

Ann Cole

010503-WU

**From:** Chuck Hill  
**Sent:** Monday, May 18, 2009 1:31 PM  
**To:** Jennifer Brubaker; Mary Bane  
**Cc:** Betty Ashby; Selena Chambers; Booter Imhof; Mary Anne Helton; Samantha Cibula; Kathryn Cowdery; Ralph Jaeger; Tim Devlin; Marshall Willis; Cheryl Bulecza-Banks; Bart Fletcher; Ann Cole; William C. Garner; Lois Graham; Roberta Bass; Kelly McLanahan; Lorena Holley; Kay Posey; Larry Harris; Steve Larson; Bill McNulty; Cristina Slaton  
**Subject:** RE: Request for permission to modify Item 6A (Docket 010503-WU/Aloha) for the 5/19/09 Agenda Conference

Approved.

COM  
 ECR  
 GCL  
 OPC  
 RCP  
 SSC  
 SGA  
 ADM  
 CLK  
 Cole  
 Wans, Harris  
 Macero, Riva

**From:** Jennifer Brubaker  
**Sent:** Monday, May 18, 2009 1:30 PM  
**To:** Mary Bane  
**Cc:** Chuck Hill; Betty Ashby; Selena Chambers; Booter Imhof; Mary Anne Helton; Samantha Cibula; Kathryn Cowdery; Ralph Jaeger; Tim Devlin; Marshall Willis; Cheryl Bulecza-Banks; Bart Fletcher; Ann Cole; William C. Garner; Lois Graham; Roberta Bass; Kelly McLanahan; Lorena Holley; Kay Posey; Larry Harris; Steve Larson; Bill McNulty; Cristina Slaton  
**Subject:** Request for permission to modify Item 6A (Docket 010503-WU/Aloha) for the 5/19/09 Agenda Conference

Staff requests permission to make a minor modification to its recommendation for Docket No. 010503-WU, which the Commission will address as Item 6A at the May 19, 2009, Agenda Conference.

After further discussion with the Florida Department of Financial Services, Division of Treasury, Bureau of Collateral Management, staff requests permission to make the modify page 7 of its recommendation as indicated below in type-and-strike format:

Staff also contacted the Florida Department of Financial Services, Division of Treasury, Bureau of Collateral Management (BCM). One of the services BCM offers is the management of cash deposit/escrow services. While some agencies have the ability to handle an escrow account within the agency (such as the Florida Office of the Attorney General), most agencies (such as the Commission) do not, requiring that escrow accounts be established in the private sector. Financial institutions usually charge to establish an escrow account and charge a continuing maintenance fee during the required time period. Florida law allows the BCM to provide a centralized deposit location for the specialized handling of these deposits at no charge to either the state agency or the contracting entity (which would be, in this case, Aloha), other than an administrative fee authorized by Section 17.61(4)(b), F.S., in the amount of approximately .01 percent per month. The administrative fee would be assessed from the interest earned on the account, rather than from the corpus of the escrowed interim funds. Another important benefit of using the BCM is that cash deposit and escrow accounts earn interest in the same manner as state trust funds. After discussion with staff, the BCM has agreed to hold the interim funds in escrow until final disposition of those funds.

Under these circumstances, staff believes that the best course of action to preserve and maintain the escrowed interim funds is that the Commission order Aloha, in cooperation with staff, to move the escrowed funds from Regions Bank to an escrow account with the Florida Department of Financial Services, Division of Treasury, Bureau of Collateral Management, consistent with the terms and conditions contemplated by Order No. PSC-01-2199-FOF-WU, by which the escrow account was

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originally established. If the Commission approves staff's recommendation and Aloha does not comport with the resulting Commission order by May 26, 2009, staff recommends that it be authorized to seek enforcement of the Commission's order in a court of competent jurisdiction.

In anticipation that staff may be compelled to seek enforcement of the Commission's order, staff also recommends that the Commission approve the following findings:

1. The final disposition of the escrowed money is still pending; the protest and appeal periods have not yet expired.
2. The current escrow agent has filed notice of its intent to withdraw, and has filed an interpleader in circuit court. It is the position of the Commission that the circuit court lacks jurisdiction over the escrow interim funds, and that the Commission has sole jurisdiction over disposition of the funds.
3. After due diligence, Commission staff has been unable to find an alternate bank willing to act as the escrow agent.
4. The Department of Financial Services, Division of Treasury, Bureau of Collateral Management has agreed to provide an escrow account, interest bearing, ~~without maintenance fees~~, requiring two signatures (one from Aloha, one from the Commission), or a court order, for disbursement.
5. The Commission orders Aloha to move the interim funds to a BCM escrow account.

Please let me know if you have any questions or concerns regarding this request; thank you.