

FLORIDA PUBLIC SERVICE COMMISSION  
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M E M O R A N D U M

APRIL 24, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (JAEGER) *AS*  
DIVISION OF WATER AND WASTEWATER (STARLING, MCROY) *JA*

RE: DOCKET NO. 960545-WS - INVESTIGATION OF UTILITY RATES OF  
ALOHA UTILITIES, INC. IN PASCO COUNTY

COUNTY: PASCO

AGENDA: MAY 6, 1997 - REGULAR - MOTION FOR RECONSIDERATION ON  
POST-HEARING DECISION - PARTICIPATION LIMITED TO  
COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\960545.RCM

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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.

On June 1, 1995, Aloha filed a reuse project plan (consisting of three phases) and application for increase in rates for wastewater service to its Seven Springs customers pursuant to Section 367.0817, Florida Statutes. On December 28, 1995, the Commission issued Proposed Agency Action (PAA) Order No. PSC-95-1605-FOF-SU authorizing recognition of only Phase I of the project in rate setting. In the PAA Order, the Commission allowed Aloha to implement the approved wastewater rates on a temporary basis subject to refund in the event of a protest.

On January 10, 1996, Representative Mike Fasano, a customer of the utility, filed a protest to the PAA order and requested an administrative hearing on the reuse project plan. On April 30, 1996, Mr. James Goldberg, President of the Wyndtree Master Community Association, filed a petition signed by 262 customers within Aloha's Seven Springs service area requesting the Commission

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to investigate the utility's rates and water quality. The petition and request were assigned Docket No. 960545-WS.

For the purposes of hearing, Dockets Nos. 960545-WS and 950615-SU were consolidated by Order No. PSC-96-0791-FOF-WS, issued on June 18, 1996. The hearing was held on September 9-10, 1996 in New Port Richey and concluded on October 28, 1996 in Tallahassee. Briefs were filed by the parties on December 17, 1996.

After evaluation of the evidence, the Commission rendered its final decision by Order No. PSC-97-0280-FOF-WS (Final Order), issued on March 12, 1997. On March 27, 1997, Aloha timely filed its Petition for Reconsideration (Petition). Rule 25-22.060(3), Florida Administrative Code, requires a motion for reconsideration to be filed within 15 days after issuance of the order. In its Petition, Aloha claims that the Commission either made a mistake of fact or law in regards to three determinations in the Final Order.

The Office of Public Counsel (OPC) filed its timely Response to Motion for Reconsideration and Cross Motion for Reconsideration on April 8, 1997. Rule 25-22.060(3), Florida Administrative Code, requires a response and/or cross motion to be filed within 7 days of the service of the motion for reconsideration. However, Rule 25-22.028(4), Florida Administrative Code, states that where service is by mail, five days shall be added to the prescribed time (therefore 12 days are allowed for OPC's response and cross-motion).

Aloha's Petition raised three separate issues, and the OPC responded to each of these issues. However, this recommendation addresses only the quality of service issue raised in Aloha's Petition and addressed in OPC's response. The other two issues and OPC's cross-motion all address the reuse docket and will be brought before the Commission at a later date. However, because of the sense of urgency expressed by the Commission with regard to quality of service, staff is bringing this issue before the Commission at this time.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Aloha's Petition for Reconsideration in regards to the Commission's determination that the quality of service provided by Aloha for water service is unsatisfactory?

RECOMMENDATION: No, Aloha has not shown that the Commission made any mistake or overlooked any fact or law; accordingly, Aloha's motion for reconsideration on this issue should be denied. (STARLING, MCROY, JAEGER)

STAFF ANALYSIS: The standard for determining whether reconsideration is appropriate is set forth in Diamond Cab Company of Miami v. King, 146 So. 2d 889 (Fla. 1962). In Diamond Cab, the Court held that the purpose of a petition for reconsideration is to bring to an agency's attention a point of fact or law which was overlooked or which the agency failed to consider when it rendered its order. In Stewart Bonded Warehouse v. Bevis, 294 So. 2d 315 (Fla. 1974), the Court held that a petition for reconsideration should be based upon specific factual matters set forth in the record and susceptible to review. See also, Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). Staff has applied this standard in considering Aloha's Petition on the quality of service issue.

Aloha claims that the Commission's finding that its quality of service is not satisfactory is not supported by any competent substantial evidence and specifically references evidence not of record while ignoring competent evidence of record. In its Petition, Aloha specifically addresses the evidence presented on pressure, odor and taste, corrosiveness, handling of customer complaints, the "black water" problem (copper sulfide), and the Commission's consideration of customer letters not in the record.

OPC responds that the motion for reconsideration still shows the utility to be in denial regarding the quality of its water product. OPC adds that the record is among the most, if not the most, complete record in Commission history regarding quality of service, or in this case, lack thereof. OPC attached its summary of the customer testimony as evidence of Aloha's unsatisfactory quality of service.

In its petition, Aloha first alleges that the Commission failed to consider the testimony of DEP witness Screnock or the two engineering studies about pressure which indicate that the utility is maintaining the required minimum 20 psi pressure in its system. The Commission's Order (at page 12), however, discusses Mr. Screnock's testimony on pressure as well as the engineering

studies.

Aloha next states that the Commission failed to consider evidence about the water's odor. Specifically, Aloha claims that the Commission did not consider the fact that Aloha is meeting DEP's requirements for all standards except copper. Aloha adds that the Commission also failed to consider Mr. Porter's explanation that the home treatment units may be causing the odor complaints. The Commission's Order (at pages 10-12), however, discusses the fact that Aloha is currently in compliance with DEP's rules and regulations as well as Mr. Porter's explanation of the problems which home treatment units may cause.

Aloha also states that only one customer expressed concerns about damage caused by corrosion to copper piping. Aloha adds that the Commission's rules only require that Aloha is responsible for the delivery of water up to the point of delivery into the piping of the customer and the utility is taking appropriate action with regard to this issue. Staff notes that Aloha failed its initial Lead and Copper tests, and this is evidence that the water was corrosive and could damage copper piping. (TR 566-567)

Aloha claims that there is no evidence which supports a finding that the Utility has failed to properly respond to customer complaints or that the Utility has done anything other than maintain records in accordance with Commission rule concerning customer complaints. Staff believes that such evidence does exist. Aloha, despite the numerous complaints which it has received about its water quality, has not had any of its engineering consultants analyze or prepare a report about water quality during the past five years. (TR 1074) Also, many customers testified that Aloha would tell them that they were the only ones who were complaining about water quality problems, and, also, that Aloha's employees had a poor attitude. (TR 110, 129, 354, 375, 391, 412)

Aloha next claims that the only competent substantial evidence of record about the black water (copper sulfide) problem is that Aloha has implemented a corrosion control plan to address this problem in less than three months and that the measures taken are standard operating procedures. Once again, many customers testified about black water (TR 37, 67, 68, 73, 77, 78, 87, 99, 125, 130, 144, 345, 350, 367, 377, 386, 391, 397, 400, and 405) and staff believes that the Commission did consider all of the evidence on this issue in making its decision about the quality of service.

Finally, Aloha states that the 250 letters placed in the correspondence file were never made a part of the record and cannot form a basis for the Commission's findings even in part. Aloha alleges that these letters were plainly solicited to be sent to

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Representative Fasano and even after repeated attempts and requests for copies of same by Aloha on the record, they have never been forwarded to the Utility for proper follow-up or response. Staff included this information in the recommendation in response to Commissioner Clark's request that staff review the letters within the Commission's correspondence file and report what was in these letters to the Commission. The letters which staff reviewed are located within the Division of Records and Reporting and have been and are currently available for Aloha's review at any time during the Commission's normal working hours. Staff does not believe that the Commission relied on these letters to reach any conclusion on quality of service. Rather, as OPC argues, the customer testimony at the formal hearing was more than adequate evidence for the Commission to reach the conclusion that the quality of water service provided by Aloha was unsatisfactory. As the citations to the record in the previous two paragraphs show, there was ample evidence in the record upon which the Commission relied to find that quality of service for water service was unsatisfactory.

Based upon the above discussion, staff believes that Aloha's Petition merely reargues the case and has failed to show that the Commission made any mistake or overlooked any fact or law. Therefore, staff recommends that Aloha's Petition for Reconsideration on quality of service be denied.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, Order No. PSC-97-0280-FOF-WS required this docket to remain open pending further investigation on the quality of service. (JAEGER)

STAFF ANALYSIS: Pursuant to Order No. PSC-97-0280-FOF-WS, this docket was to remain open pending further investigation on the quality of service.