

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 991643-SU
ORDER NO. PSC-00-1779-PCO-SU
ISSUED: September 29, 2000

ORDER GRANTING ALOHA'S MOTION TO STRIKE REBUTTAL TESTIMONY

On September 11, 2000, the Office of Public Counsel (OPC) filed rebuttal testimony of Ted L. Bidy.

On September 18, 2000, Aloha Utilities, Inc. (Aloha) filed its Motion to Strike "Rebuttal" Testimony (Motion) of OPC witness Bidy. In that Motion, Aloha raises two points. First, it claims that it is improper for OPC to file rebuttal testimony at all. Secondly, Aloha claims that the testimony filed by Mr. Bidy does not constitute proper rebuttal testimony.

For the first point, Aloha states that only it should be allowed to file rebuttal testimony, and that the only proper place for OPC to file any testimony is the time designated for "Intervenor's Testimony." Aloha further argues that "the fact that parties which are similarly aligned file testimony at the same time . . . has no implications to the concept of rebuttal testimony." Moreover, Aloha argues that "while one party may be 'disappointed' with another (non-adverse) party's testimony, it "does not trigger an occasion to 'rebut' that testimony," and any testimony that OPC wanted to file should have been in its initial direct testimony.

For the second point, Aloha states that the proffered testimony does not actually rebut the testimony of Staff witness MacColeman. It then lists nine examples of Mr. Bidy's testimony which it claims is not proper rebuttal. Aloha further argues that Mr. Bidy's testimony "is nothing more than an attempt to prop up testimony already rendered."

On September 25, 2000, the OPC timely filed its Response to Aloha's Motion to Strike Rebuttal Testimony. OPC argues on Aloha's first point that on at least two issues, "OPC and Staff are not aligned but rather are clearly adverse to one another." The first issue is whether to use the actual historical 134 gallons per day (gpd) per equivalent residential connection (ERC) or the Department of Environmental Protection's (DEP's) 150 gpd per ERC as the

DOCUMENT NUMBER-DATE

12362 SEP 29 8

FPSC-RECORDS-REPORTING

ORDER NO. PSC-00-1779-PCO-SU
DOCKET NO. 991643-SU
PAGE 2

"normal" amount for the used and useful calculation. The second issue is whether Aloha has excessive infiltration and inflow (I&I). Staff witness MacColeman (an employee of DEP) reached no conclusion as to whether Aloha had excessive I&I, and OPC witness Bidy testifies that Aloha does have excessive I&I. OPC further states that it is proper to allow rebuttal testimony because Staff and OPC are not "similarly aligned."

As to the utility's second point, OPC argues that Mr. MacColeman's use of 150 gpd per ERC and his failure to find that there was excessive I&I was adverse to its position and that OPC was therefore entitled to rebut this testimony and that the proffered testimony did rebut this testimony.

Upon consideration, I find that Mr. Bidy's proffered rebuttal testimony is direct testimony that OPC could have or should have filed in its direct testimony. The used and useful calculation and the issue of infiltration and inflow have been identified as issues in this proceeding and should have been addressed in OPC's direct testimony. Therefore, Aloha's Motion to Strike "Rebuttal" Testimony is hereby granted.

Based on the foregoing, it is

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that Aloha's Motion to Strike "Rebuttal" Testimony is granted. It is further

ORDERED that the testimony of OPC witness Bidy, filed September 11, 2000, shall be stricken from the record.

By ORDER of Commissioner Lila A. Jaber as Prehearing Officer, this 29th day of September, 2000.


LILA A. JABER
Commissioner and Prehearing Officer

(S E A L)

RRJ

ORDER NO. PSC-00-1779-PCO-SU
DOCKET NO. 991643-SU
PAGE 3

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.