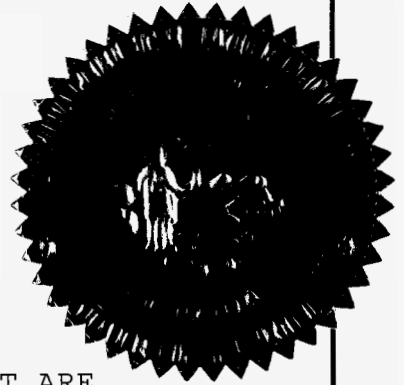


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010503-WU

In the Matter of:

APPLICATION FOR INCREASE IN WATER
RATES FOR SEVEN SPRINGS SYSTEM IN
PASCO COUNTY BY ALOHA UTILITIES,
INC.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 6

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON

DATE: June 1, 2004

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

DOCUMENT NUMBER-DATE

06340 JUN-7 04

1 PARTICIPATING:

2 MARTY DETERDING, ESQUIRE, representing Aloha
3 Utilities, Inc.

4 STEPHEN BURGESS, ESQUIRE, representing the Office of
5 Public Counsel.

6 RALPH JAEGER, ESQUIRE, representing the Commission
7 Staff.

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P R O C E E D I N G S

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2 CHAIRMAN BAEZ: We are on Item 6.

3 MR. JAEGER: Commissioners, in Item 6, staff
4 addresses Aloha's petition for formal hearing on the PAA refund
5 order, and Aloha has requested that the petition be transferred
6 to DOAH. Also, OPC has moved to dismiss the petition, and
7 Aloha has moved to strike OPC's motion to dismiss.

8 Neither OPC nor Aloha requested oral argument on
9 their petitions, and this item has been noticed as
10 participation at the discretion of the Commission.

11 CHAIRMAN BAEZ: Thank you, Mr. Jaeger.

12 Commissioners, it's at your leave whether you want to
13 hear from the parties or not. I will note that I think staff
14 has recommended that oral argument might be helpful on two of
15 the three issues, but I leave it to your discretion.

16 COMMISSIONER DAVIDSON: Chairman, just as one
17 Commissioner, I have become intricately familiar with issues
18 involving this utility, and I have studied the staff
19 recommendation and materials in the record, and I'm prepared to
20 just move to Commission discussion on this. For me there is
21 not a benefit from presentations from staff and the parties.

22 COMMISSIONER DEASON: Mr. Chairman, I'm not
23 particularly needful of any particular additional discussion or
24 presentation. I'm prepared to move forward to the Commission
25 level discussion at this point.

1 CHAIRMAN BAEZ: Thank you, Commissioner. I'm
2 inclined to agree.

3 COMMISSIONER BRADLEY: The same applies to me, Mr.
4 Chairman.

5 COMMISSIONER JABER: I defer to the majority.

6 CHAIRMAN BAEZ: Excellent.

7 Commissioners, any questions for staff?

8 MR. DETERDING: May I?

9 CHAIRMAN BAEZ: Mr. Deterding.

10 MR. DETERDING: Mr. Chairman, I just -- I don't have
11 a great deal that I would like to present to the Commission,
12 but I would like to make a suggestion, I guess, with regard to
13 this matter that I would hope could help resolve this and help
14 us move forward with this case that I could offer briefly.

15 CHAIRMAN BAEZ: Mr. Deterding, I think you heard us
16 say that we weren't going to take any oral argument. However,
17 if the suggestion is brief --

18 MR. DETERDING: Very brief.

19 CHAIRMAN BAEZ: -- 25 words or less. Is it that
20 brief?

21 MR. DETERDING: Very brief, Commissioner. I had much
22 more, but I certainly can make it that brief.

23 CHAIRMAN BAEZ: Then I will risk the wrath of my
24 colleagues and allow you to use those 25 words.

25 MR. DETERDING: Thank you all very much.

COMMISSIONER DEASON: You just used five words right
2 there. (Laughter.)

3 CHAIRMAN BAEZ: No, Mr. Deterding, I'm serious. I'm
4 counting.

5 MR. DETERDING: I believe this is a case that
6 involves issues of material fact, as we have outlined in our
7 petition. However, if we move to a Sub 2 hearing, if there are
8 later determined that there are issues of material fact, which
9 I believe clearly will present themselves, you have to move
10 back to a Sub 1 hearing. So what I'm suggesting is that we sit
11 down with the staff and the other parties and determine whether
12 or not there are, in fact, issues of material fact. And if
13 there are not, then this can brought back to you to move to a
14 Sub 2. Because if we have to move to a Sub 2 and then find
15 those issues do exist, which I believe we will, we will have to
16 move back to a Sub 1.

17 CHAIRMAN BAEZ: Thank you, Mr. Deterding.
18 Commissioners, just for purposes of our understanding what
19 Mr. Deterding just said and kind of taking it all in context,
20 Mr. Jaeger or Ms. Vining, do you all agree that there is --
21 nevermind what you think of the existence of issues of fact,
22 but is the process -- do you understand that to be the process?
23 I mean, would we be forced at some point to consider moving
24 back to a Sub 1?

25 MR. JAEGER: Chairman, I think if -- I'm not sure how

1 you would get to that point if all you are going to do is have
2 briefs and not -- if you decide there is no issues of material
3 fact today, then I'm not sure how you would ever have to go
4 back to the 120.57(1) if you go to 120.57(2) at this time.

5 CHAIRMAN BAEZ: Right.

6 MR. JAEGER: But I guess there is always that realm
7 of possibility, something in the briefs would trigger something
8 that would --

9 MR. DETERDING: And I believe they would.

10 COMMISSIONER JABER: Mr. Chairman.

11 CHAIRMAN BAEZ: Fair enough. Commissioner Jaber.

12 COMMISSIONER JABER: Mr. Chairman, let me ask a
13 question. Mr. Deterding's comment and offer is only relevant
14 if we are inclined to approve staff's primary. Am I reading
15 that correctly? But let me just gauge where the Commissioners
16 are. Is there consensus that there are no issues of fact?
17 Because I could benefit from that discussion. I have to tell
18 you, as I read through the staff recommendation I can see both
19 sides of the issue as it relates to the dispute about whether
20 the appropriate refund has been made. I can see an issue of
21 fact.

22 And, frankly, I was prepared to move staff's
23 alternative, which is to have a hearing, but to have it here.
24 In other words, at the end of the day I think a hearing here
25 very limited to the issues identified by staff might be

1 appropriate. That is not to say I can't be convinced
2 otherwise. Maybe I'm looking at this -- I'm missing something
3 in looking at it.

4 COMMISSIONER DEASON: Well, my question, perhaps, is
5 in reviewing the alternate recommendation I understand that
6 there is a potential issue of fact as it pertains to the
7 difference between what would have been collected under interim
8 rates and what was collected. But given the Commission's
9 policy decision, I'm not so sure that's relevant. We have
10 already made the decision we are going to do something else.
11 And now if that is the incorrect decision that we made, I think
12 that can be briefed. And then if we agree that that was
13 incorrect, then we may need to go to an evidentiary proceeding
14 to flesh out what those differences are. But at this point I
15 don't think we are there yet.

16 COMMISSIONER DAVIDSON: And that is where I am on
17 this issue. I think we did make a policy decision. And I
18 thought -- the primary staff for me worked procedurally because
19 it raises all the issues and briefs, and then we decide based
20 upon the staff input, or however we decide, whether to move
21 forward to the next. So to me primary staff was sort of the
22 right first step in getting this resolved.

23 CHAIRMAN BAEZ: Go ahead, Commissioner Bradley.

24 COMMISSIONER BRADLEY: What are you all suggesting,
25 then, that we have an informal hearing?

1 CHAIRMAN BAEZ: Well, if I can read the winds
2 correctly, I think Commissioner Jaber did have -- and I wanted
3 to speak to that originally, but just in answer to your
4 question, Commissioner Bradley, I think that both Commissioner
5 Davidson and Commissioner Deason, while I think they may have
6 accepted the remote possibility that some kind of factual
7 situation may arise, I think the feeling is that it is not
8 relevant. That that issue of fact was already -- we are
9 dealing with policy now, and those kinds of things can get
10 briefed. That there really isn't an issue of fact at all,
11 because that was decided with the PAA order. So, unless I'm
12 hearing you all wrong.

13 But, Commissioner Jaber, something you said kind of
14 struck a chord with me, because in reading the staff's
15 analysis, it was hard to discern where it wasn't or at least
16 look beyond, look a little bit into the future and see what
17 might happen. What kicked it for me was that just saying
18 that -- I guess what it boiled down to is, you know, someone
19 saying, look, you have got the numbers wrong; it doesn't
20 exactly create the fact when -- it doesn't create that question
21 of fact for me, anyway, when all that discussion came about
22 prior. I think all of that was before us at the time, so that
23 it doesn't become for me a lingering question anyway.

24 COMMISSIONER JABER: Okay. You know, I think I can
25 live with that, honestly. Let me tell you, though, the

1 sentence that confused me, and maybe staff can clarify it for
2 us. In the alternative staff analysis -- let me just say, Mr.
3 Jaeger, if Commissioner Deason's observation is correct, I can
4 certainly live with it and agree with it, which is that we made
5 a policy decision, so what the company believes the
6 interpretation is can be briefed. I'm okay with that.

7 But the sentence that threw me off is on Page 10, it
8 says, "The Commission did not specifically address this
9 question when it issued its PAA refund order requiring
10 additional refunds, and so alternative staff is not sure if the
11 Commission considers this to be a material fact." What did you
12 mean by that?

13 MR. JAEGER: Well, there was some discussion about
14 the 4.08, you know, the difference between the interim rates
15 and the final rates. And I don't think that your decision was
16 based on that. And the order, when you look at the order it
17 doesn't address that we accept that 4.08 is what they were
18 saying was the difference between the interim rates and the
19 final rates.

20 What you said was the final order said there is no
21 rate increase and this is a policy decision. So where I was
22 going with Commissioner Deason is I couldn't be for sure that
23 you thought this was a material fact, and he says it is
24 irrelevant. Commissioner Deason, I don't want to speak words,
25 but that is what I was wondering. If you think this -- even if

1 they came in with this 4.08 difference, is that a relevant
2 material fact?

And your decision appeared to be on policy. And if
4 you don't think this is a disputed issue of material fact, then
5 if you want to stick with that policy then basically
6 alternative staff and primary staff are in agreement.

7 CHAIRMAN BAEZ: When you make a policy decision,
8 doesn't that just -- doesn't that serve to resolve or leave
9 material facts, or what could possibly be material facts in the
10 wake? I mean, policy decisions have factual ramifications, but
11 you have to reconcile them to the policy decision. It's almost
12 a top down, it's almost a top down effect. It created that
13 4.08 that became -- I'm not seeing how it is relevant after you
14 have made a decision that shifts policy.

15 MR. JAEGER: I believe if you think it is not
16 relevant and that you want to stay on the policy decision,
17 then --

18 CHAIRMAN BAEZ: I'm having trouble seeing why it is
19 relevant, why it would be. And I guess that is a different way
20 of saying it's not, but I am having trouble how it could be if
21 you have already gotten past that. The policy is past that
22 already.

23 MR. JAEGER: I believe in the Florida Cities case
24 there was a similar situation. And what the Commission did
25 there, that policy decision was to compare what they had been

charging and what they should have been charging, and that was
2 the way they calculated the refund after it had been on -- you
3 know, that is one that went on appeal, you had a second hearing
4 and it went on appeal again, and so there was a long time. And
5 that time they compared.

6 In that policy decision, you did compare the rates
7 they had been charging against the final rates. In this policy
8 decision, you're saying you just went back, that you had
9 intended no rate increase and that was the policy decision
10 here. So there is a difference between these two orders. But
11 I just wanted to make sure that you, in fact, thought that this
12 was irrelevant, the 4.08 difference.

13 COMMISSIONER BRADLEY: Mr. Chairman.

14 CHAIRMAN BAEZ: Commissioner Bradley.

15 COMMISSIONER BRADLEY: And I just want to make sure
16 that I'm on the same page relative to the discussion that is
17 going on right now. And I want to try and reframe where we
18 have been and where we are right now.

19 As I recall, the Commission ordered interim rates,
20 correct? Then what we did was to deny a permanent rate
21 increase, which was appealed by Aloha. Aloha, in turn, kept
22 collecting the interim rates during the appeal, which they
23 lost. And then we ordered them to refund the higher rates, and
24 now Aloha is protesting that decision, which means that if we
25 have another hearing probably Aloha is also going to appeal any

1 decision that we make, if we ever have a hearing.

2 Now, also I understand very -- it is my understanding
3 that staff made a mistake as it relates to calculating --
4 staff's calculations were incorrect, and we had to go back and
5 make some adjustments, is that true?

6 MR. JAEGER: I believe the final rates were correct
7 and the revenue requirement they calculated, but there may have
8 been some dispute as to whether it represented a rate increase.
9 So, basically, there was no question that interim rates gave
10 them a 15.95 percent increase. There is also no question that
11 the final order said no rate increase was warranted, and that
12 final order was upheld in its totality on appeal. And so that
13 is where the Commission's policy decision came in.

14 It was clear they kept the 15.95 percent increase,
15 and it was clear that the order said no rate increase was
16 warranted. So that 15.95 percent that they kept during the
17 appeal was considered to be improper.

18 COMMISSIONER BRADLEY: Right. So what I'm interested
19 in doing this morning is getting to our initial intent, which
20 was to now allow a rate increase and for Aloha to refund any
21 overearnings. And I'm just trying to figure out how we get to
22 that succinctly and specifically.

23 COMMISSIONER DAVIDSON: I think we're there.

24 CHAIRMAN BAEZ: I think if you -- and someone stop
25 me, but the way I'm reading it I think the primary staff seems

1 to address what your goals are.

2 COMMISSIONER BRADLEY: Right.

3 COMMISSIONER JABER: Mr. Chairman, just in an effort
4 to speed this along, let me tell you that my concern is also
5 alleviated if we look at the primary staff recommendation as a
6 step in the right direction, and then whatever the result of
7 briefs are, leaving the door open that something might have
8 to -- not that our decision has to be revisited from early on,
9 but the decision today might have to be revisited in terms of
10 whether there are factual issues. I'm completely comfortable
11 with that.

12 CHAIRMAN BAEZ: Where it falls within the rules, what
13 kind of hearing.

14 COMMISSIONER BRADLEY: Let me ask a question of
15 Commissioner Jaber. So would you then be suggesting that we
16 move this process along and have an informal hearing to address
17 any fallout issues that --

18 COMMISSIONER JABER: Exactly.

19 COMMISSIONER BRADLEY: -- might arise as a result of
20 our decision today?

21 COMMISSIONER JABER: Exactly. So the result of that,
22 Commissioner Bradley, would be briefs, having briefs filed.
23 And hopefully that is actually a quicker resolution to the
24 case.

25 COMMISSIONER BRADLEY: Okay.

1 CHAIRMAN BAEZ: Commissioners, any more questions or
2 a motion? And I guess since we do have primary and alternative
3 on Issue 2, maybe we can go issue-by-issue.

4 COMMISSIONER DAVIDSON: Chairman, I was just going to
5 throw out a consolidated motion to move staff on Issue 1, move
6 staff's primary on Issue 2, move staff on Issue 3, and move
7 staff on Issue 4.

8 MR. JAEGER: Commissioner, excuse me. I'm sorry, I
9 know there has been a motion, but if you go with an informal
10 hearing, I think the issue about going to DOAH would be moot,
11 so you would not even have to rule on that.

12 COMMISSIONER BRADLEY: You said it would be moved or
13 moot?

14 MR. JAEGER: Moot, M-O-O-T.

15 CHAIRMAN BAEZ: So we don't even have to take up --
16 based on Commissioner Davidson's motion, we don't have to even
17 take up Issue 3.

18 MR. JAEGER: That's correct.

19 CHAIRMAN BAEZ: All right. Commissioner Davidson,
20 you want to --

21 COMMISSIONER DAVIDSON: So modified.

22 CHAIRMAN BAEZ: Okay. We have a motion by
23 Commissioner Davidson.

24 COMMISSIONER BRADLEY: And I will second the motion.

25 CHAIRMAN BAEZ: And a second. All those in favor say

1 aye.

2 (Unanimous affirmative vote.)

3 CHAIRMAN BAEZ: Thank you all.

4 MR. BURGESS: Mr. Chairman, may I ask a clarifying
5 question?

6 CHAIRMAN BAEZ: You can ask a clarifying question.

7 MR. BURGESS: Thank you very much for indulging me.
8 This is on behalf of the other parties. I assume they are
9 parties. They still aren't being served by Aloha. They
10 weren't served with Aloha's response to our motion, and I'm
11 just trying to get clarification. Are the Attorney General and
12 the other interested parties who have made presentations to the
13 Commission, are they continuing to be, or do they need to
14 reintervene as Aloha suggested?

15 CHAIRMAN BAEZ: Mr. Jaeger, you can help me out on
16 this, but my interpretation of the -- and certainly the
17 recommendations that we voted out at this point doesn't -- it
18 actually acknowledges that no one has lost any status on the
19 docket. Is that correct?

20 MR. JAEGER: That's correct.

21 CHAIRMAN BAEZ: So then that being -- in answer to
22 your question, I don't think anybody has to reintervene as it
23 were.

24 MR. BURGESS: Very good.

25 MR. JAEGER: We basically rejected Aloha's argument

1 that they have lost their intervenor status.

2 CHAIRMAN BAEZ: Very well. Are you okay with that,
3 Mr. Burgess?

4 MR. BURGESS: Yes. I just wanted to be able to pass
5 on, people have asked me that question. I wanted to be able to
6 pass that on.

7 CHAIRMAN BAEZ: Thank you all.

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STATE OF FLORIDA

CERTIFICATE OF REPORTER

COUNTY OF LEON

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 4th day of June, 2004

JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732