



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: MAY 3, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (MONIZ) *SHW RTR*
DIVISION OF LEGAL SERVICES (JAEGER) *REJ DM TB*

RE: DOCKET NO. 010518-WS - NOTICE OF INTENT TO INCREASE WATER AND WASTEWATER RATES IN PASCO COUNTY, BASED UPON APPLICATION OF PROVISIONS OF SECTION 367.081(4) (a) & (b), F.S., BY ALOHA UTILITIES INC.

AGENDA: 05/15/01. - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUES 1 AND 2 - FINAL AGENCY ACTION FOR ISSUES 3 AND 4 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: MAY 20, 2001, DATE FOR IMPLEMENTATION OF PASS-THROUGH AND PRICE INDEX RATE INCREASE

SPECIAL INSTRUCTIONS: THIS RECOMMENDATION SHOULD IMMEDIATELY FOLLOW THE RECOMMENDATION IN DOCKET NO. 000737-WS

FILE NAME AND LOCATION: S:\PSC\ECR\WP\010518.RCM

CASE BACKGROUND

Aloha Utilities, Inc. (Aloha or utility), is a class A water and wastewater utility located in Pasco County (County). The utility consists of two distinct service areas -- Aloha Gardens and Seven Springs.

On March 21, 2001, Aloha filed its Notice of Intent to Increase Its Rates (Notice) pursuant to the indexing and pass-through provisions of Sections 367.081(4)(a) and (b), Florida Statutes, and Order No. PSC-00-0206-FOF-WS, issued February 1, 2000, in Docket No. 000005-WS. By this Notice, Aloha seeks to increase its water and wastewater rates for the Aloha Gardens service area, and its water rates for the Seven Springs service

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area. In this filing, Aloha waived implementing the pass-through increase in the statutory 45-day period, and requested that it be allowed to implement both the price index and pass-through increase in 60 days.

However, there is some question as to whether Aloha is eligible to increase its rates through use of the price index procedures as requested. On June 19, 2000, prior to the filing of the above-noted Notice, staff filed its request to open an overearnings docket, and this request was approved on June 29, 2000. Therefore, pursuant to the opening of the overearnings docket, the Commission initiated an overearnings investigation of Aloha's Seven Springs water division and its Aloha Gardens water and wastewater division, in Docket No. 000737-WS, Investigation of Rates of Aloha Utilities, Inc., in Pasco County for Possible Overearnings for the Aloha Gardens Water and Wastewater Systems and the Seven Springs Water System.

The appropriate rates on a going-forward basis for the Aloha Gardens water and wastewater systems were to be considered at the May 1, 2001 Agenda Conference in Docket No. 000737-WS. However, that item was deferred. Moreover, the appropriate rates for the Seven Springs water system are still under consideration in Docket No. 000737-WS.

This recommendation addresses whether it is appropriate for Aloha to increase its water rates to its Seven Springs division and its water and wastewater rates to its Aloha Gardens division through application of the price index and pass-through provisions of Sections 367.081(4)(a) and (b), Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Aloha Utilities, Inc., to refrain from increasing its rates pursuant to the price index provisions of Sections 367.081(4)(a), Florida Statutes?

RECOMMENDATION: The Commission should order Aloha Utilities, Inc., to refrain from increasing its rates pursuant to the price index provisions of Section 367.081(4)(a), Florida Statutes. (JAEGER, MONIZ)

STAFF ANALYSIS: The utility is seeking to increase its water and wastewater rates for the Aloha Gardens division, and its water rates for the Seven Springs division through application of the price index and pass-through provisions of Sections 367.081(4)(a) and (b), Florida Statutes. As stated above, staff notes that the opening of an overearnings docket, Docket No. 000737-WS, was approved on June 29, 2000, with the filing date being June 19, 2001, for these three systems (Aloha Gardens water and wastewater and Seven Springs water). Moreover, staff notes that Aloha filed a limited water rate proceeding (Docket No. 010168-WU) for its Seven Springs water system on February 5, 2001. The Commission proposed to deny this limited proceeding application by Proposed Agency Action (PAA) Order No. PSC-01-0997-PAA-WU, issued April 23, 2001 in that docket. However, the time to protest that Order had not expired at the time of filing this recommendation.

Section 367.081(4)(a), Florida Statutes, governs the implementation of a price index increase, and states in pertinent part:

The commission by rule shall establish the procedure to be used in determining such indices and a procedure by which a utility, without further action by the commission . . . may implement an increase or decrease in its rates based upon the application of the indices to the amount of the major categories of operating costs incurred by the utility during the immediately preceding calendar year, except to the extent of any disallowances or adjustments for those expenses of that utility in its most recent rate proceeding before the commission. . . . A utility may not use this procedure between the official filing date of the rate proceeding and 1 year thereafter, unless the case is completed or terminated at an earlier date. A utility may not use this procedure . . . to increase its rates by application of a price index other

than the most recent price index authorized by the commission at the time of filing. (Emphasis added)

Rule 25-30.420, Florida Administrative Code, governs price index increases, and subsection (7) of that rule states: "No utility shall implement a rate increase pursuant to this rule within one year of the official date that it filed a rate proceeding, unless the rate proceeding has been completed or terminated."

Although Rule 25-30.420, Florida Administrative Code, refers to the date that the utility files a rate proceeding, the statute's reference is to "the rate proceeding," and states that the price index procedure may not be used "between the official filing date of the rate proceeding and 1 year thereafter, unless the case is completed or terminated at an earlier date." An overearnings investigation is a Commission initiated rate proceeding. Therefore, because the overearnings investigation was filed on June 19, 2000, staff believes that Aloha may not use the price index procedure prior to the earlier of June 19, 2001 or the completion of the overearnings investigation for each system.

Moreover, the price index procedure is initiated by a filing, and pursuant to Section 367.081(4)(a), Florida Statutes, Aloha may only increase its rates by using the "most recent price index authorized by the commission at the time of filing." Therefore, by the time Aloha will be allowed to use the price index procedure which is initiated by filing for a price index increase, it will no longer be able to use the price index for which it is now filing because the new price index will be in effect.

As noted above, by PAA Order No. PSC-01-0997-PAA-WU, issued April 23, 2001, the Commission proposed to deny Aloha's request for a limited water rate proceeding for its Seven Springs water system and to close Docket No. 010168-WU. Also, staff notes that the overearnings investigation is still pending (staff plans to file its recommendation on the Aloha Gardens water and wastewater systems for this same agenda, but is not yet ready to file its overearnings recommendation on the Seven Springs water system). Any decision on these systems will be disposed of through the issuance of a PAA Order. In the recommendation in Docket No. 000737-WS (overearnings docket) addressing whether a refund is required and the appropriate rates on a going-forward basis, staff is taking into account the inflationary factor for the year 2000 and is also considering the increase in the County's bulk water rates in October 2000. If the Commission considers and accepts staff's recommendation in Docket No. 000737-WS at this May 1 Agenda Conference, and there is no protest of the subsequent PAA Order,

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then it appears that the overearnings investigation for the Aloha Gardens water and wastewater systems will be completed. However, the overearnings investigation for the Seven Springs water system is still pending.

In any event, staff believes that Aloha is precluded from using the price index in effect prior to March 31, 2001, to increase its rates. Moreover, staff notes that in its recommendation for the overearnings docket, Docket No. 000737-WS, staff is taking into account the inflation factor for the calendar year 2000 for the Aloha Gardens water and wastewater systems and plans to take into account the inflation factor for the Seven Springs water system when it files its overearnings recommendation on that system. Based on all the above, staff recommends that the Commission order Aloha to refrain from increasing its rates pursuant to the price index provisions of Section 367.081(4)(a), Florida Statutes.

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ISSUE 2: Should the Commission order Aloha Utilities, Inc., to refrain from increasing its rates for its Aloha Gardens division pursuant to the pass-through provisions of Section 367.081(4)(b), Florida Statutes?

RECOMMENDATION: If the Commission approves staff's recommendation in Docket No. 00737-WS, the pass-through increase for both the bulk water and wastewater increases from the County will already be included in the rates for the Aloha Gardens division of Aloha Utilities, Inc. Therefore, Aloha Utilities, Inc., should not be allowed to implement the pass-through increases for its Aloha Gardens division. (JAEGER, MONIZ)

STAFF ANALYSIS: As stated above, the utility is seeking to increase its water and wastewater rates for the Aloha Gardens division, and its water rates for the Seven Springs division through application of the price index and pass-through provisions of Sections 367.081(4)(a) and (b), Florida Statutes. In reviewing the pass-through provisions of Section 367.081(4)(b), Florida Statutes, and Rule 25-30.425, Florida Administrative Code, staff could find no similar provision prohibiting the filing for a pass-through rate increase within one year of the filing of a rate case as is found for price indexing. However, if the Commission approves staff's recommendation in Docket No. 00737-WS, the pass-through increase for both the bulk water and wastewater increases from the County will already be included in the rates for the Aloha Gardens division of Aloha. If Aloha were allowed to increase the rates again for these same pass-throughs, there would be a double recovery. Therefore, staff recommends that, if the Commission approves staff's recommendation in the overearnings docket, then Aloha should not be allowed to implement the pass-through increases for its Aloha Gardens system.

ISSUE 3: Should the Commission order Aloha Utilities, Inc., to refrain from increasing its rates for its Seven Springs division pursuant to the pass-through provisions of Section 367.081(4)(b), Florida Statutes?

RECOMMENDATION: No. At this point in time, staff is making no recommendations in the overearnings docket concerning the Seven Springs division of Aloha Utilities, Inc. Therefore, Aloha Utilities, Inc., should be allowed to proceed with implementation of the pass-through increases for the Seven Springs division, provided it has submitted the appropriate notice to customers, the appropriate revised tariff sheets, and has notified each customer of the increase authorized and the reasons for the increase and has otherwise complied with the requirements of Rule 25-30.425, Florida Administrative Code. (JAEGER, MONIZ)

STAFF ANALYSIS: As stated above, the utility is seeking to increase its water and wastewater rates for the Aloha Gardens division, and its water rates for the Seven Springs division through application of the price index and pass-through provisions of Sections 367.081(4)(a) and (b), Florida Statutes. In reviewing the pass-through provisions of Section 367.081(4)(b), Florida Statutes, and Rule 25-30.425, Florida Administrative Code, staff could find no similar provision prohibiting the filing for a pass-through rate increase within one year of the filing of a rate case. Also, staff did not address the Seven Springs division in the recommendation that it filed for this agenda in Docket No. 000737-WS, the overearnings investigation.

Therefore, staff recommends that Aloha be allowed to implement the pass-through increase for its Seven Springs division, provided Aloha has submitted the appropriate notice to customers, the appropriate revised tariff sheets, and has notified each customer of the increase authorized and the reasons for the increase and has otherwise complied with the requirements of Rule 25-30.425, Florida Administrative Code.

Although Aloha set forth the calculations for the pass-through increase, and gave the initial notice to the Commission as required by Section 367.081(4)(b), Florida Statutes, and otherwise complied with Rule 25-30.425, Florida Administrative Code, the tariff sheets and the proposed notice to customers included the requested price index increase which staff believes is inappropriate. Therefore, staff believes that, if Aloha wishes to proceed with the pass-through portion of the requested increase, it should submit the appropriate tariffs and notice. Also, pursuant to Rule 25-30.425(8), Florida Administrative Code, "Prior to the time a

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customer begins consumption at the adjusted rates, the utility shall notify each customer of the increase authorized and explain the reasons for the increase." Once Aloha has complied with all the above, Aloha should be allowed to increase its rates to its Seven Springs customers for the County's increase in its bulk rates through application of the pass-through provisions of Section 367.081(4)(b), Florida Statutes.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Order, the decision will become final and effective upon the issuance of a Consummating Order, and the docket should be closed. (JAEGER)

STAFF ANALYSIS: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Order, the decision will become final and effective upon the issuance of a Consummating Order, and the docket should be closed.