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January 16, 2003

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 Response to Aloha Utilities, Inc.'s Motion to Strike Adam Smith Enterprises, Inc.'s Motion for Reconsideration

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

DOCUMENT NUMBER-DATE

00506 JAN 16 03

FPSC-REGISTRATION DIVISION

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: January 16, 2003

**ADAM SMITH ENTERPRISES, INC.'S RESPONSE TO ALOHA'S UTILITIES, INC.'S
MOTION TO STRIKE ADAM SMITH ENTERPRISES, INC.'S
MOTION FOR RECONSIDERATION**

Adam Smith Enterprises, Inc. (Adam Smith), pursuant to rule 28-106.204, Florida Administrative Code, files this Response to Aloha's Motion to Strike. The Commission should deny Aloha's Motion to Strike. In support, Adam Smith states:

Introduction

1. On December 18, 2002, the Commission issued Order No. PSC-02-1774-FOF-SU, which granted Aloha's Motion for Emergency Relief. On January 2, 2003, Adam Smith timely filed its Motion for Reconsideration of that order. On January 9, 2003, Aloha filed its Motion to Strike Adam Smith's Motion for Reconsideration, claiming that the order is not subject to reconsideration. For the reasons stated below, the Commission should deny Aloha's motion.

Argument

2. In the section of Order No. PSC-02-1774-FOF-SU titled "NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW,"¹ the Commission provided parties with notice of the judicial and administrative remedies that were available with respect to the Order. Paragraph 3 of the NOTICE states:

¹ Hereinafter referred to as "NOTICE"

Any party adversely affected by the portions of this order which are 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 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.

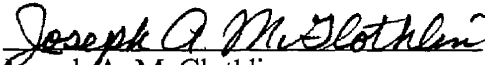
Order No. PSC-02-1774-PCO-SU at 19 (emphasis added). Adam Smith, and any other party, is entitled to rely upon the explicit instructions regarding remedies given in the Order. *See Homestead v. Johnson*, 760 So.2d 80 (Fla. 2000)(City of Homestead did not waive its right to appeal because it was entitled to rely upon the directions in the order for requesting appeal).

3. Adam Smith timely filed its Motion for Reconsideration in compliance with the directions set forth in the NOTICE section of Order No. PSC-02-1774-FOF-SU. The Order was entered by the full Commission. According to option 2 in paragraph 3 of the NOTICE, an adversely affected party had 15 days from the date of the issuance of order to seek reconsideration of the Order. Adam Smith complied with the requirements set forth in the NOTICE by timely filing its motion on January 2, 2003, fifteen days after the order was issued on December 18, 2002. Having met the requirements set forth in the NOTICE, Adam Smith is entitled to have its Motion for Reconsideration decided by the Commission.

4. Aloha does not contend that Adam Smith failed to comply with the Order. Instead, Aloha finds fault either with the Commission's rules or the Commission's interpretation of its rules. Without commenting in any way on the merits or deficiencies of Aloha's argument,

the important point is that the argument would not be limited to one order in one case. If Aloha wishes to pursue its argument, it should do so in a generic setting; if the Commission then takes action based on the argument, any such action should apply prospectively. In no event should Aloha's argument be allowed to prejudice the rights of a party that relied on instructions contained in an order that is the subject of the party's motion for reconsideration.

WHEREFORE, Adam Smith requests that the Commission enter an order denying Aloha's Motion to Strike.


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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Adam Smith Enterprises, Inc.'s Response to Aloha's Utilities, Inc.'s Motion to Strike Adam Smith Enterprises, Inc.'s Motion for Reconsideration was sent via (*)Hand Delivery, (**) Electronic mail or U.S. Mail on this 16th day of January 2003 to the following:

(*)Rosanne Gervasi
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Joseph A. McGlothlin