

LAW OFFICES

ROSE, SUNDBSTROM & BENTLEY, LLP

2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301

(904) 877-6555

FILE 1207

CHRIS H. BENTLEY, P.A.
F. MARSHALL DETERING
BRIAN L. DOSTER
MARTIN S. FRIEDMAN, P.A.
JOHN R. JENKINS, P.A.
STEVEN T. MINDLIN, P.A.
ROBERT M. C. ROSE
DAREN L. SHIPPY
WILLIAM E. SUNDBSTROM, P.A.
DANN D. TREMORI, P.A.
JOHN L. WHARTON

MAILING ADDRESS
POST OFFICE BOX 1567
TALLAHASSEE, FLORIDA 32302-1567
TELEPHONE (904) 896-4029

April 16, 1997

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Aloha Utilities, Inc.; Docket No. 960878-WS
Proposed Rate Reduction to Reflect a Decrease in Purchased
Water and Wastewater Costs to PSC Regulated Utilities By Pasco
County
Our File No. 26038.01

Dear Ms. Bayo:

As a result of the Commission's action at its April 1, 1997 agenda conference at which the Staff was directed to review the settlement offer contained in my October 17th letter and to review updated 1996 information to the extent made available, I am writing to comply as best we can at this time with the Utility's obligations to the Commission and its Staff in that regard.

First of all, the Commissioners voted to have the Staff review the settlement proposal offered by the Utility prior to final Commission action on this case. I am attaching a copy of our October 17th letter in which that settlement proposal was included. While the facts leading up to the proposal itself are important to understanding the appropriateness and the effect of the settlement proposal itself, our offer for settlement was to reduce the Aloha Garden's water system rates by the entire reduced cost of all bulk water purchases. Because at that time we did not have those 1996 actual water purchases from Pasco County in hand, we utilized the purchases for the calendar year 1995 as an estimate of the proposed rate reduction instead. We now have the data concerning actual 1996 purchases of water from Pasco County. The total number of gallons purchased during that year was 105,638 thousands of gallons. Attached hereto as Attachment "A" is a calculation of the actual 1996 cost savings from April 1, 1996 to December 31, 1996, and the annualized cost savings resulting from the reduced cost to the Utility of that purchased water.

ACK
AFA
APP
CAF
CMU
CTR
EAG
LEG
LIV
OTR

DOCUMENT PREPARE
03846 APR 16 5
FPSC-RECORDS/REPORTING

Blanca S. Bayo, Director
April 16, 1997
Page 2

Based upon the calculations in Attachment "A", we now update our proposed offer of settlement based upon actual information. The gross amount of the actual cost savings for 1996 was \$11,448 for the period April 1 through December 31, 1996. The Utility is proposing to reduce rates on a going-forward basis by this amount annualized or a total of \$17,701 including recognition of reduced regulatory assessment fees. As stated in the original proposal, Aloha would be willing to reduce rates on a prospective basis for the entire amount of the cost savings, annualized on a prospective basis (\$17,701) for the Aloha Gardens water system. Such an offer would be, of course, in recognition of the fact that no refunds or rate reductions are appropriate for the Aloha Gardens sewer system and no refunds are appropriate for the Aloha Gardens water system. Of course, this would also include agreement that no reductions or refunds are appropriate for the Seven Springs water system since water purchases from Pasco County are wholly immaterial in that case.

Initially, we had noted to the Commission that the Utility's overall water operations and overall sewer operations either combined or considered separately did not generate a fair return for this Utility during 1995. We have been able to separate out the rate base and operating statements as of December 31, 1995, for the Aloha Gardens water and wastewater systems. These are enclosed as Attachment "B" hereto. As you can see, the wastewater system remains in a substantial loss even after the reduced costs from purchased bulk wastewater services. The water system, while earning below its authorized rate of return, has the potential with even relatively small changes in expenses of overearning because of its small rate base.

The Utility is unable at this time to provide detailed 1996 information concerning either the Aloha Gardens water or wastewater systems (the only ones that have any material amounts of purchased utility services in bulk from Pasco County), we will have that information with the filing of the Annual Report on May 30, 1997. Unfortunately, due to the new annual report format imposed on the Utility for the first time this year, separating system by system will not be done until that deadline. However, as is clear from the attached schedules, neither of the Utility's water and wastewater systems have historically generated above their authorized rate of return. While we believe that earnings for 1996 and this cost savings for 1996 are the issue at hand, the above settlement proposal and the attached information should be sufficient for the Staff to recommend acceptance of our proposal of

Blanca S. Bayo, Director
April 16, 1997
Page 3

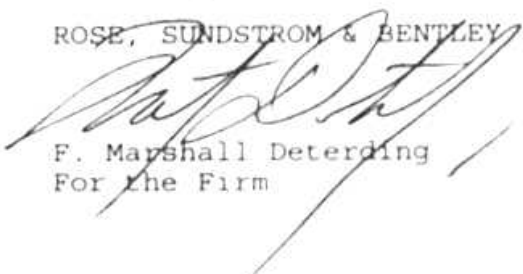
settlement of this dispute rather than going through time consuming and costly litigation which we believe ultimately would result in a decision by the courts that the Commission does not have the authority to require refunds under these circumstances nor to utilize the pass-through provisions of the statute to reduce rates on a going-forward basis without an initial determination that the Utility is actually overearning.

With the small dollars involved and only one system approaching its authorized earnings level, we believe that this settlement is in the best interest of all parties. This offer is made in hopes that this matter can be settled quickly and simply. The attractiveness of making this offer and getting Commission approval is based primarily upon the assumption that if this proposal is accepted by the Commission, that action will be taken quickly. The Utility will then supply tariff sheets and a proposed customer notice to implement this change immediately. Since this rate change is required by the Commission, and because Pasco County is likely (in keeping with its past practice) to change rates more than once in the next twelve months, this should not be considered as one of the Utility's two authorized pass-throughs under the provisions of Section 367.081(4)(e), Florida Statutes.

Should you have any further questions concerning this revision to this settlement proposal, please do not hesitate to contact me.

Sincerely,

ROSE, SUNDSTROM & BENTLEY



F. Marshall Deterding
For the Firm

FMD/lts
Enclosures

cc: Bobbie Reyes, Esquire
Connie McCaskill, CPA
Ralph Jaeger, Esquire
Mr. Stephen Watford
Robert C. Nixon, CPA

LAW OFFICES

ROSE, SUNDBSTROM & BENTLEY

A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

2548 BLAIRSTONE PINES DRIVE

TALLAHASSEE, FLORIDA 32301

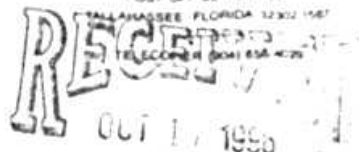
(904) 877-6555

CHRIS H. BENTLEY PA
JENNIFER S. BRUBAKER
F. MARSHALL DETERONG
BRIAN L. DOSTER
MARTIN S. FRIEDMAN PA
JOHN R. JENKINS PA
STEVEN T. MINDLIN PA
ROBERT M. C. ROSE
DAREN L. SHIPPY
WILLIAM E. SUNDBSTROM PA
DIANE D. TREMPER PA
JOHN L. WHARTON

October 17, 1996

VIA HAND DELIVERY

MAILING ADDRESS
POST OFFICE BOX 1567
TALLAHASSEE, FLORIDA 32302-1567



Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Aloha Utilities, Inc.; Docket No. 960878-WS
Proposed Rate Reduction to Reflect a Decrease in Purchased
Water and Wastewater Costs to PSC Regulated Utilities By Pasco
County
Our File No. 26038.01

Dear Ms. Bayo:

This letter is written on behalf of Aloha Utilities, Inc. in response to the Commission Show Cause Order No. PSC-96-1226-FOF-WS, dated September 27, 1996. Aloha Utilities, Inc. should not be required to reduce rates or refund monies based upon a reduction in purchased water and wastewater costs for the following general reasons:

A. The pass-through provisions of the statute upon which the Commission order relies does not authorize the Public Service Commission to require a decrease in rates because of a reduction in purchased water or wastewater costs or as a result of a reduction in any of the other categories of costs listed in the pass-through section of the Chapter 367, Florida Statutes.

B. If this statutory provision did authorize the Commission to require a negative pass-through based upon a reduction in costs, that negative pass-through or any other determination to require rate reductions must still be based upon a finding by the Commission that failure to pass that cost reduction through will cause the Utility to overearn. No such finding has been made in that order and no such finding can be made with regard to the Aloha systems without detailed inquiry as to those facts. No attempt to ascertain these facts has been undertaken.

C. Even to the extent the Commission finds that the pass-through or other statutory provisions are available to the Commission to require a reduction in rates and to the extent the

Commission finds that overearnings exist, the Commission has no authority under this statute or any other to require a retroactive reduction in rates to the date of the decrease in costs. If for no other reason, this is evident by the fact that the Commission has long held that a Utility may not implement a positive pass-through in rates retroactive to the effective date of the cost increase. Such a determination, positive or negative, plainly represents retroactive rate making and is contrary to law.

Aloha Utilities, Inc., however, believes that it can come to some agreement with the Commission to voluntarily pass-through the reduced cost, on a prospective basis, for the one system where the reduction may cause overearnings as a result of this decreased cost.

Aloha operates two separate water systems and two separate sewer systems, with separate sets of rates and totally separate physical operations within Pasco County. In order to fully understand Aloha's position in this regard, the facts and circumstances surrounding each of those systems and their purchased utility services, must be reviewed separately. Those facts are discussed below:

1. Seven Springs Water System - The Seven Springs water system purchases only a small portion of its water from Pasco County. Prior to approximately 1993, no purchases were made. In 1993 and 1994, relatively minor purchases (under 20 million gallons for each year) were made from Pasco County. In 1995, these purchases increased to 61 million gallons for the calendar year, by far the highest level ever purchased by the Utility. As a result of the addition of two additional source of supply wells by the Seven Springs water system in late 1995, the Utility has purchased from Pasco County in the first 8 months of 1996, only 2,086,000 gallons of water. This minor level of purchases is expected to be continued on a prospective basis. On an annualized basis, Aloha will therefore purchase no more than approximately 3 million gallons of water from Pasco County yearly. Even with the reduction in water costs effective October 1, 1996 (\$.16 from the rate in effect in 1995), the total impact of the reduction at 3 million gallons a year will be only \$480 on an annual basis. The reduction under any such pass-through would therefore be so immaterial as not to affect rates at all and surely cost more to process than the total reduction to be passed through.

In addition, it should be noted that the Commission has never recognized the cost of water purchased from Pasco County in the rates of the Seven Springs water system. The interconnection was made only in recent years in order to allow for emergency purchases during peak periods and as stated previously, those are anticipated to be immaterial on a going forward basis because of the addition of two new supply wells. The gallonage charge imposed on Seven Springs customers for water is substantially below the charge imposed by Pasco County.

Based on these facts, the Seven Springs water system is not appropriate for any pass-through of reductions in purchased water costs.

2. Seven Springs Sewer System - The Seven Springs sewer system has no purchased sewage treatment from Pasco County or any other entity.

3. Aloha Gardens Sewer System - The Aloha Gardens Sewer System purchases all of its sewage treatment from Pasco County. However, that system is operating at a 21% loss for calendar year 1995. Even with the reduction in costs occasioned by the reduced cost of purchased sewage treatment, that system will still operate a 4% loss on a prospective basis. Therefore, not only is the Utility not achieving its authorized rate of return, it is not even breaking even, and will not break even based upon the reduction in costs of purchased sewage treatment from Pasco County.

The rates established for this Utility are presumed reasonable until demonstrated otherwise. Neither the pass-through mechanism or any other mechanism can serve to reduce a Utility's rates so that it is kept in the same loss position as existed prior to a reduction in costs. This cannot be the conclusion reached by the Commission either as a result of the reading of the plain wording of the pass-through or other statutory sections of Chapter 367, or of general regulatory theory. Therefore, based on the above facts, no negative pass-through is appropriate for the Aloha Gardens sewer system.

4. Aloha Gardens Water System - The Aloha Gardens Water System purchases approximately 2/3 of its water from Pasco County. During calendar year 1995, the Utility experienced a return of 5.5% on its rate base. Because the Aloha Gardens water system has a relatively small rate base, the cost reduction on an annualized

Blanca S. Bayo, Director
October 17, 1996
Page 4

basis for purchased water will result in a \$16,000 savings based on 1995 purchases.

While the Utility believes that the pass-through statute does not authorize the Commission to require such a reduction, the Utility does agree that there is a potential for overearnings in 1996 as a result of this decrease in costs. It is apparent, however, that some portion of this reduced costs will only bring the Utility closer to, or up to, its authorized rate of return. However, in order to avoid responding to detailed inquiries and litigation in this matter and the costs occasioned thereby, the Utility is willing to reduce rates on a prospective basis only for the entire cost reduction based upon 1995 purchases of water in its Aloha Gardens water system. This will constitute a reduction of approximately \$16,000 to \$18,000 in annual revenue.

To the extent that the Commission proposes to require a refund for a system other than the Aloha Gardens water system and to the extent it proposes to retroactively apply any reduction based upon the reduced cost of purchased water, Aloha Utilities, Inc. requests a 120.57(1) hearing in order to address the legal and factual issues underlying any such proposed reduction.

To the extent the Commission agrees with Aloha's assessment and agrees to accept the prospective reduction in rates for the Aloha Gardens water system in settlement of this show cause proceeding, the Utility will immediately file the information necessary to pass-through a reduction in rates for the Aloha Gardens water system on a prospective basis, including all of the information, tariffs and customer notice necessary to effectuate that reduction.

The second ordering paragraph of Order No. PSC-96-1226-FOF-WS requires that each utility named in the order, file the information required by Rule 25-30.425(1)(a) through (f), Florida Administrative Code, along with a calculation of the rate reduction. Not only does the undersigned believe that this requirement is contrary to the Commission's actual decision at Agenda, but the filing of that information prior to a determination of what, if any, rate reduction is appropriate as to each Utility system is premature and a waste of the Utility's time and resources and consulting fees. Because of the substantial time and cost involved in the preparation of any such information, the Utility hereby requests a waiver of that provision of the order until such

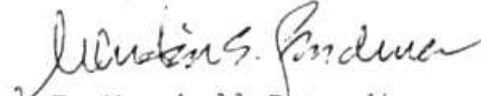
Bianca S. Bayo, Director
October 17, 1996
Page 5

time as a determination is made as to the amount, if any, of a rate reduction for the utility systems.

Should you or any members of the Staff have any questions in this regard, please let me know.

Sincerely,

ROSE, SUNDSTROM & BENTLEY


F. Marshall Deterding
For the Firm

FMD/lts
cc: Mr. Stephen Watford
Robert C. Nixon, CPA

Aloha Utilities, Inc.
Docket No. 961419-WS
Cost Savings on 1996 Gallons of Water Purchased

Month	Gallons (000's omitted)	Actual Cost Savings (1)	Annualized Cost Savings @ \$.16/thousand	Gallons Sold (000)
January	6,093		\$ 975	11,633
February	7,936		1,270	12,895
March	9,991		1,599	11,654
April	10,706	\$ 1,392	1,713	12,962
May	10,642	1,383	1,703	12,498
June	8,811	1,145	1,410	10,722
July	7,029	914	1,125	12,030
August	8,616	1,120	1,379	10,271
September	7,875	1,024	1,260	12,529
October	9,220	1,475	1,475	10,511
November	9,518	1,523	1,523	12,005
December	9,201	1,472	1,472	12,412
	<u>105,638</u>	<u>\$ 11,448</u>	<u>\$ 16,904</u>	<u>142,122</u>

Proposed rate reduction	\$ 16,904
Factor for Regulatory Assessment Fees	<u>0.955</u>
Proposed revenue reduction	<u>\$ 17,701</u>
Divide by gallons sold (000)	<u>142,122</u>
Proposed rate decrease per thousand gallons	<u>\$ 0.12</u>

- (1) \$.13/thousand gallons 04/01/96 to 09/30/96 (\$2.31 - \$2.18)
\$.16/thousand gallons 10/01/96 to 12/31/96 (\$2.31 - \$2.15)

Aloha Utilities, Inc.
Schedule of Rate Base and Rate of Return for Aloha Gardens Water System
December 31, 1995

	<u>Actual</u> <u>12/31/95</u>
Utility plant in service	\$ 835,263
Accumulated depreciation	(667,585)
Contributions in Aid of Construction	(438,245)
Accumulated amortization of CIAC	247,467
Working capital allowance	<u>51,281</u>
Rate base	<u>\$ 28,181</u>
Utility operating income (Schedule No. 2)	<u>\$ 1,537</u>
Achieved rate of return	<u>5.45%</u>

Schedule No. 1

Aloha Utilities, Inc.
Schedule of Revenue and Operating Expenses for Aloha Gardens Water System
December 31, 1995

	<u>Actual</u> <u>12/31/95</u>
<u>Revenue</u>	
Operating revenue	<u>\$ 485,805</u>
<u>Expenses</u>	
Operations & Maintenance (O&M)	410,250
Depreciation	18,022
Taxes other than income	52,654
Income taxes	<u>3,342</u>
	<u>484,268</u>
Utility operating income	<u><u>\$ 1,537</u></u>

Aloha Utilities, Inc.
Schedule of Rate Base and Rate of Return for Aloha Gardens Sewer System
December 31, 1995

	<u>Actual</u> <u>12/31/95</u>
Utility plant in service	\$ 1,350,236
Accumulated depreciation	(676,035)
Contributions in Aid of Construction (CIAC)	(324,586)
Accumulated amortization of CIAC	143,112
Working capital allowance	<u>126,529</u>
Rate base	<u>\$ 619,256</u>
Utility operating income (Schedule No. 2)	<u>\$ (130,938)</u>
Achieved rate of return	<u>-21.14%</u>

Schedule No. 1

ATTACHMENT B
PAGE 3 of 4

Aloha Utilities, Inc.
Schedule of Revenue and Operating Expenses for Aloha Gardens Sewer System
December 31, 1995

	<u>Actual 12/31/95</u>
<u>Revenue</u>	
Operating revenue	\$ 967,973
<u>Expenses</u>	
Operations & Maintenance (O&M)	1,012,235
Depreciation	30,885
Amortization of Plant Abandonment Costs	29,260
Taxes other than income	96,338
Income taxes	<u>(69,807)</u>
	<u>1,068,911</u>
Utility operating income	<u>\$ (130,938)</u>