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BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

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

In re: Application for amend- : DOCKET NO. 910260-WS
ment of Certificates No. 514-W :
and 446-S in Bay County by :
Sandy Creek Utilities, Inc. : HEARING

FPSC Hearing Room 106
101 East Gaines Street
Tallahassee, FL 32399-0870

Friday, July 19, 1991

BEFORE: COMMISSIONER BETTY EASLEY

APPEARANCES:

WAYNE SCHIEFELBEIN, of Gatlin, Woods, Carlson &
Cowdery, 1709-D Mahan Drive, Tallahassee, Florida,
32308, Telephone (904) 877-7191, for Sandy Creek
Utilities, Inc.

F. MARSHALL DETERDING, of Rose, Sundstrom &
Bentley, 2548 Blairstone Pines Drive, Tallahassee,
Florida, 32301, Telephone (904) 877-6555, for Sandy
Creek Airpark, Inc.

MATTHEW FEIL, FPSC Division of Legal Services, 101
East Gaines Street, Tallahassee, Florida 32399-0863,
Telephone No. (904) 487-2740, for the Commission

1 APPEARANCES CONTINUED:

2 PRENTICE P. PRUITT, FPSC Office of General
3 Counsel, 101 East Gaines Street, Tallahassee, Florida
4 32399-0863, Telephone No. (904) 487-2740, Counsel to
5 the Commissioners.

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10 REPORTED BY:

CAROL C. CAUSSEAU, CSR, RPR
Official Commission Reporter

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I N D E X

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2	<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>ADMITTED</u>
3	No. 1 - Developer Agreement	3	3
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P R O C E E D I N G S

(Hearing convened at 9:40 a.m.)

COMMISSIONER EASLEY: Good morning. Counsel, would you read the notice, please?

MR. FEIL: Yes, ma'am. This time and place has been designated for hearing in Docket No. 910111-WS, complaint and petition of Sandy Creek Airpark against Sandy Creek Utilities, and Docket No. 910206-WS, application for amendment by Sandy Creek Utilities.

COMMISSIONER EASLEY: Thank you, sir. Take appearances, please.

MR. DETERDING: F. Marshal Deterding, of the Rose, Sundstrom and Bentley law firm, on behalf of Sandy Creek Airpark, Inc.

COMMISSIONER EASLEY: All right, sir.

MR. SCHIEFELBEIN: Wayne Schiefelbein, of the firm Gatlin, Woods, Carlton and Cowdery, on behalf of Sandy Creek Utilities, Inc.

COMMISSIONER EASLEY: Thank you.

MR. FEIL: Matthew Feil, representing the Commission Staff.

MR. PRUITT: And I'm Prentice Pruitt, Counsel to the Commissioners.

COMMISSIONER EASLEY: Anything preliminary?

1 MR. FEIL: Nothing that I'm aware of, ma'am.

2 MR. SCHIEFELBEIN: Well, preliminary to
3 getting to preliminaries, we would -- there have been
4 discussions going on between the parties that have not
5 arrived at a settlement of the case. However, they
6 have not arrived at a breaking off of discussions,
7 either. And I think all parties would agree that there
8 has been sufficient progress made to justify asking
9 your indulgence for up to an hour in continued
10 discussions among the parties, and then to see where we
11 are at that point.

12 COMMISSIONER EASLEY: All right. We will
13 recess until the hour of -- what is that, a quarter of
14 ten? We will recess until the hour of 11:00.

15 MR. SCHIEFELBEIN: Thank you.

16 MR. DETERDING: Thank you.

17 MR. FEIL: Thank you.

18 (Recess was taken at 9:45 a.m.)

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20 (Hearing reconvened at 11:40 a.m.)

21 COMMISSIONER EASLEY: We'll go back on the
22 record. Who wishes to be heard?

23 MR. DETERDING: Commissioner, I believe we
24 have entered into an agreement that we would like to do
25 as a stipulation on the record.

1 First of all, we have a Developer Agreement
2 that basically outlines that stipulation, with some
3 modifications. I have a few copies of it, and I've got
4 a few modifications to make to those.

5 COMMISSIONER EASLEY: Mr. Deterding, I would
6 anticipate, and somebody correct me if I say this
7 incorrectly, I would anticipate receiving from the
8 parties a signed final stipulation which would include,
9 I assume, the Developer Agreement as part of that
10 stipulation. And I would then recommend to the full
11 Commission whether or not to accept the stipulation,
12 and we would go to Agenda with that as the decision
13 that comes from this hearing.

14 MR. DETERDING: Okay.

15 COMMISSIONER EASLEY: So what I'm saying is
16 that for now I think it would be sufficient to put on
17 the record the nature of the stipulation and then
18 submit to me the final stipulation in its final form,
19 signed.

20 MR. DETERDING: Commissioner, I believe what
21 we can do is with this agreement, one, add about four
22 changes that I can do in ten minutes verbally, and then
23 we can -- there's another stipulation concerning
24 something outside this agreement, their agreement to
25 serve those territories where they had existing lines,

1 those customers on existing lines.

2 With those two things done on the record, I
3 think we would all feel comfortable that we can do it
4 within ten days, enter into this Agreement. We would
5 file that with the Commission and we can file, if you
6 would like, some kind of document saying, "This is our
7 stipulation."

8 But I think we'd all feel more comfortable if we got on
9 the record what that is.

10 COMMISSIONER EASLEY: I wasn't trying to keep
11 you from doing that. I was just trying to let you know
12 what I anticipate that we will do as a result, and I
13 didn't know whether you were planning to admit a copy
14 of the Developer Agreement at this point.

15 MR. DETERDING: Yes.

16 COMMISSIONER EASLEY: Okay. Go ahead, let's
17 go from here.

18 MR. DETERDING: I have four copies, and
19 four's just enough.

20 COMMISSIONER EASLEY: How will we identify
21 this, Mr. Pruitt? Do we need to give it a number or
22 anything?

23 MR. PRUITT: Let's give it Exhibit 1 just for
24 fun, anyway.

25 COMMISSIONER EASLEY: All right, just to

1 prove we had one. All right, the Developer Agreement
2 will be marked as Exhibit No. 1 for the record.

3 (Exhibit No. 1 identified and admitted.)

4 MR. DETERDING: Beginning with the paragraph
5 that begins "Now, therefore," on Page 1 --

6 COMMISSIONER EASLEY: Yes, sir.

7 MR. DETERDING: -- the last full line after
8 the word "company," insert "their respective successors
9 and assigns," comma.

10 MR. SCHIEFELBEIN: For purposes of clarity on
11 the record, I will refrain from speaking unless there
12 is a problem. So if Mr. Deterding has said something
13 and there's silence from our side, that should signify
14 assent.

15 COMMISSIONER EASLEY: Thank you. Let me also
16 get on the record, since Mr. Walker is here and a party
17 to this proceeding -- I'm sorry, not this proceeding.

18 MR. SCHIEFELBEIN: Okay.

19 MR. FEIL: Excuse me, ma'am. Mr. Walker is --

20 COMMISSIONER EASLEY: It has been a very long
21 three days.

22 MR. SCHIEFELBEIN: Amen.

23 COMMISSIONER EASLEY: I apologize.

24 MR. FEIL: I was just going to say that Mr.
25 Walker is a witness, he's not --

1 COMMISSIONER EASLEY: To the extent that I
2 made that statement, I am entirely erroneous,
3 incorrect, out of line.

4 Continue, Mr. Deterding. (Laughter)

5 MR. DETERDING: The next change is on Page 3,
6 under Section 5, Paragraph (d), and this is a rewording
7 of that paragraph and then some additions.

8 As far as the rewording, the first line
9 strike the words "and cost." The second line, strike
10 all the wording after the word "facilities," and I
11 guess leave in the "i-n" at the end, "in."

12 COMMISSIONER EASLEY: That's the word "in"?

13 MR. DETERDING: Correct. The rest of that
14 sentence, as written, is correct. Put a comma at the
15 end of that sentence and then insert the following
16 language: "and all information concerning cost of such
17 facilities, including contracts for construction
18 thereof, and all bids for construction in possession of
19 developer." And I have another couple of sentences to
20 add as well there.

21 "Developer estimates that contract work,
22 which included water and sewer facilities, in addition
23 to other development work, totaled approximately
24 \$110,000. Developer estimates no more than 25% of this
25 final contract work was related to installation of

1 water and sewer facilities." And that's that change.

2 One typo on Page 2, the last full paragraph
3 on Page 2 under Section 4. The fourth line it says
4 "Airwhite Drive" and it should be "Airway Drive." We
5 hadn't discussed that one but I think I hear assent
6 over there.

7 I may need some help from -- let me see. Let
8 me try this: On Section 7 --

9 COMMISSIONER EASLEY: Page 4?

10 MR. DETERDING: -- Page 4, last sentence,
11 last line, after the word "the" at the beginning of
12 that, add "latest version of plans and drawings
13 provided to Utility's engineer and all modifications
14 agreed to between Utility's engineer and developer's
15 engineer," and then continue with the rest of that
16 sentence.

17 MR. SCHIEFELBEIN: Pardon me. Totally
18 nonmaterial, we think you did a great job on that, but
19 just for consistency's sake perhaps we should refer to
20 the Utility as the Service Company.

21 MR. DETERDING: Okay, thank you.

22 MR. SCHIEFELBEIN: But otherwise we totally
23 agree

24 MR. DETERDING: Correct. And the final thing
25 that I have, and Wayne may have some others that we

1 discussed that I just don't have written down, is an
2 agreement that Exhibit A, as referred to in this
3 Agreement, will be the legal description of the plat
4 for Phase II of the Airpark.

5 MR. SCHIEFELBEIN: That is correct, and just
6 for the record it is our understanding that that plat
7 is the territory known in this proceeding, although the
8 actual lot configuration or numbering may be somewhat
9 different, the area we are talking about is the same
10 land as that which has been called Phase II of the
11 Airpark in this proceeding.

12 MR. DETERDING: I understand.

13 MR. SCHIEFELBEIN: And the Agreement doesn't
14 -- once we've seen the plat we don't really need to
15 have that in the Agreement.

16 MR. DETERDING: Okay. Did you have any?

17 MR. SCHIEFELBEIN: Yes.

18 MR. DETERDING: Okay.

19 MR. SCHIEFELBEIN: Could I have a moment?

20 COMMISSIONER EASLEY: Sure. (Pause)

21 MR. SCHIEFELBEIN: Although I'd always enjoy
22 another minute to think, the only other point that I
23 think we've discussed and agreed to, and I don't have
24 any wording on this, is that the plans and the drawings
25 that we've all been relying on shall be substantially

1 identical to the certified as-builts that are to be
2 provided, and unless otherwise agreed by the parties,
3 as apparently there has been some deviations from the
4 drawings that the parties have already agreed to. So
5 I'd like something in the agreement somewhere to that
6 effect; that the drawings or the plans, whatever we
7 call them in the Agreement, will be substantially
8 agreeable to the certified as-builts to be provided
9 under this Agreement, absent agreement to the contrary.

10 MR. DETERDING: And the certified as-builts
11 -- all right, that's fine -- and the certified
12 as-builts will be provided when available, because they
13 are not currently -- until we make the connection I
14 don't believe they can be made available. I'm
15 concerned that there may be some language that
16 indicates to the contrary in here. And I don't think
17 we can provide it to you until we complete it. (Pause)

18 MR. SCHIEFELBEIN: Referring to Page 3 of the
19 Agreement, Paragraph (b) --

20 MR. DETERDING: Yes.

21 MR. SCHIEFELBEIN: And I'm referring to the
22 as-builts -- I think we're okay. You have committed
23 yourselves under this Agreement to provide a mylar of
24 the as-builts within 15 days of execution of the
25 Agreement.

1 MR. DETERDING: And all I'm trying to do,
2 Wayne, by my statement on the record, is make sure
3 we're not talking about "certified as-builts" because I
4 believe that if I do we cannot provide those in 15 days
5 unless we can make the final connection within 15 days.
6 (Pause) If you want to change that to 15 days of the
7 connection, that would be fine.

8 MR. SCHIEFELBEIN: Silence indicating assent.

9 COMMISSIONER EASLEY: The last word in
10 Subparagraph (b) will be changed from "agreement" to
11 "connection"?

12 MR. SCHIEFELBEIN: Yes.

13 MR. DETERDING: Everything after "of" in that
14 last line, the first "of."

15 COMMISSIONER EASLEY: "Of connection"?

16 MR. DETERDING: Right, "15 days of
17 connection."

18 COMMISSIONER EASLEY: Okay. Striking
19 "execution of this agreement"? (Pause)

20 MR. DETERDING: How about "receipt from the
21 engineer"? How about that? Because he may not finish
22 it within 15 days.

23 MR. SCHIEFELBEIN: That's fine, as long as we
24 can get working drawings in the meantime.

25 MR. DETERDING: Agreed.

1 COMMISSIONER EASLEY: All right. Within 15
2 days of what then?

3 MR. DETERDING: Receipt from the engineer.

4 COMMISSIONER EASLEY: All right.

5 MR. DETERDING: Now, with that, I guess what
6 we're stipulating to is execution of this within 10
7 days. Now, I guess that together is Stipulation No. 1.

8 Stipulation No. 2 deals with something that I
9 believe was agreed to at Prehearing, but the exact
10 wording I'm not sure. As I understand it, the Utility
11 has agreed to extend its service territory to include
12 all properties -- I don't know how you want to describe
13 it, Wayne. I'd better leave that to you.

14 MR. SCHIEFELBEIN: May I have a moment to
15 find the prehearing order?

16 COMMISSIONER EASLEY: Uh-huh.

17 MR. SCHIEFELBEIN: Thank you.

18 MR. DETERDING: Is it in the prehearing
19 order?

20 MR. SCHIEFELBEIN: I believe so. (Pause)

21 COMMISSIONER EASLEY: Are you looking for

22 Page 13?

23 MR. SCHIEFELBEIN: I apologize, I've been so
24 busy. (Laughter) Leave it at that, I've been so busy.
25 There it is. (Pause) What we would like to offer on

1 this, essentially, is our position on Issue 11, which
2 is given as the top paragraph on Page 12. (Pause)
3 Oh, well, it's not put as well as we could, though.

4 Let me try this, and Ms. Swain will kick me
5 at the appropriate time to correct it. "The Utility is
6 willing, following resolution of this complaint," and
7 by that I believe we mean -- okay -- "following
8 resolution of this complaint the Utility is willing to
9 promptly amend its pending amendment to application to
10 add to its territory all lots adjacent to existing
11 utility lines, subject to availability of capacity."

12 And that would include, to the extent that
13 the protestants in the amendment case own lots adjacent
14 to existing utility lines, that would take care of
15 them. And that would also -- I'm directing these
16 comments somewhat to Staff -- it will also include what
17 we've called the Jack-O'-Lantern's teeth between the
18 Airpark and the ranch.

19 COMMISSIONER EASLEY: The enclaves.

20 MR. SCHIEFELBEIN: Yeah.

21 MR. DETERDING: I'm going to make a couple of
22 suggestions to that. One, "subject to availability of
23 capacity" doesn't, I don't think, have anything to do
24 with your amendment application. Now, whether or not
25 you provide those individual service, of course, is

1 subject to the availability of capacity so I don't
2 really think that belongs there, number one.

3 Number two, I would like it to say at the
4 end, instead of "subject to availability of capacity,"
5 "including Phase I of the Airpark," because that's
6 where all those protestants are. (Pause)

7 MR. SCHIEFELBEIN: Mr. Deterding, I don't
8 have any problem with your comments just made, and we
9 are wondering aloud, and we don't need to do that too
10 much on the record, but as to how we will amend the
11 application, obviously there will need to be renotices.
12 And it is our hope -- basically, what we are up to here
13 is to minimize the costs of having to go through a
14 whole new process. As far as copying papers that would
15 be redundant to that which is already filed in this
16 amendment case and, dare I say it, the filing fee. And
17 I don't think anyone needs to assure me on that. I
18 think that would be our intention, to proceed in that
19 manner and to amend it, amend the amendment
20 application.

21 MR. DETERDING: And we will be glad to assist
22 in any way possible in getting you the necessary legal
23 descriptions to make that as easy and as cheap as
24 possible from what we have. And I believe the Staff
25 has already told us their willingness to cooperate in

1 any way that they can to make sure that this amendment
2 for both of these stipulations is done easily.

3 MR. SCHIEFELBEIN: There are, in fact, some
4 financial incentives built into the Agreement that
5 would encourage us all to work together on that, so
6 we're all for it.

7 COMMISSIONER EASLEY: Consider me an
8 incentive.

9 MR. SCHIEFELBEIN: Yes, ma'am.

10 MR. FEIL: I'm not sure exactly how you want
11 me to respond.

12 MR. SCHIEFELBEIN: You don't need to, Matt.
13 We're comfortable having -- if you would like to,
14 though, please do.

15 MR. FEIL: It's just that, suffice to say
16 that you would have to renote according to the rule;
17 however, we would have no problem with handling it
18 within the current application.

19 MR. SCHIEFELBEIN: Okay. We appreciate that.

20 MR. DETERDING: I believe that's it.

21 COMMISSIONER EASLEY: Is that it?

22 MR. SCHIEFELBEIN: Yes.

23 MR. FEIL: Commissioner, I'm sorry to bring
24 this up, but we have a stipulation between the parties
25 who are present. However we have parties who are not

1 present; namely, the other objectors in the case who
2 have, at this point in time, not participated at all.
3 It would seem to me that --

4 COMMISSIONER EASLEY: Have not participated
5 in the case itself?

6 MR. FEIL: That's correct, ma'am. It seems
7 to me that if we're going to have a binding stipulation
8 they should either be included or excluded. And by
9 "excluded" I mean -- I don't want to suggest it, I
10 guess, but they should be dismissed from the case
11 somehow.

12 COMMISSIONER EASLEY: Let me ask you this:
13 The notice of hearing today for the actual hearing, the
14 fact that the protestors did not appear today, had we
15 held a regular hearing what would be the role, or the
16 posture of those protestors had we gone through a
17 normal hearing and they hadn't been here?

18 MR. FEIL: Ma'am, I believe that it would be
19 within your discretion to dismiss them. Perhaps Mr.
20 Pruitt could offer us some guidance in that respect.

21 MR. PRUITT: If they have had notice and
22 didn't come then they are no longer parties.

23 COMMISSIONER EASLEY: They waived their right
24 to be considered parties, did they not?

25 MR. PRUITT: Right.

1 MR. DETERDING: And, Commissioner, just for
2 your information, I believe, to make you feel better
3 about it, my client informs me that he knows most of
4 these people and that the reason that they didn't come
5 is because of the belief and understanding that we
6 would enter into Stipulation No. 2.

7 COMMISSIONER EASLEY: All right, then let me
8 ask the next question. If I dismiss the protestors as
9 parties to the proceeding, do they not have recourse to
10 appeal that decision if they feel required to do so?

11 MR. PRUITT: They could do that.

12 COMMISSIONER EASLEY: All right, so there is
13 protection to their rights if they feel they have been
14 aggrieved?

15 MR. PRUITT: That's correct.

16 MR. SCHIEFELBEIN: May I ask for your
17 indulgence for one minute? And I'm trying to actually
18 be helpful and not --

19 COMMISSIONER EASLEY: I am extremely
20 indulgent today.

21 MR. SCHIEFELBEIN: Thank you. (Pause)

22 Of course, we have been pushing for dismissal
23 of these objections based on what we think is an
24 important legal principle; however, in a pragmatic
25 sense in dealing with this -- and maybe this isn't

1 workable but it's meant to be a suggestion of something
2 workable -- perhaps if these people could be
3 communicated with and asked to send in a letter to the
4 Commission saying, "It's my understanding that the
5 Utility has agreed that it's going to file an
6 application to add what it's agreed to add. Based on
7 that understanding, I hereby withdraw my objection to
8 the pending application; that the Commission is,
9 therefore, not put in the unpleasant position of having
10 to take action adverse to those objections." And I
11 don't have a problem with taking it that way, and
12 perhaps reserving any action on it. It might be a
13 terrible idea but I'm trying to be helpful.

14 COMMISSIONER EASLEY: The only problem I have
15 with that, Mr. Schiefelbein, and I'm going to get in
16 the middle of this, is that you have just opened up
17 another area of potential problem that could bring us
18 back here.

19 MR. DETERDING: I agree with you.

20 COMMISSIONER EASLEY: I tend to believe that
21 -- and I am not uncomfortable with, and I hereby rule
22 that the parties have waived their rights to be
23 intervenors in this proceeding by not appearing at this
24 hearing, and that they have whatever procedures
25 available to them should they wish to appeal that

1 ruling.

2 All right, is there anything else?

3 MR. FEIL: I don't believe so, ma'am.

4 MR. DETERDING: Nothing further.

5 COMMISSIONER EASLEY: I want to thank you
6 sincerely for having worked this hard to work this out.

7 I appreciate it very much. Thank you.

8 MR. DETERDING: Thank you.

9 MR. SCHIEFELBEIN: Thank you.

10 COMMISSIONER EASLEY: This hearing is
11 adjourned.

12 (Thereupon hearing adjourned at 12:08 p.m.)

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1 F L O R I D A)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4 I, CAROL C. CAUSSEAU, CSR, RPR, Official
5 Commission Reporter, do hereby

6 CERTIFY that I reported in shorthand the foregoing
7 proceedings at the time and place and in the docket
8 indicated in the caption; it is further

9 CERTIFIED that the said hearing was thereafter
10 transcribed under my direct supervision, and that the
11 preceding Pages 1 through 21 constitute a true and
12 accurate transcription of my shorthand notes; it is
13 further

14 CERTIFIED that I am neither related to nor are of
15 counsel for any party involved in this proceeding, and
16 that I have no interest, financial or otherwise, in the
17 outcome of this docket.

18 IN WITNESS WHEREOF, I have hereunto set my hand at
19 Tallahassee, Leon County, Florida, this 22nd day of
20 July, A.D., 1991.

21 _____
22 CAROL C. CAUSSEAU, CSR, RPR
23 Chief, FPSC Bureau of Reporting
24 101 East Gaines Street
25 Tallahassee, FL 32399-0871
(904) 488-5981