

ORIGINAL

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Sent: Monday, April 11, 2005 3:02 PM
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Attachments: 010503 Supplemental Post Hearing Statement e-filed version.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 010503-WU

In re: Application for increase in water rates for Seven Springs System in Pasco County in Aloha Utilities, Inc.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 8 pages.

e. The document attached for electronic filing is Citizens' Supplement to Post-Hearing Statements of Issues and Positions.

(See attached file: 010503 Supplemental Post Hearing Statement e-filed version.doc)

CMP _____

COM ⁵ Thank you for your attention and cooperation to this request

CTR _____

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DOCUMENT NUMBER-DATE

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for increase in)
Water Rates for Seven Springs)
System in Pasco County by)
Aloha Utilities Inc.)
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Docket No. 010503-WU
Filed April 11, 2005

**SUPPLEMENT TO
POST-HEARING STATEMENTS OF ISSUES AND POSITIONS**

The Office of Public Counsel (OPC) submits the following supplement to the post hearing statement of issues and positions filed on April 7, 2005.

Customers Harry Hawcroft and Ed Wood adopt this supplement.

Issue 4: Does the Commission have the authority to regulate, impose, or establish drinking water standards, maximum contaminant levels, action levels, or treatment technique requirements?

Position: Yes.

Discussion: Chapter 367 of the Florida Statutes provides the Commission broad authority over water and wastewater utilities. This broad authority is underscored by §367.011, Florida Statutes, which directs that the provisions of chapter 367, are to be "liberally construed:"

"(1) This chapter may be cited as the "Water and Wastewater System Regulatory Law."

(2) The Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates.

(3) The regulation of utilities is declared to be in the public interest, and this law is an exercise of the police power of the state for the protection of the public health, safety, and welfare. The provisions of this chapter shall be liberally construed for the accomplishment of this purpose.

(4) This chapter shall supersede all other laws on the same subject, and subsequent inconsistent laws shall supersede this chapter only to the extent that they do so by express reference. This chapter shall not impair or take away vested rights other than procedural rights or benefits.” §367.011, Florida Statutes.

Notably, one of the items to be liberally construed is the Commission’s jurisdiction over utilities’ service.

Water quality is such an important issue that when setting rates for water and wastewater systems, the Commission is required to consider the value and the quality of the service provided by the company:

“The commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. In every such proceeding, the commission shall consider the value and quality of the service and the cost of providing the service, which shall include, but not be limited to.....” §367.081(2)(a)1, Florida Statutes.

§367.121(1)(a), Florida Statutes, specifically gives the Commission power to prescribe standards of quality and measurements, except to the extent such authority is expressly given to another state agency:

“Powers of commission

(1) In the exercise of its jurisdiction, the commission shall have power:

(a) To prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and to prescribe service rules to be observed by each utility, except to the extent such authority is expressly given to another state agency.”
§367.121(1)(a), Florida Statutes

Since the Commission is specifically given the power to prescribe standards of quality and measurements, the only real question remaining in this proceeding is the extent, if any, to which that power is limited or taken away by being expressly given to another state agency.

Responsibility for the *safety* of drinking water is shared between the Department of Environmental Services and Department of Health. The legislature specifically declared its intent in §403.851, Florida Statutes:

§403.851. Declaration of policy; intent

It is the policy of the state that the citizens of Florida shall be assured of the availability of safe drinking water. Recognizing that this policy encompasses both environmental and public health aspects, it is the intent of the Legislature to provide a water supply program operated jointly by the department, in a lead-agency role of primary responsibility for the program,

and by the Department of Health and its units, including county health departments, in a supportive role with specific duties and responsibilities of its own. Without any relinquishment of Florida's sovereign powers and responsibilities to provide for the public health, public safety, and public welfare of the people of Florida, the Legislature intends:

(1) To give effect to Pub. L. No. 93-523 promulgated under the commerce clause of the United States Constitution, to the extent that interstate commerce is directly affected.

(2) To encourage cooperation between federal, state, and local agencies, not only in their enforcement role, but also in their service and assistance roles to city and county elected bodies.

(3) To provide for safe drinking water at all times throughout the state, with due regard for economic factors and efficiency in government.

Quality of water is a much broader concept than safety, and the legislature provided the Commission specific power to prescribe standards and measurements for quality in §367.121(a), Florida Statutes. While responsibility for safety lies with the Department of Environmental Services and the Department of Health, responsibility for quality lies with the Florida Public Service Commission. Water may be safe but still of inferior quality, and it is the Commission's responsibility is to ensure that customers receive water of satisfactory quality.

In the case of *City of North Miami Beach v. Metropolitan Dade County*, 317 So.2d 110 (Fla. 3rd D.C.A. 1975), *certiorari denied*, 334 So.2d 604 (Fla. 1976) the Court found that public health laws did not give the Department of

Health and Rehabilitative Services exclusive jurisdiction over water quality and services in Florida. In that case the attorney for the Division of Health and Rehabilitative Services had argued that the Legislature intended the Division of Health and its agents would have final responsibility and general supervision and control over all systems of water supply insofar as their adequacy, sanitary and physical condition affect public health. The Court found that the authority of the Division of Health and Rehabilitative Services was not exclusive. The Court stated that "It is sufficient for a determination of this case to point out that the Division's position does not conflict with the position taken here by Metropolitan Dade County. It is clear that the County does not seek to override a validly-exercised state authority. It seeks rather to assert an authority of its own in order 'to regulate on a county-wide basis according to a uniform plan those municipal functions that are susceptible to, and could be most effectively carried on under, a regulatory plan applicable to the entire county. *City of North Miami Beach* at 111,112.

Likewise, the Commission has its own, legislatively provided power to prescribe standards of quality and measurements. The staff witness from the Department of Environmental Regulation in this case, though not testifying as a legal expert, expressed no concern about the Commission applying additional standards to Aloha Utilities. His concerns were focused on the utility conducting tests at locations and with frequency *at least* as great as those required by the rules of the Department of Environmental Protection. Sowerby, Tr. 248.

The Commission has explicit authority to prescribe standards of quality and measurements, and nothing proposed in this case conflicts with rules of other state agencies. Quality of service is, in fact, a core concern found in several sections of chapter 367, Florida Statutes, and the legislature has given the Commission jurisdiction over that aspect of the service provided by water and wastewater companies. The Commission has ample authority to require Aloha to meet the standards proposed in this case.

Respectfully submitted,

s/ Charles J. Beck
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**DOCKET NO. 010503-WU
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by
U.S. Mail or hand-delivery to the following parties on this 11th day of April, 2005.

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