

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: ALOHA UTILITIES, INC.;) DOCKET NO. 911146-SU
Application for Limited Proceeding) ORDER NO. PSC-92-0477-FOF-SU
Increase in Wastewater Rates to its) ISSUED: 06/09/92
Aloha Gardens System)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
LUIS J. LAUREDO

ORDER DENYING AUTHORIZATION TO WITHDRAW ESCROW FUNDS

BY THE COMMISSION:

Aloha Utilities, Inc. (Aloha or utility) is a Class A water and wastewater utility operating in Pasco County. The Aloha Gardens wastewater treatment plant and effluent disposal system are under a Consent Order for failure to comply with the Florida Department of Environmental Regulation's (DER) environmental standards. On July 17, 1991, an Amendment to the Consent Final Judgment was issued by the Pasco County Circuit Court to update the Judgment to reflect changed circumstances. The court's amended Order also required Aloha to enter into a bulk wastewater service agreement with Pasco County to divert all the flow from the Aloha Gardens plant to the County's system. Aloha was given a deadline of January 1, 1992, or as soon as the County had the available capacity, to interconnect with the County's lines.

On November 20, 1991, Aloha filed a limited proceeding for increased costs expected to be incurred as a result of the required interconnection. This system is also involved in a rate case proceeding in Docket No. 910540-SU, which was considered by the Commission at the June 2, 1992 Agenda conference.

On March 31, 1992, the Commission issued Order No. PSC-92-0217-FOF-SU in Docket No. 911146-SU, granting the utility on a temporary basis and subject to refund, a revenue increase of \$491,316.

In that Order, this Commission determined that Aloha was not eligible to utilize a corporate undertaking to secure the potential refund of the temporary rates. The Order requires that Aloha employ a letter of credit, bond, or an escrow account for such purposes. Subsequent to that Order, the utility submitted letters

DOCUMENT NUMBER-DATE

05952 JUN -9 1992

PSC-RECORDS/REPORTING

ORDER NO. PSC-92-0477-FOF-SU
DOCKET NO. 911146-SU
PAGE 2

from three financial institutions who had rejected Aloha's request for a bond or letter of credit in the amount required pursuant to Order No. PSC-92-0217-FOF-SU.

On April 8, 1992, Aloha filed an emergency petition for authority to withdraw funds from an escrow account established pursuant to Order No. PSC-92-0127-FOF-SU. The utility asserts in its petition that, since it cannot obtain a bond or letter of credit, an escrow arrangement is the only available alternative for securing the potential refunds of these temporary rates. Further, the utility argues that the escrow arrangement must allow for payment of the bills for bulk wastewater service from Pasco County on a timely basis from the escrowed funds since there is no other source of funds for the payment. Moreover, the utility states that it has been informed that Pasco County will be available to provide the interconnection to the utility on approximately April 30, 1992, instead of in June as it had previously stated.

In its petition, Aloha asserts that it cannot comply with the Consent Order requiring interconnection with Pasco County until such time as rates are authorized to enable it to pay for bulk wastewater service from Pasco County and the monies generated by such rates are available for payment of the charges. Aloha also argues that it is faced with circumstances similar to those found in Mad Hatter Utility, Inc. (MHU) in Docket No. 911206-SU and, like MHU, should be allowed to withdraw funds from escrow to pay the county for bulk wastewater service.

We recognize there are similarities between the utilities; both are located in Pasco County, both have been ordered by DER to receive bulk wastewater service from Pasco County, and both have been denied corporate undertakings to secure the temporary revenue increases. However, in MHU's case, the utility's customers were being exposed to extremely hazardous health conditions and this hazardous situation could have negatively affected the customers and the environment if this Commission had not authorized the use of funds to pay the County. These hazardous conditions are not present in Aloha's situation.

Further, Pasco County had been providing bulk wastewater service to MHU for several months and the County discontinued serviced after MHU was delinquent in paying its bills for several months. In the instant case, Aloha, as of this date, has not yet connected with Pasco County and, therefore, does not owe Pasco County for wastewater service. Moreover, Pasco County has not refused to provide service to Aloha once Aloha does connect.

Finally, MHU had exhausted its potential sources of funds. Neither MHU nor its owners had any alternatives to resolve the problem without assistance and because of the potential for bankruptcy we believed that authorizing the use of escrowed funds by MHU would be in the customers' best interests. These were clearly very exceptional circumstances that necessitated permitting the Utility to utilize the escrowed funds to pay Pasco County.

We have no evidence that Aloha's owners have exhausted their potential sources of funds. The letters from the three financial institutions who rejected Aloha's request for letters of credit did not indicate whether Aloha had requested escrow agreements or bonds. Also, these letters were from banks who did not do business with Aloha. Aloha informed us at our Agenda Conference it had applied and failed to receive a bond from the financial institution with which it primarily does business.

Section 367.082(2)(a), Florida Statutes, provides that "the difference between the interim rates and the previously authorized rates shall be collected under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest." We believe that funds put into an escrow account should remain in escrow until final rates are approved and a determination of a possible refund has been made unless exceptional circumstances demand that we permit otherwise. Allowing a utility the opportunity to withdraw escrowed funds conflicts with the concept of holding money subject to refund as security for the ratepayers.

On rare occasions, exceptional circumstances may exist when the use of these funds should be authorized such as when there is no reasonable alternative which will allow a utility to provide safe and sufficient service to its current customers.

However, we do not believe these exceptional circumstances exist in Aloha's current situation. Aloha has not provided sufficient evidence that it is not financially capable of providing the service without impairing its capacity to serve its customers. Therefore, we find it appropriate to deny Aloha's petition to withdraw escrowed funds. If such circumstances were to develop, the Utility may certainly petition this Commission again to consider such a request.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Aloha Utilities, Inc.'s petition to withdraw escrowed funds from an escrow account established pursuant to Order No. PSC-92-0127-FOF-SU shall be denied at this time.

ORDER NO. PSC-92-0477-FOF-SU
DOCKET NO. 911146-SU
PAGE 4

By ORDER of the Florida Public Service Commission, this 9th
day of June, 1992.



STEVE TRIBBLE, 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 120.59(4), 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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), 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.