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January 28, 2005

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

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COMMISSION
CLERK

Re: Docket No. 050018-WU

Dear Ms. Bayo:

Enclosed for filing in the above-referenced dockets are the original and 15 copies of Citizens' Response to Aloha's Objection to Public Counsel's Status as an intervenor.

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

Sincerely,

Charles J. Beck
Deputy Public Counsel

CMP _____
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CTR _____
ECR _____
GCL _____ CJB:bsr
OPC _____ Enclosures
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of deletion proceedings against)
Aloha Utilities, Inc. for failure to provide)
sufficient water service consistent with the) Docket 050018-WU
reasonable and proper operation of the) Date filed: January 28, 2005
utility system in the public interest, in violation)
of Section 367.111(2), Florida Statutes.)
-----)

**CITIZENS' RESPONSE TO ALOHA'S OBJECTION
TO PUBLIC COUNSEL'S STATUS AS AN INTERVENOR**

Florida's Citizens ("Citizens") file this response to the pleading entitled "Objection to Request for Intervenor Status and Designation as a Party by the Office of Public Counsel" filed by Aloha Utilities, Inc. ("Aloha") on January 24, 2005.

1. At its agenda conference held on January 4, 2005, the Florida Public Service Commission voted to open a new docket for the deletion proceeding against Aloha, provide 30 days' notice of the initiation of such action pursuant to section 367.045(6), Florida Statutes, and, at the expiration of that 30 days, issue an Order to Show Cause to initiate the deletion proceeding and to provide a point of entry for Aloha to request a hearing¹. On January 6, 2005, staff established docket 050018-WU to take the actions directed by the Commission.

2. Section 350.0611, Florida Statutes, states that it shall be the duty of the Public Counsel to provide legal representation for the people of the state in proceedings before the commission. It further states that "the Public Counsel shall have such

¹ Commission vote sheet dated January 4, 2005, document 00115-05 in docket 020896-WS.

powers as are necessary to carry out the duties of his or her office, including, but not limited to, the following specific powers: (1) To recommend to the commission or the counties, by petition, the commencement of any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or action before the commission or the counties and urge therein any position which he or she deems to be in the public interest, whether consistent or inconsistent with positions previously adopted by the commission or the counties, and utilize therein all forms of discovery available to attorneys in civil actions generally, subject to protective orders of the commission or the counties which shall be reviewable by summary procedure in the circuit courts of this state." ... (underlining added).

3. The question before the Commission, therefore, is whether the formal opening of a docket to pursue action directed by the Commission at an agenda conference is a "proceeding or action." If it is a "proceeding or action," then pursuant to section 350.0611, Florida Statutes, the Public Counsel has a statutory right to intervene.

4. The term "proceeding" by itself is an extremely broad term. Black's law dictionary, seventh edition, defines the term "proceeding" as "the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry or judgment" and "any procedural means for seeking redress from a tribunal or agency." (underlining added). The opening of docket 050018-WU easily satisfies this criteria, since the opening of the docket is a procedure used by the staff to carry out the will of the Commission, as expressed and voted upon at an

agenda conference. But the legislature even went further than authorizing the Public Counsel to intervene in any proceeding; the legislature authorized the Public Counsel to intervene in any proceeding or action before the Commission.

5. Aloha's objection simply avoids addressing the obvious question of whether the opening of a docket pursuant to Commission vote is a "proceeding or action." It claims it is "redundant and inappropriate²" to allow intervention, whatever that means, and that only the Commission can initiate a proceeding to revoke its license³. All of that is beside the point. If the opening of a docket to implement the stated will of the Commission is a proceeding or action, which it is, then the Public Counsel has the statutory right to intervene.

² Aloha objection at unnumbered page 2.

³ Aloha objection at unnumbered page 3.

WHEREFORE, Citizens respectfully request the Commission to deny the objection of Aloha and to issue an order acknowledging the intervention of the Office of Public Counsel.

Respectfully submitted,

HAROLD MCLEAN
PUBLIC COUNSEL

A handwritten signature in black ink that reads "Charles J. Beck". The signature is written in a cursive style and is placed on a light gray rectangular background.

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Florida Bar no. 217281

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Attorneys for Florida's Citizens

**DOCKET NO. 050018-WU
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S.

Mail or hand-delivery to the following parties on this 28th day of January, 2005.



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