

BEFORE THE 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.

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

ORDER NO. PSC-04-1217-PCO-WS

ISSUED: December 9, 2004

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

Controlling dates in these dockets were set by Order No. PSC-04-0728-PCO-WS, (Order Establishing Procedure), issued July 27, 2004. Pursuant to the Order Establishing Procedure, Aloha is required to file its direct testimony and exhibits on December 16, 2004 and Commission staff is required to file their direct testimony and exhibits on January 13, 2005. Rebuttal testimony and exhibits are due on February 3, 2005, and prehearing statements are due on February 10, 2005.

On December 2, 2004, Aloha Utilities Inc. (Aloha or utility) filed a Motion for Modification of Controlling Dates and Request for Expeditious Determination. Aloha requests that the filing date for its direct testimony and exhibits be changed to January 7, 2005. It further requests that the filing date for staff's direct testimony and exhibits be changed to January 25, 2005, and that the filing date for rebuttal testimony and exhibits be changed to February 15, 2005.

In support of its motion, Aloha states that it must respond to the voluminous direct testimony filed by the petitioners on November 18, 2004. Aloha states that the Order Establishing Procedure currently gives it 28 days to file this responsive testimony. The utility states that this short time period "is so inadequate that an enforcement of the dates as currently contemplated deprives Aloha of fundamental due process of law." Aloha states that, by contrast, the petitioners were given 114 days to file their testimony as they were first to file testimony and the testimony filing dates were set on July 27, 2004. Aloha asserts that the modified filing schedule provides all parties with "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."

Aloha further states that there is a motion to terminate these proceedings currently pending before the Commission. The utility states that this motion will not be considered by the Commission before the agenda conference scheduled on January 4, 2005. Aloha states that if this motion is granted, "Aloha's responsibility to file the testimony at issue may be obviated or substantially changed."

DOCUMENT NUMBER-DATE

13004 DEC-9 04

FPSC-COMMISSION CLERK

Aloha's motion further requests this matter be considered on an expedited basis. Aloha states that 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."

Commission advisory staff counsel contacted Commission staff counsel to obtain staff's position on the motion. Staff counsel indicated that staff is not opposed to the motion. Staff counsel suggested, however, that the prehearing statement filing date be changed from February 10, 2005, to February 15, 2005, if the filing date for rebuttal testimony and exhibits is changed to February 15, 2005.

On December 7, 2004, the Office of Public Counsel (OPC) timely filed its Response to Aloha's Motion for Modification or Controlling Dates and Request for Expedious Determination. In its response, OPC states that it opposes any change to the filing dates and that Aloha's motion should be summarily denied.

OPC asserts that Aloha's motion is actually a motion for reconsideration of the Order Establishing Procedure. OPC states that as the Order Establishing Procedure was issued July 27, 2004, the time for filing such a motion has long since passed.

OPC further states that Aloha should not have been surprised by the volume of testimony filed in support of the petitions. OPC asserts that "[t]here has been intense customer interest in this proceeding by customers seeking to remove Aloha as their service provider."

While holding to the position that the motion should not be granted, OPC states that if the motion is granted, the date for filing rebuttal testimony should be delayed by the same amount of time as for Aloha's testimony. OPC states that "[t]o do otherwise would adversely affect petitioners because it would shorten the time for petitioners to prepare and file rebuttal to Aloha's testimony."

Upon review of the pleadings and consideration of the arguments, I find that a modification of the testimony filing dates is reasonable based on the amount of testimony that Aloha must review and address. I disagree with OPC that Aloha's motion for modification of the controlling dates is an untimely motion for reconsideration. I find that it is a motion for extension of time, which is permissible under Rule 28-106.303, Florida Administrative Code.

Furthermore, the proposed testimony filing dates set forth in Aloha's motion appear to be reasonable. It also appears reasonable to change the prehearing statement filing date to coincide with the filing of rebuttal testimony and exhibits. While OPC requests that the filing date for rebuttal testimony and exhibits be extended by the same amount of time as that given to Aloha, it does not appear feasible to do so and meet the current hearing dates. It should be noted that the 21 day time period between the filing of the last round of direct testimony, which is staff's direct testimony, and the date for filing rebuttal testimony and exhibits remains the same.

Aloha's Motion for Modification of Controlling Dates and Request for Expedious Determination is hereby granted. The following revised filing dates shall govern this case.

- 1) Company/Intervenors' direct testimony and exhibits January 7, 2005
- 2) Staff's direct testimony and exhibits, if any January 25, 2005
- 3) Rebuttal testimony and exhibits February 15, 2005
- 4) Prehearing Statements February 15, 2005

Except as modified herein, all other provisions of Order No. PSC-04-0728-PCO-WS shall remain in effect.

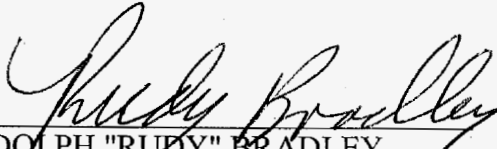
It is, therefore;

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Aloha Utilities, Inc.'s Motion for Modification of Controlling Dates and Request for Expedious Determination is hereby granted. It is further

ORDERED that the revised filing dates set forth in the body of this Order shall govern this case. It is further

ORDERED that, except as modified in this Order, all other provisions of Order No. PSC-04-0728-PCO-WS shall remain in effect.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 9th day of December, 2004


RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

SMC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) 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.