

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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FPSC - Records/Reporting

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

Docket No. 96028¹SU

RESPONSE TO MOTION TO AMEND PETITION

ALAFAYA UTILITIES, INC. ("Alafaya"), by and through its undersigned attorneys, and pursuant to Rule 25-22.037, Florida Administrative Code, files this Response to Motion to Amend 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. On or about April 6, 1998, Petitioners filed a Petition on Proposed Agency Action in this Docket. Alafaya filed a timely Motion to Dismiss that Petition. Petitioners did not file a timely

ACK _____ response to the Motion to Dismiss; and now, apparently acknowledg-
AFA _____ ing the insufficiency of its original Petition, have chosen to file
APP _____ a Motion to amend the original Petition. The proposed Amended
CAF _____ Petition is identical to the original Petition except that instead
CMU _____ of seeking a "Declaratory Statement" as relief, it seeks a
CTR _____ "clarification". That change in terminology is a distinction
EAG _____ without a difference. There is no need for clarification of Order
LEG 1 _____ No. PSC-98-0391-FOF-SU, which is clear on the two issues raised by
LIN 3 _____
DPC _____
RCH _____
SEC 1 _____

WAS _____
OTH _____

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DOCUMENT NO.
05451-98
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Petitioners. In addition, the Developer Agreements submitted by Alafaya are consistent with Order No. 98-0391-FOF-SU, and Petitioners have not argued otherwise.


2. As to the merits of the Amended Petition, 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 Amended Petition predates Order No. PSC-98-0391-FOF-SU. Even though Petitioners have been provided with proposed Developer Agreements which post date, and therefore, are in compliance with Order No. PSC-98-0391-FOF-SU, they have chosen to continue to base their Amended Petition on an outdated draft. Petitioners have not argued that the more recent Developer Agreements conflict 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 (although it is obvious that there is no factual or legal basis for such a complaint).

3. Petitioners still 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.

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

Respectfully submitted on this
15th day of May, 1998, by:

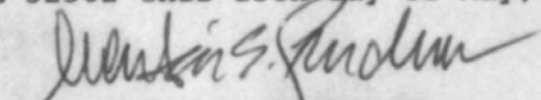
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By: 
MARTIN S. FRIEDMAN
For the Firm

alafaya\reuse\amend.res

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 15th day of May, 1998.


MARTIN S. FRIEDMAN