

**ORIGINAL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Sandy)
Creek Airpark, Inc., against)
Sandy Creek Utilities, Inc.)

Docket No. 910111-WS
Filed: February 25, 1991
FL. BAR #0027966

RESPONSE TO SANDY CREEK AIRPARK, INC.'s COMPLAINT AND PETITION

Sandy Creek Utilities, Inc., (SCU) files this its Response and Answer to the Complaint of Sandy Creek Airpark, Inc., (SCA) and states:

1. In response to the opening paragraph of the Complaint:

(a) SCU denies that Rule 25-22.037 is applicable. Rule 25-22.037, F.A.C. deals with answers and motions, not with complaints.

(b) SCU denies that Rule 25-30.560, F.A.C. is applicable herein because that rule deals with disputes concerning developer agreements. There is no developer agreement involved in this proceeding.

(c) Section 367.045, F.S. is not applicable to this proceeding because Section 367.045 deals with the authority and power of the Commission in considering and ruling upon an application for a certificate. There is no such application before the Commission in this docket.

(d) Section 367.121 is not applicable because the complainant does not allege that SCU is financially able to make any required additional investment without impairing its capacity to serve existing customers.

2. The Respondent, SCU, admits the allegations in paragraph 1 and 2 of the Complaint.

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3. SCU admits that SCA is the owner of property for which it seeks utility service, however such property for which the utility service is sought is not within the certificated territory of SCU.

4. In response to paragraph 4 of the complaint, Respondent states there are disputed issues of fact as will be set forth later.

5. SCU admits the allegation in paragraph 5(a) of the Complaint.

6. SCU admits the allegation in paragraph 5(b) of the Complaint.

7. In response to paragraph 5(c), SCU says that SCA has inquired about utility service to phase 2 of Sandy Creek Airpark but has refused to enter into a developer agreement as defined by Rule 25-30.515(6), F.A.C.

8. SCU denies the allegations in paragraph 5(d) saying further that Rule 25-30.530 is not applicable to this controversy.

9. In response to paragraph 5(e), SCU denies and states affirmatively that the facilities constructed to be connected with the apparent purpose to be interconnected with SCU facilities are not adequate and do not meet the requirements of the Department of Environmental Regulation nor the Florida Public Service Commission. The SCA facilities were constructed without the required DER permit.

10. In response to paragraph 5(f), SCU is without knowledge as to SCA's necessity for written assurances that SCU intends to

provide utility service to the lots contained in Phase II of Sandy Creek Airpark. However, in order for SCU to give any such assurance to SCA, it is necessary that SCA and SCU enter into a developers agreement as defined by Rule 25-30.515(6), F.A.C. Such agreement must provide for the payment of plant capacity charges and other appropriate charges so that capacity for the lots in Phase II of Sandy Creek Airpark will be reserved and available when needed by the purchasers of said lots.

11. In response to paragraph 5(g) of the Complaint, SCU denies that Phase I and Phase II of the Airpark is in the certificated area de facto or otherwise of SCU.

12. In response to paragraph 5(h), SCU does presently have adequate capacity to serve Sandy Creek Airpark. However, it is not willing to do so without the appropriate developers agreement and payment of the appropriate charges including a capacity charge. Further, the facilities which SCA reports it is ready, willing and able to provide by bill of sale to SCU are not constructed to standards and specifications that will be required by DER, SCU, and the PSC.

13. SCU denies the allegations contained in paragraph 5(i).

WHEREFORE, Sandy Creek Utilities, Inc. requests that the Commission:

1. Inform Sandy Creek Airpark, Inc. that if it wishes to receive utility service from Sandy Creek Utilities, Inc., it must enter into a developers agreement as contemplated by the rules of the Commission.

2. Order that facilities within Sandy Creek Airpark, Inc., Airpark Phase II are not adequate to be interconnected with the facilities of Sandy Creek Utilities, Inc.

3. Order that Section 367.045, F.S., is not relevant to the relief requested by SCA in this proceeding.

4. Order that the certificated territory of SCU should not be extended unless the requirements of Section 367.121, F.S. are met.

DATED this 25th day of February, 1991.

Respectfully submitted,

B. Kenneth Gatlin

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Attorneys for
SANDY CREEK UTILITIES, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the RESPONSE TO SANDY CREEK AIRPARK, INC.'s COMPLAINT AND PETITION has been furnished by U.S. Mail to: F. Marshall Deterding, Esquire, ROSE, SUNDSTROM & BENTLEY, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301 on this 25th day of February, 1991.

B. Kenneth Gatlin
B. KENNETH GATLIN