

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase
in water rates for Seven Springs
System in Pasco County by Aloha
Utilities, Inc.

DOCKET NO. 010503-WU
ORDER NO. PSC-04-0122-PAA-WU
ISSUED: February 5, 2004

BRIEF OF ALOHA UTILITIES, INC.

By Order No. PSC-04-0614-PCO-WU issued June 21, 2004, the PSC denied Aloha's Petition for a Formal Administrative Hearing, set the matter for informal proceedings pursuant to Section 120.57(2), Florida Statutes, and ordered the parties to file briefs by no later than July 1, 2004, on the issues raised by Aloha in its Petition. This pleading filed on behalf of Aloha Utilities, Inc. is in response to that Order.

ISSUE

The issue in this proceeding is whether Aloha Utilities, Inc. may be required to make an additional refund of monies collected under interim rates beyond the amount previously ordered by Final Order of the PSC and previously refunded by Aloha pursuant to the terms of that Final Order. More specifically, the issue is whether Aloha may be required to refund the totality of the interim revenue increase collected during the period of time in which the Final Order was pending judicial

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review when such revenues collected during that period of time exceeded the revenues approved in the PSC's Final Order by only 4.09%.

PRELIMINARY STATEMENT

By Proposed Agency Action issued on February 5, 2004 (Exhibit 1 -- PAA Order No. PSC-04-0122-PAA-WU), the PSC noticed its intent to require Aloha to make additional refunds to its customers in an amount far exceeding the amount required in a prior Final Order issued on April 30, 2002 (Exhibit 2 -- Excerpts from Order No. PSC-02-0593-FOF-WU). Said PAA requires Aloha to refund the totality of the interim rate increase (15.95%) collected during the period of time in which the Final Order was on appeal, despite the fact that the Final Order authorized Aloha to retain approximately 11% of the authorized interim rates collected during the interim collection period. On February 26, 2004, Aloha timely filed its Petition for a Formal Administrative Hearing, pursuant to Sections 120.569 and 120.57(1), Florida Statutes, claiming disputed issues of material fact, and requesting that the Petition be transmitted to the Division of Administrative Hearings for the assignment of an Administrative Law Judge to conduct a formal evidentiary hearing and render a Recommended Order resolving the disputed issues of material fact. (Exhibit 3 -- Petition for Formal Administrative Hearing and Request that Petition be Transferred

to DOAH)

At an Agenda Conference on June 1, 2004, the PSC voted to deny Aloha's Petition for a Formal Administrative Hearing on the ground that it did not contain disputed issues of material fact, granted Aloha an informal proceeding and ordered that the parties' briefs on the legal issues be filed within 30 days. On June 21, 2004, the PSC entered its written Order reflecting its determination regarding Aloha's Petition for a Formal Administrative Hearing¹ (Exhibit 4 – Order No. PSC-04-0614-PCO-WU), and ordered that the parties file briefs by no later than July 1, 2004.²

In reaching the determination that Aloha's Petition contains no disputed issues of material fact, the PSC has necessarily stipulated or agreed that the facts alleged in the Petition are true and correct and require no further proof or additional evidence. Such stipulated facts include the ultimate facts, as more particularly described below, that the interim rates previously approved by the PSC produced only 4.09% more revenue during the appeal period than the revenues which would have been produced

¹ The prime basis for Aloha's request in its Petition that the matter be referred to the Division of Administrative Hearings for hearing was to obtain a more expeditious resolution of this refund dispute. While Section 120.569(2)(a) requires that agencies grant or deny hearing requests within 15 days after receipt, the PSC did neither for a period in excess of three months.

² Contrary to Section 120.57(2), Florida Statutes, Aloha was not given the option to present to the PSC oral evidence in opposition to the proposed agency action.

had the final rates approved in the Final Order been implemented immediately after the issuance of that Order, and that Aloha has already provided refunds to its customers amounting to 4.87% of the interim rates collected during the appeal period. In other words, by denying Aloha a formal evidentiary hearing, the PSC has admitted and stipulated that the actual difference between the rates collected by Aloha under interim rates during the entire pendency of its proceeding requesting a rate increase, including the appeal period, and the rates ultimately approved by the PSC is less than the amount which has already been refunded by Aloha to its customers. By denying Aloha the opportunity of an evidentiary hearing on the ground that there are no disputed issues of material fact, the PSC has necessarily admitted and stipulated that Aloha relied upon the PSC's determination, as contained within its Final Order, that an appropriate refund amount is 4.87%, and that, in all prior cases, the PSC has allowed utilities to maintain interim rates during the pendency of an appeal, subject to refund via the methodology and/or percentage amount set forth in the Final Order. The denial of a formal evidentiary hearing has necessarily precluded the PSC itself from producing evidence, subject to countervailing evidence, which explicates or explains its policy shift with respect to the refund of interim rates collected by a utility during the period of time between the rendition of a Final Order and the issuance of Mandate from the appellate court.

Aloha submits that the above stipulations of fact, as well as the Findings of Fact contained below, which are based upon documents generated by the PSC, are binding upon the PSC based upon its June 1, 2004 determination to deny Aloha the opportunity to establish such facts in a formal evidentiary hearing pursuant to Florida's Administrative Procedure Act. Said facts are also binding upon the Office of Public Counsel, which has intervened in this proceeding. The OPC should not be permitted to assert or argue any "facts" contrary to the facts determined by the PSC to be the subject of no dispute.

Should the PSC subsequently determine that it does not agree with the facts asserted by Aloha herein, Aloha reasserts its right to a formal evidentiary administrative hearing and renews its request that this matter be transmitted to the Division of Administrative Hearings for a Recommended Order based upon the evidence adduced at the hearing. The PSC would, by law, retain its authority to finally resolve any legal issues raised in this proceeding. Section 120.57(1)(l), Florida Statutes. In submitting this briefing of legal issues as ordered by the PSC, Aloha does not waive its right to a Section 120.57(1) proceeding involving disputed issues of material fact.

FINDINGS OF FACT

Based upon the undisputed facts in the record of this informal administrative proceeding,³ the following relevant facts are found:

1. On August 10, 2001, Aloha filed an application with the PSC for an increase in rates for its Seven Springs water system utility. (Exhibit 1, Order No. PSC-04-0122-PAA-WU, page 1)

2. By Order No. PSC-01-2199-FOF-WU, issued November 13, 2001, the PSC approved interim rates subject to refund with interest. The approved interim rates were based upon a test year which is different than the test year utilized to establish final rates. The Order Approving Interim Rates increased Aloha's revenues by 15.95% above the interim test period revenue level, and required Aloha to deposit the 15.95% of interim revenue increases collected each month into an escrow account to secure for possible refund. (Exhibit 5, Order No. PSC-01-2199-FOF-WU)

3. The PSC entered its Final Order on Aloha's application for a rate increase on April 30, 2002. That Order set final rates and revenue requirements based upon the final test year (a different test year than that used for setting interim rates and revenue requirements). Among other things, the Final Order granted in part and

³ These undisputed facts are demonstrated in the referenced Exhibits attached to this filing.

denied in part Aloha's request for a revenue increase, and required Aloha to make a refund to its customers in the amount of 4.87% of the revenues collected under interim rates. That Final Order specifically addressed the "appropriate" refund for the "interim collection period," which was defined as the period "from November 13, 2001 to the date Aloha implements the final rates approved." (Exhibit 2, pages 90 and 91) The methodology utilized by the PSC in rendering its determination as to the appropriate amount of refund of interim rates followed the standard practice utilized by the PSC in all rate cases to calculate the interim refund amount. (Ex. 9, page 65, lines 20-25) That Final Order further prohibits the implementation of approved rates prior to the PSC's approval of revised tariff sheets and customer notices to be filed by Aloha pursuant to the terms of the Final Order. (Exhibit 2, pages 89, 92, 93 and 95) The Final Order provides that "this docket shall be closed after the time for filing an appeal has run." (Exhibit 2, page 95) The Final Order does not contain any language reserving jurisdiction to the PSC to perform any act not specifically set forth in that Final Order. There is no language within the Final Order which allows the PSC to revisit or modify its determination regarding the methodology for determining the appropriate amount of refund to customers of monies collected during the interim collection period, or any portion thereof.

4. Aloha timely exercised its statutory right to appeal the PSC's Final Order

No. PSC-02-0593-FOF-WU issued on April 20, 2002. Neither Aloha nor any other party sought reconsideration of the Final Order by the PSC nor did Aloha nor any other party raise as an issue in that appeal the appropriateness of the 4.87% refund of interim rates mandated by the PSC in the Final Order. (Exhibit 1, page 4)

5. Subsequent to filing its Notice of Appeal, Aloha sought from the PSC a stay of certain portions of the PSC's Final Order of April 30, 2002, including those portions requiring the implementation of the new rates and a 4.87% refund of interim rates. By Order dated August 5, 2002, the PSC granted the requested stay as to the setting of the new rate structure and the interim refund requirement, as it was required to do pursuant to Rule 25-22.061(1)(a), Florida Administrative Code. (Exhibit 6, Order No. PSC-02-1056-PCO-WU) That "Order Granting in Part and Denying in Part Motion for Stay" contains no language suggesting that the PSC would revisit or modify its Final Order requirement that ALOHA refund 4.87% of interim rates collected during the pendency of the appeal. No party sought appellate review of the PSC's stay Order. Indeed, the Office of Public Counsel did not object to staying the effectiveness of the refund provisions. (Exhibit 6)

6. Briefing in the appellate court was completed on November 4, 2002. In spite of the granting of the PSC's unopposed motion to expedite the appeal on December 13, 2002, the appellate court did not issue its decision (a per curiam

affirmance) until May 6, 2003, and Mandate was issued on June 30, 2003. Aloha Utilities, Inc. v. Florida Public Service Commission, 848 So.2d 307 (Fla. 1st DCA 2003).

7. The Final Order having become effective, Aloha implemented the final rates approved by the PSC in Order No. PSC-02-0593-FOF-WU in August of 2003. By September 10, 2003, Aloha had completed all refunds to its customers in the amount of 4.87% of all interim rates collected between November of 2001 through the conclusion of the interim collection period, which occurred upon the issuance of the Mandate from the District Court of Appeal, First District, plus an additional month required for the implementation of the new rates ordered by the PSC. (Exhibit 1, page 2)

8. As noted above, Aloha was required to maintain an interest-bearing escrow account to secure, subject to refund, the interim rates granted by the PSC in November of 2001. All interim revenues collected between November of 2001 and the conclusion of the rate case proceeding, including the appeal period (May 1, 2002 through July 31, 2003), were placed into that escrow account. Having completed the 4.87% refund to its customers in the amount of \$153,510 (said amount reflecting \$31,527 for the PSC rate case period and \$121,983 for the period in which the PSC's Order was on appeal before the First District Court of Appeal), out of Aloha's

existing funds without a release of the amounts held in escrow, Aloha sought from the PSC the release of all escrowed funds. By “Order Releasing Portion of Escrowed Funds” issued December 15, 2003, six months after Aloha’s request, the PSC released to Aloha the \$153,510, representing the 4.87% of interim rates already refunded by Aloha to its customers, from the escrow account and returned said amount to Aloha. However, the PSC ordered that the remaining balance remain in escrow pending a PSC decision on whether any further refunds are required. That December 15, 2003, Order further noted that as a result of the Mandate from the District Court of Appeal issued on June 30, 2003, “the appellate review process is complete and all provisions of the Final Order are now final and effective.” (Exhibit 7, page 2 – PSC-03-1410-FOF-WS, “Order Releasing Portion of Escrowed Funds”)

9. On numerous occasions, the PSC has stated that the intent of the April 30, 2002, Final Order was that Aloha should receive neither a rate increase **nor a rate decrease.** (Exhibit 2, page 80; Exhibit 1, page 5)

10. By Proposed Agency Action (“PAA”) dated February 5, 2004, which PAA is the subject of the instant proceeding, the PSC announced its intent to require Aloha to make additional refunds to customers in the amount of \$278,113. That amount reflects the determination of the PSC that Aloha must refund the entirety of the interim revenues allowed by the PSC and collected by Aloha during the period of

time between the entry of the PSC's Final Order and the issuance of the Mandate of the District Court, plus the one month required for implementation of the new rates: to wit: the appeal period. (Exhibit 1) The only explanation in the February 5, 2004, PAA as to why a 4.87% refund and the methodology utilized in the Final Order to determine an appropriate refund was appropriate for the period of time preceding the Final Order, but a 15.95% refund and a different methodology is appropriate during the time involved in the appeal, is that the PSC did not intend for Aloha to collect any increased revenues and that "Aloha should not benefit and receive a windfall from its unsuccessful appeal of our Final Order." (Exhibit 1, page 5) As more fully discussed in Paragraph 13 below, by making refunds of 4.87% of interim rates collected during the period of time involved in the appeal of the Final Order, Aloha received less revenues than it would have received had Aloha immediately implemented the rates approved in the Final Order and foregone its statutory right of appeal. Indeed, as a result of Aloha's appeal of the Final Order, Aloha's customers received refunds exceeding \$19,000 over the amount to which they were entitled under the terms of the Final Order.

11. In its February 5, 2004 PAA, the PSC has changed the definition of the "interim collection period" contained within its prior Final Order, and has carved out from that definition a period of time deemed the "appeal period," defining that

period as between May of 2002 and July 2003. The undisputed facts of record, and the Final Order itself, demonstrate that the PSC never intended that the final rates approved and the refund ordered in its “Final Order” would be immediately implemented on April 30, 2002, the date of the Final Order. Time frames and conditions precedent for implementation of the Final Order were set forth in the Final Order. The docket was to remain open until the time for filing an appeal had run. (Exhibit 2, pages 92-95) Necessarily, if an appeal were filed, which it was, the docket remained open pending appellate proceedings. The PSC is aware that parties have a right to appeal its Final Orders, and so advised the parties in the Final Order. The PSC is further aware that its own rules require the PSC to grant a stay pending judicial review of any order involving a refund of moneys to customers. Rule 25-22.061(1)(a), Florida Administrative Code. The PSC’s own December 15, 2003 Order releasing a portion of the escrowed funds to Aloha acknowledges that the refund provisions of its Final Order were not effective or capable of implementation until the completion of the appeal process. (Exhibit 7, page 2)

12. As noted above, the Final Order describes the “interim collection period,” and thus the refund period, as the period “from November 13, 2001 **to the date Aloha implements** the final rates approved.” The PSC’s recent June 21, 2004 Order denying Aloha’s Petition for a Formal Administrative Hearing states that the

\$278,000 additional refund intended by the February 5, 2004 PAA is “for the period subsequent to the issuance of the Final Order and **prior to the implementation** of the approved final rates – May 1, 2002 through July 31, 2003 (the appellate period).” (Exhibit 4, page 2) In fact, both descriptions of the refund period result in the same ending date, i.e., August of 2003. Yet, the Final Order prescribes a 4.87% refund, and the PAA changes that requirement to a 15.95% refund. This represents a modification of the Final Order.

13. Even assuming that the “appeal” period of time between May 1, 2002 and July 31, 2003, could lawfully be evaluated at a different refund rate than that set forth in the PSC’s Final Order, a comparative analysis of the total revenues collected under interim rates during the appeal period and the total revenues which would have been collected under the Final Order rate structure during that same period of time if no appeal had been taken conclusively represents a difference between interim and “final” revenues of 4.09%. That percentage is less than the 4.87% already refunded by Aloha for that same period of time. Stated in dollar figures, the total revenue billed under interim rates during the appeal period was \$2,492,285. The revenue that could have been billed under the Final Order (absent the appeal and absent the PSC’s Stay Order) was \$2,390,364. This represents a difference of \$101,921, or 4.09%. Aloha has already refunded \$121,006 to its customers for the appeal period,

representing \$19,085 **in excess of** the difference between the interim rates and the final rates during the appeal period. These figures have been verified by the PSC staff auditors and PSC staff members from the Office of General Counsel and the Division of Economic Regulation. (Exhibit 8, September 17, 2003 Memorandum reflecting Billing Analysis Audit for Aloha's 15-Months Ended July 31, 2003) Any refund of monies by Aloha beyond \$101,921, or 4.09%, represents a decrease in revenues authorized by the PSC in its April 30, 2002 Final Order.

14. In its June 21, 2004 Order, the PSC states that there should be no difference between a comparison of interim revenues with the newly approved revenues and interim revenues and the original revenues. Were Aloha permitted to offer evidence disputing this statement, Aloha would demonstrate that there is a substantial difference between such calculations. That difference is caused primarily by the difference in test year periods utilized in setting interim versus final rates. The difference is clearly demonstrated by the difference between the refund determined as appropriate by the Final Order for the entire "interim collection period" and the refund now being proposed by PAA Order PSC-04-0122-PAA-WU. It is further demonstrated by the comparative analysis of the total revenues collected under interim rates during the appeal period and the total revenues which would have been collected under the Final Order rate structure during that same period of time.

15. In managing its fiscal affairs since the date of the Final Order, April 30, 2002, Aloha has relied upon the methodology and the percentage amount (4.87%) set forth by the PSC in Final Order No. PSC-02-0593-FOF-WU as the appropriate refund of interim rates collected during the entirety of its rate case proceeding, which includes the period of the appeal to the District Court of Appeal. In addition to the PSC's Final Order and Stay Order on the subject, Aloha's reliance was based upon subsequent discussions with PSC staff, as well as the prior policy, practice and procedure of the PSC in other cases regarding the refund of interim rates when an appeal has been taken. In all prior cases, the PSC has permitted utilities to maintain interim rates during the pendency of an appeal and then required refunds of any excessive interim rates collected at the conclusion of the appeal based upon the same methodology for refund set forth in its Final Order.

16. Based upon the above undisputed facts, Aloha has demonstrated the following ultimate undisputed facts:

A. The PAA requiring Aloha to refund the entirety of its interim rate increase of 15.95% during the appeal period is directly contrary to, and constitutes a modification of, the Final Order which requires a refund of 4.87% of revenues collected during the interim collection period, as defined in the Final Order. The "interim collection period" is defined as that period from November 13, 2001 to the

date Aloha implements the final rates approved. Due to Aloha's appeal and the PSC's subsequent Stay Order, as well as the terms of the Final Order itself, Aloha did not and could not implement the final rates approved in the Final Order until August of 2003.

B. Neither the "Final Order" nor the rules of the PSC contemplate that "final rates" and "refunds" be implemented immediately upon rendition of the Final Order.

C. No party sought reconsideration or appeal of that portion of the PSC's Final Order regarding refunds of moneys collected during the interim period.

D. As mandated by its own rules, the PSC granted a stay of the implementation of the final rates approved and the refund provisions mandated pending conclusion of the appeal. Accordingly, through the PSC's own orders and rules, Aloha was not required to implement the approved rates or the refund of interim rates during the appeal period. The Final Order did not become effective until the conclusion of the appellate process.

E. Aloha implemented the approved final rates and completed the refund to customers in an amount of 4.87% of revenues collected during the interim collection period, which period included all periods of time between November 13, 2001 and July of 2003.

F. The revenues produced by interim rates during the appeal period are only 4.09% higher than the revenues that would have been produced had the final rates been implemented as of the date of the Final Order.

G. The requirement that Aloha refund over 15% of revenues collected during the appeal period results in allowed revenues **less than** those authorized under implementation of the final rates established in the Final Order.

H. Aloha did not receive a benefit or “windfall” from its unsuccessful appeal of the PSC’s Final Order. Had the rates approved in the Final Order been immediately implemented as of May 1, 2002, Aloha would have received more revenues than it would have received had no appeal been taken by Aloha. Since the difference between interim and finally approved revenues during the appeal period is 4.09%, Aloha’s refund of 4.87% resulted in a benefit or “windfall” to customers in the amount of over \$19,000.

I. The PSC’s Proposed Agency Action is contrary to the PSC’s prior agency practice, procedure and policies regarding refunds of interim rates collected during a rate case proceeding, including the time elapsing between a Final Order and the issuance of Mandate by the appellate court.

CONCLUSIONS OF LAW

A. The PSC's proposed agency action requiring a refund of all interim rate increases collected by Aloha during the appeal period constitutes a modification of the Final Order entered by the PSC on April 30, 2002.

The PSC's Final Order dated April 30, 2002, sets forth the methodology and the specific percentage of interim rate increases to be refunded by Aloha as a result of the rates and revenues established in that Final Order. In essence, the PSC determined in its Final Order, as was consistent with its standard practice used in all rate cases to calculate an interim refund, that due to the difference in test years utilized to determine interim and final rates Aloha was permitted to retain 11.08% of the interim rates collected to bring its revenues up to the amount authorized in the Final Order. In contrast, and in spite of conclusive evidence demonstrating that the revenues collected during the appeal period results in 11.86 % less than those authorized under the Final Order, the PAA proposes that Aloha be permitted to retain 0.00% of interim rates collected during the appeal period.

The Final Order specifically defined the "interim collection period" as being from "November 13, 2001 to the date Aloha implements the final rates approved." Because an appeal was timely filed and the PSC granted a Stay of the implementation of final rates and the refund requirements, the date that Aloha implemented the final

rates was August of 2003. Pursuant to the Final Order, Aloha was then required to refund 4.87% of interim revenues collected between November 13, 2001 and July 31, 2003; to wit: the “interim collection period.”

The PSC’s proposed agency action purports to modify the Final Order by establishing a new methodology and requiring a total refund of the interim rate increase for a period of time “prior to” the implementation of approved final rates, as opposed to the methodology established in the Final Order applicable up “to the date Aloha implements final rates.” There is nothing within the Final Order, nor is there any condition enumerated in the Stay order, which even suggests that Aloha is entitled to the revenues established in the Final Order for the period from the implementation of the interim Order to the issuance of the Final Order (November, 2001 through April 30, 2002); but is entitled to different and lower revenue levels during the period from issuance of the Final Order to the finalization of appeals and implementation of the final approved rates (April 30, 2002 through June 30, 2003); and finally, once again, entitled to the revenues established in the Final Order from the date of implementation of the final rates on a going forward basis (August, 2003 forward). Yet, that is the effect of the PSC’s proposed agency action in this case. The Final Order states that Aloha is entitled to specified newly established revenues less 4.87% of revenues previously collected under interim rates, while the PAA states

that Aloha is entitled to newly specified revenues less 15.95% of revenues collected during the period of time that judicial proceedings were pending. Not only does this determination ignore the difference between test years used to establish interim and finally approved revenues, ignore the factor of growth and disregard the established prior practice and policy of the PSC, it constitutes a substantial modification of the Final Order entered April 30, 2002.

The PSC's Final Order dated April 30, 2002, did not become effective and capable of implementation until the issuance of Mandate from the District Court of Appeal. The PSC's own rules mandate a Stay of the refund requirements of that Order pending judicial review. Just as the PSC's Stay Order did not release Aloha from its obligation to ultimately provide refunds in accordance with the Final Order, that Stay Order did not confer authority upon the PSC to revise its Final Order on the same subject. It merely stayed the execution of those portions of the Final Order requiring the implementation of the new rate structure and the refund of interim rates. A Stay does not set aside or undo what a lower tribunal has adjudicated, but merely postpones further proceedings in relation to that judgment until the appellate court acts thereon. City of Plant City v. Mann, 400 So.2d 952 (Fla. 1981); Pennsylvania Threshermen & Farmers Mutual Casualty Ins. Co. v. Barrett, 174 So.2d 417 (Fla. 3d DCA 1965). A stay simply maintains the status quo pending appellate proceedings.

It does not interfere with what has already been done. Freedom Insurors, Inc. v. M.D. Moody & Sons, Inc., 869 So.2d 1283 (Fla. 4th DCA 2004).

The Stay entered by the PSC in this case ended when the District Court of Appeal issued its mandate. City of Miami v. Arostegui, 616 So.2d 1117 (Fla. 1st DCA 1993). At that point, the Final Order became effective and capable of implementation. The Final Order defines the termination date of the “interim collection period,” and thus the “refund period,” as the date upon which Aloha implements the final rates approved. The PAA modifies that definition by separating out a 15-month period “prior to” the date upon which Aloha implemented the final rates approved, and then establishes a new and different methodology and rate of refund. This constitutes an unlawful modification of the Final Order entered on April 30, 2002.

B. The doctrines of administrative finality, res adjudicata and estoppel by judgment preclude the PSC from modifying the refund requirements and the final rates approved in the PSC’s Final Order dated April 30, 2002.

As held by the Florida Supreme Court 38 years ago in People’s Gas System v. Mason, 187 So.2d 335 (Fla. 1966), and reaffirmed by the Florida Supreme Court in the cases of Austin Tupler Trucking, Inc. v. Hawkins, 377 So.2d 679 (Fla. 1979), and

Florida Power Corporation v. Garcia, 780 So.2d 34 (Fla. 2001), the doctrine of decisional finality requires that there be a terminal point in every proceeding, both administrative and judicial, at which the parties and the public may rely on a decision as being final and dispositive of the rights and issues involved therein. In the instant case, that terminal point occurred upon the issuance of the appellate court Mandate in this case (and, arguably, on the Final Order date of April 30, 2002, since no motion for reconsideration was filed and no issue on appeal was raised as to the refund requirements of the Final Order). Aloha certainly relied upon the refund requirements of the Final Order, as demonstrated by its refund to customers in the amount of 4.87% of interim rates collected during the interim collection period, as said period was defined by the Final Order, even though the rates collected during that period were only 4.09% greater than the approved rates during a large portion of the interim collection period. Having failed to contest in any manner the refund requirements in the Final Order, the “public,” which was more than adequately represented throughout the entirety of this rate case proceeding, obviously relied upon the finality of the PSC’s Final Order as being dispositive of their rights and all issues raised. Certainly, the issue of refunds of interim rates was addressed and determined in the PSC’s Final Order and was not disturbed on appeal. Any contrary theories of refund, such as that now proposed by the PSC, could have been pursued in the initial

proceeding. Accordingly, administrative finality attaches and the PSC is barred from re-opening and modifying its prior Final Order. Florida Power Corporation v. Garcia, 780 So.2d 34 (Fla. 2001).

The doctrines of *res adjudicata* and collateral estoppel, also known as judicial estoppel and/or estoppel by judgment, are equally applicable to preclude the PSC's present attempt to modify and/or relitigate the refund requirements of its prior Final Order. The former principle of law, *res adjudicata*, holds that a Final Order bars subsequent litigation between the same parties based upon the same cause of action and is conclusive as to all matters germane thereto that were or could have been raised. Estoppel by judgment is applicable where the two causes of action are different, but the issue common to both causes of action were actually adjudicated in the prior proceeding. Gordon v. Gordon, 59 So.2d 40 (Fla.), *cert. denied*, 344 U.S. 878, 73 S.Ct. 165, 97 L.Ed. 680 (1952).

Here, the refund issue was actually adjudicated in the PSC's Final Order and the PSC is precluded from revisiting and modifying that adjudication in the manner proposed. At the very least, given the PSC's knowledge concerning its own rules⁴ and practices regarding refunds of interim rates and mandatory stays regarding such

⁴ Rule 25-22-061(1) mandates that orders involving refunds be stayed pending judicial proceedings. Rule 25-30-360(2) requires that refunds be made within 90 days of a PSC order, unless a different time frame is prescribed.

refunds during the pendency of an appeal, the issue of the appropriate amount of refunds subsequent to the rendition date of its Final Order could have been raised and addressed in the Final Order rendered on April 30, 2002. The PSC's attempt to modify its Final Order and re-adjudicate the appropriate amount of refund of interim rates is barred by the doctrines of administrative finality, *res adjudicata* and estoppel by judgment.

The PSC relies upon the cases of GTE Florida Incorporated v. Clark, 668 So. 2d 971 (Fla. 1966) and Village of North Palm Beach v. Mason, 188 So.2d 778 (Fla. 1966), both for the proposition that Aloha received a "windfall" from its unsuccessful appeal and for the proposition that it may revisit and modify its Final Order. Such reliance is woefully misplaced. In the first place, as established by the above stipulated facts and as further discussed below, Aloha received no windfall as a result of its appeal. And, importantly, both the GTE and the Village of North Palm Beach cases involved **defective and erroneous** PSC Final Orders which were reversed by the appellate court and the cases were returned to the PSC to implement the remand. In those two cases, the "modification" of the initial PSC Final Order was the result of an erroneous or defective initial Final Order as declared by the Florida Supreme Court. In the instant case, the appellate court affirmed the PSC's Final Order, which specifically addressed the issue of refunds of interim rates. Accordingly, the PSC was

authorized to do nothing more after the issuance of Mandate than The PSC allow the Final Order to become effective of implementation.

The PSC heavily relies upon dictum from the Village of North Palm Beach case, stating that

if the instant case had involved an order decreasing rates it would be equally inequitable to allow the utility to continue to collect the old and greater rates for the period between the entry of the first and second orders.

That dictum is simply not applicable in the instant case. Here, the PSC's Final Order did not decrease rates. It simply created a new rate structure with the intent that rates be neither increased nor decreased, and required that Aloha refund 4.87% of the interim rates collected. For the reasons stated above, the PSC's proposed agency action is contrary to law. Having completed the refund of all monies required by the PSC's Final Order, Aloha is entitled to a release of all funds remaining in escrow.

C. Aloha received no benefit from the interim rates it collected during the appeal period. Indeed, the uncontroverted evidence demonstrates Aloha's customers benefitted by over \$19,000 during the appeal period.

Even if the PSC had the authority to ignore the doctrines of administrative finality, *res adjudicata*, and collateral estoppel; even if the PSC had the authority to

modify the clear wording of its Final Order; and even if the PSC had the authority to ignore and deviate from its own established policy, practice and precedent in other rate case proceedings without adequate explanation and justification, the uncontroverted, stipulated facts which were verified by the PSC's own auditors and other staff members clearly demonstrate the following:

- Had the rates, revenues and refund requirements approved in the Final Order been immediately implemented by Aloha upon the rendition date of the Final Order, Aloha would have received over \$19,000 more in revenues than it received after the termination of the appeal period. Instead, Aloha's customers received over \$19,000 more than they were entitled to receive under the terms of the Final Order.

- By its Final Order establishing new rates and revenue requirements, the PSC intended that Aloha receive neither an increase nor a decrease in rates. Any refund above 4.09% of interim revenues received during the appeal period results in a decrease in the rates established in the Final Order.

Section 367.081(2)(a), Florida Statutes, requires the PSC to fix rates which are just, reasonable, compensatory and not unfairly discriminatory. Presumably, the PSC's Final Order rates were set pursuant to that statute. Accordingly, only those revenues in excess of the revenues that would have been generated by the Final Order should be refunded. Aloha has already refunded such excess revenues. Indeed,

Aloha has already refunded more than such excess revenues. No further refund is authorized.

D. It has been the long-standing, established policy, practice and procedure of the PSC to calculate refunds of interim rates in the manner established in the Final Order, allow utilities to maintain interim rates during the pendency of an appeal, and then require a refund of any excessive interim rates at the conclusion of that appeal based upon the requirements and methodology of the original Final Order. The PSC presented no evidence, subject to countervailing evidence, to explain or justify the abrupt change in policy and procedures expressed in its Proposed Agency Action.

It is a long-established principle of administrative law that agency action which yields inconsistent results based upon similar facts, without reasonable explanation, is improper. North Miami General Hospital, Inc. v. Office of Community Medical Facilities, Dep't of Health and Rehabilitative Services, 355 So.2d 1272 (Fla. 1st DCA 1978). When agencies change their established policies and practices and procedures, they must, by expert testimony, documentary opinion, or other evidence appropriate to the nature of the issue involved, give a reasonable explanation for the change, supported by record evidence which all parties must have an opportunity to address. Manasota-88, Inc. v. Gardinier, Inc., 481 So.2d 948 (Fla. 1st DCA 1986). Also see

Florida Cities Water Company v. Florida Public Service Commission, 705 So.2d 620 (Fla. 1st DCA 1998). These established principles of law are also codified in Florida's Administrative Procedure Act. Section 120.68(7)(e)3, Florida Statutes, requires that agency action be set aside or remanded when the agency's exercise of discretion is "Inconsistent with officially stated agency policy or a prior agency practice, if deviation therefrom is not explained by the agency."

Here, the PSC has admitted its established policy, has offered no reasonable explanation supported by record evidence for its proposed shift in that policy, and has certainly denied Aloha the right to offer countervailing evidence or otherwise address any potential or claimed reason for a deviation from established precedent and policy. Accordingly, Aloha is entitled to retain and have released from escrow all monies deposited in that account which is in excess of the amount of refunds previously refunded by Aloha in accordance with the PSC's Final Order dated April 30, 2002.

E. The PSC is estopped from changing its position regarding the appropriate amount of refund of interim rates.

As previously discussed, the doctrines of administrative finality, *res adjudicata*, collateral estoppel, as well as the "law of the case" doctrine, and the established practice, policy and procedure of the PSC with regard to the refund of

interim rates collected during the pendency of an appeal, all justify Aloha's good faith reliance upon the 4.87% refund required in the PSC's Final Order. Business and financial decisions were made by Aloha based upon that justifiable reliance, for Aloha had no reason to believe that "the official mind would change" after the PSC had entered its Final Order and, particularly since no party appealed the refund provisions of that Final Order. See Reedy Creek Improvement District v. Department of Environmental Regulation and Central Florida Utilities, 486 So.2d 642 (Fla. 1st DCA 1986). Accordingly, the PSC is equitably estopped from now requiring a 15.95% refund of the interim revenues collected during the pendency of appellate proceedings, particularly since such a refund requirement results in a decrease of the revenues approved in the PSC's Final Order.

CONCLUSION

Based upon the foregoing findings of fact and conclusions of law, the PSC should rescind its proposed agency action Order No. PSC-04-0122-PAA-WU, and enter a Final Order determining that Aloha has completed all refunds required and order the release to Aloha of all remaining escrowed funds.

Respectfully submitted this 1st day of July, 2004.



F. MARSHALL DETERDING, ESQUIRE

Florida Bar I.D. #515876

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(850) 877-6555

Attorneys for Aloha Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U. S. Mail to the following, this 1st day of July 1, 2004:

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Assistant General Counsel
Southwest Florida Water Management District
2379 Broad Street
Brooksville, FL 34604-6899

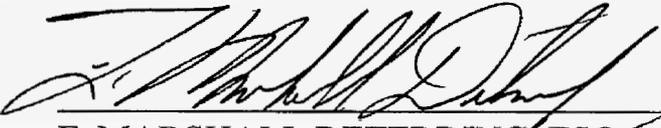
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F. MARSHALL DETERDING, ESQ.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase
in water rates for Seven Springs
System in Pasco County by Aloha
Utilities, Inc.

DOCKET NO. 010503-WU
ORDER NO. PSC-04-0122-PAA-WU
ISSUED: February 5, 2004

The following Commissioners participated in the disposition of
this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING INTERIM REFUNDS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein requiring the utility
to make additional interim refunds is preliminary in nature and
will become final unless a person whose interests are substantially
affected files a petition for a formal proceeding, pursuant to Rule
25-22.029, Florida Administrative Code.

Background

Aloha Utilities, Inc. (Aloha or utility) is a Class A water
and wastewater utility in Pasco County. The utility consists of
two distinct service areas: Aloha Gardens and Seven Springs. On
August 10, 2001, Aloha filed an application for an increase in
rates for its Seven Springs water system. By Order No. PSC-01-
2199-FOF-WU, issued November 13, 2001, we approved interim rates
subject to refund with interest, which increased rates by 15.95%.
This 15.95% interim increase was secured by the utility's deposit
of those funds in an escrow account.

The Commission set final rates by Order No. PSC-02-0593-FOF-WU
(Final Order), issued April 30, 2002. Among other things, we

EXHIBIT 1

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FPSC-COMMISSION CLERK

denied a revenue increase, set a two-tiered inclining block rate structure, increased plant capacity charges, required certain plant improvements, and set the methodology that required a 4.87% interim refund. The utility appealed our Final Order to the First District Court of Appeal (First DCA), and sought a stay while the decision was under appellate review.

By Order No. PSC-02-1056-PCO-WU (Stay Order), issued August 5, 2002, we granted in part and denied in part the utility's Motion for Stay. We stayed the setting of the new rate structure, as well as the interim refund and certain plant improvement requirements. The First DCA affirmed our Final Order on May 6, 2003, Aloha Utilities v. Florida Public Service Commission, 848 So. 2d 307 (Fla. 1st DCA 2003), and subsequently denied the utility's Motion for Rehearing on June 12, 2003. The First DCA issued its mandate on June 30, 2003. As a result, the appellate review process is complete and all provisions of our Final Order are now final and effective.

The utility began collecting final rates in August 2003, and completed interim refunds of 4.87% on or about September 10, 2003. By letter dated June 30, 2003, Aloha requested release of the escrow funds above the amount required for the 4.87% refunds. By Order No. PSC-03-1410-FOF-WU, issued December 15, 2003, we recognized that Aloha had refunded \$153,510 to its customers without withdrawing any funds from the escrow account to make the 4.87% refund. Accordingly, we allowed \$153,510 of the escrowed funds to be released to Aloha. However, as set out below, after hearing argument from interested persons, we find that all interim increases collected while the Final Order was pending on appeal shall be refunded to Aloha's customers.

We have jurisdiction pursuant to Sections 367.081 and 367.082, Florida Statutes.

Decision

The file and suspend law "was designed to provide accelerated [rate] relief without sacrificing the protections inherent in the overall regulatory scheme." Florida Power Corporation v. Hawkins, 367 So. 2d 1011, 1013 (Fla. 1979). Interim rates, which are one aspect of this scheme, were designed "to make a utility whole

during the pendency of the proceeding without the interjection of any opinion testimony." Citizens v. Public Service Commission, 435 So. 2d 784, 786 (Fla. 1983). Thus, the provision of interim rates is a quick and dirty means by which a utility can obtain immediate financial relief. Citizens v. Mayo, 333 So. 2d 1, 5 (Fla. 1976).

Section 367.082, Florida Statutes, governs the setting of interim rates for water and wastewater utilities. According to paragraph (2)(a), interim rates must be designed to bring the utility up to the minimum of its last authorized rate of return. Subsection (4) sets forth guidelines for the determination of any interim refund, which include the following:

Any refund ordered by the commission shall be calculated to reduce the rate of return of the utility or regulated company during the pendency of the proceeding to the same level within the range of the newly authorized rate of return which is found fair and reasonable on a prospective basis

In our Final Order, we required Aloha to make a 4.87% refund of the interim rates it had collected. In doing so, we stated:

According to Section 367.082(4), Florida Statutes, any refund must be calculated to reduce the rate of return of the utility during the pendency of the proceeding to the same level within the range of the newly authorized rate of return. Adjustments made in the rate case test period that do not relate to the period interim rates are in effect should be removed.

In this proceeding, the test period for establishment of interim rates was the twelve months ended June 30, 2001. The test year for final rates purposes was the projected year ended December 31, 2001. The approved interim rates did not include any provisions or consideration of pro forma adjustments in operating expenses or plant. The interim increase was designed to allow recovery of actual interest costs, and the floor of the last authorized range for equity earnings. Included in the interim test year were three months of expenses for purchased water from Pasco County.

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To establish the proper refund amount, we calculated a revised interim revenue requirement utilizing the same data used to establish final rates. Rate case expense was excluded, because it was not an actual expense during the interim collection period. Aloha did not purchase water from Pasco County during the interim collection period. The interim collection period is from November 13, 2001 to the date that Aloha implements the final rates approved.

Using the principles discussed above, we calculated the interim revenue requirement from rates for the interim collection period to be \$1,914,375. This revenue level is less than the interim revenue of \$2,009,292, which was granted in Order No. PSC-01-2199-FOF-WU. This results in a 4.87% refund of interim rates, after miscellaneous revenues have been removed.

Final Order, pps. 90-91. Neither the above methodology nor the 4.87% refund was raised as an issue on appeal.

Aloha collected interim rates for 19 months from January 2002 through July 2003. The Final Order established the methodology for the interim refund for the first four months, when the utility collected interim rates while the rate case was pending before the Commission (January 2002 - April 2002) (the rate case period). The Commission, however, did not address the refund amount for the interim rates collected while the appeal was pending (May 2002 - July 2003) (the appeal period). Aloha has refunded \$153,510 or 4.87% of the interim rates it collected while the rate case (\$31,527) and appeal (\$121,983) were pending.

Because the Final Order addressed the interim refund for the rate case period, we find that no further refunds shall be required for this period. No party challenged the interim refund provisions in the Final Order which was affirmed on appeal. Under the doctrine of administrative finality, we decline to revisit the refund for this period. Peoples Gas System, Inc. v. Mason, 187 So. 2d 335 (Fla. 1966). Accordingly, Aloha shall not be required to make any further refunds for the rate case period beyond the \$31,527 Aloha has already refunded to its customers. However, for

the reasons set out below, we find that Aloha shall refund all interim rates collected during the appeal period.

The intent behind our Final Order is clear. We did not intend for the utility to collect any increased revenues. Aloha's request for a rate increase was denied because the utility failed to meet its ultimate burden of proof. See Order No. PSC-02-0593-FOF-WU, pps. 52, 68, 70, 72. Moreover, we found that Aloha should receive neither a rate increase nor a decrease. See Order No. PSC-02-0593-FOF-WU, pps. 80, 85. However, by appealing the decision and collecting interim rates during the 15-month appeal period, Aloha had the benefit of the higher interim rates during this time. Since we found, and the First DCA ultimately agreed, that no revenue increase was justified, we find that it is patently unfair to allow Aloha to benefit from the higher interim rates it collected during the appeal period.

The Florida Supreme Court views ratemaking as a matter of fairness between the utility and its ratepayers. GTE Florida v. Clark, 668 So. 2d 971, 973 (Fla. 1996). In GTE, the Supreme Court reversed a Commission order that denied GTE's request to surcharge ratepayers to recover costs that the Court had previously determined had been improperly disallowed by us. In making its decision, the Supreme Court relied on Village of North Palm Beach v. Mason, 188 So. 2d 778, 781 (Fla. 1966). In Mason, when deciding whether to allow the utility to collect higher rates that it was entitled to under a defective order that had been entered two years earlier, the Supreme Court stated that if the

case had involved an order decreasing rates it would be equally inequitable to allow the utility to continue to collect the old and greater rates for the period between the entry of the first and second orders.

Id. (quoted in GTE at 973.) The Supreme Court concluded in GTE that the company's customers should not benefit and receive a windfall from an erroneous Commission order. Similarly, Aloha should not benefit and receive a windfall from its unsuccessful appeal of our Final Order. We lawfully found that Aloha was not entitled to a revenue increase. Aloha's appeal of this decision was without merit. It would be unfair to require Aloha's customers to pay the higher interim rates for the 15-month period that the

appeal was pending. Accordingly, Aloha shall be required to refund the 15.95% interim increase that was collected during the appeal period.

This refund is consistent with the purpose of interim rates, which is to provide utilities with a "quick and dirty" means to obtain immediate financial relief while a rate case is pending. Aloha received the immediate rate relief as was intended when it was allowed to keep 11.08% of the interim increase for the rate case period. Because we did not know if an appeal would be filed, our Final Order did not address the appropriate refund methodology for the appeal period. Further, because the appeal and subsequent stay of final rates delayed implementation of the appropriate final rates, the utility continued to collect a 15.95% increase to which the Final Order said it was not entitled.

Thus, for the reasons discussed above, Aloha is required to refund its customers the entire interim increase collected during the appeal period, including interest. Because Aloha has already refunded \$121,983 for the appeal period, Aloha must make an additional refund of \$278,113, which includes interest. In order to comply with our decision, Aloha must maintain \$278,113 in the escrow account to secure the additional refund. Because there is now approximately \$352,352 in the escrow account, \$74,239 may be released to Aloha at this time. The remaining \$278,113 in the escrow account shall not be released to Aloha until our staff has verified that the utility has made the additional refund, with interest, in accordance with Rule 25-30.360(4), Florida Administrative Code. The utility shall submit refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. The utility shall also treat any unclaimed refunds as contributions-in-aid-of-construction pursuant to Rule 25-30.360(8), Florida Administrative Code.

Although Aloha failed to deposit the interim increase it collected in July of 2003 in its escrow account, as required by Orders Nos. PSC-01-2199-FOF-WU and PSC-02-1056-PCO-WU, we decline to take further action against Aloha for this omission. As soon as Aloha learned of its error, Aloha placed \$25,866 in the escrow account to correct its oversight for this month. Except for a minimal amount of interest that would have accrued, the amount now

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in the escrow account is correct. Aloha's customers were always fully protected.

It is therefore

ORDERED by the Florida Public Service Commission that Aloha Utilities, Inc. shall not be required to make additional interim refunds for the rate case period, as described above. It is further

ORDERED that Aloha shall refund the additional interim increase collected during the appeal period, so that its customers shall receive an additional refund of \$278,113, which includes interest. It is further

ORDERED that this additional refund for the appeal period shall be made with interest in accordance with Rule 25-30.360(4), Florida Administrative Code. It is further

ORDERED that the excess \$74,239 in the escrow account may be released to Aloha. It is further

ORDERED that the remaining \$278,113 in the escrow account may be released to Aloha after our staff has verified that Aloha made the additional refund for the rate case period. It is further

ORDERED that Aloha shall submit refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. It is further

ORDERED that Aloha shall treat any unclaimed refunds as contributions-in-aid-of-construction pursuant to Rule 25-30.360(8), Florida Administrative Code. It is further

ORDERED that the provisions of this Order concerning the additional refund for interim rates collected during the appeal period, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of

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business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall remain open for our staff to verify that Aloha completed the additional refunds as well as the construction of the pro forma plant required by the Final Order.

By ORDER of the Florida Public Service Commission this 5th day of February, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

MAH

DISSENT:

Commissioner Davidson dissented from the Commission's decision not to require Aloha to refund the entire amount of the interim increase for the rate case period.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action requiring Aloha to make additional refunds for the appeal period is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 26, 2004. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or

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telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase
in water rates for Seven Springs
System in Pasco County by Aloha
Utilities, Inc.

DOCKET NO. 010503-WU
ORDER NO. PSC-02-0593-FOF-WU
ISSUED: April 30, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
BRAULIO L. BAEZ
MICHAEL A. PALECKI

APPEARANCES:

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On behalf of Aloha Utilities, Inc.

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On behalf of the Southwest Florida Water Management
District.

STEPHEN BURGESS, ESQUIRE, Office of Public Counsel, c/o
The Florida Legislature, 111 West Madison Street, Room
812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida.

REPRESENTATIVE MIKE FASANO, 8217 Massachusetts Avenue,
New Port Richey, Florida 34653
On behalf of himself.

EDWARD O. WOOD, 1043 Daleside Lane, New Port Richey,
Florida 34655-4293
On behalf of himself.

EXHIBIT 2

DOCUMENT NUMBER-DATE
04725 APR 30 02
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RALPH R. JAEGER and LORENA ESPINOZA, ESQUIRES, Florida
Public Service Commission, 2540 Shumard Oak Boulevard,
Tallahassee, Florida 32399-0850
On behalf of the Commission.

FINAL ORDER DENYING WATER RATE INCREASE,
REQUIRING REFUNDS, APPROVING NEW RATE STRUCTURE AND CHARGES,
INCREASING TEMPORARY SERVICE AVAILABILITY CHARGES SUBJECT TO
REFUND, APPROVING CONSERVATION MEASURES, AND REQUIRING
IMPLEMENTATION OF CUSTOMER SERVICE MEASURES

BY THE COMMISSION:

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I. BACKGROUND

Aloha Utilities, Inc. (Aloha or utility) is a Class A water and wastewater utility in Pasco County. The utility consists of two distinct service areas: Aloha Gardens and Seven Springs. The utility's service area is located within the Northern Tampa Bay Water Use Caution Area as designated by the Southwest Florida Water Management District (SWFWMD). Critical water supply concerns have been identified by SWFWMD within this area.

On August 10, 2001, Aloha filed an application for an increase in rates for its Seven Springs water system. Since the utility's application was complete as filed, the official filing date was established as August 10, 2001, pursuant to Section 367.083, Florida Statutes. In its minimum filing requirements (MFRs), the utility requested total water revenues of \$3,044,811. This represents a revenue increase of \$1,077,337 (or 54.76%). These final revenues are based on the utility's requested overall rate of return of 9.07%.

The utility's requested test year for setting final rates is the projected year ended December 31, 2001. Also, the utility requested that this application be directly set for hearing. By

However, we shall disallow the utility's requested expense for the new position to assist in administering conservation efforts, in the amount of \$30,000, as shown in Item 6 above. As noted by SWFWMD witness Sorensen, it will take some time to get programs in place so that any measurable savings can be realized. Adding a Water Auditor to develop the programs should be adequate to get the programs off the ground. If the programs prove successful and have a high penetration rate, we can reconsider approving the expense for a second position at a later date in another proceeding.

K. Test Year Operating Income

Based on the adjustments discussed above, we find that the test year operating income before any provision for increased revenues is \$117,714. The schedule for operating income is attached as Schedule No. 3-A, and the adjustments to operating income are listed on attached Schedule No. 3-B.

VIII. REVENUE REQUIREMENT

The computation of the revenue requirement is shown on Scheduled No. 3-A and is \$1,979,140, which represents neither an increase nor a decrease.

IX. RATES AND CHARGES

The utility requested final rates designed to produce revenues of \$3,044,811. The requested revenues would have represented an increase of \$1,077,337 or 54.76%, and would have been based on the utility's requested overall rate of return of 9.07%.

Consistent with our findings above, the final rates approved for the utility's Seven Springs water system shall be designed to produce annual revenues of \$1,979,140. This will allow the utility the opportunity to recover its expenses and earn an 8.52% return on its investment in rate base.

A. Rate Structure

We further find that the appropriate rate structure for residential customers is a BFC and two-tier inclining-block rate structure. The usage blocks shall be for monthly usage of: 1) 0-

10,000 gallons; and 2) in excess of 10,000 gallons. The rate in the second usage block shall be 1.25 times greater than the rate in the first block, with a BFC cost recovery allocation of 25.3%. The traditional BFC and uniform gallonage charge rate structure shall be implemented for the General Service class. All gallonage allotments included in the BFC shall be eliminated.

The utility's current residential rate structure utilizes a BFC of \$7.32, which includes a 3 Kgal minimum allowance, and a uniform gallonage charge of \$1.32/Kgal for usage in excess of 3 Kgal. The utility proposed to remove the 3 Kgal allowance from the BFC and implement a two-tier inclining block rate structure to encourage conservation, in compliance with the wishes of the SWFWMD. We concur with the proposal to implement an inclining-block rate structure and the removal of the initial usage from the BFC. The utility, however, proposed to recover all of its revenue requirements through the BFC and first tier, with the revenue from the second tier going towards conservation programs. Since we have allowed the cost of conservation programs to be included in the total revenue requirement, there is no longer any basis for setting rates to recover more than the approved revenue requirement.

Given Aloha's current low rates, and the desire to remove the 3 Kgal allowance from the BFC, our first decision in designing rates is to determine how much of the revenue requirement should be recovered in the BFC. As a general rule, the more costs that are recovered through fixed charges, the more stable the utility's earnings. However, if the BFC collects too much revenue, the resulting usage charges are too low, or the tier breakpoints too small, resulting in a failure to send meaningful conservation signals. An important guideline established by the SWFWMD is to recover no more than 40% of the overall revenue requirement through the BFC. The utility proposed a 32%/68% split, with the first block recovering the full revenue requirements. This ratio is consistent with the water management district guidelines that we commonly use. However, SWFWMD witness Yingling also indicated that the fixed charge portion of the bill should be kept to the minimum commensurate with the need for revenue stability.

Based on the revenue requirement approved above, analysis shows that recovering 30% or more of recommended revenues through the BFC would result in gallonage rates below acceptable levels.

In order to keep gallonage charges at or above current levels, we find it appropriate to set the percentage recovered through the BFC at 25.3%. This is only lower than the 32% offered by the utility and slightly above the level of 25% recommended by staff witness Stallcup. We find that our decision allows for the design of meaningful inverted block rates.

**Comparison of Conservation Adjustment
 Between BFC and Usage Charge**

Current BFC¹ \$7.32
 Current Gal. Chg above 3 gallons \$1.32

% Revenue requirement recovered through BFC	25%	28%	30%	32%
BFC w/o 3Kgal	\$4.02	\$4.44	\$4.75	\$5.08
Gallonage charge Block ¹	\$1.38	\$1.33	\$1.29	\$1.25
BFC greater than current? ²	Yes	Yes	Yes	Yes
Block 1 charge greater than current?	Yes	Yes	No	No

¹ Current BFC includes a 3 Kgal allotment

² Current BFC after removal of 3 Kgal allotment = $\$7.32 - (3 \times \$1.32) = \$3.36$

Recovery of 74.7% of the revenue requirement through usage sensitive charges results in a BFC (without any gallon allowance) of \$4.02. Witness Watford questioned setting the new BFC at a level less than the current BFC as contradictory to Commission practice. However, since the current BFC includes 3 Kgal of usage, a more appropriate comparison is to subtract the cost of the 3 Kgal at the current gallonage charge, to determine whether the level of the proposed BFC is justified. Removing the cost of the 3 Kgal from the BFC at current rates [$7.32 - (3 \times \$1.32)$] equals a BFC without a gallonage allotment of \$3.36 compared with our approved

BFC of \$4.02. Therefore, the proposed BFC is greater than the adjusted current BFC.

Witness Stallcup initially proposed a three tier rate structure with blocks of 0-8, 8-15, and over 15 Kgal/month. However, given the revenue requirements recommended above, and recovering 25.3% of the revenue requirement through the BFC and 74.7% through the gallonage charge, a three-tier structure would have required the initial tier to fall below the current level of \$1.32. The lower first block combined with the lower BFC would have raised the possibility of revenue instability to an unacceptable level. Therefore, we find it appropriate to approve a two-tier structure with blocks of 0-10 Kgal and above 10 Kgal/month. This increases the first tier rates slightly from \$1.32 to \$1.38 for usage up to 10 Kgal/month and sets the second tier at \$1.72 for usage in excess of 10Kgal/month. We are sensitive to the utility's need for some measure of revenue stability. The approved breakpoint for the tiers leaves 68% of the total gallons sold in the first tier, which mitigates the concerns about revenue stability.

In addition, Exhibit 29 shows that 10 of the 30 subdivisions have average usage in excess of 10 Kgal/month. These two conditions further mitigate concerns about revenue stability resulting from the lower BFC. We find that the differential between tiers will provide a small but meaningful first step in sending a conservation signal to high-end users. In a previous case, we determined that setting breakpoints below 10,000 gallons may adversely impact non-discretionary usage for larger families. (See Order PSC-00-0807-PAA-WU, Docket No. 991290-WU) Since the utility maintains its service territory is becoming more family oriented, we find that this 10 Kgal tier breakpoint is appropriate at this time.

One of our concerns in designing rates is to minimize the impact on low users who may be at or near non-discretionary usage levels. Even with the decrease in the BFC, customers who currently use 3 Kgal or more will see an increase in their bills, primarily due to the removal of the 3 Kgal allowance. With the slightly higher first tier rate, customers using 3 Kgal/month will see an increase of 11%, or \$0.84, in their monthly bills. The percentage increase declines to a low of 7% for usage at 15

Kgal/month. On the other end of the usage spectrum, however, significant increases of 20% or greater affect customers using over 50 Kgal/month. The following chart shows representative increases for selected levels of usage:

Impact of Proposed Rates on Usage Levels

Thousand gallons	Current Price	Approved Price	Amount	% Change
0	7.32	4.02	-3.30	-45%
1	7.32	5.40	-1.92	-26%
2	7.32	6.78	-.54	-7%
3	7.32	8.16	0.84	11%
4	8.64	9.54	0.90	10%
5	9.96	10.92	0.96	10%
6	11.28	12.30	1.02	9%
7	12.60	13.68	1.08	9%
8	13.92	15.06	1.14	8%
9	15.24	16.44	1.20	8%
10	16.56	17.82	1.26	8%
15	23.16	24.72	1.56	7%
20	29.76	33.32	3.56	12%
50	69.36	84.92	15.56	22%
75	102.36	127.92	25.56	25%
150	201.36	256.92	55.56	28%
200	267.36	342.92	75.56	28%

SWFWMD advocates an aggressive inclining block rate structure, and we believe, given the approved revenue requirement, the proposed structure will put customers on notice that increased

usage comes with a higher price tag. Should the utility justify higher revenue requirements in the future, the blocks and rates can be adjusted to increase the pricing signals to high users.

B. Repression of Consumption

Due to the revenue requirement not increasing and the minimal increase in the second tier rates, we do not find it appropriate to include a repression adjustment in determining consumption for setting rates. Past Commission decisions indicate minimal repression (0-4%) in several cases, even where multiple tier inclining block rates were implemented along with a rate increase. (See Dockets 970164-WU, 980445-WU, 990535-WU, 010403-WU) In this case, the rate structure is revenue neutral because there is no increased revenue requirement. In addition, the utility maintained throughout the hearing that its expected usage was higher than either our staff or OPC projected, and that new customers would use more than current customers. If the utility's projections prove more accurate than the forecast approved here, setting rates on the forecast approved above results in rates higher than those that would have been generated using the utility's forecast.

With the approved inclining-block rates, the additional revenues from the higher block should offset any reduction in revenue due to decreases in usage. We do, however, find it appropriate to adjust residential consumption downward by 2.5% to account for the reduction in usage resulting from implementation of conservation programs. The projected annual savings cited in the Consent Order were 5% per year. SWFWMD witness Sorensen also testified that many of the programs will likely take years to reap results. Therefore, we find that adjusting consumption to reflect the full effect of conservation would overstate the benefits of the programs' initial implementation.

C. Monthly Service Rates

The appropriate monthly rates are as follows:

Residential Service Water Rates

Meter size	Current	Commission Approved
<u>BFC</u>		
5/8" x 3/4"	\$7.32 (includes 3Kgal)	\$4.02
3/4"	\$0.00	\$6.03
1"	\$0.00	\$10.05
1 1/2"	\$0.00	\$20.10
<u>Usage charges</u>		
Per 1,000 gals		
0 - 3,000 gals	\$0.00	\$1.38
3,000-10,000	\$1.32	\$1.38
Over 10,000 gals	\$1.32	\$1.72

General Service Rates

Meter Size	Current	Commission Approved
<u>BFC</u>		
5/8" x 3/4"	\$7.32*	\$4.02
1"	\$19.46*	\$10.05
1 1/2"	\$36.49*	\$20.10
2"	\$58.80*	\$32.16
3"	\$116.83*	\$64.32
4"	\$182.85*	\$100.50
6"	\$282.76*	\$201.00
8"	\$577.67*	\$321.60
10"	\$841.62*	\$462.30

*Current General Service BFC include minimum gallonage allowances.

Usage Charges

All usage Per 1,000 gals	\$1.32	\$1.49
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In addition, tariffs shall reflect that the Vacation Rate shall be set at the new BFC of \$4.02.

These rates, also shown on the attached Schedule No. 4, are designed to produce revenues of \$1,979,140, excluding miscellaneous service charge revenues. The utility shall file revised tariff sheets and a proposed customer notice to reflect our approved rates. The approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code. The rates shall not be implemented until our staff has approved the proposed customer notice, and the notice has been received by the customers. The utility shall provide proof of the date notice was given no less than 10 days after the date of the notice.

A comparison of the utility's original and requested rates, the approved interim rates, and the approved final rates is shown on attached Schedule No. 4.

D. Service Availability Charges

The utility currently has a temporary interim plant capacity charge of \$500 in effect for the Seven Springs water system. This temporary plant capacity charge was approved in Order No. PSC-00-1285-FOF-WS, issued July 14, 2000, in Docket No. 960545-WS. This temporary charge is subject to refund, and pursuant to that Order, on February 1, 2001, Aloha filed an application for an increase in service availability charges, which was assigned Docket No. 010156-WU. The establishment of a final charge should occur at the conclusion of that service availability docket. Aloha's original plant capacity charge for its Seven Spring's water system is \$163.80, and the difference of \$336.20 per connection is being held subject to refund.

Representative Fasano testified that during his time in office, finding a solution to the on-going problems facing Aloha's customers, who are also his constituents, has become one of his top priorities. Mr. Fasano testified that since 1996, his suggestion for resolution has been that Aloha increase its impact fees to make them competitive with those of Pasco County. He stated that if those costs had been ordered years ago, given the phenomenal growth in the Aloha service area times the higher impact fees, revenue would have been generated that is needed today for Aloha's improvements. He stated this choice would not have burdened the existing customer. While this revenue has been lost over the past

three years, Mr. Fasano stated he still believed it would be in the best interest of the existing customers to place the burden of the future customers on those future customers. Mr. Fasano further testified that if Aloha's impact fees would be raised to a level competitive with those charged by the surrounding Pasco County utilities, then the need for this rate increase application and those in the future would probably diminish.

Aloha witnesses Porter and Watford provided testimony on future plant additions that Aloha projected in the near-term. They stated that, at this time, the potential chemistry of Pasco County's modified water is yet to be defined. Until this information was known, it would be imprudent to move ahead, from a technical standpoint, and construct any of the pilot project facilities until a full and complete engineering analysis of the combined effects of all the chosen alternatives can be completed. To do otherwise may result in substantial costs that could be found to be unusable or unneeded when the final analysis is completed.

On cross examination by staff, Mr. Watford testified that the utility is not proposing any increase to its plant capacity charge in this rate case and referred to Docket No. 010156-WU, the open service availability docket. However, Mr. Watford stated that the utility was certainly not averse to increasing the charge.

Pursuant to Section 367.101, Florida Statutes, we must set just and reasonable charges for service availability. As addressed above, we have ordered Aloha to address numerous components of its quality of service as well as critical water supply concerns. We agree with Representative Fasano that a higher plant capacity charge can defray the cost of these looming, yet unknown, plant improvements or expansion costs, and allow the future growth to pay for the future customers' own burdens instead of placing them on existing customers. Since Aloha is in such a high growth area and the new customers being added to the system are high-end users, the plant capacity charge should be more reflective of the Pasco County charge in effect.

The current Seven Springs wastewater plant capacity charge is \$1,650. We find that it is reasonable to increase the water plant capacity charge to \$1,000 on an interim basis to offset future plant requirements necessary to address solutions to the black

water and long-term waster supply issues. In establishing a capacity charge, we normally include reliable estimates of plant additions and customer growth projections, by year, to make sure the proposed charge will allow the utility to be in compliance with the contribution levels required by Rule 25-30.580, Florida Administrative Code. While we do not have all of the necessary information at this time, we still believe that an interim charge is appropriate to continue offsetting the future cost of major plant requirements.

Therefore, the new interim service availability charge for water shall be \$1,000, with the difference between \$163.80 and \$1,000 being subject to refund. Aloha shall deposit this difference in its current interest bearing escrow account to guarantee the interim funds collected subject to refund. The escrowed funds shall not be released until we have verified that Aloha has sufficiently invested in the required plant improvements. All other escrow requirements as established by this Commission in Order No. PSC-00-1285-FOF-WS, issued July 14, 2000, shall continue to apply.

Revised tariff sheets and a proposed customer notice shall be filed by April 30, 2002, to reflect the \$1,000 interim plant capacity charge. The proposed notice shall include the date the notice will be issued; a statement that the utility is increasing its water plant capacity charge for new connections to the Seven Springs water system from an interim charge of \$500 per ERC to \$1,000 per ERC, on a temporary basis, subject to refund; the utility's address, telephone number, and business hours; and a statement that any comments concerning the charge should be addressed to the Director of the Division of the Commission Clerk and Administrative Services at 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0870. The approved charge shall be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(2), Florida Administrative Code, providing the appropriate notice has been made.

The notice shall 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 service within the past 12 calendar months. In addition, the utility shall publish a copy of the approved notice in a newspaper

of general circulation in its service area within 10 days of our staff's approval of the notice. The utility shall provide proof of the date the notice was given within 10 days after the date of the notice.

X. INTERIM REFUNDS

By Order No. PSC-01-2199-FOF-WU, issued November 13, 2001, we approved interim rates subject to refund with interest. Rates were increased by 15.95%, pursuant to Section 367.082, Florida Statutes. The approved interim revenue from these rates is shown below:

	<u>Test Year</u>	<u>\$</u>	<u>Revenue</u>	<u>%</u>
	<u>Revenues</u>	<u>Increase</u>	<u>Requirement</u>	<u>Increase</u>
Water	\$1,737,086	\$272,206	\$2,009,292	15.67%

According to Section 367.082(4), Florida Statutes, any refund must be calculated to reduce the rate of return of the utility during the pendency of the proceeding to the same level within the range of the newly authorized rate of return. Adjustments made in the rate case test period that do not relate to the period interim rates are in effect should be removed.

In this proceeding, the test period for establishment of interim rates was the twelve months ended June 30, 2001. The test year for final rates purposes was the projected year ended December 31, 2001. The approved interim rates did not include any provisions or consideration of pro forma adjustments in operating expenses or plant. The interim increase was designed to allow recovery of actual interest costs, and the floor of the last authorized range for equity earnings. Included in the interim test year were three months of expenses for purchased water from Pasco County.

To establish the proper refund amount, we calculated a revised interim revenue requirement utilizing the same data used to establish final rates. Rate case expense was excluded, because it was not an actual expense during the interim collection period. Aloha did not purchase water from Pasco County during the interim collection period. The interim collection period is from

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November 13, 2001 to the date that Aloha implements the final rates approved.

Using the principles discussed above, we calculated the interim revenue requirement from rates for the interim collection period to be \$1,914,375. This revenue level is less than the interim revenue of \$2,009,292, which was granted in Order No. PSC-01-2199-FOF-WU. This results in a 4.87% refund of interim rates, after miscellaneous revenues have been removed.

Accordingly, we find that the utility shall refund 4.87% of water revenues collected under interim rates. The refund shall be made with interest in accordance with Rule 25-30.360(4), Florida Administrative Code. The utility shall submit proper refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. The utility shall treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), Florida Administrative Code.

XI. FOUR-YEAR RATE REDUCTION

Section 367.0816, Florida Statutes, requires that rates be reduced by the amount of the rate case expense previously included in the rates immediately following the expiration of the four-year period. The reduction will reflect the removal of \$53,720 of revenues associated with the amortization of rate case expense and the gross-up for regulatory assessment fees. The reduction in revenues will result in the monthly rate reduction shown on Schedule No. 5.

The utility shall file revised tariff sheets no later than one month prior to the actual date of the required rate reduction. The utility shall also file a proposed customer notice setting forth the lower rates and the reason for the reduction.

If the utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data shall be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application by Aloha Utilities, Inc., for increased rates and charges for water service for the Seven Springs water system is hereby denied in part and granted in part as set forth in the body of this Order. It is further

ORDERED that each of the findings contained in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained herein, whether set forth in the body of this Order or in the schedules attached hereto are, by reference, expressly incorporated herein. It is further

ORDERED that Aloha Utilities, Inc. shall make improvements to Wells Nos. 8 and 9, and then to all its wells, to implement a treatment process designed to remove at least 98 percent of the hydrogen sulfide in its raw water. Such improvements to all of Aloha's Seven Springs water system shall be placed into service by no later than December 31, 2003. It is further

ORDERED that Aloha Utilities, Inc. shall submit a plan within 90 days of the date of this Final Order showing how it intends to comply with our requirement to remove hydrogen sulfide. It is further

ORDERED that Aloha shall file a revised tariff that reflects the current bill within 30 days of the date of this Final Order. It is further

ORDERED that Aloha shall have its billing format changed along with revised tariff sheets reflecting this change within 120 days of the date of this Final Order. It is further

ORDERED that Aloha Utilities, Inc. shall implement the five customer service measures described in the body of this Order, within 120 days of the date of this Final Order. It is further

ORDERED that Aloha Utilities, Inc., shall implement the conservation programs as described in this Order. It is further

ORDERED that, prior to the implementation of the rates and charges approved herein, Aloha Utilities, Inc., shall submit, and

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have approved, revised tariff sheets. The revised tariff sheets shall be approved upon staff's verification that they are consistent with this decision and that the proposed customer notice is adequate. It is further

ORDERED that the rates approved herein shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets in accordance with Rule 25-30.475, Florida Administrative Code, provided the customers have received notice. It is further

ORDERED that, prior to the implementation of the rates and charges approved herein, Aloha Utilities, Inc., shall submit a proposed customer notice pursuant to Rule 25-22.0407(10), Florida Administrative Code, reflecting the appropriate rates and charges, and explaining the rates and charges and the reasons therefor. It is further

ORDERED that Aloha Utilities, Inc., shall provide proof of the date notice was given within 10 days after the date of the notice. It is further

ORDERED that Aloha Utilities, Inc., shall make refunds with interest pursuant to Rule 25-30.360, Florida Administrative Code, as set forth in the body of this Order. It is further

ORDERED that Aloha Utilities, Inc., shall submit proper refund reports in accordance with Rule 25-30.360(7), Florida Administrative Code. It is further

ORDERED that Aloha Utilities, Inc., shall treat any unclaimed refunds as contributions-in-aid-of-construction pursuant to Rule 25-30.360(8), Florida Administrative Code. It is further

ORDERED that the temporary water service availability charges shall be increased from \$500 to \$1,000, with the difference between the \$1,000 and \$163.80 being held subject to refund. It is further

ORDERED that Aloha Utilities, Inc. shall deposit the difference between \$1,000 and the current charge of \$163.80 for its temporary water service availability charges in its current interest bearing escrow account to guarantee the interim funds

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collected subject to refund. The escrowed funds shall not be released until the Commission has verified that Aloha has sufficiently invested in the required plant improvements. All other escrow requirements as established by us in Order No. PSC-00-1285-FOF-WS, issued July 14, 2000, shall continue to apply. It is further

ORDERED that Aloha Utilities, Inc. shall file revised tariff sheets and a proposed customer notice by April 30, 2002, to reflect the \$1,000 interim plant capacity charge. The proposed notice shall include the date the notice will be issued; a statement that the utility is increasing its water plant capacity charge for new connections to the Seven Springs system from an interim charge of \$500 per ERC to \$1,000 per ERC, on a temporary basis, subject to refund; the utility's address, telephone number, and business hours; and a statement that any comments concerning the charge should be addressed to the Director of the Division of the Commission Clerk and Administrative Services at 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0870. It is further

ORDERED that the approved charge shall be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(2), Florida Administrative Code, providing the appropriate notice has been made. It is further

ORDERED that the notice shall 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 service within the past 12 calendar months. In addition, Aloha Utilities, Inc. shall publish a copy of the approved notice in a newspaper of general circulation in its service area within 10 days of staff's approval of the notice. The utility shall provide proof of the date the notice was given within 10 days after the date of the notice. It is further

ORDERED that Aloha Utilities, Inc. shall reduce its rates for amortization of rate case expense as set forth in the body of this Order. It is further

ORDERED that Aloha Utilities, Inc. shall file revised tariff sheets and a proposed customer notice setting forth the lower rates

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and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. It is further

ORDERED that if Aloha Utilities, Inc. files this reduction in conjunction with a price index or pass-through rate adjustment, separate data shall be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense. It is further

ORDERED that this docket shall be closed after the time for filing an appeal has run.

By ORDER of the Florida Public Service Commission this 30th day of April, 2002.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

RRJ/LAE

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative

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hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Change in System Average Usage after adding 473 ERCs at 500 gal/day

SUBDIVISION	GALLONS	BILLS	GALS/MTH	GALS/DAY	WGT GALS	WGT AVE USAGE
RANCHSIDE APARTMENTS	1,913,340	913	2,096	70	63,910	
ASHLEY PLACE APARTMENT	4,214,505	1,877	2,245	75	140,775	
SPRING HAVEN CONDOS	1,135,090	477	2,380	79	37,683	
HERITAGE SPRINGS	2,259,960	935	2,417	81	75,735	
RIVER OAKS CONDOS	1,235,350	480	2,574	86	41,280	
RIVERSIDE VILLAS	8,904,350	3,101	2,871	96	297,696	
OAKCREEK APARTMENTS	6,715,931	1,825	3,680	123	224,475	
COUNTRY PLACE VILLAGE	23,058,397	5,742	4,016	134	769,428	
VICEROY CONDOS	492,750	119	4,141	138	16,422	
VETERANS VILLAGE	142,284,232	27,470	5,180	173	4,752,310	
HERITAGE LAKES	58,539,830	11,210	5,222	174	1,950,540	
MILLPOND	56,028,470	8,927	6,276	209	1,865,743	
WOODTRAIL VILLAGE	23,115,080	3,375	6,849	228	769,500	
FOXHOLLOW TOWN HOMES	1,660,790	239	6,949	232	55,448	
PARK LAKE ESTATES	77,859,838	9,820	7,929	264	2,592,480	
WOODBEND	5,295,410	627	8,446	282	176,814	
WOODGATE	9,239,277	1,060	8,716	291	308,460	
RIVERSIDE VILLAGE	28,604,155	3,110	9,197	307	954,770	
WYNDTREE	59,413,671	6,158	9,648	322	1,982,876	
NATURES HIDEAWAY	41,849,469	4,311	9,707	324	1,396,764	
HILLS OF SAN JOSE	6,803,980	588	11,571	386	226,968	
NATURA	7,905,830	659	11,997	400	263,600	
CYPRESS LAKES	21,660,150	1,730	12,520	417	721,410	
PLANTATION	7,231,230	536	13,491	450	241,200	
THOUSAND OAKS	1,217,484	73	16,678	556	40,588	
FOXWOOD	63,502,203	3,758	16,898	563	2,115,754	
CHELSEA PLACE	28,599,910	1,674	17,085	569	952,506	
TRINITY OAKS	93,690,628	5,470	17,128	571	3,123,370	
FOX HOLLOW	66,965,870	3,562	18,800	627	2,233,374	
RIVIERA	<u>12,577,695</u>	<u>382</u>	<u>32,929</u>	<u>1,098</u>	<u>419,436</u>	
TOTAL	863,974,875	110,208	279,636	9,325	28,811,315	261
PROJECTED ERCS		<u>473</u>	<u>15000</u>	<u>500</u>	<u>236500</u>	
TOTAL INCLUDING NEW ERCS		110,681			29,047,815	262

Source: EXH 29 (SGW-6)

System Average Usage Assuming All Subdivisions
With Usage Between 261 and 500 Gals/Day
Use 500 Gals/day

SUBDIVISION	GALLONS	BILLS	GALS/ MTH	GALS/ DAY	WGT GALS	WGT AVE USAGE
RANCHSIDE APARTMENTS	1,913,340	913	2,096	70	63,910	
ASHLEY PLACE APARTMENT	4,214,505	1,877	2,245	75	140,775	
SPRING HAVEN CONDOS	1,135,090	477	2,380	79	37,683	
HERITAGE SPRINGS	2,259,960	935	2,417	81	75,735	
RIVER OAKS CONDOS	1,235,350	480	2,574	86	41,280	
RIVERSIDE VILLAS	8,904,350	3,101	2,871	96	297,696	
OAKCREEK APARTMENTS	6,715,931	1,825	3,680	123	224,475	
COUNTRY PLACE VILLAGE	23,058,397	5,742	4,016	134	769,428	
VICEROY CONDOS	492,750	119	4,141	138	16,422	
VETERANS VILLAGE	142,284,232	27,470	5,180	173	4,752,310	
HERITAGE LAKES	58,539,830	11,210	5,222	174	1,950,540	
MILLPOND	56,028,470	8,927	6,276	209	1,865,743	
WOODTRAIL VILLAGE	23,115,080	3,375	6,849	228	769,500	
FOXHOLLOW TOWN HOMES	1,660,790	239	6,949	232	55,448	
PARK LAKE ESTATES	77,859,838	9,820	7,929	264	2,592,480	
WOODBEND	5,295,410	627	8,446	500	313,500	
WOODGATE	9,239,277	1,060	8,716	500	530,000	
RIVERSIDE VILLAGE	28,604,155	3,110	9,197	500	1,555,000	
WYNDTREE	59,413,671	6,158	9,648	500	3,079,000	
NATURES HIDEAWAY	41,849,469	4,311	9,707	500	2,155,500	
HILLS OF SAN JOSE	6,803,980	588	11,571	500	294,000	
NATURA	7,905,830	659	11,997	500	329,500	
CYPRESS LAKES	21,660,150	1,730	12,520	500	865,000	
PLANTATION	7,231,230	536	13,491	500	268,000	
THOUSAND OAKS	1,217,484	73	16,678	556	40,588	
FOXWOOD	63,502,203	3,758	16,898	563	2,115,754	
CHELSEA PLACE	28,599,910	1,674	17,085	569	952,506	
TRINITY OAKS	93,690,628	5,470	17,128	571	3,123,370	
FOX HOLLOW	66,965,870	3,562	18,800	627	2,233,374	
RIVIERA	<u>12,577,695</u>	<u>382</u>	<u>32,929</u>	<u>1,098</u>	<u>419,436</u>	
TOTAL	863,974,875	110,208	279,636	10,646	31,927,953	

System Weighted Average

290

Source: EXH 29 (SGW-6)

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ALOHA UTILITIES, INC. - SEVEN SPRINGS WATER SYSTEM			SCHEDULE NO. 1-A		
SCHEDULE OF WATER RATE BASE			DOCKET NO. 010503-WU		
13-MONTH AVERAGE TEST YEAR ENDED 12/31/01					
DESCRIPTION	TEST YEAR PER UTILITY	UTILITY ADJUST- MENTS	ADJUSTED TEST YEAR PER UTILITY	COMM. ADJUST- MENTS	COMM. ADJUSTED TEST YEAR
1 UTILITY PLANT IN SERVICE	\$9,937,171	\$0	\$9,937,171	\$5,776	\$9,942,947
2 LAND & LAND RIGHTS	\$42,898	\$0	\$42,898	(\$5,935)	\$36,963
3 NON-USED & USEFUL COMPONENTS	\$0	\$0	\$0	\$0	\$0
4 ACCUMULATED DEPRECIATION	(\$2,328,109)	\$0	(\$2,328,109)	(\$3,182)	(\$2,331,291)
5 CIAC	(\$8,479,418)	\$0	(\$8,479,418)	(\$27,236)	(\$8,506,654)
6 AMORTIZATION OF CIAC	\$1,923,349	\$0	\$1,923,349	\$64	\$1,923,413
7 CONTRIBUTED TAXES	(\$1,175,890)	\$0	(\$1,175,890)	\$0	(\$1,175,890)
8 ACC AMORT-CONTRIBUTED. TAXES	\$222,201	\$0	\$222,201	(\$10,877)	\$211,324
9 DEFERRED INCOME TAXES	\$835,318	\$0	\$835,318	\$0	\$835,318
10 WORKING CAPITAL ALLOWANCE	<u>\$430,720</u>	<u>\$413,250</u>	<u>\$843,970</u>	<u>(\$398,488)</u>	<u>\$445,482</u>
RATE BASE	<u>\$1,408,240</u>	<u>\$413,250</u>	<u>\$1,821,490</u>	<u>(\$439,878)</u>	<u>\$1,381,612</u>

ALOHA UTILITIES, INC. - SEVEN SPRINGS WATER SYSTEM ADJUSTMENTS TO RATE BASE 13-MONTH AVERAGE TEST YEAR ENDED 12/31/01		SCHEDULE NO. 1-B DOCKET NO. 010503-WU
EXPLANATION	WATER	
<u>PLANT IN SERVICE</u>		
1 To capitalize items erroneously expensed during 2000. (Stip. 1)	\$11,552	
2 Properly allocate utility's new office building. (Stip. 12)	<u>(5,776)</u>	
Total		<u>\$5,776</u>
<u>LAND</u>		
Property allocate the utility's new office building. (Stip 12)		<u>(\$5,935)</u>
<u>ACCUMULATED DEPRECIATION</u>		
1 Accumulated depreciation for capitalize items erroneously expensed (Stip. 1)	(\$920)	
2 To reflect the appropriate depreciation rate for computer equipment. (Stip. 2)	<u>(2,262)</u>	
Total		<u>(\$3,182)</u>
<u>CIAC</u>		
To correct the total amount of contributed property received. (Stip. 3)		<u>(\$27,236)</u>
<u>ACCUM. AMORT. OF CIAC</u>		
To reflect accumulated amortization for contributed property adjustment (Stip. 3)		<u>\$64</u>
<u>ACCUM. AMORT. OF CONTRIBUTED TAXES</u>		
To correct historical starting point of amortization of contributed taxes (Stip. 4)		<u>(\$10,877)</u>
<u>WORKING CAPITAL</u>		
To reflect adjustments and reallocations.		<u>(\$398,488)</u>

ORDER NO. PSC-02-0593-FOF-WU

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ALOHA UTILITIES, INC. - SEVEN SPRINGS WATER SYSTEM
CAPITAL STRUCTURE - 13 Month Average
13-MONTH AVERAGE TEST YEAR ENDED 12/31/1

SCHEDULE NO. 2
DOCKET NO. 010503-WU

DESCRIPTION	TOTAL CAPITAL	SPECIFIC ADJUSTMENTS (EXPLAIN)	ADJUSTED TOTAL	PRO RATA ADJUSTMENTS	CAPITAL RECONCILED TO RATE BASE	RATIO	COST RATE	WEIGHTED COST
Per Utility								
1 LONG TERM DEBT	\$3,525,036	\$0	\$3,525,036	(\$2,501,723)	\$1,023,313	56.18%	9.03%	5.07%
2 SHORT-TERM DEBT	0	0	0	0	0	0.00%	0.00%	0.00%
3 PREFERRED STOCK	600,000	0	600,000	(425,866)	174,134	9.56%	9.93%	0.95%
4 COMMON EQUITY	1,587,440	0	1,587,440	(1,126,603)	460,837	25.30%	9.93%	2.51%
5 CUSTOMER DEPOSITS	562,205	0	562,205	(398,999)	163,206	8.96%	6.00%	0.54%
6 TOTAL CAPITAL	<u>\$6,274,681</u>	<u>\$0</u>	<u>\$6,274,681</u>	<u>(\$4,453,191)</u>	<u>\$1,821,490</u>	<u>100.00%</u>		<u>9.07%</u>
Per Commission								
7 LONG TERM DEBT	\$3,525,036	\$5,742,943	\$9,267,979	(\$8,200,386)	\$1,067,593	77.27%	8.25%	6.37%
8 SHORT-TERM DEBT	0	0	0	0	0	0.00%	0.00%	0.00%
9 PREFERRED STOCK	600,000	0	600,000	(530,885)	69,115	5.00%	10.34%	0.52%
10 COMMON EQUITY	1,587,440	(23,578)	1,563,862	(1,383,718)	180,144	13.04%	10.34%	1.35%
11 CUSTOMER DEPOSITS	562,205	0	562,205	(497,444)	64,761	4.69%	6.00%	0.28%
12 TOTAL CAPITAL	<u>\$6,274,681</u>	<u>\$5,719,365</u>	<u>\$11,994,046</u>	<u>(\$10,612,433)</u>	<u>\$1,381,613</u>	<u>100.00%</u>		<u>8.52%</u>
						LOW	HIGH	
RETURN ON EQUITY						<u>10.34%</u>	<u>12.34%</u>	
OVERALL RATE OF RETURN						<u>8.52%</u>	<u>8.78%</u>	

ALOHA UTILITIES, INC. - SEVEN SPRINGS WATER SYSTEM							SCHEDULE NO. 3-A	
STATEMENT OF WATER OPERATIONS							DOCKET NO. 010503-WU	
13-MONTH AVERAGE TEST YEAR ENDED 12/31/1								
DESCRIPTION	TEST YEAR PER UTILITY	UTILITY ADJUST- MENTS	ADJUSTED TEST YEAR PER UTILITY	COMM. ADJUST- MENTS	COMM. ADJUSTED TEST YEAR	REVENUE INCREASE	REVENUE REQUIREMENT	
1 OPERATING REVENUES	<u>\$1,967,474</u>	<u>\$1,077,337</u>	<u>\$3,044,811</u>	<u>(\$1,065,671)</u>	<u>\$1,979,140</u>	<u>(\$0)</u>	<u>\$1,979,140</u>	
						-0.00%		
OPERATING EXPENSES:								
2 OPERATION & MAINTENANCE	<u>\$1,394,460</u>	<u>\$1,055,944</u>	<u>\$2,450,404</u>	<u>(\$936,021)</u>	<u>\$1,514,383</u>		<u>\$1,514,383</u>	
3 DEPRECIATION	<u>75,736</u>	<u>0</u>	<u>75,736</u>	<u>(224)</u>	<u>75,512</u>		<u>75,512</u>	
4 AMORTIZATION	<u>(30,691)</u>	<u>0</u>	<u>(30,691)</u>	<u>0</u>	<u>(30,691)</u>		<u>(30,691)</u>	
5 TAXES OTHER THAN INCOME	<u>278,781</u>	<u>55,808</u>	<u>334,589</u>	<u>(47,955)</u>	<u>286,634</u>	<u>(0)</u>	<u>286,634</u>	
6 INCOME TAXES	<u>49,564</u>	<u>0</u>	<u>49,564</u>	<u>(33,976)</u>	<u>15,588</u>	<u>(0)</u>	<u>15,588</u>	
7 TOTAL OPERATING EXPENSES	<u>\$1,767,850</u>	<u>\$1,111,752</u>	<u>\$2,879,602</u>	<u>(\$1,018,176)</u>	<u>\$1,861,426</u>	<u>(\$0)</u>	<u>\$1,861,426</u>	
8 OPERATING INCOME	<u>\$199,624</u>	<u>(\$34,415)</u>	<u>\$165,209</u>	<u>(\$47,495)</u>	<u>\$117,714</u>	<u>(\$0)</u>	<u>\$117,714</u>	
9 RATE BASE	<u>\$1,408,240</u>		<u>\$1,821,490</u>		<u>\$1,381,612</u>		<u>\$1,381,612</u>	
10 RATE OF RETURN	<u>14.18%</u>		<u>9.07%</u>		<u>8.52%</u>		<u>8.52%</u>	

ALOHA UTILITIES, INC. - SEVEN SPRINGS WATER SYSTEM
ADJUSTMENTS TO OPERATING INCOME
3-MONTH AVERAGE TEST YEAR ENDED 12/31/1

SCHEDULE NO. 3-E
DOCKET NO. 010503-WL

EXPLANATION	WATER
<u>OPERATING REVENUES</u>	
1 Remove requested revenue increase	(\$1,077,337)
2 To correct the interest income allocation (Stip. 9)	7,490
3 To include vacation bills in projected revenues for 2001. (Stip. 9)	4,176
Total	<u>(\$1,065,671)</u>
<u>OPERATION & MAINTENANCE EXPENSE</u>	
1 Remove projections for plant items erroneously expensed in 2000 (Stip 1)	(\$12,396)
2 Reallocated bad debt expense (Stip 10)	1,237
3 To remove double counted officers salary and wages. (Stip 13)	(8,769)
4 To reflect adjusted purchased water expense (Issue 9a & 15)	(987,903)
5 To remove inflation projection from chemicals expense (Issue 10)	(2,234)
6 Remove salaries & benefits for vacant utility manager position (Issue 11)	(24,219)
7 Correct annualized salary for operations supervisor (Issue 12-Stip)	(21,268)
8 Adjustment to pensions expense (Issue 13)	51,089
9 Remove President's & Vice President's Salary & Benefits	(35,371)
10 Rate case expense (Issue 16)	(60,323)
11 Conservation Expenses (Issue 17)	120,000
12 To reflect costs for customer improvement initiatives	44,136
Total	<u>(\$936,021)</u>
<u>DEPRECIATION EXPENSE-NET</u>	
1 To reflect the 2001 depreciation expense for plants assets recorded in error as expense items. (Stip.1)	\$613
2 To reflect accumulated amortization for the correction of total contributed property received. (Stip. 3)	(837)
Total	<u>(\$224)</u>
<u>TAXES OTHER THAN INCOME</u>	
RAFs on revenue adjustments above	<u>(\$47,955)</u>
<u>INCOME TAXES</u>	
To adjust to test year income tax expense	<u>(\$33,976)</u>

ALOHA UTILITIES, INC. - SEVEN SPRINGS WATER SYSTEM		SCHEDULE NO. 4		
WATER MONTHLY SERVICE RATES		DOCKET NO: 010503-WU		
FINAL 13-MONTH AVERAGE TEST YEAR ENDED 12/31/01				
	Rates Prior to Filing	Commission Approved Interim	Utility Requested Final	Commission Approved Final
Residential Service				
Base Facility Charge:				
Meter Size:				
5/8" x 3/4"	\$7.32	\$8.31	\$9.23	\$4.02
3/4"	\$0.00	\$0.00	\$0.00	\$6.03
1"	\$0.00	\$0.00	\$0.00	\$10.05
1-1/2"	\$0.00	\$0.00	\$0.00	\$20.10
Usage Charges:				
Per 1,000 Gallons				
0 - 3,000 Gallons	\$0.00	\$0.00	\$2.24	\$1.38
3,000 - 10,000 Gallons	\$1.32	\$1.48	\$2.24	\$1.38
Over 10,000 Gallons	\$1.32	\$1.48	\$2.81	\$1.72
General Service				
Base Facility Charge:				
Meter Size:				
5/8" x 3/4"	\$7.32*	\$8.31*	\$9.23	\$4.02
1"	\$19.46*	\$22.10*	\$23.08	\$10.05
1-1/2"	\$36.49*	\$41.45*	\$46.15	\$20.10
2"	\$58.80*	\$66.80*	\$73.84	\$32.16
3"	\$116.83*	\$132.72*	\$147.68	\$64.32
4"	\$182.85*	\$207.72*	\$230.75	\$100.50
6"	\$282.76*	\$321.23*	\$461.50	\$201.00
8"	\$577.67*	\$656.25*	\$738.40	\$321.60
10"	\$841.62*	\$956.09*	\$1,338.35	\$462.30
Usage Charges:				
All Usage Per 1,000 Gallons				
	\$1.32	\$1.48	\$2.24	\$1.49
Typical Residential Bills				
5/8" x 3/4" Meter Size				
3,000 Gallons	\$7.32	\$8.31	\$15.95	\$8.49
5,000 Gallons	\$9.96	\$11.27	\$20.43	\$11.47
10,000 Gallons	\$16.56	\$18.67	\$31.63	\$18.92
* Current and Commission Approved Interim General Service BFC includes minimum gallonage allowances.				

**ALOHA UTILITIES, INC. - SEVEN SPRINGS WATER SYSTEM
 4 YEAR REDUCTION SCHEDULE
 DOCKET NO. 010503-WU**

SCHEDULE NO. 5

<u>Monthly Water Rates</u>	Commission Approved Monthly Rates	4-Year Reduction to Monthly Rates
<u>Residential Service</u>		
Base Facility Charge:		
Meter size		
5/8" x 3/4"	\$4.02	\$0.11
3/4"	\$6.03	\$0.16
1"	\$10.05	\$0.27
1 1/2"	\$20.10	\$0.55
Gallonage Charge:		
Per 1,000 gals		
0 - 3,000 gals	\$1.38	\$0.04
3,000-10,000	\$1.38	\$0.04
Over 10,000 gals	\$1.72	\$0.05
<u>General Service Rates</u>		
Base Facility Charge:		
Meter size		
5/8" x 3/4"	\$4.02	\$0.11
1"	\$10.05	\$0.27
1 1/2"	\$20.10	\$0.55
2"	\$32.16	\$0.87
3"	\$64.32	\$1.75
4"	\$100.50	\$2.73
6"	\$201.00	\$5.46
8"	\$321.60	\$8.73
10"	\$462.30	\$12.55
Gallonage Charge:		
All usage Per 1,000 gals	\$1.49	\$0.04

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ALOHA UTILITIES, INC.,)
)
 Petitioner,) PSC DOCKET NO. 010503-WU
) Filed: February 26, 2004
 v.)
)
 FLORIDA PUBLIC SERVICE COMMISSION,)
)
 Respondent.)
 _____)

**PETITION FOR FORMAL ADMINISTRATIVE HEARING AND
REQUEST THAT PETITION BE TRANSFERRED TO DOAH**

COMES NOW, Aloha Utilities, Inc. (hereinafter "Petitioner," "Aloha," or the "Utility") by and through its undersigned counsel and files this Petition for Formal Administrative Hearing, pursuant to Sections 120.569, 120.57(1), and 120.80 Florida Statutes, and Rule 28-106.201, Florida Administrative Code, concerning the Notice of Proposed Agency Action entitled "Order Requiring Interim Refunds." Petitioner hereby objects to certain portions of Order No. PSC-04-0122-PAA-WU (the "PAA Order") and places into dispute the issues specified in this pleading, stating as grounds therefore the following:

1. The name and address of Petitioner is:

Mr. Stephen Watford
Aloha Utilities, Inc.
6915 Perrine Ranch Road
New Port Richey, FL 34655

2. The name and address of the person authorized to received notices:

F. Marshall Deterding, Esq.
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

EXHIBIT 3

DOCUMENT NUMBER-DATE
02879 FEB 26 3
FPSC-COMMISSION CLERK

3. The name and address of the agency is the Florida Public Service Commission (hereinafter "Commission" or "PSC"):

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

The PSC has assigned this PAA Order to the same Docket No. (010503-WU) as the Commission's Final Order issued in April of 2002. It is the Petitioner's position that this docket closed at this issuance of the Mandate in mid 2003, with regard to all matters except for verification that a few ministerial tasks outlined in the Final Order had been completed. The last of those tasks was verification that the required interim refunds had been made in accordance with the terms of that Final Order. The Final Order required a refund of 4.87% of revenues collected during the "interim collection period" and both the PAA Order and the previously issued Order No. PSC-03-1410-FOF-WS verified that this had been done. As such, it is also the Petitioner's position that this PAA Order is not properly issued in this finalized rate case docket, which has been the subject of a final, appealed and upheld order.

4. Petitioner received the Commission's Notice of Proposed Agency Action Order No. PSC-04-0122-PAA-WU by U.S. Mail to their attorneys on February 9, 2004. That Notice informed Petitioner of its right to file a petition on or before February 26, 2004.

5. The Proposed Agency Action requires Aloha to refund to its customers the additional amount of \$278,113. Aloha's substantial interests are adversely affected by that proposed agency determination, in that such requirement is in violation of the

requirements of Section 367.081(2) and 367.082, Florida Statutes; long established Commission precedent; and the clear and unequivocal terms of Final Order No. PSC-02-0593-FOF-WU, issued in April of 2002 and upheld on appeal.

6. The following disputed issues of material fact, as well as mixed issues of fact and law, are raised by Aloha, and include specific facts that require modification of the Proposed Agency Action Order (hereinafter "PAA Order"):

A. Whether the PSC's Final Order is binding and conclusive on the issue of refunds.

The PAA Order alleges that Order No. PSC-02-0593-FOF-WU (the "Final Order"), issued on April 20, 2002 "...did not address the refund amount for the interim rates collected while the appeal was pending (May of 2002 through July of 2003) (the appeal period)." Such a statement is clearly contrary to the unambiguous wording of Final Order No. 04-0122-PAA-WU which specifically determined an appropriate refund for "the interim collection period" which was defined as the "period from November 3, 2001 to the date Aloha implements the final rates approved." Aloha implemented the "final rates" approved in August of 2003, after exhaustion of appeals.

B. Whether the PSC Order granting a stay along with its Final Orders, estops the PSC from changing its positions regarding refunds.

The Final Order specifically dealt with the issue of refunds for all monies collected "during the interim collection period" which is defined as being from November 3, 2001 to the date Aloha implements the final rates approved. No party sought reconsideration of this refund issue; sought

appeal of this refund issue; sought cross appeal of this refund issue; or sought any action on this refund issue in the Stay Order entered related to the rates to be accessed and the monies to be held subject to refund under the terms of the Final Order during the pendency of the appeal. Aloha therefore relied on the Commission's decisions related to this refund issue throughout the stay and appeal proceeding and thereafter.

- C. Whether Aloha has already refunded more money to its customers than was necessary to bring its revenue requirement to the level established in the Final Order, adjusted in accordance with standard Commission practice during the "interim collection period."

The Refund Order concludes with its finding that:

"...by appealing the decision in collecting interim rates during the 15 month appeal period, Aloha had the benefit of the higher interim rates during this time period to which we found, and the First DCA ultimately agreed, that no revenue increase was justified. We find that it is blatantly unfair to allow Aloha to benefit from the higher interim rates collected during the appeal period."

Underlying this finding is a belief that the final rates authorized by the Commission if implemented immediately after issuance of the Final Order in place of interim rates, would have produced revenues over 15.00% less than those that were produced by the interim rates which were charged during that appeal period. The Utility has demonstrated through detailed billing information filed and verified by the Commission staff that the interim rates produced only 4.08% more revenue than would have been produced had the final rates been implemented immediately after the Final Order and no appeal had been taken at all.

- D. Whether the PAA Order results in a windfall to Aloha's customers to the extreme detriment of Aloha.

The Refund Order also finds that Aloha "...should not benefit and receive a windfall from its unsuccessful appeal of our Final Order." That finding assumes that the refund of 4.87% of revenues collected under interim rates results in some sort of windfall to Aloha. There is no foundation for such an allegation and in fact, the facts provided by the Utility to the Commission staff which were audited and verified by the Commission staff, show that no such windfall occurred and that, to the contrary, the Commission's Final Order requiring a refund of all monies held in escrow during the "appeal period" in fact results in a windfall to the customers.

- E. Whether the directives and statements contained within the PAA conflict with and are contrary to the PSC's prior agency practices, procedures, and policies.

In prior cases, the PSC has allowed utilities to maintain interim rates during the pendency of an appeal and to refund any excessive interim rates at the conclusion of that appeal, based upon the requirements of the original order and a methodology as proposed by Aloha in this case. That procedure has been implemented in all prior cases.

In spite of the fact that this was brought to the attention of the Commission, the PSC has not explained or justified its abrupt change in this procedure or policy as expressed in the PAA Order and indeed has admitted that the refunds previously provided by Aloha result in a revenue requirement for the appeal period which is less than the

revenues which would have been produced had the final rates approved in the Final Order been immediately implemented and no appeal taken.

7. The ultimate facts alleged by the Petitioner are as outlined in Paragraph 6 hereof and are generally that Aloha is entitled to retain all but 4.87% of the monies collected under interim rates for the entire period from the issuance of Interim Order No. PSC-01-2199-FOF-WU up through implementation of final rates in July of 2003, and the refunds as completed in August of 2003 are not only all that is required by the Commission's Final Order which specifically addresses this issue, but are all that are reasonably appropriate without granting to the customers a windfall based upon a punitive lower revenue requirement during the appeal period. Since Aloha has already refunded to its customers the total amount required by the Final Order, Aloha is entitled to the release of all additional funds in the escrow account.

8. The statutes and rules which entitle Aloha to relief include the provisions of Section 367.081(2), 367.082, Florida Statutes, and Rule 25-30.360, Florida Administrative Code.

9. Based upon knowledge of the practice and procedure of the PSC with regard to the length of time required for the scheduling and conclusion of administrative hearings and the need for a disinterested finder of fact to immediately address the issues raised herein, Petitioner respectfully requests that this Petition be transmitted to the Division of Administrative Hearings for the assignment of an impartial Administrative Law Judge to conduct the hearing and render a recommended order on these issues.

WHEREFORE, based upon the above, Aloha Utilities, Inc. requests that:

- A. The Commission grant this Petition for Formal Administrative Hearing pursuant to the provisions of Section 120.57(1), Florida Statutes on each of the factual, legal, and policy issues outlined herein;
- B. The Commission forward this matter to the Florida Division of Administrative Hearings for assignment to an Administrative Law Judge to expeditiously conduct a formal administrative hearing on the issues raised herein;
- C. Recommended and Final Orders be entered finding that Aloha has completed all refunds in accordance with the requirements of the Commission's Final Order and that no further refunds are appropriate and requiring the PSC to release all monies held in escrow; and
- D. Petitioner be granted such other further relief as deemed just and proper.

Respectfully submitted this 26th day of February, 2004.

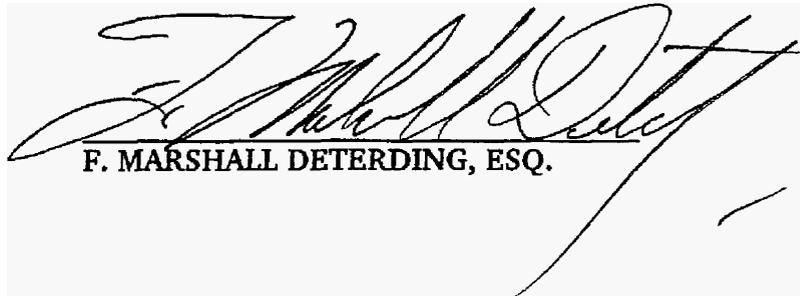


F. MARSHALL DETERDING
Rose, Sundstrom, & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(850) 877-6555

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery to the following on this 26th day of February, 2004:

Ralph Jaeger, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



F. MARSHALL DETERDING, ESQ.

aloha\35\paaorder.pet

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for increase in water rates for Seven Springs System in Pasco County
by Aloha Utilities, Inc. DOCKET NO. 010503-WU ORDER
NO. PSC-04-0614-PCO-WU ISSUED: June 21, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER DENYING OPC'S MOTION TO DISMISS AND DENYING ALOHA'S
PETITION FOR A FORMAL HEARING, AND SETTING MATTER FOR INFORMAL
PROCEEDING IN ACCORDANCE WITH SECTION 120.57(2), FLORIDA
STATUTES

BY THE COMMISSION:

BACKGROUND

Aloha Utilities, Inc. (Aloha or utility) is a Class A water and wastewater utility in Pasco County. The utility consists of two distinct service areas: Aloha Gardens and Seven Springs. On August 10, 2001, Aloha filed an application for an increase in rates for its Seven Springs water system. By Order No. PSC-01-2199-FOF-WU (Interim Rate Order), issued November 13, 2001, we approved interim rates subject to refund with interest, which increased rates by 15.95%. This 15.95% interim increase was secured by the utility's deposit of those funds in an escrow account.

After a formal hearing, we set final rates by Order No. PSC-02-0593-FOF-WU (Final Order), issued April 30, 2002. Among other things, we denied a revenue increase, set a two-tiered inclining block rate structure, increased plant capacity charges, required certain plant improvements, and set the methodology that required a 4.87% interim refund. The utility appealed the Final Order to the First District Court of Appeal (First DCA), and sought a stay while the decision was under appellate review.

By Order No. PSC-02-1056-PCO-WU (Stay Order), issued August 5, 2002, we granted in part and denied in part the utility's Motion for Stay. We stayed the setting of the new rate structure, as well as the interim refund and certain plant improvement requirements. The First DCA affirmed our Final Order on May 6, 2003, Aloha Utilities v. Florida Public Service Commission, 848 So. 2d 307 (Fla. 1st DCA 2003), and subsequently denied the utility's Motion for Rehearing on June 12, 2003. The First DCA

issued its mandate on June 30, 2003. As a result, the appellate review process is complete and all provisions of our Final Order are now final and effective.

By letter dated June 30, 2003, Aloha requested the release of the escrow funds above the amount required for the 4.87% refunds. Due to billing cycle constraints, the utility collected interim rates through July 2003 and implemented the final rates affirmed by the First DCA starting in August 2003. The utility completed the 4.87% interim refunds required by the Final Order on or about September 10, 2003.

By Order No. PSC-03-1410-FOF-WU, issued December 15, 2003, we recognized that Aloha had refunded \$153,510 to its customers without withdrawing any funds from the escrow account and authorized the release of that amount to Aloha. That Order further recognized that the issue of additional refunds and release of the remaining escrowed funds would be addressed at a later date.

At our January 20, 2004 Agenda Conference, we voted to require additional refunds of \$278,000 for the period subsequent to the issuance of the Final Order and prior to the implementation of the approved final rates -- May 1, 2002 through July 31, 2003 (the appellate period). The \$278,000 represented revenues from the interim rates collected during the appellate period less the 4.87% already refunded by Aloha. This decision was issued as proposed agency action (PAA), and was commemorated by the issuance of PAA Order No. PSC-04-0122-PAA-WU (PAA Refund Order) on February 5, 2004.

On February 26, 2004, Aloha protested the PAA Refund Order by filing its Petition for Formal Administrative Hearing and Request That Petition Be Transferred to DOAH (Aloha's Petition). On March 5, 2004, the Office of Public Counsel (OPC) filed the Citizens Response to Aloha's Petition for Formal Administrative Hearing and Request That Petition Be Transferred to DOAH (OPC's Motion to Dismiss and Response). In its Response, OPC requests that the Commission dismiss Aloha's Petition, or, in the alternative, not assign the case to DOAH. On March 17, 2004, Aloha filed its Motion to Strike Citizen's "Response" or, in the Alternative, Response to Citizen's Motion to Dismiss and Citizen's Objection to Transfer Petition to DOAH (Aloha's Motion to Strike and Response). Neither Aloha nor OPC requested oral argument on their respective petitions, motions, and responses.

We have jurisdiction pursuant to Sections 367.081 and 367.082, Florida Statutes.

OPC'S MOTION TO DISMISS AND ALOHA'S MOTION TO STRIKE

When Aloha filed its Petition on February 26, 2004, it did not serve the petition on any of the other parties to this docket. Shortly after that, OPC obtained a copy of the Petition, and filed its Response and Motion to Dismiss, which Aloha subsequently moved to strike.

OPC relies on Rule 28-106.104(4), Florida Administrative Code, which requires that "whenever a party files a pleading or other document with the agency, that party shall serve copies of the pleading or other document upon all other parties to the proceeding." OPC argues that "because Aloha failed to meet this fundamental requirement, the Commission should dismiss the pleading."

Aloha points to the Notice of Further Proceedings ending language found in the PAA Refund Order which states that any former objection or protest filed prior to the issuance of the Order is deemed abandoned unless a petition was filed by February 26, 2004. It also argues in its Petition that this docket closed at the issuance of the court's mandate in mid-2003, and styled its Petition as Aloha Utilities, Inc., Petitioner v. Florida Public Service Commission, Respondent.

Based on the above, Aloha argues that at the time of the filing of its Petition, there were no other parties to be served within the meaning of Rule 28-106.104(4), Florida Administrative Code. Therefore, under Aloha's interpretation, that rule was inapplicable. Moreover, Aloha alleges that because OPC was not a party and has not complied with Rules 25-22.039 or 28-106.205, Florida Administrative Code, OPC has no status or standing in this proceeding and is not entitled to respond and file motions.

Aloha also disputes OPC's allegation that this is not a new case, but a continuation of a rate case filed by Aloha on August 10, 2001. Aloha argues that the language in the PAA Refund Order specifically noted that all provisions of the Final Order entered in this rate case are now final and effective.

Finally, if these arguments are not accepted, Aloha states that there has been no prejudice to OPC, that dismissal is too harsh a remedy, and that OPC has clearly received notice and did not request an extension of time to respond to Aloha's Petition. Therefore, Aloha concludes that OPC's Motion to Dismiss should be denied.

This case is unusual in that a PAA Order was issued after a final order was issued in the same docket. We find that Aloha has misinterpreted the notice language found at the end of the PAA Refund Order, the above-noted rules, the meaning and effect of the language in the Final Order, and the result of only one party objecting to a PAA Order.

The notice language required by Section 120.569, Florida Statutes, provides that "any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it . . . is renewed within the specified protest period." This language does not mean that those parties who had party status lose party status if they fail to file a petition on the PAA Order.

Aloha alleges that OPC has failed to comply with the rules governing intervention, Rules 25-22.039 and 28-106.205, Florida Administrative Code. We disagree. By Order No. PSC-01-1750-PCO-WU, issued August 28, 2001, in this docket, we acknowledged that OPC had exercised its statutory right to intervene in this docket pursuant to Section 350.0611, Florida Statutes. The PAA Refund Order was issued in this docket, and Aloha's Petition was filed in this docket. It is incongruous to argue that a party must refile for party status if the party filed no protest to the proposed agency action. Therefore, we find that OPC and all other parties continue to have party status for any proceeding in this docket.

As noted above, Aloha has styled its Petition as a new proceeding. Although Aloha has attempted to change the style, OPC notes that this is not a new case, but a continuation of the case filed by Aloha on August 10, 2001. We agree. The interim rates are part of Aloha's rate case in this docket, and their final disposition is part of this proceeding. It does not matter how Aloha styled its Petition, the interim refund issue is still a part of this docket. Based on the above, Aloha's Motion to Strike is denied.

However, this does not mean that OPC's Motion to Dismiss for Aloha's failure to properly serve the petition should be granted. Rule 28-106.104(4), states that "[w]hen a party files a pleading or other document with the agency, the party shall serve copies of the pleading or other document upon all other parties to the proceeding." Aloha's Petition is filed in Docket No. 010503-WU, and protests Order No. PSC-04-0122-PAA-WU which was issued in Docket No. 010503-WU. Senator Mike Fasano, Mr. Edward Wood, the Southwest Florida Water Management District (SWFWMD), and OPC have long been recognized as parties in this docket. Also, by Order No. PSC-04-0108-PCO-WU, issued January 30, 2004, we granted intervenor status to the Office of the Attorney General. Therefore, Aloha should have filed its protest and objection to the PAA Refund Order on all parties.

However, OPC was aware of the Petition no later than March 1, 2004 (a Monday), and either obtained a copy that day or the next. The Petition was not filed with this Commission until February 26, 2004 (a Thursday). Therefore, the delay appears to have been no more than two-working-days. This is probably no longer a delay than if Aloha had mailed a copy of the Petition to OPC. Also, all parties have now been advised of Aloha's Petition. Moreover, pursuant to Rule 28-106.201(4), Florida Administrative Code, any dismissal would be without prejudice, and would only further delay the processing of this case. Therefore, we find that OPC's Motion to Dismiss shall be denied.

ALOHA'S PETITION FOR FORMAL ADMINISTRATIVE HEARING

In its Petition, Aloha seeks a formal administrative proceeding pursuant to Section 120.57(1), Florida Statutes, which governs administrative proceedings that involve disputed issues of material fact. Aloha raises five issues in Paragraph Six of its Petition. In its Response, OPC addresses each of those subparagraphs.

For subparagraph 6.A. (Issue A), Aloha takes issue with the statement in the PAA Refund Order that said the Final Order did not address the refund amount for the interim

rates collected while the appeal was pending. Aloha argues that the language in the Final Order was unambiguous, and “specifically determined an appropriate refund for ‘the interim collection period’ which was defined as the ‘period from November 3, 2001 to the date Aloha implements the final rates approved.’” OPC responds that “Issue A raises the question of proper interpretation of the refund language contained in [the Final Order].” We find that Issue A is a legal issue involving an interpretation of the refund language contained in the Final Order and does not involve a disputed issue of material fact warranting an evidentiary hearing.

In subparagraph 6.B. (Issue B), Aloha raises the issue whether this Commission is estopped from changing its position regarding refunds because no one contested this portion of the Final Order determining interim refunds, and that Aloha had relied on the Commission’s decisions related to the refund issue. OPC notes that Issue B “raises the legal issue of estoppel as it would apply to the refund language contained in” the Final Order. We find that Issue B is a legal issue involving estoppel and does not involve a disputed issue of material fact warranting an evidentiary hearing.

In subparagraph 6.C. (Issue C), Aloha raises the issue whether it “has already refunded more money to its customers than was necessary to bring its revenue requirement to the level established in the Final Order, adjusted in accordance with standard Commission practice during the ‘interim collection period.’” Aloha then points to the PAA Refund Order, which concludes with the finding that:

... by appealing the decision and collecting interim rates during the 15-month appeal period, Aloha had the benefit of the higher interim rates during this time. Since we found, and the First DCA ultimately agreed, that no revenue increase was justified, we find that it is patently unfair to allow Aloha to benefit from the higher interim rates collected during the appeal period.

Aloha argues that “underlying this finding is a belief that the final rates authorized by the Commission if implemented immediately after issuance of the Final Order in place of interim rates, would have produced revenues over 15.00% less than those that were produced by the interim rates which were charged during that appeal period.” According to Aloha, the utility has shown “that the interim rates produced only 4.08% more revenue than would have been produced had the final rates been implemented immediately after the Final Order” with no appeal and stay.

OPC notes that “Aloha’s Issue C purports to raise a factual question about the relationship between total refunds and the final revenue requirement.” However, OPC argues that though “couched as a factual dispute, in reality the parties have no dispute about the underlying facts. The only question here is the proper amount of refunds that are required under the facts on which all parties are in accord.”

We agree with OPC. The PAA Refund Order acknowledges that the Final Order changed the rate structure, and found no rate increase was warranted. However, it is undisputed that the Interim Rate Order granted a 15.95% interim rate increase across the board, which Aloha was allowed to continue to charge during the appeal period. Clearly,

the interim rates were 15.95% higher than the original rates, and there can be no dispute of material fact in this regard.

We find that it is a mixed issue of policy and law with respect to what this Commission should consider when an order specifically provides no increase is warranted, but changes the rate structure. Aloha argues that the actual revenues collected under interim rates should be compared against the revenues that would have been collected under the newly approved rates, and that, with the change in rates and rate structure, you should not compare the interim revenues against the revenues that would have been collected under the original rates. If the Final Order was correct, and we note that the Final Order was upheld on appeal, then there should have been no difference. In the PAA Refund Order, we concluded that the Final Order said no rate increase over the original rates was warranted, and yet it was clear that the Interim Rate Order had increased the original rates by 15.95% across the board, and so we directed that the full 15.95% be refunded for the appeal period. Based on the above, we find that Aloha has failed to demonstrate a disputed issue of material fact in regards to Issue C warranting a formal hearing.

In subparagraph 6.D. (Issue D), Aloha argues that the PAA Refund Order “results in a windfall to Aloha’s customers to the extreme detriment of Aloha.” Aloha notes that the PAA Refund Order finds that Aloha “should not benefit and receive a windfall from its unsuccessful appeal of our Final Order.” Aloha argues “that finding assumes that a refund of 4.87% of revenues collected under interim rates results in some sort of windfall to Aloha.” Aloha further argues that the facts provided by the utility to our staff show that no such windfall occurred and that, to the contrary, there would be a windfall to the customers if the additional refunds were required.

OPC argues that “Aloha’s Issue D raises the issue of the proper characterization and usage of the term ‘windfall’ under the facts on which all parties are in accord.” We find that Aloha has again failed to show a disputed issue of material fact for Issue D.

In subparagraph 6.E. (Issue E), Aloha argues that the directives and statements contained within the PAA Refund Order “conflict with and are contrary to the PSC’s prior agency practices, procedures, and policies.” Aloha further argues that the Commission:

has not explained or justified its abrupt change in this procedure or policy as expressed in the PAA Order and indeed has admitted that the refunds previously provided by Aloha result in a revenue requirement for the appeal period which is less than the revenues which would have been produced had the final rates approved in the Final Order been immediately implemented and no appeal taken.

According to OPC, Issue E raises the legal question of whether the PAA Refund Order conflicts with prior Commission practices, procedures, and policies, and that this is a legal question which this Commission “is clearly in the best position to reach a proper answer.” We find Issue E is a legal issue involving whether the PAA Refund Order

conflicts with our prior practices, procedures, and policies, and does not involve a disputed issue of material fact warranting a formal hearing.

We find that the situation in this case is similar to the situation in the remand proceeding following the reversal and remand by the Florida Supreme Court in GTE Florida Inc. v. Clark, 668 So. 2d 971 (Fla. 1996). In that remand proceeding, we issued a proposed agency action order requiring surcharges. OPC protested that Order and requested a Section 120.57(1) formal hearing. In considering this request, we issued Order No. PSC-96-1021-FOF-TL, on August 7, 1996, in Docket No. 920188-TL, In re: Application for a rate increase by GTE Florida Incorporated. In that Order, we found that of the five issues raised by OPC, two were issues of fact, and three were mixed issues of policy and law. For the two alleged factual issues, we found that there was really no dispute. Therefore, the only issues remaining were mixed issues of policy and law, and we denied OPC's request for a Section 120.57(1) hearing. While we found that a Section 120.57(1) proceeding was not appropriate, we did find that it was appropriate to set the matter for an informal proceeding under Section 120.57(2), Florida Statutes, and to require briefs.

As in the GTE case, we find that Aloha's issues are mixed issues of policy and law, which would be more appropriately handled through the process of an informal proceeding in accordance with Section 120.57(2), Florida Statutes.

Therefore, Aloha's request for a formal hearing pursuant to Section 120.57(1), Florida Statutes, is denied. Instead, an informal proceeding in accordance with Section 120.57(2), Florida Statutes, shall be conducted, and parties shall file briefs on the issues raised by Aloha within 30 days of our vote on June 1, 2004, which is July 1, 2004. Based on our decision to deny the utility's request for a formal proceeding, we find that the utility's request that the matter be transferred to DOAH is moot and no ruling is required.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion of Aloha Utilities, Inc. to Strike the Office of Public Counsel's Motion to Dismiss is denied. It is further

ORDERED that the Office of Public Counsel's Motion to Dismiss is denied. It is further

ORDERED that Aloha Utilities, Inc.'s Petition for Formal Hearing pursuant to Section 120.57(1), Florida Statutes, is denied. It is further

ORDERED that an informal proceeding pursuant to Section 120.57(2), Florida Statutes, shall be conducted, and the parties shall file briefs by no later than July 1, 2004, on the issues raised by Aloha in its Petition. It is further

ORDERED that this docket shall remain open to resolve the informal proceeding and pending disposition of the improvements required by Order No. PSC-02-0593-FOF-WU.

By ORDER of the Florida Public Service Commission this 21st day of June,
2004.

	BLANCA S. BAYÓ, Director Division of the Commission Clerk and Administrative Services

By:	/s/ Kay Flynn
	Kay Flynn, Chief Bureau of Records

This is a facsimile copy. Go to the Commission's
Web site, <http://www.floridapsc.com> or fax a request
to 1-850-413-7118, for a copy of the order with
signature.

(S E A L)

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1),
Florida Statutes, to notify parties of any administrative hearing or judicial review of
Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as
well as the procedures and time limits that apply. This notice should not be construed to
mean all requests for an administrative hearing or judicial review will be granted or result
in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

SCANNED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase
in water rates for Seven Springs
System in Pasco County by Aloha
Utilities, Inc.

DOCKET NO. 010503-WU
ORDER NO. PSC-01-2199-FOF-WU
ISSUED: November 13, 2001

The following Commissioners participated in the disposition of
this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER APPROVING INTERIM RATES

BY THE COMMISSION:

BACKGROUND

Aloha Utilities, Inc. (Aloha or utility), is a Class A water and wastewater utility in Pasco County. The utility consists of two distinct service areas, Aloha Gardens and Seven Springs. This Order relates to the Seven Springs water system. The utility's service area is located within the Northern Tampa Bay Water Use Caution Area as designated by the Southwest Florida Water Management District (SWFWMD). Critical water supply concerns have been identified by SWFWMD within this area.

In its 2000 annual report, Aloha reported operating revenues of \$2,298,460 and \$3,694,106 for water and wastewater, respectively. In 2000, the utility served 12,732 water and 12,112 wastewater customers. Rate base was last established for Aloha's Seven Springs water system by Order No. PSC-01-1374-PAA-WS, issued June 27, 2001, in Docket No. 000737-WS, an overearnings proceeding. Order No. PSC-01-1374-PAA-WS was finalized by Order No. PSC-01-1672-AS-WS, issued August 16, 2001.

EXHIBIT 5

DOCUMENT NUMBER-DATE

14349 NOV 13 01

FPSC-COMMISSION CLERK

On August 10, 2001, Aloha filed an application for an increase in rates for its Seven Springs water system. The utility's application was complete as filed, and, pursuant to Section 367.083, Florida Statutes, that date was established as the official filing date.

The utility's requested test year for setting final rates is the projected year ended December 31, 2001. Also, the utility requested that this application be directly set for hearing. A hearing in Pasco County has been scheduled for January 9 through 11, 2002. In its minimum filing requirements (MFRs), the utility has requested total water revenues of \$3,044,811. This represents a revenue increase of \$1,077,337 (or 54.76%). These final revenues are based on the utility's requested overall rate of return of 9.07%.

Aloha initially requested a test year for interim purposes for the historical year ended December 31, 2000. However, on September 10, 2001, Aloha filed its Amended Application for an Interim Increase in Water Rates, in which it requested that interim rates be determined using the historic test year ended June 30, 2001. Aloha's amended request was for annual revenues of \$2,027,224. This represented a revenue increase of \$290,138 (or 16.70%) for interim purposes.

Our staff originally filed a recommendation on the utility's amended request for interim rates on October 4, 2001. However, by letter dated October 10, 2001, Aloha expressed disagreement with our staff's adjustments to depreciation expense and income tax expense, and our staff's analysis that the utility could not support a corporate undertaking. Upon receipt and review of additional interim schedules, our staff agreed that the depreciation adjustment was in error. Therefore, the October 4, 2001 recommendation was deferred, and our staff filed a revised recommendation to remove the depreciation expense adjustment. Regarding the utility's other two concerns - the adjustment to income tax expense and the denial of a corporate undertaking, the utility now states that it agrees with our staff's position.

The sixty-day statutory deadline for us to address the utility's requested interim rates is November 9, 2001. This Order

addresses Aloha's amended request for interim rates. We have jurisdiction pursuant to Section 367.082, Florida Statutes.

INTERIM RATE INCREASE

As stated above, Aloha is seeking an interim revenue increase of \$290,138 (or 16.70%). Based on the historical test year ended June 30, 2001, the utility filed rate base, cost of capital, and operating statements to support its requested water increase. In its application, the utility has used a thirteen-month average to calculate its requested rate base and cost of capital. The utility has filed its MFRs consistent with the averaging requirement of Rule 25-30.433, Florida Administrative Code.

Section 367.082(5)(b)1., Florida Statutes, requires that the achieved rate of return for interim purposes be calculated by applying appropriate adjustments consistent with those used in the utility's most recent rate proceeding, and annualizing any rate changes that occurred during the interim test year. **Our** interpretation of the interim statute is that projections or pro forma adjustments are not allowed, but corrections of errors are appropriate.

Based on our review of the utility's interim request and the last rate proceeding order for the Seven Springs water system, we have made adjustments as discussed below. Our calculation of rate base is shown on Schedule 1. The capital structure is reflected on Schedule 2. The operating statement is Schedule 3-A, and the schedule of adjustments to the operating statement is Schedule 3-B.

RATE BASE

Based on our review of the utility's interim rate base, we note one inconsistency with Aloha's last rate proceeding. As stated earlier, rate base was last established for Aloha's Seven Springs water system by Order No. PSC-01-1374-PAA-WS, issued June 27, 2001, in Docket No. 000737-WS. In that Order, we specifically increased the working capital for the Seven Springs water system by \$190,000 to reflect the costs associated with the pilot project ordered by this Commission in Docket No. 960545-WS. The purpose of the pilot project was to use the best available treatment alternative to enhance the water quality and to diminish the

tendency of the water to produce copper sulfide in the customers' homes. The utility's interim working capital allowance does not include the costs associated with the above pilot project. Therefore, consistent with the last rate proceeding, we have increased working capital by \$190,000.

COST OF CAPITAL

In its interim request, Aloha used an 8.93% return on equity (ROE), which is the minimum of the range of its last authorized ROE from Order No. PSC-01-1374-PAA-WS. The utility's cost of capital calculation appears to be consistent with its last rate proceeding and the interim statute. As such, we have made no adjustments, and the interim weighted average cost of capital is 8.87%.

NET OPERATING INCOME

Based on our review of the utility's interim net operating income, we note one inconsistency with Aloha's last rate proceeding. In its MFRs, Aloha reduced its interim Operation and Maintenance (O&M) expenses by \$15,559, which represents the excess revenues for overearnings in 2000 for this system that was determined in the utility's last rate proceeding. However, pursuant to Order No. PSC-01-1374-PAA-WS, we required that interest be calculated on the \$15,559 of excess revenues. Further, we determined that those excess revenues plus interest amounted to \$16,860 as of June 30, 2001. By applying the monthly average commercial paper rates from July 2001 to November 2001, we calculate that the excess revenues plus interest is \$17,091. Therefore, consistent with Aloha's last rate proceeding, the interim O&M expenses shall be decreased by an additional \$1,532 (the difference between the utility's reduction of \$15,559 and the appropriate reduction, with interest, of \$17,091).

Based on the utility's filing and the above adjustments, test year operating income, before any revenue increase, is a negative \$27,445. This represents a negative achieved rate of return of 1.81%.

REVENUE REQUIREMENT

Based on the above, the interim revenue requirement is \$2,009,292. This represents an interim increase in annual revenues of \$272,206 or 15.67%, and will allow the utility the opportunity to recover its operating expenses and earn an 8.87% required rate of return on its rate base.

INTERIM RATES

Based on all the above, interim rates shall be designed to allow the utility the opportunity to generate annual operating revenues of \$2,009,292, which represents an increase of \$272,206 for its Seven Springs water system. To determine the appropriate increase to apply to the service rates, miscellaneous service and other revenues are removed from the test year revenues. The calculation is as follows:

1 Total Test Year Revenues	\$1,737,086
2 Less: Miscellaneous & Other Revenues	<u>30,839</u>
3 Test Year Revenues from Service Rates	<u>\$1,706,247</u>
4 Revenue Increase	<u>\$272,206</u>
5 % Service Rate Increase (Line 4/Line 3)	<u>15.95%</u>

This increase of 15.95% in rates shall be applied as an across the board increase to service rates in effect as of June 30, 2001.

On July 24, 2001, Aloha implemented a price index rate adjustment of 1.33% for the Seven Springs water system. Section 367.082(5)(b)1., Florida Statutes, states that to determine the achieved rate of return, any rate changes that occur during the interim test year shall be annualized. For interim purposes, Aloha chose the test year ending June 30, 2001. Therefore, the interim increase shall be applied to the rates in effect as of June 30, 2001, not to the rates that are currently in effect.

The interim rates shall be implemented for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided customers

have received notice. The revised tariff sheets shall be approved upon our staff's verification that the tariff sheets are consistent with our decision, that the proposed notice to the customers is adequate, and that the required security has been filed. The utility shall provide proof to staff of the date notice was given within 10 days after the date of the notice.

Schedule 4 reflects the utility's rates as of June 30, 2001, the utility's current rates, the utility's requested interim rates, and our approved interim rates.

SECURITY FOR INTERIM RATES

Pursuant to Section 367.082, Florida Statutes, revenues collected under interim rates shall be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by this Commission. Based on a total annual interim increase of \$272,206, and in accordance with Rule 25-30.360, Florida Administrative Code, we calculate the potential refund of revenues and interest collected to be \$183,669. This amount is based on an estimated eight months of revenue being collected subsequent to our approval of interim rates.

In determining whether a utility can support a corporate undertaking, we consider the following criteria: sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Our staff has reviewed the 1998, 1999 and 2000 annual reports of Aloha to determine the financial condition of the utility. Analysis of these reports shows that Aloha has minimal liquidity for two of the three periods. Moreover, the utility shows a declining equity ratio and minimal interest coverage. Finally, the average annual net income amount over the three-year period is below the corporate undertaking of \$183,669. Based upon this analysis, we find that Aloha cannot support a corporate undertaking in the amount of \$183,669. Therefore, the utility shall provide a letter of credit, bond or escrow agreement to guarantee the funds collected subject to refund.

This brief financial analysis is only appropriate for our determination as to whether the utility can support a corporate

undertaking in the amount noted, and is not a finding regarding our position on other issues in the rate case.

If the security provided is an escrow account, said account shall be established between the utility and an independent financial institution pursuant to a written escrow agreement: This Commission shall be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement shall state the following: that the account is established at the direction of this Commission for the purpose set forth above; that no withdrawals of funds shall occur without the prior approval of the Commission through the Director of the Division of the Commission Clerk and Administrative Services; that the account shall be interest bearing; that information concerning that escrow account shall be available from the institution to the Commission or its representative at all times; that the amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt; and that pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla 3d DCA 1972), escrow accounts are not subject to garnishments.

The utility shall deposit the 15.95% of interim revenue increases collected each month into the escrow account each month to secure for possible refund. The escrow agreement shall also state the following: that if a refund to the customers is required, all interest earned on the escrow account shall be distributed to the customers; and if a refund to the customers is not required, the interest earned on the escrow account shall revert to the utility.

If the security provided is a bond or a letter of credit, said instrument shall be in the amount of \$183,669. If the utility chooses a bond as security, the bond shall state that it will be released or shall terminate only upon subsequent order of the Commission. If the utility chooses to provide a letter of credit as security, the letter of credit shall state that it is irrevocable for the period it is in effect and that it will be in effect until a final Commission order is rendered releasing the funds to the utility or requiring a refund.

Irrespective of the type of security provided, the utility shall keep an accurate and detailed account of all monies it

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receives. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

In no instance shall maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and shall be borne by, the utility.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request for an interim rate increase for water rates by Aloha Utilities, Inc. is hereby granted to the extent set forth in the body of this Order. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained in the schedules attached hereto are incorporated herein by reference. It is further

ORDERED that Aloha Utilities, Inc. shall either provide a bond or letter of credit in the amount of \$183,669, or establish an escrow account pursuant to the terms and conditions set forth in this Order. It is further

ORDERED that irrespective of the type of security provided, Aloha Utilities, Inc., shall keep an accurate and detailed account of all monies it receives. It is further

ORDERED that prior to implementation of the interim rates approved herein, Aloha Utilities, Inc. shall file and have approved tariff pages revised in accordance with the provisions of this Order, the appropriate security for the refund, a proposed customer notice, and proof that the customers have received notice of the rate increase. It is further

ORDERED that the approved interim rates shall become effective for service rendered on or after the stamped approval date on the

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tariff sheets, provided customers have received notice. It is further

ORDERED that the utility shall provide proof to staff of the date notice was given within 10 days after the date of the notice. It is further

ORDERED that the tariff sheets will be stamped approved upon verification that they are consistent with our decision herein, that the proposed customer notice is adequate, and that the appropriate security is provided. It is further

ORDERED that during the time the interim rates are in effect, Aloha Utilities, Inc. shall file a report by 20th of each month indicating the monthly and total revenue collected subject to refund pursuant to Rule 25-30.360(6), Florida Administrative Code. It is further

ORDERED that in the event a refund is required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code. It is further

ORDERED that this docket shall remain open pending our final action on the utility's requested final rate increase.

By ORDER of the Florida Public Service Commission this 13th day of November, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

RRJ

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is non-final in nature, may request (1) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Citizens of the State of Florida v. Mayo, 316 So.2d 262 (Fla. 1975), states that an order on interim rates is not final or reviewable until a final order is issued. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

ALOHA UTILITIES, INC. - SEVEN SPRINGS SYSTEM						SCHEDULE 1
SCHEDULE OF WATER RATE BASE						DOCKET 010503-WU
INTERIM TEST YEAR ENDED 6/30/01						
DESCRIPTION	TEST YEAR PER UTILITY	UTILITY ADJUST- MENTS	ADJUSTED TEST YEAR PER UTILITY	COMM. ADJUST- MENTS	COMM. ADJUSTED TEST YEAR	
1 UTILITY PLANT IN SERVICE	\$9,710,384	\$0	\$9,710,384	\$0	\$9,710,384	
2 LAND & LAND RIGHTS	41,257	0	41,257	0	41,257	
3 ACCUMULATED DEPRECIATION	(2,179,616)	0	(2,179,616)	0	(2,179,616)	
4 CIAC	(9,429,535)	0	(9,429,535)	0	(9,429,535)	
5 AMORTIZATION OF CIAC	2,000,330	0	2,000,330	0	2,000,330	
6 DEFERRED INCOME TAXES	828,979	0	828,979	0	828,979	
7 WORKING CAPITAL ALLOWANCE	<u>356,135</u>	<u>0</u>	<u>356,135</u>	<u>190,000</u> (1)	<u>546,135</u>	
RATE BASE	<u>\$1,327,934</u>	<u>\$0</u>	<u>\$1,327,934</u>	<u>\$190,000</u>	<u>\$1,517,934</u>	

Note: (1) To adjust working capital consistent with last rate proceeding.

ALOHA UTILITIES, INC. - SEVEN SPRINGS WATER SYSTEM						SCHEDULE 2	
CAPITAL STRUCTURE						DOCKET 010503-WU	
INTERIM TEST YEAR ENDED 6/30/01							
DESCRIPTION	TOTAL CAPITAL	SPECIFIC ADJUSTMENTS (EXPLAIN)	PRO RATA ADJUSTMENTS	CAPITAL RECONCILED TO RATE BASE	RATIO	COST RATE	WEIGHTED COST
PER UTILITY 2000 - 13-MONTH AVERAGE							
1 LONG TERM DEBT	\$8,721,367	\$0	(\$7,733,118)	\$988,249	74.42%	9.03%	6.72%
2 SHORT-TERM DEBT	0	0	0	0	0.00%	0.00%	0.00%
3 PREFERRED STOCK	600,000	0	(532,010)	67,990	5.12%	8.93%	0.46%
4 COMMON EQUITY	1,832,681	0	(1,624,992)	207,689	15.64%	8.93%	1.40%
5 CUSTOMER DEPOSITS	564,702	0	(500,696)	64,006	4.82%	6.00%	0.29%
6 DEFERRED INCOME TAXES	0	0	0	0	0.00%	0.00%	0.00%
7 DEFERRED ITC'S-ZERO COST	0	0	0	0	0.00%	0.00%	0.00%
8 TOTAL CAPITAL	<u>\$11,718,750</u>	<u>\$0</u>	<u>(\$10,390,816)</u>	<u>\$1,327,934</u>	<u>100.00%</u>		<u>8.87%</u>
PER COMMISSION 2000 - 13-MONTH AVERAGE							
9 LONG TERM DEBT	\$8,721,367	\$0	(\$7,591,684)	\$1,129,683	74.42%	9.03%	6.72%
10 SHORT-TERM DEBT	0	0	0	0	0.00%	0.00%	0.00%
11 PREFERRED STOCK	600,000	0	(522,282)	77,718	5.12%	8.93%	0.46%
12 COMMON EQUITY	1,832,681	0	(1,595,293)	237,388	15.64%	8.93%	1.40%
13 CUSTOMER DEPOSITS	564,702	0	(491,556)	73,145	4.82%	6.00%	0.29%
14 DEFERRED INCOME TAXES	0	0	0	0	0.00%	0.00%	0.00%
15 DEFERRED ITC'S-ZERO COST	0	0	0	0	0.00%	0.00%	0.00%
16 TOTAL CAPITAL	<u>\$11,718,750</u>	<u>\$0</u>	<u>(\$10,200,815)</u>	<u>\$1,517,934</u>	<u>100.00%</u>		<u>8.87%</u>
						<u>LOW</u>	<u>HIGH</u>
RETURN ON EQUITY						8.93%	10.93%
OVERALL RATE OF RETURN						8.87%	10.07%

ALOHA UTILITIES, INC. - SEVEN SPRINGS SYSTEM						SCHEDULE 3-2	
STATEMENT OF WATER OPERATIONS						DOCKET 010503-WU	
INTERIM TEST YEAR ENDED 6/30/01							
DESCRIPTION	TEST YEAR PER UTILITY	UTILITY ADJUST- MENTS	ADJUSTED TEST YEAR PER UTILITY	COMM. ADJUST- MENTS	COMM. ADJUSTED TEST YEAR	REVENUE INCREASE	REVENUE REQUIREMENT
1 OPERATING REVENUES	<u>\$1,737,086</u>	<u>\$290,138</u>	<u>\$2,027,224</u>	<u>(\$290,138)</u>	<u>\$1,737,086</u>	<u>\$272,206</u> 15.67%	<u>\$2,009,292</u>
OPERATING EXPENSES:							
2 OPERATION & MAINTENANCE	<u>\$1,467,332</u>	<u>\$48,458</u>	<u>\$1,515,790</u>	<u>(\$1,532)</u>	<u>\$1,514,258</u>		<u>\$1,514,258</u>
3 DEPRECIATION	<u>63,960</u>	<u>0</u>	<u>63,960</u>	<u>0</u>	<u>63,960</u>		<u>63,960</u>
4 AMORTIZATION	<u>(30,691)</u>	<u>0</u>	<u>(30,691)</u>	<u>0</u>	<u>(30,691)</u>		<u>(30,691)</u>
5 TAXES OTHER THAN INCOME	<u>298,985</u>	<u>11,828</u>	<u>310,813</u>	<u>(13,056)</u>	<u>297,757</u>	<u>12,249</u>	<u>310,006</u>
6 INCOME TAXES	<u>49,564</u>	<u>0</u>	<u>49,564</u>	<u>(130,317)</u>	<u>(80,753)</u>	<u>97,822</u>	<u>17,069</u>
7 TOTAL OPERATING EXPENSES	<u>\$1,849,150</u>	<u>\$60,286</u>	<u>\$1,909,436</u>	<u>(\$144,905)</u>	<u>\$1,764,531</u>	<u>\$110,071</u>	<u>\$1,874,602</u>
8 OPERATING INCOME	<u>(\$112,064)</u>	<u>\$229,852</u>	<u>\$117,788</u>	<u>(\$145,233)</u>	<u>(\$27,445)</u>	<u>\$162,135</u>	<u>\$134,690</u>
9 RATE BASE	<u>\$1,327,934</u>		<u>\$1,327,934</u>		<u>\$1,517,934</u>		<u>\$1,517,934</u>
10 RATE OF RETURN	<u>(8.44%)</u>		<u>8.87%</u>		<u>(1.81%)</u>		<u>8.87%</u>

ALOHA UTILITIES, INC. - SEVEN SPRINGS SYSTEM		SCHEDULE 3-B
ADJUSTMENTS TO OPERATING INCOME		DOCKET 010503-WU
INTERIM TEST YEAR ENDED 6/30/01		
EXPLANATION		WATER
<u>OPERATING REVENUES</u>		
Remove requested interim revenue increase.		<u>(\$290,138)</u>
<u>OPERATION & MAINTENANCE EXPENSE</u>		
Reflect appropriate interest on deferred revenues for overearnings.		<u>(\$1,532)</u>
<u>TAXES OTHER THAN INCOME</u>		
RAFTs on revenue adjustments above.		<u>(\$13,056)</u>
<u>INCOME TAXES</u>		
To adjust to test year income tax expense		<u>(\$130,317)</u>

ALOHA UTILITIES, INC. - SEVEN SPRINGS SCHEDULE 4
 SYSTEM
 WATER MONTHLY SERVICE RATES DOCKET 010503-WU
 INTERIM TEST YEAR ENDED 6/30/01

	<u>Rates</u> As of <u>6/30/01</u>	<u>Current</u> <u>Rates</u>	<u>Utility</u> Requested <u>Interim</u>	<u>Comm.</u> Approved <u>Interim</u>
<u>Residential and General Service</u>				
Base Facility Charge:				
Meter Size:				
5/8" x 3/4" (3,000 gallons minimum)	\$7.17	\$7.32	\$8.37	\$8.31
1" (8,000 gallons minimum)	\$19.06	\$19.46	\$22.24	\$22.10
1-1/2" (15,000 gallons minimum)	\$35.75	\$36.49	\$41.72	\$41.45
2" (24,000 gallons minimum)	\$57.61	\$58.80	\$67.23	\$66.80
3" (48,000 gallons minimum)	\$114.46	\$116.83	\$133.57	\$132.72
4" (75,000 gallons minimum)	\$179.14	\$182.85	\$209.06	\$207.72
5" (150,000 gallons minimum)	\$277.03	\$282.76	\$323.29	\$321.23
6" (240,000 gallons minimum)	\$565.96	\$577.67	\$660.48	\$656.25
10" (345,000 gallons minimum)	\$824.55	\$841.62	\$962.25	\$956.09
Gallonage Charge, per 1,000 Gallons	\$1.28	\$1.32	\$1.49	\$1.46
<u>Typical Residential Bills</u>				
5/8" x 3/4" Meter Size				
3,000 Gallons	\$7.17	\$7.32	\$8.37	\$8.31
5,000 Gallons	\$9.73	\$9.96	\$11.35	\$11.28
10,000 Gallons	\$16.13	\$16.56	\$18.80	\$18.70

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase
in water rates for Seven Springs
System in Pasco County by Aloha
Utilities, Inc.

DOCKET NO. 010503-WU
ORDER NO. PSC-02-1056-PCO-WU
ISSUED: August 5, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR STAY

BY THE COMMISSION:

BACKGROUND

Aloha Utilities, Inc. (Aloha or utility) is a Class A water and wastewater utility in Pasco County. The utility consists of two distinct service areas: Aloha Gardens and Seven Springs. The utility's service area is located within the Northern Tampa Bay Water Use Caution Area as designated by the Southwest Florida Water Management District (SWFWMD). Critical water supply concerns have been identified by SWFWMD within this area.

On August 10, 2001, Aloha filed an application for an increase in rates for its Seven Springs water system, and this date was set as the official filing date pursuant to Section 367.083, Florida Statutes. In its minimum filing requirements, the utility requested total water revenues of \$3,044,811. This represented a revenue increase of \$1,077,337 (or 54.76%). These final revenues were based on the utility's requested overall rate of return of 9.07%.

The utility's requested test year for setting final rates was the projected year ended December 31, 2001. By Order No. PSC-01-2092-PCO-WU, issued October 22, 2001, we suspended the utility's requested final rates. Also, by Order No. PSC-01-2199-FOF-WU,

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issued November 13, 2001, we approved interim rates subject to refund with interest. Rates were increased by 15.95%.

Edward O. Wood, the Office of Public Counsel (OPC), SWFWMD, and Representative Mike Fasano were all granted intervenor status upon their requests. A hearing in Pasco County was held on January 9 through 11, 2002. Subsequent to this hearing, we issued Order No. PSC-02-0593-FOF-WU (Final Order on Appeal) on April 30, 2002.

In the Final Order on Appeal, based on a finding that the overall quality of service of Aloha was unsatisfactory, we directed Aloha to improve its water treatment system starting with wells 8 and 9 and then continuing with all of its wells to implement a treatment process designed to remove at least 98% of the hydrogen sulfide in the raw water. Such improvements to all of Aloha's wells were to be placed into service by no later than December 31, 2003. Moreover, Aloha was directed to submit a plan within 90 days of the Final Order on Appeal showing how it intended to comply with the above-noted requirements for the removal of hydrogen sulfide. Finally, Aloha was directed to implement five customer service measures within 120 days from the date of the Final Order on Appeal, and to implement the conservation programs described in the Order.

Also, we recognized that the utility had proceeded with the pilot project and provided monthly reports as required in Docket No. 960545-WS through Orders Nos. PSC-00-1285-FOF-WS and PSC-00-1628-FOF-WS, issued July 14, 2000 and September 12, 2000, respectively. However, we further noted that there had been little progression on the pilot project since July 2001.

Having considered the value and quality of the service, we determined that the utility's rates should be set so as to give it the opportunity to earn the minimum of its authorized rate of return on equity. Also, we determined that the continuing problems with "black water" over at least the last six years, the customers dissatisfaction with the way they were being treated and the service they received from the utility, and the failure of the utility to aggressively and timely seek alternate sources of water supply reflected poor management of this utility.

We also determined that the appropriate projected number of purchased water gallons from Pasco County at this time is zero with a resulting expense of \$0. Moreover, we directed Aloha to perform a cost benefit analysis of an appropriate alternative water supply that allows it to fit permanently into the long-term alternative water supply plan in a manner that is not deleterious to the environment, or to Aloha's ratepayers. This analysis was to include negotiating with Pasco County for a better bulk rate, which might include paying an impact fee up-front.

In addition to the above, we determined that:

- (1) the royalty fee charged by the related parties should be reduced to \$0.10 per thousand gallons for regulatory purposes; and
- (2) the annual expense for rate case expense should be reduced by \$60,323 to remove the costs of a duplicative filing for interim rates, and the imprudency and additional costs incurred for filing separate water and wastewater rate cases which could have been avoided if the utility had filed a combined filing for its Seven Springs water and wastewater divisions.

Although no increase in revenues was found to be necessary, we determined that the rate structure for residential customers should be a base facility charge and two-tier inclining-block rate structure. Because there was no change in the revenue requirement from that provided by the original rates, Aloha was directed to "refund 4.87% of water revenues collected under interim rates."

We also directed that the interim plant capacity charge be increased from \$500 (approved on an interim basis in Order No. PSC-00-1285-FOF-WS, issued July 14, 2000, in Docket No. 960545-WS) to \$1,000 to offset future plant requirements. The utility was directed to deposit the difference between \$1,000 and the last non-interim charge of \$163.80 in its current interest bearing escrow account to guarantee the interim funds collected subject to refund. The escrowed funds were not to be released until we verified that Aloha had sufficiently invested in the required plant improvements. All other escrow requirements with respect to the interim service availability charges as established by us in Order No. PSC-00-1285-FOF-WS were to continue to apply. By our Final Order on Appeal, we

directed Aloha to file revised tariff sheets and a proposed customer notice by April 30, 2002, to reflect the \$1,000 interim plant capacity charge. We found that this second interim increase was necessary in order to fund future plant requirements necessary to address solutions to the "black water" and long-term water supply issues.

On May 28, 2002, Aloha filed its timely Notice of Appeal. Also, on June 14, 2002, Aloha filed its Motion for Stay which was accompanied by a Request for Oral Argument. On June 21, 2002, OPC filed its timely Response to Motion for Stay (Response).

This Order addresses Aloha's Request for Oral Argument, its Motion for Stay, and OPC's Response. We have jurisdiction pursuant to Sections 367.081 and 367.111, Florida Statutes.

REQUEST FOR ORAL ARGUMENT

Aloha specifically requested oral argument on its Motion for Stay, and argued that it would assist us in understanding all of the facts and circumstances of Aloha's Motion. We agreed, and allowed ten minutes for each party at the July 23, 2002, Agenda Conference.

MOTION FOR STAY

Rule 25-22.061(1)(a), Florida Administrative Code provides that:

When the order being appealed involves the refund of moneys to customers or a decrease in rates charged to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

Aloha contends that, pursuant to this rule, the Commission shall, with the filing of Aloha's Motion, grant a stay of the entire Order. Alternatively, Aloha seeks a stay of Order No. PSC-02-0593-FOF-WU pursuant to Rule 9.190(e)(2), Florida Rules of

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Appellate Procedure. That rule merely allows the filing of a Motion for Stay with the lower tribunal, and that the lower tribunal or court may grant a stay upon appropriate terms.

Aloha alleges that "to require Aloha to undertake the various tasks required by Order No. PSC-02-0593-FOF-WU prior to final determination of the merits of the appeal would be counter-productive, confusing to the customers, cause Aloha to suffer irreparable harm, and would not be in the public interest," and that Aloha would "not be able to 'undo' those matters, tasks, analysis, and expenditures" if it were made to proceed with the various tasks. Moreover, Aloha argues that a stay of execution of that Order "is necessary to prevent a change of the status quo and provide meaning to Aloha's appeal." Aloha alleges that, in issuing this Order, we have formulated our "Final Order outside of the only public meeting which was held for consideration of the Order," and that we have exceeded our "jurisdiction, acted unlawfully, deprived Aloha of due process, and . . . made findings of fact and conclusions of law which are not supported by competent, substantial evidence."

Based on the above, Aloha argues that it is in the public interest for us to grant a stay. Moreover, Aloha argues that it is likely to succeed on appeal on several issues which include, but are not limited to, the following:

The Order determines that Aloha has not "sustained its burden of proof" regarding its request to recover expenses for purchased water from Pasco County. The Commission reached this conclusion in the face of an overwhelming amount of evidence that Aloha's only alternative in order to come into compliance with its Water Use Permit was to purchase water from Pasco County, and in the face of a complete and total lack of evidence to the contrary.

The Commissions [sic] Order is an unlawful Order in that it was not rendered as required by the Florida Administrative Procedure Act and other applicable tenents [sic] of Florida Law. At a minimum, the Commission's vote on the Final Order on this matter was nothing more

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than a ceremonial acceptance of a decision previously made in private, in violation of Florida's Sunshine Law.

Aloha is ordered to make improvements to wells number eight and nine, and eventually to all its wells, to implement a treatment process designed to remove at least 98% of the Hydrogen Sulfide in its raw water. This requirement is arbitrary, capricious, exceeds the Commission's jurisdiction, and imposes upon Aloha an environmental standard stricter than that imposed upon any utility, private or governmental, in the State of Florida by any regulatory or jurisdictional authority. In addition, the finding that such a requirement is appropriate is unsupported by any evidence or expert testimony that such a requirement is permissible, or technically feasible.

The Final Order requires Aloha to submit a plan within ninety (90) days of the date of the Final Order showing how Aloha intends to comply with the requirement to remove Hydrogen Sulfide. Such a plan, if it can be accomplished at all within that time frame, will be expensive, time consuming, and a significant drain on the resources of Aloha. Given the certainty that Aloha's appeal of the Commission's Order will take longer than ninety (90) days such a requirement cannot be completed while the appeal is pending.

The Order directs Aloha to make refunds with interest to Aloha's customers. Such refunds with interest cannot be retrievable and will not be retrievable should Aloha prevail on appeal.

The Order directs that Aloha's rate case expense shall be reduced by 50% because this case was not filed in conjunction with the prior wastewater case. The Commission's directive in this regard is arbitrary, capricious, and not supported by any facts in the record.

The Order requires Aloha to implement certain customer service measures which will be counterproductive, which

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are unlawful, and which are not either required or advisable under the law and the evidence in this case.

The Order requires Aloha to undertake certain billing format changes without any foundation in the law or the evidence in this case.

The Order unlawfully and improperly reduces the President's and Vice President's salary without any justification or competent evidence to support the same.

If we stay the rate and refund portion of the Final Order on Appeal, Aloha notes that it has been escrowing the increased revenues associated with the interim rates, and that continuation of which would be "more than ample security to cover any potential refund."

OPC filed its timely Response to Aloha's Motion for Stay on June 21, 2002. In its Response, OPC states that it does not object to staying the "effectiveness of the refund, as long as Aloha posts a sufficient bond as required by Rule 25-22.061, Florida Administrative Code." However, OPC does object "to Aloha's motion to the extent that it seeks to stay or delay the implementation of the five customer service measures, the submission of the plan for reducing the hydrogen sulfide, or the plant improvement program."

OPC argues that Aloha has misinterpreted Rule 25-22.061(1) and has ignored the provisions of Rule 25-22.061(2), Florida Administrative Code, and specifically the provisions of Rule 25-22.061(2)(c), Florida Administrative Code, which requires us to consider "whether the delay will cause substantial harm or be contrary to the public interest." OPC states "that any delay in the requirements for improving the quality of the water or the quality of the customer service will cause substantial additional and continuing harm to the customers," and that it is clearly in the public interest for there to be a "supply of acceptable quality water and reasonable customer service."

OPC further argues "that there is very little likelihood that Aloha will prevail in its appeal of any issues challenging" our decisions on the customer service measures, the hydrogen sulfide removal plans, or the hydrogen sulfide removal plant improvements.

OPC argues that Aloha's primary focus is to accuse this Commission of improprieties such as making our "decision in private, in violation of Florida's Sunshine Law," and making decisions based on "political considerations." OPC argues that these are unsupported charges and do not show that there is "a likelihood of prevailing on appeal."

Finally, OPC addresses Aloha's alternative request for relief pursuant to Rule 9.190(e)(2), Florida Rules of Appellate Procedure, and notes that the rule merely states that "[t]he lower tribunal or court may grant a stay upon appropriate terms." OPC argues that the "specificity of the elements described in Rule 25-22.061, Florida Administrative Code, define the 'appropriate terms.'" OPC requests us to deny Aloha's request for a stay with respect to our "order on customer service measures, the hydrogen sulfide removal plan or plant improvements to reduce hydrogen sulfide levels."

When an order requires a refund or reduction in rates, the application of Rule 25-22.061(1)(a), Florida Administrative Code, is mandatory. However, when an order requires other actions by a utility, we find that subsections (2)(a), (b), and (c) of that same Rule apply. Rules 25-22.061(2)(a), (b), and (c), Florida Administrative Code, provide in pertinent part:

(2) Except as provided in subsection (1), a party seeking to stay a final or nonfinal order of the Commission pending judicial review shall file a motion with the Commission, which shall have authority to grant, modify, or deny such relief. . . . In determining whether to grant a stay, the Commission may, among other things, consider:

(a) Whether the petitioner is likely to prevail on appeal;

(b) Whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and

(c) Whether the delay will cause substantial harm or be contrary to the public interest.

The Final Order on Appeal specifically requires Aloha to make refunds and modify its rate structure such that it will no longer collect the interim increase allowed by Order No. PSC-01-2199-FOF-

ORDER NO. PSC-02-1056-PCO-WU

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WU. Therefore, these provisions shall be stayed pending the resolution of the judicial proceedings pursuant to Rule 25-22.061(1), Florida Administrative Code. Pending this resolution, Aloha shall be allowed to continue to collect the interim rates and continue escrowing the amounts subject to refund in accordance with Order No. PSC-01-2199-FOF-WU, which we find is sufficient security.

Aloha has also requested that we stay those provisions of the Final Order on Appeal which require Aloha to first make improvements to Wells Nos. 8 and 9, and then to all of its wells, to implement a treatment process designed to remove at least 98 percent of the hydrogen sulfide in its raw water, with such improvements being placed into service by no later than December 31, 2003. Aloha claims that this requirement is not supported "by any evidence or expert testimony that such a requirement is permissible, or technically feasible," and that it will be irreparably harmed if forced to implement the improvements pending the appeal.

We believe there is evidence to show that hydrogen sulfide is the primary problem causing the formation of copper sulfide (black particulate in the water) and that virtually all of it needs to be removed. Also, it appears that packed tower aeration can remove over 98% of the hydrogen sulfide. Therefore, it appears that there is evidence in support of this decision and that it is technically feasible. However, we note that there is a multi-million dollar cost associated with this requirement, and that, pursuant to Rule 25-22.061(2)(b), Florida Administrative Code, we must consider whether there will be irreparable harm to Aloha. At the same time, OPC points to Rule 25-22.061(2)(c), Florida Administrative Code, and states that further delay will harm the public and not be in the public interest.

Considering the likelihood of Aloha's prevailing on appeal, the irreparable harm to Aloha, and the fact that further delay may harm the customers who are experiencing "black water," and that this is contrary to the public interest, we find that we must consider a "middle ground" in fashioning a stay. Specifically, we find that the risk of irreparable injury to Aloha is too great to require it to proceed with the improvements designed to remove 98% of the hydrogen sulfide, and that the portion of the Final Order on Appeal requiring this shall be stayed. However, we do not believe

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that Aloha would be irreparably harmed by proceeding with the plans for how it intends to remove hydrogen sulfide. While these costs could be significant, the costs would be significantly less than the costs of the actual improvements, and would enable Aloha to promptly proceed upon the appeal process being concluded.

Pursuant to Orders issued in Docket No. 960545-WS, Aloha has been conducting a pilot project for almost two years now, and the engineer for Aloha admitted that it was now in the third stage or demonstration phase, and that the demonstration phase could be used on Wells Nos. 8 and 9. We find that it is in the public interest to minimize any delay in searching for a solution to the "black water" problem, and that Aloha shall at least continue to work toward submitting a plan for the removal of the hydrogen sulfide.

Also, the costs associated with the five Customer Service Measures are not significant, and these measures could greatly improve Aloha's interactions with its customers and promote customer well-being for minimal output on the part of Aloha. For Customer Service Measure (1), the Transfer Connect Program, Aloha must merely provide a toll-free telephone number (\$20 monthly rate with per minute charge of \$.216) and consumer assistance personnel during business hours. The cost of the toll-free number is minimal, and Aloha should already have personnel available during business hours to handle customer complaints.

For subsection A of Customer Service Measure (2), Customer Service Improvements, Aloha has already been directed in previous orders to provide training to its personnel concerning customer relations. It would not appear to be that great a burden to have this training standardized through creation of a manual. Moreover, if Aloha is handling outages and reconnections as it should, the credits outlined in subsection B of this portion (\$15 for either a missed appointment, out-of-service repair exceeding 24 hours, or a reconnection taking over 12 hours) should not even come into play. Finally, subsection C of this portion is a mere listing of standards that Aloha should try to obtain and no penalty is set for failing to meet these standards.

For Customer Service Measure (3), Customer Billing Improvements, customer Nowack complained about the bill itself and indicated that it was hard to understand. We agreed, and our staff

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designed a bill to help clarify the rates and any past payments received. Again, it does not appear that it would be that burdensome or costly to modify the bill.

For Customer Service Measure (4), the Citizens Advisory Council, we merely gave Aloha guidance on how this should work, required someone from Aloha to attend meetings at least once a month, and required that Aloha provide the executive secretary. This type of Council was suggested by Dr. Kurien and Aloha initially seemed to agree that it could help customer relations.

Finally, for Customer Service Measure (5), the Consumer-Friendly Web Site, President Watford indicated that Aloha was contemplating a utility Web site, and we agreed that this was a good idea and ordered Aloha to go forward with it. We merely listed eight factors that Aloha should consider in designing its Web site so that it could be more user friendly. We fail to see how any of the above five Customer Service Measures could burden Aloha, and believe that they could aid greatly in improving Aloha's customer relations and its responsiveness to its customers.

Based on the above, Aloha shall submit a plan showing how it intends to comply with the requirement to remove hydrogen sulfide, and Aloha shall implement the five Customer Service Measures set forth in the Final Order on Appeal listed as follows: (1) The Transfer Connect Program; (2) Customer Service Improvements; (3) Customer Billing Improvements; (4) Citizen's Advisory Committee; and (5) Develop a Consumer-Friendly Website, and these provisions shall not be stayed. Aloha shall submit the plan within 90 days and implement the five customer service measures within 120 days of July 23, 2002, the date of our vote on the Motion for Stay. Also we find that it is in the public interest for Aloha to implement the conservation measures described and allowed in the Final Order on Appeal.

Moreover, Aloha is cautioned to proceed with due diligence in completing the pilot project it was directed to conduct in Orders Nos. PSC-00-1285-FOF-WS and PSC-00-1628-FOF-WS. The requirements for the pilot project were set forth in those orders issued in Docket No. 960545-WS, and the first order referring to the pilot project was issued approximately two years ago. Therefore, a stay

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of the Final Order on Appeal does not affect Aloha's actions concerning the pilot project.

Also, failure by Aloha to increase and implement the second interim water service availability charge of \$1,000 could irreparably harm the current customers, and the implementation of the charge could not harm Aloha in any way. Therefore, the provision for increasing the interim water service availability charge from \$500 to \$1,000 is not stayed, and Aloha shall comply with the requirements set out in the Final Order on Appeal for increasing its interim water service availability charges. Aloha shall submit revised tariff sheets and the notice reflecting this \$1,000 interim service availability charge within 20 days of July 23, 2002, and comply with all other requirements of the Final Order on Appeal as regards the implementation of the second interim water service availability charges.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Stay of Order No. PSC-02-0593-FOF-WU filed by Aloha Utilities, Inc., is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that Aloha Utilities, Inc., shall be allowed to continue collecting the interim rates and escrowing the amounts subject to refund and making monthly reports as required by Order No. PSC-01-2199-FOF-WU. It is further

ORDERED that the provisions of Order No. PSC-02-0593-FOF-WU setting new rates and requiring refund of the interim rates is stayed. It is further

ORDERED that those provisions of Order No. PSC-02-0593-FOF-WU which require Aloha to make improvements to Wells Nos. 8 and 9, and then to all its wells, to implement a treatment process designed to remove at least 98 percent of the hydrogen sulfide in its raw water, with such improvements being placed into service by no later than December 31, 2003, shall also be stayed. It is further

ORDERED that the requirement that Aloha Utilities, Inc., submit a plan showing how it intends to comply with the requirement

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to remove hydrogen sulfide, that it implement the five Customer Service Measures, and that it implement the conservation programs described in the Order shall not be stayed. Aloha shall submit the plan within 90 days and implement the five customer service measures within 120 days of July 23, 2002, the date of our vote on the Motion for Stay. It is further

ORDERED that Aloha Utilities, Inc., shall be cautioned to proceed with the pilot project as directed in Orders Nos. PSC-00-1285-FOF-WS and PSC-00-1628-FOF-WS. It is further

ORDERED that the provision for increasing the interim water service availability charge from \$500 to \$1,000 shall not be stayed, and Aloha Utilities, Inc., shall comply with the requirements set out in Order No. PSC-02-0593-FOF-WU for increasing its interim water service availability charges. Aloha Utilities, Inc., shall submit revised tariff sheets reflecting this \$1,000 interim service availability charge within 20 days of July 23, 2002, the date of our vote on this Motion for Stay, and shall also comply with all other requirements of Order No. PSC-02-0593-FOF-WU as regards the interim service availability charges. It is further

ORDERED that this docket shall remain open pending the outcome of the appeal.

By ORDER of the Florida Public Service Commission this 5th day of August, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

RRJ

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase
in water rates for Seven Springs
System in Pasco County by Aloha
Utilities, Inc.

DOCKET NO. 010503-WU
ORDER NO. PSC-03-1410-FOF-WS
ISSUED: December 15, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER RELEASING PORTION OF ESCROWED FUNDS

BY THE COMMISSION:

BACKGROUND

Aloha Utilities, Inc. (Aloha or utility) is a Class A water and wastewater utility in Pasco County. The utility consists of two distinct service areas: Aloha Gardens and Seven Springs. On August 10, 2001, Aloha filed an application for an increase in rates for its Seven Springs water system. By Order No. PSC-01-2199-FOF-WU, issued November 13, 2001, we approved interim rates subject to refund with interest, which increased rates by 15.95%. This 15.95% interim increase was secured by the utility's deposit of those funds in an escrow account.

We set final rates by Order No. PSC-02-0593-FOF-WU (Final Order), issued April 30, 2002. Among other things in that Final Order, we denied a revenue increase, set a two-tiered inclining block rate structure, increased plant capacity charges, required certain plant improvements, and set the methodology that required a 4.87% interim refund. The utility appealed the Final Order to the First District Court of Appeal (First DCA), and sought a stay while the decision was under appellate review.

By Order No. PSC-02-1056-PCO-WU (Stay Order), issued August 5, 2002, we granted in part and denied in part the utility's Motion

for Stay. We stayed the setting of the new rate structure, as well as the interim refund and certain plant improvement requirements. The First DCA affirmed our Final Order on May 6, 2003, Aloha Utilities v. Florida Public Service Commission, 848 So. 2d 307 (Fla. 1st DCA 2003), and subsequently denied the utility's Motion for Rehearing on June 12, 2003. The First DCA issued its mandate on June 30, 2003. As a result, the appellate review process is complete and all provisions of the Final Order are now final and effective.

By letter dated June 30, 2003, Aloha requested the release of the escrow funds above the amount required for the 4.87% refunds. Due to billing cycle constraints, the utility was unable to cease its collection of interim rates and begin collecting the final rates affirmed by the First DCA until August of 2003.

Subsequent to the utility's request for partial release of escrowed funds, the utility completed making the refunds at the 4.87% rate set forth in the Final Order on or about September 10, 2003. This Order addresses the release of escrowed funds correlating to the amount that has already been refunded to the customers.

We have jurisdiction pursuant to Sections 367.081 and 367.082, Florida Statutes.

PARTIAL RELEASE OF ESCROWED FUNDS

As stated above, by Order No. PSC-01-2199-FOF-WU, we approved a 15.95% interim increase, subject to refund with interest. Pursuant to that Order, Aloha opened an escrow account on October 31, 2001, to secure the funds collected subject to refund, and subsequently deposited 15.95% of all monthly revenues in the escrow account.

Aloha collected the interim rates prior to the issuance of the Final Order and continued to collect the interim rates during the time of appellate review. All of the revenues collected subject to refund, totaling \$499,671, were placed in the escrow account. This amount includes \$102,152 for the rate case period (January 1, 2002 through April 30, 2002) and \$397,519 for the appeal period (May 1, 2002 through July 31, 2003). Final rates were implemented in August 2003, and the utility began the refund of 4.87% of the interim rates collected at that time.

According to its refund report dated October 10, 2003, Aloha has refunded \$153,510, including interest, which is based on the 4.87% in the Final Order for the entire interim period. The utility stated that of the total \$153,510 refund, \$139,077 was issued through credits on existing customer accounts and \$14,433 was issued through checks. By letter dated November 20, 2003, Aloha notified this Commission that the refund had been completed with the exception of \$1,182 in outstanding checks and \$344 in checks returned as undeliverable, for a total of \$1,526. The utility further stated that it would wait another 30 days to prepare its final refund report and propose final disposition of the unclaimed refunds.

Based on review of the utility's refund report, it appears that Aloha has substantially completed \$153,510 in refunds for which \$31,527 was for the rate case period and \$121,983 was for the appeal period. These amounts were refunded out of Aloha's existing funds without a release of the amounts held in escrow.

Without addressing the merits of any requirement for further refunds, we find that the \$153,510 amount already refunded to the customers shall be released from the escrow account and returned to Aloha at this time. The appropriate disposition of the remaining balance in the escrow account of \$346,161 will be addressed by this Commission when we make our decision on whether any further refunds are required.

Our calculation of the amounts refunded and amounts to remain in the escrow account is set out below:

	15.95% Amount Escrowed	4.87% Refunded (Without Use of Escrow Funds)	Amount to Remain in Escrow Account
Rate Case Period (January 1, 2002 through April 30, 2002)	\$102,152	\$31,527	\$70,625
Appeal Period (May 1, 2002 through July 31, 2003)	<u>\$397,519</u>	<u>\$121,983</u>	<u>\$275,536</u>
Total Interim Period (January, 2002 through July 31, 2003)	<u>\$499,671</u>	<u>\$153,510</u>	<u>\$346,161</u>

Based on the foregoing, it is

ORDER NO. PSC-03-1410-FOF-WS
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ORDERED by the Florida Public Service Commission that \$153,510 in the escrow account shall be released to Aloha Utilities, Inc., immediately, with the disposition of the remaining balance in the escrow account to be addressed when we make our decision on whether any further refunds are required. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 15th Day of December, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: /s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

This is a facsimile copy. Go to the Commission's Web site, <http://www.floridapsc.com> or fax a request to 1-850-413-7118, for a copy of the order with signature.

(S E A L)

RRJ

ORDER NO. PSC-03-1410-FOF-WS
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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

STATE OF FLORIDA

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



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

Public Service Commission

December 16, 2003

010503

AmSouth Bank, Holiday Branch
c/o Rose, Sundstrom and Bentley, LLP
ATTN: F. Marshall Deterding, Esq.
2548 Blairstone Pines Drive
Tallahassee, Florida 32301

Re: Escrow Account Nos. 3720776217 and 3720776209 - Aloha Utilities, Inc.

Dear Mr. Deterding:

As assistant director in the Division of the Commission Clerk and Administrative Services, and acting director in the absence of Ms. Blanca Bayó, who is the Commission's designated agent and signatory on Commission-required escrow accounts, I hereby authorize the release of \$153,510 from Aloha Utilities, Inc.'s escrow account to the utility, pursuant to Commission Order No. PSC-03-1410-FOF-WS issued December 15, 2003.

A copy of the order is attached.

Sincerely,

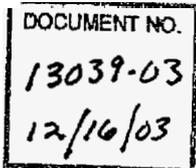
Marcia Sharma

Marcia Sharma, Assistant Director
Division of the Commission Clerk
and Administrative Services

MS/kf

Enclosure

cc: **Ralph Jaeger, Esq., Office of the General Counsel**
Bart Fletcher, Division of Economic Regulation



State of Florida



Public Service Commission

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

DATE: September 17, 2003
TO: Division of Economic Regulation (Fletcher)
FROM: Division of Auditing and Safety (Vandiver) *W*
RE: **Docket No.** 010503-WU; **Company Name:** Aloha Utilities, Inc.;
Audit Purpose: Billing Analysis Audit for the Fifteen Months Ended July 31, 2003;
Audit Control No. 03-240-2-2

Attached is the final audit report for the utility stated above. I am sending the utility a copy of this memo and the audit report. If the utility desires to file a response to the audit report, it should send the response to the Division of the Commission Clerk and Administrative Services. There are no confidential work papers associated with this audit.

DNV/jcp
Attachment

cc: Division of Auditing and Safety (Hoppe, District Offices, File Folder)
Division of the Commission Clerk and Administrative Services (2)
Division of Competitive Markets and Enforcement (Harvey)
General Counsel
Office of Public Counsel

Rose Law Firm
Marshall Deterding, Esq.
2548 Blairstone Pines Drive
Tallahassee, FL 32301

Pamela Yacobelli, Administration Manager
Aloha Utilities, Inc.
6915 Perrine Ranch Road
New Port Richey, FL 34655-3904

Stephen G. Watford, President
Aloha Utilities, Inc.
6915 Perrine Ranch Road
New Port Richey, FL 34655-3904

EXHIBIT 8

DOCUMENT NUMBER-DATE

08913 SEP 18 2003

FPSC-COMMISSION CLERK



FLORIDA PUBLIC SERVICE COMMISSION

*DIVISION OF AUDITING AND SAFETY
BUREAU OF AUDITING*

TAMPA DISTRICT OFFICE

ALOHA UTILITIES, INC.

BILLING ANALYSIS AUDIT

FOR THE FIFTEEN MONTHS ENDED JULY 31, 2003

Docket No. 010503-WU

AFA Control # 03-240-2-2


Joseph W. Rohrbacher, Tampa District Supervisor

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**DIVISION OF AUDITING AND SAFETY
AUDIT REPORT**

SEPTEMBER 9, 2003

TO: FLORIDA PUBLIC SERVICE COMMISSION AND OTHER INTERESTED PARTIES

We have applied the procedures described later in this report to audit the utility's billing analysis for its Seven Springs Water System for the historical fifteen month period ended July 31, 2003, for Aloha Utilities, Inc. These schedules were prepared by the utility as part of Docket No. 010503-WU. There is no confidential information associated with this audit.

This is an internal accounting report prepared after performing a limited scope audit. Accordingly, this report should not be relied upon for any purpose except to assist the Commission staff in the performance of their duties. Substantial additional work would have to be performed to satisfy generally accepted auditing standards and produce audited financial statements for public use.

SUMMARY OF SIGNIFICANT PROCEDURES

Our audit was performed by examining, on a test basis, certain transactions and account balances which we believe are sufficient to base our opinion. Our examination did not entail a complete review of all financial transactions of the company. Our more important audit procedures are summarized below. The following definitions apply when used in this report:

Compiled - The exhibit amounts were reconciled with the general ledger, and accounts were scanned for error or inconsistency.

Verified - The item was tested for accuracy, and substantiating documentation was examined.

OTHER: Developed a program to verify electronic data provided by Aloha. Reconciled utility billing analysis to its customer billing registers.

DISCLOSURES

Disclosure No. 1

Subject: **Billing Analysis**

Statement of Fact: The Commission approved an interim rate increase, subject to refund with interest, for Aloha Utilities, Inc. Seven Springs Water System by Order No. PSC-01-2199-FOF-WU, issued November 13, 2001. The Commission issued its final order, Order No. PSC-02-0593-FOF-WU on April 30, 2002 which, among other things, required a 4.87% interim refund.

Subsequently, Aloha provided staff with a billing analysis which indicated that the interim revenues were only 4.09% greater than the revenues it would have collected under the approved final rate structure from May 15, 2002 to July 31, 2003.

Conclusion: We reviewed the Aloha - Seven Springs Water system billing analysis for the number of bills, dollars billed and gallonage for the period May 15, 2002 through July 31, 2003. We reconciled the total gallons and dollars billed that were reported in the utility's billing analysis with the billing registers for the period.

In addition, we requested that the utility provide the electronic billing data used to produce the billing analysis report filed with the Commission. Using this data, we developed a program to create a billing analysis which agreed with the company filing. Our audit matched the utility filing for:

- total record count
- total number of bills
- total gallons
- number of bills for each usage increment level by service type and meter size
- number of gallons for each usage increment level by service type and meter size

Aloha Utilities, Inc.
Revenue Collected Under Interim Rates VS. Revenue That Could Have Been Collected Under Final Rates
For The Period May 15, 2002 Through The End of The Refund Period - July 31, 2003
Recalculation of Each Bill

	<u>Count</u>	<u>Orig Base</u>	<u>Gal Chrg</u>	<u>Orig Water Chrg</u>	<u>New Base</u>	<u>Gal Chrg</u> <u>10000<=</u>	<u>Gal Chrg</u> <u>10000></u>	<u>New Water Chrg</u>
May 2002	9967	\$89,094.11	\$100,526.41	\$189,620.52	\$43,482.33	\$93,116.35	\$49,810.21	\$186,408.89
June 2002	9994	88,995.09	119,251.92	208,247.01	43,596.90	97,590.98	65,876.71	207,064.59
July 2002	9993	88,948.41	76,248.84	165,197.25	43,631.07	84,545.11	30,459.72	158,635.90
August 2002	10044	89,941.79	56,377.17	146,318.96	44,137.59	76,470.40	16,905.15	137,513.14
September 2002	10085	90,361.74	56,596.45	146,958.19	44,330.55	76,700.49	17,036.35	138,057.39
October 2002	10148	90,924.36	56,005.77	146,930.13	44,555.67	76,356.92	16,804.04	137,716.63
November 2002	10186	91,513.64	78,389.74	169,903.38	44,742.60	87,158.90	31,552.97	163,454.47
December 2002	10254	92,394.33	73,657.55	166,051.88	45,112.44	85,422.00	28,535.72	159,070.16
January 2003	10269	92,409.91	50,466.18	142,876.09	45,088.32	75,327.58	13,295.98	133,711.88
February 2003	10283	92,885.10	68,785.50	161,670.60	45,285.30	85,812.06	23,207.52	154,304.88
March 2003	10288	92,824.38	54,796.96	147,621.34	45,249.12	78,217.47	15,617.07	139,053.66
April 2003	10322	93,080.07	61,828.17	154,908.24	45,379.77	82,987.88	19,184.39	147,552.04
May 2003	10386	93,617.74	85,738.07	179,355.81	45,729.51	92,613.44	34,783.31	173,126.26
June 2003	10471	94,317.98	110,133.95	204,451.93	46,129.50	101,487.02	53,412.01	201,028.53
July 2003	10484	95,423.56	66,750.15	162,173.71	46,149.60	84,105.57	21,279.20	151,534.37
Totals:	153174	\$1,376,732.21	\$1,115,552.83	\$2,492,285.04	\$672,600.27	\$1,277,912.17	\$437,760.35	\$2,388,272.79

Summary

Total Revenue Billed Under Interim Rates	(1)	<u>\$2,492,285</u>
Total That Could Have Been Billed Under Final Rates		<u>(2,388,273)</u>
Add back interim increase for July	(2)	<u>(2,091)</u>
		<u>\$(2,390,364)</u>
Excess Revenue From Interim Rates Over Final Rates		<u>\$101,921</u>
Excess Revenue Percentage		<u>4.09%</u>
Actual Refund Made For Same Period		<u>\$121,006</u>
Actual Refund Percentage		<u>4.87%</u>
Excess of Actual Refund Made Over Calculated Refund		<u>\$19,085</u>

Notes: (1) The Interim And Final Revenues Shown Above Do Not Include Cumulative Adjustments Which Are Immaterial For These Calculations.

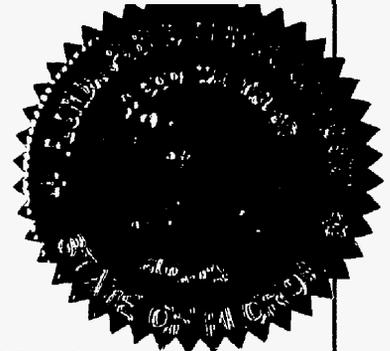
(2) July 2003 Interim Revenue Includes The Indexed Increase, While The Calculated Final Rates Revenue For July Does Not. Added Back Index Percentage To Calculated Revenues.

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010503-WU

In the Matter of:

APPLICATION FOR INCREASE IN
WATER RATES FOR SEVEN SPRINGS
SYSTEM IN PASCO COUNTY BY ALOHA
UTILITIES, INC.



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PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 5

BEFORE: CHAIRMAN BRAULIO L. BAEZ
 COMMISSIONER LILA A. JABER
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER RUDOLPH "RUDY" BRADLEY
 COMMISSIONER CHARLES M. DAVIDSON

DATE: Tuesday, January 20, 2004

TIME: Commenced at 9:45 a.m.
 Concluded at 11:45 a.m.

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR
 Official FPSC Reporter
 (850) 413-6734

DOCUMENT NUMBER - DAFI
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FPSC-COMMISSION CLERK

1 I fortunately was not on. In retrospect I can say I
2 fortunately was not on that panel. That panel of Commissioners
3 made a decision, and that decision was, as the order states,
4 and I'm to some extent paraphrasing, but there was no rate
5 increase. However, there was, it was ordered that only a
6 portion of the interim revenues collected would be refunded.
7 That was not appealed, but -- and then the -- but the court
8 affirmed that order in all respects, and that order stated that
9 there was going to be a certain amount of the interim
10 collection refunded, that being -- interim being during the
11 rate case period.

12 I'm at a little bit of a loss as how I then interject
13 myself to go back and basically reconsider a decision that I
14 didn't make to start with but the court has affirmed it.
15 That's the difficulty I'm having.

16 I guess the question is -- and, staff, in your mind
17 what was the basis of the Commission's decision to not order an
18 increase but to order only a partial refund of the interim
19 collection during the processing of the rate case?

20 MS. MERCHANT: You're referring to the issue on
21 what's the appropriate interim refund in the final order?
22 That -- we followed our standard practice that we use in all
23 rate cases to calculate an interim refund. We use the final
24 revenue requirement and we back out those items that were not
25 in effect during the interim collection period. And examples

1 of that would be pro forma expenses or inflation adjustments or
2 rate case expense. And that's what we did in this case. We
3 backed those items out.

4 COMMISSIONER DEASON: And so -- I don't mean to put
5 words in your mouth, but it's basically a formulistic way that
6 you evaluate that consistent with the statute; is that correct?

7 MS. MERCHANT: That's correct.

8 COMMISSIONER DEASON: Okay. Now let's move forward
9 to the appellate period. Now I know that the Commission in its
10 order granting stay allowed interim rates to be continued to be
11 collected. Now does that mean that the collection of those
12 interim rates is still subject to formulistic approaches of the
13 interim statute or is that just an amount at the Commission's
14 discretion that it felt reasonable was an amount to allow to be
15 collected during the -- as the stay -- since the stay was
16 granted? And maybe -- and that's partially a legal question, I
17 suppose, to some extent as well.

18 MS. MERCHANT: I believe that the four point -- I
19 mean, the interim increase that was in effect, I think that the
20 Commissioners just allowed that to stay in effect. I don't
21 think the Commissioners, when they looked at their stay, they
22 were even thinking about what amount would be refunded on a
23 perspective basis.

24 COMMISSIONER DEASON: In fact, does the Commission
25 have, even have the authority to grant interim rates during a