

ORIGINAL

Timolyn Henry

**From:** Trina Collins [tcollins@rsbattorneys.com]  
**Sent:** Wednesday, March 29, 2006 4:55 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** tcollins@rsbattorneys.com; 'Martin Friedman'  
**Subject:** Filing in Docket No.: 050281-WS/Plantation Bay Utility Company for Increase in Water and Wastewater Rates in Volusia County, FL  
**Importance:** High  
**Follow Up Flag:** Follow up  
**Due By:** Thursday, March 30, 2006 12:00 AM  
**Flag Status:** Flagged  
**Attachments:** Bayo ltr. (Protest of PAA Order).pdf; Protest of PAA Order (03-29-2006).pdf

- a. Martin S. Friedman, Esquire  
 Rose, Sundstrom & Bentley, LLP  
 2180 W. State Road 434, Suite 2118  
 Longwood, FL 32779  
 PHONE: (407) 830-6331  
[mfriedman@rsbattorneys.com](mailto:mfriedman@rsbattorneys.com)
- b. In re: Application of Plantation Bay Utility Company for Increase in Water and Wastewater Rates in Volusia County.  
 Docket No.: 050281-WS
- c. Plantation Bay Utility Company
- d. 6 pages
- e. 1 page cover letter to PSC Clerk, 5 page Protest of Proposed Agency Action Order and Petition for Formal Administrative Hearing.

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 OTH Kum P. Lockard

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MARTIN S. FRIEDMAN, P.A.  
VALERIE L. LORD  
BRIAN J. STREET

March 29, 2006

VIA E-FILING

Ms. Blanca Bayo  
Commission Clerk and Administrative Services Director  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

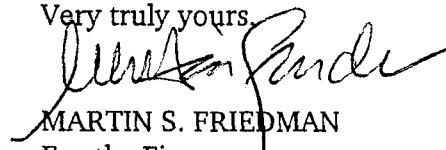
Re: Docket No.: 050281-WS; Application of Plantation Bay Utility Company for Increase in  
Water and Wastewater Rates in Volusia County, Florida  
Our File No.: 36062.06

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket is Plantation Bay Utility Company's  
original Protest of Proposed Agency Action Order and Petition for Formal Administrative  
Hearing.

Should you have any questions regarding this filing, please do not hesitate to give me  
a call.

Very truly yours,

  
MARTIN S. FRIEDMAN  
For the Firm

MSF/tlc  
Enclosures

cc: Rosanne Gervasi, Esquire, Office of General Counsel (w/enc.) (by U.S. Mail)  
Stephen Reilly, Esquire, Office of Public Counsel (w/enc.) (by U.S. Mail)  
Mr. Troy Rendell, Division of Economic Regulation (w/enc.) (by U.S. Mail)  
Mr. Bart Fletcher, Division of Economic Regulation (w/enc.) (by U.S. Mail)  
Mr. Douglas R. Ross, Jr. (w/enc.) (by U.S. Mail)  
Ms. Jean Trinder (w/ enc.) (by U.S. Mail)  
Mr. Frank Seidman (w/ enc.) (by U.S. Mail)  
Robert C. Nixon, CPA (w/ enc.) (by U.S. Mail)

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**ORIGINAL**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of  
PLANTATION BAY UTILITY COMPANY,  
for an increase in water and wastewater  
rates in Volusia County, Florida

DOCKET NO. 050281-SU

PLANTATION BAY UTILITY COMPANY'S PROTEST OF PROPOSED AGENCY  
ACTION ORDER AND PETITION FOR FORMAL ADMINISTRATIVE HEARING

PLANTATION BAY UTILITY COMPANY ("PBUC" or "Petitioner"), by and through its undersigned attorneys and pursuant to Sections 120.569 and 120.57, Florida Statutes, and Rules 25-22.029 and 28-106.201, Florida Administrative Code, hereby files this protest of certain portions of Commission Order No. PSC-06-0170-PAA-WS ("PAA Order") issued March 1, 2006, and requests the Florida Public Service Commission ("PSC") conduct a formal administrative hearing in the above-captioned docket. As grounds therefore, and in support of this Petition, PBUC states as follows:

1. The name and address of the agency affected and the agency's docket number are:

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

Docket No.: 050281-WS

2. The name and address of the Petitioner are:

Plantation Bay Utility Company, Inc.  
2379 Beville Road  
Daytona Beach, Florida 32119  
PHONE: (386) 437-9185

3. All notices, pleadings, correspondence, discovery, staff recommendations and

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orders filed or served in this proceeding should be served on the following on behalf of PBUC:

Martin S. Friedman, Esquire  
Valerie L. Lord, Esquire  
Rose, Sundstrom & Bentley, LLP  
2180 W. State Road 434, Suite 2118  
Longwood, FL 32779  
PHONE: (407) 830-6331

4. Petitioner received notice of the PAA Order from the PSC website on March 1, 2006.

PBUC's Substantial Interests

5. PBUC has a direct, immediate and substantial interest in the issues addressed in the PAA Order in that the PAA Order requires a change in its service availability policy, a reduction in its water rates, and insufficient revenues for its wastewater system.

Disputed Issues of Material Fact

6. Subject to discovery and refinement of the issues that will be appropriate for final hearing, the disputed issues of material fact are:

- a. Whether rate base, including used and useful percentage, approved by the PSC for the PBUC water treatment plant is correct.
- b. Whether the rate case expense approved by the PSC for PBUC is correct.
- c. Whether the denial of a provision for income taxes was correct.
- d. Whether the required changes to PBUC's service availability policy and charges as approved by the PSC are correct.
- e. Whether the PSC has the authority to order a temporary modification of

PBUC's service availability policy in the event of a protest of the PAA Order.

Statement of Ultimate Facts Alleged

7. PBUC alleges that the ultimate facts, together with the applicable case law, PSC statutes, rules, orders and precedents, demonstrate and support a final determination by the PSC that:

a. The rate base, including used and useful percentage, approved by the PSC for the PBUC water treatment plant is understated for at least the following reasons:

- (1) The available storage capacity of the storage tank is 328,000 gallons.
- (2) The minimum backwash requirement of 25,000 gallons is an appropriate demand.
- (3) The maximum daily demand without unusual occurrences was 263,000 gallons.
- (4) Storage capacity is not firm reliable capacity for operating purposes.
- (5) The projected customer growth is 107,100 gpd.
- (6) The \$25,195 cost for the easement for well sites is reasonable and should be included in rate base.
- (7) A net deferred tax debit should be included in rate base.

b. The rate case expense approved by the PSC for PBUC is understated for at least the following reasons:

- (1) It was inappropriate to reduce rate case expense based upon the average cost per ERC in prior cases, when the PSC's own analysis resulted in rate case expense of \$188,869.

- (2) It was inappropriate to deny more than one-half of the rate case expense because PBUC did not obtain a water rate increase.
- c. PBUC is entitled to an income tax provision based on operating income established in this proceeding.
- d. PBUC is entitled to a deferred tax expense related to the accumulated deferred tax credit included in the capital structure at zero cost.
- e. The change in PBUC's service availability policy ignore sound regulatory principles and adversely affects PBUC's cash flow.
8. PBUC reserves the right to address any issues in this proceeding which may be timely raised by another party or by the PSC Staff.
9. The correct application of Section 367.081, Florida Statutes, requires modification of the PAA Order.

WHEREFORE, PBUC requests the PSC Staff conduct a formal administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes as the issued specified herein and to grant the relief set forth herein above.

Respectfully submitted on this 29<sup>th</sup> day of  
March 2006, by:

ROSE, SUNDSTROM & BENTLEY, LLP  
2180 W. State Road 434, Suite 2118  
Longwood, Florida 32779  
Telephone: (407) 830-6331  
Facsimile: (407) 830-8522

By: 

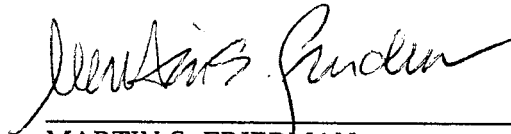
MARTIN S. FRIEDMAN  
VALERIE L. LORD  
For the Firm

CERTIFICATE OF SERVICE  
(PSC Docket No.: 050281-WS)

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished  
by U.S. Mail this 29<sup>th</sup> day of March 2006, to:

Rosanne Gervasi, Esquire  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Stephen Reilly, Esquire  
Office of Public Counsel  
Claude Pepper Building  
111 W. Madison Street, Suite 812  
Tallahassee, FL 32399



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MARTIN S. FRIEDMAN  
VALERIE L. LORD  
For the Firm