

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Customers of )  
Aloha Utilities, Inc. for deletion of )  
a portion of territory in Seven )  
Springs area in Pasco County. )  
\_\_\_\_\_ )

Docket No. 020896-WS

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MOTION TO DISMISS

Aloha Utilities, Inc. (Aloha), by and through its undersigned counsel, moves to dismiss the above-referenced petition and in support states the following:

1. The petition was received by the Office of Chairman Jaber on July 18, 2002, and docketed on August 16, 2002. Aloha obtained a copy of the petition from the PSC's office of General Counsel on August 20, 2002, four (4) days after it was docketed.

2. The petition, purportedly submitted on behalf of "1491 individuals of 1314 households" in the Seven Springs portion of Aloha's certificated water territory, requests in part that the Plan of Action that Aloha has been "asked to submit" by Order No. PSC-02-0593-FOF-WU (the Order) "be approved only after an independent audit of Aloha's processing plant and methodology and only if the Action Plan contains the minimum requirements adopted by neighboring utilities for raw water processing and if a Citizens' Advisory Committee is created to monitor the effectiveness of any plan that is accepted." The petition further requests that the PSC order Aloha to put into

effect new minimum requirements for processing water by April 30, 2003. The Order required implementation of the PSC's mandated treatment process by December 31, 2003.

3. In this regard, the petition is properly deemed a motion for reconsideration of the Order. The time for filing such motions has long passed, and, as such, the petition is untimely.

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4. In an appeal pending before the First District Court of Appeal (DCA Case No. 1D02-2147), Aloha seeks reversal of the PSC's mandated treatment process on grounds including the absence of PSC jurisdiction to impose such treatment requirements. Aloha also therein seeks reversal of the PSC's directive to establish a Citizens' Advisory Committee and attendant requirements, in part on the basis that such directive is an improper interference with Aloha's managerial discretion. These issues are properly before the Court for resolution. Aloha herein reiterates its positions, as explicated in its Initial Brief, that the PSC does not have the jurisdiction to impose the treatment process mandated by the Order, and that the Citizens' Advisory Committee and attendant requirements unlawfully interferes with the province and prerogatives of Aloha's management, and incorporates herein by this reference Sections IID (pp. 28-33) and IV (pp. 36-37) of said Initial Brief.

5. On August 5, 2002, the PSC issued Order No. PSC-02-1956-PCO-WU (the Stay Order), granting in part Aloha's Motion for Stay. In pertinent part, the Stay Order suspends the requirements of the Order to implement the aforesaid PSC-mandated water treatment process pending resolution of the appeal. To the extent the petition could be deemed a motion for reconsideration of the stay, it was filed prematurely, and the time for filing such motions having passed, the petition is untimely.

6. In the event that "SIGNIFICANT RESOLUTION OF THE PROBLEMS DOES NOT OCCUR by June 30, 2003 even after the institution of additional processing methods,"(sic) the petition requests that the PSC "sequester the Seven Springs Area from Aloha Utilities and make it a part of the service area of Pasco County water utility system."

7. The PSC does not have the jurisdiction to grant the latter relief requested. The Legislature has never conferred upon the PSC a general authority to regulate public utilities. The

PSC has “only those powers granted by statute expressly or by necessary implication.” *Deltona Corp. v. Mayo*, 342 So. 2d 510 (Fla. 1977) Any reasonable doubt as to the lawful existence of a particular power must be resolved against the exercise thereof. *Cape Coral v. GAC Utilities, Inc.*, 281 So.2d 493 (Fla. 1973)

8. Aloha is statutorily required “to provide service” to the area described in its certificate of authorization within a reasonable time. Further,

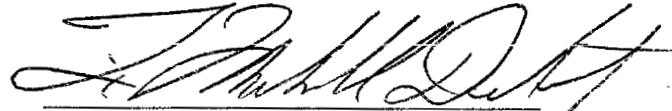
[i]f the commission finds that any utility has failed to provide service to any person reasonably entitled thereto, or finds that extension of service to any such person could be accomplished only at an unreasonable cost and that addition of the deleted area to that of another utility company is economical and feasible, it may amend the certificate of authorization to delete the area not served or not properly served by the utility, or it may rescind the certificate of authorization. Sec. 367.111(1), Florida Statutes

The foregoing statute clearly addresses the failure of a utility to provide service availability within its certificated service area. This a far cry from deleting territory of a utility consistently found to be in compliance with all environmental standards promulgated by the Florida Department of Environmental Protection, on the basis of a failure to implement a water treatment standard imposed by the PSC, and transferring such territory to Pasco County, a nonjurisdictional service provider. The PSC lacks such jurisdiction.

9. The customers do not have standing to seek the “sequester” or deletion of a portion of Aloha’s service area to be made a part of the service area of Pasco County. The Florida Supreme Court has held that “[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself.” *Storey v. Mayo*, 217 So. 2d 304, 307-308 (Fla. 1968) No other support having been alleged, the petition should be dismissed for lack of standing.

**WHEREFORE**, Aloha Utilities, Inc. Requests that the petition filed in the above docket be dismissed.

Respectfully submitted this 5<sup>th</sup> day of  
September, 2002, by:



F. Marshall Deterding  
John L. Wharton  
ROSE, SUNDTROM & BENTLEY, LLP  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301  
(850) 877-6555  
(850) 656-4029 Fax  
*Attorneys for Aloha Utilities, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail (\*hand delivery) this 5<sup>th</sup> day of September, 2002, to:

Lorena Holley, Esquire\*  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0873

V. Abraham Kurien, M.D.  
1822 Orchardgrove Avenue  
New Port Richey, FL 34655

Stephen C. Burgess, Esquire\*  
Office of Public Counsel  
111 Madison Street  
Tallahassee, FL 32399-1400

State Representative Michael Fasano  
Florida House of Representatives  
8217 Massachusetts Avenue  
New Port Richey, FL 34653



F. Marshall Deterding