

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-

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**DATE:** April 20, 2006

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

**FROM:** Office of the General Counsel (Melson)  
Division of Economic Regulation (Devlin, Willis, Rendell)

**RE:** Docket No. 050018-WU – 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.  
County: Pasco

**AGENDA:** 05/02/06 – Regular Agenda – Decision on Motion for Reconsideration – Oral Argument Not Requested; Participation at sole discretion of Commission

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Deason

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\0500183.RCM.DOC

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### Case 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. In this docket, the Commission initiated deletion proceedings for a portion of the Seven Springs service area based on taste, odor, black water and customer service problems that ultimately stem from the presence of hydrogen sulfide in the water.

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By Order No. PSC-06-0270-AS-WU, issued April 5, 2006, the Commission approved a Settlement Agreement (Settlement), executed by Aloha, the Office of Public Counsel (OPC), and certain individual intervenors (Parties). The Settlement resolves all outstanding dockets and court proceedings between Aloha and the Commission, including this docket. A key element of the Settlement is the agreement by the Parties that it is prudent for Aloha to implement a new water treatment method, anion exchange, to address the current problems that stem from the presence of hydrogen sulfide in the water.

On April 17, 2006, Mr. Edward O. Wood, the only individual intervenor in this docket who did not sign the Settlement, timely filed a letter requesting reconsideration of Order No. PSC-06-0270-AS-WU. Oral argument was not requested. As of the filing of this recommendation, no party has filed a response to the request for reconsideration. This recommendation addresses the request for reconsideration.

**Discussion of Issues**

**Issue 1:** Should the request for reconsideration of Order No. PSC-06-0270-AS-WU be granted?

**Recommendation:** No, the request for reconsideration should be denied. (Melson, Rendell)

**Staff Analysis:** By letter, Mr. Wood requests reconsideration of Order No. PSC-06-0270-AS-WU, stating that the information submitted to the Commission in the staff recommendation to approve the Settlement regarding his objection was inaccurate, that the statement that he believes the Commission should move forward with the deletion of a portion of Aloha's territory is unfounded, and that because no one from the staff contacted him regarding his position, the statement was fabricated or is hearsay. Mr. Wood further states that the only party who contacted him to find out anything about his position was OPC, that he gave OPC some specifics that are not included in the Settlement which caused him to not be in favor of the Settlement, and that those specifics did not appear in the staff recommendation to approve the Settlement.

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its Order.<sup>1</sup> Moreover, in a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.<sup>2</sup> A motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review."<sup>3</sup>

Mr. Wood's request for reconsideration does not identify any of the specifics that he asserts cause him not to be in favor of the Settlement. Staff notes that the transcript of Item 6 from the April 4, 2006, agenda conference, at which the Commission ruled on the Settlement, reveals that Mr. Wood's concerns were brought to the Commission's attention in advance of the Commission's ruling on the merits of the Settlement.<sup>4</sup> See transcript at page 6, line 14, through page 8, line 3, addressing three specific concerns of Mr. Wood which he discussed with OPC in advance of the agenda conference. The Order specifically states that "we [the Commission] also considered Mr. Wood's other objections to the Settlement and do not find them persuasive." Order, at page 6.

In summary, Mr. Wood's request for reconsideration fails to identify a point of fact or law that the Commission overlooked or failed to consider in rendering its Order. Staff therefore recommends that the request for reconsideration should be denied.

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<sup>1</sup> See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981).

<sup>2</sup> Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959) (citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958)).

<sup>3</sup> Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

<sup>4</sup> Item 6 from the April 4, 2006, agenda conference was noticed as being open to participation by interested persons. Staff notes that Mr. Wood did not avail himself of the opportunity to speak at the agenda conference.

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**Issue 2:** Should this docket be closed?

**Recommendation:** Yes, pursuant to Order No. PSC-06-0270-AS-WU, this docket should be closed after Order No. PSC-06-0270-AS-WU has become final and non-appealable. (Melson)

**Staff Analysis:** Pursuant to Order No. PSC-06-0270-AS-WU, this docket should be closed after Order No. PSC-06-0270-AS-WU has become final and non-appealable.