

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Joint Petition by Aloha Utilities  
Inc. and Office of Public Counsel to  
Approve Stipulation \_\_\_\_\_/

Docket No. 060122-WU

Filed: March 24, 2008

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COMMISSION  
CLERK

**PETITION FOR FORMAL ADMINISTRATIVE HEARING**

Aloha Utilities, Inc. (hereinafter "Aloha"), by and through its undersigned counsel, and pursuant to Sections 120.569 and 120.57, Florida Statutes, hereby requests a formal administrative hearing concerning the proposed agency action of the Florida Public Service Commission in Order No. PSC-08-0137-PAA-WU (the "Order")

1. The name and address of the Petitioner is Aloha Utilities, Inc., 6915 Perrine Ranch Road, New Port Richey, Florida 34655. For the purposes of this proceeding, the address and telephone number of the Petitioner is that of its undersigned counsel.

2. The name, address and telephone number of the Respondent is Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850. The phone number is 850-413-6770.

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SEC \_\_\_\_\_  
OTH \_\_\_\_\_

3. Aloha is substantially affected by the Commission's proposed action.

Customer demand in Aloha's service area requires the availability of the water available from Aloha's groundwater wells as well as the availability of the bulk water from Pasco County for which Aloha requested recognition. Without the appropriate rates, Aloha will be unable to meet customer demand without exceeding the allocations in its Water Use Permit.

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4. Aloha received a copy of the Commission's Proposed Agency Action on or about March 4, 2008.

5. The disputed issues of material fact in this proceeding include:

- a. whether the adjustment in the Order to Aloha's requested recognition of impact fees paid to Pasco County is appropriate, proper, and consistent with Order No. PSC-07-0023-S-WU (the "Stipulation Order");
- b. whether the projected gallons required to be purchased from Pasco County has been properly calculated and included in rate setting by the Order;
- c. whether it is appropriate to use the 2007 actual gallons to determine the projected gallons required to be purchased from the County and whether the 2007 actual gallons were appropriately calculated in the Order;
- d. whether the adjustment in the Order to Aloha's requested recognition of the impact fees paid to Pasco County constitutes a used and useful adjustment to those impact fees in violation of the Stipulation Order;
- e. whether the adjustment in the Order to Aloha's requested recognition of impact fees paid to Pasco County, based on the ostensible use of 2007 actual gallons to determine the projected gallons required to be purchased from the County, is a violation of the Stipulation Order;

- f. whether any adjustments to Aloha's requested purchased water increase are a violation of the Stipulation Order;
- g. whether the adjustments in the Order to Aloha's requested purchased water increase have been correctly and appropriately made;
- h. whether the so called "true-up" contained in the Order will allow a review of impact fees, gallons purchased, and debt carrying costs associated with the payment of the impact fees, contrary to the Stipulation Order;
- i. whether the so called "true-up" purports to allow the review or revisitation of matters, items, or issues resolved or established by prior final Commission Orders;
- j. whether the so called "true-up" language in the Order is so broad that it fails to either put Aloha on notice as to what issues, costs, or matters may be reviewed for "reasonableness" or "prudence" or fails to limit what issues, costs, or matters may be thusly reviewed or is so broad as to allow reconsideration of issues settled by the stipulation and previous Commission orders;
- k. whether the utilization of a twelve month period after the implementation of Phase I, 2009, rates, is appropriate for review of the amount of water that has actually been purchased by Aloha from Pasco County;

- l. whether the utilization of such a period may cause Aloha to lack the rates necessary to purchase sufficient bulk supplies from Pasco County on a going forward basis as necessary to comply with the water use limitations imposed by the Southwest Florida Water Management District;
  - m. whether it is appropriate that any over-recovery must be refunded with interest, but that any under-recovery will apparently be recovered without interest; and
  - n. whether the rate case expense in this proceeding is adequate or appropriate given the Commission's proposed so called "true-up" as reflected in the Order.
  - o. whether the Order has properly utilized the applicable County bulk rate which would be in effect at the time the water is expected to be purchased.
6. The ultimate facts which entitle Petitioner to relief include:
  - a. the adjustment in the Order to Aloha's requested recognition of impact fees paid to Pasco County is not appropriate, proper, and consistent with Order No. PSC-07-0023-S-WU (the "Stipulation Order");
  - b. the projected gallons required to be purchased from Pasco County have not been properly calculated and included in rate setting by the Order;

- c. it is not appropriate to use the 2007 actual gallons to determine the projected gallons required to be purchased from the County and the 2007 actually gallons were not appropriately calculated in the Order;
- d. the adjustment in the Order to Aloha's requested recognition of the impact fees paid to Pasco County constitutes a used and useful adjustment to those impact fees in violation of the Stipulation Order;
- e. the adjustment in the Order to Aloha's requested recognition of impact fees paid to Pasco County, based on the ostensible use of 2007 actual gallons to determine the projected gallons required to be purchased from the County, is a violation of the Stipulation Order;
- f. the adjustments to Aloha's requested purchased water increase are a violation of the Stipulation Order;
- g. the adjustments in the Order to Aloha's requested purchased water increase have not been correctly and appropriately made;
- h. the so called "true-up" contained in the Order will allow a review of impact fees, gallons purchased, and debt carrying costs associated with the payment of the impact fees, contrary to the Stipulation Order;

- i. the so called “true-up” purports will allow the review or revisitation of matters, items, or issues resolved or established by prior final Commission Orders;
- j. the so called “true-up” language in the Order is so broad that it fails to either put Aloha on notice as to what issues, costs, or matters may be reviewed for “reasonableness” or “prudence” or fails to limit what issues, costs, or matters may be thusly reviewed or is so broad as to allow reconsideration of issues settled by the stipulation and previous Commission orders;
- k. the utilization of a twelve month period after the implementation of Phase I, 2009, rates, is not appropriate for review of the amount of water that has actually been purchased by Aloha from Pasco County;
- l. the utilization of such a period may cause Aloha to lack the rates necessary to purchase sufficient bulk supplies from Pasco County on a going forward basis as necessary to comply with the water use limitations imposed by the Southwest Florida Water Management District;
- m. it is not appropriate that any over-recovery must be refunded with interest, but that any under-recovery will apparently be recovered without interest; and

- n. the rate case expense in this proceeding is not adequate or appropriate given the Commission's proposed so called "true-up" as reflected in the Order.
- o. the Order has not properly utilized the applicable County bulk rate which would be in effect at the time the water is expected to be purchased.

7. The Order, in all respects referenced herein above, fails to comply with the Stipulation Order; it is confiscatory or allows or provides for confiscatory actions, directives, or determinations by the Commission during the so called "true-up"; and fails to fix rates for Aloha which are just, reasonable, compensatory, and not unfairly discriminatory under Chapter 367.081, Florida Statutes. The Order fails to fix rates recognizing the prudent cost of providing service during the period of time rates will be in effect and that will therefore allow the utility to earn a fair rate on its rate base during that period of time contrary to Section 367.081(3), Florida Statutes. The Commission has failed, for all of the aforementioned reasons, to properly consider the value and quality of the service and the cost of providing the service and to allow a fair return on the investment of Aloha and property used and useful in the public service. Recognition of impact fees paid to Pasco County and the projected gallons required to be purchased from Pasco County, as requested in Aloha's application, as well as related costs and expenses, is necessary, appropriate, and proper under Section 367.081 and constitutes the denial of an environmental compliance cost (the purchase of the bulk water) to be incurred by Aloha on a going forward basis. The so called "true-up" mechanism, as utilized in this case and as set forth in the Order, fails to provide Aloha that level of rates

and charges on a going forward basis and the commensurate certainty as to such rates and charges, to which Aloha is entitled under Chapter 367 and the Florida Constitution.

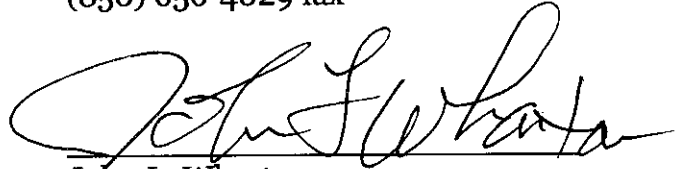
WHEREFORE, Petitioner, Aloha requests that:

- a. The Commission issue an Order recognizing Aloha's requested impact fees paid to Pasco County without an adjustment.
- b. The Commission issue an Order recognizing Aloha's projected gallonage required to be purchased to Pasco County without an adjustment.
- c. The Commission issue an Order recognizing Aloha's requested recognition of related expenses and costs as to such impact fees and projected gallonage.
- d. The Commission issue an Order removing the so called "true-up" language as it relates to impact fees, projected gallonage, bulk water purchases and related costs and expenses.
- e. The Commission issue an Order proposing rates and recognizing Aloha's prudently incurred costs and expenses as requested herein and as requested in Aloha's application.
- f. The Commission make such adjustments to its proposed action as are necessary and appropriate after determination of the other issues raised and adjustments requested herein.



Respectfully submitted this 24th day of March, 2008.

Rose, Sundstrom & Bentley, LLP  
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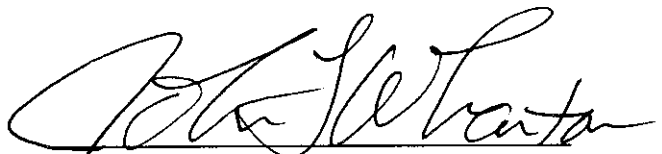
John L. Wharton  
F. Marshall Deterding

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished this 24<sup>th</sup> day of March, 2008 via facsimile to the following:

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Office of Public Counsel  
111 West Madison Street, Room 812  
Tallahassee, Florida 32399-1400  
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