

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Florida Public Service Commission,)
Petitioner)
)
v.)
)
Aloha Utilities, Inc.,)
Respondent)
_____)

DOCKET No. 050018-WU

**ALOHA UTILITIES, INC.'S RESPONSE IN OPPOSITION TO
CITIZEN'S MOTION TO HOLD HEARING IN SERVICE TERRITORY**

Aloha Utilities, Inc. ("Aloha"), by and through its undersigned counsel, files this Response in Opposition to Citizen's Motion to Hold Hearing in Service Territory filed in the above-referenced case and in support thereof states as follow:

1. As noted in the Citizen's Motion, the provisions of Rule 28-106.207(1), F.A.C. are applicable to this case.
2. The Citizen's Motion relies on the Commission's practice in holding some service hearings pursuant to Section 367.081, Florida Statutes in the service territory, and the provisions of Section 367.045(4), Florida Statutes. Such reliance is without merit.
3. The Commission practice of holding service hearings relative to proceedings under Section 367.081, Florida Statutes in the service territory of the Utility, is based upon the Commission's need to comply with the statutory requirements under that section and Commission rules that involve conducting "service hearings" as well as "technical hearings." The Commission practice in often holding "technical hearings" in the service area is more a matter of efficiency than policy. Even with the need to

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conduct both types of hearings, the Commission often conducts portions or all of its technical hearings in such cases in Tallahassee. This hearing is not and does not involve a “service hearing.” It is by its nature a “technical hearing.”

4. The provisions of Section 367.045(4) relied upon by Citizens specifically states that it is applicable to proceedings held “pursuant to §. 120.567 and 120.57...”

5. The instant proceeding is not a proceeding under Section 367.045 or under Section 367.081, Florida Statutes. Nor is it a proceeding under Section 120.569 or 120.57, Florida Statutes. Instead it is a licensure proceeding which is being conducted pursuant to Section 367.161 and 120.60, Florida Statutes. The primary parties in interest are Aloha and the Florida Public Service Commission. The Commission’s Show Cause Order No. PSC-05-0204-SC-WU specifically provides:

“Section 367.111(2), Florida Statutes, provides in relevant part, that each utility shall provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest. The relevant inquiry is whether there are facts to show that Aloha has violated this statutory standard such that it is in the public interest for this Commission to delete the territory that is insufficiently served.”

6. This is a license revocation proceeding and not a customer complaint proceeding. Aloha is the Respondent. It is the Commission’s burden to demonstrate this noncompliance. As such, the provisions of Section 28-106.207(1) must be read to support the convenience of the primary parties in interest, the Commission, and Aloha.

7. Because of the location of Aloha's counsel and its experts, and the location of the agency which carries the burden, the location of the hearing in Tallahassee is the most convenient venue for this proceeding.

8. While interpreting the provisions of Section 25-106.207(1), FAC, the interests of a group of intervenors, and specifically their convenience, should not be allowed to outweigh the convenience of the primary parties in interest in this proceeding.

WHEREFORE, Aloha Utilities, Inc. opposes the Citizen's Motion to Hold Hearing in Service Territory and requests that the Commission for the convenience of itself, its staff and Aloha Utilities, Inc. schedule the hearing to be held on January 18, 2006 through January 27, 2006 in Tallahassee, Florida.

Respectfully submitted this 1st
day of July, 2005 by:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by fax* or U.S. Mail this 1st day of July, 2005, to:

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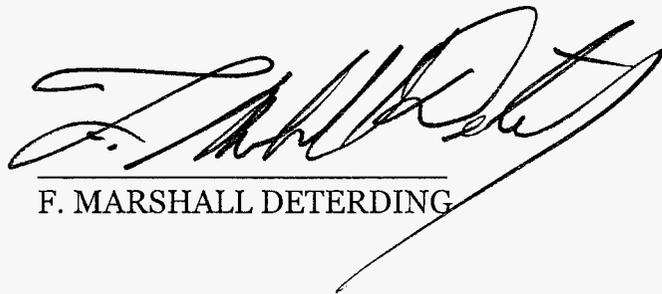
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