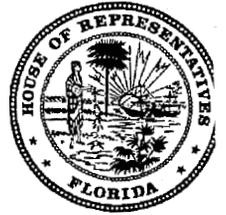


ORIGINAL

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July 1, 2004

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

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JUL - 1 @ 2:51
COMMISSION
CLERK

RE: Docket No. 010503-WU

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens' Brief Filed Pursuant to Order No. PSC-04-0614-PCO-WU for filing in the above-referenced docket.

Also enclosed is a 3.5 inch diskette containing Citizens' Brief Filed Pursuant to Order No. PSC-04-0614-PCO-WU in Microsoft Word format. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Burgess
Deputy Public Counsel

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07231 JUL-1 04
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for 'increase)
in water rates for **Seven** Springs)
System in Pasco County by Aloha)
Utilities, Inc.)
_____)

DOCKET NO. 010503-WW
DATED: July 1, 2004

CITIZENS' BRIEF
FILED PURSUANT TO ORDER
NO. PSC-04-0614-PCO-WU

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CITIZENS' BRIEF
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INTRODUCTION

By Order No. PSC-04-0614-PCO-WU, the Commission established the current briefing schedule, as follows:

ORDERED that an informal proceeding pursuant to Section 120.57(2), Florida Statutes, shall be conducted, and the parties shall file briefs by no later than July 1, 2004, on the issues raised by Aloha in its Petition. It is further

Id. At p. 8

Aloha's Petition for Formal Administrative Hearing (hereinafter, Petition), however, merely identified the areas in which it took issue with Order No. PSC-04-0122-PAA-WU (hereinafter, Proposed Agency Action or **PAA**). Aloha's Petition did not describe with any detail the specific arguments on which it disputes the Proposed Agency Action. Without more specificity, the Citizens cannot at this time address any detailed points that Aloha intends to make.

The Citizens support the PAA as it now stands. The Citizens believe the findings of the **PAA** represent a valid exercise of Commission discretion. The PAA, including the areas challenged by Aloha, is based on sound logic and factual underpinnings. The

defense of the PAA is contained within that document itself. Until and unless Aloha brings forward cogent arguments to dispute the **PAA**, the validity of that Order is self-explanatory.

The Citizens cannot prove a negative (“The PAA is not invalid as charged by Aloha”) until they see the arguments and cases upon which Aloha will make its claims. Accordingly, the arguments put forth here are very general in nature, and rely to a large extent on the language contained in the PAA itself. Nevertheless, there **are** some points to be made in response to the general complaints submitted by Aloha in its Petition. Each issue will be addressed in the order as it is presented in paragraph **6** of Aloha’s Petition.

A. WHETHER THE PSC’S FINAL ORDER IS BINDING AND CONCLUSIVE ON THE ISSUE OF REFUNDS

The Citizens are astonished Aloha would raise this issue. The Commission is currently engaged in other proceedings that were initiated by Aloha’s Motion to Modify Requirements of Order Number PSC-02-0593-FOF-WU. In that motion, Aloha asked the Commission to modify Order No. PSC-02-0593-FOF-WU (hereinafter, Rate Order). At its most recent agenda conference, the Commission modified the Rate Order. In this Petition, however, Aloha argues that the Commission does not have the authority to modify the very same Rate Order. Here, Aloha is arguing that the Rate Order cannot be altered, while simultaneously asking in another pleading that the same Rate Order be altered.

This is not to say that OPC believes that the PAA actually alters the ruling in the Rate Order. It does not. Rather, the **PAA** identifies the appeal period as a different time frame than the rate case period identified in the earlier Rate Order. The Citizens

highlight Aloha's diametrically inconsistent positions merely to note the disingenuousness of Aloha's current position.

In fact, the issue on which Aloha sought modification (98% removal of hydrogen sulfide) was one of the issues explicitly identified by Aloha in its appeal to the District Court. By rejecting Aloha's appeal, the Court approved the Commission's finding on that specific issue. If any issue were immutable, it would be the issue specifically reviewed and approved by the District Court. Yet Aloha feels perfectly free to seek (and receive) alteration of that particular issue, while arguing that no other issues in the same order can **be** altered.

B. WHETHER THE PSC ORDER GRANTING A STAY ALONG WITH ITS FINAL ORDERS, ESTOPS THE PSC FROM CHANGING ITS POSITIONS REGARDING REFUNDS.

As discussed in the Introduction, the Citizens really do not know what issue Aloha is raising here. The Citizens do not see any relevant nexus between the doctrine of estoppel and the Commission's stay of various portions of the Rate Order. The Citizens would need to see what arguments Aloha intends to present before they can respond to those arguments.

In its Petition, Aloha complains that it "relied on the Commission's decision related to this refund issue throughout the stay and **appeal** proceeding and thereafter." The Citizens fail to see the point. The concept of detrimental reliance contemplates some detriment. Aloha has suffered no detriment that the Citizens can see. Without a more specific explanation, the Citizens are unable to provide further response to the general complaint raised in Aloha's Petition.

C. WHETHER ALOHA HAS ALREADY REFUNDED MORE MONEY TO ITS CUSTOMERS THAN WAS NECESSARY TO BRING ITS REVENUE REQUIREMENT TO THE LEVEL ESTABLISHED IN THE FINAL ORDER, ADJUSTED IN ACCORDANCE WITH STANDARD COMMISSION PRACTICE DURING THE “INTERIM COLLECTION PERIOD.”

In this issue, Aloha seems to confuse the Commission’s decision on the revenue requirement with the Commission’s decision on a rate structure change. In the Final Order, the Commission took two distinct actions relevant to Aloha’s rates: (1) first, the Commission found that Aloha was not entitled to any rate increase; (2) secondly, in order to encourage conservation, the Commission imposed a revenue-neutral rate structure shift.

In establishing the revenue entitlement, the Commission affirmatively found that no rate increase was justified. In hindsight, then, no interim increase was actually necessary to **keep** Aloha whole pending the final outcome of the case. Thus, even with a refund of the entire amount of the interim increase, the company would still have been financially whole throughout the deliberative process.

Aloha, however, has constructed an elaborate theory based on what its earnings would have been during the appeal period if the new two-tiered structure had been in effect. Aloha then purports to show that it would have actually collected more revenue with the two-tiered structure than it would have if it were to retain 11.08% (15.95% - 4.87%) of the interim increase.

Aloha’s theory fails to consider two points. First, the rate structure shift was not intended to override the Commission’s primary decision that Aloha was not entitled to any rate relief. The shift to a two-tiered rate structure was intended to be revenue-neutral.

A revenue-neutral rate design shift cannot be achieved with absolute perfection because of all the variables involved. If the new two-tiered rate structure results in more (or less) revenue than the former rate design would have, it is strictly by accident.

The second point that Aloha misses is that the Commission shifted to the two-tiered rate structure for the expressed purpose of causing conservation of water usage. If the Conservation-causing rate structure had actually been in effect during the appeal period, the usage would have been lower than it was with the old rate design. In fact, that usage differential is why the rate design shift includes a factor for anticipated suppression of usage. That suppression factor contributed to the higher revenue that resulted when the new rate design was applied to the usage that took place under the old rate design. Consequently, Aloha's application of the new rate structure to actual usage that occurred under the old rate structure does not provide any meaningful analysis.

D. WHETHER THE PAA ORDER RESULTS IN A WINDFALL TO ALOHA'S CUSTOMERS TO THE EXTREME DETRIMENT OF ALOHA.

The PAA Order does not result in a windfall to the customers in any way. By Order No. PSC-01-2199-FOF-WU, the Commission granted Aloha an interim rate increase of 15.95%. In the Rate Order, however, the Commission found that even without any increase, Aloha's revenues were sufficient to meet the utility's reasonable requirements. Consequently, the Commission ordered the interim increase to be rolled back entirely and set rates to the level that existed prior to Aloha's filing.' As the PAA observed, the purpose of interim rates is only to make a utility whole during the pendency of a rate case. In hindsight, it is clear that Aloha did not need any increase to make it

¹ This process is complicated by the revenue-neutral shift to the new two-tiered rate structure. A revenue-neutral rate structure shift, however, cannot be effected with absolute accuracy because it must be based on estimates and expectations. Nevertheless, the new two-tiered rates were imposed with the intention to achieve the same rate level that existed prior to Aloha's filing.

“whole” during a case that determined that its rates were already adequate. Based on this logic and purpose for interim rates, then, the entirety of the 15.95% interim increase should have been refunded. The Rate Order, however, relied on a refund formula that resulted in only 4.87% being refunded. Because no party challenged this refund method, the PAA found that administrative finality required that only the 4.87% should be refunded for the time between the Rate Order and the filing of Aloha’s appeal.

Notwithstanding this set of circumstances, the fact remains that Aloha was never entitled to any interim rate increase, and equity would have dictated that the 15.95% should have been refunded for the entire time that it was collected. The fact that the doctrine of administrative finality allows Aloha to keep part of this unjustified increase during some portion of the proceedings can hardly be characterized as a “windfall to Aloha’s customers to the extreme detriment of Aloha.” Obviously, Aloha is the party that received the windfall by retaining its portion of an increase to which it was never entitled.

E. WHETHER THE DIRECTIVES AND STATEMENTS CONTAINED WITHIN THE PAA CONFLICT WITH AND ARE CONTRARY TO THE PSC’S PRIOR AGENCY PRACTICES, PROCEDURES, AND POLICIES.

The Citizens dispute Aloha’s central contention that the procedure which Aloha seeks “has been implemented in all prior cases.” To properly apply precedent, one must examine only those prior cases which have identical or analogous relevant circumstances. The Citizens are unaware of prior cases in which the Commission: (1) first allowed a utility interim rates to keep it whole during the pendency of the rate case; (2) then determined the utility was already financially whole without any rate increase; (3) and yet

allowed the utility to keep some of the customers' money that was never necessary to make it financially whole in the first place.

Once again, the Citizens are stymied by the lack of specificity or elucidation in Aloha's identification of the issue. What one party cites as precedent, the adversarial party can often show is inapplicable or misinterpreted. Until the Citizens see the specific "procedures and policies" that Aloha purports to be precedent, the Citizens cannot respond any further.

Respectfully submitted,



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Attorneys for the Citizens of the
State of Florida

CERTIFICATE OF SERVICE
DOCKET NO. 010503-WU

I HEREBY CERTIFY that a true and correct copy of the foregoing Citizens' Brief Filed Pursuant to Order No. PSC-04-0614-PCO-WU has been furnished by hand-delivery or U.S. Mail to the following parties on the 1st day of July, 2004

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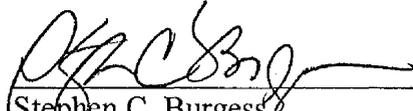
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