

SUZANNE BROWNLESS, P. A.
ATTORNEY AT LAW
1975 Buford Boulevard
Tallahassee, Florida 32308

ORIGINAL

ADMINISTRATIVE LAW
GOVERNMENTAL LAW
PUBLIC UTILITY LAW

TELEPHONE (850) 877-5200
TELECOPIER (850) 878-0090

October 2, 2002

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0800

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COMMISSION
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Re: Docket No. 020413-SU - Initiation of Show Cause Proceedings against Aloha Utilities, Inc. for failure to charge approved service availability charges in violation of Order PSC-01-0326-FOF-SU and Section 367.091, F.S.

Dear Ms. Bayo:

Attached please find the original and fifteen copies of Aloha Utilities, Inc.'s Request for Hearing to be filed in the above-styled docket. Also attached is a copy to be stamped and returned to our office.

Should you have questions or need any additional information, please contact me.

Thank you for your assistance in this matter.

Very truly yours,

Suzanne Brownless
Attorney for Aloha Utilities, Inc.

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10646 OCT-28

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Initiation of show cause)	
proceedings against Aloha Utilities,)	
Inc. in Pasco County for failure to)	
charge approved service availability)	DOCKET NO. 020413-SU
charges, in violation of Order No.)	
PSC-01-0326-FOF-SU and Section)	
367.091, Florida Statutes.)	
)	

ALOHA UTILITY, INC.'S REQUEST FOR HEARING

Pursuant to Rules 25-22.029 and 28-106.201, Florida Administrative Code, and Order No. PSC-02-0250-SC-SU (Order 02-0250), issued on September 11, 2002, Aloha Utilities, Inc. (Aloha), through its undersigned counsel, files this petition for a \$120.57, Florida Statutes, formal hearing and in support thereof states as follows:

I. Background

1. Order 02-1250 addressed seven issues: Issues 1, 3, 4, and 6¹ as proposed agency action and Issues 2, 5 and 7² as final agency action. [Order 02-1250 at 1-2]

II. Intervenor information

2. The name and address of the Petitioner is:

Aloha Utilities, Inc.
6915 Perrine Ranch Road
New Port Richey, Florida 34655

3. Copies of all correspondence, pleadings, notices and

¹ Issue 1: Aloha's proposed Settlement Agreement; Issue 3: backbilling; Issue 4: Imputation of CIAC; Issue 6: Effective date of wastewater service availability tariff.

² Issue 2: Show cause; Issue 5: Intervention of SRK Partnership Holdings, LLC and Benchmark Manmem Corporation; Issue 7: Closure of docket.

DOCUMENT NUMBER DATE

10646 OCT-28

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orders in this docket should be provided to:

Suzanne Brownless
Suzanne Brownless, P.A.
1975 Buford Blvd.
Tallahassee, Florida 32308
Phone: (850) 877-5200
FAX: (850) 878-0090
E-Mail: sbrownless@comcast.net

Steve Watford, President
Aloha Utilities, Inc.
6915 Perrine Ranch Road
New Port Richey, Florida 34655
Phone: (727) 372-0115
FAX: (727) 372-2677

III. Substantial interest

4. By Order 02-1250 the Commission: imputed CIAC in the amount of \$659,547 to Aloha; authorized Aloha to backbill developers and builders for the service availability charges which should have been collected from May 23, 2001 to April 16, 2002; set the effective date of Aloha's service availability tariff at April 16, 2002; granted SRK Partnership Holdings, LLC and Benchmark Manmem Corporation (Limited Partners) limited intervention; rejected Aloha's tendered Settlement Agreement; and issued a show cause imposing a fine of \$10,000 on Aloha. [Order 02-1250 at 22-5.] The service availability charge CIAC imputation, backbilling, effective date of the tariff and rejection of Aloha's Settlement Agreement were all issued as Proposed Agency Action (PAA) items.

5. The PAA issues clearly impact Aloha's substantial interests in that: imputed CIAC lowers the rate base upon which Aloha is entitled to earn a fair rate of return; the effective date of the tariff controls the date by which the CIAC can be imputed;

the ability to backbill mitigates the utility's rate base losses and the rejection of the Settlement Agreement results in a greater penalty being imposed on Aloha than it had agreed to. That being the case, the two prong test of Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), for proving substantial interest has been met by Aloha. Aloha will, as demonstrated above, sustain an injury in fact of sufficient immediacy due to the Commission's decisions in Order 02-1250 and Aloha's interest is of the type this proceeding is designed to protect: the integrity of utility compliance with Commission rules and statutes.

III. Disputed Issues of Fact and Law

6. The following issues have been identified by Aloha as disputed issue of material fact in this proceeding:³

Issue 1: Does the imputation of CIAC without the ability to fully backbill for the undercollected service availability charges which should have been collected from May 23, 2001 to April 16, 2002 constitute a taking?

Issue 2: Is it appropriate to impute CIAC for the

³ Aloha wishes to make its intent clear: this request for hearing is being filed in order to preserve Aloha's right to backbill developers and builders who connected to Aloha's system from May 23, 2001 until April 16, 2002 should Aloha's Motion for Reconsideration and Clarification filed on September 24, 2002, and amended on September 26, 2002 not be granted. Aloha has agreed to the full imputation of CIAC for undercollected service availability charges on the condition that the Commission authorizes Aloha to collect 100% of those service availability charges from the developers and builders who should have paid them. If, for whatever reason, the Commission reverses its decision to authorize 100% backbilling, Aloha will go to hearing. If, however, the Commission sticks with its decision to allow 100% backbilling, Aloha will withdraw its request for hearing.

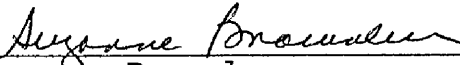
uncollected service availability charges which should have been collected from May 23, 2001 until April 16, 2002 and, if so, what amount of CIAC should be imputed?

IV. Ultimate Facts Alleged

7. Imputation of CIAC for undercollected service availability charges without authorizing the utility to backbill developers and builders who should have paid the correct charge constitutes an illegal taking in violation of the Florida and federal Constitutions. Unless backbilling is allowed, no amount of CIAC should be imputed.

WHEREFORE, Aloha Utilities, Inc. respectfully requests that this Commission set this matter for a \$120.57 formal evidentiary hearing and grant such other relief as the Commission deems appropriate.

Respectfully submitted this 2d day of October, 2002 by:


Suzanne Brownless
1975 Buford Blvd.
Tallahassee, FL 32308
Phone: (850) 877-5200
FAX: (850) 878-0090
E-mail: sbrownless@comcast.net

Attorney for Aloha Utilities,
Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been provided to the persons listed below by U.S. Mail or (*)Hand Delivery this 2d day of October, 2002:

*Rosanne Gervasi
Senior Attorney
Florida Public Service Comm.
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Diane Kiesling
Landers & Parsons, P.A.
310 West College Ave.
Tallahassee, FL 32302

Kathryn G.W. Cowdery
Ruden, McClosky Law Firm
215 South Monroe Street
Suite 815
Tallahassee, FL 32301

Gerald A. Figurski, Esq.
Figurski & Harrill
The Holiday Tower
2435 U.S. Highway 19
Suite 350
Holiday, FL 34691

Stephen G. Watford, Pres.
Aloha Utilities, Inc.
6915 Perrine Ranch Road
New Port Richey, FL 34655-3904

Stephen C Burgess,
Jack Shreve
Office of Public Counsel
c/o Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400


Suzanne Brownless, Esq.

c: 3686