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ORIGINAL

November 29, 2000

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RECORDS AND REPORTING

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 991643-SU

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of a Response to Aloha's Motion for Reconsideration for filing in the above-referenced docket.

Also Enclosed is a 3.5 inch diskette containing the Response to Aloha's Motion for Reconsideration in WordPerfect for Windows 6.1 format. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Burgess
Deputy Public Counsel

SCB/dsb
Enclosures

- APP _____
- CAF _____
- CMP _____
- COM 3
- CTR _____
- ECR Merchant
- LEG 2
- OPC _____
- PAI _____
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- SEC 1
- SER _____
- OTH _____

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Ms
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
15262 NOV 29 8
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for increase)
 in wastewater rates in Seven)
 Springs System in Pasco County)
 by Aloha Utilities, Inc.)

Docket No. 991643-SU
 Filed: November 29, 2000

RESPONSE TO ALOHA'S
MOTION FOR RECONSIDERATION

The Citizens of the State of Florida, through their attorney, the Public Counsel, pursuant to Rule 25-22.0376, Florida Administrative Code, hereby respond to Aloha's Motion for Reconsideration of a PSC evidentiary ruling filed on November 15, 2000, and state:

1. The nature of the Commission's evidentiary ruling should be considered to be a non-final order. As such, the procedure for reconsideration would be governed by Rule 25-22.0376, Florida Administrative Code. Under that rule, Aloha's motion (as well as this response) is untimely.
2. Even if Aloha's motion is considered to be timely filed, Aloha's Motion does not state any valid grounds for reconsideration of the Commission's evidentiary ruling on the purported rebuttal testimony proffered by Aloha.
3. Aloha has misinterpreted the entire rationale for the oral motion made by OPC and the basis for the Commission's ruling on that motion. The testimony in question was excluded because it was not actually rebuttal to the testimony that it purported to rebut. Ms. Merchant's testimony had asserted that Aloha's earlier testimony did not meet what she considered to be a convincing level of proof. Ms. Merchant's testimony then suggested various items omitted from Aloha's earlier testimony which she believed might have been more convincing.

An excellent illustration of this is the following excerpt from Ms. Merchant's testimony:

DOCUMENT NUMBER-DATE

15262 NOV 29 8

FPSC-RECORDS/REPORTING

Q. Do you believe that it was prudent for the utility to purchase a building without performing a cost benefit analysis?

A. No I do not. Staff has not been provided with information that supports Aloha's decision to purchase this particular building. If Aloha did perform any such analysis, the results of its analysis or its conclusions reached, whether written or not, have not been provided through discovery. I believe that a prudent business owner in the competitive market would perform a cost benefit analysis to determine whether its decision to lease or purchase a material piece of property was economical and prudent. Just because Aloha is a regulated monopoly does not excuse it from performing a prudent and essential business analysis.

[T-683]

Ms. Merchants' complaint is that the information submitted by Aloha did not contain information that she believed supported the decision to purchase. In other words there was a void in the utility's offer of proof.

4. Ms. Merchant then suggested the type of information that she might have considered to fill the void in the utility's offer of proof, as follows:

Q. What kind of analysis do you believe should have been done before purchasing this building?

A. I believe that Aloha should have documented the minimum requirements for its new office location. Examples of these

requirements could have been size, location, availability, cost and whether the property was available for purchase or lease. It then should have researched and compiled a list of all the available properties that fit the minimum criteria established. Aloha then should have compared each of the alternatives and documented the advantages and disadvantages of each property. Any that were found unsatisfactory should have been documented and removed from the list. All of the attributes of the acceptable locations should have been detailed and documented so that an appropriate decision could have been made based on these facts.

[T-683, 684]

5. Ms. Merchant's position is basically two-fold: (1) the utility was given the opportunity to present whatever information it considered necessary to demonstrate the prudence of the building purchase; (2) the information that the utility brought forward was not adequate to demonstrate the prudence of its decision.

6. There are only two ways to rebut the two-fold position described in paragraph 4, above.

Either:

(a) the utility could have argued that it had, in fact, provided the information that Ms. Merchant said was missing; or

(b) the utility could have argued that notwithstanding the omission of the information suggested by Ms. Merchant, the utility's

supplemental direct testimony nevertheless demonstrated the prudence with the information that it did contain.

Either of those two approaches would have been rebuttal to Ms. Merchant, but the utility did neither. Instead, the utility untimely provided the information that Ms. Merchant said should have been provided in the first instance. [See Mr. Watford's Supplemental "Rebuttal" p. 7, l. 13 through p. 22, l. 5] By later providing the information identified by Ms. Merchant, Aloha confirms her point that it was originally missing. Consequently, the proffered testimony is not rebuttal to Ms. Merchant, and the Commission ruled appropriately.

7. In paragraph 10 of its Motion, Aloha concedes this very point and shows that it still does not understand the reason for the Commission's ruling. In paragraph 10, Aloha admits that Mr. Watford was simply "responsive" in providing the information that Ms. Merchant believed was required for Aloha to meet its initial burden of proof. That is precisely the point: Mr. Watford rebutted nothing; instead he conceded Ms. Merchant's position that such information had not theretofore been supplied.

8. Paragraphs 1, 2, 3, 4, 5, and 8 simply complain that Ms. Merchant's testimony adopted improper criteria for Aloha's burden of proof. This issue, however, has nothing to do with the Commission's evidentiary ruling. If Aloha objects to standard that Ms. Merchant appeared to set for Aloha's proof of a prudent expenditure, Aloha has several avenues to challenge that. Those arguments are absolutely irrelevant to the evidentiary ruling, however, and will not cure the defect of the "rebuttal" testimony proffered by Aloha.

9. Aloha's final contentions contained in paragraph 11 simply re-argue the points raised by Aloha during the hearing. Paragraph 11 does not show any point of law or fact which the Commission

misapprehended or misapplied in its ruling. As a result, it does not present proper grounds for reconsideration.

WHEREFORE, the Citizens of the State of Florida respectfully request the Commission to deny Aloha's Motion for Reconsideration.

Respectfully submitted,

Jack Shreve
Public Counsel



Stephen C. Burgess
Deputy Public Counsel

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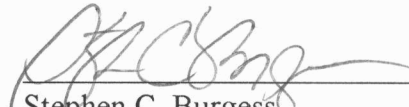
Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
DOCKET NO. 991643-SU

I HEREBY CERTIFY that a copy of the foregoing RESPONSE TO ALOHA'S MOTION FOR RECONSIDERATION has been furnished by U.S. Mail or *hand-delivery to the following parties this 29th day of November, 2000.

Ralph Jaeger*
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Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Stephen C. Burgess
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