

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Emergency complaint of Pasco Health Investors, LLC against Aloha Utilities for apparent violation of Sections 367.081 and 367.101, F.S.	DOCKET NO. 070146-WS ORDER NO. PSC-07-0498-PAA-WS ISSUED: June 11, 2007
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The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER ACKNOWLEDGING NOTICE OF VOLUNTARY DISMISSAL

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING SPECIAL SERVICE AVAILABILITY AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein approving the Special Service Availability Agreement between Aloha Utilities, Inc. and Pasco Health Investors, LLC, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

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 March 6, 2007, Pasco Health Investors, LLC (Pasco Health) filed an Emergency Complaint against the utility for violation of Sections 367.081 and 367.101, Florida Statutes. Pasco Health is a developer of nursing home facilities in Florida. In the Emergency Complaint, Pasco Health asserted that Aloha's requested amount of impact fees were excessive. On March 16, 2007, the utility filed its answer to the Emergency Complaint. On April 26, 2007, Pasco Health filed a Notice of Voluntary Dismissal of its Emergency Complaint without prejudice.

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On April 26, 2007, Aloha filed a Special Service Availability Agreement (Agreement), dated April 23, 2007, between the utility and Pasco Health for our approval, pursuant to Rule 25-30.550, Florida Administrative Code (F.A.C.). Aloha stated that the filing of the Agreement was conditioned upon Pasco Health's withdrawal of its Emergency Complaint and asserted that the Agreement does not constitute a commitment for service until approved by the Commission in its entirety. On May 3, 2007, Aloha and Pasco Health provided us with an executed copy of an addendum to the Agreement. The addendum was filed on May 22, 2007.

For the purpose of administrative efficiency, this Order addresses both the Notice of Voluntary Dismissal and the Agreement. We have jurisdiction pursuant to Sections 367.081 and 367.101, Florida Statutes.

Notice of Voluntary Dismissal

The law is clear that a plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975). It is also established civil law that once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act and cannot revive the original action for any reason. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So. 2d 68, 69 (Fla. 1978).¹

We find that the Notice of Voluntary Dismissal divests this Commission of further jurisdiction over the complaint. We hereby acknowledge Pasco Health's Notice of Voluntary Dismissal of its Emergency Complaint.

Special Service Availability Agreement

Rule 25-30.550 (2) and (3), F.A.C., states:

(2) Each special service availability contract shall be approved by the Commission prior to becoming effective.

(3) Each special service availability contract and developer's agreement shall be accompanied by a statement from the utility affirming the current treatment plant connected load, the current treatment plant capacity, and the amount of capacity reserved under the agreement or contract. In lieu of this information, the utility may file a copy of its Department of Environmental Protection permit application.

Upon review, the Agreement only differs from the utility's current tariffs with respect to the amount of demand. Pursuant to Aloha's Tariff Sheet No. 26.26, the daily-rated gallonage for a nursing home is estimated to be 150 gallons per day (gpd) per 100 square feet. This results in

¹ This Commission has previously cited to these cases in acknowledging notices of voluntary dismissal. See, e.g., Order No. PSC-04-0070-FOF-WS, issued January 26, 2004, in Docket No. 020554-WS, In Re: Petition by Florida Water Services Corporation (FWSC) for determination of exclusive jurisdiction over FWSC's water and wastewater land and facilities in Hernando County, and application for certificate of authorization for existing utility currently charging for service (in acknowledging a notice of dismissal of a petition and withdrawal of an application for original certificates for an existing utility currently charging for service).

an estimated demand for Pasco Health of 81,776 gpd. According to the Agreement, the utility and Pasco Health have agreed to a water demand of 14,700 gpd. The 14,700 gpd demand is based upon numerous facts and circumstances for Pasco Health, including: (1) professional engineering estimates; (2) prior experience of both Aloha and Pasco Health of similar-type customers; and (3) the flow estimates in Pasco Health's applications to the Florida Department of Environmental Protection (DEP).

Aloha's Tariff Sheet No. 26.26 reflects the daily-rated gallonage for various occupancies. These daily-rated gallonages were developed using available literature and information including publications from the Florida Department of Health, DEP, and several treatment plant manufacturers. Those daily-rated gallonages should be used for general use purposes because those gallonages are estimated flows.

We find it appropriate to use historical data for similar-type customers whenever possible. Similarly, on this point, Rule 64E-6.008(1), F.A.C., states that the minimum design flows for systems serving any structure, building, or group of buildings shall be based on the estimated daily sewage flow as determined from Table I. However, Rule 64E-6.008(1)(a), F.A.C., states:

The DOH county health department shall accept, for other than residences and food operations, metered water use data in lieu of the estimated sewage flows set forth in Table I. For metered flow consideration, the applicant shall provide authenticated monthly water use data documenting water consumption for the most recent 12 month period for at least six similar establishments. Similar establishments are those like size operations engaged in the same type of business or service, which are located in the same type of geographic environment, and which have approximately the same operating hours. Metered flow values will not be considered to be a reliable indicator of typical water use where one or more of the establishments utilized in the sample has exceeded the monthly flow average for all six establishments by more than 25 percent or where the different establishments demonstrate wide variations in monthly flow totals. When metered flow data is accepted in lieu of estimated flows found in Table I, the highest flow which occurred in any month for any of the six similar establishments shall be used for system sizing purposes.

(Emphasis added.) Thus, we agree with the 14,700 gpd demand reached by the utility and Pasco Health.

Moreover, we recently approved a stipulation between Aloha and the Office of Public Counsel (OPC) which proposed that Aloha's water service availability capacity charges for its Seven Springs system should be increased to \$3,000 per equivalent residential connection (ERC).² Using the approved \$3,000 per ERC charge and a 300 gpd demand per ERC, we increased the non-residential water service availability capacity charge to \$10.00 per gallon.

² See Order No. PSC-07-0281-S-WU, issued April 2, 2007, in Docket No. 060122-WU, In re: Joint petition for approval of stipulation on procedure by Aloha Utilities, Inc. and Office of Public Counsel.

When applying the currently authorized charge of \$10.00 per gallon to the agreed upon demand of 14,700 gpd, the water impact fees are \$147,000, rather than the \$48,995 contained in the Agreement.

Before Pasco Health can receive water and wastewater service, it must complete a water main extension and collection system. According to Pasco Health's applications to DEP, the water main extension and collection system will take approximately six months to complete. Pursuant to H. Miller & Sons v. Hawkins, 373 So. 2d 913 (Fla. 1979), future customers must pay the applicable service availability charges at the time of connection for service. On May 3, 2007, Aloha and Pasco Health provided us with an executed copy of an addendum to the Agreement. The addendum recognizes H. Miller & Sons v. Hawkins and states that the total water service availability capacity charges will be \$147,000 instead of the \$48,995 outlined in Paragraph 5 of the Agreement.

Based on the foregoing, we hereby approve the Special Service Availability Agreement between Aloha Utilities, Inc. and Pasco Health Investors, LLC. The Special Service Availability Agreement shall become effective on June 5, 2007, the date of our vote on the matter.

Based on the foregoing, it is


ORDERED by the Florida Public Service Commission that Pasco Health Investors, LLC's Notice of Voluntary Dismissal of its Emergency Complaint is acknowledged. It is further

ORDERED that the Special Service Availability Agreement between Aloha Utilities, Inc. and Pasco Health Investors, LLC, is approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 11th day of June, 2007.



ANN COLE
Commission Clerk

(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.

As identified in the body of this order, our action approving the Special Service Availability Agreement between Aloha Utilities, Inc. and Pasco Health Investors, LLC, is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 2, 2007. If such a petition is filed, 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. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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 Office of Commission Clerk, 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 or wastewater utility by filing a notice of appeal with the Office of Commission Clerk 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.