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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

COMMISSION
CLERK

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

Docket No. 010503-WU

ALOHA UTILITIES, INC.'S
MOTION FOR MODIFICATION OF CONTROLLING DATES AND
REQUEST FOR EXPEDITIOUS DETERMINATION

Aloha Utilities, Inc. ("Aloha"), by and through undersigned counsel, hereby files this Motion for Modification of Controlling Dates and Request for Expeditious Determination and in support thereof would state and allege as follows:

1. On July 27, 2004, the Prehearing Officer issued his Order Establishing Procedure in this case. That Order, among other things, established certain Controlling Dates which were established to govern the activities of the case.

2. The Order Establishing Procedure granted the Petitioners 114 days to file their direct testimony and exhibits.

3. The Order Establishing Procedure establishes a rebuttal testimony and exhibit due date of February 3, 2005. Despite the fact that staff will file direct testimony and exhibits ("if any") on January 13, 2005, it is reasonable to anticipate that the lion's share of rebuttal testimony and exhibits will be filed by the Petitioners in response to Aloha's direct testimony and exhibit. Accordingly, that rebuttal testimony is required by the Order Establishing Procedure to be filed 50 days after the direct testimony to which it will be primarily directed.

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OPC _____
MMS _____
RCA _____
SCR _____
SEC 1
OTH Kim P.

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Kim P.
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4. Under the Order Establishing Procedure, Aloha is afforded one opportunity to provide direct testimony and exhibits in this case, on December 16, 2004. Aloha will not be supporting an application or a request for affirmative action in this case, but rather will be responding to the Petitioner's direct testimony and exhibits. The Order Establishing Procedure gives Aloha 28 days to file that responsive testimony and exhibits. The testimony, described anecdotally by counsel for OPC at a meeting attended by the undersigned as among the most voluminous testimony¹ ever filed by OPC, presents a labyrinth of legal, evidentiary, testimonial and categorical issues which Aloha must address.²

5. Twenty-eight days is a totally inadequate time for Aloha to respond to this testimony, and is so inadequate that an enforcement of the dates as currently contemplated deprives Aloha of fundamental due process of law. The relief requested herein cannot, and will not, provide relief to that deprivation in total (for instance, even the dates contemplated herein, which try to accommodate the current hearing schedule, afford Aloha no opportunity for meaningful discovery prior to the formulation of its responsive direct testimony and exhibits) but will afford Aloha extra time to formulate its testimony.

6. There is no logical reason that Petitioners should be given 164 days in order to file their testimony and that Aloha should only be afforded 28 days to file and to formulate its testimony. Additionally, the Thanksgiving Holidays commenced immediately after the filing of Petitioners' direct testimony and exhibits.

¹One witness alone has filed testimony approximately 2" thick, including 64 exhibits.

²Whether OPC actually "filed" this testimony, and their relationship with the individuals who filed the testimony, is not an issue which needs to be resolved for the purpose of this Motion.

7. Accordingly, Aloha respectfully requests the Prehearing Officer alter the Controlling Dates such that Aloha's direct testimony and exhibits be due on January 7, 2005, that staff's direct testimony and exhibits thereafter be due on January 25, 2005, and that rebuttal testimony and exhibits thereafter be due on February 15, 2005. This schedule provides all parties to the case a fair opportunity to file appropriate testimony, and takes into account the narrow scope of rebuttal testimony and exhibits, and the limited role of staff in this case (staff is not a party and has indicated, anecdotally, that it does not intend to file voluminous testimony in this case on numerous subjects).

8. An additional basis for the granting of this Motion is the fact that Aloha's Motion to Terminate will be heard before the Commission on January 4, 2005. The disposition of that Motion will be delayed by the holiday season and the fact that the Commission only holds a single December Agenda Conference. If Aloha's Motion is granted, Aloha's responsibility to file the testimony at issue herein may be obviated or substantially changed.

9. The Prehearing Officer has previously been quite deft in expediting the disposition of Motions when it is his determination that such expeditious treatment is appropriate. Aloha attempted to reach something akin to a stipulation by running dates (not these dates) by the staff and OPC and was unable to preliminarily secure their agreement to such an extension. Aloha respectfully requests that the problem which Aloha faces is apparent herein, and that no response by other parties to this case (OPC has not, according to their own discovery responses, even filed any testimony in this case to date) is necessary in order for the Hearing Officer to rule. Allowing normal response times to this Motion will essentially deprive Aloha of the relief requested herein, because a

determination will be made so close to the current filing date for Aloha's direct testimony and exhibits.

10. Aloha's request herein does not prejudice any party, and will assist Aloha in the preparation of its direct testimony and exhibits. OPC opposes this Motion.

WHEREFORE, and in consideration of the above, Aloha Utilities, Inc. respectfully requests that the Hearing Officer alter the Controlling Dates as requested herein, and that he do so as expeditiously as possible in his good judgment and as allowed under the Uniform Rules of Procedure.

Respectfully submitted this 2nd
day of December, 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 hand delivery (indicated by *) to the following on this 2nd day of December, 2004:

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