

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of utility  
rates of Aloha Utilities, Inc.  
in Pasco County.

DOCKET NO. 960545-WS  
ORDER NO. PSC-00-1628-FOF-WS  
ISSUED: September 12, 2000

The following Commissioners participated in the disposition of this matter:

LILA A. JABER  
E. LEON JACOBS, JR.

ORDER GRANTING IN PART AND DENYING IN PART  
MOTION FOR CLARIFICATION, AMENDING ORDER NO. PSC-00-1285-FOF-WS,  
AND REQUIRING NO ACTION TO BE TAKEN ON CUSTOMER LETTER

BY THE COMMISSION:

BACKGROUND

Aloha Utilities, Inc. (Aloha or utility), is a class A water and wastewater utility in Pasco County. The utility consists of two distinct service areas - Aloha Gardens and Seven Springs. As of December 31, 1997, Aloha was serving approximately 8,457 water customers in its Seven Springs service area.

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 that the Commission investigate the utility's rates and quality of the service. The petition and request were assigned Docket No. 960545-WS, and a formal hearing was scheduled.

For the purposes of the initial hearing (First Hearing), Docket No. 960545-WS was consolidated with Docket No. 950615-SU (Aloha's reuse case). The First Hearing was held on September 9-10, 1996 in New Port Richey, and concluded on October 28, 1996 in Tallahassee.

Subsequent to this hearing, we issued Order No. PSC-97-0280-FOF-WS on March 12, 1997. In that Order, based in part on the "black water" problem, we determined that the quality of service provided by Aloha was unsatisfactory and we ordered Aloha to

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evaluate the treatment alternatives for removal of hydrogen sulfide from its water and prepare a report that addressed this evaluation.

On June 10, 1997, Aloha filed its engineering report, 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, then the option of constructing three central water treatment plants which utilize packed tower aeration should be approved. Aloha estimated that construction and operation of the three treatment plants and other water system upgrades would increase customer rates by 398 percent.

In a June 5, 1998 letter to the Commission, Aloha 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 was willing to proceed with this upgrade to address customer quality of service concerns and to comply with future Environmental Protection Agency regulations. However, before commencing construction of these water treatment facilities, Aloha requested that the Commission issue an order declaring that it was prudent for Aloha to construct these facilities.

This request was considered at the December 15, 1998 Agenda Conference. Also, this Commission again considered whether there was a water quality problem in Aloha's Seven Springs service area and, if so, what further actions were required.

Pursuant to the decisions at that agenda conference, on January 7, 1999, we issued Proposed Agency Action Order No. PSC-99-0061-FOF-WS (PAA Order), determining to take no further actions in regards to quality of service in this docket and closing the docket. Moreover, by final action, we denied the utility's request for an order declaring it to be prudent to begin construction of three central water treatment facilities.

Subsequently, three customers - Mr. Edward O. Wood, Mr. James Goldberg, on behalf of the Wyndtree Master Community Association (recognized as a party), and Representative Mike Fasano (also a party), filed timely protests to the PAA Order, and requested a formal hearing. Mr. Wood was contacted and asked if he wished to participate as a party. He stated that he did not.

Based on these protests, a second hearing was held on March 29-30 and April 25, 2000, to determine if the quality of service was still unsatisfactory, and what actions, if any, we should require the utility to take to improve the quality of service. Customer testimony was taken in two sessions on March 29, 2000, and several hundred customers attended each session. Approximately 50 customers testified. The technical portion of the hearing began on March 30, 2000, in New Port Richey and was continued and concluded on April 25, 2000, in Tallahassee, Florida.

Briefs were timely filed on May 19, 2000. Also on May 19, 2000, the Office of Public Counsel (OPC) filed its Motion to Strike Exhibit Testimony (Motion). In that Motion, OPC specifically requested that Late-Filed Exhibit 13 (response detailing Aloha's engineer's visit to homes of customers who had testified at hearing about quality of service problems) be stricken in its entirety. The utility filed its timely response to this Motion to Strike on May 30, 2000.

Subsequent to this second hearing, we issued Order No. PSC-00-1285-FOF-WS on July 14, 2000. In that Order, we struck one full paragraph of Exhibit 13 and an attached newspaper article. However, the rest of Exhibit 13 was admitted.

Also, by that Order we found that the overall quality of service provided by the utility was marginal. Among other things, we ordered the utility 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." We also required the utility to begin charging a temporary water service availability charge of \$500 (with \$336.20 of that charge being escrowed and subject to refund), and to file a service availability application by February 1, 2001. The Order provided that this docket shall remain open until the service availability case is filed, after which time the docket shall be closed administratively.

In response to Order No. PSC-00-1285-FOF-WS, by letter dated July 22, 2000, and received by the Commission on July 28, 2000, Mr. Edward Wood objected to the finding that the quality of service is marginal, and stated that it should be considered unsatisfactory. Moreover, among other things, Mr. Wood requested that the docket not be closed and that additional public hearings be held to allow all customers to rebut Aloha's expert testimony. Finally, Mr. Wood

stated that: "I am writing this letter as an appeal to the ruling."

By overnight mail (sent August 8, 2000), Staff responded to Mr. Wood and advised him that parties could file an appeal with the First District Court of Appeal by no later than August 14, 2000, and that he should contact OPC to discuss his options. Moreover, Mr. Wood's letter was forwarded to all parties, and our staff discussed Mr. Wood's letter with OPC.

On July 31, 2000, Aloha filed a Motion for Clarification of the fifth ordering paragraph of Order No. PSC-00-1285-FOF-WS, which reads as follows:

ORDERED that Aloha Utilities, Inc., shall 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 as set forth in the body of this Order.

MOTION FOR CLARIFICATION

In its Motion, Aloha argues, that there is no definition of the "best available treatment alternative" in the Order, nor was that term used at the hearing. We agree. However, we note that there are technological advances every day, and we do not wish to restrict the choices of the utility.

Aloha states that it has provided information and suggested alternatives for water treatment, including what Aloha believes to be the best available method for the reduction of hydrogen sulfide. We agree.

Aloha further states that the Order provides no guidance as to which treatment alternative should be implemented and that the Order "does not specify the removal of hydrogen sulfide as the goal of the pilot project." We agree with these statements.

Aloha explains that the pilot project is not a study of treatment alternatives, but rather a mini-treatment plant using a selected treatment method. The sole purpose of a pilot project is to determine sizing of components and dosing rates for the prescribed treatment. We agree with Aloha's characterization of the purpose of the pilot project.

Aloha states that the Order does not delineate the methodology to be used to remove the hydrogen sulfide. We agree. The method selected to accomplish the goal of hydrogen sulfide removal should be the utility's own choosing. We do not dictate or limit treatment techniques or technologies, but instead allow utilities to rely upon designs recommended by their consultants and approved by the Florida Department of Environmental Protection (DEP). We do agree, however, that the record shows that packed tower aeration appears to be the best method for removing the most hydrogen sulfide from the water, based upon the testimony from the utility and DEP witness Mike Leroy, who stated that packed tower aeration was the correct solution. Mr. Leroy noted that there are numerous plants in Florida that use this treatment method, including Pinellas County.

Aloha further states that it knows of no method or different treatment option other than those presented at the hearing. While there may be other options, the intent is not to limit Aloha to the selection of packed tower aeration, in case Aloha finds another treatment alternative it believes to be superior.

Aloha states that it was given no guidance in the Order as to the treatment method to be utilized. The utility argues that based upon the record, packed tower aeration is the preferred method of hydrogen sulfide removal.

In its prayer for relief, Aloha requests this Commission to provide specific guidance as to the treatment methodology that we desire that Aloha implement through a pilot testing program, and that until this is done, Aloha will not be able to comply with the Order. The intent of the fifth ordering paragraph is for Aloha to begin a pilot project that will enhance the water quality by removing hydrogen sulfide from the water. It is obvious from the Order and the testimony in this proceeding that the chemical treatment with chlorine converting the sulfides to sulfates is not adequate. We noted that: "The current treatment method of converting the sulfides to sulfate through chlorination, while effective in meeting current drinking water standards, is not adequate for customer satisfaction due to the reconverting of sulfates back to sulfides, causing the black water problem."

Upon consideration, the utility's motion shall be granted in part and denied in part. We hereby clarify the fifth ordering paragraph to mean that the utility shall choose the best available treatment alternative to remove hydrogen sulfide, thereby enhancing

the water quality and diminishing the tendency of the water to produce copper sulfide in the customers' homes. While packed tower aeration is clearly an acceptable method, we will not designate the specific treatment alternative. That choice shall be made by the utility. Based on this clarification, the fifth ordering paragraph of Order No. PSC-00-1285-FOF-WS shall be amended to read as follows:

ORDERED that Aloha Utilities, Inc., 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 as set forth in the body of this Order.

CUSTOMER LETTER

On July 28, 2000, we received a letter from Mr. Edward Wood dated July 22, 2000. In his letter, Mr. Wood objected to the finding that the quality of Aloha's service is marginal, and stated that it should be considered unsatisfactory. Moreover, he stated that the customers should be compensated for having to purchase drinkable water and for the cost of flushing, and that the utility should not be compensated for the additional costs of the treatment process to clean up the utility's water. Finally, Mr. Wood stated that: "I am writing this letter as an appeal to the ruling," and requested that we "not close Docket Number 960545-WS," and that we "hold additional Public Hearings in Pasco County on this issue, so that all customers may have a chance to express their concerns and rebut the 'expert' testimony."

Mr. Wood's letter is much in the nature of a Motion for Reconsideration. However, Rule 25-22.060(1)(a), Florida Administrative Code, governs Motions for Reconsideration and states, in pertinent part: "Any party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order." (emphasis supplied) Mr. Wood is not a party of record in this docket. Therefore, we find that it is not appropriate to treat the letter as a Motion for Reconsideration.

We note that if it were proper to treat Mr. Wood's letter as a Motion for Reconsideration, the proper standard of review for a Motion for Reconsideration would be 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, Inc., at 317.

Mr. Wood's letter fails to identify a point of fact or law which was overlooked or which we failed to consider in rendering our Order. Mr. Wood states that little attention, if any, was paid to the testimony of the customers. We appropriately considered the customer testimony as well as the customer letters received and examined in Attachment 1 of the Order.

Mr. Wood also states that the quality of service provided by Aloha is unsatisfactory. We thoroughly discussed and considered this issue. We did not find the overall quality of service provided by Aloha to be unsatisfactory. In finding the quality of service to be marginal, we noted that the utility was meeting all state and federal standards. Moreover, we noted that the majority of the complaints are limited to the Seven Springs service area and not throughout Aloha's total system, which includes the Aloha Gardens service area.

Mr. Wood requests that this docket not be closed and that additional hearings be held. The Order requires the docket to remain open pending Aloha's filing of a service availability application by February 1, 2001. Moreover, we note that there have already been two formal hearings (with four customer sessions in the service area) at which over 100 customers testified about the quality of service provided by Aloha. We also note that we approved a plan to form an Inter-Agency Black Water Work Group at our August 1, 2000, Internal Affairs meeting, and we believe this Work Group will be an effective forum for finding solutions to the black water problem. Consequently, we find it unnecessary to hold additional public hearings at this time in this docket.

Finally, Mr. Wood stated that he wrote his letter as an appeal to the ruling. Our staff counsel has unsuccessfully attempted to

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contact Mr. Wood numerous times by telephone. Therefore, on August 8, 2000, our staff counsel sent a letter by overnight mail to Mr. Wood stating that staff has contacted OPC to request that OPC review the letter and assist Mr. Wood in exploring any options available to Mr. Wood and/or the OPC.

Based on the foregoing, we find that no action shall be taken regarding Mr. Wood's letter.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Clarification filed by Aloha Utilities, Inc. is hereby granted in part and denied in part, as set forth in the body of this Order. It is further


ORDERED that the fifth ordering paragraph of Order No. PSC-00-1285-FOF-WS is hereby amended as set forth in the body of this Order. It is further

ORDERED that Order No. PSC-00-1285-FOF-WS is affirmed in all other respects. It is further

ORDERED that no action shall be taken on Mr. Wood's letter. It is further

ORDERED that pursuant to Order No. PSC-00-1285-FOF-WS, this docket shall remain open until Aloha files its application to revise its service availability charges.

By ORDER of the Florida Public Service Commission this 12th day of September, 2000.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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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 party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting 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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.