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July 24, 2002

Blanca S. Bayo, Director  
Division of Commission Clerk  
And Administrative Services  
Florida Public Service Commission  
Betty Easley Bldg., Room 110  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Via Hand Delivery

RECEIVED FPSC  
JUL 24 AM 11:03  
COMMISSION CLERK

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 No. PSC-01-0326-FOF-SU and Section 367.091, Fla. Stat., in  
Pasco County.

Dear Ms. Bayo:

Enclosed for filing in the above docket, on behalf of SRK Partnership Holdings  
LLC and Benchmark Manmem Corp., which together are the 99.5% owners of a project  
known as the Village at Wyndtree, please find an original and fifteen copies of the  
following:

1. Notice of Appearance; and 07698-02
2. Petition to Intervene. 07699-02

Please acknowledge receipt of the foregoing by stamping the enclosed extra copy  
of this letter and returning same to my attention. Thank you for your assistance.

Sincerely,

*Diane K. Kiesling*  
Diane K. Kiesling

AUS	_____
CAF	_____
CMP	_____
COM	_____
CTR	_____
ECR	_____
GCL	_____
OPC	_____
MMS	_____ Enclosures
SEC	_____
OTH	_____ Hoag

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Initiation of Show Cause Proceedings  
Against Aloha Utilities, Inc., for Failure to  
Charge Approved Service Availability  
Charges in Violation of Order No. PSC-01-  
0326-FOF-SU and Section 367.091, Fla.  
State., in Pasco County.

DOCKET NO. 020413-SU  
Filed July 24, 2002

**PETITION TO INTERVENE**

SRK Partnership Holdings, LLC (SRK), and Benchmark Manmem Corp.  
(Benchmark), hereinafter referred to collectively as the Limited Partners, pursuant to  
Commission Rule 25-22.039, Florida Administrative Code (F.A.C.), Rule 28-106.201,  
F.A.C., Rule 28-106.205, F.A.C., and Chapter 120, Florida Statutes,<sup>1</sup> hereby file their  
petition to intervene in the above-styled docket, which was initiated by the Staff of the  
Florida Public Service Commission (FPSC) on May 10, 2002, against Aloha Utilities,  
Inc. (Aloha).

In summary, the Limited Partners are entitled to intervene in this proceeding for  
the following reasons. Staff filed a recommendation on May 15, 2002, for an Agenda  
Conference on May 21, 2002, wherein Staff recommended as to Issue 2, among other  
things, that the effective date of Aloha's wastewater service availability tariff be  
established as April 16, 2002. The effective date of the tariff has and will determine the  
substantial interests of the Limited Partners because the effective date will affect any  
decision as to the service availability charge for the connection of the Village at  
Wyndtree to the Aloha system, as further set forth in this Petition.

**PROCEDURAL BACKGROUND**

1. The Limited Partners are the combined 99.5% owners of a 288-unit  
apartment complex project in Pasco County in the service territory of Aloha.

<sup>1</sup> All citations herein to the Florida Statutes are to the 2001 edition thereof.

DOCUMENT NUMBER DATE

07699 JUL 24 02

FPSC-COMMISSION CLERK

The Limited Partners names, address, and telephone number are:

SRK Partnership Holdings LLC  
Benchmark Manmem Corp.  
4053 Maple Road  
Amherst, NY 14226-1072  
(716) 833-4986

The Limited Partners first learned of this proceeding on or about June 21, 2002, when the attorney representing the general partner, Village Partners, contacted the Florida Public Service Commission.

2. All pleadings, notices, orders, correspondence, and other communications filed or had in this docket should be served on the following:

Diane K. Kiesling  
Robert Scheffel Wright  
Landers & Parsons, P.A.  
310 West College Avenue (ZIP 32301)  
Post Office Box 271  
Tallahassee, Florida 32302  
Telephone (850) 681-0311  
Telecopier (850) 224-5595

3. Aloha Utilities, Inc., is a Class A water and wastewater utility located in Pasco County, Florida. Aloha's name and address is as follows:

Aloha Utilities, Inc.  
6915 Perrine Ranch Road  
New Port Richey, FL 32655

4. The name and address of the agency affected by this petition and this docket are:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850.

**THE LIMITED PARTNER'S SUBSTANTIAL INTERESTS**

5. As stated above, SRK is a limited partner in the project known as the

Village at Wyndtree (the Project)<sup>2</sup>, holding a 99% interest therein. Benchmark is a special limited partner in the Project, holding a 0.5% interest therein. The general partner is Village Partners, which holds a 0.5% interest in the project.

6. The Project consists of a 288-unit apartment complex and clubhouse in Pasco County, Florida. The engineer on the project inquired of Aloha in December 2000 regarding the fees and charges of Aloha related to the project. By letter dated December 4, 2000, Aloha advised that the project would require fees (service availability charges) for water of \$108,342.00, and for sewer of \$44,811, plus a water meter fee of \$8,175.00, a water deposit of \$5,010.32, a sewer deposit of \$10,912.12, and a connection fee of \$15.00, for a total of \$177,265.44.

7. Apparently, Aloha was the subject of Order No. PSC-01-0326-FOF-SU issued on February 6, 2001, which required Aloha, among other things, to increase its wastewater service availability charges for its Seven Springs system from \$206.75 per equivalent residential connection (ERC) to \$1,650 per ERC and to file appropriate tariffs sheets to reflect the change within 20 days of the order.<sup>3</sup> The tariffs sheets were due on May 23, 2001. For whatever reason, Aloha did not file amended tariff sheets until on or about March 11, 2002. Based on misrepresentations from Aloha that all developers had been notified of the change by April 16, 2002, Staff administratively approved the amended tariff effective April 16, 2002.

8. The Project secured its funding from the United States Department of Housing and Urban Development (HUD) and was billed by and paid to Aloha in October

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<sup>2</sup> For business purposes, the Project has recently been renamed Palms at Wyndtree.

<sup>3</sup> Aloha and the Office of Public Counsel (OPC) filed for reconsideration of that order. The Petitions for Reconsideration were disposed of by Order No. PSC-01-0961-FOF-SU, issued on April 18, 2001, which affirmed the increase in the service availability charges for wastewater approved by Order No. PSC-01-0326-FOF-SU.

2001 the sum of \$177,265.44, the total amount previously specified in Aloha's December 4, 2000 letter. Construction proceeded on the project and on June 14, 2002, the engineer of the project formally requested that Aloha permanently connect the project to Aloha's Seven Springs water and wastewater system.

9. In response to that request, Aloha, **FOR THE VERY FIRST TIME**, told the engineer that the wastewater service availability charge had increased and that any comments concerning the charge should be addressed to the FPSC. The method by which this information was conveyed was by Aloha faxing a copy of a letter purportedly sent to the general partner on May 16, 2002, related to the increase in the service availability charges. The general partner and all others connected with the Project specifically deny ever receiving any such letter prior to June 17, 2002, when a copy of it was faxed to the engineer. Aloha refused to make the connection until it received an additional approximately \$500,000 dollars. Aloha was specifically aware that tenants had signed leases and were waiting to move into the apartments on June 17, 2002.

10. Counsel for the general partner sent a letter to Aloha on June 21, 2002, questioning the applicability of the higher charge and advising Aloha of its failure to notice anyone connected with the project about the higher charge until June 17, 2002. That letter also advised Aloha that tenants were waiting to move in and were being put up in hotels pending resolution of the matter. Aloha was requested to make the connection while the matter was being resolved. However, Aloha refused to make the connection until the full amount was received.

11. The engineer for the project attempted by letter to Aloha dated June 24, 2002, to resolve the matter. That letter questioned the method of computation and

suggested that the correct calculation, assuming that any additional service availability charges were due, would be \$307,167.00 (\$351,978 - \$44,811 previously paid). The letter further offered to pay that amount in six monthly payments beginning on July 1, 2002, with adjustments to be made if the amount was determined to be incorrect. In response, Aloha again refused to connect the Project until the full amount was paid and Aloha disputed the calculations in the engineer's letter.

12. In an effort to mitigate damages because of the tenants with leases who were waiting to move into the units, on July 2, 2002, under protest, the limited partner, SRK, paid Aloha \$430,389.00 and requested immediate connection.

13. On July 10, 2002, Aloha, through counsel, again refused to make the connection based on a decision by Aloha to classify the Project under "all other connections" and to calculate the service availability charge at \$12.79 per gallon times projected usage of 58,500 gallon per day for a total of \$748,215 minus amounts previously paid, for an additional balance due of \$273,015.

14. The general partner and the engineer revised the Department of Environmental Protection (DEP) certifications and reduced the projected usage for the Project to 37,152 gallons per day for the apartments and 900 gallons per day for the clubhouse. Based on that reduction, Aloha recalculated the balance due by multiplying 38,052 times \$12.79 for a total service availability charge of \$486,685 minus the \$475,200 already paid for a balance of \$11,485. That balance was paid and Aloha finally connected the Project on July 18, 2002.

15. Staff previously recommended in this docket on May 15, 2002, in regard to Issue 2, that the effective date of the revised wastewater service availability charge

tariff should be April 16, 2002, because Aloha had “substantially completed noticing on April 16, 2002.” Aloha had further represented to the Staff that on or about April 16, 2002, it had sent letters to all persons who had outstanding prepaid connections who would be assessed the higher rate upon attempting to connect to the Aloha system.

16. As stated herein, Aloha never notified anyone connected with the Project about this increase until June 17, 2002, after connection had been requested. The difference between the amounts that had been prepaid for connections at the Project and the amount finally paid under protest is almost \$500,000. Upon information and belief, the amount Aloha had failed to collect between May 23, 2001, and April 16, 2002, from others besides this Project is approximately \$600,000. Aloha’s failure to notify anyone connected with this project can hardly be deemed “substantially completed notice” when the amount due from this one developer is approximately equal to the amounts due from all other developers.

17. The developers of the Village at Wyndtree relied on a) Aloha’s erroneous representations about the service availability charges in October 2001 when the charges were paid; b) the outdated tariff sheet on file until Staff approved the revised tariff sheet in April of 2002 based on Aloha’s misrepresentations; and c) the fact that Aloha did not notify them of the change in the tariff until June 17, 2002, after connection had been requested.

18. As to Issue 2, the Staff’s May 15, 2002, filing recommends that Aloha be required to file a replacement tariff sheet reflecting an effective date of April 16, 2002. The date of April 16, 2002 is selected because Aloha allegedly substantially completed noticing on April 16, 2002. As previously shown, Aloha did not notify anyone connected

with the Project about the change until June 17, 2002, and clearly this project can be deemed to be a substantial project based on the significant and material increase in fees for a project that was completed and ready for connection.

19. Rule 25-30.475(2), F.A.C., provides that the effective date of an approved tariff for a non-recurring charges (such as service availability charges) shall be “for service rendered or connections made on or after the stamped approval date on the tariff sheets provided customers have received notice.” This provision goes on to state: “The tariff sheets will be approved upon staff’s verification that the tariffs are consistent with the Commission’s decision and that the proposed customer notice is adequate.”

20. Because the Limited Partners’ potential liability for the increased service availability charge is impacted by the effective date of the tariff, and because the effective date of the revised tariff is an issue in this case, the Limited Partners’ substantial interests will be affected through this proceeding. If the effective date of the tariff is after the Project requested and should have received connection (but for Aloha’s refusal to connect based on its demand for almost \$500,000), then Aloha cannot collect the increased charges. Based on Aloha’s failure to provide notice, refusal to connect even though Aloha had full knowledge that tenants were ready to move into the apartments, and coercive demand for full payment prior to connection (under the facts of this case), the Limited Partners assert that the effective date of the revised tariff should be on or after July 19, 2002.

**STATUTES AND RULES THAT ENTITLE  
THE LIMITED PARTNERS TO RELIEF**

21. The Limited Partners are entitled to intervene in this proceeding by Rules 25-22.039, 28-106.201, and 28-106.205, F.A.C., and by Chapter 120, Florida Statutes,



because the Commission's decision(s) herein will determine the Limited Partners' substantial interests. The statutes and rules that provide the Commission with the authority to grant the substantive relief identified herein include the following: Chapter 367, Florida Statutes; and Rule 25-30.475, F.A.C.

### **MATERIAL FACTS**

22. The Limited Partners adopt by reference the material facts set forth in paragraphs 5-20 above.

### **DISPUTED ISSUES OF MATERIAL FACT**

23. The disputed issues of material fact may include the following:
- a. When did Aloha provide notice to the Limited Partners or anyone else authorized to accept notice on behalf of the Project that the service availability charges had been increased?
  - b. Whether Aloha wrongly refused to connect service within a reasonable time after June 14, 2002.
  - c. When did the Project request that service be connected?
  - d. Whether Aloha was in violation of the Commission's orders and rules by failing to advise anyone connected with the Project of the PSC's order increasing the service availability charges when Aloha accepted payment of the service availability charges specified by Aloha in October 2001.
  - e. Whether Aloha had a valid tariff in place on June 14, 2002, when the Project's service connection was requested.
  - f. Whether Aloha's coercive demand for almost \$500,000 prior to connection of service was pursuant to a valid tariff.
  - g. On what date did Aloha substantially complete notice to all developers affected by the proposed revised tariff?
  - h. Was the notice provided by Aloha to the Project, the Limited Partners, or anyone else authorized to accept notice on behalf of the Project, reasonable and accurate?

- i. Whether the effective date of the revised tariff should be on or after July 19, 2002.
- j. Whether the effective date of the revised tariff should be on or after June 17, 2002.

The Limited Partners reserve their right to raise additional issues as this proceeding goes forward.

#### **ULTIMATE FACTS ALLEGED**

24. The Limited Partners allege the following ultimate facts that entitle them to relief as prayed herein:

- a. The Limited Partners did not receive actual or constructive notice of the increase in service availability charges until June 17, 2002;
- b. The Project had already requested connection on June 14, 2002, prior to receiving notice of the increase in service availability charges;
- c. Aloha did not have a valid tariff in place on June 14, 2002;
- d. Aloha wrongfully refused to connect service to the project because it did not have a valid tariff in place at the time it refused to make the connection;
- e. The effective date of the revised tariff should be after on or after July 19, 2002, when Aloha finally connected the Project after the Limited Partners paid almost \$500,000 under duress.
- f. The Project had paid all amounts due and owing to Aloha, *i.e.*, \$177,265.44, for connection and availability charges in October 2001.

#### **RELIEF REQUESTED**

24. The Limited Partners' allegations above are sufficient to establish their right to intervene in this proceeding pursuant to Commission Rule 25-22.039, F.A.C., Rule 28-106.201, F.A.C., Rule 28-106.205, F.A.C., and Chapter 120, Florida Statutes. The Limited Partners' substantial interests are affected and will be determined in this

proceeding. Standing to participate in administrative proceedings requires a demonstration that the intervenor meets the two-pronged test first announced in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). That two-pronged test requires allegations that the intervenor will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing and that his substantial injury is of a type or nature which the proceeding is designed to protect. Agrico, 406 So.2d at 482. The first prong deals with the degree of injury and the second deals with the nature of the injury. The injury must be in a manner beyond the injury the general public might sustain. St. Joe Paper v. DCA, 657 So.2d 27 (Fla. 1<sup>st</sup> DCA 1995). Here, the Limited Partners has clearly alleged that they will suffer a substantial injury if Aloha is permitted to violate Chapter 367 and the Rules and Orders of the FPSC with impunity and if the effective date of the revised tariff is established to be prior to July 19, 2002.

25. Accordingly, the Limited Partners pray that the Commission will enter its order **GRANTING** this Petition to Intervene.

26. The Limited Partners seek affirmative relief from this Commission establishing the effective date of the revised Service Availability Charge tariff as being on or after July 19, 2002.

### **CONCLUSION**

WHEREFORE, for the reasons set forth above, SRK Partnership Holdings LLC and Benchmark Manmem Corp., as the Limited Partners, respectfully ask the Commission:

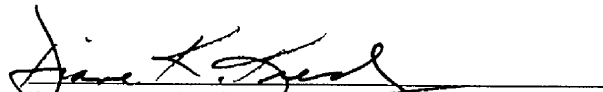
1. to issue its order GRANTING this Petition to Intervene in this proceeding;

2. to establish the effective date of Aloha Utilities, Inc.'s, revised wastewater service availability charge tariff as on or after July 19, 2002; and

3. to order such other relief as the Commission deems appropriate.

Respectfully submitted this 24th day of July, 2002.

Respectfully submitted,



Diane K. Kiesling  
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Robert Scheffel Wright  
Florida Bar No. 0966721  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery (\*), or U.S. Mail, on this 24<sup>th</sup> day of July 2002, to the following:

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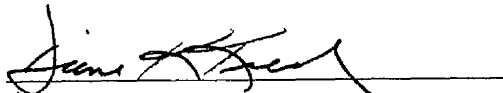
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