

Ruth Nettles

From: Bronwyn Revell [BRevell@RSBattorneys.com]
Sent: Tuesday, September 23, 2008 4:28 PM
To: Filings@psc.state.fl.us; John Wharton; reilly.steve@leg.state.fl.us; Jean Hartman; wayneforehand@verizon.net
Cc: Marty Deterding
Subject: Joint Request for Abatement
Attachments: Joint Request for Abatement.pdf

- a. John L. Wharton
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- b. Docket No. 060122-WU; Application for a limited proceeding increase in water rates in Pasco County by Aloha Utilities, Inc.
- c. Jointly by Aloha Utilities and the Office of Public Counsel
- d. 6 pages
- e. Joint Request for Abatement consisting of six pages

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9/23/2008

DOCUMENT NUMBER-DATE
08976 SEP 23 8
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a limited proceeding
Increase in water rates in Pasco County by
Aloha Utilities, Inc.

Docket No. 060122-WU

JOINT REQUEST FOR ABATEMENT

Aloha Utilities, Inc. ("Aloha", "Utility" or "Company") and the Office of Public Counsel ("OPC") (sometimes hereafter referred to jointly as the "Movants"), hereby file this Joint Request for Abatement and in support thereof state as follows:

1. This case is currently set for hearing on November 24-25, 2008. The prehearing conference and discovery deadline are on November 12, 2008. The date for rebuttal testimony and exhibits is October 15, 2008. By order of the Prehearing Officer issued September 17, 2008, the time for filing intervenor and staff testimony and exhibits is tolled, pending a determination by the full Commission on OPC's Motion to Dismiss or in the alternative, Motion to Amend Procedural Order, and Aloha's Response to that Motion. Those motions are set to be heard by the full Commission at the agenda scheduled for September 29, 2008.
2. On September 17, 2008, staff issued its recommendation on OPC's pending motion and Aloha's response. Staff has recommended, in pertinent part, that the Motion to Dismiss be denied, and has recommended that Aloha be directed to refile its testimony and exhibits on October 15, 2008, that Aloha be directed to account for adjustments for known and measurable changes that it wishes the Commission to consider, and that the Prehearing Officer thereafter modify the Order Establishing Procedure as needed.

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3. Aloha submits that the filing of direct testimony and exhibits by Aloha on October 15, 2008, with a hearing date of November 24-25, 2008, may be impossible to accomplish in a form and fashion which is consistent with the due process rights of the Movants. It is the position of OPC that the same would be impossible. Counsels for both Parties have significant obligations in other cases during this time period which only exacerbates the difficulties of an attenuated schedule in this proceeding. Additionally, the issue of rescheduling all of the critical events in this case is not as simple as rescheduling the dates upon which testimony and exhibits should be filed. No depositions have occurred in this case, and it is a certainty that depositions will be taken. Aloha intends to take the deposition of OPC and staff witnesses *after* they have filed their prefiled testimony. Likewise, OPC may take depositions in this proceeding, and will need to engage in other discovery. There is no practical way to accomplish this discovery, including the transcription of depositions and their review by the pertinent experts and counsel, as well as file all testimony which needs to be filed in a period of a little over 30 days (assuming an October 15, 2008 filing date for Aloha's direct). None of this is intended to cast aspersions upon staff or staff's recommendation, but rather to establish the basis for why the Movants are requesting the relief herein. Further, staff's recommendation does not presume that the hearing date of November 24-25, 2008 would not be rescheduled.
4. The balance of this Docket No. 060122-WU and the other critical docket involving Aloha, Docket No. 060606-WS has been in abatement since April 30, 2008. On September 16, 2008, the Commission voted to extend the period of abatement for an additional 45 days, commencing on the date of the issuance of the order reflecting that vote.

5. The Movants request that the Commission abate this proceeding in its entirety. The Movants propose that all activities in this case be abated on the date of the Commission's vote, said abatement to otherwise run concurrently with the abatement that the Commission established in Docket Nos. 060122-WU and 060606-WS on September 16, 2008, such that the abatement in those dockets and the abatement in this proceeding end on the same day. The Movants respectfully request that this matter be reset for hearing on April 8 and 9, 2009 (those days currently scheduled for hearing in Docket No. 060606-WS the Aloha Show Cause proceeding), and that the Show Cause proceeding be set for the first available two days thereafter. If the Commission votes to abate this proceeding, both Aloha and OPC commit to file within 7 days of the Commission issuing its order their respective recommendations concerning discovery parameters and the rescheduling of critical dates for the case.
6. For all of the reasons set forth above; in light of OPC's concerns as reflected in its motions; and for all of the reasons for which the abatement was established and thereafter extended in Docket Nos. 060122-WU and 060606-WS, the Movants respectfully request that this matter be abated as requested herein. The abatement is in the public interest; is in the interest of the Movants, the staff and the Commission; and will promote and assist the negotiations which are currently occurring between the FGUA and Aloha. It is Aloha's position that this abatement will result in the most expeditious disposition of this particular docket and the establishment of rates which will allow Aloha to purchase bulk water from Pasco County, given the realities of OPC's pending motion, the staff's recommendation, and the present posture of the case.

7. This motion is made jointly by Aloha and the OPC. The OPC hereby represents that they have communicated to the customer parties on the issue of this motion, and that those customers join herein.

WHEREFORE, and in consideration of the above, the Movants respectfully requests that:

- a) This proceeding be abated in its entirety for a period commencing on the date of the Commission's vote and ending on the same day the abatement which the Commission approved in Docket Nos. 060122-WU and 060606-WS by its vote on September 16, 2008; and
- b) That the matter be reset on April 8 and 9, 2009, as requested herein;
- c) If FGUA and Aloha are unable to reach agreement concerning the sale of the Utility, then the protests of PAA Order No. PSC-08-0137-PAA-WU will be rescheduled for hearing, and the Prehearing Officer will issue an Amended Order Establishing Procedure that directs Aloha to refile its testimony and exhibits and directs Aloha to account for adjustments for known and measurable changes at the time of the filing of such testimony that it wishes the Commission to consider, and the Prehearing Officer will establish other critical dates in the Amended Procedural Order that protect the due process rights of the parties and provide adequate discovery and an orderly disposition of the case; and
- d) That this matter be heard by the full Commission prior to OPC's pending motion, at its September 29, 2008 agenda conference, such that if this Joint

Motion is accepted, OPC's pending Motion to Dismiss or in the Alternative
Motion to Amend Procedural Order will be moot.

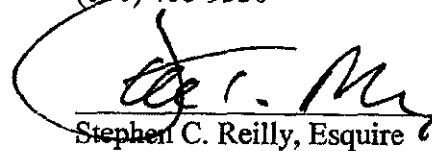
Respectfully submitted this 23rd day of September, 2008, by

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CERTIFICATE OF SERVICE
DOCKET NO. 060122-WU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail and by U. S. Mail to the following parties this 23rd day of September, 2008:

Customer Petitioners
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