

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

---

**DATE:** December 21, 2004

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of the General Counsel (Gervasi, Helton)  
Division of Economic Regulation (Fletcher, Stallcup)

**RE:** Docket No. 020896-WS – Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County.

**AGENDA:** 01/04/05 – Regular Agenda – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** This recommendation should be taken up immediately following the recommendation on whether to grant Aloha Utilities, Inc.'s Motion for Termination of Proceedings filed in Docket No. 020896-WS.

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\020896.RCM.DOC

---

### Case Background

Aloha Utilities, Inc. (Aloha or utility) is a Class A water and wastewater utility providing service to approximately 14,000 customers in Pasco County, including approximately 11,000 customers in the Seven Springs area. The Seven Springs area has a continuing problem with odor and black water caused by the presence of hydrogen sulfide.

By Order No. PSC-04-0712-PAA-WS, issued July 20, 2004, the Commission, among other things, ordered that Docket No. 020896-WS proceed directly to a formal hearing on the merits of three deletion petitions filed in that docket by customers of Aloha. Also by that order, the Commission proposed to modify the fourth ordering paragraph of Order No. PSC-02-0593-FOF-WU, issued April 30, 2002, in Docket No. 010503-WU (rate case order), to read that:

Aloha shall make improvements to its wells 8 and 9 and then to all of its wells as needed to meet a goal of 0.1 mg/L of sulfides in its finished water as that water

leaves the treatment facilities of the utility. Compliance with such requirement shall be determined based upon samples taken at least annually from a point of connection just after all treatment systems and before entry of such water into the transmission and distribution system of the utility. Aloha shall implement this standard no later than February 12, 2005.

On August 9, 2004, four *pro se* parties who are customers of Aloha individually and collectively filed a protest to portions of that proposed action. The protest disputes the proposed requirement that Aloha meet the 0.1 mg/L goal as the water leaves Aloha's treatment facilities, as well as the methodology upon which compliance with that goal shall be measured. The protest was not against the portion of the proposed action that eliminated the prior standard of 98% removal of hydrogen sulfide, and which requires Aloha to instead make improvements to its wells 8 and 9 and then to all of its wells as needed to meet a goal of 0.1 mg/L of sulfides in its finished water and to implement that standard by no later than February 12, 2005. Therefore, a partial consummating order issued making the non-protested actions final and effective and keeping Docket No. 010503-WU open to resolve the protest.<sup>1</sup>

On September 22, 2004, Order No. PSC-04-0929-PCO-WS issued, consolidating the two dockets for the purposes of having a single hearing on the deletion petitions and on the protest to Order No. PSC-04-0712-PAA-WS.<sup>2</sup> Order No. PSC-04-0929-PCO-WS also declared that the Order Establishing Procedure issued in Docket No. 020896-WS<sup>3</sup> shall apply to the protest as well as to the deletion petitions, including an additional deletion petition filed on August 17, 2004. The four deletion petitions at issue relate to the following areas included within Aloha's Certificate No. 136-W: Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard); Riviera Estates; Villa del Rio (also known as Riverside Villas); and Riverside Village Unit 4.

On November 9, 2004, Aloha filed a Motion for Termination of Proceedings as They Relate to Deletion of Territory (Motion for Termination), which is the subject of another recommendation to be filed for the January 4, 2004, agenda conference, and which should be taken up prior to a ruling on this recommendation. This recommendation addresses what action the Commission should take in the event that the Motion for Termination is granted. If the Commission denies the Motion for Termination, this recommendation will need not be ruled upon.

The Commission has jurisdiction pursuant to sections 367.045, 367.111 and 367.161, Florida Statutes.

---

<sup>1</sup> Order No. PSC-04-0831-CO-WS, issued August 25, 2004, in both dockets.

<sup>2</sup> Aloha filed a motion for reconsideration of Order No. PSC-04-0929-PCO-WS, or in the alternative, a motion for bifurcation of the two dockets. Those motions was denied by Order No. PSC-04-1156-FOF-WS, issued November 22, 2004.

<sup>3</sup> Order No. PSC-04-0728-PCO-WS, issued July 27, 2004.

### **Discussion of Issues**

**Issue 1:** What action, if any, should the Commission take in the event that Aloha's Motion for Termination is granted?

**Primary Staff Recommendation:** If the Commission votes to grant Aloha's Motion for Termination, the Commission must determine whether there is probable cause to believe that Aloha has violated a statute, rule, or order that warrants the imposition of a penalty. Primary staff recommends that the Commission should decline to initiate deletion proceedings against Aloha because there is not probable cause to believe that Aloha has violated a statute, rule, or order that warrants the imposition of a penalty. Because Aloha provides potable water which meets all state and federal drinking water standards up to the point of connection to its customers' meters, primary staff does not believe that the facts relating to Aloha's provision of water service to Trinity, Riviera Estates, Villa del Rio, and Riverside Village Unit 4 provide probable cause that Aloha has violated its statutory duty under section 367.111(2), Florida Statutes, to provide service to customers in those areas that "shall not be . . . less sufficient than is consistent with . . . the reasonable and proper operation of the utility system in the public interest." Aloha should be required to continue to submit monthly project status reports up to the time of implementation of the treatment standard imposed by Order No. PSC-04-0712-PA-WS. (Gervasi, Fletcher)

**Alternate Staff Recommendation:** If the Commission votes to grant Aloha's Motion for Termination, the Commission must determine whether there is probable cause to believe that Aloha has violated a statute, rule, or order that warrants the imposition of a penalty. Alternate staff believes the facts relating to Aloha's provision of water service to Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard), Riviera Estates, Villa del Rio, and Riverside Village Unit 4 provide probable cause that Aloha has violated its statutory duty under section 367.111(2), Florida Statutes, to provide service to customers in those areas that "shall not be . . . less sufficient than is consistent with . . . the reasonable and proper operation of the utility system in the public interest." Alternate staff recommends that the appropriate penalty pursuant to section 367.161(2), Florida Statutes, for such statutory violation is to amend or partially revoke Aloha's water certificate no. 136-W to delete these insufficiently served areas from its service territory. The Commission's decision to revoke any portion of Aloha's certificated territory should be made contingent upon provisions being made for an alternative service provider to be in place. Procedurally, alternate staff recommends that the Commission open a new docket for this deletion proceeding, provide 30 days' notice of the initiation of such action pursuant to section 367.045(6), and, at the expiration of that 30 days, issue the Order to Show Cause appended to this recommendation as Attachment C, to initiate the deletion proceeding and provide a point of entry for Aloha to request a hearing. The requisite notice should be served on Aloha by personal service or certified mail, and submitted for the next available publication of the Florida Administrative Weekly and to a newspaper of general circulation in the area affected within seven days of the Commission's vote on the matter. (Helton, Stallcup)

**Primary Staff Analysis:** In Order No. PSC-02-0593-FOF-WU (most recent rate case order), the Commission extensively discussed the “black water” problem experienced by a number of Aloha’s customers, and made the following observations:<sup>4</sup>

- Hydrogen sulfide naturally occurs in much of the source water for Florida’s utilities. The black water problem is not unique to the customers of Aloha and does occur in other areas of Florida
- Hydrogen sulfide in Aloha’s source water is converted to sulfates by chlorination.
- Copper sulfide (black water) occurs when elemental sulfur or sulfate in the water is converted biochemically in the customer’s home from harmless sulfate and elemental sulfur back into hydrogen sulfide.
- Aloha’s water contains very small quantities of sulfate as it is delivered to the customer – at most one-tenth of the national limit.
- Aloha meets the drinking water standards set forth by the Department of Environmental Protection (DEP) for water quality, and the black water is created beyond the meter. Therefore the quality of Aloha’s product is satisfactory.
- The method that Aloha has chosen to comply with DEP’s water quality rules – the conversion of sulfides to sulfates through chlorination – has not proven to be an adequate remedy. Aloha should take a more proactive approach to dealing with the black water problem.
- For those customers experiencing black water, the only absolute fix appears to be to replace existing copper pipe with chlorinated polyvinyl chloride (CPVC) piping.
- Another possible solution to address the black water problem is the removal of almost all hydrogen sulfide.

From comments made by various customers at the April 8, 2004 customer hearings held in Docket No. 020896-WS and in written comments submitted to the Commission, it appears that there is a public perception among customers who have requested to be deleted from Aloha’s service area that Aloha has done nothing to address the “black water” problem that has been ongoing since at least 1996. However, this is simply not the case. That said, staff understands the frustration that these customers feel as a result of struggling with this problem for so long. The following is a summary of the sequence of events that have caused delay on the part of Aloha to begin construction of treatment facilities to combat the problem.

---

<sup>4</sup>Attachment A contains the full text of Section III and Section IV.A.1 of the rate case order, which address the “black water” issue.

1997-1999

The Commission first required Aloha to evaluate the best available treatment technologies for removal of hydrogen sulfide from its water and to prepare an engineering report that addressed that evaluation in Order No. PSC-97-0280-FOF-WS, issued March 12, 1997, in Docket Nos. 950615-SU and 960545-WS<sup>5</sup>. Aloha filed the requisite engineering report in June, 1997, recommending that it be allowed to continue adjusting the corrosion inhibitor dosage level in an ongoing effort to eliminate the black water problem. Aloha also recommended that if hydrogen sulfide treatment facilities were required, the Commission should approve the construction of three central water treatment plants which utilize packed tower aeration. Aloha estimated that construction and operation of those plants would increase customer rates by 398 percent.

In a June 5, 1998 letter, Aloha again stated that it was willing to begin construction of three centrally located packed tower aeration treatment facilities to remove hydrogen sulfide from the source water. Aloha stated that it was willing to proceed with this upgrade in order to address customer quality of service concerns and to comply with future Environmental Protection Agency (EPA) regulations. Before commencing construction of these water treatment facilities, however, Aloha requested that the Commission issue an order declaring it prudent for Aloha to construct these facilities. Upon issuance of such order, Aloha stated that it planned to construct the three central packed tower aeration water treatment facilities in three phases and that it would initiate a limited proceeding to increase rates in three phases.

In Order No. PSC-99-0061-FOF-WS, issued January 7, 1999, in Docket No. 960545-WS<sup>6</sup>, the Commission noted that it required Aloha to survey its Seven Springs water customers about the quality of their water. Aloha reported that it sent 8,597 surveys to its Seven Springs customers. The Commission received 3,706 responses, constituting a 43% return rate. Of those responses, 73% indicated that they have observed discolored water during the past two years, and 71% indicated that the odor and taste was unacceptable. 56.7% indicated that the water pressure was acceptable. 83.7% indicated that they were unwilling to pay higher water rates. The Commission noted that the survey showed that many of Aloha's customers were not satisfied with Aloha's water quality, but that the majority of the customers who responded to the survey were unwilling to pay higher rates to improve their water quality.

The Commission identified four available options which could improve the water quality: (1) the construction of hydrogen sulfide treatment facilities to remove hydrogen sulfide from the supply wells; (2) for Aloha to obtain a different source of supply; (3) for Aloha's customers to modify their hot water heaters and flush the lines within the home with bleach; and (4) the removal of copper pipes in customers' homes and replacement with PVC or CPVC pipes, which may have to be accomplished in order to stop corrosion already present in some homes. With respect to option (1), the Commission noted that Aloha has considered several types of treatment for removing hydrogen sulfide and that construction of three central treatment plants utilizing

---

<sup>5</sup> In Re: Application for approval of Reuse Project Plan and increase in wastewater rates in Pasco County by Aloha Utilities, Inc., and In Re: Investigation of utility rates of Aloha Utilities, Inc. in Pasco County.

<sup>6</sup> In Re: Investigation of utility rates of Aloha Utilities, Inc. in Pasco County.

packed tower aeration appeared to be the best available technology for hydrogen sulfide removal. However, Aloha estimated that these upgrades would increase a customer's water bill for 6,000 gallons from \$14.74 to \$58.75 or 3.98 times the current rate. Further, the Commission noted that this treatment method should reduce, but not necessarily eliminate, the frequency and amount of discoloration observed within the home, and that the staff believed that the only demonstrated method for permanently eliminating the black water discoloration within the home is to replace the copper plumbing with a different material. The Commission found that although there is a black water problem, it appeared that the customers were unwilling to pay for improvements which may or may not alleviate the problem, and that there was no guarantee that packed tower aeration would completely correct the problem. By proposed agency action, the Commission concluded that it should take no further action in regards to quality of service in that docket.

Moreover, the Commission noted that Aloha was prepared to begin construction of the water system upgrade in three phases, with requested rate increases upon the completion of each phase. Because there was no regulatory requirement for this treatment process, Aloha requested that the Commission declare it prudent to construct the facilities before construction began. However, because the large majority of customers who responded to the survey indicated that they were not willing to pay higher rates for better water quality, by final agency action, the Commission declined to make a prudency determination.

#### 2000-Present

The Commission's proposed decision to take no further action in regards to quality of service in Docket No. 960545-WS was protested by three customers. A hearing was conducted in March 2000. By Final Order No. PSC-00-1285-FOF-WS, issued July 14, 2000, the Commission noted that several witnesses expressed frustration that although the water meets DEP and EPA standards, the water needs improvement and something needs to be done about it. Accordingly, the Commission found that it was in the public interest to require the utility to take more proactive corrective actions. The Commission noted that Aloha began using a corrosion inhibitor in early 1996 to help resolve the black water problem and to reduce the water's corrosivity, but that the problem continued. Additional treatment facilities, specifically packed tower aeration, were again identified as potential solutions in a study submitted by utility witness Porter. The Commission found that the utility was willing to move ahead with those improvements if desired by the customers and the Commission.

The Commission required Aloha to immediately implement a pilot project using the best available treatment alternative to enhance the water quality and to diminish the tendency of the water to produce copper sulfide in the customers' homes. Witness Porter suggested that a pilot study was needed to more accurately determine the treatment results and ultimately the costs to remove the hydrogen sulfide. He proposed sharing the results of the pilot project with the DEP to see what the DEP would permit to be built. The Commission required Aloha to file monthly reports indicating the status of permitting and construction for the pilot project and the results of the pilot project on the quality of water.

Utility witness Watford testified that the only known way to completely eliminate the black water problem is to repipe the homes with CPVC or a material other than copper. However, the Commission found that the utility did not appear to be willing, or financially able,

to offer its customers a rebate or a low cost loan for the purpose of repiping their homes at that time. The Commission noted that Rule 25-30.225(5), Florida Administrative Code, states that “[e]ach water utility shall operate and maintain in safe, efficient, and proper condition, all of its facilities and equipment used to distribute, regulate, measure or deliver service up to and including the point of delivery into the piping owned by the customer.” And the Commission noted that Rule 25-30.210(7), Florida Administrative Code, defines “point of delivery” for water systems to mean “the outlet connection of the meter for metered service or the point at which the utility’s piping connects with the customer’s piping for non-metered service.” The Commission found that because the utility’s responsibility ends at the meter, it could not require the utility to offer low cost loans or rebates for the purpose of repiping customers’ homes. However, the Commission noted that if Aloha were to propose a financial incentive program to the customers for repiping, the Commission could review the recovery of the associated program costs for appropriateness.

By Order No. PSC-02-1428-TRF-WU, issued October 18, 2002, in Docket No. 010156-WU,<sup>7</sup> the Commission noted that according to the pilot project reports that the Commission required the utility to file on a monthly basis by Order No. PSC-00-1285-FOF-WS, Aloha discovered another treatment process, identified by the trade name “MIEX,” to remove the hydrogen sulfide from the water supply. That treatment process uses a specifically engineered magnetic ion exchange resin. At the time of issuance of Order No. PSC-02-1428-TRF-WU, Aloha had tested the technical and economical feasibility of using MIEX to combat the black water problem and was nearing completion of its final feasibility report concerning that treatment process.<sup>8</sup> However, the utility engineer’s estimate was that the full-scale MIEX treatment process would cost at least \$10,000,000, and that the total cost of the MIEX pilot project would be approximately \$200,000 to \$300,000. Aloha has since stated that it chose not to pursue implementation of the MIEX process because in addition to the cost of implementation, the required resin was only available through a single provider located in Australia.

By the rate case order issued April 30, 2002, the Commission denied Aloha’s requested rate increase and required the utility to implement a treatment process for all its wells that is designed to remove at least 98% of the hydrogen sulfide in the raw water, starting with wells 8 and 9, which have the highest hydrogen sulfide concentration in the raw water.

Aloha exercised its legal right to appeal the rate case order. On August 5, 2002, the Commission granted a partial stay of the rate case order pending appeal. The requirement to complete the improvements for removal of 98% of the hydrogen sulfide within 20 months was stayed.<sup>9</sup> The First District Court of Appeal affirmed the rate case order and subsequently denied

---

<sup>7</sup> In Re: Application for increase in service availability charges for water customers in the Seven Springs service area in Pasco County by Aloha Utilities, Inc.

<sup>8</sup> The final feasibility report, entitled “2002 Water Facilities Upgrade Report,” was filed October 18, 2002, in Docket Nos. 960545-WS and 010503-WS.

<sup>9</sup> Order No. PSC-02-1056-PCO-WU.

Aloha's request for reconsideration on June 12, 2003. The new date to implement the 98%-reduction solution thus became, and remains, February 12, 2005.<sup>10</sup>

The first of the four deletion petitions in Docket No. 020896-WS was filed on July 18, 2002 – after the rate case order was appealed, before the partial stay was granted, and almost a year before the Court's mandate issued. Among other things, that petition asked that the required action plan for removing 98% of hydrogen sulfide be approved only after an independent audit of Aloha's processing plant and methodology. The Commission held action on the petition in abeyance from December 9, 2002 to March 8, 2004, pending the conclusion of the appeal of the rate case order.<sup>11</sup>

While the deletion docket was in abeyance, the Office of Public Counsel (OPC) volunteered to conduct and finance an independent audit of Aloha's processing plant and methodology that had been requested by the first deletion petition. That audit was conducted by Dr. Audrey Levine of the University of South Florida. Dr. Levine's findings and conclusions are contained in a two-phase audit report. Phase I of the report was issued in August 2003 and Phase II was issued in February 2004. Phase II of the report identifies several potential treatment options, each of which may be effective in resolving the odor problem and the formation of copper sulfide in homes that do not already exhibit a black water problem. The report indicates that there is no guarantee that the use of either packed tower aeration or alternative disinfection can completely alleviate the black water problem.

Customer service hearings were conducted on April 8, 2004, to obtain the customers' views on the audit report and the implications of its findings. The customers generally did not address the specifics of the audit report and the proposed treatment options. Instead, virtually all of the customers who testified stated that they wished to be deleted from Aloha's service area in order to obtain service from Pasco County. By letter dated May 14, 2004, a copy of which is appended to this recommendation as Attachment B, the County advised that assuming the Aloha system or a portion of it was for sale, the County is ready, willing and able to pursue a purchase. However, Aloha has advised the County that it is not interested in even discussing the potential sale of its system and the County's policy is to pursue the acquisition of private utilities only when the utility is willing to transfer ownership.

Dr. Levine's audit report identified several potential options to modify the existing treatment system, including packed tower aeration, alternative oxidants, and membrane technologies.<sup>12</sup> With respect to alternative oxidants, the study suggests that the most likely candidate oxidants are hydrogen peroxide (H<sub>2</sub>O<sub>2</sub>) or ozone, and that an advantage of using alternative oxidants is that the chlorine demand of the water will be reduced allowing for more

---

<sup>10</sup> On July 29, 2003, Aloha requested a 100-day extension to the new February 12, 2005 deadline. The Commission denied that request as premature by Order No. PSC-03-1157-PCO-WU, issued October 20, 2003.

<sup>11</sup> Order No. PSC-02-1722-PCO-WS, issued December 9, 2002. Order No. PSC-03-0325-FOF-WS, issued March 6, 2003, denied customer requests for reconsideration of the abeyance order. Order No. PSC-04-0254-PCO-WS, issued March 8, 2004, removed the docket from abeyance.

<sup>12</sup> These treatment options are more fully discussed in Order No. PSC-04-0712-PAA-WS, issued July 20, 2004, in Docket Nos. 020896-WS and 010503-WU.



effective use of chloramination. However, while H<sub>2</sub>O<sub>2</sub> has been used for the treatment of drinking water, it has not been used for the purpose of reducing hydrogen sulfides in drinking water. The science suggests that it will be effective for that purpose; but the science has not been proven in a full-scale utility application. Aloha has chosen to implement this methodology, which is substantially less expensive to implement than aeration or membrane technologies, and has retained Dr. Levine as a consultant. In its most recent project status report dated December 10, 2004, Aloha advises that it has submitted the initial permit application submittal package to the DEP for review and approval and that it has selected contractors to provide construction services for the project. Further, Aloha advises that testing work is underway on Dr. Levine's H<sub>2</sub>O<sub>2</sub> treatment process.

By Order No. PSC-04-0712-PAA-WS, the Commission noted that it will review the prudence of the option that Aloha implements during any future rate proceeding wherein Aloha requests, and carries the burden to prove, that the costs of the treatment process should be included in rates. Moreover, the Commission noted that the 98% removal standard required by the rate case order did not appear to be attainable for all of Aloha's wells, due to low concentration of hydrogen sulfide in some of the wells. In noting that Tampa Bay Water, a wholesale water supplier in the area, has voluntarily imposed a standard for hydrogen sulfide not to exceed 0.1 mg/L for its finished water, the Commission, by proposed agency action, found it appropriate for Aloha to apply that same standard because it appears to be reasonable and attainable, and will diminish the occurrences of black water. Numerous customers have expressed concern about the experimental nature of the H<sub>2</sub>O<sub>2</sub> treatment methodology, and certain customers have protested portions of the Commission's proposed modification of the rate case order as a result of those concerns. A hearing to resolve the protest is scheduled to commence on March 8, 2005.

The above discussion shows that Aloha has, in fact, considered several treatment alternatives to alleviate the black water problem experienced by its customers, including packed tower aeration and MIEX, has performed a pilot study of the MIEX option, and is in the process now of implementing H<sub>2</sub>O<sub>2</sub> technology to address the problem. Aloha is currently under a requirement imposed by Order No. PSC-04-0712-PA-WS to make improvements to its wells 8 and 9 and then to all of its wells as needed to meet a goal of 0.1 mg/L of sulfides in its finished water as that water leaves the treatment facilities of the utility, and to implement that standard no later than February 12, 2005. Aloha's project status reports filed to date indicate that the utility is working to meet that implementation deadline.

Although customers have complained for many years about the quality of the water they receive from Aloha, the above discussion shows that contrary to public opinion, Aloha does not have a history of ignoring the problem. Moreover, as noted above, the Commission has found by prior order that the utility's responsibility ends at the meter.<sup>13</sup> In making that finding, the Commission cited to Rules 25-30.225(5) and 25-30.210(7), Florida Administrative Code. Rule 25-30.225(5) requires each water utility to operate and maintain all of its facilities and equipment in safe, efficient, and proper condition, up to and including the point of delivery into the piping

---

<sup>13</sup>Order No. PSC-00-1285-FOF-WS, Issued July 14, 2000, in Docket No. 960545-WS, In Re: Investigation of utility rates of Aloha Utilities, Inc. in Pasco County, at page 24.

owned by the customer. Rule 25-30.210(7) defines “point of delivery” to mean “the outlet connection of the meter for metered service or the point at which the utility’s piping connects with the customer’s piping for non-metered service.” These rules make it clear that a black water problem occurring on the customers’ side of the meter is not covered under section 367.111, Florida Statutes.

Further, the DEP, not the Commission, has the statutory authority to establish standards for drinking water quality pursuant to the Florida Safe Drinking Water Act, sections 403.850 et seq., Florida Statutes. Primary drinking water regulations can address contaminants that “may have an adverse effect on the health of the public.” §403.852(12). Secondary drinking water standards can address contaminants that “may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use” or which otherwise adversely affect the public welfare. §403.852(13). DEP has recently adopted regulations that address the required treatment of hydrogen sulfide in water from new water wells. However, those rules do not apply to existing wells such as Aloha’s. As stated in many prior Commission orders, Aloha’s drinking water appears to comply with all applicable DEP drinking water standards.

If the Commission votes to grant Aloha’s Motion for Termination, the Commission must determine whether there is probable cause to believe that Aloha has violated a statute, rule, or order that warrants the imposition of a penalty. Primary staff recommends that the Commission should decline to initiate deletion proceedings against Aloha at this time because there is not probable cause to believe that Aloha has violated a statute, rule, or order that warrants the imposition of a penalty. Because Aloha provides potable water which meets all state and federal drinking water standards up to the point of connection to its customers’ meters, primary staff does not believe that the facts relating to Aloha’s provision of water service to the Trinity, Riviera Estates, Villa del Rio, and Riverside Village Unit 4 provide probable cause that Aloha has violated its statutory duty under section 367.111(2), Florida Statutes, to provide service to customers in those areas that “shall not be . . . less sufficient than is consistent with . . . the reasonable and proper operation of the utility system in the public interest.” Aloha should be required to continue to submit monthly project status reports up to the time of implementation of the treatment standard imposed by Order No. PSC-04-0712-PAA-WS.

Staff will continue to closely monitor Aloha’s progress toward achieving the standard of 0.1 mg/L of sulfides in its finished water by February 12, 2005. At a minimum, Aloha is required to meet this standard at the point where the finished water enters its distribution system. A final determination as to whether Aloha will be required to meet that standard at additional points in the distribution system, and whether conversion or removal of sulfides will be required, depends on the outcome of the hearing scheduled for March 8, 2005 on the customers’ protest of Order No. PSC-04-0712-PAA-WS. In the event that Aloha fails to meet the February 12, 2005 deadline, or fails to comply with the requirements of the final order that is issued in the protest docket, staff will promptly file a recommendation for the Commission to further address the matter and potentially initiate a show cause proceeding at that time.

**Alternate Staff Analysis:** Section 367.045(5)(a), Florida Statutes, provides, in relevant part, that

[t]he commission may grant or amend a certificate of authorization, in whole or in part or with modifications in the public interest, but may not grant authority greater than that requested in the application or amendment thereto and noticed under this section; or it may deny a certificate of authorization or an amendment to a certificate of authorization, if in the public interest.

Section 367.045(6), Florida Statutes, provides that “[t]he revocation, suspension, transfer, or amendment of a certificate of authorization is subject to the provisions of this section. The commission shall give 30 days’ notice before it initiates any such action.”

Read together, these statutory provisions clearly provide that the Commission may amend a certificate of authorization to delete territory, if in the public interest, so long as it provides 30 days’ notice before initiating the action. Moreover, section 367.111(2), Florida Statutes, provides, in relevant part, that each utility shall provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest. The relevant inquiry is whether there are facts to show that Aloha has violated this statutory standard such that it is in the public interest for the Commission to delete the territory that is insufficiently served. Alternate staff believes that although it appears that Aloha is in compliance with the drinking water standards imposed by the DEP, there are sufficient facts to support the initiation of deletion proceedings against Aloha.

In determining whether it is in the public interest to amend a certificate of authorization, the Commission addresses, among other things, the financial and technical ability of the utility to provide adequate service. See Rule 25-30.036, Florida Administrative Code. The Commission has been plagued for many years with Aloha customer complaints concerning the quality of water that Aloha provides, and questioning Aloha’s ability to provide adequate service. The following is a summary discussion of the “black water” problem experienced by Aloha customers that the Commission has been addressing for so long.

Customer testimony concerning poor quality of service provided by Aloha, due, in large part, to a “black water” problem, was first taken by the Commission over eight years ago, on September 9, 1996. Over 500 customers attended the customer testimony sessions. At page 19 of Order No. PSC-97-0280-FOF-WS, issued March 12, 1997, in Docket Nos. 950615-SU and 960545-WS,<sup>14</sup> the Commission noted that 57 of those customers presented testimony about Aloha’s quality of service, and that several of them represented various customer groups and spoke for a number of people. The Commission found that “[i]t is obvious that the customers are dissatisfied with the quality of water which Aloha is providing, have been unhappy with the water for many years, and do not trust the utility.” Many customers provided testimony about problems with low pressure, and about the water’s offensive taste and odor. Several customers testified about the damage which Aloha’s corrosive water has done to the plumbing inside their

---

<sup>14</sup> In Re: Application for approval of Reuse Project Plan and increase in wastewater rates in Pasco County by Aloha Utilities, Inc., and In Re: Investigation of utility rates of Aloha Utilities, Inc. in Pasco County.

homes. Customers also described the poor attitude of Aloha's employees and stated that they believed that Aloha was not interested in improving the water quality, and that Aloha was not sincere in responding to their repeated complaints. At page 13 of the Order, the Commission found that "[t]he customers also provided many black-colored water samples which effectively demonstrated the poor quality of water which [was] coming out of their faucets." In finding that Aloha's quality of water service was unsatisfactory, the Commission noted that

[e]ven though Aloha is technically in compliance with State and Federal drinking water standards, customers from many areas within Aloha's service territory either testified or wrote letters to the Commission stating that their water is aesthetically objectionable. It smells bad, tastes bad, and in some cases it reacts with copper plumbing, turning the water black. The water is also corrosive to copper plumbing and is damaging the plumbing within many of the customers' homes.<sup>15</sup>

The Commission required the utility to evaluate the best available treatment technologies for removal of hydrogen sulfide from its water and to prepare an engineering report that addressed that evaluation.<sup>16</sup>

The Commission noted that Aloha filed the requisite engineering report in June, 1997, recommending, among other things, that if hydrogen sulfide treatment facilities were required, the Commission should approve the construction of three central water treatment plants which utilize packed tower aeration.<sup>17</sup> Aloha estimated that construction and operation of those plants would increase customer rates by 398 percent. In that same order at page 15, the Commission noted that Aloha had begun adding a corrosion inhibitor in early 1996. By Proposed Agency Action Order PSC-99-0061-FOF-WS, issued January 7, 1999, which was protested, the Commission determined that it should not take further actions regarding quality of service in the docket. Another hearing was conducted, with customer testimony being taken in two sessions on March 29, 2000. Several hundred customers attended each session and approximately 50 customers testified about black or discolored water, odor/taste problems, low pressure, and/or deposits/sediments. Again, many customers brought containers of discolored or black water to the hearing for viewing.<sup>18</sup> Again the Commission concluded that the record was clear that the quality of the water met all applicable state and federal standards but that the customers were not satisfied with the product that they receive.<sup>19</sup>

---

<sup>15</sup> Id. at 14.

<sup>16</sup> Id. at 16.

<sup>17</sup> See pages 3-4 of Order No. PSC-00-1285-FOF-WS, issued July 14, 2000, in Docket No. 960545-WS, In Re: Investigation of utility rates of Aloha Utilities, Inc. in Pasco County.

<sup>18</sup> Order No. PSC-00-1285-FOF-WS at page 11.

<sup>19</sup> Id. at 15-16.

The Commission found the overall quality of service to be marginal and required Aloha “to immediately implement a pilot project using the best available treatment alternative to enhance the water quality and to diminish the tendency of the water to produce copper sulfide in the customers’ homes.”<sup>20</sup> Some months later, the Commission clarified that Aloha “shall immediately implement a pilot project using the best available treatment alternative to remove the hydrogen sulfide, thereby enhancing the water quality and diminishing the tendency of the water to produce copper sulfide in the customer’s homes.” In so doing, the Commission declined to designate the specific treatment alternative, leaving Aloha to make that choice.<sup>21</sup>

Pending the completion of the pilot project, Aloha continued to use a polyphosphate corrosion inhibitor and chlorination to address the black water problem, as reflected in Order No. PSC-02-0593-FOF-WU, issued April 30, 2002, in Docket No. 010503-WU (rate case order). When asked what steps Aloha had taken to alleviate the problem, DEP witness Foster testified that the utility was permitted to use a polyphosphate corrosion inhibitor on December 12, 1995, but that home treatment units can cause the corrosion inhibitor to be less effective because they tend to remove mineral calcium, iron, and magnesium, causing the water to become corrosive.<sup>22</sup> The Commission found that this methodology, along with the conversion of hydrogen sulfide to sulfate or elemental sulfur through chlorination, had not proven to be an adequate remedy, and required Aloha to take additional measures to correct the problem.<sup>23</sup> Again customers testified mostly about the “black water” problem, but also about customer dissatisfaction with the taste and odor of the water, insufficient pressure, and attitude of the utility.<sup>24</sup> The Commission found that “a significant number of customers have been receiving ‘black water’ from Aloha for over six years, and it is past time for Aloha to do something about it.” Further, the Commission noted that: 1) Aloha has violated its water use permit with the Southwest Florida Water Management District starting in 1994, and consistently since 1996; 2) Aloha's customers have complained about black water since at least early 1996; 3) any actions that Aloha has taken to eliminate these problems have come about in response to requirements made by governmental authorities; and 4) the actions that Aloha has taken have been slow-moving and ineffective. For these reasons, the Commission again found the overall quality of service provided by Aloha to be unsatisfactory, and required Aloha to implement, within 20 months, a treatment process for all of its wells, starting with well nos. 8 and 9, that is designed to remove at least 98% of the hydrogen sulfide in the raw water.<sup>25</sup>

Also in Order No. PSC-02-0593-FOF-WU, the Commission took note of section 367.111(2), Florida Statutes, and determined that “[w]hile the service provided by Aloha appears

---

<sup>20</sup> Id. at 20,22.

<sup>21</sup> Order No. PSC-00-1628-FOF-WS, issued September 12, 2000, in Docket No. 960545-WS.

<sup>22</sup> Order No. PSC-02-0593-FOF-WU at 13.

<sup>23</sup> Id. at 14.

<sup>24</sup> Id. at 16.

<sup>25</sup> Id. at 20, 30.

to meet DEP standards, the question here is whether Aloha operates its system in the public interest.”<sup>26</sup> Further, the Commission noted that a DEP witness testified that Pasco County had a hydrogen sulfide problem in its water and installed a treatment system to address the problem. The Commission opined that if Aloha had committed itself to a more proactive approach to this problem, it could have prevented the situation from becoming as bad as it is and possibly could have eliminated it entirely.<sup>27</sup> The Commission set the rates at the minimum of the range of return on equity “because of the overwhelming dissatisfaction of Aloha's customers due to the poor quality of the water service and their treatment by the utility in regards to their complaints and inquiries.” The Commission also reduced the amount allowed for salaries and benefits of both the President and Vice-President by 50% upon finding that “the continuing problems with ‘black water’ over at least the last six years, the customers' dissatisfaction with the way they are treated, the poor service they receive from the utility, and the failure of the utility to aggressively and timely seek alternate sources of water supply reflect poor management of this utility.”<sup>28</sup> Finally, the Commission required Aloha to implement five specific measures designed to improve customer service, including the formation of the Citizens’ Advisory Committee.<sup>29</sup>

As noted in Order No. PSC-04-0712-PAA-WS, issued July 20, 2004, in the instant dockets, Aloha appealed the rate case order and the requirement to complete the improvements for removal of 98% of the hydrogen sulfide within 20 months was stayed.<sup>30</sup> The First District Court of Appeal affirmed the rate case order and subsequently denied Aloha’s request for reconsideration on June 12, 2003. Therefore, the new date to implement a solution to the “black water” problem became, and remains, February 12, 2005.

Two more customer service hearings were held on April 8, 2004, in Docket No. 020896-WS, to obtain customer views on Dr. Audrey Levine’s independent audit report of Aloha’s processing plant and methodology that had been requested by the first deletion petition. Approximately 200 customers attended each session and numerous customers testified. As further evidence that Aloha is not operating its system in the public interest, virtually all of the customers elected not to address the specifics of the audit report and the treatment options proposed therein. Instead, virtually all of the customers who testified stated that they wished to be deleted from Aloha’s service area in order to obtain service from Pasco County due to the “black water” problem and the poor quality of service they receive. Many carried picket signs into the hearing room which read “Better Water Now!”

As evidenced in Attachment B, the County has advised that it is ready, willing and able to pursue a purchase of Aloha. However, Aloha has advised the County that it is not interested in even discussing the potential sale of its system and the County’s policy is to pursue the acquisition of private utilities only when the utility is willing to transfer ownership. In the

---

<sup>26</sup> Id. at 24.

<sup>27</sup> Id. at 29.

<sup>28</sup> Id. at 30-31.

<sup>29</sup> Id. at 31-40.

<sup>30</sup> See Order No. PSC-02-1056-PCO-WU, issued August 5, 2002, in Docket No. 010503-WU.

County's opinion, a transfer of utility customers or service area can only legally occur under certain scenarios, including: "(1) a willing sale by the utility owner; (2) exercise of the power of eminent domain; (3) a lease arrangement; or (4) a court ordered sale from a receivership to the highest bidder after the utility owner has abandoned the utility or the PSC has revoked the certificate(s) to operate causing an abandonment." Therefore, the Commission's decision to revoke any portion of Aloha's certificated territory should be made contingent upon provisions being made for an alternative service provider to be in place.

Staff recently mailed a survey to the customers who reside, or own property, in the four areas that customers have petitioned for deletion of territory, asking whether those customers are in favor of the Commission approving the deletion petitions and whether they have a black water problem at their premises. The survey response rate is approximately 49% to date. The results of the survey preliminarily show that 81% of the responding customers favor deletion, 9% do not favor deletion, and 10% do not know whether they favor deletion or not. 64% of the responding customers state that they have a black water problem at their premises. 59% of the responding customers who indicated that they did not have a black water problem at their premises still favored deletion, indicating a more systemic problem with the utility than just a "black water" problem. 59% of the responding customers provided additional comments. Of those, 63% complained of other quality of service issues, including the quality of the water, water pressure, and customer service, and 14% stated that they have found it necessary to purchase bottled water or filters, or they have abandoned the use of their saunas or bathtubs. Only 2% of the comments provided by Aloha's customers indicated that they had no problems with Aloha's service.

Finally, 19 customers prefiled testimony in the deletion docket (Docket No. 020896-WS) on November 18, 2004, in accordance with the Order Establishing Procedure issued in the docket. In their prefiled testimony, some customers state that they have experienced pinhole leaks in their copper piping, and many state that they believe the customer service from Aloha is not satisfactory. Many of these customers state that they have water softeners and/or water filters. All nineteen customers who prefiled testimony state that they experience poor water quality and wish to receive water from another utility.

For the foregoing reasons, alternate staff believes the facts relating to Aloha's provision of water service to Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard), Riviera Estates, Villa del Rio, and Riverside Village Unit 4 provide probable cause that Aloha has violated its statutory duty under section 367.111(2), Florida Statutes, to provide service to customers in those areas that "shall not be . . . less sufficient than is consistent with . . . the reasonable and proper operation of the utility system in the public interest." Alternate staff recommends that the appropriate penalty pursuant to section 367.161(2), Florida Statutes, for such statutory violation is to amend or partially revoke Aloha's water certificate no. 136-W to delete these insufficiently served areas from its service territory. The Commission's decision to revoke any portion of Aloha's certificated territory should be made contingent upon provisions being made for an alternative service provider to be in place.

Procedurally, alternate staff recommends that the Commission open a new docket for this deletion proceeding, provide 30 days' notice of the initiation of such action pursuant to section 367.045(6), and, at the expiration of that 30 days, issue the attached Order to Show Cause to initiate the deletion proceeding and provide a point of entry for Aloha to request a hearing. The

Docket No. 020896-WS  
Date: December 21, 2004

requisite notice should be served on Aloha by personal service or certified mail, and submitted for the next available publication of the Florida Administrative Weekly and to a newspaper of general circulation in the area affected within seven days of the Commission's vote on the matter.



BEFORE THE PUBLIC SERVICE COMMISSION

|   |                                    |
|---|------------------------------------|
| In re: Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient 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.<br>ORDER NO.<br>ISSUED: |
|---|------------------------------------|

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON  
LISA POLAK EDGAR

SHOW CAUSE ORDER

BY THE COMMISSION:

BACKGROUND

Aloha Utilities, Inc. (Aloha or utility) is a Class A water and wastewater utility located in Pasco County. The utility consists of two distinct service areas: Aloha Gardens and Seven Springs. Approximately 1,800 customers in the Seven Springs area filed petitions in Docket No. 020896-WS for deletion of territory from Aloha's certificate of authorization due to alleged poor quality of service. By Order No. \_\_\_\_\_, issued \_\_\_\_\_, in that docket, this Commission granted Aloha's Motion for Termination of Proceedings as They Relate to Deletion of Territory, and closed the docket.

The four deletion petitions related to the following areas included within Aloha's Certificate No. 136-W: Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard); Riviera Estates; Villa del Rio (also known as Riverside Villas); and Riverside Village Unit 4. This order addresses whether Aloha should be required to show cause as to why those portions of its certificated territory should not be deleted from its Certificate No. 136-W for failure to provide sufficient service consistent with the reasonable and proper operation of the utility system in the public interest, in apparent violation of section 367.111(2), Florida Statutes. We have jurisdiction pursuant to sections 367.045, 367.111 and 367.161, Florida Statutes.

FINDINGS OF FACT

On or about September 9, 1996, testimony was first taken by this Commission of Aloha's customers in the Seven Springs area concerning poor quality of service provided by Aloha, due, in large part, to a "black water" problem. Hundreds of customers attended the hearing. By Order No. PSC-97-0280-FOF-WS, issued March 12, 1997, in Docket Nos. 950615-SU and 960545-WU, this Commission found that "it is obvious that the customers are dissatisfied with the quality of water which Aloha is providing, have been unhappy with the water for many years, and do not trust the utility." By that same order, we noted that even though Aloha is in compliance with state and federal drinking water standards, customers from many areas within Aloha's service territory have stated that their water is aesthetically objectionable, smells bad, tastes bad, and in some cases reacts with copper plumbing, turning the water black. We found Aloha's quality of water service to be unsatisfactory and required Aloha to evaluate the best available treatment technologies for removal of hydrogen sulfide from its water to address the "black water" problem.

On or about March 29, 2000, testimony was again taken by this Commission of Aloha's customers in the Seven Springs area concerning poor quality of service provided by Aloha. Again, hundreds of customers attended the hearing. Approximately 50 customers testified about black or discolored water, odor/taste problems, low pressure, and/or deposits/sediments in the water. By Order No. PSC-00-1285-FOF-WS, issued July 14, 2000, in Docket No. 960545-WS, we found the overall quality of Aloha's service to be marginal and required Aloha "to immediately implement a pilot project using the best available treatment alternative to enhance the water quality and to diminish the tendency of the water to produce copper sulfide in the customers' homes." By Order No. PSC-00-1628-FOF-WS, issued September 12, 2000, in Docket No. 960545-WS, we clarified that Aloha "shall immediately implement a pilot project using the best available treatment alternative to remove the hydrogen sulfide, thereby enhancing the water quality and diminishing the tendency of the water to produce copper sulfide in the customers' homes."

On or about January 9, 2002, testimony was again taken by this Commission of Aloha's customers in the Seven Springs area concerning poor quality of service provided by Aloha. Again customers testified about the "black water" problem, as well as about dissatisfaction with the taste and odor of the water, insufficient water pressure, and Aloha's poor attitude towards its customers. By Order No. PSC-02-0593-FOF-WU, issued April 30, 2002, in Docket No. 010503-WU and affirmed on appeal by the First District Court of Appeal (rate case order), we found that the methodology chosen by Aloha to alleviate the "black water" problem, including the use of a polyphosphate corrosion inhibitor along with the conversion of hydrogen sulfide to sulfate or elemental sulfur through chlorination, had not proven to be an adequate remedy, and required Aloha to take additional measures to correct the problem.

We also set Aloha's rates at the minimum of the range of return on equity "because of the overwhelming dissatisfaction of Aloha's customers due to the poor quality of the water service and their treatment by the utility in regards to their complaints and inquiries," and reduced the amount allowed for salaries and benefits of the Aloha's President and Vice-President by 50%

ATTACHMENT C

upon finding that “the continuing problems with ‘black water’ over at least the last six years, the customers’ dissatisfaction with the way they are treated, the poor service they receive from the utility, and the failure of the utility to aggressively and timely seek alternate sources of water supply reflect poor management of this utility.” Moreover, we found that had Aloha committed itself to a more proactive approach to the “black water” problem, it could have prevented the situation from becoming as bad as it is and possibly could have eliminated it entirely. We again found the overall quality of service provided by Aloha to be unsatisfactory, and required the utility to implement, within 20 months, a treatment process for all of its wells, starting with well nos. 8 and 9, that is designed to remove at least 98% of the hydrogen sulfide in the raw water. Because Aloha appealed the rate case order, the requirement to complete the improvements for removal of 98% of the hydrogen sulfide within 20 months was stayed. The new date to implement a solution to the “black water” problem became, and remains, February 12, 2005.

On April 8, 2004, this Commission conducted two more customer service hearings to obtain customer views on an independent audit report of Aloha’s processing plant and methodology that had been requested by the first deletion petition filed in Docket No. 020896-WS. Approximately 200 customers attended each session and numerous customers testified. Virtually all of the customers elected not to address the specifics of the audit report and the treatment options proposed therein, and instead stated that they wished to be deleted from Aloha’s service area in order to obtain service from Pasco County due to the continuing “black water” problem and the poor quality of service they receive. Many carried picket signs into the hearing room which read “Better Water Now!”

By Order No. PSC-04-0712-PAA-WS, issued July 20, 2004, in Docket Nos. 020896-WS and 010503-WU, we found that the removal of 98% of the hydrogen sulfide standard appears not to be attainable for all of Aloha’s wells, due to low concentration of hydrogen sulfide in some of the wells. We therefore proposed to modify that standard to require that Aloha “make improvements to its wells 8 and 9 and then to all of its wells as needed to meet a goal of 0.1 mg/L of sulfides in its finished water as that water leaves the treatment facilities of the utility,” and required the implementation of certain measures to assure compliance with this goal.

Aloha has chosen to implement a process involving the introduction of hydrogen peroxide (H<sub>2</sub>O<sub>2</sub>) to combat the “black water” problem, which is a process suggested in the audit report. However, while H<sub>2</sub>O<sub>2</sub> has been used for the treatment of drinking water, it has not been used for the purpose of reducing hydrogen sulfides in drinking water. According to Aloha and the independent auditor, the science suggests that this methodology will be effective for that purpose, but the science has not been proven in a full-scale utility operation. Numerous customers have expressed concern about the experimental nature of the H<sub>2</sub>O<sub>2</sub> treatment methodology, and certain customers have protested portions of our proposed modification of the rate case order as a result of those concerns. A hearing to resolve the protest is scheduled to commence on March 8, 2005.

Additionally, our staff has mailed a survey to the customers who reside, or own property, in the four areas that customers have petitioned for deletion of territory, asking whether those customers are in favor of the Commission approving the deletion petitions and whether they have

ATTACHMENT C

a black water problem at their premises. The survey response rate is approximately 49% to date. The results of the survey preliminarily show that 81% of the respondents favor deletion, 9% do not favor deletion, and 10% do not know whether they favor deletion or not. 64% of the respondents state that they have a black water problem at their premises. 59% of the respondents who indicated that they did not have a black water problem at their premises still favored deletion, indicating a more systemic problem with the utility than just a “black water” problem. 59% of the respondents provided additional comments. Of these, 63% complained of other quality of service issues, including the quality of the water, water pressure, and customer service, and 14% stated that they have found it necessary to purchase bottled water or filters, or they have abandoned the use of their saunas or bathtubs. Only 2% of the comments provided by Aloha's customers indicated that they had no problems with Aloha's service.

Nineteen customers who had petitioned for deletion of territory prefiled testimony in Docket No. 020896-WS on November 18, 2004, in accordance with the Order Establishing Procedure issued in that case. In their prefiled testimony, some customers stated that they have experienced pinhole leaks in their copper piping, and many stated that they believe the customer service from Aloha is not satisfactory. Many of these customers stated that they have water softeners and/or water filters. All nineteen customers who prefiled testimony in that case stated that they experience poor water quality and wish to receive water from another utility.

CONCLUSIONS OF LAW

Section 367.045(5)(a), Florida Statutes, provides, in relevant part, that

[t]he commission may grant or amend a certificate of authorization, in whole or in part or with modifications in the public interest, but may not grant authority greater than that requested in the application or amendment thereto and noticed under this section; or it may deny a certificate of authorization or an amendment to a certificate of authorization, if in the public interest.

Section 367.045(6), Florida Statutes, provides that “[t]he revocation, suspension, transfer, or amendment of a certificate of authorization is subject to the provisions of this section. The commission shall give 30 days’ notice before it initiates any such action.” Read together, these statutory provisions clearly provide that this Commission may amend a certificate of authorization to delete territory, if in the public interest, so long as it provides 30 days’ notice before initiating the action. We have provided the requisite notice.

Section 367.111(2), Florida Statutes, provides, in relevant part, that each utility shall provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest. The relevant inquiry is whether there are facts to show that Aloha has violated this statutory standard such that it is in the public interest for this Commission to delete the territory that is insufficiently served. Although it appears that Aloha is in compliance with the drinking water standards imposed by the Department of Environmental

Protection (DEP), the facts and findings set forth above support the initiation of a deletion proceeding against Aloha.

In determining whether it is in the public interest to amend a certificate of authorization, this Commission addresses, among other things, the financial and technical ability of the utility to provide adequate service. As discussed above, we have been plagued for many years with complaints from numerous of Aloha's customers concerning the quality of water that Aloha provides, and questioning Aloha's ability to provide adequate service.

Section 367.161, Florida Statutes, authorizes us to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes, or the Commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it. In failing to provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest, Aloha's act was "willful" within the meaning and intent of section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

The findings of fact outlined above show that: 1) Aloha has violated its statutory obligation under section 367.111(2) to provide sufficient water service by providing water with unacceptable color, taste and odor, by failing for over eight years to take proactive steps to remedy the situation, and by failing to improve upon customer relations; and 2) it is in the public interest for this Commission to delete the following insufficiently served areas from Aloha's Certificate No. 136-W, contingent upon provisions being made for an alternative service provider to be in place: Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard); Riviera Estates; Villa del Rio (also known as Riverside Villas); and Riverside Village Unit 4. The Commission reserves the option to impose a monetary penalty in addition to or in lieu of revocation if it concludes after hearing that such action is in the public interest. Therefore, we find that a show cause proceeding is warranted at this time.

Pursuant to sections 367.161 and 120.60, Florida Statutes, Aloha is hereby ordered to show cause, in writing, within 21 days, why the areas encompassing Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard); Riviera Estates; Villa del Rio (also known as Riverside Villas); and Riverside Village Unit 4 should not be deleted from its Certificate No. 136-W for failure to provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest, in apparent violation of

section 367.111(2), Florida Statutes, and why a monetary penalty should not be imposed for such violation.

Aloha's response to the show cause order must contain specific allegations of fact and law and comply with the requirements of Rule 28-107.004(3), Florida Administrative Code. Should the utility file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to sections 120.569 and 120.57(1), Florida Statutes, further proceedings will be scheduled in this matter before a final determination is made. A failure to file a timely written response shall constitute an admission of all facts herein alleged and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Aloha has the right to request a hearing to be conducted in accordance with sections 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses, and to have subpoena and subpoena duces tecum issued on its behalf if a hearing is requested.

It is, therefore,

ORDERED that Aloha Utilities, Inc., is hereby ordered to show cause, in writing, within 21 days, why the areas encompassing Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard); Riviera Estates; Villa del Rio (also known as Riverside Villas); and Riverside Village Unit 4 should not be deleted from its Certificate No. 136-W for failure to provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest, in apparent violation of section 367.111(2), Florida Statutes, and why a monetary penalty should not be imposed for such violation. It is further

ORDERED that Aloha Utilities, Inc.'s, response to this show cause order must contain specific allegations of fact and law. Should Aloha file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to sections 120.569 and 120.57(1), Florida Statutes, a further proceeding will be scheduled before a final determination of this matter is made. A failure to file a timely written response shall constitute an admission of all facts herein alleged and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. It is further

ORDERED that any response to this Order shall be filed with the Director, Division of the Commission Clerk and Administrative Services within 21 days of the date of issuance of this Order. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

---

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

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.

Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on \_\_\_\_\_.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.