

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

**OBJECTION TO ALAFAYA UTILITIES, INC.'S APPLICATION
FOR AMENDMENT TO WASTEWATER CERTIFICATE NO. 379-S**

BANC OF AMERICA STRATEGIC SOLUTIONS, INC. (“BOA”), by counsel, and pursuant Rule 25-30.031, *Florida Administrative Code*, hereby files its objection to ALAFAYA UTILITIES, INC. (“Applicant’s”) May 23, 2006, Application for Amendment to Wastewater Certificate No. 379-S, and as grounds 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”). A true and correct copy of the Agreement is attached and incorporated herein as Exhibit “A”.

4. The Agreement provides in pertinent part:

A. The Lessee [Applicant] is a sewer utility company operating under the Florida Public Service Commission Certificate bearing number **379-S**.

B. The Lessee owns and operates a sewage treatment plant which presently discharges a portion of its wastewater effluent into percolation/evaporation ponds in accordance with permits used by the Florida Department of Environmental Regulation (hereinafter "DER") but desires further lands within which to discharge its wastewater effluent.

C. Lessor is the owner of certain real estate situated in Seminole County, Florida to be known as the Ekana Golf Club...

D. Lessor has the need for a supply of water for the irrigation of the Golf Course Property and desires to use the effluent from Lessee's wastewater or sewage treatment plant as its source for such irrigation.

E. Lessee desires to utilize the Golf Course Property for purposes of disposal of treated wastewater effluent (hereinafter referred to as "Effluent") from its sewage treatment plant.

F. The parties wish to confirm and set forth the terms, conditions and procedures under which the discharge, irrigation, maintenance and operations relative to the disposal of the Effluent onto the Golf Course Property will be performed.

....

2. AGREEMENT RELATIVE TO THE GOLF COURSE PROPERTY. The Lessor does hereby let, remise and release unto the Lessee for a term of **sixty (60) years from and after the 8th of November, 1988**, the right to release Effluent from Lessee's sewage treatment plant located in Seminole County, Florida, on and over the surface of the Golf Course Property.....

Furthermore, Lessee shall have the rights and privileges of discharging wastewater effluent to the Irrigation Facilities of Lessor, through the wastewater effluent transmission lines, up to and including **448,000 gallons per day** of wastewater effluent in accordance with permits issued or to be issued by the DER.

3. AGREEMENT RELATIVE TO SPRAY IRRIGATION OF EFFLUENT. It is agreed by and between the parties hereto that Lessor shall not be limited to the rate of four hundred forty-eight thousand (448,000) gallons per day, but may irrigate the Golf Course Property at such higher rates as Lessor may deem appropriate. **Lessee shall use its best efforts to provide Lessor with Effluent quantities of more than four hundred forty-eight thousand (448,000) gallons per day as Lessor may request, but**

shall not be responsible for Acts of God or other occurrences beyond Lessee's control which prevent such provisions of Effluent.

13. SUCCESSORS AND ASSIGNS. The covenants and agreements set forth herein shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

(Emphasis supplied).

3. Since at least May 2005 (BOA's approximate ownership date), Applicant has failed and refused to supply effluent to BOA in accordance with the terms of the Agreement. For example, for the month of May 2006, notwithstanding its contractual obligation to provide a minimum 448,000 gallons of effluent per day to Twin Rivers, and its obligation to use its "best efforts" to exceed this minimum amount, Applicant has only provided an average of approximately 171,300 gallons of effluent per day. Attached and incorporated herein as Exhibit "B" is a true and correct copy of a spreadsheet that describes in detail the effluent that has been provided by Applicant to Twin Rivers during this time period.

4. As recently as May 4, 2006, BOA demanded that Applicant comply with the Terms of the Agreement and supply a minimum of 448,000 gallons of effluent per day; however, Applicant continues to refuse to provide the minimum effluent. Moreover, Applicant has completely failed to use its "best efforts" to supply effluent quantities in excess of 448,000 gallons per day. Attached and incorporate herein as Exhibit "C" is a true and correct copy of correspondence to Applicant dated May 4, 2006.

5. Notwithstanding its complete and total failure to provide the minimum effluent as required by the terms of the Agreement to its existing customer, 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 Amend Wastewater Certificate 379-S, to

allow Applicant to extend its certified wastewater service area in Seminole County, Florida, to new customers.

6. 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"*.

7. 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.

8. BOA objects to any Amendment to Applicant's Wastewater Certificate 379-S, which permits Applicant to provide wastewater and/or effluent to any new customers, until such time as Applicant has complied with terms of the Agreement by providing a minimum of 448,000 gallons of effluent per day to BOA. Applicant's failure to provide the required minimum effluent is not only a material breach of the Agreement, but has significantly impaired BOA's ability to properly operate and maintain the Twin Rivers golf course. As Exhibit "B" hereto clearly describes, due to Applicant's failure to supply the minimum effluent required under the Agreement, BOA has been required to use its own on site water to supplement the deficient amounts provided by Applicant. BOA, however, does not possess sufficient quantities of water to supplement the deficiencies resulting from Applicant's material breach of the Agreement. As a result, BOA has been only able to water portions of the fairways and greens, and has been unable to water any other surrounding areas. This has resulted in major damage to the Twin Rivers Golf Course, including but not limited to degradation, drying and generally

inferior quality golf course and playing conditions. Not surprisingly, the economic impact has been and will continue to be devastating.

WHEREFORE, BANC OF AMERICA STRATEGIC SOLUTIONS, INC., respectfully requests that this Commission deny ALAFAYA UTILITIES, INC.'S 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 23rd day of June 2006.

s/Daniel P. Osterndorf
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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 23rd day of June 2006.

DANIEL P. OSTERNDORF