

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Aloha Utilities, Inc. in Pasco County for failure to charge approved service availability charges, in violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes.

DOCKET NO. 020413-SU  
ORDER NO. PSC-03-0397-FOF-SU  
ISSUED: March 21, 2003

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON  
BRAULIO L. BAEZ  
CHARLES M. DAVIDSON

ORDER ACKNOWLEDGING JOINT WITHDRAWAL OF PROTESTS, MAKING PAA PORTIONS OF ORDER NO. PSC-02-1250-SC-SU FINAL AND EFFECTIVE, 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 February 9, 2000, Aloha filed an application for an increase in rates for its Seven Springs wastewater system. By Order No. PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU, this Commission approved increased rates and charges for Aloha. We also directed Aloha to increase its wastewater service availability charges for its Seven Springs wastewater system from \$206.75 per equivalent residential connection (ERC) to \$1,650 per residential ERC and \$12.79 per gallon for all other connections. We required Aloha to file an appropriate revised

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tariff sheet reflecting the approved service availability charges within 20 days of the date of the order.<sup>1</sup>

Aloha should have submitted revised tariff sheets on wastewater service availability charges and had them approved at the same time as the wastewater rate tariffs, on May 23, 2001. However, in apparent violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes, the utility did not submit the tariff sheets until almost 10 months later, on March 11, 2002, and did not begin charging its approved service availability charges until almost 11 months later, on April 12, 2002.

On August 15, 2002, the Office of Public Counsel (OPC) filed a Notice of Intervention in this docket. OPC's intervention was acknowledged by Order No. PSC-02-1122-PCO-SU, issued August 19, 2002.

By Order No. PSC-02-1250-SC-SU, issued September 11, 2002, among other things, this Commission granted in part and denied in part SRK Partnership Holdings, LLC and Benchmark Manmen Corp.'s (Limited Partners) Petition to Intervene in this docket, ordered the effective date of the service availability tariff to be April 16, 2002, authorized Aloha to backbill developers for the uncollected amounts of service availability charges that it failed to collect from May 23, 2001 to April 16, 2002, or any portion thereof as negotiated between Aloha and the developers, and ordered that regardless of whether Aloha is successful in collecting the full backbilled amounts from the developers or any portion thereof, 100% of the amount of these charges, or \$659,547 shall be recognized as contributions-in-aid-of-construction (CIAC). We also ordered Aloha to show cause as to why it should not be fined in the amount of \$10,000 for failure to timely file a revised tariff sheet on service availability charges and charge its approved service

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<sup>1</sup>Both Aloha and the Office of Public Counsel (OPC) filed petitions for reconsideration of Order No. PSC-01-0326-FOF-SU. Those petitions were disposed of by Order No. PSC-01-0961-FOF-SU, issued April 18, 2001, by which this Commission granted Aloha's motion in part and denied OPC's motion. Order No. PSC-01-0961-FOF-SU reaffirmed the wastewater service availability charges approved by Order No. PSC-01-0326-FOF-SU.

availability charges, in apparent violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, Florida Statutes.

On October 2, 2002, Aloha filed its Response to the Show Cause Order. By Order No. PSC-02-1774-FOF-SU, issued December 18, 2002, we denied the relief requested in Aloha's Response to Show Cause Order and disposed of the show cause proceeding by assessing the \$10,000 fine.

Protests to the proposed agency action (PAA) portion of Order No. PSC-02-1250-SC-SU concerning backbilling were timely filed by three developers: Windward Homes, Greene Builders, Inc. (Greene Builders), and Adam Smith Enterprises, Inc. (Adam Smith). In addition, Aloha timely filed a Request for Hearing on the PAA portion of the Order concerning the imputation of CIAC.<sup>2</sup> Therefore, this docket was scheduled for a formal hearing to be conducted on April 11, 2003. Greene Builders, Windward Homes, and the Limited Partners have since withdrawn from the docket.

On October 7, 2002, Aloha filed a Motion for Emergency Relief, which the full Commission granted by Order No. PSC-02-1774-FOF-SU. On January 2, 2003, Adam Smith timely filed a Motion for Reconsideration of that decision. By Order No. PSC-03-0259-PCO-SU, issued February 24, 2003, Adam Smith's Motion for Reconsideration was denied, as was Aloha's Motion to Strike the Motion for Reconsideration.

On February 7, 2003, Aloha and Adam Smith filed a Joint Withdrawal of Protests in this docket. This Order acknowledges that filing. We have jurisdiction pursuant to Section 367.091, Florida Statutes.

#### JOINT WITHDRAWAL OF PROTESTS

In the Joint Withdrawal of Protests, Aloha and Adam Smith state that they withdraw their respective protests of Order No. PSC-02-1250-SC-SU. Because these parties have settled their

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<sup>2</sup>Aloha filed its Request for Hearing in order to preserve its right to backbill developers and builders who connected to its system from May 23, 2001 until April 16, 2002.

dispute, we acknowledge the Joint Withdrawal of Protests, and the PAA portions of Order No. PSC-02-1250-SC-SU shall be made final effective March 4, 2003. The prehearing and hearing dates scheduled in this docket have been cancelled by the Chairman's Office.<sup>3</sup>

The following filings are deemed moot by virtue of the protest withdrawals, and therefore need not be ruled upon: Aloha's Objection to, and Request for Clarification of, Adam Smith's Second Set of Interrogatories Nos. 11-14, filed January 27, 2003; Aloha's Motion for Reconsideration and Clarification of Order No. PSC-03-0130-PCO-SU, filed January 30, 2003<sup>4</sup>; and Aloha's Request for Oral Argument on the Motion, also filed January 30, 2003.

Finally, we note that by Order No. PSC-02-1774-FOF-SU, in granting Aloha's Motion for Emergency Relief, we authorized Aloha to collect, and to hold subject to refund with interest, its service availability charges that it should have collected from May 23, 2001 to April 16, 2002, had the utility correctly implemented those charges pursuant to Order No. PSC-01-0326-FOF-SU in the first place. As security to guarantee the amount collected subject to refund, we ordered Aloha to establish an escrow agreement with an independent financial institution. Because we granted the Motion for Emergency Relief in order to allow the utility to backbill for the service availability charges at issue pending the resolution of the protests filed in this docket, the escrow account may be closed, with all monies deposited therein, including any interest earned, reverting to the utility upon the expiration of the 30-day appeal time of this Order.

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<sup>3</sup>OPC intervened early on in this docket, prior to the issuance of Order No. PSC-02-1250-SC-SU, but did not file a protest to the Order. OPC has not withdrawn as a party to the docket. Nevertheless, pursuant to Rule 25-22.039, Florida Administrative Code, intervenors take the case as they find it.

<sup>4</sup>The Motion for Reconsideration involves a decision concerning the relevancy of certain discovery propounded in this docket, as well as the potential participation of prior counsel in answering discovery and providing testimony.

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Based on the foregoing, it is

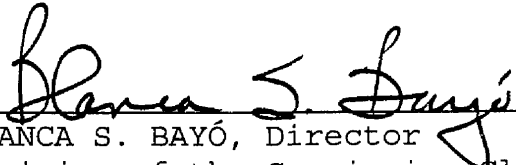
ORDERED by the Florida Public Service Commission that the Joint Withdrawal of Protests filed by Aloha Utilities, Inc. and Adam Smith Enterprises, Inc., is acknowledged, and the PAA portions of Order No. PSC-02-1250-SC-SU are final effective March 4, 2003. It is further

Ordered that Aloha Utilities, Inc.'s Objection to, and Request for Clarification of, Adam Smith's Second Set of Interrogatories Nos. 11-14, filed January 27, 2003, Motion for Reconsideration and Clarification of Order No. PSC-03-0130-PCO-SU, filed January 30, 2003, and Request for Oral Argument on the Motion, also filed January 30, 2003, are moot and need not be ruled upon. It is further

ORDERED that the escrow account opened pursuant to Order No. PSC-02-1774-FOF-SU may be closed, with all monies deposited therein, including any interest earned, reverting to Aloha Utilities, Inc., upon the expiration of the 30-day appeal time of this Order. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of March, 2003.

  
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BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( 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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.