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J.R. Kelly
Public Counsel

February 26, 2009

Anne Cole, Commission Clerk
And Administrative Services
Room 100, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket Nos. 060122-WU & 060606-WS

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Response to Aloha's Motion for Contingent Release of Escrow Monies. A diskette in Word format is also submitted.

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

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ADM	_____
CLK	_____

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Sincerely,

Stephen C. Reilly
Associate Public Counsel

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding
increase in water rates in Pasco County,
by Aloha Utilities, Inc.

Docket No. 060122-WU

In Re: Progress reports on implementation
of Anion Exchange in Pasco County, filed
by Aloha Utilities, Inc. pursuant to
Order No. PSC-06-0270-AS-WU.

Docket No. 060606-WS

**CITIZENS' RESPONSE TO ALOHA'S
MOTION FOR CONTINGENT RELEASE OF ESCROW MONIES**

The Citizens of the State of Florida ("Citizens"), by and through their undersigned attorney, with the Office of Public Counsel ("OPC"), file this response to Aloha Utilities, Inc.'s ("Aloha", "Utility" or "Company") Motion for Contingent Release of Escrow Monies, and state:

1. On April 30, 2002 the Commission issued Order No. PSC-02-0593-FOF-WU, which denied Aloha's request for a rate increase and ordered a refund of the interim rates authorized by the Commission in rate case Docket No. 010503-WU.
2. Aloha appealed the Final Order in Docket No. 010503-WU to the First District Court of Appeal ("First DCA") and sought a stay while the decision was under appellate review.
3. By Order No. PSC-02-1056-PCO-WU, issued August 5, 2002, the Commission granted in part and denied in part the Utility's Motion for Stay. The Commission stayed the setting of the new rate structure, as well as the interim refund and certain plant improvement requirements.
4. On May 6, 2003, the First DCA affirmed the Commission's Final Order No. PSC-02-0593-FOF-WU, including the Commission's requirement of a complete refund of the interim rate increase. The First DCA denied Aloha's Motion for Rehearing on June 12, 2003 and issued

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FPSC-COMMISSION CLERK

its mandate on June 30, 2003. As a result of these First DCA opinions the appellate review process was completed on June 30, 2003, and all provisions of Final Order No. PSC-02-0593-FOF-WU were made final and effective.

5. The Utility collected interim rates for a 19-month period, from January 2002 through July 2003. The first four months were during the rate case period, and the remaining 15 months were during the appeal period. On or about September 10, 2003, the Utility completed the 4.87% interim refunds required by the Final Order for the rate case period, and also refunded 4.87% for the appeal period. Recognizing that Aloha had made this 4.87% refund without using funds from the escrow account, the Commission released \$153,510 from the escrow account to Aloha by Order No. PSC-03-1410-FOF-WU, issued December 15, 2003.

6. By Proposed Agency Action Order No. PSC-04-0122-PAA-WU (PAA Refund Order), issued February 5, 2004, the Commission proposed to require Aloha to make additional refunds of approximately \$278,000 for the appeal period. This amount represented the additional revenues from the interim rates collected during the appeal period, less the 4.87% already refunded by Aloha. This decision never became final because, on February 26, 2004, Aloha protested the PAA Refund Order.

7. On October 26, 2004 the Commission issued a second Final Order requiring Aloha to refund the balance of the interim rate increase monies (portion not refunded in September 2003) collected from customers during the period of Aloha's appeal of Final Order No. PSC-02-0593-FOF-WU. The Commission's second Final Order No. PSC-04-1050-FOF-WU, required Aloha to immediately refund an additional principal amount of \$276,066 for the appeal period to its customers and that the refund be made with interest in accordance with the Commission's Rule 25-30.360(4), F.A.C.

8. Rather than refund the money wrongfully collected from customers between May 2002 through July 2003, on November 29, 2004, Aloha again filed a Notice of Appeal. Aloha appealed the Commission's second Final Order requiring the complete refund of interim rate increase collections. On December 2, 2004 Aloha filed another Motion to Stay the requirement of refunding the balance of the interim rate increase collections received from its ratepayers. On February 7, 2005, the Commission issued Order No. PSC-05-0144-PCO-WU granting Aloha's Motion for Stay pending Judicial Review of the Commission's requirement to make the additional refunds.

9. While Aloha was actively involved in other dockets before the Commission to address its black water problems, motions were filed with the First DCA to delay the Court's consideration of the merits of Aloha's second appeal.

10. On March 9, 2006 Aloha, OPC and certain customer Intervenors entered into a Settlement Agreement which attempted to resolve all of Aloha's active Commission dockets and appeals of Commission Orders.

11. The part of the Settlement Agreement relevant to this motion is paragraph 3.(d) which provides:

(d) Aloha will voluntarily dismiss the Refund Appeal. The amount to be refunded as require by Order No. PSC-04-1050-FOF-WU is currently approximately \$290,000. This amount ("Gross Refund") shall be updated to the Effective Date and shall include interest calculated in accordance with Rule 25-30.360(4), F.A.C. through that date. In order to determine the Net Refund, the Gross Refund shall be reduced by the documented costs of Aloha (up to \$45,000) to prepare the Conceptual Cost Estimate, and the amount of such documented costs shall immediately be released from escrow. This reduction reflects the prior letter agreement between Aloha and OPC which has been approved by the Commission, that the cost (up to \$45,000) of preparing the Conceptual Cost Estimate for anion exchange shall be recovered from customers in this manner. After reimbursing Aloha for this documented costs, the Net Refund shall remain in the escrow account, accruing interest at the rate actually earned on that account. The Net Refund, plus interest earned thereon, shall be used to help pay for the anion exchange project. Aloha shall record an amount equal to the Net Refund, plus the interest earned thereon, as a

contribution-in-aid-of-construction (CIAC) of the anion exchange facilities at the time the order establishing Phase III rates under Section 2(c) has become final and non-appealable. At that time, the balance in the escrow account shall be released to Aloha, Aloha acknowledges that it shall not be entitled to recover through rates, a return on, or return of, such portion of its investment either in the limited proceeding conducted under Section 2(c), or in any future rate proceeding.

12. By agreeing to paragraph 3.(d) of the Settlement Agreement the customers were willing to apply the net refund monies (unpaid refunds plus interest less agreed \$45,000) to help pay for the permanent and effective solution to the long-standing black water problems. The customers never agreed that these refund monies would ever be given to the shareholders of Aloha, but quite to the contrary would only be considered contributions-in-aid-of-construction (CIAC) of the facilities built to solve the black water problems, and would only be applied as CIAC if and when the facilities were completely constructed, and after the facilities were fully operational for over a year. Pursuant to the expressed terms of the Settlement Agreement, not one penny of the customers net refund monies were to be applied as CIAC until the Commission issued its Final Order establishing Phase III rates, and the Order was final and non-appealable.

13. Contrary to the above requirements, construction has not begun on the anion exchange facilities, nor given FGUA's study of the black water problems, will those facilities ever be constructed or operated.

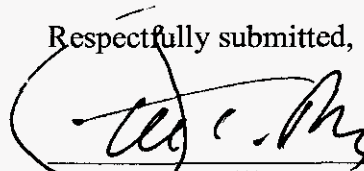
14. To the extent Aloha has expended funds in good faith to plan for the construction of the anion exchange facilities, such investment will be fully compensated when Aloha receives its 90.5 million dollars from the Florida Government Utility Authority ("FGUA"), as full payment for all rights, title and interest in Aloha. The financing of the purchase price **and** the additional sums borrowed by FGUA to help pay for FGUA's improvements to Aloha's system to resolve the black water problems will be paid for by the increased rates that will be borne by Aloha's customers. Releasing these refund monies to Aloha after Aloha sells the Utility to

FGUA would merely give additional money to the shareholders of Aloha over and above the 90.5 million dollars they are going to receive from FGUA for sale of the system. Such a windfall for the shareholders was not contemplated by the Settlement Agreement and would provide no offsetting CIAC credit or reduction in increased rates that will be needed to support FGUA's borrowing to finance the purchase and improvement of Aloha's system.

15. Aloha's Motion for Contingent Release of Escrow Monies is merely the last of many legal filings designed to retain for the benefit of its shareholders monies that have been, according to a number of Commission Orders, due and payable to the customers since July 30, 2003.

WHEREFORE, for the reasons stated above the Commission should deny Aloha's Motion for Contingent Release of Escrow Monies, but rather issue an order requiring Aloha to refund the remaining funds in the escrow account to the customers in accordance with Rule 25-30.360 (4), F.A.C., with the Utility providing proper refund reports pursuant to Rule 25-30.360 (7), F.A.C. Any unclaimed refunds should be given to FGUA to provide a pro rata credit to all existing water accounts that were in existence as of July 30, 2003.

Respectfully submitted,



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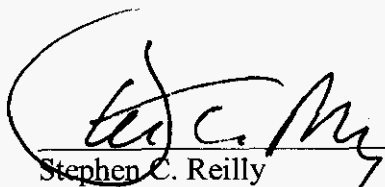
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the following parties this 26th day of February, 2008.

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