

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase)
in water rates for Seven Springs) PSC DOCKET NO. 010503-WU
System in Pasco County by Aloha) DCA CASE NO. 1D04-5242
Utilities, Inc.)
_____)

MOTION FOR STAY PENDING JUDICIAL REVIEW

ALOHA UTILITIES, INC., (“Aloha”), by and through its undersigned counsel, and pursuant to Rule 25-22.061(1)(a), Florida Administrative Code, hereby files its Motion for Stay of the requirements of Order No. PSC-04-1050-FOF-WU, issued on October 26, 2004, and in support of this Motion, states:

1. By Final Order Requiring Additional Refunds, rendered on October 26, 2004, the Florida Public Service Commission required Aloha to refund the principal amount of \$276,066, with interest, to its customers and to submit refund reports.

2. On November 29, 2004, Aloha timely filed its Notice of Administrative Appeal from that Final Order Requiring Additional Refunds. That appeal is pending before the District Court of Appeal, First District; is captioned Aloha Utilities, Inc. v. Florida Public Service Commission; and has been designated as Case No. 1D04-5242.

3. Rule 25-22.061(1)(a), Florida Administrative Code, which rule governs stays pending judicial review, provides:

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When the order being appealed involves **the refund of moneys to customers** or a decrease in rates charged to customers, the Commission **shall**, upon motion filed by the utility or company affected, **grant a stay pending judicial proceedings**. The stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

4. The Final Order on appeal clearly involves the refund of monies to customers. This motion constitutes a motion filed by the affected utility. Accordingly, Rule 25-22.061(1)(a), Florida Administrative Code, requires that the Commission “shall” grant a stay pending judicial proceedings. Neal v. Bryant, 149 So.2d 529 (Fla. 1962). While the remaining portions of Rule 25-22.061 afford the Commission some discretion in granting or denying a stay motion, subsection (1)(a) of Rule 25-22.061 is mandatory when the order being appealed involves the refund of monies to customers. The Commission may not lawfully disregard or modify its own rules.

5. Aloha is no longer collecting the interim rates allowed by Order No. PSC-01-2199-FOF-WU. The monies ordered to be refunded by the Final Order Requiring Additional Refunds, the Order currently on appeal, remain in an escrow account. This escrow account provides more than ample security to cover any potential refund. Accordingly, there is no basis or reason to require Aloha to post a bond or a corporate undertaking as a condition for this requested stay.

WHEREFORE, Aloha Utilities, Inc. requests that this Motion for Stay Pending
Judicial Review be GRANTED.

Respectfully submitted this 2nd day of December, 2004.



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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 to the following on this 2nd day of December, 2004:

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