

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

INITIATION OF DELETION PROCEEDINGS
AGAINST ALOHA UTILITIES, INC. FOR
FAILURE TO PROVIDE SUFFICIENT WATER
SERVICE CONSISTENT WITH THE REASONABLE
AND PROPER OPERATION OF THE UTILITY
SYSTEM IN THE PUBLIC INTEREST, IN
VIOLATION OF SECTION 367.111(2),
FLORIDA STATUTES.

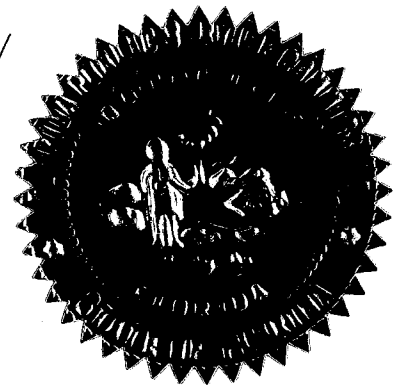
DOCKET NO. 050018-WU

REQUEST BY HOMEOWNERS FOR THE COMMISSION
TO INITIATE DELETION PROCEEDINGS AGAINST
ALOHA UTILITIES, INC. FOR FAILURE TO
PROVIDE SUFFICIENT WATER SERVICE
CONSISTENT WITH THE REASONABLE AND PROPER
OPERATION OF THE UTILITY SYSTEM IN THE
PUBLIC INTEREST, IN VIOLATION OF
SECTION 367.111(2), FLORIDA STATUTES.

DOCKET NO. 050183-WU

APPLICATION FOR INCREASE IN WATER RATES
FOR SEVEN SPRINGS SYSTEM IN PASCO COUNTY
BY ALOHA UTILITIES, INC.

DOCKET NO. 010503-WU



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PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 6

1 BEFORE: CHAIRMAN LISA POLAK EDGAR
2 COMMISSIONER J. TERRY DEASON
3 COMMISSIONER ISILIO ARRIAGA
4 COMMISSIONER MATTHEW M. CARTER, II
5 COMMISSIONER KATRINA J. TEW

6 DATE: Tuesday, April 4, 2006

7 PLACE: Betty Easley Conference Center
8 Room 148
9 4075 Esplanade Way
10 Tallahassee, Florida

11 REPORTED BY: LINDA BOLES, RPR, CRR
12 Official FPSC Reporter
13 (850) 413-6734
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1 PARTICIPATING:

2 STEVE REILLY, ESQUIRE, representing the Office of
3 Public Counsel.

4 MARSHALL DETERDING, ESQUIRE, representing Aloha
5 Utilities, Inc.

6 RICK MELSON, GENERAL COUNSEL, representing the
7 Florida Public Service Commission Staff.

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P R O C E E D I N G S

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3 MR. MELSON: Commissioners, Item 6 is staff's
4 recommendation to approve a settlement agreement among Aloha,
5 its customers and the Office of Public Counsel.

6 I'd like to begin by making a correction to Page 5 of
7 the recommendation. There are three bullets about 60 percent
8 of the way down the page.

9 The first bullet says, "Design; four months." That
10 should be, "Design; six months." With that correction, I'll
11 try to summarize the high points of the settlement.

12 In order to address the black water problem caused by
13 hydrogen sulfide in Aloha's system, the settlement calls for
14 Aloha to install new treatment facilities called anion exchange
15 at seven of its nine water plants, and it provides limited
16 proceeding process for Aloha to recover the cost of that
17 investment.

18 Anion exchange is a process that all of the parties,
19 including the Commission's independent consultant Dr. Taylor of
20 the University of Central Florida, agree is the best treatment
21 method to address the problem.

22 The settlement spells out the timetable for
23 construction of the facilities, and it details the water
24 quality monitoring that will be required to ensure that they
25 are, in fact, removing the hydrogen sulfide. And I'd note that

1 that monitoring is more stringent than anything required by DEP
2 regulations.

3 As part of the settlement, Aloha has agreed to
4 contribute \$250,000 toward the cost of the project, and it's
5 giving up its claim to over a million dollars in legal fees and
6 other litigation costs that might otherwise have to be paid by
7 customers. Those monetary aspects of the settlement are things
8 that could not be achieved outside of a settlement.

9 If you approve the settlement, Aloha will drop three
10 appeals and one circuit court case that are currently pending,
11 and the Commission will be dismissing the existing deletion
12 docket and a related investigation docket.

13 Once the settlement becomes final, Aloha will start
14 with a clean slate in the sense that it cannot be penalized for
15 water quality issues that predate the effective date of the
16 settlement. However, the Commission will retain full
17 enforcement power in the event Aloha were to breach any of the
18 provisions of the settlement.

19 As a point of information, Pasco County has got an
20 ordinance that is currently being challenged by Aloha that
21 requires them to install forced draft aeration or an
22 equivalent. The parties to the settlement believe that anion
23 exchange is an equivalent, and the county has started the
24 process now of repealing that ordinance. They took it up at
25 their county commission meeting last Tuesday, and at this point

1 I believe are expected to take final action on the repeal by
2 April 25th. And that action is being taken in recognition of
3 the settlement agreement that the parties have reached.

4 The settlement was negotiated over a period of about
5 six months. You may recall that last fall we brought an offer
6 of settlement from Aloha, and the Commission directed us to go
7 off and negotiate with customers and other parties to try to
8 bring everyone to the table. We did that. The agreement has
9 now been signed by Aloha, the Office of Public Counsel, three
10 customer intervenors, and five other customers who are not
11 intervenors but are members of the Committee for Better Water
12 Now, which is the community organization that has been dealing
13 with this water quality issue for a number, number of years.

14 One intervenor in the deletion docket, Mr. Ed Wood,
15 did not sign the settlement. I'd like to spend just a
16 minute -- I learned yesterday from Public Counsel some of his
17 specific concerns, three specific concerns. I'd like to
18 address those just very briefly.

19 First, to facilitate the settlement, Aloha prepared a
20 conceptual cost estimate for the anion exchange facilities that
21 has an estimating range of plus or minus 30 percent. Mr. Wood
22 believes that Aloha should have produced a more accurate
23 estimate. The estimate though was prepared at the customers'
24 request. It's the type of estimate that would not ordinarily
25 be performed at this stage in the process. It was done on an

1 expedited basis, and the customers, the customer negotiators
2 who had requested it agreed that that was an acceptable range
3 for this type of a preliminary estimate.

4 That estimate is not binding by terms of the
5 settlement agreement itself. It was provided essentially to
6 give the customers a feel for the potential rate impact.

7 Second, Mr. Wood believes that Aloha should pay a
8 larger share of the cost of the new facilities. As I said,
9 they're contributing \$250,000 toward that cost, and they're
10 giving up a claim to a million dollars or more in litigation
11 expenses. Those were negotiated aspects of the settlement.
12 And that, that pool of dollars was basically acceptable to the
13 customer negotiators and the others who signed the settlement.

14 Finally, the settlement calls for water quality
15 testing for three years after the anion exchange facilities go
16 into operation. Mr. Wood believes that period should be
17 longer. This is a provision, as I said, where it's above and
18 beyond anything required by DEP. The customers -- the three
19 years is more than Aloha was initially willing to agree to.
20 The three years was basically a negotiation by the customers
21 that got that water quality monitoring up. Even after three
22 years though the testing does not end unless Aloha has had a
23 12, consecutive 12-month period at which a well has met the
24 goal that's set forth in the settlement agreement with no
25 exceedences. And I think the parties to the negotiations felt

1 that the, the minimum of three years with the 12 months clean
2 would provide adequate assurance the facilities were working
3 as, as expected.

4 In summary, staff believes this is a good settlement
5 that's in the public interest and that it will resolve a
6 long-standing water quality dispute in Aloha's territory. We
7 recommend that you approve it, and I'll be happy to answer any
8 questions you may have about the details of it.

9 CHAIRMAN EDGAR: Thank you, Mr. Melson. I cannot let
10 this moment go by without noting that it was almost exactly 15
11 months ago that -- on the day I was sworn in as Commissioner,
12 and on the agenda that we had following that was a very, very
13 difficult item involving this issue where consideration and
14 discussion of deletion proceedings were debated at length by
15 this Commission. And I'm not sure that on that day I expected
16 we would be at this point 15 months later. So I am very
17 pleased that one of the first items that came before me, that
18 we are able to see good, positive progress forward.

19 Mr. Melson, thank you, and thank you to our staff for
20 all of the work that you have done to get us to this point, and
21 to OPC and to the company and to all the customers. I know
22 many, many, many hours and many, many, many meetings were had
23 by all, and I'm very pleased that we're able to have this
24 discussion here today.

25 Commissioners, any questions? Commissioner Carter.

1 COMMISSIONER CARTER: Thank you, Madam Chairman.
2 Mr. Melson, this settlement, it does, it resolves all of the
3 outstanding issues up to this point in this matter; right?

4 MR. MELSON: Yes, sir.

5 COMMISSIONER CARTER: So if anything else --
6 follow-up, Madam Chairman?

7 So if anything else evolves, it would be a new
8 matter?

9 MR. MELSON: It would be a new matter. And the
10 cutoff date is actually the date that a Commission order
11 approving the settlement becomes final. So once you issue an
12 order, there's a 30-day appeal period. Basically anything
13 before that point is the past, and any future activity is
14 something Aloha will be fully accountable for.

15 COMMISSIONER CARTER: Okay. And, Madam Chairman, if
16 I may with just one final.

17 CHAIRMAN EDGAR: Commissioner Carter, please.

18 COMMISSIONER CARTER: I noticed you said that that
19 resolves three cases. Are there anymore in terms of the
20 appeals you were mentioning?

21 MR. MELSON: No, sir. It resolves three appeals by
22 Aloha, it resolves one circuit court case, and the Commission
23 will be dismissing two cases, so it resolves all of the
24 Commission cases. There is still a DOAH case pending between
25 Aloha and the county regarding the ordinance, but that will be

1 mooted if the county follows through and repeals the ordinance
2 on the 25th.

3 COMMISSIONER CARTER: Okay. Thank you, Madam
4 Chairman.

5 CHAIRMAN EDGAR: Commissioner Arriaga.

6 COMMISSIONER ARRIAGA: Madam Chairman, I also have a
7 similar experience. It seems like when a new Commissioner gets
8 sworn in, he's thrown into a very difficult case. In my
9 specific case, I was thrown into a two-and-a-half day hearing.
10 I didn't know what was going on, but.

11 Mr. Melson --

12 MR. MELSON: Yes, sir.

13 COMMISSIONER ARRIAGA: -- the next step in this
14 process will probably be a rate case; correct?

15 MR. MELSON: The next case, next step will be first
16 for Aloha to begin the design process and to hold, file
17 quarterly progress reports and hold quarterly meetings with
18 staff and customers. Probably after that first quarterly
19 meeting they may be to a stage that they've got construction
20 cost numbers, at which point there would be a limited
21 proceeding, limited rate proceeding to begin to recover the
22 cost of the new facilities.

23 COMMISSIONER ARRIAGA: So we will eventually see a
24 rate case. I follow up asking if that would happen, any of
25 these issues can be brought up again, or is this settled and no

1 recourse on these issues?

2 MR. MELSON: No recourse on these issues. What the
3 approval of the settlement will do is find that anion exchange
4 is a prudent treatment method for the utility to implement.
5 And the settlement provides for the utility through a three
6 phase limited proceeding to phase in rates to recover that
7 cost. When we get to Phase 3, whether the company spent too
8 much doing it, whether they acted reasonably in implementing it
9 will be a live issue that the parties can litigate, if need be.
10 Staff at that point will be doing an audit. And we expect at
11 the end of that process to bring you a PAA recommendation that
12 if customers believe Aloha has gold-plated the facilities in
13 some way, there could be live issues at that point.

14 COMMISSIONER ARRIAGA: Okay. Thank you.

15 CHAIRMAN EDGAR: Commissioner Tew.

16 COMMISSIONER TEW: I have some comments, Chairman, if
17 that's appropriate at this time.

18 CHAIRMAN EDGAR: Absolutely.

19 COMMISSIONER TEW: I think the other parties that
20 appear before us should be prepared for a healthier dose of
21 optimism that some of our most challenging cases can be
22 resolved.

23 But getting to the matter at hand, I'm elated to see
24 proof that this company can work with its customers. And while
25 I admit to having my doubts at first, I'm encouraged by the

1 concessions that both sides have made, and I hope we'll see
2 more of this better relationship in the future.

3 Specifically to OPC and Senator Fasano, thank you
4 both for supporting the customers throughout all these
5 proceedings that led us here today. And to the customers,
6 thank you for all your work that brought us this settlement.

7 More specifically to the Chairman, thanks for your
8 leadership and for ensuring that some of our best resources
9 were used on this task. Without these dedicated staff, we'd
10 never have gotten to this point. And more specifically to Rick
11 Melson, in two-and-a-half short years you've definitely made
12 your mark here, and I think this Aloha settlement is part of
13 your legacy, and the Commission, numerous staff and the
14 taxpaying public are in your debt. And I've told Rick numerous
15 times that I've had my doubts throughout this, but I'm glad to
16 say that he's proven me wrong. That's all I have.

17 CHAIRMAN EDGAR: Thank you.

18 MR. REILLY: Could OPC say one thing? I'd like to
19 second the comments. I think Rick Melson really, his tireless
20 and effective brokering of this settlement agreement of a very
21 protracted ten-plus year black water problem is just exemplary.
22 But for his extraordinary efforts, it's hard to know that this
23 would have, in fact, happened. So we give special recognition
24 to Rick Melson in making this thing possible.

25 CHAIRMAN EDGAR: Thank you, Mr. Reilly.

1 Mr. Deterding.

2 MR. DETERDING: Madam Chairman, I as well would like
3 to especially commend the staff and Mr. Melson for their work
4 in this. I know we, we spent years literally before Mr. Melson
5 even got directly involved in this working on it, but he was
6 able to bring it to, to fruition, a settlement to fruition, and
7 I thank him very much for that.

8 MR. MELSON: And, Chairman Edgar, I know you
9 mentioned the customers. I'd like to give a special thanks to
10 Dr. John Gaul and Mr. Wayne Forehand who sat at the negotiating
11 table over a six-month period and engaged in the give and take,
12 and like the company at the negotiating table, all the parties
13 at the table were very professional. I think we also were ably
14 assisted by Dr. James Taylor of the University of Central
15 Florida. And, again, I'm glad we got permission to hire him
16 because without him I'm not sure we could have got there. He
17 was instrumental in being able to provide an independent
18 technical source that the customers felt they could rely on.

19 CHAIRMAN EDGAR: Thank you. Commissioner Deason.

20 COMMISSIONER DEASON: Madam Chairman, I would just
21 like to basically echo all that's been said and just say that I
22 am optimistic that this is the beginning of a new era of
23 improved customer service and in customer relations and the
24 ability to identify problems and work them out without
25 necessitating a, a hearing. I was not looking forward to ten

1 days of hearings this hot summer going over in a deletion
2 proceeding. So this is, this is very, very welcome. I know
3 that it took a great deal of effort on everyone that's
4 involved, and my congratulations to all.

5 And if the time is now right, I would like to move
6 approval of staff's recommendation.

7 COMMISSIONER TEW: Second.

8 CHAIRMAN EDGAR: Commissioner Deason, thank you. We
9 have a motion and a second. Before we call the vote, are there
10 any further comments? No? Commissioner Carter.

11 COMMISSIONER CARTER: I have a comment, it's not
12 related, but since Mr. Melson talked about his expert that he
13 hired from the University of Florida, I'd just like to mention
14 the fact that the Florida Gators were national champions last
15 evening. That's hard for me to say, but --

16 CHAIRMAN EDGAR: I was going to say, we appreciate
17 that plug for the University of Florida. But since I know for
18 a fact that you're a Seminole --

19 MR. REILLY: I was going to move to strike that from
20 the record.

21 MR. DETERDING: I second that.

22 (Laughter.)

23 CHAIRMAN EDGAR: It's a good day for many reasons.
24 We have a motion and a second to approve the staff
25 recommendation on Issue 1, Commissioner Deason?

1 COMMISSIONER DEASON: Well, let's -- I was really
2 intending to move the entire recommendation at this point,
3 unless, Madam Chairman, you believe we need to take it issue by
4 issue.

5 CHAIRMAN EDGAR: Well, I just wasn't sure.
6 Mr. Melson, do we need to address Issue 2 separately?

7 In fact, let's do it this way because it will help me
8 with my thought process. Commissioner Deason, if you're
9 comfortable, let's address Issue 1 first and then go through
10 them.

11 COMMISSIONER DEASON: So move that we move -- I would
12 move staff's recommendation on Issue 1.

13 CHAIRMAN EDGAR: Okay.

14 COMMISSIONER TEW: Second.

15 CHAIRMAN EDGAR: And we have a second on that.

16 Okay. All in favor of approving the staff
17 recommendation on Issue 1, say aye.

18 (Unanimous affirmative vote.)

19 CHAIRMAN EDGAR: Please show Issue 1 approved.

20 And then my understanding is that with that vote of
21 this Commission that Issue 2 is moot. Mr. Melson; is that
22 correct?

23 MR. MELSON: Yes, ma'am.

24 CHAIRMAN EDGAR: Okay. So that brings us to Issue 3,
25 which the staff recommendation is to close two of the dockets

1 and leave one open for some procedural matters, and then that
2 will be closed. Do I have a motion for the staff
3 recommendation for Issue 3?

4 COMMISSIONER DEASON: I would move staff on Issue 3.

5 COMMISSIONER TEW: Second.

6 CHAIRMAN EDGAR: I have a motion and a second. And
7 we will show -- let's go ahead and take it to a vote. All in
8 favor of the motion for Issue 3, please say aye.

9 (Unanimous affirmative vote.)

10 CHAIRMAN EDGAR: And thank you.

11 (Agenda Item 6 concluded.)

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1 STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
2 COUNTY OF LEON)

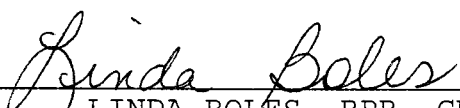
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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 12TH DAY OF APRIL, 2006.



LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
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