

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

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**Docket No. 060122-WU**

**Filed: August 29, 2008**

**MOTION TO DISMISS OR IN THE ALTERNATIVE  
MOTION TO AMEND PROCEDURAL ORDER**

The Citizens of the State of Florida (“Citizens”) by and through their undersigned attorney, the Office of Public Counsel (“OPC”), hereby file this Motion to Dismiss Aloha Utilities, Inc.’s (“Aloha,” “Utility” or “Company”) application for limited proceeding increase in water rates or in the alternative Motion to Amend Procedural Order issued in this docket, and state:

1. On September 28, 2007, Aloha filed its application for a limited proceeding in accordance with Order No. PSC-06-1069-S-WU, Order Approving Stipulation on Procedure. The purpose of the limited proceeding was to establish water rates to allow for the recovery of Aloha’s cost of constructing chloramination facilities and purchasing additional water from Pasco County, including the cost of any interconnection facilities, any required impact fees, and any related reduction in Aloha’s water treatment costs.

2. The Commission considered the Utility’s application at its February 12, 2008, Agenda Conference, and subsequently issued Proposed Agency Action (PAA) Order No. PSC-08-0137-PAA-WU on March 3, 2008 (“PAA Order”).

3. In this order, the Commission found that the limited proceeding should be trifurcated into three phases, the first of which considers the cost of the interconnection facilities that must be

constructed in order to purchase water from Pasco County, the payment of impact fees for this water, the estimated payments for bulk water purchases from Pasco County, and the expenses of the chloramination conversion.

4. On March 24, 2008, Aloha, OPC, and members of the Better Water Now Committee (“BWN”) protested the order and requested a hearing on the matter.

5. Controlling dates for this proceeding were established by Order No. PSC-08-0427-PCO-WU, Order Establishing Procedure (“Procedural Order”) issued June 27, 2008.

The controlling dates are as follows:

- |  |                      |
|--|----------------------|
| (1) Utility’s testimony and exhibits       | August 5, 2008       |
| (2) Intervenors’ testimony and exhibits    | September 16, 2008   |
| (3) Staff’s testimony and exhibits, if any | October 1, 2008      |
| (4) Rebuttal testimony and exhibits        | October 15, 2008     |
| (5) Prehearing Statements                  | October 30, 2008     |
| (6) Prehearing Conference                  | November 12, 2008    |
| (7) Discovery Deadline                     | November 12, 2008    |
| (8) Hearing                                | November 24-25, 2008 |
| (9) Briefs                                 | December 24, 2008    |

### **MOTION TO DISMISS**

6. In accordance with the Procedural Order, Aqua Utilities Inc., filed direct testimony of Stephen Watford, David Porter PE, and Robert C. Nixon, CPA on August 5, 2008.

7. In its direct testimony, filed on August 5, 2008, to support its protest of the PAA Order, the Company essentially refiled its original case by resubmitting its Special Report, dated

September 19, 2007. However, when refiling the above Special Report the Company's accounting and engineering witnesses in their testimony state that the Company needs to significantly modify its rate increase request based upon "known and measurable changes." Further, according to the Company's testimony Aloha does not anticipate filing these major changes until it files its rebuttal testimony.

According to the Company's testimony, these changes include:

- The AFUDC accrual of the capacity charges paid to Pasco County, and the cost of the interconnect needs to be updated to at least December of 2009
- The updated estimated cost of the interconnect needs to be recognized, based on changes to the design of facilities ultimately approved by Pasco County, together with applicable AFUDC.
- Expenses and plant affected by growth need to be revised. Aloha claims that growth in the service area has slowed to almost zero due to the subprime mortgage crisis and overall slowdown in the economy.
- Operating costs for chemicals have risen dramatically due to the record increases in the price of oil. Specifically, liquid chlorine used at the water plants will be much greater than projected since chlorine demand associated with removal of hydrogen sulfide will need to be met with liquid chlorine.
- Current labor costs are greater than the 2005 labor costs used in the application for chloramination related expenses. In addition, select wage increases based on merit and general wage increases of 12% have been implemented by Aloha.
- Change to the rate per thousand gallons to be charged Aloha for purchased water.
- Rate case expense needs to be updated to recognize actual expense. (Although addressed in the testimony of Mr. Nixon, rate case expense is part of Phase II of this proceeding, not the instant Phase I.)

8. As shown on Exhibit A, the changes that Aloha proposes to make to its filing affects every issue subject to protest by the Citizens, BWN, or Aloha itself. Of the total adjustments that have been protested, 100% will have **changed significantly** when the Company files its rebuttal

testimony. The extent of the changes are unknown to the parties that are required to respond to Aloha's testimony, as the Company did not submit any updated or revised adjustments with its direct testimony and exhibits. Instead, the Company only provided a discussion of the magnitude of the changes that it will not provide to the Citizens, BWN, and the Staff until it files its rebuttal testimony. At page 4 of his testimony Mr. Porter explains that the changes he anticipates filing with his rebuttal testimony are significant.

The combination of the increase in the quantity of liquid chlorine required plus the increases in liquid chlorine costs that have occurred since the estimates were completed in early 2006 will result in **greatly increased** incremental costs for liquid chlorine over the costs that were originally submitted in RCN-2. (Emphasis supplied).

Mr. Nixon also addressed significant changes on page 9 of his testimony. "The cost of chemicals and purchased power has **risen dramatically** since the original projections were made." (Emphasis supplied). The changes that the Company proposes to make to its original filing with its rebuttal testimony, for all intents and purposes constitutes a materially new filing.

9. Aloha intends to withhold its completely revised filing until its rebuttal testimony.

Mr. Porter states on page 4 of his testimony the following:

I have not completed an analysis of the cost impact as of the time of filing of my direct testimony. However, I will have updated values for this and other costs which have increased, as discussed in Mr. Nixon's Direct Testimony at the time my rebuttal testimony is prepared.

10. In the direct testimony filed in this docket Aloha's witnesses have conceded that the numbers used to support the Company's application for a rate increase have materially changed since the Company filed its case on September 28, 2007. The Company cannot be permitted to disavow its original filing with regard to 100% of the issues being protested in this docket, with a promise to provide these material changes when the Company files its rebuttal testimony a little more than a month before the hearing.

11. By statute, the Commission is prohibited from establishing rates that are not shown to be reasonable. By statute and rule, the Commission has a very deliberative process whereby it can fully analyze a filing in a timely fashion and, in the final analysis, assure the public that the rates that result from the PSC hearing process are reasonable. As an integral part of the PSC's analysis, it carefully establishes time frames under which all participating parties can analyze a utility's filing and present positions and testimony for the Commission to evaluate in arriving at its decisions. Aloha's expressed intention to materially alter its rate increase request more than 10 months after filing its application, more than 4 months after the protests were filed by the parties, and after OPC is required to file direct testimony critiquing the Company's original filing, violates the customers' due process rights to be afforded a reasonable opportunity to analyze and test the reasonableness of the Company's rate increase request. This is particularly true since the Company in its direct testimony disavows the numbers used in the original filing.

12. Permitting Aloha to materially alter its filing at such a late date effectively eliminates the factual basis of the Commission's PAA decision issued in this Docket on March 3, 2008. It also deprives Intervenors and Staff of the time frames established to allow for the depth of analysis necessary for the PSC to assure the public of reasonable rates.

13. In response to similar circumstances presented in the Aqua Utilities Florida, Inc. ("Aqua") rate case, Docket No. 060368-WS, OPC filed a Motion to Dismiss. In addition to failing to provide sufficient or timely responses to discovery and audit requests, Aqua failed to provide adequate support for projected plant-in-service, engineering data and billing determinants, as well as conceding two weeks before OPC's testimony was due that it needed to make changes to all of its expense filing. This revelation effectively disavowed Aqua's expense numbers two weeks before OPC's testimony was required to be filed. In the instant proceeding,

Aloha knowingly disavowed its original expense adjustments at the time it filed its direct testimony and does not intend to provide new significantly increased adjustments until one month after OPC files its testimony.

14. In the Aqua proceeding, Staff filed its recommendation for the Commission to grant the Motion to Dismiss the Aqua rate case on August 16, 2007. In the recommendation Staff noted that:

...the utility is attempting to revise its rate case application by submitting additional information seven months after it filed its MFR's, four months after the official date of filing, and one month after the Commission concluded its service hearings in this rate case. The filing of this revised data is also one month before testimony is due from intervenors and staff. (page 12).

Faced with an unfavorable Staff recommendation Aloha elected to withdraw its rate increase request rather than suffer a dismissal of the case.

15. In the instant case, Aloha proposes to materially alter all of the numbers associated with all of the protested issues in this case, one month **after** OPC is required to file its testimony critiquing the Company's disavowed numbers, and a little more than a month before the hearing is scheduled. Permitting Aloha to materially change all of the numbers associated with all of protested issues in this proceeding when it files its rebuttal testimony would make a mockery of the Commission's procedures and the due process rights of the customers. The Commission should dismiss this case. To do otherwise would set a bad precedent permitting utilities to increase their original rate request every time a Commission's PAA Order is protested.

## MOTION TO AMEND PROCEDURAL ORDER

16. In the alternative to the Citizens' Motion to Dismiss, the Commission should at minimum amend the Procedural Order to preserve the customers' due process rights and to assure the public that the rates that result from the PSC hearing process are supported and reasonable.

17. Aloha intends to file a materially new case on the October 15, 2006, approximately one month **after** the Citizens file their testimony in this proceeding. There is absolutely no opportunity for the Citizens or BWN to examine this new filing and provide responsive testimony. Moreover, there are only 40 days from the date Aloha files rebuttal testimony to the hearing, which leaves little time to evaluate the Company's new filing and no time to issue discovery and receive responses.

18. At this stage of the proceeding, the parties have no idea as to the magnitude of the rate increase the Company is requesting. If the Citizens and BWN are required to file testimony on September 16, 2008, their due process rights will have been violated, as they have been given no opportunity to propound discovery, evaluate the responses to discovery, or provide responsive testimony to Aloha's new case.

19. Even extending the date of the hearing to allow interveners to provide surrebuttal testimony is an unacceptable solution. Such a fix imposes extra costs and time upon the Intervenor as they will file direct testimony responding to adjustments contained in the September 28, 2007 filing, as mostly disavowed by the Company's direct testimony filed on August 5, 2008, only to have to re-evaluate new information after Aloha's rebuttal testimony is filed. To require Intervenor's to duplicate their efforts to analyze a materially new case is superfluous, wasteful, and should not be permitted by the Commission.

20. The Citizens request that the Commission delay this proceeding to allow the Citizens and BWN the opportunity to examine and evaluate the significant modifications the Company intends to make to its limited proceeding rate request. The Citizens request at least a 90-day delay in this proceeding from October 15, 2008 to give it an opportunity to evaluate the new and revised filing the Company intends to present on this date. The Citizens should not be required to file its direct case until after the Company has filed its significantly revised adjustments for this limited proceeding rate increase. The Citizens request that the Commission issue a new procedural schedule setting the due date for the Intervenor direct testimony on January 13, 2009. This will give the Intervenors in this case the opportunity to properly evaluate and respond to the new case the Company intends to file on October, 15, 2008. The remaining dates of the procedural schedule should be adjusted accordingly, taking into consideration the Commission's calendar.

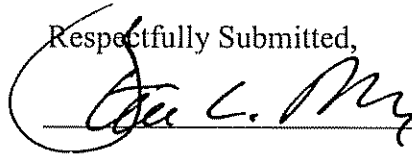
21. There is no good reason to proceed with this limited proceeding under the current procedural schedule, given the Company's intent to file a new case with its rebuttal filing. As previously stated, the rates to be set in this proceeding will not even take place until Aloha begins purchasing water from Pasco County – projected to be year-end 2009 at the earliest – more than a year from now.

WHEREFORE, the Citizens request that the Commission grant its request to dismiss the case or in this alternative to amend the procedural order to provide the Citizens with at least 90 days to file direct testimony after Aloha provides all of its material changes to its rate increase request. Further, since the Commission's decision on this motion may not be scheduled before the Citizens must file its direct testimony on September 16, 2008, the Citizens request the



Prehearing Office to issue an order permitting the delayed filing of the Citizens' direct testimony until after the Commission rules on this motion.

Respectfully Submitted,

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

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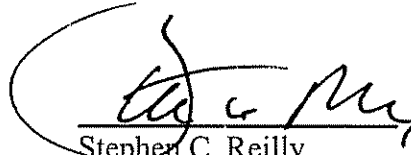
Attorney for the Citizens  
of the State of Florida

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 060122-WU**

I HEREBY CERTIFY that a true and correct copy of the foregoing Citizens' Motion to Dismiss or in the Alternative Motion to Amend Procedural Order has been furnished by electronic mail and by U. S. Mail to the following parties this 29<sup>th</sup> day of August, 2008:

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

John L. Wharton, Esquire  
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Stephen C. Reilly  
Associate Public Counsel

Aloha Utilities, Inc.  
Seven Springs Water Limited Proceeding  
Summary of Company Adjustments

Rate Base	Original Filing	Company's Anticipated Change	Amount To Be Changed in Rebuttal	Contested
<b>Plant in Service</b>				
Estimated Tie-In Costs (including AFUDC)	\$ 828,593	...the updated estimated cost of the interconnect needs to be recognized, based on the design of facilities ultimately approved by Pasco County, together with applicable AFUDC. (Nixon, p.7.) AFUDC needs to be calculated to the estimated completion date of the interconnect based on the revised cost to meet County requirements for the interconnect. (Nixon, p. 9.)	Yes	BWN
Plant Capacity Charges (Impact Fees)	\$ 4,136,675	AFUDC on the capacity charges paid to Pasco County must be recalculated to the estimated completion date of this proceeding and approval of rates to begin purchasing water. (Nixon, p. 9.)	Yes	Aloha, BWN
<b>Land</b>				
Estimate	\$ 75,000	Such updated costs would also substitute the annual cost of leased land required for the Phase I interconnect in place of the estimate to acquire land (\$75,000) included in the application. (Nixon, p. 9.)	Yes	BWN
<b>Accumulated Depreciation</b>				
Acc. Depreciation of Capacity Charges	\$ (248,201)	Function of Increase in Capacity Charges	Yes	Aloha, BWN
Annual Depreciation of Estimated Tie-In Cost	\$ (39,254)	Function of Increase in Tie-in Cost	Yes	BWN
<b>CIAC</b>				
Additional Projected CIAC through 12-31-09	\$ (6,282,000)	...the growth in the service area has slowed to almost zero due to the subprime mortgage crisis and overall slowdown in the economy. Staff recognized the impact of this slow down in the PAA Order, but things have gotten even worse. Growth in the application was based on a linear regression of customer growth for the five years ending December 31, 2006. Obviously, this is now outdated by circumstances beyond Aloha's control. (Nixon, p. 7.) Revised growth projections to reflect the slow down in new connections need to be recognized. This will impact the projection of CIAC, accumulated amortization, sales and perhaps purchased water costs, purchased power and chemicals. (Nixon, p. 9.)	Yes	No

Aloha Utilities, Inc.  
Seven Springs Water Limited Proceeding  
Summary of Company Adjustments

	Original Filing	Company's Anticipated Change	Amount To Be Changed in Rebuttal	Protested
<b>Accumulated Amortization of CIAC</b>				
Additional Accumulated Amortization of projected CIAC through 12-31-09	\$ 393,162	Revised growth projections to reflect the slow down in new connections need to be recognized. This will impact the projection of CIAC, accumulated amortization, sales and perhaps purchased water costs, purchased power and chemicals. (Nixon, p. 9.)	Yes	No
<b>O&amp;M Expense</b>				
<b>Labor</b>				
Incremental Cost of Labor for Chloramination Conversion	\$ 99,685	...current labor costs are greater than the 2005 labor costs used in the application for chloramination related expenses. In addition to selective wage increases based on merit, in August 2006, Aloha implemented general wage increases to remain competitive with Pasco County of approximately 12%. (Nixon, pp. 7-8.) Current labor costs should be recognized, since the 2005 wage scales used to project chloramination labor costs have risen. (Nixon, p. 10.)	Yes	BWN
Additional Labor for Tie-in	\$ 12,486	...current labor costs are greater than the 2005 labor costs used in the application for chloramination related expenses. In addition to selective wage increases based on merit, in August 2006, Aloha implemented general wage increases to remain competitive with Pasco County of approximately 12%. (Nixon, p. 8.) Current labor costs should be recognized, since the 2005 wage scales used to project chloramination labor costs have risen. (Nixon, p. 10.)	Yes	BWN
<b>Employee Pensions &amp; Benefits</b>				
Incremental Cost of Pensions and Benefits for Chloramination Conversion	\$ 41,140	Function of Increase in Labor Costs	Yes	BWN
Incremental Cost of Pensions and Benefits for Tie-in	\$ 5,153	Function of Increase in Labor Costs for Tie-in	Yes	BWN
<b>Purchased Water</b>				
Net Increase in Purchased Water Costs	\$ 3,136,080	The actual Pasco County charge per thousand gallons to Aloha for purchased water needs to be utilized in this proceeding. (Nixon, p. 10.)	Yes	Aloha, OPC, BWN

**Aloha Utilities, Inc.  
Seven Springs Water Limited Proceeding  
Summary of Company Adjustments**

	Original Filing	Company's Anticipated Change	Amount To Be Changed in Rebuttal	Protested
<b>Purchased Power</b>				
Net Decrease in Purchased Power After Chloramination Conversion	\$ (39,073)	The cost of chemicals and purchased power has risen dramatically since the original projections were made. The current costs should be recognized. (Nixon, p. 9.)	Yes	BWN
Incremental Increase in Purchased Power for Tie-In	\$ 26,937	The cost of chemicals and purchased power has risen dramatically since the original projections were made. The current costs should be recognized. (Nixon, p. 9.)	Yes	BWN
<b>Chemicals</b>				
Net Increase in Ammonia Solution After Chloramination Conversion	\$ 12,597	The cost of chemicals and purchased power has risen dramatically since the original projections were made. The current costs should be recognized. (Nixon, p. 9.)	Yes	BWN
Net Increase in Corrosion Inhibitor After Chloramination Conversion	\$ 1,062	The cost of chemicals and purchased power has risen dramatically since the original projections were made. The current costs should be recognized. (Nixon, p. 9.)	Yes	BWN
Net Increase for Chlorine After Chloramination Conversion	\$ 13,967	The cost of chemicals and purchased power has risen dramatically since the original projections were made. The current costs should be recognized. (Nixon, p. 9.) Therefore, liquid chlorine use at the water plants will be much greater than was projected since the chlorine demand associated with hydrogen sulfide will need to be met with liquid chlorine. The combination of the increase in the quantity of liquid chlorine required plus the increases in liquid chlorine costs that have occurred since the estimates were completed in early 2006 will result in greatly increased incremental costs for liquid chlorine over the costs that were originally submitted in RCN-2. (Porter, p. 4.)	Yes	BWN
<b>Materials &amp; Supplies - Maintenance</b>				
Increase in Materials & Supplies After Chloramination Conversion	\$ 12,500	Not Protested	No	No
Increase in Maintenance Contract After Tie-In	\$ 11,785	Not Protested	No	No
<b>Contract Services - Testing</b>				
Additional Testing After Chloramination Conversion	\$ 66,952	Not Protested	No	No

**Aloha Utilities, Inc.**  
**Seven Springs Water Limited Proceeding**  
**Summary of Company Adjustments**

	Original Filing	Company's Anticipated Change	Amount To Be Changed in Rebuttal	Protested
<b>Contract Services - Other</b>				
Net Increase in Contract Services - Other After Chloramination Conversion	\$ 122,845	Not Protested	No	No
<b>Amortization of Rate Case Expense</b>				
Annual Amortization Over 4 Years	\$ 43,750	...rate case expense needs to be updated to recognize actual expense. The estimate in the application did not envision many things that have occurred, especially a protest or need for a hearing and extensive discovery which OPC has begun. (Nixon, p. 8.)	Yes	Aloha
<b>Depreciation Expense</b>				
Increase in Depreciation Expense for Capacity Charges	\$ 165,467	Function of Increase in Capacity Charges	Yes	Aloha, BWN
Increase in Depreciation Expense for Tie-In	\$ 26,169	Function of Increase in Tie-in Costs	Yes	BWN
<b>CIAC Amortization</b>				
Increase in CIAC Amortization	\$ (244,370)	...the growth in the service area has slowed to almost zero due to the subprime mortgage crisis and overall slowdown in the economy. Staff recognized the impact of this slow down in the PAA Order, but things have gotten even worse. Growth in the application was based on a linear regression of customer growth for the five years ending December 31, 2006. Obviously, this is now outdated by circumstances beyond Aloha's control. (Nixon, p. 7.) Revised growth projections to reflect the slow down in new connections need to be recognized. This will impact the projection of CIAC, accumulated amortization, sales and perhaps purchased water costs, purchased power and chemicals. (Nixon, p. 9.)	Yes	No
<b>Taxes Other Than Income Taxes</b>				
Increase in Payroll Taxes After Chloramination Conversion	\$ 7,626	...current labor costs are greater than the 2005 labor costs used in the application for chloramination related expenses. In addition to selective wage increases based on merit, in August 2006, Aloha implemented general wage increases to remain competitive with Pasco County of approximately 12%. (Nixon, pp. 7-8.) Current labor costs should be recognized, since the 2005 wage scales used to project chloramination labor costs have risen. (Nixon, p. 10.)	Yes	BWN

**Aloha Utilities, Inc.  
Seven Springs Water Limited Proceeding  
Summary of Company Adjustments**

	Original Filing	Company's Anticipated Change	Amount To Be Changed in Rebuttal	Contested
Increase in Payroll Taxes After Tie-In	\$ 955	...current labor costs are greater than the 2005 labor costs used in the application for chloramination related expenses. In addition to selective wage increases based on merit, in August 2006, Aloha implemented general wage increases to remain competitive with Pasco County of approximately 12%. (Nixon, pp. 7-8.) Current labor costs should be recognized, since the 2005 wage scales used to project chloramination labor costs have risen. (Nixon, p. 10.)	Yes	BWN
Increase in Property Taxes After Chloramination Conversion	\$ 49,230	Function of Increase in Chloramination Plant Costs	No	No
Increase in Property Taxes After Tie-In	\$ 13,379	Function of Increase in Tie-in Plant Costs	Yes	BWN
<b>True-Up Language in Commission's Order No.</b>				
<b>Absolute Value of Total Rate Base Adjustments Aloha Proposes to Change (1)</b>				
	\$ 12,002,885			
<b>Absolute Value of Total O&amp;M Adjustments Aloha Proposes to Change (2)</b>				
	\$ 3,889,896			

(1) The absolute value represents the total amount of all adjustments regardless of the positive or negative direction of the adjustment.  
(2) The absolute value represents the total amount of all adjustments regardless of the positive or negative direction of the adjustment.