

Ruth Nettles

From: Bronwyn Revell [BRevell@RSBattorneys.com]
Sent: Thursday, February 19, 2009 9:25 AM
To: Filings@psc.state.fl.us; Jean Hartman; reilly.steve@leg.state.fl.us
Cc: John Wharton; Marty Deterding; Steve Watford; Tonya Simpson
Subject: Filing in Docket No. 060122-WU and 060606-WS
Attachments: Motion for Release of Funds.pdf

- a. John L. Wharton, Esquire
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- b. Docket No. 060122-WU and 060606-WS; Joint Petition for Approval of Stipulation on Procedure with Office of Public Counsel, and Application for a Limited Proceeding Increase in Water Rates in Pasco County by Aloha Utilities, Inc. and Progress Reports on Implementation of Anion Exchange in Pasco County filed by Aloha Utilities, Inc. pursuant to Order PSC-06-0270-AS-WU
- c. Aloha Utilities, Inc.
- d. Motion For Contingent Release of Escrow Monies is 5 pages
- e. Documentation that Aloha's expenditures in the implementation of the anion exchange water treatment method - 2 pages

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for Approval of Stipulation
on procedure with Office of Public Counsel,
and Application for a limited proceeding
increase in water rates in Pasco County
by Aloha Utilities, Inc.

Docket No. 060122-WU

In Re: Progress reports on implementation of
Anion Exchange in Pasco County, filed by
Aloha Utilities, Inc. pursuant to Order
PSC-06-0270-AS-WU.

Docket No. 060606-WS

**ALOHA UTILITIES, INC.'S MOTION
FOR CONTINGENT RELEASE OF ESCROW MONIES**

ALOHA UTILITIES, INC. ("Aloha"), by and through its undersigned attorneys, hereby files this Motion for Contingent Release of Escrow Monies, and would state as follows:

1. On April 5, 2006, the Commission issued its Order Approving Settlement Agreement, Order No. PSC-06-0270-AS-WU (the Order).
2. The Order was the culmination of negotiations between Aloha, the Office of Public Counsel, certain customer representatives, and the Commission Staff regarding several on-going issues and litigations. A key facet of the Order was its recognition that a particular water treatment method (anion exchange) should be

implemented by Aloha, and that the cost of such anion exchange facilities would be recoverable through rates. The Order also set forth a construction schedule which required Aloha to begin the process of implementation of anion exchange. Aloha's progress on the implementation of anion exchange was monitored by the parties to the settlement and the staff through a series of quarterly reports and meetings. The Order contemplated that certain monies held in escrow, including accrued interest (hereinafter "Monies in Escrow"), would be released to Aloha to defray the expenses of the implementation of anion exchange, and that Aloha would record a corresponding amount as contribution-in-aid-of-construction. The Monies in Escrow would be released to Aloha upon the time that Phase III rates take effect. For all of the reasons set forth below, Aloha requests that the Commission acknowledge and direct that the Monies in Escrow should be released to Aloha, said finding contingent upon receipt by the Commission of sufficient documentation that the pending acquisition of Aloha's assets by the Florida Government Utility Authority has closed.

3. There are several clear and demonstrable facts about the Order as it relates to this issue:

- If the anticipated acquisition of Aloha's assets by the Florida Governmental Utility Authority takes place, Phase III rates will never "take effect".

- The Settlement Agreement and the Order contemplated that the Monies in Escrow would be released to Aloha to defray Aloha's costs in the implementation of anion exchange. Unlike the balance of the monies expended to implement anion exchange, these costs were never contemplated as recoverable by Aloha through rates or otherwise.¹ The only manner by which these expenditures would be recouped by Aloha was through release of the escrowed funds.

- There is no alternate disposition of the Monies in Escrow contemplated by the Settlement Agreement or the Order.

- The release of these Monies in Escrow to Aloha (to recoup monies expended by Aloha consistent with the Order) was part and parcel of the consideration Aloha received for entering into the Settlement Agreement. In fact, dismissal of a pending appeal regarding those exact monies was a fundamental concession Aloha made in the Settlement Agreement. Likewise, recovery of monies expended on anion exchange (exclusively by release of the Monies in Escrow to Aloha) was a fundamental consideration by Aloha in accepting and agreeing to that dismissal.

- Substantial monies have been expended by Aloha in good faith reliance upon the release of said Monies in Escrow, consistent with the Settlement Agreement and the Order.

- Aloha has, in fact, expended a far greater amount on the implementation of the anion exchange project than the amount of the Monies in Escrow. These excess expenditures will not be recoverable by Aloha, through any means or method, if the sale to the Florida Governmental Utility Authority closes as anticipated.

4. Attached hereto as Exhibit A is documentation that Aloha's expenditures in the implementation of the anion exchange water treatment method,

¹The costs specifically referred to are costs expended equal to that amount in escrow. The Settlement Agreement and Order made clear those specific costs could not be recovered through rates.

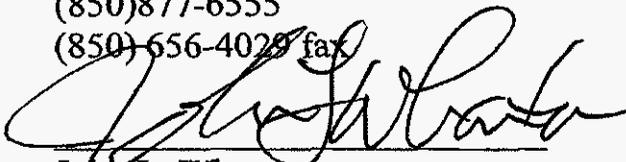
as directed by the Order and the Settlement Agreement, have been well in excess of the amount of the Monies in Escrow.

5. Aloha's intention is, upon release of the escrow monies as requested herein, to distribute the funds as follows: (a) those monies necessary to pay Aloha's prorated regulatory assessment fee for 2009; (b) \$15,000 to the PSC to settle with finality the Order to Show Cause (Docket No.); and (c) to Pasco County for certain work the county performed at the request of Aloha in furtherance of Aloha's purchase of bulk water from Pasco County. The balance of the funds will partially defray Aloha's anion exchange as explained herein.

WHEREFORE, Aloha requests that the Commission direct that the Clerk, upon demonstration that the acquisition of Aloha has occurred by sale of assets to the Florida Governmental Utility Authority, execute whatever documents are appropriate such that all of the Monies in Escrow will be released to Aloha.

Respectfully submitted this 19th day of February, 2009, by

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(850)877-6555
(850) 656-4029 fax



John L. Wharton
For the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to the following this 19th day of February, 2009:

Customer Petitioners
c/o Wayne T. Forehand
1216 Arlinbrook Drive
Trinity, Florida 34655

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

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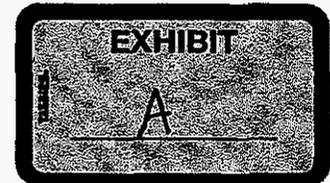
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Aloha Utilities, Inc.
 General Ledger Detail Report
 For November 2008

For Account 105-02-3 Through 105-02-3

Include Zero Activity Accounts, Exclude Statistical Accounts, Summarized by Account Number, Exclude Year End Closing Entry

Account Number	Account Description				Debit Amount	Credit Amount	Net Change	Ending Balance
Tran Date	Src	Transaction Description	Batch	Tran No				
105-02-3		ANION EXCHANGE PRE-TREAT-SSW						
		** No activity for this account **						
Account Total:		Beginning Balance:	\$	508,055.40	\$	0.00	\$	508,055.40
		Grand Totals:	\$	508,055.40	\$	0.00	\$	508,055.40



**Aloha Utilities, Inc.
General Ledger Detail Report
For November 2008**

For Account 187-04-2 Through 187-04-2

Include Zero Activity Accounts, Exclude Statistical Accounts, Summarized by Account Number, Exclude Year End Closing Entry

Account Number		Account Description										
Tran Date	Src	Transaction Description	Batch	Tran No	Debit Amount	Credit Amount	Net Change	Ending Balance				
187-04-2		DEF LIMITED PRCDNG-ANION EXCHNG 2008										
Beginning Balance										260,885.89		
11/30/2008	ALL	Summarized for this account	004834	005256	2,116.89	0.00		263,002.78				
Account Total:		Beginning Balance:	\$	260,885.89	\$	2,116.89	\$	0.00	\$	2,116.89	\$	263,002.78
		Grand Totals:	\$	260,885.89	\$	2,116.89	\$	0.00	\$	2,116.89	\$	263,002.78