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September 27, 1999

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RECORDS AND REPORTING

ORIGINAL

Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Docket No. 960545-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizen's Motion to Compel Discovery Compliance. A diskette in WordPerfect 6.1 is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Harold McLean  
Associate Public Counsel

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_ HM:bsr
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_ 2 Enclosures
- MAS \_\_\_\_\_ 3
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FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

*In Re* Investigation of Utility )  
rates of Aloha Utilities, Inc. )  
In Pasco County, Florida. )  
\_\_\_\_\_ /

DOCKET NO. 960545-WS

FILED: September 27, 1999

ORIGINAL

**CITIZENS' MOTION TO COMPEL  
DISCOVERY COMPLIANCE**

On September 13, 1999, the Citizens of the State of Florida, by and through JACK SHREVE, Public Counsel, (Citizens) served discovery requests upon Aloha Utilities, Inc. (Aloha) consisting of Interrogatories and Requests for Production of documents, under the authority of the Florida Rules of Civil Procedure, and of Order No. PSC-99-0514-PCO-WS. On September 23, 1999, Aloha lodged certain Objections to both the Interrogatories and Requests for Production. The Citizens move the Commission to compel compliance with the discovery requests over Aloha's objections based upon the following:

**INTERROGATORIES**

A. Interrogatory No. 2 propounded by the Citizens upon Aloha requests:

- 2. Please state the names and provide the business addresses of any and all persons who had physical access to Aloha's well sites located east of Highway 19 during the week of August 2nd through 6th, or any part thereof;

Aloha has lodged the following objection as to Interrogatory No. 2:

Interrogatory No. 2: Aloha objects to this Interrogatory to the extent it seeks the identity of persons unknown to Aloha. Aloha is only able to respond to those persons who had "physical access" to Aloha's well-sites during the week of August 2-6, 1999 when such "physical access" was within Aloha's knowledge.

Aloha's objection is unfounded, if not disingenuous. The preface to the Citizens' interrogatories, which was apparently carefully and critically read by Aloha provides in relevant part:

Each interrogatory should be answered based upon your knowledge and information or belief, and any answer based upon information and belief should state that it is given on such basis. *If the complete answer to an interrogatory is not known, so state and answer as fully as possible the part of the interrogatory to which an answer is known.* (emphasis supplied)

Aloha was clearly not asked that which it does not know. Aloha's objection to Interrogatory No. 2 is superfluous. While a frank answer to the interrogatory is required, an objection to matters beyond Aloha's knowledge is not.

The Citizens move the Commission to compel Aloha to answer Interrogatory No. 2, insofar as its knowledge permits.

B. Interrogatory No. 3 propounded by the Citizens upon Aloha requests:

3. Please state the names and provide the business addresses of any and all persons, irrespective of whether Aloha employees, who Aloha has authorized physical access to Aloha's well sites located east of Highway 19 at any time during the year immediately preceding the date of these interrogatories;

Aloha has lodged the following objection as to Interrogatory No. 3:

Interrogatory No. 3: Aloha objects to Interrogatory No. 3 as being overbroad, burdensome, seeking information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The Interrogatory, as worded, does not seek information relevant to any issue in this case.

The objection is unfounded. The objection is noting more than a recitation of several terms of art which shed light neither on the burden to Aloha, nor the grounds for a claim of irrelevance. Florida law requires much more. The Fourth District Court of Appeal has state the matter clearly in First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Association, Inc. 545 So 2d 503 (Fla. 4th DCA, 1989)

Lastly, we turn our attention to petitioners' objections that some of the discovery sought was 'overly broad' or 'burdensome'. Such objections, standing alone would not constitute a basis for granting certiorari relief. (Citation omitted) More importantly, such words of art have little meaning without substantive support. Is this objection raised because petitioners would be required to produce a railroad boxcar full of documents, or are they merely objecting to the production of a half-inch thick file folder? Since the trial court has to consider petitioners' other objections, it is incumbent upon petitioners to quantify for the trial court the manner in which such discovery might be overly broad or burdensome. *They must be able to show the volume of documents, or the number of man-hours required in their production, or some other quantitative factor that would make it so.* (emphasis added)

Id. at 503

Both the Commission and the Citizens are left to speculate as to the burden, and as to how that burden might be lessened.

As to relevance, the Citizens' sworn testimony will show, and the Commission has found, that the quality of service delivered by Aloha is unsatisfactory. Moreover, the Citizens will provide in sworn testimony that it is likely that Aloha's water was altered before the Citizens' sampling. It is critical to the integrity of the Citizens testing of Aloha's water to know which persons -- *authorized by Aloha* -- had access to Aloha's well, storage, and pumping facilities.

Lastly, while Aloha objects that Interrogatory No. 3 "does not seek information relevant to any issue in this case." The Citizens respectfully submit that the issues of this case are as yet to

be determined. The broad issue is the unsatisfactory quality of service provided by Aloha.

Interrogatory No. 3 is designed to further the Commission's understanding of why Aloha provides unsatisfactory quality of service.

The Citizens move the Commission to compel Aloha to answer Interrogatory No. 3 insofar as its knowledge permits.

### REQUESTS FOR PRODUCTION OF DOCUMENTS

C. The Citizens' request for Production of Documents (POD) No. 4 requests:

4. Any time schedule, worksheet, work schedule, time cards, or the like which will show which Aloha employees were on duty during the week of August 2nd through 6th, 1999;

Aloha has lodged the following objection as to POD No. 4:

Request for Production No. 4: Objection. This request is burdensome, overbroad, seeks information which is not relevant to any information in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

As is the case with Aloha's objections to Interrogatory No. 3 above, the objection to POD No. 4 is a bare string of conclusory terms of art, totally lacking in any substance or justification for the objection. It falls far short of the requirements discussed in First City, Id., and it fails to favor the Commission or the Citizens with any information as to what burden might befall Aloha in its production, or how the POD might be amended to facilitate discovery.

As to relevance, the substance of the POD addresses which employees were on duty during the week of the week immediately preceding the day of water testing performed by the Citizens' contractor, any of the employees, irrespective of whether professional or support. Any such employee may have information regarding activities at the water well, storage, and pumping

sites during that week, a matter of critical interest and importance to the Citizens' role in this docket.

Lastly, the Citizens submit as a matter of common knowledge that Aloha, for a number of reasons, must account for, keep up with, and record what employees are on duty and when. The Citizens' POD requests but a week of these records.

The Citizens move the Commission to compel Aloha to provide what documents it has sought by the Citizens' in POD No. 4.

D. The Citizens' POD No. 5 requests:

5. Any memorandum, letter, notice, or the like, authored by Aloha's employees, officers, or representatives, irrespective of whether generated before or after August 4th, 1999, which discussed or mentioned in any way the site visit requested by the Citizens, that request being tendered on July 2, 1999;

Aloha has lodged the following objection as to POD No. 5:

Request for Production No. 5: Objection. To the extent this request addresses documents which are entitled to work product or privileged protection, Aloha objects. Any letters written by counsel for Aloha on this issue represent such work product and/or privileged material.

The Citizens seek no document from Aloha which is legitimately subject to attorney-client privilege. However, the objection does not assert that there are any such document(s).

Moreover, if any document is withheld under claim of privilege, Aloha is obliged to furnish a list of any such document(s) such that the Commission can assess the claim of privilege based upon the following considerations: who is the client; who is the attorney; does the document constitute legal advice; was the attorney acting in a managerial or legal capacity; and whether the privilege

has been intentionally or unintentionally waived. Any and all document(s) authored by Counsel for Aloha are not necessarily cloaked with a attorney-client privilege.

The Citizens move the Commission to compel Aloha to comply with POD No. 5 by either including document(s) pursuant thereto, or identifying by author, date, and recipient any document which it claims subject to attorney client privilege.

E. The Citizens' POD No. 7 requests:

7. Any and all documents which relate to the testing of water withdrawn and/or produced by Aloha Utilities, whether raw or treated, generated by any source within the last five (5) years not otherwise included in the documents requested in this set of document requests, and not otherwise included in Aloha's direct prefilled testimony in this docket.

As is the case with Aloha's objections to Interrogatory No. 3 and POD No. 5 above, the objection to POD No. 7 is a bare string of conclusory terms of art, totally lacking in any substance or justification for the objection. It falls far short of the requirements discussed in First City, Id., and it fails to favor the Commission or the Citizens with any information as to what burden might befall Aloha in its production, or how the POD might be amended to facilitate discovery.

As to relevance, the Citizens say that any testing of Aloha's water over the past five years is at the heart of this case. Aloha has been found by the Commission to provide unsatisfactory quality of service. The Citizens respectfully submit that any records of the testing of Aloha's water are central to this case, and could well provide the Commission an insight into why it is that Aloha has not met Commission standards.

Lastly, Florida Rules of Civil Procedure permit Aloha to offer these documents to the Citizens for inspection and copying as necessary and do not compel Aloha to reproduce the records in any way.

The Citizens move the Commission to compel Aloha to comply with POD No. 5

WHEREFORE, The Citizens of the State of Florida move the Commission to compel Aloha Utilities, Inc. to comply with the Citizens discovery requests as identified above, and upon the grounds as set forth above.

Respectfully submitted,



Harold McLean  
Associate Public Counsel

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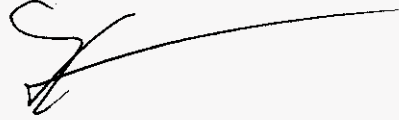
(850) 488-9330

Attorney for the Citizens  
of the State of Florida



**CERTIFICATE OF SERVICE  
DOCKET NO. 960545-WS**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 27th day of September, 1999.



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Harold McLean

Ralph Jaegar  
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