

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of proceedings to determine whether Aloha Utilities, Inc. should be made to show cause why it should not be fined for its apparent failure to automatically reduce rates due to amortization of rate case expense in apparent violation of Section 367.0816, F.S. (1997), and Order No. PSC-97-0280-FOF-WS.

DOCKET NO. 001693-WS  
ORDER NO. PSC-01-1122-FOF-WS  
ISSUED: May 16, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

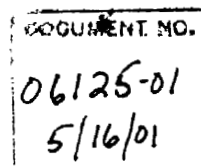
ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDING  
AND CLOSING DOCKET

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 and application for increase in rates for wastewater service to its Seven Springs customers pursuant to Section 367.0817, Florida Statutes. This application was assigned Docket No. 950615-SU.

Pursuant to Order No. PSC-97-0280-FOF-WS, issued March 12, 1997, in that docket and in Docket No. 960545-WS, this Commission



approved final wastewater rates and charges and a reuse rate. In that Order, we determined that Aloha was entitled to recover a total of \$205,777 in rate case expense. However, we further noted that the utility had already been recovering rate case expense through its rates and had recovered approximately \$27,434 of this rate case expense over an approximate one-year period. Therefore, we reduced the \$205,777 figure by \$27,434 for a rate case expense yet to be recovered of \$178,343.

We further noted that Section 367.0816, Florida Statutes, as it existed at that time, required that rate case expense be apportioned for recovery over a four-year period, and that "at the conclusion of the recovery period, the rate of the public utility shall be reduced immediately by the amount of rate case expense previously included in rates." Consistent with that statute and because approximately one year had passed, we directed that the remaining rate case expense of \$178,353 be amortized over three years. This resulted in an annual rate case expense allowance of \$59,448, and an increased annual revenue requirement of \$62,249 to allow for the gross-up for regulatory assessment fees.

By Order No. PSC-97-0280-FOF-WS, we required Aloha to reduce its rates upon the expiration of the three-year period as shown on Schedule No. 5 which was attached to and made a part of that Order. That Order further required the utility to file revised tariffs no later than one month prior to the actual date of the required rate reduction and a proposed customer notice setting forth the lower rates and reason for the reduction. Based on the implementation of the new rates, the tariffs should have been filed by May 9, 2000, and the rates reduced as of June 9, 2000. However, Aloha did not file the required tariffs until September 20, 2000.

Therefore, Aloha failed to reduce its rates upon expiration of the three-year period as required by the Order and Section 367.0816, Florida Statutes (1997). Because the utility did not timely reduce its rates, it collected revenues to which it was not entitled.

Based upon this failure to reduce rates, which is an apparent violation of both the Order and the statute, our staff opened this docket so that we could determine whether Aloha should be made to show cause why the utility should not be fined. We have

jurisdiction pursuant to Sections 367.0816 and 367.161, Florida Statutes.

SHOW CAUSE PROCEEDING

As stated above, Aloha failed to reduce its rates as required by Order No. PSC-97-0280-FOF-WS and Section 367.0816, Florida Statutes (1997). Upon becoming aware that Aloha had failed to reduce its rates on June 9, 2000 as required, our staff contacted the utility in August of 2000 to determine why the utility had not reduced its rates. Aloha advised our staff that this was an oversight and that Aloha would immediately reduce the rates and make the appropriate refunds or credits to customer bills. On September 20, 2000, the utility submitted revised tariffs reflecting the appropriate rates. On September 29, 2000, our staff notified the utility that the tariffs were approved reflecting an effective date of June 9, 2000.

Moreover, the utility has provided documentation showing that all refunds with interest were completed by credits to the customers' bills on January 15, 2001. The total amount of credits was \$14,069 plus interest of \$538.06. Of the total credits plus interest, there were 77 customers who had terminated service. At the end of February, 2001, Aloha issued checks in the total amount of \$139.20 to the terminated customers with credits of \$1 or more. As of April 10, 2001, the utility shows that only \$18.12 in checks have not cleared. Aloha has agreed that any remaining unclaimed checks shall be credited to the CIAC account, and we find that this action is appropriate. Therefore, it appears that the utility has now corrected the error that it made by failing to reduce its rates in a timely manner.

Upon being notified about its apparent noncompliance with the above-noted Order and statute, Aloha appeared to be genuinely apologetic that it had overlooked the requirement to reduce its rates and took immediate steps to rectify the situation. Not in justification, but in explanation, Aloha states that in the year 2000, its resources had been strained to the limit. Aloha notes that in the first six months of 2000, it had been involved in at least four docketed items and one undocketed overearnings investigation, which included all the attendant agenda conferences, filing of petitions and minimum filing requirements, filing of

testimony, responses to data requests of our staff, responses to multiple sets of discovery from both our staff and the Office of Public Counsel, and preparation for formal hearing in a full wastewater rate case. Further, Aloha states that it was attempting to comply with the requirements of the Amended and Restated Consent Final Judgment (ARCFJ) which it had entered into with the Department of Environmental Protection (DEP) on March 9, 1999. The ARCFJ required that the utility expand its Seven Springs Wastewater Treatment Plant, and Aloha was in the process of applying for a loan to pay for the improvements and expansion, attempting to complete the improvements and expansion by September of 2000, and applying for a wastewater rate increase to pay for these improvements and expansion. The hearing on the quality of service docket, Docket No. 960545-WS, was held on March 29-30 and April 25, 2000, and included the concomitant discovery, testimony, hearing preparation, and briefs. Subsequent to the final order in that docket, the utility moved for clarification and had to begin preparations for filing a service availability case and implementation of a pilot project for removal of hydrogen sulfide.

In addition, Aloha was also preparing for a hearing on October 2-3, and November 2, 2000 in Docket No. 991643-SU, with its concomitant discovery, testimony, hearing preparation, and briefs. As stated above, the utility states that it filed that application because of its need to recover the expenses that it was incurring to expand and upgrade its wastewater treatment to comply with DEP requirements. That plant was brought on line in September of 2000. Also, our staff opened an overearnings investigation, Docket No. 000737-WS, and Aloha was responding to staff inquiries and discovery in that docket. Based on all this activity, Aloha states that it completely overlooked the need to reduce its rates.

Nevertheless, the utility has apparently violated both the requirements of Order No. PSC-97-0280-FOF-WS and Section 367.0816, Florida Statutes (1997). We note that the last sentence of Section 367.0816, Florida Statutes (1997), provided as follows: "At the conclusion of the recovery period, the rate of the public utility shall be reduced immediately by the amount of rate case expense previously included in rates." This sentence was deleted by Section 6, Ch. 99-319, Laws of Florida (1999). However, Section 9, Ch. 99-319, Laws of Florida (1999), specifically stated: "This act does not apply to rate cases pending on March 11, 1999." As noted

above, the rate case in Docket No. 950615-SU was filed on June 1, 1995, and Order No. PSC-97-0280-FOF-WS was issued on March 12, 1997. Therefore, the requirement to automatically reduce rates was still applicable, and both the last sentence in Section 367.0816 (1997), and the Commission Order required an immediate reduction in rates upon amortization of the rate case expense.

Section 367.161(1), Florida Statutes, authorizes this Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes, or any lawful rule or order of the Commission.

Utilities are charged with the knowledge of our orders, rules and statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, entitled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., this Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Aloha's failure to reduce its rates appears to have violated the requirements of both the Order and the applicable statute. However, the circumstances listed above appear to mitigate the utility's apparent violation. Also, the utility cooperated with our staff and quickly filed appropriate tariff sheets as set forth above, and it subsequently proceeded with the refund. -

Based on the above, we find that the apparent violation of Order No. PSC-97-0280-FOF-WS and Section 367.0816, Florida Statutes, does not rise in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, we shall not order Aloha to show cause for its apparent failure to reduce rates due to amortization of rate case expense as required by Section 367.0816, Florida Statutes (1997), and Order No. PSC-97-0280-FOF-WS. However, the utility shall be placed on notice that

ORDER NO. PSC-01-1122-FOF-WS  
DOCKET NO. 001693-WS  
PAGE 6


it is expected to know and comply with our orders, rules and regulations, and that future violations may result in fines:

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that no show cause proceeding shall be initiated against Aloha Utilities, Inc., for its apparent failure to reduce rates as required by Order No. PSC-97-0280-FOF-WS and Section 367.0816, Florida Statutes (1997). However, Aloha Utilities, Inc., shall be placed on notice that it is expected to know and comply with our orders, rules and regulations, and that future violations may result in fines. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 16th day of May, 2001.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

RRJ

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

ORDER NO. PSC-01-1122-FOF-WS  
DOCKET NO. 001693-WS  
PAGE 7

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.