

VOTE SHEET

AUGUST 20, 2002

Docket No. 020413-SU - Initiation of show cause proceedings against Aloha Utilities, Inc. in Pasco County for failure to charge approved service availability charges, in violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes. (Deferred from the May 21, 2002 conference; revised recommendation filed.)

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ISSUE 2: Should Aloha be ordered to show cause, in writing within 21 days, why it should not be fined for failure to charge its approved service availability charges and to timely file a revised tariff sheet reflecting those charges, in apparent violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes?

RECOMMENDATION: Yes. Aloha should be ordered to show cause, in writing within 21 days, why it should not be fined \$1,000 for the apparent violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes. The order to show cause should incorporate the conditions stated in the analysis portion of staff's August 8, 2002 memorandum.

MODIFIED

Approved with the modification that the fine is \$10,000. Additionally, the order is to include language to ensure that Aloha complies with all other obligations set out in Order PSC-01-0326-FOF-SU.

ISSUE 3: Should Aloha be authorized to backbill customers for the approved service availability charges that it should have collected for connections made between May 23, 2001 and April 16, 2002, and, if not, should any such backbilled amounts collected be refunded, with interest?

RECOMMENDATION: Aloha should not be authorized to backbill customers for the approved service availability charges that it should have collected for connections made between May 23, 2001 and April 16, 2002. Aloha should be required to refund any such backbilled amounts received and any increased service availability charges collected prior to April 16, 2002, calculated with interest in accordance with Rule 25-30.360, Florida Administrative Code. The amount of interest should be based on the 30-day commercial paper rate for the appropriate time period. The refund should be made within 30 days of the effective date of the final order in this docket and the utility should be required to file refund reports consistent with Rule 25-30.360, Florida Administrative Code. With respect to persons who prepaid the erroneous charge in order to reserve capacity, but who did not connect to Aloha's system prior to April 16, 2002, Aloha should charge its approved \$1,650 service availability charge provided notice was received pursuant to Rule 25-30.475(2), Florida Administrative Code.

DENIED

With the cautions articulated at the conference, Aloha will be allowed to backbill the developers in question and exercise its ability to collect the approved service availability charges. Chairman Faber dissented.

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ISSUE 4: Should Aloha be required to impute on its books as though collected any amount of the CIAC that it should have collected between May 23, 2001 and April 16, 2002?

RECOMMENDATION: Yes. Aloha should be required to impute \$157,341 of CIAC on its books as though collected.

DENIED *100% of service availability charges that should have been billed is recognized as CIAC.*

ISSUE 5: Should the Limited Partners' Petition to Intervene be granted?

RECOMMENDATION: Yes. However, because the Limited Partner's substantial interests are only affected by the Commission's decision on Issues 3 and 6, intervention should be limited to those issues. This decision should be without prejudice to the Limited Partners to file a complaint regarding the other issues raised in their Petition which are unrelated to the issues addressed in this docket.

APPROVED

ISSUE 6: Should Aloha be required to file a replacement tariff sheet reflecting its approved service availability charges, to be stamped effective for connections made on or after April 16, 2002?

RECOMMENDATION: Yes. Aloha should be required to file a replacement tariff sheet within 10 days of the effective date of the order arising from this recommendation, reflecting its approved service availability charges. The tariff sheet should be stamped effective for connections made on or after April 16, 2002 and the affirmative relief sought by the Limited Partners, which is that the effective date of the revised service availability charge tariff should be on or after July 19, 2002, should be denied. Further, no developer or builder should be billed the approved service availability charges unless notice has been provided to the developer or builder,

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pursuant to Rule 25-30.475(2), Florida Administrative Code. In accordance with H. Miller & Sons, that notice must be received prior to connection and no later than the date of connection. Aloha should also be required to provide notice of the Commission's order arising from this recommendation to all developers to whom it has sent a backbilling letter and to any persons who have either requested service or inquired about service with the utility in the past 12 months. Aloha should submit the proposed notices for staff's administrative approval within 10 days of the effective date of the order.

MODIFIED *Approved with the modification that Aloha is to file a replacement tariff sheet within 10 days of the issuance date of the order arising from this recommendation.*

ISSUE 7: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation on Issues 1-6, no timely protests are filed to the proposed agency action issues, and Aloha responds to the show cause order by paying the required fine, refunds any backbilled amounts received calculated with interest in accordance with Rule 25-30.360, Florida Administrative Code, within 30 days of the effective date of the order, files refund reports consistent with Rule 25-30.360, Florida Administrative Code, files a replacement tariff sheet reflecting its approved service availability charges and provides the required notices within 10 days of the effective date of the order, this docket should be closed administratively. If Aloha fails to comply with the Commission's directives, this docket should remain open for further action. If Aloha responds to the show cause order and requests a hearing, or a protest is received to a proposed agency action issue by a substantially affected person within 21 days of the issuance date of the order, this docket should remain open for final disposition. In the event of a protest, the tariff should remain in effect, held subject to refund, pending resolution of the protest.

APPROVED