

ORIGINAL



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MAY 19 PM 3:59

RECORDS AND
REPORTING

May 12, 1999

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 960545-WS

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens' Response to Aloha Utilities, Inc.'s Motion to Strike 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,

Harold McLean
Associate Public Counsel

HM/dsb
Enclosures

- AFA _____
- APP _____
- CAP _____
- CMU _____
- CTR _____
- EAG _____
- LEG 1
- MAS 3
- CPC _____
- RPR _____
- SEC 1
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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re Investigation of Utility)
rates of Aloha Utilities, Inc.)
In Pasco County, Florida.)
_____ /

DOCKET NO. 960545-WS

FILED: May 19, 1999

CITIZENS' RESPONSE TO ALOHA
UTILITIES, INC.'S MOTION TO STRIKE

The Citizens of the State of Florida respond to Aloha's May 14, 1999 Motion to Strike and say as follows:

- 1) The Commission has recognized that the striking of a pleading is an unusually harsh penalty to be levied only in extraordinary circumstances and where the party seeking the strike has been materially prejudiced;
- 2) Aloha has neither suffered nor alleged any prejudice, and in fact has, in its own words, impeached the necessity of its original Motion to Establish Burden so as to render it a superfluous motion:

Attached are the original and fifteen copies of Aloha Utilities, Inc.'s Motion to Establish the Burden which is being filed today and telecopied to all the parties with telecopiers. *The identical legal issue in this proceeding is being heard by the Commission at Tuesday's agenda conference in the form of a Motion for Reconsideration. All parties have had an opportunity and have responded to the issues raised* in this Motion through their responses to the Motion for Reconsideration to be argued Tuesday. Therefore, it is my intention as attorney for Aloha to ask that a ruling be entered on the attached Motion at Tuesday's agenda conference. (Emphasis supplied.)

Aloha's cover letter of April 30, 1999.

Thus Aloha says: that its Motion to Establish presents issues *identical* with its earlier motion for reconsideration; that it nevertheless filed its Motion to Establish, the duplicative nature thereof conceded; and that the Citizens response to the redundant motion should be stricken

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on considerations of time. If Aloha is to be taken at its word, the Citizens' allegedly untimely motion was itself redundant with the Citizens' response to the Motion for Reconsideration -- all of which belies any belated claim of prejudice;

- 3) The true shortcoming of Aloha's motion to strike is illustrated by consideration of the scenario which would have been implicitly acceptable to Aloha, that is, had the Citizens' response to the Motion to Establish been filed by the Citizens on May 10, instead of May 12, two days later. The question of prejudice must focus on what, if anything, Aloha would or could have done differently were the response to their redundant motion been filed two days earlier than it actually was.

WHEREFORE, because Aloha suffered no prejudice of any kind, the Citizens urge the Commission to deny Aloha's motion to strike.

Respectfully Submitted,



Harold McLean
Associate Public Counsel

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(850) 488-9330

Attorney for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing CITIZENS' RESPONSE TO ALOHA UTILITIES, INC.'S MOTION STRIKE has been served by United States Mail or (*) by hand delivery upon the following parties on this the 19th day of May, 1999:

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