

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

MEMORANDUM

RECEIVED

JULY 2, 1997

JUL 02 1997

9:55

FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (JAEGER)  
DIVISION OF WATER AND WASTEWATER (GILCHRIST)  
DIVISION OF ADMINISTRATION (SEWELL)

RE: DOCKET NO. 970695-WS-REQUEST FOR A SECTION 120.57(1),  
F.S., HEARING BY ALOHA UTILITIES, INC.

COUNTY: PASCO

AGENDA: JULY 15, 1997 - REGULAR - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\970695RC.RCM

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.

On June 1, 1995, Aloha filed a reuse project plan (consisting of three phases) and application for increase in rates for wastewater service to its Seven Springs customers pursuant to Section 367.0817, Florida Statutes. On December 28, 1995, the Commission issued Proposed Agency Action (PAA) Order No. PSC-95-1605-FOF-SU authorizing recognition of only Phase I of the project in rate setting. In the PAA Order, the Commission allowed Aloha to implement the approved wastewater rates on a temporary basis subject to refund in the event of a protest. The Order was protested.

As allowed by the PAA Order, Aloha implemented the approved rates effective February 12, 1996, and established an escrow account as security in the event a refund was found to be necessary. Pursuant to the PAA Order, Aloha escrows approximately \$61,000 each month in this account.

DOCUMENT NUMBER-DATE

06641 JUL 25

FPSC-RECORDS/REPORTING

DOCKET NO. 970695-WS  
JULY 15, 1997

Pursuant to petition of customers from the Wyndtree Master Community Association, the Commission opened Docket No. 960545-WS to investigate Aloha's rates and water quality. For the purposes of hearing, Dockets Nos. 960545-WS and 950615-SU were consolidated by Order No. PSC-96-0791-FOF-WS, issued on June 18, 1996. The hearing was held on September 9-10, 1996 in New Port Richey and concluded on October 28, 1996 in Tallahassee. Briefs were filed by the parties on December 17, 1996, and the whole matter was scheduled to be heard at the February 18, 1997 Agenda Conference.

At the February 18 Agenda Conference, the Commission, among many other decisions, voted to require Aloha to refund approximately 20% of the revenue collected pursuant to the temporary rates. Also, the Commission determined that the funds remaining in the escrow account would only be released to the utility upon completion of the refund. These decisions were memorialized in Order No. PSC-97-0280-FOF-WS (Final Order), issued on March 12, 1997.

Just prior to the issuance of that Order, Aloha, on March 10, 1997, filed an Emergency Motion for Release of Funds From Escrow Account (Emergency Motion -- attached as Attachment A), in which it requested a release of \$332,000 from the escrow account prior to March 31, 1997. In its Emergency Motion, Aloha stated that unless it was given access to \$332,000 of the approximate total of \$750,000 in escrow funds, it would be unable to timely pay its regulatory assessment fees (RAFs) and that it was already past due on interest payments on debt service in excess of \$298,000.

In order to meet that date, consideration of the motion would have had to take place on the March 18, 1997 agenda conference as an emergency item. Finding that the facts surrounding the motion did not constitute an emergency and that the motion could be heard at the April 1, 1997 Agenda Conference, the Chairman denied the request to have the motion considered as an emergency item. Prior to the March 18 Agenda Conference, the utility was notified that its Emergency Motion would not be considered at that agenda, and that staff would attempt to have it considered at the April 1 Agenda Conference.

Subsequently, by letter dated and filed on March 31, 1997 (Attachment B), Aloha requested that its Emergency Motion be treated as "a request for an extension for the paying of Aloha's regulatory assessment fees." On April 1, 1997, the Commission authorized a partial release of escrowed funds in the amount of \$332,000. This decision was memorialized by Order No. PSC-97-0372-FOF-SU, issued on April 4, 1997. Aloha then paid its RAFs on April 14, 1997, without remitting any penalty or interest.

DOCKET NO. 970695-WS  
JULY 15, 1997

By letters dated May 14, 1997, the Division of Administration requested Aloha to pay, by May 28, 1997, an additional \$12,582.86 in penalty and interest. These letters did not specifically address Aloha's request for an extension. For its water service, the additional amount was \$5,091.53, consisting of \$4,242.94 for a 5 percent penalty and \$848.59 in interest. For the wastewater service, the additional amount was \$7,591.33, consisting of \$6,326.11 for a 5 percent penalty and \$1,265.22 in interest. However, Aloha, by letter dated May 23, 1997 (Attachment C), argues that its Emergency Motion, filed on March 10, 1997, should be treated as a request for extension of time in which to pay its RAFs. Based on this argument, Aloha believes that it should be made to pay only an additional fee of .75 percent as authorized by Section 350.113(5), Florida Statutes. Therefore, in that same May 23 letter, Aloha requests either "a short hearing" "under Section 120.57(1), Florida Statutes", or, at least that the issue of additional fees be presented to the Commissioners for decision.

This recommendation addresses both the request for a Section 120.57(1) hearing and what amount in additional fees should be remitted by Aloha.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant either Aloha's request for hearing under Section 120.57(1), Florida Statutes, or its alternative request that the Commission consider the appropriate amount of additional fees?

RECOMMENDATION: As there is no dispute of material fact, the request for a Section 120.57(1) hearing should be denied. However, the Commission should determine, on the facts presented, whether Aloha was entitled to a 30-day extension for paying its regulatory assessment fees. (JAEGER)

STAFF ANALYSIS: As stated above, Aloha has requested either a Section 120.57(1) hearing, or, in the alternative, that the question of the appropriate amount of additional fees be placed before the Commissioners. Section 120.57(1), Florida Statutes, is entitled, "ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT." Because there is no dispute of material fact, staff does not believe that a formal hearing is required.

Therefore, staff recommends that Aloha's request for a Section 120.57(1) hearing be denied. However, staff believes that the Commission should decide, on the facts presented, whether Aloha was entitled to a 30-day extension. Through Issue 2 of this recommendation, staff is placing before the Commission the question of the appropriate amount of additional fees (interest and penalty, if any) that should be remitted by Aloha for its payment of regulatory assessment fees on April 14, 1997? This would, in effect, grant Aloha's alternative request and allow Aloha to address the Commission.

DOCKET NO. 970695-WS  
JULY 15, 1997

**ISSUE 2:** What is the appropriate amount of additional fees that should be remitted by Aloha for its payment of regulatory assessment fees on April 14, 1997?

**RECOMMENDATION:** Pursuant to Sections 367.145 and 350.113(4), Florida Statutes, and Rules 25-30.120(6) and (7), Florida Administrative Code, Aloha should be required to pay a penalty equal to 5 percent of the original fee plus 1 percent of interest. This equates to \$12,682.86. (GILCHRIST, JAEGER)

**STAFF ANALYSIS:** Pursuant to Rule 25-30.120(7), Florida Administrative Code, the due date for RAFs is March 31. However, Rule 25-30.120(6), Florida Administrative Code, provides for and sets forth the procedures for obtaining a 30-day extension. To obtain an extension, that Rule requires that: 1) the utility submit a request in writing; 2) the request be accompanied by a statement of good cause; and 3) the Division of Administration receive such request at least two weeks before the due date.

As stated above, Aloha did not pay its RAFs until April 14, 1997. Therefore, the amount of additional fees and penalties, if any, depends on whether Aloha was entitled to a 30-day extension of the due date. If it was entitled to a 30-day extension, and because it paid the RAFs within 15 days of the original due date, the only additional fee, as set forth in Section 350.113(5), Florida Statutes, is a charge of an additional .75 percent. However, if it was not entitled to a 30-day extension, then Section 350.113(4), Florida Statutes, and Rule 25-30.120(7)(a), Florida Administrative Code, provide for a penalty of 5 percent of the fee plus 1 percent of interest.

Aloha argues that it should be given a 30-day extension based on its Emergency Motion that it filed on March 10, 1997. In that Emergency Motion, Aloha clearly stated that it would not be able to timely pay its RAFs due on March 31, 1997, unless the Commission released \$34,000 from the escrow account prior to that date. Aloha places approximately \$61,000 per month in an escrow account pursuant to the requirements of Order No. PSC-95-1605-FOF-SU, issued on December 28, 1995. In that same Emergency Motion, Aloha requested an additional \$298,000 be released so that it could pay its current debt service on a loan. By letter dated March 31, 1997, Aloha specifically requested that the March 10th Emergency Motion be treated as a request for a 30-day extension for the paying of Aloha's RAFs.

Staff has reviewed the Emergency Motion and does not believe that it complies with the requirements for granting an extension set forth in Rule 25-30.120(6), Florida Administrative Code. Nowhere in that Emergency Motion is there a request for an



DOCKET NO. 970695-WS  
JULY 15, 1997

extension, and it was not filed with the Division of Administration as required by the rule. Further, Aloha could have requested the release of the escrowed funds sooner, or it could have filed an unambiguous request for a 30-day extension by March 17, 1997, as required by rule.

Therefore, even if the Commission should decide to treat the Emergency Motion as, alternatively, a request for a 30-day extension, staff does not believe that Aloha has shown good cause for the delay in paying the RAFs. Staff notes that Aloha did not file its request for release of escrowed funds until four days after recommendations were due for the last agenda in March. Therefore, the only way that such request was going to be considered by the Commission prior to the due date for RAFs was if the Chairman allowed it as an emergency item. However, as explained in the Case Background, the Chairman declined to have the matter considered as an emergency item, and the utility was so advised on or before March 17, 1997.

Also, staff notes that the utility requested a 2-week extension in which to file its post-hearing brief in Docket No. 950615-SU (the reuse docket) and acknowledged that the time schedule for all actions on that case would also be delayed an additional 2 weeks. Therefore, with the issuance of Order No. PSC-96-1444-FOF-WS on December 6, 1996 (Order granted Aloha's request for a 2-week extension), Aloha knew that the Commission would not consider staff's final recommendation in the reuse docket until February 18, 1997.

At the February 18 Agenda Conference the Commission voted that: 1) a refund would be required, 2) Aloha would have 90 days to complete the refund, and 3) the funds in the escrow account could not be released until staff verified that the refund had been completed. Therefore, Aloha knew as early as February 18, 1997, that, absent special Commission action, the escrowed funds would not be available to pay the RAFs.

However, Aloha waited for over 3 weeks before it filed any request for release of the funds. Further, Aloha knew no later than March 17, 1997, that its Emergency Motion would not be considered in March, but still waited until March 31, 1997, before it filed anything in writing specifically referring to a 30-day extension. Realizing that Rule 25-30.120(6), Florida Administrative Code, required such request to be filed at least two weeks prior to March 31, 1997, it is staff's opinion that Aloha is attempting to make the Emergency Motion "fit". Staff does not believe that the filing of the Emergency Motion for release of escrowed funds with the Division of Records and Reporting fulfills

DOCKET NO. 970695-WS  
JULY 15, 1997

the requirements for obtaining an extension set forth in Rule 25-30.120(6), Florida Administrative Code.

Considering all the above, staff believes that Aloha's failure to timely pay its RAFs or obtain a 30-day extension was due to its own delay. Therefore, staff recommends that the Commission find that Aloha did not comply with the requirements of Rule 25-30.120(6), Florida Administrative Code, for obtaining an extension (both because there was no timely request filed and there was no good cause shown). Having failed to obtain an extension, Aloha should, pursuant to the provisions of Rule 25-30.120(7), Florida Administrative Code, be required to pay a 5 percent penalty and an additional 1 percent in interest for having paid its RAFs on April 14, 1997. This equates to \$12,682.86.

DOCKET NO. 970695-WS  
JULY 15, 1997

ISSUE 3: Should this docket be closed?

RECOMMENDATION: After the time for appeal has passed, this docket should be closed. (JAEGER)

STAFF ANALYSIS: With the issuance of this Order, there are no further actions to be taken in this docket. Therefore, once the time for appeal has passed, this docket should be closed.



## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for approval of ) Reuse Project Plan and increase in ) wastewater rates in Pasco County ) by Aloha Utilities, Inc. )	Docket No. 950615-SU
<hr/>	
In Re: Investigation of utility ) rates of Aloha Utilities, Inc. in ) Pasco County. )	Docket No. 960545-WS

**ALOHA'S EMERGENCY MOTION FOR RELEASE  
OF FUNDS FROM ESCROW ACCOUNT**

Aloha Utilities, by and through undersigned counsel, hereby files this Aloha's Emergency Motion For Release Of Funds From Escrow Account, and in support thereof states and alleges as follows:

1. Pursuant to the relief Aloha has requested in this proceeding, \$688,630 are currently in escrow pending the outcome of Aloha's application, and subsequent litigation, for rate relief. An additional \$61,000 will be placed in that escrow account within the next three days making the total approximately \$750,000 in escrow as of the end of March, 1997.

2. Aloha must pay approximately \$200,000 to the Florida Public Service Commission on or before March 31, 1997 for regulatory assessment fees. The Commission has previously determined in several cases that the Commission has no authority to waive the interest or penalties which will accrue if payment of regulatory assessment fees is not received by the March 31 deadline.

3. The utility also has accrued over \$320,000 in principal and interest payments due on its loan for construction of the reuse

DOCUMENT NUMBER-DATE

02553 MAR 10 97

plant hereunder but has not received release of the funds held in escrow which are intended to cover such payments.

4. The Commission's final decision rendered at its February 18, 1997 Agenda will allow recovery of \$298,163 annually as interest on this debt.

5. The Commission's order due to be issued on today's date will propose a refund of approximately \$152,000 on an annual basis. This constitutes approximately 20% of the total increase authorized for collection on an interim basis approximately one year ago, as well as 20% of the actual revenues collected for the one year period during which these interim rates have now been in effect.

6. While it is unclear at this time whether requests for reconsideration of the Commission's Final Order will be filed, any such requests will further delay the utility's access to the funds necessary to pay the reasonable expenses associated with the operation of the reuse system and to pay the Commission regulatory assessment fees due March 31, 1997.

7. Even if a request for reconsideration is filed, it is unlikely that the matters brought to the Commission's consideration could conceivably have the effect of increasing the amount of the refund substantially above that proposed in the Commission's Final Order.

8. The approximately \$750,000 in the escrow as of the end of this month is the most reasonable and readily available pool of funds from which the utility can pay its regulatory assessment fees and other overdue obligations. Release of \$332,000 in order to

satisfy Aloha's regulatory assessment fee obligation and debt service obligations to the extent recognized in the Commission's Final Order, from a total pool of approximately \$750,000 in the escrow will not significantly impede the escrow fund's ability to serve the purposes intended and protect the customers' interests in any potential refund. Neither any member of the public nor any ratepayer will be prejudiced by the release of \$322,000 from the funds currently in escrow so that Aloha may pay the regulatory assessment fees and overdue debt service amounts.

9. The Commission must act before March 31, 1997 in order to allow Aloha access to the needed funds before the regulatory assessment fee payment due date.

WHEREFORE, in consideration of the above, Aloha Utilities, Inc. respectfully requests the Public Service Commission immediately issue its order on an emergency basis releasing \$34,000 from the escrow fund in this docket so that Aloha may use these monies to satisfy outstanding regulatory assessment fee, and an additional release of \$298,000 for overdue interest payments on debt service obligations recognized in rate-setting by the Commission in its Final Order.

DATED this 12<sup>th</sup> day of March, 1997.



F. Marshall Deterding, Esq.  
ROSE, SUNDSTROM & BENTLEY, LLP  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301  
(904) 877-6555

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by \*Hand Delivery, \*\*facsimile or U.S. Mail to the following parties this 10<sup>th</sup> of March, 1997.

\*Bobbie Reyes, Esquire  
\*Ralph Jaeger, Esquire  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

Representative Mike Fasano  
8217 Massachusetts Avenue  
New Port Richey, Florida 34653

James Goldberg, President  
1251 Trafalgar Drive  
New Port Richey, Florida 34655

\*\*Harold McLean, Esquire  
Office of Public Counsel  
c/o Florida Legislature  
111 W. Madison Street, Room 812  
Tallahassee, FL 32399-1400



F. MARSHALL DETERDING, ESQ.

aloha\17\release.mot



Letter to Blanca S. Bayo, Director  
March 31, 1997  
Page 2

staff as to the outstanding litigation. Aloha's Emergency Motion made known to the Commission that Aloha would need an extension of the time in which to pay its regulatory assessment fees. Aloha understands that the Commission's schedule does not allow for a particularly expeditious adjudication of the outstanding Emergency Motion or allow that it be heard on a "emergency basis." Rather, Aloha requests the Commission to suspend the obligation of Aloha to pay such fees at least until such time as the Emergency Motion is addressed by the Commission and release of funds from escrow occurs.

We apologize for any inconvenience which may have been caused by not requesting the extension on the form published by the Commission. However, Aloha's Emergency Motion states good cause for the requested extension.

I look forward to hearing from you with regard to the above.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP



F. Marshall Deterding, Esq.  
For The Firm

FMD/lm  
cc. Ralph Jaeger, Esq.  
Mr. Steve Watford



LAW OFFICES

## ROSE, SUNDBSTROM &amp; BENTLEY, LLP

2548 BLAIRSTONE PINES DRIVE  
TALLAHASSEE, FLORIDA 32301

(904) 877-6555

CHRIS H. BENTLEY, P.A.  
F. MARSHALL DETERDING  
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.  
DIANE D. TREMPER, P.A.  
JOHN L. WHARTONMAILING ADDRESS  
POST OFFICE BOX 1587  
TALLAHASSEE, FLORIDA 32302-1587  
TELECOPIER (904) 866-4029

May 23, 1997

VIA HAND DELIVERYRalph Jaeger, Esquire  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399Re: Aloha Utilities, Inc.;  
Our File No. 26038.01

Dear Ralph:

Aloha Utilities recently received the attached two letters from Evelyn Sewell concerning payment of regulatory assessment fees. As you will recall, Aloha Utilities filed a Motion for Release of Escrowed Funds on March 10, 1997, stating that unless those funds were released prior to March 31, 1997, Aloha would be unable to pay regulatory assessment fees by their due date. The Commission acted on April 1, 1997, to release those funds and Aloha immediately sent payment for regulatory assessment fees to the Commission after obtaining such release (on April 14, 1997).

In light of these facts, we believe that our Motion for Release of Escrow Funds effectively requested an extension of time to file those regulatory assessment fees when the Commission could not act to release those funds until after March 31, 1997. As such, no penalty should be imposed. Certainly, for the purposes of calculating the additional amounts due from Aloha, they should follow those outlined under Rule 25-30.120(4)(a), because not only did the Utility file and state its inability to pay by the due date, but those payments were made on April 14, 1997, immediately after release of funds from escrow. The motion, including the provision which we contend constitutes a request for extension was filed with the Commission well in advance of that due date. The Commission specifically recognized the Utility's situation in granting the release of escrowed funds and we believe that should also be recognized for the purposes of the regulatory assessment fee penalty and interest provisions.

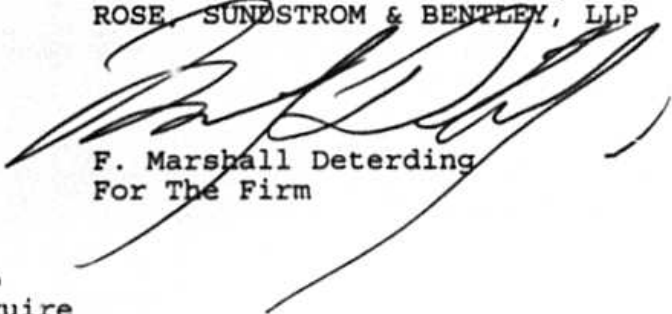
Ralph Jaeger, Esquire  
May 23, 1997  
Page 2

To the extent that we need to do so, we would like to request a short hearing on this matter or at least that it be presented to the Commissioners for decision. Time is of the essence in processing this request since Ms. Sewell has indicated a requirement that we pay over \$12,000 in penalty and interest by May 28, 1997, to avoid further interest charges. If we can agree that the Utility is liable for only the .75% fee required under the rule where an extension is appropriate, the Utility will gladly pay that immediately upon notification to that effect. Please be sure that whoever needs to receive this request gets it immediately. To the extent necessary, please consider this our request for hearing under Section 120.57(1), Florida Statutes.

We appreciate your prompt attention to this matter.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP



F. Marshall Deterding  
For The Firm

FMD/lts

cc: Ms. Blanca Bayo  
Lila Jaber, Esquire  
Ms. Evelyn Sewell  
Ms. Jackie Gilchrist  
Mr. Charles Byrne  
Mr. Stephen Watford