

M E M O R A N D U M

July 11, 2000

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RECORDS AND  
REPORTING

TO: DIVISION OF RECORDS AND REPORTING  
FROM: DIVISION OF LEGAL SERVICES (FUDGE, JAEGER)  
RE: DOCKET NO. 991643-SU - APPLICATION FOR INCREASE IN  
WASTEWATER RATES IN SEVEN SPRINGS SYSTEM IN PASCO COUNTY  
BY ALOHA UTILITIES, INC.

Attached is STAFF'S MOTION TO COMPEL, REQUEST FOR EXTENSION OF  
TIME TO FILE PREFILED TESTIMONY, AND REQUEST FOR EXPEDITED RESPONSE  
TIME ON MOTION TO COMPEL to be filed in the above-referenced  
docket.

(Number of pages in order - 12)

JKF/lw

Attachment

cc: Division of Economic Regulation (Merchant, Lingo)

I:991643MC.JKF

APP  
CAF  
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DOCUMENT NUMBER-DATE

08361 JUL 11 8

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase  
in wastewater rates in Seven  
Springs System in Pasco County  
by Aloha Utilities, Inc.

DOCKET NO. 991643-SU

FILED: JULY 10, 2000

STAFF'S MOTION TO COMPEL,  
REQUEST FOR EXTENSION OF TIME TO FILE PREFILED TESTIMONY,  
AND REQUEST FOR EXPEDITED RESPONSE TIME ON MOTION TO COMPEL

The Staff of the Florida Public Service Commission, by and through its undersigned attorney, served discovery requests upon Aloha Utilities, Inc. (Aloha or utility) on May 24, 2000, consisting of Interrogatories and Requests for Production of Documents, under the authority of the Florida Rules of Civil Procedure, and Order No. PSC-00-0972-PCO-SU, issued May 3, 2000 (Order). Responses were due on June 28, 2000. Aloha filed its responses to both the Interrogatories and Requests for Production on June 30, 2000, and either objected to or failed to respond to several discovery requests. Staff moves the Commission to compel Aloha to respond to those discovery requests as set forth below.

MOTION TO COMPEL

In support of our Motion to Compel, staff notes that the Order required any objections or requests for clarification be made within ten days of service of the discovery requests. Nevertheless, to the extent Aloha's responses are recognized objections to discovery, staff has addressed those objections.

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FPSC-RECORDS/REPORTING

INTERROGATORIES

A. Staff's Interrogatory No. 3 requests the following:

3. Please provide a projection of Operation and Maintenance (O&M) expenses for the projected test year 9/30/01 for Aloha Gardens water and wastewater and Seven Springs water. In the projections, include the impact of customer growth, inflation, known changes in O&M expenses, and any index or pass-through adjustment since the historical test year. Please provide the calculations and any supporting workpapers used to project these expenses.

Aloha's response to Interrogatory No. 3 is as follows:

Aloha did not file for rate relief in its Aloha Gardens water and wastewater systems, or for the Seven Springs water system. [Aloha has not performed any such calculations, and to do so would be outside the requirements of the MFRs or any other regulatory or accounting requirements, and would have been an imprudent expense.] Such an additional analysis would be time consuming and costly, especially in light of the anticipated improvements in the water system recently required by the Commission in very vague terms which will have to be clarified through discussions with the Commission staff and which are not yet even the subject of a Final Order.

The request for O&M expenses for Aloha's other systems is relevant because the utility allocates working capital based on O&M expenses of each of its systems. Staff requires the analysis requested by Interrogatory No. 3 to appropriately allocate working capital for the Seven Springs wastewater system.

In addition, the response does not meet the standard for showing that the discovery requested is overly broad or burdensome

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as required by First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Association, Inc., 545 So. 2d 502, 503 (Fla. 4th DCA 1989). In that case, the Fourth District Court of Appeal stated:

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. Hartford Accident & Indemnity Company v. U.S.C.P. Co., 515 So.2d 998 (Fla. 4th DCA 1987). 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).

Because Aloha has not quantified the manner in which the discovery may be burdensome, the Commission and staff is left to speculate as to the extent of the burden and how it may be lessened.

For the foregoing reasons, staff moves the Commission to compel Aloha to answer Interrogatory No. 3 so that O&M expenses can be accurately determined and allocated.

- B. Staff's Interrogatory No. 7(b) requests the following:
- b. If not specifically provided above, please provide the amount of rate case expense

incurred to respond to the Commission staff's MFR deficiency letter. Please provide a breakdown of this cost by consultant and number of hours expensed.

Aloha's response to Interrogatory No. 7(b) is as follows:

The Utility has not performed a separate analysis of costs related to responding to the Commission's MFR deficiency letter, [because Aloha believes that the information requested was not a deficiency.] To the extent the Commission staff is inquiring on this question in order to suggest that the Utility is responsible for any such costs, that position is inappropriate and illogical.

Staff requires this analysis, in order to make a recommendation to the Commission concerning whether the time allocated for responding to the deficiency letter should be borne by the ratepayers. If staff were to estimate this amount, such an estimate would not be fair to the ratepayers or the utility. Therefore, staff moves the Commission to compel Aloha to answer Interrogatory No. 7(b).

C. Staff's Interrogatory No. 28(c) propounded by staff upon Aloha requests the following:

- c. Please provide a detailed statement by a registered professional engineer showing the cost of the projected plant expansion by NARUC Uniform System of Accounts account numbers and the resulting projected capacity to match the utility's growth from 2000 to 2015.

Aloha's response to Interrogatory No. 28(c) is as follows:

The Utility's Consulting Engineer has not been enlisted to provide any projected plant expansions for the wastewater system, much less by NARUC Accounts for the next 15 year period. The Utility has recently undertaken an expansion of its wastewater treatment plant that is to be placed in service in the very near future. These costs are outlined in the MFR's. Aloha will begin planning for later phases as demand requires.

By this discovery request, staff was seeking growth projections for the next 15 years to be consistent with the growth projections for Aloha's Seven Springs water system provided in Docket No. 960545-WS. Nevertheless, staff is willing to accept growth projections for the next five years.

Staff believes that with the projected plant additions, the utility's current plant capacity charge may be too low, which would create a situation of intergenerational inequity of existing customers through higher service rates. Moreover, the utility's service availability charges came into question in Docket No. 960545-WS, in which the Commission ordered Aloha to file a Service Availability Application by February 1, 2001, for the Seven Springs water system. Therefore, staff moves the Commission to compel Aloha to answer Interrogatory No. 28(c), through the year 2005, so that staff can analyze what the appropriate plant capacity charge should be for the Seven Springs wastewater system on a going-forward basis.

D. Interrogatory No. 31(a) requests the following:

31. For the purpose of the following requests, please refer to Schedule E-3 in the MFRs.
- a. For the four-year period October 1994 - September 1998, please provide schedules of monthly wastewater customers billed or served by rate class in a manner consistent with the presentation on page 1 of 1.

Aloha's response to Interrogatory No. 31(a) states the following:

Such records and documents do not exist, and would require reprogramming of the computer system to obtain that information on a monthly basis. Keeping of such detailed monthly information is nowhere required under the NARUC System of Accounts, nor any reporting requirement of the Commission or any other regulatory agency. It is available on an annual basis in the Utility's Annual Report. Because of the change in the computer system in 1999, any pre-1999 data would be especially time consuming and costly to produce.

Interrogatory No. 31(b) requests the following:

- b. For the five-year period October 1994 - September 1999, please provide schedules of monthly wastewater gallons billed by rate class in a manner consistent with the presentation of wastewater customers billed on page 1 of 1.

Aloha's response to Interrogatory No. 31(b) states:

See (a) above. In addition, such information would not be available for years prior to 1996 in any case.

Interrogatory No. 31(c) requests the following:

- c. For the five-year period October 1994 - September 1999, please provide schedules of monthly water customers billed or served by rate class in a manner consistent with the presentation on page 1 of 1.

Aloha's response to Interrogatory No. 31(c) states:

Please see answer (a) above.

Interrogatory No. 31(d) requests the following:

- d. For the five-year period October 1994 - September 1999, please provide schedules of monthly water gallons billed by rate class in a manner consistent with the presentation of wastewater customers billed on page 1 of 1.

Aloha's response to Interrogatory No. 31(d) states:

Please see answer (b) above.

Interrogatory No. 31(e) requests the following:

- e. Did the utility consider basing its growth projections on a methodology other than the one used in this case, and, if not, please explain why no other growth projection method was considered.

Aloha's response to Interrogatory No. 31(e) states:

No. The Utility followed the MFR requirements exactly.

Interrogatory No. 31(f) requests the following:

- f. If the response to (e) is affirmative, please provide: all other methods considered, and the reason(s) why each methodology was subsequently not used; any prepared projections based on other considered methodology; and the inputs and outputs and results of any and all such projections, in a manner consistent with the corresponding projection presented in its filing.

Aloha's response to Interrogatory No. 31(f) states:

Not applicable.



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Staff notes that in the two most recent cases in which a projected test year was used for a Class A or Class B utility, the Commission found that the appropriate methodology for wastewater consumption forecasting was to regress water consumption against wastewater consumption. See Order No. PSC-97-0618-FOF-WS, issued May 30, 1997 in Docket No. 960451-WS; Order No. PSC-99-0513-FOF-WS, issued March 12, 1999 in Docket No. 980214-WS. In the prior cases, the most recent five years of water and wastewater historical bills and consumption data, segregated by customer class, was used.

However, this methodology was not utilized by Aloha in the instant case. As this case is wastewater-only, staff must first forecast the water consumption (which requires the customer billing information requested above) in order to then forecast wastewater consumption. Therefore, the requested information is necessary for staff to perform forecasts consistent with Commission practice, and then to compare staff's resulting forecasts against those of the utility to determine the reasonableness of the utility's forecasts.

Furthermore, if the utility's response to Interrogatory No. 31, "Such records and documents do not exist..." is a correct statement, the utility has apparently violated several sections of the National Association of Regulatory Commissioners' (NARUC) Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities, Revised May 1985. Specifically:

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Section 52, Customers' ledgers and other records used in lieu thereof, subsection(a), Customers' ledgers, states that the records must be retained "3 years or as may be necessary to comply with service rules regarding refunds on fast meters."

Section 52, subsection(b), Records used in lieu of customers' ledgers, such as bill summaries, registers, bill stubs, etc., states that the records must be retained "Ditto." (Referring to retention requirements of Section 52(a) above.)

Section 55, Customers' account adjustments, subsection(a), Detailed records pertaining to adjustments of customers' accounts for overcharges, undercharges, and other errors, results of which have been transcribed to other records, states that the records must be retained 3 years.

Staff believes it is possible, using the above-referenced documents, to compile a response to Interrogatory No. 31 for at least a three-year period. If the utility does not, in fact, have the above-referenced documents, then staff believes Aloha has apparently violated the referenced sections of the NARUC Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities, Revised May 1985, and will file a show cause recommendation concerning such apparent violation.

EXTENSION OF TIME TO PREFILE DIRECT TESTIMONY

Staff notes that staff testimony is due on August 14, 2000, and that staff planned to have the requested data no later than June 28, 2000, so that it could properly prepare its testimony. However, because of the late filing of discovery and objections by the utility, and if the utility is now made to provide the

information by no later than July 18, 2000, staff will have lost 20 days in which to adequately prepare its testimony. Therefore, staff requests that the utility be compelled to respond to all of the above-noted discovery requests by July 18, 2000, and that staff be given up to and including August 28, 2000, to prefile its direct testimony.

REQUIREMENT FOR EXPEDITED RESPONSE TO MOTION TO COMPEL

Pursuant to Rule 28-106.204(1), Florida Administrative Code, a party shall be given seven days to respond to a written motion when time allows. Staff does not believe that in this instance time allows a seven-day response time. To allow staff to acquire the information as quickly as possible and to give staff time to prefile its testimony, even with an extension, staff requests that Aloha Utilities, Inc., be required to file its response to this Motion to Compel by no later than July 13, 2000.

Staff has contacted the Office of Public Counsel, but was unable to reach the attorney assigned to this case. Staff has contacted Aloha who contends that discovery can only be used to seek information known to the utility. Discovery cannot be used to require the utility to perform analysis which it has not performed.

Staff notes that Section 367.121(1)(c) states that the commission shall have the power "[t]o require such regular or emergency reports from a utility . . . as the commission deems

necessary . . . ." Moreover, Rule 25-30.110(2), states that "[t]he utility shall also furnish the Commission with any information concerning the utility's facilities or operation that the Commission may request and require for determining rates . . . ."

Staff also requests that Aloha be compelled to comply with instruction E of Commission Staff's First Set of Interrogatories which states:

E. Please report the name(s) of each person responding to each of the following interrogatories, the business address and telephone number of each such person, and the relationship of each person to Aloha. Also, identify which interrogatory each such person has answered.

**WHEREFORE**, Staff respectfully requests the Prehearing Officer to compel Aloha Utilities, Inc. to comply with staff's discovery requests as identified above, and upon the grounds set forth above, by July 18, 2000, to file any response to this Motion to Compel by no later than July 13, 2000, and that staff be given up to and including August 28, 2000, to prefile its direct testimony.

**WHEREFORE**, Staff respectfully requests the Prehearing Officer compel Aloha Utilities, Inc. to comply with instruction E of Commission Staff's First Set of Interrogatories.

  
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Ralph R. Jaeger, Senior Attorney  
Florida Public Service Commission

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

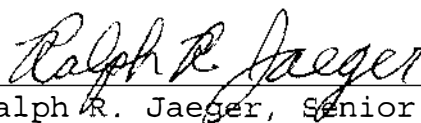
In re: Application for increase  
in wastewater rates in Seven  
Springs System in Pasco County  
by Aloha Utilities, Inc.

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FILED: JULY 10, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Staff's Motion to Compel, Request for Extension of Time to File Prefiled Testimony, and Request for Expedited Response Time on Motion to Compel has been furnished by hand delivery to F. Marshall Deterding, Esquire, and by U.S. Mail to Steve Burgess, Esquire, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400 on this 10th day of July, 2000.



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