

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

RECEIVED-FPSC  
09 JUN -4 PM 3:36  
COMMISSION  
CLERK

In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

Docket No. 010503-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.

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

In re: Joint notice by Aloha Utilities, Inc. And the Florida Governmental Utility Authority of transfer of water and wastewater assets to the Florida Governmental Utility Authority, in Pasco County and cancellation of Certificate Nos. 136-W and 97-S.

Docket No. 090120-WS

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Aloha Utilities, Inc. (hereinafter "Aloha"), by and through its undersigned counsel, and pursuant to Sections 120.569 and 120.57, Florida Statutes, hereby requests a formal administrative hearing concerning the proposed agency action of the Florida Public Service Commission in Order No. PSC-09-0334-PAA-WS (the "Order")

1. The name and address of the Petitioner is Aloha Utilities, Inc., Post Office

COM \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL 2 \_\_\_\_\_  
OPC \_\_\_\_\_  
RCP \_\_\_\_\_  
SSC \_\_\_\_\_  
SGA \_\_\_\_\_  
ADM \_\_\_\_\_  
CLK \_\_\_\_\_

Box 3557, Holiday, Florida 34692. For the purposes of this proceeding, the address and telephone number of the Petitioner is that of its undersigned counsel.

DOCUMENT NUMBER-DATE

05599 JUN -4 8

FPSC-COMMISSION CLERK

2. The name, address and telephone number of the Respondent is Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850. The phone number is 850-413-6770.

3. Aloha is substantially affected by the Commission's proposed action. The Commission's proposed action will improperly exercise jurisdiction over Aloha and its assets; will deprive Aloha of monies to which it is lawfully, rightfully, and contractually entitled; and will continue to inextricably intertwine Aloha with a regulatory body with whom it desires to have no further contact.

4. Aloha received a copy of the Commission's Proposed Agency Action on or about May 12, 2009.

5. The disputed issues of material fact in this proceeding include:

- a. whether the Commission has the authority and jurisdiction to dispose of the monies in escrow;
- b. whether the Commission has the jurisdiction or authority to propose to transfer the money to the Florida Governmental Utility Authority;
- c. whether Aloha has demonstrated its entitlement to the monies in escrow;
- d. whether Aloha is entitled to the monies as a matter of law and fact;
- e. whether the monies were earmarked and intended by the Commission to defray Aloha's expenditures on the implementation of the anion project;
- f. whether the Commission, by and through its actions, induced Aloha to act, to Aloha's detriment, by making Aloha a promise or assurance

that either the Commission did not intend to honor, or that the Commission subsequently determined should not or could not be honored;

- g. whether the transfer of the monies to the Florida Governmental Utility Authority as proposed is supported by any reasonable or factual or policy basis; and
- h. whether this matter should be stayed or abated until these issues are adjudicated by a court of competent jurisdiction;
- i. whether a portion of the money the Commission has proposed to transfer to FGUA should be released to Aloha consistent with prior Commission Orders.

6. The ultimate facts which entitle Petitioner to relief include:

- a. that the Commission has no authority and jurisdiction to dispose of the monies in escrow;
- b. that the Commission has no jurisdiction or authority to propose to transfer the money to the Florida Governmental Utility Authority;
- c. that Aloha has demonstrated its entitlement to the monies in escrow;
- d. that Aloha is entitled to the monies as a matter of law and fact;
- e. that the monies were earmarked and intended by the Commission to defray Aloha's expenditures on the implementation of the anion project;
- f. that the Commission, by and through its actions, induced Aloha to act, to Aloha's detriment, by making Aloha a promise or assurance

that either the Commission did not intend to honor, or that the Commission subsequently determined should not or could not be honored;

- g. that the transfer of the monies to the Florida Governmental Utility Authority as proposed is not supported by any reasonable or factual or policy basis; and
- h. that this matter should be stayed or abated until these issues are adjudicated by a court of competent jurisdiction.
- i. that a portion of the money the Commission has proposed to transfer to FGUA should be released to Aloha consistent with prior Commission Orders.

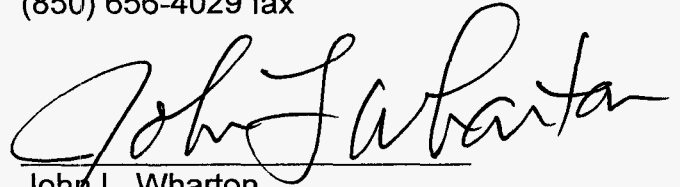
7. The Order, in all respects referenced herein above, fails to comport with the essential requirements of law; is contrary to Chapter 367; is contrary to the Florida Administrative Procedure Act and other applicable tenets of Florida law; asserts jurisdiction and authority over monies which are rightfully Aloha's and over which the Commission has no such jurisdiction or authority; and proposes to dispose of the monies in a way that is entirely contrary to precedent, law, the applicable facts, sound policy, and common sense.

WHEREFORE, Petitioner, Aloha requests that:

- a. the Commission issue an order recognizing Aloha's entitlement to the monies in escrow and releasing those monies, in their entirety, to Aloha.
- b. in the alternative, that the Commission issue an order releasing those monies to Aloha as required by prior Commission orders.

Respectfully submitted this 4<sup>th</sup> day of June, 2009.

Rose, Sundstrom & Bentley, LLP  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301  
(850) 877-6555  
(850) 656-4029 fax

A handwritten signature in black ink, appearing to read "John L. Wharton". The signature is written in a cursive style and is positioned above a horizontal line.

John L. Wharton  
F. Marshall Deterding