

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 27, 2008

TO: Office of Commission Clerk (Cole)

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

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: 04/08/08 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skopp (060122-WU) and 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.

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 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 associated 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).

On March 14, 2008, the Florida Governmental Utility Authority (FGUA), which is not a party to either Aloha docket, filed a "Suggestion of Abatement"² in the limited proceeding docket only. FGUA "suggests an abatement of the anion exchange project currently being implemented by Aloha Utilities pursuant to Commission Order" FGUA's suggestion was corrected by letter dated March 18, 2008, to clarify that the FGUA suggests an abatement period of 120 days. It is unclear whether FGUA is seeking abatement of any interconnection activities. For the reasons discussed below, staff recommends a 120 day abatement period for all actions associated with the implementation of 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 has jurisdiction pursuant to Chapters 120 and 367, 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.

² A "suggestion" is not a pleading contemplated by the Florida Administrative Procedures Act, the Uniform Rules, or any Commission rule or statute.

Discussion of Issues

Issue 1: Should the Commission abate any Aloha proceedings pursuant to the suggestion of the Florida Governmental Utility Authority?

Recommendation: Yes, the Commission should establish a 120 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. The 120 day 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. (Hartman, Willis)

Staff Analysis: The Commission has previously determined that the “FGUA is an interlocal entity created pursuant to Chapter 163, Florida Statutes, by political subdivisions of the state.”³ The Commission has approved, as a matter of right, transfers of investor-owned water and wastewater utilities to FGUA.⁴ According to the FGUA’s website, the FGUA provides “drinking water and wastewater service and infrastructure to various counties in Florida. By joining the FGUA, these counties have pooled their resources to bring citizens the best of both worlds: private-sector functionality with public-sector commitment and experience.” In its “suggestion,” FGUA alleges that “[i]f Aloha is acquired by Pasco County, FGUA will handle the acquisition, financing, and operation of the utility until such time in the future as it becomes feasible for the County to take over ownership of Aloha’s former system.”

FGUA acknowledges that it is not a party to any Aloha proceeding. Nonetheless, FGUA argues that because of the “unique posture” of the limited proceeding docket and because it is in the public interest, the Commission should consider FGUA’s “suggestion as expeditiously as possible.” FGUA suggests that the Commission abate the anion exchange project for 120 days “so that FGUA may investigate whether an acquisition of Aloha can and should be accomplished.”

By an e-mail exchange between counsel to FGUA, Aloha, and OPC, which OPC forwarded to staff on March 25, 2008, neither Aloha nor OPC oppose the abatement suggested by FGUA. In addition, neither Aloha nor OPC are opposed to FGUA intervening for the limited purpose of supporting its “suggestion.” As of the date of filing this recommendation, FGUA has not petitioned to intervene in any open Aloha docket.

³ Order No. PSC-03-1284-FOF-WS, issued November 10, 2003, in Docket No. 030932-WS, In re: Joint application for acknowledgement of sale of land and facilities of Florida Water Services Corporation in Lee County to Florida Governmental Utility Authority, and for cancellation of Certificate Nos. 306-W and 255-S.

⁴ Order No. PSC-00-2351-FOF-WS, issued December 7, 2000, in Docket No. 990489-WS, In re: Application by Florida Cities Water Company, holder of Certificate Nos. 027-W and 024-S in Lee County and 007-W and 003-S in Brevard County, and Poinciana Utilities, Inc., holder of Certificate Nos. 146-W and 103-S in Polk and Osceola Counties, for transfer of facilities to Florida Governmental Utility Authority and cancellation of Certificate Nos. 027-W, 024-S, 007-W, 003-S, 146-W, and 103-S; and Order No. PSC-03-1284-FOF-WS, issued November 10, 2003, in Docket No. 030932-WS, In re: Joint application for acknowledgement of sale of land and facilities of Florida Water Services Corporation in Lee County to Florida Governmental Utility Authority, and for cancellation of Certificate Nos. 306-W and 255-S.

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According to the FGUA, the Pasco County Board of County Commissioners, on February 27, 2008, voted unanimously to join the FGUA for the purpose of acquiring investor-owned utilities on behalf of County utility customers. FGUA requests that "no further monies be expended on the anion exchange project since the project may not ultimately be constructed or utilized by the FGUA (or the County) if the concerns of Aloha's customers can be met without the design, construction, or utilization of the anion exchange project." FGUA argues that it is not in the public interest to spend significant funds for a project that may never be built.

FGUA filed its suggestion in the limited proceeding docket, which is currently the vehicle by which the Commission is addressing Aloha's pending petition to recover certain costs associated with interconnecting to Pasco County to effectuate the utility's bulk water purchase agreement with the County. This limited proceeding docket is not intended to govern the implementation of the anion exchange project in any way.

The last Commission action in the limited proceeding docket was the issuance of proposed agency action (PAA) Order No. PSC-08-0137-PAA-WU, issued 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. Until these protests are resolved, Aloha will be placed in a posture where it will be extremely difficult to proceed with its planned interconnection with Pasco County, for which there has been a bulk water purchase agreement since the Fall of 2004.

No docket has been opened to address the implementation of anion exchange except Docket No. 060606-WU. This docket has been used to track the quarterly reports and other correspondence associated with Aloha's implementation of the anion exchange project.

It is staff's understanding that FGUA is negotiating with Aloha to purchase the utility. Staff is not privy to the status of these negotiations. According to FGUA's "suggestion," if FGUA acquires the utility, FGUA may not implement anion exchange because its preliminary analysis shows it would purchase enough bulk water from Pasco County so that "an anion exchange system may not be required." FGUA argues that continued work on the project could diminish the possibility of a sale or increase the purchase price and thus "would constitute a waste of money and resources."

Staff recommends that the Commission establish a schedule for the hearing requested in the limited proceeding docket. Aloha is currently exceeding limits in its water use permit issued by the Southwest Water Management District and, even if FGUA purchases the utility, FGUA would need to purchase bulk water from Pasco County to serve Aloha's customers. Thus, the Commission should not abate the litigation to resolve the protests of Order No. PSC-08-0137-PAA-WU. The litigation will help further refine some of the issues concerning the appropriateness of interconnecting Aloha to Pasco County. All other actions associated with Aloha's purchase of bulk water from Pasco County should be abated.

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In addition, staff recommends that the Commission abate, for 120 days, any actions directed towards Aloha implementing anion exchange. The utility and OPC do not object, and as suggested by FGUA, the abatement may avoid “a waste of money and resources.” The 120 day 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.

Docket Nos. 060122-WU, 060606-WS

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Issue 2: 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.