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Stephen C. Reilly
Associate Public Counsel

June 24, 2005

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RECEIVED-PSC
JUN 24 PM 4:09
COMMISSION
CLERK

RE: Docket No. 050018-WU-GU

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of the Office of Public Counsel's Motion to Hold Hearing in Service Territory and Request for Oral Argument in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

JMP _____
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Respectfully submitted,

Stephen C. Reilly
Associate Public Counsel

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

06036 JUN 24 05

FPSC-COMMISSION CLERK

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 No. 050018-WU

Filed: June 24, 2005

**CITIZENS' MOTION TO HOLD HEARING
IN SERVICE TERRITORY**

The Citizens of the State of Florida, by and through their undersigned attorney, file this motion for the Commission to conduct the formal evidentiary hearing to be held in this docket, in the Seven Springs service territory of Aloha Utilities, Inc. ("Aloha" "Utility" or "Company"), and state:

1. The Order Establishing Procedure, Order No. PSC-05-0514-PCO-WU, issued May 11, 2005, and amended by Order No. PSC-05-0641-PCO-WU, issued June 15, 2005, establish January 18-27, 2006, as the dates for the formal evidentiary hearing in this docket.

2. The above two procedural orders are silent as to the venue of this formal evidentiary hearing. However, it is the Commission's current intention to hold the hearing in Tallahassee, Florida. The Commission's scheduling coordinator confirmed that the hearing is currently scheduled to be conducted in room 148 of the Betty Easley Conference Center.

3. In Commission proceedings to fix or change rates or charges of water and wastewater utilities, the Commission has consistently held the formal evidentiary hearings in or near the service territory of the utility seeking the rate change. The Commission's interpretation of the requirements of Section 367.081, Florida Statutes, and its requirement of the Commission to consider the value and quality of the utility's service has caused the Commission to hold all of the rate hearings in or near the service territory of the utility seeking the rate increase. This is true even for evidentiary hearings

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being scheduled in rate cases after a protest of a PAA Order, based in part on customer testimony received at a customer meeting previously scheduled in the rate case.

4. A utility may not delete or add to its service territory described in its certificate of authorization until it has first obtained an amended certificate of authorization from the Commission. If the Commission receives a timely objection and request for hearing to a proposed deletion or addition, the Commission is required to conduct a hearing on the proposed amendment to the utility's service territory. Section 367.045 (4), Florida Statutes, requires the Commission to conduct the hearing "in or near the area for which application is made, if feasible." In Section 367.045 (4), Florida Statutes, the Legislature expressly acknowledges the importance of holding the evidentiary hearing in the service territory when taking evidence to support an order to add or delete areas from a utility's service territory.

5. Rule 28-106.207 (1), Florida Administrative Code, prescribes the proper venue for formal evidentiary hearings held pursuant to Chapter 120, Florida Statutes, that involve disputed issues of material fact. Rule 28-106.207 (1), Florida Administrative Code, provides: "whenever practicable and permitted by statute or rule, hearings shall be held in the area of residence of the non-governmental parties affected by agency action, or at the place most convenient to all parties as determined by the presiding officer."

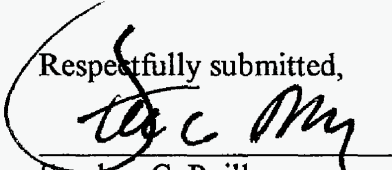
6. In the instant case, to consider the deletion of four areas from Aloha's service territory, the Legislature's expressed policy to hold such hearings in the service territory should be given great weight by the Commission. All of the parties that are critically affected by the outcome of this proceeding, the Utility and its customers, are located in the service territory. If a proceeding to fix or change rates is sufficiently important to require a hearing in the service territory, certainly the more important determination of who will be authorized to provide the service also warrants a hearing in the service territory.

7. Rule 28-106.207 (1), Florida Administrative Code, requires the hearing to be held in the service territory (area of residence of the non-governmental parties affected by the agency action) if it is practicable, permitted by statute or rule and the presiding officer determines it is the venue which is most convenient to all the parties. In the instant case, the Commission's statutes and rules permit the hearing to be held in the

service territory. As to the issue of the convenience to the parties, there are unique and compelling arguments that in this particular case it is especially important to the non-governmental parties that the hearing be held in the service territory. First, the Utility and its personnel are located in the service territory. Second, there are many customer witnesses (perhaps fifteen or more) sponsored by the Commission's Staff that will be filing pre-filed testimony in this docket. They will be required to attend and be subjected to cross-examination at the hearing. If the hearing is held in Tallahassee, all of these private citizens will be required to bear the extra cost of time and money, including transportation, room and board, to attend the hearing. Third, in this case there are also five customers who have formally intervened and intend to fully participate in the evidentiary hearing from the beginning to the end. For those five customers, who have already sacrificed so much of their time to work on this case, it is unfair for the Commission to impose the very substantial cost of transportation, room and board to attend a hearing in Tallahassee that is scheduled for three days one week and another five days the next week. In this case, perhaps more than in a typical case, there are more non-governmental parties actively participating in this formal evidentiary hearing, which warrants special consideration, particularly in light of the potential duration of the hearing.

WHEREFORE, for all of the reasons stated above, the Office of Public Counsel, on behalf of the Citizens, hereby respectfully requests the Commission to hold the evidentiary hearing in the Seven Springs service territory of Aloha.

Respectfully submitted,



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On behalf of the Citizens
Of the State of Florida

**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 24th day of June, 2005.


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