BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Warren Dunphy, on behalf of Realm Management, LLC regarding required installation of a reuse line by Aloha Utilities, Inc.	DOCKET NO. 070641-WS ORDER NO. PSC-08-0167-PAA-WS ISSUED: March 20, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER DECLINING TO REQUIRE THE INSTALLATION OF A REUSE LINE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein 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 utility which provides service in Pasco County to approximately 15,454 water customers and 14,784 wastewater customers. The utility consists of two distinct service areas: Aloha Gardens and Seven Springs. The utility's 2006 annual report shows water annual operating revenue of $10,001,126, and a total utility operating income of $880,042.

On April 11, 2007, Mr. Warren Dunphy, on behalf of Realm Management, LLC (Realm), contacted this Commission about a complaint against Aloha. Since January 2006, Realm had been involved in a development project consisting of a restaurant and two medical office buildings. The development is located at the corner of Little Road and Springhaven Drive in Pasco County. According to Mr. Dunphy, in May 2006, Aloha required Realm to enter into a Refundable Advance Agreement (Agreement) requiring Realm to pay all costs associated with the installation of a 6" off-site reclaimed water line (reuse line). Realm alleges that Aloha refused to sign off on Realm's Florida Department of Environmental Protection (DEP) Potable Water and Sanitary Sewer Permit Applications unless Realm entered into the Agreement. Realm signed the Agreement in order to receive the necessary water and wastewater service for its business.

Pursuant to the Agreement, Realm had an engineer, Marolf Environmental, Inc., prepare a design plan for the reuse line and had a contractor prepare a proposal based on the engineer's design plan. The contractor's proposal came to $177,450. Aloha disagreed with the proposal, and in March 2007, Aloha required Realm to obtain a Letter of Credit for $300,000 to cover the cost of the reuse line before it would provide water and wastewater service to Realm.[1] Pursuant to the letter of credit, the utility is permitted to begin withdrawing funds in November 2007. However, no withdrawals have been made to date.

On April 13, 2007, our staff sent data requests to Realm and Aloha. Realm responded on April 17, 2007, and Aloha responded on May 1, 2007. Our staff also sent an additional data request to Aloha on April 17, 2007, which the utility responded to on May 25, 2007.

After reviewing the information provided by Realm and Aloha, our staff sent a letter to the utility on June 19, 2007, stating that it was staff's opinion that it was not prudent to require Realm to construct the reuse water line. However, staff also stated that it would be reasonable for Aloha to require Realm to connect to a reuse line if and when it became available. Aloha did not agree with our staff's opinion, and requested this dispute move forward to the next appropriate step so the utility could present its case and, if necessary, proceed to hearing on this matter. Our staff sent another data request to Aloha on August 24, 2007. Aloha responded to the data request on September 24, 2007.

Our staff has made several attempts to have the parties involved come to an agreement concerning the reuse line. On December 19, 2007, a meeting was held with representatives from Realm, Aloha, SWFWMD, other potential developers, and Commission staff. No agreement was reached and the parties have refused any further mediation regarding this matter.

This Order addresses whether Aloha should require Realm to install the reuse line. We have jurisdiction pursuant to Sections 367.0817 and 367.101, Florida Statutes (F.S.).

REUSE LINE

Realm is developing a restaurant and two medical offices. The need for irrigation at these facilities is quite limited since the majority of the property consists of an asphalt parking lot and landscaping is minimal. As previously stated, Realm signed a Refundable Advance Agreement in order to receive the necessary water and wastewater service for its business. Under the terms of the agreement, Realm is obligated to install a reuse line. A refundable advance is defined by Rule 25-30.515(16), Florida Administrative Code (F.A.C.), as:

[1] On February 20, 2008, staff received a copy of a complaint for injunctive relief filed with the Circuit Court of the Sixth Judicial Circuit on behalf of David M. and Leslie A. Baccari against Intervest National Bank, Aloha Utilities, Inc. and Realm Management, LLC. The complaint alleges that Aloha is attempting to have and utilize the funds secured by the extended letter of credit and no legitimate reason exists to draw on the letter of credit at this time. The Circuit Court of the Sixth Judicial Circuit has issued an order granting a temporary injunction extending the letter of credit until March 31, 2008.

> . . . money paid or property transferred to a utility by the applicant for the installation of facilities which may not be used and useful for a period of time. The advance is made so that the proposed extension may be rendered economically feasible. The advance is returned to the applicant over a specified period of time in accordance with a written agreement as additional users connect to the system.

The proposed route for the reuse line would run along the same route as an existing 4" reuse line that was installed to serve a Wal-Mart adjacent to Realm's Property. According to Aloha, the 4" line is insufficient to serve both Wal-Mart and Realm's property, thus the 4" line would need to be replaced by a 6" line. The reuse line would run from the connection point on the south side of State Road 54 (SR54), proceed under SR54, then proceed east along SR54 and then down Little Road to Realm's property. The reuse line would cover approximately 2,000 feet.

According to the signed Agreement, Realm is subject to the following terms and conditions:

(1). Realm shall pay all costs associated with the installation of the reuse line,

(2). Realm shall convey all ownership of the reuse line after the completion of construction,

(3). Realm shall hold Aloha harmless for any liability associated with the construction,

(4). Realm shall provide plans and specifications by a certified engineer to the utility for approval, and

(5). Realm shall complete construction within 120 days after the approval of the plans and specifications.

Realm's Complaint

As previously stated, Realm expressed concerns regarding the terms of the Agreement. Realm's concerns primarily center around its hydraulic share and reimbursement for the reuse line. These concerns are discussed more fully below.

A. Hydraulic Share

The reuse line in question would serve Realm, as well as several other adjacent properties. The reuse line would have a total hydraulic design capacity of 47,075 gallons per day, and Realm's hydraulic share would be only 4.91% of the reclaimed water line.

Rule 25-30.515(10), F.A.C., defines hydraulic share as, "the pro rata share of the capabilities of the utility's facilities to be made available for service to the contributor. The pro

rata share is multiplied by the unit cost (per gallon) of providing the facilities to determine the proportional share of the cost thereof to be borne by the contributor."

Below is a breakdown of the estimated hydraulic share for the reuse line provided to Aloha by Aloha's engineer, Civil Engineering Associates, Inc.:

Development	Tract Size Square Foot	Percent Irrigable	Irrigated Area Square Foot	Annual Est. Avg. Daily Flow (GPD)	Percent of Total Usage
Realm	95,832 sq. ft.	26.8%	25,633 sq. ft.	2,311	4.91%
Manos 15 acre parcel (no plans to develop)	522,720 sq. ft.	25%	130,630 sq. ft.	11,761	24.98%
Manos 18.5 acre parcel (no plans to develop)	805,860 sq. ft.	25%	201,465 sq. ft.	18,132	38.52%
Chang Medical Center	60,984 sq. ft.	25%	15,246 sq. ft.	1,372	2.91%
Trinity Springs Medical Center (no plans to develop)	143,748 sq. ft.	25%	35,937 sq. ft.	3,234	6.87%
Seven Springs Medical Park	220,206 sq. ft.	20%	44,041 sq. ft.	3,964	8.42%
Seven Springs Medical Park Common Area	70,000 sq. ft.	100%	70,000 sq. ft.	6,300	13.38%
Total				47,074	100.00%

Realm's hydraulic share is low because most of Realm's property consists of a parking lot that has very minimal irrigation needs. Because Realm's hydraulic share is low relative to adjacent properties, Realm believes it is unfair that it should be required to install the reuse line.

It should also be noted that the above chart does not take into account the hydraulic share of the adjacent Wal-Mart. If the adjacent Wal-Mart were included, the hydraulic shares listed above would be less. Since Wal-Mart has already installed a 4" reuse line, it is not obligated to contribute to the new reuse line. Realm's hydraulic share of the line would be 4.3% if Wal-Mart's usage is factored in.

B. Reimbursement of Reuse Line

Pursuant to Rule 25-30.530(3)(c)1, F.A.C., if a utility decides to install facilities for its future benefit that are larger than normally required in the requested extension, the incremental

cost for the larger facilities shall not be included in the cost estimate, but shall be covered by utility investment or by a refundable advance agreement. Further, pursuant to Rule 25-30.530(3)(c)2, F.A.C., Realm can recover the cost from adjacent properties based on the adjacent properties' hydraulic share. Rule 25-30.530(3)(c)2, F.A.C., states:

> [i]f more than one customer is to be served by a facility, the costs to be charged to a particular customer shall be determined according to the hydraulic demand of that customer or in accordance with some other acceptable method reasonably related to the cost of providing service.

The Agreement contains a provision that allows Aloha to collect a refundable advance fee from any adjacent property that connects to the reuse line within 5 years after the completion. The amount of the refundable advance fee paid to the utility by any adjacent property will be based on the adjacent property's pro rata share of the hydraulic capacity. Aloha will pay Realm any refundable advance fee it collects within the 5-year period, but is under no legal obligation to make refunds to Realm after the expiration of the 5-year period.

The adjacent Manos properties, consisting of two parcels of land (15 and 18.5 acres), would use an estimated 63.5% of the reuse line based on the above chart. The property is currently vacant and is unlikely to be developed before the 5-year refundable advance period expires. Realm asserts that Aloha has refused to extend the 5-year refundable period. Because of this, Realm believes that it is highly unlikely that it would be reimbursed for the majority of the cost associated with the installation of the reuse line.

Aloha's Response

Aloha has set forth several arguments as to why it believes that it is appropriate to require Realm to construct the reuse line, which are discussed more fully below.

A. Violation of Aloha's Service Availability Policy

Aloha contends that not requiring Realm to install the reuse line would deviate from its service availability policy and would call into question its applicability in future instances. The utility insists that its service availability policy requires that developers contribute all on-site and off-site distribution and collection system facilities; therefore, the requirements that Aloha is imposing on Realm is in conformance with those policies.

B. Violation of Sound Regulatory Policy

Aloha asserts that not requiring Realm to install the reuse line would violate sound regulatory policy based on the following:

(1) Requiring Realm to oversize the existing reuse line is only a minor additional cost. The utility believes that reuse should not be considered a stand-alone service but a requirement that it must be used. Therefore, Realm will either have to install a reuse line for its sole use or oversize the existing line. Aloha believes

that requiring Realm to install a larger reuse line would be a benefit to not only Aloha and Realm, but to adjacent properties as well;

(2) The utility has received no guidance regarding the level of usage by a developer in which it should be required to install a reuse line;

(3) It will lead to confusion regarding Aloha's service availability policy;

(4) It will encourage litigation from developers who are required to extend and/or oversize reuse lines from neighboring properties;

(5) The line will likely never be constructed, thus, reducing Aloha's ability to sell reuse and expand its reuse system;

(6) The utility may have to construct the reuse line itself, thus, resulting in higher rates for its customers;

(7) Aloha contends that Realm's complaint should have been made known when the Agreement was executed; and

(8) A time frame should be established in which developer agreements should be final and not subject to complaint. Aloha contends that allowing Realm to file a complaint a year after the execution of the Agreement opens the possibility of future complaints regarding developer agreements.

C. Undermines Sections 403.064 and 373.250 F.S.

Aloha states that not requiring Realm to install the reuse line would violate the provisions of Sections 403.064 and 373.250, F.S. The utility also contends that not requiring Realm to install the reuse line would violate the following:

(1) Memorandum of Understanding (MOU) between the Florida Department of Environmental Protection and the Commission dated September, 2001;

(2) Memorandum of Understanding (MOU) between the Commission and Florida Water Management Districts dated June 27, 1991;

(3) Memorandum of Understanding (MOU) between the Commission and the Florida Department of Community Affairs dated May 16, 2000; and

(4) Statement of Support for Water Reuse between the Commission, The United States Environmental Protection Agency, the Florida Department of Health, the Florida Department of Agriculture and Consumer Services, the Florida Department of Community Affairs, all water management districts and the Florida Department of Environmental Protection (Statement of Support).

Aloha contends that all statutes, memorandum, and statements referenced above specifically state the objective to promote and maximize the use of reuse water, and that not requiring Realm to install the reuse line would run counter to these objectives.

D. Contrary to Aloha's DEP and Southwest Florida Water Management District (SWFWMD) Permits, as well as Requirements of a Commission Order

Aloha asserts that not requiring Realm to install the reuse line would violate the conditions imposed upon the utility by the following Permits and Orders:

(1) DEP Permit – Aloha states that the DEP has required the utility to utilize all of its undeveloped certificated territory as part of its reuse system and that Aloha is required to provide reuse to new customers that connect to its wastewater system. The utility contends that not requiring Realm to install the reuse line would prevent Aloha from complying with its DEP Permit.

(2) SWFWMD Permit – Aloha states that its water use permit (WUP), conservation plan, and the grants it receives for construction of reuse require the utility to aggressively pursue reuse for all new customers. Aloha contends that not requiring Realm to install the reuse line would violate its WUP.

(3) Final Order No. PSC-97-0280-FOF-WS – Aloha states that the Commission ordered Aloha to aggressively pursue reuse service. Aloha contends that unless it requires Realm to construct the reuse line, it will not be able to comply with the terms of the Order.

Analysis

Section 367.101(1), F.S., governs our decision on this complaint. Section 367.101(1), F.S. states:

> The commission shall set just and reasonable charges and conditions for service availability. The commission by rule may set standards for and levels of service-availability charges and service-availability conditions. Such charges and conditions shall be just and reasonable. The commission shall, upon request or upon its own motion, investigate agreements or proposals for charges and conditions for service availability.
> (emphasis added)

We find that requiring Realm to install the reuse line violates Section 367.101(1), F.S., in that it is not just or reasonable. Our analysis of Realm's and Aloha's positions are discussed more fully below.

A. Service Availability Policy and Hydraulic Share

Although Aloha states that not requiring Realm to construct the reuse line violates its service availability policy, Aloha has made certain exceptions for other current customers. These exceptions include Chang Medical Center (CMC) and Seven Springs Medical Park (SSMP). Both properties are adjacent to Realm and are required to connect to the reuse line. CMC's hydraulic share would be 2.91% and SSMP's hydraulic share would be 21.81%.

On July 27, 1998 CMC entered into a Customer Service Agreement with Aloha stating that CMC would connect to the utility's reuse system when reuse is made available in the future. The service agreement states:

> Customer agrees to accept and receive Service Company's sewage treatment plant effluent for spray irrigation on the Property. In that event Customer would bear the cost of installing lines, facilities on its property for the disposition of effluent.

On February 24, 2005, SSMP signed a developer agreement with Aloha stating:

> Developer covenants and agrees that Service Company's reclaimed water, if available, shall always be the primary source of water for any non-potable use for the Property. Developer will, at Developer's sole cost and expense, install such lines and facilities for the disposition of said effluent on the Property.

Subsequently, on September 20, 2005, the utility entered into a developer agreement amendment for reclaimed water with SSMP which states that Aloha would agree to begin to provide water and sewer service subject to SSMP agreeing to take reclaimed water at such time in the future as the utility makes it available to the property. This agreement was executed approximately a year before Aloha required Realm to sign the Refundable Advance Agreement.

In the response to data request dated September 24, 2007, the utility made the following statement regarding SSMP:

> Seven Springs Medical Park was not required to execute a Refundable Advance Agreement to install the reuse line, because at the time that they needed water and wastewater service, they were several miles away from the nearest reuse line. As such, imposing such a requirement upon them would have been unreasonable, given the fact that their demand for reuse service is comparable to that required for the Realm property and therefore, their percentage demand on such line would likely have been well under 1%.

As previously stated, we find that requiring Realm to install the reuse line violates Section 367.101(1), F.S; however, we also find that it is reasonable for Aloha to provide Realm an agreement that would require Realm to connect to the utility's reuse system when it becomes available in the future. Aloha disagrees, even though Aloha made the option of connecting in the future available to other customers previously.

We note that there are other developments who have requested service from the utility and experienced significant delays due to the expense of installing the reuse lines. Specifically, Trinity Springs Professional Center (TSPC) planned to apply for approval from DEP for its project in July 2005. Aloha submitted a proposed refundable advance agreement to TSPC covering the provisions of water, sewer, and reuse service. In a subsequent letter, TSPC agreed to accept reclaimed water at such time it is made available by Aloha at the property line; however, TSPC believed it was unreasonable for TSPC to pay the full cost to extend the line. After several subsequent responses, on June 15, 2006, TSPC indicated that Aloha had refused to cooperate, which resulted in TSPC not being able to obtain the necessary permits to proceed. Therefore, TSPC was unable to proceed with its planned development.

B. Sections 403.064 and 373.250, F.S.

Both Sections 403.064 and 373.250, F.S., state, "[t]he encouragement and promotion of water conservation and reuse of reclaimed water . . . are state objectives and are considered to be in the public interest." In addition, this Commission has entered into the MOUs and Statement of Support listed above. The MOUs and Statement of Support encourage the promotion and maximization of reuse as stated by Aloha in its letter sent in response to the data request dated June 19, 2007. We, however, disagree with Aloha's assertion that not requiring Realm to construct the reuse line violates the provisions of Sections 403.064 and 373.250, F.S.

Reuse projects must be economically feasible in order to be required. Section 373.250(c),F.S., states: "[a] water management district may require the use of reclaimed water in lieu of surface water or groundwater when the use of uncommitted reclaimed water is environmentally, economically, and technically feasible and of such quality and reliability as is necessary to the user." (Emphasis added) We have concerns that requiring Realm to install the reuse line would not be economically feasible, since Realm's hydraulic share is very low. We find that it is unreasonable for Realm to fund the cost of the line, when it will be unable to recover the majority of the costs associated with the installation of the reuse line. Therefore, we find that not requiring Realm to construct the reuse line would not violate the provisions of Sections 403.064 and 373.250, F.S. because constructing the reuse line would not be economically feasible.

C. Operating Permit from DEP

The utility asserted the following regarding its DEP wastewater treatment operating permit in its response to a data request:

> DEP imposes permit requirements for Aloha's wastewater treatment system. DEP has specifically recognized in Aloha's most recent wastewater treatment plant operating permit that all of Aloha's undeveloped certificated territory is to be utilized as part of the reuse system . . . Aloha is required to provide reuse to any new customers who connect to Aloha's wastewater system and such requirement is a part of the utility's wastewater treatment operating permit.

We requested that Aloha provide the above mentioned wastewater treatment operating permit in a data request. The utility failed to provide the wastewater treatment operating permit as requested, but instead provided the following response:

> The capacity of Aloha's reuse application is 3.089 MGD based on the application of reuse . . . [B]y granting this capacity, the FDEP anticipated that all non-developed land suitable for reuse water application within the Seven Springs service area would be used for reuse water application as it was developed in the future.

We have been in contact with DEP and obtained a copy of Aloha's current wastewater treatment operating permit from DEP. Based on our discussions with DEP concerning Aloha's current wastewater treatment operating permit, DEP does not require Aloha to utilize all of its undeveloped certificated territory as part of its reuse system. In addition, DEP made the following statement to our staff concerning the utility's wastewater treatment operating permit:

> The Department (DEP) wants the utility, to the greatest extent possible, to expand their reuse system, but there are no Department rules specific to requiring customers accept reuse water.

D. Water Use Permit (WUP) from SWFWMD

Aloha stated the following regarding its WUP in its response to a data request:

> Aloha's SWFWMD approved: (a) water use permit; (b) conservation plan; and (c) the grants it received for construction of its reuse system all require this utility to aggressively pursue the provision of reuse service to all new customers.

We requested that Aloha provide the above items regarding its SWFWMD permit in another data request. In response to the request, Aloha provided the following documents and made the following assertions regarding each document:

(1) WUP – Aloha claims that in order to secure its SWFWMD WUP it had to comply with the following: (a) supply reuse water to all customers where an existing reuse distribution pipeline existed; or (b) require all new subdivisions and commercial users, by service agreements, to provide the infrastructure necessary and take reuse water for irrigation purposes. Further, the utility stated that it must supply the SWFWMD with reports detailing reuse water used by its customers.

(2) Consent Order and Conservation Plan – Aloha contends that in order to comply with the Consent Order with SWFWMD, it must, "require all new developments to construct reuse distribution systems and take back effluent as an alternative to potable water for irrigation purposes."

(3) Cooperative Funding Agreement and related Proposed Project Plan – The Cooperative Funding Agreement, executed in 1997 between Aloha and SWFWMD, provided Aloha with financial assistance to extend its reuse system to areas of future development. This agreement states that the area will benefit "from reduced environmental impacts from groundwater withdrawals." The utility contends that this statement implies that all future developments serviced by the extended reuse system should be required to utilize reuse. The agreement further states that another benefit will be "an opportunity/obligation for future residential and commercial construction to plan and construct reuse distribution systems as a substitute for potable water supply irrigation."

After reviewing the documents regarding the utility's WUP, we agree that Aloha must supply the SWFWMD with reports detailing reuse water used by its customers. However, the WUP contains no wording to the effect that Aloha must supply reuse water to all customers where an existing reuse distribution pipeline existed or require all new subdivisions and commercial users, by service agreements, to provide the infrastructure necessary and take reuse water for irrigation purposes.

In addition, we believe that Aloha has misinterpreted the applicability of the requirement that all new developments construct reuse distribution systems and take back effluent as an alternative to potable water for irrigation purposes. Specifically, the entire paragraph in the consent order and conservation plan, containing the statement referenced by Aloha is as follows:

> For a number of years, Aloha Utilities has required developers in its service area to contractually obligate themselves to construct residential reuse distribution systems for new development within the service area. Aloha has been limited in its ability to enforce this requirement until public access irrigation quality effluent was in fact available to such projects. This has now occurred, and Aloha will continue to require new projects to construct reuse distribution systems and take back effluent as alternative to potable water for irrigation purposes. (emphasis added)

The statement only applies to residential developments and not to Realm, which is a commercial development, and the statements referenced above regarding the consent order and conservation plan and related proposed project plan do not require future developments serviced by the extended reuse system to utilize reuse. Therefore, based on the above, it is apparent that Aloha's SWFWMD-approved water use permit, conservation plan, and grants received for construction of its reuse system, do not call for Aloha to require reuse service from all new customers.

E. Final Order No. PSC-97-0280-FOF-WS

We agree that Aloha was directed to aggressively pursue reuse contracts. By Order No. PSC-97-0280-FOF-WS,[2] we stated that "upon approval of its reuse plan and a tariffed reuse charge, Aloha can initiate working with the District and aggressively negotiate reuse contracts." Aloha has aggressively pursued reuse contracts as evidenced by the reuse revenues in the utility's 2006 annual report; however, the directive to aggressively pursue reuse contracts only applies to the implementation of Aloha's initial reuse service. Based on a discussion with Aloha's counsel, the utility has, at times ran out of reuse water. Accordingly, Aloha's reuse system has matured to a point that the purpose of Order No. PSC-97-0280-FOF-WS, to aggressively pursue reuse contracts, has been accomplished.

F. Realm Reuse

The recovery of the installation costs by Realm is speculative because it is unlikely the largest landowner (Manos) will be developing or requiring reuse service within 5 years of the agreement. We have spoken with the owner of the Manos properties, and he stated that he has no intention of ever developing the properties. If Realm is required to install the reuse line, Realm would be forced to incur the majority of the costs, while being one of the smallest users of the service with little hope of recovering the majority of the costs. We find that it is reasonable to require Realm to pay its hydraulic share of the cost of the reuse line once it is installed, but it is unreasonable to require it to pay the entire cost of the reuse line.

Conclusion

Based on the above, we find that Aloha shall not require Realm to install the reuse line at this time; however, Aloha shall be allowed to require Realm to connect to a reuse line and pay its hydraulic share of the costs, if and when one becomes available. Further, in the interest of fairness, we believe that the $300,000 letter of credit should be released.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Aloha Utilities, Inc. shall not require Realm to install a reuse line at this time. It is further

ORDERED that Realm Management, LLC shall connect to a reuse line and pay its hydraulic share of the costs, if and when one becomes available. It is further

[2] See Order No. PSC-97-0280-FOF-WS issued on March 12, 1997, in Docket No. 950615-SU, In Re: Application of Reuse Project Plan and increase in wastewater rates in Pasco County by Aloha Utilities, Inc.

ORDERED that the provisions of this Order, 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 Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no timely protest is filed within 21 days of the issuance of this Order, this docket should be closed upon the issuance of a consummating order.

By ORDER of the Florida Public Service Commission this 20th day of March, 2008.

ANN COLE
Commission Clerk

(SEAL)

KEF

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

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.

The action proposed herein 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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 10, 2008.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.