

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Application For)
Approval of Reuse Project Plan)
in Seminole County by Alafaya)
Utilities, Inc.,)

Docket No. 960288-SU

PROPOSED AGENCY
ACTION ORDER
NO. PSC-98-0391-FOF-SU

AMENDED PETITION ON PROPOSED AGENCY ACTION

Petitioner, SEMINOLE RANCH, LTD., and LIVE OAK RESERVE, LTD., (hereafter collectively referred to as "Petitioners") are owners and developers of two tracts of land located in Seminole County (hereafter referred to as "developments") identified as follows:

Seminole Ranch, Ltd. a/k/a Richland Properties

River Run (formerly known as "Flying Seminole Ranch") consists of approximately 727 acres approved for the construction of 1,032 single family dwelling units as well as commercial and institutional uses.

Address:

Richland Properties
One Urban Center
4830 Kennedy Blvd., Suite 740
Tampa, Florida 33609-2552

Live Oak Reserve, Ltd.

Live Oak Plantation - consists of approximately 800 acres and is seeking approval for approximately 1,328 residential units.

Address:

Live Oak Reserve, Ltd.
c/o Donald W. McIntosh
2200 Park Avenue N.
Winter Park, FL 32709

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

All notices, pleadings and correspondence should be directed to:

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Petitioners' developments are located in Alafaya Utilities, Inc.'s, (hereafter "Alafaya") wastewater treatment and reuse service area. In fact, the majority of the "customer lots" impacted by "Alafaya's Reuse Project Plan and Reuse Rates and Charges" are located in the Petitioners' developments. Accordingly, Petitioners are substantially affected by the proposed agency action. For the reasons set forth below, Petitioners file this petition for a formal proceeding as provided by Rule 25-22.029(4), Florida Administrative Code (F.A.C.) and §120.57, Florida Statutes (F.S.) and Declaratory Relief as provided in Rule 25-22.020 F.A.C. and 120.565, F.S.

Petitioners became aware of the Proposed Agency Action Order on March 30, 1998, when they were provided a copy by the City Planner's Office for the City of Oveido, Florida.

Background

Alafaya is a privately owned Class A wastewater only utility located in Seminole County. The developments are located within the city limits of Oveido, Florida (hereafter referred to as "City") and will be provided potable water through the City's water utility. The developments are subject to the City's ordinances. Since the developments are located within Alafaya's wastewater service area, they are also within Alafaya's non-exclusive reuse service area.

Alafaya's present wastewater treatment and reuse facilities can be summarized as follows:

Wastewater treatment plant	-	2.4 million gallons per day (mgd) capacity, <u>limited</u> by Department of Environmental Protection (hereafter referred to as "DEP") to its effluent disposal capacity of 1.1 mgd.
Effluent disposal capacity	-	Nine fast percolation ponds with a rated capacity of 1.0 mgd ¹ .
	-	One eighteen hole golf course with slow rate public access level spray irrigation with a rated capacity of .1 mgd. ²
Present wastewater treatment demand	-	.80 mgd.

As matters presently stand, Alafaya has wastewater treatment capacity three times its present demand, but permitted for less than one-half its capacity due to inadequate effluent disposal capacity. This latter limitation has prompted Alafaya's submission of a seriously flawed and incomplete Reuse Project Plan.

On March 6, 1996, Alafaya submitted its "Application For Approval of Reuse Project Plan" to the Florida Public Service Commission (hereinafter referred to as "Commission"). The application had attached to it a "Wastewater Reuse Study" prepared by Alafaya's engineers, Hartman & Associates, Inc. The "Wastewater Reuse Study" set forth various assumptions and estimates from which four residential reuse scenarios were developed. As recommended in the

¹ As noted in the proposed Agency Action Order (hereafter referred to as "Order"), under DEP guidelines percolation ponds are not a viable long-term disposal solution for Alafaya.

² Initially the golf course was rated at .325 mgd for reclaimed water disposal by spray irrigation but subsequent to March 1996, was reduced by DEP to .10 mgd due to saturation.

Hartman & Associates' study, the Commission concluded residential reuse scenario number four was the best alternative.

The following are some of the assumptions upon which scenario number four was based and which were adopted by the Commission in its proposed order:

1. When built out, the new territory (including Petitioner's developments) will include an additional 5,700 homes.
2. By ordinance, the City requires new developments to install a reuse distribution system. Accordingly, Petitioners will install reuse distribution lines in their respective developments at the time of construction and donate the distribution lines to Alafaya.
3. New territory should be built out in 17 years. One-half (50%) of the wastewater customers will use reuse at an average rate of 500 gallons per day (gpd). This would increase Alafaya's effluent disposal through reuse to 2.0 mgd.
4. Through scenario number 4, Alafaya will invest in the additional filters, pumps, storage facilities and trunk mains to serve the new territory [underline added].
5. The capital expenditure necessary to enlarge Alafaya's reuse system (as adjusted by the Commission) is \$3,275,000. This amount includes expenditures for the following:

Reuse Pump Station with Hydro Tank	\$200,000.00
Effluent Transfer Pump Modifications	\$100,000.00
16-inch DIP Reuse Main 13,296 LF	\$412,200.00
12-inch PVC Reuse Main 15,356 LF	\$837,000.00
10-inch PVC Reuse Main 1,374 LF	\$215,600.00

6. While additional storage may be needed to implement scenario number 4, Alafaya believes its existing 3.65 mg reuse storage pond provides adequate wet weather storage for the reuse system anticipated under scenario four.

Disputed Issues of Material Facts

The following issues of material facts, as provided by Alafaya and adopted into the proposed order, are submitted:

1. The estimate that 50% of the wastewater customers will use reuse in the amount of 500 gpd is unrealistic. Since most of the developments' lots are one-quarter acre \pm , upon which are located a residence, driveway, walkways, and patios, DEP will not permit the disposal amount estimated. See Rule 62-610.423, F.A.C.
2. DEP requires at least three days of wet weather storage, depending on soil conditions. The water table is very high in the Petitioners' developments and the soil quality is poor.³ Accordingly, more than three days of storage would most likely be required by DEP. See Rule 62-610.414 F.A.C. Contrary to the assertions of Alafaya, the present 3.65 million gallon storage pond is grossly inadequate to meet the needs of scenario number four.
3. While the proposed order states Alafaya will use the \$3,275,000 reuse capital to invest in various upgrades including "storage facilities," the budget submitted to justify the \$3,275,000 capital investment allocates no money for the purchase or construction of storage facilities.
4. As presented, Alafaya's Reuse Project Plan is not workable in that it grossly overstates reuse disposal capacity and significantly understates its wet weather reuse storage requirements.

Alafaya's Dealings With and Representations to Reuse Customers (Petitioners) Indicate Alafaya Intends to Proceed With a Reuse Project Plan Contrary to the Plan Being Approved in the Proposed Order

Alafaya has provided Petitioners with Draft Developer Agreements (hereafter referred to as "Draft Agreement") as set forth in Exhibit 1. Petitioners have objected to portions of the Draft Agreement as stated below and ongoing negotiations (written and oral) have been unsuccessful in resolving the objections. For purposes of this Petition, the portions of the Draft Agreement for which there are unresolved objections are as follows:

³ Recall DEP reduced the golf course reuse disposal capacity from .365 mgd was .10 mgd based on water saturation.

1. (Introduction) . . . Service is contingent upon the construction and utilization of existing and contemplated wastewater collection and reuse storage and distribution facilities and the availability of capacity of these facilities.

2. (Mutual Consideration) Developer and Service Company hereby covenant and agree as follows:

(a) 2.2. Contribution-in-aid-of-Construction (CIAC) -

The sum of money and/or the value of property represented by the cost of the wastewater collection systems (including lift stations) and reuse storage and distribution facilities constructed or to be constructed by a Developer which Developer transfers, or agrees to transfer to Service Company at no cost to Service Company in order to induce Service Company to provide wastewater and reuse services to the Property.

(b) 7.0. On-Site Installation. To induce Service Company to provide the wastewater collection and reuse distribution service to the Property, unless otherwise provided for herein, Developer hereby covenants and agrees to construct and to transfer ownership and control to Service Company, as a contribution-in-aid-of-construction, the on-site wastewater collection and reuse distribution systems necessary to provide Service to the Property. The term "on-site wastewater collection and reuse distribution systems" means and includes all mains, lines, pipes, reuse meters and related facilities, and equipment, including pumping stations, reuse holding ponds and storage tanks adequate in size to provide Service to each lot or unit within the Property or as otherwise required by Service Company. Developer shall install, at its sole expense, all of the aforesaid facilities within the Property in accordance with the plans, specifications and all other pertinent documents approved by the Service Company.

(c) 8.0. Off-Site Wastewater Collection and Reuse Distribution Installation - Developer will construct and install all wastewater collection and reuse distribution facilities from Developer's property to Service Company's existing facilities in accordance with overall master plans of the utility system. Developer acknowledges and agrees that at some later date the Florida Public Service Commission may direct Service Company to assess and collect a reuse tap-on/connection charge for

individual utility customers availing themselves to said services.

- (d) 9.1. By these presents, Developer hereby transfers, subject to the completion of construction of facilities, to Service Company, title to the on-site and off-site systems installed by Developer or Developer's contractor pursuant to the provisions of this Agreement. Such conveyance shall take effect at the time Service Company issues its final letter of acceptance.
- (e) 11.0. Agreement to Serve. Upon the completion of construction of the on-site and off-site systems, their inspection, and the other terms of this Agreement and Service Company's Service Availability Policy, Service Company covenants and agrees that it will connect or oversee the connection of the on-site and off-site systems installed by Developer to the central facilities of Service Company in accordance with the terms and intent of this Agreement.
- (f) 13.1. Developer guarantees storage and disposal within Property, via the on-site reuse system, of a volume of reuse water at least equal to one hundred percent of the ADF represented by the number of ERC's being provided service within the Property at any given time. Said acceptance of reuse water shall be in compliance with all federal, state and local rules and regulations.
- (g) 34.0. Developer shall make available to Service Company and assist Service Company in the irrigation of open areas, greenbelts, and if mutually agreed upon and approved by the appropriate regulatory agencies, the irrigation of the lawns and other open areas of the residential phases of this project, Service Company shall be responsible for the obtainment of all necessary regulatory agency approvals and monitoring programs for all such irrigation activities.

Storage

The Draft Agreement demonstrates the proposed Project Reuse Plan does not address the major problem that has plagued Alafaya from the beginning; lack of effluent disposal capacity. While Alafaya's engineers state Alafaya's present 3.65 million gallon storage facility provides adequate wet weather storage for the reuse system design set forth in scenario number four, its

engineers also state, in a tongue-in-cheek fashion, "[i]t is estimated that additional storage may need to be provided for implementation of this scenario [scenario number four]." See excerpts from the "Alafaya Utilities, Inc., Wastewater Reuse Study" prepared by Hartman & Associates, Inc., previously provided to the Commission and attached hereto and incorporated herein as Exhibit 2.

The majority of the consideration to be provided by the Petitioners in the Draft Agreement include the following:

1. Construct and install all wastewater collection and reuse distribution facilities from petitioners' developments to Alafaya's existing facilities in accordance with Alafaya's overall master plans.
2. Mains, lines, pipes, reuse meters and related facilities and equipment, including pumping stations, reuse holding ponds and storage tanks adequate in size to provide service to each lot in the Petitioners' developments located within the development serviced.
3. Petitioners are to guarantee storage and disposal within each development which will be equal to at least 100 percent of the average daily flow of wastewater being produced by residents within the development.
4. Petitioners are to make available to Alafaya open areas and greenbelts for reuse disposal.

Petitioners have not allocated property within their respective developments to be used as reuse holding ponds. Further, city ordinances prohibit the installation of reuse storage ponds within the developments. Despite the understanding by the Commission, as reflected in the Proposed Order, that Alafaya will use a portion of its \$3,275,000 reuse capital expenditure to invest in "additional storage facilities," Alafaya's Capital Budget Estimate of \$3,990,000 (reduced by the Commission to \$3,275,000 for other reasons) has absolutely no provision for additional reuse storage.

As demonstrated in the Draft Agreement, the lack of reuse storage facilities and disposal areas are Alafaya's major concern, which Alafaya is attempting to shift to the Petitioners. Presenting for approval a Reuse Project Plan purporting to address necessary capital investment, operating budgets, availability fees, and monthly rates, which ignores the single most troublesome and costly issue (reuse storage and disposal) is unwise and can only result in protracted litigation.

Contributions-in-Aid-of-Construction

The proposed order recognizes Petitioners are required by the City to install reuse lines in their respective developments and that these reuse lines will be transferred at no cost to Alafaya. The order also reflects an understanding that Alafaya's approved reuse capital budget includes allocations for the cost of "additional filters, pumps, storage facilities and trunk mains associated with the reuse expansion." In fact, at least \$1,764,800 of the approved \$3,275,000 budget is allocated to pump stations and trunk lines.

The Draft Agreement calls for the Petitioners to fund and construct on-site pumping stations, holding ponds and storage tanks. Further, the Draft Agreement calls for the Petitioners to fund and construct off-site "all wastewater collection and reuse distribution facilities from their respective developments to Alafaya's existing facilities." This would include funding and installing trunk mains and off-site pumping stations. At the conclusion of the construction, the Petitioners are to transfer ownership of these facilities to Alafaya. Obviously, Alafaya cannot petition the Commission for a rate approval based on capital expenditures it does not intend to expend. The petition submitted to the Commission states Alafaya will pay these costs and the proposed order reflects this understanding. Alafaya's Draft Agreement, which was prepared

long after the Reuse Project Plan was submitted to the Commission, reflects an entirely different intent on the part of Alafaya.

Relief Requested

Based on the foregoing, Petitioners request the following:

1. That the proposed "Agency Action Order Approving Reuse Project and Reuse Rates Charges" be stayed pending further inquiry through an administrative hearing regarding the following aspects of the Reuse Project:

- (a) Storage requirements and availability of same;
- (b) Cost estimates;
- (c) Permitability; and
- (d) Overall viability.

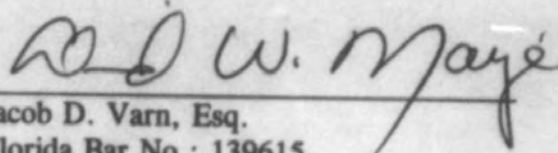
2. Clarification in the Proposed Agency Action stating:

- A. All costs associated with providing and maintaining off-site reuse transmission and storage facilities and equipment shall be the responsibility of Alafaya Utilities, Inc.
- B. Unless agreed otherwise, in writing, it shall be the responsibility of Alafaya Utilities to locate, build and have permitted, off-site, all reuse storage facilities.

3. Such other relief or measures as the Commission deems proper.

Respectfully submitted,

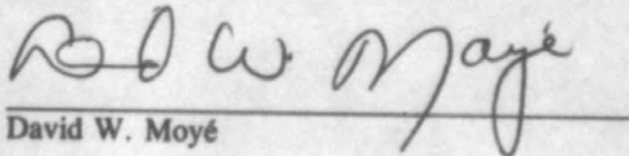
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this 7th day of May, 1998, to Mr. Donald Rasmussen, Vice President Alafaya Utilities, Ltd., 200 Weatherfield Avenue, Altamonte Springs, Florida 32714; and Martin S. Friedman, Esq., last known counsel for Alafaya Utilities, Inc., 2548 Blairstone Pines Drive, Tallahassee, Florida 32301.



David W. Moyé