

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 960543-W

RECORDS ADMINISTRATION REPORTING

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RESPONSE TO OPC'S MOTION TO STRIKE EXHIBIT TESTIMONY

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

1. OPC is hardly in the position to file a Motion To Strike in this case, given the fact that it did not comply with the Commission's Order in this case that briefs be less than 40 pages. A Motion To Strike is a waste of everyone's time at this point. Aloha only desires this case to be adjudicated on the facts as established by the evidence and by reality and has no desire to squander the resources of the staff on any other tasks, procedural or otherwise.

2. Aloha's Late-Filed Exhibit No. 13 is what it is and, as the Commission does with all evidence before it, it will be accorded the weight which the members of the panel deem appropriate. To the extent any portion of that exhibit is "untested

hearsay" as OPC states, then the well-established tenets of administrative law

determine the appropriate weight to be given that evidence.

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1OPC's utilization of a 29-page "attachment" in addition to its two page statement of issues and positions and its 23-page brief clearly violates the spirit and intent of the 40 page limitation for post-hearing memorandum.

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3. OPC's statements that Aloha's Late-Filed Exhibit No. 13 is a document responsive to a Commission procedure which has "evolved over time" and that OPC would have no objection to an exhibit which complies with "the intent and purpose of this procedure" are perplexing, at best. Surely OPC is not suggesting that the Commission has a rule of general applicability which is not duly recorded in the Florida Administrative Code. All Aloha's Late-Filed Exhibit No. 13 represents in this case is the document which Aloha was instructed to file after follow-up on customer testimony which Aloha undertook also pursuant to the Commission's clear understanding and instructions. The Commission asked the witness if he was "going to be reporting ... back to the Commission in (the) late-filed exhibit responding to the customers' concerns." (TR. 538). Aloha's counsel indicated that "we are planning to investigate those issues at each and every home that complained of that situation... But we are planning to investigate that, and that further investigation and the purpose of that is to be able to report back to you in the late-filed." (TR. 538-9)

4. OPC's Motion To Strike never even asserts that Late-Filed Exhibit No. 13 was not the result of a process that OPC, the Commission, and Aloha all agreed to in the first part of this bifurcated proceeding, nor does it present any "meat" to support its argument that the exhibit should be stricken. Rather, it merely says in a cursory and conclusory way that the exhibit goes "too far." The only evidence that can support a finding of fact in this proceeding is evidence that is competent and substantial. Hearsay evidence can only support a finding of fact in this proceeding if it is corroborated. There is nothing to fear from Aloha Late-Filed Exhibit No. 13.

Administrative law and the well-established tenets of the Florida Administrative Procedure Act determine the extent to which this exhibit, just as with any other exhibit, should be utilized by the finder of fact in this proceeding.

5. OPC's final paragraph in its Motion, which says that OPC would have no objection to a "general response to customer service issues" but does object to Late-Filed Exhibit No. 13, indicates that OPC is moving to strike Late-Filed Exhibit No. 13 because it is disappointed with that late-filed exhibit's content, rather than that OPC has any genuine objection to the process.

WHEREFORE, and in consideration of the above, Aloha respectfully requests the Commission deny OPC's Motion To Strike Exhibit Testimony.

DATED this <sup>30<sup>th</sup></sup>~~30~~ day of May, 2000.



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**CERTIFICATE OF SERVICE**


I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished via U.S. Mail to the following on this 30<sup>th</sup> day of May, 2000:

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