

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

In re: Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU.

DOCKET NO. 060606-WS
ORDER NO. PSC-08-0665-PCO-WS
ISSUED: October 8, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER GRANTING EXTENSION OF ABATEMENT

BY THE COMMISSION:

Background

Aloha Utilities, Inc. (Aloha or utility) is a Class A water and wastewater utility located in Pasco County. The utility consists of two distinct service areas: Aloha Gardens and Seven Springs.

In February 2005, we initiated deletion proceedings in Docket No. 050018-WU to delete a portion of the Seven Springs service area based on a number of problems that ultimately stem from the presence of hydrogen sulfide in the water. On March 9, 2006, after several months of extensive negotiations in which Commission staff participated, a Settlement Agreement was executed by Aloha, the Office of Public Counsel (OPC), and individual intervenors. The Settlement Agreement resolved all outstanding dockets and court proceedings between Aloha and the Commission, and was approved by Order No. PSC-06-0270-AS-WU.¹ A key element of

¹ Issued April 5, 2006, in Docket No. 050018-WU, In Re: Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes; Docket No. 050183-WU, In Re: Request by homeowners for the Commission to initiate deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes; and Docket No. 010503-WU, In Re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

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the Settlement Agreement is the agreement by the parties that it is prudent for Aloha to implement a new water treatment method – anion exchange – to address the current problems that stem from the presence of hydrogen sulfide in the water.

In addition, on October 26, 2004, Aloha entered into a Bulk Water Agreement with Pasco County (County), wherein it contracted to purchase approximately 3.1 million gallons of water per day from the County in order to meet the needs of current and future customers. Significant costs are expected to be associated with the associated interconnection and purchase of this water, and the installation and operation of related chloramination facilities.

There are currently two dockets open to address the ripe issues associated with the purchase of bulk water from Pasco County and associated interconnection, and to track Aloha's progress to design and install the plant necessary to implement anion exchange: Docket Nos. 060606-WU, In re: Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU (the anion exchange docket) and 060122-WU, In re: Joint petition for approval of stipulation on procedure with Office of Public Counsel, and application for limited proceeding increase in water rates in Pasco County, by Aloha Utilities, Inc. (the limited proceeding docket).²

On March 14, 2008, the Florida Governmental Utility Authority (FGUA), which is not a party to either Aloha docket, filed a "Suggestion of Abatement."³ In its filing, FGUA suggested "an abatement of the anion exchange project currently being implemented by Aloha Utilities pursuant to Commission Order" FGUA's suggestion was corrected by letter dated March 18, 2008, to clarify that the FGUA suggested an abatement period of 120-days.

At our April 8, 2008, Agenda Conference, we considered FGUA's request and agreed to "abate for 120 days, any and all actions directed towards Aloha implementing anion exchange and all actions necessary for Aloha to interconnect with Pasco County, except for the litigation to resolve the protests of Order No. PSC-08-0137-PAA-WU." We also directed that Aloha should not be penalized for the 120-day abatement period for purposes of implementation of the settlement agreement approved by Order No. PSC-06-0270-AS-WU.⁴

In addition, in a separate vote, we voted at the April 8, 2008, Agenda Conference to order Aloha to show cause, in writing, within 21 days, why it should not be fined for its apparent violation of Section 367.081(1), Florida Statutes, for knowingly failing to comply with Order

² In the limited proceeding docket, we issued proposed agency action (PAA) Order No. PSC-08-0137-PAA-WU, on March 3, 2008. In this PAA order, we voted to allow the utility, after it has completed the construction of a fully operating interconnection with Pasco County, to recover phase one costs associated with the interconnection and with the utility's purchase of bulk water from Pasco County. On March 24, 2008, Aloha, OPC, and certain members of the Better Water Now Committee petitioned for a hearing concerning this PAA order.

³ A "suggestion" is not a pleading contemplated by the Florida Administrative Procedures Act, the Uniform Rules, or any Commission rule or statute.

⁴ Order No. PSC-08-0267-PCO-WS, issued April 30, 2008. in Docket No. 060122-WU, Joint petition for approval of stipulation on procedure with Office of Public Counsel, and application for limited proceeding increase in water rates in Pasco County, by Aloha Utilities, Inc., and Docket No. 060606-WS – Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU.

No. PSC-06-0270-AS-WU, by failing to report delays of the anion exchange treatment facilities in its quarterly report.⁵ This matter is currently pending and has been set for hearing in April 2009.

On August 19, 2008, FGUA filed "FGUA's Request for Extension of Abatement." In its filing, FGUA requested that we extend the abatement period established by Order No. PSC-08-0267-PCO-WS for an additional 45-days. On August 29, 2008, FGUA's counsel filed a letter clarifying that its request for an extension of the abatement period does not include a request to abate the show cause matter. On September 2, 2008, FGUA's counsel filed another letter further clarifying that it was requesting the 45-day abatement to begin to run from the date the we issue an order approving the 45-day abatement. The 120-day abatement period we approved by Order No. PSC-08-0267-PCO-WS ended on August 28, 2008.

For the reasons discussed below, we grant an additional 45-day abatement period for all actions associated with the implementation of anion exchange and all actions necessary for Aloha to interconnect with Pasco County, except for the litigation to resolve the protests of Order No. PSC-08-0137-PAA-WU and the show cause proceeding initiated by Order No. PSC 08-0266-SC-WS.

We have jurisdiction pursuant to Chapters 120 and 367, Florida Statutes.

Decision

We have previously determined that the "FGUA is an interlocal entity created pursuant to Chapter 163, Florida Statutes, by political subdivisions of the state."⁶ We have approved, as a matter of right, transfers of investor-owned water and wastewater utilities to FGUA.⁷ According to the FGUA's website, the FGUA provides "drinking water and wastewater service and infrastructure to various counties in Florida. By joining the FGUA, these counties have pooled their resources to bring citizens the best of both worlds: private-sector functionality with public-sector commitment and experience." In its earlier filed "suggestion," of March 2008, FGUA alleged that "[i]f Aloha is acquired by Pasco County, FGUA will handle the acquisition, financing, and operation of the utility until such time in the future as it becomes feasible for the County to take over ownership of Aloha's former system."

⁵ Order No. PSC-08-0266-SC-WS, issued April 30, 2008, in Docket No. 060606-WS, In re: Progress reports on implementation of Anion Exchange in Pasco County, filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU.

⁶ Order No. PSC-03-1284-FOF-WS, issued November 10, 2003, in Docket No. 030932-WS, In re: Joint application for acknowledgement of sale of land and facilities of Florida Water Services Corporation in Lee County to Florida Governmental Utility Authority, and for cancellation of Certificate Nos. 306-W and 255-S.

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

In its "Suggestion of Abatement," which we approved by Order PSC-08-0267-PCO-WS, FGUA acknowledged that it is not a party to any Aloha proceeding. Nonetheless, FGUA argued that because of the "unique posture" of the limited proceeding docket and because it is in the public interest, we should consider FGUA's "suggestion as expeditiously as possible." FGUA suggested that we abate the anion exchange project for 120-days "so that FGUA may investigate whether an acquisition of Aloha can and should be accomplished." As of the date of filing this recommendation, FGUA has not petitioned to intervene in any open Aloha docket.

According to the FGUA in its "Suggestion," the Pasco County Board of County Commissioners, on February 27, 2008, voted unanimously to join the FGUA for the purpose of acquiring investor-owned utilities on behalf of County utility customers. In its "Request" of August 2008, FGUA states that since our grant of the 120-day abatement period, "the parties have been in frequent communication, have met or discussed the potential acquisition of Aloha by FGUA at least weekly, and have continued to negotiate in good faith, with due diligence, and all reasonable efforts." FGUA requests an extension of the abatement "for all the reasons FGUA initially requested abatement."

FGUA also advises that because of the complexity of the potential acquisition, more time is needed:

From the perspective of FGUA the logistics of this proceeding (given the size, vagaries, and posture of Aloha's water and wastewater systems, the particularities of the current bond market, and the reasonable need of both parties to negotiate and resolve, if possible, all of the issues which normally arise in such a transaction) makes necessary this request for an extension of the abatement period by another 45 days from the date of the Commission's order granting this request. All of the reasons upon which the FGUA initially requested abatement, and upon which Order No. PSC-08-0267-PCO-WS were founded, still exist and apply to the ongoing negotiations just as they did to the prospective negotiations at the time the Order was issued.

FGUA represents that the parties are close to an agreement, remain optimistic that an agreement is achievable, and that an extension of the abatement period will facilitate this possibility. The FGUA notes that the OPC supports its request for the 45-day abatement, and Aloha does not oppose the request.

Accordingly, we abate, for an additional 45-days, any actions directed towards Aloha implementing anion exchange. The OPC supports and Aloha does not object to the request, and as previously suggested by FGUA, the abatement may avoid "a waste of money and resources." We find that the 45-day abatement period shall not count against Aloha for purposes of the implementation of the Settlement Agreement approved by Order No. PSC-06-0270-AS-WU. The abatement period shall commence upon the issuance of this Order codifying our decision.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a 45-day abatement period shall be established for all actions associated with implementing anion exchange and all actions necessary for Aloha to interconnect with Pasco County, except for the litigation to resolve the protests of Order No. PSC-08-0137-PAA-WU, and the show cause proceeding initiated by Order No. PSC 08-0266-SC-WS. It is further

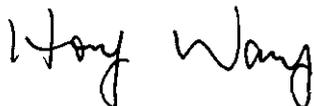
ORDERED that the abatement period shall commence upon the issuance of this Order codifying our decision. It is further

ORDERED that Aloha shall not be penalized for the 45-day abatement period for purposes of the implementation of the Settlement Agreement approved by Order No. PSC-06-0270-AS-WU. It is further

ORDERED that these dockets shall remain open pending the resolution of the issues associated with Aloha's interconnection with Pasco County and the implementation of anion exchange.

By ORDER of the Florida Public Service Commission this 8th day of October, 2008.

ANN COLE
Commission Clerk

By: 

Hong Wang
Office of Commission Clerk

(S E A L)

JEH

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.