

Ann Cole

From: Ann Cole
Sent: Monday, March 16, 2009 4:40 PM
To: Booter Imhof
Cc: Mary Anne Helton; Jennifer Brubaker; Jean Hartman
Subject: FW: Aloha Utilities, Inc. Escrow Issue
Attachments: _0313152950_001.pdf

Per your request, this attached letter from William Sundstrom regarding the release of escrowed monies consistent with the settlement agreement of March 9, 2006, will be filed in Docket Nos. 010503-WU, 060606-WS, 060122-WU, and 090120-WS.

From: Booter Imhof
Sent: Monday, March 16, 2009 2:50 PM
To: Ann Cole
Cc: Mary Anne Helton; Jennifer Brubaker; Jean Hartman
Subject: FW: Aloha Utilities, Inc. Escrow Issue

Ann - would you file this in the docket file please?

Booter

From: William E. Sundstrom [mailto:wes@rsbattorneys.com]
Sent: Friday, March 13, 2009 3:56 PM
To: Booter Imhof
Subject: Fw: Aloha Utilities, Inc. Escrow Issue

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

From: William E. Sundstrom
To: Booter Imhof
Sent: Friday, March 13, 2009 3:39 PM
Subject: Aloha Utilities, Inc. Escrow Issue

Booter -- attached please find the request and demand of our client, Aloha Utilities, Inc. for release of escrow. If you have any questions or comments, please call.

Have a good weekend.

Bill

**William E. Sundstrom, Esq.
Rose, Sundstrom, & Bentley, LLP
2548 Blirstone Pines Dr.**

3/16/2009

DOCUMENT NUMBER - DATE
02262 MAR 16 08
FPSC-COMMISSION CLERK

Tallahassee, Fl. 32301
(850) 877-6555 - telephone
(850) 656-4029 - facsimile

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Thank you.

LAW OFFICES

ROSE, SUNDBSTROM & BENTLEY, LLP

2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301

FREDERICK L. ASCHAUER, JR.
CHRIS H. BENTLEY, P.A.
ROBERT C. BRANNAN
F. MARSHALL DETERDING
JOHN R. JENKINS, P.A.
KYLE L. KEMPER
STEVEN T. MINDLIN, P.A.
CHASITY H. O'STEEN
WILLIAM E. SUNDBSTROM, P.A.
DIANE D. TREMOR, P.A.
JOHN L. WHARTON

ROBERT M. C. ROSE, (1924-2006)

(850) 877-6555
FAX (850) 656-4029
www.rsattorneys.com

March 13, 2009

CENTRAL FLORIDA OFFICE
SANLANDO CENTER
2180 WEST STATE ROAD 434
SUITE 2118
LONGWOOD, FLORIDA 32779
(407) 830-6331
FAX (407) 830-8522

MARTIN S. FRIEDMAN, P.A.
BRIAN J. STREET

CHRISTIAN W. MARCELLI, OF COUNSEL
(LICENSED IN NEW YORK ONLY)

VIA ELECTRONIC TRANSMISSION AND U.S. MAIL

Patrick L. "Booter" Imhof, General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Aloha Utilities, Inc.

Dear Booter:

I was closing agent for Aloha Utilities, Inc. relative to its sale of assets to the Florida Governmental Utility Authority. The sale was consummated in February, specifically, equitable conversion took place at 12:01 am on Friday, February 27, 2009.

As of the moment of equitable conversion, Aloha was no longer a "utility" within the meaning of Chapter 367, Florida Statutes. We have, on behalf of Aloha, submitted Aloha's Certificates to the Commission for cancellation, along with certain relevant information so that the Commission can close its files in this regard.

Thus, please accept this correspondence as Aloha's request and demand that the Commission agree, forthwith, to execute and transmit such documentation as is necessary and required to release those funds currently maintained in Account No. [REDACTED] at AmSouth Bank. Aloha has previously provided sufficient documentation to the Commission demonstrating Aloha's entitlement to the release of these escrowed monies consistent with the Settlement Agreement of March 9, 2006. A release document is attached for your convenience in this regard.

Patrick L. "Booter" Imhof, General Counsel
March 13, 2009
Page 2

I look forward to receiving the executed Release forthwith. If, for any reason, you do not intend to provide the release document during the week of March 16, please advise.

Very truly yours,

ROSE, SUNDSTROM & BENTLEY, LLP



WILLIAM E. SUNDSTROM
For the Firm

WES/bsr

Attachment

cc: Mr. Stephen G. Watford
John L. Wharton, Esquire

aloha\49\general counsel

[TO BE TYPED ON FPSC STATIONERY]

Authorized Representative
AmSouth Bank
Account [REDACTED]
Aloha Utilities, Inc. Escrow Account

To Whom It May Concern:

Pursuant to that certain Escrow Agreement, a copy of which is attached hereto and incorporated herewith, I, Director of the Division of Records and Recording of the Florida Public Service Commission, hereby authorize the withdrawal of all funds deposited in the above-referenced account by Aloha Utilities, Inc.

Sincerely yours,

Ann Cole, Director of the
Commission, Clerk and
Administrative Services

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 its application for increased water rates for its Seven Springs system on August 10, 2001 and;

WHEREAS, pursuant to the provisions of Chapter 367.082, Florida Statutes, the Commission authorized the Utility to implement interim rates during the pendency of its review of the Application and determination of the appropriate amount of the final rate increase and;

WHEREAS, pursuant to the provisions of Section 367.082, Florida Statutes and the Commission's decision of November 6, 2001, the Utility must implement those rates under appropriate security, including among other alternatives, escrow of all such increases and;

WHEREAS, on November 6, 2001, the FPSC voted to allow the Utility to implement increased interim rates subject to refunds during the pendency of this proceeding.

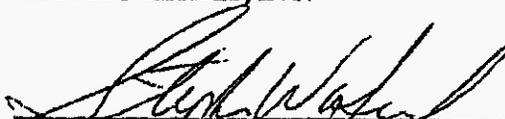
WHEREAS, the Bank has agreed to hold such funds in an interest bearing account, the parties agree as follows:

1. The foregoing representations are true and correct.
2. The difference between the prior approved rates of Aloha's Seven Springs water system and the increased rates being implemented as authorized pursuant to the Commission's decision of November 6, 2001 on interim, shall be deposited by the Utility in an escrow account held by the Bank.
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 Division of Records and Reporting of the FPSC and the President of the Utility. Signature cards executed by the Director of the Division 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, Attn: Blanca S. Bayo, Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, FL 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 the cost thereof (including court costs and attorney fees for negotiation, trial and appeal).

8. This escrow account is established pursuant to the provisions of Section 367.082, Florida Statutes for the benefit of the Utility's customers, in the event that the final rates approved by the Commission are less than those implemented by Aloha on November 6, 2001.
9. Information concerning the escrow account shall be available from the Bank to the FPSC and its representatives at all times.
10. Pursuant to Cosentino v. Elson, 263 So.2d 253 (Fla. 3rd DCA 1972), escrow accounts are not subject to garnishment.

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

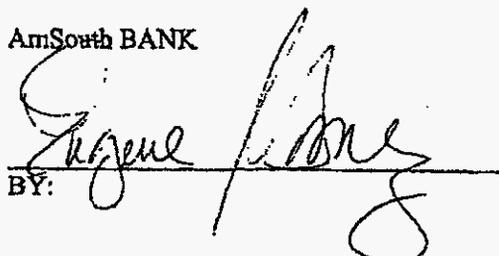
ALOHA UTILITIES, INC.


BY: Stephen Watford, President

(Corporate Seal)

AmSouth Bank of Florida
Holiday Office
2338 U.S. Hwy 19
Holiday, FL 34691

AmSouth BANK


BY:

(Corporate Seal)

FLORIDA PUBLIC SERVICE COMMISSION


BY:
Director, Division of the Commission
Clerk and Administrative Services

(Seal)