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Chairman Lila Jaber and
Commissioners of the Public Service Commission
Of the State of Florida, 2540 Shumard Oak Blvd,
Tallahassee, FL 32399-0873

November 4, 2002

RE: REBUTTAL TO 'MOTION TO DISMISS'
THE PETITION SUBMITTED BY CERTAIN CUSTOMERS
OF ALOHA UTILITIES INC. DOCKET NO 020896-WS

On behalf of the customers who filed the petition referred to under the above docket, I like to submit the following additional arguments.

As documented in the official audio-record of the Agenda Conference of the PSC dated August 20, 2002 **Aloha Utilities** through the attorney who represented it in Docket No 020413-SU brought to the attention of the Commissioners that under Florida Statutes Chapter 367.161.2 the "*commission may.... amend, suspend or revoke any certificate of authorization issued by it*" but that it could not deny the Utility the opportunity to back bill the builders from whom it had not collected the higher service connection charge the PSC had instituted in March 2001.

We conclude, therefore, that the issue raised by **Aloha Utilities** in its request dated September 5, 2002 for oral arguments on Docket No 020896-WS is not really a question of whether the Public Service Commission has the jurisdiction under Florida Statutes to amend, suspend or revoke any certificate of authorization, because such jurisdiction and authority were already conceded on August 20, 2002 but of whether the Commission can exercise such authority in the instance of the petition to give the *particular relief that the customers are seeking based on the reasons that they have put forward.*

That question must be answered in the total context of the issues addressed by Chapter 367 of the Florida Statutes.

Under 367.011 Jurisdiction; legislative intent.-- Subsection (3) states

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“The regulation of utilities is declared to be in the public interest, and this law is an exercise of the police power of the state for the protection of the public health, safety and welfare. The provisions of this chapter shall be liberally construed for the accomplishment of this purpose.”

Under 367.045 Certificate of Authorization; application and amendment procedures.--Subsection 5(a) states

“ The commission may grant or amend a certificate of authorization, in whole or part or with modification in the public interest,or it may deny a certificate of authorization or an amendment to a certificate of authorization if in the public interest.”

“The commission may not grant a certificate of authorization..... or an amendment to a certificate of authorization,unless it first determines that such other system or portion thereof is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses or neglects to provide reasonable adequate service.”

Under 367.111 Service.--Subsection (1) states

“*it (commission) may 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.*”

Under 367.111 Service.--Subsection (2) states

“Each Utility shall provide to each person reasonably entitled thereto such safe, efficient and sufficient service: but such service shall not be less safe, less efficient or less sufficient than is consistent with the approved engineering design of the system and the reasonable and proper operation of the utility in the public interest.”

Under 367.121 Powers of the Commission. --Subsection (1) (d) states

“In the exercise of its jurisdiction, the commission shall have power:

To require repairs, improvements, additions, and extensions to any facility, or to require the construction of a new facility, if reasonably necessary to provide adequate and proper service to any person entitled to service or if reasonably necessary to provide any prescribed quality of service, except that no utility shall be required to extend its service outside the geographic area described in its certificate of authorization.....”

Under 367.121 Powers of the Commission. -- Subsection (j) states:

“ To seek relief in connection with the impairment of a utility’s operation or service, constitute irreparable harm for which there is no adequate remedy at law.”

Under 367.121 Powers of the Commission. – Subsection (2) states:

“The Commission or its duly authorized representatives may, during all reasonable hours, enter upon any premises occupied by any utility and set up and use thereon any necessary apparatus and appliance for the purpose of making investigations, inspections, examinations, and tests and exercising any power conferred by this chapter.”

Under 367.161 Penalties.--Subsection (2) states

“ or the commission may, for any such violation, amend, suspend or revoke any certificate of authorization issued by it.”

This comprehensive and detailed review of Chapter 367 of the Florida Statutes clearly emphasizes that the legislative intent of this chapter is to allow the Public Service Commission through its Commissioners to exercise jurisdiction and authority over water Utilities to protect public welfare, and to liberally construe the provisions of this chapter for the accomplishment of this purpose.

In repeatedly using phrases such as “*in the public interest*”, “*public welfare*” “*reasonable needs of the public*”, the legislative directive to the Commission is to exercise its powers to protect the citizens from the inability, refusal or neglect to provide reasonable adequate service.

THEREFORE, the Commission in its determination as to whether it has the jurisdiction to hear this particular petition with its clearly specified relief must first of all ascertain whether the Utility has provided *reasonable adequate service*, because not to do so would be a denial of the citizens’ right to petition the PSC and a dereliction of its duty as well as an abdication of its responsibility and powers, including that of *amending, suspending or revoking a certificate of authorization*, that are guaranteed to it by Chapter 367 of the Florida Statutes.

Chapter 367.111 and Chapter 367.121.2 taken together clearly indicate that the Commission has the authority to audit the quality of product and services of Aloha Utilities Inc. and objectively establish whether Aloha has provided a service “less safe, less efficient or less sufficient than is consistent with the approved engineering design of the system and the reasonable and proper operation of the utility *in the public interest.*”

The reference to the *engineering design of the system* obviously does not refer only to a particular system that a certain Utility has chosen to employ, but also to the assessment of the relative merit of its methodologies and physical plant capabilities in

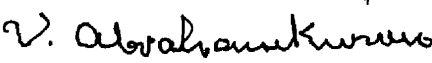
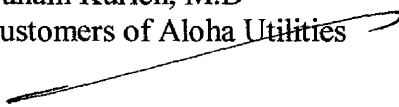
comparison to water processing systems that are considered adequate by a standard that is practical and available in the neighboring communities.

The petitioners are prepared to present evidence to show that Aloha utilities Inc. do not meet this standard. The petitioners have sought relief in the very specific manner that they have done only because the Utilities has not exercised its many voluntary opportunities to provide a service that in the parameters described above was equal to those in adjacent geographical areas serviced by other utilities. *The petitioners do not expect their subjective experience of black water, rotten egg smell and pin hole leaks to be the sole determinant of the inadequacy of the services of Aloha, for in their petition they have offered an opportunity for Aloha Utilities to subject itself to an independent objective audit to establish the equivalence of its service.* The petition also gives Aloha a window of time to improve its services if an audit reveals deficiencies, before deletion of service area is considered.

The petitioners submit that in its motion seeking summary dismissal of the petition, Aloha Utilities is indirectly denying its responsibility to perform its services *in the public interest* and in a manner that meets the criteria set forth in 367.111.2, which the Florida Statutes demand of every water utility regulated by the PSC and which the legislature has authorized the Public Service Commission to enforce.

Therefore, the petitioners have no other alternative than to request that the Public Service Commission deny the 'motion to dismiss' submitted by Aloha Utilities on September 5, 2002 and to proceed with an audit of Aloha Utilities Inc. under Chapter 367.121.2 without further delay. Such an approach will ensure that the petition can be addressed before more harm is done to the petitioners and their properties.

Thank you.


V. Abraham Kurien, M.D
On behalf of certain Customers of Aloha Utilities 

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via US Mail and e-mail this 4th day of November 2002 to:

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