BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for amendment of Certificate No. 488-W in Marion County by Venture Associates Utilities Corp.	)	DOCKET NO. 930892-WU ORDER NO. PSC-96-0790-FOF-WU ISSUED: June 18, 1996

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JOE GARCIA
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APPEARANCES:

F. MARSHALL DETERDING, Esquire, Rose, Sundstrom & Bentley, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301 and CLEATOUS J. SIMMONS and LOU FREY, Lowndes, Drosdick, Doster, Kantor & Reed, P.A., Post Office 8 Box 2809, Orlando, Florida 32802
On behalf of Venture Associates Utilities Corp.

WALTER H. HALLBERG, 5079 N. W. 25th Pl. Ocala, Florida 34482
On behalf of Himself.

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On behalf of Himself.

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On behalf of the Citizens of the State of Florida.

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On behalf of the Commission Staff.

FINAL ORDER GRANTING, IN PART, AND DENYING, IN PART, VENTURE ASSOCIATES UTILITIES CORP.'S MOTION TO STRIKE, APPROVING RATES AND CHARGES AND IMPUTING MAIN EXTENSION AND METER INSTALLATION CHARGES AS CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION

BY THE COMMISSION:

BACKGROUND

Venture Associates Utilities Corp. (Venture, VAUC or utility) is a developer-owned class B water utility which presently provides service to the Palm Cay subdivision within Marion County. On September 9, 1993, Venture filed its application to amend its existing water certificate to include additional territory to provide service to the Ocala Palms Subdivision. This property, as well as the existing Palm Cay property, is being developed by Venture Associates Utilities Corp., an affiliated company. Within the additional territory, Venture proposes to serve an additional 790 equivalent residential connections (ERCs) consisting of single family homes and townhouses as well as a club house and community center. Venture proposes to provide only water service. Wastewater service will be provided to individual customers directly by the City of Ocala.

Venture provides service to its Palm Cay system through an on-site water treatment plant. To provide service to the Ocala Palms Subdivision, Venture purchases water from the City of Ocala through a master meter and resells it to the individual water users within the development.

By Order No. PSC-94-1621-FOF-WU, issued December 30, 1994, this Commission, by final action, amended Venture's certificate to include the additional territory (Ocala Palms Subdivision) and by proposed agency action (PAA), approved rates and charges for the Ocala Palms Subdivision. On January 20, 1995, six customers timely filed protests to Order No. PSC-94-1621-FOF-WU. On the same date, the utility timely filed a protest to the Order. Accordingly, this matter was scheduled for an administrative hearing. On March 24, 1995, Venture filed a Motion for Interim Rates. The basis for this request was that the utility is presently providing service, without compensation, to 90 homes and would like to recover costs pending finalization of this docket. By Order No. PSC-95-0624-FOF-WU, issued May 22, 1995, we denied Venture's motion but granted Venture's PAA rates and charges as temporary rates, subject to refund.

The Prehearing Conference was held on December 18, 1995, in Tallahassee, Florida. At the conference, the Prehearing Officer

acknowledged intervention of the Office of Public Counsel (OPC) on behalf of the citizens of Florida. Additionally, the parties and our staff identified nine issues to be addressed at the formal hearing. Prehearing Order No. PSC-96-0044-PHO-WU was issued on January, 12, 1996.

On January 22-23, 1996, we held the technical hearing in Ocala, Florida. Customer testimony was taken at the beginning of the technical hearing on January 22, 1996, as well as the evening session that day. There were approximately 125 customers in attendance at the beginning of the hearing, 24 of which offered testimony. In addition, two customers pre-filed testimony in this case.

The major concerns of the customers as expressed at the hearing centered on the rates charged by VAUC and the misleading information given to prospective home buyers by the developer. With regard to the rates, several customers testified that the rates are excessive and that they would prefer the lower rates charged for water service by the City of Ocala, the wholesale provider of the water service. Thirteen customers testified that, at the time they were purchasing property in Ocala Palms, they were led to believe that water service would by provided by the City of Ocala. Most of these indicated that this promotion by the developer played a significant part in their decision to purchase a home in Ocala Palms. Four brochures containing promotions of the Ocala Palms development were presented which indicate that water service is provided by a city or municipal water system.

Several customers testified that fact sheets presented by the developer at closing reflected the rates and charges for the Palm Cay water system, another utility system located in Marion County and owned by VAUC. Thus, customers were apparently confused as to what rates and charges would be applicable to the Ocala Palms development. A related issue developed at the hearing when it was discovered that the developer/utility held out to home buyers that certain service availability charges could be waived, when in fact we did not approve these charges for the Ocala Palms development. The developer apparently did this as a bargaining chip in negotiating the sale of the home.

Pursuant to Rule 25-22.056(3)(a), Florida Administrative Code, each party shall file a post hearing statement which shall include a summary of each position. On March 4, 1996, OPC and Venture filed post-hearing briefs, both of which included a summary of each position. On March 20, 1996, Venture filed a Motion to Strike portions of OPC's brief.

FINDINGS OF FACT, LAW AND POLICY

Having heard the evidence presented at the formal hearing and having reviewed the recommendation of staff, as well as the briefs of parties, we now enter our findings and conclusions.

VENTURE'S MOTION TO STRIKE

As stated in the background, on March 20, 1996, the Utility filed a Motion to Strike portions of OPC's brief, stating that OPC's brief contained matters outside the bounds of the record, along with inflammatory, impertinent, immaterial, or scandalous statements. The Motion to Strike focuses upon 4 statements, along with a footnote referencing a post-hearing customer telephone call to OPC, within OPC's brief.

Ventures objection's to OPC's statements are outlined as follows:

1. OPC's statement: "The Commission should consider that this Utility is the same Utility which collected enormous sums of Contributions-in-Aid-of-Construction (CIAC) without authority to do so,"

Venture interprets this statement as an exaggeration of 3 occasions where CIAC was collected in error, and omission of the fact that all monies have since been refunded.

2. OPC's statement: "The Utility collected substantial sums from customers upon the representation that customers had to pay a main extension charge to the Utility. Better the Commission should take the Utility's representation to the customers as true, and thus impute all of the illegally collected service availability charges to the cost of the main."

Venture also interprets this statement as an exaggeration of the 3 occasions where CIAC was collected in error, and omission of the fact that all monies have since been refunded.

3. OPC's statement: "Under the guise of 'main extension charge' listed on nearly every closing statement provided to customers, customers were led to believe that they paid for main extension. Questions from the Commission made it clear that the Utility had collected these main extension charges illegally and under the cover of authority of this Commission."

Venture again interprets this statement as an exaggeration of the 3 occasions where CIAC was collected in error, and omission of

the fact that all monies have since been refunded. Further, Venture notes that witness answers did not state that the charges were collected illegally.

4. Similar statements in OPC's Post-Hearing Statement imply that the Utility collected or coerced payment of certain CIAC without authority.

These similar statements were not specified by Venture, therefore, we are not clear as to the actual objectionable statements.

5. OPC's mention of a "telephone call from a customer received long after this record was closed," in a footnote of OPC's brief.

Venture believes that this call comprises a matter outside the record and therefore, should be stricken as irrelevant. OPC referenced the call to Venture's late filed Exhibit 27. Venture bases its Motion to Strike on Florida Rule of Civil Procedure 1.140(f) which states, "a party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matters from any pleading at any time.

OPC timely filed its Response to Venture's Motion to Strike on March 26, 1996. OPC stated that its posthearing statement was offered in lieu of its closing statement, and therefore is its own interpretation of the evidence presented in the record along with reasonable inferences drawn therefrom. OPC relies solely upon Trawick's definition of post-hearing statements:

> The argument is confined to the evidence and issues with any reasonable deductions to be drawn from them. The attorney may comment on the issues raised by the pleadings, but not about the nature of contradictory defenses or causes of action, on the credibility of the witnesses and parties, on failure to produce evidence or testify, on the value of pain an disability and on the weaknesses or deficiency of the opposing party's case. He may not express personal belief in the justice of his client's case or in his client, give testimony in effect, appeal to sympathy or prejudice or ask a juror to put himself in the place of the party he represents. H. Trawick, Florida Practice and Procedure 22-18 (1995)

We also considered Black's Law Dictionary's definition of a "brief":

> A written . . . document, prepared by counsel to serve as the basis for argument upon a cause in an appellate court, and usually filed for the information of the court. It embodies the point of law which the counsel desires to establish, together with the arguments and authorities upon which he rests his contention. Blacks Law Dictionary (1995)

OPC responds to all statements in Venture's above listed objection by stating that Venture characterizes the CIAC collections as "minor" or "error", while OPC characterizes them as "enormous" and "without authority." Venture downplays the significance of the collection while OPC emphasizes it. Venture interprets this emphasis by OPC as inflammatory. Regardless, OPC states that the facts relating to whether unauthorized CIAC collections were made are in the record of hearing.

OPC argues that we should not consider the slanted viewpoints of counsel as evidence but rather the evidence itself and then make our own determination. We have examined the purpose of post-hearing briefs, including what is considered to be appropriate content, and do not find anything in contradiction to OPC's Response. We do not find that the above statements are prejudicial to Venture. Furthermore, we do not find that OPC's statements listed above are inflammatory, impertinent, immaterial, scandalous, or outside the bounds of the record. Therefore, we find it appropriate to deny Venture's Motion to Strike with regard to the above-referenced statements.

However, with respect to the post-hearing telephone call from a customer, we do find this telephone call to be outside the bounds of the record. OPC states that the call references Venture's Late Filed Exhibit 27, which details the refunding of erroneous collection of CIAC to Customer Eric Curson. OPC presents a new fact in that the customer alleged in his call that the refund did not include interest. Venture was not given an opportunity to cross-examine the caller on this new allegation. Therefore, we find it appropriate to grant Venture's Motion to Strike with respect to consideration of the telephone call.

DISALLOWANCE OF WATER SUPPLY MAIN

This is the core issue of the case. It deals with the facts surrounding the construction of the supply main, the prudence of its construction by the utility and whether the utility or developer should bear its cost.

The need for utility service was based upon the desire of Venture Associates, Inc., a developer, to develop the Ocala Palms subdivision. As the utility admits, without development there would be no need for utility service. Mr. Tait, the vice president of both the developer and the utility, decided that both water and wastewater service would be obtained from the City of Ocala. Mr. Frey and Mr. Tait both testified that city service is a good sales tool, and it is a plus to have city water in lieu of service from a small utility. The record shows that as late as December, 1995, long after the utility was granted the Ocala Palms territory and given temporary rates, the development was still being promoted as having municipal central water and sewer.

Through an agreement with the City, it was decided that wastewater service would be provided directly to the residents of the subdivision by the City. The wastewater collection main to serve Ocala Palms was paid for by the developer and donated to the City of Ocala. Water service would be provided through a bulk service arrangement to VAUC, which would provide retail service to individual customers within Ocala Palms. In June of 1993, Mr. Tait negotiated both the water and wastewater contracts with the City of Ocala. The water contract was executed in the name of the utility, while the wastewater contract was in the developer's name. The basic difference between water and wastewater service is that the developer decided to recover wastewater costs through lot sales and water costs through its affiliated utility.

Our review of the water agreement reveals that water service could and can be provided directly to Ocala Palms from the City, in the same manner as wastewater service. Despite any comments concerning the intent of the water agreement by Ocala's city manager, we find that the document speaks for itself. The contract provides that at any time within five years of execution of the agreement, the system may be turned over to the City regardless of whether Ocala Palms has been annexed into the City. This being the case, the City agrees within the contract to provide individual residential service to Ocala Palm's residents at any time VAUC wishes to turn over its on-site system. This could have been done the day after the water agreement was executed. In fact, the City apparently recognizes no difference between the developer or utility since pursuant to the contract with the utility for bulk water service it issued the reimbursement check to the developer

and listed the developer as the customer on the bulk water bills.

OPC's position is that since the line will be donated to the City, the utility cannot earn a return on property which it does not own. The utility testified that although the line will be donated by the utility, its cost should be recorded on the utility's books as plant in service until such time as it is donated to the city. Upon donation the utility planned to record the line on the utility books as an intangible asset based upon the right to receive service. This change from a tangible to an intangible asset presupposes acceptance of the tangible asset as a prudent utility expense. As noted by Witness Mandrak, her testimony deals with accounting treatment and not the prudency of the expenditure.

This docket involves an application by Venture to amend its service territory. Since the area was not within the utility's authorized territory, we find that the utility was under no obligation to provide service to Ocala Palms. The decision to include Venture as a reseller utility was made by Mr. Tait when he negotiated the water contract with the City. As the Vice-President for both the utility and developer, he considered the impact of his decision on both entities. Our concern is the prudence of this decision by the utility. Mr. Tait had control over whether the cost of both the on-site and off-site lines would be recovered through home sales or as separate charges by VAUC. Absent any negotiation between the utility and the developer regarding payment for the supply main, we must evaluate whether the decision to include the line as a utility cost was more in the interest of the developer or the utility.

The utility presents the arguments that the water contract with the City required VAUC to construct and donate the supply main to the City and that a source of water to the utility would not be available if the utility did not construct this line. We do not find this argument persuasive. A major consideration of the City in providing both water and wastewater service to Ocala Palms was apparently that the water supply and wastewater collection mains be paid for by someone other than the City. Obviously, water service from the City would not be available without the transmission line. Since the City would not incur the cost of the line, either the developer or the water utility would have to pay for the water supply main. The choice of who would pay for the water line was made by Mr. Tait, who represents both the developer and the utility in this instance.

The utility provided extensive testimony concerning the cost and benefits of the alternatives of interconnecting to the city or

building its own wells and related facilities. Through witnesses Mears and Munt, the utility provides estimated costs of constructing its own facilities and rates and charges based upon this alternative. Through these estimates, the utility shows that the cost of interconnecting is less than constructing on-site wells and related facilities and that operation and maintenance expenses should be less utilizing the supply main.

We find these estimates meaningless. Mr. Tait stated that Mr. Munt's cost study, which is the basis for the utility's argument, was not used or even prepared at the time the decision was made to interconnect with the city. The utility asks us to compare the cost of two options when no options exist. The fact remains that the main to the City is in place and in use. Comparing the actual cost of the main to the estimated cost of a system which will never be built is at best additional information. At issue is treatment of the cost of the already constructed line. The utility's analysis centers on whether the construction of the water supply main was a lower cost method of providing water service than constructing its own wells and facilities. Ignored in this analysis is that the ability to require the developer to pay for the supply main would be an even more cost effective measure for the utility.

A basic argument of the utility is that the utility's construction of the supply main was required under its approved service availability policy, and that allowing another party to construct the line would be in violation of its tariff. The utility's service availability policy clearly states that off-site transmission and distribution systems shall be provided by the utility. However, the following paragraph within the policy defines "off-site" as follows:

> [F]or the purpose of this policy, the term "off-site" shall be defined as those main water transmission lines necessary to connect developer's property with facilities of UTILITY adequate in size to transmit to developer's property an adequate supply of water under adequate pressure. (emphasis added)

Since the line in question connects the developer's property to the City's and not the utility's facilities, we find that the line is not an off-site facility subject to the above referenced provisions of the service availability policy of Venture. The utility agrees that the above wording does not fit the situation of the main coming from the City to Ocala Palms but, instead envisions

extending service from it Palm Cay facilities. However, the utility contends that despite this verbiage, the intent of the policy is that the utility will pay for all off site facilities.

At the hearing, Witness Mears conceded that a refundable advance agreement would appear to be a tool that the utility could have used in order to require the developer to front the cost of the supply main. According to the policy, this provision applies only to main extensions, with the cost of water treatment plant facilities being specifically excluded from consideration in a refundable advance. Under the usual scenario of VAUC extending its mains at the request of a developer, the developer would front the cost of the entire extension which the utility would record as CIAC. The developer would then be able to receive refunds from the utility to the extent other customers connect to the main. This provision of the tariff places the cost and risk of extending service on the party which requested such service.

Within its brief, the utility argues that a refundable advance agreement would not be applicable to the instant situation. Their basic argument is that the interconnect to the City is not an extension of the utility's lines and that the line will not be owned by the utility. Additionally, they assert that since the main extension is the utility's source of water, it should be considered as treatment facilities, which are specifically barred from being included in a refundable advance.

We find that in its arguments, the utility uses either the wording or intent of its tariff to its advantage as needed. As noted above, a threshold argument of the utility is that its tariff requires that all off-site lines be the responsibility of the utility; however, the main from the city to Ocala Palms does not meet the definition of off-site facilities contained in the utility's tariff. On that point, the utility argues that the intent of the tariff, which is that the utility construct all facilities, should control over the specific language of its tariff. Regarding the refundable advance, the utility reverses its tactic and argues the specific language of the tariff should control. Here Venture asserts that the refundable advance provision in the tariff does not apply since the provision relates to an extension of water mains necessary to connect the developer's property with the utility's mains, and this is a connection to the City's facilities.

We find that the fact that the supply main in question directly connects Ocala Palms to the city presents no obstacle in developing a refundable advance agreement. In fact, this

arrangement could resolve a major concern expressed by Mr. Tait in his testimony. Mr. Tait testified that the supply main was a prudent and necessary expenditure required by VAUC's service availability policy and that disallowing this cost is confiscatory because it prohibits the utility from recovering that cost. However, on cross examination Mr. Tait agreed that if there was a reasonable way of recovering the line other than through customers' rates and charges, his concern would probably be eliminated. He further testified that if the developer was to front the cost of the main it would eliminate the need for the utility to recover any cost associated with the line.

We find that a refundable advance agreement relating to the supply main could have been executed between VAUC and the developer. The agreement with the City would remain intact with the additional step that any reimbursements to the utility from the City would be forwarded to the developer.

Another, even simpler solution, was provided under cross examination by Mr. Mears, which would eliminate any arguments regarding VAUC's service availability policy and whether the main can be termed an intangible asset, as well as resolve Mr. Tait's concerns over confiscation. Mr. Mears stated that the main from the City would not be considered an off-site supply main if the utility had at no time had ownership of the line. He further stated that if the utility did not own the line, it would not be subject to the utility's service availability policy. A tri-party agreement among the developer, utility and City could have easily been drafted wherein the developer would pay for the supply main (just as it did for the wastewater main), and VAUC would construct the on-site facilities and receive the contemplated bulk service through a master meter.

The utility argues and the record reflects many benefits of connecting to the city's water system. These include the fact that water will come from a larger water source less susceptible to outages, the cost of maintenance expenses for the supply main as well as the costs of additional water testing requirements will be spread among all City customers, not just those in Ocala Palms, and the system will have adequate pressure and capacity for fire fighting purposes. We find that these benefits do exist. However, their existence has no bearing on who constructed or funded the main. The benefits accrue because the City is the bulk provider of water service, and because of the fact that the City required that the distribution system be constructed to its specifications to allow for eventual turnover to the City. This included the use of 8 inch iron pipe and the provision of fireflow, benefits which VAUC promotes, but did not offer its Palm Cay customers. Further, Mr.

Tait agreed on cross examination that if the utility system were to be turned over to the City of Ocala as provided for in the contract, none of these benefits would go away.

This Commission has exclusive jurisdiction over the utility. We do not regulate the developer. In this case, the developer/utility made its decision to resell water in Ocala Palms, thereby excluding the cost of water facilities from the price of its homes. Had the developer/utility included the cost of the supply main within the price of homes, recovery of this cost would have been outside of our jurisdiction. The developer/utility through its testimony indicates a belief that it has the right to recover the main through either entity based upon its choice. However, by including the main cost as a utility cost, the utility has, in effect, invited us to rule on the prudence of this decision. Mr. Tait testified that the cost of the supply main is a prudent and necessary expenditure required by the approved service availability policy. We find that it was not necessary for the utility to have invested in the main, and that requiring the developer to pay for the main would have been the most prudent and cost effective means for the utility to provide service within its Ocala Palms territory. Accordingly, we find it appropriate to deny Venture recovery of the cost associated with the supply main in the rate calculation. The cost of the main has been excluded from Venture's rate calculation.

Policy Analysis

It is the policy, and in fact obligation, of this Commission to evaluate the prudency of any utility investment to determine if such cost should be passed on to ratepayers. Within its brief, the utility asserts that it reasonably constructed the main in question and established its costs. The assumption is apparently that since it chose to construct and finance the main, such expenditure was necessary and prudent. At issue is not the fact that the utility chose to construct the line, but who should pay for the line. As discussed earlier in this Order, the utility was not required to invest in the off-site line. Pursuant to its approved service availability policy, the cost and risk associated with the line could have been placed on the developer. Regarding the purpose of the service availability policy, Witness Mears stated:

> The purpose of a service availability policy and main extension policy is to define the rights and responsibilities of the parties involved in the design, construction and allocation and financing of utility facilities. The Commission requires every

utility to follow the policies and charges specified in its service availability and main extension policy.

The refundable advance provision of a service availability policy provides for the financing of main extensions by the developer which necessitated the extension. We find this provision should apply equally to all developers without distinction as to whether such developer is affiliated with the utility.

In its brief, the utility states that a developer and its related utility will initially have to make a choice between the developer paying for all cost of utility facilities and recovering those in the price of homes, or the utility making an investment and receiving a return on it. The utility goes on to claim that the supply main cannot be characterized as a "development cost" since both the developer and the utility treated the line construction and acquisition costs as a proper cost of the utility. Thus, it would appear that it is the utility's position that we should not consider whether its investment in the line was prudent since such cost has already been incurred and placed upon the utility's books.

The Utility argues that we have considered interconnection costs in other dockets. The utility references three orders relating to reseller utilities to show a policy in treating interconnection costs in rate base. Order No. 22447 relates to the provision of bulk service By Malabar Woods Utility, Inc. However, since the order does not specifically address the issue of the utility installing off-site mains and including such in rate base, we do not find precedent in this Order. Order No. 24133 relates to the interconnection costs of Broadview Park Water Company. In this case, we ordered the utility to pursue an interconnection with the City of Ft. Lauderdale based upon a Notice of Violation and Order for Corrective Action by the then Department of Environmental Regulation. Differing from the Ocala Palms scenario, we ordered this interconnection to eliminate quality of service problems. Further, interconnection costs were $23,464 as opposed to an initial cost of over $300,000 for the Ocala Palms line. Order No. PSC-92-0868-FOF-SU, outlines the scenario of an existing regulated utility, Parkland Utilities, Inc., which purchases sewage treatment from Broward County. As a result of a rate increase by the county, the utility was advised that it owed an additional $235,000 in impact fees based upon their existing reserve capacity. In that order, we recognized this cost as investment.

We do not find that these orders are relevant to the Ocala Palms situation. With regard to the Malabar Woods order, as

mentioned above, the order does not specifically address the issue of the utility installing off-site mains and including such in rate base. Therefore, there is no indication that we acknowledged that scenario in approving the initial rates. In the cases of Broadview Park and Parkland Utilities, it is clear that these were existing utilities faced with circumstances beyond their control. We ordered Broadview Park to interconnect based upon poor quality of service. Parkland Utilities was faced with an unforeseen, unavoidable cost which we acknowledged so the utility could continue to provide service to its existing territory. In both cases, the utilities were faced with only one alternative for continued service to their existing customers.

In this case, as noted earlier, VAUC was under no obligation to extend its territory to include Ocala Palms. Rather, VAUC voluntarily chose to serve the area and pay for the interconnection. In the Venture scenario we are dealing with a new development and utility system, not an existing system faced with unavoidable problems. As discussed earlier, the utility had the ability to acquire water from the City and serve the Ocala Palms area without funding the main. Therefore, we find that the cost of the main was avoidable and not a prudent or cost effective investment of the utility or in the best interest of its customers. Accordingly, we find that disallowing the cost of the line is in accordance with Commission Policy.

Legal Analysis

Venture argues that our exclusion of the costs of the off-site main is contrary to the requirements of law and represents a taking of property without compensation in violation of applicable law. In support of its argument, Venture states that a public utility is entitled to just compensation and a fair rate of return on the value of its property used or useful in the public interest. See Keystone Water Company v. Bevis, 278 So. 2d 606, 609 (Fla. 1973). Venture also asserts that the Fifth and Fourteenth Amendments to the Federal Constitution safeguard private property against a taking for public use, and neither the nation nor the state may take such property of a public utility by means of the fixing of rates or charges which do not allow the utility to earn a reasonable rate of return on the value of that property. Id. We find these statements inapplicable to Venture. There can be no taking of property when the utility does not own the property. Utility witness Mears testified at hearing that Venture will transfer title of the off-site main to the City of Ocala and will treat the cost of the off-site main as an intangible asset in rate base. The utility asserts that the intangible asset is Venture's right to receive water from the City of Ocala. However, the

utility failed to present any evidence that defined "intangible asset" nor evidence that illustrated that the right to receive water is an intangible asset. Furthermore, as OPC states in its brief, the utility held out standards from the accounting profession as to how a firm possessed of an intangible asset might capitalize it. However, the utility provided no testimony probative of whether we could or should permit the entry of the intangible asset into rate base. In the absence of such evidence, we find that the utility should not be entitled to a rate of return on property which it does not own.

Venture also asserts that in establishing rates, the value of the system must be considered, or constitutional requirements are not met. Keystone at 611. Venture also asserts that in establishing the value of service, we must consider what the system is worth to the customers. Id. In Keystone, the issue was whether this Commission should consider the fair value of the utility system in setting rate base versus the cost less depreciation of book value. However, what distinguishes Keystone from Venture is that in Keystone there was no question that the utility owned the system. The components of the system were well defined, and the issue facing the court was merely how to place a value on the system. However, in this instance, Venture provided no proof of ownership in the off-site main following transfer to the city. Therefore, in the absence of any ownership, whether actual or intangible, there is no reason to focus on the value of the off-site main. We find that regardless of the value of the off-site main and its worth to the customers, it is immaterial in establishing rates, because the off-site main will be the property of the City of Ocala.

Furthermore, Venture states that a utility's rate base is derived by determining the original cost of the property used in providing the service. See Tamaron Homeowners Association v. Tamaron Utilities, 460 So. 2d 347, 350 (Fla. 1984). As stated earlier, the utility will not own the off-site main nor will it have a basis for including an intangible right to receive water in rate base. Therefore, we find that Venture's reliance on Tamaron is incorrect. Accordingly, we find that disallowing the cost of the line is not contrary to the law.

Sound Regulatory Philosophy

Mr. Mears testified that disallowing the cost of the main represents unsound public policy since it would discourage interconnection with existing water sources and discourage cooperation with municipal water facilities. He also stated that he would advise owners of regulated utilities to avoid

interconnection with existing water utility systems, except on an emergency basis to avoid the risk of such confiscatory disallowance of their investments. However, he does not indicate if this generic advice is being offered to existing or new utilities. At issue here are the circumstances involving VAUC's choice to construct and pay for the off-site main. Policy must be applied based upon differing circumstances.

The utility argues that in an original cost rate setting jurisdiction rates are set on the cost of providing service. As such, costs should properly include the cost of the supply main. The basis of this argument is that the main was a necessary cost to provide service and was, therefore, a prudent expenditure. The utility further argues that there is no sound regulatory reasoning for treating that the supply main is a developer cost.

Within its brief, the utility argues that once the decision was made for the utility to invest in its own treatment or supply facilities and to recover these cost through the utility operations, the choice between construction or individual wells or interconnection to an existing system was the utility's choice which should be judged based upon the cost of competing alternatives only. This does not absolve us of our mandate to evaluate this choice and its associated costs to the utility's customers.

We find that connecting to the City was the preferable alternative to avoid another small treatment system. However, if as the utility suggests, we evaluate that choice based upon the cost of competing alternatives, we must conclude that the most cost effective option is for the developer to pay for the line either directly or through a refundable advance as discussed earlier. This represents the optimal solution since the interconnection, fostering cooperation with the city, would be accomplished, the customers would realize the benefits of receiving water from a large central system, service would be provided at the lowest cost and risk to the utility and its customers, and the confiscatory concern would be eliminated. Utilizing the utility's tariff to its advantage and using CIAC to offset utility investment represents sound regulatory philosophy in the context of original cost rate setting. Based upon the foregoing, we find that disallowing the cost of the off-site main represents sound public policy and regulatory philosophy.

IMPUTATION OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION (CIAC)

At the Prehearing Conference, one issue identified asked whether the Commission had taken proper account of the contributions of the customers to the utility plant through the purchase price of their homes. The issue arose because homeowners alleged that they had paid for portions of the utility plant through the price of their homes. At hearing, a related issue was raised regarding whether the waiver or agreement to pay VAUC's service availability charges by the developer should result in the imputation of such charges as CIAC.

In response to customer concerns that they may have paid for water distribution facilities within the purchase price of their homes, VAUC provided the rebuttal testimony of Ms Mandrak. Her testimony and exhibits, show that the cost associated with the Ocala Palms on-site and off-site transmission and distribution systems were included within the tax return of the utility. Therefore, the record contains no evidence or indication that the developer included any of these costs within the cost of development.

At the hearing, customers, OPC and this Commission expressed concern regarding misleading information provided to prospective homebuyers by the developer concerning water rates and charges. This information was contained within the fact sheet provided to residents at the time they negotiated or signed the purchase contracts for their homes. This document represents that we authorized VAUC to operate a water utility within Ocala Palms and sets forth the rates supposedly approved by the Commission for Ocala Palms. We find these statements are false since VAUC was not authorized to serve Ocala Palms, and the referenced rates are the rates in effect for VAUC's other system, Palm Cay. The utility indicates that these fact sheets were provided for informational purposes to advise homebuyers of the cost of water and wastewater services. The record shows that the service availability charges, represented as approved by this Commission, were used by the developer as an incentive or bargaining chip in negotiating the sale of individual homes. In response to our concerns over this practice, the utility provided as late filed exhibits, copies of all fact sheets, closing statements, and relevant portions of sales contracts relating to the purchase of homes both prior to and after June 1, 1995, the date temporary rates were approved for VAUC's Ocala Palms system.

The key to this issue is that the developer represented the charges contained in the fact sheet as Commission authorized charges which must be paid to receive utility service. Appropriately and truthfully, this sheet should have stated that VAUC had a pending application before this Commission, and

reflected the rates proposed by the utility in its September, 1993 filing for Ocala Palms. Further, customers should have been advised that these charges would not be effective until approved by us and, only if approved prior to closing on a property, would such charges be applicable to receive water service.

We have reviewed fact sheets, closing statements and portions of sales contracts for each customer prior to June 1, 1995. To determine if any customer paid unauthorized charges and the extent these charges were used in negotiating the sales of homes, we evaluated information relating to homes which closed prior to June 1, 1995, the date temporary rates became effective. Ocala Palms' customers who closed on their homes after that date should have properly been charged the approved service availability charges. A review of these documents shows eighty-five closings prior to June 1, 1995. These documents show that in seventy of the sales contracts the developer agreed to either pay or credit the VAUC meter installation and main extension charges. It should be noted that this is an on-site main extension charge and not related to the off-site supply main. Of the remaining fifteen closings, the documents indicate that eight of the agreements and fact sheets were silent regarding this charge, leading to a conclusion that the fact sheet was used solely for information purposes. Three closing statements showed that these charges were collected, but the utility indicates that these charges have been refunded subsequent to the hearing. Documents relating to the last four show that the developer has included the full VAUC charges within the purchase price of three homes, and one-half of the service availability charges within another.

These documents clearly show that these charges were considered by customers in negotiating the price of their homes. While the VAUC charges are not separately shown as a line item, the contracts reference composite totals under various names including impact fee, City water and wastewater hookup and other terms. However, these terms relate to a composite figure of $3,166 which is referenced in many contracts and is broken down as follows:

VAUC main extension	$ 417
VAUC Meter Installation	75
VAUC Initial Connection	10
Marion Co. Impact Fee	640
City of Ocala Water Impact	536
City of Ocala Sewer Impact	1,488
Total	$3,166

By including this charge in the price of the home, the charges were given value. By waiving, crediting or agreeing to pay the charges, the developer used them as an incentive or bargaining chip in negotiations. Our review indicates that fifty-seven of the sales contracts specifically state that the charges will be paid by the developer or seller. These contracts were signed by Mr. Tait as Vice President of the developer. At the hearing, Mr. Tait was questioned regarding the wording "paid by developer" on customer Lobdell's fact sheet. When asked if this Commission was to assume that the developer was to pay that charge to the utility, Mr. Tait responsed in the affirmative. Mr. Tait's statement is consistent with the aforementioned sales contracts.

The developer represented that these charges were applicable and either waived, credited or agreed to pay the charges. It is clear that these charges were not approved and could not legally be charged by the utility. Mr. Tait, as vice president of both the utility and the developer, was aware of this fact, but represented this charge as valid in the negotiation of the purchase price of homes.

The utility argues within its brief that if we impute the developer's actions as CIAC, we should also consider the waived City of Ocala water impact fee, which were paid by the developer as additional capital investment of the utility. Since the City impact fee is paid by individual homeowners, and is not an approved charge of this Commission, we find that the developer waived this charge at his own discretion and such action has no impact on the utility.

Additionally, the utility argues that contracts for sale and the closing documents, unlike the fact sheet, are the only official documents dealing with home sales and that none of these documents waive or agree to pay the VAUC charges. As noted above, fifty-seven of the sales contracts specifically state that the charges will be paid by the developer or seller. Therefore, we find this statement false.

Based on the foregoing, we find it appropriate to impute the main extension and meter installation charges in the seventy instances where these were represented by the developer as waived or credited. Additionally, we find it appropriate to impute these charges in the three instances where the developer included the Palm Cay charges within the price of the home with no waiver or credit, and in the one instance where one-half of the total fee was included in the price of the home. Accordingly, we hereby impute the amount of $492, representing main extension and meter

installation charges, to VAUC as CIAC in these instances for a total imputation of $36,162.

VENTURE'S RECEIPT OF WATER AT BULK RATE

Customer witnesses Lobdell and Hallberg originally raised concerns regarding whether VAUC received a discounted rate for water service from the City of Ocala. The basis for the argument was that if water was purchased at a discount, VAUC should be able to sell water to the Ocala Palms residents at the same residential rates charged by the City of Ocala. However, both witnesses amended their testimony to exclude reference to such discount, upon learning from the City that no discount is offered.

The record shows that VAUC is presently a bulk customer of the City of Ocala receiving service based upon its standard rate schedule for customers located outside the city limits. These charges include a twenty-five percent, outside city surcharge. This is the same rate applicable to any and all customers located outside of the City. This rate is the basis for the utility's cost of purchased water included within it operating expenses.

RATES

The approved rates and charges are based upon projections at 100% buildout of the system within the Ocala Palms subdivision. We utilized the 100% figure because based upon projected growth, both 80% and 100% buildout will occur within the same year. The utility filed a cost study in support of its proposed rates and charges. This study is based upon the utility's original, September, 1993, filing, revised to agree with some of our adjustments in Order No. PSC-94-1621-FOF-WU. These prior adjustments, which included disallowance of organizational costs and some engineering costs, pursuant to the utility's service availability policy, were agreed to by the utility and were not at issue at hearing. However, VAUC disagrees with exclusion of the off-site main and associated charges, for allowance for funds prudently invested (AFPI) and the cost of capital used in the PAA Order.

The utility updated its initial filing with a revised cost of capital to reflect the conversion of some notes payable to common equity and the most recently approved leverage graph. At the hearing, Venture witness Mears revised his cost study to properly reflect that the City's reimbursement for additional customers connecting to the supply main would be based upon front instead of lineal footage. Additionally, he corrected the cost of purchased water from the City in recognition of verification from the City that it would begin billing Venture based on two eight-inch meters

as opposed to the two eight-inch and one six-inch meter originally used in determining the cost of purchased water. This correction affects only the base facility charge portion of Venture's bill from the City. We find Mr. Mears' corrections appropriate.

Our staff conducted an audit of the utility's plant accounts. The audit provided actual cost of plant facilities in service designed to serve the initial phases consisting of 272 ERCs, in lieu of the estimated costs contained in the utility's initial filing. With the exception of adjustments to allowance for funds used during construction (AFUDC), for which VAUC provided additional support, the utility is in agreement with each adjustment. In addition to the audit adjustments, the utility agreed that it was appropriate to exclude the portion of the Martin Williams surveying costs related to design work. As discussed earlier in this Order, we are excluding the supply main from the rate base determination used to calculate initial rates.

In calculating its proposed rates and service availability charges, the utility included CIAC attributable to only 690 of its 790 connections. Therefore, no corresponding CIAC is included for 100 connections. While the record is silent, it appears that the utility's figure of 690 was based upon that being the estimated number of customers connected to the system prior to our approval of the temporary rates in June of 1995. The record indicates that only 85 homes were closed prior to June 1, 1995. Therefore, we have imputed CIAC for 15 ERCs based upon temporary service availability charges. Additionally, we are imputing $36,162 of CIAC as discussed previously in this Order.

Our calculation of the appropriate rate base for purposes of establishing rates in this docket is attached to this Order as Schedule No. 1 with our adjustments attached as Schedule No. 1A. We adjusted depreciation expense to reflect the adjustments made to utility plant in service. Additionally, our approved working capital allowance reflects one-eighth of operation and maintenance expenses, which is consistent with current Commission practice.

Within its cost study, the utility developed operation and maintenance expenses based upon developing per customer costs for the Palm Cay division and using 50% of this per unit cost as an estimate for the Ocala Palms division. Since these are similar size developments we find these 50% estimates reasonable since Ocala Palms has no treatment facilities. At the hearing, the utility stated that since the utility is now a Class B rather than a Class C utility and is now required to differentiate between source expenses, treatment expenses, customer account expenses and administrative expenses, it would be more accurate to use 70%

rather than 50%. The utility filed no documentation in support of its allegation and, in our opinion, failed to show how an accounting treatment would increase costs by 20%. Therefore, we find it appropriate to use the 50% factor in developing rates.

Our calculation of operations is attached to this Order as Schedule No. 2 with our adjustments attached as Schedule No. 2A. Operating revenues and the corresponding regulatory assessment fees were adjusted to a level which allows the utility the opportunity to earn a 9.99% overall rate of return.

We adjusted the utility's capital structure to reconcile with the utility rate base. We find the utility's return on common equity to be 10.35% using the current Commission leverage formula authorized by Order No. PSC-95-0982-FOF-WS, issued August 10, 1995. Our calculation of the utility's capital structure is attached to this Order as Schedule No. 3.

We are merely utilizing the above schedules as tools to establish initial rates for the Ocala Palms service area. The schedules and are not intended for the purpose of establishing rate base. This is consistent with Commission practice in original certificate applications and is also appropriate for the manner in which rates were calculated in this docket.

OPC states that rates should be set equal to the City of Ocala's rate, which are the rates the developer led customers to believe they would receive. We do not agree with OPC's argument on this point because we find it appropriate to establish rates using a rate base analysis based on the cost of providing the service. This view is consistent with Section 367.081(2)(a) and (b), Florida Statutes, which state:

> The commission shall, either upon request or upon its own motion, fix rates with are just, reasonable, compensatory, and not unfairly discriminatory. In every such proceeding, the commission shall consider the value and quality of the service and the cost of providing the serve....
>
> In establishing initial rates for a utility, the commission may project the financial and operational data as set out in paragraph (a) to a point in time when the utility is expected to be operating at a reasonable level of capacity.

Our approved rates are shown in the following table. We have excluded the supply main as discussed in greater detail later in this Order. These rates also include an adjustment to CIAC as discussed later in this Order.

WATER

Residential and General Service
Monthly Service Rates

Meter Size	Present Temporary Rates	Venture Proposed Rates	Commission Approved
BASE FACILITY CHARGE			
5/8" x 3/4"	$ 7.06	$ 8.44	$ 7.06
3/4"	10.59	12.66	10.59
1"	17.65	21.11	17.65
1-1/2"	35.30	42.22	35.30
2"	56.48	67.52	56.48
3"	112.96	135.04	112.96
4"	176.50	211.00	176.50
6"	353.00	422.00	353.00
8"	564.80	675.00	564.80
GALLONAGE CHARGE (per 100 cubic feet)			
All Meter Sizes	$ 1.31	$ 1.37	$ 1.32
Residential Bill at 1,300 cubic feet (9,724 gal.)	$ 24.09	$ 26.25	$ 24.22

SERVICE AVAILABILITY CHARGES

Venture requested a total service availability charge of $1,032, including an on-site main extension charge of $716, an off-site main extension charge of $216, and a meter installation charge of $100. We have recalculated these charges based upon the adjustments made to utility plant in service. As shown on Schedule No. 4, attached to this Order, we find a total service availability charge of $815 to be appropriate. We have divided the service availability charge into an on-site main extension charge of $715 and a meter installation charge of $100, for a 5/8 inch by 3/4 inch meter. We have not included an off-site main extension charge since we have excluded the supply main from rate base as discussed earlier. In addition, the utility requested a charge for AFPI to recover its portion of the carrying cost of its investment in the supply main built to serve future customers. Since we have excluded the supply main, we find it appropriate to disallow the related AFPI charges.

EFFECTIVE DATE

The utility shall file revised tariff sheets within 30 days of the issuance date of this Order reflecting the approved rates and service availability charges. The rates and charges shall be effective for service rendered as of the stamped approval date of the tariff sheets. We find it appropriate to release VAUC from its letter of credit because no refund is required.

Additionally, Venture has requested that the City of Ocala's impact fee be included within its tariff. Presently that charge is $536 per ERC. Based upon the agreement with the City, Venture will collect and pass through this charge each time it connects a customer to the Venture system, which in effect is a connection to the City water system. We find it appropriate to include this fee in Venture's tariff. We find that specifying this charge in the tariff is beneficial in that it clearly shows that at the time of connection customers have contributed to Venture for the on-site lines and meter and to the City for plant capacity. Therefore, if in the future Ocala were to take over the system, there would be no question of double charging and it would be clearly shown that the City's impact fee has been paid.

TEMPORARY RATES IN CERTIFICATE APPLICATIONS

As stated earlier, by Order No. PSC-95-0624-FOF-WU, issued May 22, 1995, we authorized Venture to collect the PAA rates and charges previously approved in Order No. PSC-94-1621-FOF-WU, as temporary rates subject to refund, pending the outcome of this

docket. Prior to that Order, Venture was providing service to Ocala Palms residents at no compensation to the utility. OPC challenges our authority to grant Venture those temporary rates.

In its brief, Venture asserts that our actions in granting temporary rates in this case are authorized by statute, conform with its statutory obligations and are both fair to the utility and protect the customers. Venture states that nothing in Chapter 367, Florida Statutes, precludes us from authorizing the temporary rates. In fact, Venture argues that Chapter 367, Florida Statutes, compels it. Venture refers to Section 367.081(2)(a), Florida Statutes, which provides in part:

> The commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. In every such proceeding, the Commission shall consider the value and quality of the service and the cost of providing the service....

Venture also cites to Order No. PSC-95-0624-FOF-WS, in which we stated that we set the utility's PAA rates as if Venture had filed an original certificate application. Venture argues that pursuant to Section 367.111(1), Florida Statutes, the utility has the absolute and ultimate responsibility to provide service to Ocala Palms and is compelled by Section 367.111(2), Florida Statutes, to provide such service or be subject to sanction.

Just as the utility is compelled to provide service, Venture argues that we are compelled by the law and by fairness to authorize the temporary rates charged to the Ocala Palms residents. Venture cites to Order No. PSC-95-0624-FOF-WU, in which we stated:

> (T)o refuse Venture's request to collect the rates now, subject to refund, could result in an unrecoverable loss of revenues to the utility. Since the utility is, in fact, proposing to collect the revenue subject to refund, the utility is protected, as well as the customers if there were to be a refund.

It is Venture's opinion that we would not require a utility to provide service without compensation. To do so, would neither be fair nor in concert with the clear legislative mandate of Chapter 367, Florida Statutes. Venture argues that Chapter 367 expressly provides that we have the authority and responsibility to authorize the collection of rates and charges. We granted Venture an

extension of its territory. According to the utility, that grant, read in conjunction with Chapter 367, requires the utility to serve Ocala Palms. If we failed to authorize rates for that service, Venture asserts that the result would be a confiscation without compensation of the utility's property and services.

Finally, Venture argues that despite the absence of the words "temporary rates" in Chapter 367 relating to certificate applications, the implementation of temporary rates comports with the liberal construction of Chapter 367, Florida statutes, mandated by the Legislature.

OPC, in its brief, argues that Florida law does not permit us to provide for temporary rates in a certificate application and requests that the temporary rates collected be refunded to the Ocala Palms residents. OPC states that in granting temporary rate to Venture, we rely on "implicit" authority under Section 367.011(3), Florida Statutes, to set rates which are just, reasonable, compensatory, and not unfairly discriminatory. However, OPC argues that Florida courts "are not permissive in recognizing implicit authority in administrative agencies."

In support of its argument, OPC cites City of Cape Coral v. GAC Utilities, Inc., of Florida, 281 So. 2d 493, 495-496 (Fla. 1973) in which the court stated:

> All administrative bodies created by the Legislature are not constitutional bodies, but, rather simply mere creatures of statute. This, of course, includes the Public Service Commission. As such, the Commission's powers, duties, and authority are those and only those that are conferred expressly or impliedly by statute of the state. Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof, and the further exercise of the power should be arrested. (Citations within the quote were omitted by OPC)

OPC cites to subsequent cases which uphold this proposition. See Deltona Corp. v. Mayo, 342 So. 2d 510 (Fla. 1977); Florida Bridge Company v. Bevis, 363 So. 2d 799 (Fla. 1978); and Aloha Utilities, Inc. v. The Florida Public Service Commission, 376 So. 2d 850 (Fla. 1979).

Furthermore, OPC states that Chapter 367, Florida Statutes, makes no mention of temporary rates during a certificate amendment extension. Therefore, according to OPC, one cannot infer that where the Legislature provided for interim rates in some circumstances, it must be presumed to have provided such authority in others. OPC asserts that it is more reasonable to infer that if the Legislature conferred jurisdiction on this Commission to set temporary rates in certificate amendment proceedings it would have expressly done so.

We are not persuaded by OPC's arguments on this issue. In citing case law, OPC argues that we are a creature of statute, and therefore, Florida courts are not permissive in recognizing our implicit authority. However, the very statement to which OPC refers states that "the Commission's powers, duties, and authority are those and only those that are conferred expressly or **impliedly** by statute of the state." (Emphasis added) City of Cape Coral v. GAC Utilities, Inc., of Florida, 281 So. 2d 493, 496 (Fla. 1973). We have found that we do have implicit authority in Section 367.011(3), Florida Statutes, to grant Venture temporary rates. Florida courts recognize that implied authority. Therefore, we find that the cases cited by OPC do not support its argument.

We find that this Commission is authorized by law to grant Venture temporary rates for service to the Ocala Palms residents. Section 367.081(2)(a), Florida Statutes, requires us to fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. In fixing rates, we consider many factors, including the utility's investment in property used and useful in the public interest. In fact, a regulated public utility is entitled to an opportunity to earn a fair and reasonable rate of return on its invested capital. Gulf Power Co. v. Bevis, 289 So. 2d 401 (Fla. 1974).

The fact remains that Venture was providing service to Ocala Palms residents for which it is entitled by law to some amount of reasonable compensation and an opportunity to earn a fair rate of return. By PAA Order No. PSC-94-1621-FOF-WU, we did place a value on that service when we set rates and charges. As we expressed in Order No. PSC-95-0624-FOF-WS, a refusal to grant Venture temporary rates for that service could result in an unrecoverable loss of revenue to the utility, where, at the outcome of this proceeding, this Commission may find that Venture is rightfully entitled to collect the rates originally granted in the PAA Order.

Chapter 367, Florida Statutes does not specifically refer to "temporary rates" in amendments of certification. However, when we granted the utility temporary rates, we analogized this situation

to those described in Sections 367.0814(5) and 367.081(8), Florida Statutes. The former authorizes a utility applying for a staff assisted rate case to collect temporary rates in the event of a PAA protest. The latter provides a utility the opportunity to collect temporary rates in the event of a PAA protest in file and suspend rate cases. With regard to these statutes, we stated:

> We have recognized in these cases that a protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the utility. We find that the same logic can be used here. Although Section 367.045, Florida Statutes, does not specifically provide such a vehicle, we find that we have the implicit authority to approve such a request in Section 367.011(3), Florida Statutes.

Section 367.011(3), Florida Statutes, provides that the provisions of Chapter 367, Florida Statutes, shall be liberally construed for the accomplishment of public utility regulation. We find that our authorization of temporary rates fulfills the goal of that statute.

Additionally, we find that our actions also protect the customers. As Venture pointed out, we granted the temporary rates subject to refund. At the end of this proceeding, to any extent that we found that the utility was not entitled to compensation, the customers would have received refunds, including interest.

Based on case law and the authority set forth in Chapter 367, Florida Statutes, we find that we are authorized to grant temporary rates under the circumstances set forth in this matter. As asserted by Venture, Section 367.111(1), Florida Statutes, requires each utility to provide service to the area described in its certificate of authorization. We granted Venture the addition of the Ocala Palms Subdivision. Therefore, if we required Venture to serve Ocala Palms without compensation, such action would contradict the requirements of law and basic fairness. Just as the Ocala Palms residents are entitled to service, Venture should be entitled to compensation. Ratemaking is a matter of fairness in which "[e]quity requires that both ratepayers and utilities be treated in a similar manner." GTE Florida, Inc. v. Clark, No. 85,776 (Fla. Sct. Feb. 29, 1996).

Based on the foregoing, we find that the law permits this Commission to provide for temporary rates in a certificate application.

COMMISSION COMPELLED TO AUTHORIZE RATES IN CERTIFICATE APPLICATION UPON REQUEST

In its brief, OPC argues that this Commission has no authority to set rates for a utility until it complies with the provisions of Section 367.081(2)(a), Florida Statutes. According to OPC, there has been no Commission activity under that statute other than a specific finding that we did not confer jurisdiction to establish interim rates. OPC also states that interim rates would be available under Section 367.082, Florida Statutes, once the utility or this Commission invoked the Commission's rate making authority under Section 367.081(2)(a), Florida Statutes.

We are not persuaded by OPC's argument. Section 367.011(2), Florida Statutes, grants us exclusive jurisdiction over utilities with respect to rates. As mentioned earlier, Section 367.081(2)(a), Florida Statutes, requires us to set rates which are just, reasonable, compensatory, and not unfairly discriminatory. Such is always the case, regardless of whether or not this Commission or the utility has initiated rate making under Section 367.081, Florida Statutes. Furthermore, Section 367.045(1)(c), Florida Statutes, requires a utility applying for an initial certificate to file with this Commission a schedule showing all proposed rates, classifications and charges for service by the utility. We find that this requirement contemplates the authorization of appropriate rates in a certificate application proceeding.

As mentioned earlier, Venture is providing service to Ocala Palms. To deny the utility an opportunity to collect rates would contradict law and fairness. We have found that we do have implicit authority in Section 367.011(3), Florida Statutes, to grant Venture temporary rates. Accordingly, we find that we are compelled to authorize rates upon our issuance of a certificate or amendment thereto, if requested.

CLOSING OF DOCKET

Since our decision in this docket represents final agency action and we find that no refund of temporary rates is required, we find it appropriate to close this docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Venture Associates Utilities Corp.'s Motion to Strike is granted, in part, and denied in part. It is further

ORDERED that Venture Associates Utilities Corp. is authorized to charge the new rates and charges as set forth in the body of this Order. It is further

ORDERED that Venture Associates Utilities Corp. shall file revised tariff sheets reflecting the approved rates and charges within thirty days of the issuance date of this Order. It is further

ORDERED that the City of Ocala impact fee of $536 per ERC, which is collected and passed on by Venture Associates Utilities Corp., shall be specified in the utility's tariff. It is further

ORDERED that the approved rates and charges shall be effective for service rendered on or after the stamped approval date of the tariff sheets. It is further

ORDERED that Venture Associates Utilities Corp. is hereby released from its letter of credit. It is further

ORDERED that main extension and meter installation charges for customers of the Ocala Palms subdivision, totalling $36,162, shall be imputed to Venture Associates Utilities Corp. as contributions-in-aid-of-construction. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 18th day of June, 1996.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

Schedule No. 1A

Venture Associates Utilities Corp.
Schedule of Adjustments to Rate Base

Description	Water
Utility Plant-In-Service	
To remove unsupported portion of Martin Williams contract	($ 7,172)
To remove design work associated with Martin Williams contract	($ 49,651)
To remove improperly classified AFUDC per audit	($ 8,933)
To remove capitalized documentary stamps per audit	($ 8,501)
To remove off-site supply main	($229,808)
Total UPIS	($304,065)
Accumulated Depreciation	
To reflect adjustment made to UPIS.	$ 40,385
Contributions-in-Aid-of-Construction	
To reflect recommended service availability charges	$149,730
To eliminate reimbursement from City based upon future connections to off-site main	$ 32,940
To include CIAC for the 15 homes excluded from the utility's analysis	($ 11,250)
To include imputation of CIAC based upon sales agreements (Issue 5)	($ 36,162)
Total CIAC	($135,258)

Schedule No. 1A
(Continued)

Venture Associates Utilities Corp.
Schedule of Adjustments to Rate Base

Description	Water
CIAC Amortization	
To reflect amortization of adjustment to CIAC	($ 5,727)
TOTAL ADJUSTMENTS TO RATE BASE	($134,149)

Schedule No. 2A

Venture Associates Utilities Corp.
Adjustments to Schedule of Operations

Description	Water
Depreciation Expenses	
To reflect adjustments made to UPIS	($5,352)
Taxes Other Than Income	
To reflect regulatory assessment fees associated with change in operating revenue	($ 887)
TOTAL ADJUSTMENTS	($6,239)

Venture Associates Utilities Corp
Schedule of Capital Structure
At 80% of Design Capacity

DOCKET NO. 930892-WU
Schedule No. 3

Description	Balance Per Filing	Commission Adjust.	Commission Vote	Recon Adjust.	Recon Balance	Weight	Cost Rate	Weighted Cost
Common Equity	581,770	0	581,770	(392,733)	189,037	86.57%	10.35%	8.96%
Long and Short-Term Debt	88,510	0	88,510	(59,750)	28,760	13.17%	7.68%	1.01%
Customer Deposits	1,720	0	1,720	(1,161)	559	0.26%	8.00%	0.02%
Advances from Associated Companies	0	0	0	0	0	0.00%	6.00%	0.00%
Other	0	0	0	0	0	0.00%	0.00%	0.00%
	672,000	0	672,000	(453,644)	218,356	100.00%		9.99%

Range of Reasonableness	High	Low
Common Equity	11.35%	9.35%
Overall Rate of Return	10.86%	9.13%

Venture Associates Utilities Corp
Schedule of Net Plant to Net C.I.A.C.
At 100% of Design Capacity
DOCKET NO. 930892-WU

Schedule No. 4

Account Number	Account Description	Water	Wastewater	Total
101	Utility Plant in Service	879,815	0	879,815
104	Accumulated Depreciation	(116,544)	0	(116,544)
	Net Plant	763,271	0	763,271
271	C.I.A.C.	609,762	0	609,762
272	Accum. Amortization of C.I.A.C.	(44,952)	0	(44,952)
	Net C.I.A.C.	564,810	0	564,810
	Net C.I.A.C. / Net Plant	74.00%	0.00%	74.00%
	Gross to Gross Minimum Contribution Level	94.84%	0.00%	94.84%
	Commission Vote	815	0	815