

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and petition of) DOCKET NO. 910111-WS
 Sandy Creek Airpark, Inc. against)
 Sandy Creek Utilities, Inc.)
 regarding provision of water and)
 sewer service in Bay County)
)

In re: Application for amendment) DOCKET NO. 910260-WS
 of Certificates Nos. 514-W and)
 446-S in Bay County by Sandy) ORDER NO. 24809
 Creek Utilities, Inc.)
) ISSUED: 07-12-91

Pursuant to notice, a prehearing conference was held in the above-captioned dockets on June 28, 1991, before Commissioner Betty Easley, as Hearing Officer, in Tallahassee, Florida.

APPEARANCES: WAYNE SCHIEFELBEIN, Esquire, Gatlin, Woods,
 Carlson & Cowdery, 1709-D Mahan Drive,
 Tallahassee, Florida 32308
On behalf of Sandy Creek Utilities, Inc.

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On behalf of Sandy Creek Airpark, Inc.

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On behalf of the Commission Staff

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PREHEARING ORDERI. Case Background

On February 4, 1991, Sandy Creek Airpark, Inc., (Airpark) filed a Complaint and Petition against Sandy Creek Utilities, Inc., (SCU or utility) wherein the Airpark asked the Commission to order the utility to provide service to the two phases of the Airpark

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development located outside of the utility's certificated territory. The utility filed a timely response to the complaint wherein it asserted that the Airpark should enter into a developer's agreement with the utility and that the utility should not be ordered to serve the Airpark unless the requirements of Section 367.121, Florida Statutes were met.

On March 4, 1991, the utility filed an application for an amendment to its certificated territory pursuant to Section 367.045, Florida Statutes. In response to the utility's notice of filing said application, numerous parties filed timely objections. In all, eleven parties objected to the utility's application, the foremost objector being the Airpark, and the remainder being individual lot owners within the Airpark development.

Although the complaint and the amendment were separately docketed, the issues in the two cases were similar enough that the Chairman consolidated the cases for the purpose of hearing. The hearing for these cases is scheduled for July 19, 1991.

II. Prefiled Testimony and Exhibits

The testimony of all witnesses to be sponsored by the utility and the Airpark in both cases has been prefiled. Neither the Commission Staff (Staff) nor any of the objectors in the amendment case, other than the Airpark, have prefiled any testimony. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

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Other than the Airpark, none of the objectors in the amendment case filed prehearing statements, as was required by Order No. 24530, issued May 14, 1991, the Order Establishing Procedure in the amendment docket. Pursuant to said Order, the failure of a party to timely file a prehearing statement constitutes a waiver of any issue not raised by the other parties or by the Commission and precludes the party from presenting testimony in support of its position.

III. Order of Witnesses

| <u>Witness</u> | <u>Appearing for</u> | <u>Issues #</u> |
|----------------------------|----------------------|----------------------------------|
| <u>Direct and Rebuttal</u> | | |
| Greg Delavan | Airpark | 1, 2, 3, 4, 5, 9, 10, 11, 12, 13 |
| Deborah D. Swain | Utility | 1, 2, 3, 4, 5, 9, 10, 11, 12, 13 |
| <u>Rebuttal</u> | | |
| Alton L. Walker | Airpark | 2 |

IV. Basic Positions

Utility: The intended purpose of the amendment application is to certificate certain territory already served by the utility. The application was promptly filed pursuant to a Commission directive in Order No. 24170. The application complies with the applicable requirements of Chapter 367, Florida Statutes, and Chapter 25-30, Florida Administrative Code. The objecting parties have no standing to contest the application. The application should therefore be granted.

The utility does not presently have adequate capacity (water treatment, wastewater collection, nor financial capacity) to provide service to the Airpark. However, if its conditions are met, as set forth in "Attachment A" to Ms. Swain's testimony, the utility would have the financial ability to provide service.

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Airpark: While the utility has informally agreed for many years to provide service to Sandy Creek Airpark, Phases I and II, and the Airpark has attempted to work with the utility over several years in obtaining that service, it is now apparent that the utility has no intention of providing service to the Airpark's Phase II, or any of the remaining undeveloped lots in Phase I. The utility has filed an inappropriate and imprudent extension application with the Florida Public Service Commission to include only those specific lots currently served by the utility in its certificated service territory, while excluding other lots immediately adjacent thereto, as well as excluding all of Phase II of the Airpark. The Airpark has, based upon the assurances of service from the utility, constructed the internal water distribution and sewage collection systems as approved by the utility, and has indicated a willingness for many months to construct all necessary additional lines to connect those systems directly to water and sewer plants of the utility. Despite the fact that the utility will have no out-of-pocket costs related to providing service to the Airpark's Phase II, the utility has refused to provide such service.

The Florida Public Service Commission should require the utility to renote its extension application and extend its territory to provide service to Phases I and II of the Airpark, as well as all other properties currently served by the utility's system, or where the facilities have been constructed and are available for immediate connection to the utility's system. In addition, the Commission should require the utility to provide such service based upon its existing service availability charges on an individual lot bases only when such lot requests service.

Staff: Based on the information available to Staff at this time, Staff believes that the utility's application for amendment to its water and wastewater certificates should be granted. Staff also believes that the utility should be required to serve and be required to file an amendment application for all of the area excluded from the present amendment in which the utility currently owns lines and all of the Sandy Creek Airpark Phase II.

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V. Issues and Positions

For convenience, the issues appearing below have been segregated into three categories: "Issues of Fact," "Issues of Law," and "Issues of Policy." Issues which are considered to be a combination of any these categories appear under the "Issues of Policy" category.

A. Issues of Fact.

ISSUE 1: Are the objecting parties' properties located outside of the territory sought by this amendment application and described in the notice?

POSITIONS

UTILITY: Agree with Staff. (Swain)

AIRPARK: While the objecting parties all own property located outside the proposed territory, several of those objecting parties, including Sandy Creek Airpark, Inc., also own properties within the proposed territory and are customers of the utility at the present time. (Delavan)

STAFF: As best as Staff can determine from that which has been filed thus far, the status of the objectors is as follows: one of the objectors owns a lot within the proposed amended territory and six are excluded from the proposed amended territory. The other objectors did not mention which lots they owned, although they indicated that their lots were within the Airpark development.

ISSUE 2: Does the utility have adequate water and wastewater capacity to provide service to the area for which the Airpark seeks service?

POSITIONS

UTILITY: No. The utility does not presently have adequate capacity (water treatment, wastewater collection, nor financial capacity) to provide service to the area for

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which the Airpark requests service. An extension to the area for which the Airpark requests service risks exacerbating the serious problems of the existing collection system and detracts from the capacity needed to serve future customers within the utility's certificated service area. (Swain)

AIRPARK: Yes. The utility has sufficient water supply, treatment, and distribution capacity and adequate wastewater collection, treatment, and disposal capacity to serve the entire Airpark. Specifically, as to water plant capacity, the fire flow amounts allowed for rate case purposes should not be considered in determining whether or not the utility has adequate water capacity to provide service to the Airpark. There are no specific requirements for fire flow within the service territory. The utility's facilities are not only insufficient to provide fire flow service, but they are not depended upon by the local fire authorities.

Even if fire flows are considered, the utility still has adequate capacity to provide service with existing facilities to the Airpark Phases I and II for several reasons outlined in the testimony of Greg Delavan. Even if the Commission were to find that the utility does not currently have adequate water capacity to provide service to the Airpark, little or no additional investment would be required in order to add the needed capacity.

The utility has adequate sewer capacity to provide service to the proposed territory. (Delavan, Walker)

STAFF: At this time it appears as though the utility currently has adequate water distribution and wastewater collection facilities to serve Phase I of the Airpark. It also appears as though the utility will have adequate distribution and collection facilities to serve Phase II of the Airpark, since such facilities would be donated to the utility by the Airpark. The utility has adequate wastewater treatment capacity, but it appears as though the utility has limited water treatment capacity, and water plant expansion may be necessary.

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ISSUE 3: What additional investment would be required by the utility to serve the Airpark?

POSITIONS

UTILITY: So long as the Airpark is required to bear its fair share of costs of plant capacity and connecting to the utility's mains, no significant additional utility investment is necessary. (Swain)

AIRPARK: In order to provide service to the Airpark Phases I and II, no additional investment will be required by the utility. The utility currently has all facilities necessary to provide service to Sandy Creek Airpark Phase I, as the line bordering all the lots in that development are in place. Sandy Creek Airpark, Inc., has constructed the facilities in Phase II under specifications provided by the utility, and has had its plans approved for those facilities prior to their construction. That construction has now been completed, and little or no additional investment by the utility is necessary. (Delavan)

STAFF: Based on the information available at this time, it appears as though little, if any, additional investment would be necessary.

ISSUE 4: If additional investment were required, is the utility financially able to make such investment without impairing its capacity to serve its existing customers?

POSITIONS

UTILITY: The utility is not financially able to provide service to the area for which the Airpark requests service. An extension to the area for which the Airpark requests service risks exacerbating the serious problems of the existing collection system and detracts from the capacity needed to serve future customers within the utility's certificated service area. (Swain)

AIRPARK: Even assuming that the utility needs additional storage capacity, or pumping capacity for its water system, it is obvious that the utility is able to obtain financing for

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such construction based upon its recent financing of substantial investment in its sewer system expansion.

It appears as though improvements to the water system, if any are necessary in order to provide service to the Airpark, would be of relatively little cost to the utility. (Delavan)

STAFF: Based on the information available at this time, it appears as though the utility would be financially able to make such investment without impairing its capacity to serve its existing customers.

ISSUE 5: Were the lines in Phase II of the Airpark properly permitted and constructed?

POSITIONS

UTILITY: Agree with Staff. (Swain)

AIRPARK: Yes. (Delavan)

STAFF: Based on the information available at this time, it cannot be determined whether the lines in Phase II of the Airpark were properly permitted and constructed.

B. Issues of Law

ISSUE 6: Do the objecting parties have standing to protest the amendment application?

POSITIONS

UTILITY: No. Please see the utility's Pending Motion to Dismiss Objections

AIRPARK: Yes.

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STAFF: The standing issue will be determined by the Commission at its July 2nd Agenda Conference when the Commission considers the utility's motion to dismiss.

ISSUE 7: May the Commission grant authority greater than that requested in the amendment application and described in the notice of application?

POSITIONS

UTILITY: No, pursuant to Section 367.045(5)(a), Florida Statutes.

AIRPARK: Under the provisions of Section 367.045, Florida Statutes, the Commission has the authority to amend a certificate on its own motion, after proper notice. The Commission can either perform the noticing itself or require the utility to perform proper noticing of the amendment as ordered by the Commission.

STAFF: No. Section 367.045(5)(a), Florida Statutes, states that the Commission may grant an amendment application in whole or in part or with modifications in the public interest, but may not grant authority greater than that requested in the application and noticed for.

ISSUE 8: Does the Commission have the authority to require a utility to extend service outside of its certificated territory?

POSITIONS

UTILITY: No, pursuant to Section 367.121(1)(d), Florida Statutes, the Commission lacks that power where, as in this case, the utility does not have the capacity or financial ability to extend such service. Section 367.045, Florida Statutes, invoked by the Airpark, is not applicable, because that section deals with the authority and power of the Commission in considering and ruling upon applications for certificates, and deletions and amendments thereto. There is no such application before the Commission in this docket. Rule 25-30.560, Florida Administrative Code, also invoked by the Airpark, is not

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applicable since the utility has not filed for a change in its service availability policy or charges and the Commission has not initiated a show cause proceeding to require the utility to change such policy or charges.

AIRPARK: Yes. Under the provisions of Section 367.121, Florida Statutes, the Commission may require a utility to extend its service outside the geographic area described in its Certificate of Authorization, and make additions to its plant or equipment to serve outside such area if the Commission first finds that the utility is financially able to make such additional investment without impairing its capacity to serve its customers. The evidence presented demonstrates that the utility has the financial ability to make the investment, if any, needed to provide service to the Airpark, and the ability to serve, without impairing its capacity to serve its existing customers.

STAFF: Yes. Under Section 367.121, Florida Statutes, the Commission may require a utility to extend its service outside the geographic area described in its certificate if the Commission first finds that the utility is financially able to make such additional investment without impairing its capacity to serve its customers.

C. Issues of Policy

ISSUE 9: Is it in the public interest to grant the utility's application?

POSITIONS

UTILITY: Yes. (Swain)

AIRPARK: No. To grant the application as filed, excluding all undeveloped properties located on its existing lines and Phase II of the Airpark is contrary to the public interest and should not be authorized. (Delavan)

STAFF: Yes. Since the lots currently being served by the utility should be included in its certificated territory, the utility's application should be granted. However,

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see also Staff's positions on Issues Nos. 11 and 12 regarding the inclusion of additional territory.

ISSUE 10: Is the utility's approach of extending its territory prudent, cost effective, and in the public interest?

POSITIONS

UTILITY: The intended purpose of the application was to comply with the Commission directive to promptly file an application to certify that which was already served and which had inadvertently been omitted from the utility's initial certification proceedings. (Swain)

AIRPARK: No. A piecemeal or lot by lot approach to amendment of the utility's certificated service territory, and exclusion of Phase II of the Airpark, is imprudent, not cost effective, and contrary to the public interest. The Commission should find, that unless the Utility will voluntarily extend its service territory to include all of those lots on lines currently owned and operated by the utility and Phase II of the Airpark in its certificated service territory, that the extension application, as filed, and all the costs related thereto were an imprudent expenditure by the utility, and not in the public interest. As such, the Commission should disallow recognition of any of those costs in the establishment of the utility's rate base, rates or charges. (Delavan)

STAFF: No. Staff believes that the utility's methodology is imprudent, not cost effective, and not in the public interest. However, if the Commission finds otherwise and this methodology continues, the costs of filing amendment applications as a result of its use should be borne by the utility below the line.

ISSUE 11: Should the utility be required to file an amendment application to include all territory in which it presently owns lines?

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POSITIONS

- UTILITY: No. However, following approval of the pending application and resolution of the complaint, the utility is willing to promptly file an amendment application to add to its territory all lots adjacent to existing utility lines, subject to availability of capacity. (Swain)
- AIRPARK: Yes. The utility should be required to file an amendment application to include all property in which it presently owns lines and Sandy Creek Airpark Phase II. However, a more cost effective approach would be to require the utility to renote its existing application to include the territory in which it presently owns lines, and Sandy Creek Airpark Phase II. (Delavan)
- STAFF: Yes. Such an amendment would include not only all of the lots in the Sandy Creek Airpark Phase I which were omitted from the current proposed amended territory, but would also include the balance of lots not currently receiving service in Sandy Creek Ranch. The appropriate rates and charges to be applied to this additional territory would be the approved rates and charges in the utility's tariff.
- ISSUE 12: Should the utility be ordered to file an amendment application to include Phase II of the Airpark?

POSITIONS

- UTILITY: No. However, please see the utility's position on the following issue. (Swain)
- AIRPARK: The Commission should immediately require the Utility to extend service outside its territory to include all of Sandy Creek Airpark Phases I and II, to accept the lines constructed in Sandy Creek Airpark Phase II for connection to the Utility's systems, and to provide service to each individual homeowner upon payment of the appropriate service availability fee. The Commission should thereafter require the Utility to renote an extension application to include all those territories in

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Sandy Creek Airpark Phases I and II, and to file an application for extension of certificate to include those territories within its certificated service territory, all at the Utility's sole cost and expense. (Delavan)

STAFF: Yes. The appropriate rates and charges to be applied to this additional territory would be the approved rates and charges in the utility's tariff.

ISSUE 13: If the Commission requires the utility to extend service, what, if any, of the conditions described in Exhibit DDS-4 are reasonable and appropriate?

POSITIONS

UTILITY: Consistent with the listed conditions sponsored by Ms. Swain's prefiled direct testimony, the Commission should inform the Airpark that if it wishes to receive a commitment from the utility that capacity for the fifty lots within Phase II of the Airpark will be available, it must enter into a developer's agreement and bear a fair share of the costs of such extension of service by advance payment of appropriate service availability charges, including a capacity charge. This would ensure that the utility has the continued ability to provide service needed within its certificated service area. (Swain)

AIRPARK: With regard to the items contained in Exhibit DDS-1, attached to Ms. Deborah Swain's direct testimony filed in Docket No. 910111-WS, the Airpark takes the following positions:

1) It is unclear what is meant by a "letter of intent." However, the Airpark is willing to enter into a simple Developer Agreement, including the terms as outlined below.

2) The Airpark is willing to pay, in accordance with Commission rule, estimated costs of legal fees which will be required to enter into an Agreement. These would include generally, the cost of drafting such an Agreement

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after terms are agreed upon or mandated. Under the provisions of Commission rule 25-30.540, maximum prepayment of such costs is 10% of the total estimate. The Airpark has already paid the Utility \$880.00 for engineering review of plans and inspection of the system, and as such this prepayment should be considered in determining the appropriate advance payment, and no further charges for engineering are appropriate.

It is not reasonable or appropriate to require the Utility to pay the cost of establishing new service availability fees or extension of the Utility's certificate to provide service to the Airpark Phase II.

3) The Utility's policy in providing service to customers has been to provide service, as requested, to each individual lot owner upon payment of the appropriate individual service availability charge. Since Sandy Creek Airpark, Inc., has constructed and is prepared to contribute the entire internal collection and distribution system to the Utility, such impact fees would include only plant capacity charges with no main extension charge being applicable.

The Utility does not currently have the authority to charge the tax impact of CIAC to contributors of property or service availability fees, and as such, such charge is neither appropriate or allowable. The Utility has not requested such approval, and it does not appear authorized, under this Utility's circumstances.

If the Commission finds that prepayment in full of service availability fees is required in order to connect Sandy Creek Airpark Phase II, all individual lot owners throughout the service territory should be required to make such contributions immediately upon being added to that territory, including all those vacant lots owned by the Utility's related party in the existing service territory.

4) The Airpark is agreeable to all of the ten requirements outlined in paragraph 4 to the extent that the information is available, and has not already been

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provided to the Utility. The warranty required under subparagraph (h) is only acceptable and reasonable to the extent it is a warranty against defects in materials or workmanship or installation, and not a warranty against maintenance or repairs of the equipment installed.

5) The requirement that the developer or homeowners retain ownership and maintain responsibility over pump stations or septic tanks is inappropriate in that such would result in the rates, as proposed by the Commission, being discriminatory, and the service availability charges currently imposed and to be imposed in the future to be discriminatory against this developer and the individual lot owners. In addition, ownership and maintenance of these facilities by either homeowners or the developer is not practicable. To the extent such condition was deemed appropriate by this Commission, existing customers of the Utility should be required to own, operate and maintain similar facilities. (Delavan)

STAFF:

The provision of service to Phase II of the Airpark should be given in accordance with Rules 25-30.530 and 25-30.540, Florida Administrative Code. These rules spell out how an advance deposit is calculated and places a limit on said deposit. They allow the utility to request that the total amount of CIAC charges be paid at the time of execution of the agreement. They do not allow the utility to require the developer to pay for costs incurred by the utility in revising service availability charges. The appropriate service availability charges which the developer must pay would be those in effect at the time the developer agreement is executed. The utility has no authority to gross-up CIAC. Additionally, pursuant to Rule 25-30.545, Florida Administrative Code, the utility may refuse any contributed property which does not meet prescribed standards.

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VI. Proposed Stipulations

At the Prehearing Conference, the parties and staff stipulated to the following:

- 1) The utility has the technical ability to provide service to the proposed amended territory.
- 2) The utility has the financial ability to provide service to the proposed amended territory.
- 3) There is a need for service in the proposed amended territory.
- 4) Service to the proposed amended territory is not available from other sources in the proximity.
- 5) The utility owns the water distribution and wastewater collection facilities in the areas it is presently serving outside of its certificated territory.

VII. Rulings

On May 24, 1991, Sandy Creek Utilities, Inc., filed a Motion To Dismiss Objections (Motion) in the amendment objection case, Docket No. 910260-WS. On June 3, 1991, Sandy Creek Airpark, Inc., filed a timely response to the Motion. The Motion pertains only to the amendment objection case. On June 20, 1991, the Commission Staff filed a recommendation to deny the Motion. At its July 2, 1991, Agenda Conference, the Commission deferred the matter with the intention of considering it at and after the hearing.

VIII. Exhibits

| <u>Witnesses</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|------------------|---------------------|--------------------|------------------------------------|
| Swain | Utility | DDS-1 Composite | Complete application for amendment |
| Swain | Utility | DDS-2 Composite | Schedules from PAA Order No. 24170 |

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| <u>Witnesses</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|------------------|---------------------|-------------------|---|
| Swain | Utility | DDS-3 | Resume of Carol L. Anderson |
| Swain | Utility | DDS-4 | List of service conditions |
| Delavan | Airpark | GD-1 | Letter from Mr. Delavan to Mr. Leal dated 7/25/88 |
| Delavan | Airpark | GD-2 Composite | 1989 correspondence between Airpark counsel and utility counsel |
| Delavan | Airpark | GD-3 | Letter from utility engineer to Airpark engineer dated 4/18/90 and copy of a canceled check for inspection fee paid to utility by Airpark |
| Delavan | Airpark | GD-4 | Correspondence from Mr. Delavan to utility President dated 9/24/90 with proposed service agreement attached |
| Delavan | Airpark | GD-5 | Letter dated 5/18/90 from Airpark engineer to utility engineer including revised sewer plans, connection of Phase II, and letter dated 12/20/90 from utility engineer to utility vice-president approving plans for connection of Phase II, |
| Delavan | Airpark | GD-6 | Letter dated 4/2/91 from Mr. Delavan requesting service to Lot 100, Phase II, of Airpark |
| Delavan | Airpark | GD-7 | Letter from utility counsel to Mr. Delavan denying service to Lot 100 |

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| <u>Witnesses</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|------------------|---------------------|--------------------|---|
| Delavan | Airpark | GD-8 | Letter dated 3/29/91 from Mr. Rogers to utility requesting service to Lot 41, Phase I, of Airpark; letter dated 4/9/91 from Mr. Rogers to Mr. Delavan concerning request for service; and letter dated 4/9/91 from utility counsel to utility vice-president concerning denial of service to Mr. Rogers |
| Delavan | Airpark | GD-9 | Letter dated 2/28/91 from Mr. Heber of HRS to utility president concerning provision of sewer service to Airpark |
| Delavan | Airpark | GD-10 | DER permits for construction of water and wastewater systems signed by utility Representatives |
| Delavan | Airpark | GD-10 Composite | Correspondence from 1983 through 1984 concerning service to Sandy Creek Ranch and Airpark |

Staff has requested that the Commission take administrative notice of the following Commission rules: Rules 25-30.510 through 25-30.585, Florida Administrative Code.


Parties and Staff reserve the right to identify exhibits for the purpose of cross-examination.

Based upon the foregoing, it is

ORDERED by Commissioner Betty Easley, as Hearing Officer, that this Prehearing Order shall govern the conduct of these proceedings unless modified by the Commission.

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By ORDER of Commissioner Betty Easley, as Hearing Officer, this
12th day of JULY, 1991.



BETTY EASLEY, Commissioner
and Hearing Officer

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