

VOTE SHEET

May 19, 2009

Docket No. 010503-WU – Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

Issue 1: Should the Commission order Aloha Utilities, Inc. to transfer the escrowed interim funds from Regions Bank to the Florida Department of Financial Services, Division of Treasury, Bureau of Collateral Management?

Recommendation: Yes. The Commission should order Aloha, in cooperation with staff, to move the escrowed funds from Regions Bank to an escrow account with the Florida Department of Financial Services, Division of Treasury, Bureau of Collateral Management, consistent with the terms and conditions contemplated by Order No. PSC-01-2199-FOF-WU, by which the escrow account was originally established. If the Commission approves staff's recommendation and Aloha does not comport with the resulting Commission's order by May 26, 2009, staff recommends that it be authorized to seek enforcement of the Commission's order in a court of competent jurisdiction. Staff also recommends that the Commission approve the specific findings discussed in the analysis portion of staff's memorandum dated May 12, 2009, in anticipation that enforcement of the Commission's order may become necessary.

APPROVED, as modified at the commission conference. Staff was directed to work with aloha and provide them with the new BCM escrow account number so that the interim funds can be deposited in this account.

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

Handwritten signatures of majority commissioners: Ned A. Igo, Katrina J. McMurrian, Lois Eder, Matt Carter, and Nancy Argenziano (by Jay D. Lewis).

Blank lines for dissenting signatures.

REMARKS/DISSENTING COMMENTS: Chairman Carter and Commissioner Argenziano participated in the conference by telephone. They will sign the vote sheet upon their return to the office.

Anal modification to item 6A is attached to this vote sheet.

DOCUMENT NUMBER-DATE

05102 MAY 22 09

Vote Sheet

May 19, 2009

Docket No. 010503-WU – Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

(Continued from previous page)

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending final disposition of all pending matters in the docket.

APPROVED

Ann Cole

From: Chuck Hill
Sent: Monday, May 18, 2009 1:31 PM
To: Jennifer Brubaker; Mary Bane
Cc: Betty Ashby; Selena Chambers; Booter Imhof; Mary Anne Helton; Samantha Cibula; Kathryn Cowdery; Ralph Jaeger; Tim Devlin; Marshall Willis; Cheryl Bulecza-Banks; Bart Fletcher; Ann Cole; William C. Garner; Lois Graham; Roberta Bass; Kelly McLanahan; Lorena Holley; Kay Posey; Larry Harris; Steve Larson; Bill McNulty; Cristina Slaton
Subject: RE: Request for permission to modify Item 6A (Docket 010503-WU/Aloha) for the 5/19/09 Agenda Conference

Approved.

COM |
 ECR |
 GCL |
 OPC |
 RCP |
 SSC |
 SGA |
 ADM |
 CLK *CHK*
Wans, Angus
Macxo, A. Pa.

From: Jennifer Brubaker
Sent: Monday, May 18, 2009 1:30 PM
To: Mary Bane
Cc: Chuck Hill; Betty Ashby; Selena Chambers; Booter Imhof; Mary Anne Helton; Samantha Cibula; Kathryn Cowdery; Ralph Jaeger; Tim Devlin; Marshall Willis; Cheryl Bulecza-Banks; Bart Fletcher; Ann Cole; William C. Garner; Lois Graham; Roberta Bass; Kelly McLanahan; Lorena Holley; Kay Posey; Larry Harris; Steve Larson; Bill McNulty; Cristina Slaton
Subject: Request for permission to modify Item 6A (Docket 010503-WU/Aloha) for the 5/19/09 Agenda Conference

Staff requests permission to make a minor modification to its recommendation for Docket No. 010503-WU, which the Commission will address as Item 6A at the May 19, 2009, Agenda Conference.

After further discussion with the Florida Department of Financial Services, Division of Treasury, Bureau of Collateral Management, staff requests permission to make the modify page 7 of its recommendation as indicated below in type-and-strike format:

Staff also contacted the Florida Department of Financial Services, Division of Treasury, Bureau of Collateral Management (BCM). One of the services BCM offers is the management of cash deposit/escrow services. While some agencies have the ability to handle an escrow account within the agency (such as the Florida Office of the Attorney General), most agencies (such as the Commission) do not, requiring that escrow accounts be established in the private sector. Financial institutions usually charge to establish an escrow account and charge a continuing maintenance fee during the required time period. Florida law allows the BCM to provide a centralized deposit location for the specialized handling of these deposits at no charge to either the state agency or the contracting entity (which would be, in this case, Aloha), other than an administrative fee authorized by Section 17.61(4)(b), F.S., in the amount of approximately .01 percent per month. The administrative fee would be assessed from the interest earned on the account, rather than from the corpus of the escrowed interim funds. Another important benefit of using the BCM is that cash deposit and escrow accounts earn interest in the same manner as state trust funds. After discussion with staff, the BCM has agreed to hold the interim funds in escrow until final disposition of those funds.

Under these circumstances, staff believes that the best course of action to preserve and maintain the escrowed interim funds is that the Commission order Aloha, in cooperation with staff, to move the escrowed funds from Regions Bank to an escrow account with the Florida Department of Financial Services, Division of Treasury, Bureau of Collateral Management, consistent with the terms and conditions contemplated by Order No. PSC-01-2199-FOF-WU, by which the escrow account was

DOCUMENT NUMBER-DATE
 04858 MAY 18 09

5/18/2009

FPSC-COMMISSION CLERK

originally established. If the Commission approves staff's recommendation and Aloha does not comport with the resulting Commission order by May 26, 2009, staff recommends that it be authorized to seek enforcement of the Commission's order in a court of competent jurisdiction.

In anticipation that staff may be compelled to seek enforcement of the Commission's order, staff also recommends that the Commission approve the following findings:

1. The final disposition of the escrowed money is still pending; the protest and appeal periods have not yet expired.
2. The current escrow agent has filed notice of its intent to withdraw, and has filed an interpleader in circuit court. It is the position of the Commission that the circuit court lacks jurisdiction over the escrow interim funds, and that the Commission has sole jurisdiction over disposition of the funds.
3. After due diligence, Commission staff has been unable to find an alternate bank willing to act as the escrow agent.
4. The Department of Financial Services, Division of Treasury, Bureau of Collateral Management has agreed to provide an escrow account, interest bearing, ~~without maintenance fees~~, requiring two signatures (one from Aloha, one from the Commission), or a court order, for disbursement.
5. The Commission orders Aloha to move the interim funds to a BCM escrow account.

Please let me know if you have any questions or concerns regarding this request; thank you.