

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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RECEIVED-FPSC
COMMISSION CLERK

DATE: November 9, 2011

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Fletcher, Daniel, Hudson, Jones-Alexis, Maurey, Walden)
Office of the General Counsel (Bennett)

BS *CSM SH* *MMK* *ALM*
ALB *SC*

RE: Docket No. 080562-WU – Request for approval of amendment to connection/transfer sheets, increase in returned check charge, amendment to miscellaneous service charges, increase in meter installation charges, and imposition of new tap-in fee, in Marion County, by East Marion Sanitary Systems Inc.

AGENDA: 11/22/11 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: Edgar, Brown

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080562.RCM.DOC

DOCUMENT NUMBER DATE
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Case Background

East Marion Sanitary Systems Inc. (East Marion or Utility) is a Class C utility providing water and wastewater service to approximately 96 customers in Marion County. Water and wastewater rates were last established for this Utility in a staff-assisted rate case in 2002.¹ East Marion reported water and wastewater revenues of \$56,918 in its 2010 Annual Report. The system is located in the St. Johns River Water Management District (SJRWMD).

On August 19, 2008, the Utility filed an application for approval to amend its tariff sheets to reflect the following: amendment to connection/transfer sheet to require each customer to provide his social security number to obtain service, increase in returned check charge, amendment to miscellaneous service charges, increase in meter installation charges, and the imposition of a new tap-in fee. By Order No. PSC-08-0746-PCO-WU, issued November 12, 2008, the Commission suspended the tariff filing pending further investigation.

By Order No. PSC-09-0263-TRF-WU, issued April 27, 2009, the Commission denied in part and granted in part the Utility's application. Specifically, the Commission ordered that any customer who has requested an irrigation meter from East Marion prior to April 7, 2009, shall only be charged the rates in effect at the time of their application.

On May 18, 2009, the Utility protested the portion of the Commission's order addressing previous applications for irrigation meters. East Marion protested the Commission's requirement that the Utility install irrigation meters at its prior tariff rate for certain customers. Specifically, East Marion protested the order as it related to customers Will, Smith, Tarsitano, Costello, and Politte. The Utility did not dispute the order as it relates to customers Greco and Singel, or to customer Turner if the application process is completed.

By Order No. PSC-09-0742-PCO-WU, issued November 10, 2009, a procedural schedule was established setting forth the controlling dates for this docket. East Marion was to file testimony on or before December 7, 2009. At that time, the Utility did not file testimony and none of the customers referenced in the order had requested intervention. In addition, staff counsel was informed that settlement discussions had taken place between the parties. In an effort to accommodate those settlement discussions and to permit the Utility to file testimony and the customers to intervene if appropriate, the hearing, prehearing, and controlling dates were revised by Order No. PSC-10-0116-PCO-WU, issued February 26, 2010.

On May 6, 2010, a Joint Motion was filed by East Marion Sanitary Systems, Inc., Dennis U. Smith, Joseph M. Singel, Earl Turner, David Greco, Carol Greco, Millicent Mallon, Terry Will, and Kevin Politte (movants) requesting that the Commission hold this proceeding in abeyance pending efforts by the parties to resolve their differences by way of settlement, and that the Commission abate all of scheduled actions set forth in Commission Order Nos. PSC-10-0116-PCO-WU and PSC-10-0276-PCO-WU, First and Second Orders Revising Order Establishing Procedure (procedural orders). By Order No. PSC-10-0294-PCO-WU, issued May

¹ See Order No. PSC-02-1168-PAA-WS, issued August 26, 2002, in Docket No. 010869-WS, In re: Application for staff-assisted rate case in Marion County be East Marion Sanitary Systems, Inc.

7, 2010, this joint motion was approved holding this proceeding in abeyance for 45 days pending completion of those settlement discussions.

By Order No. PSC-10-0460-PCO-WU, issued July 19, 2010, an extension of the Order Granting Abatement and Continuance for 30 days was approved to allow the parties to continue negotiating an agreement. On September 15, 2010, intervention petitions filed by Terry Will, David Greco, Carol Greco, Dennis U. Smith, Millicent Mallon, Earl Turner, Joseph M. Singel, and Kevin Politte were granted.²

Prior to the proceeding being abated and pursuant to the prior procedural schedules, the Utility, intervenors, and staff filed testimony. The remaining controlling dates and key activities that were abated are as follows: the Utility's rebuttal testimony, the discovery cut-off, the prehearing statement filing deadline, the prehearing conference, the hearing, and the post-hearing briefs.

On November 17, 2010, OPC filed a Motion for Commission hearing, asking that the Commission and not an administrative law judge from the Division of Administrative Hearings (DOAH) hear the case. OPC stated that Commission staff suggested that the docket be transferred to DOAH. OPC stated that given the very small size and gross revenues of the Utility, OPC believed it is in the best interest of the Utility and its customers to keep litigation expenses to the absolute minimum, and to find the most cost-effective solution possible to this controversy. OPC argued that assigning this case to DOAH will unnecessarily increase the cost of litigating this dispute.

During late 2010 and early 2011, the members of the Commission, including some of the members of the panel, changed. During 2011, Commission staff assigned to the docket were also temporarily reassigned. Accordingly, OPC's November motion was addressed by Order No. PSC-11-0280-PCO-WU, issued June 23, 2011, and this docket was set for a Commission prehearing conference on October 3, 2011, and a hearing on October 13, 2011. By Order No. PSC-11-0351-PCO-WU, issued August 23, 2011, the Commission acknowledged the intervention of OPC.

By Order No. PSC-11-0353-PCO-WU, issued August 23, 2011, all parties of this proceeding were required to attend a Status Conference on September 14, 2011. The purpose of the Status Conference was to discuss the status of settlement negotiations, to discuss the status of discovery, to allow for a preliminary identification of witnesses and issues, to discuss any possible stipulations, and to resolve any other procedural matters.

On September 29, 2011, East Marion, a majority of the intervenors, and OPC on behalf of all ratepayers entered into a Settlement Agreement and filed a Joint Motion to Approve Settlement Agreement. (See Attachment A) Intervenors Terry Will and Millicent Mallon did not enter into the Settlement Agreement.

² See Order Nos. PSC-10-0565-PCO-WU, PSC-10-0566-PCO-WU, PSC-10-0567-PCO-WU, PSC-10-0568-PCO-WU, PSC-10-0569-PCO-WU, PSC-10-0570-PCO-WU, and PSC-10-0571-PCO-WU.

Docket No. 080562-WU
Date: November 9, 2011

By Order No. PSC-11-0435-PCO-WU, issued September 29, 2011, the prehearing conference set for October 3, 2011, and the hearing scheduled for October 13, 2011, were held in abeyance pending a decision by the Commission panel on the proposed Settlement Agreement.

On October 6, 2011, OPC, Terry Will and Millicent Mallon filed their joint notice of OPC's withdrawal of representation of the individual Intervenor ratepayers Terry Will and Millicent Mallon.

This recommendation addresses the Joint Motion to Approve Settlement Agreement and the disposition of this docket. The Commission has jurisdiction pursuant to Section 367.091, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve the Joint Motion Seeking Approval of Settlement Agreement?

Recommendation: Yes. The Joint Motion Seeking Approval of Settlement Agreement should be approved. (Fletcher, Bennett)

Staff Analysis: As stated in the case background, the Joint Motion Seeking Approval of Settlement Agreement was filed on September 29, 2011. East Marion, OPC and every Intervenor that executed the proposed settlement agreement agreed to the following terms and conditions:

1. East Marion shall provide to each Intervenor who executes this Agreement, an irrigation meter, installed as prescribed by the June 16, 2010 Memorandum titled: Settlement of Docket No. 080562-WU, ("grandfather installation") attached hereto as Exhibit "A" and made a part hereof.
2. With regard to Intervenor David and Carol Greco and Joseph M. Singel, East Marion will reinstall their irrigation meters in accordance with the June 16, 2010 Memorandum. With regard to the other Intervenor who execute this Settlement Agreement, East Marion shall provide new irrigation meters in accordance with the June 16, 2010 Memorandum. All of these installations shall be completed on or before 30 days after the Commission issues an [sic] order approving this Settlement Agreement.
3. Each Intervenor' must pay East Marion a \$70.00 irrigation meter charge prior to the meter being installed. [sic] Intervenor David and Carol Greco and Joseph M. Singel [sic] have already paid their respective \$70.00 meter installation charge.
4. Each Intervenor agrees to utilize the irrigation meter and pay the minimum monthly irrigation charge approved by the Florida Public Service Commission for a period of no less than 36 months after their respective meter has been installed or reinstalled, or until the Intervenor dies or sells the property being served by the meter, whichever occurs first. However, with respect to Mr. Joseph M. Singel's reinstalled irrigation meter, his 36 months begins after the original installation of his meter.
5. East Marion agrees to issue a credit to David and Carol Greco's water and wastewater bill equal to all of the monthly irrigation charges he has paid to the Utility since his original irrigation meter was installed until the time his irrigation meter is reinstalled in accordance with the June 16, 2010 Memorandum.
6. East Marion, OPC and the Intervenor, who execute this Agreement will file a Joint Motion requesting the Commission to issue an order approving the Settlement Agreement.

7. The submission of this Settlement Agreement by the Parties is in the nature of an offer to settle. Consequently, if this Settlement Agreement is not accepted and approved without modification by Commission Order, then this Settlement Agreement is rejected and shall be considered null and void and neither Party may [sic] use the attempted agreement in this or any other proceeding.

Staff believes that the Parties' Settlement Agreement is a reasonable resolution because it addresses the protested issues between the Utility, OPC, and each Intervenor that executed this agreement. It is a compromise in which the Utility relinquishes its position that the new irrigation tariff rate applies while the signatories relinquish their termination of service rights under Rule 25-30.325, F.A.C. Further, staff believes that it is in the public interest for the Commission to approve the Settlement Agreement because it promotes administrative efficiency and avoids the time and expense associated with issues between the Utility, OPC, and every Intervenor that executed this agreement. In keeping with the Commission's long-standing practice of encouraging parties to settle contested proceedings whenever possible,³ staff recommends that the Commission approve the Joint Motion Seeking Approval of Settlement Agreement.

³ See Order Nos. PSC-10-0299-AS-WU, issued May 10, 2010, in Docket No. 090170-WU, In re: Application for staff-assisted rate case in Lee County by Mobile Manor Water Company, Inc.; PSC-09-0711-AS-WS, issued October 26, 2009, in Docket No. 080249-WS, In re: Application for increase in water and wastewater rates in Pasco County by Labrador Utilities, Inc.; PSC-06-0092-AS-WU, issued February 9, 2006, in Docket No. 000694-WU, In re: Petition by Water Management Services, Inc. for limited proceeding to increase water rates in Franklin County.; PSC-05-0956-PAA-SU, issued October 7, 2005, in Docket No. 050540-SU, In re: Settlement offer for possible overearnings in Marion County by BFF Corp.; and PSC-00-0374-S-EI, issued February 22, 2000, in Docket No. 990037-EI, In re: Petition of Tampa Electric Company to close Rate Schedules IS-3 and IST-3, and approve new Rate Schedules GSLM-2 and GSLM-3.

Issue 2: Should this docket be closed?

Recommendation: No. If the Commission approves staff's recommendation in Issue 1, the prehearing and hearing should be set to address the outstanding disputes between the Utility and Intervenor Terry Will and Millicent Mallon. (Bennett, Fletcher)

Staff Analysis: As stated in the case background, Intervenor Terry Will and Millicent Mallon did not enter into the Settlement Agreement. On October 6, 2011, OPC, Terry Will and Millicent Mallon filed their joint notice of OPC's withdrawal of representation of the individual Intervenor ratepayers Terry Will and Millicent Mallon.

Pursuant to South Florida Hospital and Healthcare Assoc. v. Jaber, 887 So. 1d 1210 (Fla. 2004), the Commission did settle a rate proceeding without one party (SFHHA)'s agreement. The Supreme Court affirmed that decision. However, staff believes that the SFHHA case is distinguishable and does not recommend this option for two reasons. First in the SFHHA docket, the non-signatory party maintained its right to institute a new rate proceeding and was not bound by the settlement agreement. In the current docket, this will be the intervenors only opportunity to pursue obtaining an irrigation meter at the prior tariffed rate. Second, Rule 25-30.325, F.A.C., entitled "Termination of Service by Customer", states: "A utility may require a customer to give reasonable notice of his or her intention to discontinue service. Until the utility receives such notice, a customer may be held responsible for all service rendered." Staff believes requiring the two non-signatories to pay the BFC for a 3-year period is in contradiction with a customer's right to terminate his/her service upon giving a utility reasonable notice of their intention to discontinue service.

Staff believes that the remaining non-signatory parties should be advised that the maximum relief the Commission would be able to grant either intervenor was that set forth in the order, an irrigation meter at the cost of \$70. In other words, if either or both Mr. Will or Ms. Mallon were successful in proving that they properly requested a meter, the only advantage they would gain over not signing the settlement agreement is that they would not be obligated to keep the irrigation meter for 3 years. Irrigation meters must pay a base charge of \$9.98. If either party fails to convince the Commission that they properly requested the meter, then they would be obligated to pay for the meter at the new meter installation fee of \$195 and the applicable tap-in fees of \$1,400, \$1,800, and \$2,600 for the short, long, and extra-long irrigation service line installation, respectively.

In addition, staff recommends that because this docket is now limited to two customers, and this is not a service hearing where input from the general body of ratepayers will be sought, that the hearing be held in Tallahassee, Florida rather than in Ocala, Florida. Staff believes that conducting the hearing in Tallahassee promotes administrative efficiency, and minimizes the costs associated with a hearing.

Furthermore, the Utility should be advised that it must bear the burden of proving that Ms. Mallon and Mr. Will did not request a meter. If the Utility is unsuccessful, it will be required to connect the two customers at the \$70.00 fee and any additional costs it incurs will likely not be considered a prudent expenditure. The Utility should be made aware that it still has the option to withdraw its protest as to Ms. Mallon and Mr. Will. If the Utility's protest is

withdrawn, staff believes the Commission's ruling in Order No. PSC-09-0263-TRF-WU should be revived so that Ms. Mallon and Mr. Will may obtain an irrigation meter at \$70.00 and the Utility will not incur any additional litigation expense.

Based on the above, if the Commission approves staff's recommendation in Issue 1, staff recommends that East Marion, Terry Will, and Millicent Mallon affirmatively indicate each party's intention to proceed with the hearing. East Marion, Terry Will, and Millicent Mallon should be required to file a written statement in the docket affirming they have read and will abide by Chapters 25-22 and 28-106, F.A.C. and the all procedural orders in this docket, and are prepared to fulfill their obligations as parties or have a qualified representative appear on their behalf. Staff recommends that the parties' written statements should be filed within 21 days of the date the order is issued. If opposing parties file the written statement, the prehearing and hearing conference may be set by the Prehearing Officer.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of amendment to connection/transfer sheets, increase in returned check charge, amendment to miscellaneous service charges, increase in meter installation charges, and imposition of new tap-in fee, in Marion County, by East Marion Sanitary Systems, Inc.

Docket No. 080562-WU

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT is made and entered into this 7th day of September, 2011, by and between East Marion Sanitary Systems, Inc. ("East Marion" "Utility" or "Company"), the Office of Public Counsel, ("OPC") on behalf of the general body of ratepayers of East Marion, and intervenors David and Carol Greco, Joseph M. Singal, Rosemary Turner, Dennis Smith, Kevin Politte, Millicent Mallon and Terry Will. Each intervenor signing this agreement is doing so only on their own behalf with regard to their individual claim and request for relief in this docket.

WITNESSETH

WHEREAS, the Public Service Commission issued a Proposed Agency Action Order, No. PSC-09-0263-TRF-WU, ("PAA Order"), which provided in part that East Marion was required to provide an irrigation meter for the prior tariff rate of \$70.00 to those customers who requested an irrigation meter prior to April 7, 2009; and

WHEREAS, East Marion protested that part of the PAA Order; and

WHEREAS, the Commission provided an opportunity for every customer who desired to document their efforts to request an irrigation meter from East Marion prior to April 7, 2009, to do so to establish their entitlement to receive the irrigation meter at the prior charge of \$70.00; and

WHEREAS, seven customers, David and Carol Greco, Joseph M. Singel, Rosemary Turner, Dennis Smith, Kevin Pollite, Millicent Mallon and Terry Will all intervened in this docket and provided profiled testimony to document their efforts to request an irrigation meter from East Marion prior to April 7, 2009; and

WHEREAS, prior efforts to settle this docket and the seven claims regarding each individual Intervenor's entitlement to an irrigation meter at the prior \$70.00 charge, were not successful, resulting in this matter being set for hearing; and

WHEREAS, in order to avoid the time, expense and uncertainty associated with adversarial litigation, and in keeping with the Commission's long-standing policy and practice of encouraging parties in protested proceedings to settle issues wherever possible. East Marion OPC and each and every Intervenor that executes this agreement to bind only themselves to the terms and conditions of this Agreement, hereby enter into this Settlement Agreement and agree as follows:

1. East Marion shall provide to each Intervenor who executes this Agreement, an irrigation meter, installed as prescribed by the June 16, 2010 Memorandum titled: Settlement of Docket No. 080562-WU, ("grandfather installation") attached hereto as Exhibit "A" and made a part hereof.

2. With regard to Intervenor David and Carol Greco and Joseph M. Singel, East Marion will reinstall their irrigation meters in accordance with the June 16, 2010 Memorandum. With regard to the other Intervenor who execute this Settlement Agreement, East Marion shall provide new irrigation meters in accordance with the June 16, 2010 Memorandum. All of these installations shall be completed on or before 30 days after the Commission issues an order approving this Settlement Agreement.

3. Each Intervenor must pay East Marion a \$70.00 irrigation meter charge prior to the meter being installed. Intervenor David and Carol Greco and Joseph M. Singel have already paid their respective \$70.00 meter installation charge.

4. Each Intervenor agrees to utilize the irrigation meter and pay the minimum monthly irrigation charge approved by the Florida Public Service Commission for a period of no less than 36 months after their respective meter has been installed or reinstalled, or until the Intervenor dies or sells the property being served by the meter, whichever occurs first. However, with respect to Mr. Joseph M. Singel's reinstalled irrigation meter, his 36 months begins after the original installation of his meter.

5. East Marion agrees to issue a credit to David and Carol Greco's water and wastewater bill equal to all of the monthly irrigation charges he has paid to the Utility since his original irrigation meter was installed until the time his irrigation meter is reinstalled in accordance with the June 16, 2010 Memorandum.

6. East Marion, OPC and the Intervenor, who execute this Agreement will file a Joint Motion requesting the Commission to issue an order approving the Settlement Agreement.

7. The submission of this Settlement Agreement by the Parties is in the nature of an offer to settle. Consequently, if this Settlement Agreement is not accepted and approved

without modification by Commission Order, then this Settlement Agreement is rejected and shall be considered null and void and neither Party may use the attempted agreement in this or any other proceeding.

IN WITNESS WHEREOF, the parties hereto have hereunder caused this Settlement Agreement to be executed as of the date and year aforesaid, in counterparts, each counterpart to be considered and original.

Respectfully submitted this ____ day of September, 2011.

East Marion Sanitary System, Inc.

Office of Public Counsel

By: [Signature] 9-16-2011
Herbert Hein, President

By: [Signature] 9/17/11
Stephen C. Reilly
Associate Public Counsel
*on behalf of the general body
of ratepayers. Expressly not
on behalf of any of the Intervenor's.*

Intervenor's

David Greco

Dennis U. Smith

Carol Greco

Kevin Politte

Joseph M. Singel

Rosemary Turner

Millicent Mallon

Terry Will

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East Marion Sanitary System, Inc.

Office of Public Counsel

By: _____

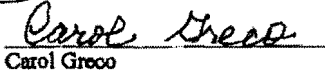
Herbert Hein, President

By: _____

Stephen C. Reilly
Associate Public Counsel

Intervenors


David Greco


Carol Greco

Joseph M. Singel

Millicent Mallon

Dennis U. Smith

Kevin Politte

Rosemary Turner

Terry Will

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East Marion Sanitary System, Inc.

Office of Public Counsel

By: _____

By: _____

Herbert Hein, President

Stephen C. Raily
Associate Public Counsel

Intervenor

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Dennis U. Smith

Carol Greco

Kevin Politte


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Office of Public Counsel

By: _____

By: _____

Herbert Hein, President

Stephen C. Reilly
Associate Public Counsel

Intervenor

David Greco

Dennis U. Smith

Carol Greco

Kevin Politto

Joseph M. Singel

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DOCKET NO. 080562-WU

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Office of Public Counsel

By: _____

By: _____

Herbert Hein, President

Stephen C. Reilly
Associate Public Counsel

Intervenors

David Greco

Dennis U. Smith

Dennis U. Smith 9/20/2011

Carol Greco

Kevin Politte

Joseph M. Singel

Rosemary Turner

Millicent Mallon

Terry Will

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Office of Public Counsel

By: _____

By: _____

Herbert Hein, President


Stephen C. Reilly
Associate Public Counsel

Intervenors

David Greco

Dennis U. Smith

Carol Greco



Kevin Politto

Joseph M. Singel

Rosemary Turner

Millieci Mallon

Terry Will

Exhibit "A"
Page 1 of 3

MEMORANDUM

From: Steve Reilly
TO: Mr. Herbert Hein
Intervenors
DATE: June 16, 2010
SUBJECT: Settlement of Docket No. 080562-WU

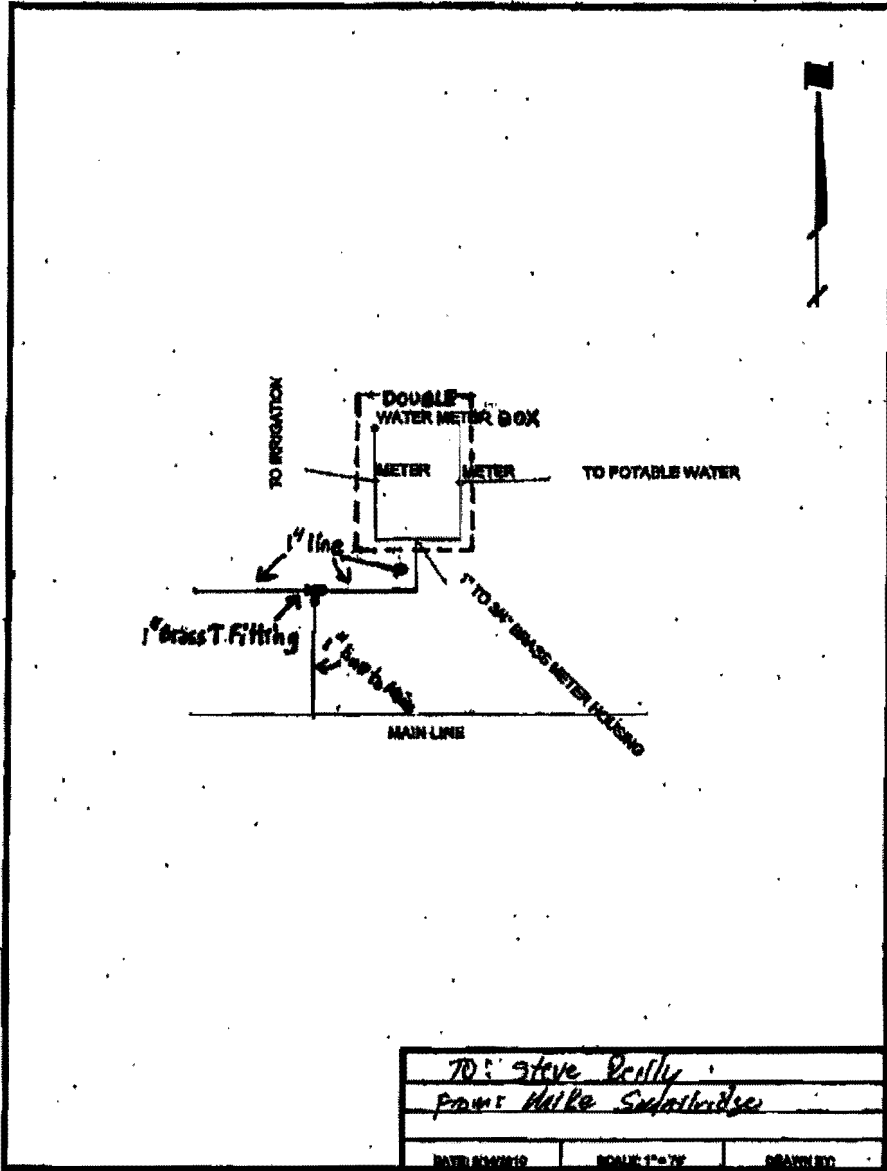
Combining the resources and efforts of Dave Greco and Mike Smalridge we have been able to produce a very workable and affordable solution to the problem of providing irrigation meters for the houses of the five Intervenors who did not receive irrigation meters prior to the April 7, 2010 deadline. By selecting the best priced items researched by Dave and Mike we were able to assemble the best prices for the materials, and Mike has graciously offered excellent labor costs to install the new parts and lines. The parts with the "Sunstate" designation are parts provided by Sunstate Meter and Supply, Inc. at wholesale prices arranged by Dave. The remaining parts and labor will be supplied by Mike.

See the attached diagram that depicts the "grandfather" installation. Grandfather, because it is the less costly configuration which uses the existing 1" line that serves two houses rather than the more expensive dedicated line that goes directly to the main.

The breakdown of the materials and labor and their estimated costs are as follows:

| | | |
|----|--|-----------|
| 1. | 1" Brass "T" fitting | \$ 9.00 |
| 2. | 3/4" - 1" Brass double branch w/ curb stops (Sunstate) | \$ 80.00 |
| 3. | 5/8" x 3/4" Senus manual read meter | \$ 41.00 |
| 4. | Plastic double meter box with lid (Sunstate) | \$ 32.00 |
| 5. | Miscellaneous schedule 40 drinking water PVC 1" & 3/4" pipes and fittings | \$ 16.00 |
| 6. | Labor and installation | \$ 40.00 |
| | Estimated total cost per irrigation installation: | \$ 218.00 |
| | Intervenor payment per prior tariff: | \$ -70.00 |
| | Approximate net cost to utility per installation: | \$ 148.00 |

TIME RECEIVED: June 14, 2010 4:08:05 PM EDT
REMOTE CSID: 1 352 726 0547
DURAT: 39
Exhibit 'A'
Page 3 of 3
08/14/2010 10:07 BLACK & WHITE COPY



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