

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of  
UTILITIES, INC. OF SANDALHAVEN  
for an increase in wastewater  
rates in Seminole County, Florida

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DOCKET NO. 060285-SU

RESPONSE TO PLACIDA HG, LLC'S MOTION FOR RECONSIDERATION  
OF ORDER NO. PSC-07-0327-PCO-SU

UTILITIES, INC. OF SANDALHAVEN ("Sandalhaven"), by and through its undersigned attorneys and pursuant to Rule 25-22-060 (1) (b), Florida Administrative Code, files this response to PLACIDA HG, LLC's ("Placida") Motion for Reconsideration of Order No. PSC-07-0327-PCO-SU ("Order"), and states as follows:

Standard for Reconsideration

1. Placida acknowledges that it should be entitled to a rehearing of the Order only if the Commission overlooked some fact, precedent or rule of law in rendering its decision. Placida in its Motion makes the same substantive argument that it made at the March 27, 2007, Agenda Conference, but makes the assertion that this Commission must have overlooked those arguments since they were not specifically discussed in the Order.

2. Interestingly, the State v. Green<sup>1</sup> opinion relied upon by Placida (and in which rehearing was denied) is actually one in which the Court is chastising attorneys for over use of motions for reconsideration. Applicable to the instant case, the Court stated:

Certainly it is not the function of a petition for rehearing to furnish a medium through which counsel may advise the court that they disagree with its conclusion, to reargue matters already discussed in briefs and oral argument and necessarily

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<sup>1</sup> Placida's citation was incorrect. It is 105 So. 2d 817 (Fla. 1<sup>st</sup> DCA 1958).

considered by the court or to request the court to change its mind as to a matter which has already been received.

3. The possibility that an agreement made to the court in an appellate proceeding, in brief or in oral argument, will be overlooked when the opinion is written is not applicable to the Commission's Agenda Conference proceedings where a decision is announced immediately following the arguments. As is clear from the transcript of the Agenda Conference attached to Placida's Motion for Reconsideration, Placida's arguments and documents provided to the Commissioners were carefully and thoughtfully considered before its decision was announced. Placida's argument that since there was no mention of its argument in the Order that such arguments were not considered is frivolous and an insult to the Commissioners.

4. Thus, there is no legal or factual basis upon which the Commission should reconsider the Order.

#### Argument

5. As to the merits, or lack thereof, of Placida's substantive re-arguments, the Order is not inconsistent with the holding in City of Cooper City v. PCH Corp., 496 So. 2d 843 (Fla. 4<sup>th</sup> DCA 1986). That appellate decision arose after a trial in which all parties were provided an opportunity to present evidence. The instant case is not yet at that point procedurally. Placida, as an intervener, will have the opportunity at the final hearing (should it be dissatisfied with the PAA Order) to assert its position regarding the reasonableness of Sandalhaven's proposed service availability charges and any pro rations which serve as the basis for those charges. At this point, Placida must only pay the temporary charges which are subject to refund with interest if the final charges are less than

the temporary charges. Placida is well protected if the temporary charges are ultimately determined to be unreasonable. The opposite is not true. If temporary charges are not imposed then for each connection which Placida makes, the increase in service availability charges is forever lost.

6. The imposition of temporary service availability charges also serves a practical purpose. In developing the appropriate service availability charges consistent with Rule 25-30.580, Florida Administrative Code, one must know the number of potential ERCs that are going to connect to the system. If temporary charges are not imposed, then that number will be subject to change even as the appropriate charge is sought to be determined.

7. Placida's reliance on Staff's Second Data Request is misplaced. Data requests are commonplace in Commission rate proceedings, and merely because they are being made does not mean that the utility's proceeding should be dismissed because the data was not initially filed. The responses to the data requests will be provided to Placida who can analyze them to determine whether they believe the proposed charges are consistent with its interpretation of the law.

8. Placida's quote of the Staff's question to Sandalhaven as to whether the interconnection should be made and the existing WWTP retired before the new rates go in effect has no bearing on when the service availability charges go in effect . It is clear that the interconnection with EWD is required in order to serve Placida. The timing of the interconnection (which has actually been completed) and retirement of the WWTP are not relevant to the appropriate amount of service availability charges due from Placida.

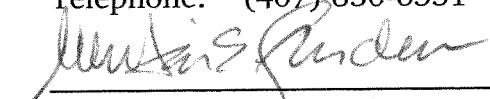
9. Sandalhaven would point out that pursuant to Rule 25-22.060 (1) (c), Florida

Administrative Code, Placida's filing of the Motion for Reconsideration "does not serve automatically to stay the effectiveness" of the Order. Thus, the increase in service availability charges are currently due and payable in order for Placida to retain its rights pursuant to its Wastewater Agreement with Sandalhaven.

WHEREFORE, UTILITIES, INC. OF SANDALHAVEN, requests this Commission deny Placida HG, LLC's Motion for Reconsideration.

Respectfully submitted this 1<sup>st</sup> day of May, 2007, by:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following parties by U.S. Mail as indicated this 1st day of May, 2007:

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