

State of Florida



Public Service Commission

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RECORDS AND REPORTING

**DATE:** FEBRUARY 17, 2000

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

**FROM:** DIVISION OF LEGAL SERVICES (JAEGER, FUDGE) *JAE*  
DIVISION OF WATER AND WASTEWATER (MERCHANT, CROUCH) *MC*

**RE:** DOCKET NO. 991643-SU - APPLICATION FOR INCREASE IN WASTEWATER RATES IN SEVEN SPRINGS SYSTEM IN PASCO COUNTY BY ALOHA UTILITIES, INC. *BL*

**AGENDA:** 02/29/00 - REGULAR AGENDA - RULE VARIANCE - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** MARCH 10, 2000 - COMMISSION MUST GRANT OR DENY EMERGENCY REQUEST FOR RULE VARIANCE WITHIN 30 DAYS OF RECEIPT OF PETITION

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\991643.RCM

CASE BACKGROUND

On October 22, 1999, Aloha Utilities, Inc. (Aloha or utility) requested approval of a test year for a rate increase in Pasco County. On November 22, 1999, the projected test year ending July 31, 2001 was approved. On January 12, 2000, Aloha requested modification of the projected test year because completion of the facilities that form the basis for their requested increase would not be completed until approximately two months after the beginning of the proposed projected test period. On January 21, 2000, the Commission granted Aloha's request that the projected test year be changed to September 30, 2001, with an historical base year ended September 30, 1999.

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On February 9, 2000, Aloha filed an Application for Increase in Wastewater Rates (Application) and its minimum filing requirements (MFRs). Also on February 9, 2000, Aloha filed a Petition for Emergency Variance from Rule 25-30.440(1)(a) and (b), Florida Administrative Code (Petition). Aloha filed its Petition pursuant to Rules 28-104.002 and 28-104.004, Florida Administrative Code. By letter dated February 16, 2000, Aloha submitted additional information in support of its Petition. This recommendation addresses Aloha's request that it be granted an emergency waiver or variance.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Aloha Utilities Inc.'s, request for an emergency temporary waiver of Rule 25-30.440(1)(a) and (b), Florida Administrative Code, be granted?

**RECOMMENDATION:** No. Aloha's request for an emergency temporary variance from Rule 25-30.440(1)(a) and (b), Florida Administrative Code, should be denied, and the petition should be reviewed on a non-emergency basis as set forth in Section 120.542(7), Florida Statutes. (FUDGE, JAEGER, MERCHANT, CROUCH)

**STAFF ANALYSIS:** Rule 25-30.440(1)(a) and (b), Florida Administrative Code, requires each applicant for a rate increase to provide one copy of the following engineering information:

- (1) A detailed map showing:
  - (a) The location and size of the applicant's distribution and collection lines as well as its plant sites, and
  - (b) The location and respective classification of the applicant's customers.

Aloha claims that because its lines are basically 100% contributed, these maps are not required, and requests that it be granted an emergency waiver pursuant to the provisions of Rule 28-104.004, Florida Administrative Code.

Rule 28-104.004, Florida Administrative Code, provides that a petition for an emergency waiver shall specify, in addition to the other requirements of Section 120.542(5), Florida Statutes, the following:

- (a) The specific facts that make the situation an emergency; and
- (b) The specific facts to show that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided in Section 120.542, Florida Statutes.

In 1994, Aloha entered into a Consent Final Judgment (CFJ) with the Florida Department of Environmental Protection (FDEP).

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The CFJ was amended on March 9, 1999, by FDEP and required the utility to meet FDEP Class One Reliability requirements.

Based at least in major part on these additional FDEP requirements and the dramatic increase in expenses, Aloha was concerned about how best to recover these expenses as quickly as possible. Therefore, on January 12, 2000, Aloha requested a meeting with staff to discuss how Aloha might receive immediate recognition of the substantial change in operations required by FDEP. A meeting was held on February 9, 2000, to discuss the best way to receive immediate recognition of these costs, but no decision was reached.

Aloha alleges in its Petition that it has been required by FDEP to make substantial changes in its operations over the last several months, including hiring two wastewater operators on December 1, 1999, at a cost of approximately \$90,000. Furthermore, Aloha alleges that other operating expenses have increased dramatically and these changes will continue for the next eighteen months. By letter dated February 16, 2000, Aloha alleges that an emergency situation was created when its "careful level of staffing" was used to the limit to address: (1) the Commission's water quality investigation; (2) the addition of the increased DEP requirements; (3) the need to seek rate relief; and (4) the need to seek financing. In that same letter, Aloha states that the total impact of the CFJ on revenues is a loss of \$18,151 per month, which will increase to \$89,000 per month by September 2000. Accordingly, Aloha states that it is in need of immediate rate relief to receive adequate revenues to recover its expenses so that, pursuant to Section 367.081, Florida Statutes, it may earn a fair return on its investment.

However, until this waiver is granted, Aloha's Application will be considered deficient and incomplete. The statutory time frame for the Commission to consider interim rates, or final rates, will not begin until Aloha's Application is complete. Consequently, Aloha alleges that it will suffer an immediate adverse effect and continue to incur substantial economic loss unless the waiver is processed more expeditiously than the time frames provided in Section 120.542, Florida Statutes.

Section 120.542(8), Florida Statutes, requires the Commission to grant or deny a petition for variance or waiver within 90 days. In addition, Section 120.542(6), Florida Statutes, requires that the Commission provide notice of the petition to the Department of State, which shall publish notice of the petition in the first available issue of the Florida Administrative Weekly. This

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subsection also requires that the Uniform Rules provide a means for interested persons to provide comments on the petition. These requirements apply generally to petitions for rule waivers or variances.

Nevertheless, Section 120.542(3), Florida Statutes, requires that the Uniform Rules provide for procedures for the processing of emergency variances and waivers, and allows for public notice of, and comments on, such emergency waiver requests, to be waived or limited. Rule 28-104.005(1), Florida Administrative Code, provides that petitions for emergency rule waivers or variances shall be acted upon within thirty days. Moreover, because Section 120.542(6), Florida Statutes, is not applicable to requests for emergency waivers or variances, the publication of notice of such petitions and the comment period afforded to rule waiver requests generally are not required when processing such emergency requests. See Rule 28-104.004(2), Florida Administrative Code.

Staff believes that the timing of the filing for a rate case is the sole responsibility of the utility. Aloha knew of the additional FDEP requirements as early as March 9, 1999; and the need for additional staffing some time prior to December 1, 1999, when Aloha actually began hiring. Moreover, as early as October 22, 1999, when Aloha filed its request for test year approval, it should have known that it did not have the required maps and could not meet the requirements of Rule 25-30.440(1)(a) and (b), Florida Administrative Code, and that it would need a rule waiver. However, Aloha alleges that it could not have filed its Application any earlier nor later, and still have met the requirements of FDEP and the bank. Staff does not believe that this delayed filing of a request for a waiver creates an emergency. It was the utility's choice.

Aloha asserts that it was relying on the waiver provision contained in Rule 25-30.436(6), Florida Administrative Code, that was repealed on January 31, 2000. In addition, Aloha states that there is no requirement that the utility file a request for variance or waiver in advance of filing the Application in either Rule 25-30.436(6), Florida Administrative Code, or Rule 28-104.004, Florida Administrative Code.

However, Rule 25-30.436(6), Florida Administrative Code, required that "all requests for waiver of specific portions of the minimum filing requirements shall be made as early as practicable." Even if Rule 25-30.436(6), Florida Administrative Code, still existed and was applicable, Aloha could have filed for a waiver of these MFRs earlier and thereby could have avoided the need to

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request an emergency waiver under Rule 28-104.004, Florida Administrative Code.

Based on the above, staff believes that the utility has failed to allege "specific facts that make the situation an emergency," and thus, has not complied with Rule 28-104.004(1)(a), Florida Administrative Code. Therefore, staff recommends that Aloha's Petition for Emergency Waiver be denied and that the petition be reviewed on a non-emergency basis as set forth in Section 120.542(7), Florida Statutes.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** No. This docket should remain open to dispose of Aloha's Application for Increase in Wastewater Rates. (JAEGER, FUDGE)

**STAFF ANALYSIS:** This docket should remain open to dispose of Aloha's Application for Increase in Wastewater Rates.