

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ALOHA UTILITIES, INC.

DOCKET NO. 991643-SU

APPLICATION FOR WASTEWATER RATE INCREASE OF

ALOHA UTILITIES, INC. IN PASCO COUNTY

REBUTTAL TESTIMONY OF F. MARSHALL DETERDING

- Q. Please state your name and employment address.
- A. F. Marshall Deterding, Rose, Sundstrom & Bentley Law Firm, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301.
- Q. Please give us a brief outline of your background and experience with regard to water and sewer regulation in Florida.
- A. After graduation from Florida State University with a B.S. in Accounting in August 1976, I began work with the Florida Public Service Commission in January 1977 as an auditor, and ultimately an analyst dealing with rate case matters a great deal of my time. I was always involved in water and wastewater utilities with a little experience in some of the other regulated industries. I left the Florida Public Service Commission in August 1982 to attend law school. After my first year of law school, I began clerking with the Tallahassee office of the Miami law firm of Meyers, Kennon, Lovitson, Frank and Richards in August 1983. I continued to clerk for this firm throughout the remainder of my law school career. In May 1985, I became employed full-time by that law firm as an associate. Ultimately, that firm became what is

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now known as Rose, Sundstrom & Bentley. I am now one of the four senior partners in that firm. Throughout this time, I have worked almost exclusively in the area of PSC regulation of private water and sewer utilities.

Q. Have you represented Aloha Utilities throughout this wastewater rate case proceeding.

A. Yes. I have. I have been the attorney primarily responsible for processing Aloha's application for rate increase for its Seven Springs wastewater system.

Q. What is the purpose of your testimony here today.

A. To sponsor all of the exhibits related to legal rate case expense for this proceeding and also to specifically respond to some of the issues raised by Ms. Merchant concerning the legal aspects of rate case expense in her direct testimony.

Q. With regard to the general issue of rate case expense, have you prepared schedules to show the total amount of legal rate case expense expended by Aloha.

A. Yes. I have prepared a schedule of actual expenses to date and also a calculation of the estimated legal cost to complete this rate case. These are attached as **Exhibit "FMD-1"** to this testimony. Copies of all of my bills related to this rate proceeding and detail concerning the basis for my estimate to complete are included in Robert Nixon's Testimony.

Q. Do you believe that the Utility's expenditures on rate case expense, to date and in your estimate, have been reasonable in

light of the requirements imposed within this rate case.

A. Yes. I believe the Utility and my office have been as efficient as is humanly possible in expending only that time and energy necessary to deal with the issues that have arisen during this rate case and that we have done everything within our power to try and keep rate case expense cost to a minimum where we could. I believe all of the expenses incurred by the Utility for the time and energies of my firm and cost incurred in that representation have been prudent and appropriate. I would like to note that in keeping with the Commission's standard policy, we would like to provide supplemental information concerning actual rate case cost as a late filed exhibit after the hearing, to update the actual cost and revise slightly the estimated cost to provide the Commission with the most accurate figures in all areas of rate case expense.

Q. What specific areas of Ms. Merchant's testimony do you intend to respond to.

A. Specifically, I wish to respond to her comments concerning legal costs and other costs incurred relative to the maps and the Petition for Emergency Variance filed in this proceeding and the circumstances which led up to that Petition for Variance and its subsequent withdrawal. In addition, I wish to respond to the comments of Ms. Merchant concerning reduction in rate case expense for matters related to

responding to the deficiency letters from the Staff and primarily related to the legal cost related thereto.

Q. Please address the first issue related to the required maps and the Petition for Emergency Variance.

A. My concern with Ms. Merchant's adjustment on the variance issue is twofold. First, I believe it is inappropriate to make an adjustment under the circumstances. The costs related to seeking this variance are appropriately recoverable as rate case expense because of the circumstances surrounding the request at that time. In addition, the adjustment made by Ms. Merchant proposes to exclude far more of the legal costs incurred by the Utility during this period of time than are related to the request for the variance itself. I will address that issue later.

To fully understand this issue, I must provide some background on the maps and variance request. The Utility has maps in conformance with the provisions of the Commission Rule 25-30.125 F.A.C. in its possession in its Utility's offices and has maintained those maps throughout its existence. However, because the Utility has required (in accordance with Commission rules and its tariff), the contribution of all but an immaterial amount of its wastewater collection system, those maps are simply maps provided by developers after the developers themselves construct and contribute any collection facilities or phase of collection facilities within the

property they are developing. As such, the Utility has a very extensive file of hundreds of maps which constitute the maps it maintains in conformance with Rule 25-30.125 F.A.C.

Prior to filing its Application on February 9, 2000, the Utility had planned to copy all of these maps and provide them to the Staff. Approximately one to two weeks before the Application was to be filed, I, as the Utility representative, called the Chief Staff Engineer, Mr. Bob Crouch, to discuss the issue of what maps were needed in order to comply with the Commission's minimum filing requirements as contained in Rule 25-30.436(6). I told Mr. Crouch of the concern of the Utility that the maps that we had might not present the information that the Staff needed. First, because they only provided maps of each subdivision or phase of a subdivision as developed by the property owner. Secondly, because of the huge volume of maps involved, and third, because the Rule 25-30.436(6) requires information concerning location of customers that were not contained on these maps that the utility maintains in conformance with the standard record keeping rule. Finally, during these discussions, I noted to Mr. Crouch that the Utility's entire water transmission distribution system and sewage collection system are contributed by developers. Mr. Crouch agreed that if the facilities were contributed he did not need maps of the systems at all. He also agreed that a waiver would be appropriate and he would support a waiver

request under these circumstances. Since Mr. Crouch is the person primarily responsible for determining whether or not a utility's filing complies with this provision of the MFRs, I assumed he was the best person at the PSC to discuss this issue with, and still believe that to be the case. Even Ms. Merchant admitted as much in her deposition.

During a meeting between myself and several Staff members on the day before the MFRs were filed, Mr. Crouch was not present because the primary purpose of the meeting was to discuss issues unrelated to engineering or the maps. However, during that meeting, Merchant noted that Rule 25-30.436(6), which contained the waiver provisions within the MFRs had been repealed. The Staff was not fully aware of this fact. Even the Staff's own senior counsel assigned to this case was not aware of that repeal at the time of the meeting. However, further discussions after the meeting with Tricia Merchant revealed that in fact the waiver provision within the Commission's rules had been repealed eight days prior to that date.

Based upon her testimony and comments made in her deposition, Ms. Merchant seems to have three bases for stating that the costs related to the waiver request should be denied.

First, she suggests that the Utility should have filed its request for a waiver at an earlier point in time. While certainly that would have been possible, the facts did not

come to light concerning the specifics of this issue until shortly before the date of the rate case filing. While on the one hand stating that the Commission's own waiver provision had been repealed by the date the MFRs were filed (by eight days as noted above), Ms. Merchant also contends that the provisions of this rule that suggest that a utility should make such a request "as early as practicable", not only guide her thinking with regard to what is prudent for Aloha to have done in this case, but she goes a step further and even suggests that this type of language from a repealed rule almost rises to the level of a requirement and therefore forms a basis for determining the prudence of the timing of the waiver request. I believe such a position is wholly unreasonable under the circumstances as outlined herein. The Utility was trying to avoid expending additional monies that were wholly unnecessary and which the Staff engineer agreed was wholly unnecessary in order to develop maps that complied with the MFRs or to copy literally hundreds of pages of maps of its collection system which would be of no use to the Staff. Either of these alternatives would have caused the Utility to incur substantial additional costs.

When we received the Staff's Recommendation to deny the variance because of their position that it did not constitute an emergency and therefore should not be treated as an emergency variance request, we were very surprised given the

Engineering Staff position as expressed to us. This very much seemed like the Staff was elevating procedure over substance since the engineers at the PSC agreed the information was not needed and was useless.

Upon receiving this Staff Recommendation, I discussed it with the client and what alternatives were available to us to provide something that would meet the requirements of the rule as determined by the Commission engineers. We further discussed this with the Utility's consulting engineers and determined that perhaps some maps which were already in the works for other purposes, but not planned for completion for another four to six weeks at a minimum, could be "fast-tracked" in order to satisfy the Staff. We were not sure that those maps would even when completed technically contain all the information required by the MFR rule. Therefore, we went to the Commission Staff engineer to determine whether or not those maps if completed would satisfy the rule requirements in his opinion if we were able to prepare those maps in an expeditious manner. In part because he had agreed that no maps were necessary, the Staff engineer agreed that he would consider those maps to meet the minimum rule requirements. Based on a belief that preparation of the maps was the cheapest way to resolve this issue for all concerned, we proceeded to direct the Utility's consulting engineer to go forward expeditiously with the preparation of those maps.

Approximately a week later, after intensive work by the consulting engineer over the weekend, we were able to accumulate some maps that the PSC Staff engineer agreed were sufficient to conform to the rule. We then filed those and withdrew our waiver request.

During her deposition, Ms. Merchant also expressed concern with the fact that a petition for emergency variance was more costly to prepare than a basic petition for variance that the Utility had sought at an earlier point in time in this process. I have reviewed the provisions of Rule 28-104.002 and compared them with the additional requirements in Rule 25-104.004 related to the additional requirements for an emergency variance. The petition for a waiver or variance itself under Rule 25-104.002 contains eleven basic requirements. The requirements for an emergency variance as contained in Rule 25-104.004 require two additional items only. Therefore, even assuming that Ms. Merchant is correct that there are any significant additional time necessary to devote to preparing a petition for emergency variance, they are minor. The additional costs of providing those two additional items are minor in relation to the total costs of preparing the petition in the first place. In fact, if you will look at the five full page motion which was filed for this variance, only approximately one full page relates to the issue of a distinction between an emergency versus a non-

emergency variance. However, given that both of these "indicators" suggest approximately 15 to 20% additional time related to the emergency nature of the variance, I would estimate given the other factors involved in filing a document with the PSC of that additional length really constitutes more like a 10% additional factor for the costs related to the "emergency portion" of the variance request.

I do not believe that the actions taken by the Utility with regard to the request for emergency waiver were inappropriate or imprudent. They were an attempt by the Utility to spend the least amount of money complying with a rule that the Commission's own Staff agreed was not necessary or useful to them in reviewing Aloha's rate application. However, once it became apparent that action on that waiver or variance would, at a minimum, be delayed, if not rejected altogether, plus require additional argument by the Utility and legal time in dealing with the waiver issue, we decided the cheapest alternative was to try and come up with something that would comply with the rule as judged by the Staff engineer.

I believe that each step of the way, Aloha took very prudent steps in attempting to minimize costs to the customers in complying with this rule or in seeking to avoid the rule through a waiver request. Based on all of these facts, I believe that Ms. Merchant's proposed adjustments are wholly unreasonable and blatantly punitive.

Q. You also mention some concern with the way the adjustment was calculated by Ms. Merchant.

A. Yes, in reviewing Ms. Merchant's testimony and based upon further explanation of the adjustment from her deposition, it became apparent that the adjustment which she made was based upon exclusion of approximately 93% of the legal bills charged to the Utility for the month of February. She stated that because the dates on the bills were unclear, she was unable to distinguish those items related to the variance versus those items related to other matters relevant to the rate case. Therefore, she has excluded over 93% of the bill for the month of February which is the same month in which the Utility filed its MFRs and undertook various other matters unrelated to the variance request. I have therefore gone back through the bill for the month of February and marked those items which are related to the variance and calculated an amount of time actually expended related to it. I have attached hereto as **Exhibit "FMD-2"**, a copy of that calculation. However, I believe that no adjustment is appropriate, but even if it were, it certainly should include only those costs directly related to the variance request itself. A total of those costs is shown on this schedule.

Q. What other concerns do you have with relation to Ms. Merchant's testimony on this issue.

A. The Utility did not include any costs related to the

preparation of the maps that were ultimately provided to the Commission as part of the rate case expense in this proceeding. Those costs which are being sponsored by Mr. Watford should be included in any calculation of rate case expense allowed.

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ALOHA UTILITIES, INC.
Docket No. 991643-SU

Summary of Actual and Estimated Rate Case Expense
Legal Fees and Costs Incurred

1. Actual costs incurred from 10/01/99 through 08/31/00

Legal \$ 87,788.62

2. Estimate of cost to complete rate case

Legal

Total Estimated to Complete \$ 87,000.00

Total Actual & Estimated Costs of the
Rate Case through 8/31/00

\$ 174,788.62

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ACTUAL LEGAL FEES AND COSTS INCURRED
ALOHA UTILITIES, INC.
Docket No. 991643-SU
General Rate Increase - Seven Springs
10/01/99-08/31/00

<u>Invoice Date</u>	<u>Hours</u>	<u>Fees</u>	<u>Costs</u>	<u>Total</u>
11/99	12.00	\$ 2,280.00	\$ 112.43	\$ 2,392.43
12/99	11.40	2,166.00	27.75	2,193.75
01/00	0.50	100.00	200.00	300.00
02/00	5.60	1,120.00	4,524.40	5,644.40
03/00	50.60	10,070.00	661.23	10,731.23
04/00	8.10	1,620.00	207.58	1,827.58
05/00	17.00	3,400.00	349.63	3,749.63
06/00	14.50	2,900.00	96.46	2,996.46
07/00	37.80	7,248.00	532.07	7,780.07
08/00	79.20	15,735.00	1,261.54	16,996.54
09/00	<u>156.50</u>	<u>31,275.00</u>	<u>1,901.53</u>	<u>33,176.53</u>
Total	<u>393.20</u>	<u>77,914.00</u>	<u>9,874.62</u>	<u>87,788.62</u>

aloha\30\schedule

ALOHA UTILITIES, INC.
Docket No. 991643-SU

Legal Fees and Costs - Estimate to Complete

September 1 through September 30, 2000

Organize files and responses re: discovery; prepare for discovery depositions of staff auditors and other staff witnesses; travel to Tampa and participate in depositions; work with engineer and Utility and accountant re: preparation of rebuttal testimony; work on legal testimony re: rate case expense; telephone conference with various persons at OPC and staff re: all and with client re: all; finalize all testimony and file; participate in prehearing conference; draft prehearing statement and revisions to prehearing order; begin preparation of exhibits; research re: cross exhibits; begin work on drafting cross examination

100 hours at \$200/hour + \$1,500 in costs

October 1, 2000 through Hearing

Prepare for final hearing; meetings with client and consultants; draft cross-examination questions and other matters and prepare; research and organize exhibits; participate in prehearing preparation and two day hearing

80 hours at \$200/hour + \$3,000 in costs

Post Hearing through Brief

Work with client and consultants re: preparation of late-filed exhibits; organize and finalize same with attachments and file; review of transcript in detail; do legal and other research; discussion with client and consultants re: all; prepare Brief and submit

100 hours at \$200/hour + \$1,500 in costs

Review OPC Post Hearing Brief Filing through Final Order

Review OPC Brief; discussions with client re: same; obtain and review Staff Recommendation; conference calls and meeting with client and consultants re: same; research re: same; prepare for and attend final agenda conference; meeting with client re: same and reconsideration options; review Final Order; intra-office conferences; conferences with client and consultant re: same; prepare letter to client re: options; work on preparation of final notice of rate change and assist client in implementing Order.

70 hours at \$200/hour + \$500 in costs

Reconsideration

Review order and discussions with client re: reconsideration request; draft reconsideration petition; review various case law and research re: same and previous Commission cases, case law, statutory law, transcript and exhibits and rules re: same; submit petition for reconsideration; review cross-petition for reconsideration; discussions with client re: same; preparation for oral argument; meetings with client; participate in oral argument; obtain and review staff recommendation on reconsideration discussions with client re: same; prepare for and attend agenda conference re: reconsideration; review final order on reconsideration and discussions with client re: same and correspondence to client re: same

50 hours at \$200/hour + \$500 in costs

<u>Fees</u>	<u>Costs</u>	<u>Total</u>
\$80,000	\$7,000	\$87,000

Total Estimated to Complete: \$87,000

ALOHA UTILITIES, INC.
Docket No. 991643-SU
Portion of February Bill Related to Rule Waiver

02/03/00	.8 hours
02/04/00	1.60 hours
02/08/00	3.10 hours
02/09/00	4.0 hours
02/09/00	1.00 hour
02/15/00	2.50 hours
02/16/00	4.52 hours
02/17/00	1.40 hours
02/18/00	1.40 hours
02/22/00	1.20 hours
02/23/00	1.70 hours
02/24/00	2.50 hours
02/24/00	1.70 hours
02/29/00	1.70 hours

TOTAL HOURS: 29.12 hours
x \$200 rate

\$ 5,824.00

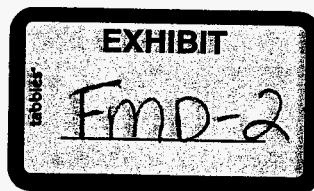
29.12 hours ÷ 50.60 total bill hours = 57.55%
Total Costs 661.23

Costs Applicable to Rule Waiver

380.53

Total Fees and Costs Related to Rule Waiver

6,204.53



ROSE, SUNDBSTROM & BENTLEY, LLP

P. O. BOX 1567
TALLAHASSEE, FLORIDA 32302-1567
(850) 877-6555

PLEASE REFER TO INVOICE NUMBER
WHEN REMITTING

F.E.I. # 59-2783536

ALOHA UTILITIES, INC
2514 ALOHA PLACE
HOLIDAY, FL 34691

INVOICE # 21924
MARCH 14, 2000
FILE # 26038-0030

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MATTER 1999 GENERAL RATE INCREASE-SEVEN SPRINGS

02/01/00	TELEPHONE CONFERENCE WITH NIXON; TELEPHONE CONFERENCE WITH STAFF ATTORNEY RE: ESTABLISHING TIME OF MEETING; TELEPHONE CONFERENCE WITH NIXON RE: NEEDED TESTIMONY AND PLEADINGS AND SCHEDULE FOR COMPLETION OF MFR'S.	0.90	
02/03/00	REVIEW NOTICE FROM PSC; SEND WITH COVER LETTER TO WATFORD, PORTER AND NIXON; REVIEW NOTES; TELEPHONE CONFERENCE WITH PORTER RE: NEEDED INFORMATION AND TESTIMONY; REVIEW PORTER TESTIMONY DRAFT; TELEPHONE CONFERENCE WITH NIXON AND WATFORD RE: MFR'S AND PLEADING;	3.60	
02/03/00	TELEPHONE CONFERENCE WITH WATFORD RE: NEW MAPS; REVIEW RULE RE: SAME.	0.00	.8 hrs
02/04/00	TELEPHONE CONFERENCE WITH CROUCH AND REDEMANN; TELEPHONE CONFERENCE WITH WATFORD; REVIEW RULE REQUIREMENTS RE: MAPS; TELEPHONE CONFERENCE WITH NIXON AND PORTER; SET UP CONFERENCE CALL; BEGIN WORK ON PLEADING.	2.60	1.60
02/07/00	CONTINUE WORK ON PLEADING; TELEPHONE CONFERENCE WITH NIXON; CONFERENCE CALL RE: SAME AND RE: INTERIM.	2.40	
02/08/00	TELEPHONE CONFERENCE WITH NIXON AND WATFORD; PREPARE FOR MEETING AT PSC; GO TO MEETING WITH STAFF; REVIEW FAC ONLINE FROM VARIOUS SERVICES; BEGIN REVIEW OF MFR'S FROM NIXON; WORK ON DRAFT PLEADING RE: RATE CASE; CONFERENCE CALL WITH WATFORD AND NIXON RE: ALL; REVIEW RULES RE: MAPS AND WAIVER.	8.10	3.10
02/08/00	FINISH SECOND DRAFT OF PLEADING; REVISE AND FINALIZE PLEADING; REVIEW RULE RE: VARIANCE; TELEPHONE CONFERENCE WITH	0.00	
02/09/00		8.40	2.0

LAW OFFICES
ROSE, SUNDSTROM & BENTLEY, LLP

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02/09/00	WATFORD RE: SAME AND RE: AFFIDAVIT; TELEPHONE CONFERENCE WITH NIXON RE: QUESTIONS ON MFR'S; TELEPHONE CONFERENCE WITH PORTER RE: TESTIMONY; REVIEW RULE ON NOTICE; DRAFT PETITION FOR VARIANCE; REVISE AND FINALIZE; INTRA-OFFICE CON- FERENCE RE: SAME; DRAFT LETTER TO BANKER; DRAFT LETTER TO COUNTY COMMIS- SION CHAIRMAN; FINALIZE, ORGANIZE ALL PLEADINGS AND EXHIBITS AND FILE ALL WITH COVER LETTER.	0.00
02/09/00	REVIEW AND EDIT PETITION FOR VARIANCE.	1.00
02/10/00	TELEPHONE CONFERENCE WITH NIXON RE: NEEDED CHANGES IN PLEADING; REVIEW PLEADING AND EXHIBITS; REVISE PLEADING; ADDITIONAL TELEPHONE CONFERENCE WITH NIXON; DRAFT LETTER TO CLERK RE: REVISIONS TO PLEADING AND SEND.	1.90
02/11/00	REVIEW REVISED TABLE OF CONTENTS RECEIVED FROM NIXON; TELEPHONE CONFERENCE WITH NIXON AND SEND WITH COVER LETTER TO PSC.	1.00
02/14/00	TELEPHONE CONFERENCE WITH STAFF ATTORNEY RE: WAIVER AND STAFF RECOMMENDATION; REVIEW PLEADING AND AGENDA SCHEDULE.	0.60
02/15/00	TELEPHONE CONFERENCE WITH CLERK; REVIEW RULE; DRAFT LANGUAGE; SEND TO WATFORD; FILE NOTICE OF APPEARANCE; TELEPHONE CONFERENCE WITH JAEGER RE: SPECIFICS OF EMERGENCY; TELEPHONE CONFERENCE WITH NIXON AND WATFORD RE: SAME; TELEPHONE CONFERENCE WITH WATFORD RE: ALL.	2.50
02/15/00	TELEPHONE CONFERENCE WITH JAEGER OF PSC;	0.00
02/16/00	REVIEW INFORMATION FROM NIXON AND REFORMULATE SAME RE: COSTS; REVIEW MFR'S; REVIEW OLD AND NEW RULES; TELEPHONE CONFERENCE WITH WATFORD; CONFERENCE CALL WITH WATFORD, NIXON AND PORTER; DRAFT LETTER TO JAEGER;	7.20
02/16/00	TELEPHONE CONFERENCE WITH ALL RE:	0.00

*See prior
page for
allocation*

4.50

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02/17/00	CHANGES; REVISE AND FINALIZE LETTER AND SCHEDULE AND SEND TO JAEGER. TELEPHONE CONFERENCE WITH WATFORD; TELEPHONE CONFERENCE WITH JAEGER; REVIEW STAFF RECOMMENDATION AND LETTER TO WATFORD RE: SAME.	1.40	
02/18/00	CONTINUE REVIEW OF STAFF RECOMMENDATION ON VARIANCE; TELEPHONE CONFERENCE WITH WATFORD RE: SAME; REVIEW RULES AND TELEPHONE CONFERENCE WITH JAEGER.	1.40	
02/22/00	TELEPHONE CONFERENCE WITH WATFORD RE: MAPS AND SUBMISSION; TELEPHONE CONFERENCE WITH CROUCH'S OFFICE RE: SUBMISSION OF THE LAST MAPS AND PREAPPROVAL.	1.20	
02/23/00	REVIEW MAPS AND MAKE COPIES OF SAME; DELIVER ONE COPY TO CROUCH FOR REVIEW; BEGIN WORK ON DRAFT LETTER TO CLERK.	1.70	
02/24/00	TELEPHONE CONFERENCE WITH CROUCH RE: MAPS SUBMITTAL; TELEPHONE CONFERENCE WITH WATFORD RE: SAME; DRAFT LETTER TO PSC RE: MAPS AND VARIANCE AND REVISE LETTER TO PSC; ADDITIONAL TELEPHONE CONFERENCE WITH WATFORD AND PORTER RE: SAME; FINALIZE AND SEND.	2.50	
02/24/00	TELEPHONE CONFERENCE WITH JAEGER RE: STATUS OF VARIANCE AND MAPS; CONFERENCE WITH TRICIA MERCHANT RE: DEFICIENCIES LETTER; GO TO PSC; MONITOR ACTION RE: VARIANCE AND WITHDRAWAL OF SAME;	0.00	
02/29/00	CONFERENCE WITH STAFF ATTORNEY AND LETTER RE: SAME AND RE: MEETING OF SAME AND ACCEPTANCE OF MAPS; LETTER TO WATFORD RE: ALL; TELEPHONE CONFERENCE WITH WATFORD RE: ALL.	2.20	1.70
02/29/00		0.00	
		50.60	10,070.00
	LONG DISTANCE CALLS	47.73	
	TELECOPIER	71.50	

4

Continue

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PHOTOCOPIES
LEXIS SERVICE

512.00
30.00

TOTAL COSTS ADVANCED

661.23

TOTAL STATEMENT

\$10,731.23

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5