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September 12, 1997

VIA HAND DELIVERY

Ms. Blanca Bayo, Clerk  
Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oaks Boulevard  
Tallahassee, Florida 32399-0850

Re: Docket No. ~~97-1092~~-WS; Complaint of Tahitian Gardens  
Condominium Association, Inc. against Aloha Utilities, Inc.  
Our File No. 26038.24


Dear Ms. Bayo:

Filed herewith is the original and seven (7) copies of the  
Response of Aloha Utilities, Inc. to the above-styled Complaint.

We are also providing herewith a diskette containing a copy of  
Aloha's response to the Complaint in compliance with Rule 25-  
22.038, Florida Administrative Code. Please contact us if you have  
any questions or need any additional documents or information.

- ACK
- AFA
- APP
- CAF
- CMU
- CTR
- EAG
- LEG  RMCR/bsr
- LIN
- QPC  Enclosure
- RON  cc: Mr. Steve Watford
- SE  Mr. Chris Liossis
- WAS  Mr. James Richardson
- OTH  aloha\clerk.rr

Very truly yours,

  
ROBERT M. C. ROSE  
For The Firm

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DOCUMENT NUMBER-DATE  
09824-SEP 12 97  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Complaint of Tahitian )  
Gardens Condominium Association, )  
Inc. against Aloha Utilities, Inc. )

Docket No. 97-1092-WS  
Filed: 9-12-97

ALOHA'S RESPONSE TO THE COMPLAINT

MOTION TO DISMISS, MOTION TO STRIKE,  
ANSWER AND AFFIRMATIVE RESPONSE  
SUBJECT TO MOTION TO DISMISS AND MOTION TO STRIKE

Aloha Utilities, Inc. ("Aloha"), pursuant to Rule 25-22.037, Florida Administrative Code (F.A.C.), files this Motion to Dismiss the Complaint ("Complaint") of Tahitian Gardens Condominium Association, Inc. ("Association"), to Strike portions of the Complaint, and Aloha's Answer and Affirmative Response, subject to Alohas Motions to Dismiss and to Strike. In support of its Motions, Answer and Affirmative Response, Aloha says:

1. Motion to Dismiss.

In its Complaint, the Association opens with the assertion that the Complaint is "pursuant to Florida Public Service Commission Rule 25-22.036, Florida Administrative Code, . . ."

(a) Rule 25-22.036(5) F.A.C. provides as follows:

Complaints. A complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interest and which is in violation of a statute enforced by the Commission, or any Commission rule or order.

(1) The Complaint alleges no facts which show that the act of Aloha, in charging the base facility charge to customers who are

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also members of the Association, in any way affects the substantial interest of the Association itself.

(2) The Complaint alleges no violation by Aloha of any statute enforced by the Commission, or of any violation by Aloha of any Commission rule or order.

(b) The Complaint alleges no dispute of material fact as required by Rule 25-22.036(7)3., F.A.C.

(c) The Complaint provides no statement of ultimate facts alleged or any rules, orders or statutes which entitle the Association to any relief as is required by Rule 25-22.036(7)4, F.A.C.

(d) The Complaint fails to specify or indicate any rule, order or statute that Aloha has violated [Rule 25-22-.036(7)(c)1, F.A.C.]

(e) The Complaint alleges no actions of Aloha which constitute such violations. [Rule 25-22.036(7)(c)2, F.A.C.]

## 2. Motion to Strike.

Aloha moves to strike all of the allegations, in paragraphs 4 and 5 of the complaint as irrelevant, or in one instance, as scandalous, except the following:

(a) As to paragraph 4: Aloha admits that there are 464 non-metered customers of Aloha who reside in Tahitian Gardens Condominiums.

The remainder of paragraph 4 should be stricken because it alleges that Aloha "wrongfully" charges the base facility charge

rate, which is scandalous in that it prejudicially characterizes the issues in this case.

(b) As to paragraph 5: All of the allegations of paragraph 5 should be stricken except subparagraph (e).

Subparagraphs (a), (b), and (c) allege facts concerning the physical means by which and through which water service is provided to Tahitian Gardens Condominiums and is wholly irrelevant to the issues in the Complaint.

The allegations of paragraph 5(d) concerning the measurement of water to the customers in Tahitian Gardens Condominiums is redundant and the gallonage rate is not raised as an issue in the Complaint.

2. Answer, Subject to the above Motions to Dismiss and Strike.

Aloha hereby restates and incorporates paragraphs 1. (Motion to Dismiss) and 2. (Motion to Strike) of this Response to the Complaint, and subject to the said Motions, files this Answer to the Complaint.

As to the allegations of paragraph 4 of the Complaint, Aloha says:

(a) Aloha admits that Aloha provides water and wastewater service to 464 residential customers who reside in the Tahitian Gardens Condominiums, and that water service is not individually metered to those 464 customers.

(b) Aloha does not know whether each of the 464 customers is an Association member and therefore can neither admit

nor deny this allegation. Aloha demand strict proof of this allegation.

(c) Aloha denies that the Association's substantial interests are affected by Aloha's charging the base facility charge rates to Aloha's 464 non-metered customers who reside in the Tahitian Gardens Condominiums and demands strict proof.

(d) Aloha denies that it wrongfully charges the base facility charge rates to each of the Association's 464 non-metered members and demands strict proof.

(e) As to the allegations of paragraph 5 of the Complaint:

1. Aloha denies that water is piped into the Tahitian Gardens Condominium development through two 2-inch meters.

2. Aloha admits the allegations of paragraph 5(b), except for the meter size denied in (5)a., above.

3. Aloha denies the allegations of paragraph 5(d) as to the meter size and is without knowledge as to who owns any of the five metered commercial customers referred to in this paragraph of the Complaint and therefore can neither admit nor deny this allegation.

4. Aloha admits the allegations of 5(d), except for its denial of the meter size matter and that the current gallonage rate for water is \$2.77 per 1,000 gallons.

5. Aloha admits the allegations of paragraph 5(e).

(f) Aloha denies the allegation of paragraph 6 of the Complaint and demands strict proof.

(g) Aloha denies the allegation of paragraph 7 of the Complaint and demands strict proof.

(h) Aloha denies that its tariffs do not permit Aloha to charge the base facility charge rates to each of the 464 non-metered condominium customers referred to in the Complaint, that the base facility charge does not apply to those customers, or that the absence of meter reading and related costs justifies discontinuing the base facility charge, as set forth in paragraph 7 of the Complaint, and demands strict proof.

(i) With the exception of paragraph 5(e) of the Complaint, Aloha has asserted that paragraph 5 is irrelevant, but proper pleading necessitates that Aloha note specific matters which Aloha may not properly admit. Please note the following:

The two water meters referred to in the Complaint are 4-inch compound meters which contain a 4-inch register and a 2-inch register.

Aloha's relationship to its customers is not based upon ownership, and rarely, if ever, does Aloha have an occasion to inquire into the legal title to land or buildings where its customers receive service.

The gallonage rate for water was changed from \$2.77 to \$2.65 per 1,000 gallons at approximately the same time that the Complaint was prepared.

3. Affirmative Defenses.

Aloha hereby restates and incorporates paragraphs 1. (Motion to Dismiss) and 2. (Motion to Strike) of this Response to

the Complaint, and subject to the said Motions, files this Affirmative Defense to the Complaint:

Each of the 464 non-metered customers who reside in the Tahitian Gardens Condominiums is a customer of Aloha, and Aloha bills each of them directly.

(a) In a public hearing on September 6, 1973, the Association refused to accept responsibility for acting with Aloha on behalf of its members in regard to the services provided by Aloha to those members. (See Order No. 6691.) Now the Complaint requests the Commission to permit the Association to represent its members in the very same relationship it refused to accept in that hearing.

Twenty-four years have passed since that day. The Association can produce no document by which the Association has ever resolved to undertake the responsibility it refused to accept in September of 1973.

(b) The problem of Aloha's relationship to the Tahitian Gardens Condominium customers was considered, defined and resolved by Commission Order No. 6691, issued in Docket No. B-73436-WS on May 27, 1975. In that Order, the Commission concluded, among other things, as follows (Sheet 4):

The condominium customers are to be charged individually on the basis of the number thereof receiving service during the month, multiplied by 4,000 gallons, to determine the amount of water representing minimum consumption; the total amount of water purchased by the utility through the master meter, less amounts sold to customers with individual meters and less the minimum consumption, as above computed, equals overage, the cost of

which is to be equally divided among the condominium customers receiving service during the month, at a rate of \$.40 per 1,000 gallons.

(c) The Commission discontinued using the "minimum gallonage" rate structure in setting water and wastewater rates and began employing its "base facility charge" rate structure sometime after Order No. 6691 was issued. The base facility charge rate was applied by the Commission to Aloha by Order No. 9256, issued in Docket No. 790027 on February 20, 1980.

It appears that the last tariff sheet employing the minimum consumption structure bore an effective date of August 19, 1979, and that the first tariff sheet employing the new base facility charge structure was Fourth Revised Sheet No. 18.1, which became effective on March 21, 1980. (A copy of Fourth Revised Sheet 18.1 is attached hereto as Attachment No. 1.)

(d) Since at least as early as Aloha's compliance with Order No. 6691, over twenty-two years ago, Aloha has followed the Commission's Order, setting up and employing a direct relationship between itself and each individual non-metered customer resident of Tahitian Gardens Condominiums. For each of those customers, it employed the "minimum consumption" rate structure until its compliance with Order No. 9256, at which time it began to charge the "base facility charge," and has done so ever since.

Thus the Commission has consistently required Aloha, and Aloha has consistently obeyed, in treating its customers who reside in the Tahitian Gardens Condominiums, the same as it does its other



residential customers, and thus avoids the unfair discrimination prohibited by Section 367.081(2), Florida Statutes.

(e) Rule 25-9.031(2), F.A.C., provides:

Only one rate schedule shall be placed on a single sheet.

Thus, each of the rate sheets applicable to Tahitian Gardens Condominiums (Water Tariff Sheet 18.1) contained either the "minimum charge" or the "base facility charge" throughout the history of this matter, referred to in the Complaint. If the base facility charge did not apply to Tahitian Gardens Condominiums, the Commission would not permit it to appear on the same sheet with the base facility charge. It does, and has since Fourth Revised Sheet No. 18.1 became effective over seventeen years ago. Sheet No. 18.1 of Aloha's water tariff has been revised and reissued by the Commission fifteen times since first approved.

(f) The problem of the inability of Aloha to individually meter service to each of the customers of the Tahitian Gardens Condominiums relates to circumstances which occurred before the Public Service Commission had jurisdiction to regulate Aloha<sup>1</sup> and during a period of time when water and wastewater service to this condominium complex was provided by Tahitian Utilities, Inc. Aloha's personnel understand that the residential structures in the condominium complex are built upon concrete slabs. The water and wastewater lines serving them are encased within or under those

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<sup>1</sup>The Commission obtained jurisdiction to regulate Aloha (and Tahitian Utilities, Inc.) on July 11, 1972. (See Order No. 5641, issued in Docket No. 72509-WS on February 5, 1973.)

slabs. Further, it long ago became evident that the lines serving some of the residences within the condominium were split and subdivided inside or under the slab to serve two or more residence units. So, after acquiring Tahitian Utilities, Aloha asked the Association to accept responsibility for collection of bills to resident members to pay the cost of water and sewer service. The Association refused to undertake the responsibility, and the Commission found that it lacked authority to require it to do so. (See Order No. 6691, Sheet 3.)

(g) Perhaps the most comprehensive and most succinct statement and resolution of the problem is stated in the November 10, 1994 letter from Charles H. Hill, Director of the Commission's Water and Wastewater Division, to Mr. Thomas H. Rennell, Jr., a copy of which is attached hereto as Exhibit No. 1.

Mr. Hill, near the end of his letter states as follows:

Until such time as the Association decides to install individual meters, however, Aloha is bound by and must comply with the order and the tariff now in effect.

(h) The language of the tariff sheets, applicable to residential service for water, was devised by Public Service Commission personnel and has consistently contained a provision applicable to Tahitian Gardens Condominiums. It can be seen on the present Nineteenth Revised Sheet No. 18.1, effective July 25, 1997, pursuant to Authority No. WS-97-0124. This language arose out of the fact that Tahitian Gardens Condominium customers do not have individual water meters, as do Aloha's other residential customers.

Since there are no residential sewer meters, the specific language down near the bottom of Water Tariff Nineteenth Revised Sheet No. 18.1 does not appear on the residential sewer service rate schedule, as can be seen from Eighth Revised Sheet No. 17.1, which became effective on August 30, 1996. The two tariff sheets referred to in this paragraph (h) are attached hereto as Attachment No. 2.

(i) In its prayer for relief, the Complaint states:

WHEREFORE, the Association requests the Florida Public Service Commission to enter an order directing Aloha Utilities, Inc. to immediately stop charging the BFC rate to non-metered condominium customers and to refund all past overcharges in full, with interest, to the Association.

1. As to requiring Aloha to stop charging the "BFC" rates to Aloha's non-metered Tahitian Gardens Condominium customers, that would deprive Aloha of a substantial portion of its revenue and necessitate imposing the burden of having those revenues paid by other customers.

2. It is Aloha's understanding that the base facility charge is designed to cover certain portions of the fixed costs of a utility. Aloha is required by Commission Order No. 9256 to employ the base facility charge.

The Association cannot show that Aloha should charge and collect no base facility charge from each of its 464 non-metered Tahitian Gardens Condominium customers or that the base facility charge should be one cent less than is currently authorized by Aloha's tariffs.

3. As to making any retroactive refunds, Aloha has shown that it has, with the knowledge of the Commission, charged and collected that base facility charge rate from those specific customers each month for over seventeen years. Throughout that time, Aloha has affirmatively believed that the base facility charge rate, applicable to the Tahitian Gardens Condominium customers was authorized by the tariff and lawful and proper. The tariff sheet specifically implementing and authorizing that base facility charge rate to those customers has been revised and reissued by the Commission fifteen times.

4. The Complaint alleges no fact by which the Commission could find that the base facility charge rate which it has authorized Aloha to charge to and collect from its non-metered Tahitian Gardens Condominium customers is not lawful and proper.

5. The prayer of the Complaint requests that the Commission order Aloha to refund all the base facility charge rates Aloha has collected to the Association, with interest. As can be seen in Order No. 6691, that Association refused to accept responsibility for the billing twenty-four years ago. The Association has never resolved to reverse that decision. Now the Association requests that it receive the refund.

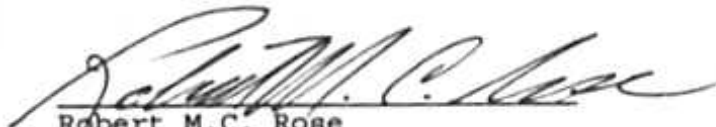
6. A final consideration is the fact that no utility, including Aloha, has standing to object to any rate or rate structure set by the Commission so long as the end result of ratemaking provides the utility an opportunity to earn a fair return. The base facility rate charge is one of the rate struc-

tures or "systems" which the Commission uses when it concludes that base facility rate charge is proper and appropriate, as it has done in Aloha's rates to the non-metered customers of Tahitian Gardens Condominiums.

WHEREFORE, Aloha Utilities, Inc., prays that the Florida Public Service Commission will accept this Response to the Complaint of the Tahitian Gardens Condominium Association, Inc., and issue its order dismissing the said Complaint, or in the alternative, issue its Order granting Aloha's motion to strike portions of the said Complaint and to make such other Orders as the Commission finds to be appropriate in the premises.

Respectfully submitted this 12<sup>th</sup> day of September, 1997, by:

ROSE, SUNDSTROM & BENTLEY, LLP  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301  
(850) 877-6555 Fax: 656-4029  
Attorneys for Aloha Utilities, Inc.



Robert M.C. Rose  
Florida Bar No. 95414  
For the Firm

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Response was furnished by U.S. Mail to Mr. Chris Liossis, 4351 C Tahitian Gardens Circle, Holiday, FL 34691-3733, and to Mr. James Richardson, 4344 A Tahitian Gardens Circle, Holiday, FL 34691-4993, this 12<sup>th</sup> day of September, 1997.



Robert M.C. Rose

Aloha\Responses  
September 11, 1997

## State of Florida

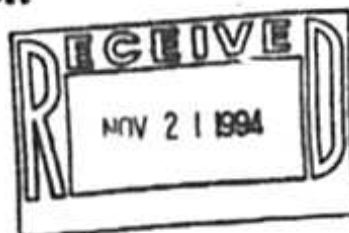
Commissioners:  
J. TERRY DEASON, CHAIRMAN  
SUSAN F. CLARK  
JULIA L. JOHNSON  
DIANE K. KIESLING  
JOE GARCIA



DIVISION OF WATER &  
WASTEWATER  
CHARLES HILL  
DIRECTOR  
(904) 488-8482

**Public Service Commission**

November 10, 1994



Mr. Thomas H. Rennell Jr.  
2348 Middlecoff Drive  
Dunedin, Fl. 34698-2234

Dear Mr. Rennell:

RE: Your letter dated Sept. 9, 1994

We have thoroughly investigated your complaint against Aloha Utilities Inc., involving the lack of individual water meters in the Tahitian Gardens Condominiums. The following information has been obtained and hopefully will explain the situation to your satisfaction.

- The only customers within Tahitian Gardens with individual meters are commercial customers of Aloha Utilities.
- There are no residential customers within Tahitian Gardens with individual meters even though it appears that some buildings may be configured in such a manner that individual meters might be installed.
- There is a single, master water meter where the water main enters Tahitian Gardens.
- Aloha Utilities maintains the water lines from the master meter up to the curb in front of each building but their responsibility stops at the curb.
- The lines from the curb up to each building are owned by Tahitian Gardens and are maintained by the maintenance service employed by the Condo Association, not by Aloha Utilities.
- The irrigation system for the common areas is tied into the distribution system in a haphazard manner with virtually no records of pipe locations.

EXHIBIT NO. 1

(page 1 of 2)

Thomas H. Rennell, Jr.  
November 10, 1994  
Page Two

- The cost of water used in irrigating the common areas is divided between the residents just as all other water flowing through the master meter (less any water used by the commercial customers).
- Aloha Utility has an agreement with the Condo Association whereby the utility agreed to submit individual bills to each condo resident in accordance with their tariff and PSC Order No. 5641 issued in 1973.

From the above information it appears that your complaint is with the Tahitian Gardens Condo Association since that Association is responsible for the plumbing and water lines up to the individual apartments. If the Condo Association decides to install individual meters and enters into a new agreement with Aloha Utilities, then your request could be honored. Until such time as the Association decides to install individual meters, however, Aloha is bound by and must comply with the order and tariff now in effect.

I'm afraid this is not the decision you were looking for but for now you need to work through your Condo Association in order to get the existing agreement changed.

Sincerely,



Charles H. Hill  
Director  
Division of Water & Wastewater

BC/tyg

cc: Stephen G. Watford

Exhibit No. 1

(page 2 of 2)

RESIDENTIAL SERVICE

RATE SCHEDULE RS

AVAILABILITY - Available in Aloha and Tahitian Gardens.

APPLICABILITY - For water service for all purposes in private residences and individually metered apartment units.

LIMITATIONS - Subject to all the rules and regulations of this tariff and general rules and regulations of the Commission.

RATES - (Monthly)

<u>Meter Size</u>	<u>Base Facility Charge</u>	<u>Gallage Charge</u> <u>(Per 1,000 gallons)</u>
5/8" x 3/4"	\$ 2.60	\$ 2.65
1"	6.51	2.65
1-1/2"	13.02	2.65
2"	20.83	2.65
3"	40.44	2.65
4"	65.00	2.65
6"	130.11	2.65
8"	208.18	2.65

TERMS OF PAYMENT - Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. After five (5) working days written notice is mailed to the customer separate and apart from any other bill, service may then be discontinued.

Applicable to Tahitian Gardens Condominiums:

(1) The condominium customers are to be charged individually on the basis of the number thereof receiving service during the month. The total amount of water purchased by the utility through the master meter, less amounts sold to customers with individual meters, equals excess, the cost of which is to be equally divided among the condominium customers receiving service during the month, at a rate of \$2.65 per 1,000 gallons.

EFFECTIVE DATE: July 25, 1997  
TYPE OF FILING: Show Cause - Pass-thru  
Gallage Reduction

Stephen G. Watford  
ISSUING OFFICER

Vice President  
TITLE



FLORIDA PUBLIC SERVICE COMMISSION

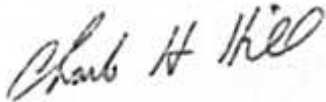
APPROVED

AUTHORITY NO. WS-97-0124

DOCKET NO. N/A

ORDER NO. N/A

EFFECTIVE DATE July 25, 1997



DIRECTOR  
DIVISION OF WATER AND WASTEWATER

Attachment No. 2

(page 2 of 4)

ALOHA GARDENS SYSTEM

RESIDENTIAL SERVICE

RATE SCHEDULE RS

AVAILABILITY - Available throughout the Aloha Gardens area served by the company.

APPLICABILITY - For sewer service in private residences and individually metered apartment units.

LIMITATIONS - Subject to all the rules and regulations of this tariff and general rules and regulations of the Commission.

RATES - (Monthly)

<u>Meter Size</u>	<u>Base Facility Charge</u>	<u>Gallage Charge</u> (per 1,000 gallons)
All meter sizes	\$11.03	\$4.45 (maximum of 10,000 gallons)

TERMS OF PAYMENT - Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. After five (5) working days written notice is mailed to the customer separate and apart from any other bill, service may then be discontinued.

EFFECTIVE DATE: August 30, 1996  
TYPE OF FILING: 1996 Indexing

Stephen G. Watford  
ISSUING OFFICER

Vice President  
TITLE

FLORIDA PUBLIC SERVICE COMMISSION

APPROVED

AUTHORITY NO. WS-96-0178

DOCKET NO. N/A

ORDER NO. N/A

EFFECTIVE August 30, 1996

*Char H Hill*

DIRECTOR  
DIVISION OF WATER AND WASTEWATER

Attachment No. 2

(page 4 of 4)