

State of Florida



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: September 17, 2002
TO: Division of the Commission Clerk and Administrative Services
FROM: Office of the General Counsel (Holley) JAH
RE: Docket No. 020896-WS - Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County.

Please file the attached letter with attached rebuttal to the Motion to Dismiss, from Dr. V. Abraham Kurien, dated September 13, 2002, in the docket file for the above-referenced docket.

LAH/dm

cc: Division of Economic Regulation (Willis, Walden)
Division of Consumer Affairs (Lowery)
Office of Public Counsel (Burgess)
Representative Mike Fasano
John Wharton, Esquire
Marshall Deterding, Esquire
Mr. Edward O. Wood

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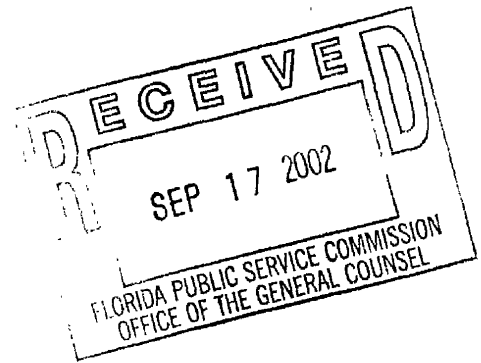
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FPSC-COMMISSION CLERK

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Atty. Lorena Holley,
Florida Public Service Commission
2540 Shumard Oak Blvd,
TALLAHASSEE, FL 32399-0873



September 13, 2002

Dear Atty Holley

REBUTTAL TO THE MOTION TO DISMISS
DOCKET NO 020896-WS

First of all let me apologize for my error in contacting you to get legal clarification about the format in which I should respond to the 'motion to dismiss' our petition. I have very limited knowledge of legal matters.

I am enclosing my rebuttal of the 'Motion to Dismiss' expressed in lay terms. I would appreciate your kindness if you would forward it to other 'interested parties'.

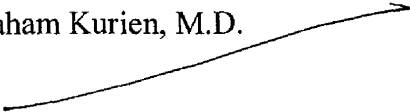
I presume I will hear from you when oral arguments are to take place, because the customers want me to be there personally to present their case.

Thank you.

Yours sincerely,

V. Abraham Kurien

V. Abraham Kurien, M.D.



REBUTTAL OF THE 'MOTION TO DISMISS'
THE PETITION SUBMITTED BY
CERTAIN CUSTOMERS OF ALOHA UTILITIES INC.

Chairman Jaber and
Honorable Members of the Public Service Commission,

I am V. Abraham Kurien, a representative of certain *captive customers of the monopoly known as Aloha Utilities Inc., who have filed a petition before you to get relief from the unsatisfactory quality of potable water that has been coming out of their faucets intermittently for almost a decade now.*

Thank you for giving me the opportunity to respond to the Motion to Dismiss filed by the attorneys of Aloha utilities against the petition of 1491 persons from 1341 households in a specific part of the Seven Springs Area of Aloha Utilities' potable water delivery system. These petitioners constitute 80% of the householders in that area of Seven Springs.

I am a physician by profession and have a degree in chemistry. I understand water chemistry and the behavior and metabolism of bacteria, which is a major part of medical education. I have no legal education and do not claim to understand legal complexities and least of all how legalese can be used to confuse, obfuscate and deny fair and just treatment to people who are injured by the acts of omission or commission of others. Therefore, I have to use simpler language and make a more direct and honest attempt to respond to the motion, even as you permitted me to argue in lay terms against a PSC staff recommendation to allow Aloha to impose upon its customers a major part of the financial cost of its acts of omission.

Before the petitioners filed this petition, I did contact the legal staff of the Florida Public Service Commission to ascertain that the Commission was indeed the Governmental regulatory agency, which has the authority and jurisdiction to receive this petition. A Senior Attorney assured me that such was indeed the case. Therefore I would leave to the able attorneys *who advise the PSC itself on a continuing basis* the adversarial task of a debate with the robust officers of the law who represent *Aloha Utilities*.

However, before I make my layman's attempt to rebut the motion to dismiss our petition, I would beg your indulgence to set before you the foundation on which I am going to present our case. I also would seek permission to bring to your attention the

context and reason which forced us to seek relief from our problems through the Public Service Commission.

I presume that the laws of the State of Florida cannot contradict its constitution and further that they are subject to the constitution of the United States of America, which is the foundation for the Federal laws. The preamble to the Constitution of the United States of America of which Florida is just one state, names *the people* as the only sovereign power from whom every branch of Government derives its authority. That sovereignty derives from the axiomatic basis of the Republic that *the people have certain inalienable rights granted to them by their Creator* as the Declaration of Independence proclaimed and for which the citizens of the 13 colonies fought with their sweat and blood during the war of Independence in 1776. *To quote just one sentence from that sacred document, "when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security"*.

That sentence obviously referred to the King of Great Britain and his government and their relationship to the people of the 13 colonies. The people of Seven Springs are facing a similar situation. The experience of the customers of the *monopoly utility Aloha* is a history of repeated injuries, all having in direct object the apparent preservation of the monopoly rights of Aloha utilities, irrespective of the quality of the water it supplies to its customers. In the words of the Declaration of Independence, *"To prove this, let facts be submitted to a candid (unbiased) world"*.

The customers of Aloha have presented some of these facts many times before the Public Service Commission during public hearings in a manner that I can best describe as "show and tell". They brought their bottles of "black water", complained about the rotten egg smell pouring forth from their hot water faucets and demonstrated the distress they suffered from the lack of clean water in which they could bathe their children, wash their bodies and their clothes. You heard stories of customers who were ashamed to invite guests to their homes because of the unpredictable emergence of black water and foul smell from their bathrooms. They pleaded with Aloha Utilities repeatedly to improve the quality of water. But instead of telling them the *"truth, the whole truth and nothing but the truth"* about the scientific reasons for the problems, *Aloha Utilities took cover under legalisms of the worst kind* instead of seeking help to remedy the difficulties that were facing their customers. Not that the solutions to these problems were not available, for neighboring utilities such as Pasco and Pinellas county utilities who had similar problems had researched the matter and found methods for improving the situation. But Aloha could not be bothered, like the distant King who in 1776 could not be inconvenienced by the complaints of his subjects from a far away land.

Aloha started a campaign to imply that the water problems were the responsibility of the customers and not of the company that supplies the water! Its responsibility ended at the meter and of course it had chapter and verse from Florida Statutes to support its legalistic, but entirely unfriendly attitude to its customers. Aloha's primary concern seemed to be to make sure that it collected without default the 10-12% return on its monetary investment rather than serving its customers. When a scientific study initiated by the FDEP found that 'black water' was associated with the presence *in domestic plumbing of the sulfur reducing bacteria (SRB) Divibrio sulfuricans*, Aloha used that finding to boost its propaganda war against its customers by using that observation in its 'Water News'. *The Utility, its scientific adviser and its legal team seemed to have conveniently forgotten that the study also documented that the water, which Aloha was delivering to its customers contained the very bacteria as a major initiating cause of all the problems.*

At least by 1998 when this scientific study was published, it should have been obvious to anyone with a minimum knowledge of chemistry and bacteriology that the *presence of SRB in delivered water was a major cause of 'black water' and rotten egg smell*: even more so to any engineer who maintains that "water chemistry is a specialized field, requiring not only specialized education and training, but a great deal of experience to fully understand". Since Aloha utilities has such an engineer on its staff, the only reason such evidence was not attended to must be a degree of indifference of which even the King in the far away island of Great Britain could not have been accused! Or is it possible that the King's advisors could not respond to the truth because the legal spectacles that they were wearing were blinding them?

This 'omission' has been pointed out to Aloha, its engineer, its President and its legal team along with an offer to work with Aloha to solve the problems. Instead of taking the hand of co-operation and goodwill that the customers have offered repeatedly and which offer has been made known also to all the Governmental regulatory agencies, Aloha has chosen to remain in the legal trench that it has dug to defend itself and is now attempting to fortify it with sandbags. This 'motion to dismiss the petition' is such a sand bag!

Let me point out that the petitioners have not rushed to seek 'deletion of Aloha's territory' as a precipitous demand! They have gone along with the PSC Order of April 30, 2002 No 02-593-FOF-WU that has recognized Aloha's responsibility in this matter and have demonstrated the patience of Job in their search for solutions, except for a request for expedited implementation to reduce the injury that they experience. Even while frustrated by the extremely minimal improvement in the quality of water after many years and continuing to suffer the economical, psychological and physical burdens of "black water, rotten egg smell and pin-hole leaks", the customers of Aloha have recognized in this petition the need to give Aloha time to remedy the problems through an independent scientific audit of the adequacy of its processing methods and physical plant. They have

even gone the proverbial extra mile by providing data to show the limitations of the *sole* method of water processing used by Aloha, which it should have admitted long before a lay customer pointed it out; even now Aloha does not admit such limitations. *The customers have even provided acknowledgement from FDEP that they do indeed understand water chemistry and that FDEP agrees with the petitioners that Aloha's processing methodology is inadequate.*

In the face of all the evidence the customers have provided, the continued denial by Aloha of its responsibility to deal with the 'blackwater' and associated problems must be considered *pathological*. If a Corporation which supplies as important an essential to life as drinking water, cannot and does not accept scientific evidence of its responsibility and is not willing to adopt methods that can eliminate such problems for whatever reasons including the legalistic claim that it already provides 'clear, clean and safe water', then the *customers have no other alternative* but to seek solutions best expressed once again in the words of the Declaration of Independence. "*Whenever any form of government becomes destructive of these ends (life, liberty and pursuit of happiness), it is the right of the people to alter or to abolish it and to institute new government, laying its foundation on such principles and organizing powers in such form, as to them shall seem most likely to effect their safety and happiness.*

Once every four years, **the people** of the State of Florida elect a Governor as their ultimate civil authority and *we shall be doing so again very soon*. The governor then appoints the members of the Public Service Commission and charges them with the responsibility of ensuring that the welfare of the citizens is not jeopardized and their fundamental rights are not trampled upon by the actions of the Utilities, especially those that have been given the *privileged status of being monopolies*. This act is a *just* exercise of the authority **the people** have vested in the Governor, the Chief Officer of the State because *government is of the people, by the people and for the people*. However, if the Government does not exercise that authority by balancing it with provisions in **its statutes** to ensure that the *monopolies* so created do not injure the citizens by their acts of omission or commission, then the Government would have violated the rights of the citizens to be protected from "unreasonable.....seizure" prohibited by the **Fourth amendment in the bill of rights**.

For in the absence of such statutes, which empower the very same Public Service Commission that grants the privileges of monopoly to a Utility through a certificate of authorization, also the jurisdiction to amend or rescind it, the PSC will become merely the agent of a government serving the interests of the monopoly instead of its citizens by delivering them to the monopoly as captive customers!

The Florida statutes, however, **do provide** for both these considerations. As conveyed to me by the legal staff of the PSC, pursuant to Chapter 367 of the Florida statutes, the Commission "**has exclusive jurisdiction over each utility with respect to its authority, service and rates. That includes granting a certificate and setting its service**

territory". And as inadvertently pointed out by the Aloha Attorneys themselves in their motion to dismiss the petition, Florida Statute 367, 111(1) also authorizes the Commission to "*amend the certificate of authorization to delete an area not served or not properly served by the utility or it may rescind the certificate of authorization*". In giving both these authorities to the **same** regulatory body of the government, the State of Florida has protected itself from violating the rights of the citizens safeguarded by the Fourth Amendment. *The Public Service Commission's Order No PSC-02-0593-FOF-WU of April 30, 2002 has already come to the conclusion that the Seven Springs Area has not been properly served by Aloha Utilities Inc.*

On behalf of the signatories to this petition, I submit that the relief that they have sought is not inappropriate for their continuing injuries in the face of the unwillingness of Aloha to address the matter with scientific accuracy, customer friendly vigor and in an expeditious manner. *In fact, their petition stands within the great civic traditions on which this country was founded and continues to function.* Therefore, I enjoin my contention with that of the legal staff of the Public Service Commission of the State of Florida that the Commission **alone** has the *exclusive legal responsibility and jurisdictional authority* to consider this petition since it has been appointed by the duly elected Governor of this State, and the Commissioners have been entrusted with the responsibility for upholding the rights of the citizens. I hope that as at the time of the birth of this nation, the rights of **the people** will be sustained.

V. Abraham Kurien

V. Abraham Kurien, M.D.

