

ORIGINAL

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From: Shannon Bennett [sbennett@groneklatham.com]  
 Sent: Wednesday, July 12, 2006 4:23 PM  
 To: Filings@psc.state.fl.us  
 Cc: Daniel Osterndorf  
 Subject: In Re: Application of Alafaya Utilities, Inc. for Amendment to Wastewater Certificate No. 379-S in Seminole County, FL  
 Attachments: Response in Opposition to Motion to Dismiss.pdf

Attached please find Bank of America Strategic Solutions, Inc.'s Response in Opposition to Motion to Dismiss Objection to Alafaya Utilities, Inc.'s Application for Amendment to Wastewater Certificate No. 379-S for filing in docket number 060400-SU.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of ALAFAYA  
UTILITIES, INC. for amendment to  
Wastewater Certificate No. 379-S in Seminole  
County, Florida

Docket No. 060400-SU

**RESPONSE IN OPPOSITION TO MOTION TO DISMISS OBJECTION TO ALAFAYA  
UTILITIES, INC.'S APPLICATION FOR AMENDMENT TO WASTEWATER  
CERTIFICATE NO. 379-S**

BANC OF AMERICA STRATEGIC SOLUTIONS, INC. ("BOA"), by counsel, hereby files its Response in Opposition to ALAFAYA UTILITIES, INC. ("Applicant's") Motion to Dismiss BOA's Objection to the May 23, 2006, Application for Amendment to Wastewater Certificate No. 379-S, and states:

1. BOA is the current owner of the Twin Rivers Golf Course ("Twin Rivers"), which is located in Seminole County, Florida. BOA became owner of Twin Rivers on or about May 2005. Twin Rivers is an eighteen (18) hole public golf course that has operated under various names since at least the early 1980's.

2. Applicant is a wastewater utility provider in Seminole County, Florida.

3. BOA is the successor in interest to The Anden Group of Florida, a Florida general partnership, who is a former owner of Twin Rivers and was the original Lessor under a Lease and Effluent Disposal Agreement entered into with Applicant on or about November 8, 1988 (hereafter the "Agreement"). BOA is a customer as defined in Section 25-30.210, *Florida Administrative Code*.

4. On or about May 23, 2006, Applicant filed its Application for Amendment to Wastewater Certificate No. 379-S (the "Application"), which requests that this Commission

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Amend Wastewater Certificate 379-S, to allow Applicant to extend its certified wastewater service area in Seminole County, Florida, to new customers.

5. Specifically, the Application provides that the Applicant entered into a Developer Agreement dated January 13, 2005, wherein the Applicant agreed to provide wastewater service and reclaimed water service to a residential development in Seminole County, Florida, to be constructed by River Pine Estates, LLC. *See Application, paragraph 3 and Exhibit "B"*.

6. The Application further provides that the River Pine Estates consists of eleven (11) ERC's, but that the Extension Area has the proposed capacity to serve up to one hundred (100) wastewater ERC's.

7. Applicant moves to dismiss BOA's Objection to the Application for the following reasons: (1) Applicant has no obligation to provide any quantity of effluent to BOA; (2) BOA's interests are not affected by the Application for extension of service; and (3) Applicant proposes to construct a 1 million gallon storage tank to increase its storage capacity of treated effluent and drill a well. BOA will respond to each of these unsubstantiated assertions individually.

8. As regards Applicant's assertion that it has no obligation to provide effluent in any quantity to BOA, the clear and unambiguous language of the Agreement between the parties refutes this assertion. Under the Agreement, Applicant is required to provide a minimum of 448,000 gallons of effluent per day to BOA.

9. As regards Applicant's assertion that BOA's interests are not affected by the request for extension of service, Applicant essentially bases this argument on two theories. First, that the proposed additional customers will not receive effluent from Applicant for "many years", and second, that the customers in the proposed territory will actually increase the available supply of effluent. Initially, these arguments must be rejected as Applicant does not

provide any evidentiary support for either of these assertions; rather, they are nothing more than unsubstantiated arguments presented by Applicant's legal counsel. Accordingly, this Commission should reject both of them outright as a basis for dismissal of BOA's Objection. Moreover, Applicant's counsel's speculation as "when" these new customers "may" receive effluent and that they will increase the available effluent, do not, in any respect, provide justification for Applicant's continued failure to provide effluent to its existing customer, BOA. As an existing customer (as defined under Section 25-30.210, *Florida Administrative Code*), any extension of service does substantially effect the interests of BOA. This is especially true considering the quantity of effluent that BOA necessarily requires and that Applicant has contractually agreed to provide.

10. Finally, while Applicant's "proposal" to construct a new storage tank and drill a well may, someday, increase the available effluent for Applicant's existing customers, noticeably absent from the Motion to Dismiss is any commitment or agreement by the Applicant that either of these will be utilized by Applicant to provide the contractually agreed upon amount of effluent to BOA. In fact, Applicant's Motion to Dismiss expressly contradicts this. Applicant's position as to its obligation to provide effluent to BOA in any quantity is clear. As stated in the Motion, "the utility is not obligated to provide effluent in any quantities." Accordingly, Applicant's "proposal" to construct a new storage tank and drill a well bears no relevance to the Objection filed by BOA, and clearly, neither of these "proposals" will be used by Applicant to provide effluent to BOA as required by the Agreement.

11. As the above demonstrates, Applicant's Motion to Dismiss is not properly supported by record evidence, and amounts to nothing more than rank speculation by its counsel.

As a result, BOA requests that this Commission deny Applicant's Motion to Dismiss the Objection to the Application for Amendment to Wastewater Certificate 379-S.

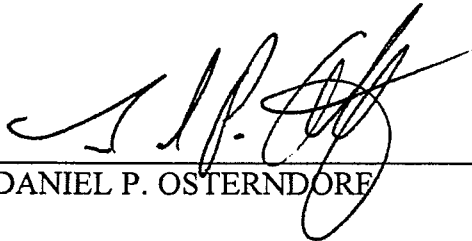
**WHEREFORE**, BANC OF AMERICA STRATEGIC SOLUTIONS, INC., respectfully requests that this Commission deny ALAFAYA UTILITIES, INC.'S Motion to Dismiss BOA's Objection to the Application for Amendment to Wastewater Certificate 379-S, which requests an extension of Service Area in Seminole County, Florida, and for such other and further relief as this Commission deems necessary and proper.

**RESPECTFULLY SUBMITTED** this 12<sup>th</sup> day of July 2006.

**s/Daniel P. Osterndorf**  
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Orlando, Florida 32801  
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Attorneys for BOA

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via facsimile and U.S. Mail to VALERIE L. LORD, ESQ., 2180 W. State Road 434, Suite 2118, Longwood, FL 32779 and RALPH JAEGER, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, this 12<sup>th</sup> day of July 2006.

  
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DANIEL P. OSTERNDORE