

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 charges, in violation of Order No.
PSC-01-0326-FOF-SU and Section 367.091,
Florida Statutes.

DOCKET NO. 020413-SU

**OBJECTIONS OF ALOHA UTILITIES, INC. TO
ADAM SMITH ENTERPRISES, INC.'S DISCOVERY**

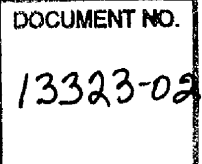
Aloha Utilities, Inc. (Aloha) files its Objections to Adam Smith Enterprises, Inc.'s (Adam Smith) First Request for Admissions Nos. 1-10, First Set of Interrogatories Nos. 1-10 and First Request for Production of Documents Nos. 1-8 and in support thereof states as follows:

Admissions Request No. 1: Order No. PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU, required Aloha to file an appropriate revised tariff sheet reflecting an increase in the approved service availability charges from \$206.75 to \$1,650 per equivalent residential connection within 20 days of the date of the order.

Admissions Request No. 2: Aloha failed to submit timely the tariff sheets for increased service availability charges required by Order No. PSC-01-0326-FOF-SU.

Admissions Request No. 3: PSC staff notified counsel for Aloha on or before March 7, 2002 that the tariff for the increased service availability charge that the Commission directed Aloha to file in Order No. PSC-01-0326-FOF-SU had not yet been filed.

Admissions Request No. 5: When it filed the revised tariff sheet to increase service availability charges, on or about March 11, 2002 counsel for Aloha represented to the PSC Staff that developers were aware of and had been paying the increased service availability charge since May 23, 2001.



Admissions Request No. 6: On May 6, 2002, counsel for Aloha advised PSC staff that he had been misinformed by Aloha in early March 2002 and that this earlier representation that Aloha had been applying the higher service availability charges since May 23, 2001 was incorrect.

Objections: With regard to these admissions, Aloha has a general objection which apply to all of these admissions as well as objections specific to Admission Request 1.

Aloha's general objection is that each of these interrogatories seeks to admit facts which are irrelevant to the issues which have been raised in this proceeding: backbilling, imputation of CIAC and the effective date of the service availability tariff.¹ The facts which are stated in the above admissions requests are germane to the issue of whether Aloha violated Order PSC-01-0326-FOF-SU. Aloha did not protest the show cause portion of Order PSC-02-1250-SC-SU (Order 02-1250). Aloha requested reconsideration of Order 02-1250's imposition of a \$10,000 fine for its admitted violation of Order 02-1250. The Commission, by unanimous vote, denied Aloha's request for reconsideration on Monday, December 2, 2002. The order issued reflecting the Commission's vote will reflect that fact and that order is the final decision with regard to that issue. It is not appropriate to relitigate Aloha's violation of Order 02-1250 here.

In sum, these admissions are neither relevant nor reasonably calculated to lead to information which is relevant to the identified issues in this proceeding.

Specifically with regard to Admissions Request 1, Order PSC-01-0326-FOF-SU (Order 01-0326) speaks for itself. No interpretation by Aloha of Order 01-0326 is necessary or required.

Interrogatory No. 1: When did Aloha receive Order No. PSC-01-0326-FOF-SU?

¹ Aloha's Request for Hearing at 2-4.

Interrogatory No. 2: Please identify the person or persons on whom Aloha placed the responsibility to (a) prepare and (b) file tariffs, including the revised service availability tariff that was required by Order No. PSC-01-0326-FOF-SU.

Interrogatory No. 3: When was the revised service availability tariff prepared and by whom?

Objection: As discussed above, Interrogatories Nos. 1-3 are not relevant to any issue properly litigated in this case nor are they calculated to lead to any such admissible evidence.

Request for Production No. 1 Please provide any and all correspondence, memoranda, emails, written communications, and all other documents between and among officers, employees, and consultants of Aloha regarding the revised service availability charge of \$1,650 per equivalent residential connection that the Commission directed Aloha to implement by tariff and written notice to developers in Order No. PSC-01-0326-FOF-SU.

Request for Production No. 2: Please provide any and all correspondence, memoranda, emails, written communications, and all other documents between Aloha (including its officers, employees, consultants and counsel) and the Florida Public Service Commission that relate in any way to the revised service availability charge of \$1,650 per equivalent residential connection that the Commission directed Aloha to implement by tariff and written notice to developers in Order No. PSC-01-0326-FOF-SU.

Request for Production No. 4: Please provide any and all correspondence, notices and all other written communications, memoranda, notes and minutes of meetings, and all other documents that refer to or relate in any way to the subject of written notices to developers relating to the revised service availability charge of \$1,650 sent by Aloha to developers. This

request includes, but is not limited to, documents that relate to the obligation to provide notices that the Commission imposed in Order No. PSC-01-0326-FOF-SU; Aloha's failure to provide such notices timely; and documents relating to the content and format of the notices that Aloha eventually sent to developers.

Request No. 7: If not already provided in response to the above items, please provide any and all communications to and from President Steve Watford referring in any way to the fact that Aloha did not file revised service availability tariffs as required by Order No. PSC-01-0326-FOF-SU.

Request No. 8 If not already provided in response to earlier items, please provide any and all communications between the Florida Public Service Commission and Aloha (including Aloha's officers, employees, consultants, and counsel) relating in any way to:

- (a) the requirement of Order No. PSC-01-0326-FOF-SU to submit tariffs, including a revised service availability tariff and conforming to the order;
- (b) the failure of Aloha to file the service availability tariff timely;
- (c) the requirement that Aloha provide adequate notice of the revised service availability charges to affected developers prior to applying the revised charge;
- (d) Aloha's failure to send the notices required by Order No. PSC-01-0326-FOF-SU timely;
- (e) representations by Aloha that Aloha had applied the revised service availability charge of \$1,650 per equivalent residential connection prior to having filed the appropriate tariff;
- (f) the processing by Staff of the service availability tariff that Aloha submitted in March of 2002, including the stamping of the date of May 23, 2001 on a tariff that was submitted

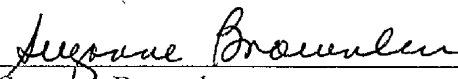
in March 2002; and

(g) communications to Staff to the effect that earlier representations regarding the time frame in which Aloha first applied the higher service availability charges were incorrect.

Objections: Aloha objects to each and every one of these production requests which call for information protected by the attorney-client privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made or is later determined to be applicable for any reason. Aloha in no way intends to waive such privilege or protection.

Aloha objects to each and every one of these production requests which call for information which is irrelevant to the issues which have been raised in this proceeding: backbilling, imputation of CIAC and the effective date of the service availability tariff and are not calculated to lead to information which is admissible, e.g., Production Request No. 4 to the extent related to the obligation to provide notices or Aloha's failure to provide; Production Request No. 7 and Production Request Nos. 8(a) - (e) and 8(g). Finally, Aloha objects to Production Requests No. 3, 6, 7 and 8 as being repetitive of Production Requests Nos. 1, 2, 4 and 5.

Respectfully submitted this 5th day of December, 2002 by:



Suzanne Brownless
1975 Buford Blvd.
Tallahassee, FL 32308
Phone: 850-877-5200
FAX: 850-878-0090

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, (*) Hand Delivery or (**) E-mail this 5th day of December, 2002:

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

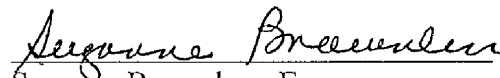
Diane Kiesling
Landers & Parsons, P.A.
310 West College Ave.
Tallahassee, FL 32302

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

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

**Joe McGlothlin, Esq.
McWhirter Reeves Law Firm
117 South Gadsden Street
Tallahassee, Florida 32301


Suzanne Brownless, Esq.

c: 3687a