

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

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**MOTION**

Aloha Utilities, Inc. (Aloha) pursuant to Rule 28-106.204, Florida Administrative Code, files this motion and in support thereof states as follows:

1. On November 14, 2002, Adam Smith Enterprises, Inc. (Adam Smith) served its First Request for Admissions Nos. 1-10, First Set of Interrogatories Nos. 1-10 and First Request for Production of Documents Nos. 1-8 on Aloha. Responses to this discovery are due on or before Monday, December 16, 2002.

2. Aloha has filed objections to the following of Adam Smith's discovery requests: Admissions Request Nos. 1-3, 5 and 6; Interrogatories Nos. 1-3; Request for Production Requests Nos. 1, 2, 4, 7 and 8. These objections are based partially on the grounds that Adam Smith seeks information which is irrelevant to the remaining issues to be litigated in this docket: backbilling, imputation of CIAC and the effective date of Aloha's revised service availability tariff<sup>1</sup>. That is, that the information objected to by Aloha sought by Adam Smith is germane only to the issue of whether Aloha violated the tariff filing requirements of Order PSC-01-0326-FOF-SU.<sup>2</sup>

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<sup>1</sup>Aloha's Request for Hearing at 2-4.

<sup>2</sup>Objections of Aloha Utilities, Inc to Adam Smith Enterprises, Inc.'s Discovery (Objection) at 2-5.

DOCUMENT NUMBER-DATE

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3. However, should the Commission disagree with Aloha and order Aloha to answer these discovery requests, the assistance of Marty Deterding, Aloha's previous counsel will be required since only Mr. Deterding is able to answer many of these questions, i.e., Admissions Request Nos. 3, 5, 6; Interrogatories Nos. 2, 3. Additionally, Mr. Deterding would have relevant documents and information in addition to those in Aloha's possession which relate to Request for Production Nos. 1, 2, 4, 7 and 8.

4. As the Commission is aware, Mr. Deterding was unable to represent Aloha in this matter due to the fact that another member of the Rose, Sundstrom and Bentley law firm represents Adam Smith Enterprises, Inc. and Adam Smith objected to Mr. Deterding's representation of Aloha on the basis of a conflict of interest.

5. Given these unique circumstances, Aloha requests that the Commission order Adam Smith to either allow Mr. Deterding to answer its propounded discovery and to provide testimony at hearing regarding this information or to strike these discovery requests and prohibit Adam Smith from using this information at trial, i.e., offering testimony or other evidence regarding Aloha's failure to file a revised service availability tariff on May 23, 2001. If the Commission determines that the facts surrounding Aloha's failure to file on May 23, 2001 are relevant to this proceeding, a fact Aloha does not concede, it is necessary for Mr. Deterding, the sole source for much of this information, to be allowed to participate both in answering Adam Smith's discovery and at hearing on this point. To allow the discussion without Mr. Deterding's input is unfair and inherently biased. The Commission should hear both sides of the story concerning Aloha's late filing or no side at all.

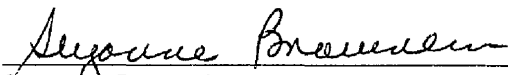
**WHEREFORE**, Aloha Utilities Inc. requests that the Commission order Adam Smith to

either:

(a) Allow Mr. Deterding to provide answers to Adam Smith Enterprises, Inc.'s Admission Request Nos. 3, 5,6; Interrogatories 2 and 3; and Request for Production of Documents Nos. 1, 2, 4, 7, and 8 and to provide testimony at hearing regarding this information or, in the alternative,

(b) Strike these discovery requests and prohibit Adam Smith from offering testimony or other evidence related to the information requested in Adam Smith Enterprises, Inc.'s Admission Request Nos. 3, 5,6; Interrogatories 2 and 3; and Request for Production of Documents Nos. 1, 2, 4, 7, and 8, i.e., regarding Aloha's failure to file a revised service availability tariff on May 23, 2001.

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

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

Attorney for Aloha Utilities, Inc.

c: 3727

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

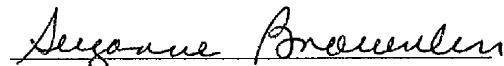
Diane Kiesling  
Landers & Parsons, P.A.  
310 West College Ave.  
Tallahassee, FL 32302

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