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January 22, 2003

VIA HAND DELIVERY

Blanca Bayo
Clerk and Director of Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Docket No. 020413-SU
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.

Dear Ms. Bayo:

Enclosed please find the original and fifteen (15) copies of Aloha Utilities, Inc.'s Revised Motion to Establish Issues to be filed in the above-styled docket. This revision consists of correcting scrivener's errors on pages 5 and 6 by replacing "December 8th" with "December 18th", the correct date for the second issue identification meeting held in this docket. In all other respects the pleading is identical to that previously filed on January 16, 2003.

Thank you for your assistance in this matter. Please contact me if you have any questions or need any additional information regarding this filing.

AUS ___
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GCL ___
OPC ___
MMS ___
SEC 1
OTH ___

Very truly yours,

Suzanne Brownless
Attorney for Aloha Utilities, Inc.

c: 3766
cc: Rosanne Gervasi
Joe McGlothlin
Steve Watford

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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REVISED MOTION TO ESTABLISH ISSUES

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

1. In Order PSC-02-1250-SC-SU (Order 02-1250), issued on September 11, 2002, the Commission: 1) rejected Aloha's proposed Settlement Agreement; 2) allowed Aloha to backbill developers for service availability charges that should have been collected from May 23, 2001 until April 16, 2002; 3) imputed as CIAC the $659,547 in service availability charges that Aloha should have collected; 4) established the effective date of the service availability tariff as April 16, 2002 ; 5) show caused Aloha for failure to file the service availability tariff and failure to collect the appropriate service availability charges and 6) granted intervention to SRK Partnership Holdings, LLC. The imputation of CIAC, backbilling and effective date of the tariff were issued as Proposed Agency Action (PAA) decisions.

2. On October 2, 2002 both Aloha and Adam Smith Enterprises, Inc. (Adam Smith) timely filed requests for hearing in this docket..

3. Procedural Order PSC-02-1460-PCO-SU (Order 02-1460), issued in this docket on October 23, 2002, states that the "scope of this proceeding shall be based upon the issues raised by the parties and Commission staff (staff) up to and during the prehearing conference,

unless modified by the Commission." [Order 02-1460 at 1] Order 02-1460 also requires each party to the docket to file a prehearing statement which identifies each question of fact, law or policy that the party considers at issue and each party's position on each such identified issue. [Order 02-1460 at 4-5] Disputes regarding the subject matter and the exact wording of the issues to be litigated in the case are normally resolved by the Prehearing Officer at the prehearing conference and placed in a prehearing order which controls the proceeding unless a party can meet the criteria for adding a new issue after its issuance. [Order 02-1460 at 5-6]

4. Order 02-1460 has set the date for the prehearing conference in this docket as Monday, March 24, 2003 and the date for the hearing as April 11, 2003. [Order 02-1460 at 7] However, in an effort to reach consensus on the matters at issue in this proceeding and the wording of the issues agreed upon, the Staff and parties held two informal issue identification meetings on October 8, 2002 and December 18, 2002. At these meetings parties were unable to reach agreement regarding either what matters had been protested, and thereby put at issue by the parties, or regarding the actual wording of the issues that all agreed had been raised.

5. The necessity to resolve the matters at issue in this proceeding, and the exact wording of those issues, now rather than waiting until the prehearing conference to do so is both practical and substantive. First, Aloha has already filed direct testimony in this proceeding which addresses the effective date of the tariff. Intervenor testimony is due to be filed by Adam Smith on February 3, 2003 and by Commission staff on February 17, 2003 with rebuttal filed by Aloha on March 3, 2003. [Order PSC-02-1551-PCO-SU, issued on November 12, 2002, at 2] Effort, time and money can be saved in the preparation of this testimony if parties know whether the effective date of the service availability tariff is, or is not, at issue. In short, Adam Smith will not

present its argument concerning this issue and Aloha will not rebut that testimony if the issue is found not to have been raised. Ruling now also removes the necessity for parties to file a motion to strike such testimony if it is ultimately decided at the prehearing conference that the effective date of the tariff is not at issue. Second, whether the effective date of the tariff is at issue affects the legal arguments structured by both Aloha and Adam Smith. A ruling on the issue relieves parties from having to make alternative arguments - one if the effective date is at issue, another if it is not. Third, the issues raised in a proceeding provide the background against which all discovery requests are measured since the basic standard for allowable discovery is whether it is relevant. [Rule 1.280(b)(1), Florida Rules of Civil Procedure] The parties have outstanding discovery motions currently pending before the Commission which will be impacted by a decision regarding the areas at issue in this docket. For these reasons, a decision on the issues now will substantially streamline the pretrial procedures Orders 02-1460 and 02-1551 require be followed in this case.

ARGUMENT

5. With regard to the issues, the main disagreement between the parties is whether the effective date of the service availability tariff increasing Aloha's charges to $1,650 per equivalent residential connection and $12.79 per gallon for all other connections was protested. Adam Smith takes the position that neither it nor Aloha raised this issue in their petitions for hearing. This is incorrect. Aloha did raise the tariff's effective date as an issue in its petition both directly and indirectly as discussed in more detail below. Staff takes the position that the effective date of the tariff is so intertwined with the issues of backbilling and imputation of CIAC that if either of these issues was timely raised, the effective date of the tariff was thereby put at

issue.

6. Aloha placed the imputation of CIAC for the uncollected service availability charges directly at issue in this proceeding by the following means. Aloha included in the "Disputed Issues of Fact and Law" section of its petition the following issues: "Is it appropriate to impute CIAC for the 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?" and "Does the imputation of CIAC without the ability to fully backbill for the uncollected service availability charges which should have been collected from May 12, 2001 to April 16, 2002 constitute a taking?" [Aloha Petition at 3-4.] In the "Substantial Interest" portion of its petition, Aloha stated that Aloha's substantial interests were impacted because "the effective date of the tariff controls the date by which CIAC can be imputed". [Aloha's Petition at 2.] In footnote 3 of its petition Aloha made the intent of its petition 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 ... [Aloha Petition at 3.] It is Aloha's position that the effective date of the tariff is May 23, 2001 because that is the date that is consistent with both the imputation of CIAC and backbilling for the uncollected service availability charges as ordered by the Commission. Aloha has clearly raised the imputation of CIAC as a disputed issue, clearly tied the ability to impute CIAC to the effective date of the tariff and clearly alleged the substantial impact of both. The effective date of the service availability tariff has been timely and directly raised by Aloha.

7. Even had Aloha not directly raised the effective date of the tariff as an issue, Aloha agrees with Staff that it is simply impossible to segregate the tariff's effective date from

either the imputation of CIAC or backbilling. The effective date of the tariff is intrinsic to both concepts. Adam Smith, by its own admission, has raised the issue of backbilling. Adam Smith concedes that Aloha has timely raised the issue of the imputation of CIAC. The issue of the effective date of the tariff has been raised indirectly in this proceeding.

8. Finally, as Order 02-1460 states, any issue may be raised by the Commission or its Staff prior to the date of the prehearing conference on its own motion. Adam Smith first raised its objection to the inclusion of the effective date of the service availability tariff as an issue at the initial issues meeting on October 8th and reiterated its objection at the second meeting on December 18th. On December 18th, Commission Staff proposed an issue list which included the effective date of the tariff as a factual issue: "What should be the effective date for Aloha's current service availability tariff for its Seven Springs wastewater system?" [Attachment A] Likewise, Aloha proposed a similar issue:"What should be the effective date of the tariff increasing Aloha Utilities, Inc.'s wastewater service availability charge from $206.75 to $1,650 per equivalent residential connection and $12.79 per gallon for all other connections?" [Attachment B] Aloha agreed to accept the Staff's wording of the issue on December 18th. Commission Staff has the same ability as other parties to the case to raise issues and has done so. The effective date of the tariff is, and should be, at issue in this proceeding.

9. All parties at the December 18th meeting agreed that imputed CIAC and backbilling had been put at issue by Aloha and Adam Smith, respectfully. Further, parties agreed that each factual issue should have an associated legal issue. However, with regard to these issues the parties are in disagreement about the exact wording to be used.

10. The proposed wording for the issues is as follows[1]:

Legal Issues:

1. Staff: Does the Commission have the legal authority to permit Aloha Utilities, Inc. to collect from developers the difference in the prior and current wastewater service availability tariffs for the period May 23, 2001 through April 16, 2002?

   Aloha: Does the Commission have the statutory authority to authorize Aloha Utilities, Inc. to collect from developers $1,650 per equivalent residential connection and $12.79 for other connections made during the period of May 23, 2001 through April 16, 2002?

2. Staff: Would the imputation of CIAC on the utility's books in the amount of the uncollected service availability charges without authorizing the utility to collect these charges from developers constitute a taking and/or a penalty?

   Aloha: Does the imputation of CIAC on Aloha's books in the amount of the uncollected wastewater service availability charges without authorizing Aloha to collect these charges constitute an unconstitutional taking and/or a penalty?

Factual Issues:

3. Staff: If the Commission has the legal authority to do so, should Aloha Utilities, Inc. be allowed to collect from developers the difference in the prior and current service availability tariffs for the period May 23, 2001 through April 16, 2002 under the facts of this case?

   Aloha: If the Commission has the statutory authority to do so, should Aloha Utilities, Inc. be authorized to collect from developers $1,650 per equivalent residential connection and $12.79 for other connections made during the period of May 23, 2001 through April 16, 2002?

4. Staff: Should CIAC be imputed on the utility's books for the uncollected service availability charges which should have been collected from

[1] At the December 18th meeting, Adam Smith and Aloha agreed with the wording of some of the Staff issues and disagreed with others. Staff provided a preliminary issues list to parties after that meeting in which the Staff attempted to reflect agreements made. [Attachment C] On December 23, 2002, Aloha amended the Staff's list and provided its changes to all parties. [Attachment D]

May 23, 2001 until April 16, 2002, and if so, in what amount?

Aloha: Is it appropriate to impute CIAC on Aloha's books for the uncollected wastewater service availability charges which should have been collected from May 23, 2001 through April 16, 2002, and if so, in what amount?

11. The changes to the wording of the issues proposed by Aloha have been made to make the issues as neutral and as broad as possible. For this reason, "charges" and time periods are substituted for "tariffs" in Issues 1 and 3. In Issue 3, the phrase "under the facts of this case" was deleted as redundant since every issue addressed in every case litigated before the Commission is considered in light of the facts presented by the parties. In Issue 2, "wastewater" is added as a clarification due to the fact that Aloha has water service availability charges which have increased as the result of an appealed rate case. Further, in Issue 2, "unconstitutional" is added to clarify the legal concept being referenced. Finally, in Issues 1 and 3, "statutory" has been substituted for "legal" in order to more accurately reflect the authority of the Commission.

WHEREFORE, Aloha Utilities, Inc. requests that the Prehearing Officer enter an order which establishes the effective date of the service availability tariff as an issue in this proceeding and adopts the wording proposed by Aloha for the issues identified above.

Respectfully submitted this 22d day of January, 2003 by:

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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 22d day of January, 2003.

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Suzanne Brownless, Esq.

c: 3757a

legal

Preliminary Issues List - DN 020413-SU

Does the Commission have the legal authority to allow

1. ~~Should~~ Aloha ~~be allowed~~ to collect from developers the difference in the prior and current service availability tariffs for the period May 23, 2001 through April 16, 2002?

2. Should CIAC be imputed on Aloha's books for the uncollected service availability charges which should have been collected from May 23, 2001 until April 16, 2002, and if so, in what amount?

3. What should be the effective date for Aloha's current service availability tariff for its Seven Springs wastewater system?

Suggested Stipulations

1. From May 23, 2001 to April 16, 2002, Aloha erroneously failed to notice and implement its service availability charge increase to $1,650 per residential ERC and $12.79 per gallon for all other connections, which charges were approved by Order No. PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU.

2. The tariff on file with the Commission from May 23, 2001, to April 16, 2002, erroneously reflected Aloha's old service availability charge of $206.75 per ERC, which was Aloha's approved service availability charge prior to the issuance of Order No. PSC-01-0326-FOF-SU.

3. The full amount of service availability charges which Aloha should have charged to various developers from May 23, 2001 to April 16, 2002, had the charges been correctly noticed and implemented pursuant to Order No. PSC-01-0326-FOF-SU is $659,547.

4. The full amount of service availability charges which Aloha should have charged to Adam Smith from May 23, 2001 to April 16, 2002, had the charges been correctly noticed and implemented pursuant to Order No. PSC-01-0326-FOF-SU is $220,817.25. (according to Adam Smith's protest)

ATTACHMENT A

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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PROPOSED ISSUES OF ALOHA UTILITIES, INC.

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

2. Is it appropriate to impute CIAC for the uncollected wastewater 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?

3. Is it appropriate to authorize Aloha Utilities, Inc. to fully backbill developers for the undercollected wastewater service availability charges which should have been collected from May 23, 2001 until April 16, 2002, and if so, what amount should be subject to backbilling?

4. What should be the effective date of the tariff increasing Aloha Utilities, Inc.'s wastewater service availability charge from $206.75 to $1,650 per equivalent residential connection and $12.79 per gallon for all other connections?

c: 3746

ATTACHMENT B

Preliminary Issues List - DN 020413-SU

Legal Issues

1. Does the Commission have the legal authority to permit Aloha Utilities, Inc. to collect from developers the difference in the prior and current wastewater service availability tariffs for the period May 23, 2001 through April 16, 2002?

2. Would the imputation of CIAC on the utility's books in the amount of the uncollected service availability charges without authorizing the utility to collect these charges from developers constitute a taking and/or a penalty?

Factual Issues

1. If the Commission has the legal authority to do so, should Aloha Utilities, Inc. be allowed to collect from developers the difference in the prior and current service availability tariffs for the period May 23, 2001 through April 16, 2002, under the facts of this case?

2. Should CIAC be imputed on the utility's books for the uncollected service availability charges which should have been collected from May 23, 2001 until April 16, 2002, and if so, in what amount?

3. What should be the effective date for Aloha Utilities, Inc.'s current service availability tariff for its Seven Springs wastewater system?

ATTACHMENT C

Aloha's Preliminary Issues List

Legal Issues

1. Does the Commission have the statutory authority to authorize Aloha Utilities, Inc. to collect from developers $1,650 per equivalent residential connection and $12.79 for other connections made during the period of May 23, 2001 through April 16, 2002?

2. Does the imputation of CIAC on Aloha's books in the amount of the uncollected wastewater service availability charges without authorizing Aloha to collect these charges constitute an unconstitutional taking and/or a penalty?

Factual Issues

1. If the Commission has the statutory authority to do so, should Aloha Utilities, Inc. be authorized to collect from developers $1,650 per equivalent residential connection and $12.79 for other connections made during the period of May 23, 2001 through April 16, 2002?

2. Is it appropriate to impute CIAC on Aloha's books for the uncollected wastewater service availability charges which should have been collected from May 23, 2001 through April 16, 2002, and if so, in what amount?

3. What should be the effective date of Aloha Utilities, Inc.'s current service availability tariff for its Seven Springs wastewater system?

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ATTACHMENT D