



Public Service Commission

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DATE: AUGUST 17, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (FUDGE, JABGER) *RFJ*
DIVISION OF ECONOMIC REGULATION (MERCHANT, FLETCHER) *SBF ANT*

RE: DOCKET NO. 991643-SU - APPLICATION FOR INCREASE IN WASTEWATER RATES IN SEVEN SPRINGS SYSTEM IN PASCO COUNTY BY ALO A UTILITIES, INC. *AMM*

AGENDA: 08/29/2000 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\991643.RCM

CASE BACKGROUND

On February 9, 2000, Aloha Utilities, Inc. (Aloha or utility) filed an application for an increase in rates for its Seven Springs wastewater system. The utility was notified of several deficiencies in the minimum filing requirements (MFRs). Those deficiencies were corrected and the official filing date was established as April 4, 2000, pursuant to Section 367.083, Florida Statutes.

On May 29, 2000, staff served its First Set of Interrogatories on Aloha. Although responses were due on June 28, 2000, the utility did not serve its Notice of Response on staff until June 30, 2000.

Moreover, the utility did not provide the information requested by staff by certain interrogatories. Therefore, on July 11, 2000, staff filed its Motion to Compel, Request for Extension of Time to File Prefiled Testimony and Request for Expedited

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Response. Also, on July 10, 2000, the Office of Public Counsel (OPC) filed its Motion for Extension of Time to prefile its testimony. On July 13, 2000, Aloha filed its Response to staff's Motion to Compel, indicating that its responses to staff's interrogatories were not objections and that the utility did not have the requested information. However, through negotiations held on July 14 and 17, 2000, the utility and staff reached an agreement on what information the utility would provide to staff, and staff agreed to withdraw its Motion to Compel.

On July 17, 2000, the Prehearing Officer issued Order No. PSC-00-1288-PCO-SU, granting staff's and OPC's motions for extension of time to file prefiled testimony, modifying Order No. PSC-00-0872-PCO-SU, and acknowledging the settlement of the discovery dispute and the withdrawal of staff's motion to compel.

On July 27, 2000, Aloha filed a Motion for Reconsideration of Order No. PSC-00-1288-PCO-SU, and a Request for Oral Argument. No responses to the Motion were filed, and the time for filing such responses expired on August 8, 2000. This recommendation addresses the Request for Oral Argument and Motion for Reconsideration.

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DISCUSSION OF ISSUES

ISSUE 1: Should Aloha's Request for Oral Argument be granted?

RECOMMENDATION: The Request for Oral Argument should be denied. Oral argument is not necessary for the Commission to reach an informed decision on the Motion. (FUDGE, JAEGER)

STAFF ANALYSIS: Pursuant to Rule 25-22.0376(5), Florida Administrative Code, oral argument on any motion may be granted at the discretion of the Commission. The points raised on reconsideration do not require oral argument in order to be fully addressed. Because oral argument is not necessary for the Commission to reach an informed decision on the Motion, the request for oral argument should be denied.

ISSUE 2: Should Aloha's Motion for Reconsideration be granted?

RECOMMENDATION: No, the Motion should be denied. Aloha has failed to point out any point of law, fact or policy which the Commission has overlooked or misapprehended. (FUDGE, JAEGER)

STAFF ANALYSIS: On July 27, 2000, Aloha filed a Motion for Reconsideration of Order No. PSC-00-1288-PCO-SU, issued July 17, 2000, by the Prehearing Officer. Aloha contends that three sentences "are not only violative of the letter of the agreement between the Utility and the Staff to withdraw their Motion to Compel, but are violative of the spirit of that agreement and the spirit of any good faith settlement negotiations of outstanding disputes."

The three sentences in dispute are:

- 1) "Although the utility either objected or failed to respond to several interrogatories, no objections were filed within the required 10-day time period." Page 1, Paragraph 1.
- 2) "Because of the untimely filing of objections and responses to staff's discovery requests, both staff and OPC have requested an extension of time in which to file prefiled testimony." Page 2, Paragraph 2.
- 3) "The untimely responses by the utility have restricted the time for staff and OPC to prefile testimony." Page 3, Paragraph 3.

The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, 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." Stewart Bonded Warehouse at 317.

Staff served discovery requests upon Aloha on May 24, 2000, consisting of Interrogatories and Requests for Production of Documents, under the authority of the Florida Rules of Civil Procedure, and Order No. PSC-00-0972-PCO-SU, issued May 3, 2000. Responses were due on June 28, 2000. Aloha filed its responses to both the Interrogatories and Requests for Production on June 30, 2000.

However, upon review of those responses, staff noted that, for four interrogatories, the utility did not provide the requested information. Believing that it needed this information to file its prefiled testimony and to give it time to prefile its testimony, staff filed its Motion to Compel, Request for Extension of Time to File Prefiled Testimony and Request for Expedited Response on July 11, 2000.

The utility and staff ultimately reached an agreement on what information the utility would provide, and staff agreed to withdraw its Motion to Compel. Further, staff, OPC, and the utility agreed that all parties and staff should be granted a two-week extension to file direct and rebuttal testimony because of the delay caused by the discovery dispute.

Staff has reviewed all three sentences contained in the Order that Aloha found objectionable, and believes there is no mistake of fact or law contained in any of the sentences. Staff believes that the utility seeks cosmetic changes to an order which granted all parties, including the utility, the same two-week extension. This was exactly what the utility asked for. The granting of the motion for extension of time, while related to the discovery dispute, was separate and apart from the settlement reached on the Motion to Compel. Therefore, even if there was an error, staff does not believe there was any violation of either the letter or the spirit of the settlement reached in regards to the discovery dispute.

Staff believes that the sentences in question were a part of the justification for the filing of the request for extension of time. Moreover, removal of the offending sentences would merely constitute cosmetic changes and would not change the ultimate decision. The offending sentences were not directed at the Motion to Compel and do no violation to the settlement reached by the parties. Therefore, the inclusion of these sentences is harmless and irrelevant to the ultimate decision.

The utility states that the first sentence in dispute was in error because it is the utility's belief that it in fact did respond to all, and did not object to any interrogatories. Staff

believes that there is no error in the statement that "the utility either objected to or failed to respond," because Rule 1.380(a)(3), Florida Rules of Civil Procedure, provides that an incomplete answer constitutes a failure to answer. See E.Z.E., Inc. v. Little River Bank and Trust Co., 300 So. 2d 43, 44 (Fla. 4th DCA 1974) (holding that incomplete answers were to be treated as no answer under Rule 1.380(a)(3), Fla. R. Civ. P.) Therefore, staff recommends that no mistake of fact or law exists as to the first sentence in dispute and accordingly, that portion of the motion for reconsideration should be denied.

The second sentence in dispute states that there were "untimely filing of objections and responses." There is no dispute whatsoever that the responses were untimely. The only dispute seems to be whether the utility's responses were untimely objections. Even if the utility's responses did not constitute untimely objections, what was filed was untimely and does not change the ruling that both the OPC and staff should be granted a two-week extension to file their pre-filed testimony. Thus, staff does not believe that the utility has demonstrated that there has been a mistake of law or fact, and pursuant to the holding in Stewart Bonded Warehouse, a "motion for reconsideration should not be 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." For the foregoing reasons, this sentence should not be stricken. Likewise, staff can find no mistake of fact or law in the third sentence in dispute. The utility did untimely file its responses. Therefore, that sentence should also not be stricken.

Based on the foregoing, staff believes that Aloha has failed to point out any point of law, fact or policy which the Commission has overlooked or misapprehended. Therefore, Aloha's Motion for Reconsideration should be denied.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open pending a ruling on Aloha's application for an increase in wastewater rates. (FUDGE, JAEGER)

STAFF ANALYSIS: Aloha's application for an increase in wastewater rates in its Seven Springs system is currently pending before the Commission. Therefore, the docket should remain open pending a ruling on Aloha's application.