

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

IN RE: Application of )  
ALAFAYA UTILITIES, INC. )  
for approval of reuse project )  
plan in Seminole County, Florida. )

Docket No. 96028-SU <sup>288</sup>

MOTION TO DISMISS

ALAFAYA UTILITIES, INC. ("Alafaya"), by and through its undersigned attorneys, and pursuant to Rule 25-22.037, Florida Administrative Code, files this Motion to Dismiss the Petition on Proposed Agency Action filed on behalf of Seminole Ranch, Ltd. and Live Oak Reserve, Ltd. (jointly referred to as "Petitioners"), and in support thereof states:

1. Petitioners are developers in Alafaya's service area and the substance of their objections is that Alafaya is requiring them to install reuse holding ponds on their properties and to construct off-site reuse distribution facilities. It should be noted that the Developer Agreement attached to the Petition predates Order No. PSC-98-0391-FOF-SU. Petitioners have been provided with proposed Developer Agreements which post date, and therefore, are in compliance with Order No. PSC-98-0391-FOF-SU. Petitioners' complaint is more properly brought pursuant to Rule 25-30.560, Florida Administrative Code, which addresses resolving disputes concerning developer agreements.

2. Petitioners have not shown that they are substantially affected by Order No. PSC-98-0391-FOF-SU in that the order does not require that they construct any reuse storage, or off-site reuse distribution systems to which they complain.

ACK \_\_\_\_\_  
MFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
LEG 1 \_\_\_\_\_  
LIN 3 \_\_\_\_\_  
OPC \_\_\_\_\_  
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SEC 1 \_\_\_\_\_  
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FPSC-BUREAU OF RECORDS

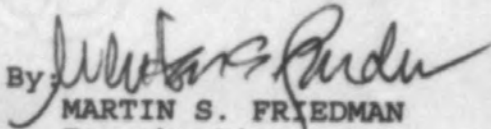
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3. Petitioners' request for a Declaratory Statement is moot. When a Petition is filed protesting a Proposed Agency Action Order, that Order becomes a nullity, thus there is no order of the Commission to apply to Petitioners' particular set of circumstances. Rule 25-22.020(1), Florida Administrative Code.

WHEREFORE, Alafaya requests this Commission enter an Order dismissing the Petition and reinstating Order No. PSC-98-0391-FOF-SU.

Respectfully submitted on this  
17th day of April, 1998, by:

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By:   
MARTIN S. FRIEDMAN  
For the Firm

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss has been forwarded via U.S. Mail to Roseanne Gervasi, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 and Jacob D. Varn, Esquire, Fowler, White, Gillen, Boggs, Villareal and Banker, P.A., P.O. Box 11240, Tallahassee, FL 32302 this 17th day of April, 1998.

  
MARTIN S. FRIEDMAN