

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a limited proceeding  
increase in water rates in Pasco County  
by Aloha Utilities, Inc.

Docket No. 060122-WU

Filed: September 5, 2008

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**ALOHA UTILITIES, INC.'S RESPONSE TO  
CITIZENS' MOTION TO DISMISS OR IN THE  
ALTERNATIVE, MOTION TO AMEND  
PROCEDURAL ORDER**

ALOHA UTILITIES, INC. ("Aloha"), by and through its undersigned attorneys, hereby files this response to the Citizens' Motion to Dismiss or in the Alternative, Motion to Amend Procedural Order (the "Motion"), and would state as follows:

*The Posture Of OPC's Motion*

This is OPC's second suggestion that the Commission shut down this rate proceeding in the last few weeks. In a pleading filed with the Commission on August 18, 2008, OPC urged that final resolution of the anion exchange docket "is necessary" before the Commission can resolve Aloha's pending rate request.<sup>1</sup> Now, a mere 11 days later, OPC formally moves to dismiss (or alternatively, delay) this rate proceeding on a whole other unconnected and unrelated basis. In

In this regard, OPC's agenda to stop Aloha from obtaining this needed rate increase

<sup>1</sup>It is notable that OPC has never made this suggestion before that particular filing.

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by whatever means possible, is clear. This Motion cannot be read in the proper context without due consideration of the fact that this rate proceeding is not merely the unquestioned prerequisite to the initiation of bulk water service from Pasco County (which has been universally accepted as the only source available to Aloha to meet the needs of its present and future customers) but that this rate increase is also in fact the prerequisite to the very commencement of the work, which will take many months at a minimum, necessary to make that bulk water purchase a reality. As such, OPC's request for a delay is not only (a) violative of the stipulation OPC entered into; (b) violative of the Commission's subsequent order; and (c) without good cause (all as argued below), but it is also clearly and plainly contrary to the public interest. Aloha needs this water. The Commission knows Aloha needs this water. The Southwest Florida Water Management District has been attempting to fine Aloha millions of dollars for over seven years for failure to take this water. OPC has acknowledged that Aloha needs this water. Any delay in this proceeding will result in a delay in obtaining Aloha this needed bulk water.

Additionally, Aloha has been under pressure from the Southwest Florida Water Management District for several years to decrease its groundwater withdrawals. This rate request is the culmination of the efforts of Aloha, the Commission staff, and (at least ostensibly) OPC to achieve that end. Delay of this

proceeding delays Aloha's ability to meet the concerns of SWFWMD.

***OPC's Request Violates The Stipulation OPC Signed And Invites  
The Commission to Ignore its Own Prior Order***

1. OPC has moved, in the alternative, either to dismiss this proceeding or for the Commission to amend the procedural order such that the proceeding would be reset at some unknown date in the future. These Motions, in and of themselves are the personification of stipulator's remorse.

2. On February 3, 2006, OPC entered into a Stipulation On Procedure (see Attachment "A") wherein OPC agreed that the purchase of supplemental water from Pasco County was the only reasonable and feasibly available option to Aloha to insure that Aloha has sufficient water to serve the potable needs of its present and future customers. Therein, OPC indicated its willingness "to agree on certain procedures and time frames for the processing of" this limited proceeding. The Stipulation clearly indicated that it would bind the parties if it was approved by the Commission, which it was (see Attachment "A"). OPC's Motion to Dismiss cannot be reconciled with OPC's Stipulation that this rate increase should be processed as a limited proceeding and that the scope of the proceeding would be "issues related to the chloramination facilities and the additional water purchased (including the cost of any interconnection facilities, any required impact fees, and any related reduction in Aloha's water treatment costs). No amount of sophistry can change

the fact that OPC is now moving to dismiss a proceeding which it stipulated could and should occur.

3. Likewise, OPC's Motion to Dismiss invites the Commission to violate its own Order Approving Stipulation On Procedure (see Attachment "A"). That Order specifically found that the issues to be considered in this proceeding and the time tables enumerated in the Stipulation were reasonable, and recognized that approval of the Stipulation would facilitate the ultimate goal of the parties reaching a global agreement to resolve the outstanding issues between them (which in fact happened). The Commission issued an Order contemplating the processing of this very rate request. To dismiss the matter now would be entirely inconsistent with that Order.

4. Likewise, OPC's alternative request for relief, that the case be continued and the order of presentation changed (through an amended procedure order), also clearly violates the Stipulation On Procedure. OPC stipulated that in the event the PAA Order was protested, the Commission would issue its final order within eight months of the date of such protest. The Commission specifically approved the Stipulation On Procedure (see Attachment "A"). OPC's Petition was filed on March 24, 2008 (as were the other Petitions in this proceeding). Eight months from March 24, 2008 would be November 24, 2008. Under the current

schedule of this case, the Final Order will likely be issued by the Commission some time in early 2009. Through no fault of Aloha, the stipulated (and ordered) eight month period for the issuance of the Final Order (in the case of a protest) already cannot and will not be achieved. OPC now seeks, in violation of its own Stipulation and contrary to the Commission's Order, to exacerbate that delay.

5. OPC's Stipulation should mean something. Order No. PSC-06-0169-S-WU should mean something. OPC's Motions should be summarily denied on this basis alone.

***OPC Has Failed To State Good Cause  
For Its Motion To Dismiss***

6. OPC's Motion to Dismiss is based upon a statement in Aloha' prefiled direct testimony that Aloha will modify its rate increase request based upon certain "known and measureable changes" at the time of the filing of its rebuttal testimony. OPC has in its Motions set forth several arguments that it may properly make at the appropriate time, but which are clearly premature at this point. OPC will have the opportunity, *when Aloha's testimony and evidence is actually put into the record*, to set forth whatever objections it may have to the introduction of that evidence. OPC's Motion is not addressed to anything Aloha has actually filed, but rather only to what may occur in the future in the form of testimony and requests which OPC and the staff have not even seen at this point. To direct a Motion to Dismiss at

something that might occur in the future, rather than at something that has occurred, is so specious that it cannot be read in context without proper reference to the fact that OPC has argued this case should be delayed in a separate pleading filed only a week before. OPC is apparently grasping at any straw it can to achieve that end. OPC's argument that the Commission should dismiss this case because to do otherwise "would set a bad precedent permitting utilities to increase their original rate request every time a Commission's PAA Order is protested" makes numerous assumptions about what will occur, but what has not yet occurred, regarding the testimony, the basis of the testimony, OPC's reaction, the staff's recommendation, and the Commission's ultimate decision. The Motion should be dismissed for these reasons.

***OPC's Has Failed To State Good Cause  
For Its Motion To Amend The Procedure Order***

7. OPC's alternative motion essentially asks that the case begin anew. Once again anticipating what might happen, and assuming that it will have inadequate time to engage in discovery or evaluate Aloha's requested rate increase (another assumption), OPC asks the Commission, in violation of its own Stipulation, to continue to delay this needed rate increase (already delayed by the filing of a Petition by OPC and by a Petition ghost-written by OPC for certain customers). OPC will have every appropriate and proper procedural and

substantive means as it would in any case, at the time of this hearing, to make any argument regarding Aloha's case, Aloha's request, or Aloha's evidence as would any participant in an administrative proceeding under these facts and circumstances.

8. OPC's selective quote from a staff recommendation in a proceeding involving Aqua in 2007 conveniently omits staff's statement therein that "**the Commission has made adjustments to filed data in past rate cases for utilities when the corrections were based on known and measureable changes**".<sup>2</sup> Whether Aloha will propose adjustments in this case, based on known and measureable changes, and whether the Commission will accept those adjustments, is little more than speculation at this point. At the time such adjustments are proposed, if they are known and measureable and consistent with past Commission practice and orders, then it is incumbent upon the Commission to accept them, in furtherance of and consistent the Commission's constitutional obligation to set compensatory rates and with Aloha's constitutional right to earn a fair return on its investment. It should also be incumbent upon OPC to refrain from using procedural niceties or circuitous arguments to "defeat" Aloha's attempt to gain such

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<sup>2</sup> Interestingly enough, OPC itself has traditionally been a fan of the doctrine whereby adjustments based on known and measureable changes are allowed in Commission proceedings when it serves to depress or decrease rates, but is situationally against the same process in this case for obvious reasons.

rate recognition. Any argument, as to whether any change is appropriate because it is known and measureable, whether such argument is made by Aloha or made by OPC, is an argument for another day. OPC's preemptive strike, by its speculative nature and timing, and the fact that the testimony in question *is not even filed* reveals that that day is not today.

9. OPC's argument that there is no good reason to proceed with this limited proceeding because the rates "will not even take place until Aloha begins purchasing water from Pasco County" and that such is projected to occur in "year-end 2009" is smoke and mirrors. Every day this proceeding is delayed, and every day further which the Final Order is delayed beyond the date contemplated in the Order Approving Stipulation On Procedure, is another day delay for the purchase of water from Pasco County, another day of noncompliance with Water Management District directives, another day of financial hardship for Aloha and another day of risk to Aloha's customers of insufficient water supplies. While OPC apparently has no agenda to expedite the purchase of water from Pasco County and meet the requirements of state regulatory agencies, Aloha does have such an agenda and is ready, willing, and able to proceed with this rate proceeding as scheduled, a schedule which already represents a set back to Aloha's need to obtain the water it needs from Pasco County on the earliest possible date.



WHEREFORE, in consideration of the above, Aloha respectfully requests the Commission deny OPC's Motions.

Respectfully submitted this 5th day of September, 2008.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail and U.S. Mail\* to the following this 5th day of September, 2008:

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