

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: December 7, 2006

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

FROM: Office of the General Counsel (Gervasi)
Division of Economic Regulation (Bulecza-Banks, Rendell)

RE: Docket No. 060122-WU – Joint petition for approval of stipulation on procedure by Aloha Utilities, Inc. and Office of Public Counsel.

AGENDA: 12/19/06 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 12/19/06 (Deadline by which utility must pay County impact fees at lower rate.)

SPECIAL INSTRUCTIONS: Please schedule this as the first item after the minutes and consent items.

FILE NAME AND LOCATION: S:\PSC\GCL\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. In February 2005, the Commission initiated deletion proceedings in Docket No. 050018-WU for 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 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 the Commission by Order No. PSC-06-0270-AS-

WU¹. 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.

Moreover, on October 26, 2004, Aloha entered into a Bulk Water Agreement with Pasco County (County), wherein it contracted to purchase approximately 1.5 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 purchase of this water and the installation and operation of related chloramination facilities. On February 13, 2006, as part of the negotiations between the parties towards reaching the Settlement Agreement, OPC and Aloha filed a Joint Petition to Approve Stipulation on Procedure, which formalized an agreement between Aloha and OPC regarding the procedure to be followed and the issues to be addressed in the event Aloha files a future limited proceeding to recover the costs of the purchased water and related chloramination facilities. The Commission approved the Stipulation on Procedure by Order No. PSC-06-0169-S-WU, issued March 1, 2006, in the instant docket.

Effective December 20, 2006, the County will begin collecting substantially higher impact fees to be charged for plant capacity, including the plant capacity that Aloha contracted to reserve by way of the Bulk Water Agreement. Aloha endeavors to pay these County impact fees by December 19, 2006, under the current lower charges. To that end, on November 30, 2006, Aloha and OPC entered into a Stipulation and Joint Petition to Approve Stipulation, which were filed in the instant docket on December 1, 2006. The Stipulation specifies the treatment of impact fees to be paid and related carrying costs for purchasing water from the County. By its terms, the Stipulation will be effective only if approved by the Commission. The Commission has jurisdiction pursuant to section 367.011, Florida Statutes.

¹ Issued April 5, 2006, in three dockets. 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.

Discussion of Issues

Issue 1: Should the Commission approve the Stipulation filed December 1, 2006, between Aloha and the Office of Public Counsel specifying the treatment of impact fees paid and related carrying costs for purchasing water from Pasco County?

Recommendation: Yes, the Stipulation should be approved in its entirety. (GERVASI, BULECZA-BANKS, RENDELL)

Staff Analysis: Aloha and the Office of Public Counsel (parties) have entered into a Stipulation (Attachment A) which specifies that the impact fees (\$556 per 350 gallons of water reserved from the County) paid by Aloha to the County on or before December 19, 2006, for the purchase of Phases I, II, and III (total of 3.1 million gallons per day) for bulk water service should be considered prudent and that no used and useful adjustments should be made to those impact fees. The Stipulation further specifies that Aloha should be allowed to accrue prudently incurred effective debt carrying costs associated with the payment of the impact fees until such time as the Commission approves rate relief to Aloha, and that no used and useful adjustments should be made on the amount of those prudently incurred carrying costs. The parties agree that the impact fees and prudently incurred carrying costs shall be recoverable in current rates as determined in the future limited proceeding to be filed by Aloha to recover its costs to construct and operate its chloramination facilities and purchase of bulk water from the County.

Moreover, the Stipulation specifies (in Paragraph 3) that if any amount of impact fees are subsequently refunded to Aloha by the County, the rate impact of the amount refunded shall be credited to ratepayers as agreed to by the parties, or if an agreement cannot be reached, as determined by the Commission. On behalf of staff and OPC, OPC requested clarification from the County as to whether the County will agree to refund to Aloha any portion of the impact fees paid to the County on or before December 19, 2006, to the extent Aloha ultimately does not require the water paid for by that portion of the impact fees. By letter dated November 29, 2006, to Aloha, the County advised that it indeed agrees to refund to Aloha any portion of the impact fees paid to the County to the extent Aloha ultimately does not require the water paid for by that portion of the impact fees. The County further clarified that it will not be obliged to make such refund to Aloha unless and until Aloha provides a written request for the refund, including a release of the County's obligation to provide the water associated with the refunded impact fees and the Board of County Commissioners authorizes payment.

The Stipulation is clear that it will only be effective if approved by the Commission without change, is incorporated by reference in a procedural order, and the time for reconsideration of such order has passed. Aloha's counsel has represented to staff that if the Commission approves the Settlement at its December 19, 2006, agenda conference, Aloha will pay the County impact fees that same day.

Staff believes the Stipulation is reasonable and will serve to provide Aloha the assurance it needs in order to move forward with the payment of the County impact fees under the current lower charges, which is in the best interest of its customers. Accordingly, staff recommends that the Commission approve the Stipulation in its entirety.

Docket No. 060122-WU

Date: December 7, 2006

Issue 2: Should this docket be closed?

Recommendation: No, this docket should remain open to allow Aloha the opportunity to file a Petition for Limited Proceeding.

Staff Analysis: This docket should remain open to allow Aloha the opportunity to file a Petition for Limited Proceeding.