

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding
increase in water rates in Pasco County,
by Aloha Utilities, Inc..

Docket No: 060122-WU

Filed: July 14, 2008

CITIZENS' MOTION TO COMPEL

Pursuant to Chapter 28-106.206, Florida Administrative Code, and Rules 1.350 and 1.380, Florida Rules of Civil Procedure, the Citizens of the State of Florida ("Citizens"), by and through their undersigned attorney with the Office of Public Counsel ("OPC"), respectfully request the Prehearing Officer to issue an order compelling Aloha Utilities, Inc. ("Aloha", "Utility", or "Company") to provide the document or documents responsive to the Citizens' Production of Document Request No. 39, and state:

1. On April 15, 2008, the Citizens propounded upon Aloha its Amended Second Request for Production of Documents. Included in this request was Production of Document Request No. 39.
2. Document Request No. 39 requested the following:

Please provide an accurate, to scale, up to date, system map, which depicts all water transmission and distribution pipes which connect each of the wells, water treatment plants and all of the connections that make up the service territory of Aloha. The system

map should provide the exact diameter and length of all water pipes serving the Aloha service territory.

3. Aloha's response to POD Request No. 39 was as follows:

No such documents exist.

4. In an effort to secure the needed updated system map information without resorting to a motion to compel, OPC secured copies of outdated system maps of Aloha's Seven Spring system from the Commission's Staff. Aloha agreed for us to inspect maps at their principal office that we understood would permit us to update the undated and outdated maps we secured from the Commission's Staff.

5. At the May 28, 2008, inspection at Aloha's principal office we were escorted by Aloha's attorney to two rooms which contained stacks of maps organized only in alphabetical order. Aloha's attorney told us that all detailed maps depicting additions to Aloha's water transmission and distribution system could be found in the two rooms, and that the first letter of the name of each addition would determine in which stack of maps the water line addition would be located. For example, if there was a Fairfield subdivision addition to the system, it would be located somewhere at the top, middle or bottom of the stack of maps marked "F". If there was an addition to Aloha's transmission lines that transports water to Aloha's growing number of residential and commercial developments, OPC, could only guess the possible name of such a project. For this reason, we would not know which stack of maps included the transmission addition. Likewise, without

knowing the name of a new subdivision or commercial development we would not be able to even know which stack to begin to look for the maps detailing the addition. To make this process even more impossible, Aloha's attorney provided no Aloha personnel to assist OPC's attorney and engineer in their attempt to secure the appropriate maps needed to update the undated and outdated maps in OPC's possession. Aloha's attorney merely said he would be available to mark every map identified for copying so that it could be later provided to OPC. OPC determined that the discovery process outlined by Aloha's attorney on May 28, 2008, did not constitute a reasonable response to OPC's POD Request No. 39.

6. Having a complete updated system map is essential in order to properly account for all of the locations of the various water demands placed upon the transmission and distribution system, and to model the ability of the system to get water to where it needs to be in a timely fashion. It is only after you perform this analysis that an engineer can properly recommend the best (operationally and economically) points interconnection with the Pasco County system to receive Pasco County water.
7. Notwithstanding the above, OPC's engineer believed that if he knew the location of at least all water lines 8" or greater in diameter, that he could develop a supportable recommendation concerning the best points of interconnection with Pasco County's water system. For this reason, OPC offered Aloha one final compromise to resolve our impasse concerning discovery of an updated system map. By e-mail, on June 26, 2008, OPC requested Aloha to at least provide the location of all water lines 8" or greater in diameter

to help satisfy our Document Request No. 39. (See copy of attached e-mail as Exhibit “A”)

8. Aloha responded to the June 26, 2008 e-mail with a lecture about how Aloha had “gone above and beyond what is required by the Rules to accommodate (OPC) with regard to this issue.” Further, the response suggested that the request for a system map depicting all water lines 8” or greater in diameter, rather than all of the lines that make up Aloha’s system was “clearly not covered” by the expressed wording of POD Request No. 39. (See copy of Aloha’s response e-mail attached as Exhibit “B”).
9. The Citizens respectfully argue that a request for documents that depict all water lines 8” or greater in diameter, rather than all of the lines, should be considered a lesser but fully covered subset of information included in the original request. Such fully covered lesser request should not require a new document request requiring a new 30 day time period in which to comply. The point is somewhat moot however, because Aloha claims it does not maintain its system map in a manner that would permit it to produce a map or even four maps as previously provided to Staff, that would depict even all water lines in service 8” or greater in diameter.
10. Further, any suggestion that Aloha has “gone above and beyond what is required by the Rules to accommodate (OPC) with regard to this issue” is disingenuous at best.
11. Commission Rule 25-30.125, F.A.C., titled System Maps and Records states:

Each utility shall maintain on file at its principal office located within the State suitable maps, drawings and/or records of its system and facilities to show size, location, character, date of installation and installed cost of major items of plant and extension of facilities.

12. OPC respectfully argues that a reasonable reading of Commission Rule 25-30.125, F.A.C., requires every water and wastewater utility to maintain at its principal office located in the state, updated system maps which accurately depict the size and location of all lines serving the service territory. Pursuant to the requirement of this rule, such system maps should readily be available for operational as well as regulatory purposes, and should be readily available to Utility personnel as well as to the Commission's Staff and parties to proceedings. OPC respectfully argues that maintaining hundreds upon hundreds of individual maps in two rooms with no reasonable index system to enable Utility personnel, the Commission's Staff or any party to reasonably ascertain the size and location of all lines serving the service territory does not constitute compliance with Commission Rule No. 25-30.125, F.A.C.

13. Commission Rule No. 25-30.125, F.A.C., requires Aloha to maintain updated system maps, which accurately depict the size and location of all water transmission and distribution pipes serving its service territory. This is precisely the information OPC needs for its engineer to make a recommendation for the best points of interconnection with Pasco County's water system, and it is precisely the information Aloha refuses to

provide in any manner that can be reasonably discovered and utilized by OPC or the Commission in this docket.

WHEREFORE, for the reasons stated above, the Citizens respectfully request the Prehearing Officer to order Aloha Utilities to provide, to OPC at its office in Tallahassee on an expedited basis, a map or maps (no more than four as previously provided to staff) which accurately depicts the size and location of all water lines currently serving the Seven Springs service territory of Aloha.

Respectfully Submitted,

J. R. Kelly
Public Counsel

A handwritten signature in black ink, appearing to read "Stephen C. Reilly", is written over a horizontal line. The signature is enclosed in a hand-drawn oval.

Stephen C. Reilly
Associate Public Counsel
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c/o The Florida Legislature
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Attorneys for the Citizens
of the State of Florida

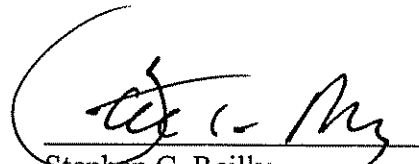
CERTIFICATE OF SERVICE

DOCKET NO. 060122-WU

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Compel has been furnished by U. S. Mail and electronic mail to the following parties on this 14th day of July, 2008.

Jean Hartman, Esquire
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

John L. Wharton, Esquire
F. Marshall Deterding, Esquire
Rose, Sundstrom, & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301


Stephen C. Reilly
Associate Public Counsel

REILLY.STEVE

From: REILLY.STEVE
Sent: Thursday, June 26, 2008 2:54 PM
To: 'John Wharton'; 'martyd@rsbattorneys.com'
Cc: 'Kim Dismukes'; 'khatcher@baskervilledonovan.com'
Subject: FW: Citizen's POD Request No. 39

Per my phone conversation today with Marty Deterding, please provide the alternative documents in response to POD Request No. 39.

In response to Citizen's POD Request No. 39, which seeks a complete updated system map for Aloha's Seven Springs system, the Company responded: "No such document exists." As an alternative to providing a complete system map for the Seven Springs System, the Company should provide any document or documents which identify the length and location of all water lines 8" or greater in diameter currently serving the Seven Springs service territory, which is the subject of this docket. We seek all such maps or other documents which provide the above information in the possession of the Company or in the possession of any engineering firm hired by the Company to provide engineering services for Aloha Utilities.

Thanks.

"Exhibit A"

REILLY.STEVE

From: John Wharton [johnw@RSBattorneys.com]
Sent: Friday, June 27, 2008 12:11 PM
To: REILLY.STEVE
Cc: Marty Deterding
Subject: Aloha - pending discovery issue

Steve,

We do not agree to reread your prior discovery request to cover documents clearly not covered by its express wording. If a proponent of discovery could simply, after the fact, change what his request sought so as to illicit additional documents or information, as you are trying to do here, the very procedures established by the Civil Rules, not to mention the restrictions on the number and scope of the various discovery devices, would be rendered meaningless.

This case is not yet set for hearing. However, it will eventually result in a formal, adversarial, hearing as a result of the petitions filed by yourself and certain customers. The Civil Rules, as incorporated by the Uniform Rules, allow for and establish how proper discovery is accomplished. You have known since at least your visit to Aloha to review documents on May 28 what documents Aloha maintains as to its system, and we have gone above and beyond what is required by the Rules to accommodate you with regard to this issue.

If you wish to seek the documents referenced in your email, please do so consistent with the applicable rules and within the context of proper discovery.

John L. Wharton, Esq.
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Thank you

"Exhibit B"