

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

October 3, 1991

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (FEIL) *MS CB RUF*
DIVISION OF WATER AND SEWER (VON FOSSEN) *PA*

RE: UTILITY: SANDY CREEK UTILITIES, INC.
DOCKET NO. 910260-WS
COUNTY: BAY
CASE: APPLICATION FOR AMENDMENT OF CERTIFICATES NOS.
514-W AND 446-S IN BAY COUNTY BY SANDY CREEK
UTILITIES, INC.

AND

DOCKET NO. 910111-WS
CASE: COMPLAINT AND PETITION OF SANDY CREEK AIRPARK,
INC. AGAINST SANDY CREEK UTILITIES, INC. REGARDING
PROVISION OF WATER AND SEWER SERVICE IN BAY COUNTY

AGENDA: OCTOBER 15, 1991 - CONTROVERSIAL - PARTIES MAY NOT
PARTICIPATE

CRITICAL DATES: NONE

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 development located outside of the utility's certificated territory. The utility responded to the complaint, and as settlement seemed unlikely, the matter was scheduled for hearing.

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

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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.

In its amendment application, SCU sought to add to its certificated territory only those lots which it was presently serving, even though SCU owned lines adjacent to various other lots in the Airpark and Sandy Creek Ranch areas.

Although the complaint and the amendment were separately docketed, the issues in the two cases were similar enough that the Commission Chairman consolidated the cases for the purpose of hearing. The hearing for these cases commenced as scheduled on July 19, 1991, before Commissioner Betty Easley, as Hearing Officer. At the hearing, SCU and the Airpark entered into a stipulation in resolution of their disputes. None of the other objectors in the amendment docket were represented at the hearing, so the Hearing Officer dismissed them as parties. A signed Stipulation agreement was filed on August 13, 1991.

ISSUE 1: Should the Commission adopt the Hearing Officer's Recommended Order?

RECOMMENDATION: Yes, the Commission should adopt the Hearing Officer's Recommended Order. The complaint docket should be closed, and the amendment docket should remain open to complete processing the amendment application.

STAFF ANALYSIS: The Hearing Officer's Recommended Order is attached hereto and marked "Attachment 1." Staff believes that the Hearing Officer's Recommended Order should be approved. The August 13, 1991, executed Stipulation agreement entered into by the parties and accepted by the Hearing Officer is a reasonable resolution to both the Airpark's complaint and its objection to SCU's amendment.

As stated in the Case Background, the basis of the complaint (Docket No. 910111-WS) was the utility's refusal to provide service to both phase one and phase two of the Airpark. The utility filed its amendment application so as to include in its certificated territory only those areas to which it was already providing service. Numerous lots, including a majority of the first phase of the Airpark development, were excluded from the proposed amended territory. All of phase two of the Airpark was excluded from the proposed amended territory.

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The Stipulation will resolve all of the concerns of the Airpark, as well as those of staff. Staff was concerned with the possibility that subsequent amendment applications would be filed on a lot-by-lot basis; i.e., the certificate being amended as each customer came on line. Pursuant to the Stipulation, the utility has renoticed and has amended the legal description in the application to include both phases of the Airpark, as well as "all lots adjacent to existing lines."

In addition, SCU and the Airpark have entered into a developer agreement for the provision of service to phase two of the Airpark. Staff recommends that the developer agreement be approved since the stated charges are those within the utility's approved tariff and the terms and conditions of the agreement are consistent with a standard developer agreement whereby the developer is to donate its distribution and collection systems.

Staff recommends that the Hearing Officer's Recommended Order be approved. This action will approve the stipulation, including the developer agreement. Further, the complaint docket should be closed with the amendment docket left open to process the revised application.

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) FILED: 10-02-91
Creek Utilities, Inc.)
_____)

HEARING OFFICER'S RECOMMENDED ORDER

Pursuant to notice, a hearing in the above-captioned matter was held on July 19, 1991, before the undersigned Commissioner, Betty Easley, as Hearing Officer, in Tallahassee, Florida. Appearances were as follows:

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

F. MARSHALL DETERDING, Esquire, Rose, Sundstrom & Bentley, 2548 Blairstone Pines Drive, Tallahassee, FL 32301
On behalf of Sandy Creek Airpark, Inc.

MATTHEW FEIL, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff

PRENTICE PRUITT, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863
Counsel to the Commission

I. CASE BACKGROUND

On February 4, 1991, Sandy Creek Airpark, Inc., (Airpark) filed a Complaint and Petition against Sandy Creek Utilities, Inc.,

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(SCU or utility) wherein the Airpark asked the Commission to order the utility to provide service to the two phases of the Airpark 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 the application, numerous parties filed timely objections. Of the eleven parties objecting to the utility's application, the foremost objector was the Airpark; the remainder were individual lot owners within the Airpark development.

In its amendment application, SCU sought to add to its certificated territory only those lots which it was presently serving, even though SCU owned lines adjacent to various other lots in the Airpark and Sandy Creek Ranch areas.

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

II. DISMISSAL OF ABSENT PARTIES

At the hearing, only the Airpark and SCU were represented. None of the other objectors appeared. Because these parties were not present to represent their interests, I ruled that, by virtue of their absence, they had waived their rights to participate any further in the proceeding and that they were no longer parties to the proceeding.

III. STIPULATION

At the hearing, the Airpark and SCU agreed to a stipulation in resolution of their disputes. The final executed written Stipulation, filed on August 13, 1991, is attached to this recommended order and marked "Attachment A." In this Stipulation, SCU agreed to amend its pending amendment application so as to

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include all lots adjacent to existing utility lines. In addition, SCU and the Airpark entered into a developer agreement under which SCU became obligated to provide service to phase II of the Airpark.

The parties ask that the Commission approve their stipulation. As the stipulation seems a reasonable resolution of the controversy, I recommend that the Commission approve the stipulation.

DONE AND ENTERED this 2nd day of October,
1991.



BETTY EASLEY, Commissioner
and Hearing Officer

(SEAL)

MF

[ATTACHMENT A]

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Complaint and petition of
Sandy Creek Airpark, Inc., against
Sandy Creek Utilities, Inc.,
regarding provision of Water and
sewer service in Bay County.

DOCKET NO. 910111-WS

&
Application for amendment of
Certificates Nos. 514-W and 446-S in
Bay County by Sandy Creek Utilities, Inc.

DOCKET NO. 910260-WS
FILED:

STIPULATION

RECEIVED
AUG 14 1991

Sandy Creek Airpark, Inc. (Developer), and Sandy Creek Utilities, Inc. (Utility), by and through their undersigned counsel, agree to the following stipulation and request the Florida Public Service Commission to approve its terms.

1. These matters have been scheduled for formal hearing before the Public Service Commission to consider Developer's complaint against Utility regarding provision of water and sewer service, and Developers's objection to Utility's application for amendment of Certificates Nos. 514-W and 446-S.

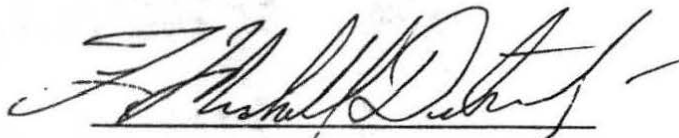
2. The parties have come to reach a stipulation of these matters, under the terms and conditions set forth in the attached Developer Agreement, which they ask the Commission to approve as reasonable and satisfactory conditions for extension of territory

and service to Sandy Creek Airpark phase II.

3. The Utility, following the resolution of this complaint, will promptly amend its pending amendment application to add to its territory all lots adjacent to existing utility lines including phase I of the Airpark.

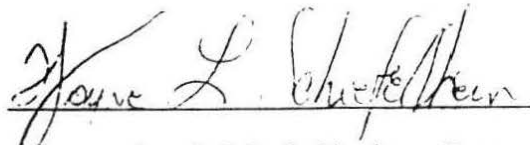
4. Should the Commission decline to approve the stipulation between the parties in its entirety and without modification, the stipulation shall be deemed void and without prejudice to any of the parties.

WHEREFORE, the parties respectfully request the commission to approve the above stated stipulation in its entirety.



F. Marshall Deterding, Esq.
Rose, Sundstrom & Bentley
2548 Blairstone Pines Drive
Tallahassee, Florida 32302
(904)877-655

Attorneys for Sandy Creek
Airpark, Inc.



Wayne L. Schiefelbein, Esq.
Gatlin, Woods, Carlson &
Cowdery
1709-D Mahan Drive
Tallahassee, Florida 32308
(904)877-7191

Attorneys for Sandy Creek
Utilities, Inc.

DEVELOPER AGREEMENT

THIS AGREEMENT made and entered into this 6th day of ^{August}~~July~~, 1991, by and between SANDY CREEK AIRPARK, INC., a Florida corporation, hereinafter referred to as "Developer," and SANDY CREEK UTILITIES, INC., a Florida corporation, hereinafter referred to as "Service Company,"

WHEREAS, Developer owns and controls land located in Bay County, Florida, and contained within the description in Exhibit "A," attached hereto ("Property"), and in developing the Property desires that the Service Company provide central water treatment and distribution and sewage collection, treatment and disposal; and,

WHEREAS, Service Company wishes to provide water and sewer service to the Property in accordance with the provisions of this Agreement, its Tariff and Service Availability Policy, and rules of the Florida Public Service Commission;

NOW, THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, Developer and Service Company, their respective successors and assigns, hereby covenant and agree as follows:

1. The foregoing statements are true and correct.
2. Extension of Service Territory. Service Company agrees to amend its currently pending Application for Extension of Service Territory in Florida Public Service Commission Docket No. 910260-WS to include all of the property described in Exhibit "A." Developer agrees to pay for the direct costs incurred for advertising and certified mail required for renoticing necessary to accomplish this amendment of service territory. Developer and Service Company recognize that in providing this notice and amendment, Service Company may wish to include additional territories other than those owned or controlled by Developer or included in Exhibit "A." To the extent such additions do not materially increase the cost of this renoticing, Developer agrees to pay all such renoticing costs.

Within ten (10) days of the execution of this Agreement, Service Company shall initiate the mailed notice and published notice required in order to amend its pending certificate application to include the property described in Exhibit "A" hereof. Service Company shall take whatever action is necessary in order to insure proper amendment of that Application with the Public Service Commission upon initiation of such notice, and Developer shall assist as necessary in this regard.

3. Plant Capacity Charges. Developer agrees to pay to Service Company, in accordance with its tariff, plant capacity charges of Two Hundred Fifty Dollars (\$250.00) per ERC for water plant capacity, and Three Hundred Dollars (\$300.00) per ERC for

sewer plant capacity, for each of the forty-six (46) equivalent residential connections included in Phase II of Sandy Creek Airpark. Such payment shall be made in three (3) installments. The first installment equal to one-half of the total plant capacity charges due from Developer for the forty-six ERC's represented by Sandy Creek Airpark Phase II shall be provided to Service Company upon execution of this Agreement. The amount of such payment shall be reduced by any credits due to Developer as a result of advance payments discussed under paragraph 6 of this Agreement.

The second and third installments for plant capacity charges due under this Agreement shall be made in two (2) equal payments, the first of which is due one (1) year from the date of execution of this Agreement, the second of which is due two (2) years from the date of execution of this Agreement. Each such payment shall be equal to one-quarter of the total water and sewer plant capacity charges due from Developer for the forty-six (46) ERC's represented by Sandy Creek Airpark Phase II.

4. On-Site and Off-Site Installations. Developer has constructed the on-site sewage collection and transmission system, and the water distribution system ("On-Site Facilities") necessary to provide service to Phase II of the Airpark. Developer stands ready to contribute those On-Site Facilities to the Service Company as CIAC by Bill of Sale upon completion of such facilities.

The Developer has also constructed the necessary Off-Site Facilities to enable direct connection of Developer's On-Site Facilities to the existing facilities of Service Company. The design of the collection facilities constructed by Developer have been reviewed by Service Company's engineer, and approved. Developer has constructed those facilities in accordance with such design specifications, which meet all of the Service Company's standards. All such facilities shall be contributed to Service Company by Bill of Sale upon completion thereof.

The parties hereto agree that the acceptance by the Service Company of Developer's plans for installation of facilities is contingent upon the Developer agreeing to loop a six inch line back to the line on Airway Drive if and when flow problems develop. Developer agrees that eventually such looping will be required but based upon engineering data believes that such looping would be detrimental to efficient service in the initial stages of development of Sandy Creek Airpark Phase Two. Once flow problems do occur, however, Developer, and its successors and assigns, agree to install that looping at their sole cost and expense and to transfer such line to Service Company by Bill of Sale.

5. Ancillary Documents. As part of the contribution of the On-Site and Off-Site facilities, Developer shall provide the

following documents in conjunction with its property contribution of these facilities under the circumstances and in the times outlined below.

- (a) The DER Certificate of Completion of Construction shall be provided to Service Company within ten (10) days of the receipt of such Certificate by Developer.
- (b) Developer has previously provided the as-built plan drawings to representatives of Service Company. Developer shall provide one (1) mylar of the as-built plans within fifteen (15) days of receipt from the engineer.
- (c) Engineer's letter of certification of construction shall be provided within ten (10) days of receipt of such letter of certification after completion and interconnection of the constructed facilities.
- (d) An itemized description of the constructed facilities in as much detail as possible, at the time of transfer of the On-Site and Off-Site Facilities, and all information concerning cost of such facilities, including contracts for construction thereof, and all bids for construction in possession of Developer. Developer estimates that contract work, which included water and sewer facilities in addition to other development work, totalled approximately \$110,000. Developer estimates that no more than 25% of this final contract work was related to installation of water and sewer facilities.
- (e) Developer shall provide a Bill of Sale for the contributed facilities at the time of and as evidence of the contribution of such facilities after completion.
- (f) A Letter of Dedication shall be provided at the time of transfer of the dedicated facilities.
- (g) All facilities transferred to Service Company shall be warranted by the Developer for one (1) year from the time transferred to Service Company. Such warranties shall be only against defects in material, workmanship or installation, and shall not warrant against normal wear and tear of equipment installed.
- (h) Contractor's Waiver and Release of Liens shall be provided at the date of transfer of the On-Site and Off-Site Facilities, or, in the alternative, if such Contractor's Waiver or Release of Lien is not available, a demonstration that no such liens are applicable to the property to be contributed.
- (i) Developer shall provide to Service Company at the time of dedication of the On-Site and Off-Site Facilities,

all easements that Developer is required to provide to Service Company in order to receive service within the property through Developer's On-Site Facilities. Service Company agrees that all easements granted will be utilized in accordance with the established and generally accepted practices of the water and sewer industry. Such easements shall evidence Service Company's right to construct, own, maintain and operate said On-Site Facilities and shall be in a form reasonably satisfactory for Service Company to accomplish those purposes.

6. Advance Payment. Developer has provided to Service Company prior to the execution of this Agreement an advance payment of Five Thousand Dollars (\$5,000.00). Such payment shall in part be utilized to offset the costs of renoticing the proposed service territory of Service Company in order to include the property described in Exhibit "A" within the Service Company's service territory and the legal costs related to review and finalization of this Developer Agreement, the total of such costs not to exceed Two Thousand Dollars (\$2,000.00). All remaining costs, other than those necessary for the two purposes outlined above, shall be credited against the plant capacity charges due under paragraph 2 of this Agreement at the date of execution of such Agreement.

7. Agreement to Serve. Upon completion of construction of the On-Site and Off-Site Facilities by Developer, at Developer's sole cost and expense, contribution of the collection facilities to Service Company, and compliance with other terms of this Agreement and Service Company's tariff and service availability policy, Service Company covenants and agrees that it will oversee the connection of the water distribution and sewage collection facilities to the central facilities of Service Company subject to specifications and approval of Service Company in making such connection, and will provide water and sewer service. Such approval and specifications to be imposed by Service Company upon Developer in making such connection shall be in accordance with the latest version of the plans and drawings provided to Utility's engineer, and all modifications to such plans and drawings agreed to by Utility and Developer's engineers, and such approval shall not be unreasonably withheld.

8. Application for Service: Consumer Installations. Developer, or any owner of any parcel of the Property, or any occupant of any residence, building or unit located thereon shall not connect any consumer installation to the water distribution and sewage collection facilities until written notice has been provided to Service Company by the Developer or owner, all required charges, except those plant capacity charges as referenced in paragraph 2 hereof, have been paid by the individual parcel or property owner, and approval for such connection has been granted by Service Company.

Further said parcel or property owner shall, at his expense, install or have installed by Service Company such tank and pumping station as is required for the pretreatment of wastewater, in the manner and pursuant to specifications prescribed by Service Company. This requirement is not intended to impose any additional requirement on Developer to obtain service hereunder. This requirement shall be uniformly applied to all Utility customers requesting service hereafter in accordance with the Utility's Service Availability Policy.

9. Exclusive Right to Provide Service. Developer, as a further and essential consideration of this Agreement, agrees not to engage, or to allow any subsequent owner of the property to engage in the business of providing water and sewer services to the Property during the period of time Service Company, its successors and assigns, provide water and sewer services to the Property. Service Company shall have the sole and exclusive right and privilege to provide water and sewer services to the Property.

10. Rates. Service Company agrees that the rates and charges to be charged to Developer and individual consumers of water and sewer services shall be those set forth in the tariff of Service Company, however, Service Company, its successors and assigns, may establish, amend or revise rates and charges, from time to time in the future, and enforce rates so established. Any such future decreased or increased rates shall be binding upon Developer and upon any user or consumer of the water and sewer service provided to the Property by Service Company.

11. Miscellaneous Provisions.

- (a) This Agreement shall be binding upon and shall inure to the benefit of Developer, Service Company and their respective assigns and successors by merger, consolidation, conveyance or otherwise.
- (b) This Agreement shall be governed by the laws of the State of Florida.
- (c) In the event the Service Company or Developer is required to enforce this Agreement by Court proceedings or otherwise, by instituting suit or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorney's fees.

IN WITNESS WHEREOF, Developer and Service Company have executed or have caused this Agreement to be executed, with the named Exhibits attached, which may be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

Schiffelheim

EXHIBIT A
(Phase II Property Description)

ATTACHMENT 1
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COMMENCE AT A CONCRETE MONUMENT No. 3961 MARKING THE RESTORED LOCATION OF THE SOUTHEAST CORNER OF SECTION 30, TOWNSHIP 4 SOUTH, RANGE 12 WEST, BAY COUNTY, FLORIDA; THENCE N85°22'50"W ALONG THE SOUTH LINE OF SAID SECTION 30 FOR 602.57 FEET TO THE POINT OF BEGINNING; THENCE S03°21'28"W FOR 25.41 FEET; THENCE N85°05'16"W FOR 3269.03 FEET TO THE EASTERLY RIGHT OF WAY LINE OF COUNTY ROAD 2297; THENCE N06°55'47"W FOR 134.57 FEET; THENCE N05°10'02"W FOR 596.95 FEET; THENCE N36°17'58"W FOR 113.52 FEET TO THE SOUTH RIGHT OF WAY LINE OF AIR WAY (AIR PARK BOULEVARD); THENCE N58°36'16"E ALONG SAID SOUTH RIGHT OF WAY LINE FOR 103.55 FEET TO THE P.C. OF A CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 212.14 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE FOR AN ARC DISTANCE OF 12.07 FEET, SAID ARC HAVING A CHORD OF 12.07 FEET BEARING N60°15'04"E; THENCE SOUTHEASTERLY ALONG THE EAST RIGHT OF WAY LINE OF PARK WAY, WHICH IS A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 460.78 FEET, FOR AN ARC DISTANCE OF 92.32 FEET, SAID ARC HAVING A CHORD OF 92.17 FEET BEARING S34°47'22"E TO THE P.T. OF SAID CURVE; THENCE S29°02'58"E FOR 3.94 FEET TO THE P.C. OF A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 358.60 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE FOR AN ARC DISTANCE OF 117.62 FEET, SAID ARC HAVING A CHORD OF 117.10 FEET BEARING S19°39'09"E; THENCE LEAVING SAID EAST RIGHT OF WAY LINE S86°34'39"E FOR 83.90 FEET TO THE SOUTHWEST CORNER OF LOT 48, SANDY CREEK AIR PARK, AS PER PLAT RECORDED IN PLAT BOOK 14, PAGES 11 AND 12 OF THE PUBLIC RECORDS OF BAY COUNTY, FLORIDA; THENCE S00°37'11"E ALONG THE SOUTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 48 FOR 200.48 FEET TO THE SOUTH LINE OF AN AIR STRIP (HAVING A 200.00 FT. R.O.W.); THENCE S86°38'32"E ALONG SAID SOUTH LINE FOR 3155.00 FEET; THENCE S03°21'28"W FOR 555.37 FEET TO THE POINT OF BEGINNING.