

STATE OF FLORIDA

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DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770 (CLERK)
(850) 413-6330 (ADMIN)

Public Service Commission

February 13, 2003

ORIGINAL

Ms. Suzanne Brownless
Attorney at Law
1975 Buford Boulevard
Tallahassee, Florida 32308

Re: Docket No. 020413-SU - 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, F.S.

Dear Ms. Brownless:

Enclosed is the original Escrow Agreement made between AmSouth Bank, the Florida Public Service Commission, and Aloha Utilities, Inc. The agreement has been signed by Blanca S. Bayó, the Commission's designated agent for such matters, and is being returned to you so you may obtain signatures from Stephen Watford, Aloha president, and the bank's representative.

Please call if you require further assistance.

Sincerely,

Hong Wang, Chief Deputy Commission Clerk
Bureau of Records and Hearing Services

AUS
CAF
CMP
COM
CTR
ECR
GCL
OPC
MMS
SEC
OTH

Enclosure
cc: Rosanne Gervasi, Office of the General Counsel

RECORDS\020413\escrowletter.wpd

FPSC-COMMISSION CLERK
DOCUMENT NUMBER-DATE
01472 FEB 13 03

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is made by and between AmSouth Bank (the "Bank"), the Florida Public Service Commission ("FPSC"), and Aloha Utilities, Inc. (the "Utility"), a Florida corporation, upon the following terms, conditions and considerations:

WITNESSETH:

WHEREAS, Aloha Utilities, Inc. filed an application for increased wastewater rates for its Seven Springs system on April 4, 2000 and;

WHEREAS, the Florida Public Service Commission, in addition to granting an increase in wastewater rates also ordered an increase in wastewater service availability charges by issuing Order PSC-01-0326-FOF-SU on February 6, 2001 and:

WHEREAS, the Utility inadvertently failed to file a revised tariff implementing the increased wastewater service availability rates in May of 2002, which lead to the initiation of Docket No. 020413-SU, show cause proceedings for failure to charge approved service availability charges in violation of Order No. PSC-01-0326-FOF-SU and Section 367.091, F.S., and;

WHEREAS, the Commission issued a show cause order, Order PSC-02-1250-SC-SU, on September 11, 2002, ordering the Utility to show cause, imputing CIAC for the uncollected wastewater service availability charges to the Utility and allowing the Utility to backbill developers and builders for these uncollected service availability charges, and;

WHEREAS, Adam Smith Enterprises, Inc. has timely protested the Utility's ability to backbill the uncollected service availability charges and requested a hearing on same, and :

WHEREAS, the Utility requested, and was granted, the ability to collect the service availability charges it should have collected from May 23, 2001 until April 16, 2002 and as security to guarantee the amount collected subject to refund with interest the Utility has been required to establish an escrow agreement with an independent financial institution and;

WHEREAS, the Bank has agreed to hold such funds in an interest bearing account, the parties agree as follows:

1. The foregoing representations are true and correct.
2. The full amount backbilled developers and builders for connections made between May 23, 2001 and April 16, 2002 by the Utility shall be deposited by the Utility in an escrow account held by the Bank within seven (7) days of receipt.
3. The escrow account shall bear interest at the prevailing rate.

4. No funds will be withdrawn from the escrow account without the signature of both the Director of the Commission Clerk and Administrative Services of the FPSC and the President of the Utility. Signature cards executed by the Director of the Commission Clerk and Administrative Services of the FPSC and the President of the Utility shall designate the appropriate authorized signature for each.

5. The Bank shall forward regular monthly statements (including canceled checks) to the Utility and shall mail a copy of the monthly account statement to the FPSC. Attention: Blanca S. Bayo, Director, Commission Clerk and Administrative Services, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0850.

6. The Bank may, without reason, withdraw from this Agreement upon thirty (30) days written notice to the FPSC and to the Utility.

7. The Utility shall indemnify and hold the Bank harmless from any claim, demand or loss suffered by the Bank, and from the cost thereof (including court costs and attorney fees for negotiation, trial and appeal).

8. This escrow account is established at the direction of the Florida Public Service Commission pursuant to §§367.011 and 367.101, Florida Statutes, in the event that the Utility, after hearing, is not allowed to backbill developers and builders for wastewater service availability rates not fully collected from May 23, 2001 until April 16, 2002. Pursuant to Consentino v. Elson, 263 So.2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.

9. Information concerning the escrow account shall be available from the Bank to the FPSC and its representatives at all times.

10. If a refund is required, all interest earned by the escrow account shall be distributed to the appropriate developers. If a refund is not required, the interest earned by the escrow account shall revert to the Utility.

THIS AGREEMENT shall become effective and binding upon all parties upon the date that it becomes executed by all parties.

ALOHA UTILITIES, INC.

By: _____
Stephen Watford, President

AMSOUTH BANK

By: _____

FLORIDA PUBLIC SERVICE COMMISSION

By: Blanca Bayo
Blanca Bayo, Director
Commission Clerk and Administrative
Services

c:3759

CCA Official Filing:

2/11/03***3:04 PM*****Kay Flynn*****1**

Kay Flynn

From: Kay Flynn
Sent: Tuesday, February 11, 2003 3:04 PM
To: Rosanne Gervasi
Cc: Blanca Bayo
Subject: RE: 020413-SU - Aloha escrow agreement

Thanks, Rosanne. I'll have it signed and back to Suzanne today if possible!

-----Original Message-----

From: Rosanne Gervasi
Sent: Tuesday, February 11, 2003 2:54 PM
To: Kay Flynn
Subject: RE: 020413-SU - Aloha escrow agreement

Kay, I have reviewed the escrow agreement. It complies with the Commission order and is OK for Blanca to sign. Thanks for checking with me.

-----Original Message-----

From: Kay Flynn
Sent: Tuesday, February 11, 2003 2:46 PM
To: Rosanne Gervasi
Cc: Blanca Bayo
Subject: 020413-SU - Aloha escrow agreement

Rosanne, per our conversation, I'm faxing you a copy of the escrow agreement submitted on 2/10 by Suzanne Brownless. Please review and advise by response to this e-mail if agreement is OK and can be signed by Blanca.

Thanks.

Kay

SUZANNE BROWNLESS, P. A.

ATTORNEY AT LAW
1975 Buford Boulevard
Tallahassee, Florida 32308

ADMINISTRATIVE LAW
GOVERNMENTAL LAW
PUBLIC UTILITY LAW

TELEPHONE (850) 877-5200
TELECOPIER (850) 878-0090

February 12, 2003

VIA HAND DELIVERY

COMMISSION
CLERK

03 FEB 12 PM 3:35

RECEIVED-FPSC

Ms. Blanca Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

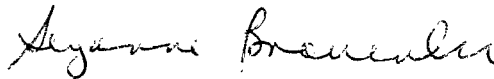
RE: Docket No. 020413-SU
In re: Initiation of show cause proceedings against Aloha Utilities, Inc. in Pasco
County for failure to charge approved service availability charges in violation of
Order No. PSC-01-0326-FOF-SU and Section 367.091, F.S.

Dear Ms. Bayo:

Attached please find an Escrow Agreement related to the backbilling of wastewater
service availability fees for Aloha Utilities, Inc. (Aloha) to be executed by you on behalf of the
Florida Public Service Commission. This is the same agreement that was previously provided to
the Commission on February 10, 2003 for your signature.

Upon your review and signature, please contact our office and we will provide the
original to Mr. Watford, the president of Aloha, to be filed with AmSouth Bank.

Very truly yours,



Suzanne Brownless
Attorney for Aloha Utilities, Inc.

c: 3793
cc: Steve Watford

RECEIVED & FILED

R. V. N.
FPSC-BUREAU OF RECORDS