

ORIGINAL

MEMORANDUM

July 21, 2005

TO: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES

FROM: OFFICE OF THE GENERAL COUNSEL (Gervasi) *ps*

RE:

In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

DOCKET NO. 010503-WU

In re: Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes.

DOCKET NO. 050018-WU

In re: Request by homeowners for the Commission to initiate deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes.

DOCKET NO. 050183-WU

FILED: JULY 21, 2005

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COMMISSION
CLERK

Attached is an OFFER OF SETTLEMENT to be issued in the above-referenced dockets.

DATE DOCUMENT SENT TO CCA 7/21/05

- MR
- RG
- Attachment
- COM 2005/050018-OFFER OF SETTLEMENT.rg.doc
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FPSC-COMMISSION CLERK

OFFER OF SETTLEMENT

WHEREAS, the Florida Public Service Commission ("Commission") has initiated proceedings in Docket No. 050018-WU (Show Cause Docket) relating to the potential deletion of a portion of the territory to which Aloha Utilities, Inc. ("Aloha") is currently authorized to provide water service, as more fully set forth in Order No. PSC-05-0204-SC-WU, and Aloha is vigorously defending this case; and

WHEREAS, the Commission has opened an investigation in Docket No. 050183 (Investigation Docket) into whether there is probable cause to initiate additional deletion proceedings with respect to other portions of Aloha's water service territory; and

WHEREAS, Aloha has filed a notice of appeal of the order initiating the Investigation Docket in the First District Court of Appeal (Investigation Appeal); and

WHEREAS, the underlying issues in the Show Cause Docket and the Investigation Docket arise out of the presence of hydrogen sulfide in the water in the homes of some Aloha customers and various taste, odor and color issues that result from such presence (the "hydrogen sulfide issues"); and

WHEREAS, Aloha has filed an action against the Commission in Leon County Circuit Court Case No. 05-CA-01142 seeking declaratory and injunctive relief (Declaratory Judgment Action); and

WHEREAS, Aloha has appealed to the First District Court of Appeal in Case No. 04-5242 (Refund Appeal) a Commission order that requires Aloha to refund certain amounts previously collected from its customers; and

WHEREAS, the Commission has issued Order No. PSC-05-0709-FOF-WU (Water Quality Order) granting Aloha's request to replace the requirement in Order No. PSC-02-0593-FOF-WU that Aloha remove 98% of the hydrogen sulfide from its finished water with a goal that the level of hydrogen sulfide in its water should not exceed 0.1 mg/L, and has specified the locations and frequency of required testing; and

WHEREAS, Aloha has the right to seek reconsideration and/or appeal of the Water Quality Order; and

WHEREAS, the University of South Florida, under contract with Aloha, is nearing completion of a study (the "USF Study") that will identify and analyze various water treatment options to address the hydrogen sulfide issues (the "Available Options") and Aloha currently anticipates that the final USF Study will be completed on or before August 15, 2005 and such study will address tray, forced draft and packed tower aeration in addition to other water treatment options; and

WHEREAS, Aloha intends to promptly review the Available Options, analyze and estimate their respective costs and rate impact, and file with the Commission a request for

approval of Aloha's preferred water treatment option ("Aloha Option"), taking into account which option has the best likelihood of eliminating or minimizing the hydrogen sulfide issues on a cost-effective basis, within 60 days following receipt of the final USF Study; and

WHEREAS, Aloha is ready and willing to implement either the Aloha Option, or any of the other appropriate Available Options identified by the USF Study, or a technically feasible hydrogen sulfide treatment option identified by an independent consultant retained by the Commission, which shall be approved by the Commission as the preferred method to address the hydrogen sulfide issues ("Selected Option"); and

WHEREAS, Aloha believes that due to the risk of future disallowance for cost recovery purposes, it will not have the ability to finance the Selected Option in the absence of either (1) formal regulatory approval by the Commission of implementation of the Selected Option, or (2) the existence of a legally enforceable water treatment standard that requires the implementation of the Selected Option; and

WHEREAS, Aloha further believes it will not have the ability to finance the Selected Option while the Show Cause Docket is pending, due to the risk to lenders that a portion of Aloha's revenue-generating territory may be deleted; and

WHEREAS, in the event the Show Cause Docket and/or Investigation Docket were to result in an order deleting any portion of Aloha's territory, Aloha will exercise every legal right at its disposal to resist such deletion and to preserve or recover the full value of its assets; and

WHEREAS, Aloha believes that the public interest is better served by the prompt implementation of the Selected Option that has the best likelihood of eliminating or minimizing the hydrogen sulfide issues on a cost-effective basis than by prolonged administrative, judicial and appellate litigation; and

WHEREAS, Aloha believes that the purchase of water from Pasco County is the only option reasonably and feasibly available to Aloha to insure that Aloha has sufficient water to serve the potable water needs of its present and future customers.

NOW, THEREFORE, Aloha Utilities, Inc. offers to settle the Show Cause Docket, the Investigation Docket, the Investigation Appeal, the Declaratory Judgment Action, the Refund Appeal, and the Water Quality Proceeding on the following basis:

1. The "First Effective Date" is the date that the Commission votes to accept this Offer of Settlement. The "Second Effective Date" is the date that a Commission order accepting this Offer of Settlement has become final and non-appealable. The "Third Effective Date" is the date that a Commission order approving implementation of the Selected Option has become final and non-appealable.
2. The Available Options are those identified by the USF Study to address the hydrogen sulfide issues in Aloha's water service territory. The Available Options will also include any other technically feasible hydrogen sulfide treatment option recommended by an independent

consultant retained by the Commission, provided that any such option must be described by the consultant in a report with sufficient specificity and detail to enable Aloha and its engineers to evaluate the cost of such option, and, if the option is ultimately selected by the Commission, to proceed expeditiously to implement such option.

3. Aloha will provide a copy of the final USF Study to the Commission, the Office of Public Counsel, and each of the individual intervenors in the Show Cause Docket immediately upon its receipt from USF. Representatives of USF have assured Aloha that the USF Study and appendices will provide all of the relevant data and workpapers generated in the preparation of the USF Report. Aloha will provide the Commission with all of these data and workpapers. Aloha shall make the representatives of USF who worked on the study reasonably available to consult with the Commission's staff and/or consultants about their data, findings and conclusions.

4. (a) No later than 60 days following Aloha's receipt of the final USF Study, Aloha will file with the Commission and serve on all parties to the Show Cause Docket a report that analyzes and estimates the respective costs and rate impacts of the Available Options identified by the USF study. The report will be accompanied by a petition that requests Commission approval of the Aloha Option. The Commission will expeditiously conduct a proceeding to review the Available Options and to enter an order selecting one of the Available Options (the "Selected Option") and approving its implementation.

(b) Aloha agrees that it will not protest any PAA order, or appeal any final order, on the grounds that the order approves a Selected Option that is different than the Aloha Option. Provided, however, that this paragraph shall not prohibit a protest, motion for reconsideration or appeal on the grounds that the Selected Option has not been identified with sufficient specificity to enable Aloha to proceed with design and engineering.

(c) The approval of the Selected Option shall have the effect of determining that it is prudent for Aloha to proceed to implement such option as if there were a legally enforceable water treatment standard that requires the implementation of such option and that the prudent costs of implementing such option shall be recoverable through rates. Aloha acknowledges and agrees that such approval will not preclude the Commission from reviewing the reasonableness of the specific costs incurred in implementing the Selected Option at the time Aloha seeks recovery of the related costs; however, the Commission's review shall not revisit for ratemaking purposes the fundamental decision that the Selected Option should have been implemented.

5. On or immediately after the First Effective Date:

- (a) The Show Cause Docket shall be placed in abeyance, all further activity in that docket shall be suspended, and the hearings currently scheduled for January 2006 shall be cancelled.
- (b) Staff's investigation in the Investigative Docket shall be placed in abeyance and all further activity in that docket shall be suspended.

- (c) Aloha and the Commission shall file a joint motion requesting that the Circuit Court hold the Declaratory Judgment Action in abeyance. If the motion is denied, Aloha agrees not to prosecute the Declaratory Judgment Action in anticipation of the occurrence of the Third Effective Date.
- (d) Aloha and the Commission shall file a joint motion requesting that the First District Court of Appeal hold the Refund Appeal and the Investigation Appeal in abeyance.

6. On or immediately after the Second Effective Date:

- (a) Aloha will not file, or if previously filed will withdraw or voluntarily dismiss, any request for reconsideration or any appeal of the Water Quality Order.
- (b) Aloha will file a notice of voluntary dismissal of the Refund Appeal and shall promptly make the refunds required by Order No. PSC-04-1050-FOF-WU.

7. On or immediately after the Third Effective Date:

- (a) The Commission will voluntarily dismiss both the Show Cause Docket and the Investigative Docket.
- (b) No further enforcement action will be taken against Aloha by the Commission, nor any further disallowances or penalties of any kind will be assessed against Aloha by the Commission in any future proceeding based on action or inaction relating to water quality or customer service issues which have been raised in Docket Nos. 950615-SU, 960545-WS, 010503-WU, 020896-WS, 050018-WU or 050183-WU, which action or inaction occurred prior to the Third Effective Date.
- (c) Aloha will voluntarily dismiss the Declaratory Judgment Action, with prejudice, and will voluntarily dismiss the Investigation Appeal.
- (d) Aloha will proceed as quickly as possible, and in good faith, to implement the Selected Option, including, but not limited to, design, permitting, financing, construction, testing, and operation. This obligation will be incorporated in, and imposed by, the Commission order approving implementation of the Selected Option.

8. Beginning 30 days following the Third Effective Date, and continuing for 18 months thereafter, Aloha will reimburse \$1000 of the cost incurred during said 18 month period by any of its residential customers in the Seven Springs service area for replacing copper water piping in their home with CPVC piping and will finance 100% of the remaining cost (up to an additional \$2,500) through an interest-free loan program (the "Repiping Program"). The maximum number of residential customers allowed to participate in the Repiping Program shall not exceed 200 homes. The loans will be repaid by the residential customer, without interest, in equal increments over a 36 month period. Customers must submit a written application to Aloha

within the above-noted 18 month period in order to participate in the Repiping Program. Such applications will be available at Aloha's offices. The application shall not require any credit approval. Aloha will not seek to recover the cost of the Repiping Program from its ratepayers; provided, however, this does not prevent Aloha from taking collection action against a customer to enforce Aloha's right to repayment of any loan to the customer under the Repiping Program. An outline of the procedures to be followed by Aloha in administering the Repiping Program are attached to this Offer of Settlement as Exhibit I, and are incorporated herein by reference.

9. Neither Aloha nor the Commission will seek recovery from the other of attorneys fees, costs, damages, or other compensation related to any action taken by either party on or prior to the Third Effective Date. Further, Aloha will not seek recovery from its ratepayers of any litigation costs, legal fees, consultant fees, and costs arising directly from or resulting from any judicial or quasi-judicial litigation in the Show Cause Docket, the Investigation Docket, the Declaratory Judgment Action, the Refund Appeal, the Investigation Appeal and the Water Quality Proceeding. The provisions of this paragraph will take effect on the Third Effective Date.

10. (a) Aloha intends to immediately file a limited proceeding in order to recover through water rates the cost of the additional 1.5 million gallons per day of water that Aloha has contracted to purchase from Pasco County beginning in January, 2006. The Commission will process such application as a limited proceeding, will not expand the scope of the proceeding beyond issues related to the additional water purchase, and will issue its PAA Order in such case within 90 days of the receipt of the petition. In the event the PAA Order is protested, the Commission will issue its Final Order within 6 months of the date of such protest.

(b) Aloha has provided to the Commission, and will file in the limited proceeding, a report detailing its attempts to locate alternative sources of water in order to conform to the maximum limits of its water use permit while meeting the water supply needs of its existing and future customers. Based upon that report and on the previous information provided to the Commission in Docket No. 020896-WS, the staff of the Commission will recommend at the PAA stage of the limited proceeding that Aloha has now complied with the requirements of Order No. PSC-02-0593-FOF-WU with regard to the further issues that needed to be analyzed and information that needed to be produced by Aloha to determine the most cost effective alternative for obtaining additional water resources as contained on Pages 52 and 53 of that Order.

11. In the event that Aloha violates, or fails to meet its obligations under, Section 3, 4(a), 4(b), 5(c), 5(d), 6(a) or 6(b), the Commission may take the Show Cause Docket and Investigative Docket out of abeyance. If the Commission takes those dockets out of abeyance, nothing herein shall limit in any way Aloha's right to seek relief in Circuit Court from any alleged procedural or substantive due process violation of Aloha's property rights by the Commission.

12. In the event the Commission finds probable cause that Aloha has violated its obligations under Section 7(d) or 8, or the provisions of any Commission order that incorporates those obligations, nothing in this Offer of Settlement, or the Commission's acceptance thereof, shall limit in any way the Commission's authority to take enforcement action against Aloha for

such alleged violation. Such enforcement action shall be initiated in a manner that provides Aloha with the right to a hearing and complies with any other applicable requirements of Chapter 120. If the Commission initiates such enforcement action, nothing herein shall limit in any way Aloha's right to seek relief in Circuit Court from any procedural or substantive due process violation of Aloha's property rights by the Commission which is alleged to have occurred after the Third Effective Date.

13. This Offer of Settlement shall create binding obligations on Aloha only if it is accepted by the Commission, without change, and is incorporated by reference in a final Commission order.

14. If this Offer of Settlement is not accepted by the Commission, without change, then neither the Offer of Settlement nor the staff recommendation that the Commission accept the Offer of Settlement will be admissible in any present or future judicial or administrative proceeding.

15. By making this Offer of Settlement, Aloha does not admit to any violation of any statute, rule or order, nor does such offer constitute an admission of fault or liability on water quality or customer service issues which have been raised by the Commission or some of Aloha's customers. In the event this Offer of Settlement is not accepted by the Commission, without change, neither Aloha nor any other party to any of the proceedings referenced herein (including the Commission) waives any legal, factual, policy or other position, or any legally available rights and remedies, otherwise available to it.

SUBMITTED this 20th day of July, 2005.


ALOHA UTILITIES, INC.


By: 

STATEMENT BY COMMISSION STAFF

The Commission's General Counsel and Director of Economic Regulation have participated in settlement negotiations with Aloha and have reviewed the foregoing Offer of Settlement. Based on that participation and review, they will recommend to the Commission that it issue a final order accepting the Offer of Settlement, without change.

Dated: 7/21/05


General Counsel


Director of Economic Regulation

ALOHA UTILITIES, INC.
Copper Pipe Replumbing Reimbursement through Loan and Grant

Procedures

1. Within 18 months of the start date for program, a customer in Aloha's Seven Springs service territory whose home has copper piping may submit an application for preapproval of a \$1,000 grant and up to a \$2,500 loan for complete repiping of the home with CPVC pipe. The application shall include:
 - a) The name and address of the customer requesting repiping within the Seven Springs service territory;
 - b) An estimate by a state licensed plumbing contractor for work to be performed to replace all existing copper piping with CVPC;
 - c) An executed Indemnification and Hold Harmless Agreement relieving Aloha from responsibility for damage to pipes, or for the work to be performed and the materials to be utilized by the licensed plumbing contractor;
 - d) The customer's authorization for Aloha to include on the customer's monthly water and sewer bill the charges for repayment of the loan portion; and
 - e) The customer's agreement to repay the loan portion along with payment for water and sewer service.
2. Aloha will notify the customer of any deficiencies in the application within 15 business days of its receipt. Aloha will approve the application within 20 business days of its receipt, or within 20 days of the correction of any deficiencies. If Aloha has previously approved 200 applications under the program, Aloha will place the customer's name on a waiting list in the event that previously approved customers do not complete their repiping projects.
3. All work related to the replacement of copper piping with CVPC shall be completed by the licensed plumbing contractor within 90 days of the approval as outlined in Paragraph 2 above. Within 30 days after completion of such work, the customer shall submit a statement from the plumbing contractor showing a specific itemization of the work performed to replace all copper pipe with CPVC, the cost of the work performed to replace all copper pipe with CPVC, and that such work has been completed in full.
4. Aloha shall schedule a closing within 30 business days after its receipt of such invoice. At closing, the customer shall be required to sign a promissory note for repayment of the loan portion. Such note shall provide for the customer to pay any attorneys' fees and costs in the event Aloha is required to institute collection action and shall provide that the obligation to repay the note will "run with the land." Upon execution and delivery of note, Aloha shall issue a check for the grant and loan proceeds payable to the customer.

In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

DOCKET NO. 010503-WU

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DOCKET NO. 050183-WU

FILED: JULY 21, 2005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one true and correct copy of ALOHA UTILITIES, INC.'s OFFER OF SETTLEMENT, has been served by U.S. Mail to F. Marshall Deterding and John Wharton, Esquires, Rose, Sundstrom and Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee, FL 32301, and that a true and correct copy thereof has been furnished to the following by U. S. Mail, this 21st day of July, 2005:

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