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ORIGINAL

September 17, 2002

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COMMISSION
CLERK

Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 020896-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Response to Motion to Dismiss.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Stephen C. Burgess
Deputy Public Counsel

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- CAF _____
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- GCL _____
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- MMS _____
- SEC 1
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—SCB:bsr

Enclosure

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE

09891 SEP 17 02

FPSC-COMMISSION CLERK

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
Filed: September 17, 2002

RESPONSE TO MOTION TO DISMISS

The Citizens of the State of Florida, through their attorney, the Public Counsel, hereby respond to the Motion to Dismiss filed by Aloha Utilities, Inc. ("Aloha") on September 5, 2002. The Citizens submit:

1. On July 16, 2002, Dr. Abraham Kurien forwarded to the PSC a petition (hereinafter "Customers' Petition" or "the Petition") signed by 1491 customers of Aloha Utilities. Among other things, the Customers' Petition requested the Commission to grant relief from being captive customers of the utility monopoly.

2. In response to the Petition, the Commission established Docket No. 020896-WS, to consider the issues raised in the Petition.

3. Notwithstanding the Commission's own decision to establish a separate docket, Aloha claims the Customer's Petition should be deemed an untimely motion for reconsideration (Paragraph 3 of Aloha's Motion). The customers' requests for relief are distinct from any issue resolved in Docket No. 010503-

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

WS. The Commission's decision to establish a separate docket is a proper procedural treatment for the issues raised in the Customers' Petition.

4. In paragraph 4, Aloha reiterates its position that it has taken an appeal from Order No. PSC-02-0593-FOF-WU, regarding the establishment of a Citizens' Advisory Committee. Unless the District Court overturns the Commission's order, however, the Commission's order is a valid pronouncement requiring the establishment of a Citizens' Advisory Committee.

5. In paragraph 5, Aloha seems to be arguing that the Customers' Petition is simultaneously both premature and untimely. It is neither. Should the District Court uphold the Commission's decision on the water treatment process, the Petition seeks an acceleration of that requirement.

6. In its paragraphs 6-9, Aloha argues that the Commission does not have the authority to remove the Seven Springs area from Aloha's certificated area, nor do the customers have standing to make such a request. Aloha cites Storey v. Mayo, 217 So.2d 304 (Fla. 1968), as authority for its contention. Aloha's reliance on Storey v. Mayo is misplaced. In Storey, the PSC had approved a territorial agreement between Florida Power and the City of Homestead. A group of customers challenged the Commission's approval of the territorial agreement. The Supreme Court upheld the Commission's authority to approve the territorial lines, stating:

Service areas are not specifically controlled by requirement or certificates of public necessity and convenience. However, in some measure the Commission does control

the areas served by the companies by virtue of its prescribed powers, including the specific power "* * * to require repairs, improvement, additions and extensions to the plant and equipment of any public utility reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto * * *." Fla. Stat. § 366.05 (1967), F.S.A. The regulatory powers of the Commission, as announced in the cited section, are exclusive and, therefore, necessarily broad and comprehensive. Fla. Stat. § 366.03 (1967), F.S.A.; Florida Power & Light Co. v. City of Miami, 72 So.2d 270 (Fla. 1954) [Id., at 307]

Moreover, the Court adds:

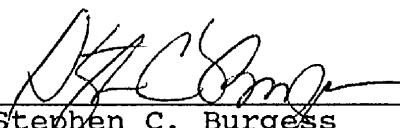
When the Commission approved the subject agreement, it, in effect, informed the respondent electric company that it would not have to serve the particular area because under the circumstances it would not be reasonable to require it to do so. Fla. Stat. § 366.05, F.S.A., supra. There was certainly competent, substantial evidence to support this conclusion and the Commission had the power to act in the premises. The petitioners here are in the posture of customers demanding service of a particular regulated utility. The regulatory agency has heard the matter and with evidentiary support has concluded that under the circumstances it would be unreasonable to require the utility to render the service. This in substance is the ultimate impact of the arrangement with the Commission has approved. [Id., at 308]

In Storey, then, the customers were challenging the Commission's authority to make a pronouncement on the service territory. In the instant case, on the other hand, the customers are asking the Commission to exercise its authority over a service territory in a particular fashion. Contrary to Aloha's (mis)interpretation, the Supreme Court's ruling in

Storey actually supports the Commission's authority to grant the Customers' Petition, should the Commission deem it proper.

Respectfully submitted,

JACK SHREVE
Public Counsel



Stephen C. Burgess
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**CERTIFICATE OF SERVICE
DOCKET NO. 020896-WS**

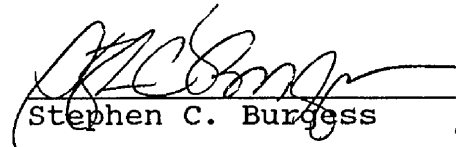
I HEREBY CERTIFY that a true and exact copy of the above and foregoing RESPONSE TO MOTION TO DISMISS has been furnished by hand-delivery* or U.S. Mail to the following parties of record this 17th day of September, 2002.

Lorena Holley, Esquire*
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