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OF COUNSEL

November 19, 1999
VIA HAND DELIVERY

Mr. Joe A. Garcia, Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: 1999 General Rate Increase Application - Docket No. 991643-SU
Seven Springs System
Our File No. 26038.30

Dear Chairman Garcia:

After discussions with the staff, we were informed that you and they needed to know what test year we intended to utilize for interim rates in order to complete your test year approval letter in response to our letter dated October 22, 1999. This letter is intended to provide that additional information.

The Utility had originally intended to seek recovery through interim rates of one specific expense imposed upon the Utility in recent months by the Florida Department of Environmental Protection through a Consent Agreement. While the entire rate case is to some extent based upon the improvements required by DEP in the same Consent Agreement, some of the new operating costs imposed upon the Utility, specifically increased staffing at the wastewater treatment plant, have already taken effect and the Utility is expending those monies on a going-forward basis. As such, we have discussed at length with the staff, the desire of the Utility to have recovery of those prudently incurred expenditures, required by a duly authorized governmental authority, in interim ratesetting. Since those expenditures have only occurred in the last few months, we had discussed with the staff three different alternatives for appropriate recognition of those costs in interim rates. These three alternatives were:

1. Use of a projected test year to include a full year of these new costs, such a projection would require utilization of a projected test year ended no earlier than November 30, 2000. This would be the most costly interims of rate case expense of the three alternatives available.
2. Annualization of actual expense based upon a test year ended November 30, 1999. Because the new staffing requirements imposed upon the Utility by DEP will be in full effect as of December 1, 1999, we had proposed to the staff the possibility of annualizing this one cost as a part of the interim request and utilizing a historic test year ended

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November 30, 1999. This would be the least costly in terms of rate case expense, of the three alternatives available.

3. Finally, we had suggested a third alternative of proforma recognition of the one increased operating cost for increased staffing, and utilizing our base year ended in July, 1999, or a more recent year ended as late as November 30, 1999, in order to gain full recognition of this increased cost that the Utility is now incurring. The cost effectiveness of this alternative is the same as Paragraph 2 above.

The Commission recently completed an informal investigation of the rates and charges of the Utility and its earnings level. This was done in conjunction with two limited proceedings, as well as an informal rate review. The findings of the Commission showed that the one system of Aloha Utilities which is the subject of this rate increase (the Seven Springs Sewer System) was earning almost exactly at the midpoint of the range of reasonable returns based upon a test year ended December 31, 1998.

Because the Utility did not agree with all the adjustments that led to this conclusion, this is a conservative figure. The Utility intends to demonstrate that it is actually in a loss position at this time. Based upon this fact and the fact that Aloha has been required by DEP as part of a Consent Agreement to increase staffing at its wastewater treatment plant and that requirement has been imposed in two steps, the last of which will occur within the next two weeks, we believe it is appropriate that the Commission recognize this increased cost in interim ratesetting. This case presents a unique situation where it is only just and reasonable for the Commission to recognize such additional costs imposed upon the Utility Company in interim rates.

We have been told by the staff, as a result of our informal discussions, that it has not been the position of the Commission to recognize in interim ratesetting either proforma or annualized increases in expenses. While I am not aware of any that have specifically addressed the issue and the appropriateness of such recognition by the Commission, given the Commission's obligation to establish fair and reasonable rates, I do not understand why the additional expenses imposed upon Aloha in this circumstance by the environmental regulator, would not be appropriate for interim consideration, regardless of the method required to reach that recognition.

Through discussions with the staff, it is also my understanding that the one time that the Commission has considered recognizing a projected test year for interim ratesetting, that utilization of projected test year for interim purposes was rejected by the staff in their recommendation, and ultimately by the Commission. As a general proposition, Aloha Utilities adamantly disagrees with this conclusion. The provisions of Section 367.082, authorize the Commission to utilize a projected test period in the establishment of interim rates. However, because the Statute refers to "a projected test year rate base" (emphasis supplied), the Commission in its Order related to Florida Water Service has interpreted this to effectively bar by its omission, the utilization of projected operating costs. In doing so, the Commission is determined that this relatively new provision of the Statute authorizing utilization of a projected test year for interim purposes is not workable, and as such, has rejected the statutory change as a general practice. We believe this is an inappropriate position for the Commission to take. A reasonable reading of the Statute would incorporate utilization of a projected test year expenses and rate base in general, in order to properly match a projected rate base with the projected operating cost. It is a well established axiom of statutory interpretation that if a Statute is subject to more than one interpretation, one or more of which render the Statute unworkable, one must utilize the interpretation that renders the Statute workable. Therefore, the interpretation in the Florida Water Services case, that all interim rates based upon projections are rejected by the Commission out

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of hand, is an inappropriate interpretation. I offer the following excerpt from a recent Florida Supreme Court Opinion on this rule of statutory construction:

“We are compelled by well-established norms of statutory construction to choose that interpretation of statutes and rules which renders their provisions meaningful. Statutory interpretations that render statutory provisions superfluous ‘are, and should be, disfavored.’”

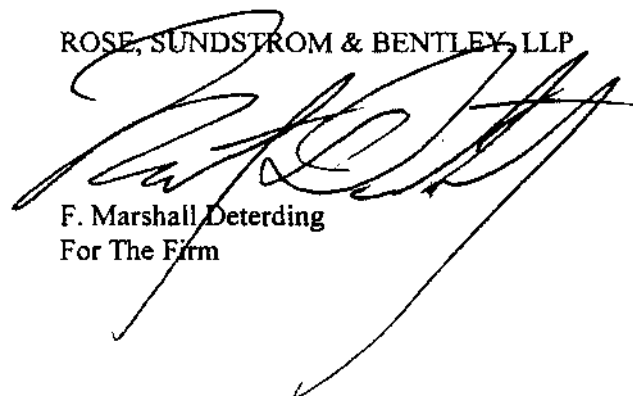
Hawkins V. Ford Motor Company 24 Fla. Law W. S480, 482 (Fla 1999).

More specifically, Aloha also believes that the particular circumstances in which it finds itself justifying a utilization of a projected proforma or annualized test year in order to recognize this one additional cost imposed upon the Utility by the environmental regulator. It is unreasonable, on the one hand, to recognize that an environmental regulator is imposing this additional cost on Aloha and to reject recognition of it for interim purposes, as this plainly violates the Utility’s entitlement to reasonable rates and to the Commission’s responsibility to set such reasonable and compensatory rates. The customers are not harmed, in that full review of these expenses will be performed by the Commission in the course of the rate proceeding, and the Utility is only asking for those costs specifically imposed upon it by the environmental regulator. In addition, because the Utility’s operations have recently been reviewed and it was determined that prior to this substantial increase in staffing imposed upon the Utility by DEP, the Utility was earning at its authorized rate of return, the Commission has the information available to ensure that the inclusion of this one additional cost will not cause the Utility to overearn.

Based upon all of the above, we urge you as the Chairman, as well as your staff, to carefully consider granting to Aloha Utilities, Inc. an appropriate test year for interim purposes which will recognize this increased cost imposed upon the Utility by DEP, regardless of which interim test year you believe is most appropriate for that purpose. The Utility cannot recover its costs, and the Commission cannot comply with its responsibility to set just and reasonable rates, without recognition of this cost in interim ratesetting. We appreciate your and the staff’s careful review of these issues and the approval of an appropriate interim test year in order to set just and reasonable rates for this Utility.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP



F. Marshall Deterding
For The Firm

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