

MCWHIRTER REEVES
ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:

TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

December 27, 2002

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.: 020413-SU


Dear Ms. Bayo:

On behalf of Adam Smith Enterprises, Inc. I am enclosing the original and 15 copies of the following:

- ▶ Adam Smith Enterprises, Inc.'s Objections to Aloha Utilities, Inc.'s Notice of Deposition Duces Tecum

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and pleading by returning the same. Thank you for your assistance in this matter.

Yours truly,



Joseph A. McGlothlin

JAM/mls
Enclosure

BEFORE THE 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

Filed: December 27, 2002

**ADAM SMITH ENTERPRISES, INC.'S OBJECTIONS TO
ALOHA UTILITIES, INC.'S NOTICE OF TAKING DEPOSITION DUCES TECUM
AND MOTION FOR PROTECTIVE ORDER**

Adam Smith Enterprises, Inc. ("Adam Smith"), through its undersigned counsel, objects to the Notice of Taking Deposition Duces Tecum filed by Aloha Utilities, Inc. ("Aloha") on December 24th, 2002. (Adam Smith received the notice on December 26, 2002.) The objections stated herein are preliminary in nature and are made at this time to respond to Aloha's Notice prior to deposition. Because Adam Smith has had no adequate opportunity to prepare its objections, Adam Smith reserves the right to supplement, revise or modify its objections. Aloha requests that the Commission enter an order ruling that Adam Smith is not required to respond to Aloha's request. In support thereof, Adam Smith states:

Introduction

1. By oral agreement, counsel for Adam Smith agreed to make Adam Smith employee David S. Ford available for deposition on Monday, December 30, 2002.
2. Adam Smith received Aloha's Notice of Taking Deposition Duces Tecum on December 26th, 2002. In its Notice, Aloha directed Mr. Ford to bring with him to his deposition three categories of documents. The third category, requests Mr. Ford to bring with him: "[c]opies of all documents relating to developments of Adam Smith, or its affiliates, located

within the service territory of Aloha Utilities, Inc.”¹ When discussing the deposition schedule, counsel for Aloha and Adam Smith did not discuss, let alone agree to, the production of documents at Mr. Ford’s deposition.

3. For the reasons stated below, Adam Smith objects to Aloha’s Notice of Deposition Duces Tecum.

Adam Smith’s Objections

4. Aloha’s Notice directs Mr. Ford to bring three categories of documents to his deposition. As a preliminary matter, Adam Smith objects to these requests as an impermissible attempt to circumvent the requirements of rule 1.310(b)(5), Florida Rules of Civil Procedure, which requires that such requests be in compliance with rule 1.350, Florida Rules of Civil Procedure. Aloha’s request seeks to impermissibly shorten the allowable time period for responding to requests for production as set by rule 1.350. A party cannot use a notice of deposition to require another party to produce documents within the time frame that would otherwise be available.² Therefore, Adam Smith should not be required to produce the documents at the time of Mr. Ford’s deposition.

5. More importantly, however, Adam Smith objects to Aloha’s third category request as an impermissible attempt to circumvent the Commission’s ruling on earlier, similar discovery requests of Aloha. In Order No. PSC-02-1748-PCO-SU, the Prehearing Officer found Aloha’s Interrogatory Nos. 4(c), 5(c), and Request for Production No. 1 to be “irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding,”³ and

¹ Hereinafter referred to as Aloha’s Third Category.

² See *Bergin v. Bergin*, 292 So. 2d 400 (Fla. 3rd DCA 1974)(“[A] plaintiff may not require a defendant to produce documents at a deposition simply by a notice to produce documents at the taking of his deposition if the deposition is scheduled *within* 30 days of service upon him. “)

³ Order No. PSC-02-1748-PCO-SU at 12.

Interrogatory Nos. 4(b), 4(d), 5(b), and 5(d) to be overly burdensome because the information sought by discovery was available to Aloha in its own records.

6. Aloha's Interrogatory No. 4 requested the following:

For each of the lots which Adam Smith alleges in its Petition for Formal Hearing were sold and the title transferred to other entities prior to connection to Aloha's wastewater system during the period May 23, 2001 through April 16, 2002, please provide the following information:

- a. The tax identification number, subdivision and lot number and street address, if available, of each lot.
- b. The entity to which each lot was sold and to whom title was transferred and its affiliation with Adam Smith, if any.
- c. The price at which each lot was sold and the net profit or loss realized on each lot.
- d. The date of each sale and the date at which title was transferred if not at the time of sale.
- e. The amount of service availability charges paid, if any, by Adam Smith to Aloha for each lot.

Interrogatory No. 5 requested the following:

Has Adam Smith sold lots and transferred title to other entities from April 16, 2002, to date? If so, please provide the following information regarding those lots:

- a. The tax identification number, subdivision and lot number and street address, if available, of each lot.
- b. The entity to which each lot was sold and to whom title was transferred and its affiliation with Adam Smith, if any.
- c. The price at which each lot was sold and the net profit or loss realized on each lot.
- d. The date of each sale and the date at which title was transferred if not at the time of sale.

- e. Whether each lot was connected to Aloha's water and wastewater systems prior to sale, and if so, the amount of service availability charges paid to Aloha for each lot by Adam Smith.

Request for Production No. 1 requested the following:

Please provide the work papers supporting the answers to Interrogatories Nos. 4(c), 5(c), 6(c), and 7(c).

7. Adam Smith objected, in addition to other grounds, on the basis that to provide responses would require Adam Smith to search all of its documents, *which are not maintained so as to relate only to Aloha's service area*, which would be unduly burdensome and oppressive -- especially in light of information available to Aloha from its own records.

8. Adam Smith also pointed to its responses to other discovery requests, in which it had provided the information that was relevant and reasonably available. Aloha's overbroad third category overlaps the information which the Commission ruled was outside the scope of permissible discovery. The Prehearing Officer should see this request for what it is -- an "end-around" the Commission's earlier discovery order -- and refuse to require Adam Smith and Mr. Ford to respond to Aloha's third category.

8. In addition, Adam Smith objects to Aloha's third category request as overly broad, unduly burdensome, and beyond the permissible scope of discovery. The request asks for all documents relating to developments of Adam Smith, or its affiliates, located within the service territory of Aloha Utilities, Inc. Such documents would include a host of subjects having no relationship to utility service provided by Aloha. Aloha does not even attempt to narrow its request to include only documents that are related to the issues of this proceeding. Aloha's third category request is nothing more than a "fishing expedition."

9. Aloha's third category unreasonably asks Adam Smith to produce copies of anything, and everything, related to developments in Aloha's territory. The time and expense required to comply with Aloha's request would be inordinate.

10. Adam Smith objects to the Aloha's third category request as it seeks confidential proprietary business information and trade secret information. The massive scope of Aloha's third category would include many commercially sensitive documents. Earlier, the Commission protected Adam Smith from similarly intrusive requests that failed to establish a relationship to relevant evidence. This request is even more outlandish in its reach.

WHEREFORE, Adam Smith files its Objections to the Notice of Deposition Duces Tecum, and requests the Commission to enter an order ruling that it does not have to produce the documents delineated in Aloha's third category.



Joseph A. McGlothlin

McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman & Arnold, PA

117 South Gadsden Street

Tallahassee, Florida 32301

Telephone: (850) 222-2525

Facsimile: (850) 222-5606

jmclglothlin@mac-law.com

Attorneys for Adam Smith Enterprises, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Adam Smith Enterprises, Inc.'s Objections to Aloha Utilities, Inc.'s Notice of Taking Deposition Duces Tecum and Motion for Protective Order was sent via (*)Hand Delivery, (**) Electronic Mail or U.S. Mail on this 27th day of December 2002 to the following:

(*)Rosanne Gervasi
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850

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

Stephen Burgess
Office of Public Counsel
111 W. Madison Street, #812
Tallahassee, FL 32399-1400

J. Ben Harrill
Figurski & Harrill
2435 U.S. Highway 19, Suite 350
Holiday, Florida 34691

(**)Suzanne Brownless, P.A.
1975 Buford Blvd
Tallahassee, FL 32308-4466

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


Joseph A. McGlothlin