

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: March 1, 2007

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

FROM: Office of the General Counsel (Gervasi, Holley)
Division of Economic Regulation (Fletcher, Rendell)

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

AGENDA: 03/13/07 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 04/10/07 (60-Day Suspension Date)
10/09/07 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

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.

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 began 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. On November 30, 2006, Aloha and OPC entered into a Stipulation and Joint Petition to Approve Stipulation, specifying, among other things, that the impact fees paid by Aloha to the County on or before December 19, 2006, at the County's lower impact fees, 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 Commission approved that Stipulation by Order No. PSC-07-0023-S-WU, issued January 8, 2007, in the instant docket, and Aloha paid the lower County impact fees on December 19, 2006.

Also by the terms of the November 30, 2006 Stipulation, Aloha and OPC agreed to work toward gaining immediate approval of a stipulated increase in water service availability charges for Aloha to a minimum level of \$3,000 per equivalent residential connection (ERC), by entering into an additional stipulation and request to the Commission. To that end, on February 7, 2007, Aloha and OPC entered into a Stipulation to Increase Service Availability Charges (Stipulation), which was filed in this docket on February 9, 2007, along with a Joint Petition to approve it. By its terms, the Stipulation will be effective only if approved by the Commission. The Commission has jurisdiction pursuant to Section 367.101, 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 to Increase Service Availability Charges filed February 9, 2007, between Aloha and OPC, specifying that Aloha's service availability charges for its Seven Springs system should be increased to \$3,000 per ERC?

Recommendation: Yes, the Stipulation should be approved in its entirety. Moreover, using the proposed \$3,000 per ERC charge and the authorized 300 gallon per day (gpd) demand per ERC, the non-residential service availability charge should be increased to \$10.00 per gallon. With regard to its water tariff, Aloha's Fourth Revised Sheet No. 26.7, First Revised Sheet No. 26.8, Second Revised Sheet No. 26.9, and First Revised Sheet No. 26.24 should be approved as filed. With regard to its wastewater tariff, Aloha's Fifth Revised Sheet No. 22.7, First Revised Sheet No. 22.8, Second Revised Sheet No. 22.9, and First revised Sheet No. 22.24 should be approved as filed. These revised tariff sheets should be effective for connections made on or after the stamped approval date on the tariff sheets provided the appropriate notice has been given, pursuant to Rule 25-30.475(2), Florida Administrative Code. The notice should be mailed or hand delivered to all persons in the service area who have filed a written request for service within the past 12 calendar months or who have been provided a written estimate for service within the past 12 calendar months, pursuant to Rule 25-30.4345, Florida Administrative Code. Aloha should also be required to publish a notice of the proposed charges in a newspaper of general circulation in the service area. The utility should provide proof of the date the notice was given within 10 days after the date of the notice. (Gervasi, Fletcher, Rendell)

Staff Analysis: Aloha and the Office of Public Counsel (parties) have entered into a Stipulation to Increase Service Availability Charges (Attachment A) which specifies that the "Better Water Now" customer group has proposed that Aloha's water service availability charges for its Seven Springs system should be increased to \$3,000 per ERC in order to defray the cost to construct facilities to: 1) implement chloramination of water as a disinfectant; 2) implement anion exchange water treatment at several plants; and 3) facilitate the delivery of bulk water on Aloha's side of the point of delivery of bulk water from the County to the Seven Springs system. Aloha will begin collecting the higher water service availability fees as soon as it is authorized to do so by the Commission.

Section 367.101(1), Florida Statutes, provides that "[t]he [C]ommission shall set just and reasonable charges and conditions for service availability." This section also provides that "[t]he [C]ommission shall, upon request or upon its own motion, investigate agreements or proposals for charges and conditions for service availability." According to Rule 25-30.580, Florida Administrative Code, the guidelines for designing a utility's service availability policy are as follows:

- (1) The maximum amount of contributions-in-aid-of-construction, net of amortization, should not exceed 75% of the total original cost, net accumulated depreciation, of the utility's facilities and plant when the facilities and plant are at their capacity; and
- (2) The minimum amount of contribution-in-of-construction should not be less than the percentage of such facilities and plant that is represented by the water transmission and distribution and sewage collection systems.

Aloha's currently authorized service availability fees are \$1,000 per ERC and \$3.333 per gallon for all non-residential customers based on a 300 gpd demand per ERC (\$1,000/300 gpd demand per ERC = \$3.333).² Staff has reviewed the proposed service availability charges. Based on the total estimated costs for the interconnection with Pasco County, the chloramination facilities and the anion exchange water treatment at several plants, and because the proposed increase complies with the guidelines set forth in Rule 25-30.580, Florida Administrative Code, staff believes the increase of Aloha's service availability charges to \$3,000 is just and reasonable. The Stipulation is clear that it will only bind the parties if it is approved by the Commission without change and is incorporated by reference in an Order of the Commission. For the foregoing reasons, staff recommends that the Stipulation should be approved in its entirety. Further, using the proposed \$3,000 per ERC charge and the authorized 300 gpd demand per ERC, the non-residential charge should be increased to \$10.00 per gallon (\$3,000/300 gpd demand per ERC = \$10.00).

On February 19, 2007, Aloha filed revised tariff sheets to reflect the proposed \$3,000 per ERC charge, the non-residential charge of \$10.00 per gallon, and the 300 gpd demand per ERC. Because the utility's wastewater tariff contains Aloha's water and wastewater service availability charges, Aloha also filed revised wastewater tariff sheets. With regard to its water tariff, the utility's Fourth Revised Sheet No. 26.7, First Revised Sheet No. 26.8, Second Revised Sheet No. 26.9, and First Revised Sheet No. 26.24 should be approved as filed. With regard to its wastewater tariff, the utility's Fifth Revised Sheet No. 22.7, First Revised Sheet No. 22.8, Second Revised Sheet No. 22.9, and First revised Sheet No. 22.24 should also be approved as filed. These revised tariff sheets should be effective for connections made on or after the stamped approval date on the tariff sheets provided the appropriate notice has been given, pursuant to Rule 25-30.475(2), Florida Administrative Code. The notice should be mailed or hand delivered to all persons in the service area who have filed a written request for service within the past 12 calendar months or who have been provided a written estimate for service within the past 12 calendar months, pursuant to Rule 25-30.4345, Florida Administrative Code. Aloha should also be required to publish a notice of the proposed charges in a newspaper of general circulation in the service area. The utility should provide proof of the date the notice was given within 10 days after the date of the notice.

² The Commission authorized Aloha's current service availability fees by Order No. PSC-02-1428-TRF-WU, issued October 18, 2002, in Docket No. 010156-WU, In re: Application for increase in service availability charges for water customers in the Seven Springs service area in Pasco County by Aloha Utilities, Inc.

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. If no protest occurs within 21 days of the issuance of the Tariff Order, the Order will become final upon the issuance of a Consummating Order. If a protest is filed within 21 days of the issuance date of the Order, the tariff should remain in effect with the increased charges held subject to refund pending resolution of the protest and the utility should be required to set up an escrow account to guarantee the funds collected subject to refund, as set forth in the staff analysis. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should provide a report by the 20th of each month indicating the monthly and total monies collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code. (Gervasi, Fletcher)

Staff Analysis: This docket should remain open to allow Aloha the opportunity to file a Petition for Limited Proceeding. If no protest occurs within 21 days of the issuance of the Tariff Order, the Order will become final upon the issuance of a Consummating Order. If a protest is filed within 21 days of the issuance date of the Order, the tariff should remain in effect with the increased charges held subject to refund pending resolution of the protest and the utility should be required to set up an escrow account to guarantee the funds collected subject to refund.

In the event of a protest, the escrow account should be established between the utility and an independent financial institution pursuant to a written escrow agreement. The Commission should be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement should state the following: that the account is established at the direction of the Commission for the purpose set forth above; that no withdrawals of funds should occur without the prior approval of the Commission through the Director of the Division of the Commission Clerk & Administrative Services; that the account should be interest bearing; that information concerning the escrow account should be available from the institution to the Commission or its representative at all times; and that pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments. The utility should be required to deposit, on a timely basis, the difference between its existing plant capacity charges of \$1,000 per ERC and \$3.333 per gallon for all non-residential customers and the proposed charges of \$3,000 per ERC and \$10.00 per gallon for all the non-residential customers. If a refund is not required, the interest earned by the escrow account should revert to the utility. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should be required to provide a report by the 20th of each month indicating the monthly and total monies collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

STIPULATION TO INCREASE SERVICE AVAILABILITY CHARGES

~~This STIPULATION TO INCREASE WATER SERVICE AVAILABILITY CHARGES~~ is entered into this 7th day of February, 2007, by and between Aloha Utilities, Inc. ("Aloha") and the Office of Public Counsel on behalf of the Citizens of the State of Florida ("OPC") (collectively, "Parties").

WHEREAS, Aloha has had to recently construct, or will have to construct in the future: (1) facilities to implement chloramination of water as a disinfectant; and (2) facilities to implement anion exchange water treatment at several plants; and (3) facilities on Aloha's side of the point of delivery of bulk water from the Pasco County to facilitate the delivery of bulk water to the Seven Springs System; and

WHEREAS, Aloha has had to recently invest or will have to invest in the future, monies to: (1) pay impact fees to Pasco County in order to receive bulk water from the County; and (2) reimburse Pasco County for additional costs to build facilities to enable the County to deliver bulk water to Aloha; and

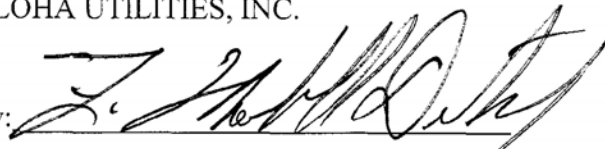
WHEREAS, the "Better Water Now" customer group has proposed that Aloha's water service availability charges, for its Seven Springs system, should be increased to \$3,000.00 per ERC, in order to defray the cost to construct the above described Aloha water facilities and to make the above described payments to the County, and to help mitigate future rate increases to pay for the construction and investment in these new facilities. Aloha and OPC are agreeable to this increase.

NOW THEREFORE, Aloha and OPC hereby stipulate and agree to the following:

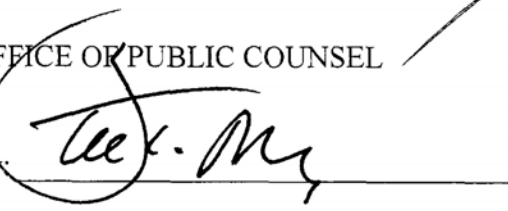
1. Aloha and OPC shall file a Joint Motion seeking an order from the Florida Public Service Commission ("Commission") authorizing Aloha to increase, as quickly as possible, its water service availability fees for its Seven Springs system to \$3,000.00 per ERC.
2. Aloha shall begin collecting the higher water service availability fees as soon as it is authorized to do so by the Commission.
3. This Stipulation shall bind the parties only if it is approved by the Commission without change and is incorporated by reference in an Order of the Commission.

EXECUTED this 7th day of February, 2007.

ALOHA UTILITIES, INC.

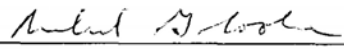
By: 

OFFICE OF PUBLIC COUNSEL

By: 

STATEMENT BY COMMISSION STAFF

The staff of the Commission participated in the negotiation of this stipulation. Based on that participation, staff will recommend to the Commission that it issue an order consistent with this stipulation.


GENERAL COUNSEL


DIRECTOR OF ECONOMIC REGULATION