

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes.

DOCKET NO. 050018-WU
ORDER NO. PSC-05-0301-PCO-WU
ISSUED: March 18, 2005

ORDER DENYING REQUEST FOR INTERVENTION

On January 14, 2005, V. Abraham Kurien, M.D., filed a letter in which he requested intervenor status and designation as a party of record in this docket. His letter states that he has been a customer of Aloha Utilities, Inc. (Aloha or utility) since June 2001 and that his interests are significantly affected by the disposition of this docket.

On January 24, 2005, Aloha timely filed its Objection to Request for Intervenor Status and Designation as a Party by Abraham Kurien. In support of its objection, Aloha states that Dr. Kurien's letter does not comply with Rules 28-106.205, 25-22.039, or 28-106.201(2), Florida Administrative Code, as the letter is not a petition and it "fails to include allegations sufficient to demonstrate that Dr. Kurien is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to a Commission rule, or that his substantial interests are subject to determination or will be affected by this proceeding." Aloha further states that the letter is premature because a proceeding, as contemplated by Rules 28-106.205 and 25-22.039, has not yet commenced in this docket.

Aloha also asserts that Dr. Kurien does not have standing to intervene in this docket or otherwise be designated as a party in this matter. Aloha states that section 120.60(5), Florida Statutes, reflects that only the agency and the licensee can be parties to a license revocation proceeding. The utility states that, as the licensee, it is the only party who can request a proceeding pursuant to section 120.60(5). It asserts that the "intervention of other parties, on the 'side' of the Commission and 'against' Aloha is improper and contrary to the spirit, intent and requirements of the Administrative Procedure Act."

In addition to his letter, on January 26, 2005, Dr. Kurien filed a Petition to Intervene in this docket. In his petition, Dr. Kurien states that his interests will be affected because, whether deletion is approved or not, actions taken by the Commission in this docket "will have a major impact on the quality and cost of the potable water that the petitioner will receive in the future." Dr. Kurien's petition also sets forth disputed issues of material fact and disputed legal issues.

On January 28, 2005, the Office of Public Counsel (OPC) filed its Response to Aloha's Objection to Dr. Kurien's Status as an Intervenor. Such a filing is not permitted under the Uniform Rules of Procedure, and thus, will not be considered.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

At the hearing on March 8, 2005, in Docket No. 010503-WU, Dr. Kurien informed the Commission that he is no longer a customer of the utility. Dr. Kurien's sole basis for requesting intervention in this proceeding was that he is a customer of the utility. This is no longer the case. Thus, Dr. Kurien has failed to demonstrate that his substantial interests will be affected by this proceeding. Accordingly, Dr. Kurien's request for intervention is hereby denied.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that V. Abraham Kurien, M.D.'s request for intervention is hereby denied.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 18th day of March, 2005



J. TERRY DEASON
Commissioner and Prehearing Officer

(SEAL)

SMC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or

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Intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.