

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

May 30, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (JAEGER) *[Handwritten initials]*
DIVISION OF WATER AND WASTEWATER (CHASE, WILLIS) *[Handwritten initials]*

RE: DOCKET NO. 950615-SU - ALOHA UTILITIES, INC. -
APPLICATION FOR APPROVAL OF REUSE PROJECT PLAN AND
INCREASE IN WASTEWATER RATE

DOCKET NO. 960545-WS - INVESTIGATION OF UTILITY RATES OF
ALOHA UTILITIES, INC. IN PASCO COUNTY

COUNTY: PASCO

AGENDA: JUNE 11, 1996 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\950615-R.RCM

DOCUMENT NUMBER-DATE
05924 MAY 30 1996
FPSC-RECORDS/REPORTING

CASE 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. Aloha serves approximately 7,000 water customers and 6,800 wastewater customers in its Seven Springs service area. The utility purchases approximately 80% of its total water supply for resale to its Seven Springs customers. Currently, wastewater is treated by a 1.2 million gallons per day (mgd) extended aeration plant that discharges to a number of percolation/evaporation ponds.

The service area is located within the Northern Tampa Bay Water Use Caution Area as designated by the Southwest Florida Water Management District (SWFWMD). Critical water supply concerns have been identified by SWFWMD within this area.

Effluent from Aloha's Seven Springs 1.2 mgd wastewater treatment facility is currently being disposed to ground water by three percolation ponds located adjacent to the plant. The DEP first became concerned about the operational condition of these ponds in 1989. According to the DEP, the pond effluent levels were continuously near the top of the berms. The DEP also believed that the ponds were leaching effluent into adjacent drainage ditches and then to surface waters.

Because the percolation ponds did not appear to be operating properly, the DEP, in 1993, filed suit against Aloha alleging that the utility's Seven Springs wastewater treatment plant had effluent discharges into nearby surface waters which, if occurring, was in violation of the plant's operating permit. On March 25, 1994, the DEP and Aloha entered into a Consent Final Judgment wherein Aloha agreed to add 400,000 gallons per day (gpd) in additional effluent disposal capacity before December 31, 1994 and pay a \$19,500 fine. The Consent Final Judgment also limited the number of new connections to 200 until 400,000 gpd of additional effluent disposal capacity was placed into service.

As a means of complying with the Consent Final Judgment, the utility proposed a project for the disposal of wastewater which would be constructed in three phases over a period of 24 months. The stated goal of the project plan is to ultimately dispose of all effluent from the Seven Springs plant via reuse.

During Phase I, the existing wastewater treatment plant will be modified to provide an increased level of treatment to produce irrigation quality water suitable for human contact. In addition, a force main and other site facilities will be constructed and extended to the disposal site. Disposal will be accomplished by

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slow rate land application on nearby property and will have an initial capacity of 400,000 gpd. The estimated construction cost for Phase I is approximately \$3,147,000.

The utility has entered into what was designated a reuse agreement with James W. Mitchell, the owner of agricultural land (the Mitchell property) nearby which is suitable as a disposal site. This agreement gives Aloha access to approximately 400 acres of property and provides for a least 1.2 mgd of disposal capacity. The term of the agreement is five years, with no specific charge outlined for the receipt of the effluent. A portion of the effluent will replace irrigation water pumped from wells through the property.

In its filing, the utility indicated that Phase II construction would begin immediately upon completion of Phase I, and would cost an estimated \$471,000. In this phase, the plan is for the effluent disposal site facilities to be expanded on the Mitchell property to provide for disposal of an additional 500,000 gpd of effluent.

The utility indicated that Phase III construction would start immediately upon completion of Phase II. The utility plans to extend the effluent force main and complete additional disposal site facilities to increase disposal capacity by an additional 300,000 gpd. With the completion of Phase III, the utility would have approximately 1.2 mgd of disposal capacity, which would match the capacity of the treatment plant. In addition, the force main would be extended to a point where reuse customers could accept treated irrigation water, further increasing the disposal capacity of the system. The estimated cost for Phase III is approximately \$1,225,000.

On June 1, 1995, Aloha applied for approval of these three phases in what it designated as a reuse project plan and an increase in rates for wastewater service to its Seven Springs customers purportedly pursuant to Section 367.0817, Florida Statutes. However, because of deficiencies in the application, the official filing date was established as July 13, 1995, the date on which the utility corrected the deficiencies.

Although Aloha filed this plan pursuant to the provisions of Section 367.0817 (entitled "Reuse Projects"), Florida Statutes, review of the plan showed that, at least in the initial phases, it is not in fact a reuse plan but just a new plan for disposing of effluent. Therefore, instead of reviewing the plan under the provisions of Section 367.0817, Florida Statutes, the Commission reviewed the filing as if it was made under Section 367.0822 (entitled "Limited proceedings"), Florida Statutes, and by Proposed

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Agency Action (PAA) Order No. PSC-95-1605-FOF-SU, the Commission proposed to approve only Phase I of the project.

The PAA Order was issued December 28, 1995, and on January 10, 1996, Representative Mike Fasano timely filed his protest and petition requesting an administrative hearing. An administrative hearing is now scheduled for September 9 and 10, 1996.

On April 30, 1996, Mr. James Goldberg, President of the Wyndtree Master Community Association, filed a petition of some 262 individual customers, all within Aloha's Seven Springs service area requesting that the Commission investigate the utility rates, water quality and other irregularities connected with Aloha Utilities, Inc. The Commission assigned Docket No. 960545-WS to this request.

Staff has contacted Mr. Goldberg and inquired as to the specific desires of the customers with regard to this petition and request for investigation and has learned that Mr. Goldberg's primary concerns are that the customers be given an opportunity to present live evidence and comments to the Commissioners concerning the quality of water and the appropriateness of a rate increase in wastewater given those water quality concerns. In addition, the customers are concerned about the effect that the three phases of construction for the "reuse" project will have on the customers' rates, and want some assurance that there will be a check to see how much money is actually spent. Further, Mr. Goldberg believes that the residential customers are receiving a very indirect benefit from "reuse" while the golf courses and commercial customers receive the direct benefit, and yet the residential customers are the ones who will pay the costs.

The attorney for Aloha also contacted Mr. Goldberg, and after talking with him, filed a Motion to Consolidate on May 17, 1996. This recommendation addresses Aloha's Motion to Consolidate.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Motion of Aloha Utilities, Inc., to Consolidate Docket Nos. 950615-SU and 960545-WS be granted?

RECOMMENDATION: Yes. (JAEGER)

STAFF ANALYSIS: In its Motion to Consolidate, Aloha asserts that the separate matters currently pending before the PSC involve similar issues of law and fact, and while there are not currently identical parties to the matter, Aloha is willing to agree to have the petitioners act as intervenors in the ongoing proceeding before the PSC or simply provide testimony at hearing and to recognize the additional issue of water quality and the appropriateness of the increase in wastewater rates given the water quality concerns to be identified and discussed by the persons who signed the petition. Aloha would agree that such evidence could be submitted by these persons, either through prefiled testimony and exhibits (as intervenors) or through oral customer testimony at hearing (as concerned customers). Aloha also believes that consolidation will promote the just, speedy and inexpensive resolution of both proceedings and would not unduly prejudice the rights of any party.

Aloha has contacted both Mr. James Goldberg, President of Wyndtree Master Community Association, who filed the petition, and Representative Mike Fasano, the customer protestant in Docket No. 950615-SU, and states that both have no objection to consolidation of these proceedings. Also, Staff has contacted Mr. James Goldberg, and he states that both he and Representative Fasano agree that the cases should be consolidated, and the Commission should grant Aloha's Motion to Consolidate.

In its motion, Aloha specifically requests that the Florida Public Service Commission consolidate Docket Nos. 950615-SU and 960545-WS and allow evidence to be presented by the persons who signed the petition either as intervenors through prefiled testimony and exhibits due to be filed with the Commission on July 10, 1996, or as concerned customers, orally, at hearing on the issues of water quality of Aloha's Seven Springs system and its effect on the proposed wastewater rate increase resulting from the reuse plan filed in Docket No. 950615-SU.

Rule 25-22.035(2), Florida Administrative Code, states:

Consolidation: If there are separate matters before the presiding officer which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy and inexpensive resolution of

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the proceedings, and would not unduly prejudice the rights of a party. Any party to a proceeding may request that it be consolidated with proceedings, or the presiding officer may on his or her own initiative order separate proceedings to be consolidated.

Staff believes this situation meets the criteria set forth in Rule 25-22.035(2), Florida Administrative Code, and Dockets Nos. 950615-SU and 960545-WS should be consolidated as requested by Aloha's Motion to Consolidate filed on May 17, 1996. First, in the hearing for the rate proceeding, the customers will be allowed to testify about the quality of service. Secondly, both Representative Fasano, the customer protestor in Docket No. 950615-SU, and Mr. Goldberg, the President of the Wyndtree Master Community Association, whose residents filed the petition in Docket No. 960545-WS, agree that consolidation is appropriate.

The Rule specifies that the dockets may be consolidated if it appears that consolidation would promote the just, speedy and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party. Staff believes that consolidation of the dockets is the most efficient manner in which to address the issue of quality of service. It will eliminate the need for a second hearing and result in a quicker resolution of the issues. Further, with the exception that the petitioners on quality service may have less time in which to file their testimony, staff does not believe that consolidation of the dockets will prejudice the rights of any party. Inasmuch as the three phases of what Aloha designates as its reuse project will be fully reviewed in Docket No. 950615-SU (styled as a reuse case, but designated by the Commission as a limited proceeding), staff believes it is more appropriate to resolve the issue of quality of service at the hearing scheduled for September 9 and 10, 1996.

Based on the above, staff recommends that Aloha's Motion to Consolidate Dockets Nos. 950615-SU and 960545-WS be granted.

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ISSUE 2: If Issue 1 is approved, should the petitioners in Docket No. 960545-WS be required to prefile testimony and exhibits, or, may customers orally present testimony and exhibits at the hearing on the issues of the quality of Aloha's Seven Springs system and its effect on the proposed wastewater rate increase resulting from the reuse plan filed in Docket No. 950615-SU.

RECOMMENDATION: If the Commission approves Issue 1, the protestors and petitioners shall prefile written testimony by July 10, 1996, and their prehearing statements by August 12, 1996, as required by the prehearing officer in Order No. PSC-96-0178-PCO-SU. However, customers should be allowed to present oral testimony at hearing on the water quality of the Seven Springs system, and its effect on the proposed wastewater rate increase resulting from the reuse plan filed in Docket No. 950615-SU. (JAEGER, WILLIS, CHASE)

STAFF ANALYSIS: Rule 25-22.048, Florida Administrative Code, states that "[a] presiding officer may require all parties to prefile testimony and shall provide reasonable notice to the parties of the date testimony shall be prefiled." By Order No. PSC-96-0178-PCO-SU, the Prehearing Officer has required the prefiled testimony of the protestors to be filed by July 10, 1996, and the prehearing statements to be filed by August 12, 1996.

If the Commission approves Issue 1, staff believes that the petitioners in Docket No. 960545-WS should also be required to prefile their testimony and prehearing statements on these dates. Also any rebuttal testimony to the prefiled testimony shall be filed on August 19, 1996. However, the customers should be allowed to present oral testimony at the hearing, on the water quality of Aloha's Seven Springs system, and its effect on the proposed wastewater rate increase resulting from the reuse plan filed in Docket No. 950615-SU.

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ISSUE 3: Should Docket No. 960545-WS be closed?

RECOMMENDATION: No. (JAEGER, WILLIS, CHASE)

STAFF ANALYSIS: If the Commission approves Issue 1 of staff's recommendation, then Docket No. 960545-WS should remain open. Docket No. 950615-SU is styled as a reuse plan, and Aloha has requested that it be processed as a reuse project, but with only the wastewater rates being affected. The petitions in Docket No. 960545-WS, appear to address primarily the water quality of the Seven Springs system. Therefore, while all the parties agree that consolidation will promote the just, speedy, and inexpensive resolution of the proceedings, staff believes that it will be easier to address the issues if both dockets remain open. Therefore, staff recommends that all filings be combined in the file for Docket No. 950615-SU, but that both dockets remain open.