



Florida Public Service Commission

SPECIAL REPORT

AUGUST 2005 NO. 9

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. 050018-WU

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

DOCKET NO. 050183-WU

Application for an Increase in Water Rates for
Seven Springs System
in Pasco County by

Aloha Utilities, Inc.

DOCKET NO. 010503-WU

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. There are a number of active dockets, appeals, or other cases involving Aloha's Seven Springs service area and the Commission.

As a result of negotiations with Commission staff, Aloha has filed a proposed Offer of Settlement in these cases. The Offer of Settlement has the potential to avoid lengthy administrative, judicial and appellate litigation and to focus instead on identifying and implementing a scientifically and technically sound, cost-effective approach to addressing the hydrogen sulfide issues.

The Commissioners are expected to vote on this matter at the August 17, 2005, Special Agenda Conference.

See charts on pages 3-6.

Customer Meeting

Monday, August 15, 2005

12:00 noon

West Pasco Government Center
County Commission Board Room, Suite 160
7530 Little Road
New Port Richey, Florida

PSC Staff and Reference Numbers

For technical questions, contact:

Marshall Willis (850) 413-6914

For legal questions, contact:

Rick Melson (850) 413-6199

For general questions, contact:

Dick Durbin (850) 413-6121

Or call toll-free 1-800-342-3552
(1-800-511-0809 to fax)

E-mail: contact@psc.state.fl.us
Internet Home Page: www.floridapsc.com

P S C C O M M I S S I O N E R S



COMMISSIONER

Lisa Polak Edgar



COMMISSIONER

J. Terry Deason



CHAIRMAN

Braulio L. Baez



COMMISSIONER

Rudolph "Rudy" Bradley

VACANT

Braulio L. Baez was appointed to the Florida Public Service Commission by Governor Jeb Bush on August 23, 2000, to complete a term ending January 2002. He was then reappointed by the Governor to a four-year term ending January 2006. Prior to his appointment, Chairman Baez was an attorney in Miami, Florida, with a statewide practice representing municipal and county governments in telecommunications, cable franchising and other regulatory matters. He was Executive Assistant to Commissioner Joe Garcia from 1994 to 1998. A native of South Florida, Chairman Baez received his undergraduate degree from Florida International University in 1988, and his Juris Doctorate degree from Nova University, Shepard Broad Law Center, in 1993. Chairman Baez is a member of the National Association of Regulatory Utility Commissioners Committees on Electricity and International Relations, and has served as President of the Southeastern Association of Regulatory Utility Commissioners. He was named to the State Regulatory Advisory Council to the FCC Federal Advisory Committee on Diversity in the Digital Age. He is a member of Leadership Florida Class XXII, the Florida Bar, and is a past Director of the Hispanic Bar Association, 2nd Judicial District.

J. Terry Deason was first appointed to the Commission by the Florida Public Service Commission Nominating Council in January 1991 for a term ending in January 1995. He was subsequently reappointed by the late Governor Lawton Chiles for a term ending in January 1999. Commissioner Deason was then reappointed by Governor Jeb Bush to a term ending in January 2003, and to his current term which ends in January 2007. Commissioner Deason has served as Chairman of the Commission on two occasions, from January 1993 to January 1995, and from July 2000 to January 2001. Commissioner Deason is an active member of the National Association of Regulatory Utility Commissioners (NARUC). He currently serves on NARUC's Board of Directors, its Finance and Technology Committee, and the Federal/State Joint Conference on Accounting. Commissioner Deason also serves on the executive committee for the Nuclear Waste Strategy Coalition. Prior to his appointment, he served as Chief Regulatory Analyst in the Office of Public Counsel. In that capacity, he was responsible for the coordination of accounting and financial analysis used by the Public Counsel in cases before the Public Service Commission, presented testimony as an expert witness, and consulted with the Public Counsel on technical issues and ratemaking policies concerning regulated utilities in the State of Florida. From 1981 to 1987, Commissioner Deason served as Executive Assistant to PSC Commissioner Gerald L. Gunter, during which time he reviewed and analyzed staff recommendations and advised the Commissioner on those recommendations and other pertinent policy determinations. From 1977 to 1981, he served as a Legislative Analyst with the Office of Public Counsel. He attended the U.S. Military Academy at West Point, and in 1975 received his bachelor of science degree in accounting, summa cum laude, from Florida State University. He also received his master of accounting degree from FSU in 1989.

Rudolph "Rudy" Bradley was appointed to the Florida Public Service Commission by Governor Jeb Bush for a four year term beginning January 8, 2002. Commissioner Bradley serves on the National Association of Regulatory Utility Commissioners' Committees on Consumer Affairs, Water, and International Relations. He is also a member of the Energy Market Access Partnership Board which is a joint project between the Department of Energy and the National Association of Regulatory Utility Commissioners. Prior to his appointment to the Commission, Commissioner Bradley served as a member of the Florida Legislature for seven years representing District 55 which includes Pinellas, Manatee and Hillsborough Counties. As a member of the Legislature, he served as the Vice Chairman of the Utilities and Telecommunications Committee and as the Chairman of the Select Committee on Energy Restructuring. Commissioner Bradley also served as the Chairman of the Business Development and International Trade Committee and Chairman of the Economic Development Council. As a legislator, Commissioner Bradley maintained a special interest in improving Florida's educational system and expanding business opportunities for all citizens. Commissioner Bradley earned his Bachelor of Science Degree from the University of Tampa and his Masters Degree from the University of Michigan. He served as an educator in Pinellas County for several years and he developed several private enterprises involving real estate and livestock.

Lisa Polak Edgar was appointed to the Florida Public Service Commission by Governor Jeb Bush for a four year term beginning January 2005. Commissioner Edgard served as Deputy Secretary for Planning and Management for the Florida Department of Environmental Protection (DEP) from August 1999 through January 2005. Ms. Edgard's responsibilities included oversight of the agency's \$2.1 billion budget, fiscal and strategic planning, accountability measures, information technology, administrative services, and coordination between the state and federal government on environmental issues, including oil and gas drilling on the Outer Continental Shelf. Prior to serving at DEP, Commissioner Edgard served as chief analyst on Environmental Policy for the Executive Office of the Governor. There Commissioner Edgard helped develop state policy on issues regarding the environment and natural resources, energy, transportation, and economic and community development. She served as liaison with state and federal agencies, Congressional delegation and staff, Cabinet offices, and the Florida Legislature. During her career in public service, Commissioner Edgard has also served as a senior cabinet aide in the Department of Agriculture and Consumer Services, as staff counsel and legislative analyst for the Florida Senate Committees on Reapportionment and Regulated Industries, completed the Harvard Kennedy School of Government program for Senior Executives in State and Local Government, and co-taught a special topics graduate course on the Everglades at Florida A&M University. Commissioner Edgard served as the State of Florida representative to the Minerals Management Service Advisory Board's Outer Continental Shelf (OCS) Policy Committee from 1993-2003, serving on the Subcommittees on Environmental Studies in OCS Areas under Moratoria and OCS Hard Minerals. She was appointed in 2004 to represent the State of Florida on the re-established Department of the Interior Outer Continental Shelf Policy Committee. Commissioner Edgard graduated cum laude from Florida State University in 1985 with a Bachelor's degree in political science and minor in English. She studied in London during her undergraduate education and in Yugoslavia during law school. She received a juris doctorate from the Florida State University College of Law in 1988 and is a member of the Florida Bar.

Highlights of Proposed Settlement

- ◆ Since June, Aloha and senior members of Commission staff have engaged in extensive settlement negotiations.
- ◆ The goal of the negotiations was to redirect the parties' resources away from litigation, and to focus instead on finding a scientific and technical solution to Aloha's water quality problems.
- ◆ The result of the negotiations is an Offer of Settlement that will be presented to the Commission for discussion and consideration at an August 17th special agenda conference.
- ◆ The negotiations proceeded in parallel with the Commission prosecutorial staff's active preparation for trial of the pending territorial deletion case. Those trial preparations will continue unless and until the Commission accepts the Offer of Settlement.
- ◆ The staff who participated in the negotiations are recommending that the Commission accept the Offer of Settlement. The staff believe that the Offer of Settlement is in the best interests of Aloha and its customers for the following reasons:
 - It establishes a framework for implementing a Commission-approved solution to the water quality problems. The Commission will consider and choose from a menu of water treatment options identified by a University of South Florida study and any additional options identified by an independent consultant for the Commission.
 - Aloha agrees not to protest or appeal the Commission decision that selects a water treatment option simply because the Commission chose something other than Aloha's preferred option.
 - Aloha will institute a repiping program consisting of \$1,000 grants and up to \$2,500 interest free loans to assist customers who have problems with leaky copper pipes replace those pipes with CPVC. Aloha will bear the cost of this program – estimated at up to \$253,000.
 - Aloha will drop its appeal of the Commission order that required interim rate refunds and will promptly refund approximately \$276,000, plus interest.
 - Aloha will give up the right to seek to charge customers for \$577,000 or more of litigation costs that it has spent in fighting prior Commission decisions. If the cases are not settled, this amount will continue to grow.
 - Once a new water treatment option has been approved, the Commission will drop the territorial deletion case.
 - Approving a water treatment option and dropping the deletion case will help make it possible for Aloha to obtain financing for needed improvements.
 - Without the settlement, there is almost certain to be many more years of litigation with no assurance that at the end of that time there would be any real solution to the water quality problems.

**Key Provisions of the Offer of Settlement and a
Short Statement of the Effects
(Pros and Cons) of Those Provisions**

ALOHA AGREEMENTS	COMMISSION AGREEMENTS	EFFECTS (PROS AND CONS)
Water Quality		
Aloha will submit USF study of water treatment options, submit cost and rate impact report, and request approval of preferred option.	PSC will conduct a proceeding (PAA or hearing) to review available options, including any options from the Commission's independent consultant, and will approve what it determines to be the best option.	Should result in selection of best scientific and technical solution to address the water quality problem. Shifts focus from litigation to solving problem.
Aloha will not protest or appeal a PSC decision on the grounds that it selects an option that is different than Aloha's preferred option. Aloha will proceed to implement approved option as quickly as possible.	PSC approval will establish Aloha's fundamental right to recover the prudent costs of implementation through rates. The reasonableness of specific costs will be subject to review when Aloha requests rate relief.	Aloha's agreement not to protest/appeal avoids delay in implementing the approved option. Assurance of cost recovery (coupled with termination of deletion proceeding) enables Aloha to obtain financing to implement the approved option.
Aloha will withdraw any motion for reconsideration or appeal of the order that established the 0.1 mg/L goal and specified the measurement points and requirements.		Avoids further delay in implementing the water quality monitoring program.
Repiping Program		
Aloha will make grants of \$1,000 and 36-month interest free loans of up to \$2,500 to customers for replacement of copper piping. The program will be open for 18 months following PSC approval of a water treatment option and will be available to up to 200 homes. Certain procedures for the program are included as an attachment to the Offer of Settlement.		Eases the financial burden faced by customers who must replace copper pipes to correct pinhole leaks or to avoid recurrence of black water problems. Repiping program represents up to \$253,000 commitment by Aloha. This cost will not be recovered from customers. Because it relates to pipes on the customer side of the meter, this commitment is above and beyond anything the PSC could require.
Interim Rate Refund		
Aloha will voluntarily dismiss its appeal of the order requiring		Avoids risk to customers of an adverse appellate decision

ALOHA AGREEMENTS	COMMISSION AGREEMENTS	EFFECTS (PROS AND CONS)
further interim rate refunds and will promptly refund the amounts ordered by the PSC.		<p>overturning their right to refund.</p> <p>Gets \$276,000 refund to customers quickly.</p>
Attorney Fees and Litigation Costs		
Aloha will not seek to recover from ratepayers its litigation costs associated with defense of the show cause proceedings and other specified PSC and court litigation.		Protects customers from potentially having to pay through rates \$577,000 or more in attorneys fees and other litigation costs.
Aloha will not seek to recover attorneys fees or other damages from the PSC related to actions before the final effective date.	PSC will not seek to recover attorneys fees or damages from Aloha related to actions before the final effective date.	Allows both PSC and Aloha to avoid expense and risks of litigation under various theories of liability.
Certificate Revocation Docket / Investigation Docket		
	<p>PSC will cancel January 2006 deletion hearings and hold dockets in abeyance in anticipation of reaching the final effective date. On the final effective date, PSC will dismiss both dockets.</p> <p>PSC will not take future enforcement action against Aloha (or impose any future penalties or disallowances) based on action or inactions, prior to final effective date, relating to water quality or customer service issues that have been raised in previous dockets.</p>	<p>Avoids what is likely to be 5 or more years of expensive litigation before a final decision on deletion could become effective.</p> <p>Dismissal of the deletion proceeding that has created a cloud over Aloha's future revenue stream (coupled with PSC approval of a particular treatment option) will allow Aloha to obtain financing to implement the best scientific and technical solution.</p> <p>Implementing the best scientific and technical solution lets Aloha start over with a clean slate.</p> <p>Eliminates risk that Aloha will implement a treatment solution for all of Seven Springs but that the cost ultimately could be recovered only from customers who remain in a reduced territory.</p> <p>Will not satisfy customers who believe that deletion from Aloha's territory and substituting service from Pasco County is the only acceptable option.</p>

ALOHA AGREEMENTS	COMMISSION AGREEMENTS	EFFECTS (PROS AND CONS)
Other Litigation		
Aloha will hold its investigation appeal and its circuit court declaratory judgment action against the PSC in abeyance until the final effective date, when it will be dismissed.		Allows PSC and Aloha to avoid expense and risks of litigation.
Other Future Proceedings		
Aloha intends to file a limited proceeding to recover incremental cost of purchase of 1.5 MGD/day from Pasco County which is required to comply with SWFWMD requirements.	<p>PSC will handle case as a limited proceeding, will not expand issues, and will issue PAA order within 90 days. If PAA is protested, PSC will issue final order within additional 6 months.</p> <p>At the PAA stage, staff will recommend that Aloha has sufficiently explored alternative sources of water.</p>	<p>Allows Aloha to use a limited proceeding to seek recovery of the costs of purchasing water from Pasco County and establishes reasonable time limits for the processing of that case.</p> <p>Allows Aloha to move forward with the purchase of needed water.</p>
Although not specifically covered by the Offer of Settlement, Aloha and staff anticipate that Aloha will need to file one or more general rate cases to recover, among other things, the cost of whatever water treatment option the PSC approves.		

Florida Public Service Commission

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The Public Service Commission provides a staff of information specialists who are available to answer questions from Florida consumers.

To reach a consumer representative, please call the Public Service Commission during business hours at **1-800-342-3552**, or send a fax to 1-800-511-0809. See the PSC's Internet home page at www.floridapsc.com.