

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of stipulation on procedure with Office of Public Counsel, and application for limited proceeding increase in water rates in Pasco County, by Aloha Utilities, Inc.

DOCKET NO. 060122-WU

In re: Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU.

DOCKET NO. 060606-WS
ORDER NO. PSC-09-0094-PCO-WS
ISSUED: February 13, 2009

The following Commissioners participated in the disposition of this matter:

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

ORDER GRANTING ABATEMENT

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.

In February 2005, we initiated deletion proceedings in Docket No. 050018-WU to delete a portion of the Seven Springs service area based on a number of problems that ultimately stem from the presence of hydrogen sulfide in the water. On March 9, 2006, after several months of extensive negotiations in which our staff participated, a Settlement Agreement was executed by Aloha, the Office of Public Counsel (OPC), and individual intervenors. The Settlement Agreement resolved all outstanding dockets and court proceedings between Aloha and this Commission, and was approved by Order No. PSC-06-0270-AS-WU.¹ A key element of the

¹ Issued April 5, 2006, in Docket No. 050018-WU, In Re: Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes; Docket No. 050183-WU, In Re: Request by homeowners for the Commission to initiate deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes; and Docket No. 010503-WU, In Re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

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Settlement Agreement is the agreement by the parties that it is prudent for Aloha to implement a new water treatment method – anion exchange – to address the current problems that stem from the presence of hydrogen sulfide in the water.

In addition, on October 26, 2004, Aloha entered into a Bulk Water Agreement with Pasco County (County), wherein it contracted to purchase approximately 3.1 million gallons of water per day from the County in order to meet the needs of current and future customers. Significant costs are expected to be associated with the interconnection and purchase of this water, and the installation and operation of related chloramination facilities.

There are currently two dockets open to address the ripe issues associated with the purchase of bulk water from Pasco County and associated interconnection, and to track Aloha's progress to design and install the plant necessary to implement anion exchange: Docket Nos. 060606-WU, In re: Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU (the anion exchange docket) and 060122-WU, In re: Joint petition for approval of stipulation on procedure with Office of Public Counsel, and application for limited proceeding increase in water rates in Pasco County, by Aloha Utilities, Inc. (the limited proceeding docket).²

On March 14, 2008, the Florida Governmental Utility Authority (FGUA), which is not a party to either Aloha docket, filed a "Suggestion of Abatement."³ In its filing, FGUA suggested "an abatement of the anion exchange project currently being implemented by Aloha Utilities pursuant to Commission Order" while it negotiated to purchase the utility. FGUA's suggestion was corrected by letter dated March 18, 2008, to clarify that the FGUA suggested an abatement period of 120-days.

At the April 8, 2008, Agenda Conference, we considered FGUA's request and agreed to "abate for 120 days, any and all actions directed towards Aloha implementing anion exchange and all actions necessary for Aloha to interconnect with Pasco County, except for the litigation to resolve the protests of Order No. PSC-08-0137-PAA-WU." We also directed that Aloha should not be penalized for the 120-day abatement period for purposes of implementation of the settlement agreement approved by Order No. PSC-06-0270-AS-WU.⁴

In addition, in a separate vote, we voted at the April 8, 2008, Agenda Conference to order Aloha to show cause, in writing, within 21 days, why it should not be fined for its apparent violation of Section 367.081(1), Florida Statutes, for knowingly failing to comply with Order

² In the limited proceeding docket, we issued proposed agency action (PAA) Order No. PSC-08-0137-PAA-WU, on March 3, 2008. In this PAA order, we voted to allow the utility, after it has completed the construction of a fully operating interconnection with Pasco County, to recover phase one costs associated with the interconnection and with the utility's purchase of bulk water from Pasco County. On March 24, 2008, Aloha, OPC, and certain members of the Better Water Now Committee petitioned for a hearing concerning this PAA order.

³ A "suggestion" is not a pleading contemplated by the Florida Administrative Procedures Act, the Uniform Rules, or any Commission rule or statute.

⁴ Order No. PSC-08-0267-PCO-WS, issued April 30, 2008. in Docket No. 060122-WU, Joint petition for approval of stipulation on procedure with Office of Public Counsel, and application for limited proceeding increase in water rates in Pasco County, by Aloha Utilities, Inc., and Docket No. 060606-WS – Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU.

No. PSC-06-0270-AS-WU, by failing to report delays of the anion exchange treatment facilities in its quarterly report.⁵ This matter is currently pending and has been set for hearing in April 2009.

On August 19, 2008, FGUA filed "FGUA's Request for Extension of Abatement." In its filing, FGUA requested that we extend the abatement period established by Order No. PSC-08-0267-PCO-WS for an additional 45-days while it continued to negotiate to purchase the utility. On August 29, 2008, FGUA's counsel filed a letter clarifying that its request for an extension of the abatement period did not include a request to abate the show cause matter. On September 2, 2008, FGUA's counsel filed another letter further clarifying that it was requesting that the 45-day abatement run from the date of our order approving the 45-day abatement. The 120-day abatement period we approved by Order No. PSC-08-0267-PCO-WS ended on August 28, 2008.

Following the FGUA's second request for an abatement, we issued Order No. PSC-08-0665-PCO-WS, Order Granting Abatement, on October 8, 2008.⁶ The Order established a 45-day abatement period for all actions associated with implementing anion exchange and all actions necessary for Aloha to interconnect with Pasco County, except for the litigation to resolve the protests of Order No. PSC-08-0137-PAA-WU, and the show cause proceeding initiated by Order No. PSC 08-0266-SC-WS. This second abatement expired November 24, 2008.

On September 23, 2008, Aloha and OPC filed a Joint Request for Abatement. Aloha and OPC asked that the litigation resulting from the protest of Order No. PSC-08-0137-PAA-WU be abated in concurrence with Order No. PSC-08-0665-PCO-WS. We granted the request pursuant to Order No. PSC-08-0694-PCO-WU, issued October 20, 2008, in Docket No. 060122-WU.

On November 6, 2008, Aloha and OPC filed a second Joint Request for Abatement. The parties requested an extension of the abatement of all activities in the two dockets, including the abatement of the show cause litigation, until January 9, 2009. On November 13, 2008, our staff received an email from a member of the customer group Better Water Now, confirming the group's support of the request. By Order PSC-08-0832-PCO-WS, issued December 23, 2008, we approved the second Joint Request for Abatement. The abatement expired January 9, 2009.

On January 9, 2009, Aloha filed a Request for Abatement, requesting that all activities in the two dockets be abated until January 30, 2009, and that Aloha be directed to report to us and our staff, no later than January 30, 2009, the posture and status of its sale to FGUA.

On January 13, 2009, OPC filed a response to the utility's Request for Abatement. OPC also seeks an extension of the abatement of all activities in the two dockets, but asks that the

⁵ Order No. PSC-08-0266-SC-WS, issued April 30, 2008, in Docket No. 060606-WS, In re: Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU.

⁶ Order No. PSC-08-0665-PCO-WS, issued in Docket No. 060122-WU, Joint petition for approval of stipulation on procedure with Office of Public Counsel, and application for limited proceeding increase in water rates in Pasco County, by Aloha Utilities, Inc., and in Docket No. 060606-WS, Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU.

abatement term extend until March 2, 2009. OPC represents that the customer petitioners concur with OPC's response and agree that the additional abatement should run until March 2, 2009.

This Order addresses Aloha's Request for Abatement filed January 9, 2009, and OPC's response filed January 13, 2009. We have jurisdiction pursuant to Chapters 120 and 367, Florida Statutes.

Request to Abate the Implementation of Anion Exchange Pursuant to Order No. PSC-06-0270-AS-WU in Docket 060606-WS and All Actions Necessary for Aloha to Interconnect with Pasco County

In support of its request, Aloha states that Aloha and FGUA have extended the time in which the acquisition of Aloha could close until and including February 27, 2009. Aloha also advises that by the terms of said extension, FGUA shall advise Aloha by January 27, 2009, whether or not it will close on or before the closing date. Aloha requests that the Abatement run until January 30, 2009.⁷ The utility further states that, "it is in the best interest of Aloha, OPC, the public, the Commission, and its staff that all activities in these two dockets be abated as requested herein."⁸ Aloha requests that it be directed to report to us and our staff, no later than January 30, 2009, the posture and status of its sale.

In OPC's response of January 13, 2009, it requests that we extend the abatement beyond the term requested by Aloha. OPC states that the Commission should extend the abatement until March 2, 2009. OPC states, "In light of the extended closing date of February 27, 2009, the Citizens believe that March 2, 2009, would be a more appropriate date to end the additional abatement...." The customer group also supports an abatement extending until March 2, 2009.

We find that an abatement of all actions associated with anion exchange implementation and all actions necessary for Aloha to interconnect with Pasco County, including the limited proceeding litigation, is reasonable, as Aloha and FGUA have entered into a contract for the sale of the utility, and by the contract's extended terms, the sale is anticipated to close by February 27, 2009. The abatement of these proceedings may prevent an unnecessary expenditure of time

⁷ OPC points out that although Aloha states that the purpose of its motion is to request an extension of the abatement until January 30, 2009, Aloha does not restate this request in its expressed prayer for relief at the end of its motion. Instead, Aloha requests an abatement for an unspecified time, and only requests that it be directed to report to the Commission and its staff no later than January 30, 2009. Irrespective of this, we have interpreted the pleading as a request to abate only until January 30, 2009.

⁸ We note that in its Request for Abatement, Aloha indicates that it will demand a refund from Pasco County of funds paid to Pasco County pursuant to the Bulk Water Agreement to reserve 3.1 mgd of bulk treated water as needed to serve Aloha's present and future customers, if financing for its sale has not been secured and a final closing date on the transaction has not been set by January 27, 2009: "If financing for the sale has not been secured and a final closing date on the transaction with the FGUA has not been set by January 27, 2009, Aloha will be compelled, by sound business practices and its particular capital requirements, to demand a refund from Pasco County of \$4,924, 571.10 unless the Commission approves, and Aloha is able to assess, a rate prior to April 1, 2009, which allows recovery of a reasonable return on and amortization of the full amount invested by Aloha in those Pasco County reservation fees plus all accrued AFUDC up through April 1, 2009." Request for Abatement, p. 3-4. We also note that Aloha has not requested relief or action from us regarding this matter in the Request for Abatement. Accordingly, this Order does not address the prudence or reasonableness of this potential action.

and resources. Accordingly, we abate all activities related to anion exchange implementation and all actions necessary for Aloha to interconnect with Pasco County, including the limited proceeding litigation, until March 2, 2009. As this matter was heard at the January 26, 2009, Agenda Conference, it is administratively inefficient to abate for a term of only four days, especially in light of the parties' past repeated requests for extensions of abatement. The abatement period shall not count against Aloha for purposes of the implementation of the Settlement Agreement approved by Order No. PSC-06-0270-AS-WU.

Request to Abate the Show Cause Proceeding Initiated by Order No. PSC-08-0266-SC-WS

As discussed above, on January 9, 2009, Aloha filed a Request for Abatement of all activities in Docket Nos. 060122-WU and 060606-WS, including the show cause proceeding, until January 30, 2009. Further, Aloha requests that it be directed to report to the Commission, no later than January 30, 2009, the posture and status of the acquisition of Aloha by FGUA. In support of its request, Aloha states that on or about December 12, 2008, Aloha and FGUA extended the time in which the acquisition of Aloha could close until February 27, 2009. FGUA is required to advise Aloha by January 27, 2009, whether the closing will occur by February 27, 2009. Aloha states that it is in the interest of Aloha, OPC, the public, and this Commission and our staff that all activities in Docket 060606-WS be abated as requested.

On January 13, 2009, OPC filed a Response to Request for Abatement. In its response, OPC states that, in light of the February 27, 2009, closing date, OPC believes that March 2, 2009, would be a more appropriate date to end the additional abatement. OPC further states that the customer petitioners in Docket No. 060122-WU concur with OPC's response and agree to the additional abatement until March 2, 2009.

Upon consideration, Aloha's Request for Abatement of the show cause proceeding shall be granted in part and denied in part. We find that because the closing date for the acquisition of Aloha by FGUA has been extended from December 17, 2008, to February 27, 2009, and because FGUA is required to notify Aloha by January 27, 2009, as to whether the closing will occur by February 27, 2009, an abatement of this proceeding may prevent an unnecessary expenditure of time and resources. We agree with OPC and find that it is appropriate to abate the show cause proceeding until March 2, 2009.

Status Report

In addition, we direct Aloha to file a report with us in Docket Nos. 060122-WU and No. 060606-WS upon the closing of the sale of the utility or March 2, 2009, whichever comes first. The report shall address the status of the acquisition of the utility by FGUA.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Aloha's Request for Abatement is granted in part and denied in part. The request to abate is granted, but the abatement's length is extended beyond the term requested by the utility. It is further

ORDERED that the implementation of anion exchange pursuant to Order No. PSC-06-0270-AS-WU in Docket 060606-WS and all actions necessary for Aloha to interconnect with Pasco County, including the litigation to resolve the protest of Order No. PSC-08-0137-PAA-WU in Docket 060122-WU, are abated until March 2, 2009. The abatement period shall not count against Aloha for purposes of the implementation of the Settlement Agreement approved by Order No. PSC-06-0270-AS-WU. It is further

ORDERED that the show cause proceeding Initiated by Order No. PSC-08-0266-SC-WS shall be abated until March 2, 2009. It is further

ORDERED that Aloha shall file a report in Docket Nos. 060122-WU and 060606-WS with this Commission upon the closing of the sale of the utility or March 2, 2009, whichever comes first. The report shall address the status of the acquisition of the utility by FGUA. It is further

ORDERED that these dockets shall remain open pending the resolution of the issues associated with Aloha's interconnection with Pasco County and the implementation of anion exchange.

By ORDER of the Florida Public Service Commission this 13th day of February, 2009.



ANN COLE
Commission Clerk

(S E A L)

JEH

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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.