

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Aloha Utilities, Inc.)

Docket No. 050018-WS

OBJECTION TO REQUEST FOR INTERVENOR STATUS
AND DESIGNATION AS A PARTY BY THE OFFICE OF PUBLIC COUNSEL

Aloha Utilities, Inc. (Aloha), by and through its undersigned counsel, hereby files this Objection to Notice of Intervention by the Office of Public Counsel and in support thereof would state and allege as follows:

1. On January 10, 2005, the Office Of Public Counsel filed a one sentence pleading with the Commission Clerk requesting “intervenor status” and “designation as a party of record” in Docket 050018-WS.

2. The Notice of Intervention fails to comply with either Rule 28-106.205, Florida Administrative Code, or Rule 25-22.039, Florida Administrative Code. The paper is by no means a petition and does not conform with Rule 28-106.201(2), Florida Administrative Code. The Notice fails to include allegations sufficient to demonstrate that the Citizens of the State of Florida are entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to a Commission rule, or that their substantial interests are subject to determination or will be affected through the proceeding. The 1998 revisions to the Administrative Procedure Act now require agencies to review petitions more strictly than was the practice prior to such revisions. See, e.g., *Brookwood Extended Care Center of Homestead, LLC v. AHCA*, 877 So.2d 834 (3d DCA, 2003) OPC’s Notice makes reference to Section 350.0611, Florida Statutes. That statutory provision contemplates that Public Counsel is authorized to appear, to provide legal representation

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for the people of the State, in Commission proceedings. In this case, the Commission is the party who has initiated this proceeding, the Commission has the high burden to carry in prosecuting this proceeding, and it is the Commission who will provide representation for those customers who support the Commission's position. OPC's role in any administrative proceeding which occurs in this docket would be redundant and inappropriate given the unique administrative framework upon which such a proceeding would be founded.

3. At a minimum, the Notice is premature. Both Rule 28-106.205 and Rule 25-22.039 contemplate intervention only in a "proceeding". There is no proceeding in this case. There is no Prehearing Officer to rule on these matters. The Commission has issued a Legal Notice noticing its intent to amend Aloha's water certificate, and the case may potentially become a proceeding. However, at this point, it is not a proceeding by any reasonable or proper definition of that term.

4. Even assuming that Aloha ultimately requests a hearing pursuant to Section 120.60(5), the Citizens have no standing to intervene or otherwise be designated as a party in such administrative proceeding. Section 120.60(5) clearly reflects that the parties to the proceeding are to be the agency (in this case, the Commission) and the licensee (in this case, Aloha). As the licensee, Aloha is the only party who can "request a proceeding" pursuant to Section 120.60(5), Florida Statutes. Only an agency can initiate a revocation proceeding under Section 120.60(5). The agency's refusal to initiate such a proceeding is not proposed action and would not be subject to a request for an administrative hearing by any person. The agency's decision to initiate such a proceeding is only subject to a request for an administrative hearing by the licensee. Staff's December 21, 2004 recommendation in Docket No. 020896-WS, correctly provides that the Order to Show Cause to initiate the deletion "proceeding" should provide "a point of entry for Aloha to request a hearing".

5. As the Commission correctly concluded on January 4, 2005, it shoulders the burden in such an administrative proceeding, should one be commenced. The intervention of other parties, on the "side" of the Commission and "against" Aloha, is improper and contrary to the spirit, intent and requirements of the Administrative Procedure Act. It is only the Commission, and the Commission alone, who can initiate such a proceeding and who can pursue such a revocation.

WHEREFORE, and in consideration of the above, Aloha Utilities, Inc. respectfully requests that the Notice of Intervention be denied for all the reasons set forth herein.

Respectfully submitted this 24th day of
January, 2005, by:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail this 24th day of January, 2004, to:

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