BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of ALOHA UTILITIES, INC. for an increase in water rates for its Seven Springs System in Pasco County, Florida.	)))))	DOCKET NO. 010503-WU

ALOHA'S VERIFIED MOTION TO DISQUALIFY AND RECUSE THE PUBLIC SERVICE COMMISSION FROM ALL FURTHER CONSIDERATION OF THIS DOCKET

Aloha Utilities, Inc. ("Aloha"), by and through undersigned counsel, and pursuant to Section 120.665, Florida Statutes, hereby files this Verified Motion to Disqualify and Recuse the Public Service Commission from All Further Consideration of this Docket ("Motion to Recuse") and in support thereof would state and allege as follows:

THE SHOW CAUSE ORDER

1. On February 22, 2005, the Commission caused to be issued its Show Cause Order (Order No. PSC-05-0204-SC-WU (see Attachment "A")). That Show Cause Order is the statement of and a declaration by the Commission that it intends to delete certain areas of Aloha's service territory, based upon numerous "findings of fact" set forth within the Show Cause Order. The Commission has announced its determination that Aloha is in violation of Section 367.111(2) and that it is in the public interest for the Commission to delete certain areas from Aloha's Certificate No. 136-W. Aloha will

exercise its right under the Administrative Procedure Act to request a hearing on the Commission's proposed action, the Commission will serve in a prosecutorial role during the course of that hearing, and will be required to sustain the burden of proof to establish, by clear and convincing evidence that Aloha has violated Commission statutes, rules or orders such that its franchise should be revoked. The issuance of the Show Cause Order places Aloha and the Commission in an adversarial posture of the highest order. Surely, the Commission does not and can not assert that after it has caused to be issued the Show Cause Order, the Commission remains free of "bias, prejudice or interest", as required by Section 120.665(1), Florida Statutes. The Show Cause Order reveals definitively that the Commission is biased with regard to the facts therein, is prejudiced with regard to the facts therein, and is interested with regard to the facts therein. In the instant case, the Commission has initiated, through the vehicle of the Show Cause Order, an attack on the sanctity of Aloha's service area and an assault on Aloha's financial integrity.

2. In the instant case, the Commission is called upon to adjudicate the property of certain water quality directives to Aloha which were purportedly designated by the Commission to benefit most of the neighborhoods which are the subject of the Show Cause Order. It is not reasonable for any litigant, much less Aloha given its experience with the Commission, to hide its head in the sand and accept that the Commission's contemporaneous expression of its intent to strip these areas from Aloha's service area will not bias, prejudice, and adversely affect its ability to adjudicate the issues in the present docket.

3. Not only is the fact that Aloha and the Commission are diametrically opposed in a pending litigation reason enough for the granting of this Motion to Recuse, it is also apparent that it is possible that the Commission could manipulate the outcome in the present docket in order to achieve its end in the Show Cause Order litigation. The Show Cause Order speaks at length to alleged customer dissatisfaction. The Commission well knows that nothing galvanizes customer dissatisfaction like a substantial rate increase. In the present docket, if the Commission accepts Dr. Kurien's position that the Commission should order Aloha to achieve the hydrogen sulfide goal by removal of all hydrogen sulfide (as opposed to Aloha's position that it should be allowed to continue to achieve the stated goal by the much less expensive method it has chosen) then a significant rate increase will necessarily result. In other words, the Commission has before it in this case a choice between two positions, the selection of one which would inflame customer passion and increase customer dissatisfaction (as large rate increases always do), which would in turn greatly assist the Commission in its stated intention to delete certain areas from Aloha's service territory as reflected in the Show Cause Order.[1]

The Commission has stated its agenda in the Show Cause Order, and it may promote that agenda, or at least make it easier to achieve that agenda, by virtue of the selection of Dr. Kurien's position in the present docket. How could any reasonable mind view that scenario and believe that the Commission in the present docket will be

[1]The issue is not whether this is the intention of the Commissioners. The issue is whether it is reasonable for Aloha to fear that it will not get a fair hearing in front of a collective body whose stated agenda to take the company's property can be advanced by a particular decision they might make in this separate proceeding involving Aloha. In fact, it would be unreasonable for Aloha not to have this concern.

free of bias, prejudice, or interest? The Commission has already declared its "interest", for all the world to see, in the Show Cause Order and there is no way for the Commissioners to pretend they have not already made that choice and that decision when they are adjudicating the present docket.

MEMORANDUM OF LAW

4. The parties to an administrative adjudicatory proceeding are entitled to a fair hearing before an impartial tribunal, and to a determination made without bias, hostility or prejudgment. 2 Fla.Jur.2d, Administrative Law, § 273. In this regard, an agency head (whether individually or collectively) can be disqualified from serving in any agency proceeding for bias, prejudice, or interest. 2 Fla.Jur.2d, Administrative Law, § 277.

5. In Florida, administrative proceedings are, in general, governed by the Florida Administrative Procedure Act ("APA"). Except where specifically provided for in superseding provisions of law, the Florida Public Service Commission is subject to the APA. 2 Fla.Jur.2d Administrative Law, § 23. With respect to recusals and disqualifications of PSC Commissioners, the APA applies. **In this regard, Florida** Statutes § 120.665 states in pertinent part as follows:

> "(1) . . . any individual serving alone or with others as an agency head may be disqualified from serving in any agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency

> proceeding. If the disqualified individual was appointed, the appointing power may appoint a substitute to serve in the manner from which the individual is disqualified.
>
> (2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution.

6. Among the fundamental and basic requirements of due process of law in a quasi-judicial proceeding is the presence of a fair and impartial tribunal which will adjudicate competing interests and rights. *Allen v. Board of Public Instruction of Broward County*, 214 So.2d 7 (Fla. 4th DCA 1968). The decision to grant or revoke a license entails the exercise of a quasi-judicial function and, in an administrative context, an impartial decision-maker is a basic constituent of minimum due process. *Cherry Communications, Inc. v. Deason*, 652 So.2d 803 (Fla. 1995); *Megill v. Board of Regents*, 541 F.2d 1073 (5th Cir. 1976).

7. In *In Re: Southern States Utilities, Inc.* (Order No. PSC-95-1438-FOF-WS) (Docket Nos. 95-0495-WS , 93-0880-WS, 92-0199-WS), this Commission held that the time constraints and procedures to be used in seeking to recuse Commissioners is that set forth by the APA. *Southern States, supra*, at pages 9-11. Section 120.665(1), Florida Statutes, provides that recusal should occur ". . . when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding." There can be no doubt that Aloha has brought this motion within a "reasonable period" of time. The Show Cause Order which is discussed at length herein was only issued by the Commission on February 22, 2005.

In further defining the standard under the predecessor statute (i.e., Fla. Stat. §120.71), this Commission stated in *In Re: Southern States Utilities, Inc.* as follows:

> "We note that the holding of *Bundy v. Rudd*, supra, still states the law with respect to a motion for the disqualification of a trial judge, i.e., a judge presented with a motion for his disqualification shall not pass on the truth of the facts alleged nor adjudicate the question of disqualification, but shall limit his inquiry to the legal sufficiency of the motion."

8. The test for determining the legal sufficiency of a motion for disqualification is whether the facts alleged (which must be taken as true) would prompt a reasonably prudent person to fear that he or she will not get a fair and impartial trial. *Department of Agric. & Consumer Servs. v. Broward County*, 810 So.2d 1056 (1st DCA 2002). It is not a question of how the judge actually feels but rather what feeling resides in the affiant's mind and the basis for such feeling. *Id.* In reviewing a motion to disqualify, the judge cannot pass upon the truth of the allegations of fact. It is sufficient that the allegations are neither frivolous nor fanciful and countervailing evidence is not admissible. *Id.*

9. The test to be applied is whether the facts alleged in the Motion would place a reasonably prudent person in fear of not receiving a fair and impartial trial. *Livingston v. State*, 441 So.2d 1083 (Fla. 1983). The inquiry must focus on the reasonableness of the affiant's belief that the Hearing Officer is prejudiced and the sufficiency of the attested facts supporting the suggestion of prejudice. *Mt. Sinai Medical Center v. Brown*, 493 So.2d 512 (Fla. 1st DCA 1986).

10. In *Ridgewood Properties, Inc. v. Department of Community Affairs,* 562 So.2d 322, 324 (Fla. 1990), the Florida Supreme Court stated that where the agency head has been appointed by the Governor, the procedure under the APA is to have any recommended orders be decided upon by a substitute appointed by the Governor, who is not a member of the agency. *See* Florida Statute § 120.665; *see also* 2 Fla.Jur.2d, Administrative Law, § 280. It is not for Aloha to suggest the specific process the Commission or the Governor would use to implement Section 120.665, Florida Statutes. Aloha's only point is that this case cannot proceed with the Commission serving as the adjudicatory body for the reasons argued herein.

VERIFICATION AND DECLARATION OF STEPHEN G. WATFORD

I, Stephen G. Watford, hereby verify and state under the pains and penalties of perjury that the following declaration is true and correct:

This declaration is based upon direct and personal knowledge.

I am the President of Aloha Utilities, Inc.

My business is located at 6915 Perrine Ranch Road, New Port Richey, Florida 34655.

I have reviewed Aloha's February 28, 2005 Motion to Recuse.

I agree with the factual assertions and conclusions made in the Motion to Recuse and incorporate them herein as the basis for the opinions and fears expressed in this verification and declaration.

For the reasons stated above and in Aloha's Motion to Recuse, Aloha has a well-grounded fear that it will not and cannot receive a fair hearing before the Commission and therefore asks that the Commission recuse and disqualify itself from all further proceedings in this docket.

I, Stephen G. Watford, hereby declare, certify, verify and state under the pains and penalty of perjury that I have read the foregoing and that the facts stated herein are true and correct.

Stephen G. Watford

2/28/05
Executed on (date)

Respectfully submitted this ~~28th~~ 1st day of ~~February~~ March, 2005, by:

JOHN L. WHARTON
FL BAR ID NO. 563099
F. MARSHALL DETERDING
FL BAR ID NO. 515876
ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(850) 877-6555
(850) 656-4029 FAX

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by fax (*) and U.S. Mail this 1st day of March, 2005, to:

Ralph Jaeger, 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

Charles Beck, Esquire*
Office of Public Counsel
111 Madison Street
Tallahassee, FL 32399-1400

Edward O. Wood
1043 Daleside Lane
New Port Richey, FL 34655-4293

Harry Hawcroft
1612 Boswell Avenue
New Port Richey, FL 34655

JOHN L. WHARTON

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes.	DOCKET NO. 050018-WU ORDER NO. PSC-05-0204-SC-WU ISSUED: February 22, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

SHOW CAUSE ORDER

BY THE COMMISSION:

BACKGROUND

Aloha Utilities, Inc. (Aloha or utility) is a Class A water and wastewater utility located in Pasco County. The utility consists of two distinct service areas: Aloha Gardens and Seven Springs. Approximately 1,800 customers in the Seven Springs area filed petitions in Docket No. 020896-WS for deletion of territory from Aloha's certificate of authorization due to alleged poor quality of service. By Order No. PSC-05-0076-FOF-WS, issued January 21, 2005, in that docket, this Commission granted Aloha's Motion for Termination of Proceedings as They Relate to Deletion of Territory, and closed the docket.

The four deletion petitions related to the following areas included within Aloha's Certificate No. 136-W: Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard); Riviera Estates; Villa del Rio (also known as Riverside Villas); and Riverside Village Unit 4. This order addresses whether Aloha should be required to show cause as to why those portions of its certificated territory should not be deleted from its Certificate No. 136-W for failure to provide sufficient service consistent with the reasonable and proper operation of the utility system in the public interest, in apparent violation of section 367.111(2), Florida Statutes. We have jurisdiction pursuant to sections 367.045, 367.111 and 367.161, Florida Statutes.

ATTACHMENT "A"

FINDINGS OF FACT

On or about September 9, 1996, testimony was first taken by this Commission of Aloha's customers in the Seven Springs area concerning poor quality of service provided by Aloha, due, in large part, to a "black water" problem. Hundreds of customers attended the hearing. By Order No. PSC-97-0280-FOF-WS, issued March 12, 1997, in Docket Nos. 950615-SU and 960545-WU, this Commission found that "it is obvious that the customers are dissatisfied with the quality of water which Aloha is providing, have been unhappy with the water for many years, and do not trust the utility." By that same order, we noted that even though Aloha is in compliance with state and federal drinking water standards, customers from many areas within Aloha's service territory have stated that their water is aesthetically objectionable, smells bad, tastes bad, and in some cases reacts with copper plumbing, turning the water black. We found Aloha's quality of water service to be unsatisfactory and required Aloha to evaluate the best available treatment technologies for removal of hydrogen sulfide from its water to address the "black water" problem.

On or about March 29, 2000, testimony was again taken by this Commission of Aloha's customers in the Seven Springs area concerning poor quality of service provided by Aloha. Again, hundreds of customers attended the hearing. Approximately 50 customers testified about black or discolored water, odor/taste problems, low pressure, and/or deposits/sediments in the water. By Order No. PSC-00-1285-FOF-WS, issued July 14, 2000, in Docket No. 960545-WS, we found the overall quality of Aloha's service to be marginal and required Aloha "to immediately implement a pilot project using the best available treatment alternative to enhance the water quality and to diminish the tendency of the water to produce copper sulfide in the customers' homes." By Order No. PSC-00-1628-FOF-WS, issued September 12, 2000, in Docket No. 960545-WS, we clarified that Aloha "shall immediately implement a pilot project using the best available treatment alternative to remove the hydrogen sulfide, thereby enhancing the water quality and diminishing the tendency of the water to produce copper sulfide in the customers' homes."

On or about January 9, 2002, testimony was again taken by this Commission of Aloha's customers in the Seven Springs area concerning poor quality of service provided by Aloha. Again customers testified about the "black water" problem, as well as about dissatisfaction with the taste and odor of the water, insufficient water pressure, and Aloha's poor attitude towards its customers. By Order No. PSC-02-0593-FOF-WU, issued April 30, 2002, in Docket No. 010503-WU and affirmed on appeal by the First District Court of Appeal (rate case order), we found that the methodology chosen by Aloha to alleviate the "black water" problem, including the use of a polyphosphate corrosion inhibitor along with the conversion of hydrogen sulfide to sulfate or elemental sulfur through chlorination, had not proven to be an adequate remedy, and required Aloha to take additional measures to correct the problem.

We also set Aloha's rates at the minimum of the range of return on equity "because of the overwhelming dissatisfaction of Aloha's customers due to the poor quality of the water service and their treatment by the utility in regards to their complaints and inquiries," and reduced the amount allowed for salaries and benefits of the Aloha's President and Vice-President by 50%

upon finding that "the continuing problems with 'black water' over at least the last six years, the customers' dissatisfaction with the way they are treated, the poor service they receive from the utility, and the failure of the utility to aggressively and timely seek alternate sources of water supply reflect poor management of this utility." Moreover, we found that had Aloha committed itself to a more proactive approach to the "black water" problem, it could have prevented the situation from becoming as bad as it is and possibly could have eliminated it entirely. We again found the overall quality of service provided by Aloha to be unsatisfactory, and required the utility to implement, within 20 months, a treatment process for all of its wells, starting with well nos. 8 and 9, that is designed to remove at least 98% of the hydrogen sulfide in the raw water. Because Aloha appealed the rate case order, the requirement to complete the improvements for removal of 98% of the hydrogen sulfide within 20 months was stayed. The new date to implement a solution to the "black water" problem became, and remains, February 12, 2005.

On April 8, 2004, this Commission conducted two more customer service hearings to obtain customer views on an independent audit report of Aloha's processing plant and methodology that had been requested by the first deletion petition filed in Docket No. 020896-WS. Approximately 200 customers attended each session and numerous customers testified. Virtually all of the customers elected not to address the specifics of the audit report and the treatment options proposed therein, and instead stated that they wished to be deleted from Aloha's service area in order to obtain service from Pasco County due to the continuing "black water" problem and the poor quality of service they receive. Many carried picket signs into the hearing room which read "Better Water Now!"

By Order No. PSC-04-0712-PAA-WS, issued July 20, 2004, in Docket Nos. 020896-WS and 010503-WU, we found that the removal of 98% of the hydrogen sulfide standard appears not to be attainable for all of Aloha's wells, due to low concentration of hydrogen sulfide in some of the wells. We therefore proposed to modify that standard to require that Aloha "make improvements to its wells 8 and 9 and then to all of its wells as needed to meet a goal of 0.1 mg/L of sulfides in its finished water as that water leaves the treatment facilities of the utility," and required the implementation of certain measures to assure compliance with this goal.

Aloha has chosen to implement a process involving the introduction of hydrogen peroxide (H2O2) to combat the "black water" problem, which is a process suggested in the audit report. However, while H2O2 has been used for the treatment of drinking water, it has not been used for the purpose of reducing hydrogen sulfides in drinking water. According to Aloha and the independent auditor, the science suggests that this methodology will be effective for that purpose, but the science has not been proven in a full-scale utility operation. Numerous customers have expressed concern about the experimental nature of the H2O2 treatment methodology, and certain customers have protested portions of our proposed modification of the rate case order as a result of those concerns. A hearing to resolve the protest is scheduled to commence on March 8, 2005.

Additionally, our staff has mailed a survey to the customers who reside, or own property, in the four areas that customers have petitioned for deletion of territory, asking whether those customers are in favor of the Commission approving the deletion petitions and whether they have

a black water problem at their premises. The survey response rate is approximately 49% to date. The results of the survey preliminarily show that 81% of the respondents favor deletion, 9% do not favor deletion, and 10% do not know whether they favor deletion or not. 64% of the respondents state that they have a black water problem at their premises. 59% of the respondents who indicated that they did not have a black water problem at their premises still favored deletion, indicating a more systemic problem with the utility than just a "black water" problem. 59% of the respondents provided additional comments. Of these, 63% complained of other quality of service issues, including the quality of the water, water pressure, and customer service, and 14% stated that they have found it necessary to purchase bottled water or filters, or they have abandoned the use of their saunas or bathtubs. Only 2% of the comments provided by Aloha's customers indicated that they had no problems with Aloha's service.

Nineteen customers who had petitioned for deletion of territory prefiled testimony in Docket No. 020896-WS on November 18, 2004, in accordance with the Order Establishing Procedure issued in that case. In their prefiled testimony, some customers stated that they have experienced pinhole leaks in their copper piping, and many stated that they believe the customer service from Aloha is not satisfactory. Many of these customers stated that they have water softeners and/or water filters. All nineteen customers who prefiled testimony in that case stated that they experience poor water quality and wish to receive water from another utility.

CONCLUSIONS OF LAW

Section 367.045(5)(a), Florida Statutes, provides, in relevant part, that

> [t]he commission may grant or amend a certificate of authorization, in whole or in part or with modifications in the public interest, but may not grant authority greater than that requested in the application or amendment thereto and noticed under this section; or it may deny a certificate of authorization or an amendment to a certificate of authorization, if in the public interest.

Section 367.045(6), Florida Statutes, provides that "[t]he revocation, suspension, transfer, or amendment of a certificate of authorization is subject to the provisions of this section. The commission shall give 30 days' notice before it initiates any such action." Read together, these statutory provisions clearly provide that this Commission may amend a certificate of authorization to delete territory, if in the public interest, so long as it provides 30 days' notice before initiating the action. We have provided the requisite notice.

Section 367.111(2), Florida Statutes, provides, in relevant part, that each utility shall provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest. The relevant inquiry is whether there are facts to show that Aloha has violated this statutory standard such that it is in the public interest for this Commission to delete the territory that is insufficiently served. Although it appears that Aloha is in compliance with the drinking water standards imposed by the Department of Environmental

Protection (DEP), the facts and findings set forth above support the initiation of a deletion proceeding against Aloha.

In determining whether it is in the public interest to amend a certificate of authorization, this Commission addresses, among other things, the financial and technical ability of the utility to provide adequate service. As discussed above, we have been plagued for many years with complaints from numerous of Aloha's customers concerning the quality of water that Aloha provides, and questioning Aloha's ability to provide adequate service.

Section 367.161, Florida Statutes, authorizes us to assess a penalty of not more than $5,000 for each offense, if a utility is found to have knowingly refused to comply with, or have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes, or the Commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it. In failing to provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest, Aloha's act was "willful" within the meaning and intent of section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

The findings of fact outlined above show that: 1) Aloha has violated its statutory obligation under section 367.111(2) to provide sufficient water service by providing water with unacceptable color, taste and odor, by failing for over eight years to take proactive steps to remedy the situation, and by failing to improve upon customer relations; and 2) it is in the public interest for this Commission to delete the following insufficiently served areas from Aloha's Certificate No. 136-W, contingent upon provisions being made for an alternative service provider to be in place: Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard); Riviera Estates; Villa del Rio (also known as Riverside Villas); and Riverside Village Unit 4. The Commission reserves the option to impose a monetary penalty in addition to or in lieu of revocation if it concludes after hearing that such action is in the public interest. Therefore, we find that a show cause proceeding is warranted at this time.

Pursuant to sections 367.161 and 120.60, Florida Statutes, Aloha is hereby ordered to show cause, in writing, within 21 days, why the areas encompassing Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard); Riviera Estates; Villa del Rio (also known as Riverside Villas); and Riverside Village Unit 4 should not be deleted from its Certificate No. 136-W for failure to provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest, in apparent violation of section 367.111(2), Florida Statutes, and why a monetary penalty should not be imposed for such violation.

Aloha's response to the show cause order must contain specific allegations of fact and law and comply with the requirements of Rule 28-107.004(3), Florida Administrative Code. Should the utility file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to sections 120.569 and 120.57(1), Florida Statutes, further proceedings will be scheduled in this matter before a final determination is made. A failure to file a timely written response shall constitute an admission of all facts herein alleged and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Aloha has the right to request a hearing to be conducted in accordance with sections 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses, and to have subpoena and subpoena duces tecum issued on its behalf if a hearing is requested.

It is, therefore,

ORDERED that Aloha Utilities, Inc., is hereby ordered to show cause, in writing, within 21 days, why the areas encompassing Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard); Riviera Estates; Villa del Rio (also known as Riverside Villas); and Riverside Village Unit 4 should not be deleted from its Certificate No. 136-W for failure to provide service that is not less sufficient than is consistent with the reasonable and proper operation of the utility in the public interest, in apparent violation of section 367.111(2), Florida Statutes, and why a monetary penalty should not be imposed for such violation. It is further

ORDERED that Aloha Utilities, Inc.'s, response to this show cause order must contain specific allegations of fact and law. Should Aloha file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to sections 120.569 and 120.57(1), Florida Statutes, a further proceeding will be scheduled before a final determination of this matter is made. A failure to file a timely written response shall constitute an admission of all facts herein alleged and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. It is further

ORDERED that any response to this Order shall be filed with the Director, Division of the Commission Clerk and Administrative Services within 21 days of the date of issuance of this Order. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 22nd day of February, 2005.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(SEAL)

RG

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 15, 2005.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.