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Stephen C. Burgess
Deputy Public Counsel

March 5, 2004

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11 MAR -5 PM 3:12
COMMISSION
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Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 010503-WU

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens Response to Aloha's Petition for Formal Administrative Hearing and Request that Petition be Transferred to DOAH for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Burgess
Deputy Public Counsel

- AUS _____
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DOCUMENT NUMBER-DATE

03230 MAR -5 04

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 010503-WU
DATED: March 5, 2004

**CITIZENS RESPONSE TO ALOHA’S PETITION
FOR FORMAL ADMINISTRATIVE HEARING AND REQUEST
THAT PETITION BE TRANSFERRED TO DOAH**

The Citizens of the State of Florida, through their attorney, the Public Counsel, hereby file this response to the “Petition for Formal Administrative Hearing and Request that Petition be Transferred to DOAH” (hereinafter “Petition”) filed by Aloha on February 26, 2004. The Citizens move the Commission to dismiss Aloha’s Petition because of Aloha’s failure to follow rules of procedure. Even if the Commission decides not to dismiss Aloha’s Petition, the case should not be transferred to DOAH. The Citizens submit:

Aloha’s Petition Should be Dismissed for Failure to Follow Rules of Procedure

1. Aloha has taken an extraordinary step by refusing to serve any of the parties who have actively participated in this litigation for the last three years. Aloha apparently believes that it can choose not to serve its pleading to parties on the justification that the “PAA Order is not properly issued in this finalized rate case docket” (Paragraph 3).

2. Rule 28-106.104(4) Florida Administrative Code, requires the following

(4) Whenever a party files a pleading or other document with the agency, that party shall serve copies of the pleading or other document upon all other parties to the proceeding. A certificate of service shall accompany each pleading or other document filed with the agency.

Id.

DOCUMENT NUMBER-DATE
03230 MAR-5 04
FPSC-COMMISSION CLERK

Throughout the rate case and all subsequent proceedings, several parties have been actively involved. Aloha's Certificate of Service, however, indicates service only to Ralph Jaeger. The Public Counsel's Office, which has participated fully in every stage of this lengthy docket, was not served. Because Aloha failed to meet this fundamental requirement, the Commission should dismiss the pleading.

3. In addition to neglecting to serve other parties, Aloha also believes it can change the style of the case, as it chooses. Since August, 2001, Docket No 010503 has been styled in the form:

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

Aloha, however, has now chosen to style the case as "Aloha Utilities, Inc., Petitioner, v. Florida Public Service Commission, Respondent." This is not a new case. It is the continuation of a rate case filed by Aloha on August 10, 2001. The Order being protested resolved issues (interim rates) that arose during the course of that case. The case style should not be changed.

This Case Should not be Transferred to DOAH

4. Aloha has petitioned for assignment of this case to DOAH, based on the Utility's "need for a disinterested finder of fact" and "the assignment of an impartial Administrative Law Judge." If Aloha's Petition is not dismissed, the Citizens oppose the assignment to DOAH and believe the Public Service Commission should hear the issues raised in Aloha's pleading.

5. In the first place, contrary to Aloha's assertions, there are almost no material facts which are at issue. Virtually all of Aloha's concerns involve legal interpretations or policy. Consider Aloha's enumerated issues:

A. Aloha's Issue A raises the question of proper interpretation of the refund language contained in Order No. PSC-02-0593-FOF-WU. This is clearly a legal issue and does not involve matters of factual dispute.

B. Aloha's Issue B raises the legal issue of estoppel as it would apply to the refund language contained in Order No. PSC-02-0593-FOF-WU.

C. Aloha's Issue C purports to raise a factual question about the relationship between total refunds and the final revenue requirement. Although it is couched as a factual dispute, in reality the parties have no dispute about the underlying facts. The only question here is the proper amount of refunds that are required under the facts on which all parties are in accord.

D. Aloha's Issue D raises the issue of the proper characterization and usage of the term "windfall" under the facts on which all parties are in accord.

E. Aloha's Issue E raises the legal question of whether the PAA conflicts with prior PSC practices, procedures and policies. This legal question is one in which PSC is clearly in the best position to reach a proper answer.

6. The issues identified by Aloha raise virtually no areas of disputed fact. Rather, by Aloha's own language, the issues raise questions about: (1) the proper interpretation of the PSC's language in the PAA Order and in Order No. PSC-02-0593-FOF-WU; and (2) the proper understanding and context of prior PSC policy, practice and procedure. It is axiomatic that the Public Service Commission is uniquely suited to have the best background and understanding of the Public Service Commission's legal practice, policy and procedure.

7. Finally, continuity and cohesiveness demand that the PSC retain authority to resolve this final array of legal disputes raised by Aloha. This case was filed on August 10, 2001, and there has been a multitude of pleadings, testimony, hearings, arguments, decisions, and orders since the

case was initiated. It would be absurdly incongruent to take this case to an entirely new forum at this point in the proceedings.

WHEREFORE, the Citizens of the State of Florida, hereby move for dismissal of Aloha's Petition. In the event the Commission does not dismiss the Petition, the Citizens oppose Aloha's request to transfer the proceedings to DOAH.

Respectfully submitted,

HAROLD MCLEAN
PUBLIC COUNSEL



Stephen C. Burgess
Deputy Public Counsel

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Attorney for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
DOCKET NO. 010503-WU

I HEREBY CERTIFY that a true and correct copy of the foregoing Citizens Response to Aloha's Petition for Formal Administrative Hearing and Request that Petition be Transferred to DOAH has been furnished by hand-delivery(*) or U.S. Mail to the following parties on the 5th day of March, 2004

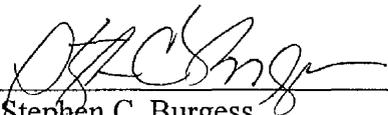
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