

ORIGINAL

Matilda Sanders

From: ROBERTS.BRENDA [ROBERTS.BRENDA@leg.state.fl.us]
 Sent: Wednesday, March 30, 2005 10:28 AM
 To: Filings@psc.state.fl.us
 Cc: Charles Beck
 Subject: e-filing
 Attachments: 050018 Response to Aloha Motion for Reconsideration re OPC Intervention e-file.doc

Electronic Filing

a. Person responsible for this electronic filing:

Charles J. Beck, Deputy Public Counsel
 Office of Public Counsel
 c/o The Florida Legislature
 111 West Madison Street, Room 812
 Tallahassee, FL 32399-1400
 (850) 488-9330
 beck.charles@leg.state.fl.us

b. Docket No. 050018-WU

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

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 6 pages.

e. The document attached for electronic filing is Citizens' Response in Opposition to Aloha's Motion for Reconsideration of Order Acknowledging Intervention

(See attached file: 050018 Response to Aloha Motion for Reconsideration re OPC Intervention e-file.doc)

CMP _____

COM Thank you for your attention and cooperation to this request.

CTR _____

ECR Brenda S. Roberts
 Secretary to Charles J. Beck, Deputy Public Counsel.

GCL Office of Public Counsel
 Telephone: (850) 488-9330

OPC Fax: (850) 488-4491

MMS _____

RCA _____

SCR _____

SEC 1

OTH Kim P.
3/30/2005

DOCUMENT NUMBER DATE

03076 MAR 30 05

FLORIDA COMMISSION OF ELECTRONIC RECORDS

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)
reasonable and proper operation of the)
utility system in the public interest, in violation)
of Section 367.111(2), Florida Statutes.)
-----)

Docket 050018-WU
Date filed: March 30, 2005

CITIZENS' RESPONSE IN OPPOSITION TO ALOHA'S MOTION FOR RECONSIDERATION OF ORDER ACKNOWLEDGING INTERVENTION

Florida's Citizens ("Citizens") file this response in opposition to the pleading entitled "Aloha's Motion for Reconsideration of Order Acknowledging Intervention" filed by Aloha Utilities, Inc. ("Aloha") on March 28, 2005.

1. 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 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).

2. 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." Docket 050018-WU easily satisfies this criteria, since the docket is a procedure used 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.

3. Aloha's motion for reconsideration sidesteps the issue of whether the plain language of section 350.0611, Florida Statutes, allows the Public Counsel to intervene in this docket. There is no exception in this statute for show cause proceedings or license revocation proceedings. If a matter is a proceeding or action before the Florida Public Service Commission, the Public Counsel has the statutory right to appear in the name of the state or its citizens. Public Counsel's intervention does not change the burden of proof in the proceeding, nor does the fact that the Commission is "prosecuting" the action have anything to do with the Public Counsel's right to intervene.

4. Cases cited by Aloha are off point and do nothing to address Public Counsel's statutory right to intervene in any proceeding or action before the Florida Public Service Commission. For example, Aloha described the case of *State v. General Development Corporation*, 448 So.2d 1074 (Fla. 2nd D.C.A. 1984), *approved*, 469 So. 1381 (Fla. 1985) as "directly on point." Motion for Reconsideration at 6. In that case the state attorney attempted to independently bring a complaint concerning violations of environmental law that only the Department of Environmental Protection could bring. Not surprisingly, the Court found that the Department of Environmental Protection would have to bring the action. That case has no bearing on the issue before the Commission. Here Public Counsel is intervening in a case brought by the correct party: the Florida Public Service Commission. If anything, the *General Development Corporation* case supports the actions in this case where the action is being brought by the correct party.

5. In another instance, Aloha claimed that the case of *Associated Home Health Agency v. State, Department of Health and Rehabilitative Services*, 453 So.2d 104 (Fla. 1st D.C.A. 1984) stands for the proposition that a third party has no standing in agency revocation proceedings. Motion for Reconsideration at 4. In that case one corporation initiated a section 120.57 hearing to partially revoke the license of another. The Court found that the corporation had no standing to a section 120.57 hearing on that matter. Here again, that has nothing to do with this case, where the Public Service Commission initiated this proceeding to partially revoke Aloha's license. Aloha requested a hearing on the show cause order issued by the Commission, not Public

Counsel. The problems that appeared in *Associated Home Health Agency* are not present in this proceeding.

6. Aloha has not met the burden of showing that the Prehearing Officer made a mistake of fact or law when he acknowledged intervention by the Office of Public Counsel in this proceeding. The Commission should deny Aloha's motion for reconsideration.

Respectfully submitted,

HAROLD MCLEAN
PUBLIC COUNSEL

s/ Charles J. Beck
Charles J. Beck
Deputy Public Counsel
Florida Bar no. 217281

Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400

(850) 488-9330

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 30th day of March, 2005.

s/ Charles J. Beck

Charles J. Beck

Rosanne Gervasi, Esquire
Division of Legal Services
Fla. Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

F. Marshall Deterding, Esquire
John Wharton, Esquire
Rose, Sundstrom and Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

Mr. Harry Hawcroft
1612 Boswell Avenue
New Port Richey, FL 34655

V. Abraham Kurien, M.D.
7726 Hampton Hills Loop
New Port Richey, FL 34654

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

Senator Mike Fasano
8217 Massachusetts Avenue
New Port Richey, FL 34653

Aloha Utilities, Inc.
Mr. Stephen G. Watford
6915 Perrine Ranch Road
New Port Richey, FL 34655-3904

John H. Gaul, Ph.D.
7633 Albacore Drive
New Port Richey, FL 34655

Wayne T. Forehand, Chairman
Citizens' Advisory Committee
1216 Arlinbrook Drive
Trinity, FL 34655-4556

James Mitchell, Jr.
Riviera Home Owners Association
5957 Riviera Lane
New Port Richey, FL 34655

Ann Winkler
Riverside Village Estates, Unit 4
4417 Harney Court
New Port Richey, FL 34655

John Parese
Riverside Villas
4029 Casa del Sol Way
New Port Richey, FL 34655



Samantha Cibula, Esquire
Division of Legal Services
Fla. Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Jack Shreve, Esquire
Office of Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050