

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of stipulation on procedure with Office of Public Counsel, and application for limited proceeding increase in water rates in Pasco County, by Aloha Utilities, Inc.

DOCKET NO. 060122-WU

In re: Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU.

DOCKET NO. 060606-WS
ORDER NO. PSC-08-0832-PCO-WS
ISSUED: December 23, 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

ORDER GRANTING ABATEMENT

BY THE COMMISSION:

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.

In February 2005, we initiated deletion proceedings in Docket No. 050018-WU to delete a portion of the Seven Springs service area based on a number of problems that ultimately stem from the presence of hydrogen sulfide in the water. On March 9, 2006, after several months of extensive negotiations in which our staff participated, a Settlement Agreement was executed by Aloha, the Office of Public Counsel (OPC), and individual intervenors. The Settlement Agreement resolved all outstanding dockets and court proceedings between Aloha and us, and was approved by Order No. PSC-06-0270-AS-WU.¹ A key element of the Settlement

¹ Issued April 5, 2006, in Docket No. 050018-WU, In Re: 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. 050183-WU, In Re: 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; and Docket No. 010503-WU, In Re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

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Agreement is the agreement by the parties that it is prudent for Aloha to implement a new water treatment method – anion exchange – to address the current problems that stem from the presence of hydrogen sulfide in the water.

In addition, on October 26, 2004, Aloha entered into a Bulk Water Agreement with Pasco County (County), wherein it contracted to purchase approximately 3.1 million gallons of water per day from the County in order to meet the needs of current and future customers. Significant costs are expected to be associated with the interconnection and purchase of this water, and the installation and operation of related chloramination facilities.

There are currently two dockets open to address the ripe issues associated with the purchase of bulk water from Pasco County and associated interconnection, and to track Aloha's progress to design and install the plant necessary to implement anion exchange: Docket Nos. 060606-WU, In re: Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU (the anion exchange docket) and 060122-WU, In re: Joint petition for approval of stipulation on procedure with Office of Public Counsel, and application for limited proceeding increase in water rates in Pasco County, by Aloha Utilities, Inc. (the limited proceeding docket).²

On March 14, 2008, the Florida Governmental Utility Authority (FGUA), which is not a party to either Aloha docket, filed a "Suggestion of Abatement."³ In its filing, FGUA suggested "an abatement of the anion exchange project currently being implemented by Aloha Utilities pursuant to Commission Order" while it negotiated to purchase the utility. FGUA's suggestion was corrected by letter dated March 18, 2008, to clarify that the FGUA suggested an abatement period of 120-days.

At the April 8, 2008, Agenda Conference, we considered FGUA's request and agreed to "abate for 120 days, any and all actions directed towards Aloha implementing anion exchange and all actions necessary for Aloha to interconnect with Pasco County, except for the litigation to resolve the protests of Order No. PSC-08-0137-PAA-WU." We also directed that Aloha should not be penalized for the 120-day abatement period for purposes of implementation of the settlement agreement approved by Order No. PSC-06-0270-AS-WU.⁴

In addition, in a separate vote, we voted at the April 8, 2008, Agenda Conference to order Aloha to show cause, in writing, within 21 days, why it should not be fined for its apparent violation of Section 367.081(1), Florida Statutes, for knowingly failing to comply with Order

² In the limited proceeding docket, we issued proposed agency action (PAA) Order No. PSC-08-0137-PAA-WU, on March 3, 2008. In this PAA order, we voted to allow the utility, after it has completed the construction of a fully operating interconnection with Pasco County, to recover phase one costs associated with the interconnection and with the utility's purchase of bulk water from Pasco County. On March 24, 2008, Aloha, OPC, and certain members of the Better Water Now Committee petitioned for a hearing concerning this PAA order.

³ A "suggestion" is not a pleading contemplated by the Florida Administrative Procedures Act, the Uniform Rules, or any Commission rule or statute.

⁴ Order No. PSC-08-0267-PCO-WS, issued April 30, 2008. in Docket No. 060122-WU, Joint petition for approval of stipulation on procedure with Office of Public Counsel, and application for limited proceeding increase in water rates in Pasco County, by Aloha Utilities, Inc., and Docket No. 060606-WS – Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU.

No. PSC-06-0270-AS-WU, by failing to report delays of the anion exchange treatment facilities in its quarterly report.⁵ This matter is currently pending and has been set for hearing in April 2009.

On August 19, 2008, FGUA filed "FGUA's Request for Extension of Abatement." In its filing, FGUA requested that we extend the abatement period established by Order No. PSC-08-0267-PCO-WS for an additional 45-days while it continued to negotiate to purchase the utility. On August 29, 2008, FGUA's counsel filed a letter clarifying that its request for an extension of the abatement period does not include a request to abate the show cause matter. On September 2, 2008, FGUA's counsel filed another letter further clarifying that it was requesting the 45-day abatement to begin to run from the date we issue an order approving the 45-day abatement. The 120-day abatement period we approved by Order No. PSC-08-0267-PCO-WS ended on August 28, 2008.

Following the Florida Governmental Utility Authority's second request for an abatement, we issued Order No. PSC-08-0665-PCO-WS, Order Granting Abatement, on October 8, 2008.⁶ The Order established a 45-day abatement period for all actions associated with implementing anion exchange and all actions necessary for Aloha to interconnect with Pasco County, except for the litigation to resolve the protests of Order No. PSC-08-0137-PAA-WU, and the show cause proceeding initiated by Order No. PSC 08-0266-SC-WS. This second abatement expires November 24, 2008.

On September 23, 2008, Aloha and OPC filed a Joint Request for Abatement. Aloha and OPC asked that the litigation resulting from the protest of Order No. PSC-08-0137-PAA-WU be abated in concurrence with Order No. PSC-08-0665-PCO-WS. We granted the request pursuant to Order No. PSC-08-0694-PCO-WU, issued October 20, 2008, in Docket No. 060122-WU.

On November 6, 2008, Aloha and OPC filed a second Joint Request for Abatement. The parties request an extension of the abatement of all activities in the two dockets, including the abatement of the show cause litigation, until January 9, 2009. On November 13, 2008, our staff received an email from a member of the customer group Better Water Now, confirming the group's support of the request.

This Order addresses the second Joint Request for Abatement. We have jurisdiction pursuant to Chapters 120 and 367, Florida Statutes.

⁵ Order No. PSC-08-0266-SC-WS, issued April 30, 2008, in Docket No. 060606-WS, In re: Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU.

⁶ Order No. PSC-08-0665-PCO-WS, issued in Docket No. 060122-WU, Joint petition for approval of stipulation on procedure with Office of Public Counsel, and application for limited proceeding increase in water rates in Pasco County, by Aloha Utilities, Inc., and in Docket No. 060606-WS, Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU.

Request to Abate the Implementation of Anion Exchange Pursuant to Order No. PSC-06-0270-AS-WU in Docket 060606-WS and All Actions Necessary for Aloha to Interconnect with Pasco County

Aloha and OPC's second Joint Request to Abate asks us to abate the implementation of anion exchange pursuant to Order No. PSC-06-0270-AS-WU in Docket 060606-WS, and all actions necessary for Aloha to interconnect with Pasco County, including the litigation to resolve the protest of Order No. PSC-08-0137-PAA-WU, in Docket 060122-WU, until January 9, 2009. In support of their request, Aloha and OPC state that Aloha entered into a contract on October 8, 2008, for the sale of its assets to FGUA. They state that the transaction is in the due diligence phase and that "FGUA and Aloha are directing their efforts to the successful completion of the transaction." The parties conclude that they anticipate the closing to occur during the month of December 2008, and that the abatement of this proceeding will assist the parties in their efforts to finalize the sale as quickly as possible. We would also note that Pasco County has approved the FGUA purchase. In addition, the Better Water Now customer group has expressed support for the abatement.

In the second Joint Request to Abate, the parties state that, "it is in the best interest of Aloha, OPC, the public, the Commission, and its staff, that all activities, including those related to the show cause, in these two dockets be abated until such time as the Commission receives the update from the parties on or before January 9, 2009."

We find that an abatement of all actions associated with anion exchange implementation and all actions necessary for Aloha to interconnect with Pasco County, including the limited proceeding litigation, is reasonable as Aloha and FGUA have entered into a contract for the sale of the utility and the sale is anticipated to close in December 2008. The abatement of these proceedings may prevent an unnecessary expenditure of time and resources. Accordingly, we grant Aloha and OPC's second Joint Request to Abate all activities related to anion exchange implementation and all actions necessary for Aloha to interconnect with Pasco County, including the limited proceeding litigation, until January 9, 2009. The abatement period shall not count against Aloha for purposes of the implementation of the Settlement Agreement approved by Order No. PSC-06-0270-AS-WU.

Joint Request to Abate the Show Cause Proceeding Initiated by Order No. PSC-08-0266-SC-WS

The prior requests for abatement of Docket No. 060606-WS, and Order Nos. PSC-08-0267-PCO-WS and PSC-08-0665-PCO-WS granting the abatement requests, did not include the show cause proceeding initiated by Order No. PSC-08-0266-SC-WS in Docket No. 060606-WS. However, in their second Joint Request for Abatement filed on November 6, 2008, Aloha and OPC specifically request we also abate all activities in the show cause proceeding until January 9, 2009.

In support of their request, Aloha and OPC state that Aloha entered into a contract on October 8, 2008, for the sale of its assets to FGUA. They state that the transaction is in the due diligence phase and that "FGUA and Aloha are directing their efforts to the successful completion of the transaction." They assert that the abatement of all activities in the show cause

proceeding until January 9, 2008, is in the interest of Aloha, OPC, the public, and the Commission. The parties conclude that they anticipate the closing to occur during the month of December 2008, and that the abatement of this proceeding will assist the parties in their efforts to finalize the sale as quickly as possible.

We find that an abatement of the show cause proceeding is reasonable, as Aloha and FGUA have entered into a contract for the sale of the utility and the sale is anticipated to close in December 2008. The abatement of this proceeding may prevent an unnecessary expenditure of time and resources. Thus, we grant Aloha and OPC's joint request to abate the show cause proceeding. In accordance with Aloha and OPC's request, the show cause proceeding shall be abated until January 9, 2009.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the implementation of anion exchange pursuant to Order No. PSC-06-0270-AS-WU in Docket 060606-WS and all actions necessary for Aloha to interconnect with Pasco County, including the litigation to resolve the protest of Order No. PSC-08-0137-PAA-WU, in Docket 060122-WU, shall be abated until January 9, 2009. The abatement period shall not count against Aloha for purposes of the implementation of the Settlement Agreement approved by Order No. PSC-06-0270-AS-WU. It is further

ORDERED that the show cause proceeding initiated by Order No. PSC-08-0266-SC-WS shall be abated until January 9, 2009. It is further

ORDERED that these dockets shall remain open pending the resolution of the issues associated with Aloha's interconnection with Pasco County and the implementation of anion exchange.

By ORDER of the Florida Public Service Commission this 23rd day of December, 2008.



ANN COLE
Commission Clerk

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JEH

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.

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.