

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of stipulation on procedure with Office of Public Counsel, and application for limited proceeding increase in water rates in Pasco County, by Aloha Utilities, Inc.

DOCKET NO. 060122-WU
ORDER NO. PSC-08-0601-PCO-WU
ISSUED: September 17, 2008

ORDER TOLLING FILING OF INTERVENOR AND
STAFF TESTIMONY AND EXHIBITS, AND
REVISING ORDER ESTABLISHING PROCEDURE

Aloha Utilities, Inc. (Aloha or utility) is a Class A water and wastewater utility located in Pasco County. The utility consists of two distinct service areas: Aloha Gardens and Seven Springs. The utility has been exceeding its Southwest Florida Water Management District water use permit (WUP) limits. To address Aloha's excess withdrawals, on October 26, 2004, Aloha entered into a Bulk Water Agreement with Pasco County (County), wherein it contracted to purchase water from the County in order to meet the needs of current and future customers and eliminate excess withdrawals from its wells. On September 28, 2007, Aloha filed its application for a limited proceeding to recover the costs for the chloramination and purchased water from the County.

Proposed agency action (PAA) Order No. PSC-08-0137-PAA-WU, issued March 3, 2008, provided that Aloha would be allowed to recover phase one costs associated with the interconnection and with the utility's purchase of bulk water from Pasco County, after it has completed the construction of a fully operating interconnection with the County. On March 24, 2008, Aloha, the Office of Public Counsel (OPC), and certain members of the Better Water Now Committee protested the order and requested a hearing on the matter.

By Order No. PSC-08-0427-PCO-WU, issued June 27, 2008, controlling dates were established for this proceeding,¹ and an administrative hearing was scheduled for November 24-25, 2008. Pursuant to Order No. PSC-08-0427-PCO-WU, on August 5, 2008, Aloha filed the direct testimony and exhibits of Mr. Stephen G. Watford, Aloha's President; Mr. David W. Porter, a professional engineer; and Mr. Robert Nixon, a certified public accountant.

On August 29, 2008, Office of Public Counsel filed a Motion to Dismiss or in the Alternative, Motion to Amend Procedural Order (Motion). In its Motion, OPC contends that, as part of its direct testimony and exhibits, Aloha essentially refiled its original case by resubmitting its Special Report, dated September 19, 2007. However, the testimony of Aloha's accounting and engineering witnesses state that the utility needs to significantly modify its rate increase request based upon "known and measurable changes." Further, according to testimony,

¹ The controlling dates at issue here are the dates for filing the utility's direct testimony and exhibits (August 5, 2008), intervenor testimony and exhibits (September 16, 2008), staff testimony and exhibits, if any (October 1, 2008), and rebuttal testimony and exhibits (October 15, 2008).

DOCUMENT NUMBER-DATE

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Aloha does not anticipate filing these major changes until it files its rebuttal testimony. OPC contends that permitting Aloha to materially alter its filing at such a late date effectively eliminates the factual basis of the Commission's PAA decision and deprives intervenors and staff of the time frames allowed for the depth of analysis necessary for the Commission to assure the public that reasonable rates will be established in this proceeding.

OPC's primary request for relief is that the Commission dismiss Aloha's underlying application for a limited proceeding. In the alternative, OPC requests that the procedural schedule in this matter be amended and delayed by at least 90 days, to ensure that intervenors have an adequate and meaningful opportunity to address the revisions to Aloha's rate request. OPC contends that permitting surrebuttal would not be an adequate solution, and would require intervenors to wastefully duplicate their efforts in analyzing a materially new case.

On September 5, 2008, Aloha filed a Response in objection to OPC's Motion, simultaneously with a request for oral argument on the matter.

A motion to dismiss contemplates dispositive action on the case, and thus is appropriate for consideration by the full Commission. Staff will file a recommendation on OPC's Motion and Aloha's Response for the Commission's consideration at the September 29, 2008, Agenda Conference. In light of all the circumstances, and in order to ensure that the intervenors and staff's opportunity to file testimony and exhibits in this matter is preserved, I find it is appropriate to toll the time for filing such, pending the Commission's consideration of OPC's Motion to Dismiss. Further modification of the procedural schedule shall be made, as appropriate, by separate order, pending the outcome of the Commission's decision at the September 29, 2008, Agenda Conference.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

Based upon the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the time for filing intervenor and staff testimony and exhibits is hereby tolled, pending a determination by the full Commission on the Office of Public Counsel's Motion to Dismiss or in the Alternative, Motion to Amend Procedural Order, and Aloha's Response to that Motion. It is further

ORDERED that Order No. PSC-08-0427-PCO-WU shall be revised as indicated above. It is further

ORDERED that all other provisions of Order No. PSC-08-0427-PCO-WU remain in effect, and shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 17th day of September, 2008.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(S E A L)

JSB

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 Office of Commission Clerk, 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.