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Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: November 18, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Fletcher, Bulecza-Banks) *BS*
Office of the General Counsel (Hartman, Cowdery) *RCM* *MSB* *SMC* *1/10*

RE: 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.

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.

AGENDA: 12/02/08 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop (060122-WU)
Argenziano (060606-WS)

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060122.RCM.DOC

Case 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.

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In February 2005, the Commission initiated deletion proceedings in Docket No. 050018-WU to delete a portion of the Seven Springs service area based on a number of problems that ultimately stem from the presence of hydrogen sulfide in the water. On March 9, 2006, after several months of extensive negotiations in which Commission staff participated, a Settlement Agreement was executed by Aloha, the Office of Public Counsel (OPC), and individual intervenors. The Settlement Agreement resolved all outstanding dockets and court proceedings between Aloha and the Commission, and was approved by Order No. PSC-06-0270-AS-WU.¹ A key element of the Settlement Agreement is the agreement by the parties that it is prudent for Aloha to implement a new water treatment method – anion exchange – to address the current problems that stem from the presence of hydrogen sulfide in the water.

In addition, on October 26, 2004, Aloha entered into a Bulk Water Agreement with Pasco County (County), wherein it contracted to purchase approximately 3.1 million gallons of water per day from the County in order to meet the needs of current and future customers. Significant costs are expected to be associated with the interconnection and purchase of this water, and the installation and operation of related chloramination facilities.

There are currently two dockets open to address the ripe issues associated with the purchase of bulk water from Pasco County and associated interconnection, and to track Aloha's progress to design and install the plant necessary to implement anion exchange: Docket Nos. 060606-WU, In re: Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU (the anion exchange docket) and 060122-WU, 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. (the limited proceeding docket).²

On March 14, 2008, the Florida Governmental Utility Authority (FGUA), which is not a party to either Aloha docket, filed a "Suggestion of Abatement."³ In its filing, FGUA suggested "an abatement of the anion exchange project currently being implemented by Aloha Utilities pursuant to Commission Order" while it negotiated to purchase the utility. FGUA's suggestion was corrected by letter dated March 18, 2008, to clarify that the FGUA suggested an abatement period of 120-days.

¹ Issued April 5, 2006, in Docket No. 050018-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. 050183-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; and Docket No. 010503-WU, In Re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

² In the limited proceeding docket, the Commission issued proposed agency action (PAA) Order No. PSC-08-0137-PAA-WU, on March 3, 2008. In this PAA order, the Commission voted to allow the utility, after it has completed the construction of a fully operating interconnection with Pasco 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 petitioned for a hearing concerning this PAA order.

³ A "suggestion" is not a pleading contemplated by the Florida Administrative Procedures Act, the Uniform Rules, or any Commission rule or statute.

At the April 8, 2008, Agenda Conference, the Commission considered FGUA's request and agreed to "abate for 120 days, any and all actions directed towards Aloha 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." The Commission also directed that Aloha should not be penalized for the 120-day abatement period for purposes of implementation of the settlement agreement approved by Order No. PSC-06-0270-AS-WU.⁴

In addition, in a separate vote, the Commission voted at the April 8, 2008, Agenda Conference to order Aloha to show cause, in writing, within 21 days, why it should not be fined for its apparent violation of Section 367.081(1), Florida Statutes, for knowingly failing to comply with Order No. PSC-06-0270-AS-WU, by failing to report delays of the anion exchange treatment facilities in its quarterly report.⁵ This matter is currently pending and has been set for hearing in April 2009.

On August 19, 2008, FGUA filed "FGUA's Request for Extension of Abatement." In its filing, FGUA requested that the Commission extend the abatement period established by Order No. PSC-08-0267-PCO-WS for an additional 45-days while it continued to negotiate to purchase the utility. On August 29, 2008, FGUA's counsel filed a letter clarifying that its request for an extension of the abatement period does not include a request to abate the show cause matter. On September 2, 2008, FGUA's counsel filed another letter further clarifying that it was requesting the 45-day abatement to begin to run from the date the Commission issue an order approving the 45-day abatement. The 120-day abatement period the Commission approved by Order No. PSC-08-0267-PCO-WS ended on August 28, 2008.

Following the Florida Governmental Utility Authority's second request for an abatement, the Commission issued Order No. PSC-08-0665-PCO-WS, Order Granting Abatement, on October 8, 2008.⁶ 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. This second abatement expires November 24, 2008.

On September 23, 2008, Aloha and OPC filed a Joint Request for Abatement. Aloha and OPC asked that the litigation resulting from the protest of Order No. PSC-08-0137-PAA-WU be abated in concurrence with Order No. PSC-08-0665-PCO-WS. The Commission granted the

⁴ Order No. PSC-08-0267-PCO-WS, issued April 30, 2008, 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 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.

⁵ Order No. PSC-08-0266-SC-WS, issued April 30, 2008, in Docket No. 060606-WS, In re: Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU.

⁶ Order No. PSC-08-0665-PCO-WS, 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.

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request pursuant to Order No. PSC-08-0694-PCO-WU, issued October 20, 2008, in Docket No. 060122.

On November 6, 2008, Aloha and OPC filed a second Joint Request for Abatement. The parties request an extension of the abatement of all activities in the two dockets, including the abatement of the show cause litigation, until January 9, 2009. On November 13, 2008, staff received an email from a member of the customer group Better Water Now, confirming the group's support of the request.

This recommendation addresses the second Joint Request for Abatement. The recommendation addresses the abatement of the show cause matter as a separate issue since Commission staff have separated into two distinct groups for this matter: advisory staff and hearing staff.⁷

The Commission has jurisdiction pursuant to Chapters 120 and 367, Florida Statutes.

⁷ See Cherry Communications, Inc. v. Deason, 652 So.2d 803 (Fla.1995).

Discussion of Issues

Issue 1: Should the Commission grant Aloha and OPC's Joint Request to Abate the implementation of anion exchange pursuant to Order No. PSC-06-0270-AS-WU in Docket 060606-WS and all actions necessary for Aloha to interconnect with Pasco County, including the litigation to resolve the protest of Order No. PSC-08-0137-PAA-WU, in Docket 060122-WU until January 9, 2009?

Recommendation: Yes, the Commission should grant Aloha and OPC's second Joint Request to Abate the implementation of anion exchange pursuant to Order No. PSC-06-0270-AS-WU in Docket 060606-WS and all actions necessary for Aloha to interconnect with Pasco County, including the litigation to resolve the protest of Order No. PSC-08-0137-PAA-WU, in Docket 060122-WU until January 9, 2009. (Willis, Hartman)

Staff Analysis: In support of their request, Aloha and OPC state that Aloha entered into a contract on October 8, 2008, for the sale of its assets to FGUA. They state that the transaction is in the due diligence phase and that "FGUA and Aloha are directing their efforts to the successful completion of the transaction." The parties conclude that they anticipate the closing to occur during the month of December 2008 and that the abatement of this proceeding will assist the parties in their efforts to finalize the sale as quickly as possible. Staff would also note that Pasco County has approved the FGUA purchase. In addition, the Better Water Now customer group has expressed support for the abatement.

In the second Joint Request to Abate, the parties state that, "it is in the best interest of Aloha, OPC, the public, the Commission, and its staff, that all activities, including those related to the show cause, in these two dockets be abated until such time as the Commission receives the update from the parties on or before January 9, 2009."

Hearing staff believes that an abatement of all actions associated with anion exchange implementation and all actions necessary for Aloha to interconnect with Pasco County, including the limited proceeding litigation, is reasonable as, Aloha and FGUA have entered into a contract for the sale of the utility and the sale is anticipated to close in December 2008. The abatement of these proceedings may prevent an unnecessary expenditure of time and resources. Accordingly, hearing staff recommends that the Commission grant Aloha and OPC's second Joint Request to Abate all activities related to anion exchange implementation and all actions necessary for Aloha to interconnect with Pasco County, including the limited proceeding litigation, until January 9, 2009. The abatement period should not count against Aloha for purposes of the implementation of the Settlement Agreement approved by Order No. PSC-06-0270-AS-WU.

Issue 2: Should the Commission grant Aloha and OPC's joint request to abate the show cause proceeding initiated by Order No. PSC-08-0266-SC-WS?

Recommendation: Yes. The show cause proceeding should be abated until January 9, 2009. (Cowdery)

Staff Analysis: The prior requests for abatement of Docket No. 060606-WS and Order Nos. PSC-08-0267-PCO-WS and PSC-08-0665-PCO-WS granting the abatement requests did not include the show cause proceeding initiated by Order No. PSC-08-0266-SC-WS in Docket No. 060606-WS. However, in their second Joint Request for Abatement filed on November 6, 2008, Aloha and OPC specifically request the Commission also abate all activities in the show cause proceeding until January 9, 2009.

In support of their request, Aloha and OPC state that Aloha entered into a contract on October 8, 2008, for the sale of its assets to FGUA. They state that the transaction is in the due diligence phase and that "FGUA and Aloha are directing their efforts to the successful completion of the transaction." They assert that the abatement of all activities in the show cause proceeding until January 9, 2008, is in the interest of Aloha, OPC, the public, and the Commission. The parties conclude that they anticipate the closing to occur during the month of December 2008, and that the abatement of this proceeding will assist the parties in their efforts to finalize the sale as quickly as possible.

Advisory staff believes that an abatement of the show cause proceeding is reasonable, as Aloha and FGUA have entered into a contract for the sale of the utility and the sale is anticipated to close in December 2008. The abatement of this proceeding may prevent an unnecessary expenditure of time and resources. Thus, advisory staff recommends that the Commission grant Aloha and OPC's joint request to abate the show cause proceeding. In accordance with Aloha and OPC's request, the show cause proceeding should be abated until January 9, 2009.

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Issue 3: Should these dockets be closed?

Recommendation: No, these dockets should remain open pending the resolution of the issues associated with Aloha's interconnection with Pasco County and the implementation of anion exchange. (Hartman)

Staff Analysis: These dockets should remain open pending the resolution of the issues associated with Aloha's interconnection with Pasco County and the implementation of anion exchange.