

BEFORE THE FLORIDA 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
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
In re: Joint notice by Aloha Utilities, Inc. and the Florida Governmental Utility Authority of transfer of water and wastewater assets to the Florida Governmental Utility Authority, in Pasco County, and cancellation of Certificate Nos. 136-W and 97-S.	DOCKET NO. 090120-WS ORDER NO. PSC-09-0334-PAA-WS ISSUED: May 14, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
KATRINA J. McMURRIAN
NANCY ARGENZIANO¹
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING TRANSFER OF ESCROWED INTERIM RATES
TO THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY
FOR ESTABLISHMENT OF A RATE STABILIZATION ESCROW ACCOUNT
AND
PROCEDURAL ORDER REQUIRING SELECTION OF A NEW ESCROW AGENT
AND
FINAL ORDER APPROVING SALE TO THE FGUA
AND CLOSING DOCKET NOS. 060606-WS AND 060122-WU

¹ Commissioner Argenziano voted only on those issues concerning Docket No. 010503-WU.

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FPSC-COMMISSION CLERK

NOTICE is hereby given by the Florida Public Service Commission that our actions in this Order concerning the transfer of the escrowed interim rate funds to the Florida Governmental Utility Authority (FGUA) for establishment of a Rate Stabilization Escrow Account discussed herein 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 (F.A.C.). All other portions of this Order are issued as final agency action, except for our decision herein regarding the selection of an alternative escrow agent, which is procedural in nature.

I. BACKGROUND

Aloha Utilities, Inc. (Aloha or Utility) is a Class A water and wastewater utility located in Pasco County. Aloha consists of two distinct service areas: Aloha Gardens and Seven Springs. The Utility provides water and wastewater service to approximately 15,365 water and 16,688 wastewater equivalent residential connections (ERC). Aloha's 2007 annual report indicates that the Utility had gross water revenue of \$3,352,825 and a net operating loss of \$283,036, and gross wastewater revenue of \$6,756,597 and net operating revenue of \$928,212. The Utility's water and wastewater systems were originally issued Certificate Nos. 136-W and 97-S in 1973.² Aloha's certificates were amended five times.³

On August 10, 2001, Aloha completed its filing for a rate increase in Docket No. 010503-WU. By Order No. PSC-01-2199-FOF-WU (Interim Rate Order), issued November 13, 2001,⁴ this Commission granted Aloha a 15.95 percent interim rate increase subject to refund with interest. These interim rates were placed in an escrow account. By Order No. PSC-02-0593-FOF-WU (First Final Order),⁵ the Commission found no increase was warranted, and ordered that 4.87 percent of the interim rates be refunded with interest. Aloha appealed this Order, and a stay was granted. Based on this appeal and stay, the final rates approved by the Commission were not implemented until August 1, 2003, some 15 months after the final rates were initially approved.

Based upon the First District Court of Appeals' (First DCA's) affirmance of the First Final Order, Aloha refunded 4.87 percent of all interim rates collected. Because Aloha refunded

² See Order No. 5741, issued May 4, 1973, in Docket Nos. C-73054-W and C-73055-S, In re: Application of Aloha Utilities, Inc., for certificates to operate an existing water and sewer system in Pasco County.

³ See Order No. 6182, issued June 21, 1974, in Docket No. 74316-WS, In re: Joint Application of Tahitian Utilities, Inc., and Aloha Utilities, Inc., for transfer of Certificates Nos. 135-W and 96-S from the former to the latter.; Order No. 14100, issued February 15, 1985, in Docket No. 830554-WS, In re: Application of Aloha Utilities, Inc. to extend water and sewer service and petition for revocation of certificated service area and declaratory statement.; Order No. 15373, issued November 19, 1985, in Docket No. 830554-WS, In re: Application of Aloha Utilities, Inc., to extend water and sewer service and Petition for Revocation of Certificated area., Order No. PSC-99-1911-FOF-WS, issued September 27, 1999, in Docket No. 990940-WS, In re: Application for amendment of Certificates Nos. 136-W and 97-S to add and delete territory in Pasco County by Aloha Utilities, Inc., and Order No. PSC-00-0581-SOS-WS, issued March 22, 2000, in Docket No. 991699-WS, In re: Application for amendment of Certificates 136-W and 97-S to add territory in Pasco County by Aloha Utilities, Inc.

⁴ Docket No. 010503-WU, In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

⁵ Issued April 30, 2002, in Docket No. 010503-WU

\$153,510, this Commission, through Order No. PSC-03-1410-FOF-WU, issued December 5, 2003, released that amount from the escrow account. However, we also determined that Aloha should not be allowed to benefit from its appeal and the stay of the final rates, which was a 15-month period. For this 15-month appeal period, May 1, 2002 through July, 2003, we found that the full 15.95 percent of interim rates that were collected should be refunded. Because Aloha had already refunded 4.87 percent, we determined that an additional 11.08 percent⁶ should be refunded for the appeals period. Aloha appealed that decision.

In February 2005, we initiated deletion proceedings in Docket No. 050018-WU to delete a portion of the Seven Springs service area based on poor customer relations and a number of problems that ultimately stemmed 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 customer intervenors. The Settlement Agreement, proposing to resolve all outstanding dockets and court proceedings between Aloha and the Commission, was approved by Order No. PSC-06-0270-AS-WU.⁷ A key element of the Settlement Agreement was the agreement by the parties that it was 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.

Another major component of the Settlement Agreement was that after Aloha dismissed its appeal of Order No. PSC-04-1050-FOF-WU,⁸ which directed the Utility to make refunds to customers, the funds would remain in escrow and be used to help pay for the anion exchange project. Pursuant to Order No. PSC-06-0270-AS-WU, page 5, the order approving the Settlement Agreement stated:

The amount that would ordinarily be refunded (approximately \$290,000) will be reduced by the documented cost (up to \$45,000) of preparing the Conceptual Cost Estimate. The balance will remain in escrow, earning interest, until Phase III [of the anion exchange project] rates take effect. At that time, the funds in escrow, including accrued interest, will be released to Aloha and Aloha will record a corresponding amount as a contribution-in-aid-of-construction.

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

⁶ See Order No. PSC-04-1050-FOF-WU (Second Final Order), issued October 26, 2004, in Docket No. 010503-WU, In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

⁷ 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.

⁸ Order No. PSC-04-1050-FOF-WU, Final Order Requiring Additional Refunds, was issued October 26, 2004, in Docket 010503-WU.

per day from the County in order to meet the needs of current and future customers. Significant costs were expected to be associated with the interconnection and purchase of this water, and the installation and operation of related chloramination facilities.

To address 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, the following two dockets are currently open: 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).⁹ These dockets were abated several times at the request of the parties and FGUA.¹⁰

By letter dated January 26, 2009, Aloha requested the release of the escrowed funds being held pursuant to Order Nos. PSC-01-2199-FOF-WU and PSC-06-0270-AS-WU. By letter dated January 27, 2009, our staff advised Aloha that the Order contemplated that the release of the escrowed funds could occur only after Phase III rates took effect, and that action by the full Commission would be required to release the escrowed funds prior to the implementation of Phase III rates. Our staff indicated that after the sale was completed, a recommendation would be brought to the Commission regarding the appropriate disposition of the escrowed funds.

On February 19, 2009, Aloha filed its Motion for Contingent Release of Escrow Monies, and requested the Commission to release the escrowed funds upon receipt of sufficient documentation that the pending acquisition of Aloha's assets was closed. On February 26, 2009, OPC filed a response objecting to the release of monies to Aloha. OPC stated that the monies should be refunded to customers and that unclaimed refunds should be given to FGUA to provide a pro rata credit to all existing water accounts that were in existence as of July 30, 2003. Aloha filed a reply to the response. OPC subsequently filed a motion to strike the reply. On March 11, 2009, Aloha filed a withdrawal of its request for release of escrow monies.

On March 4, 2009, Aloha sent a letter to staff advising that the acquisition of Aloha's assets by FGUA was closed on February 27, 2009. On March 11, 2009, a joint application was

⁹ 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 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.

¹⁰ See Orders No. PSC-08-0267-PCO-WS, issued April 30, 2008, PSC-08-0665-PCO-WS, issued October 8, 2008; PSC-08-0694-PCO-WU, issued October 20, 2008; PSC-08-0832-PCO-WS, issued December 23, 2008; and PSC-09-0094-PCO-WS, issued February 13, 2009, with all orders being issued in both Docket No. 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., and 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.

filed by Aloha and the FGUA for the transfer of utility assets to FGUA and cancellation of Certificate Nos. 136-W and 97-S in Docket No. 090120-WS.

On March 13, 2009, Aloha sent a letter to our staff and indicated that the letter was a request and demand that the Commission release the escrowed monies to Aloha. The Utility asked to be contacted if our staff did not intend to release the monies by the week of March 16. Our staff advised Aloha that a decision would not be made by that time.

On March 19, 2009, certain Aloha customers filed Customer Intervenors' and Petitioners' Motion to Establish a Rate Stabilization Escrow Account asking that we issue an order requiring the transfer of funds to FGUA for the purpose of establishing a rate stabilization escrow account for the benefit of the customers. Aloha responded on March 26, 2009, and contended that we lacked the jurisdiction over the monies and to entertain the relief requested.

Although Aloha initially requested a hearing on the show cause matter, on March 25, 2009, the Utility remitted a check for \$15,000 to satisfy the requirements of the show cause order in Docket No. 060606-WS.

On March 30, 2009, Aloha served this Commission with a Complaint for Declaratory Relief and Injunctive Relief.¹¹ The Complaint indicated that the monies at issue (interim rate funds formerly in the escrow account) were then in a separate, segregated account in Pasco County.¹² It appears that on April 3, 2009, the interim rate funds (approximately \$373,803) were wired back to the escrow account initially established to secure the interim rates collected from the customers.

This Order addresses our jurisdiction over the escrow account funds, the appropriate disposition of those escrowed funds, the acknowledgement of the sale of Aloha's assets to FGUA, and the disposition of all outstanding Aloha dockets. We have jurisdiction pursuant to Chapters 120 and 367, F.S.

II. DISPOSITION OF DOCKET NO. 010503-WS

A. Jurisdiction Over Escrow Account Funds

Pursuant to the Interim Rate Order issued November 13, 2001, in Docket No. 010503-WU, Aloha was authorized to collect interim rates subject to refund with interest, pending a determination of whether a refund would be required. Pursuant to that Order, Aloha was granted a 15.95 percent interim increase, and required to either provide a bond or letter of credit, or deposit the full amount of the 15.95 percent interim increase in an escrow account. Aloha chose to create an escrow account, and began collecting the interim rates in January 2002, and depositing 15.95 percent of monthly revenues in the account. As required by the Interim Rate

¹¹ Circuit Court of the Sixth Judicial Circuit – Case No. 51-2009-CA-3011-WS, Division G.

¹² By bank records received from the Regions Bank, the interim rate funds being held in the escrow account, as required by the Interim Rate Order and Order No. PSC-06-0270-AS-WU, were withdrawn on March 23, 2009.

Order, the escrow account specified “that no withdrawals of funds shall occur without the prior approval of the Commission through the director of the Division of the Commission Clerk”

Final Rates were set by Order No. PSC-02-0593-FOF-WU (First Final Order), issued April 30, 2002. In the First Final Order, we determined that no rate increase whatsoever was warranted, but that only 4.87 percent of the Interim Rates should be refunded.¹³ Aloha appealed that Order, and after being granted a stay of that Order, continued to collect the full 15.95 percent interim rate increase.

The First Final Order was affirmed by the First District Court of Appeals on May 6, 2003.¹⁴ Aloha continued to collect the full 15.95 percent increase through July 31, 2003. Aloha refunded 4.87 percent of interim revenues plus interest, totaling \$153,510, for the period January 2002 through July 2003.¹⁵ However, a dispute arose as to whether Aloha should be required to refund the full 15.95 percent interim increase for having continued to collect the full 15.95 percent interim increase throughout the 15 months that the First Final Order was stayed, i.e., from May 1, 2002, through July 31, 2003.

By Proposed Agency Action Order No. PSC-04-0122-PAA-WU (PAA Refund Order), issued February 5, 2004, we determined that for the appeal period, May 1, 2002 through July 31, 2003, the full 15.95 percent should be refunded. Aloha filed a petition protesting this PAA Refund Order.

Upon review, we determined that there were no disputed issues of material fact, and the protest could be handled without an evidentiary hearing. After considering the briefs, we issued Order No. PSC-04-1050-FOF-WU (Second Final Order), on October 26, 2004, in which we reaffirmed that the full 15.95 percent collected for the period May 1, 2002, through July 31, 2003 (the appeal period), should be refunded with interest. Aloha appealed the Second Final Order.

During the pendency of the appeal, we accepted a comprehensive settlement (Settlement Agreement) negotiated by staff, and signed by Aloha, OPC, individual customer intervenors Forehand, Gaul, and Mitchell, and non-intervenor customers who were members of the Committee for Better Water Now. Pursuant to the Settlement Agreement, the escrowed funds were to be released only upon the implementation of Phase III rates with such amount being recorded by Aloha as a contribution-in-aid-of construction. The Settlement Agreement was approved by Order No. PSC-06-0270-AS-WU, issued on April 5, 2006.¹⁶

¹³ Because the interim test year was different from the test year for final rates, and there were some expenses for the interim test year that were not in the test year for final rates, we determined that the full 15.95 percent increase would not have to be refunded for the period the interim rates were in effect.

¹⁴ See Aloha Utilities, Inc. v. Florida Public Service Commission, 848 So. 2d 307 (Fla. 1st DCA 2003).

¹⁵ Because Aloha had made these refunds without using the funds from the escrow account, by Order No. PSC-03-1410-FOF-WU, we released \$153,510 from the escrow account to Aloha.

¹⁶ The Order approving the Settlement Agreement was issued in three dockets: 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

However, even before Phase I rates could be implemented, the Utility was sold to the FGUA, and the closing took place on February 27, 2009. With the occurrence of the sale, Aloha has not and cannot comply with the terms of the Settlement Agreement. In its Motion for Contingent Release of Escrow Monies Aloha, filed on February 19, 2009, and at the April 21, 2009, Agenda Conference, Aloha argued that a sale to a governmental authority must be approved as a matter of right pursuant to Section 367.071(4)(a), F.S.; and, that being so, Aloha argued that we lost jurisdiction of the escrow agreement and that the only remaining action for us to take was to release the escrow funds to Aloha.

In its response filed on February 26, 2009, OPC argued that because the terms of the Settlement Agreement have not been satisfied, the funds should not be released to Aloha. Moreover, at the April 21, 2009, Agenda Conference, because the funds were derived from the 15.95 percent interim rate increase which we found to be unwarranted, OPC argued that we should grant the customers' Motion to Establish a Rate Stabilization Escrow Account. In that Motion, the customers request the Commission to transfer control of the refund escrow account to the FGUA, to be held by it or its successor in trust for the benefit of the customers to offset a future rate increase.

Although a transfer to a governmental authority must be approved as a matter of right pursuant to Section 367.071(4)(a), F.S., that does not mean that we lose jurisdiction over the escrow account. Section 367.071(2), F.S., concerning sales or transfers of utilities, states: "The transferor remains liable for any outstanding regulatory assessment fees, fines, or refunds of the utility."

Also, we find that the situation in this case is analogous to Charlotte County v. General Development Utilities, Inc., 653 So. 2d 1081 (Fla. 1st DCA 1995); Order No. PSC-01-0945-FOF-SU, issued April 16, 2001, in Docket No. 950387-SU, In re: Application for a rate increase for North Ft. Myers Division in Lee County by Florida Cities Water Company – Lee County Division (Florida Cities Order); and Order No. 18714, issued January 21, 1988, in Docket 861627-WS, In re: Application for approval of the purchase of Du-Lay Company, Inc. by the City of Jacksonville in Duval County, Florida (Du-Lay Order).¹⁷ In the Charlotte County case, Charlotte County, a bulk-water purchaser from General Development Utilities, Inc. (GDU), initially filed its complaint against GDU in Circuit Court after Charlotte County acquired GDU's North Port facility through eminent domain and the sale had been acknowledged by this Commission. The complaint alleged that Charlotte County was seeking damages for water service overcharges that occurred over an 18-month period when GDU was subject to the regulatory jurisdiction of this Commission. GDU filed a Motion to Abate, and the Circuit Court granted the Motion to Abate to allow this Commission to determine whether we had jurisdiction

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.

¹⁷ See also, Order No. PSC-05-0953-FOF-WU, issued October 6, 2005, in Docket No. 050314-WU, In re: Application for transfer of facilities operated under Certificate 434-W in Highlands County from Sebring Ridge Utilities, Inc. to City of Avon Park. In this Order, we approved the transfer as a matter of right, but noted that we continued to have jurisdiction over a billing dispute which arose before the transfer and had not yet been resolved.

over the cause. We determined that we did have jurisdiction, and Charlotte County appealed. The First District Court of Appeals affirmed our decision.

In the Florida Cities Order, after remand and a second hearing, we determined that the rates implemented by Florida Cities, subject to refund, were higher than the final approved rates. By our Final Order on Remand, issued on April 8, 1999, we ordered Florida Cities to refund with interest the difference between the implemented rates and the final rates. One week later, Florida Cities filed its application to transfer all of its facilities to FGUA, which transfer was finalized on April 15, 1999. In the Order approving the transfer issued on December 7, 2000, we noted that the wastewater rate case was still open and that Florida Cities remained responsible for the completion of the refund. Moreover, we noted:

[B]oth the Final Order on Remand and Rule 25-30.360(8), Florida Administrative Code, state that any unclaimed refunds are to be treated as CIAC. Nevertheless, circumstances have changed since the Final Order on remand. When we issued that Order, the utility was still in existence and providing service to customers. Therefore crediting the unclaimed refunds to the CIAC account would have reduced the utility rate base and benefitted the general body of rate payers. We find that both the Final Order on Remand and the Rule contemplate that the utility would be in existence after the unclaimed refunds have been addressed. We further find that the rule was drafted so that the customers of the utility would receive the maximum benefit of any refunds to include the unclaimed refunds. Moreover, Section 367.081(6), Florida Statutes, provides that we “shall provide by rule for the disposition of any funds not refunded, but in no event shall such funds accrue to the benefit of the utility.” However, with the subsequent sale of the utility, and under the terms of the sale agreement, any funds deposited in the CIAC account would go directly to the shareholders and thus enure to the benefit of the utility.

Order No. PSC-01-0945-FOF-SU, p. 5.

Finally, in the Du-Lay Order, we noted that the utility had been acquired by the City of Jacksonville on December 29, 1986, but at that time a docket was pending on whether certain customers were entitled to a refund for service rendered from September 23, 1985, through December 31, 1986. We concluded that acknowledgement of the sale of the utility in no way relieved the utility of its responsibilities to perform the refund we determined to be appropriate for that period.

Because the funds at issue here were collected from Aloha’s customers and were deposited in the escrow account prior to the sale of Aloha to the FGUA, the funds remain under our jurisdiction and we have authority to determine their proper disposition.

B. Disposition of Escrow Account Funds

Pursuant to the Interim Rate Order, Aloha was authorized to collect interim rates subject to refund with interest, pending a determination of whether a refund would be required. In accordance with the Interim Rate Order, Aloha chose to create an escrow account, and began collecting the interim rates in January 2002, and depositing 15.95 percent of monthly revenues in the account.

Section 367.082, F.S., governs the setting of interim rates for water and wastewater utilities. According to paragraph (2)(a), interim rates must be designed to bring the utility up to the minimum of its last authorized rate of return. Section 367.082(4), F.S., sets forth guidelines for the determination of any interim refund, which include the following:

Any refund ordered by the commission shall be calculated to reduce the rate of return of the utility or regulated company during the pendency of the proceeding to the same level within the range of the newly authorized rate of return which is found fair and reasonable on a prospective basis

Aloha collected interim rates for 19 months from January 2002 through July 2003. Because of the stay on appeal of the First Final Order, Aloha continued to collect the full 15.95 percent increase for the whole appeal period, even though the First Final Order, issued April 30, 2002, had found that Aloha was not entitled to any increase and had been affirmed on appeal. We found that this was not appropriate. We first addressed the issue of additional refunds in the PAA Refund Order, issued February 5, 2004. However, Aloha protested the PAA Refund Order, requested a formal evidentiary proceeding, and requested that the petition be transferred to the Division of Administrative Hearings (DOAH). The Utility raised five issues concerning our decision to require additional refunds.

Because there appeared to be no disputed issues of material fact, we denied Aloha's request for a Section 120.57(1), F.S., formal evidentiary proceeding in Order No. PSC-04-0614-PCO-WU, issued June 21, 2004. Instead, we directed the matter be set for an informal proceeding pursuant to Section 120.57(2), F.S., and required briefs to be filed by July 1, 2004, on the issues raised by Aloha. As a result, the Utility's request for the case to be transferred to DOAH became moot. Aloha and OPC filed briefs on July 1, 2004.

Pursuant to the Second Final Order, issued October 22, 2004, we directed Aloha to make additional refunds; Aloha appealed the additional required refunds to the First DCA. However, pursuant to the March 2006 Settlement Agreement between Aloha, OPC, individual customer intervenors, and non-intervenor customers of the Better Water Now Committee, the Utility agreed to dismiss its refund appeal. Moreover, pursuant to the Settlement Agreement, the escrowed funds for the appeal period were to be disposed of as follows:

The amount that would ordinarily be refunded (approximately \$290,000) will be reduced by the documented cost (up to \$45,000) of preparing the Conceptual Cost Estimate. The balance will remain in escrow, earning interest, until the Phase III

rates¹⁸ take effect. At that time, the funds in escrow, including accrued interest, will be released to Aloha and Aloha will record a corresponding amount as a contribution-in-aid-of construction.¹⁹

By Order No. PSC-06-0270-AS-WU, issued April 5, 2006, we approved the Settlement Agreement. Since that date, the Utility has not requested reimbursement of any cost associated with preparing the Conceptual Cost Estimate, nor has it provided any support documentation for such costs. On March 24, 2009, our staff requested that Aloha provide such support documentation by the close of business on Monday, March 30, 2009. On March 25, 2009, the Utility's attorney responded as follows: "I have passed your request on to the Representatives of my client. They are currently considering your request. However it will take until at least mid next week for us to respond to you. I will get back to you then." On April 5, 2009, counsel of Aloha responded as follows: "[w]e have considered your request below as promised last week. However it is Aloha's position that the Florida Public Service Commission has no jurisdiction over the monies previously held in escrow including any authority to dispense or allocate any part of those monies. We had hoped this matter would be resolved simply in accord with the clear intent of the Settlement Agreement. However the matter is now before the Circuit Court where it belongs and where these issues will be resolved."

To date, we have not received any support documentation for the Conceptual Cost Estimate, and there have been no further disbursements from the interim rate revenues²⁰ deposited in the escrow account. Further, we note that Section 367.071(4)(a), F.S., which governs transfers, states, that in the event of a transfer: "Interim rates, if previously approved by the commission, must be discontinued, and any money collected pursuant to interim rate relief must be refunded to the customers of the utility with interest." Further, Section 367.081(6), F.S., states that we "shall provide by rule for the disposition of any funds not refunded, but in no event shall such funds accrue to the benefit of the utility." Based on the above requirements, and noting that all the funds in this escrow account come from interim rates, we find that the full amount of the interim revenues remaining in the escrow account shall be used for the benefit of the customers.

¹⁸ Phase I rates were to be temporary rates during construction designed to recover the carrying cost (interest during construction) on the projected average balance of construction work in progress. These temporary rates were subject to true-up in Phase III and were to be in lieu of Aloha accruing an Allowance for Funds Used During Construction. Phase II rates were to be temporary rates during the first twenty months (more or less) the anion exchange facilities were in operation. The Phase II were also subject to true-up in Phase III and were to be designed to recover the actual or contracted cost of the anion exchange facilities. Phase III rates were to be final rates based on actual construction costs and one year of operating expense history, both of which were subject to audit and to review for reasonableness. Any over- or under-collection for Phase I and II were to be used as an offset in the first 12 months of Phase III, and Phase III rates were to be set by a proposed agency action (PAA) order within six months after Aloha's submission of actual cost data. In the event of a protest of the PAA Order, a final order was to have been entered within eight months of the protest.

¹⁹ See Order No. PSC-06-0270-AS-WU, page 5, and Settlement Agreement, page 6 of 11.

²⁰ Other than the \$153,510 approved by Order No. PSC-03-1410-FOF-WU, issued December 5, 2003.

C. Rate Stabilization Escrow Account

On March 19, 2009, certain Aloha customers filed Customer Intervenors' and Petitioners' Motion to Establish a Rate Stabilization Escrow Account asking this Commission to issue an order requiring the transfer of funds to FGUA for the purpose of establishing a rate stabilization escrow account for the benefit of the customers. Aloha responded on March 26, 2009, and stated that we lacked the jurisdiction over the monies and to entertain the relief requested. By letter dated March 30, 2009, a FGUA representative stated that, while the FGUA is not a party to the Commission proceeding at issue and does not take any position with respect to such proceeding, the FGUA would accept the transfer of the escrow funds if so ordered by the Commission and commit to use these funds to offset a commensurate amount of revenue which would be recovered through an increase in customer rates.

As discussed earlier, the Settlement Agreement called for the amount to be refunded to customers to be offset against a future increase as a contribution-in-aid-of construction. In the spirit of the Settlement Agreement, we find that the monies were always intended to be used for the benefit of the customers and that they were only to be released to Aloha under very specific conditions, and even then, the funds would be used to reduce Aloha's investment in the Utility plant on which it would be allowed a return. With the sale of the Utility, these terms and conditions can no longer be met, and any release of the interim revenue funds to Aloha would accrue solely to the benefit of Aloha's owners in contravention of Section 367.081(6), F.S.

Having found that these funds should be used to the benefit of the customers, the question becomes how can this best be done. As stated above, certain Aloha customers filed Customer Intervenors' and Petitioners' Motion to Establish a Rate Stabilization Escrow Account asking that we issue an order requiring the transfer of funds to FGUA for the purpose of establishing a rate stabilization escrow account for the benefit of the customers. Having considered other alternatives, and noting that the FGUA will not make refunds to the customers using the escrow account, we find that the customers' motion shall be granted. Therefore, the full amount of revenues remaining in the escrow account, approximating \$373,803 shall be transferred to FGUA for the purpose of establishing such an account for the benefit of the customers. The Better Water Now representative acknowledged that, once the escrowed funds are transferred to FGUA, we will no longer have jurisdiction over those funds and that we do not have jurisdiction over the FGUA. As noted by letter dated March 30, 2009, the FGUA has agreed that it would accept such funds if so ordered by the Commission and hold them in a "Rate Stabilization Account" for the benefit of Aloha's former customers.

D. Establishment of New Escrow Account for Interim Funds

As discussed previously, on or around March 23, 2009, the escrowed monies were removed from the escrow account initially established to secure the interim rates collected from the customers; however, on April 3, 2009, the monies (approximately \$373,803) were wired back to the account. On April 7, 2009, we received a letter from Regions Bank, the escrow agent, stating that it did not wish to continue to hold these funds, and setting certain conditions which this Commission and Aloha would be required to meet by Friday, April 17, 2009, in order to avoid the Bank's filing a complaint for interpleader, which essentially requests that the court determine the appropriate disposition of the funds. Pursuant to the Escrow Agreement, the Bank may, without reason, withdraw from the agreement upon thirty days' written notice to this Commission and to the Utility.

In light of Regions Bank's unwillingness to maintain the current escrow account, Aloha was consulted regarding whether it would be willing to select a new agent to maintain the escrowed funds pending resolution of this matter. Aloha has indicated that it is not willing to select a new escrow agent.

Section 367.082, F.S., requires that interim funds must be collected under bond, escrow, letter of credit, or corporate undertaking, subject to refund with interest at a rate ordered by the Commission. Because of the above circumstances, we find it is incumbent upon this Commission in the discharge of our statutory duties to order the interim rate funds to be transferred from the current escrow account into a different escrow account. Given Regions Bank's intent to take action to withdraw from the agreement, Aloha shall work with our staff to transfer the interim rate funds from the Regions Bank escrow account to an independent financial institution, consistent with the terms and conditions contemplated by Order No. PSC-01-2199-FOF-WU, by which the escrow account was originally established. If an independent alternative escrow agent is not selected and the funds are not transferred to a new escrow account by April 28, 2009, our staff shall take such steps as are necessary to secure a new escrow agent to maintain the interim funds pending resolution of this matter, including, if necessary, enforcing our Order in a court of competent jurisdiction.

III. DISPOSITION OF DOCKET NO. 060606-WS

Docket No. 060606-WS was established to track Aloha's progress of designing and installing the plant necessary to implement anion exchange. Order No. PSC-06-0270-AS-WU, the order approving the Settlement Agreement, directed Aloha to file quarterly progress reports which detailed the work it had completed during the preceding quarter and to provide a timetable for future activities.

As noted earlier, we have previously determined that the "FGUA is an interlocal entity created pursuant to Chapter 163, Florida Statutes, by political subdivisions of the state."²¹ We

²¹ Order No. PSC-03-1284-FOF-WS, issued November 10, 2003, in Docket No. 030932-WS, In re: Joint application for acknowledgement of sale of land and facilities of Florida Water Services Corporation in Lee County to Florida Governmental Utility Authority, and for cancellation of Certificate Nos. 306-W and 255-S.

have approved, as a matter of right, transfers of investor-owned water and wastewater utilities to FGUA.²² Pursuant to Section 367.022, F.S., systems owned, operated, managed, or controlled by governmental authorities are exempt from our jurisdiction. We do not have jurisdiction over utilities owned by the FGUA. We also note that FGUA does not plan to implement anion exchange, but rather hopes to resolve the black water problem by purchasing greater amounts of bulk water from Pasco County.

By Order No. PSC-08-0266-SC-WS, issued April 30, 2008, we required Aloha to show cause, in writing, within 21 days, why it should not be fined a total of \$15,000 for its apparent violation of Section 367.081(1), F.S., for knowingly failing to comply with Order No. PSC-06-0270-AS-WU, by failing to report delays of the anion exchange treatment facilities in its quarterly report.²³ The order states in part that "if the utility responds to the show cause order by remitting the fine, this show cause matter shall be considered resolved." Although Aloha initially requested a hearing on the show cause matter, on March 25, 2009, Aloha remitted a check for \$15,000 to satisfy the requirements of the show cause order. For these reasons, we find Docket No. 060606-WS shall be closed.

IV. DISPOSITION OF DOCKET NO. 060122-WU

At the time Docket No. 060122-WU was opened, Aloha had been exceeding its Southwest Florida Water Management District water use permit (WUP) limits. It appeared that Aloha needed to purchase approximately 1.5 million gallons of water per day in order to meet the needs of current and future customers. Aloha had contracted to purchase this water from Pasco County, and expected there would be significant costs associated with the purchase of this water and the installation and operation of related chloramination facilities.

As part of the negotiations between the parties, on February 13, 2006, OPC and Aloha filed a Joint Petition to Approve Stipulation on Procedure. The Stipulation on Procedure formalized an agreement between Aloha and OPC regarding the procedure to be followed and the issues to be addressed in the event Aloha filed a future limited proceeding to recover the costs of purchasing water from Pasco County, and the cost of installing and operating related chloramination facilities. The Joint Petition was approved pursuant to Order No. PSC-06-0169-S-WU, issued March 1, 2006.

²² Order No. PSC-00-2351-FOF-WS, issued December 7, 2000, in Docket No. 990489-WS, In re: Application by Florida Cities Water Company, holder of Certificate Nos. 027-W and 024-S in Lee County and 007-W and 003-S in Brevard County, and Poinciana Utilities, Inc., holder of Certificate Nos. 146-W and 103-S in Polk and Osceola Counties, for transfer of facilities to Florida Governmental Utility Authority and cancellation of Certificate Nos. 027-W, 024-S, 007-W, 003-S, 146-W, and 103-S.; and Order No. PSC-03-1284-FOF-WS, issued November 10, 2003, in Docket No. 030932-WS, In re: Joint application for acknowledgement of sale of land and facilities of Florida Water Services Corporation in Lee County to Florida Governmental Utility Authority, and for cancellation of Certificate Nos. 306-W and 255-S.

²³ 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.

To address Aloha's excess withdrawals, on October 26, 2004, Aloha entered into a Bulk Water Agreement with Pasco County (County), wherein it contracted to purchase water from the County in order to meet the needs of current and future customers and eliminate excess withdrawals from its wells. On September 28, 2007, Aloha filed its application for a limited proceeding to recover the costs for the chloramination and purchased water from the County.

We considered this application at our February 12, 2008, Agenda Conference, where we heard from the Utility, OPC, and interested customers. Subsequently, we issued PAA Order No. PSC-08-0137-PAA-WU on March 3, 2008. The order allowed 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 protested the order and requested a hearing on the matter.

As indicated above, Docket No. 060122-WU has been abated several times while FGUA and Aloha negotiated the sale of Aloha's assets. Section 367.071(4)(a), F.S., directs that a request for rate relief pending before us at the time of sale is deemed to have been withdrawn. Therefore, with the sale of its facilities to FGUA, Aloha's application for a limited proceeding is deemed withdrawn by operation of law. The transfer of the facilities to FGUA further renders the stipulation moot. Accordingly, this docket shall be closed.

V. DISPOSITION OF DOCKET NO. 090120-WS

A. Transfer of Aloha's water and wastewater facilities to FGUA

On March 11, 2009, Aloha and FGUA filed a joint application to transfer the Utility's service territory and facilities to FGUA pursuant to Section 367.071(4)(a), F.S., and Rule 25-30.037(4), Florida Administrative Code (F.A.C.), and to cancel Certificate Nos. 136-W and 97-S. We determined FGUA to be a governmental authority in previous dockets.²⁴ The actual closing of the transfer took place on February 27, 2009. Therefore, we find that February 27, 2009, is the effective date of the transfer. Pursuant to Section 367.071(4), F.S., the transfer of facilities to a governmental authority shall be approved as a matter of right. As such, no notice to customers of the transfer is required and no filing fees apply.

The application contains a statement that the Utility has credited customer deposits to final bills or refunded excess deposits to the customers. However, at the April 21, 2009, Agenda Conference, discussion by the parties and staff disclosed that FGUA took possession at closing of the remaining deposits. The application stated that the buyer obtained the Utility's most

²⁴ See Order No. PSC-03-1284-FOF-WS, issued November 10, 2003, in Docket No. 030932-WS, In re: Joint application for acknowledgement of sale of land and facilities of Florida Water Services Corporation in Lee County to Florida Governmental Utility Authority, and for cancellation of Certificate Nos. 306-W and 255-S, and Order No. PSC-00-2351-FOF-WS, issued December 7, 2000, in Docket No. 990489-WS, In re: Application by Florida Cities Water Company, holder of Certificate Nos. 027-W and 024-S in Lee County and 0007-W and 0003-S in Brevard County, and Poinciana Utilities, Inc., holder of Certificate Nos. 146-W and 103-S in Polk and Osceola Counties, for transfer of facilities to Florida Governmental Utility Authority and Cancellation of Certificate Nos. 027-W, 024-S, 007-W, 003-S, 146-W, and 103-S.

recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction.

Pursuant to Rule 25-30.120, F.A.C., the Utility's regulatory assessment fees (RAFs) for 2008 and all prior years have been paid. On April 6, 2009, Aloha paid \$48,057 in RAFs for the period from January 1, 2009 through the February 27, 2009, closing date. The Utility filed its annual reports for 2007 and prior years. As discussed later, Aloha has not filed its 2008 annual report.

Based on the above, we find that the transfer of the Aloha water and wastewater facilities to the FGUA shall be approved as a matter of right, pursuant to Section 367.071(4)(a), F.S., effective February 27, 2009. Consistent with Rule 25-30.037, F.A.C., upon the disposition of any outstanding RAFs, fines or refunds owed, and the completion of all pending proceedings before us, Certificate Nos. 136-W and 97-S shall be cancelled.

B. Filing of Aloha's 2008 Annual Report

Water and wastewater utilities under our jurisdiction are required to file an annual report in accordance with Rule 25-30.110(3), F.A.C., which states that "[t]he obligation to file an annual report for any year shall apply to any utility which is subject to this Commission's jurisdiction as of December 31 of that year. . . ." Rule 25-30.110(3)(a), F.A.C., requires the annual report to be filed by March 31 of the following year.

One of the ways in which we use the annual report is to verify that the revenue on which a company's RAF was based is accurate. We note that Aloha paid its RAFs for 2008, but the amount is less than that paid in 2007. We believe it is important to have additional verification of the 2008 revenue. The 2008 wastewater RAF paid was \$301,478, and the 2008 water RAF paid was \$146,368. The 2007 wastewater RAF paid was \$304,047, and the 2007 water RAF paid was \$150,877. The total difference for water and wastewater is \$7,078, or a decrease of 1.56 percent overall from 2007 to 2008.

Aloha has not requested a rule waiver for the filing of an annual report. On March 27, 2009, Commission staff advised Aloha that it would either need to file its 2008 annual report by March 31, or request an extension by sending a letter to us. No extension was requested. On March 31, 2009, counsel for Aloha indicated the Utility did not intend to file an annual report for 2008.

Rule 25-30.110(6), F.A.C., provides for a penalty to be assessed if a utility does not file an annual report or request an extension. The rule states that:

[t]he Commission may, in its discretion, impose penalties for noncompliance that are greater or lesser than provided herein; such as in cases involving a flagrant disregard for the requirements of this rule or repeated violations of this rule. No final determination of noncompliance or assessment of penalty shall be made by the Commission except after notice and an opportunity to be heard, as provided by applicable law. Rule 25-30.110(6)(c), F.A.C.

The penalty for a Class A utility is \$25 per day. See Rule 25-30.110(7)(b)3., F.A.C. The rule also provides for interest to be charged if a penalty is not paid within 30 days after its assessment. See Rule 25-30.110(6)(d), F.A.C.

Aloha has filed its annual reports in a timely manner in the past. Thus, there is no evidence of flagrant disregard or repeated violations. We find that the Utility shall be given an opportunity to file the annual report no less than 30 days from our vote on this issue, or by May 21, 2009. If Aloha does so, no penalty shall be assessed. However, if the report is not filed by that date, the penalty shall accrue beginning with the due date, March 31, 2009. Interest shall accrue 30 days after May 21, or beginning June 20, 2009.

At our April 21, 2009, Agenda Conference, Aloha stated that it would provide certain pages from the Annual Report which would be necessary for Commission staff to verify the RAFs for 2009, namely, pages W-3, S-3, W-9, S-9, the cover sheet, and the affirmation. Upon timely receipt of this information, the 2008 Annual Report shall be deemed filed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Customer Intervenors' and Petitioners' Motion to Establish a Rate Stabilization Escrow Account in Docket No. 010503-WU is approved, and the full amount of the escrowed interim revenues and associated interest shall be transferred to the Florida Governmental Utility Authority for the establishment of a Rate Stabilization Escrow Account for the benefit of Aloha's Seven Springs system former customers. It is further

ORDERED that the provisions of this Order concerning the disposition and transfer of the interim rate revenues in the escrow account to the Florida Governmental Utility Authority, 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 Docket No. 010503-WU shall remain open pending the final disposition of the interim rate revenues in the escrow account and the transfer of the funds to the Florida Governmental Utility Authority for the establishment of a Rate Stabilization Escrow Account. It is further

ORDERED that Docket No. 010503-WU shall be closed administratively once the Rate Stabilization Escrow Account has been established. It is further

ORDERED that Aloha Utilities, Inc. shall work with Commission staff to transfer the interim rate funds from the Regions Bank escrow account to an independent financial institution, consistent with the terms and conditions contemplated by Order No. PSC-01-2199-FOF-WU, by which the escrow account was originally established. It is further

ORDERED that if an independent alternative escrow agent is not selected and the funds are not transferred to a new escrow account by April 28, 2009, our staff shall take such steps as are necessary to secure a new escrow agent to maintain the interim funds pending resolution of this matter, including, if necessary, enforcing our Order in a court of competent jurisdiction. It is further

ORDERED that the transfer of Aloha Utilities, Inc.'s water and wastewater facilities to the Florida Governmental Utility Authority shall be approved. It is further

ORDERED that, consistent with Rule 25-30.037, F.A.C., upon the disposition of any outstanding regulatory assessment fees, fines or refunds owed, and the completion of all pending proceedings before us, Certificate Nos. 136-W and 97-S shall be cancelled. It is further

ORDERED that Aloha shall provide the information and schedules set forth in the body of this Order to satisfy the requirement for the filing of its 2008 annual report. It is further

ORDERED that Docket No. 090120-WS shall remain open until all requirements pursuant to Rule 25-30.037, F.A.C., are met, and until there is a final disposition of all issues in Docket No. 010503-WU, and until Aloha Utilities, Inc. files the information and schedules set forth in the body of this Order to satisfy the requirement for the filing of its 2008 annual report. It is further

ORDERED that Docket No. 060606-WS shall be closed. It is further

ORDERED that Docket No. 060122-WU shall be closed.

By ORDER of the Florida Public Service Commission this 14th day of May, 2009.



ANN COLE
Commission Clerk

(S E A L)

RRJ/JH

CONCURRENCE BY: COMMISSIONER SKOP

COMMISSIONER SKOP, concurring specially with comment:

I concur with the majority decision as to the refund amount, but hold that it would have been preferable for the Commission to order that this amount be refunded directly to the customers of record as of the closing date of the sale. In my judgment, adopting the Committee for Better Water Now (CBWN) request that the subject funds be placed into a “Rate Stabilization Escrow Account” held by Florida Governmental Utility Authority (FGUA) was not the best alternative for the following reasons:

CBWN Lacks Legal Standing to Adversely Bind All Customers to the Requested Outcome

The CBWN is not a recognized legal entity, and does not represent the entire class of customers who paid interim rates which are the subject of the funds currently held in escrow. Accordingly, CBWN lacks the legal standing to adversely bind the entire class of customers to the requested outcome. While the Commission typically affords great deference to customer requests, the Office of Public Counsel (OPC) has a fiduciary duty to represent the interests of all affected customers. In the instant case, it should have been readily apparent to OPC that a potential conflict could arise to the extent that CBWN does not represent the entire class of customers and that all affected customers may not wish to be bound by the CBWN request. Accordingly, ordering a direct refund represented the preferable approach in view of the potential conflict.

The Commission Lacks Jurisdiction over FGUA

The Commission lacks jurisdiction over FGUA. Therefore, the Commission has no ability to ensure that the funds placed into the “Rate Stabilization Escrow Account” are prudently spent and properly accounted for on a forward going basis. Furthermore, the Commission has no ability to arbitrate any disputes that may arise with respect to the funds placed in the “Rate Stabilization Escrow Account”. In the instant case, the lack of jurisdiction over FGUA also stands in direct conflict with the fiduciary duty of the Commission to ensure the security and disposition of the funds held in escrow. Based upon the above, I firmly believe that the Commission should have exercised its jurisdiction to order a direct refund of the funds held in escrow in lieu of entrusting such funds to an entity over which the Commission has no jurisdiction. Accordingly, ordering a direct refund would have resulted in the best possible outcome consistent with the fiduciary duty of the Commission and the lack of jurisdiction over FGUA.

In closing, it is extremely disappointing that FGUA declined to appear before the Commission during the course of this proceeding. It is equally disappointing that FGUA would not agree to provide a direct refund of the escrowed funds, via a one-time credit, on customer bills.²⁵ In this regard, the demonstrated lack of cooperation by FGUA further illustrates the

²⁵ Such an agreement by FGUA would have provided the Commission with an expeditious method of refunding the escrowed funds directly to the customers of record as of the closing date of the sale.

perils of placing the escrow funds into a “Rate Stabilization Escrow Account” held by FGUA. Furthermore, in the instant case, it is interesting to note that FGUA would only support the creation of the “Rate Stabilization Escrow Account”. Ironically, the self-serving position taken by FGUA does nothing more than serve to camouflage the true magnitude of FGUA rate increases which are the subject of numerous customer complaints. For these reasons, I would hold that it would have been preferable for the Commission to order the direct refund of the funds held in escrow to the customers of record as of the closing date of the sale.²⁶

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 concerning the transfer of the escrowed interim rate funds to the Florida Governmental Utility Authority (FGUA) for establishment of a Rate Stabilization Escrow Account discussed herein 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 June 4, 2009. 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.

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

²⁶ The direct refund could have been accomplished by the Commission ordering Aloha to make the required refund. The preferable approach, however, would have been to obtain FGUA agreement to make a direct refund of the escrowed funds, to customers of record as of the closing date of the sale, via a one-time credit on customer bills. Alternatively, the Commission could have conditioned the certificate transfer on the making of the refund ordered by the Commission.

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 the Commission's decision regarding the selection of an alternative escrow agent, as set forth in the body of 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.

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.