

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited
proceeding increase in water and
wastewater rates by Aloha
Utilities, Inc.

DOCKET NO. 970536-WS
ORDER NO. PSC-97-0825-FOF-WS
ISSUED: July 10, 1997

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER DENYING REQUEST FOR INTERIM OR EMERGENCY, TEMPORARY RATES
AND
ORDER HOLDING LIMITED PROCEEDING IN ABEYANCE PENDING
DISPOSITION OF RULE CHALLENGE BY THE DIVISION
OF ADMINISTRATIVE HEARINGS

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. These service areas are physically divided by U.S. Highway 19, the major north/south highway through Pinellas and Pasco Counties. Aloha's 1996 revenues were \$1,885,752 and \$2,811,605 for water and wastewater, respectively. The utility serves 11,148 water and 10,691 wastewater customers.

The Aloha service area is located within the Northern Tampa Bay Water Use Caution Area as designated by the Southwest Florida Water Management District (SWFWMD or District). Critical water supply concerns have been identified by SWFWMD within this area.

On June 1, 1995, Aloha filed a reuse project plan and application in Docket No. 910540-SU for an increase in rates for wastewater service to its Seven Springs customers pursuant to

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FROM RECORDS REPORTING

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Section 367.0817, Florida Statutes. On March 12, 1997, we rendered our final decision on the reuse plan and increased rates by Order No. PSC-97-0280-FOF-WS. By Order No. PSC-97-0658-FOF-SU, issued June 9, 1997, we denied Aloha's Motion for Reconsideration, but affirmed the Office of Public Counsel's cross-motion that the Seven Springs wastewater rates should be recalculated to correct the identified errors. Further, we corrected another error which overstated the wastewater rate reductions subsequent to Phase III due to the imputation of future reuse revenue and amortization of rate case expense. Lastly, we granted Aloha a stay of Order No. PSC-97-0280-FOF-WS only through the issuance of the Order on Reconsideration.

On July 1, 1996, Aloha filed an index rate increase of \$4,218 and \$17,335 for its Aloha Gardens and Seven Springs water systems, respectively. Also, Aloha filed an index rate increase of \$5,109 for its Aloha Gardens wastewater system. After our analysis, these rate increases became effective on August 30, 1996.

On December 12, 1995, the Pasco County Board of County Commissioners approved a rate decrease for all water and/or wastewater customers encompassing the period of January 1, 1996 through September 30, 1999, with an effective date of April 1, 1996. By Order No. PSC-96-1226-FOF-WS, issued September 27, 1996, in Docket No. 960878-WS, Aloha and four other utilities were ordered to show cause in writing why their rates should not be adjusted, effective April 1, 1996, to reflect the reduction in purchased water and/or wastewater costs to bulk water and/or wastewater customers in Pasco County. By Order No. PSC-97-0682-FOF-WS, issued on June 11, 1997, we accepted a revised settlement proposal offered by Aloha on April 16, 1997. The revised settlement proposal offered to reduce the rates for the Aloha Gardens water system on a going forward basis by \$17,701 or \$0.12 per thousand gallons of water sold. This was a 3.56% reduction in annual revenues to that system.

On April 14, 1997, Aloha paid its 1996 regulatory assessment fees that were due on March 31, 1997. The utility contends that it does not owe any penalty and interest for the late payment of its regulatory assessment fees. We will address this matter at a later date.

On May 6, 1997, Aloha filed this current limited proceeding application to increase its water and wastewater rates for its Aloha Gardens and Seven Springs customers pursuant to Section

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367.0822, Florida Statutes. The utility requested additional revenues for Aloha's cost in the Florida Department of Transportation's (FDOT) relocation of State Road 54 line project. The limited proceeding also includes a request for increased revenues to change its billing system.

On May 23, 1997, Aloha and Florida Waterworks Association, Inc. (Petitioners) filed a Petition for Determination of Invalidity of Agency Non-rule Policies and Existing Rules with the Division of Administrative Hearings (DOAH). This petition was prompted by our announcement to Aloha by letter dated March 5, 1997 that our staff would perform an audit of Aloha's books and records for the year ended December 31, 1996. The Petitioners contend there should be rulemaking to determine this Commission's legal authority and procedures in the performance of an audit. Currently, the rule challenge is scheduled to be heard by DOAH on June 24, 1997. However, we have filed a motion for a continuance of the hearing due to scheduling conflicts. It now appears that the hearing may be continued until sometime in late August, 1997.

Section 367.0822, Florida Statutes, does not require that tariffs be filed with the application, and as such, suspension is not necessary. Further that section does not contain a statutory time limit within which we must act.

REQUEST FOR INTERIM OR EMERGENCY, TEMPORARY RATES

Aloha filed this application, pursuant to Section 367.0822, Florida Statutes, for a limited proceeding to increase its rates for water and wastewater service provided to the utility's Seven Springs and Aloha Gardens systems in Pasco County, Florida. The proposed increase to the Seven Springs systems' revenues are to cover the costs associated with the first phase of the FDOT required relocation of existing water and wastewater lines within the right-of-way of Highway 54, and the proposed increase in revenues to both its Seven Springs and Aloha Gardens systems is for the proposed change to envelope billing. Aloha requested additional revenues of \$4,575 (0.91%) and \$4,157 (0.42%) for the Aloha Gardens water and wastewater systems, respectively, and \$90,814 (6.65%) and \$78,483 (3.54%) for the Seven Springs water and wastewater systems, respectively. The utility explained that it filed proposed tariffs for information purposes only. Therefore, the tariffs do not need to be suspended.

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In 1995, Aloha was sued by FDOT in eminent domain proceedings in connection with FDOT's project to widen a portion of State Road 54. On March 4, 1996, Aloha was ordered by the court to relocate and replace its utility lines. As a condition of the settlement of this lawsuit, the parties have executed a Joint Project Agreement and Utility Relocation Agreement. Under the terms of the Order, Aloha and FDOT entered into a Joint Project Agreement under which the total estimated project costs of \$1,728,521 would be funded as follows: \$1,013,376 (excluding \$63,000 paid to Aloha for property rights) to be paid by FDOT and \$715,144 to be paid by Aloha. In February, 1996, Aloha deposited \$715,144 with FDOT for its share of estimated project costs.

Subsequently, FDOT solicited bids for the project, and a contract was awarded to the low bidder, R.E. Purcell Construction, Inc. The contract with Prucell was lower than the estimates contained in the Joint Project Agreement and totaled \$1,194,537. As a result, the revised project cost was funded as follows: \$571,632 to be paid by FDOT and \$622,905 (excluding AFUDC) to be paid by Aloha. The revised amount paid by Aloha includes an additional contract for work from Madison Avenue to Rowan Road which was not reimbursable to Aloha.

Aloha's limited proceeding application also included a request for increased revenues to cover the \$30,468 increase in costs for changing its billing system. Currently, Aloha bills for service on postcards. Any notices or customer service communications require separate envelope mailings. As a result, Aloha is proposing to change its method of billing and customer communications by changing to a letter two-part bill which would include a return window type envelope. Aloha stated in its application that it will implement the use of the envelope billing system to coincide with the rate relief requested.

Aloha applied its proposed increases to the currently approved tariffs for the Aloha Gardens water and wastewater systems and the Seven Springs water system. For the Seven Springs wastewater system, the utility used the Phase II rates recently approved by Order No. PSC-97-0280-FOF-WS, issued March 12, 1997, in Docket No. 950615-SU. Aloha explained that the rates for the Seven Springs wastewater system are likely to change as a result of our order disposing of the Motions for Reconsideration, which Aloha anticipated would be issued sometime in June, 1997. Regardless, Aloha requested that the revenue increases be based on the rates

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and annualized revenues in effect at the time of our final action in this proceeding.

In its filing, Aloha requests that we authorize interim or temporary/emergency rates in order for the utility to recover the costs required to be expended by it in conjunction with the FDOT line relocation project and with the utility's conversion to envelope billing. The utility alleges that FDOT's required line relocations have resulted in substantial capital expenditures by the utility and increased costs of providing water and wastewater service. The utility further alleges that the change in billing method will increase costs slightly but is in the best interests of the utility's customers. The utility states that because Aloha has already been required over one year ago to provide funding for the road project and the utility's portion of the line relocation cost, the utility is in immediate need of rate relief to cover such costs.

A utility may receive "interim" rates pursuant to the interim statute set forth in Section 367.082, Florida Statutes, which provides for interim rates in full rate proceedings filed under Section 367.081, Florida Statutes, not limited proceedings. Although Section 367.082, Florida Statutes, contains very broad language regarding the availability of interim rates, it has been past Commission practice and policy not to use Section 367.082, Florida Statutes, in limited proceedings. Aloha's petition was filed under the provisions of the limited proceeding statute, Section 367.0822, Florida Statutes, which does not include a provision for "interim" rates. See Order No. PSC-93-0525-FOF-WU, issued April 7, 1993, in Docket No. 910963-WU. Therefore, we find that "interim" rates are not appropriate here.

The determination of whether emergency, temporary rates are appropriate is made on a case-by-case basis. See Order No. PSC-93-0525-FOF-WU. We have previously granted emergency, temporary rates for utilities where the utility has demonstrated an immediate or substantial increase in its costs or has demonstrated that a situation exists which requires our immediate attention in order to preserve the public health, safety, and welfare. See Order No. PSC-93-0525-FOF-WU; Order No. PSC-92-0127-FOF-SU, issued March 31, 1992, in Docket No. 911146-SU; Order No. 25711, issued February 12, 1992, in Docket No. 911206-SU.

We find that Aloha has failed to demonstrate that an emergency exists in these circumstances which would warrant emergency,

temporary rates. We do not believe the utility has demonstrated an immediate need for an increase in costs occasioned by the line relocation project as the project was completed approximately a year ago, and the utility has already expended the funds necessary for the project. We believe that if emergency rates were truly necessary, the utility could have and would have requested the revenues earlier. Further, we do not believe the utility has demonstrated a substantial increase in costs which would warrant emergency, temporary rates given the small percentage increases requested by the utility. Aloha requested a 0.91% and 0.42% revenue increase for the Aloha Gardens water and wastewater systems, respectively. Also, Aloha requested a 6.65% and 3.54% revenue increase for the Seven Springs wastewater systems, respectively. Finally, we do not believe the utility has presented in its filing a situation which requires our immediate attention in order to preserve the public health, safety, and welfare. Therefore, we find it appropriate to deny the utility's request for emergency, temporary rates.

TEMPORARY ABEYANCE OF LIMITED PROCEEDING

As stated earlier, on May 23, 1997, the Petitioners filed a Petition for Determination of Invalidity of Agency Non-rule Policies and Existing Rules with DOAH. This petition was prompted by our announcement to Aloha by letter dated March 5, 1997 that our staff would perform an audit of Aloha's books and records for the year ended December 31, 1996. The Petitioners state that in the March 5th letter, the Commission staff does not give a reason for the audit of Aloha, fails to properly define the scope of the audit, and does not define the audit procedures to be used. Further, the Petitioners state that this Commission has not promulgated any rules regarding our audit procedures, nor does this Commission have lawfully adopted rules defining the nature of such an audit or the circumstances by which we may audit a water and wastewater utility. Therefore, the Petitioners contend there should be rulemaking to determine this Commission's legal authority and procedures in the performance of an audit.

We have reviewed the proposed rates, the amount of additional revenues sought thereunder, and the supporting data which has been submitted. We believe that further examination of the data filed by the utility, as well as additional and/or corroborative data, will be necessary. The books and records for the Aloha Gardens wastewater system were last audited for a rate case in Docket No. 910540-SU. The books and records for the Seven Springs water and

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wastewater systems and the Aloha Gardens water system have not been audited since 1979. Therefore, at this point, we believe an audit will be necessary to determine the appropriate final increase in revenues. We will be unable to complete our investigation for this limited proceeding until an audit is complete.


However, we are currently unable to conduct an audit of the utility's books and records because the utility will not permit us to do so. Therefore, we believe the prudent course of action is to wait for DOAH to rule on Aloha's petition. Currently, the rule challenge is scheduled to be heard by DOAH on June 24, 1997. However, we have filed a motion for a continuance of the hearing due to scheduling conflicts. It now appears that the hearing may be continued until sometime in late August, 1997. Based on the foregoing, we find it appropriate to hold Aloha's application for a limited proceeding in abeyance until DOAH issues a ruling on the petition.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Aloha Utilities, Inc.'s request for interim or emergency, temporary rates is hereby denied. It is further

ORDERED that Aloha Utilities, Inc.'s application for a limited proceeding shall be held in abeyance until the Division of Administrative Hearings issues a ruling on Aloha Utilities, Inc.'s petition.

By ORDER of the Florida Public Service Commission, this 10th day of July, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Director, Division of Records and Reporting, 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.