

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition by Customers of )  
**ALOHA UTILITIES, INC.**, for deletion of )  
portion of territory in Seven Springs )  
Area in Pasco County, Florida. )

Docket No. 020896-WS

IN RE: Application for increase in water )  
rates for Seven Springs System in Pasco )  
County by **ALOHA UTILITIES, INC.** )

Docket No. 010503-WU

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**ALOHA UTILITIES, INC.'S MOTION FOR  
RECONSIDERATION OF ORDER NO. PSC-04-1001-PCO-WS**

Aloha Utilities, Inc. ("Aloha"), by and through undersigned counsel and pursuant to Rule 25-22.0376, Fla.Admin.Code, hereby requests reconsideration by the Commission panel assigned to this proceeding of Order No. PSC-04-1001-PCO-WS, and in support thereof would state and allege as follows:

1. On July 20, 2004, the Commission set this matter for hearing.
2. The Procedure Order in this case setting this case for a formal administrative hearing was issued on July 27, 2004.
3. On October 5, 2004, the staff filed its First Set of Interrogatories and First Request for Production of Documents directed to Aloha.
4. On October 14, 2004, only nine days after the filing of said discovery, the Commission staff filed its Motion to Compel and to Shorten Time (sometimes hereafter referred to as "the Motion") requesting, among other things, that Aloha file its written

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objections, if any, to the Commission's First Request for Production of Documents (Nos. 1-2) and its response to the Motion by Tuesday, October 19, 2004.

5. On October 15, 2004, the Prehearing Officer issued Order No. PSC-04-1001-PCO-WS directing Aloha to respond to the Motion by Tuesday, October 19, 2004.

6. An examination of this sequence reveals several highly unusual procedural and substantive events. After the service of discovery in a case which was set for hearing over two months before, staff requested that the Prehearing Officer issue an order requiring an expedited response to the staff's discovery which would allow Aloha only 14 days response time, rather than the 30 days allowed by the Uniform Rules of Procedure.<sup>1</sup> The staff contemporaneously filed a Motion to Compel, despite having received no formal or written objection to its outstanding discovery (and, in fact, none was due) and a motion to shorten the time to file the anticipated objections to which the Motion to Compel was preemptively addressed. The Prehearing Officer's Order expediting a response to the Motion to Compel and requiring expedited responses and objections to staff's discovery was issued the next morning (October 15, 2004).

7. The defacto effect of this chain of events is that the Prehearing Officer apparently received a suggestion to expedite the response to staff's Motion to Compel and to Shorten Time and immediately issued an order on said suggestion.<sup>2</sup> Stated succinctly, ...

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<sup>1</sup>Although Order No. PSC-04-1001-PCO-WS does not state explicitly that staff requested the Order, it is assumed that staff approached the Prehearing Officer regarding the same.

<sup>2</sup>In other words, the chance to respond to the request to expedite the time to respond to staff's Motion to Compel and to Shorten Time was not merely expedited, it was non-existent.

on October 15, 2004, Aloha received an Order from the Prehearing Officer which directed Aloha to respond to staff's Motion to Compel which anticipated objections to discovery which were not yet due and which Aloha had not yet, in fact, made. This sequence of events is not consistent with the Procedure Order in this case, is not conversant with the process for discovery established by the Uniform Rules of Procedure, and is highly prejudicial and unfair to Aloha and a violation of its procedural due process rights.

7. Order No. PSC-04-1001-PCO-WS does not suggest that the Prehearing Officer took into account, in issuing his Order, that this case had been set for hearing for over 60 days before the discovery was filed. The reasons requiring an expedited response to staff's Motion to Compel and to Shorten Time are unknown, because if those reasons were set out before the Prehearing Officer, they were done so orally by the staff and Aloha was not privy to those conversations.

8. While the extreme urgency on the part of the staff with regard to these particular discovery requests is unknown in great detail to Aloha, it is fair to say that nothing Aloha has done, said, or filed has placed the staff in the position it finds itself in. The Uniform Rules of Procedure allow reasoned response times to discovery (and motions), however brief, for good reason. They should not be cast aside at the whim of the Commission staff merely because it, unlike the parties to this proceeding, has unfettered access to the Prehearing Officer. In this case, time allows for the full seven day response time contemplated by rule.

WHEREFORE, and in consideration of the above, Aloha Utilities, Inc. respectfully requests that the Commission panel reconsider Order No. PSC-04-1001-PCO-WS and

allow Aloha seven days to respond to the Motion.

Respectfully submitted this 19th  
day of October, 2004, by:



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail or via facsimile (indicated by \*) to the following on this 19th day of October, 2004:

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