

# ORIGINAL

## REQUEST FOR CHANGE TO AGENDA CONFERENCE HAND DELIVER

RECEIVED FPSC

Date of Request: 11/25/03 Date of Agenda Conference: 12/2/03 Item No. 9

Docket No.: 010503-WU Brief Title: Application for Increase by Aloha Utilities, Inc. NOV 26 AM 8:32

Requested by:  Staff  Other Office of Public Counsel **COMMISSION CLERK**  
Please attach a copy of the written documentation filed (if other) \_\_\_\_\_ (Name)

STAFF's Recommendation to Executive Suite (IF OTHER)  Approve Request  Deny Request

### ACTION REQUESTED [see APM 2.11]

- Defer Item to Agenda Scheduled Date: - 1/20/04
- Change Order of Item or Take Up at Time Certain
- Withdraw Item
- Late Filed Recommendation (must be filed no later than 3:00 p.m. on the date approved for late filing) **A copy of the front page of the recommendation must be provided to CCA by 12 noon on the regular filing date for use as a place-holder during agenda preparation.**
- Add Item to Published Agenda [ see Section 120.525(2), F.S.] - Issue an ADDENDUM and give Legal NOTICE
- Add Emergency Item to Published Agenda [see Section 120.525 (3), F.S.] - Issue an ADDENDUM and Give Fair NOTICE

Concise explanation, justification or comments (attach additional sheet if necessary):

This recommendation relates to whether the utility should be required to refund to customers any additional portion of interim rates above the 4.87% (\$153,510) already refunded. Office of Public Counsel requested deferral to 1/20/04. The request should be granted provided that Staff is permitted to file a substitute recommendation to release \$153,510 of escrow funds to the utility to reimburse it for refunds that have already been completed.

Signature (OPR Staff): JDS *[Signature]* Initials (OPR Division Director or Designee): JDS

Signature (Legal Staff): RRJ *[Signature]* Initials (Legal Division Director or Designee): RRJ

### EXECUTIVE DIRECTOR:

Recommendation to the Chairman's Office  Approve Request  Deny Request  
Initials: MAB Date: 11/25/03

Comments: *Since item 9 is being deferred, the issue in this new recommendation needs to be added as 9A, addendum, to the 12/2 agenda.*

CHAIRMAN'S OFFICE:  Approve Request  Deny Request  
Initials: RL Date: 11/26/03

Executive Suite will send the original to the Division of Commission Clerk and Administrative Services and return a copy to the requesting staff after the Chairman's Office takes action on this request. Requesting staff should distribute copies to the Division Directors (OPR & OCR) and Attorney assigned to the docket.

US  
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DTH

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Sandy  
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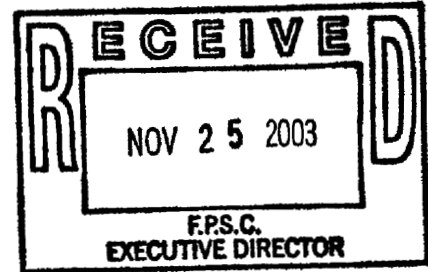
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MARTIN S. FRIEDMAN, P.A.  
VALERIE L. LORD, *OF COUNSEL*  
(LICENSED IN TEXAS ONLY)

November 25, 2003

VIA HAND DELIVERY



Dr. Mary Bane, Executive Director  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Aloha Utilities, Inc.; PSC Docket No. 010503-WU - Water Rate Case  
Our File No. 26038.35

Dear Dr. Bane:

It is my understanding that there is discussion of the possible second delay in action on the final staff recommendation relative to the partial refund of interim rates and closing the above-referenced docket. The agenda to close this case was originally scheduled for action four months ago, but was deferred then by request of OPC.

As far as I can tell from discussions with representatives of the Office of Public Counsel, the purpose of this further delay is solely to allow the Attorney General's office to review the staff recommendation and issues raised therein relative to the refund.

The Attorney General's office had ample opportunity to seek party status in this proceeding in earlier stages and to appeal the refund requirement of the Order or any other provisions of the order, as did all parties. The Attorney General failed to become involved at that stage. The Office of Public Counsel did not appeal or cross appeal on the required calculation of the refund.

Even to the extent the Attorney General's office ever has standing to become involved in such a case after final action (which they do not), no further delays should be granted, as they should take the case as they find it.

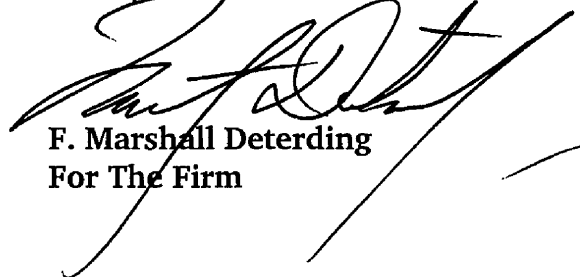
Dr. Mary Bane, Executive Director  
November 25, 2003  
Page 2

This refund was required by the Final Order in accordance with the methodology long recognized as appropriate by the Commission in finalizing rate proceedings involving interim rates. Such decision was reviewed and affirmed by the First District Court of Appeal. The Utility has now completed that refund and submitted the required reports to the Public Service Commission. Because the customer credits and checks issued resulted in a substantial reduction in revenue received by the Utility, the Utility is in need of the monies held in escrow in order to meet its operating expenses recognized in that rate proceeding. As such, immediate release of the escrow of funds must be finalized by the Commission and Aloha objects to any delay in completing that process.

If you have any questions in this regard, please let me know.

Sincerely,

ROSE, SUNDBSTROM & BENTLEY



F. Marshall Deterding  
For The Firm

FMD/tms

cc: Lila A. Jaber, Chairman  
Ms. JoAnn Chase  
Ralph Jaeger, Esq.  
Lorena Holley, Esq.  
Mary Anne Helton, Esq.  
Marshall Willis, CPA  
Tricia Merchant, CPA  
Mr. Bart Fletcher  
Stephen G. Watford  
Robert C. Nixon, CPA

JAMES E. "JIM" KING, JR.

PRESIDENT



Charles J. Beck  
Interim  
Public Counsel

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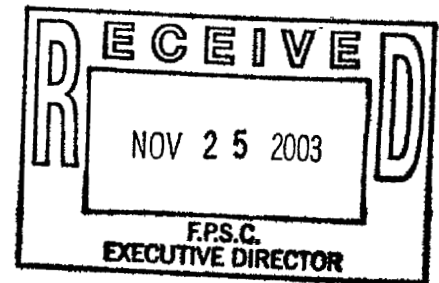
JOHNNIE BYRD

SPEAKER



November 25, 2003

Dr. Mary A. Bane  
Executive Director  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850



RE: Docket No. 010503-WU

Dear Dr. Bane:

By this letter, the Office of Public Counsel is asking for a deferral of Commission action on the interim rate refund in Docket No. 010503-WU, which is currently scheduled on the December 2<sup>nd</sup> Agenda. The OPC is seeking a deferral until mid-January. The OPC has discussed this deferral request with the parties and interested persons. Senator Mike Fasano fully supports a deferral of the decision. Leadership representatives of the Citizens Advisory Committee support a deferral. Mr. Ed Wood (Intervenor) supports a deferral. Moreover, Mr. Jack Shreve has expressed an interest in participating in the issue and also seeks a deferral of the decision. Aloha, however, opposes a deferral.

A deferral of the decision will not harm any party. The funds are protected, and the Commission's procedures account for the time value of money. Accordingly, OPC is asking the PSC to defer its ruling on the interim rate refund until mid-January.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen C. Burgess".

Stephen C. Burgess  
Deputy Public Counsel

SCB/dsb

cc: Parties of Record