

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Initiation of show cause)
proceedings against Aloha Utilities,)
Inc. in Pasco County for failure to)
charge approved service availability)
charges, in violation of Order No.)
PSC-01-0326-FOF-SU and Section)
367.091, Florida Statutes.)

DOCKET NO. 020413-SU

WINDWARD HOMES' RESPONSE TO ALOHA UTILITIES, INC.'S MOTION FOR
EMERGENCY RELIEF

Pursuant to Rule 28-106-204, Florida Administrative Code, Windward Homes files this Response to Aloha Utilities, Inc.'s Motion for Emergency Relief and in support thereof states as follows:

1. In Order No. PSC-01-0326-FOF-SU, issued **February 6, 2001**, in Docket No. 991643-SU, the Public Service Commission ordered Aloha Utilities, Inc. (Aloha) to increase its wastewater service availability charges from \$206.75 per equivalent residential connection (ERC) to \$1,650.00 per residential ERC and \$12.79 per gallon for all other connections. That Order required Aloha to file the appropriate revised tariff sheet reflecting the approved service availability charges within 20 days of the date of the order.
2. In violation of Order No. PSC-01-0326-FOF-SU, Aloha failed to submit the revised tariff sheets until **March 11, 2002** and failed to begin charging the approved service availability charges until **April 12, 2002**.
3. On October 7, 2002, Aloha filed its Motion for Emergency Relief in which Aloha requests the Public Service Commission (PSC) allow it to begin

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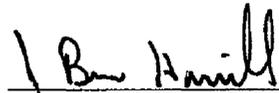
backbilling developers immediately who connected to the system between May 23, 2001 and April 16, 2002 and retain those collected funds in an escrow account pending resolution of this matter.

4. Aloha, in its motion, alleges that “[d]evelopers by nature are peripatetic.” (Aloha’s Motion for Emergency Relief Page 3) Further, Aloha alleges that irrespective of the outcome of this matter, Windward Homes will not be injured should the PSC permit Aloha to collect the monies and place them in an interest bearing escrow account. (Aloha’s Motion for Emergency Relief Page 4)
5. Windward Homes takes great exception to both statements. Windward Homes’ actions in this matter speak volumes to their lack of a “peripatetic” nature. Windward Homes is an established, well-respected, financially secure builder in Pasco County who has hired counsel to vigorously pursue this matter to the full extent of the law.
6. Additionally, Windward Homes vehemently objects to paying Aloha any monies until this matter is resolved. It is Windward Homes’ position that the PSC did not have the authority to permit Aloha to backbill, or, in reality, retroactively charge developers for a fee that was not lawfully in effect during that particular time period. In light of Windward Homes’ active participation in this matter, Aloha’s risk of not receiving its monies in the event that it should prevail is minimal.
7. Furthermore, reviewing this matter from an equitable perspective, who better to bear the risk of loss than Aloha? Aloha created this matter

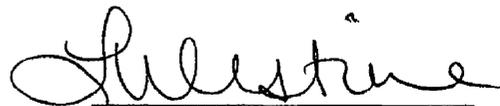
through its procrastination and failure to abide by a previous order of the PSC. Ironically, it is now Aloha petitioning the PSC to act with great haste in order to protect itself from the result of its own lack of urgency.

WHEREFORE, for the reasons stated above, Windward Homes respectfully requests that this Commission deny Aloha's Motion for Emergency Relief.

Respectfully submitted this 16th day of October, 2002 by:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response of Windward Homes to Aloha Utilities, Inc.'s Motion for Emergency Relief was sent via U. S. Mail on this 16th day of October, 2002 to the following:

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