

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc. | DOCKET NO. 010503-WU  
ORDER NO. PSC-05-0144-PCO-WU  
ISSUED: February 7, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON  
LISA POLAK EDGAR

ORDER GRANTING MOTION FOR STAY

BY THE COMMISSION:

BACKGROUND

Pursuant to the application of Aloha Utilities, Inc. (Aloha or utility) for both an interim and a permanent water rate increase for its Seven Springs system, we approved a 15.95% interim increase, subject to refund with interest, by Order No. PSC-01-2199-FOF-WU, issued November 13, 2001. Aloha began collecting interim rates as of January 2002, and the 15.95% interim increase was secured by the utility's deposit of all monthly interim revenues in an escrow account through July 31, 2003. We set final rates by Order No. PSC-02-0593-FOF-WU (First Final Order), issued April 30, 2002. Among other things, we denied a revenue increase and established the interim refund methodology, which required the utility to make an interim refund of 4.87%. The utility appealed the First Final Order, and, after receiving a stay, collected interim rates through July 31, 2003. Aloha implemented the rates approved in the First Final Order when that Order was affirmed by the First District Court of Appeal (First DCA).

After the First Final Order became final, a dispute arose over what was the appropriate amount to be refunded by Aloha. We concluded that the refund for the time period that the rate case was pending, i.e., through April 30, 2002, was addressed in the First Final Order, and our decision to require a 4.87% increase for that time period was governed by the principles of administrative finality. We also determined that the First Final Order did not address the time period during which the appeal was pending before the First DCA. We determined that Aloha should not be allowed to benefit from the higher interim rates it collected during the appeal period, when the court affirmed our decision to award no rate increase to the utility. Thus, by Proposed Agency Action Order No. PSC-04-0122-PAA-WU (PAA Refund Order), issued February 5, 2004, we proposed to require Aloha to make additional refunds of \$278,000 for the appeal period. This amount represented the additional revenues from the interim rates collected

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during the appeal period (May 1, 2002 through July 31, 2003), less the 4.87% already refunded by Aloha. Aloha protested the PAA Refund Order.

We resolved the PAA protest by Order No. PSC-04-1050-FOF-WU (Second Final Order), issued October 26, 2004, and required Aloha to refund the principal amount of \$276,066, with interest, to its customers and to submit refund reports. On November 29, 2004, Aloha filed its notice of administrative appeal of the Second Final Order. In addition, on December 2, 2004, Aloha filed its Motion for Stay Pending Judicial Review (Motion for Stay) of the Second Final Order. We have jurisdiction pursuant to Sections 367.081 and 367.082, Florida Statutes.

#### MOTION FOR STAY

Aloha has sought a stay of the requirement in the Second Final Order that Aloha refund the additional principal amount of \$276,066, with interest, to its customers. Pursuant to Rule 25-22.061(1)(a), Florida Administrative Code:

When the order being appealed involves the refund of moneys to customers . . . , the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings.

Rule 25-22.061 also provides that the stay must be conditioned upon the posting of an appropriate security.

Aloha has escrowed the interim revenues it has collected, and we have released only those funds associated with refunds already made by Aloha. While the Second Final Order is on appeal, the funds in the escrow account are sufficient security for any refund and shall be maintained at their present level.

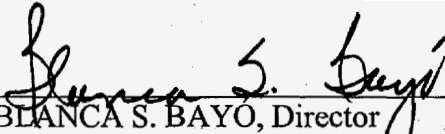
Based on the above, Aloha's Motion for Stay is granted, and the requirement to make additional refunds as set forth in the Second Final Order shall be stayed pending judicial review.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Aloha Utilities, Inc.'s Motion for Stay Pending Judicial Review is granted, and the requirement to make additional refunds as set forth in Order No. PSC-04-1050-FOF-WU shall be stayed pending judicial review. It is further

ORDERED that pending the final determination of the appropriate refunds and the required plant improvements, this docket shall remain open.

By ORDER of the Florida Public Service Commission this 7th day of February, 2005.

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

( 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 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 Director, Division of the Commission Clerk and Administrative Services, 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.