

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a Rate) DOCKET NO. 921293-SU
Increase in Pinellas County by) ORDER NO. PSC-94-0469-PHO-SU
MID-COUNTY SERVICES, INC.) ISSUED: April 19, 1994
_____)

Pursuant to Notice, a Prehearing Conference was held on April 6, 1994, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

RICHARD D. MELSON, ESQUIRE, Hopping Boyd Green & Sams,
123 South Calhoun Street, Post Office Box 6526,
Tallahassee, Florida 32314
On behalf of Mid-County Services, Inc.

JOHN R. JENKINS, ESQUIRE, Rose Sundstrom & Bentley, 2548
Blairstone Pines Drive, Tallahassee, Florida 32301
On behalf of Suntech Homes, Inc.

SUZANNE F. SUMMERLIN, ESQUIRE, AND MARC S. NASH, ESQUIRE,
Florida Public Service Commission, 101 E. Gaines Street,
Tallahassee, Florida 32399-0863
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

Mid-County Services, Inc. (Mid-County or utility), a wholly owned subsidiary of Utilities, Inc., is a Class B utility, located in Pinellas County, Florida. Mid-County provides wastewater service to customers located in Dunedin, Florida. The utility is located in a region which has been designated by the South Florida Water Management District (SFWMD) as a critical use area. As of December 31, 1992, the utility served approximately 1,062 residential customers and 175 general service customers. The wastewater system serves approximately 2,337 equivalent residential connections (ERCs). By Order No. 25257, issued October 28, 1991, the Commission approved a transfer of majority organizational control of Mid-County from the former owner of the utility to Utilities, Inc. The transaction involving the acquisition of stock was completed and the closing occurred on May 22, 1991.

COMMUNICATIONS SECTION

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FPSO-FLORIDA PUBLIC SERVICE REPORTING

On April 1, 1993, the utility filed the instant application for approval of interim and permanent rate increases pursuant to Sections 367.081 and 367.082, Florida Statutes, and requested that the Commission process this case under the proposed agency action (PAA) procedure. However, the information submitted did not satisfy the minimum filing requirements (MFRs) for a general rate increase. Subsequently, on May 21, 1993, the utility satisfied the MFRs and this date was designated the official filing date. The test year for interim is the twelve-month period ended December 31, 1992. The test year for the final rate determination is the projected twelve-month period ending March 31, 1994, based on the historical twelve-month period ending June 30, 1992. The current rate case was driven by the capital improvements required by Department of Environmental Protection (DEP) directives. The utility has upgraded personnel and invested approximately \$1,500,000 to improve its present service.

Mid-County requested interim wastewater rates designed to generate annual operating revenues of \$796,235. Those revenues exceeded test year revenues by \$304,591 or 61.95 percent. By Order No. PSC-93-1174-FOF-WU, issued August 10, 1993, the Commission approved annual operating revenues of \$755,218 on an interim basis, subject to refund. Mid-County requested final wastewater rates designed to generate annual revenues of \$926,127. These revenues exceed test year revenues by \$430,548, or 86.88 percent. By PAA Order No. PSC-93-1713-FOF-SU, issued November 30, 1993, the Commission proposed increased wastewater rates and service availability charges for this utility. Specifically, the Commission proposed a \$761,584 wastewater revenue requirement for Mid-County, which represents an annual increase in revenue of \$262,803 or 52.69 percent.

On December 20, 1993, Suntech Homes, Inc. (Suntech or developer) timely filed a Petition on Proposed Agency Action, wherein it requested a Section 120.57, Florida Statutes hearing. The developer's protest appears to be limited to the service availability charges. On December 27, 1993, Mid-County filed a Notice of Intent to Implement Increased Rates and Charges, along with revised tariff sheets, a proposed customer notice, and corporate undertakings of Mid-County Services, Inc., and its parent, Utilities, Inc. By Order No. PSC-94-0419-FOF-SU, issued February 7, 1994, this Commission acknowledged Mid-County's Notice to Implement the PAA rates. An administrative hearing for this docket has been scheduled for April 20, 1994.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the

nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

III. POST-HEARING PROCEDURE

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. You must include in that statement, a summary of each position of no more than 50 words, set off with asterisks. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

IV. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties has been prefiled. 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.

V. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
Mark F. Kramer	Utility	1,
Donald W. Rasmussen	"	3, 4, 5
Frank Seidman	"	1, 2, 4
Michael Orsi	Developer	1, 3, 4, 5
Michael Burton	"	1, 2, 4
<u>Rebuttal</u>		
Donald W. Rasmussen	Utility	
Frank Seidman	"	

VI. BASIC POSITIONS

UTILITY: Mid-County was willing to accept the rates and service availability charges contained in the Commission's Proposed Agency Action Order, although it did not agree with all the specific adjustments made by the Commission. Following Suntech's protest, Mid-County is still willing to accept the results of the Commission's PAA order with three exceptions. First, the Commission should approve the \$1,235 service availability charge requested by the utility, rather than the \$1,179 charge contained in the PAA order. Second, the Commission should include in rate base the capitalized administrative time associated with management and supervision of the major improvements to Mid-County's wastewater treatment plant. Third, the Commission should allow the increased rate case expense incurred as a result of Suntech's protest.

DEVELOPER: Mid-County's 869% increase in service availability charge violates Chapter 367, Florida Statutes, Rule 25-30.585, Florida Administrative Code, and case law by requiring future customers to pay more than their fair, pro rata share of the cost of facilities necessary to serve them. This results in future customers subsidizing existing customers.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions. The information gathered through discovery and prefiled testimony indicates, at this point, that the utility is entitled to some level of increase. The specific level cannot be determined until the evidence presented at hearing is analyzed.

VII. ISSUES AND POSITIONS

ISSUE 1: What are the appropriate service availability charges for this utility?

POSITIONS

UTILITY: \$1,235 per ERC. This charge is consistent with the Commission's rules and does not result in collecting more than an appropriate amount from any party connecting to the utility system.

DEVELOPER: \$282 per ERC. This more than doubles the existing charge and represents a pro rata cost allocation of the existing plant and improvements. A higher charge results in future customers subsidizing existing customers.

STAFF: No position pending further development of the record.

ISSUE 2: Is the service availability charge proposed by the utility in compliance with the Commission guideline Rule 25-30.585 Florida Administrative Code?

POSITIONS

UTILITY: Rule 25-30.585, Florida Administrative Code, does not apply to the charge proposed by the utility. This rule only applies to charges made to developers pursuant to developer agreements. The charges under such agreements are evaluated under this rule on a case-by-case basis. There are no existing developer agreements at issue in this case.

DEVELOPER: No. The appropriate service availability charge according to this rule is \$282. Utility must fairly allocate costs among customers regardless of whether there is a developer agreement.

STAFF: No position pending further development of the record.

ISSUE 3: What action, if any, should be taken by the Commission as a result of the collection of an increased service availability charge prior to the effective date?

POSITIONS

UTILITY: In mid-November, 1993, Suntech Homes applied for service to ten units in two buildings. Based on past experience with Suntech, it appeared likely the units would not connect to the system before the new service availability charge was effective. Mid-County therefore required Suntech to pay at the new rate, with the understanding Mid-County would refund the increased charges if any of the units connected before the effective date of the revised tariff. In fact, none of the units did connect prior to the effective date of the new tariff. Under these circumstances, no action should be taken by this Commission.

DEVELOPER: The Commission should impose such sanctions as it deems necessary.

STAFF: Staff have no position at this time concerning what action should be taken pending further development of the record.

ISSUE 4: Can the utility expect additional property CIAC?

POSITIONS

UTILITY: The utility may or may not receive additional property CIAC depending on the terms of future developer agreements, if any.

DEVELOPER: Yes, including \$100,000 from Suntech.

STAFF: No position at this time.

ISSUE 5: What is the appropriate ERC factor to utilize in calculating the service availability charge for a townhome or villa?

POSITIONS

UTILITY: An individually metered townhome or villa should be treated as one ERC, the same as any other individually metered single family residence.

DEVELOPER: Less than 1 ERC because a townhome is not a single family residence.

STAFF: No position at this time.

VIII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Mark F. Kramer	Utility	MFK-1	NARUC accounting instruction
"	"	MFK-2	Staff Advisory Bulletin No. 33
"	"	MFK-3	Analysis of rate case expense -- Updated January, 1994
"	"	MFK-4	Analysis of rate case expense -- Updated April 15, 1994
"	"	MFK-5	MFRs
"	"	MFK-6	Response to Staff Audit Report
Donald W. Rasmussen	"	DR-1	Wastewater plant flows
"	"	DR-2	Suntech application to DEP for general permit
"	"	DR-3	Letter with chronology concerning Suntech's payment of service availability charges
"	"	DR-4	Letter from Suntech regarding payment of service availability charges

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Donald w. Rasmussen	Utility	DR-5	DEP permit allowing Mid-County a plant capacity of 900,000 gpd
Frank Seidman	"	FS-1	Analysis of range of service availability charges with 52 ERC/year growth rate using plant capacity of 800,000 gpd
"	"	FS-2	Analysis of range of service availability charges with 100 ERC/year growth rate
"	"	FS-3	Analysis of range of service availability charges with 52 ERC/year growth rate using plant capacity of 900,000 gpd and a n u p d a t e d multiplier
Michael Orsi	Developer	MO-1	M a p o f t h e Brookfield Project
"	"	MO-2	Florida Department of Environmental Regulation notice of denial of use of general permit dated June 25, 1992
"	"	MO-3	Phase II collection system cost estimate
Michael Burton	"	MB-1	Firm Resume of Burton & Associates, Inc.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Michael Burton	Developer	MB-2	Service availability charge calculation and supporting schedules
"	"	MB-3	Service availability charge calculation and supporting schedules
"	"	MB-4	Service availability charge calculation and supporting schedules
"	"	MB-5	Updated consolidated service availability charge calculation and supporting schedules

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

X. PROPOSED STIPULATIONS

The parties and staff have identified the following proposed stipulations.

1. Mid-County is accepting the Commission's decisions in the proposed agency action order, with the following modifications:
 - (a) The appropriate level of service availability charges remains at issue in this proceeding.
 - (b) The wastewater plant is 88% used and useful.

- (c) Salaries directly related to construction projects should be capitalized. Accordingly, the following adjustments reflected in the proposed agency action order are deleted.

Plant Account	\$64,326
Accumulated Depreciation	\$ 3,003
Depreciation Expense	\$ 1,608

- (d) The final rates shall be the same as those shown on Schedule No. 4, page 34, of the proposed agency action order. The rate decrease at the end of four years shall be twice the amount shown on Schedule No. 5, page 35, of the proposed agency action order. Rate case expense of \$110,000 is implicit in these calculations.
- (e) Mid-County will have the right, in its next rate case to present evidence as to the total amount of rate case expense incurred in this proceeding and the prudence thereof. Any such rate case expense in excess of \$110,000 which is found by the Commission to be prudent shall be recoverable through rates at that time.
2. The plant capacity is 900,000 gpd.
 3. Suntech timely filed an objection to Mid-County's Application for Increased Service Availability Charges and has standing to raise service availability charge issues.
 4. Mid-County began collecting the increased service availability charge of \$1,179 per ERC from Suntech Homes in mid-November, 1993, prior to the January 7, 1994, effective date.
 5. Units paying the increased service availability charge prior to January 7, 1994, were not connected until after that date at which time the higher charge was appropriate.
 6. Mr. Frank Seidman and Mr. Michael Burton are qualified as experts to testify in this case. This stipulation does not preclude cross-examination of such witnesses about their professional background and experience.

7. A service availability charge anywhere between \$0 and \$1,795.00 provides Mid-County with a level of CIAC which falls within the guidelines set forth in Rule 25-30.580, Florida Administrative Code.

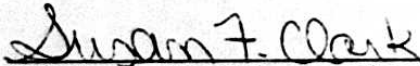
XI. PENDING MOTIONS

Developer's Motion to Take Official Notice of Mid-County tariff, annual reports from 1973-1976 and 1983-1992, and prior Public Service Commission orders regarding Mid-County or its predecessor, Dyna-Flo Services, Inc.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 19th day of April, 1994.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.