

State of Florida



Public Service Commission  
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION  
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DATE: FEBRUARY 20, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &  
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (GERVASI) *pp*  
DIVISION OF ECONOMIC REGULATION (FLETCHER, MERCHANT, *MS*  
WILLIS) *W* *JDS*

RE: 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.  
COUNTY: PASCO

AGENDA: 03/04/2003 - REGULAR AGENDA - DECISION ON STIPULATION  
PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE.

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\020413.RCM

CASE BACKGROUND

Aloha Utilities, Inc. (Aloha or utility) is a Class A water and wastewater utility located in Pasco County. The utility consists of two distinct service areas, Aloha Gardens and Seven Springs. On February 9, 2000, Aloha filed an application for an increase in rates for its Seven Springs wastewater system. By Order No. PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU, the Commission approved increased rates and charges for Aloha. The Commission also directed Aloha to increase its wastewater service availability charges for its Seven Springs wastewater system from \$206.75 per equivalent residential connection (ERC) to \$1,650 per residential ERC and \$12.79 per gallon for all other connections. The Commission required Aloha to

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file an appropriate revised tariff sheet reflecting the approved service availability charges within 20 days of the date of the order.<sup>1</sup>

Aloha should have submitted revised tariff sheets on wastewater service availability charges and had them approved at the same time as the wastewater rate tariffs, on May 23, 2001. However, in apparent violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes, the utility did not submit the tariff sheets until almost 10 months later, on March 11, 2002, and did not begin charging its approved service availability charges until almost 11 months later, on April 12, 2002.

On August 15, 2002, OPC filed a Notice of Intervention in this docket. OPC's intervention was acknowledged by Order No. PSC-02-1122-PCO-SU, issued August 19, 2002.

By Order No. PSC-02-1250-SC-SU, issued September 11, 2002, among other things, the Commission granted in part and denied in part SRK Partnership Holdings, LLC and Benchmark Manmen Corp.'s (Limited Partners) Petition to Intervene in this docket, ordered the effective date of the service availability tariff to be April 16, 2002, authorized Aloha to backbill developers for the uncollected amounts of service availability charges that it failed to collect from May 23, 2001 to April 16, 2002, or any portion thereof as negotiated between Aloha and the developers, and ordered that regardless of whether Aloha is successful in collecting the full backbilled amounts from the developers or any portion thereof, 100% of the amount of these charges, or \$659,547 shall be recognized as contributions-in-aid-of-construction (CIAC). The Commission also ordered Aloha to show cause as to why it should not be fined in the amount of \$10,000 for failure to timely file a revised tariff sheet on service availability charges and charge its approved service availability charges, in apparent violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes.

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<sup>1</sup>Both Aloha and the Office of Public Counsel (OPC) filed petitions for reconsideration of Order No. PSC-01-0326-FOF-SU. Those petitions were disposed of by Order No. PSC-01-0961-FOF-SU, issued April 18, 2001, by which the Commission granted Aloha's motion in part and denied OPC's motion. Order No. PSC-01-0961-FOF-SU reaffirmed the wastewater service availability charges approved by Order No. PSC-01-0326-FOF-SU.

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On October 2, 2002, Aloha filed its Response to the Show Cause Order. By Order No. PSC-02-1774-FOF-SU, issued December 18, 2002, the Commission denied the relief requested in Aloha's Response to Show Cause Order and disposed of the show cause proceeding by assessing the \$10,000 fine.

Protests to the proposed agency action (PAA) portion of Order No. PSC-02-1250-SC-SU concerning backbilling were timely filed by three developers: Windward Homes, Greene Builders, Inc. (Greene Builders), and Adam Smith Enterprises, Inc. (Adam Smith). In addition, Aloha timely filed a Request for Hearing on the PAA portion of the Order concerning the imputation of CIAC.<sup>2</sup> Therefore, this docket was scheduled for a formal hearing to be conducted on April 11, 2003. Greene Builders, Windward Homes, and the Limited Partners have since withdrawn from the docket.

On October 7, 2002, Aloha filed a Motion for Emergency Relief, which the full Commission granted by Order No. PSC-02-1774-FOF-SU. On January 2, 2003, Adam Smith timely filed a Motion for Reconsideration of that decision. Adam Smith's Motion for Reconsideration was denied at the February 4, 2003, agenda conference, as was Aloha's Motion to Strike the Motion for Reconsideration.

On February 7, 2003, Aloha and Adam Smith filed a Joint Withdrawal of Protests in this docket. This recommendation is to acknowledge that filing. The Commission has jurisdiction pursuant to Section 367.091, Florida Statutes.

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<sup>2</sup>Aloha filed its Request for Hearing in order to preserve its right to backbill developers and builders who connected to its system from May 23, 2001 until April 16, 2002.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Joint Withdrawal of Protests of Adam Smith Enterprises, Inc. and Aloha Utilities, Inc. be acknowledged?

**RECOMMENDATION:** Yes, the Joint Withdrawal of Protests should be acknowledged, and the PAA portions of Order No. PSC-02-1250-SC-SU should be made final effective March 4, 2003. All other pending motions and requests for orders resolving discovery disputes, as identified in the staff analysis, should be deemed moot by virtue of the protest withdrawals, and therefore need not be ruled upon. Finally, the escrow account described in the staff analysis may be closed, with all monies deposited therein, including any interest earned, reverting to the utility upon the expiration of the 30-day appeal time of the Order arising from this recommendation.  
(GERVASI)

**STAFF ANALYSIS:** On February 7, 2003, Adam Smith and Aloha filed a Joint Withdrawal of Protests, in which they state that they withdraw their respective protests of Order No. PSC-02-1250-SC-SU. Because the parties have settled their dispute, staff recommends that the Joint Withdrawal of Protests should be acknowledged, and that the PAA portions of Order No. PSC-02-1250-SC-SU should be made final effective March 4, 2003. The prehearing and hearing dates scheduled in this docket have been cancelled by the Chairman's Office.<sup>3</sup>

Staff further recommends that the following filings should be deemed moot by virtue of the protest withdrawals, and therefore need not be ruled upon: Aloha's Objection to, and Request for Clarification of, Adam Smith's Second Set of Interrogatories Nos. 11-14, filed January 27, 2003; Aloha's Motion for Reconsideration and Clarification of Order No. PSC-03-0130-PCO-SU, filed January

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<sup>3</sup>Staff notes that OPC has not withdrawn from its status as intervenor. OPC intervened early on in this docket, prior to the issuance of Order No. PSC-02-1250-SC-SU, but did not file a protest to the Order. OPC has not withdrawn as a party to the docket. Nevertheless, pursuant to Rule 25-22.039, Florida Administrative Code, intervenors take the case as they find it.

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30, 2003<sup>4</sup>; and Aloha's Request for Oral Argument on the Motion, also filed January 30, 2003.

Finally, staff notes that by Order No. PSC-02-1774-FOF-SU, in granting Aloha's Motion for Emergency Relief, the Commission authorized Aloha to collect, and to hold subject to refund with interest, its service availability charges that it should have collected from May 23, 2001 to April 16, 2002, had the utility correctly implemented those charges pursuant to Order No. PSC-01-0326-FOF-SU in the first place. As security to guarantee the amount collected subject to refund, the Commission ordered Aloha to establish an escrow agreement with an independent financial institution. Because the Commission granted the Motion for Emergency Relief in order to allow the utility to backbill for the service availability charges at issue pending the resolution of the protests filed in this docket, staff recommends that the escrow account may be closed, with all monies deposited therein, including any interest earned, reverting to the utility upon the expiration of the 30-day appeal time of the Order arising from this recommendation.

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<sup>4</sup>The Motion for Reconsideration involves a decision concerning the relevancy of certain discovery propounded in this docket, as well as the potential participation of prior counsel in answering discovery and providing testimony.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, because no further action is necessary, this docket should be closed. (GERVASI)

**STAFF ANALYSIS:** Because no further action is necessary, this docket should be closed.