

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for approval) DOCKET NO. 950615-SU
of Reuse Project Plan and) ORDER NO. PSC-97-0372-FOF-SU
increase in wastewater rates in) ISSUED: April 4, 1997
Pasco County by Aloha Utilities,)
Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
DIANE K. KIESLING

ORDER AUTHORIZING RELEASE OF PORTION OF ESCROWED FUNDS

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.

On June 1, 1995, Aloha filed a reuse project plan (consisting of three phases) and application for increase in rates for wastewater service to its Seven Springs customers pursuant to Section 367.0817, Florida Statutes. On December 28, 1995, we issued Proposed Agency Action (PAA) Order No. PSC-95-1605-FOF-SU authorizing recognition of only Phase I of the project in rate setting. In the PAA Order, we allowed Aloha to implement the approved wastewater rates on a temporary basis subject to refund in the event of a protest.

On January 10, 1996, Representative Mike Fasano, a customer of the utility, filed a protest to the PAA order and requested an administrative hearing on the reuse project plan. As allowed by the PAA Order, Aloha implemented the approved rates effective February 12, 1996, and established an escrow account as security in the event a refund was found to be necessary.

On April 30, 1996, Mr. James Goldberg, President of the Wyndtree Master Community Association, filed a petition signed by 262 customers within Aloha's Seven Springs service area requesting the Commission investigate utility rates and water quality of Aloha. We assigned Docket No. 960545-WS to this request.

DOCUMENT NUMBER-DATE

03493 APR-45

FPSC-RECORDS/REPORTING

For the purposes of hearing, Dockets Nos. 960545-WS and 950615-SU were consolidated by Order No. PSC-96-0791-FOF-WS, issued on June 18, 1996. The hearing was held on September 9-10, 1996 in New Port Richey and concluded on October 28, 1996 in Tallahassee. Briefs were filed by the parties on December 17, 1996.

After evaluation of the evidence, we rendered our final decision by Order No. PSC-97-0280-FOF-WS (Final Order), issued on March 12, 1997. Pursuant to this Order, Aloha was ordered to refund approximately 20% of the revenue collected pursuant to the temporary rates. Upon completion of the refund, that Order allowed the funds remaining in the escrow account to be released to the utility.

On March 11, 1997, Aloha filed an Emergency Motion for Release of Funds From Escrow Account (Emergency Motion), in which it requested a release of \$332,000 from the escrow account prior to March 31, 1997. In order to meet that date, consideration of the motion would have had to been placed on the March 18, 1997 agenda as an emergency item. Finding that the facts surrounding the motion did not constitute an emergency and that the motion could be heard at the April 1, 1997 agenda, the Chairman denied the request to have the motion considered as an emergency item.

The Citizens of the State of Florida (Citizens) filed their response to Aloha's motion on March 13, 1997. This Order addresses the request of Aloha for a partial release of escrowed funds and the Citizens' response.

PARTIAL RELEASE OF ESCROWED FUNDS

As stated above, on March 11, 1997, Aloha filed its Emergency Motion. In its Emergency Motion, Aloha states that unless it is given access to \$332,000 of the approximate total of \$750,000 in escrow funds, it will be unable to timely pay its regulatory assessment fees (RAFs) and that it is already past due on interest payments on debt service in excess of \$298,000. Aloha further argues that because our Final Order issued on March 12, 1997 will only require a refund of approximately \$152,000 on an annual basis, that the remaining amount in the escrow account of approximately \$400,000 will be more than adequate to protect the customers.

In their response, the Citizens state that Aloha has failed to demonstrate that it will suffer irreparable injury or other harm which might justify a claim of emergency. Also the Citizens state that Aloha has not alleged that it cannot meet its obligations without the escrowed funds or that it would incur any undue expense. Therefore, the Citizens claim that Aloha has not demonstrated that there is an emergency. Further, the Citizens stress the fact that the Final Order is subject to a petition for

reconsideration and appeal. Therefore, the refund amounts could change and there may be a continuing need for collection of funds subject to escrow. Based upon these arguments, the Citizens request that we deny Aloha's petition, and grant the Citizens such other relief as may be appropriate.

We have reviewed Aloha's petition and the Citizens' response. Pursuant to the Final Order, as it now stands, Aloha is to refund on an annual basis, prior to the inclusion of interest, approximately \$152,000. As of February 1997, the temporary rates have been in effect for one year and approximately \$750,000 is presently in the escrow account. Including interest and customer growth, we cannot envision the refund being in excess of \$200,000 which is approximately 27 percent of the escrowed amount. Should the temporary rates be continued, through either a petition for reconsideration or appeal of the Final Order, funds would continue to be escrowed at \$61,496 per month. Since the refund is based upon the difference between temporary and final Phase I rates only, any changes on appeal or reconsideration to Phases II or III would have no impact on the refund.

The Final Order states that the remaining money in the escrow account will be released to the utility upon staff's verification that the refund has been completed. Aloha is asking that it be allowed access to a portion of these funds prior to completing the refund. Our first concern is that the escrow account must contain sufficient funds to protect the customers to provide for any refund. Based upon the present level of the escrow account and the level of monthly additions to the account, the ability to cover any potential refund would not be compromised by the release of the requested \$332,000. Accordingly, we find that Aloha's request for release of \$332,000 from the escrow account shall be granted.

CLOSING OF DOCKET

Pursuant to the Final Order, we gave staff administrative authority to close Docket No. 950615-SU upon verification that the refund has been completed. Therefore, this docket shall remain open pending this verification.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the motion of Aloha Utilities, Inc., for a partial release, in the amount of \$332,000, of escrowed funds shall be granted as set forth in the body of this Order. It is further

ORDERED that, notwithstanding the above, Aloha Utilities, Inc., shall continue to place all rates collected in excess of its

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original rates into its escrow account, pursuant to the provisions of Order No. PSC-95-1605-FOF-SU. It is further

ORDERED that this docket shall remain open pending staff's verification that the refund has been completed.

By ORDER of the Florida Public Service Commission, this 4th day of April, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

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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.

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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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.