

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 951419-SU
amendment of Certificate No.) ORDER NO. PSC-96-1558-FOF-SU
379-S in Seminole County by) ISSUED: December 23, 1996
Alafaya Utilities, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER VACATING AUTOMATIC STAY

BY THE COMMISSION:

Background

Alafaya Utilities, Inc. (Alafaya or utility) is a Class B utility providing wastewater service in Seminole County. On November 15, 1995, pursuant to Section 367.045, Florida Statutes, the utility applied for an amendment of its wastewater Certificate No. 379-S to add additional territory in Seminole County. On December 8, 1995, the City of Oviedo (City) filed with the Commission an Objection to Notice of Application to Alafaya's amendment pursuant to Section 367.045, Florida Statutes. Consequently, a formal hearing was held on May 28 through 29, 1996 in Oviedo, Florida.

By Order No. PSC-96-1281-FOF-SU, issued October 15, 1996, the Commission approved Alafaya's application to amend wastewater Certificate No. 379-S. On November 8, 1996, the City filed a Notice of Appeal of Order No. PSC-96-1281-FOF-SU. On November 12, 1996, Alafaya filed a Motion to Vacate Automatic Stay, pursuant to Rule 9.310, Florida Rules of Appellate Procedure, and Rule 25-22.061(3), Florida Administrative Code. The City filed a Memorandum in Response to Motion to Vacate Automatic Stay on November 19, 1996.

Motion to Vacate Automatic Stay

In its Motion to Vacate Automatic Stay, Alafaya cites to Rule 9.310(b)(2), Florida Rules of Appellate Procedure, and Rule 25-22.061(3)(b), Florida Administrative Code. Pursuant to Rule

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9.310(b)(2), Florida Rules of Appellate Procedure, the filing of a Notice of Appeal by a public body, such as the City, shall act automatically as a stay pending review by the appellate court. However, that same rule grants the Commission the authority to vacate the stay. Pursuant to Rule 25-22.061(3)(b), Florida Administrative Code, "[w]hen a public body or public official appeals an order that does not involve an increase in rates, the Commission may vacate the stay or impose any lawful conditions." In its response, the City does not contest the applicability of Rule 9.310(b)(2), Florida Rules of Appellate Procedure, or Rule 25-22.061(3)(b), Florida Administrative Code, to the Order on appeal in this docket.

In its Motion, Alafaya states that the primary factor in deciding to lift the automatic stay is the Commission's responsibility to uphold the public interest. Alafaya argues that there are proposed developments in the territory which are in immediate need of wastewater service. Alafaya states that the developer of Waverlee Woods advised Alafaya that it was ready to break ground and that delays in its development schedule would be costly and troublesome. Presumably that development will be at a standstill if the stay is not vacated. Alafaya further states in its Motion that it accepts the risk of providing service should the Order be reversed on appeal.

In its Response, the City states that it does not object to the stay being vacated during the pendency of the appeal, but requests that the Commission affirmatively note in any Order vacating the stay that Alafaya has committed to promptly assuming [sic] all risks in the event of a reversal on appeal.

Upon review and consideration of the pleadings, we find it appropriate to vacate the stay. All parties are in agreement to vacating the stay, and it appears to be in the public interest to do so given the immediate need for service in the territory. Further, we note that Alafaya has voluntarily committed to assume all risks associated with providing service to the territory in the event of a reversal on appeal. Accordingly, Alafaya's Motion to Vacate the Automatic Stay is granted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Alafaya Utilities, Inc.'s Motion to Vacate Stay is hereby granted.

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By ORDER of the Florida Public Service Commission, this 23rd
day of December, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.