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October 4, 1999

ROBERT M. C. ROSE
OF COUNSEL

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0862

Re: Aloha Utilities, Inc.; Docket No. 960545-WS
Investigation of utility rates of Aloha Utilities, Inc.
Our File No. 26038.17

Dear Ms. Bayo:

Enclosed for filing please find the original and fifteen copies of Aloha Utilities, Inc.'s Response To OPC's Motion To Compel Discovery.

Should you have any questions regarding the above, please let me know.

Sincerely,

ROSE, SUNDSTROM & BENTLEY

John L. Wharton, Esq.
For The Firm

AFA _____
APP _____
CAF _____
CMU _____
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LEG 2 _____
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation of utility rates of Aloha Utilities, Inc. in Pasco County, Florida))))

DOCKET NO. 960545-WS

ALOHA UTILITIES, INC.'S RESPONSE TO OPC'S MOTION TO COMPEL DISCOVERY

Aloha Utilities, Inc., by and through undersigned counsel, hereby files this Aloha Utilities, Inc.'s Response To OPC's Motion To Compel Discovery, and in support thereof would state and allege as follows:

1. A common theme in OPC's Motion To Compel Discovery is its apparent insistence that Aloha's objections did not describe, to the apparent satisfaction of OPC, the basis for the objection. Such is not the same for the purpose of objections. The objections made by Aloha were obviously adequate to preserve Aloha's objections and were in conformance with the basis set forth in the applicable Administrative Code Rules, the Florida Rules of Civil Procedure, and Florida case law with regard to such objections. It is then incumbent upon the party seeking discovery to move to compel *if it elects to continue to pursue the information even in the face of such objections*. This, OPC has now done. Therefore, according to routine discovery practice, this Response is now Aloha's opportunity to expound upon the basis for its objections. Making objections is different than motion practice. There is no need, and in fact it would be improper, to go on and on in a pleading which sets forth such objections.

Additionally, in point of fact, OPC did not attempt to resolve any of these matters as required by Rule 28-106.204(3), before it filed its Motion To Compel Discovery. Interrogatory No. 2 is a classic case of where the parties seem to be saying the same thing and a call surely might have resolved that issue.

Interrogatories

2. INTERROGATORY NO. 2: OPC apparently agrees that the Interrogatory, despite its clear language, cannot reach information unknown to Aloha. In that case, the Citizens' Motion To Compel was unnecessary and superfluous. There is no need for "the Commission to compel Aloha to answer Interrogatory No. 2, insofar as its knowledge permits." Aloha has already indicated that it will respond as to those persons who had "physical access" to the well sites when such "physical access" was within Aloha's knowledge.

3. INTERROGATORY NO. 3: While OPC's reference to a case dealing with a burdensome Request For Production with regard to this Interrogatory is not helpful, it is apparent from OPC's own response to the Objection that OPC has engaged in a classic fishing expedition. The response by OPC that this Interrogatory was intended to further its scandalous and defamatory testimony "that Aloha's water was altered before the Citizens' sampling" does not even attempt to explain how access to those wells over a one year period has any relevance to the theory, even as specious as the theory is. OPC cannot show and has not even attempted to show, how an individual (whether an employee or otherwise) who had access to Aloha's well sites two months

ago, four months ago, six months ago, ten months ago, or a year ago, has any relevance to OPC's apparent belief.

Requests For Production Of Documents


4. REQUEST FOR PRODUCTION NO. 4: OPC again argues that the objection of Aloha must set forth anymore than the legal bases for the objection itself. The conclusion is incorrect and not supported by any case law. The Request is obviously intended to assist OPC in conducting a "witch hunt" to support its witness's defamatory and specious testimony. The time schedules, work sheets, work schedules, time cards, "or the like" which show which Aloha employees were on duty during the week of August 2-6, 1999, has no relevance to the issue in this case and were apparently completely unnecessary for OPC witness Bidy to make his scandalous, implausible and incorrect assertions in his Prefiled Testimony. It is apparently OPC's desire to now actually come up with some proof or basis for Bidy's scandalous and specious testimony. The time for such adequate proof would have been before the testimony was filed, not after.

5. REQUEST FOR PRODUCTION NO. 5: Aloha's objection to Request For Production No. 5 only seeks protection for letters which have been written between counsel for Aloha and employees of Aloha. If so ordered by the Commission, counsel for Aloha will furnish the information requested by OPC but such would be a useless act. The letters discussed issues in this case and the mental impressions of the authors. In this regard, the letters are clearly privileged.

6. REQUEST FOR PRODUCTION NO. 7: This request for five years of water data is a blatant abuse of the discovery process and could not reasonably be calculated to lead to the discovery of admissible evidence. This far-reaching and all-encompassing Request For Production could reach an untold number of documents and could not reasonably or possibly contribute to any understanding of the issues in this case. Aloha has not merely objected to this Request because it will "reach a bunch of documents." Aloha intends to respond to other Requests To Produce that will require the production of substantial and voluminous documentation. For instance, Aloha has not objected to Request For Production No. 6 regarding "written reports" making any representation of water quality to regulatory authorities of the State of Florida or any of its political subdivisions within the last five years. However, requests for "any and all" documents "which relate to" the testing of water "withdrawn" and/or "produced" by Aloha, whether "raw or treated," and "generated by any source" within the last five years is simply over-broad and not reasonably tailored to fit the issues in this case or reasonably calculated to lead to the discovery of admissible evidence.

WHEREFORE, and in consideration of the above, Aloha respectfully requests that the Citizens' Motion To Compel Discovery Compliance be denied in its entirety.

DATED this 4th day of October, 1999.



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CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished via Hand Delivery (denoted by *) and by Regular U.S. Mail to the following on this 4th day of October, 1999:

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