

BEFORE THE FLORIDA 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

RESPONSE TO STAFF'S MOTION TO COMPEL

Aloha Utilities, Inc. ("Aloha" or "Utility"), by and through its undersigned attorneys, hereby and pursuant to Rule 28-106.204 and 25-102.211, F.A.C. files this Response to the Staff of the Florida Public Service Commission's Motion to Compel Aloha to produce all documents responsive to the Staff's First Request for Production of Documents and to permit entry upon land for inspection and other purposes (Request Nos. 1 and 2) and in support thereof states as follows:

1. The staff's Request No. 1 is overbroad, vague and is not reasonably calculated to lead to the discovery of admissible evidence. The Commission's Show Cause Order No. PSC-05-0204-SC-WU alleges that Aloha has "...violated its statutory obligation under Section 367.111(2), [Florida Statutes] to provide sufficient water service by providing water with acceptable color, taste and odor by failing for over eight years to take proactive steps to remedy the situation..." Nowhere in the Commission's Order does it allege anything related to type, sizes or location of Utility lines, or any other matters related to the Utility distribution system, which is the sole information sought under Request No. 1.

2. Staff's Request No. 1 is overbroad, vague and not reasonably calculated to lead to the discovery of admissible evidence in that it attempts to review issues related to the current state of the Utility's system, rather than that which existed at the time the Commission issued its Show Cause Order or before. Therefore, it cannot possibly lead to

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the discovery of admissible evidence to support the allegations contained in the Show Cause Order.

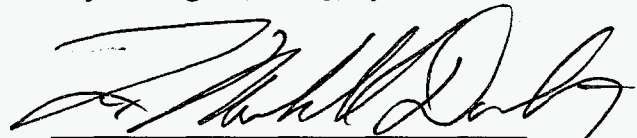
3. If, as stated in Paragraph 6 of the staff's Motion to Compel, the information requested is that which is required to be filed as part of any rate proceeding and Aloha has filed for rate increases in the past, then the Commission already has the information in Request No. 1 and as such, under the provisions of the Florida Rules of Civil Procedure, the documents are as readily accessible to the Commission as they are to Aloha and Aloha has no further obligation to produce these documents. That information was provided as Exhibit 5 to Aloha's Application in Docket No. 010503-WU.

4. Staff's Request No. 2 lacks specificity and detail about what is to be inspected, measured, surveyed, photographed, tested or sampled and the request as such is overbroad, vague and not reasonably calculated to lead to the discovery of admissible evidence. Again, the Commission's Show Cause Order is based upon facts which existed at the time that Show Cause Order was issued and is based upon an allegation that "Aloha has violated this statutory obligation under Section 367.111(2) to provide sufficient water service by providing water with acceptable color, taste, and odor, by failing for over eight years to take proactive steps to remedy the situation..." Aloha's plants have been substantially modified in both piping and treatment since the time the Show Cause Order was issued. An inspection of those facilities cannot possibly lead to evidence to support what, if any, violations existed prior to the time of issuance of that Order. It is as though the Commission has issued its Order alleging violations of certain provisions of statutes and after the fact the Commission staff is doing research of substantially modified treatment facilities in attempting to prove that the allegations made in the Show Cause Order existed. Such a review cannot possibly lead to the

discovery of admissible evidence and as such as currently stated, the specific nature of the inspections is vague and overbroad.

WHEREFORE, for the foregoing reasons, Aloha specifically requests that the Prehearing Officer enter an Order denying the Commission staff's Motion to Compel Aloha to produce documents and respond to the staff's First Request for Production of Documents and to permit entry upon land for inspection and other purposes (Request Nos. 1 and 2) on August 20, 3005 or at some other date that is mutually agreed upon by the parties.

Respectfully submitted this 9th
day of August, 2005, by:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by fax (*) and U.S. Mail this 9th day of August, 2005, to:

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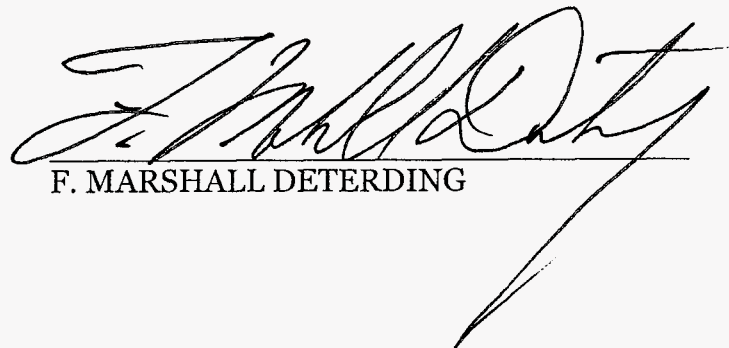
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