

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: August 18, 2008

CITIZENS' MOTION TO COMPEL

Pursuant to Chapter 28-106.206, Florida Administrative Code, and Rules 1.340 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 lesser but included information responsive to Citizens' Interrogatory No. 62 and to provide the information responsive to Citizens' Interrogatory No. 63, and state:

1. On June 27, 2008 the Citizens propounded upon Aloha its Fourth Set of Interrogatories (Nos. 62-63).

2. Interrogatory No. 62 requested the following:

62. Please provide the lengths and locations of all water lines 8" or greater in diameter currently serving the subject Aloha Seven Springs service territory. Please provide this information in one or more maps or provide the information with sufficient detail so that OPC can prepare a map or maps that provide the locations of all water lines 8" or greater in diameter currently serving the Seven Springs service territory.

3. Aloha's response to Interrogatory No. 62 was as follows:

62. OPC has been informed repeatedly that there is no single, or even a select few, maps and/or documents which reflect this information. The information requested by the second part of the Interrogatory has already been presented to OPC in a visit to Aloha's offices (as a courtesy, since the production at the offices of Aloha, which OPC and its engineer attended, was not in response to any specific discovery request). OPC and its engineer declined to review the information (and dismissed its usefulness) apparently because of the scope of work involved in accumulating the information OPC seeks. This Interrogatory is nothing but an attempt to pass the responsibility for the Professional Engineering work OPC deems necessary to support its theories in this litigation upon Aloha. Aloha could not accomplish this task any easier than could OPC and its expert engineer.

To the extent Aloha was required (by utilizing the exact same documents that were produced to OPC and which could be produced to OPC again) to accumulate this information in the form of a single map, the effort would cost tens of thousands of dollars and would take weeks, or more likely months. In that regard, the Interrogatory is burdensome, would subject Aloha (and ultimately the rate payers) to undue cost and expense, and is not merely a request for information from Aloha, but is rather an attempt to hoist upon Aloha an extremely complicated, expensive, and operationally and technically unnecessary, "homework assignment" to support some as-yet unformulated unknown theory of its adversary in this litigation. This response is made without waiver to Aloha's objection that this interrogatory is burdensome, overboard, and not reasonably calculated to lead to the discovery of admissible evidence.

4. Interrogatory No. 63 requested the following:

63. (a) Please provide a ranking of the Aloha's wells 1-4 and 6-9, with the raw water produced by the well with the least hydrogen sulfide content being ranked first and the well which produces raw water with the highest hydrogen sulfide content being ranked eighth.

(b) In the above ranking please utilize the latest information available to the utility concerning hydrogen sulfide content. Please provide next to each ranking the actual hydrogen sulfide content value estimated for each well, and include any details concerning how the value was determined, including but not limited to the number of samples taken and the dates the samples were taken.

5. Aloha's response to Interrogatory No 63 was as follows:

This Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence, constitutes an anion fishing expedition, seeks information related to a separate docket, and any response thereto would cause Aloha to violate Order No. PSC-08-0267-PAA-WS (which directed Aloha to abate any and all actions directed towards Aloha implementing anion exchange). Discovery in this docket is not the proper way for OPC to go on a search for data about anion exchange with overboard, vague, and irrelevant series of questions about the hydrogen sulfide content of Aloha's wells.

6. In the Citizens' Motion to Compel with regard to POD Request No. 39, filed on July 16, 2008, the Citizens argued that a reasonable reading of Commission Rule 25-30.125, F.A.C., requires utilities to maintain, at its principal office located in the state, updated system maps, which accurately depict the size and location of all water transmission and distribution pipes serving the utilities' service territory. We argued that 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. In the previously filed Motion to Compel we argued 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 the lines serving the service territory does not constitute compliance with Commission Rule 25-30.125, F.A.C.

7. At an informal meeting held between Staff, OPC, and Aloha, held at the Commission's offices on August 1, 2008, Staff informed OPC that in Staff's opinion Aloha's hundreds of maps stacked in alphabetical order with no index satisfies the requirements of Commission Rule 25-30.125, F.A.C. At the meeting Staff said they do not require a utility to provide a useable updated system map until the utility seeks a Chapter 367.081, F.S., general rate increase. In the case of a general rate increase request the utility is required to provide a usable updated system map or maps to meet the minimum filing requirements, pursuant to Commission Rule 25-30.440 (1) (a) and (b), F.A.C. In fact, in its last rate case in Docket No. 991643-SU, Aloha requested an emergency temporary waiver of the requirement to provide Staff with a usable updated system map. Staff refused to support the Company's motion. Lacking that support the Company withdrew its motion and provided four maps representing the northeast, northwest, southeast and southwest portions of the entire Aloha Seven Springs service territory. While these four maps do not provide a scale nor are they dated, they were provided to Staff on February 24, 2000, to help meet Aloha's minimum filing requirements in Docket No. 991643-SU. These four maps provide the location and size of all of Aloha's transmission and distribution pipes as of early 2000.

8. In response to the Citizens' request to produce an updated system map (POD Request No. 39), the Company responded that no such document or documents existed. Citizens disagree with Staff's interpretation of Rule 25-30.125, F.A.C. However, if Staff is correct and the Company is not required to maintain an updated map of the system, pursuant to this rule, then under the rules of discovery, Aloha should not be compelled to produce a document that neither exists nor is required to exist absent a Chapter 367.081, F.S., rate increase request. However, providing important relevant information that can be provided without undue burden in response to interrogatories is a completely different question.

9. While this docket is not a general rate case, it is a proceeding where the Utility is seeking a very significant rate increase. For this reason, the Commission should not be reluctant to require the Utility to provide the customers' representative with basic and essential information needed to evaluate the Utility's proposal and the significant rate increase request resulting from that proposal.

10. Despite the above problem of discovering the details of all of Aloha's Seven Springs transmission and distribution system, one of the most important questions to be answered in this docket remains, namely, what is the best way (operationally and economically) for Aloha to purchase water from Pasco County? According to OPC's engineer, that question cannot be answered without knowing at minimum the capability of Aloha's transmission system to deliver water to the various residential, industrial and commercial distribution systems that make up the service territory. Without this minimum information there is no way Aloha can demonstrate that a quantity of water delivered to a single point of delivery in the extreme eastern portion of the service territory can be delivered when and where it is needed to serve customers throughout the entire system.

11. It is even more imperative for the Commission to have an updated transmission system map before determining the best point or points of delivery of Pasco County water because of the unresolved brine waste disposal problem that became known in the Fall of 2007. The Dr. Gomberg Report indicated that the disposal of anion exchange wastes to the sanitary sewer system would likely result in negative impacts to ground water, plants and soils in the reuse areas. Aloha and its consultants reported that the brine waste disposal problem would potentially cause FDEP permitting and rule compliance issues for the anion exchange project. Up until the time that Docket No. 060606-SU and the anion exchange project was held in abeyance, Aloha had not offered an economical solution to the difficult brine waste disposal problem. Until such time as a feasible economical solution is found to this problem we cannot assume that it is going to be cost effective to fully treat with anion exchange all of the water produced by wells 2, 6, 8, 9 and Mitchell (3 and 4).

12. In short, Dockets Nos. 060122-WU and 060606-WS are very interrelated and dependent upon each other. Final resolution of the anion exchange docket, particularly if it becomes economically impractical to provide anion exchange treatment at one or more of the wells designated for treatment, will have important consequences to Docket No 060122-WU. If it is ultimately determined that it is not economically feasible to provide anion exchange treatment for certain wells (more costly than simply buying water from the County), that has important consequences to designing the best points of delivery of County water to the Aloha system. If it becomes economically infeasible to produce water from certain wells it will become imperative to replace that water with County water provided by a County bulk meter, properly located next to the affected area. The proper locations of any County bulk meter, will be determined by the capability of the transmission lines to deliver the water to the affected area in a timely manner.

13. The resolution of the anion exchange docket and complete discovery and understanding of the transmission system is necessary before the Commission can approve the best proposal for purchasing water from Pasco County. While the customers desire Aloha to purchase water from the County as quickly as possible, proceeding with Docket No. 060122-WU before knowing the resolution of Docket No. 060606-WS and without full discovery and understanding of the limitations of Aloha's transmission system could result in millions of dollars of ratepayers' money being wasted. The money could be wasted building temporary and permanent water facilities (including storage) in the extreme eastern portion of Aloha's service territory that will not adequately provide service to Aloha's customers.

14. The critical interrelationship of Dockets Nos. 060122-WU and 060606-WS is further underscored when one considers another important problem. The Citizens' engineers have informed us that the chloramination process is far less effective than using chlorine in oxidizing hydrogen sulfide. There is considerable concern that switching to the chloramination facilities currently constructed at Aloha's wells prior to implementing additional treatment for hydrogen sulfide (such as anion exchange) could significantly worsen the black water (hydrogen sulfide) problem. In short, given the design of the chloramination facilities, including contact time, it may be necessary to implement more robust hydrogen sulfide treatment prior to purchasing the first drop of water from the County. If this is true, Aloha will not be in a position to purchase water from the County for one and a half to two years. This is an important question that needs to be answered prior to the Commission approving any rate increase to pay for purchasing water from the County.

15. Interrogatory No. 62 requests Aloha to provide the lengths and location of all water lines 8" or greater in diameter currently serving the Aloha Seven Springs service territory. In its

response Aloha complains that the interrogatory is burdensome, overbroad and not reasonably calculated to lead to the discovery of admissible evidence. As stated previously, understanding at minimum the size and location of all transmission mains is essential before anyone can determine the feasibility (economically and operationally) of any plan to introduce Pasco County water to Aloha's water system to meet the needs of its customers in a timely manner. This requested information is not only relevant but essential to resolve one of the primary issues in this docket, namely, what is the best way (economically and operationally) for Aloha to purchase water from Pasco county.

16. The Citizens do not believe the request for information concerning all lines 8" or greater is either overbroad or burdensome. However, after further consultation with our engineers OPC is willing to limit the request for the Company to identify the location and diameter size of **all transmission mains** rather than **all lines over 8"** in diameter. There is no question there are many 8" lines that comprise the numerous distribution systems serving Aloha's customers. One reason the 8" diameter threshold was used was because according to the four maps provided in 2000 there are instances where water can only travel from one distribution system (subdivision, commercial or industrial) to another by a transmission main that is only 8" in diameter. It was also used to avoid confusion and disagreement about which lines were transmission and which should be considered distribution. So long as Aloha identifies and provides the location and diameter of all water transmission mains (providing water to distribution systems that include customer connections), we can remove the request to locate all 8" lines. In this Motion OPC requests the location of only those 8" lines that function as a transmission main, plus all other transmission mains that exceed 8" in diameter. To the extent there is uncertainty concerning some of the lines, there will need to be some degree of communication and cooperation to

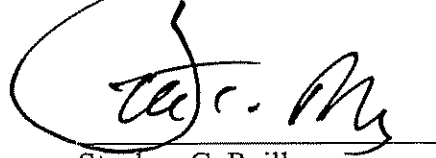
resolve such questions. The Company should readily know and be able to provide the location and diameter of all transmission mains added to their system since 2000. If the Company doesn't readily know this information by now, they cannot properly defend their proposal for purchasing water from Pasco County. Certainly, the Citizens' request for Aloha to provide all changes and additions to its transmission lines since February, 2000 is neither overboard nor burdensome.

17. Interrogatory No. 63 (a) requests the Company to rank wells 1-4 and 6-9, with the raw water produced by the well with the least hydrogen sulfide content being ranked first and the well with the highest hydrogen sulfide content being ranked eighth. Interrogatory No. 63 (b) asks the Company to provide the latest information available to the Utility concerning hydrogen sulfide content. The Citizens seek this information not to conduct an "anion fishing expedition" or seek information related to another abated docket, but rather to discover essential information to prepare the Citizens' proposal concerning the best plan to purchase water from Pasco County. For the reasons stated above the best plan cannot be finalized without consideration of the black water problem and how that problem impacts certain areas of Aloha's service territory more than others.

WHEREFORE, for the reasons stated above, the Citizens' respectfully request the Prehearing Officer to order Aloha to provide, to OPC at its office in Tallahassee on a expedited basis, an update to the four maps previously provided to Staff, that describes all transmission line changes and additions made to Aloha's water system since February, 2000, and to provide the

ranking and hydrogen sulfide data requested in Interrogatory No. 63 (a) and (b).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "S.C. Reilly", is written over a horizontal line. The signature is stylized and cursive.

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Attorney for the Citizens
of the State of Florida

AFFIDAVIT

STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, who deposed and stated that he/she provided the answers to interrogatories _____ served on _____ by _____ on _____ and that the responses are true and correct to the best of his/her information and belief.

DATED at _____, _____, this day of _____, 2008.

Sworn to and subscribed before me this _____ day of _____, 2008.

NOTARY PUBLIC

State of _____ at Large

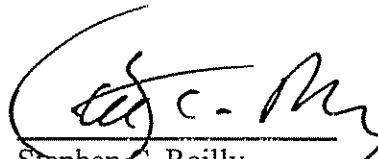
My Commission Expires: _____

CERTIFICATE OF SERVICE
DOCKET NO. 060122-WU

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Citizens' Motion to Compel has been furnished by electronic mail and by U. S. Mail to the following parties this 18th day of August, 2008:

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