

STATE OF FLORIDA

COMMISSIONERS
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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 25, 2003

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 paperwork to be returned to AmSouth Bank. This paperwork is concerned with the Escrow Agreement made between AmSouth, the Florida Public Service Commission, and Aloha Utilities, Inc. The paperwork has been signed by Blanca S. Bayó, the Commission's designated agent for such matters, pursuant to your request of February 24.

Please call if you require further assistance.

Sincerely,

Handwritten signature of Kay Flynn in cursive.

Kay Flynn, Chief
Bureau of Records and Hearing Services

Enclosure

cc: Rosanne Gervasi, Office of the General Counsel

I:\RECORDS\020413\escrowletter2.wpd

DOCUMENT NUMBER-DATE

01898 FEB 25 03

FPCO-COMMISSION CLERK

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 24, 2003

VIA HAND DELIVERY

COMMISSION
CLERK

03 FEB 24 PM 2:30

RECEIVED-FPSC

Blanca Bayo, Clerk
Division of 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 a copy of the fully executed Escrow Agreement regarding
wastewater service availability fees to be filed in the above docket. Also attached is the
AmSouth Bank paperwork regarding the establishment of the Escrow Account which must be
signed by you on behalf of the Commission as indicated.

Upon your review and signature, please contact our office and we will provide the
originals to Mr. Watford, president of Aloha, to be filed with AmSouth Bank. Should you have
any questions or need any additional information, please contact me.

Very truly yours,



Suzanne Brownless
Attorney for Aloha Utilities, Inc.

c: 3795
cc: Steve Watford

CCA Official Filing:

2/24/03***3:00 PM*****Kay Flynn*****1**

Kay Flynn

From: Kay Flynn
Sent: Monday, February 24, 2003 3:00 PM
To: Rosanne Gervasi
Cc: Blanca Bayo
Subject: RE: escrow matter in 020413 (Aloha)

They look pretty straightforward.

Thanks!

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

From: Rosanne Gervasi
Sent: Monday, February 24, 2003 2:58 PM
To: Kay Flynn
Subject: RE: escrow matter in 020413 (Aloha)

no, unless you or Blanca thinks something is weird about them. Thanks for checking.

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

From: Kay Flynn
Sent: Monday, February 24, 2003 2:52 PM
To: Rosanne Gervasi
Cc: Blanca Bayo; Carol Purvis
Subject: escrow matter in 020413 (Aloha)

Rosanne, Suzanne Brownless filed today escrow account forms:

1. Authorization of corporation, partnership, association or other entity to utilize deposit or fee-based services and
2. Account package (non-personal checking/savings services) (2 of these)

from AmSouth Bank associated with the escrow agreement Blanca signed week before last. Do you need to see the forms before Blanca signs them?

Kay


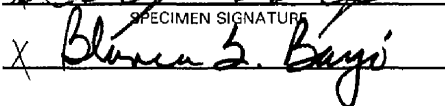


**Authorization of Corporation, Partnership, Association or
Other Entity to Utilize Deposit or Fee-Based Services**

At a meeting of the X Board of Directors, _____ Board of Trustees, _____ partners, _____ other (please specify) _____ of Aloha Utilities, Inc. held on the 13th day of February , 2003 , _____, at which a quorum was present, the following resolutions were adopted:

RESOLVED, that Aloha Utilities, Inc. (the "Organization") hereby authorizes AmSouth Bank (the "Bank") to provide the following accounts, products or services as indicated below; and that the following resolutions shall remain in full force and effect until written notice of their amendment or rescission shall have been received by the Bank, and the receipt of said notice shall not affect any action taken by the Bank prior thereto;

RESOLVED, that the Bank be named as a depository of the Organization and, in the case of all depository accounts on which checks, drafts, and/or notes may be written as provided in the Rules and Regulations of the Bank with respect to that type of account as now in force or as may be amended from time to time by the bank, the funds deposited with the bank may be withdrawn upon a written check, draft, note or order of the Organization signed by any _____ of the following:

<u> X </u> <u> Stephen G. Watford </u> <small>NAME</small>	<u> X </u> <u> Aloha Utilities, Inc. </u> <small>TITLE</small>	<u> X </u>  <small>SPECIMEN SIGNATURE</small>
<u> X </u> <u> Blanca S. Bayo </u>	<u> X </u> <u> Fl. Public Service Commission </u>	<u> X </u> 

and countersigned by any _____ of the following:

_____ <small>NAME</small>	_____ <small>TITLE</small>	_____ <small>SPECIMEN SIGNATURE</small>
_____	_____	_____

In the case of depository accounts from which withdrawals may be made upon oral orders as provided in the Rules and Regulations of the Bank with respect to that type of account now in force or as they may be amended from time to time by the Bank, funds deposited with the bank in such accounts may be withdrawn by oral order of any one of the following:

_____ <small>NAME</small>	_____ <small>TITLE</small>
_____	_____

The Bank is authorized to pay checks, drafts, notes or other orders of withdrawal, or to receive the same for credit of, or in payment from the payee, or any other legal holder when so signed, without inquiry into the circumstances or the disposition of their proceeds, whether drawn to the individual order or tendered in payment of individual obligations of the officers above named, or other officers of the Organization, or otherwise. Bank is authorized to supply any endorsement for the organization on any check or other instrument tendered for deposit to this account and it is hereby relieved of any liability in connection with collection of such items which are handled by it without negligence and it shall not be liable for the acts of its agents, subagents or others or for any casualty. Any amount not collected on items deposited to this account may be charged back to this account, including expense incurred, and any other outside expense incurred on account of this account, including reasonable attorneys' fees, may be charged to it.

The Bank is further authorized in the case of depository accounts from which oral orders may be made (including oral orders made by telephone) to honor oral orders (including oral orders made by telephone) in accordance with the Rules and Regulations of the bank with respect to that type of account or telephone transfers as now in force and as they may be amended from time to time by the Bank.

RESOLVED, that since the bank has no way of determining the validity of checks or other written orders bearing facsimile signatures, the Organization hereby releases the Bank from any liability for unauthorized use of the Organization's facsimile signature device.

RESOLVED, that if this resolution pertains to an interest bearing checking account, then the Organization hereby certifies that all deposits in the account are held for the benefit of individuals or governmental entities or not-for-profit organizations operated primarily for religious, philanthropic, charitable, educational or other similar purposes.

RESOLVED, that unless specifically modified below, any one of the above signatories is authorized to enter into agreements with the Bank and to obtain any and all products or services offered by the Bank now or at any time hereafter and to do any and all other acts required for the Organization to obtain these products or services. These products and services include, but are not limited to, Business Checkcard, safe deposit box services, night depository and safekeeping services, Treasury Management services, all services effected through Automated Clearing House process (also known as ACH), Money Transfer and Wire Transfer Services.

The following DDA signatories named above are specifically excluded from authority to enter into these agreements:

None

If none are excluded, write "None"

Even though they are not DDA signatories, the following individuals are specifically authorized to enter into these agreements:

None

If none are excluded, write "None"

Even though such party may or may not be a DDA signatory, any individual having the following title(s) shall be authorized to enter into those agreements:

None

If none are excluded, write "None"

The bank may rely upon a person's representation that he/she holds the title indicated.

I hereby certify that I am the duly elected and authorized President of the Organization and that I have the authority to make the certifications contained herein.

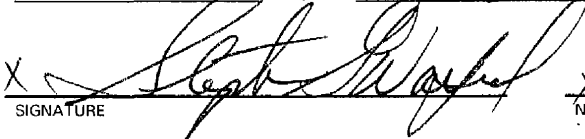
I further certify that the foregoing is a complete and correct copy of the resolutions duly adopted and recorded as a part of the minutes of said meeting and that they affirmatively appear in and as a part of said minutes.

I further certify that there is no provision in the articles of incorporation, articles of association, charter, partnership agreement, bylaws or any other governing document of the Organization restricting the power of the group passing the foregoing resolutions from so passing said resolutions, and that the same are in conformity with the provisions of said governing documents.

I further certify that the specimen signatures appearing above are the true signatures of the persons named herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Organization (if applicable) this

17th day of February, 2003.

X 

SIGNATURE

X Stephen G. Watford

NAME (PLEASE PRINT)

FOR BANK USE ONLY

ACCOUNT NAME	ACCOUNT NUMBER
--------------	----------------



Account Package

(Non-Personal Checking/Savings Services)

Florida	HOLIDAY	00322
BANK NAME	BRANCH NAME	BRANCH NO.
ALOHA UTILITIES INC ESCROW ACCOUNT		591299038
CUSTOMER NAME		FEDERAL TAX ID#
6915 PERRINE RANCH RD NEW PORT RICHEY, FL 34655-3904		
CUSTOMER ADDRESS		

CUSTOMER E-MAIL ADDRESS(ES)

727-372-0115	02/14/2003	F018687	322MG
PRIMARY PHONE	SECONDARY PHONE	OPEN DATE	OFFICER NUMBER

Please check appropriate box

<input type="checkbox"/> Individual/Sole Proprietor	<input checked="" type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Other
---	---	--------------------------------------	--------------------------------

If this account is a proprietorship or partnership account, the person(s) signing below: (a) authorize the bank named above (the "Bank") to open the account noted below in the name of the proprietorship/partnership listed on this application for the account, (b) agrees to be bound by the terms of the Bank's customer agreement, rules and regulations, and schedule of charges, as now in force and as amended from time to time hereafter, related to the account noted below; and (c) acknowledges receipt of a copy of the applicable customer agreement now in force.

If this is a partnership account, it is also agreed that: (a) each of the persons signing below is a general and not a limited partner, unless otherwise noted on this form and other documents which may be required, and that there are no other partners, (b) each signator indicated below has full authority to represent, sign for, and bind the partnership, and (c) the authority of each partner, unless otherwise indicated, shall be binding upon the partnership and every member thereof, notwithstanding any death, dissolution, or other circumstances until written notice of revocation of such authority from one of them shall have been received by the Bank

If this account is a corporation or organization account, it is agreed that the Certified copy of Resolution of the Board of Directors shall be a part of the applicable customer agreement for the account noted below. By signing below, the authorized signators for such an account: (a) agree that the corporation or organization shall be bound by the terms of the Bank's customer agreement, rules and regulations, and schedule of charges, as now in force and as amended from time to time hereafter, related to the account noted below, and (b) acknowledges receipt of a copy of the applicable customer agreement now in force.

If this account is established by a Limited Liability Company (LLC) it is agreed that: (a) the party or parties named below serve as a manager or member of the LLC or have been expressly appointed in writing by a manager or member of the LLC to handle banking transactions for the LLC; (b) each party has full authority to represent, sign for and bind the LLC; (c) the authority of each person so named shall continue until written notice of revocation of such authority in form and content satisfactory to the Bank shall have been received by the Bank and (d) the LLC acknowledges receipt of and agrees to be bound by the Bank's customer agreement, rules and regulations and pricing schedules as are now in force and as may be amended from time to time in the future.

If this account is a Public Funds Account held by a public entity, it is also agreed that each of the persons signing below has been authorized by the public entity to act for it in opening this account and in making the following representations: (a) the public entity agrees to be bound by the rules of the Bank in relation to the AmSouth Public Funds Account as now in force and as they may be amended from time to time hereafter and hereby acknowledges receipt of a copy of the applicable rules as now in force; and (b) the public entity hereby certifies: (i) that its funds are derived solely from tax dollars and (ii) that it is a governmental entity or an organization not operated for profit and operated primarily for educational or other similar purposes.

The Bank is authorized to pay checks, drafts, notes or other orders of withdrawal, or to receive the same for credit of, or in payment from the payee, or any other legal holder when so signed, without inquiry into the circumstances of issue or the disposition of their proceeds, whether drawn to the individual order or tendered in payment of individual obligations of the person(s) signing below or otherwise. The Bank is authorized to supply any endorsement for the proprietorship/partnership/corporation/organization/public entity on any check or other instrument tendered for deposit to this account and it is hereby relieved of any liability in connection with collection of such items which are handled by it without negligence and it shall not be liable for the acts of its agents, sub-agents or others or for any casualty. Any amount not collected on items deposited to this account may be charged back to this account, including expenses incurred, and any other outside expense incurred on account of this account, including reasonable attorneys' fees, may be charged to it. All operating fees not collected may also be charged back to this account or, if grouped, the account to charge.

Signature Card

Account ALOHA UTILITIES INC ESCROW ACCOUNT Title 6915 PERRINE RANCH RD and NEW PORT RICHEY, FL 34655-3904 Mailing Address	_____ Account Number DA RelationshiPlus - Business Money Market _____ Account Type
 	Type or Print Name & Title Stephen G. Watford Aloha Utilities, Inc. Blanca S. Bayo Fl. Public Service Commission
The signature(s) appearing above is/are duly authorized signature(s) of this proprietorship/partnership/corporation/organization/public entity which the Bank will recognize in the payment of funds and the transaction of other business for this account.	
Checks, drafts, acceptance, notes and other transactions must bear Two (2) of the within mentioned signatures	

Thank you for banking with AmSouth!

AMSOUTH Account Package
(Non-Personal Checking/Savings Services)

Florida HOLIDAY 00322
 BANK NAME BRANCH NAME BRANCHING
 ALOHA UTILITIES INC ESCROW ACCOUNT 591299038
 CUSTOMER NAME FEDERAL TAX ID#
 6915 PERRINE RANCH RD NEW PORT RICHEY, FL 34655-3904
 CUSTOMER ADDRESS
 CUSTOMER E MAIL ADDRESS(ES)
 727-372-0115 02/14/2003 F018687 322MG
 PRIMARY PHONE SECONDARY PHONE OPEN DATE OPENED BY OFFICER NUMBER

Please check appropriate box Individual/Sole Proprietor Corporation Partnership Other

If this account is a proprietorship or partnership account, the person(s) signing below (a) authorize the bank named above (the "Bank") to open the account noted below in the name of the proprietorship/partnership listed on this application for the account (b) agree to be bound by the terms of the Bank's customer agreement, rules and regulations and schedule of charges, as now in force and as amended from time to time hereafter, related to the account noted below, and (c) acknowledges receipt of a copy of the applicable customer agreement now in force.

If this is a partnership account, it is also agreed that (a) each of the persons signing below is a general and not a limited partner, unless otherwise noted on this form and other documents which may be required, and that there are no other partners, (b) each signator indicated below has full authority to represent, sign for, and bind the partnership, and (c) the authority of each partner, unless otherwise indicated, shall be binding upon the partnership and every member thereof, notwithstanding any death, dissolution or other circumstances until written notice of revocation of such authority from one of them shall have been received by the Bank.

If this account is a corporation or organization account, it is agreed that the Certified copy of Resolution of the Board of Directors shall be a part of the applicable customer agreement for the account noted below. By signing below, the authorized signators for such an account (a) agree that the corporation or organization shall be bound by the terms of the Bank's customer agreement, rules and regulations, and schedule of charges, as now in force and as amended from time to time hereafter, related to the account noted below, and (b) acknowledges receipt of a copy of the applicable customer agreement now in force.

If this account is established by a Limited Liability Company (LLC) it is agreed that (a) the party or parties named below serve as a manager or member of the LLC or have been expressly appointed in writing by a manager or member of the LLC to handle banking transactions for the LLC, (b) each party has full authority to represent, sign for and bind the LLC, (c) the authority of each person so named shall continue until written notice of revocation of such authority in form and content satisfactory to the Bank shall have been received by the Bank and (d) the LLC acknowledges receipt of and agrees to be bound by the Bank's customer agreement, rules and regulations and pricing schedules as are now in force and as may be amended from time to time in the future.

If this account is a Public Funds Account held by a public entity, it is also agreed that each of the persons signing below has been authorized by the public entity to act for it in opening this account and in making the following representations: (a) the public entity agrees to be bound by the rules of the Bank in relation to the AmSouth Public Funds Account as now in force and as they may be amended from time to time hereafter and hereby acknowledges receipt of a copy of the applicable rules as now in force, and (b) the public entity hereby certifies (i) that its funds are derived solely from tax dollars and (ii) that it is a governmental entity or an organization not operated for profit and operated primarily for educational or other similar purposes.

The Bank is authorized to pay checks, drafts, notes or other orders of withdrawal, or to receive the same for credit of, or in payment from the payee, or any other legal holder when so signed without inquiry into the circumstances of issue or the disposition of their proceeds, whether drawn to the individual order or tendered in payment of individual obligations of the person(s) signing below or otherwise. The Bank is authorized to supply any endorsement for the proprietorship/partnership/corporation/organization/public entity on any check or other instrument tendered for deposit to the account and it is hereby released of any liability in connection with collection of such items, which are handled by it without negligence and it shall not be liable for the acts of its agents, sub-agents or others or for any casualty. Any amount not collected on items deposited to this account may be charged back to this account, including expenses incurred and any other outside expense incurred on account of this account, including reasonable attorneys' fees, may be charged to it. All operating fees not collected may also be charged back to this account or, if grouped, the account to charge.

Signature Card

Account Title and Mailing Address	ALPHA UTILITIES INC ESCROW ACCOUNT 6915 PERRINE RANCH RD NEW PORT RICHEY, FL 34655-3904	Account Number DA_RelationshiPlus - Business Money Market Account Type
Signature	Type or Print Name & Title	
	Stephen G. Watford Aloha Utilities, Inc.	
	Blanca S. Bayo Fl. Public Service Commission	
The signature(s) appearing above is/are duly authorized signature(s) of this proprietorship/partnership/corporation/organization/public entity which the Bank will recognize in the payment of funds and the transaction of other business for this account.		
Checks, drafts, acceptance, notes and other transactions must bear <u>Two (2)</u> of the within mentioned signatures		

Thank you for banking with AmSouth!

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).

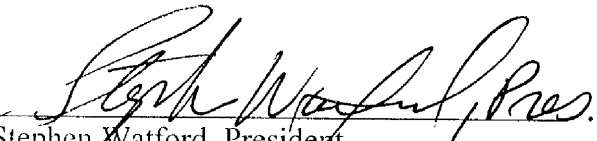
8. This escrow account is established at the direction of the Florida Public Service Commission pursuant to §§367.011 and 367.101, Florida Statutes, in the event that the Utility, after hearing, is not allowed to backbill developers and builders for wastewater service availability rates not fully collected 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, Director
Commission Clerk and Administrative
Services

c:3759