

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for a Section  
120.57(1), F.S., hearing by  
Aloha Utilities, Inc. in Pasco  
County

DOCKET NO. 970695-WS  
ORDER NO. PSC-97-0898-FOF-WS  
ISSUED: July 30, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
DIANE K. KIESLING  
JOE GARCIA

ORDER DENYING REQUEST FOR A SECTION 120.57(1) HEARING,  
ACKNOWLEDGING THAT EMERGENCY MOTION FOR RELEASE OF FUNDS  
FROM ESCROW ACCOUNT WAS IN THE ALTERNATIVE A REQUEST  
FOR EXTENSION OF TIME TO PAY REGULATORY ASSESSMENT FEES  
AND APPROVING REQUEST FOR EXTENSION

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.

On June 1, 1995, Aloha filed a reuse project plan (consisting of three phases) and application for increase in rates for wastewater service to its Seven Springs customers pursuant to Section 367.0817, Florida Statutes. On December 28, 1995, we issued Proposed Agency Action (PAA) Order No. PSC-95-1605-FOF-SU authorizing recognition of only Phase I of the project in rate setting. In the PAA Order, we allowed Aloha to implement the approved wastewater rates on a temporary basis subject to refund in the event of a protest. The Order was protested.

As allowed by the PAA Order, Aloha implemented the approved rates effective February 12, 1996, and established an escrow

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account as security in the event a refund was found to be necessary. Pursuant to the PAA Order, Aloha escrows approximately \$61,000 each month in this account.

Pursuant to a petition by customers from the Wyndtree Master Community Association, we opened Docket No. 960545-WS to investigate Aloha's rates and water quality. For the purposes of hearing, Dockets Nos. 960545-WS and 950615-SU were consolidated by Order No. PSC-96-0791-FOF-WS, issued on June 18, 1996. The hearing was held on September 9-10, 1996 in New Port Richey and concluded on October 28, 1996 in Tallahassee. Briefs were filed by the parties on December 17, 1996, and the whole matter was scheduled to be heard at the February 18, 1997 Agenda Conference.

At the February 18 Agenda Conference, we, among many other decisions, voted to require Aloha to refund approximately 20 percent of the revenue collected pursuant to the temporary rates. Also, we determined that the funds remaining in the escrow account would only be released to the utility upon completion of the refund. These decisions were memorialized in Order No. PSC-97-0280-FOF-WS (Final Order), issued on March 12, 1997.

Just prior to the issuance of that Order, Aloha, on March 10, 1997, filed an Emergency Motion for Release of Funds From Escrow Account (Emergency Motion), in which it requested a release of \$332,000 from the escrow account prior to March 31, 1997. In its Emergency Motion, Aloha stated that unless it was given access to \$332,000 of the approximate total of \$750,000 in escrow funds, it would be unable to timely pay its regulatory assessment fees and that it was already past due on interest payments on debt service in excess of \$298,000.

In order to meet that date, consideration of the motion would have had to take place on the March 18, 1997 agenda conference as an emergency item. Finding that the facts surrounding the motion did not constitute an emergency and that the motion could be heard at the April 1, 1997 Agenda Conference, the Chairman denied the request to have the motion considered as an emergency item. Prior to the March 18 Agenda Conference, the utility was notified that its Emergency Motion would not be considered at that agenda, and that staff would attempt to have it considered at the April 1 Agenda Conference.

Subsequently, by letter dated and filed on March 31, 1997, Aloha requested that its Emergency Motion be treated as "a request

for an extension for the paying of Aloha's regulatory assessment fees." On April 1, 1997, we authorized a partial release of escrowed funds in the amount of \$332,000. This decision was memorialized by Order No. PSC-97-0372-FOF-SU, issued on April 4, 1997. Aloha then paid its regulatory assessment fees on April 14, 1997, without remitting any penalty or interest.

By letters dated May 14, 1997, our Division of Administration requested Aloha to pay, by May 28, 1997, an additional \$12,682.86 in penalty and interest. These letters did not specifically address Aloha's request for an extension. For its water service, the additional amount was \$5,091.53, consisting of \$4,242.94 for a 5 percent penalty and \$848.59 in interest. For the wastewater service, the additional amount was \$7,591.33, consisting of \$6,326.11 for a 5 percent penalty and \$1,265.22 in interest.

However, Aloha, by letter dated May 23, 1997, argues that its Emergency Motion, filed on March 10, 1997, should be treated as a request for extension of time in which to pay its regulatory assessment fees. Based on this argument, Aloha believes that it should be made to pay only an additional fee of .75 percent as authorized by Section 350.113(5), Florida Statutes. Therefore, in that same May 23 letter, Aloha requested either "a short hearing" "under Section 120.57(1), Florida Statutes", or, at least that the issue of additional fees be presented to us for decision.

This Order addresses both the request for a Section 120.57(1) hearing and what amount in additional fees should be remitted by Aloha.

#### REQUEST FOR A SECTION 120.57(1) HEARING

As stated above, Aloha has requested either a Section 120.57(1) hearing or that this Commission consider its argument that it was entitled to an extension of time in which to pay its regulatory assessment fees. As there is no dispute of material fact, no Section 120.57(1) hearing is warranted, and that request is denied. However, as set forth below, we have considered and acknowledged that Aloha was entitled to an extension of time in which to pay its regulatory assessment fees.

#### EXTENSION OF TIME IN WHICH TO PAY REGULATORY ASSESSMENT FEES

Having reviewed the facts of this case, and the Emergency Motion and letters of Aloha, we find that the filing of the

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Emergency Motion on March 10, 1997, entitled the utility, pursuant to Rule 25-30.120(6), Florida Administrative Code, to an extension of time in which to pay its regulatory assessment fees. Further, since Aloha paid the regulatory assessment fees within 15 days, the utility shall only be required to pay an additional .75 percent of the fee (calculated to be \$1,585.36) as required by Rule 25-30.120(6)(c), Florida Administrative Code, and Section 350.113(5), Florida Statutes.

CLOSING OF DOCKET

With the issuance of this Order, there are no further actions to be taken in this docket. Therefore, once the time for appeal has passed, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request of Aloha Utilities, Inc., for a Section 120.57(1) hearing is denied. It is further

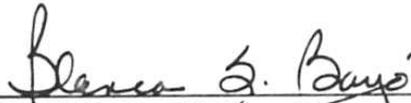
ORDERED that the Emergency Motion for Release of Funds From Escrow Account filed by Aloha Utilities, Inc., entitled the utility to an extension of time in which to pay its regulatory assessment fees. It is further

ORDERED that Aloha Utilities, Inc., shall only be required to pay an additional \$1,585.36 (.75 percent of the fee) as required by Rule 25-30.120(6)(c), Florida Administrative Code, and Section 350.113(5), Florida Statutes. It is further

ORDERED that once the time for appeal has passed, this docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 30th  
day of July, 1997.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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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 Records and Reporting, 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 Records and reporting 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.