

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes.

DOCKET NO. 050018-WU

FILED: MAY 20, 2005

RESPONSE TO ALOHA UTILITIES, INC.'S MOTION FOR CONTINUANCE

The Staff of the Florida Public Service Commission, by and through its undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code, hereby files its Response to Aloha Utilities, Inc.'s (Aloha or utility) Motion for Continuance filed on May 13, 2005, and states that:

1. Aloha argues that the unilateral establishment of the hearing and other controlling dates in this case, with no consultation with Aloha but after consultation with the Commission, is improper, is a violation of Aloha's right to due process, and is an inherently unfair exercise of the strategic advantage the Commission enjoys in the dual role of judge and prosecutor in this case. Staff disagrees. Certainly Aloha must be afforded a fair hearing in the matter under due process of law, and has the right to defend itself, cross-examine witnesses, and otherwise fully participate in the case. However, regardless of whether the Commission itself is a party, it is not a due process violation for the Commission to set a hearing date without first consulting with the other parties to the case.

2. The Commission necessarily must consult with itself in order to schedule hearings that are to be conducted by the Commission. Upon the recommendation of the Prehearing Officer and approval of the Chairman, the Commission calendar largely controls the scheduling of hearings before the Commission. Many hearings must be conducted within statutorily-

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imposed timeframes, and other hearings are necessarily scheduled around such statutory deadlines.

3. Parties may file motions for continuance when scheduling conflicts arise, which is exactly what Aloha has done here. Pursuant to Rule 28-106-210, Florida Administrative Code, “[t]he presiding officer may grant a continuance of a hearing for good cause shown.” There is nothing inherently unfair about this process.

4. Although due process of law does not require it, Commission advisory staff consulted with the prosecutorial staff, Aloha, and the Office of Public Counsel (OPC) concerning the scheduling of the controlling dates leading up to the August hearing prior to the issuance of Order No. PSC-05-0514-PCO-WU (the Order Establishing Procedure). Prosecutorial staff and OPC elected to provide input in this regard; Aloha did not.

5. Prosecutorial staff and intervenors have approximately five weeks from the date the Commission denied Aloha’s motion to abate the proceeding in which to prefile their direct testimony and exhibits. Aloha has five weeks from the date the staff and intervenor testimony is due in which to prefile its testimony and exhibits. The schedule of controlling dates leading up to the August hearing is equally tight for all parties and thus does not provide an unfair advantage of one party over another.

6. Aloha requests new controlling dates which afford it at least 90 days to respond to the collective testimony of the Commission and the intervenors in advance of the hearing. If Aloha’s request is granted, staff requests that the filing date for its testimony and exhibits also be

enlarged commensurately in order for staff to be afforded an equal amount of time to prepare and file its case in chief as Aloha is afforded to prepare and file its defense.

WHEREFORE, for the foregoing reasons, Staff does not support Aloha's Motion for Continuance. However, if Aloha's Motion is granted, staff respectfully requests that the filing date for its testimony and exhibits also be enlarged commensurately in order for staff to be afforded an equal amount of time to prepare and file its case in chief as Aloha is afforded to prepare and file its defense.

Respectfully submitted,



ROSANNE GERVASI, Staff Counsel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Staff's Response to Aloha Utilities, Inc.'s Motion for Continuance has been served by facsimile and U.S. Mail to Marshall Deterding and John Wharton, Esquires, Rose, Sundstrom and Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee, FL 32301, and that a true and correct copy thereof has been furnished to the following by U. S. Mail this 20th day of May, 2005:

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A handwritten signature in black ink, appearing to read "Rosanne Gervasi", is written over a light gray rectangular background.

ROSANNE GERVASI, STAFF COUNSEL

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