

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: AUGUST 2, 2005

MOTION TO COMPEL

The staff of the Florida Public Service Commission, by and through its undersigned counsel, and pursuant to Rules 28-106.204 and 28-106.211, Florida Administrative Code, moves the Commission for an order compelling Aloha Utilities, Inc. (Aloha or utility) to produce all documents responsive to Staff's First Request for Production of Documents and to permit Entry upon Land for Inspection and Other Purposes (Requests Nos. 1-2). As grounds therefor, staff states that:

1. On July 8, 2005, staff served Aloha with Staff's First Request for Production of Documents and for Entry upon Land for Inspection and Other Purposes (Requests Nos. 1-2).
2. On July 18, 2005, Aloha filed its Objection to Staff's First Request for Production of Documents and for Entry upon Land for Inspection and Other Purposes.
3. Request No. 1 states as follows:

Please produce for inspection and copying on August 15, 2005, Aloha's water system map(s) depicting the pipe size and location of all water lines in the Seven Springs service area at issue in this docket. If Aloha is unable to determine which such system maps pertain to the Seven Springs service area at issue in this docket, please alternatively produce for inspection and copying Aloha's water system map(s) depicting the pipe size and location of all water lines in the entire Seven Springs service area. If multiple maps are required to satisfy this request, please produce for inspection and copying a copy of the entire set of maps.

DOCUMENT NUMBER-DATE

07428 AUG-2 05

FPSC-COMMISSION CLERK

4. Aloha argues that Request No. 1 is overbroad, vague, and is not reasonably calculated to lead to the discovery of admissible evidence. According to Aloha, nothing in the documents could lead to relevant evidence which pertains to the Order by which the Commission initiated this case, or the issues in this case. Aloha further states that Request No. 1 would require the production of documents which Florida law protects from disclosure.

5. Request No. 1 is not overbroad. By this Request, staff simply and clearly seeks to inspect and copy Aloha's water system map(s) depicting the pipe size and location of all water lines in the Seven Springs service area at issue in this docket. Only in the event that it would be unduly burdensome for Aloha to decipher which of its system map(s) are responsive to this Request does staff request that Aloha alternatively produce its water system map(s) depicting the pipe size and location of all water lines in the entire Seven Springs service area.

6. There is nothing vague about Request No. 1. Anytime a Class A or B utility files for a rate increase, the utility is required by rule to provide a detailed system map showing the location and size of its distribution and collection lines, plant sites, and the location and respective classification of its customers. Rule 25-30.440(1)(a) and (b), Florida Administrative Code. Aloha has filed for rate increases in the past and knows exactly which maps the staff is requesting it to produce.

7. Request No. 1 is indeed calculated to lead to the discovery of relevant evidence. By Order No. PSC-05-0204-SC-WU, the Show Cause Order issued in this docket, the Commission found that "[i]n determining whether it is in the public interest to amend a certificate of authorization, this Commission addresses, among other things, the financial and

technical ability of the utility to provide adequate service. . . . [W]e have been plagued for many years with complaints from numerous of Aloha's customers concerning the quality of water that Aloha provides, and questioning Aloha's ability to provide adequate service." It is imperative for the staff to inspect Aloha's water system maps in order to independently assess the adequacy of its facilities. The adequacy of the facilities and lines that the utility has in service today is directly related to the issue of whether Aloha has demonstrated the technical ability to provide adequate service to its customers over the years.

8. If Request No. 1 requires the production of documents which Florida law protects from disclosure, Aloha is fully aware of the Commission's rules and procedures for producing the documents under a claim of confidentiality. This is certainly not a valid reason for withholding the documents. Aloha need look no further than to Order No. PSC-05-0514-PCO-WU, the Order Establishing Procedure in this docket, to see that "[a]ny information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information."

9. Request No. 2 states as follows:

On August 15, 2005, please permit the Commission prosecutorial staff, or someone acting on behalf of the Commission prosecutorial staff, entry upon every parcel of land in Aloha's possession or control located in its Seven Springs service area for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property, including the water facilities

thereon and the water produced by such facilities, pursuant to Rule 1.350, Florida Rules of Civil Procedure.

10. Aloha argues that Request No. 2 lacks the specificity and detail about what is to be inspected, measured, surveyed, photographed, or tested or sampled, and that the request is overbroad, vague, and is not reasonably calculated to lead to the discovery of admissible evidence. Further, Aloha objects to any request for entry upon and inspection of its land unless Aloha's representatives and experts are allowed to accompany the Commission prosecutorial staff's representatives during the inspection.

11. Request No. 2 is proper discovery made pursuant to Rule 1.350(a), Florida Rules of Civil Procedure, which is applicable to this proceeding through Rule 28-106.206, Florida Administrative Code. Rule 1.350(a) provides that any party may request any other party "to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on it within the scope of rule 1.280(b)."

12. Request No. 2 specifies that the water facilities and the water produced by such facilities are to be inspected, measured, surveyed, photographed, tested, or sampled. The rule does not require further specificity than that provided by the Request. Nevertheless, the prosecutorial staff offers that pursuant to this Request, the staff will have a representative who is a licensed Professional Engineer in the State of Florida conduct any inspection, measuring, surveying, photographing, testing or sampling of the facilities and water produced thereby.

13. Request No. 2 is neither overbroad nor vague, and it is reasonably calculated to lead to the discovery of admissible evidence. It is clearly necessary for a staff expert witness to inspect the facilities on every parcel of property in Aloha's possession or control, and to measure, survey, photograph, test or sample the facilities and water produced thereby, as he deems necessary, in order for him to independently assess how Aloha has failed to provide adequate service to its customers in the areas at issue in this proceeding. Again, as stated in paragraph 7, above, the adequacy of the facilities and lines that the utility has in service today is directly related to the issue of whether Aloha has demonstrated the technical ability to provide adequate service to its customers over the years.

14. Staff has no objection to allowing Aloha's representatives and experts to accompany the prosecutorial staff's representatives during the requested inspection.

15. Requests Nos. 1 and 2 are for the production of documents and inspection of property to take place on August 15, 2005. On August 17, 2005, the Commission is now scheduled to rule upon an Offer of Settlement filed by Aloha. For that reason, staff requests that the production of documents and inspection of property take place on August 30, 2005, or on some other date that is mutually agreed upon by the parties after August 17, 2005, in the event that the Commission rejects the settlement offer.

MOTION TO COMPEL
DOCKET NO. 050018-WU
PAGE 6

WHEREFORE, for the foregoing reasons, the staff respectfully requests that the Prehearing Officer enter an order compelling Aloha to produce all documents responsive to Staff's First Request for Production of Documents and to permit Entry upon Land for Inspection and Other Purposes (Requests Nos. 1-2) on August 30, 2005, or on some other date that is mutually agreed upon by the parties after August 17, 2005, in the event that the Commission rejects the settlement offer.

Respectfully submitted,



ROSANNE GERVASI, Staff Counsel

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
Phone No.: (850) 413-6224
Facsimile No.: (850) 413-6250

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: August 2, 2005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one true and correct copy of the Staff's Motion to Compel has been served by facsimile and U.S. Mail to F. Marshall Deterding and John Wharton, Esquires, Rose, Sundstrum 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 2nd day of August, 2005:

Stephen C. Reilly, Esquire
Office of Public Counsel
111 West Madison Street, Room 182
Tallahassee, FL 32399-1400

Edward O. Wood
1043 Daleside Lane
New Port Richey, FL 34655

Mr. Wayne T. Forehand
1216 Arlinbrook Drive
Trinity, FL 34655-4556

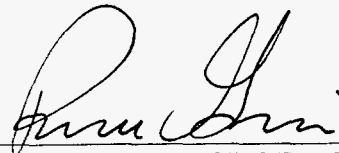
*Margaret Lytle, Esquire
Southwest Florida Water Management District
2379 Broad Street
Brooksville, FL 34604-6899

John H. Gaul, Ph.D
633 Albacore Drive
New Port Richey, FL 34655

Mr. James (Sandy) Mitchell, Jr.
5957 Riviera Lane
Trinity, FL 34655

Mr. Harry Hawcroft
1612 Boswell Lane
New Port Richey, FL 34655

*Mr. Stephen G. Watford
6915 Perrine Ranch Road
New Port Richey, FL 34655-3904



ROSANNE GERVASI, STAFF COUNSEL
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
Telephone No.: (850) 413-6224
Facsimile No.: (850) 413-6250

*courtesy copy