

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding emergency, temporary, and permanent increase in water rates to customers in Seven Springs service area in Pasco County, by Aloha Utilities, Inc.

DOCKET NO. 010168-WU
ORDER NO. PSC-01-0997-PAA-WU
ISSUED: April 23, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER DENYING EMERGENCY RATES AND
NOTICE OF PROPOSED AGENCY ACTION ORDER DENYING REQUEST FOR A
LIMITED PROCEEDING FOR A TEMPORARY AND PERMANENT RATE INCREASE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action concerning the denial of the request for a limited proceeding for a temporary and permanent rate increase discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Aloha Utilities, Inc. (Aloha or utility), is a Class A water and wastewater utility in Pasco County (County) and purchases bulk water from the County. The utility consists of two distinct service areas, Aloha Gardens and Seven Springs. The utility's service area is located within the Northern Tampa Bay Water Use Caution Area (NTB-WUCA) and the Northern Tampa Bay-Wellfield Impact Area (NTB-WIA) as designated by the Southwest Florida Water

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Management District (SWFWMD or District). The NTB-WUCA is delineated by Rule 40D-2.801(3)(c), Florida Administrative Code, as an area where groundwater withdrawals have resulted in the lowering of lake levels, destruction or deterioration of wetlands, reduction in streamflow, and salt water intrusion. Permittees within the NTB-WUCA are required by SWFWMD to take special measures to conserve water and protect the water resource.

In its 1999 annual report, Aloha reported 9,242 customers and revenues of \$1,726,029 for its Seven Springs water system. The last rate proceeding for this system was combined in Dockets Nos. 970536-WS and 980245-WS. In those dockets, rate base for Seven Springs water was established as of December 31, 1998 by Order No. PSC-99-1917-PAA-WS, issued September 28, 1999. This Order was consummated by Order No. PSC-99-2083-CO-WS, issued October 21, 1999.

On March 21, 2000, our staff initiated an undocketed earnings investigation and commenced an audit of the utility. The purpose of the audit was to compile and audit the utility's Aloha Gardens water and wastewater, and Seven Springs water system rate base, capital structure and net operating income for the 13-month average test year ended December 31, 1999.

By Order No. PSC-00-1289-FOF-WS, issued July 18, 2000, in Docket No. 000737-WS, we initiated a formal investigation of the rates and charges of the Aloha Gardens water and wastewater systems and Seven Springs water system and held revenues subject to refund for these systems. By Order No. PSC-01-0101-PCO-WS, issued January 11, 2001, we increased the corporate undertaking approved in Order PSC-00-1289-FOF-WS by \$70,910, resulting in total secured revenues of \$232,050 as a guarantee of any potential refund of water and wastewater revenues collected subject to refund.

On February 5, 2001, Aloha filed a limited proceeding for its Seven Springs water system, stating that it was filed pursuant to Sections 367.081(1)(a) [sic] and (3) and 367.0822, Florida Statutes. The utility requested an emergency, temporary, and permanent increase in rates to recover a substantial increase in purchases of bulk water from the County. Specifically, Aloha requested a revenue increase of \$621,096. This would result in an average rate

increase of 37.82% for a water customer that uses 10,000 gallons per month.

This Order addresses the emergency/temporary rate request and whether a limited proceeding is the appropriate avenue to determine any potential rate increase for the Seven Springs water system. We have jurisdiction pursuant to Sections 367.081 and 367.0822, Florida Statutes.

EMERGENCY RATES

On February 5, 2001, Aloha filed this application, pursuant to Section 367.0822, Florida Statutes, for a limited proceeding to increase its gallonage rate for water service provided to its Seven Springs customers. Aloha requested an emergency, temporary, and permanent rate increase. In its application, Aloha states that the proposed increase to this system is to recover a substantial increase in purchases of bulk water from the County. The utility requested additional annual revenues of \$621,096.

On February 23, 2001, Aloha filed additional information which it believes supports its emergency relief request. This information included a copy of its current water use permit (WUP). In addition, the utility provided a copy of a letter dated November 19, 1998, from the District to Aloha. On March 12, 2001, Aloha filed a letter with copies of the two bills from the County for bulk water purchased covering the periods December 18, 2000 to January 18, 2001 and January 19, 2001 to February 19, 2001.

In its application, the utility states that in early 2000, SWFWMD informed Aloha of the District's concern that the utility was exceeding its permitted water withdrawal allocation. Aloha asserts that this is a result of growth and other factors. In December 2000, the utility began purchasing water from the County to supplement its permitted allocation in order to comply with its WUP. In determining whether an emergency/temporary rate increase is warranted, we believe it is appropriate to review the events that led up to the utility's filing for this limited proceeding.

By letter dated November 19, 1998, Steven W. DeSmith, P.G., of SWFWMD requested additional information from David W. Porter, P.E., C.O., Aloha's engineering consultant, concerning the WUP.

According to this letter, in May of 1997, SWFWMD met with the utility's engineering consultant to discuss modification of Aloha's WUP for its Seven Springs service area to redistribute and increase withdrawal quantities. At that time, the District informed the utility that Aloha's actual water withdrawals exceeded the withdrawal amount authorized by Aloha's previous WUP and that the increase may or may not be authorized on a subsequent permit, if issued. Additionally, SWFWMD discussed the fact that the utility's service area and well sites are located within the NTB-WUCA and NTB-WIA. The NTB-WIA is an area in which the cumulative withdrawal impacts from existing sources already exceed the performance standards identified in the Basis of Review for WUPs, and new withdrawal quantities may not be available. Due to the complications of increasing water withdrawals in this area, several alternative options were discussed, including acquiring other permitted uses and converting those permitted uses to public supply, and supplying effluent for reuse to other parties.

Further, according to the November 19, 1998 letter, the utility's 1998 WUP application for Seven Springs did not address any options for acquiring the additional water supply needed other than by increasing ground water withdrawals. SWFWMD indicated that other potential sources, other than new ground water withdrawals, were acquiring WUPs from others, additional conservation, desalination, reuse systems, aquifer storage and recovery, and interconnection to other suppliers. In response to the District's concerns, Aloha agreed to obtain water in excess of its permitted quantities through an interconnection with the County's water system.

By letter dated April 2, 1999 from Mr. DeSmith of SWFWMD to Mr. Porter, the District issued an overpumping compliance notice. Based on a January 6, 1999 meeting with Aloha, the District's understanding was that the utility was to begin utilizing an interconnection with the County immediately to reduce on-site well pumping to its previously permitted quantities. However, based on a facsimile from Aloha to SWFWMD dated March 24, 1999, the interconnection was not being used at that time. In fact, pumping records indicated that the utility had exceeded its WUP allocation since February 1998. In the April 2, 1999 notice, the District requested that Aloha take necessary actions to reduce its on-site well withdrawals to its permitted quantities. SWFWMD reiterated

that these actions could include interconnecting with the County and/or other external sources, or implementing other water use strategies that would address and reduce the current overpumping from its wells. Further, the District requested that the utility provide a status report of steps taken to comply with its WUP capacity limit.

By letter dated June 6, 2000 from Mr. DeSmith of SWFWMD to Mr. Stephen Watford, President of Aloha, the District issued a second notice of noncompliance for overpumping. Based on a letter dated April 14, 1999 from Mr. Porter, the District's understanding was that the interconnection with the County was to be completed and utilized by August of 1999. However, as discussed in the second notice of noncompliance, SWFWMD's review of pumping records indicated that Aloha continued its ground water withdrawals in excess of its permitted quantities. Further, Aloha was instructed to inform the District of the status of the interconnection with the County by June 20, 2000.

The District issued Aloha a notice of violation dated November 21, 2000, for Aloha's pumping in excess of the quantity limits set in its WUP. On December 7, 2000, Aloha provided a status update of its efforts to comply with its WUP. However, pursuant to SWFWMD's review of this status update, Aloha had failed to provide adequate detail of the utility's efforts to comply with its WUP. The District asserted that the measures described in this update did not appear likely to result in compliance with the WUP by the December 21, 2000 deadline set by SWFWMD. By letter dated January 4, 2001, from Margaret M. Lytle, Assistant General Counsel of SWFWMD to John R. Jenkins, Esquire, Aloha's Counsel, the District discussed Aloha's unsuccessful efforts to comply with the notice of violation. SWFWMD stated that Aloha could expect a proposed Consent Order shortly with monetary penalties. However, the District stated that if Aloha's December 2000 pumpage data indicated that the utility had come into compliance with its permit, the utility would not be subject to enforcement action at that time. The District further stated that if the utility had made good faith progress to achieve compliance, then it could mitigate the amount of the final monetary penalty.

On January 5, 2001, by certified and regular mail, SWFWMD presented Aloha with a proposed consent order. The order called

for Aloha's full compliance of its WUP within 180 days from an approval of the proposed order by the District's Governing Board. In addition, the proposed order called for Aloha to pay a penalty of \$105,774 and \$250 to compensate the District for its enforcement costs. SWFWMD requested that the utility respond by January 19, 2001, regarding its intentions in this matter.

On January 18, 2001, Aloha responded to the Consent Order by requesting a meeting with the District. This meeting was held on February 14, 2001, at which time Aloha presented the District with a water use permit compliance plan document containing (but not limited to) a discussion of such items as a system overview, usage characteristics, and lists of short and long term alternatives available to Aloha to bring the utility into compliance. As a result of this meeting, Aloha is to submit a plan to the District as to how it will come into compliance. This involves pursuing those alternatives which are most promising and will have the largest impact on Aloha's supply and demand. In a letter from Aloha to the District dated February 23, 2001, the utility indicated that it expects to get back to the District within sixty days regarding this matter. Aloha's proposed compliance plan will also include estimated compliance expenses for the District's consideration regarding the dollar amount of the proposed penalty.

Through a six-inch meter, Aloha has been interconnected with the County since the early 1980s. The County states that there is no purchased water restriction on the total capacity of the 6-inch meter. Further, the County stated that the utility could have purchased more water as the need arose.

This Commission has, on occasion, granted emergency, temporary rates in true emergency situations. By Order No. PSC-99-1010-PCO-SU, issued May 20, 1999, in Docket No. 980242-SU, this Commission authorized emergency rates in a limited proceeding application of Lindrick Service Corporation (Lindrick) because Lindrick had to take its wastewater plant off-line and send its raw effluent to the City of New Port Richey to comply with the requirements of the Florida Department of Environmental Protection (DEP). Further, by Orders Nos. PSC-92-0127-FOF-SU and 25711, issued March 31, 1992 and February 12, 1992, in Dockets Nos. 911146-SU and 911206-SU, respectively, this Commission granted emergency rates to Aloha Gardens Wastewater System and Mad Hatter Utility, Inc. so that the

utilities could pay the costs incurred for bulk wastewater treatment by Pasco County, following a DEP required interconnection to the County.

Nevertheless, Aloha has been aware of the need to find alternative water sources, other than groundwater withdrawals, since 1997. As early as 1998, the utility could have both begun purchasing water from the County in amounts in excess of its permitted WUP quantities and requested an increase in rates to recover the increase in purchased water expenses. We find that Aloha's request for rate relief is not an emergency, due to Aloha's failure to adequately address its overpumping problem over the past two years. Therefore, the utility's request for emergency rates is denied.

APPLICATION FOR A LIMITED PROCEEDING FOR A TEMPORARY AND
PERMANENT RATE INCREASE

Section 367.0822, Florida Statutes, states that the Commission may conduct limited proceedings and further states that the Commission shall determine the issues to be considered in a limited proceeding. In determining whether a limited proceeding is an appropriate vehicle to establish new rates for the Seven Springs water system, we have considered several factors.

First, we note that the Seven Springs water system is currently being investigated by this Commission for overearnings. See Order No. PSC-00-1289-FOF-WS, issued July 18, 2000, in Docket No. 000737-WS. The analysis used to open the investigation was the simple average test year ending December 31, 1999. However, it appears that the December 31, 1999 test year is inappropriate to determine the earnings level for this system. The Seven Springs service area is currently experiencing substantial customer growth without concurrent increases in plant. This customer growth results in greater revenues and contributions-in-aid-of-construction which make the 1999 historical test year stale and unrepresentative of the current and prospective earnings for the Seven Springs water system. This is especially true given the issue of water supply and its associated costs.

Secondly, the Seven Springs water system has a rate structure that includes minimum gallonage in its base charge. By Order No.

PSC-97-0280-FOF-WS, issued March 12, 1997, in Dockets Nos. 950615-SU and 960545-WS, the utility was put on notice that rate restructuring would be considered in the next rate proceeding involving its Seven Springs water system.

In addition to the above reasons, we note the strict enforcement procedures proposed by the SWFWMD for its district. Aloha is currently buying water from the County to supplement quantities in excess of its WUP. The County is part of Tampa Bay Water (TBW), which is a regional water supply authority with responsibility as the wholesale supplier of water to six local governments (Member Governments): Pinellas County, the City of St. Petersburg, Hillsborough County, the City of Tampa, Pasco County (Aloha's wholesale provider) and the City of New Port Richey. On March 20, 2001, the Governing Board of the SWFWMD approved an Executive Director Order which declared a water shortage emergency in Pinellas, Hillsborough and Pasco Counties.

The Order requires, among other things, that within 30 days, each of the Member Governments shall develop and implement an emergency water-conservation inclined block rate structure for each customer class or other enforceable conservation measures to achieve a five percent (5%) target reduction.

Based on this language, Aloha could, within 30 days, be subject to an inclining-block rate structure for the purchase of its wholesale water from Pasco County. Therefore, Aloha's proposed revenue requirement increase to recover the purchased water cost, based on the existing wholesale water rate, may not be an accurate reflection of the prospective effects the wholesale water expenses could have on Aloha's revenue requirement for its Seven Springs system.

The District recognizes that for those utilities whose rates are regulated by this Commission, compliance may not be achieved within the specified time frame. However, the District requires that these utilities undertake efforts to secure our approval and report on the status of their efforts.

Aloha attached two schedules in support of its Application for a Limited Proceeding showing projected usage and cost data under the current SWFWMD directives. However, the requirements of the

District's Order could change virtually each line-item and calculation. Furthermore, it is impossible to predict at this point what effects the requirements of the District's Order will have on the quantities of water purchased by Aloha, and, ultimately, what effect those same requirements will have on Aloha's customers. The District's Order will have a material effect on the utility's filing both in terms of additional revenue required and the basis of revenue recovery. Therefore, it is inappropriate to set the new revenue requirement until the impact of these changes are better quantified.

Limited proceedings generally address a specific or significant change that would adversely affect the normal operating income of the utility. They are usually narrow in scope. We find that there are a number of issues which are material to Aloha's operating earnings, that any proceeding to adjust rates will not be narrow in scope, and that these issues cannot be adequately addressed in a limited proceeding. In light of the above, we believe that a full review of Aloha's Seven Springs water earnings is required to determine whether a water rate increase is warranted and to determine the appropriate rate structure for Aloha to recover its revenue requirement. As such, we find that a limited proceeding is an inappropriate vehicle to establish new rates for the Seven Springs water system. This position is supported by our decision in the 1998 limited proceeding for Lindrick, where this Commission denied Lindrick's request for a limited proceeding for its water system for similar reasons. See Order No. PSC-99-1883-PAA-SU, issued September 21, 1999, in Docket No. 980242-SU. Therefore, we hereby deny the utility's request for a limited proceeding for a temporary and permanent rate increase. Any proceeding resulting from a protest of the proposed agency action portion of this Order will be solely on the issue of whether a limited proceeding is appropriate.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request of Aloha Utilities, Inc., for emergency rates for its Seven Springs water system is denied. It is further

ORDERED that, because of the circumstances of this case, a limited proceeding is an inappropriate vehicle to establish new

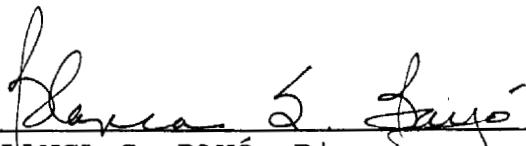
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rates for the Seven Springs water system, and the request of Aloha Utilities, Inc., for a limited proceeding for a temporary and permanent rate increase for its Seven Springs water system is denied. It is further

ORDERED that the provisions of this Order concerning the denial of the request for a limited proceeding for a temporary and permanent rate increase, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no person whose substantial interests are affected by the proposed agency action files a timely request for a Section 120.57, Florida Statutes, hearing within the twenty-one day protest period, no further action will be required and this docket shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 23rd day of April, 2001.



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.

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 that portion of the order denying emergency rates, 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.

The action concerning the denial of the request for a limited proceeding for a temporary and permanent rate increase proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 14, 2001.

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In the absence of such a petition, that portion of the order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.