

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of stipulation on procedure with Office of Public Counsel, and application for limited proceeding increase in water rates in Pasco County, by Aloha Utilities, Inc.

DOCKET NO. 060122-WU
ORDER NO. PSC-08-0694-PCO-WU
ISSUED: October 20, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER GRANTING EXTENSION OF ABATEMENT

BY THE COMMISSION:

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. The utility has been exceeding its Southwest Florida Water Management District water use permit (WUP) limits. To address Aloha's excess withdrawals, on October 26, 2004, Aloha entered into a Bulk Water Agreement with Pasco County (County), wherein it contracted to purchase water from the County in order to meet the needs of current and future customers and eliminate excess withdrawals from its wells.

On February 13, 2006, OPC and Aloha filed a Joint Petition to Approve Stipulation on Procedure (Stipulation), which formalized an agreement between Aloha and OPC regarding the procedure to be followed and the issues to be addressed in the event Aloha filed a future limited proceeding to recover the costs of purchased water and related chloramination facilities. We approved the Stipulation on Procedure by Order No. PSC-06-0169-S-WU, issued March 1, 2006, in this docket.

On September 28, 2007, Aloha filed its application for a limited proceeding to recover the costs for the chloramination and purchased water from the County. We considered the application at our February 12, 2008, Agenda Conference, where we heard from the utility, the Office of Public Counsel (OPC), and interested customers. Subsequently, we issued proposed agency action (PAA) Order No. PSC-08-0137-PAA-WU, on March 3, 2008. The order allowed the utility, after it has completed the construction of a fully operating interconnection with Pasco

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County, to recover phase one costs associated with the interconnection and with the utility's purchase of bulk water from Pasco County. On March 24, 2008, Aloha, OPC, and certain members of the Better Water Now Committee protested the order and requested a hearing on the matter. The hearing date to resolve the protest was scheduled for November 24-25, 2008.

On August 29, 2008, OPC filed a Motion to Dismiss or in the Alternative Motion to Amend Procedural Order (Motion), alleging that Aloha's testimony is insufficient and is essentially an attempt to revise its application for a limited proceeding rate case. Aloha filed a response in opposition to OPC's Motion on September 5, 2008, simultaneously with a request for oral argument.

Upon consideration of these pleadings, the Prehearing Officer tolled the time for the filing of OPC and staff's direct testimony and exhibits by Order No. PSC-08-0601-PCO-WU, issued September 17, 2008, in order to allow for OPC's Motion to be heard by the full Commission.

On September 17, 2008, Commission staff filed a recommendation on the outstanding motions and recommended that we deny OPC's Motion to Dismiss. Instead, staff recommended that we direct Aloha to refile its testimony and exhibits on October 15, 2008, direct the utility to account for adjustments for known and measurable changes that it wishes us to consider, and allow the Prehearing Officer to modify the order establishing procedure as needed.

On September 23, 2008, OPC and Aloha filed a Joint Request for Abatement. Aloha and OPC asked that the Joint Request for Abatement be heard by the full commission prior to our consideration of staff's recommendation. They stated that if we granted the request for abatement, OPC's pending Motion to Dismiss would be moot.

Staff recommended that we consider the Joint Request for Abatement prior to taking up the recommendation on OPC's Motion to Dismiss. Staff also recommended that we grant the Joint Request for Abatement, noting in particular that the request was supported by all parties to this proceeding, and that the request offered a reasonable and administratively efficient means of addressing the potential sale of Aloha to Florida Governmental Utility Authority (FGUA) as well as the concerns raised in OPC's Motion to Dismiss.

Accordingly, at our Agenda Conference of September 29, 2008, we addressed the parties' Joint Request for Abatement in lieu of staff's recommendation.

We have jurisdiction pursuant to Chapters 120 and 367, Florida Statutes.

Decision

On September 23, 2008, OPC and Aloha filed a Joint Request for Abatement in this docket. The Joint Request for Abatement asks that we abate the litigation in Docket 060122-WU concurrent with the abatement established by our vote at the September 16, 2008, Agenda Conference, in the above referenced docket and in Docket No. 060606-WS, Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU.¹ The parties also requested that we move the scheduled hearing date from November 24-25, 2008, to April 8-9, 2009, and asked that if FGUA and Aloha are unable to reach agreement concerning the sale of the utility, that the Prehearing Officer issue a revised Order Establishing Procedure to govern the controlling dates of the proceeding and direct Aloha to refile its testimony and exhibits to account for know and measurable changes that it wishes us to consider. We note that by letter dated September 24, 2008, filed in this docket, OPC clarified that the Better Water Now Committee, which is also a party to this matter, is in support of the Joint Request for Abatement.

Accordingly, we abate the litigation regarding the protest of Order No. PSC-08-0137-PAA-WU. The abatement period shall commence September 29, 2008, and shall end on the same day as the abatement established by Order No. PSC-08-0665-PCO-WS. The hearing date shall be moved from November 24-25, 2008 to April 8-9, 2009. If FGUA and Aloha are unable to reach agreement concerning the sale of the utility, then the Prehearing Officer shall issue an amended order establishing procedure which directs the utility to refile its testimony and exhibits, and establishing other critical dates.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that an abatement period shall be established for the litigation to resolve the protests of Order No. PSC-08-0137-PAA-WU. It is further

ORDERED that the abatement period shall commence September 29, 2008, and shall end on the same day as the abatement established by Order No. PSC-08-0665-PCO-WS. It is further

ORDERED that the hearing date to resolve the protests of Order No. PSC-08-0137-PAA-WU shall be moved from November 24-25, 2008 to April 8-9, 2009, It is further

¹ We issued Order No. PSC-08-0665-PCO-WS, Order Granting Abatement, on October 8, 2008, following the Florida Governmental Utility Authority's request for an abatement while it negotiated to purchase the utility. The Order established a 45-day abatement period for all actions associated with implementing anion exchange and all actions necessary for Aloha to interconnect with Pasco County, except for the litigation to resolve the protests of Order No. PSC-08-0137-PAA-WU, and the show cause proceeding initiated by Order No. PSC 08-0266-SC-WS. Order No. PSC-08-0665-PCO-WS, was issued in Docket No. 060122-WU, Joint petition for approval of stipulation on procedure with Office of Public Counsel, and application for limited proceeding increase in water rates in Pasco County, by Aloha Utilities, Inc., and in Docket No. 060606-WS, Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU.

ORDERED that if FGUA and Aloha are unable to reach agreement concerning the sale of the utility, then the Prehearing Officer shall issue an amended order establishing procedure which directs the utility to refile its testimony and exhibits, and establishes other critical dates. It is further

ORDERED that this docket should remain open pending the resolution of the protest, and further action associated with the Stipulation.

By ORDER of the Florida Public Service Commission this 20th day of October, 2008.



ANN COLE
Commission Clerk

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.