

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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IN RE: Petition by Customers of)
ALOHA UTILITIES, INC., for deletion of)
portion of territory in Seven Springs)
Area in Pasco County, Florida.)

Docket No. 020896-WS

COMMISSION
CLERK

IN RE: Application for increase in water)
rates for Seven Springs System in Pasco)
County by **ALOHA UTILITIES, INC.**)

Docket No. 010503WU

**ALOHA UTILITIES, INC.'S RESPONSE TO
REQUEST FOR RECONSIDERATION
AND MOTION TO MODIFY**

Aloha Utilities, Inc. ("Aloha"), by and through undersigned counsel and pursuant to Rule 28-106.204(1), Fla.Admin.Code, hereby files this Request for Reconsideration and Motion to Modify, and in support thereof would state and allege as follows:

1. On July 29, 2004, a single customer of Aloha (purporting to represent two other customers) filed a pleading in this docket styled "Request for Reconsideration of PAA Order No. PSC-04-0712-PAA-WS Motion to Modify Order No. PSC-02-0593-FOF-WU. Apparently, the pleading is intended to be both a Motion for Reconsideration and a Motion to Modify the Order.

2. The Request for Reconsideration must be denied. The request provides, on its face, that its seeks reconsideration of a Commission Order which is Proposed Agency Action. Rule 25-22.060(1)(a), Fla.Admin.Code, expressly provides

The Commission will not entertain a Motion for Reconsideration of a Notice of Proposed Agency Action issued pursuant to Rule 25-22.029, regardless of the form of the Notice and regardless of whether or not the proposed action has become effective under Rule 25-22.029(6).

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OPC _____
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The Commission, pursuant to Rule 25-22.060(1)(a), Fla.Admin.Code, cannot entertain the Motion for Reconsideration.

3. To the extent the pleading is intended to request modification of the Order, the pleading is, effectively, requesting reconsideration of that Order and therefore the Commission should not entertain the same pursuant to Rule 25-22.060(1)(a), Fla.Admin.Code. Because the Order is not final, it is not subject to modification pursuant to a defacto motion for reconsideration. Even if the Order was final, it could only be modified if a petitioner demonstrated entitlement to reconsideration under the established requirements for such relief. See, e.g., *Austin Tupler Trucking, Inc. v. Paula Hawkins*, 377 So.2d 769, 681 (Fla. 1979).

WHEREFORE, for the reasons set forth above, Aloha Utilities, Inc. respectfully requests that the Commission deny the request and/or motion.

Respectfully submitted this 5th
day of August, 2004, by:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail or via facsimile (indicated by *) to the following on this 5th day of August, 2004:

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