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Charles J. Beck
Deputy Public Counsel

December 7, 2004

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
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RECEIVED FPSC
04 DEC - 7 PM 3:16
COMMISSION
CLERK

Re: Docket Nos. 020896-WS and 010503-WU

Dear Ms. Bayo:

Enclosed for filing in the above-referenced dockets are the original and 15 copies of Citizens' Response to Aloha's "Motion for Modification of Controlling Dates and Request for Expeditious Determination".

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck
Charles J. Beck
Deputy Public Counsel

- CMP _____
- COM 5
- CTR _____
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- OPC _____ Enclosures
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- RCA _____ cc: All parties of record
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County)	Docket no. 020896-WS
-----)	
In re: Application for Increase in Water Rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.)	Docket no. 010503-WU
-----)	Date filed: December 7, 2004

CITIZENS' RESPONSE TO ALOHA'S "MOTION FOR MODIFICATION OF CONTROLLING DATES AND REQUEST FOR EXPEDITIOUS DETERMINATION"

Florida's Citizens ("Citizens") file this response to the motion entitled "Motion for Modification of Controlling Dates and Request for Expeditious Determination " filed by Aloha Utilities, Inc. ("Aloha") on December 2, 2004.

ALOHA'S MOTION IS AN UNTIMELY MOTION FOR RECONSIDERATION OF THE ORDER ESTABLISHING PROCEDURE ISSUED ON JULY 27, 2004

The dates for filing testimony by petitioners, intervenors, the company, and staff were set forth over four months ago in the Prehearing Officer's Order Establishing Procedure, order no. PSC-04-0728-PCO-WS issued July 27, 2004. The order itself contained a notice to all parties that any motion for reconsideration had to be filed within ten days from the date of issuance of the order. *Order Establishing Procedure* at 7.

It is now far too late for Aloha to ask for reconsideration of the Order Establishing Procedure, and doing so in the guise of moving for modification of controlling dates makes no difference. At its core the motion is still a motion for reconsideration of the

Order Establishing Procedure, no matter what Aloha calls it. The true nature of a motion must be determined by its content and not by the label the moving party has used to describe it. *Fire & Cas. Ins. Co. of Connecticut v. Sealey*, 810 So.2d 988, 992 (Fla. 1st DCA 2002).

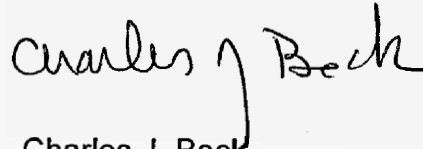
It can come as no surprise to Aloha that petitioners would file significant testimony in support of their petitions. There has been intense customer interest in this proceeding by customers seeking to remove Aloha as their service provider. The filing of testimony by numerous customers should have been anticipated by Aloha when the Prehearing Officer issued the Order Establishing Procedure.

The time to file for reconsideration of the dates controlling the filing of testimony has long since gone. Aloha's motion should be summarily denied for failure to follow the time frames set forth in the Order Establishing Procedure for seeking reconsideration.

ANY CHANGE IN THE DATES FOR FILING TESTIMONY SHOULD NOT SHORTEN THE TIME PERIOD FOR PETITIONERS TO RESPOND TO ALOHA'S TESTIMONY

The Prehearing Officer should not grant Aloha's motion at all because it is an untimely attempt to move for reconsideration of the Order Establishing Procedure. However, if the Prehearing Officer should delay the date for Aloha to file testimony, Citizens request that the date for filing rebuttal testimony be delayed by the same amount of time. To do otherwise would adversely affect petitioners because it would shorten the time for petitioners to prepare and file rebuttal to Aloha's testimony.

Respectfully submitted,



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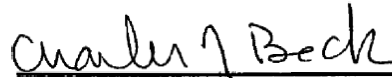
(850) 488-9330

Attorney for Florida's Citizens

**DOCKET NOS. 020896-WS and 010503-WU
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S.

Mail or hand-delivery to the following parties on this 7th day of December, 2004.



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