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Sent: Wednesday, March 04, 2009 9:26 AM
To: Filings@psc.state.fl.us
Cc: Jean Hartman; reilly.steve@leg.state.fl.us; John Wharton; Steve Watford; Marty Deterding; Bill Sundstrom
Subject: Filing in Dockets 060122-WU and 060606-WS
Attachments: Reply to Citizens Response to Aloha's Request for Release of Escrow Monies.pdf

- a. John L. Wharton
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- b. Docket No. 060122-WU Joint Petition for Approval of Stipulation on Procedure with Office of Public Counsel and Application for a 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 No. PSC-06-0270-AS-WU
- c. Aloha Utilities, Inc.
- d. 5 pages
- e. Reply to the Citizens' Response to Aloha's Request for Contingent Release of Escrow Monies

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for Approval of Stipulation
on procedure with Office of Public Counsel,
and Application for a limited proceeding
increase in water rates in Pasco County
by Aloha Utilities, Inc.

Docket No. 060122-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.

Docket No. 060606-WS

**ALOHA UTILITIES, INC.'S REPLY TO THE CITIZENS'
RESPONSE TO ALOHA'S REQUEST FOR CONTINGENT
RELEASE OF ESCROW MONIES**

ALOHA UTILITIES, INC. ("Aloha"), by and through its undersigned attorneys, hereby files this Reply to the Citizens' Response to Aloha's Request for Contingent Release of Escrow Monies, and would state as follows:

1. Much of the Citizens' Response is designed to create the impression that the release of the escrowed monies to Aloha is a "windfall". With typically misplaced aplomb, OPC never wrestles with the dichotomy that a windfall is (according to Merriam-Webster) "an unexpected, unearned or sudden gain or advantage" while the release of the escrow monies as Aloha has requested would in

fact only partially reimburse Aloha for expenses incurred prudently and in good faith and consistent with and pursuant to a Settlement Agreement with OPC and a Commission Order. The Order itself clearly and unequivocally provided that the only way Aloha would ever be repaid for these good faith outlays would be by release of the escrow funds.¹

2. OPC correctly points out that release of the escrow monies will provide no offsetting CIAC credit or reduction in the increased rates FGUA intends to implement to finance the purchase and maintenance of Aloha's former assets. While FGUA's plans to "improve" the system are at most a matter a speculation (both as to their implementation and their outcome), there is no doubt that FGUA will operate unrestrained by the consistent delays and quantum increase in expenses that OPC has visited upon Aloha and its customer base over the last decade. Yet, in the end, all of this has little to do with the fact that a) the monies are in escrow; b) the monies were contemplated by the Commission, Aloha, and OPC to eventually be released to Aloha to offset outlays for the implementation of anion; and c) the Order which set up this very process made clear that Aloha would not be entitled to recover through rates (or through any method other than release

¹ Notably, the Order, with its contemplation that the escrowed monies would ultimately be applied so as to defray Aloha's expenses on anion exchange, was embraced and supported by OPC.

of the escrow monies) any portion of its investment in anion up to the amount which remains in escrow.


4. What Aloha is now requesting is exactly what all concerned contemplated as to the final disposition of the monies in escrow. OPC's statement that construction had not begun on the anion exchange facilities is a complete red herring. What had begun, at the Commission's direction and at OPC's urging, was the necessary work to move the project forward. OPC's attempt to mischaracterize the prerequisites to the release of the escrow monies as requiring that the facilities be "fully operational" for a year, or that construction must have started, is nowhere to be found in either the Order or the Settlement Agreement and is only offered to bolster OPC's predictable default position, to wit: no matter what the Order says, and no matter what Aloha has spent, and no matter how reasonable Aloha's reliance upon the Commission's directive (under the observant eye of the staff and OPC during the entire process) -- the money should of course go back to the customers because the shareholders of Aloha just received millions of dollars for the sale of the assets of the utility. While this position is certainly populist, it is completely unsupportable by the Settlement Agreement or by any credible assertion or position in OPC's Response.

5. The absurd closure in OPC's Response, that this money has been "due and payable to the customers since July 30, 2003" is one last, desperate attempt to poison the well and to ask this Commission to ignore the purpose and intent of the Settlement Agreement; to ignore the intent of its own Order; to ignore the considerable pressure applied upon Aloha in implementing the Order (such pressure applied from the perspective that Aloha was moving too slowly on anion exchange, not too quickly); and to ignore that the Settlement Agreement rendered the original purpose and posture of the escrow monies moot. What the escrow monies became was a sum of money available to defray the expenses of Aloha in the reasonable and good faith implementation of anion exchange. Aloha set about that task; the acquisition of Aloha's assets occurred such that the task was never completed; the outlays by Aloha far exceeded the amount in escrow; and it is only reasonable, logical, and right that the monies be now released to defray Aloha's expenses thusly incurred.

WHEREFORE, Aloha requests that the Commission direct that the Clerk, now that the acquisition of Aloha has occurred by sale of assets to the Florida Governmental Utility Authority, execute whatever documents are appropriate such that the monies in escrow will be released to Aloha.

Respectfully submitted this 4th day of March, 2009, by

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been
furnished via U.S. Mail to the following this 4th day of March, 2009:

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