

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase
in water rates for Seven Springs
System in Pasco County by Aloha
Utilities, Inc.

DOCKET NO. 010503-WU
ORDER NO. PSC-04-0122-PAA-WU
ISSUED: February 5, 2004

The following Commissioners participated in the disposition of
this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING INTERIM REFUNDS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein requiring the utility
to make additional interim refunds 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. The utility consists of
two distinct service areas: Aloha Gardens and Seven Springs. On
August 10, 2001, Aloha filed an application for an increase in
rates for its Seven Springs water system. By Order No. PSC-01-
2199-FOF-WU, issued November 13, 2001, we approved interim rates
subject to refund with interest, which increased rates by 15.95%.
This 15.95% interim increase was secured by the utility's deposit
of those funds in an escrow account.

The Commission set final rates by Order No. PSC-02-0593-FOF-WU
(Final Order), issued April 30, 2002. Among other things, we

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denied a revenue increase, set a two-tiered inclining block rate structure, increased plant capacity charges, required certain plant improvements, and set the methodology that required a 4.87% interim refund. The utility appealed our Final Order to the First District Court of Appeal (First DCA), and sought a stay while the decision was under appellate review.

By Order No. PSC-02-1056-PCO-WU (Stay Order), issued August 5, 2002, we granted in part and denied in part the utility's Motion for Stay. We stayed the setting of the new rate structure, as well as the interim refund and certain plant improvement requirements. The First DCA affirmed our Final Order on May 6, 2003, Aloha Utilities v. Florida Public Service Commission, 848 So. 2d 307 (Fla. 1st DCA 2003), and subsequently denied the utility's Motion for Rehearing on June 12, 2003. The First DCA issued its mandate on June 30, 2003. As a result, the appellate review process is complete and all provisions of our Final Order are now final and effective.

The utility began collecting final rates in August 2003, and completed interim refunds of 4.87% on or about September 10, 2003. By letter dated June 30, 2003, Aloha requested release of the escrow funds above the amount required for the 4.87% refunds. By Order No. PSC-03-1410-FOF-WU, issued December 15, 2003, we recognized that Aloha had refunded \$153,510 to its customers without withdrawing any funds from the escrow account to make the 4.87% refund. Accordingly, we allowed \$153,510 of the escrowed funds to be released to Aloha. However, as set out below, after hearing argument from interested persons, we find that all interim increases collected while the Final Order was pending on appeal shall be refunded to Aloha's customers.

We have jurisdiction pursuant to Sections 367.081 and 367.082, Florida Statutes.

Decision

The file and suspend law "was designed to provide accelerated [rate] relief without sacrificing the protections inherent in the overall regulatory scheme." Florida Power Corporation v. Hawkins, 367 So. 2d 1011, 1013 (Fla. 1979). Interim rates, which are one aspect of this scheme, were designed "to make a utility whole

during the pendency of the proceeding without the interjection of any opinion testimony." Citizens v. Public Service Commission, 435 So. 2d 784, 786 (Fla. 1983). Thus, the provision of interim rates is a quick and dirty means by which a utility can obtain immediate financial relief. Citizens v. Mayo, 333 So. 2d 1, 5 (Fla. 1976).

Section 367.082, Florida Statutes, governs the setting of interim rates for water and wastewater utilities. According to paragraph (2)(a), interim rates must be designed to bring the utility up to the minimum of its last authorized rate of return. Subsection (4) sets forth guidelines for the determination of any interim refund, which include the following:

Any refund ordered by the commission shall be calculated to reduce the rate of return of the utility or regulated company during the pendency of the proceeding to the same level within the range of the newly authorized rate of return which is found fair and reasonable on a prospective basis

In our Final Order, we required Aloha to make a 4.87% refund of the interim rates it had collected. In doing so, we stated:

According to Section 367.082(4), Florida Statutes, any refund must be calculated to reduce the rate of return of the utility during the pendency of the proceeding to the same level within the range of the newly authorized rate of return. Adjustments made in the rate case test period that do not relate to the period interim rates are in effect should be removed.

In this proceeding, the test period for establishment of interim rates was the twelve months ended June 30, 2001. The test year for final rates purposes was the projected year ended December 31, 2001. The approved interim rates did not include any provisions or consideration of pro forma adjustments in operating expenses or plant. The interim increase was designed to allow recovery of actual interest costs, and the floor of the last authorized range for equity earnings. Included in the interim test year were three months of expenses for purchased water from Pasco County.

To establish the proper refund amount, we calculated a revised interim revenue requirement utilizing the same data used to establish final rates. Rate case expense was excluded, because it was not an actual expense during the interim collection period. Aloha did not purchase water from Pasco County during the interim collection period. The interim collection period is from November 13, 2001 to the date that Aloha implements the final rates approved.

Using the principles discussed above, we calculated the interim revenue requirement from rates for the interim collection period to be \$1,914,375. This revenue level is less than the interim revenue of \$2,009,292, which was granted in Order No. PSC-01-2199-FOF-WU. This results in a 4.87% refund of interim rates, after miscellaneous revenues have been removed.

Final Order, pps. 90-91. Neither the above methodology nor the 4.87% refund was raised as an issue on appeal.

Aloha collected interim rates for 19 months from January 2002 through July 2003. The Final Order established the methodology for the interim refund for the first four months, when the utility collected interim rates while the rate case was pending before the Commission (January 2002 - April 2002) (the rate case period). The Commission, however, did not address the refund amount for the interim rates collected while the appeal was pending (May 2002 - July 2003) (the appeal period). Aloha has refunded \$153,510 or 4.87% of the interim rates it collected while the rate case (\$31,527) and appeal (\$121,983) were pending.

Because the Final Order addressed the interim refund for the rate case period, we find that no further refunds shall be required for this period. No party challenged the interim refund provisions in the Final Order which was affirmed on appeal. Under the doctrine of administrative finality, we decline to revisit the refund for this period. Peoples Gas System, Inc. v. Mason, 187 So. 2d 335 (Fla. 1966). Accordingly, Aloha shall not be required to make any further refunds for the rate case period beyond the \$31,527 Aloha has already refunded to its customers. However, for

the reasons set out below, we find that Aloha shall refund all interim rates collected during the appeal period.

The intent behind our Final Order is clear. We did not intend for the utility to collect any increased revenues. Aloha's request for a rate increase was denied because the utility failed to meet its ultimate burden of proof. See Order No. PSC-02-0593-FOF-WU, pps. 52, 68, 70, 72. Moreover, we found that Aloha should receive neither a rate increase nor a decrease. See Order No. PSC-02-0593-FOF-WU, pps. 80, 85. However, by appealing the decision and collecting interim rates during the 15-month appeal period, Aloha had the benefit of the higher interim rates during this time. Since we found, and the First DCA ultimately agreed, that no revenue increase was justified, we find that it is patently unfair to allow Aloha to benefit from the higher interim rates it collected during the appeal period.

The Florida Supreme Court views ratemaking as a matter of fairness between the utility and its ratepayers. GTE Florida v. Clark, 668 So. 2d 971, 973 (Fla. 1996). In GTE, the Supreme Court reversed a Commission order that denied GTE's request to surcharge ratepayers to recover costs that the Court had previously determined had been improperly disallowed by us. In making its decision, the Supreme Court relied on Village of North Palm Beach v. Mason, 188 So. 2d 778, 781 (Fla. 1966). In Mason, when deciding whether to allow the utility to collect higher rates that it was entitled to under a defective order that had been entered two years earlier, the Supreme Court stated that if the

case had involved an order decreasing rates it would be equally inequitable to allow the utility to continue to collect the old and greater rates for the period between the entry of the first and second orders.

Id. (quoted in GTE at 973.) The Supreme Court concluded in GTE that the company's customers should not benefit and receive a windfall from an erroneous Commission order. Similarly, Aloha should not benefit and receive a windfall from its unsuccessful appeal of our Final Order. We lawfully found that Aloha was not entitled to a revenue increase. Aloha's appeal of this decision was without merit. It would be unfair to require Aloha's customers to pay the higher interim rates for the 15-month period that the

appeal was pending. Accordingly, Aloha shall be required to refund the 15.95% interim increase that was collected during the appeal period.

This refund is consistent with the purpose of interim rates, which is to provide utilities with a "quick and dirty" means to obtain immediate financial relief while a rate case is pending. Aloha received the immediate rate relief as was intended when it was allowed to keep 11.08% of the interim increase for the rate case period. Because we did not know if an appeal would be filed, our Final Order did not address the appropriate refund methodology for the appeal period. Further, because the appeal and subsequent stay of final rates delayed implementation of the appropriate final rates, the utility continued to collect a 15.95% increase to which the Final Order said it was not entitled.

Thus, for the reasons discussed above, Aloha is required to refund its customers the entire interim increase collected during the appeal period, including interest. Because Aloha has already refunded \$121,983 for the appeal period, Aloha must make an additional refund of \$278,113, which includes interest. In order to comply with our decision, Aloha must maintain \$278,113 in the escrow account to secure the additional refund. Because there is now approximately \$352,352 in the escrow account, \$74,239 may be released to Aloha at this time. The remaining \$278,113 in the escrow account shall not be released to Aloha until our staff has verified that the utility has made the additional refund, with interest, in accordance with Rule 25-30.360(4), Florida Administrative Code. The utility shall submit refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. The utility shall also treat any unclaimed refunds as contributions-in-aid-of-construction pursuant to Rule 25-30.360(8), Florida Administrative Code.

Although Aloha failed to deposit the interim increase it collected in July of 2003 in its escrow account, as required by Orders Nos. PSC-01-2199-FOF-WU and PSC-02-1056-PCO-WU, we decline to take further action against Aloha for this omission. As soon as Aloha learned of its error, Aloha placed \$25,866 in the escrow account to correct its oversight for this month. Except for a minimal amount of interest that would have accrued, the amount now

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in the escrow account is correct. Aloha's customers were always fully protected.

It is therefore

ORDERED by the Florida Public Service Commission that Aloha Utilities, Inc. shall not be required to make additional interim refunds for the rate case period, as described above. It is further

ORDERED that Aloha shall refund the additional interim increase collected during the appeal period, so that its customers shall receive an additional refund of \$278,113, which includes interest. It is further

ORDERED that this additional refund for the appeal period shall be made with interest in accordance with Rule 25-30.360(4), Florida Administrative Code. It is further

ORDERED that the excess \$74,239 in the escrow account may be released to Aloha. It is further

ORDERED that the remaining \$278,113 in the escrow account may be released to Aloha after our staff has verified that Aloha made the additional refund for the rate case period. It is further

ORDERED that Aloha shall submit refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. It is further

ORDERED that Aloha shall treat any unclaimed refunds as contributions-in-aid-of-construction pursuant to Rule 25-30.360(8), Florida Administrative Code. It is further

ORDERED that the provisions of this Order concerning the additional refund for interim rates collected during the appeal period, 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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of

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business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall remain open for our staff to verify that Aloha completed the additional refunds as well as the construction of the pro forma plant required by the Final Order.

By ORDER of the Florida Public Service Commission this 5th day of February, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

MAH

DISSENT:

Commissioner Davidson dissented from the Commission's decision not to require Aloha to refund the entire amount of the interim increase for the rate case period.

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.

As identified in the body of this order, our action requiring Aloha to make additional refunds for the appeal period 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 the Commission Clerk and Administrative Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 26, 2004. If such a petition is filed, 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. In the absence of such a petition, this order shall become effective and final 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.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or

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telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.