

State of Florida



Public Service Commission

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COMMISSION CLERK

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DATE: January 6, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Jaeger) *RFJ* *Watt* *10/27*
 Division of Economic Regulation (Merchant, Fletcher) *W* *B3*

RE: Docket No. 010503-WU – Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

AGENDA: 01/18/05 – Regular Agenda – Participation at Discretion of the Commission

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\010503.RCM.DOC

Case Background

Pursuant to the application of Aloha Utilities, Inc. (Aloha or utility) for both an interim and a permanent water rate increase for its Seven Springs system, the Commission approved a 15.95% interim increase, subject to refund with interest, by Order No. PSC-01-2199-FOF-WU (Interim Rate Order), issued November 13, 2001. Aloha began collecting interim rates as of January 2002, and the 15.95% interim increase was secured by the utility's deposit of all monthly interim revenues in an escrow account through July 31, 2003. The Commission set final rates by Order No. PSC-02-0593-FOF-WU (First Final Order), issued April 30, 2002. Among other things, the Commission denied a revenue increase and established the interim refund methodology, which required the utility to make an interim refund of 4.87%. The utility appealed the First Final Order, and, after receiving a stay, collected interim rates through July 31, 2003. Aloha implemented the rates approved in the First Final Order when that Order was affirmed by the First District Court of Appeal (First DCA).

After the First Final Order became final, a dispute arose over what time periods and what amounts Aloha should be required to refund interim rates. The Commission concluded that the refund for the time period that the rate case was pending, i.e., through April 30, 2002, was

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addressed in the First Final Order, and the Commission's decision to require a 4.87% increase for that time period was governed by the principles of administrative finality. The Commission also determined that the First Final Order did not address the time period during which the appeal was pending before the First DCA. The Commission saw no reason why Aloha should be allowed to benefit from the higher interim rates it collected during the appeal period, when the court affirmed the Commission's decision to award no rate increase to the utility. Thus, by Proposed Agency Action Order No. PSC-04-0122-PAA-WU (PAA Refund Order), issued February 5, 2004, the Commission required Aloha to make additional refunds of \$278,000 for the appeal period. This amount represented the additional revenues from the interim rates collected during the appeal period (May 1, 2002 through July 31, 2003), less the 4.87% already refunded by Aloha. Aloha protested the PAA Refund Order.

The Commission resolved the PAA protest by Order No. PSC-04-1050-FOF-WU (Second Final Order), issued October 26, 2004, and required Aloha to refund the principal amount of \$276,066, with interest, to its customers and to submit refund reports. On November 29, 2004, Aloha filed its notice of administrative appeal of the Second Final Order. In addition, on December 2, 2004, Aloha filed its Motion for Stay Pending Judicial Review (Motion for Stay) of the Second Final Order. This recommendation addresses Aloha's December 2, 2004, Motion for Stay. The Commission has jurisdiction pursuant to Sections 367.081 and 367.082, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant Aloha's Motion for Stay Pending Judicial Review?

Recommendation: Yes, pursuant to Rule 25-22.061(1)(a), Florida Administrative Code, the Commission should grant the Motion for Stay Pending Judicial Review. Pending judicial review, the funds in the escrow account should be maintained at their present level. (Jaeger)

Staff Analysis: Aloha has sought a stay of the requirement in the Second Final Order that Aloha refund the additional principal amount of \$276,066, with interest, to its customers. Pursuant to Rule 25-22.061(1)(a), Florida Administrative Code:

When the order being appealed involves the refund of moneys to customers . . . , the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings.

Rule 25-22.061 also provides that the stay must be conditioned upon the posting of an appropriate security.

Aloha has escrowed the interim revenues it has collected, and the Commission has released only those funds associated with refunds already made by Aloha. While the Second Final Order is on appeal, the funds in the escrow account are sufficient security for any refund and should be maintained at their present level.

Based on the above, staff recommends that the Commission grant Aloha's Motion for Stay Pending Judicial Review, and the requirement to make additional refunds as set forth in the Second Final Order should be stayed pending judicial review.

Issue 2: Should this docket be closed?

Recommendation: No, pending the final determination of the appropriate refunds and the required plant improvements, this docket should remain open. (Jaeger)

Staff Analysis: Pending the final determination of the appropriate refunds and the required plant improvements, this docket should remain open.