

State of Florida



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Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

COMMISSION
CLERK

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

DATE: March 2, 2009
TO: Ann Cole, Commission Clerk - PSC, Office of Commission Clerk
FROM: Jean E. Hartman, Senior Attorney, Office of the General Counsel
RE: DOCKET NO. 010503-WU - Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

Please place the attached documentation in the above-referenced docket file. Thank you.

DOCUMENT NUMBER-DATE

01713 MAR-3 09

FPSC-COMMISSION CLERK

FEB 27 2009

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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 No. PSC-06-0270-AS-WU.

Docket No. 060606-WS

**CITIZENS' RESPONSE TO ALOHA'S
MOTION FOR CONTINGENT RELEASE OF ESCROW MONIES**

The Citizens of the State of Florida ("Citizens"), by and through their undersigned attorney, with the Office of Public Counsel ("OPC"), file this response to Aloha Utilities, Inc.'s ("Aloha", "Utility" or "Company") Motion for Contingent Release of Escrow Monies, and state:

1. On April 30, 2002 the Commission issued Order No. PSC-02-0593-FOF-WU, which denied Aloha's request for a rate increase and ordered a refund of the interim rates authorized by the Commission in rate case Docket No. 010503-WU.
2. Aloha appealed the Final Order in Docket No. 010503-WU to the First District Court of Appeal ("First DCA") and sought a stay while the decision was under appellate review.
3. By Order No. PSC-02-1056-PCO-WU, issued August 5, 2002, the Commission granted in part and denied in part the Utility's Motion for Stay. The Commission stayed the setting of the new rate structure, as well as the interim refund and certain plant improvement requirements.
4. On May 6, 2003, the First DCA affirmed the Commission's Final Order No. PSC-02-0593-FOF-WU, including the Commission's requirement of a complete refund of the interim rate increase. The First DCA denied Aloha's Motion for Rehearing on June 12, 2003 and issued

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FPSC-COMMISSION CLERK

its mandate on June 30, 2003. As a result of these First DCA opinions the appellate review process was completed on June 30, 2003, and all provisions of Final Order No. PSC-02-0593-FOF-WU were made final and effective.

5. The Utility collected interim rates for a 19-month period, from January 2002 through July 2003. The first four months were during the rate case period, and the remaining 15 months were during the appeal period. On or about September 10, 2003, the Utility completed the 4.87% interim refunds required by the Final Order for the rate case period, and also refunded 4.87% for the appeal period. Recognizing that Aloha had made this 4.87% refund without using funds from the escrow account, the Commission released \$153,510 from the escrow account to Aloha by Order No. PSC-03-1410-FOF-WU, issued December 15, 2003.

6. By Proposed Agency Action Order No. PSC-04-0122-PAA-WU (PAA Refund Order), issued February 5, 2004, the Commission proposed to require Aloha to make additional refunds of approximately \$278,000 for the appeal period. This amount represented the additional revenues from the interim rates collected during the appeal period, less the 4.87% already refunded by Aloha. This decision never became final because, on February 26, 2004, Aloha protested the PAA Refund Order.

7. On October 26, 2004 the Commission issued a second Final Order requiring Aloha to refund the balance of the interim rate increase monies (portion not refunded in September 2003) collected from customers during the period of Aloha's appeal of Final Order No. PSC-02-0593-FOF-WU. The Commission's second Final Order No. PSC-04-1050-FOF-WU, required Aloha to immediately refund an additional principal amount of \$276,066 for the appeal period to its customers and that the refund be made with interest in accordance with the Commission's Rule 25-30.360(4), F.A.C.

8. Rather than refund the money wrongfully collected from customers between May 2002 through July 2003, on November 29, 2004, Aloha again filed a Notice of Appeal. Aloha appealed the Commission's second Final Order requiring the complete refund of interim rate increase collections. On December 2, 2004 Aloha filed another Motion to Stay the requirement of refunding the balance of the interim rate increase collections received from its ratepayers. On February 7, 2005, the Commission issued Order No. PSC-05-0144-PCO-WU granting Aloha's Motion for Stay pending Judicial Review of the Commission's requirement to make the additional refunds.

9. While Aloha was actively involved in other dockets before the Commission to address its black water problems, motions were filed with the First DCA to delay the Court's consideration of the merits of Aloha's second appeal.

10. On March 9, 2006 Aloha, OPC and certain customer Intervenors entered into a Settlement Agreement which attempted to resolve all of Aloha's active Commission dockets and appeals of Commission Orders.

11. The part of the Settlement Agreement relevant to this motion is paragraph 3.(d) which provides:

(d) Aloha will voluntarily dismiss the Refund Appeal. The amount to be refunded as require by Order No. PSC-04-1050-FOF-WU is currently approximately \$290,000. This amount ("Gross Refund") shall be updated to the Effective Date and shall include interest calculated in accordance with Rule 25-30.360(4), F.A.C. through that date. In order to determine the Net Refund, the Gross Refund shall be reduced by the documented costs of Aloha (up to \$45,000) to prepare the Conceptual Cost Estimate, and the amount of such documented costs shall immediately be released from escrow. This reduction reflects the prior letter agreement between Aloha and OPC which has been approved by the Commission, that the cost (up to \$45,000) of preparing the Conceptual Cost Estimate for anion exchange shall be recovered from customers in this manner. After reimbursing Aloha for this documented costs, the Net Refund shall remain in the escrow account, accruing interest at the rate actually earned on that account. The Net Refund, plus interest earned thereon, shall be used to help pay for the anion exchange project. Aloha shall record an amount equal to the Net Refund, plus the interest earned thereon, as a

contribution-in-aid-of-construction (CIAC) of the anion exchange facilities at the time the order establishing Phase III rates under Section 2(c) has become final and non-appealable. At that time, the balance in the escrow account shall be released to Aloha, Aloha acknowledges that it shall not be entitled to recover though rates, a return on, or return of, such portion of its investment either in the limited proceeding conducted under Section 2(c), or in any future rate proceeding.

12. By agreeing to paragraph 3.(d) of the Settlement Agreement the customers were willing to apply the net refund monies (unpaid refunds plus interest less agreed \$45,000) to help pay for the permanent and effective solution to the long-standing black water problems. The customers never agreed that these refund monies would ever be given to the shareholders of Aloha, but quite to the contrary would only be considered contributions-in-aid-of-construction (CIAC) of the facilities built to solve the black water problems, and would only be applied as CIAC if and when the facilities were completely constructed, and after the facilities were fully operational for over a year. Pursuant to the expressed terms of the Settlement Agreement, not one penny of the customers net refund monies were to be applied as CIAC until the Commission issued its Final Order establishing Phase III rates, and the Order was final and non-appealable.

13. Contrary to the above requirements, construction has not begun on the anion exchange facilities, nor given FGUA's study of the black water problems, will those facilities ever be constructed or operated.

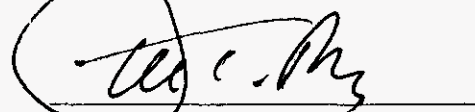
14. To the extent Aloha has expended funds in good faith to plan for the construction of the anion exchange facilities, such investment will be fully compensated when Aloha receives its 90.5 million dollars from the Florida Government Utility Authority ("FGUA"), as full payment for all rights, title and interest in Aloha. The financing of the purchase price **and** the additional sums borrowed by FGUA to help pay for FGUA's improvements to Aloha's system to resolve the black water problems will be paid for by the increased rates that will be borne by Aloha's customers. Releasing these refund monies to Aloha after Aloha sells the Utility to

FGUA would merely give additional money to the shareholders of Aloha over and above the 90.5 million dollars they are going to receive from FGUA for sale of the system. Such a windfall for the shareholders was not contemplated by the Settlement Agreement and would provide no offsetting CIAC credit or reduction in increased rates that will be needed to support FGUA's borrowing to finance the purchase and improvement of Aloha's system.

15. Aloha's Motion for Contingent Release of Escrow Monies is merely the last of many legal filings designed to retain for the benefit of its shareholders monies that have been, according to a number of Commission Orders, due and payable to the customers since July 30, 2003.

WHEREFORE, for the reasons stated above the Commission should deny Aloha's Motion for Contingent Release of Escrow Monies, but rather issue an order requiring Aloha to refund the remaining funds in the escrow account to the customers in accordance with Rule 25-30.360 (4), F.A.C., with the Utility providing proper refund reports pursuant to Rule 25-30.360 (7), F.A.C. Any unclaimed refunds should be given to FGUA to provide a pro rata credit to all existing water accounts that were in existence as of July 30, 2003.

Respectfully submitted,



Stephen C. Reilly
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330

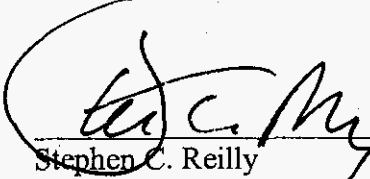
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the following parties this 26th day of February, 2008.

Jean Hartman, Esquire
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

John L. Wharton, Esquire
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Dr.
Tallahassee, FL 32301

Customer Petitioners
c/o Wayne T. Forehand
1216 Arlinbrook Drive
Trinity, Florida 34655


Stephen C. Reilly

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for Approval of Stipulation
on procedure with Office of Public Counsel,
and Application for a 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

**ALOHA UTILITIES, INC.'S MOTION
FOR CONTINGENT RELEASE OF ESCROW MONIES**

ALOHA UTILITIES, INC. ("Aloha"), by and through its undersigned attorneys, hereby files this Motion for Contingent Release of Escrow Monies, and would state as follows:

1. On April 5, 2006, the Commission issued its Order Approving Settlement Agreement, Order No. PSC-06-0270-AS-WU (the Order).
2. The Order was the culmination of negotiations between Aloha, the Office of Public Counsel, certain customer representatives, and the Commission Staff regarding several on-going issues and litigations. A key facet of the Order was its recognition that a particular water treatment method (anion exchange) should be

implemented by Aloha, and that the cost of such anion exchange facilities would be recoverable through rates. The Order also set forth a construction schedule which required Aloha to begin the process of implementation of anion exchange. Aloha's progress on the implementation of anion exchange was monitored by the parties to the settlement and the staff through a series of quarterly reports and meetings. The Order contemplated that certain monies held in escrow, including accrued interest (hereinafter "Monies in Escrow"), would be released to Aloha to defray the expenses of the implementation of anion exchange, and that Aloha would record a corresponding amount as *contribution-in-aid-of-construction*. The Monies in Escrow would be released to Aloha upon the time that Phase III rates take effect. For all of the reasons set forth below, Aloha requests that the Commission acknowledge and direct that the Monies in Escrow should be released to Aloha, said finding contingent upon receipt by the Commission of sufficient documentation that the pending acquisition of Aloha's assets by the Florida Government Utility Authority has closed.

3. There are several clear and demonstrable facts about the Order as it relates to this issue:

- If the anticipated acquisition of Aloha's assets by the Florida Governmental Utility Authority takes place, Phase III rates will never "take effect".

- The Settlement Agreement and the Order contemplated that the Monies in Escrow would be released to Aloha to defray Aloha's costs in the implementation of anion exchange. Unlike the balance of the monies expended to implement anion exchange, these costs were never contemplated as recoverable by Aloha through rates or otherwise.¹ The only manner by which these expenditures would be recouped by Aloha was through release of the escrowed funds.

- There is no alternate disposition of the Monies in Escrow contemplated by the Settlement Agreement or the Order.

- The release of these Monies in Escrow to Aloha (to recoup monies expended by Aloha consistent with the Order) was part and parcel of the consideration Aloha received for entering into the Settlement Agreement. In fact, dismissal of a pending appeal regarding those exact monies was a fundamental concession Aloha made in the Settlement Agreement. Likewise, recovery of monies expended on anion exchange (exclusively by release of the Monies in Escrow to Aloha) was a fundamental consideration by Aloha in accepting and agreeing to that dismissal.

- Substantial monies have been expended by Aloha in good faith reliance upon the release of said Monies in Escrow, consistent with the Settlement Agreement and the Order.

- Aloha has, in fact, expended a far greater amount on the implementation of the anion exchange project than the amount of the Monies in Escrow. These excess expenditures will not be recoverable by Aloha, through any means or method, if the sale to the Florida Governmental Utility Authority closes as anticipated.

4. Attached hereto as Exhibit A is documentation that Aloha's expenditures in the implementation of the anion exchange water treatment method,

¹ The costs specifically referred to are costs expended equal to that amount in escrow. The Settlement Agreement and Order made clear those specific costs could not be recovered through rates.

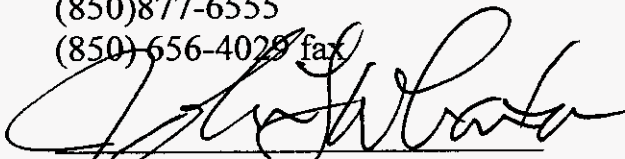
as directed by the Order and the Settlement Agreement, have been well in excess of the amount of the Monies in Escrow.

5. Aloha's intention is, upon release of the escrow monies as requested herein, to distribute the funds as follows: (a) those monies necessary to pay Aloha's prorated regulatory assessment fee for 2009; (b) \$15,000 to the PSC to settle with finality the Order to Show Cause (Docket No.); and (c) to Pasco County for certain work the county performed at the request of Aloha in furtherance of Aloha's purchase of bulk water from Pasco County. The balance of the funds will partially defray Aloha's anion exchange as explained herein.

WHEREFORE, Aloha requests that the Commission direct that the Clerk, upon demonstration that the acquisition of Aloha has occurred by sale of assets to the Florida Governmental Utility Authority, execute whatever documents are appropriate such that all of the Monies in Escrow will be released to Aloha.

Respectfully submitted this 19th day of February, 2009, by

Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850)877-6555
(850) 656-4028 fax



John L. Wharton
For the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to the following this 19th day of February, 2009:

Customer Petitioners
c/o Wayne T. Forehand
1216 Arlinbrook Drive
Trinity, Florida 34655

Jean Hartman, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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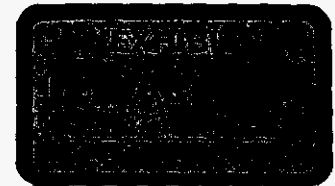
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Aloha Utilities, Inc.
General Ledger Detail Report
For November 2008

For Account 105-02-3 Through 105-02-3

Include Zero Activity Accounts, Exclude Statistical Accounts, Summarized by Account Number, Exclude Year End Closing Entry

Account Number	Account Description									
Tran Date	Src	Transaction Description	Batch	Tran No	Debit Amount	Credit Amount	Net Change	Ending Balance		
105-02-3		ANION EXCHANGE PRE-TREAT-SSW								
		** No activity for this account **								
Account Total:		Beginning Balance:	\$	508,055.40	\$	0.00	\$	0.00	\$	508,055.40
		Grand Totals:	\$	508,055.40	\$	0.00	\$	0.00	\$	508,055.40



Aloha Utilities, Inc.
 General Ledger Detail Report
 For November 2008

For Account 187-04-2 Through 187-04-2

Include Zero Activity Accounts, Exclude Statistical Accounts, Summarized by Account Number, Exclude Year End Closing Entry

Account Number		Account Description			Debit Amount	Credit Amount	Net Change	Ending Balance
Tran Date	Src	Transaction Description	Batch	Tran No				
187-04-2		DEF LIMITED PRCDNG-ANION EXCHNG 2006						
Beginning Balance								260,885.89
11/30/2008	ALL	Summarized for this account	004834	005256	2,116.89	0.00		263,002.78
Account Total:		Beginning Balance:	\$ 260,885.89		\$ 2,116.89	\$ 0.00	\$ 2,116.89	\$ 263,002.78
		Grand Totals:	\$ 260,885.89		\$ 2,116.89	\$ 0.00	\$ 2,116.89	\$ 263,002.78