

ORIGINAL

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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SUPPLEMENTAL  
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. This docket was opened in August of 2002. On December 11, 2003, the Commission received a petition from certain residents of "Riverside Villas" which was placed into this docket, which is currently in abeyance. In an abundance of caution, Aloha files this Motion to Dismiss as a specific response to that petition.

2. The petition, purportedly submitted on behalf of certain residents of Riverside Villas requests that those residents be given "another choice" of a water provider based on water quality and other concerns. The petition states that it represents two-thirds of our residents.

3. 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)

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MMS \_\_\_\_\_  
SEC   1    
OTH \_\_\_\_\_

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*R. V. N.*

FPSC-BUREAU OF RECORDS

Rose, Sundstrom & Bentley, LLP  
2548 Blairstone Pines Drive, Tallahassee, Florida 32301

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4. 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.

5. The customers (only a small percentage of whom are ostensibly presented by the petition) do not have standing to seek the deletion of a portion of Aloha’s service area. 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 20<sup>th</sup> day of  
January, 2004, by:

  
\_\_\_\_\_  
John L. Wharton

F. Marshall Deterding  
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 this 20th day of January, 2004, 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

  
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JOHN L. WHARTON

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