

ORIGINAL



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June 21, 2002

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Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 010503-EI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens' Response to Motion for Stay for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Burgess
Deputy Public Counsel

SCB/dsb
Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of ALOHA)
UTILITIES, INC. for an increase)
in water rates for its Seven)
Springs System in Pasco County,)
Florida.)
_____)

DOCKET NO.: 010503-WU
FILED: June 21, 2002

RESPONSE TO MOTION FOR STAY

The Citizens of the State of Florida, through their attorney, the Public Counsel, hereby respond to the Motion for Stay filed by Aloha Utilities, Inc. (hereinafter referenced as "Aloha" or "the Utility") on June 14, 2002. The Citizens submit:

1. On April 30, 2002, the Public Service Commission (hereinafter referenced as "the Commission" or "the PSC") issued Order No. PSC-02-0593-FOF-WU, establishing final rates for Aloha. That order also required Aloha to effect a refund and complete certain tasks associated with plant upgrades and customer service measures. More specifically, Aloha was ordered: to submit a plan showing how the Utility intends to remove an unacceptable level of hydrogen sulfide; to complete the improvements necessary to remove the unacceptable level of hydrogen sulfide by December, 2002; and to implement five customer service measures identified in the order.

2. On June 14, 2002, Aloha filed a motion to stay the requirements of Order No. PSC-02-0593-FOF-WU, specifically identifying those requirements identified in paragraph 1, above. It appears that Aloha seeks to stay every aspect of the Commission's order.

3. The Citizens do not object to that portion of Aloha's motion which seeks to stay the effectiveness of the refund, as long as Aloha posts a sufficient bond as required by Rule 25-22.061, F.A.C. The Citizens, however, do object to Aloha's motion to the extent that it seeks to stay or delay

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the implementation of the five customer service measures, the submission of the plan for reducing the hydrogen sulfide, or the plant improvement program.

4. Aloha has sought this stay under two alternative legal authorities. First, beginning in paragraph 4, Aloha argues that under Rule 25-22.061(1)(a), F.A.C., the Commission is mandated to grant Aloha's motion to stay. Aloha argues that because the order encompasses a refund requirement among the many other requirements imposed, the Commission is required to grant the stay of every aspect of the order.

5. Aloha's illogical conclusion, however, is a result of its misinterpretation of Rule 25-22.061, F.A.C. While subsection (1) of the rule governs for that part of an order which involves a refund or rate reduction, subsection (2) provides the Commission the "authority to grant, modify, or deny such relief." (excerpt from Rule 25-22.061(2), F.A.C.). Obviously, the Commission has the authority to deny a stay for the provisions in a final order which do not involve a refund.

6. In the instant case, the requirements for the customer service measures, the hydrogen sulfide removal plan and the hydrogen sulfide removal plant improvements have no bearing on the refund requirement. Those three issues can be severed cleanly from those provisions of the order that affect the refund. The Commission can deny the stay of those three provisions without affecting the aspects of the order referenced by section (1) of Rule 25-22.061, F.A.C.

7. Accordingly, in determining whether to grant a stay of the "non-refund" portions of the order, the Commission should be guided by paragraph (2) of Rule 25-22.061. Among the factors for the Commission's consideration is "whether the delay will cause substantial harm or be contrary to the public interest." Rule 25-22.061(2)(c), F.A.C. Based upon that factor, Aloha's motion for stay of the non-refund items should be denied.

8. The Citizens submit that any delay in the requirements for improving the quality of the water or the quality of the customer service will cause substantial additional and continuing harm to the customers. Clearly, the supply of acceptable quality water and reasonable customer service is in the public interest. Axiomatically, then, the continuing delay in the implementation of steps necessary to provide acceptable quality water and service is contrary to the public interest.

9. The Citizens submit that there is very little likelihood that Aloha will prevail in its appeal of any issues challenging the Commission's decisions on the customer service measures, the hydrogen sulfide removal plans, or the hydrogen sulfide removal plant improvements. It appears that Aloha's primary focus is to accuse the Commission of major improprieties, such as "making its decision in private, in violation of Florida's Sunshine Law," (paragraph 15) and making its decision on "political considerations" (paragraph 13). These unsupported charges, however, do not meet the test of showing a likelihood of prevailing on appeal. Given the strong public interest in correcting these problems, the Commission should not stay the order based on the application of Rule 25-22.061(2), F.A.C.

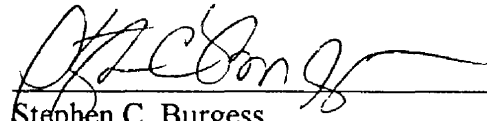
10. Beginning with its paragraph 8, Aloha argues as an alternative that Rule 9.190(e)(2), Florida Rules of Appellate Procedure, gives the Utility justification for a stay of the Commission order. In applicable part, subsection (a) of that Rule states that "[t]he lower tribunal or court may grant a stay upon appropriate terms."

11. The Citizens contend that Rule 9.190(e)(2), Fla. R. App. P., is not an alternative to be read as inconsistent and separate from the Florida Administrative Code. Rather, the two rules are consistent and complementary and should be read as such. The specificity of the elements described in Rule 25-22.061, F.A.C., define the "appropriate terms" that are referenced in Rule 9.190(e)2, Fla.

R. App. P. Accordingly, the tests for the appropriateness of a stay as presented in the Florida Administrative Code are subsumed into the relevant Rules of Appellate Procedure. Since the Citizens have already shown that Aloha is not entitled to a stay of certain issues under the application of the Florida Administrative Code, there is no need to re-address the same arguments under Aloha's "alternative" approach under the Rules of Appellate Procedure.

WHEREFORE, the Citizens of the State of Florida object to Aloha's motion for stay to the extent that the motion seeks a stay of the Commission's order on customer service measures, the hydrogen sulfide removal plan or plant improvements to reduce hydrogen sulfide levels.

Respectfully submitted,



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Attorneys for the Citizens of the
State of Florida

CERTIFICATE OF SERVICE
DOCKET NO. 010503-WU

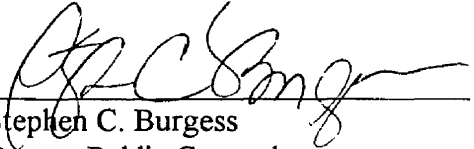
I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Motion for Stay has been furnished by hand-delivery(*) or U.S. Mail to the following parties on the 21st day of June, 2002:

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