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October 7, 2002

VIA HAND DELIVERY

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COMMISSION
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Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0800

Re: Docket No. 020413-SU - Initiation of Show Cause Proceedings against Aloha Utilities, Inc. for failure to charge approved service availability charges in violation of Order PSC-01-0326-FOF-SU and Section 367.091, F.S.

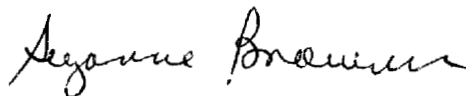
Dear Ms. Bayo:

Attached please find the original and fifteen copies of Aloha Utilities, Inc.'s Motion for Emergency Relief to be filed in the above-styled docket. Also attached is a copy to be stamped and returned to our office.

Should you have questions or need any additional information, please contact me.

Thank you for your assistance in this matter.

Very truly yours,



Suzanne Brownless
Attorney for Aloha Utilities, Inc.

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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) DOCKET NO. 020413-SU
 charges, in violation of Order No.)
 PSC-01-0326-FOF-SU and Section)
 367.091, Florida Statutes.)

ALOHA UTILITIES, INC.'S MOTION
FOR EMERGENCY RELIEF

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

1. In Order PSC-02-1250-SC-SU (Order 02-1250), issued on September 11, 2002, the Commission authorized Aloha to backbill developers and builders who connected to Aloha's system between May 23, 2001 and April 16, 2002 in the amount of \$659,547, the amount which Aloha had undercollected for wastewater service availability charges during that time period. [Order 02-1250 at 23.] This portion of Order 02-1250 was issued as Proposed Agency Action (PAA) subject to substantially affected parties filing a protest and request for hearing. [Order 02-1250 at 1-2]

2. Adam Smith Enterprises, Inc. (Adam Smith), Windward Homes (Windward) and Greene Builders, Inc. (Greene), each of whom is a developer in Aloha's service territory who would be backbilled, have filed timely protests and requests for an evidentiary hearing in this docket.¹ Likewise, Aloha timely filed a protest and

¹ Greene Builders, Inc. and Windward Homes filed on September 30, 2002; Adam Smith Enterprises, Inc. filed on October 2, 2002. Protests were required to be filed by close of business on October

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request for evidentiary hearing on the imputation of CIAC for the uncollected service availability charges which should have been collected from May 23, 2001 until April 16, 2002. [Aloha Utilities, Inc.'s Request for Hearing at 3-4] Aloha's request for hearing on the imputation of CIAC was filed subject to withdrawal should no other protests be filed. [Aloha's Request at 3, fn. 3] Since other protests have now been filed regarding the backbilling issue, Aloha's protest will not be withdrawn.

3. In addition to these protests of Order 02-1250, on September 24, 2002, Aloha also requested reconsideration of the Commission's decision to grant intervention to SRK Partnership Holdings, LLC and Benchmark Manmen Corporation (Limited Partners) and clarification of certain portions of Order 02-1250, including the language used by the Commission regarding authorization of backbilling. [Aloha Utilities, Inc.'s Motion For Clarification and Motion For Reconsideration at 1-4, 8-10]

4. It appears from a review of the protests filed by Greene and Windward that neither has raised any disputes of material fact, but rather question the legal authority of the Commission to authorize backbilling. [Greene Petition at 4-15; Windward Petition at 4-15] Adam Smith's petition also raises the Commission's power to authorize backbilling but unlike the petitions of Greene and Windward does appear to identify disputed issues of material fact, e.g., when and under what conditions lots were sold by Adam Smith

2, 2002. [Order 02-1250 at 26]

between May 23, 2001 and April 16, 2002. [Adam Smith Petition at 3-4]²

5. In light of these protests, and the fact that disputed issues of material fact have been raised, the Commission is required by Chapter 120, F.S., and Order 02-1250 to set this matter for an evidentiary hearing. The Commission's calendar is crowded and such a hearing will most likely not be scheduled until early next year with a decision made in the spring of 2003. That being the case, should the Commission affirm its decision to allow backbilling, as Aloha believes it must in order not to violate Aloha's constitutional rights, a period of up to 24 months will have passed between the Commission's vote and May 23, 2001, the date that the Commission believes Aloha should have collected the higher service availability charges set by Order PSC-01-0326-FOF-SU, issued February 6, 2001. Should the Commission's final decision post-hearing be appealed, this 24 months will be extended for another 12-18 months as the appeal works its way to completion and decision. Thus, it is entirely possible that Aloha could, by operation of legal procedures, be estopped from even attempting to collect the undercollected service availability charges at issue in this case for up to 3 1/2 years.

6. Developers are by nature peripatetic. Projects are planned, lots are sold, houses are built and the developer moves


² It also appears that Adam Smith has raised the issue of the effective date of the service availability tariff. [Adam Smith Petition at 4-6]

on. Often in the process, the developer encounters financial difficulties and folds leaving an empty corporate shell stripped of any unencumbered assets. In short, Aloha's ability to actually collect the undercollected service availability fees in question is compromised with every day that passes. Given the fact that a final resolution of the Commission's legal authority to require backbilling and to impute the CIAC associated with the undercollected service availability charges will not be reached quickly, Aloha requests that it be allowed to immediately backbill developers who connected to its system from May 23, 2001 until April 16, 2002 and retain those monies in an escrow account subject to refund at the interest rate borne by the escrow account and otherwise in accord with standard Commission refund procedures. In this way Aloha will be protected from a *de facto* reversal of the Commission's decision in Order 02-1250 authorizing Aloha to backbill developers. This process does not place the developers at greater risk: if they prevail either at the Commission or on appeal, they will recover their money with interest. If they do not ultimately prevail, they will be in exactly the same posture as they would have been absent the filing of a protest of Order 02-1250.

WHEREFORE, for the reasons stated above, Aloha requests that this Commission allow it to immediately backbill developers who connected to its system from May 23, 2001 until April 16, 2002 and retain those monies in an escrow account subject to refund at the interest rate borne by the escrow account and otherwise in accord

with standard Commission refund procedures at the ultimate conclusion of this proceeding, i.e., at the conclusion of any judicial appeal.

Respectfully submitted this 7th day of October, 2002 by:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been provided to the persons listed below by U.S. Mail or (*)Hand Delivery this 7th day of October, 2002:

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c: 3687