

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 ABRAHAM KURIEN

Aloha Utilities, Inc. (Aloha), by and through its undersigned counsel, hereby files this Objection to Request for Intervenor Status and Designation as a Party by Abraham Kurien and in support thereof would state and allege as follows:

1. On January 11, 2005, Abraham Kurien filed a two sentence letter with the Commission Clerk requesting “intervenor status” and “designation as a party of record” in Docket 050018-WS.

2. The paper filed by Dr. Kurien 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 paper fails to include allegations sufficient to demonstrate that Dr. Kurien is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to a Commission rule, or that his 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)

3. At a minimum, the paper is premature. Both Rule 28-106.205 and Rule 25-22.039 contemplate intervention only in a “proceeding”. There is no proceeding in this

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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), Dr. Kurien has 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". An individual such as Dr. Kurien, who would not have standing to initially request such a hearing, does not have standing to intervene in such 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. Dr. Kurien simply does not possess the power, authority, or standing to seek revocation of

Aloha's license. 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 Dr. Kurien be denied intervenor status and designation as a party of record in Docket No. 050018-WS, 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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V. Abraham Kurien, M.D.
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