

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 010503-WU
ORDER NO. PSC-01-2350-PCO-WU
ISSUED: December 6, 2001

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR EXTENSION
OF TIME TO FILE REBUTTAL TESTIMONY, DENYING REQUEST
FOR ORAL ARGUMENT ON MOTION, AND THIRD ORDER ESTABLISHING
NEW CONTROLLING DATE FOR FILING REBUTTAL TESTIMONY

Order No. PSC-01-2328-PCO-WU, issued November 29, 2001, granted Aloha Utilities, Inc.'s (Aloha or utility) Unopposed Motion for Extension of Time to File Rebuttal Testimony (Unopposed Motion), and the date to file rebuttal testimony was extended to December 10, 2001. That Order otherwise reaffirmed Orders Nos. PSC-01-1680-PCO-WU and PSC-01-1752-PCO-WU, issued August 17, 2001 and August 28, 2001, respectively.

However, on December 3, 2001, Aloha filed its Partially Opposed Motion for Extension of Time to File Rebuttal Testimony (Motion) and its Request for Oral Argument. In this latest Motion, Aloha requests that the date to file its rebuttal testimony be extended from December 10, 2001 to December 17, 2001.

In support of its Motion, Aloha reiterates the reasons it gave in its previous Unopposed Motion; i.e., that the number of witnesses in this proceeding is more than twice the number of witnesses presented in any of Aloha's recent cases before the Commission and that Aloha's counsel and consulting engineer are both involved in a proceeding in another jurisdiction with almost identical timetables to those within this case. However, the primary reason for this latest request appears to be the unavailability of staff witness Frances J. Lingo for deposition.

Ms. Lingo's deposition was originally scheduled to take place on Friday, November 30, 2001, but was delayed due to illness. Although it has been repeatedly tentatively rescheduled, Ms. Lingo's illness has been continuing, and her deposition is currently scheduled to take place on Friday, December 7, 2001,

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which is seven days later than the originally scheduled deposition date.

In its Motion, Aloha states that it finds itself in a difficult situation, which is not of its own making, and that it always intended to take Ms. Lingo's deposition in the span between the filing of staff's testimony and the due date for Aloha's rebuttal testimony. Aloha further states that Ms. Lingo is providing extensive testimony on issues that are rather unique to this case and are in opposition to the positions taken by the utility; thus, Ms. Lingo's deposition is essential to the final preparation of testimony from all of the utility's primary witnesses. Aloha states that with the original deposition date, it was already in the position of having to obtain expedited deposition transcripts of Ms. Lingo's deposition in order to meet the rebuttal filing due date of December 10, 2001. With the change to the deposition date to no earlier than Friday, December 7, 2001, there would be no time for Aloha or its witnesses to obtain the transcripts and review them prior to the December 10, 2001 due date. Thus, Aloha requests that the date to file its rebuttal testimony be extended an equal number of days after the originally scheduled deposition of Ms. Lingo. With the deposition set for December 7, 2001, Aloha requests that rebuttal testimony be due on Monday, December 17, 2001.

Aloha further states that it conferred with staff counsel on this Motion and that staff agreed that the due date for rebuttal testimony should be extended to December 17, 2001, but only on the issues that Ms. Lingo's testimony addresses. Aloha states that this proposal is unworkable for several reasons. Aloha states that Ms. Lingo's deposition is necessary to clarify which issues she is addressing and to what extent her issues affect Aloha's witnesses' testimony. Further, Aloha states that it would be prejudiced and placed at substantial risk if it were forced to bifurcate its rebuttal testimony. In addition, Aloha states that to limit the second portion of the rebuttal testimony to issues that are raised by Ms. Lingo through her deposition would result in further disagreement and motion practice between parties, thereby imposing additional cost and prejudice to Aloha. Finally, Aloha states that the preparation of separate sets of rebuttal testimony will have the effect of destroying the flow of Aloha's witnesses' testimony and will also result in additional rate case costs.

Aloha states that after conferring with the parties, it found that Mr. Edward O. Wood does not oppose extending the filing date for rebuttal testimony to December 17, 2001, OPC is in agreement with Commission staff, and counsel for the Southwest Florida Water Management District is opposed to granting Aloha an extension.

As stated previously, Aloha filed a Request for Oral Argument in conjunction with its Motion. In its Request, Aloha states that oral argument would assist the Commission Panel to understand all the facts and circumstances of Aloha's Motion.

Having considered all the above, the request of Aloha appears to be reasonable to the extent that it not be required to bifurcate the filing of its rebuttal testimony. However, Aloha has already been granted a four-day extension for other reasons. Therefore, the Motion shall be granted in part and denied in part, and Aloha shall be granted another four-day extension of time in which to file its rebuttal testimony. Assuming that Ms. Lingo's deposition takes place on Friday, December 7, 2001, all rebuttal testimony shall now be due on Friday, December 14, 2001. Moreover, Aloha's request for oral argument is denied. All other controlling dates shall remain the same.

Based on the foregoing, it is

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that the Partially Opposed Motion for Extension of Time to File Rebuttal Testimony filed by Aloha Utilities, Inc. is granted in part and denied in part. It is further

ORDERED that if the deposition of Commission staff witness Frances J. Lingo takes place on Friday, December 7, 2001, all rebuttal testimony shall be due on Friday, December 14, 2001. It is further

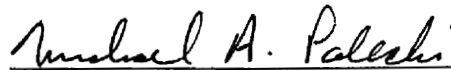
ORDERED that Aloha's Request for Oral Argument is denied. It is further

ORDERED that all other controlling dates remain the same. It is further

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ORDERED that Orders Nos. PSC-01-1680-PCO-WU, PSC-01-1752-PCO-WU are reaffirmed in all other respects.

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 6th day of December, 2001.



MICHAEL A. PALECKI
Commissioner and Prehearing Officer

(S E A L)

LAE

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida

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Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.