

**ORIGINAL**

**Matilda Sanders**

**From:** ROBERTS.BRENDA [ROBERTS.BRENDA@leg.state.fl.us]  
**Sent:** Tuesday, March 22, 2005 2:19 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Charles Beck  
**Subject:** e-filing attached  
**Attachments:** 050018 opc opposition to Aloha motion for abatement electronic version.doc

Electronic Filing

a. Person responsible for this electronic filing:

Charles J. Beck, Deputy Public Counsel  
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c/o The Florida Legislature  
111 West Madison Street, Room 812  
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b. Docket No. 050018-WU

In re: Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 9 pages.

e. The document attached for electronic filing is Citizens' Response in Opposition to Aloha's Motion for Abatement.

(See attached file: 050018 opc opposition to Aloha motion for abatement electronic version.doc)

Thank you for your attention and cooperation to this request.

Brenda S. Roberts  
Secretary to Charles J. Beck, Deputy Public Counsel  
Office of Public Counsel  
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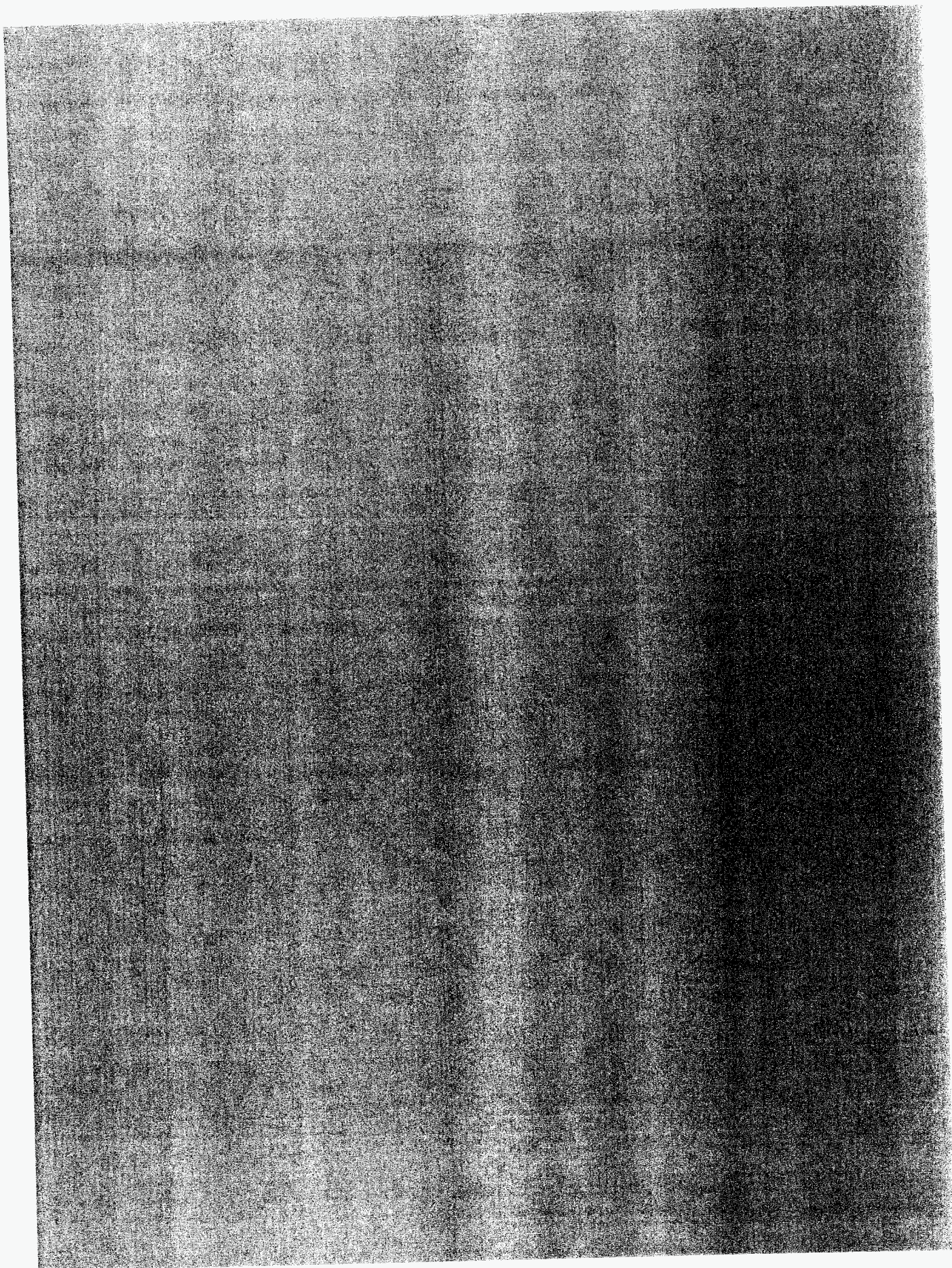
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March 22, 2005

Blanca S. Bayo, Director  
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2540 Shumard Oak Blvd.  
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Re: Docket No. 050018-WU

Dear Ms. Bayo:

Enclosed for electronic filing in the above-referenced docket is Citizens' Response in Opposition to Aloha's Motion for Abatement.

Thank you for your assistance.

Sincerely,

Harold McLean  
Public Counsel

s/ Charles J. Beck  
Charles J. Beck  
Deputy Public Counsel

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CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of deletion proceedings against )  
Aloha Utilities, Inc. for failure to provide )  
sufficient water service consistent with the )  
reasonable and proper operation of the )  
utility system in the public interest, in violation )  
of Section 367.111(2), Florida Statutes. )  
-----)

Docket 050018-WU  
Date filed: March 22, 2005

**CITIZENS' RESPONSE IN OPPOSITION TO  
ALOHA'S MOTION FOR ABATEMENT**

Florida's Citizens ("Citizens") file this response in opposition to the motion for abatement filed by Aloha Utilities, Inc. ("Aloha") on March 15, 2005.

1. The subject matter of this docket was initiated by a petition filed by 1491 individuals, representing 1314 households, in July of 2002. They provided the following reasons to delete the territory in which they lived from the certificate of authorization this Commission granted to Aloha:

(a) Aloha Utilities had not been providing potable water to customers in their service area that met the concept of 'competitive standard' set out by the PSC in its April 30, 2002 Order No. PSC-02-593-FOF-WU, as evidenced by the continuing high incidence of 'black water,' 'rotten egg smell,' and copper pipe corrosion, issues that have not been remedied since being raised almost ten years ago, whereas neighboring Utilities have effectively reduced such problems.

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(b) Aloha Utilities, Inc. has not instituted available processing methods (adopted by neighboring Pasco and Pinellas County Utilities) that reduced the incidence of copper pipe corrosion and 'black water,' but has continued with the sole method of super chlorination, which has so far proved ineffective and can have serious side effects.

(c) Aloha Utilities has demonstrated an unwillingness and/or inability to meaningfully address their concerns by improving the characteristics of potable water so as not to cause harm to their property and/or health, and has continually stone-walled all recommendations for solving the problems using legalistic claims that it already provides 'clean, clear and safe' drinking water.

(d) Aloha Utilities' lack of transparency about its water processing plant and methods undermined the confidence of the customers in the safety of the water it supplies.

2. On December 12, 2002, the Commission issued an order holding the customers' petition in abeyance until resolution of an appeal by Aloha of the Commission's final order in the docket 010503-WS rate case proceeding.

3. On May 26, 2003, the First District Court of Appeal denied Aloha's appeal and entered an order affirming the Commission's decision.

4. Other customers of Aloha petitioned the Commission for the same relief requested by the initial group of 1491 individuals. Petitions were filed by homeowners located in Riverside Villas on December 29, 2003, Riverside Village Estates on June 10, 2004, and Riviera Estates on August 17, 2004<sup>1</sup>.

5. The Commission granted a motion filed by Aloha to terminate the proceedings because of procedural matters relating to the revocation of a license. In order to follow the requirements for the revocation of a license, the Commission opened this docket on January 6, 2005, and issued a show cause order against Aloha on February 22, 2005. The recent date of the show cause order does nothing to change the fact that the subject matter of this proceeding has been pending almost three years.

6. The subject matter of the proceeding in docket 010503-WS has been pending for years, too. Like the deletion proceeding, the cause of delay in that proceeding is primarily attributable to Aloha.

7. In Aloha's rate case proceeding, twenty-nine customers testified that they were dissatisfied with the quality of service provided by Aloha, citing black or discolored water, odor / taste problems, low pressure, sediment /sludge, and the utility's response to customer complaints or inquiries. The Commission found that the quality of customer service provided by Aloha was unsatisfactory and that Aloha treats its customers poorly.

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<sup>1</sup> In addition, docket 050183-WU was opened on March 15, 2005, to address a request to the Commission from homeowners in the Natura subdivision to open a show cause proceeding against Aloha.

As a result, the Commission set Aloha's rates at a point that would give it the opportunity to earn at the minimum of its authorized range of return on equity. In addition, the Commission required Aloha to implement a treatment process designed to remove at least 98% of the hydrogen sulfide in its water by its final order issued April 30, 2002.

8. As already stated, Aloha appealed that final order and lost. It followed this loss with a motion to modify the final order, which the Commission granted in a proposed agency action order. A protest of that proposed agency action order led to the hearing held on March 8, 2005. According to the CASR, post-hearing statements will be filed on April 7, 2005, to be followed by a staff recommendation on May 19, 2005, and a decision by the Commission on May 31, 2005. The results of that proceeding will therefore be known soon.

9. The deletion proceedings are focused on the past actions and inactions of Aloha which warrant deletion. Then Commission was required to set forth the grounds for deletion in its show-cause order; deletion is therefore based on actions and inactions which precede issuance of the show cause order. While Aloha *may* raise actions taken by them after issuance of the show-cause order in mitigation, that is up Aloha. It should have nothing to do with the Commission going forward to prove up the facts contained in the show-cause order. In any event, the Commission's decision in docket 010503 will be made soon, and Aloha is free to bring up those matters in its defense if it chooses to do so.

10. The Commission should not grant this latest request by Aloha to delay resolution of these proceedings again. In its order issued April 30, 2002, the Commission decided "that a significant number of customers have been receiving "black water" from Aloha for over six years, and it is past time for Aloha to do something about it." Commission order no. PSC-02-0593-FOF-WU at 20. The Commission *still* receives complaints from Aloha's customers about black water. The Commission should not grant Aloha's request for abatement and allow these conditions to continue still longer.

11. Then ongoing efforts to mediate these disputes with Aloha continue, but mediation can continue without abating any of the pending dockets.



**WHEREFORE**, Citizens respectfully request the Commission to deny Aloha's motion for abatement.

Respectfully submitted,

HAROLD MCLEAN  
PUBLIC COUNSEL

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**DOCKET NO. 050018-WU  
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by  
electronic mail and U.S. Mail to the following parties on this 22<sup>nd</sup> day of March, 2005.

s/ Charles J. Beck

Charles J. Beck

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