

State of Florida
Division of Administrative Hearings

080562.WU

Rick Scott
Governor

Robert S. Cohen
Director and Chief Judge

Claudia Lladó
Clerk of the Division



David M. Maloney
Deputy Chief
Administrative Law Judge

David W. Langham
Deputy Chief Judge
Judges of Compensation Claims

September 17, 2012

Ann Cole, Commission Clerk
Office of the Commission Clerk
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

COMMISSION
CLERK

12 SEP 19 PM 2:19

RECEIVED-FPSC

Re: EAST MARION SANITARY SYSTEMS, INC. vs. PUBLIC SERVICE
COMMISSION, DOAH Case No. 12-0909

Dear Ms. Cole:

Enclosed is my Recommended Order in the referenced case. Also enclosed is the one-volume Transcript, together with the Respondent's Exhibits numbered 1, Intervenor's Exhibits numbered 1 through 5, and Joint Exhibits 1 through 9. Copies of this letter will serve to notify the parties that my Recommended Order and the hearing record have been transmitted this date.

As required by section 120.57(1)(m), Florida Statutes, you are requested to furnish the Division of Administrative Hearings with a copy of the Final Order, along with any exceptions to the Recommended Order, within 15 days of its rendition.

Sincerely,

W. DAVID WATKINS
Administrative Law Judge

WDW/bjs

Enclosures

cc: Lisa C. Bennett, Esquire
Herbert Hein
Millicent Mallon
Terry Will
Mike Smallridge
Martha F. Barrera, Esquire
S. Curtis Kiser, General Counsel
Timothy J. Devlin, Executive Director

DOCUMENT NUMBER-DATE

06302 SEP 19 12

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EAST MARION SANITARY SYSTEMS,)	
INC.,)	
)	
Petitioner,)	
)	
vs.)	Case No. 12-0909
)	
PUBLIC SERVICE COMMISSION,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before W. David Watkins, Administrative Law Judge of the Division of Administrative Hearings, on June 12, 2012, in Ocala, Florida.

APPEARANCES

- For Petitioner: No appearance

- For Respondent: Martha F. Barrera, Esquire
Lisa Bennett, Esquire
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

- For Intervenor: Millicent Mallon, pro se
1075 Northeast 130th Terrace
Silver Springs, Florida 34488

- For Intervenor: Terry Will, pro se
1385 Northeast 130th Terrace
Silver Springs, Florida 34488

STATEMENT OF THE ISSUE

Are Intervenors Mallon and Will each entitled to the installation of an irrigation meter with a "dedicated line configuration" at the prior tariffed rate of \$70.00?

PRELIMINARY STATEMENT

On August 19, 2008, East Marion Sanitary Systems, Inc. (East Marion or Utility) filed an application with the Florida Public Service Commission (Commission) for approval to amend its tariff sheets. Among the changes requested was an increase in meter installation charges, and the imposition of a new tap-in fee. The application was processed and on April 27, 2009, the Commission issued Order No. PSC-09-0263-TRF-WU (2009 Order) approving a new meter installation fee of \$195 and tap-in fees of \$1,400, \$1,800, and \$2,600 for the short, long, and extra-long irrigation service line installations, respectively.

In the 2009 Order, the Commission ordered that any customer who requested an irrigation meter from the Utility prior to April 7, 2009, would only be charged the \$70 rate in effect at the time of their request. On May 15 and 18, 2009, the Utility timely protested the portion of the Commission's order requiring the Utility to install irrigation meters at the prior tariff rate for customers requesting the meters prior to April 7, 2009. On September 15, 2010, the Commission granted Terry Will and Millicent Mallon's motions to intervene wherein they alleged

they were entitled to the installation of irrigation meters at the \$70 rate. Several other Utility customers who had requested meters also intervened in the action.

On September 29, 2011, East Marion, a majority of the intervenors, and the Office of Public Counsel (on behalf of all ratepayers), filed a joint motion for Commission approval of a settlement agreement wherein East Marion would install irrigation meters for the customers signing the agreement at the prior tariff rate of \$70 using an agreed-upon meter configuration. Intervenors Will and Mallon did not sign the agreement. On December 12, 2011, the Commission entered an order (2011 Order) approving the settlement agreement only as to the customers/intervenors who signed the agreement.

On December 29, 2011, East Marion protested the December 12, 2011, Order stating Will and Mallon were not entitled to a meter at the prior tariff rate. On January 11, 2012, Will filed a protest of the 2011 Order. On March 14, 2012, the Commission referred the matter to the Division of Administrative Hearings for the assignment of an administrative law judge to conduct a formal hearing.

Pursuant to notice, the hearing was convened on June 12, 2012, in Ocala, Florida. East Marion did not appear at the hearing and did not present any evidence. Mr. Mike Smallridge appeared at the hearing and represented that the Utility's

owner, Herbert Hein, asked him to state that the Utility had now agreed to install irrigation meters for Will and Mallon.

Mr. Smallridge stated, however, that Mr. Hein did not indicate that he would install the meters at the \$70 fee.

Mr. Smallridge, who is not an attorney, also stated that he was not appearing on behalf of the Utility and was not an agent, employee or representative of East Marion.

The Commission presented the testimony of Bart Fletcher and James McRoy, and introduced one exhibit into evidence.

Intervenors Will and Mallon each testified on their own behalf.

Mallon submitted five exhibits into evidence and the parties offered 9 joint exhibits, all of which were admitted. The Commission's motion to deem the request for admissions propounded by the Commission on East Marion was granted.

At the conclusion of the hearing the parties requested, and were granted, leave to submit their proposed recommended orders 30 days after the transcript was filed. The Transcript was filed at the Division on June 19, 2012, and on July 18, 2012, the Commission filed its Proposed Recommended Order. On August 16, 2012, Petitioner filed a Proposed Recommended Order, which Respondent moved to strike as untimely. On August 31, 2012, the undersigned entered an order denying the motion to strike. However, the order also noted that the documents attached to Petitioner's Proposed Recommended Order, which were

not offered into evidence at the hearing and were not part of the record in this case could not form the basis for any findings of fact. The Proposed Recommended Orders of both parties have been carefully considered in the preparation of this recommended order.

All citations are to Florida Statutes (2012) unless otherwise indicated.

FINDINGS OF FACTS

1. Petitioner, East Marion Sanitary Systems Inc., is a Class C investor-owned utility providing water and wastewater service to approximately 96 customers in Marion County, Florida.

2. Respondent, Public Service Commission, is an arm of the legislative branch of the State of Florida responsible for regulating investor-owned water and/or wastewater utilities pursuant to chapters 350 and 367, Florida Statutes.

3. Intervenors Terry Will and Millicent Mallon are two water/wastewater customers of the Utility.

4. A utility's rates and charges must be contained in a tariff approved by the Commission. A utility may only charge rates and charges that are approved by the Commission.

5. The purpose of an irrigation meter is to avoid being charged a sewage rate for any water used to water lawns. Without a separate irrigation meter, a consumer is charged the

sewage rate based on the amount of potable water that the consumer uses.

6. In East Marion's tariff, approved by the Commission in 2002, the charge for installation of a meter was \$70. The tariff contained no provision for tap-in fees.

7. On February 14, 2007, Ms. Mabelle Gregorio, a customer of East Marion, filed a complaint with the Commission regarding the cost of an irrigation meter. East Marion charged, and Ms. Gregorio paid, a total of \$897 for the installation of the irrigation meter.

8. On October 2, 2007, Angela and Dennis Fountain, also customers of East Marion, filed a complaint with the Commission regarding the \$597 they were required to pay the Utility for the installation of an irrigation meter.

9. In response to the complaints, Mr. Hein, the Utility owner, stated in a letter to the Commission that there was no way to install an irrigation meter to the existing piping.

10. By Commission Order No. PSC-08-0182-PAA-WU, issued March 25, 2008, East Marion was required to refund the sum of \$824 to Ms. Gregorio, and the sum of \$527, with interest, to the Fountains.

11. In the March 25, 2008, Order, the Commission stated: "[w]hile we agree that the actual cost of the meter installation

may have exceeded \$70, the utility may only charge the fees contained in its approved tariff."

12. East Marion did not request that the Commission approve a change to its tariff charges for installation of irrigation meters until August 2008. On August 19, 2008, East Marion filed an application for Commission approval to amend its tariff sheets to reflect, among other items, an increase in meter installation charges, and the imposition of new tap-in fees.

13. Prior to April 27, 2009, a notice was placed on the locked bulletin board located at the Utility's office stating that no irrigation meters would be put in place until the requested new rates went into effect.

14. On September 26, 2008, Mr. Herbert Hein, owner and operator of East Marion, left a voicemail message to Commission staff member, Shannon Hudson, regarding a customer of the Utility and the installation of irrigation meters. In the voicemail message, Mr. Hein stated that he was "in the middle of asking for an irrigation meter tariff and until that is approved, I am not installing irrigation meters."

15. In order to offer customers a separate irrigation service, East Marion's application requested approval to implement new tap-in fees with charges dependent upon whether the tap-in required a "short," "long," or "extra-long"

installation. The short installation tap-in involved installing a dedicated service line 20 feet or less where the water main is on the same side of the road as the meter. The long installation tap-in involved installing a dedicated service line 40 feet or less where the water main is on the opposite side of the road. Finally, the extra-long installation tap-in involved installing the irrigation service line 40 feet or more on the opposite side of the meter.

16. By Order No. PSC-09-0263-TRF-WU, issued April 27, 2009, the Commission approved a new meter installation fee of \$195 and tap-in fees of \$1,400, \$1,800, and \$2,600 for the short, long, and extra-long irrigation service line installation, respectively. In that same order, the Commission directed that any customer who requested an irrigation meter from East Marion prior to April 7, 2009, would only be charged the \$70 rate, which was in effect at the time of the Utility's application.

17. Intervenor Will requested the Utility to install an irrigation meter by letter to the Utility dated March 16, 2008. Will also verbally requested the installation of the irrigation meter.

18. Mallon requested East Marion to install an irrigation meter at the \$70 tariff rate in a letter written by her late husband dated January 11, 2008.

19. On May 18, 2009, the Utility protested the portion of the Commission's order addressing previous applications for irrigation meters. Specifically, East Marion protested the Commission's requirement that the Utility install irrigation meters at its prior tariff rate for some customers who requested the meters prior to April 7, 2009.

20. On April 19, 2010, Terry Will and Millicent Mallon filed testimony in Docket 080562-WU, alleging they were entitled to the installation of irrigation meters at the \$70 rate. Several other Utility customers who had requested meters also intervened in the action.

21. On September 29, 2011, East Marion, a majority of the intervenors, and Florida's Office of Public Counsel, on behalf of all ratepayers, entered into a settlement agreement, and filed a joint motion with the Commission for approval of the settlement.

22. The Commission approved the settlement agreement by Commission Order No. PSC-11-0566-AS-WU, issued December 12, 2011.

23. At paragraph 1 of the settlement agreement, East Marion agreed to provide each settling Intervenor with an irrigation meter, installed as prescribed by the June 16, 2010, memorandum titled "Settlement of Docket No. 080562-WU

("grandfather installation")". The memorandum, dated June 16, 2010, was attached as attachment "A" to the agreement and order.

24. The June 16, 2010, Memorandum stated that the meter installation would use "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 configuration for the agreed-upon meter installation, pictured in attachment "A," did not include a separate dedicated line leading from the Utility's main line to the irrigation meter.

25. Will and Mallon declined to enter into the settlement agreement. The Commission order issued December 12, 2011, expressly held that the settlement agreement was binding only as to the customer/intervenors who signed the agreement.

26. Will and Mallon did not agree that the installation of an irrigation meter in the configuration agreed to by the parties and intervenors, depicted in the June 16, 2010, memorandum, was an appropriate installation. This is because an irrigation meter installation that serves two houses, without a separate dedicated line, may impact one neighbor's water pressure if the other neighbor is running the irrigation system.

CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this

proceeding pursuant to sections 120.569, and 120.57(1), Florida Statutes.

28. Petitioner, East Marion, has the burden of proving, by a preponderance of the evidence, that Mallon and Will were not entitled to an irrigation meter installed at the prior tariff rate of \$70. In this case, East Marion failed to meet its burden, as it did not appear at the final hearing and did not present any evidence that Mallon and Will were not entitled to irrigation meters installed at the prior tariff rate of \$70. Fla. Dep't of Transp. v. J.W.C. Co., Inc. 396 So. 2d 778 (Fla. 1st DCA 1981).

29. Section 367.081(2)(a)1., Florida Statutes, provides that the Commission shall, either upon request or upon its own motion, fix rates for water and wastewater utilities which are just, reasonable, compensatory, and not unfairly discriminatory. Section 367.081(1) provides that a utility may only charge rates and charges that have been approved by the Commission.

30. In Aloha Utilities, Inc. v. Florida Public Service Commission, 281 So. 2d 357 (Fla. 1973), the Supreme Court found that where a utility company's rate increase was not authorized by the Commission, all rates and charges were to be refunded or reduced to pre-rate hike status.

31. In 2007 and 2008, East Marion charged two customers amounts in excess of the \$70 fee for the installation of

irrigation meters. East Marion objected on the basis that the installation of the irrigation meters had required the installation of additional separate lines connected from the main line to the meter. East Marion argued that the installation of the additional lines would cost more than the existing \$70 rate. The Commission, noting that the Utility's existing tariff only provided a \$70 fee for meter installation, ordered refunds of all amounts collected in excess of the \$70 stating: "[w]hile we agree that the actual cost of the meter installation may have exceeded \$70, the utility may only charge the fees contained in its approved tariff."

32. Section 367.111 requires each utility to provide service to customers in its service territory within a reasonable time. Pursuant to Florida Administrative Code Rule 25-30.520, East Marion could not refuse to provide service within its certificated areas in accordance with the terms and conditions on file with the Commission. The terms and conditions on file with the Commission were those in East Marion's tariff, which included the installation of a meter at the rate of \$70. It is clear from the evidence presented in this case that Will and Mallon requested the irrigation meter installation prior to the April 7, 2009, date provided in the Commission's 2009 Order. It is also clear that East Marion improperly delayed providing the service to its customers when

it refused customers' requests to install meters until its application to increase the Utility's tariff was approved by the Commission.

33. Section 367.081(3), provides that in fixing rates for a water/wastewater utility, the Commission may determine the prudent cost of providing service during the period of time the rates will be in effect following the entry of a final order relating to the rate request of the utility, and may use such costs to determine the revenue requirements that will allow the utility to earn a fair rate of return on its rate base.

34. In this case, the costs of providing the meters to Will and Mallon will exceed the \$70 tariff rate. In its December 12, 2011, Order, the Commission cautioned East Marion that if it failed to prove that Mallon and Will did not request a meter, "the Utility will be required to connect the two customers at the \$70 fee and any additional costs it incurs will likely not be considered a prudent expenditure."

35. East Marion has failed to prove, by a preponderance of the evidence, that Will and Mallon did not request the meter installation prior to the April 7, 2009, deadline established in the Commission's 2009 Order. Rather, the unrebutted evidence of record established that Will and Mallon timely requested the meter installation while the approved rate was \$70 and that East Marion refused to install the meters.

36. Moreover, Will and Mallon are not bound by the stipulated meter installation configuration set forth in the settlement agreement approved by the Commission since they refused to join in the agreement.

37. The un rebutted evidence also established that an irrigation meter installation with a separate dedicated line is a superior configuration. Indeed, this was the approach used by the Utility to install the Gregorio's and Fountain's irrigation meters, believing it could recoup the full cost of the installation.

38. Section 367.091(1), (3), and (4), provide that each utility's rates, charges, and customer service policies must be contained in a tariff approved by and on file with the Commission. Further, a utility may only impose and collect those rates and charges approved by the Commission for the particular class of service involved. A change in a utility's rate schedule may not be made without Commission approval.

39. Since the Utility did not have an additional fee in its approved tariff for the installation of an irrigation meter with a dedicated line at the time Will and Mallon requested installation, East Marion can only charge \$70 for the installation with the dedicated line.

40. As Will and Mallon requested the meter installation prior to the April 7, 2009, deadline, they are entitled to the installation of an irrigation meter with a separate dedicated line at the prior tariff rate of \$70.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

RECOMMENDED that the Public Service Commission enter a Final Order dismissing Petitioner's protest and ordering the Utility to install irrigation meters with a dedicated line for Intervenors Will and Mallon at the prior tariff rate of \$70.

DONE AND ENTERED this 17th day of September, 2012, in Tallahassee, Leon County, Florida.



W. DAVID WATKINS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of September, 2012.

COPIES FURNISHED:

Lisa C. Bennett, Esquire
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
lbennett@psc.state.fl.us

Herbert Hein
East Marion Sanitary Systems, Inc.
Suite 190
G-4225 Miller Road
Flint, Michigan 48507

Millicent Mallon
1075 Northeast 130th Terrace
Silver Springs, Florida 34488

Terry Will
1385 Northeast 130th Terrace
Silver Springs, Florida 34488

Mike Smallridge
15827 Cedar Elm Terrace
Land O Lakes, Florida 34638

Martha F. Barrera, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
mbarrera@psc.state.fl.us

Ann Cole, Commission Clerk
Office of the Commission Clerk
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

S. Curtis Kiser, General Counsel
Office of the Commission Clerk
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Timothy J. Devlin, Executive Director
Office of the Commission Clerk
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

CASE NO. 12-0909 CASE STYLE EAST MARION SANITARY SYSTEMS V. P.S.C.

EXHIBIT LIST - Petitioner Respondent Intervenor Other Name of party offering exhibits: _____

No.	DESCRIPTION	OBJECTION		DISPOSITION		
PSC 1	INDEX OF RATES + CHANGES ^{JOINT EX.}	Yes	<input checked="" type="radio"/> No	<input checked="" type="radio"/> Admitted	Rejected	Proffered
PSC 2	ORDER DENYING IN PART - JOINT ^{EX.}	Yes	<input checked="" type="radio"/> No	<input checked="" type="radio"/> Admitted	Rejected	Proffered
PSC 3	PET. TO PROTEST ORDER, 5/15/09 ^{JOINT EX.}	Yes	<input checked="" type="radio"/> No	<input checked="" type="radio"/> Admitted	Rejected	Proffered
PSC 4	5/18/09 E-MAIL w/ PETITION ^{JOINT EX.}	<input checked="" type="radio"/> Yes	No	<input checked="" type="radio"/> Admitted	Rejected	Proffered
PSC 5	TESTIMONY OF WILL, 4/19/10 ^{JOINT EX.}	Yes	<input checked="" type="radio"/> No	<input checked="" type="radio"/> Admitted	Rejected	Proffered
PSC 6	TESTIMONY OF MARION, 4/19/10 ^{JOINT EX.}	Yes	<input checked="" type="radio"/> No	<input checked="" type="radio"/> Admitted	Rejected	Proffered
PSC 7	HUDSON TESTIMONY	Yes	<input checked="" type="radio"/> No	<input checked="" type="radio"/> Admitted	Rejected	Proffered
PSC 8	ORDER APPROVING SETTLEMENT AGREEMENT ^{JOINT EX.}	Yes	<input checked="" type="radio"/> No	<input checked="" type="radio"/> Admitted	Rejected	Proffered
PSC 9	HEIN PROTEST OF 12/12 ORDER ^{JOINT EX.}	Yes	<input checked="" type="radio"/> No	<input checked="" type="radio"/> Admitted	Rejected	Proffered
PSC 10	WILL'S PROTEST FILED 12/12 1/11/12 ^{JOINT EX.}	Yes	<input checked="" type="radio"/> No	<input checked="" type="radio"/> Admitted	Rejected	Proffered
		Yes	No	Admitted	Rejected	Proffered
		Yes	No	Admitted	Rejected	Proffered
		Yes	No	Admitted	Rejected	Proffered
		Yes	No	Admitted	Rejected	Proffered
		Yes	No	Admitted	Rejected	Proffered
		Yes	No	Admitted	Rejected	Proffered
		Yes	No	Admitted	Rejected	Proffered
		Yes	No	Admitted	Rejected	Proffered

CLOSING NOTES:

Transcript ordered? Yes No Unresolved MISCELLANEOUS: _____

Late-filed exhibits? Yes No Deadline: _____

Deadline for PRO's or PFO's: X SCRIPT + 30

Hours of Hearing: 3.5

CASE NO. 12-0909

CASE STYLE EAST MARION SANITARY SYSTEMS V. P.S.C.

EXHIBIT LIST - Petitioner Respondent Intervenor Other Name of party offering exhibits: _____

No.	DESCRIPTION	OBJECTION		DISPOSITION	
1	<u>MAULON</u> 2/21/2008 MEMO	Yes	<u>No</u>	<u>Admitted</u>	Rejected Proffered
2	NOTICE OF PROPOSED AGENCY ACTION	Yes	<u>No</u>	<u>Admitted</u>	Rejected Proffered
3	SKETCH + MEMO	Yes	<u>No</u>	<u>Admitted</u>	Rejected Proffered
4	1st RFA TO EAST MARION	Yes	<u>No</u>	<u>Admitted</u>	Rejected Proffered
5	COURT APPROVING SETTLEMENT AGREEMENT	Yes	No	Admitted	Rejected Proffered
5	DEFICIENCY LETTER TO EAST MARION	Yes	<u>No</u>	<u>Admitted</u>	Rejected Proffered
6	SUPPLEMENT TO APPLICATION	Yes	<u>No</u>	<u>Admitted</u>	Rejected Proffered
		Yes	No	Admitted	Rejected Proffered
		Yes	No	Admitted	Rejected Proffered
		Yes	No	Admitted	Rejected Proffered
		Yes	No	Admitted	Rejected Proffered
		Yes	No	Admitted	Rejected Proffered
		Yes	No	Admitted	Rejected Proffered
		Yes	No	Admitted	Rejected Proffered
		Yes	No	Admitted	Rejected Proffered
		Yes	No	Admitted	Rejected Proffered
		Yes	No	Admitted	Rejected Proffered
		Yes	No	Admitted	Rejected Proffered

CLOSING NOTES:

Transcript ordered? Yes No Unresolved MISCELLANEOUS: _____

Late-filed exhibits? Yes No Deadline: _____

Deadline for PRO's or PFO's: _____

Hours of Hearing: _____

REC'D

ORIGINAL SHEET NO. 11.0

NAME OF COMPANY East Marion Sanitary Systems, Inc.

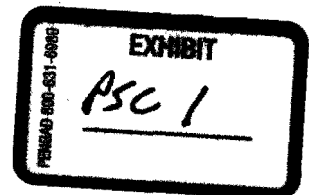
WATER TARIFF

INDEX OF RATES AND CHARGES SCHEDULES

	<u>Sheet Number</u>
Customer Deposits	14.0
General Service, GS	12.0
Meter Test Deposit	15.0
Miscellaneous Service Charges	16.0
Residential Service, RS	13.0
Service Availability Fees and Charges	17.0

12-0909

WDW



Herbert Hein
ISSUING OFFICER

President
TITLE

FLORIDA PUBLIC SERVICE COMMISSION

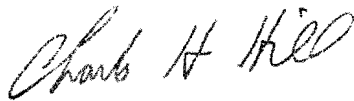
APPROVED

AUTHORITY NO. WS-97-0200

DOCKET NO. 971169-WS

ORDER NO. PSC-98-0928-FOF-WS

EFFECTIVE DATE July 7, 1998



DIRECTOR
DIVISION OF WATER AND WASTEWATER

NAME OF COMPANY: EAST MARION SANITARY SYSTEMS, INC.

WATER TARIFF

GENERAL SERVICE

RATE SCHEDULE GS

AVAILABILITY - Available throughout the area served by the Company.
APPLICABILITY - For water service to all Customers for which no other schedule applies.
LIMITATIONS - Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.

BILLING PERIOD Monthly

<u>RATE</u>	<u>Meter Size</u>	<u>Base Facility Charge</u>
	5/8" x 3/4"	\$9.62
	3/4"	\$14.43
	1"	\$24.05
	1 1/2"	\$48.09
	2"	\$76.95
	3"	\$153.90
	4"	\$240.47
	6"	\$480.93
	<u>Gallonge Charge</u>	
	Per 1,000 Gallons	\$2.35

MINIMUM CHARGE - Base Facility Charge

TERMS OF PAYMENT - Bills are due and payable when rendered. In accordance with Rule 25-30.320, Florida Administrative Code, if a Customer is delinquent in paying the bill for water service, service may then be discontinued.

EFFECTIVE DATE - February 1, 2008

TYPE OF FILING - 2007 Price Index

HERBERT HEIN
ISSUING OFFICER

PRESIDENT
TITLE

FLORIDA PUBLIC SERVICE COMMISSION

APPROVED

AUTHORITY NO. WS-07-0131

DOCKET NO. N/A

ORDER NO. N/A

EFFECTIVE: February 1, 2008

Tim Devlin

DIRECTOR
DIVISION OF ECONOMIC AND REGULATION

NAME OF COMPANY: EAST MARION SANITARY SYSTEMS, INC.

WATER TARIFF

RESIDENTIAL SERVICE

RATE SCHEDULE RS

AVAILABILITY - Available throughout the area served by the Company.

APPLICABILITY - For water service for all purposes in private residences and individually metered apartment units.

LIMITATIONS - Subject to all of the Rules and Regulations of this Tariff and General Rules and Regulations of the Commission.

BILLING PERIOD Monthly

<u>RATE</u>	<u>Meter Size</u>	<u>Base Facility Charge</u>
	5/8" x 3/4"	\$9.62
	3/4"	\$14.43
	1"	\$24.05
	1 1/2"	\$48.09
	2"	\$76.95
	3"	\$153.90
	4"	\$240.47
	6"	\$480.93
	<u>Gallonage Charge</u>	
	0 – 10,000 Gallons	\$2.01
	Above 10,000 Gallons	\$3.01

MINIMUM CHARGE - Base Facility Charge

TERMS OF PAYMENT - Bills are due and payable when rendered. In accordance with Rule 25-30.320, Florida Administrative Code, if a Customer is delinquent in paying the bill for water service, service may then be discontinued.

EFFECTIVE DATE - February 1, 2008

TYPE OF FILING - 2007 Price Index

HERBERT HEIN
ISSUING OFFICER

PRESIDENT
TITLE

FLORIDA PUBLIC SERVICE COMMISSION

APPROVED

AUTHORITY NO. WS-07-0131

DOCKET NO. N/A

ORDER NO. N/A

EFFECTIVE: February 1, 2008

Tim Devlin

DIRECTOR
DIVISION OF ECONOMIC AND REGULATION

NAME OF COMPANY EAST MARION SANITARY SYSTEMS, INC.

WATER TARIFF

LATE PAYMENT CHARGE

APPLICABILITY - For water and wastewater bills whose payment is not received by the 21st day after the utility has mailed or presented the bill for payment.

RATE - \$5.00 per occurrence

EFFECTIVE DATE - September 4, 2002

TYPE OF FILING - 2002 SARC

HERBERT HEIN
ISSUING OFFICER

PRESIDENT
TITLE

FLORIDA PUBLIC SERVICE COMMISSION

APPROVED

AUTHORITY NO. WS-01-0079

DOCKET NO. 010869-WS

ORDER NO. PSC-02-1168-PAA-WS

EFFECTIVE September 4, 2002

TIM DEVLIN

DIRECTOR
DIVISION OF ECONOMIC REGULATION

NAME OF COMPANY EAST MARION SANITARY SYSTEMS, INC.

WATER TARIFF

CUSTOMER DEPOSITS

ESTABLISHMENT OF CREDIT - Before rendering water service, the Company may require an Applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the Customer from complying with the Company's rules for prompt payment. Credit will be deemed so established if the Customer complies with the requirements of Rule 25-30.311, Florida Administrative Code.

AMOUNT OF DEPOSIT - The amount of initial deposit shall be the following according to meter size:

	<u>Residential</u>	<u>General Service</u>
5/8" x 3/4" All Over 5/8" x 3/4"	<u>\$61.00</u> 2 x Average Bill	<u>\$61.00</u> 2 x Average Bill

ADDITIONAL DEPOSIT - Under Rule 25-30.311(7), Florida Administrative Code, the Company may require a new deposit, where previously waived or returned, or an additional deposit in order to secure payment of current bills provided.

INTEREST ON DEPOSIT - The Company shall pay interest on Customer deposits pursuant to Rules 25-30.311(4) and (4a). The Company will pay or credit accrued interest to the Customers account during the month of April each year.

REFUND OF DEPOSIT - After a residential Customer has established a satisfactory payment record and has had continuous service for a period of 23 months, the Company shall refund the Customer's deposit provided the Customer has met the requirements of Rule 25-30.311(5), Florida Administrative Code. The Company may hold the deposit of a non-residential Customer after a continuous service period of 23 months and shall pay interest on the non-residential Customer's deposit pursuant to Rules 25-30.311(4) and (5), Florida Administrative Code.

Nothing in this rule shall prohibit the Company from refunding a Customer's deposit in less than 23 months.

EFFECTIVE DATE - September 4, 2002

TYPE OF FILING - 2002 SARC

HERBERT HEIN
ISSUING OFFICER

PRESIDENT
TITLE

FLORIDA PUBLIC SERVICE COMMISSION

APPROVED

AUTHORITY NO. WS-01-0079

DOCKET NO. 010869-WS

ORDER NO. PSC-02-1168-PAA-WS

EFFECTIVE September 4, 2002

TIM DEVLIN

DIRECTOR
DIVISION OF ECONOMIC REGULATION

NAME OF COMPANY East Marion Sanitary Systems, Inc.

WATER TARIFF

SCHEDULE OF METER TEST DEPOSITS

METER BENCH TEST REQUEST - If any customer requests a bench test of his or her water meter, the Company will require a deposit to defray the cost of testing; such deposit shall not exceed the following schedule of fees and shall be in accordance with Rule 25-30.266, Florida Administrative Code:

<u>METER SIZE</u>	<u>FEE</u>
5/8" x 3/4"	\$20.00
1" and 1 1/2"	\$25.00
2"and over	Actual Cost

REFUND OF METER BENCH TEST DEPOSIT - If the meter is found to register in excess of prescribed accuracy limits pursuant to Rule 25-30.262, Florida Administrative Code. the deposit shall be refunded. If the meter is found to register accurately or below such prescribed accuracy limits, the deposit shall be retained by the Company as a service charge for conducting the meter test.

METER FIELD TEST REQUEST - Upon written request of any customer, the Company shall, without charge, make a field test of the accuracy of the water meter in use at the customer's premises provided that the meter has not been tested within one-half the maximum interval allowed under Rule 25.30.265, Florida Administrative Code.

Herbert Hein
ISSUING OFFICER

President
TITLE

FLORIDA PUBLIC SERVICE COMMISSION

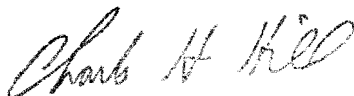
APPROVED

AUTHORITY NO. WS-97-0200

DOCKET NO. 971169-WS

ORDER NO. PSC-98-0928-FOF-WS

EFFECTIVE DATE July 7, 1998



DIRECTOR
DIVISION OF WATER AND WASTEWATER

NAME OF COMPANY East Marion Sanitary Systems, Inc.

WATER TARIFF

MISCELLANEOUS SERVICE CHARGES

The Company may charge the following miscellaneous service charges in accordance with the terms state herein. If both water and wastewater services are provided, only a single charge is appropriate unless circumstances beyond the control of the Company requires multiple actions.

INITIAL CONNECTION - This charge would be levied for service initiation at a location where service did not exist previously.

NORMAL RECONNECTION - This charge would be levied for transfer of service to a new customer account at a previously served location or reconnection of service subsequent to a customer requested disconnection.

VIOLATION RECONNECTION - This charge would be levied prior to reconnection of an existing customer after disconnection of service for cause according to Rule 25-30.320(2), Florida Administrative Code, including a delinquency in bill payment.

PREMISES VISIT CHARGE (IN LIEU OF DISCONNECTION) - This charge would be levied when a service representative visits a premises for the purpose of discontinuing service for nonpayment of a due and collectible bill and does not discontinue service because the customer pays the service representative or otherwise makes satisfactory arrangements to pay the bill.

Schedule of Miscellaneous Service Charges

Initial Connection Fee	\$ 15.00
Normal Reconnection Fee	\$ 15.00
Violation Reconnection Fee	\$ 15.00
Premises Visit Fee (in lieu of disconnection)	\$ 10.00

EFFECTIVE DATE -TYPE OF FILING - Transfer

Herbert Hein
ISSUING OFFICER

President
TITLE

FLORIDA PUBLIC SERVICE COMMISSION

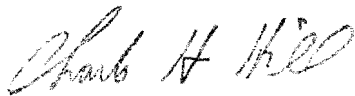
APPROVED

AUTHORITY NO. WS-97-0200

DOCKET NO. 971169-WS

ORDER NO. PSC-98-0928-FOF-WS

EFFECTIVE DATE July 7, 1998



DIRECTOR
DIVISION OF WATER AND WASTEWATER

NAME OF COMPANY EAST MARION SANITARY SYSTEMS, INC.
 WATER TARIFF

SERVICE AVAILABILITY FEES AND CHARGES

<u>Description</u>	<u>Amount</u>	<u>Refer to Service Availability Policy Sheet No./Rule No.</u>
<u>Back-Flow Preventor Installation Fee</u>		
5/8" x 3/4"	\$	
1"	\$	
1 1/2"	\$	
2"	\$	
Over 2"	\$ ¹	
<u>Customer Connection (Tap-in) Charge</u>		
5/8" x 3/4" metered service	\$	
1" metered service	\$	
1 1/2" metered service	\$	
2" metered service	\$	
Over 2" metered service	\$ ¹	
<u>Guaranteed Revenue Charge</u>		
With Prepayment of Service Availability Charges:		
Residential-per ERC/month (__ GPD)	\$	
All others-per gallon/month	\$	
Without Prepayment of Service Availability Charges:		
Residential-per ERC/month (__ GPD)	\$	
All others-per gallon/month	\$ ¹	
<u>Inspection Fee</u>	\$ ¹	
<u>Main Extension Charge</u>		
Residential-per ERC (<u>349</u> GPD)	\$255.00	
All others-per gallon	\$ 0.73	
or		
Residential-per lot (__ foot frontage)	\$	
All others-per front foot	\$	
<u>Meter Installation Fee</u>		
5/8" x 3/4"	\$ 70.00	
1"	\$	
1 1/2"	\$	
2"	\$	
Over 2"	\$ ¹	
<u>Plan Review Charge</u>	\$ ¹	
<u>Plant Capacity Charge</u>		
Residential-per ERC (<u>349</u> GPD)	\$112.00	
All others-per gallon	\$ 0.32	
<u>System Capacity Charge</u>		
Residential-per ERC (__ GPD)	\$	
All others-per gallon	\$	

¹Actual Cost is equal to the total cost incurred for services rendered.

⁴ EFFECTIVE DATE - September 4, 2002
TYPE OF FILING - 2002 SARC

HERBERT HEIN
 ISSUING OFFICER

PRESIDENT
 TITLE

FLORIDA PUBLIC SERVICE COMMISSION

APPROVED

AUTHORITY NO. WS-01-0079

DOCKET NO. 010869-WS

ORDER NO. PSC-02-1168-PAA-WS

EFFECTIVE September 4, 2002

TIM DEVLIN

DIRECTOR
DIVISION OF ECONOMIC REGULATION

NAME OF COMPANY East Marion Sanitary Systems, Inc.

WATER TARIFF

INDEX OF STANDARD FORMS

	<u>Sheet No.</u>
APPLICATION FOR METER INSTALLATION	21.0
APPLICATION FOR WATER SERVICE	20.0
COPY OF CUSTOMER'S BILL	22.0
CUSTOMER'S GUARANTEE DEPOSIT RECEIPT	19.0

Herbert Hein
ISSUING OFFICER

President
TITLE

FLORIDA PUBLIC SERVICE COMMISSION

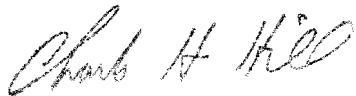
APPROVED

AUTHORITY NO. WS-97-0200

DOCKET NO. 971169-WS

ORDER NO. PSC-98-0928-FOF-WS

EFFECTIVE DATE July 7, 1998



DIRECTOR
DIVISION OF WATER AND WASTEWATER

NAME OF COMPANY East Marion Sanitary Systems, Inc.

WATER TARIFF

CONNECTION/TRANSFER SHEET

Effective Date _____

EAST MARION SANITARY SYSTEMS, INC.

Meter # _____

P.O. BOX 245

Meter Reading _____

SILVER SPRINGS, FL 34489-0245

Billing and Management by: **Enviro-Masters Water & Wastewater Services, Inc.**
2320 N.E. 2nd Street, Suite 3B, Ocala, FL 34470
24-Hour Telephone Service: 352/351-1338

Subdivision: LAKEVIEW WOODS Account Number: _____

Customer Name: _____

Billing Address: _____

Home Phone: _____ Work Phone (Emergency Only) _____

Service Address: _____

Block/Lot: _____ Type: Residential/Commercial

Bills are mailed on the last day of each month and are due upon receipt.

Bills are considered late 20 days after the billing date and must be paid no later than the 20th of every month. Customers are notified 5 days before disconnection on delinquent accounts, and 48 hours before disconnection on returned checks. There is a \$20.00 charge for returned checks, plus any additional charges assessed to us by the bank (cash payment only on returned checks). If water service is disconnected due to non-payment, there is a \$15.00 reconnection charge when performed during regular hours. After regular hours, the reconnection charge is \$30.00.

There shall be no liability of any kind against the company by reason of discontinuance of water service to the customer for failure of the customer to pay the bills on time.

Monthly Rate:

Water: Base Charge: \$8.70 \$1.27 per 1,000 gallons
Sewer: Base Charge: \$9.61 \$1.83 per 1,000 gallons (Max. 10,000 gal.)

Initial Connection Fee: \$ _____
Deposit \$ None
Conn /Transfer Fee \$ _____
Other Charges \$ _____
TOTAL \$ _____ Paid by Cash or Check # _____

The undersigned does hereby agree to abide by the Rules and Regulation of this Utility, as approved by the Florida Public Service Commission, and does guarantee payment of any and all indebtedness incurred

PLEASE FILL IN HIGHLIGHTED AREAS, SIGN AND RETURN WITH PAYMENT. THANK YOU.

Signature _____

Herbert Hein
ISSUING OFFICER

President
TITLE

FLORIDA PUBLIC SERVICE COMMISSION

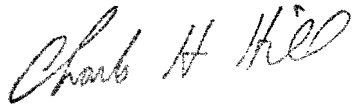
APPROVED

AUTHORITY NO. WS-97-0200

DOCKET NO. 971169-WS

ORDER NO. PSC-98-0928-FOF-WS

EFFECTIVE DATE July 7, 1998



DIRECTOR
DIVISION OF WATER AND WASTEWATER

Sample Application Form

Name _____

Telephone Number _____

Billing Address _____

City

StateZip

Service Address _____

City

StateZip

Date service should begin _____

Service requested:

Water _____ Wastewater _____ Both _____

By signing this agreement, the customer agrees to the following:

1. The Company shall not be responsible for the maintenance and operation of the customer's pipes and facilities. The customer agrees not to utilize any appliance or device which is not properly constructed, controlled and protected or which may adversely affect the water service; the Company reserves the right to discontinue or withhold water service to such apparatus or device.
2. The Company may refuse or discontinue water service rendered under application made by any member or agent of a household, organization, or business for any of the reasons contained in Rule 25-30.320, Florida Administrative Code. Any unauthorized connections to the customer's water service shall be subject to immediate discontinuance without notice, in accordance with Rule 25-30.320, Florida Administrative Code.
3. The customer agrees to abide by all existing Company rules and regulations as contained in the tariff.
4. Bills for water service will be rendered - Monthly, Bimonthly, or Quarterly - as stated in the rate schedule. Bills must be paid within 20 days of mailing bills. If payment is not made after five working days written notice, service may be discontinued.
5. When a customer wishes to terminate service on any premises where water and/or wastewater service is supplied by the Company, the Company may require (oral, written) notice within ___ days prior to the date the customer desires to terminate service.

Signature

Date

Herbert Hein
ISSUING OFFICER

President
TITLE

FLORIDA PUBLIC SERVICE COMMISSION

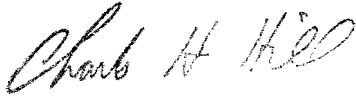
APPROVED

AUTHORITY NO. WS-97-0200

DOCKET NO. 971169-WS

ORDER NO. PSC-98-0928-FOF-WS

EFFECTIVE DATE July 7, 1998



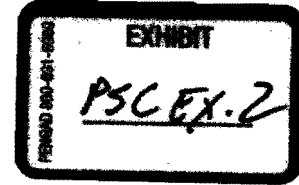
DIRECTOR
DIVISION OF WATER AND WASTEWATER

REC'D

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
ORDER NO. PSC-09-0263-TRF-WU
ISSUED: April 27, 2009



The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER DENYING IN PART AND GRANTING IN PART EAST MARION SANITARY SYSTEM, INC.'S APPLICATION TO AMEND TARIFFS; ADDRESSING PREVIOUS APPLICATIONS FOR IRRIGATION METERS

BY THE COMMISSION:

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 \$65,553 in its 2007 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, we suspended the tariff filing pending further investigation. We have jurisdiction pursuant to Section 367.091, Florida Statutes (F.S.).

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 by East Marion Sanitary Systems, Inc.

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT THAT WAS FILED WITH THE FLORIDA PUBLIC SERVICE COMMISSION
BY: Ann Cole
ANN COLE, COMMISSION CLERK
(or Office of Commission Clerk designee)

DOCUMENT NUMBER-DATE

03917 APR 27 8

FPSC-COMMISSION CLERK

Social Security Number

The Utility requests that its connection/transfer sheet be revised to reflect a provision that requires customers to provide their Social Security numbers in their applications for service. The Utility asserts that it needs the Social Security number to collect on bad debts and delinquent accounts. The Utility's request to amend its tariff sheet to require a customer to provide his Social Security number to obtain service is denied. While there is no law prohibiting a company from requiring a Social Security number before it provides service, we find that it is bad policy to require the number before a customer obtains utility service, especially when alternate means of identification will allow the Utility to pursue bad debts. The Social Security administration acknowledges on its website:

If a business or other enterprise asks you for your number, you can refuse to give it. However, that may mean doing without the purchase or service for which your number was requested. For example, Utility companies and other services ask for a Social Security number, but do not need it; they can do a credit check or identify the person in their records by alternative means.

<http://ssa-custhelp.ssa.gov> We have permitted other utilities to ask for a Social Security number, as one of several acceptable forms of identification a ratepayer may provide to obtain service. For instance, in its tariff, Florida Power & Light Company (FPL) is permitted to require an applicant to provide his name, telephone number and address and to require identification with the application for service. "The types of identification required upon application for service include a valid Social Security number, tax identification number, driver's license, birth certificate, or any other form of identification acceptable to the Company." FPL Tariff Sheet 6.010.

East Marion is not requesting alternate types of identification; it only wants the customer's Social Security number. To provide a customer no alternative method of proving identification other than his Social Security number removes any choice from the consumer about releasing this sensitive information due to the monopolistic nature of a utility. Further, there are customers who do not have Social Security numbers, and in those instances, this requirement would be discriminatory. Therefore, East Marion's request to amend its connection/transfer sheet is denied.

The Utility is permitted, however, to amend its connection/transfer sheet to require one of several acceptable forms of identification. For purposes of the tariff, the types of identification required upon application for service include a valid Social Security number, tax identification number, driver's license, birth certificate, or any other form of identification acceptable to the Company. If the Utility chooses to amend its connection/transfer sheet consistent with our direction, it must provide our staff with a copy of the revised tariff within 30 days of the effective date of the Order. Our staff is granted the administrative authority to approve the revised tariff sheet, consistent with our direction.

Returned Check Charge

The Utility requests that its returned check charge be increased from \$20 to \$25. The utility submitted information in its filings reflecting the actual costs it incurs for returned checks. We find that the Utility shall be permitted to collect its actual costs for returned checks. The Utility shall revise its tariff to reflect that the charges for returned checks will be its actual costs.

Miscellaneous Service Charges

The Utility requests an increase in its miscellaneous service charges to be more reflective of its current cost of service. The current miscellaneous service charges were approved for the Utility in a transfer docket in 1998² and have not changed since that date – a period of 11 years. East Marion believes these charges should be updated to reflect current costs. Based on the data supplied by the company, we agree with this update. The costs for fuel and labor have risen substantially since that time. Further, our price index has increased approximately 25 percent in that period of time. We have expressed concern with miscellaneous service charges that fail to compensate utilities for the cost incurred. By Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, we expressed “concern that the rates [miscellaneous service charges] are eight years old and cannot possibly cover current costs” and directed our staff to “examine whether miscellaneous service charges should be indexed in the future and included in index applications.”³ Currently, miscellaneous service charges may be indexed if requested in price index applications pursuant to Rule 25-30.420, F.A.C. However, few utilities request that their miscellaneous service charges be indexed. The Utility does not have on-site personnel to perform these services and has to contract out. East Marion provided cost estimates from a third-party vendor. In light of the above considerations and the data provided by the Utility, we find that the Utility’s requested charges are reasonable.

East Marion’s current tariff includes a Premises Visit (in lieu of disconnection) charge. This charge is levied when a service representative visits a premise for the purpose of discontinuing service for non-payment of a due and collectible bill but does not discontinue service because the customer pays the service representative or otherwise makes satisfactory arrangements to pay the bill. In addition to those situations described in the definition of the current Premises Visit In Lieu of Disconnection, the new Premises Visit charge will also be levied when a service representative visits a premise at a customer’s request for complaint resolution or for other purposes and the problem is found to be the customer’s responsibility. This charge is consistent with Rule 25-30.460(1)(d), F.A.C. In addition, by Order No. PSC-05-0397-TRF-WS, issued April 18, 2005, we approved a Premises Visit Charge to be levied when a service representative visits a premises at the customer’s request for a complaint and the problem

² See Order No. PSC-98-0928-FOF-WS, issued July 7, 1998, in Docket No. 971269-WS, In re: Application for transfer of majority organizational control of East Marion Sanitary Systems, Inc. and East Marion Water Distribution, Inc. in Marion County from Del-American/First Federal of Osceola to Herbert Hein, and change in name on Certificate No. 490-W from East Marion Water Distribution, Inc. to East Marion Sanitary Systems, Inc.

³ See Docket No. 950495-WS, In Re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.

is found to be the customer's responsibility.⁴ Based on the foregoing, the Premises Visit (in lieu of disconnection) shall be changed to a Premises Visit charge.

The Utility has requested to implement a Disconnection Charge. East Marion wants to levy this charge for disconnection of service for cause pursuant to Rule 25-30.320(2), F.A.C. Rule 25-30.460, F.A.C. does not provide a specific category for this charge. However, the Utility does not have any on-site personnel to perform disconnections. The Utility included its estimate for the disconnection costs in the docket file. Based on the estimate provided by the Utility, East's Marion's proposed disconnection charges are reasonable. The Utility has proposed that its Violation Reconnection charge for water be actual cost. Pursuant to Rule 25-30.460, F.A.C., violation reconnection charges are at the tariffed rate for water and actual cost for wastewater. The third-party vendor charges a \$50 violation reconnection for water during normal business hours and \$80 for after hours. We find that this amount is reasonable for the water disconnection charge.

In summary, the Utility's miscellaneous service charges are approved with the changes discussed above. The following table shows East Marion's current charges, its proposed charges, and the Commission-approved charges.

<u>Water</u>	<u>Current</u>	<u>Proposed</u>		<u>Commission Approved</u>	
		<u>Normal Hours</u>	<u>After Hours</u>	<u>Normal Hours</u>	<u>After Hours</u>
Initial Connection Fee	\$15.00	\$45.00	\$75.00	\$45.00	\$75.00
Normal Reconnection Fee	\$15.00	\$45.00	\$75.00	\$45.00	\$75.00
Disconnection Fee	\$0.00	\$45.00	\$75.00	\$45.00	\$75.00
Violation Reconnection Fee	\$15.00	Actual Cost	Actual Cost	\$50.00	\$80.00
Premise Visit Fee (in lieu of disconnection)	\$10.00	\$55.00	\$85.00	\$0	\$0
Premise Visit	\$0	\$0	\$0	\$55.00	\$85.00

⁴ See Docket 050096-WS, In re: Request for revision of Tariff Sheets 14.0 and 15.1 to change request for meter test by customer and premise visit charge, by Marion Utilities, Inc.

	<u>Current</u>	<u>Proposed</u>		<u>Commission Approved</u>	
		<u>Normal Hours</u>	<u>After Hours</u>	<u>Normal Hours</u>	<u>After Hours</u>
<u>Wastewater</u>					
Initial Connection Fee	\$15.00	\$45.00	\$75.00	\$45.00	\$75.00
Normal Reconnection Fee	\$15.00	\$45.00	\$75.00	\$45.00	\$75.00
Disconnection Fee	\$0.00	\$45.00	\$75.00	\$45.00	\$75.00
Violation Reconnection Fee	Actual Cost	Actual Cost	Actual Cost	Actual Cost	Actual Cost
Premise Visit Fee (in lieu of disconnection)	\$10.00	\$55.00	\$85.00	\$0	\$0
Premise Visit	\$0	\$0	\$0	\$55.00	\$85.00

Meter Installation Charges

The Utility requests an increase in its meter installation charge. East Marion's current meter installation charge is \$70.00. The Utility's meter installation charge was last established in 2002. East Marion has requested to increase its meter installation charge to \$195.00. The Utility does not have on-site personnel to perform this service and has to contract out meter installations. East Marion provided cost estimates for the meter installation from a third-party vendor. We find the meter installation charge to be reasonable. We have approved meter installation charges of \$193⁵ in 2008, \$200⁶ in 2004 and \$250⁷ in 2003. Based on the above, the Utility is authorized to collect meter installation fees of \$195 for 5/8" x 3/4" meters and actual cost for all others.

Tap-In Fee

In order to provide separate irrigation service, East Marion has requested to implement a new tap-in fee. The Utility is requesting three different charges for the tap-in fee. The proposed tap-in fees are \$1,400, \$1,800, and \$2,600 for the short, long, and extra-long irrigation service

⁵ See Order No. PSC-08-0483-PAA-WU, issued July 25, 2008, in Docket No. 070627-WU, In re: Application for staff-assisted rate case in Lake County by Raintree Utilities, Inc.

⁶ See Order No. PSC-04-1256-PAA-WU, issued December 20, 2004, in Docket No. 041040-WU, In re: Application for certificate to operate water utility in Baker and Union Counties by B & C Water Resources, L.L.C.

⁷ See Order No. PSC-03-0740-PAA-WS, issued June 23, 2003, in Docket No. 021067-WS, In re: Application for staff assisted rate case in Polk County by River Ranch Water Management, L.L.C.

line installation, respectively. The short installation tap-in fee involves installing the irrigation service line twenty-feet or less where the water main is on the same side of the road as the meter. The long installation tap-in fee involves installing the irrigation service line forty-feet or less where the water main is on the opposite side of the road. Finally, the extra-long installation tap-in fee involves installing the irrigation service line forty feet or more on the opposite side of a cul-de-sac. East Marion does not have on-site personnel to perform these services and has to contract out these services. We have reviewed the estimates provided by the Utility from a third-party vendor. Based on the estimates, the proposed tap-in fees are reasonable.

Customer Notice of Tariff Changes

East Marion shall file a proposed customer notice to reflect our approved tariff changes, including the change to the connection/transfer sheet, the returned check charge, the miscellaneous service charges, meter installation charges, and tap-in fees. The approved changes shall be effective for service rendered on or after the stamped approval date of the tariff, pursuant to Rule 25-30.475(2), F.A.C., provided the notice has been approved by our staff. Within ten days of the date the order is issued, the Utility shall provide notice of the tariff changes to all customers. Within ten days after the date the notice was sent, East Marion shall provide an affidavit for proof that the customers have received notice.

Summary

East Marion's proposal to amend its tariffs is denied in part and granted in part as filed. The Utility is not permitted to amend its connection/transfer sheet to include a requirement that the applicant provide his Social Security number. The Utility is permitted to amend its connection/transfer sheet to require one of several acceptable forms of identification. We find that the Utility shall be permitted to collect its actual costs for returned checks. Also, the Utility's proposed premise visit in lieu of disconnection shall be changed to premise visit, and its violation reconnection charge for water shall be \$50.00 for normal hours and \$80.00 for after hours. With those exceptions, all other of East Marion's requested miscellaneous service charges, meter installation charges, and tap-in fees are approved. If the Utility files revised tariff sheets within 30 days of the effective date of the Order which are consistent with our vote, our staff is given administrative authority to approve the revised tariff sheets upon verification that the tariffs are consistent with our decision. If the revised tariff sheets are filed and approved, the connection/transfer sheet, returned check charge, miscellaneous service charges, meter installation charges, and tap-in fee shall become effective for connections made on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(2), Florida Administrative Code (F.A.C.), provided customer notice was timely given and provided that no protest is filed.

Prior Applicants for Irrigation Meters

We have received correspondence from four customers (Mr. David Greco, Mr. Joseph Singel, Mr. Terry Will, and Mr. Earl Turner) who have all requested irrigation meters. In all instances, the customers were told that service would not be provided until after we approved the new meter installation rate. At an informal meeting held on November 14, 2008, with East Marion, our staff informed East Marion that pursuant to Rule 25-30.520, F.A.C., a utility could

not refuse to provide service within its certificated areas in accordance with the terms and conditions on file with us.

By this Order we have approved the Utility's new meter installation charge and tap-in charge. However, these four customers, and any other customers who have requested an irrigation meter prior to April 7, 2009, shall only be charged the rates in effect at the time of their application. The Utility shall be required to provide irrigation meters to those customers at the current tariff rate of \$70.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that East Marion Sanitary Systems, Inc.'s application for approval to amend its tariff sheets is denied in part and approved in part as set forth in the body of this Order. It is further

ORDERED the Utility is not permitted to amend its connection/transfer sheet to include a requirement that the applicant provide his Social Security number. The Utility is permitted to amend its connection/transfer sheet to require one of several acceptable forms of identification. The Utility is permitted to collect its actual costs for returned checks. The Utility's proposed premise visit in lieu of disconnection shall be changed to premise visit, and its violation reconnection charge for water shall be \$50.00 for normal hours and \$80.00 for after hours. All other of East Marion's requested miscellaneous service charges, meter installation charges, and tap-in fees are approved. It is further

ORDERED that if the Utility chooses to amend its connection/transfer sheet to require one of several acceptable forms of identification consistent with our direction, it must provide our staff with a copy of the revised tariff within 30 days of the effective date of the Order. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that East Marion Sanitary Systems, Inc.'s shall file revised tariff sheets and a proposed customer notice to reflect the approved tariff amendments. It is further

ORDERED that the tariffs shall be approved upon our staff's verification that the tariffs are consistent with our decision herein. It is further

ORDERED that the approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. It is further

ORDERED that the approved tariff amendments shall not be implemented until our staff has approved the proposed customer notice and the notice has been received by the customers as set forth in the body of this Order. It is further

ORDER NO. PSC-09-0263-TRF-WU
DOCKET NO. 080562-WU
PAGE 8

ORDERED that East Marion Sanitary Systems, Inc.'s shall provide proof of the date notice was given no less than ten days after the date of the notice. It is further

ORDERED any customer who has requested an irrigation meter from East Marion Sanitary Systems, Inc. prior to April 7, 2009, shall only be charged the rates in effect at the time of their application. The Utility shall be required to provide irrigation meters to those customers at the current tariff rate of \$70.

ORDERED upon expiration of the protest period, if a timely protest is not filed, a Consummating Order shall be issued and the docket shall remain open for 30 days from the issuance date of the Consummating Order, to allow the Utility time to file the revised tariff sheet. Upon staff's verification that the tariff sheet complies with the order, the tariff sheet shall be stamped approved and the docket shall be closed administratively. In the event that a timely protest is filed, and the Utility files revised tariff sheets reflecting the approved charges, the tariff shall remain in effect with any increases held subject to refund pending resolution of the protest.

By ORDER of the Florida Public Service Commission this 27th day of April, 2009.



ANN COLE
Commission Clerk

(SEAL)

LCB

NOTICE OF FURTHER PROCEEDINGS

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

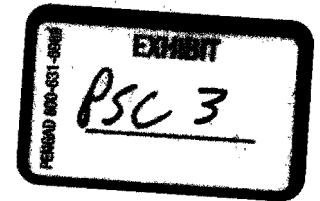
The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 18, 2009.

In the absence of such a petition, this Order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Florida P.S.C
2540 Shumard Oaks Blvd.
Tallahassee, FL 32399

RECEIVED-FPSC
09 MAY 19 AM 9:18
COMMISSION
CLERK



EAST MARION SANITARY SYSTEMS, INC.
G 4225 Miller Road #190
Flint, Michigan 48507
810 733-6342

May 15th, 2009.

PETITION TO PROTEST ORDER

Docket # 080562-WU

To whom it may concern;

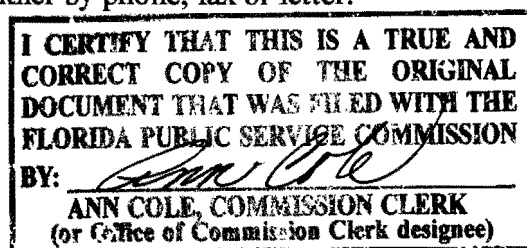
East Marion Sanitary Systems Inc. is protesting the Commissions order regarding the installation of irrigation meters for four customers and other applicants as stated on page 6 & page 8 of order #PSC09-0263-TRF-WU as specifically to Mr. Will and Mr. Turner. Mr. Will has never contacted the Company in any form or manner to even request an irrigation meter. The commission stated it had received correspondence from Mr. Will regarding a request for an irrigation meter. The staff has provided the Company with a copy of all correspondence from Mr. Will and there is nothing in any of the correspondence that in any way indicates that he had contacted the company in any fashion for a meter. The company is in concurrence with installing irrigation meters for Mr. Greco & Mr. Single as these customer have sent in an application along with the appropriate funds necessary for the installation. In regards to Mr. Turner, Mr. Turner did send a letter not to the Company but to the bill processing P.O. Box which was then forwarded on to the company. Mr. Turner was sent an application along with a letter stating that the application needed to be filled out & the appropriate funds mailed to the Utility and no response was received. Further the staff has provided copies of four additional letters that were provided to the PSC by Mr. Will purporting to be customers that had applied for irrigation meters prior to the deadline and the company protest these for the following reasons.

1) RE: letter from Mr. & Mrs. Smith at 1384 NE 130th Terrace

In reviewing this letter it is clear that this letter was not sent to the utility, just by reviewing the mailing address. This is an incorrect address.

2) RE: letters from Mr. Tarsitano & the Costello's

In reviewing these letters it is clear that these letters were solicited by Mr. Will and given either to Mr. Will or the Lakeview Woods Property Owners Association and not sent to the company, nor do they indicate that there ever was any contact made by them to the company, either by phone, fax or letter.



DOCUMENT NUMBER-DATE

04954 MAY 19 08

FPSC-COMMISSION CLERK

3)RE: Kevin & Candy Politte

This letter was solicited by Mr. Will and is a letter that was never mailed to the Utility. Mr. & Mrs. Politte would have filed a complaint with the Florida PSC, had they actually sent the letter and not received a response.

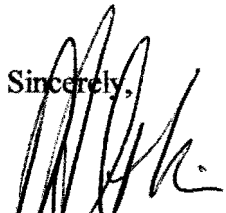
The only letter that has any credibility is Mr. Turner's and the Utility is willing to install an irrigation meter at that location should Mr. Turner so desire and properly fill out an application and pay the appropriate charges. Any others the Utility fully protests!

The Petitioner ask the Commissioner to amend its order to require the Utility to only install three irrigation meters and no others. The three being: Mr. Greco, Mr. Single and Mr. Turner should he complete the application process as required by the Utilities Tariff's.

The Utility received a copy of the PSC's order by fax from a customer and again from the PSC along with copies of the letters provided by Mr. Will.

Petitioners interest shall be substantially affected if the Utility is required to install irrigation meters at a cost of \$1,400.00 or more and only collect \$70.00. Especially as this was an oversight by the staff during the staff assisted rate case, as the \$70.00 meter installation fee took into consideration the existing piping, valves & meter box which costs are offset by the tap-in fee. However none of that applies to irrigation meters as additional piping, valves and meter box are required. This Utility is a very small utility with only 87 customer and it will be very difficult for the Utility to survive with 30 to 70 percent of its net revenue lost due to irrigation meters. The Utility should be allowed to charge the Water tap-in fee for the irrigation meters that are to be installed at \$70.00, as this fee was set to help pay for the piping and other necessary costs of installing a meter.

Sincerely,



Herbert Hein, President
East Marion Sanitary Systems Inc.

Petitioner: Herbert Hein of East Marion Sanitary Systems Inc.
G 4225 Miller Road, Suite 190
Flint, MI 48507
810 733-6342

Representative: Mike Smallridge
15827 Cedar Elm Terrace
Land O Lakes, FL 34638
352 302-7406

REC'D

Ruth Nettles

080562-WU

From: mike smallridge [michael.smallridge@century21.com]
Sent: Monday, May 18, 2009 4:33 PM
To: Filings@psc.state.fl.us
Subject: Document1
Attachments: Doc1.docx

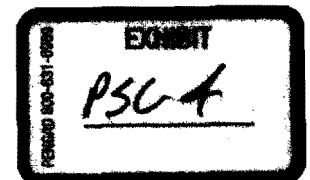
Please find attached petition to protest PSC order # PSC-09-0263-TRF-WU in Docket # 080562-WU as an e-filing.

Filed by

Mike Smallridge
 Mike Smallridge Utility Consulting
 15827 Cedar Elm Terr.
 Land O Lakes, FL 34638

For my client;

East Marion Sanitary Systems.



DOCUMENT NUMBER-DATE

04880 MAY 18 8

FPSC-COMMISSION CLERK

Ann Cole Commission Clerk

Florida Public Service Commission

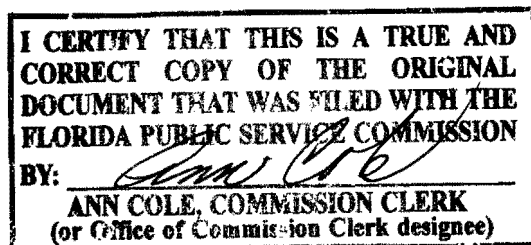
2540 Shumard Oak Blvd.

Tallahassee, FL. 32399

Re: Petition to Protest Order # PSC-09-0263-TRF-WU in Docket # 080562-WU

Dear Ms. Cole:

1. East Marion Sanitary Systems, Inc. is protesting the above referenced commission order regarding the installation of irrigation meters for (4) four customers and the other applicants listed on pages 6 & 8 in the order, specifically to Mr. Will and Mr. Turner. Mr. Will has never contacted the company in any form or manner to even request an irrigation meter. The commission stated it had received correspondence from Mr. Will regarding a request for an irrigation meter. The staff has provided the company with a copy of all correspondence from Mr. Will and there is nothing in any of the correspondence that in any way indicates that he had contacted the utility in any fashion for installation of an irrigation meter. The utility is in concurrence with installing irrigation meters for Mr. Greco and Mr. Single, as these customers have sent in an application along with the appropriate funds for the installation. Mr. Turner did send a letter not to the company address but the Post Office Box address used for bill payment and processing, which was forwarded to the utility. However, Mr. Turner was sent an application along with a letter stating that the application needed to be filled out and the appropriate funds mailed to the utility and no response was received.



DOCUMENT NUMBER-DATE

04880 MAY 18 8

FPSC-COMMISSION CLERK

2. Staff has provided copies of four additional letters that were provided to the PSC by Mr. Will purporting to be customers that had applied for irrigation meters prior to the deadline. The utility protests these for the following reasons:

A. Letter from Mr. & Mrs. Smith of 1384 N.E. 130th Terrace.

In reviewing this letter it is clear that this letter was not sent to the utility, just by reviewing the mailing address. This address is incorrect.

B. Letters from Mr. Tarsitano & the Costello's.

In reviewing these letters, it is clear these letters were solicited by Mr. Will and given either to Mr. Will or the Lakeview Woods Property Owners Association and not sent to the utility. These letters have no indication they were never sent to the utility.

C. Kevin & Candy Politte.

This letter was solicited by Mr. Will and is a letter that was never mailed to the utility. Mr. & Mrs. Politte would have filed a complaint had they actually sent the letter and not received a response.

3. The only letter that has any credibility is Mr. Turner's and the utility is willing to install an irrigation meter at the location should Mr. Turner properly execute the proper application and pay the required fee.

The Petitioner asks the Commission to amend order # PSC-09-0263-TRF-WU to only install three (3) irrigation meters, the three being Mr. Greco, Mr. Single and Mr. Turner should he successfully complete the application process and pay the required fee.

The Utility received a copy of the Commission Order # PSC-09-0263-TRF-WU by fax from a customer and again from the Commission along with letters provided by Mr. Will.

Petitioner's interest shall be substantially affected if the utility is required to install irrigation meters at a cost of \$ 1,400 or more and only collect \$70.00. This was an oversight by commission staff during the last staff assisted rate case. The \$70.00 irrigation installation fee took into account the existing piping, valves & meter boxes which costs are offset by the tap- in fee. However, none of that applies to irrigation meters as additional piping, valves and meter boxes that are required.

4. With only 87 customers the utility will find it difficult to survive with 30% to 70% of its net revenue lost, due to irrigation meters. The utility should be allowed to charge a fee similar to the utilities water tap-in fee for the irrigation fee, which was set up to help pay for proper installation of an irrigation meter.

Petitioner: East Marion Sanitary Systems, Inc

Herbert Hein

G-4225 Miller Road Suite 190

Flint, MI. 48507

Phone Number- 810-733-6342

Company Representative: Mike Smallridge

15827 Cedar Elm Terr.

Land O'Lakes, FL. 34638

352-302-7406

Sincerely,

s/ Herbert Hein

REC'D

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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
Filed: April 19, 2010

DIRECT TESTIMONY

OF

TERRY M. WILL

A Customer of East Marion Sanitary Systems, Inc.

COM 5
APA _____
ECR 8
GCL 1
RAD _____
SSC _____
ADM _____
OPC _____
CLK 1



I CERTIFY THAT THIS IS A TRUE AND
CORRECT COPY OF THE ORIGINAL
DOCUMENT THAT WAS FILED WITH THE
FLORIDA PUBLIC SERVICE COMMISSION
BY: Ann Cole
ANN COLE, COMMISSION CLERK
(or Office of Commission Clerk designee)

DOCUMENT NUMBER-DATE

03035 APR 19 2010

FPSC-COMMISSION CLERK

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DOCKET NO. 080562-WU**

3 **DIRECT TESTIMONY OF TERRY M. WILL**

4

5 **Q. WHAT IS YOUR FULL NAME AND ADDRESS?**

6 A. My name is Terry M. Will and I reside at 1385 NE 130th Terrace, Silver Springs
7 Florida, 34488.

8

9 **Q. WHY ARE YOU FILING THIS TESTIMONY?**

10 A. It is a requirement for Interveners.

11

12 **Q. WHY DO YOU REQUEST TO INTERVENE IN THIS DOCKET NO.**
13 **080562-WU?**

14 A. I was refused an irrigation meter at the stated price provided in the Utility's tariff.

15

16 **Q. HAVE YOU REQUESTED AN IRRIGATION METER?**

17 A. Yes.

18

19 **Q. HAVE YOU REQUESTED AN IRRIGATION METER IN PERSON**
20 **(VERBALLY)?**

21 A. Yes.

22

23 **Q. HAVE YOU REQUESTED AN IRRIGATION METER IN WRITING?**

DOCUMENT NUMBER-DATE

03035 APR 19 9

1 A. Yes, a copy of the written request is attached to my testimony as Exhibit TMW-1.

2

3 **Q. HAVE YOU BEEN REFUSED AN IRRIGATION METER?**

4 A. Yes, I was told that "we are not taking applications for any irrigation meters until
5 they (PSC) change the prices."

6

7 **Q. WAS THERE A MEMO POSTED ON THE LVW BULLETIN BOARD
8 STATING THAT?**

9 A. Yes.

10

11 **Q. WHO HAD ACCESS TO THE BULLETIN BOARD AT THAT TIME?**

12 A. Bea Jordan was the only person that had access to the locked board.

13

14 **Q. WAS BEA JORDAN A BOARD MEMBER OF LAKEVIEW WOODS
15 P.O.A.?**

16 A. Yes.

17

18 **Q. HAVE YOU RECEIVED A COPY OF THE DIRECTED TESTIMONY OF
19 BEA JORDAN FROM THE PSC?**

20 A. Yes.

21

22 **Q. IS THIS TESTIMONY AN ACCURATE DESCRIPTION OF THE
23 EVENTS IN DOCKET NO. 080562?**

1 A. No. Bea Jordan's is not truthful.

2

3 **Q. WHAT PARTS OF BEA JORDAN'S PREFILED TESTIMONY ARE**
4 **FALSE?**

5 A. Page 2, lines 5-9 and lines 11-14; page 3, lines 3-7; page 4, lines 10-12 and lines
6 18-20.

7

8 **Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**


9 A. Yes it does.

CERTIFICATE OF SERVICE
DOCKET NO. 080562-WU

I HEREBY CERTIFY that a true and correct copy of the foregoing Direct Testimony of Terry M. Will has been furnished by Electronic and U.S. Mail to the following parties this 19th day of April, 2010.

Lisa Bennett, Esquire
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

East Marion Sanitary Systems, Inc.
G-4225 Miller Road, #190
Flint, MI 48507-1227



Stephen C. Reilly
Associate Public Counsel

To: East Marion Sanitary Systems Inc.

Docket No. 080562-WU
Exhibit No. ____ (TMW-1)

From: Terry Will
1385 N/E 130th Terrace
Silver Springs FL.

Sub. Irrigation Meter

Date: March, 16, 2008

Dear Bea Jordan:

Per our conversation last week, I ask about the irrigation meter for my home. You told me to "put it in writing". So "Hereitgoes" Please except this request for an Irrigation Meter on this date. Please let me know if all is well, and when it will be installed. Thank you in advance for you help in this matter. It has been very dry this winter, so the sooner the better.

Terry Will

Terry Will T.W.
J

Dropped in mail 3/16/08
Hans Ral. Today 3/17/08
T.W.

1
REC'D

Request For Approval of Amendment to)	Docket No. 080562-WU
Connection/Transfer Sheets, Increase in)	Filed: April 19, 2010
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.)	
_____)	

DIRECT TESTIMONY
OF
MILLICENT MALLON

Customer of East Marion Sanitary Systems, Inc.

COM 5
 APA _____
 ECR 8
 GCL 1
 RAD _____
 SSC _____
 ADM _____
 OPC _____
 CLK 1

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT THAT WAS FILED WITH THE FLORIDA PUBLIC SERVICE COMMISSION
 BY: [Signature]
 ANN COLE, COMMISSION CLERK
 (or Office of Commission Clerk designee)

EXHIBIT
PSC 6

DOCUMENT NUMBER 047
 03036 APR 19 2010
 FPSC-COMMISSION CLERK

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DOCKET NO. 080562-WU**

3 **DIRECT TESTIMONY OF MILLICENT MALLON**

4
5
6 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

7
8 **A. Millicent Mallon, 1075 NE 130th Terrace, Silver Springs, Fl. 34488**

9
10 **Q. WHAT IS YOUR AFFILIATION WITH EAST MARION SANITARY SYSTEMS,**
11 **INC.?**

12
13 **A. I am a customer of theirs.**

14
15 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

16
17 **A. To intervene regarding Docket No. 080562-WU.**

18
19 **Q. PLEASE STATE YOUR FULL EXPERIENCE IN OBTAINING AND/OR**
20 **RECEIVING AN IRRIGATION METER FROM EAST MARION SANITARY**
21 **SYSTEMS, INC.**

22
23 **A. My husband requested a irrigation meter in writing on January 11, 2008, a copy of the**
24 **letter is attached as Exhibit MM-1. The request was sent to East Marion Sanitary**

1 Systems, 1112 NE 130th Terrace, Silver Springs, Florida 34488---in care of Beata Jordan.
2 Ms. Jordan then told Jim verbally that no irrigation meters will be put in place until the
3 new rates go into effect. She also put a notice on the locked community bulletin board
4 stating that no applications will be accepted until the new rates for installing the meters
5 go into effect. Ms. Jordan was the only person who had access to the bulletin board at the
6 time.

7

8 **Q. DOES THIS CONCLUDE YOUR TESIMONY?**

9


10 A. Yes.

CERTIFICATE OF SERVICE
DOCKET NO. 080562-WU

I HEREBY CERTIFY that a true and correct copy of the foregoing Direct Testimony of Millicent Mallon has been furnished by Electronic and U.S. Mail to the following parties this 19th day of April, 2010.

Lisa Bennett, Esquire
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

East Marion Sanitary Systems, Inc.
G-4225 Miller Road, #190
Flint, MI 48507-1227



Stephen C. Reilly
Associate Public Counsel

CONSUMER



Mr. Millie's Mollusks
1075 NE 130th Ter.
Silver Springs, FL 34488

RECEIVED-FPSC
09 MAY 15 AM 8:38
COMMISSION
CLERK

East Marion Sanitary System, Inc.

Attention: Beata Jordan
Herb Hein

Jan. 11, 2008

May this letter serve as my request to have a irrigation meter installed at my residence. I would like this meter installed at the rate of \$70.00. Please let me know how soon you can fill this request.

Sincerely,

Jim Mallon
Jim Mallon
1075 N.E. 130th Terrace
Silver Springs, Florida 34488

Docket # 080562-WU

DOCUMENT NUMBER-DATE

14789 MAY 15 8

FPSC-COMMISSION CLERK

REC'D

STATE OF FLORIDA

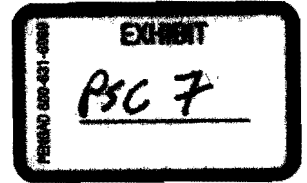
COMMISSIONERS:
NANCY ARGENZIANO, CHAIRMAN
LISA POLAK EDGAR
NATHAN A. SKOP
DAVID E. KLEMENT
BEN A. "STEVE" STEVENS III



OFFICE OF THE GENERAL COUNSEL
S. CURTIS KISER
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

April 29, 2010



Ann Cole, Commission Clerk
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RECEIVED-FPSC
10 APR 29 PM 2: 17
COMMISSION CLERK

Re: Docket No. 080562-WU - Request for approval of amendment to connection/transfer streets, 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.

Dear Ms. Cole:

Attached for filing is Staff's testimony and exhibits in Docket No. 080562-WU. The testimony is filed subject to approval and Order of the Prehearing officer in this docket. As always, if you have any questions, please do not hesitate to contact me.

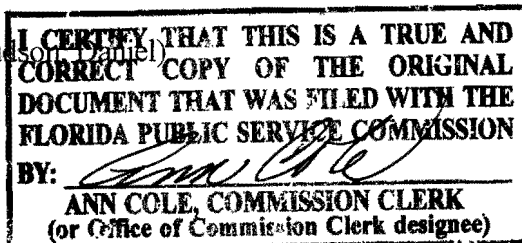
Sincerely,

Lisa C. Bennett
Senior Attorney

LCB:th

Attachment

cc: Parties of Record
Economic Regulations (Fletcher, Hudson, Daniel)



3170-8386 IN 12507000
03524 APR 29 09
FPSC-CCM-PRODUCTION UNIT

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.

WITNESS: **Direct Testimony of Shannon J. Hudson**, Appearing on Behalf of Staff

DATE FILED: April 29, 2010

DOCUMENT NO. DATE
0352410 4 29 10
EPSC - COMMISSION CLERK

DIRECT TESTIMONY OF SHANNON J. HUDSON

1
2 Q. Please state your name and professional address.

3 A. My name is Shannon J. Hudson and my business address is 2540 Shumard Oak Boulevard,
4 Tallahassee, FL 32399-0850.

5 Q. By whom are you employed and in what capacity?

6 A. I am employed by the Florida Public Service Commission as a Regulatory Analyst IV in the
7 Division of Economic Regulation.

8 Q. How long have you been employed by the Commission?

9 A. I started working at the Commission in November 1995.

10 Q. Would you state your educational background and experience?

11 A. I received a Bachelor of Science degree with a major in Economics and a minor in Business
12 Administration from Florida Agricultural and Mechanical University in December 1994. From May 1995
13 to November 1995, I was a Fiscal Assistant with the Florida Fish and Wildlife Conservation Commission
14 formerly known as the Florida Game and Freshwater Fish Commission. My duties under this capacity
15 included processing utility invoices for payment and auditing telephone bills and logs for proper standard
16 equipment charges and rates. In November 1995, I was employed by the Commission as a Regulatory
17 Analyst I in the Division of Water and Wastewater's Rate Section of the Bureau of Economic Regulation.
18 In June 1997, I became a Regulatory Analyst II in the Rate Section of the Bureau of Economic
19 Regulation. In June 1999, I became a Regulatory Analyst III in the Bureau of Special Assistance. In
20 May 2003, I became a Regulatory Analyst IV in the Bureau of Certification, Economics & Tariffs. I have
21 attended various regulatory seminars and Commission in-house training and professional development
22 meetings concerning regulatory matters.

23 Q. Would you explain what your general responsibilities are as a Regulatory Analyst IV in the Rate
24 Filings Section?

25 A. This section is responsible for the financial, accounting and rate review and evaluation of

1 complex formal rate proceedings before the Commission. Specifically, I am assigned to review and
2 analyze the accounting issues for water and wastewater utilities under the jurisdiction of the Florida
3 Public Service Commission. For the cases that I am assigned, I coordinate, prepare and present staff
4 recommendations to the Commission. I am also responsible for preparing and writing cross-examination
5 questions for hearings involving complex accounting and financial issues.

6 Q. What is the nature and purpose of your testimony?

7 A. Several customers of East Marion Sanitary Systems (East Marion or Utility) have indicated that
8 the Utility refused to provide an application for an irrigation meter until a pending application for new
9 charges was approved by the Commission. Pursuant to Rule 25-30.520, Florida Administrative Code, it
10 is the responsibility of the utility to provide service within its certificated territory in accordance with terms
11 and conditions on file with the Commission. The purpose of my testimony is to present evidence that Mr.
12 Herbert Hein, the owner of East Marion, is in violation of this rule. On September 26, 2008, Mr. Hein left
13 a voicemail in which he indicated irrigation meters would not be installed until the Commission
14 addressed his request for an irrigation meter tariff. The voice message has been included as a
15 transcription in Exhibit SJH-1 and as a WMA audio file in Exhibit SJH-2 of my testimony.

16 Q. Does this conclude your testimony?

17 A. Yes, it does.

18
19
20
21
22
23
24
25

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

DATED: APRIL 29, 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of STAFF'S TESTIMONY AND EXHIBITS has been served by electronic and U. S. mail to the following by U. S. mail this 29th day of April, 2010:

Herbert Hein
East Marion Sanitary Systems, Inc.
G-4225 Miller Road, #190
Flint, MI 48507-1227

Terry Will
1385 NE 130th Terrace
Silver Springs, FL 34488

Joseph M. Singel
1215 NE 130th Terrace
Silver Springs, FL 34488


David and Carol Greco
1221 NE 130th Terrace
Silver Springs, FL 34488

Dennis Smith
1384 NE 130th Terrace
Silver Springs, FL 34488

Earl and Turner
787 NE 130th Terrace
Silver Springs, FL 34488

Kevin and Candy Politte
13075 NE 7th Loop
Silver Springs, FL 34488

Millicent Mallon
1075 NE 130th Terrace
Silver Springs, FL 34488



LISA C. BENNETT
STAFF COUNSEL

FLORIDA PUBLIC SERVICE COMMISSION
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Telephone: (850) 413-6230

Transcription of Phone Message from Herbert Hein

"Yes, Herbert Hein returning your call regarding David Greco. I've spoken to Mr. Greco, I guess I'm wondering, just recently, I'm just wondering when he called in again. If you would call and let me know that information I would appreciate it. And as my written reply indicated, I'm in the middle of asking for an irrigation meter tariff and until that is approved I am not installing irrigation meters. Thank you. Bye."

Voice Recording of Message left by Herbert Hein on September 26, 2008

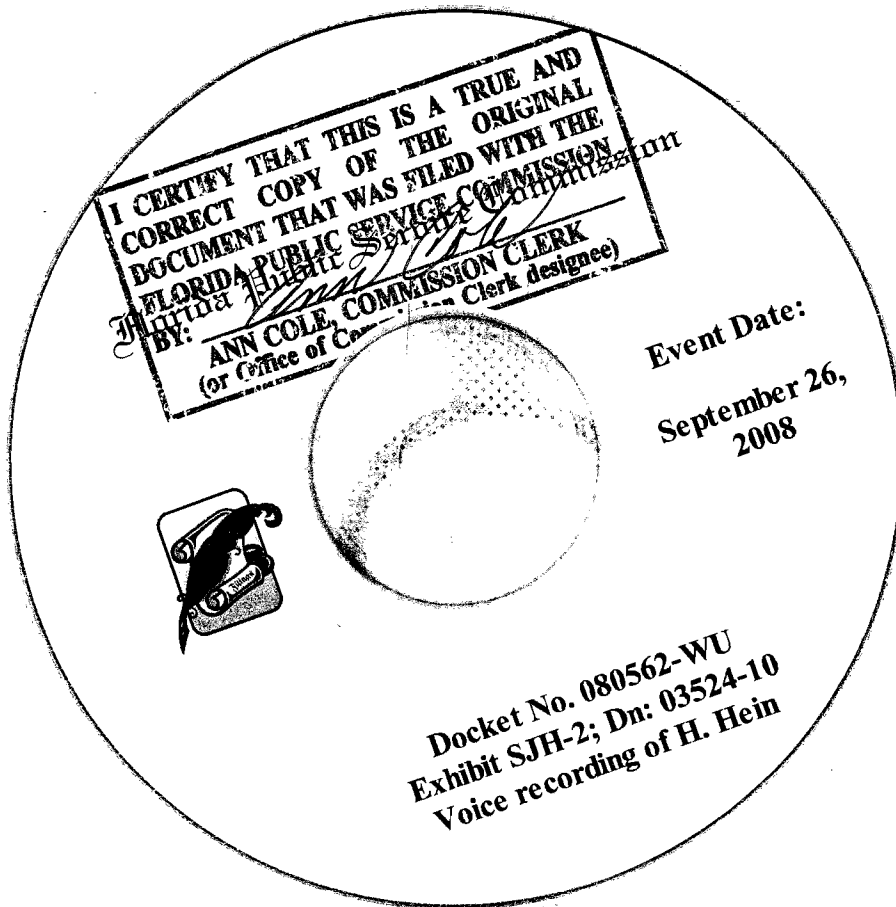
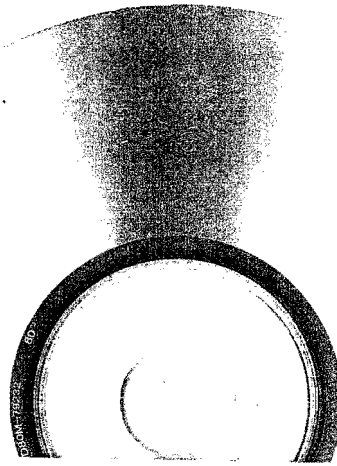


Exhibit SJH-2

Voice Recording of Message left by Herbert Hein on September 26, 2008



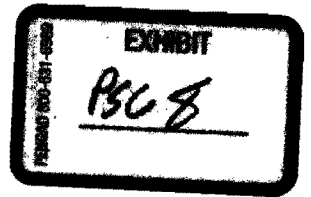
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Exhibit SJH-2

RECD



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
ORDER NO. PSC-11-0566-AS-WU
ISSUED: December 12, 2011

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR
JULIE I. BROWN

ORDER APPROVING SETTLEMENT AGREEMENT AND
REQUIRING REMAINING PARTIES TO FILE ACKNOWLEDGEMENT

BY THE COMMISSION:

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, we suspended the tariff filing pending further investigation.

By Order No. PSC-09-0263-TRF-WU, issued April 27, 2009, we denied in part and granted in part the Utility's application. Specifically, we 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 our order addressing previous applications for irrigation meters. East Marion protested our requirement that the Utility install

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 by East Marion Sanitary Systems, Inc.

I CERTIFY THAT THIS IS A TRUE AND
CORRECT COPY OF THE ORIGINAL
DOCUMENT THAT WAS FILED WITH THE
FLORIDA PUBLIC SERVICE COMMISSION
BY: 
ANN COLE, COMMISSION CLERK
(or Office of Commission Clerk designee)

DOCUMENT NUMBER: 08882 DEC 12 =
FPSC-COMMISSION CLERK

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, our 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 we hold this proceeding in abeyance pending efforts by the parties to resolve their differences by way of settlement, and that we abate all of scheduled actions set forth in our Order Nos. PSC-10-0116-PCO-WU and PSC-10-0276-PCO-WU, First and Second Orders Revising Order Establishing Procedure (procedural orders), respectively. By Order No. PSC-10-0294-PCO-WU, issued May 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 our 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 our 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.

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.

During late 2010 and early 2011, the members of the Commission, including some of the members of the panel, changed. During 2011, our staff assigned to the docket was 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 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, we acknowledged the intervention of OPC.

By Order No. PSC-11-0353-PCO-WU, issued August 23, 2011, all parties to 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. The Settlement Agreement is included in this Order as Attachment A. Intervenors Terry Will and Millicent Mallon did not enter into the Settlement Agreement.

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 our decision 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.

We have jurisdiction pursuant to Section 367.091, Florida Statutes (F.S.).

Settlement Agreement

As stated above, 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 Intervenors 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 Intervenors 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 issuance of this order approving the Settlement Agreement.

3. Each Intervenor¹ 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 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.

We find 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, we find that it is in the public interest for us 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 our long-standing practice of encouraging parties to settle contested proceedings whenever possible,³ we approve the Joint Motion Seeking Approval of Settlement Agreement, as set forth in Attachment A.

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-El, issued February 22, 2000, in Docket No.

Remaining Intervenors

Intervenors 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), we approved a settlement of a rate proceeding without one party (SFHHA)'s agreement. The Supreme Court affirmed that decision. However, we find that the SFHHA case is distinguishable from this present docket. 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." We find that 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 the customer's intention to discontinue service.

The remaining non-signatory parties are advised that the maximum relief we will be able to grant either intervenor was that set forth in the original order, an irrigation meter at the cost of \$70. In other words, if either or both Mr. Will or Ms. Mallon is successful in proving that they properly requested a meter, the only advantage they would gain over not signing the settlement agreement is that they will 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 us 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, 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, the hearing will be held in Tallahassee, Florida rather than in Ocala, Florida. Conducting the hearing in Tallahassee promotes administrative efficiency, and minimizes the costs associated with a hearing.

Furthermore, the Utility is 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 is hereby notified that it still has the option to withdraw its protest as to Ms. Mallon and Mr. Will. If the Utility's protest is withdrawn, our ruling in Order No. PSC-09-0263-TRF-WU is 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.

We require East Marion, Terry Will, and Millicent Mallon to each affirmatively indicate their intention to proceed with the hearing. East Marion, Terry Will, and Millicent Mallon shall 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 all procedural orders issued in this docket, and that each is prepared to fulfill their obligations as parties or have a qualified representative appear on their behalf. The parties' must file these written statements within 21 days of the date this order is issued. If opposing parties file the written statement, the Prehearing Conference and hearing will be set by the Prehearing Officer.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Settlement Agreement, attached to this Order and made a part hereof by reference, is approved. It is further

ORDERED that East Marion Sanitary Services, Terry Will, and Millicent Mallon shall file a written statement in the docket affirming that they have read and will abide by Chapters 25-22 and 28-106, F.A.C. and all procedural orders issued in this docket, and that each is prepared to fulfill their obligations as parties or have a qualified representative appear on their behalf. It is further

ORDERED that the written statement must be filed with the Commission Clerk within 21 days of the date this Order is issued.

By ORDER of the Florida Public Service Commission this 12th day of December, 2011.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As to the approval of the Settlement Agreement, any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).

As to the continuation of the docket for the remaining, non-signatory parties, any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of amendment to connection/transfer rebates, 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 17th 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 Politta, 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 FAA 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. Singal, Rosemary Turner, Dennis Smith, Kevin Polite, Millicent Mallon and Terry Will all intervened in this docket and provided prefiled 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 and 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's David and Carol Greco and Joseph M. Singel have already paid their respective \$70.00 meter installation charges.
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.

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

Office of Public Counsel

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 Pollitts

Joseph M. Singel

Rosemary Turner

Millicent Mellon

Terry Will

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.

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Respectfully submitted this ____ day of September, 2011.

East Marion Sanitary System, Inc.

Office of Public Counsel


By: _____

By: _____

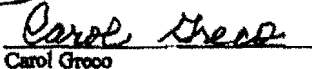
Herbert Hein, President

Stephen C. Reilly
Associate Public Counsel

Intervenor


David Greco

Dennis U. Smith


Carol Greco

Kevin Politte

Joseph M. Singel

Rosemary Turner

Millicent Mallon

Terry Will

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Respectfully submitted this ____ day of September, 2011.

East Marion Sanitary System, Inc.

Office of Public Counsel

By: _____

By: _____

Herbert Hein, President

Stephen C. Reilly
Associate Public Counsel

Intervenor

David Greco

Dennis U. Smith

Camp Greco

Kevin Politte

Joseph M. Singel

Rosemary Turner

Millicent Mallon

Terry Will

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Respectfully submitted this _____ day of September, 2011.

East Marion Sanitary System, Inc.

Office of Public Counsel

By: _____

By: _____

Herbert Hein, President

Stephen C. Ralby
Associate Public Counsel

Interveners

David Greco

Dennis U. Smith

Carol Greco

Kevin Politto

Joseph M. Singel

Rosemary Turner

Rosemary Turner

Millicent Mallon

Terry Will

DOCKET No. 080562-WU

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Respectfully submitted this ____ day of September, 2011.

East Marlon Sanitary System, Inc.

Office of Public Counsel

By: _____

By: _____

Herbert Hein, President

Stephen C. Rellly
Associate Public Counsel

Intervenor

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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Respectfully submitted this ____ day of September, 2011.

East Marien Sanitary System, Inc.

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

Rosemary Turner

Millicent Mallon

Terry Will

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 Smallridge 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:

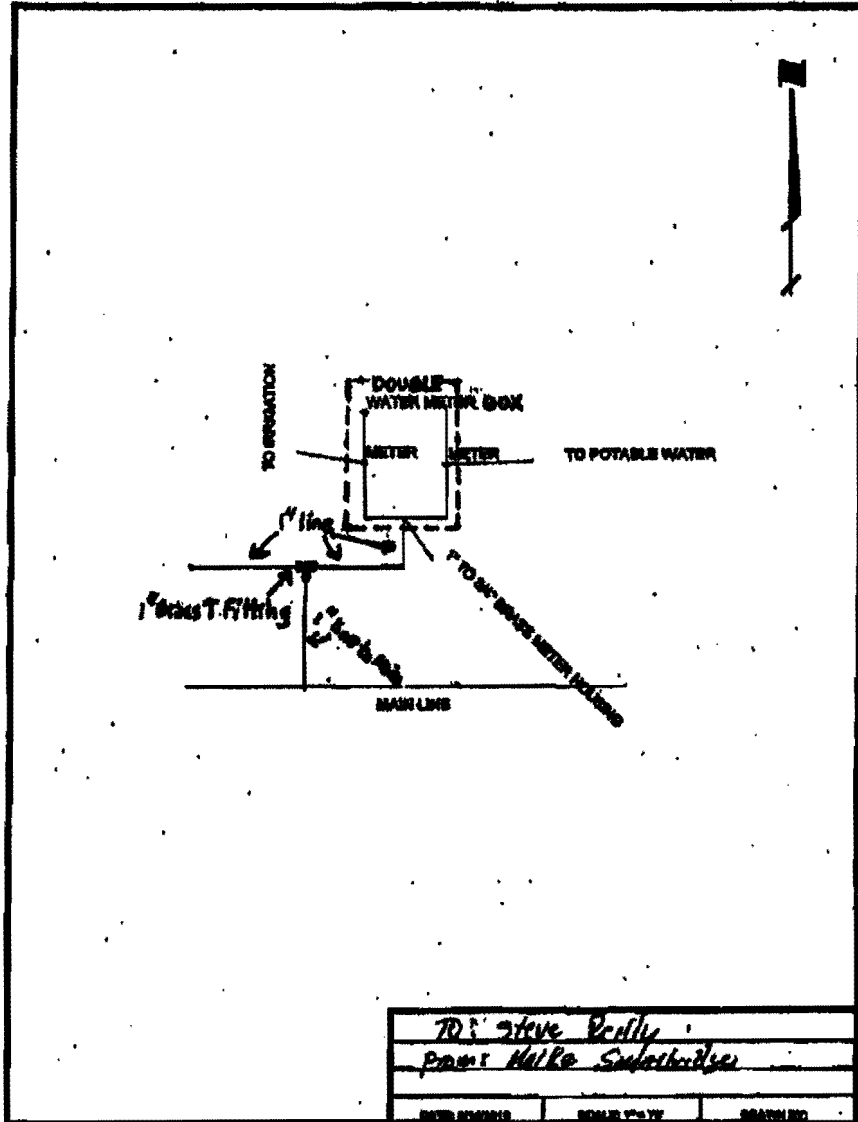
1.	1" Brass "T" fitting	\$ 9.00
2.	3/4" - 1" Brass double branch w/ curb stops (Sunstate)	\$ 80.00
3.	3/8" x 1/4" Senus manual read meter	\$ 41.00
4.	Plastic double meter box with lid (Sunstate)	\$ 32.00
5.	Miscellaneous schedule 40 drinking water PVC 1" & 3/4" pipe and fittings	\$ 16.00
6.	Labor and 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

MR

ORDER NO. PSC-11-0566-AS-WU
DOCKET NO. 080562-WU
PAGE 18

Attachment A, Page 11 of 11

TIME RECEIVED: June 24, 2020 4:08:05 PM EDT
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Page 3 of 3
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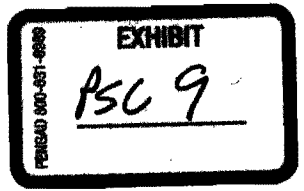
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

12 JAN -3 AM 9:37

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-WL
COMMISSION CLERK

Dated: December 12, 2011



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one correct copy of East Marion's Protest of Commission's 12/12/2011 order and affirmative letter to proceed, has been served by facsimile & FedEx mail to Ann Cole, Commission Clerk

Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850

and a correct copy by U.S. mail to the following on this 12 day of December, 2011.

Terry Will,
1385 NE 130th Terrace
Silver Springs, FL 34488

Millicent Mallon
1075 NE 130th Terrace
Silver Springs, FL 34488

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT THAT WAS FILED WITH THE FLORIDA PUBLIC SERVICE COMMISSION
BY: Ann Cole
ANN COLE, COMMISSION CLERK
(or Office of Commission Clerk designee)

Donna Congdon
Donna Congdon

- COM _____
- APA _____
- ECR I
- GCL _____
- AAD _____
- SRC _____
- ADM _____
- OPC _____
- CLK _____

12 JAN 2011 9:37 AM

DOCUMENT NUMBER-DATE
00011 JAN-3 2011
FPSC-COMMISSION CLERK

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

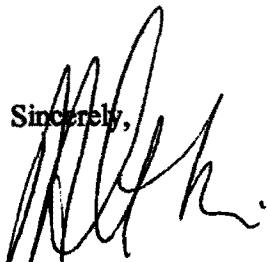
Dated: December 28, 2011

To: Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak, Blvd
Tallahassee, Florida, 32399

To whom it may concern,

East Marion Sanitary Systems Inc, hereby is affirmatively indicating it's intention to proceed with the hearing. East Marion is prepared to fulfill it's obligation or have a qualified representative appear on the Utilities behalf.

Sincerely,



Herbert Hein, President for East Marion

DOCUMENT NUMBER-DATE

00011 JAN-3 2012

FPSC-COMMISSION CLERK

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

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To: Ann Cole, Commission Clerk
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2540 Shumard Oak, Blvd
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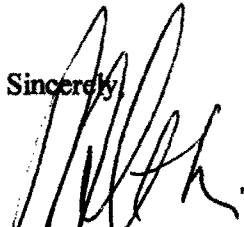
PROTEST OF ORDER DATED 12/12/2011

To whom it may concern,

East Marion Sanitary Systems Inc, hereby is protesting the order entered by the commission dated December 12, 2011.

The portion of the order being disputed is on page 5, paragraph 5.

Sincerely,


Herbert Hein, President for East Marion

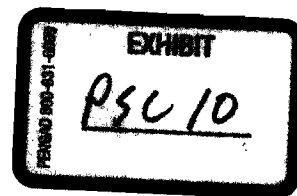
DOCUMENT NO. DATE

00011-12 01/3/12
FPSC - COMMISSION CLERK

Eric Fryson

From: terry99wi@aol.com
Sent: Wednesday, January 11, 2012 1:39 PM
To: Filings@psc.state.fl.us
Subject: Doc. 080562-WU
Attachments: FLORIDA PUBLIC SERVICE COMM. PROTEST.docx
Please find efilings above

REC'D



I CERTIFY THAT THIS IS A TRUE AND
CORRECT COPY OF THE ORIGINAL
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BY: *Ann Cole*
ANN COLE, COMMISSION CLERK
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1/11/2012

DOCUMENT NUMBER-DATE
00208 JAN 11 2012
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

080562-WU

Doc. No. ~~08052-WU~~

Date: Jan, 11, 2012

-DM

Ann Cole, Commission
Florida Public Service Commission
2540 Shumard Oak, Blvd
Tallahassee, Florida, 32399

PROTEST OF ORDER DATED 12/12/2011

To whom it may concern

Terry Will is protesting the order entered by the commission dated 12/12/2011 as follows.

Pages 3, 5, and 6, including but not limited to any future corrections.

S/ Terry Will

This protest was improperly filed by terry will and dated 12/16/2011

DOCUMENT NUMBER-DATE
00208 JAN 11 2012
FPSC-COMMISSION CLERK

#1

Bane YMB
Cooke MJC

RECEIVED--FPSC

State of Florida

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Public Service Commission

RFCJ



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

-M-E-M-O-R-A-N-D-U-M-

DATE: February 21, 2008

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Fleming) *KEFB PD*
Division of Economic Regulation (Daniel, Kaproth, Redemann) *192*
Division of Regulatory Compliance & Consumer Assistance (Hicks, Vandiver) *W*

RE: Docket No. 080064-WU – Complaint against East Marion Sanitary Systems Inc. by Mabelle Gregorio, Angela and Dennis Fountain, and Terry Will.

AGENDA: 03/04/08 – Regular Agenda – Proposed Agency Action for Issues 1-3 -- Interested Persons May Participate

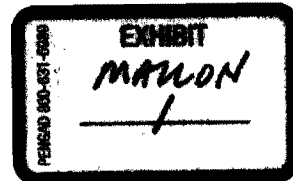
COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCLWP\080064.RCM.DOC



Case Background

East Marion Sanitary Systems Inc. (East Marion or utility) is a Class C utility providing water and wastewater service to approximately 98 customers in Marion County. Water and wastewater rates were last established for this utility in a staff assisted rate case in 2002.¹ The utility reported water and wastewater revenues of \$62,037 in its 2006 Annual Report. The system is located in the St. Johns River Water Management District (SJRWMD).

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

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT THAT WAS FILED WITH THE FLORIDA PUBLIC SERVICE COMMISSION
BY: *Ann Cole*
ANN COLE, COMMISSION CLERK
(or Office of Commission Clerk designee)

DOCUMENT NUMBER-DATE
01351 FEB 21 08
FPSC-COMMISSION CLERK

Docket No. 080064-WU
Date: February 21, 2008

On February 14, 2007, Ms. Mabelle Gregorio filed a complaint (727135W) regarding the cost of an irrigation meter. Ms. Gregorio paid a total of \$897.00 for the installation of the irrigation meter; however, the utility's tariff contains a \$70.00 meter installation fee. On October 2, 2007, Angela and Dennis Fountain filed a complaint (753207W) regarding the \$597.00 they were required to pay for an irrigation meter. On December 17, 2007, Mr. Terry Will filed a complaint (762448W) regarding the disconnection of his water service and the resulting reconnection charges.

Staff has been unsuccessful in resolving these complaints informally. Attachment A contains a timeline showing the correspondence between the customers, the utility, and staff. The utility has charged fees for irrigation meters, customer deposits, and disconnection charges that have not been approved by the Commission. In addition, the utility has failed to respond on a timely basis to staff inquiries regarding the complaints and a request to audit the utility's records.

Issues 1, 2, and 3 address whether the utility should be required to make refunds to Ms. Gregorio, Mr. and Mrs. Fountain, and Mr. Will, respectively. Issues 4 and 5 address whether the utility should be show caused for charging outside its authorized tariff and its failure to respond to staff on a timely basis regarding the complaints and the audit request. The Commission has jurisdiction pursuant to Sections 367.011, 367.081, 367.121, and 367.161, F.S.

Discussion of Issues

Issue 1: What disposition should be taken to resolve the complaint of Ms. Mabelle Gregorio against East Marion Sanitary Systems, Inc.?

Recommendation: East Marion should refund \$824.00 to Ms. Gregorio and provide a statement to the Commission that the refund was made within 30 days of the Commission's order becoming final. (Redemann)

Staff Analysis: On February 14, 2007, Ms. Mabelle Gregorio filed Complaint No. 727135W regarding the cost of an irrigation meter. During the period from February 8, 2007, to June 15, 2007, Ms. Gregorio gave the utility checks in the amounts of \$597.00, \$497.00, \$100.00, \$597.00, and \$197.00 for an irrigation meter. The first check for \$597.00 was never cashed and Ms. Gregorio stopped payment on it. The check for \$497.00 was returned to Ms. Gregorio. Ms. Gregorio paid a total of \$894.00 for the irrigation meter which was installed on June 19, 2007. Ms. Gregorio's receipt for the \$497.00 payment, which was returned to her, indicates that she was charged \$437.00 for an initial connection fee and \$60.00 for a deposit.

On November 30, 2007, in response to staff's request for an explanation from the utility regarding several complaints, Mr. Hein, the utility owner, provided several reasons for the charges for the irrigation meters. According to Mr. Hein, in order to obtain an irrigation meter the customer must also pay the contribution in aid of construction (CIAC) charge. He also cited the cost to install an irrigation meter, the need for separate piping for the meter, and a potential revenue shortfall, as more fully described in Issue 4, as reasons for the charges. A specific, detailed explanation was not provided for the total \$894.00 collected from Ms. Gregorio for the irrigation meter.

The utility's approved service availability charges for water service to a new customer include a meter installation charge of \$70.00, a plant capacity charge of \$112.00, and a main extension charge of \$255.00. The utility is not entitled to collect a plant capacity charge from an existing residential customer. There is no evidence that Ms. Gregorio needed to reserve additional water capacity; rather, she merely wanted an irrigation meter so that her irrigation demand would not be reflected in her wastewater bill. While a separate service line may have been needed for the irrigation meter, there is no provision for that in the utility's tariff. The utility's main extension charge is for a main extension for new connections to the water system. Although it appears that the charges to Ms. Gregorio included a customer deposit, there is no evidence that Ms. Gregorio had a history of late payments. Therefore, the utility was not entitled to require a deposit for the irrigation meter.

While staff agrees that the actual cost of the meter installation may have exceeded \$70.00, the utility may only charge the fees contained in its approved tariff. Staff has advised Mr. Hein that he may request an increase in his meter installation charge; however, as of the date of this recommendation, he has not filed a request. Therefore, since the utility was only entitled to charge \$70.00 for the irrigation meter, Ms. Gregorio should be refunded the \$824.00 she overpaid.

Docket No. 080064-WU

Date: February 21, 2008

Staff recommends that the utility should be required to refund \$824.00 to Ms. Gregorio and provide a statement to the Commission that the refund was made within 30 days of the Commission's order becoming final.

Docket No. 080064-WU
Date: February 21, 2008

Issue 2: What disposition should be taken to resolve the complaint of Angela and Dennis Fountain against East Marion Sanitary Systems, Inc.?

Recommendation: East Marion should refund \$527.00 to Angela and Dennis Fountain and provide a statement to the Commission that the refund was made within 30 days of the Commission's order becoming final. (Redemann)

Staff Analysis: On October 2, 2007, Angela and Dennis Fountain (Fountains) filed Complaint No. 753207W regarding the \$597.00 they were required to pay for an irrigation meter. The Fountain's built a house in 2007 and as part of the construction an irrigation meter was installed. The Fountains were charged \$597.00 for the irrigation meter in addition to the utility's approved water and wastewater service availability charges.

As previously discussed, Mr. Hein provided a letter on November 30, 2007, describing his reasons for the charges for the irrigation meter. No other specific explanation was given for the charges collected from the Fountains. As discussed in Issue 1, while staff agrees that the actual cost of the meter installation may have exceeded \$70.00, the utility may only charge the fees contained in its approved tariff. Staff has advised Mr. Hein that he may request an increase in his meter installation charge; however, as of the date of this recommendation, he has not filed a request. Therefore, since the utility was only entitled to charge \$70.00 for the irrigation meter, the Fountains should be refunded the \$527.00 they overpaid.

Staff recommends the utility should be required to refund \$527.00 to Angela and Dennis Fountain and provide a statement to the Commission that the refund was made within 30 days of the Commission's order becoming final.

Docket No. 080064-WU
Date: February 21, 2008

Issue 3: What disposition should be taken to resolve the complaint of Terry Will against East Marion Sanitary Systems, Inc.?

Recommendation: East Marion should refund \$45.00 to Terry Will for the overcharge on the reconnection charge and provide a statement to the Commission that the refund was made within 30 days of the Commission's order becoming final. Further, staff recommends that the utility be required to provide a statement to the Commission that Mr. Will's bill was credited \$37.00 for the excess customer deposit within 30 days of the Commission's order becoming final. (Redemann)

Staff Analysis: On December 17, 2007, Mr. Terry Will filed Complaint No. 762448W regarding the disconnection of his water service and the resulting reconnection charges. According to Mr. Will, on September 28, 2007, his water service was disconnected without notice and he was charged a \$241.55 reconnection fee. The charges included a customer deposit of \$141.00, a disconnection fee of \$50.00, and a reconnection fee of \$15.00, in addition to the outstanding balance of \$35.55 for water and wastewater service.

On January 18, 2008, Mr. Hein responded to staff's inquiry about the complaint. According to Mr. Hein, Mr. Will's bill was mailed out on August 29, 2007, a disconnection notice was mailed out on September 21, 2007, and service was discontinued on September 28, 2007. Mr. Will provided a copy of his cancelled check and the envelope showing the postmark date of September 20, 2007; however, Mr. Hein stated that the payment was not received by the utility until October 4, 2007. In addition, Mr. Hein stated that Mr. Will pays his bill late on a regular and ongoing basis and that Mr. Will had been asked to pay a deposit in April and again in June 2007.

Pursuant to Rule 25-30.320, Florida Administrative Code (F.A.C.), service may be discontinued for nonpayment of bills only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customer. In addition, the notice must be separate and apart from any bill for service. Based on the information available, it appears that Mr. Hein complied with this rule.

Rule 25-30.311(7), F.A.C., provides that a utility may require a new deposit, where previously waived, in an amount not to exceed the average actual charge for water and wastewater for two billing periods for the prior 12 months. Therefore, Mr. Will's deposit should not have exceeded approximately \$104.00.

Pursuant to Rule 25-30.460(1)(c), F.A.C., a utility may apply for miscellaneous service charges, which may include rates for violation reconnections. A violation reconnection is a charge that is levied prior to reconnection of an existing customer after discontinuance of service for cause. The utility's approved violation reconnection charge is \$15.00 for water. The tariff specifies that if both water and wastewater services are provided, only a single charge is appropriate unless circumstances beyond the control of the company requires multiple actions. The reconnection charge for wastewater (actual cost) may only be charged to wastewater only customers because the utility is not able to shut off the water meter to discontinue wastewater service. The utility does not have an approved disconnection fee for water or wastewater

Docket No. 080064-WU

Date: February 21, 2008

service. Therefore, it appears that Mr. Will should have only been charged \$15.00 to reconnect his water and wastewater service after it was disconnected.

On February 6, 2008, staff sent a letter to Mr. Hein indicating that it appeared that Mr. Will's deposit should have been \$104.00 instead of \$141.00 and that the reconnection charge should have been \$15.00 instead of \$60.00. On February 14, 2008, Mr. Hein responded that he agreed that the customer deposit should have been \$104.00 and that he intended to credit \$37.00 on Mr. Will's next bill. However, Mr. Hein continues to disagree that the disconnection charge should be only \$15.00. He stated that the wastewater tariff provides for a disconnection charge at the actual cost and there were multiple actions taken including several premise visits and meetings with Mr. Will.

Based on the above, it appears that Mr. Will should have paid \$15.00 for the violation reconnection instead of \$60.00, and a deposit of \$104.00 instead of \$141.00. Staff recommends that the utility should be required to refund \$45.00 to Terry Will for the overcharge on the reconnection charge and provide a statement to the Commission that the refund was made within 30 days of the Commission's order becoming final. Further, staff recommends that the utility be required to provide a statement to the Commission that Mr. Will's bill was credited \$37.00 for the excess customer deposit within 30 days of the Commission's order becoming final.

Issue 4: Should East Marion Sanitary Systems, Inc. be ordered to show cause in writing, within 21 days, why it should not be fined for its apparent violation of Section 367.081(1), F.S., and Rules 25-30.135(2) and 25-30.311(7), F.A.C., for charging rates and charges not authorized by the Commission?

Recommendation: Yes. East Marion should be ordered to show cause in writing, within 21 days why it should not be fined a total of \$1,500 for its apparent violation of Section 367.081(1), F.S., and Rules 25-30.135(2) and 25-30.311(7), F.A.C., charging rates and charges not authorized by the Commission. The order to show cause should incorporate the conditions stated below in the staff analysis. Further, the utility should be required to only charge its approved rates and charges and use the forms in its tariff until authorized to change by this Commission in a subsequent proceeding. (Fleming)

Staff Analysis: A utility may only charge rates and charges that have been approved by the Commission pursuant to Section 367.081, F.S. In addition, Rule 25-30.135(2), F.A.C., provides that, "[n]o utility may modify or revise its rules or regulations or its schedules of rates and charges until the utility files and receives approval from the Commission for any such modification or revision."

As discussed in Issues 1, 2, and 3, East Marion has overcharged a number of customers. Ms. Mabelle Gregorio paid a total of \$894, and the Fountains paid \$597 to have an irrigation meter installed; however, the utility's tariff contains a meter installation charge of \$70.00. In response to staff's request for an explanation from the utility, Mr. Hein stated that he disagrees with staff that the utility has to provide an irrigation meter for \$70.00 for several reasons: Mr. Hein believes that (1) the \$70.00 meter installation fee is correct only for household use with the appropriate gallonage charge for water and sewer; (2) the customer qualifies for this rate only after paying the appropriate contribution in aid of construction (CIAC) fees; (3) the fee is based on the cost of installation in 1987; (4) there is no way to install an irrigation meter to the existing piping or valving that is currently in existence; (5) the utility would have a considerable loss if it were required to charge only \$70.00; and (6) the utility's rates were developed based on irrigation demand.

While staff does not dispute that the actual cost for the installation of an irrigation meter may exceed \$70.00, the utility may only collect the rates and charges that have been approved by the Commission. It is the utility's responsibility to request an increase in charges that it believes are insufficient. Although Mr. Hein's letter of November 30, 2007, requests that the utility be given 30 days to provide documentation as the actual cost of installing an irrigation meter and to amend its tariff, the utility has not provided that information to date.

Mr. Terry Will was required to pay a customer deposit of \$141.00, a disconnection fee of \$50.00, and a reconnection fee of \$10.00 subsequent to his service being discontinued on September 28, 2007. Mr. Hein responded to Mr. Will's complaint by fax on January 18, 2008. In his response, Mr. Hein stated that the Commission staff established a deposit in the amount of \$141 during the utility's staff assisted rate case. In addition, he stated that the violation reconnection fee is \$15.00 for water and the actual cost incurred by the utility for wastewater, making the total \$60.00 for a violation reconnection.

Docket No. 080064-WU
Date: February 21, 2008

Rule 25-30.311(7), F.A.C., provides that a utility may require a new deposit, where previously waived, in an amount not to exceed the average actual charge for water and wastewater for two billing periods for the prior 12 months. The \$141 customer deposit referred to by Mr. Hein is for new customers who have not yet received service from the utility. Mr. Will's bills for water and wastewater service for June through September 2007, ranged from \$35.55 to \$51.93. Therefore, it appears that Mr. Will's deposit should not have exceeded approximately \$104.00.

The utility's approved violation reconnection charge is \$15.00 for water. The tariff specifies that if both water and wastewater services are provided, only a single charge is appropriate unless circumstances beyond the control of the company requires multiple actions. The utility does not have an approved disconnection fee for water or wastewater service. Therefore, as discussed in Issue 3, it appears that Mr. Will should only have been charged \$15.00 to reconnect his water and wastewater service after it was disconnected.

In addition to collecting meter installation fees, customer deposits, and violation reconnection charges in excess of those approved by the Commission, the utility has revised its application form to reflect information and charges that have not been approved by the Commission. The revised application form provides that service may be disconnected after 48 hours notice for a returned check, and after two returned checks, bills must be paid in cash or money order only; however, there is no provision in the Commission's rules or the utility's tariff to require payment in cash or by money order only as a result of returned checks. The form also reflects a reconnection charge of \$50.00 during regular hours and \$80.00 after regular hours.

In his November 30, 2007, response to staff, Mr. Hein stated that he had not yet ascertained when or why the revised application was used. He stated that the application was provided to the customer by a management company that had been hired, that he would try to make a determination as to when the application started being used, and make sure that the correct application is used in the future. As of the date of this recommendation, Mr. Hein has not provided any additional information to staff.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S., or any lawful rule or order of the Commission. By failing to comply with the above-noted requirements of Section 367.081(1), F.S., and Rules 25-30.135(2) and 25-30.311(7), F.A.C., in a timely manner, the utility's acts were "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "willful" implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." *Id.* at 6.

Based on the above, staff recommends that East Marion be made to show cause in writing, within 21 days, why it should not be fined a total of \$1,500 for its apparent violations noted above. Staff proposes a \$1,500 fine, based on \$500 per customer, for the customer overcharges addressed in Issues 1, 2, and 3. Staff recommends that the show cause order incorporate the following conditions:

1. The utility's response to the show cause order should contain specific allegations of fact and law;
2. Should East Marion file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to Sections 120.569 and 120.57(1), F.S., a further proceeding will be scheduled before a final determination of this matter is made;
3. A failure to file a timely written response to the show cause order should constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue;
4. In the event that East Marion fails to file a timely response to the show cause order, the fine should be deemed assessed with no further action required by the Commission;
5. If the utility responds timely but does not request a hearing, a recommendation should be presented to the Commission regarding the disposition of the show cause order; and
6. If the utility responds to the show cause order by remitting the fine, this show cause matter should be considered resolved.

The utility should be put on notice that failure to comply with Commission orders, rules, or statutes will again subject the utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, F.S. Further, the utility should be required to only charge its approved rates and charges and use the forms in its tariff until authorized to change by this Commission in a subsequent proceeding.

Docket No. 080064-WU
Date: February 21, 2008

Issue 5: Should East Marion Sanitary Systems, Inc. be ordered to show cause in writing, within 21 days, why it should not be fined for its apparent violation of Section 367.156(1), F.S., and Rules 25-22.032(6), 25-30.110, and 25-30.145, F.A.C., concerning customer complaints and audit requests?

Recommendation: Yes. East Marion should be ordered to show cause in writing, within 21 days why it should not be fined a total of \$500 for its apparent violation of Section 367.156(1), F.S., and Rules 25-22.032(6), 25-30.110, and 25-30.145, F.A.C. The order to show cause should incorporate the conditions stated below in the staff analysis. In addition, the utility should be ordered to respond to the staff audit requests, as discussed in the staff analysis, within 30 days of the Commission's order becoming final. (Fleming)

Staff Analysis: Pursuant to Rule 25-22.032(6)(b), F.A.C., concerning customer complaints:

[t]he company shall make direct contact with the customer verbally or in writing and provide to the customer its response to the complaint within 15 working days after the Commission staff sends complaint to the company. Responses sent by mail must be postmarked within the 15 working day time period. The company shall also provide to the Commission staff, within 15 working days after the Commission staff sends the complaint to the company, a written response to the customer's complaint.

In addition, Rule 25-22.032(6)(e), F.A.C., provides that:

[t]he company shall respond in 7 working days to each subsequent request by staff after the initial company responses. If a complete response cannot be provided in the 7 working days, the company shall provide an update regarding the response every 15 working days until the response is completed.

Ms. Gregorio filed her complaint regarding the irrigation meter on February 14, 2007, and a response from Mr. Hein was requested by March 1, 2007. When no response was received, a second request was made on March 19, 2007, giving Mr. Hein until April 9, 2007 to respond. Mr. Hein's response to the complaint was received on April 11, 2007. The complaint was transferred from consumer affairs to ECR on April 20, 2007. From May through August, 2007, staff contacted Mr. Hein and Ms. Gregorio by phone in an attempt to resolve the complaint. On September 6, 2007, a letter was sent to Mr. Hein requesting a response by October 8, 2007; however, no response was received.

On October 2, 2007, Mr. Hein was faxed a copy of the complaint from the Fountains; however, no response was received. A certified letter was sent to Mr. Hein on October 17, 2007, requesting responses to both Ms. Gregorio and the Fountains' complaints by October 30, 2007. The certified letter was returned. A second certified letter and a fax regarding the complaints were sent to Mr. Hein on November 15, 2007; however, the certified letter was returned. Mr. Hein's response to the complaints was received by fax on November 30, 2007.

On December 19, 2007, Mr. Hein was sent a copy of Mr. Will's complaint and a response was requested by January 4, 2008. Mr. Hein's faxed response was received on January 18, 2008.

During this time period, at the request of technical staff, an audit of Mr. Hein's books and records was initiated to review the utility's collection of service availability charges and other fees for the period January 1, 2005, through October 15, 2007. A certified letter and a fax were sent to Mr. Hein on October 26, 2007, notifying him of the audit and requesting that Mr. Hein contact staff. The certified letter was signed for, but returned to the Commission unopened. On November 1, 2007, a second certified letter was sent to Mr. Hein regarding the audit and requesting a response by November 15, 2007. Only after several rounds of letters and phone calls did Mr. Hein contact staff on December 21, 2007, to discuss the audit. Staff has made and received several subsequent phone calls and phone messages regarding information that should be provided and still has not received any information. Staff has consistently used the contact information provided by the utility in corresponding with the utility.

In his November 30, 2007, letter, Mr. Hein addressed staff's efforts to contact him. Mr. Hein indicated that on several occasions he had responded and the response was not properly acknowledged or filed correctly. As to the certified letter requesting audit information that was returned to the Commission marked return to sender, refused, Mr. Hein stated that "this must have been done by the mail service," and "there are times that I am not available currently and I do not have as large of staff available as the PSC."

Rule 25-30.110(2), F.A.C., provides that, "[t]he utility shall also furnish the Commission with any information concerning the utility's facilities or operation that the Commission may request and require for determining rates or judging the practices of the utility." Section 367.156(1), F.S., provides that the Commission shall continue to have reasonable access to all utility records and records of affiliated companies. In addition, Rule 25-30.145(2), F.A.C., states:

Reasonable access means that company responses to audit requests for access to records shall be fully provided within the time frame established by the auditor. In establishing a due date, the auditor shall consider the location of the records, the volume of information requested, the number of pending requests, the amount of independent analysis required, and reasonable time for the utility to review its response for possible claims of confidentiality or privilege.

Subsection (3) of the same rule sets forth the process to be invoked by the utility if it is unable to reach agreement with the auditor on what is a reasonable response time to the auditor's requests.

It appears that the utility has persistently delayed and withheld its responses to staff's information and audit requests in the absence of sufficient reason. Staff took all available measures in attempting to resolve these complaints informally. Mr. Hein repeatedly failed to respond to staff requests for information in a timely manner and obstructed an audit of his books which staff believed was important to resolve the issues raised in the customers' complaints. His failure to respond to staff requests resulted not only in a violation of Rule 25-22.032, F.A.C., on timely response to a customer complaint, but also Commission rules regarding a utility's obligation to produce records, Rule 25-30.110, F.A.C., and the obligation to provide Commission staff with access to the utility's books and records, Rule 25-30.145, F.A.C.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S., or any lawful rule or order of the Commission. By failing to comply with the above-noted requirements of Section 367.156(1), F.S., and Rules 25-22.032(6), 25-30.110, and 25-30.145, F.A.C., in a timely manner, the utility's acts were "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "willful" implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." *Id.* at 6.

In failing to respond to staff requests for information and to provide information to the staff auditors, the utility's act was "willful" within the meaning and intent of Section 367.161, F.S. The utility's failure to respond to staff inquiries and to the staff audit requests, appear to be a violation of Section 367.156(1), F.S., and Rules 25-22.032(6), 25-30.110(2), and 25-30.145, F.A.C. Therefore, staff believes that a show cause proceeding is warranted at this time.

Based on the above, staff recommends that East Marion be made to show cause in writing, within 21 days, why it should not be fined a total of \$500 for its apparent violations noted above. Staff recommends that the show cause order incorporate the following conditions:

1. The utility's response to the show cause order should contain specific allegations of fact and law;
2. Should East Marion file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to Sections 120.569 and 120.57(1), F.S., a further proceeding will be scheduled before a final determination of this matter is made;
3. A failure to file a timely written response to the show cause order should constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue;
4. In the event that East Marion fails to file a timely response to the show cause order, the fine should be deemed assessed with no further action required by the Commission;
5. If the utility responds timely but does not request a hearing, a recommendation should be presented to the Commission regarding the disposition of the show cause order; and

Docket No. 080064-WU

Date: February 21, 2008

6. If the utility responds to the show cause order by remitting the fine, this show cause matter should be considered resolved.

Further, the utility should be put on notice that failure to comply with Commission orders, rules, or statutes will again subject the utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, F.S.

In addition, staff notes that Rule 25-30.110(1)(b), F.A.C., requires each utility to maintain its records at the office or offices of the utility within this state and to keep those records open for inspection during business hours by Commission staff. Furthermore, Rule 25-30.115, F.A.C., requires all water and wastewater utilities to maintain their accounts and records in conformance with the 1996 National Association of Regulatory Utility Commissions, Uniform System of Accounts (NARUC USOA). Accounting Instruction 2.A. and 2.B. of the NARUC USOA for Class C utilities states:

- A. The books of accounts of all water utilities shall be kept by the double entry method, on an accrual basis. Each utility shall keep its accounts monthly and shall close its books at the end of each calendar year.
- B. All books of accounts, together with records and memoranda supporting the entries therein, shall be kept in such a manner as to support fully the facts pertaining to such entries.

Therefore, East Marion should be required to send to the Commission audit staff, within 30 days of the Commission's order becoming final, the following documentation:

1. General ledgers for the years 2005, 2006, and through October 15, 2007.
2. Details of other revenues for the years 2005, 2006, and through October 15, 2007.
3. Customers bills that support the other revenues for the years 2005, 2006, and through October 15, 2007.

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Date: February 21, 2008

Issue 6: Should this docket be closed?

Recommendation: No. If no person whose substantial interests are affected by the proposed agency action issues files a protest within 21 days of the issuance of the order, a Consummating Order will be issued. However, the docket should remain open for staff's verification that the refunds have been made and the audit information has been filed, and the disposition of the show cause issues. When the PAA issues are final and the show cause issues have been resolved, this docket may be closed administratively. (Fleming)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action issues files a protest within 21 days of the issuance of the order, a Consummating Order will be issued. However, the docket should remain open for staff's verification that the refunds have been made and the audit information has been filed, and the disposition of the show cause issues. When the PAA issues are final and the show cause issues have been resolved, this docket may be closed administratively.

02/8/07 Ms. Gregorio paid \$597 for irrigation meter

02/14/07 Ms. Gregorio filed complaint re installation of meter
Response from Mr. Hein requested by 3/1/07

03/19/07 Response from Mr. Hein requested by 4/9/07

04/11/07 Response received from Mr. Hein indicating no record of payment or
contact by Ms. Gregorio re meter installation

05/01/07 Staff contacted Mr. Hein by phone, Mr. Hein requested meter installation
application from Ms. Gregorio
Staff contacted Ms. Gregorio re need for meter installation application,
she stopped payment on \$597 check

05/03/07 Call from Mr. Hein, meter installation application sent to Ms. Gregorio

05/11/07 Copy of application received from Ms. Gregorio, \$497 paid to utility for
meter installation

05/00/07 Mr. Hein requested additional \$100 and later requested new application
for meter installation with social security number and additional \$597
Ms. Gregorio paid \$100 and \$597, \$497 check returned to Ms. Gregorio

06/15/07 Mr. Hein requested additional \$197 from Ms. Gregorio
Ms. Gregorio paid \$197

06/19/07 Ms. Gregorio irrigation meter installed (total \$894 paid)

09/06/07 Staff letter to Mr. Hein requesting response due by 10/08/07

10/02/07 Mrs. Fountain filed complaint re installation of irrigation meter

10/05/07 Complaint faxed to Mr. Hein, response due 10/23/07

10/17/07 Certified letter sent to Mr. Hein regarding complaints, response due
10/30/07, certified letter returned
Staff letter to Mr. Hein initiating audit

10/26/07 Certified letter and fax re audit requests sent to Mr. Hein, letter signed for
but returned unopened

11/01/07 Certified letter re audit sent to Mr. Hein

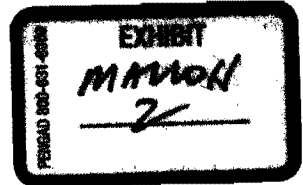
11/15/07 Certified letter and fax to Mr. Hein requesting response by 11/30/07,
certified letter returned

11/30/07	Response received from Mr. Hein regarding the complaints
12/17/07	Staff letter to Mr. Hein requesting additional response by 12/21/07 re complaints Complaint filed by Mr. Will re disconnection, charges, and deposit
12/19/07	Staff letter to Mr. Hein re Mr. Will complaint, response due 1/4/08
12/21/07	Mr. Hein called staff re 12/17/07 staff letter
01/18/08	Response from Mr. Hein re Mr. Will complaint
02/06/08	Staff letter to Mr. Hein re Mr. Will complaint, response due 2/14/08
02/14/08	Response received from Mr. Hein regarding Mr. Will's complaint

#2

REC'D

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION



In re: Complaint against East Marion Sanitary Systems Inc. by Mabelle Gregorio, Angela and Dennis Fountain, and Terry Will.

DOCKET NO. 080064-WU
ORDER NO. PSC-08-0182-PAA-WU
ISSUED: March 25, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING REFUNDS
AND

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein, except for our decision declining to initiate show cause proceedings, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

East Marion Sanitary Systems Inc. (East Marion or utility) is a Class C utility providing water and wastewater service to approximately 98 customers in Marion County. Water and wastewater rates were last established for this utility in a staff assisted rate case in 2002.¹ The utility reported water and wastewater revenues of \$62,037 in its 2006 Annual Report. The system is located in the St. Johns River Water Management District (SJRWMD).

On February 14, 2007, Ms. Mabelle Gregorio filed a complaint (727135W) regarding the cost of an irrigation meter. Ms. Gregorio paid a total of \$897.00 for the installation of the irrigation meter; however, the utility's tariff contains a \$70.00 meter installation fee. On October 2, 2007, Angela and Dennis Fountain filed a complaint (753207W) regarding the \$597.00 they were required to pay for an irrigation meter. On December 17, 2007, Mr. Terry Will filed a complaint (762448W) regarding the disconnection of his water service and the resulting reconnection charges.

¹ 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 by East Marion Sanitary Systems, Inc.

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT THAT WAS FILED WITH THE FLORIDA PUBLIC SERVICE COMMISSION
BY: *Ann Cole*
ANN COLE, COMMISSION CLERK
(or Office of Commission Clerk designee)

DOCUMENT NUMBER-DATE
02200 MAR 25 08
FPSC-COMMISSION CLERK

Our staff has been unsuccessful in resolving these complaints informally. Attachment A contains a timeline showing the correspondence between the customers, the utility, and our staff. The utility has charged fees for irrigation meters, customer deposits, and disconnection charges that have not been approved by this Commission. In addition, the utility has failed to respond on a timely basis to our staff inquiries regarding the complaints and a request to audit the utility's records. We have jurisdiction pursuant to Sections 367.011, 367.081, 367.121, and 367.161, F.S.

DISPOSITION OF COMPLAINTS

Ms. Mabelle Gregorio

On February 14, 2007, Ms. Mabelle Gregorio filed Complaint No. 727135W regarding the cost of an irrigation meter. During the period from February 8, 2007, to June 15, 2007, Ms. Gregorio gave the utility checks in the amounts of \$597.00, \$497.00, \$100.00, \$597.00, and \$197.00 for an irrigation meter. The first check for \$597.00 was never cashed and Ms. Gregorio stopped payment on it. The check for \$497.00 was returned to Ms. Gregorio. Ms. Gregorio paid a total of \$894.00 for the irrigation meter which was installed on June 19, 2007. Ms. Gregorio's receipt for the \$497.00 payment, which was returned to her, indicates that she was charged \$437.00 for an initial connection fee and \$60.00 for a deposit.

On November 30, 2007, in response to a request for an explanation from the utility regarding several complaints, Mr. Hein, the utility owner, provided several reasons for the charges for the irrigation meters. According to Mr. Hein, in order to obtain an irrigation meter the customer must also pay the contribution in aid of construction (CIAC) charge. He also cited the cost to install an irrigation meter, the need for separate piping for the meter, and a potential revenue shortfall, as reasons for the charges. A specific, detailed explanation was not provided for the total \$894.00 collected from Ms. Gregorio for the irrigation meter.

The utility's approved service availability charges for water service to a new customer include a meter installation charge of \$70.00, a plant capacity charge of \$112.00, and a main extension charge of \$255.00. The utility is not entitled to collect a plant capacity charge from an existing residential customer. There is no evidence that Ms. Gregorio needed to reserve additional water capacity; rather, she merely wanted an irrigation meter so that her irrigation demand would not be reflected in her wastewater bill. While a separate service line may have been needed for the irrigation meter, there is no provision for that in the utility's tariff. The utility's main extension charge is for a main extension for new connections to the water system. Although it appears that the charges to Ms. Gregorio included a customer deposit, there is no evidence that Ms. Gregorio had a history of late payments. Therefore, the utility was not entitled to require a deposit for the irrigation meter.

While we agree that the actual cost of the meter installation may have exceeded \$70.00, the utility may only charge the fees contained in its approved tariff. Therefore, since the utility was only entitled to charge \$70.00 for the irrigation meter, the utility shall refund \$824.00, with interest, to Ms. Gregorio and provide a statement to this Commission that the refund was made within 30 days of this order becoming final.

Angela and Dennis Fountain

On October 2, 2007, Angela and Dennis Fountain (Fountains) filed Complaint No. 753207W regarding the \$597.00 they were required to pay for an irrigation meter. The Fountain's built a house in 2007 and as part of the construction an irrigation meter was installed. The Fountains were charged \$597.00 for the irrigation meter in addition to the utility's approved water and wastewater service availability charges.

As previously discussed, Mr. Hein provided a letter on November 30, 2007, describing his reasons for the charges for the irrigation meter. No other specific explanation was given for the charges collected from the Fountains. While we agree that the actual cost of the meter installation may have exceeded \$70.00, the utility may only charge the fees contained in its approved tariff. Therefore, since the utility was only entitled to charge \$70.00 for the irrigation meter, the utility shall refund \$527.00, with interest, to Angela and Dennis Fountain and provide a statement to this Commission that the refund was made within 30 days of this order becoming final.

Mr. Terry Will

On December 17, 2007, Mr. Terry Will filed Complaint No. 762448W regarding the disconnection of his water service and the resulting reconnection charges. According to Mr. Will, on September 28, 2007, his water service was disconnected without notice and he was charged a \$241.55 reconnection fee. The charges included a customer deposit of \$141.00, a disconnection fee of \$50.00, and a reconnection fee of \$15.00, in addition to the outstanding balance of \$35.55 for water and wastewater service.

On January 18, 2008, Mr. Hein responded to our inquiry about the complaint. According to Mr. Hein, Mr. Will's bill was mailed out on August 29, 2007, a disconnection notice was mailed out on September 21, 2007, and service was discontinued on September 28, 2007. Mr. Will provided a copy of his cancelled check and the envelope showing the postmark date of September 20, 2007; however, Mr. Hein stated that the payment was not received by the utility until October 4, 2007. In addition, Mr. Hein stated that Mr. Will pays his bill late on a regular and ongoing basis and that Mr. Will had been asked to pay a deposit in April and again in June 2007.

Pursuant to Rule 25-30.320, Florida Administrative Code (F.A.C.), service may be discontinued for nonpayment of bills only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customer. In addition, the notice must be separate and apart from any bill for service. Based on the information available, it appears that Mr. Hein complied with this rule.

Rule 25-30.311(7), F.A.C., provides that a utility may require a new deposit, where previously waived, in an amount not to exceed the average actual charge for water and wastewater for two billing periods for the prior 12 months. Therefore, Mr. Will's deposit should not have exceeded approximately \$104.00.

Pursuant to Rule 25-30.460(1)(c), F.A.C., a utility may apply for miscellaneous service charges, which may include rates for violation reconnections. A violation reconnection is a charge that is levied prior to reconnection of an existing customer after discontinuance of service for cause. The utility's approved violation reconnection charge is \$15.00 for water. The tariff specifies that if both water and wastewater services are provided, only a single charge is appropriate unless circumstances beyond the control of the company requires multiple actions. The reconnection charge for wastewater (actual cost) may only be charged to wastewater only customers because the utility is not able to shut off the water meter to discontinue wastewater service. The utility does not have an approved disconnection fee for water or wastewater service. Therefore, it appears that Mr. Will should have only been charged \$15.00 to reconnect his water and wastewater service after it was disconnected.

On February 6, 2008, our staff sent a letter to Mr. Hein indicating that it appeared that Mr. Will's deposit should have been \$104.00 instead of \$141.00 and that the reconnection charge should have been \$15.00 instead of \$60.00. On February 14, 2008, Mr. Hein responded that he agreed that the customer deposit should have been \$104.00 and that he intended to credit \$37.00 on Mr. Will's next bill. However, Mr. Hein continues to disagree that the disconnection charge should be only \$15.00. He stated that the wastewater tariff provides for a disconnection charge at the actual cost and there were multiple actions taken including several premise visits and meetings with Mr. Will.

Based on the above, it appears that Mr. Will should have paid \$15.00 for the violation reconnection instead of \$60.00, and a deposit of \$104.00 instead of \$141.00. Therefore, the utility shall refund \$45.00, with interest, to Terry Will for the overcharge on the reconnection charge and shall credit Mr. Will \$37.00 for the excess customer deposit. The utility shall provide a statement to this Commission that the refund and credit was made within 30 days of this order becoming final.

Conclusion

East Marion shall refund \$824, with interest, to Ms. Gregorio, \$527, with interest, to Angela and Dennis Fountain, and \$45, with interest, to Mr. Will. In addition, East Marion shall credit \$37 to Mr. Will's bill. Finally, the utility shall provide a statement to this Commission that the refunds and credit have been made within 30 days of this order becoming final.

DECLINING TO INITIATE SHOW CAUSE

Charging Rates Outside Its Tariff

A utility may only charge rates and charges that have been approved by the Commission pursuant to Section 367.081, F.S. In addition, Rule 25-30.135(2), F.A.C., provides that, "[n]o utility may modify or revise its rules or regulations or its schedules of rates and charges until the utility files and receives approval from the Commission for any such modification or revision."

As previously discussed, East Marion has overcharged a number of customers. Ms. Mabelle Gregorio paid a total of \$894, and the Fountains paid \$597 to have an irrigation meter installed; however, the utility's tariff contains a meter installation charge of \$70.00. In response to a request for an explanation from the utility, Mr. Hein stated that he disagrees that the utility has to provide an irrigation meter for \$70.00 for several reasons: Mr. Hein believes that (1) the \$70.00 meter installation fee is correct only for household use with the appropriate gallonage charge for water and sewer; (2) the customer qualifies for this rate only after paying the appropriate contribution in aid of construction (CIAC) fees; (3) the fee is based on the cost of installation in 1987; (4) there is no way to install an irrigation meter to the existing piping or valving that is currently in existence; (5) the utility would have a considerable loss if it were required to charge only \$70.00; and (6) the utility's rates were developed based on irrigation demand.

While we do not dispute that the actual cost for the installation of an irrigation meter may exceed \$70.00, the utility may only collect the rates and charges that have been approved by this Commission. It is the utility's responsibility to request an increase in charges that it believes are insufficient. Although Mr. Hein's letter of November 30, 2007, requests that the utility be given 30 days to provide documentation as the actual cost of installing an irrigation meter and to amend its tariff, the utility has not provided that information to date.

Mr. Terry Will was required to pay a customer deposit of \$141.00, a disconnection fee of \$50.00, and a reconnection fee of \$10.00 subsequent to his service being discontinued on September 28, 2007. Mr. Hein responded to Mr. Will's complaint by fax on January 18, 2008. In his response, Mr. Hein stated that the Commission staff established a deposit in the amount of \$141 during the utility's staff-assisted rate case. In addition, he stated that the violation reconnection fee is \$15.00 for water and the actual cost incurred by the utility for wastewater, making the total \$60.00 for a violation reconnection.

Rule 25-30.311(7), F.A.C., provides that a utility may require a new deposit, where previously waived, in an amount not to exceed the average actual charge for water and wastewater for two billing periods for the prior 12 months. The \$141 customer deposit referred to by Mr. Hein is for new customers who have not yet received service from the utility. Mr. Will's bills for water and wastewater service for June through September 2007, ranged from \$35.55 to \$51.93. Therefore, it appears that Mr. Will's deposit should not have exceeded approximately \$104.00.

The utility's approved violation reconnection charge is \$15.00 for water. The tariff specifies that if both water and wastewater services are provided, only a single charge is appropriate unless circumstances beyond the control of the company requires multiple actions. The utility does not have an approved disconnection fee for water or wastewater service. Therefore, it appears that Mr. Will should only have been charged \$15.00 to reconnect his water and wastewater service after it was disconnected.

In addition to collecting meter installation fees, customer deposits, and violation reconnection charges in excess of those approved by this Commission, the utility has revised its

application form to reflect information and charges that have not been approved by us. The revised application form provides that service may be disconnected after 48 hours notice for a returned check, and after two returned checks, bills must be paid in cash or money order only; however, there is no provision in our rules or the utility's tariff to require payment in cash or by money order only as a result of returned checks. The form also reflects a reconnection charge of \$50.00 during regular hours and \$80.00 after regular hours.

In his November 30, 2007, response, Mr. Hein stated that he had not yet ascertained when or why the revised application was used. He stated that the application was provided to the customer by a management company that had been hired, that he would try to make a determination as to when the application started being used, and make sure that the correct application is used in the future.

Unresponsiveness to Staff Requests

Pursuant to Rule 25-22.032(6)(b), F.A.C., concerning customer complaints:

[t]he company shall make direct contact with the customer verbally or in writing and provide to the customer its response to the complaint within 15 working days after the Commission staff sends complaint to the company. Responses sent by mail must be postmarked within the 15 working day time period. The company shall also provide to the Commission staff, within 15 working days after the Commission staff sends the complaint to the company, a written response to the customer's complaint.

In addition, Rule 25-22.032(6)(e), F.A.C., provides that:

[t]he company shall respond in 7 working days to each subsequent request by staff after the initial company responses. If a complete response cannot be provided in the 7 working days, the company shall provide an update regarding the response every 15 working days until the response is completed.

Ms. Gregorio filed her complaint regarding the irrigation meter on February 14, 2007, and a response from Mr. Hein was requested by March 1, 2007. When no response was received, a second request was made on March 19, 2007, giving Mr. Hein until April 9, 2007 to respond. Mr. Hein's response to the complaint was received on April 11, 2007. The complaint was transferred from consumer affairs to ECR on April 20, 2007. From May through August, 2007, our staff contacted Mr. Hein and Ms. Gregorio by phone in an attempt to resolve the complaint. On September 6, 2007, a letter was sent to Mr. Hein requesting a response by October 8, 2007; however, no response was received.

On October 2, 2007, Mr. Hein was faxed a copy of the complaint from the Fountains; however, no response was received. A certified letter was sent to Mr. Hein on October 17, 2007, requesting responses to both Ms. Gregorio and the Fountains' complaints by October 30, 2007. The certified letter was returned. A second certified letter and a fax regarding the complaints

were sent to Mr. Hein on November 15, 2007; however, the certified letter was returned. Mr. Hein's response to the complaints was received by fax on November 30, 2007.

On December 19, 2007, Mr. Hein was sent a copy of Mr. Will's complaint and a response was requested by January 4, 2008. Mr. Hein's faxed response was received on January 18, 2008.

During this time period, at the request of our technical staff, an audit of Mr. Hein's books and records was initiated to review the utility's collection of service availability charges and other fees for the period January 1, 2005, through October 15, 2007. A certified letter and a fax were sent to Mr. Hein on October 26, 2007, notifying him of the audit and requesting that Mr. Hein contact staff. The certified letter was signed for, but returned to the Commission unopened. On November 1, 2007, a second certified letter was sent to Mr. Hein regarding the audit and requesting a response by November 15, 2007. Only after several rounds of letters and phone calls did Mr. Hein contact staff on December 21, 2007, to discuss the audit. Our staff has made and received several subsequent phone calls and phone messages regarding information that should be provided and still has not received any information. Our staff has consistently used the contact information provided by the utility in corresponding with the utility.

In his November 30, 2007, letter, Mr. Hein addressed our staff's efforts to contact him. Mr. Hein indicated that on several occasions he had responded and the response was not properly acknowledged or filed correctly. As to the certified letter requesting audit information that was returned to the Commission marked return to sender, refused, Mr. Hein stated that "this must have been done by the mail service," and "there are times that I am not available currently and I do not have as large of staff available as the PSC."

Rule 25-30.110(2), F.A.C., provides that, "[t]he utility shall also furnish the Commission with any information concerning the utility's facilities or operation that the Commission may request and require for determining rates or judging the practices of the utility." Section 367.156(1), F.S., provides that the Commission shall continue to have reasonable access to all utility records and records of affiliated companies. In addition, Rule 25-30.145(2), F.A.C., states:

Reasonable access means that company responses to audit requests for access to records shall be fully provided within the time frame established by the auditor. In establishing a due date, the auditor shall consider the location of the records, the volume of information requested, the number of pending requests, the amount of independent analysis required, and reasonable time for the utility to review its response for possible claims of confidentiality or privilege.

Subsection (3) of the same rule sets forth the process to be invoked by the utility if it is unable to reach agreement with the auditor on what is a reasonable response time to the auditor's requests.

Analysis and Decision

Utilities are charged with the knowledge of our rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), F.S., authorizes us to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S., or any lawful rule or order of the Commission. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "willful" implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." *Id.* at 6.

As previously discussed, our staff identified apparent violations by the utility of Sections 367.081(1) and 367.156(1), F.S., and Rules 25-22.032(6), 25-30.110, 25-30.135(2), 25-30.145, and 25-30.311(7), F.A.C.; however, we decline to initiate show cause proceedings at this time. As noted, Mr. Hein has agreed to make the required refunds and credits. However, the utility shall be on notice that failure to comply with our orders, rules, or statutes may subject the utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, F.S. Further, the utility shall only charge its approved rates and charges and use the forms in its tariff until authorized to change by this Commission in a subsequent proceeding.

Rule 25-30.110(1)(b), F.A.C., requires each utility to maintain its records at the office or offices of the utility within this state and to keep those records open for inspection during business hours by Commission staff. Furthermore, Rule 25-30.115, F.A.C., requires all water and wastewater utilities to maintain their accounts and records in conformance with the 1996 National Association of Regulatory Utility Commissions, Uniform System of Accounts (NARUC USOA). Accounting Instruction 2.A. and 2.B. of the NARUC USOA for Class C utilities states:

- A. The books of accounts of all water utilities shall be kept by the double entry method, on an accrual basis. Each utility shall keep its accounts monthly and shall close its books at the end of each calendar year.
- B. All books of accounts, together with records and memoranda supporting the entries therein, shall be kept in such a manner as to support fully the facts pertaining to such entries.

We are concerned that the utility has been unresponsive to customer complaints and staff audit requests. Therefore, East Marion shall send to the Commission audit staff, within 30 days of this order becoming final, the following documentation:

1. General ledgers for the years 2005, 2006, and through October 15, 2007.
2. Details of other revenues for the years 2005, 2006, and through October 15, 2007.
3. Customers bills that support the other revenues for the years 2005, 2006, and through October 15, 2007.

Further, the utility shall be on notice that failure to comply with our orders, rules, or statutes may subject the utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, F.S.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that East Marion Sanitary Systems, Inc. shall refund \$824, with interest, to Ms. Mabelle Gregorio. It is further

ORDERED that East Marion Sanitary Systems, Inc. shall refund \$527, with interest, to Angela and Dennis Fountain. It is further

ORDERED that East Marion Sanitary Systems, Inc. shall refund \$45, with interest, to Mr. Terry Will and credit \$37 to his bill. It is further

ORDERED that East Marion Sanitary Systems, Inc. shall make the refunds within 30 days of the date of this Order becoming final. It is further

ORDERED that East Marion Sanitary Systems, Inc. shall provide a statement to this Commission that the refunds and credit have been made within 30 days of this Order becoming final. It is further

ORDERED that East Marion Sanitary Systems, Inc. shall provide its ledgers and customer bills, as set forth herein, within 30 days of this Order becoming final. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no timely protest is received to the issues regarding the rates and charges, the Order will become final upon the issuance of a Consummating Order. It is further

ORDER NO. PSC-08-0182-PAA-WU
DOCKET NO. 080064-WU
PAGE 10

ORDERED that this docket shall remain open to verify that the refunds have been made and the audit information has been filed. Upon verification that the refunds have been made and the audit information has been filed, the docket shall be administratively closed.

By ORDER of the Florida Public Service Commission this 25th day of March, 2008.



ANN COLE
Commission Clerk

(S E A L)

KEF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action, except for our decision declining to initiate show cause proceedings, is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 15, 2008. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Any party adversely affected by the Commission's procedural or intermediate action in this matter may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

02/8/07 Ms. Gregorio paid \$597 for irrigation meter

02/14/07 Ms. Gregorio filed complaint re installation of meter
Response from Mr. Hein requested by 3/1/07

03/19/07 Response from Mr. Hein requested by 4/9/07

04/11/07 Response received from Mr. Hein indicating no record of payment or
contact by Ms. Gregorio re meter installation

05/01/07 Staff contacted Mr. Hein by phone, Mr. Hein requested meter installation
application from Ms. Gregorio
Staff contacted Ms. Gregorio re need for meter installation application,
she stopped payment on \$597 check

05/03/07 Call from Mr. Hein, meter installation application sent to Ms. Gregorio

05/11/07 Copy of application received from Ms. Gregorio, \$497 paid to utility for
meter installation

05/00/07 Mr. Hein requested additional \$100 and later requested new application
for meter installation with social security number and additional \$597
Ms. Gregorio paid \$100 and \$597, \$497 check returned to Ms. Gregorio

06/15/07 Mr. Hein requested additional \$197 from Ms. Gregorio
Ms. Gregorio paid \$197

06/19/07 Ms. Gregorio irrigation meter installed (total \$894 paid)

09/06/07 Staff letter to Mr. Hein requesting response due by 10/08/07

10/02/07 Mrs. Fountain filed complaint re installation of irrigation meter

10/05/07 Complaint faxed to Mr. Hein, response due 10/23/07

10/17/07 Certified letter sent to Mr. Hein regarding complaints, response due
10/30/07, certified letter returned
Staff letter to Mr. Hein initiating audit

10/26/07 Certified letter and fax re audit requests sent to Mr. Hein, letter signed for
but returned unopened

11/01/07 Certified letter re audit sent to Mr. Hein

11/15/07 Certified letter and fax to Mr. Hein requesting response by 11/30/07, certified letter returned

11/30/07 Response received from Mr. Hein regarding the complaints

12/17/07 Staff letter to Mr. Hein requesting additional response by 12/21/07 re complaints
Complaint filed by Mr. Will re disconnection, charges, and deposit

12/19/07 Staff letter to Mr. Hein re Mr. Will complaint, response due 1/4/08

12/21/07 Mr. Hein called staff re 12/17/07 staff letter

01/18/08 Response from Mr. Hein re Mr. Will complaint

02/06/08 Staff letter to Mr. Hein re Mr. Will complaint, response due 2/14/08

02/14/08 Response received from Mr. Hein regarding Mr. Will's complaint

TIME RECEIVED
June 14, 2010 4:08:05 PM EDT

REMOTE CSID
1 352 726 0547

DURAT
39

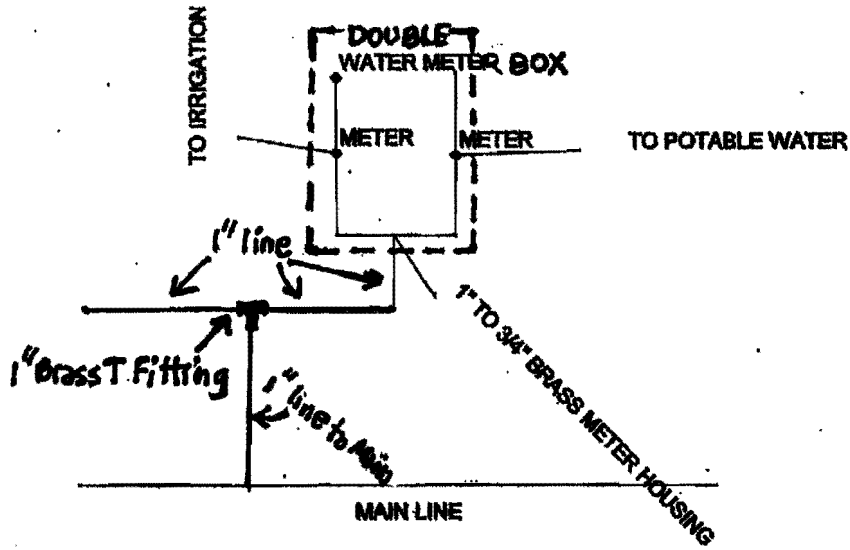
Exhibit "A"
Page 3 of 3

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(FA) 1000 1000 1000

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Mil



TO: Steve Rully		
FROM: Mike Sutherland		
DATE: 6/14/2010	SCALE: 1" = 75'	DRAWN BY:

evidence
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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 Smallridge 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. Future irrigation meter installations will require the more expensive installation and payment of the newly approved higher irrigation service line installation charges.

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

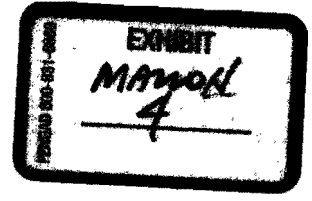
1.	1" Brass "T" fitting	\$ 9.00
2.	3/4" - 1" Brass double branch w/ curb stops (Sunstate)	\$ 80.00
3.	5/8" x 3/4" Senus manual read meter	\$ 41.00
4.	Plastic double meter box with lid (Sunstate)	\$ 32.00
5.	Miscellaneous schedule 40 drinking water PVC 1" & 3/4" pipes and fittings	\$16.00
6.	Labor and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

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EAST MARION SANITARY SYSTEMS, INC.,)
)
 Petitioner,)
)
 vs.) Case No. 12-0909
)
 PUBLIC SERVICE COMMISSION,)
)
 Respondent.)
 _____)

evidence
4

REC'D



RESPONDENT'S FIRST REQUEST FOR ADMISSIONS TO
EAST MARION SANITARY SYSTEMS, INC. (NOS. 1-21)

Respondent, Florida Public Service Commission, by and through its undersigned attorney, propounds the following request for admissions, pursuant to Rule 1.370, Florida Rules of Civil Procedure, to East Marion Sanitary Systems, Inc. (East Marion). This request for admission shall be answered under oath by you or your agent, who is qualified and who will be identified, with the answer being served as provided by the Rules of Civil Procedure. The answer to the request for admission shall admit or deny the truth of the facts set forth below, or provide a detailed explanation of why the truth of the facts cannot be admitted or denied. The answer shall be signed by the person making it.

Give the name, address and relationship to East Marion of those persons providing the answer to the following request for admission.

Please note: Unless you return your answer or objection to each of the requested admissions within 30 days from receipt, the matter will be deemed admitted in accordance with Rule 1.370, Florida Rules of Civil Procedure.

RESPONDENT'S FIRST REQUEST FOR ADMISSIONS TO
EAST MARION SANITARY SYSTEMS, INC. (NOS. 1-21)
DOAH CASE NO. 12-0909
PAGE 4

5. Admit that East Marion installed an irrigation meter for Dennis Smith.

6. Admit that East Marion installed an irrigation meter for Joseph M. Singel.

RESPONDENT'S FIRST REQUEST FOR ADMISSIONS TO
EAST MARION SANITARY SYSTEMS, INC. (NOS. 1-21)
DOAH CASE NO. 12-0909
PAGE 5

7. Admit that East Marion installed an irrigation meter for David Greco.

8. Admit that East Marion installed an irrigation meter for Earl Turner.

RESPONDENT'S FIRST REQUEST FOR ADMISSIONS TO
EAST MARION SANITARY SYSTEMS, INC. (NOS. 1-21)
DOAH CASE NO. 12-0909
PAGE 7

11. Admit that the document attached to this Request for Admissions as Exhibit B, is a true and correct copy of the testimony of Terry M. Will filed in Docket No. 080562-WU on April 19, 2010.

12. Admit that the document attached to this Request for Admissions as Exhibit C is a true and correct copy of the testimony of Millicent Mallon filed in Docket No. 080562-WU on April 19, 2010.

RESPONDENT'S FIRST REQUEST FOR ADMISSIONS TO
EAST MARION SANITARY SYSTEMS, INC. (NOS. 1-21)
DOAH CASE NO. 12-0909
PAGE 8

13. Admit that a utility's rates and charges must be contained in a tariff approved by the Commission.

14. Admit that a utility may only charge rates and charges that are approved by the Commission.

RESPONDENT'S FIRST REQUEST FOR ADMISSIONS TO
EAST MARION SANITARY SYSTEMS, INC. (NOS. 1-21)
DOAH CASE NO. 12-0909
PAGE 9

15. Admit that prior to the issuance of Commission Order No. PSC-09-0263-TRF-WU, issued April 27, 2009, in Docket No. 080562-WU East Marion's Tariff charged the amount of \$70.00 for installation of an irrigation meter.

16. Admit that East Marion did not request that the Commission approve a change to its Tariff charges for installation of irrigation meters prior to August 19, 2008.

17. Admit that Mallon requested an irrigation meter by letter dated January, 11 2008.

18. Admit that Will requested an irrigation meter by letter dated March 16, 2008.

19. Admit that prior to April 27, 2009, a notice was placed on the locked community bulletin board located at the East Marion office stating that no irrigation meters will be put in place until the new rates go into effect.

20. Admit that on September 26, 2008, Mr. Herbert Hein left a voice mail message to Commission staff regarding Mr. Greco and the installation of irrigation meters.

21. Admit that the following statement is a true and correct transcription of the 9/26/08 voice mail message left by Mr. Hein to Commission staff:

“Yes, Herbert Hein returning your call regarding David Greco. I’ve spoken to Mr. Greco, I guess I’m wondering, just recently, I’m just wondering when he called in again. If you would call and let me know that information I would appreciate it. And as my written reply indicated, I’m in the middle of asking for an irrigation meter tariff and until that is approved I am not installing irrigation meters. Thank you. Bye.”

s:\ Martha F. Barrera
MARTHA F. BARRERA
STAFF COUNSEL
FLORIDA PUBLIC SERVICE COMMISSION
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Telephone: (850) 413-6212

AFFIDAVIT

STATE OF _____)

COUNTY OF _____)

I hereby certify that on this _____ day of _____, 2012, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared _____, who is personally known to me, and he/she acknowledged before me that he/she provided the answers to request for admissions number(s) _____ from RESPONDENT'S FIRST REQUEST FOR ADMISSIONS TO EAST MARION SANITARY SYSTEMS, INC. (NOS. 1-21) in Case No. 12-0909, and that the responses are true and correct based on his/her personal knowledge.

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this _____ day of _____, 2012.

Notary Public
State of _____, at Large

My Commission Expires:

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EAST MARION SANITARY SYSTEMS, INC.,)
)
 Petitioner,)
)
 vs.) Case No. 12-0909
)
 PUBLIC SERVICE COMMISSION,)
)
 Respondent.)
 _____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a correct copy of RESPONDENT'S FIRST REQUEST FOR ADMISSIONS TO EAST MARION SANITARY SYSTEMS, INC. (NOS. 1-21) in Case No. 12-0909, was furnished by telephone facsimile to Herbert Hein, East Marion Sanitary Systems, Inc., fax number 810-733-8048, and by electronic mail to Millicent Mallon, millicentmallon@earthlink.net, Terry Will, Terry99wi@aol.com, and Mike Smallridge, Mike Smallridge Utility Consultant, utilityconsultant@yahoo.com, on this 9th day of April, 2012.

s:\ Martha F. Barrera
MARTHA F. BARRERA
STAFF COUNSEL
FLORIDA PUBLIC SERVICE COMMISSION
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Telephone: (850) 413-6212

COMMISSIONERS:
MATTHEW M. CARTER II, CHAIRMAN
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

STATE OF FLORIDA



TIMOTHY DEVLIN, DIRECTOR
DIVISION OF ECONOMIC REGULATION
(850) 413-6900

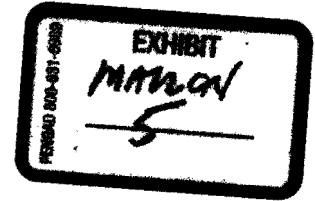
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08 SEP 16 AM 8:16
COMMISSION
CLERK

Public Service Commission

September 15, 2008

Mr. Herbert Hein, President
East Marion Sanitary Systems Inc.
G4225 Miller Road #190
Flint, Michigan 48507



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

Dear Mr. Hein:

Staff has reviewed the above-reference application filed on behalf of East Marion Sanitary Systems Inc (East Marion). Listed below are the deficiencies and the additional information needed to complete staff's review of the application.

Deficiencies and Additional Information

1. Water Tariff and Wastewater Tariff - Revised Sheet No. 19.0 should be First Revised Sheet No. 19.0
Cancels Original Sheet No. 19.0
2. The address listed on the top of the sheet is the local address. When you installed the irrigation meters previously you had the customers send the application to your Michigan address. Is the address listed on top correct?
3. Please explain why you are requiring the applicant's social security number.
4. Please explain why you are requiring the applicant's Drivers License number.
5. The statement "Bills are considered late 20 days after the billing date and must be paid no later than the 20th of every month." is not consistent with Rule 25-30.335(4), Florida Administrative Code, which states that a utility may not consider a customer delinquent in paying his or her bill until the 21st day after the utility has mailed or presented the bill for payment. If the bills are not mailed on the last day of the each month, this could affect the timing as to when the bills need to be paid. Please revise to be consistent with the Rule.
6. The statement "Customers are notified 5 days before disconnection on delinquent accounts, and 48 hours before disconnection on returned checks." is not consistent with the Rule 25-30.320(2)(g), F.A.C., which states that for nonpayment of bills, including nonpayment of municipal sewer service under circumstances specifically provided in Section 159.18(2), F.S., or

DOCUMENT NUMBER-DATE
08680 SEP 16 08
FPSC-COMMISSION CLERK

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

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Internet E-mail: contact@psc.state.fl.us

Mr. Hein, President
Page 2
September 15, 2008

noncompliance with the utility's rules and regulations in connection with the same or a different type or a different class of utility service furnished to the same customer at the same premises by the same or affiliated utility only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customers. Such notice shall be separate and apart from any bill for service. For purposes of this subsection, "working day" means any day on which the utility's office is open and the U.S. Mail is delivered. A utility shall not, however, refuse or discontinue service for nonpayment of a dishonored check service charge imposed by the utility. Please revise to be consistent with the Rule.

7. The statement "There is a \$25.00 charge for returned checks, plus any additional charges assessed to us by the bank (cash, cashiers check or money order only on returned checks)." Please provide a copy of the bank charge of \$25.00 for returned checks. Please explain what additional charges are assessed by the bank and provide copies of these charges. Typically the tariff does not allow the charges to fluctuate and the exact charge needs to be identified in the tariff.

8. East Marion's monthly rates are listed on this sheet. However, the monthly rates change with an index, pass through or rate case. This would then require Sheet No. 19.0 to be updated constantly. We do not believe that the monthly rates should be listed on this sheet. A reference to the appropriate tariff sheet would be more appropriate.

9. The list of charges is not consistent with language in your tariff. A new customer, who purchases an existing home would only pay an Initial Connection Fee and the Deposit. We recommend the following:

Initial Connection Fee:
Deposit:
Meter Installation Fee:
Water Main Extension Charge:
Water Plant Capacity Charge:
Wastewater Main Extension Charge:
Wastewater Plant Capacity Charge:
Irrigation Service Installation Charge:
Irrigation Meter Installation Fee:
Total: _____

Please revise accordingly.

10. Tariff Sheet No. 17(A) should be Original Sheet No. 17.0(A)

The title should be: IRRIGATION SERVICE LINE INSTATLLATION CHARGES

The short, long and extra long should have service line after these words, because these are service lines.

The installation for short, long and extra long are for double service. Do you intend to collect the full amount of the cost of the double service from the first customer that connects and then refund a portion of that amount to the customer when the second connection is made to the same service line? Should a refundable advance be drafted, which expires in 7 years, so the

Mr. Hein, President
Page 3
September 15, 2008

customer would only pay for their share of the service? Also, we typically use the lowest price bid. Why do you have the average cost?

11. Water and Wastewater First Revised Sheet No. 16.0

Typically the Initial Connection Fee, Normal Reconnection Fee and Violation Reconnection Fee are the same price. Why is the Violation Reconnection Fee more? In addition, why is the Premise Visit Fee more than the other fees? The Premise Visit Fee should be lower, since the service is not disconnected and this service takes less time to deal with.

The staff requests that a response be received by **October 8, 2008**. Please file the requested information in this docket and address the response to the Office of the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850.

If you have any questions, please contact me at (850) 413-6999.

Sincerely,



Richard Redemann, PE
Bureau of Certification, Economics & Tariffs

C:/msword/080562a.doc

cc: Office of the Commission Clerk
Economic Regulation (Bulecza-Banks, Fletcher, Daniel, Hudson)
Office of the General Counsel (Bennett)

WDW¹

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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EAST MARION SANITARY SYSTEMS,)	
INC.,)	
)	
Petitioner,)	
)	Case No. 12-0909
vs.)	Docket No. 080562-WU
)	
PUBLIC SERVICE COMMISSION,)	
)	
Respondent.)	
)	
)	

PROCEEDINGS: HEARING

TAKEN AT THE
INSTANCE OF: The Staff of the Florida
Public Service Commission

DATE: June 12, 2012

TIME: Commenced at 9:11 a.m.
Concluded at 12:15 p.m.

PLACE: Marion County Courthouse
Hearing Room 2A
110 Northeast First Avenue
Ocala, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

12 JUN 19 PM 2:45
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APPEARANCES:

TERRY WILL, 1385 Northeast 130th Terrace, Silver Springs, Florida 34488, appearing pro se.

MILLICENT MALLON, 1075 Northeast 130th Terrace Silver Springs, Florida 34488, appearing pro se.

MARTHA F. BARRERA and LISA C. BENNETT, ESQUIRES, Office of the General Counsel, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Florida Public Service Commission.

I N D E X

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13	PSC/Mallon-5	Direct Testimony of Terry M. Will	30 30
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16			
17	PSC/Mallon-8	Order Approving Settlement Agreement	33 33
18	PSC/Mallon-9	Hein Protest of Order	34 34
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P R O C E E D I N G S

1
2 **THE COURT:** We are here in Ocala, Florida,
3 Marion County, in the matter of East Marion Sanitary
4 Systems, Incorporated, versus Public Service Commission,
5 Case Number 12-0909.

6 My name is W. David Watkins. I'm the assigned
7 Administrative Law Judge of the Florida Division of
8 Administrative Hearings, and it's my job to take
9 testimony and evidence in this matter and determine the
10 issue of whether Intervenors Mallon and Will are
11 entitled to an irrigation meter at the prior tariffed
12 rate.

13 At this time, let me have counsel enter their
14 appearances, beginning with counsel for Respondent.

15 **MS. BARRERA:** Martha Barrera, attorney for
16 Public Service Commission.

17 **MS. BENNETT:** Lisa Bennett, attorney for the
18 Florida Public Service Commission.

19 **THE COURT:** All right. Are there any
20 attorneys here on behalf of Petitioner, East Marion
21 Sanitary Systems, Incorporated?

22 (No response.)

23 Any representatives?

24 **MR. SMALLRIDGE:** Mike Smallridge.

25 **THE COURT:** All right. Mr. Smallridge, I

1 understand you're not an attorney.

2 **MR. SMALLRIDGE:** Yes, sir, that's correct.
3 I'm not an attorney.

4 **THE COURT:** Okay. All right. Who are the
5 other folks that we have in the room? Are they
6 witnesses?

7 **MS. BARRERA:** Judge, with us are Bart Fletcher
8 and James McRoy. They are witnesses for the Commission.

9 **THE COURT:** All right. And, ma'am, what is
10 your name?

11 **MS. MALLON:** I am Millicent Mallon, and I am
12 the Intervenor, I suppose, is what our, our titles are.

13 **THE COURT:** Okay. You're one of the folks
14 seeking to have your meter connected.

15 **MS. MALLON:** Yes. I'm a resident of Lakeview
16 Woods.

17 **THE COURT:** All right. Sir, what is your
18 name?

19 **MR. WILL:** My name is Terry Will. I'm an
20 Intervenor.

21 **THE COURT:** All right. And are either of you
22 attorneys?

23 **MR. WILL:** No.

24 **MS. MALLON:** No.

25 **THE COURT:** Okay. That's fine.

1 **MR. WILL:** If now is the time, I'd like to
2 protest the representation of East Marion with,
3 respectfully, Mr. Smallridge. I don't think he's
4 qualified and he doesn't think he's qualified.

5 **THE COURT:** Okay. Well, I don't know at this
6 point what his role in this proceeding might be. We'll
7 ascertain that as we go along.

8 **MR. WILL:** Very good.

9 **THE COURT:** And your objection is noted.

10 All right. Are there any preliminary on the
11 record matters we need to deal with?

12 **MS. BARRERA:** Judge, the Commission has a
13 motion to deem the admissions that we served on East
14 Marion admitted. They were served and East Marion did
15 not respond to them at all.

16 We were -- the admissions, our request for
17 admissions were faxed to Mr. Hein on April 9th, 2012, at
18 2:34 p.m., and we received no response, no phone call,
19 no e-mail, no fax, absolutely no response.

20 We had served Mr. Hein with also a request for
21 production, interrogatories, first and second request
22 for production and interrogatories, and he also did not
23 respond to those. And at this point, of course, it's
24 too late, but we're mentioning it at this point because
25 we want to advise you that we have received no contact

1 whatsoever from Mr. Hein, who is the owner and operator
2 of East Marion.

3 And we did schedule a meeting at which --
4 telephone conference at which Mr. Mallon -- Ms. Mallon
5 and Mr. Will attended. And Mr. Hein basically, his
6 assistant advised my assistant that he wasn't going to
7 attend the telephone call, the teleconference. So
8 that's where we are on that.

9 **THE COURT:** All right. Let me ask you,
10 Mr. Smallridge, Mr. Hein contacted you and requested
11 that you be here as his representative today?

12 **MR. SMALLRIDGE:** He did not use the word
13 "representative." He, he asked me if -- he asked me to
14 deliver a message to you.

15 **THE COURT:** Okay.

16 **MR. SMALLRIDGE:** And that was the only thing
17 that he asked me. He asked me to be here and tell the
18 judge --

19 **THE COURT:** Okay. Is this a good time for you
20 to deliver the message to me?

21 **MR. SMALLRIDGE:** Yeah. His message was that
22 he wanted to let the Court know that he was going to
23 employ my company to put these meters in for these
24 folks. I had talked to him about this several weeks ago
25 because my company is going to be up there putting in

1 other meters. And the conversation was I'm going to be
2 in the neighborhood, we have the parts, let's go ahead
3 and put them in.

4 And when this process started, then he
5 realized that he wasn't prepared or wasn't going to be a
6 part of it, he instructed me to go ahead and put these
7 meters in for these folks.

8 So the message is he has, he has employed me
9 to install these meters. That's the message. What you
10 do from there is --

11 **THE COURT:** Okay. Was there any -- and my
12 understanding of this case is that it boils down to are
13 these folks entitled to have their meters put in at the
14 prior rate, or is the new rate applicable to their
15 meters? Am I correct in that understanding?

16 **MR. SMALLRIDGE:** Yes, sir. That's the way I
17 understand it.

18 **THE COURT:** Ms. Barrera, is that correct?

19 **MS. BARRERA:** Yes, sir.

20 **THE COURT:** All right. Now is Mr. Hein saying
21 that he's going to instruct you to install them at the
22 prior tariffed rate, or was there any part of the
23 message that you were instructed to deliver, did that
24 relate at all to the cost of installing these meters?

25 **MR. SMALLRIDGE:** The best way I can answer

1 your question, Judge, is that he didn't give me any
2 particular instructions to exactly what you're saying.
3 But what I can tell you is that the basic cost for me to
4 go up there and install those meters is going to be more
5 than what, what the tariff, what the discussion is about
6 today.

7 **THE COURT:** All right. Ms. Barrera, what I'm
8 grappling with here is is there, have there been
9 discussions about resolving this matter without the
10 necessity of hearing and have those been fruitless? Is
11 this news to you?

12 **MS. BARRERA:** At this point this is news to
13 us. We have not spoken to Mr. Hein. He has not
14 approached us in any way.

15 What we do know, excuse me, is that he has yet
16 to install the meters for the persons who were, he was
17 ordered to by the Commission when they entered into an
18 agreement. You know, he has contested the fact that
19 Ms. Mallon and Mr. Will are, are entitled to those
20 meters at that rate. So I don't know that we would
21 say -- the Commission's position would be that we have
22 not arrived at a settlement.

23 **THE COURT:** Okay. Then we'll push on.

24 Mr. Smallridge, do you have any connection,
25 legal connection with East Marion Sanitary Systems,

1 Incorporated? Are you, are you an employee? Is your
2 company under contract to them? Is there -- what is the
3 nexus between yourself and East Marion Sanitary Systems,
4 Incorporated, other than Mr. Hein asking you to be here
5 today?

6 **MR. SMALLRIDGE:** My connection is several
7 years ago Mr. Hein, who does not live here, he lives in
8 Michigan, contacted my company to do his billing for
9 him. And so what that means is that we read the meters,
10 we prepare the bills, we send the bills to the
11 customers. When the, when the customers send in their
12 payments, they're processed, we deposit them in the
13 bank, into his bank account. That's the extent.

14 I have occasionally, because I'm probably
15 about the only guy close that, that deals with this
16 system, I have occasionally, upon his request, went to
17 the system and, you know, checked, checked about a
18 broken pipe that may have happened or an issue with a
19 sewer plant or a water plant. That's very rare. That's
20 happened two or three times in the last several years.
21 I do that as kind of a courtesy.

22 We were under a contractual obligation for the
23 first two years. That contract has since expired and
24 we're just kind of rolling along. There's no, currently
25 no written agreement, so.

1 **THE COURT:** All right. So as of today you're
2 not holding yourself out to the court as an employee or
3 agent of East Marion Sanitary Systems; is that correct?

4 **MR. SMALLRIDGE:** Yes, sir.

5 **THE COURT:** All right. Do either of the
6 Intervenor want to be heard on the PSC motion to deem
7 admitted its request for admissions and motion to
8 compel?

9 **MR. WILL:** Yes, I think so. I don't know what
10 that means.

11 **THE COURT:** Go ahead, Mr. Will.

12 **MR. WILL:** I don't know what that means.

13 **THE COURT:** All right. The Public Service
14 Commission, under the *Rules of Civil Procedure*, when,
15 when documents that are referred to as discovery are
16 served on opposing parties, they have a certain amount
17 of time, in the case of admissions and requests for
18 production and interrogatories, 30 days to respond in
19 writing to that discovery. And according to
20 Ms. Barrera, there has been no response from Petitioner
21 to any of that discovery.

22 And of particular import is the motion to deem
23 admitted those matters that were set forth in the
24 request for admissions. And if I grant the motion, that
25 will conclusively establish the truth of the statements

1 or the propositions set forth in the request for
2 admissions. So it's an important matter.

3 Do you have any, any personal knowledge as to
4 why East Marion Sanitary Systems has not responded to
5 the discovery that was propounded by the Public Service
6 Commission? Do you know anything about that? That's
7 all that's really important to me.

8 **MR. WILL:** Do we -- if I understand you
9 correctly, the PSC asked East Marion to, to give some
10 information and there was no response from East Marion.
11 And I think you're asking me do I know anything about
12 that?

13 **THE COURT:** Precisely.

14 **MR. WILL:** I don't. I don't know why they
15 didn't respond, other than that's typical for East
16 Marion to not respond to, to any communication. I think
17 PSC can verify that. It's been documented in several
18 occasions through not only this docket but other
19 dockets, case numbers that he has refused to respond.

20 Would you find that to be true, Ms. Bennett?

21 **MS. BARRERA:** At this point our Commission's
22 position is that in this case with these admissions we
23 did not receive a response.

24 **THE COURT:** All right. I want to clarify for
25 the record where we are with Mr. Smallridge.

1 Mr. Smallridge, this is just for your
2 information, and you may want to communicate it to
3 Mr. Hein, if you have the opportunity.

4 The Florida rule -- the Florida Division of
5 Administrative Hearings has adopted rules for persons,
6 nonlawyers who may be permitted to appear at formal
7 administrative proceedings, and those criteria are set
8 out at Rule 28-106.106, *Florida Administrative Code*.

9 In order to be designated as a corporate -- as
10 a qualified representative under the rule, a motion must
11 be filed including an affidavit. And I don't have
12 before me a motion to accept anyone as a qualified
13 representative. So absent such a motion, I cannot
14 accept anyone as a qualified representative. So I'm
15 treating your presence as an interested observer, not as
16 a qualified representative.

17 All right. I am granting the motion to deem
18 matters admitted because I am not hearing any reasons on
19 behalf of the Petitioner why responses were not timely
20 served to the request for admissions. So that motion is
21 granted.

22 As to the motion to compel, the response time
23 to your motion expired yesterday at 5:00, Ms. Barrera.

24 **MS. BARRERA:** Yes, sir.

25 **THE COURT:** So we're here today and I think

1 it's water under the bridge in terms of compelling that.
2 discovery at this point.

3 **MS. BARRERA:** Yes, sir.

4 **THE COURT:** But I'm granting your motion to
5 deem matters admitted.

6 **MS. BARRERA:** Thank you.

7 **THE COURT:** All right. Ms. Barrera, what is
8 your position as to who bears the burden of proof in
9 this proceeding?

10 **MS. BARRERA:** Judge, the Intervenors, with
11 their protest, bear the burden of proof in these
12 proceedings, and so would East Marion.

13 Essentially what the Commission's order was is
14 another, it's a notice of intended agency action, even
15 those it's titled Order. It's subject to what we call a
16 protest request for hearing. So, otherwise, if no one
17 requests a hearing otherwise, a consummating order is
18 issued which would be the agency final order in, in our
19 proceedings.

20 So at this point there's that order pending
21 out there. There has been three protests to that order,
22 beginning with Mr. Hein -- I mean, with East Marion,
23 Mr. Will, and Ms. Mallon. So we're here to essentially
24 defend the order.

25 However, if I may, the Commission has no, no

1 diverse opinion as to this agreement with Ms. Mallon or
2 Mr. Will. We agree that they filed letters. They
3 requested the meter installation prior to April 7th of
4 2009. Mr. Will and Ms. Mallon both filed testimony,
5 what we call written testimony in the proceedings that
6 gave rise to this case and before the Commission. Both
7 their testimony contain letters that, to the utility
8 requesting the meters. And that is part of our exhibits
9 in this case, and it's also contained in the admissions
10 that, that have been deemed admitted. So they are
11 conclusive facts. We have no disagreement.

12 At the hearing that gave rise to the order,
13 several other customers entered into an agreement with
14 the utility that they would obtain their meter -- I
15 mean, their irrigation meters for \$70, that he would
16 install them for \$70, and East Marion agreed.
17 Ms. Mallon and Mr. Will did not sign the agreement and
18 so -- and filed a protest. So that's the, why we're
19 here at this point in time.

20 **THE COURT:** All right. So it's the PSC's
21 position that Mr. Will and Ms. Mallon are entitled to
22 have their meters installed at the prior tariffed rate?

23 **MS. BARRERA:** Yes. Yes, sir.

24 **THE COURT:** All right. So you're aligned with
25 Intervenors.

1 **MS. BARRERA:** Yes, sir. And if I could add --

2 **THE COURT:** Yes. Go ahead.

3 **MS. BARRERA:** -- two more comments. The
4 Commission's order, and it is the December 12, 2011,
5 order, contained two pertinent paragraphs which stated
6 that the utility must bear the burden of proving that
7 Ms. Mallon and Mr. Will did not request a meeting. And,
8 however, if the utility is unsuccessful, it will be
9 required to connect the two customers at the \$70 fee,
10 and any additional costs it incurs, the utility incurs,
11 would likely not be considered a prudent expenditure.

12 And what that means essentially is that in
13 utility proceedings when a utility makes an expenditure,
14 it can come back later on and request an increase in
15 rates based on its expenditures and, you know, that it
16 needs to recover. Since it was -- and the Commission
17 makes a finding of prudence and then approves the rates,
18 if it's proven.

19 In this situation, regardless of what it
20 costs, and we heard Mr. Smallridge saying that it would
21 cost more than \$70, regardless of what it costs, they're
22 entitled to the meter, to their meters at the \$70 rate
23 and that's all.

24 **THE COURT:** Mr. Will or Ms. Mallon, are you
25 seeking anything in this proceeding other than to have

1 your irrigation meters installed at the \$70 rate? Is
2 there something else that you're seeking to gain from
3 this proceeding?

4 **MR. WILL:** Yes. There was some question
5 regarding the installation of a, of a meter and what,
6 what that actually pertains to. There was a -- in some
7 of the documents it refers to a, it refers to an
8 irrigation meter installation as a grandfathered
9 irrigation meter. And we felt, Ms. Mallon and I both
10 felt certain that we would be granted a meter primarily
11 because of the letters we wrote prior to a drop-dead
12 date. And I think we've already concluded that that,
13 that has happened.

14 There's, there was a meter that was designed,
15 it was a meter installation that was designed by an
16 unqualified, not present person here. It was turned
17 over to the PSC, this is recollection on my part, and
18 turned over to an attorney named Steve Reilly. Between
19 Mr. Reilly and, and whoever created this grandfather
20 installation deemed it suitable for irrigation.

21 Ms. Mallon and I don't want that grandfathered
22 meter. We want the, the regular meter. That is to say,
23 we want an irrigation meter that's tapped from the main
24 source for irrigation purposes. The grandfathered meter
25 would piggyback off the residential meter. The impact

1 that the residential meter has are the irrigation on the
2 residential meter also includes a neighbor.

3 To clarify that, if you can imagine a 3- or a
4 4-inch main servicing the whole community, and from that
5 main comes a 1-inch pipe. That 1-inch pipe was
6 originally designed for each and every home. However,
7 to cut costs when the community was manufactured, when,
8 when the services went in, it was a 1-inch pipe that
9 came off of the main. And then it T'd off, that is to
10 say it was a T put in the 1-inch line that traveled a
11 distance and then went to two meters. One meter
12 serviced one lot or one home or one residence. The
13 other meter serviced, of course, the adjacent lot and
14 home. And that, again, was to, was to cut costs.

15 So the meter, the 4-inch main broke down to a
16 1-inch pipe. The 1-inch pipe was T'd off to two
17 3/4-inch meters, and then those 3/4-inch meters serviced
18 two homes. That's marginally acceptable at that time.

19 Now to take another meter off of one of those
20 residential meters and put it in for irrigation, it,
21 it -- the problem that's associated with that is,
22 unbeknownst to my neighbor, I could inadvertently
23 deplete their water supply if I ran my sprinkler system
24 that has no -- the sprinkler system that I can put in
25 has no regard for volume. I could put ten heads in the

1 front of my home at two and a half or three gallons per
2 minute per head, ten in the front and ten in the back,
3 and completely deplete my neighbor's water supply.

4 What we'd like to have is what the utility and
5 Mr. Smallridge has talked about in all of these
6 documents are the, the costs associated with an
7 irrigation meter. We don't want the grandfathered
8 meter. We want a standard irrigation meter that all of
9 the documents, five-, six hundred documents have always
10 talked about the cost in these documents. And part of,
11 part of the, the accepted information in this case,
12 there are documents that, that spell out the costs and
13 the requirements, primarily the requirements for that
14 irrigation meter. And that's what we're, that's what
15 we're here for, Judge.

16 **THE COURT:** Okay. I think I understand.

17 **MR. WILL:** I hope, I hope I've not rattled too
18 long. I hope I've stated my case clearly.

19 **THE COURT:** Yes. And, Mr. Will, just so you
20 know, I'm going to treat that as an opening statement.
21 And I understand you're not a lawyer, but that was
22 helpful to me to understand your position in this case.
23 It's not evidence or testimony in this case. I'm going
24 to let you testify after you've been sworn, placed under
25 oath. Then the statements that you make can be

1 considered by me as basis for findings of fact. But as
2 I said, I'm going to treat that as nothing more than
3 argument, opening statement in this matter at this
4 point.

5 MR. WILL: Should I at this time -- this is
6 the grandfather, the drawing of the grandfathered
7 irrigation meter.

8 THE COURT: I'm going to let you offer
9 exhibits in just a few minutes.

10 MR. WILL: Thank you.

11 THE COURT: We'll get to that.

12 All right. The Petitioner is not here, and
13 the Petitioner asserting the affirmative of the issue
14 and being the party that requested this proceeding
15 typically would present their case in chief first. But
16 since they're not here, we'll move on to the case in
17 chief of Respondent, Public Service Commission.

18 MR. SMALLRIDGE: Judge, may I, may I ask a
19 quick question?

20 THE COURT: Sure.

21 MR. SMALLRIDGE: I believe that I am, I
22 believe that I am a party of interest in this, in this
23 case. And I have some knowledge about Mr. Will's, what
24 Mr. Will is talking about that would, that would clear
25 up a lot of things. So at the appropriate time, if it's

1 okay, I would speak to those issues. If not --

2 **THE COURT:** You just made the statement that
3 you consider yourself to be a real party in interest. I
4 distinguish that from a party to this litigation, and
5 that's, those are terms of art. You may be a real party
6 in interest but you're not a party in this case.

7 We have previously established that you're not
8 an employee, agent, or qualified representative of the
9 Petitioner.

10 **MR. SMALLRIDGE:** Okay.

11 **THE COURT:** And, therefore, you have no
12 standing to participate in this proceeding, except as a
13 witness if one of the parties should decide to call you
14 as a witness.

15 **MR. SMALLRIDGE:** Okay.

16 **THE COURT:** Okay?

17 All right. Ms. Barrera.

18 **MS. BARRERA:** Preliminarily, Judge, we have
19 several exhibits that we would like to introduce for the
20 record. And obviously Mr. Hein is not here, but
21 Ms. Mallon and Mr. Will are.

22 We have sent the parties a copy of the
23 exhibits. We also have exhibits here in case you want
24 to take a look at the exhibits.

25 And so let me start with the tariffs in

1 effect. We also have certified copies of these exhibits
2 certified by the Clerk of the Public Service Commission.
3 And the first is the index of rates and charges
4 schedule.

5 **MR. WILL:** Your Honor, may I interrupt,
6 please?

7 **THE COURT:** Go ahead.

8 **MR. WILL:** I have to apologize my ignorance.
9 It's not clear to me, and if you would be so kind as to
10 state your, your, your position and your opening
11 statement.

12 I assume that you are, that you are opposing
13 something for Ms. Mallon and myself. I don't understand
14 your position. What, what argument are you going to
15 present? I've laid my case out. And if it's already
16 been concluded that we get a meter, are you opposing us?
17 I don't understand.

18 **MS. BARRERA:** Judge, as I stated before, we
19 have no opposition to Mr. Will and Ms. Mallon obtaining
20 the meter at the prior rate that was in existence at the
21 prior tariff.

22 We are in opposition, of course, to Mr. Hein,
23 who's not here. Since we are moving on with the
24 hearing, we are just making sure that the record is
25 complete.

1 **THE COURT:** Okay. I think what Mr. Will was
2 asking was he has explained to me that he doesn't want
3 one of the grandfathered meters that is tied to the
4 residential meter. He wants one of the later generation
5 design I guess.

6 **MR. WILL:** A standard irrigation meter
7 installation.

8 **THE COURT:** Okay. And he's asking what the
9 PSC's position is on that.

10 **MS. BARRERA:** The PSC's position on that, the
11 prior -- the order that's being protested had -- and the
12 meter that Mr. Will is referring to was an exhibit to
13 the order as an exhibit to the settlement agreement that
14 was approved by the Commission. At this point, we are
15 not proposing that that meter would be the meter that
16 Mr. Will and Ms. Mallon are entitled to because they did
17 not enter into that agreement. The Commission has no
18 position really on the type of installation that, that
19 the meter should have.

20 **THE COURT:** Okay. Does that answer your
21 question, Mr. Will?

22 **MR. WILL:** I think it does. I think we -- if
23 I understand it correctly, we don't have an argument.

24 **MS. BARRERA:** No. That's what we stated.

25 **THE COURT:** Okay. And Mr. Will and Ms. Mallon

1 and everyone else in this room, just so you understand
2 the procedure that is going to unfold here, it's my job
3 to make findings of fact and conclusions of law based
4 upon the evidence that is presented to me today. I then
5 issue a recommended order, which is, contains my
6 findings of fact and conclusions of law and
7 recommendation as to how this matter should be disposed
8 of, and that goes back to the Public Service Commission.

9 And prior to me issuing my order, the parties
10 will have an opportunity to submit to me proposed orders
11 which set forth in writing their position on the factual
12 matters, as well as the application of the law to those
13 facts, and argument in an attempt to persuade me to see
14 the case the way you see it. And so those will all be
15 considered by me prior to the issuance of my recommended
16 order. So many of the things that are going to take
17 place in this case will take place in writing after the
18 record in this matter is closed today. Okay?

19 **MR. WILL:** Yes, sir.

20 **THE COURT:** That's, that's the procedure.

21 All right. Go ahead, Ms. Barrera.

22 **MS. BARRERA:** Okay. The first exhibit that we
23 would like to mark into evidence is the tariff in
24 effect. It's East Marion's tariff in effect prior to
25 the 2009 order, which approved, in part, the tariff

1 amendment. So we would like that admitted as Exhibit --
2 do you do A or 1?

3 **THE COURT:** That would be 1.

4 **MS. BARRERA:** Okay.

5 **THE COURT:** PSC-1, for the record, is a
6 composite exhibit, the first page of which says,
7 "Original Sheet 11-0, Water Tariff Index of Rates and
8 Charges Schedules." Any objection to me receiving
9 Exhibit Number 1 in evidence?

10 (No response.)

11 Without objection, PSC-1 is received.

12 (Exhibit PSC/Mallon-1 marked for
13 identification and admitted into the record.)

14 **MS. BARRERA:** The second, the second exhibit
15 that we would like to admit into evidence would be
16 the -- excuse me -- it would be Order No.
17 PSC-09-0263-TRF-WU. It was issued by the Commission
18 April 27th of 2009, and it's entitled the Order Denying
19 in Part and Granting in Part East Marion Sanitary
20 Systems, Inc.'s, application to amend tariffs addressing
21 previous applications for irrigation meters. That will
22 be marked as Exhibit 2.

23 **THE COURT:** All right. I've marked as PSC
24 Exhibit 2 the document as identified by Ms. Barrera.
25 Any objection to PSC Number 2?

1 **MR. WILL:** Is this the document, Exhibit 2, is
2 this the document that contains the drawing? No, it
3 does not. Okay.

4 **MS. BARRERA:** No. This is the original order.

5 **MR. WILL:** Okay. Thanks?

6 **THE COURT:** Any objection?

7 **MR. WILL:** No objection.

8 **THE COURT:** Without objection, PSC-2 is
9 received.

10 (Exhibit PSC/Mallon-2 marked for
11 identification and admitted into the record.)

12 **MS. BARRERA:** Exhibit Number 3, which we would
13 like to admit, is a document entitled Petition to
14 Protest Order. It is dated May 15th, 2009, and it is
15 the petition of protest of the 2009 order by East Marion
16 Sanitary Systems.

17 **THE COURT:** Any objection to PSC Number 3?

18 (No response.)

19 Without objection, PSC-3 is received.

20 **MR. WILL:** There may be a question here, Your
21 Honor.

22 **MS. MALLON:** Okay.

23 **MR. WILL:** Thank you.

24 (Exhibit PSC/Mallon-3 marked for
25 identification and admitted into record.)

1 **MS. BARRERA:** Okay. Document, excuse me,
2 document number 4 is a petition -- well, it's, it's a
3 document that has an e-mail dated May 18th from
4 Mr. Smallridge to the Public Service Commission Clerk,
5 with an attached petition to protest the, the 2009 order
6 that was also filed as part of the petition to protest
7 that order, there were two documents, and this would be
8 Exhibit 4 to PSC.

9 **THE COURT:** Any objection to PSC Number 4?

10 **MR. WILL:** If, if Mr. Smallridge didn't have
11 any part at all in the, in the East Marion, then I think
12 I would object to number 4.

13 **THE COURT:** And the objection is?

14 **MR. WILL:** That the whole document is, is --
15 this is from Mike Smallridge, and Mike Smallridge was
16 not under contract or didn't have -- he was doing East
17 Marion a favor by billing us even at this time that this
18 document was created.

19 **THE COURT:** All right. Ms. Barrera, was this
20 a document that was filed with the PSC?

21 **MS. BARRERA:** Yes, sir.

22 **MR. WILL:** It was filed from Mr. Smallridge.

23 **THE COURT:** Okay. Over objection it's
24 received.

25 (PSC/Mallon-4 marked for identification and

1 admitted into the record.)

2 **MS. BARRERA:** The next exhibit is the, the
3 direct testimony of Mr. Will, which he filed in Docket
4 080562 on April 19th, 2010.

5 **THE COURT:** Ms. Barrera, you can just give
6 them directly to me and avoid the middleman here.

7 **MS. BARRERA:** Okay. Okay.

8 **THE COURT:** All right. Any objection to PSC
9 Exhibit 5, Direct Testimony of Terry M. Will?

10 **MR. WILL:** No.

11 **MS. MALLON:** No.

12 **THE COURT:** Without objection, it's received.

13 (PSC/Mallon-5 marked for identification and
14 admitted into the record.)

15 **MS. BARRERA:** As Exhibit 6 we would proffer
16 the direct testimony of Ms. Millicent Mallon, which was
17 also filed in Docket 080562 on April 19th, 2010.

18 **THE COURT:** Any objection to PSC-6?

19 **MS. MALLON:** No.

20 **MR. WILL:** No.

21 **THE COURT:** Without objection, it's received.

22 (PSC/Mallon-6 marked for identification and
23 admitted into the record.)

24 **MS. BARRERA:** The next exhibit, which
25 basically has two parts -- well, it would be separate.

1 It's the testimony that was filed in the same
2 docket, 080562-WU, by Shannon Hudson, who is an employee
3 of the Florida Public Service Commission as a Regulatory
4 Analyst IV in the Division of Economic Regulation.

5 **THE COURT:** Any objection to PSC Exhibit 7?

6 **MR. WILL:** No objection, Your Honor.

7 **THE COURT:** Without objection, it's received.

8 **MS. BARRERA:** Your Honor --

9 **THE COURT:** You didn't hand me that yet,
10 Ms. Barrera.

11 **MS. BARRERA:** No, I haven't. Sorry.

12 Oh, wait a minute. I'm sorry. This is the
13 correct one.

14 **MR. WILL:** Including a CD?

15 **MS. BARRERA:** Yeah. I was going to get to
16 that.

17 **MR. WILL:** Oh, I'm sorry.

18 **MS. BARRERA:** This exhibit, Shannon's
19 testimony refers to a telephone call from Herbert Hein
20 in which he left a message stating that he would not
21 install meters until such a time as the -- so I did not
22 know whether or not Your Honor wanted it as a separate
23 exhibit or as part of Ms. Shannon's testimony.

24 **MS. MALLON:** What was number 7?

25 **THE COURT:** Seven is the Public Service

1 Commission cover letter April 29, 2010.

2 MS. BARRERA: Yes, with Ms. Shannon's
3 testimony.

4 THE COURT: Ms. Barrera, as to the voice
5 recording --

6 MS. BARRERA: Uh-huh.

7 THE COURT: -- are you saying this was a
8 message that he left on someone's voice mail?

9 MS. BARRERA: Yes. On Ms. Shannon Hudson's
10 voice mail. And in her testimony she identifies the
11 recording and has, includes a transcription of the phone
12 message from Mr. Hein. And we did -- and she did record
13 that phone message, obtained the recording of the phone
14 message and transferred it into a CD. So, you know, it
15 depends if Your Honor wants the full package or --

16 THE COURT: All right. I'm looking at the
17 page that's in front of the CD, and it says,
18 "Transcription of phone message from Herbert Hein."

19 MS. BARRERA: Yes, sir.

20 THE COURT: Is this the entirety of what is on
21 the CD?

22 MS. BARRERA: Yes, sir.

23 THE COURT: Okay. I've received Exhibit 7,
24 which includes the CD.

25 MS. BARRERA: Okay.

1 (PSC-7 marked for identification and admitted
2 into the record.)

3 **MS. BARRERA:** Okay. The next exhibit is the
4 Order Approving Settlement Agreement and requiring the
5 remaining parties to file acknowledgment. That was
6 issued in 080562-WU, and it's dated December 12th, 2011.

7 And this is the order, just as a point of
8 information, Judge, this is the order that incorporates
9 a settlement agreement of several of the customers. It
10 also includes a -- sorry. Let me give that to you
11 first. It also includes a diagram which is part of the
12 agreement of the meter that's being, that was approved
13 for installation, the configuration of the meter that
14 the facility agreed to as far as these customers were
15 concerned.

16 **THE COURT:** Any objection to PSC-8?

17 (No response.)

18 Without objection, 8 is received.

19 (PSC/Mallon-8 marked for identification and
20 admitted into the record.)

21 **MS. BARRERA:** And the next exhibit would be
22 Mr. Hein's protest of the December 12th order.

23 Excuse me a second. Are these the same
24 documents? Oh, okay. I'm sorry.

25 **THE COURT:** Any objection to PSC-9?

1 (No response.)

2 Without objection, it's received.

3 (PSC/Mallon-9 marked for identification and
4 admitted into the record.)

5 **MR. WILL:** PSC-9 is, is the, is the East
6 Marion protest?

7 **MS. BARRERA:** Yes.

8 **MR. WILL:** Thank you.

9 **MS. BARRERA:** And Exhibit 10 is Mr. Will's
10 protest of the order of January, filed January 12th --
11 11, 2012.

12 **THE COURT:** Any objection to PSC-10?

13 **MR. WILL:** No.

14 **THE COURT:** Without objection, it's received.
15 (PSC/Mallon-10 marked for identification and
16 admitted into the record.)

17 **MS. BARRERA:** Okay. That would be the final
18 exhibit of the Commission at this time.

19 We also received a, an e-mail from Ms. Mallon
20 with a list of exhibits that she wanted to introduce.
21 Two of the exhibits involved an order -- wait. Excuse
22 me. And at this -- we have copies, certified copies of
23 those exhibits. I don't know if she wants to,
24 Ms. Mallon wants to introduce them at this time.

25 **MS. MALLON:** Yeah, we can.

1 **THE COURT:** Well, let's wait until we get to
2 their case in chief to do that.

3 **MS. MALLON:** Okay.

4 **MS. BARRERA:** That's the -- excuse me one
5 second, Judge.

6 **THE COURT:** Sure.

7 **MS. BARRERA:** The order and recommendation in
8 the 2008 case.

9 **MS. MALLON:** Oh, good. Okay. Good.

10 **MS. BARRERA:** Okay.

11 **THE COURT:** All right. I have Respondent
12 PSC's Exhibits 1 through 10 in evidence.

13 **MS. BARRERA:** Yes, sir. And just the -- well,
14 you have a copy of the request for admissions.

15 **THE COURT:** It's filed. Yes.

16 **MS. BARRERA:** Okay.

17 **THE COURT:** Did you want to call any
18 witnesses, Ms. Barrera?

19 **MR. WILL:** Your Honor, if I may, seeing that
20 I'm the oldest fellow in the room, I wonder if I might
21 take just a short break.

22 **THE COURT:** Sure. Let's take five minutes.

23 (Recess taken.)

24 All right. Back on the record.

25 Ms. Barrera.

1 **MS. BARRERA:** Yes. I would like to call as
2 the Public Service Commission's first witness Mr. Bart
3 Fletcher.

4 **THE COURT:** Where are you, Mr. Fletcher?
5 Raise your right hand, please.

6 **STEPHEN BART FLETCHER**
7 was called as a witness on behalf of the Florida Public
8 Service Commission and, having been duly sworn,
9 testified as follows:

10 **THE COURT:** Please state your full name, your
11 business address, and spell your last name, please.

12 **THE WITNESS:** Stephen Bart Fletcher. My
13 business address is 2540 Shumard Oak Boulevard,
14 Tallahassee, Florida 32399-0850. And my last name is
15 spelled F-L-E-T-C-H-E-R.

16 **THE COURT:** Thank you.
17 Go ahead, Ms. Barrera.

18 **EXAMINATION**

19 **BY MS. BARRERA:**

20 **Q** Mr. Fletcher, who are you employed by and in
21 what capacity?

22 **A** I'm employed by the Florida Public Service
23 Commission as a Public Utilities Supervisor in the rate
24 filing section of the Division of Economic Regulation.

25 **Q** And how long have you been employed by the

1 Commission?

2 A I've worked at the Commission since November
3 of 1997.

4 Q And would you state, please, your educational
5 background?

6 A Yes. I received an Associate of Arts degree
7 from Tallahassee Community College in August of '93 and
8 a Bachelor of Science in Accounting and Finance at the
9 Florida State University in December of '96.

10 Q Okay. Can you please explain, briefly explain
11 your general responsibilities as a Public Utilities
12 Supervisor?

13 A Yes. I'm charged with oversight of a
14 six-member technical staff that is charged with the
15 responsibility of accounting, financial, and rate review
16 evaluations for water and wastewater rate proceedings
17 that include file and suspend rate cases, staff assisted
18 rate cases, limited proceedings, earnings/over-earnings
19 reviews or evaluations. We're also, in those other
20 smaller filings we're responsible for allowance for
21 funds used during construction, allowance for funds
22 prudently invested, and service availability application
23 submitted by utilities that the Commission regulates.

24 Also the section is responsible for preparing
25 recommendations for those type of cases, as well as

1 preparing testimony in proceedings before the Commission
2 and outside the Commission, if needed, as well as
3 preparing cross-examinations at hearing as well.

4 Q And have you previously testified before the
5 Florida Public Service Commission?

6 A Yes. I've provided testimony regarding
7 Utilities Inc.'s raw water purchase transactions with
8 related parties. That was in Docket Number 010503-WU.

9 Q And are you familiar with East Marion Sanitary
10 Systems, and please explain your involvement?

11 A Yes. I'm familiar with East Marion utility
12 company. I've been involved since the genesis of Docket
13 No. 080562, which is the case that we're dealing with
14 here today.

15 Q And can you please state the circumstances
16 that led to the Commission's orders in Docket 080562-WU?

17 A The circumstances that led to the order was
18 based on the information provided by the utility
19 regarding its requested charges. Staff put -- the
20 Commission considered that information at an Agenda
21 Conference, approved certain charges that were in the
22 utility's application. And since that time there was a
23 protest that was filed by Mr. Hein of East Marion. And
24 then subsequent to that protest, there were Intervenors
25 that filed for intervention in the case. I believe

1 there were seven customers who said they requested an
2 irrigation meter. Based on that filing, the Commission
3 proceeded forward with going to hearing.

4 The parties, including the Office of Public
5 Counsel, excuse me, the, yeah, the Office of Public
6 Counsel, the Intervenors, and the utility had requested
7 the Commission hold it in abeyance for a while for a
8 possible settlement. So it was abated for a while.
9 Then when it got -- there was no settlement reached, it
10 got back on track for a hearing.

11 Prior to holding the hearing, there was a
12 settlement filed by five of the seven Intervenors in
13 which the Commission approved a settlement agreement
14 with those five Intervenors, and two of which did not
15 sign that agreement. And that basically led to the
16 December 12th order issued by the Commission approving
17 that settlement.

18 Q Okay. And back in the order that was issued
19 in 2009, which was the initial order approving the, some
20 of the tariff changes, what were the matters that, the
21 changes that the Commission approved?

22 A The Commission approved several charges
23 requested by the utility with returned check charges.
24 There was increases in certain miscellaneous service
25 charges, and also the establishment of other

1 miscellaneous service charges. But the most pertinent
2 part I guess dealing in this case were the approval of
3 the meter installation fee, going from \$70, the old
4 rate, up to \$195 approval by the Commission in that
5 April 2009 order, as well as the establishment of short,
6 long, and extra long tap-in fees at \$1,400, \$1,800, and
7 \$2,600 respectively.

8 Q Now were these short, long, and extra long
9 tap-in fees included in the prior tariff for East
10 Marion?

11 A No. That was the establishment of brand new
12 charges. They didn't have those before.

13 Q And can you elaborate on what the short, long,
14 and extra long tap-in fees are?

15 A Sure. The short tap-in fee involves the
16 installation of a service line from the utility's main,
17 which is approximately -- it's going to be 20 feet or
18 less from that main to where the meter is going to be
19 set, and it's going to be on the same side of the road
20 as that meter.

21 The long tap-in fee involves a service line
22 installation where the main is on the opposite side of
23 the street from where the meter is going to be set and
24 it's going to be 40 feet or less.

25 The extra long involves the installation of a

1 separate service line where it's over 40 feet and the
2 main is on the opposite side of the road where the meter
3 is going to be placed.

4 Q Okay. And did Mr. Will and Ms. Mallon request
5 an irrigation meter prior to April 7, 2009?

6 A Yes. According to their testimony, the
7 prefiled testimony that Mr. Will and Ms. Mallon filed in
8 the Commission Docket 080562-WU, the letters provided
9 attached to their prefiled testimony indicated that they
10 did request a service prior to the April 7th, 2009,
11 deadline set forth by the Commission.

12 Q And did you have occasion to find out whether
13 Mr. Hein refused to install meters at the old tariff
14 rate?

15 A Yes. We -- Mr. Hein left a voice message for
16 Ms. Shannon Hudson, who is on my staff with the rate
17 filing section. I listened to the message from
18 Ms. Hudson's phone, and I'm the one that actually
19 recorded, we have a digital recorder, I'm the one that
20 actually recorded the message. And I guess -- it was
21 left September 26th, 2008. And stated on the message
22 basically was Mr. Hein was returning her call and stated
23 that he had spoken to David Greco, a customer who had
24 requested a meter, and he was wondering when David Greco
25 had spoken to Ms. Hudson last, inquired about that. And

1 the last thing, he said that he was in the middle of a
2 tariff, requesting an irrigation tariff meter, and he
3 would not connect anybody until the new rate was
4 approved.

5 **THE COURT:** Mr. Fletcher, I want to ask you
6 about that recording because it needs to be established
7 that Mr. Hein was aware that he was being recorded.

8 Did I understand correctly that the recording
9 was, was based upon a voice mail message that he
10 intentionally left at the PSC?

11 **THE WITNESS:** Correct.

12 **THE COURT:** So it's your testimony he was
13 aware he was, his message was being recorded?

14 **THE WITNESS:** Yes, he was. In our voice mail
15 system it states who you're calling, "You have reached
16 the voice mailbox of" whoever the employee is. "Please
17 leave a message and I'll call you as soon as I return."
18 We all have a similar type. So anyone leaving a message
19 is informed that they are intending to leave a message
20 and it will be recorded.

21 **THE COURT:** And that their message is being
22 recorded?

23 **THE WITNESS:** Yes.

24 **THE COURT:** All right. Thank you.

25 **MS. BARRERA:** I have no more questions for

1 Mr. Fletcher.

2 THE COURT: Okay. Any cross-examination by
3 Intervenors?

4 MR. WILL: Yes, I have a few questions, Your
5 Honor.

6 THE COURT: Okay. Go right ahead.

7 EXAMINATION

8 BY MR. WILL:

9 Q According to my math, you've been with the PSC
10 for 15 years?

11 A 15 years in November.

12 Q Okay. Great. Congratulations.

13 Have you always had a job that's related to
14 ratepayers and things like this or have you moved up
15 through the PSC over 15 years? How has that worked out?

16 A January 1st of 2008 is when I received the
17 supervisory role, my current role, position. But I've
18 always worked in water and wastewater dealing with rate
19 cases and dealing with the cases that I mentioned that
20 I'm currently responsible to supervise and then involved
21 as an analyst.

22 Q I'm interested to know have you ever had any,
23 any hands-on or any field experience in the 15 years?
24 That is to say, have you, have you done this type of
25 thing before?

1 A The work? I haven't done this type work since
2 joining the Commission in November of '97.

3 Q I see. Okay. So your role has primarily been
4 from the paperwork side?

5 A It's from the accounting standpoint and rate
6 base regulation standpoint.

7 Q Okay. If I could draw your attention to the,
8 to the irrigation meter costs that were established, the
9 \$1,400 for the 20 feet, as you stated, and the
10 \$1,800 for the 40 feet, I assume that would be from
11 across the road not to exceed 40 feet. Is that how that
12 works?

13 A Yes. That would receive cost justification
14 and what -- from a third party that a utility submitted,
15 and what that was is for the short was from the main,
16 20 feet or less, that was for the 1,400.

17 Q Okay.

18 A And then the long was on the opposite side, if
19 the main is on the opposite side. And it would require,
20 if it's on the opposite side of the street, would
21 require a jack and bore. You're boring under the street
22 in order to get to the other side.

23 Q I see. And is it a -- if it were longer than
24 20 feet, for an example, would it be just a T&M after
25 that, a time and materials after that for, for, for

1 costs that would be associated with that, or is it just
2 a flat -- that is to say if it went 25 feet instead of
3 20 feet.

4 A My understanding when he filed that is he only
5 got approval for 20 feet or less and the same side. I,
6 I didn't submit the information. As far as I assume
7 when you're asking for cost justification, that every
8 one that's going to be on the same side where the main
9 and the meter, it would be 20 feet or less. If it's
10 longer, the charges that the Commission approved are
11 what they are. You have to fall and charge within what
12 the Commission approved.

13 Q I think there's just a little gray area there
14 that I'm concerned about.

15 If it were, if it were 20 feet, that would
16 fall into the \$1,400 category, or ten feet, anything
17 less, 20 feet or less. But if it were 25 feet or
18 28 feet or 30 feet, what, what would happen then in your
19 opinion?

20 A Again, the charges that are, that were
21 approved, if it's 30 feet and it's on the same side of
22 the meter, you got the main and the meter on the same
23 side, the utility is only required or only authorized to
24 charge where the meter is on the same side, the main is
25 on the same side as the meter is going to be placed,

1 only authorized to charge 1,400.

2 Q Okay.

3 A Okay? So if it's 30 feet, it must be that
4 it's on the opposite side, I would assume, if that's how
5 they filed it. Otherwise, they would have asked for, I
6 assume they would have asked for something different.

7 Q It's a gray area to me and I don't understand
8 it, so I was hoping that you could explain it to me.

9 I can understand 20 feet and less is 1,400, I
10 can understand that 40 feet and less is 1,800, and
11 that's still a gray area to me.

12 A I guess the difference between the short and
13 then the long and extra long is the short, the main is
14 on the same side of where the meter is going to be
15 placed. The other two, it's on the opposite side; the
16 main of the utility, the water main is going to be on
17 the opposite side of where the meter will be placed,
18 opposite side of the road.

19 Q Okay. The delta between 14 and 18 is \$400.
20 If the pipe were 30 feet long, could they charge \$1,600?

21 A Again, the charges are set for the feet.
22 20 feet or less on the same side of the road as the
23 meter is \$1,400. 40 feet or less for where the main is
24 on the opposite side of where the meter is going to go,
25 it's \$1,800. And you have that range, 40 feet or less.

1 Q So to be clear, you don't really know.

2 A No, that's what the charges are. If it's
3 40 feet or less and the main is going to be on the
4 opposite side of the meter, it's \$1,800. Regardless of
5 whether it's 30, 20, if the main is on the opposite side
6 of where the meter is, that is the charge.

7 Q We have, we have cul-de-sacs and I think the
8 \$2,600 is for cul-de-sacs. Do you agree with that?

9 A I have no knowledge of that. I just know the
10 linear feet or feet that is required for the extra long.

11 Q That's the extra long. So, so it's still up
12 in the air in my mind at least. I'm sorry to say you
13 haven't convinced me as to, for a clear understanding.

14 I know that this utility would say it was
15 26 feet. We used 26 feet of pipe, so the cost is going
16 to be \$1,555. And that's my concern. And do you
17 understand the answer? I've asked the question.

18 **THE COURT:** Hold on just a second, sir.

19 **MR. WILL:** I'm sorry.

20 **THE COURT:** And I understand you're not a
21 lawyer. The cross-examination is a time for questions
22 to the witness.

23 **MR. WILL:** That's clear. That's clear.

24 **THE COURT:** And when we get to your case in
25 chief, then you'll be able to present argument.

1 **MR. WILL:** Thank you, Judge.

2 **BY MR. WILL:**

3 **Q** I'm going to leave that unanswered because I
4 don't understand what it would cost to put in 30 feet of
5 pipe in a cul-de-sac. A cul-de-sac, the radius is
6 greater, the pipe is greater, and it would have to go a
7 longer distance even though the main is on the same side
8 of the street. We'll leave that as it is and
9 unanswered, in my opinion.

10 In regard to the Intervenors, you testified
11 that Will and Mallon, or two of us, supplied letters of
12 intent regarding the meters. But isn't it true that,
13 that all the Intervenors, all seven originally produced
14 letters or already had meters?

15 **A** That is correct.

16 **Q** Okay. Thank you, Mr. Fletcher. No further
17 questions at this time. I may think of some more, if I
18 can re-call you.

19 **THE COURT:** Ms. Mallon, did you have any
20 questions?

21 **MS. MALLON:** No questions.

22 **THE COURT:** Okay. Redirect?

23 **MS. BARRERA:** Yes.

24 **EXAMINATION**

25

1 BY MS. BARRERA:

2 Q Mr. Fletcher, in accordance with rules and
3 regulations of the, of the Public Service Commission,
4 can a utility charge any other fee, any fee other than
5 what's in the tariff?

6 A No, it can't. Our rules require that any, any
7 rate that a utility -- it has to be approved by the
8 Commission before it can charge its customers. It's got
9 to be approved by the Commission.

10 Q So, and these are the three fees, the 1,400,
11 1,800, and so forth are the three fees approved by the
12 Commission?

13 A Yes, for tap-in fees.

14 MS. BARRERA: Okay. No further questions.

15 THE COURT: All right. So in that regard,
16 Mr. Fletcher, regardless of whether the length of the
17 pipe between the main and the meter falls at 15 feet,
18 20 feet, 25 feet, the charge, the tap-in charge is going
19 to be one of those specific charges, \$1,400, \$1,800, or
20 \$2,600.

21 THE WITNESS: Yes, sir.

22 THE COURT: There's nothing in between.

23 THE WITNESS: Nothing in between. That's all
24 they were approved.

25 THE COURT: Okay. Thank you. Okay. Thank

1 you, Mr. Fletcher.

2 MR. WILL: May I ask Mr. Fletcher another
3 question?

4 THE COURT: Yes. Go ahead.

5 MR. WILL: Thank you.

6 EXAMINATION

7 BY MR. WILL:

8 Q If it were greater, that is to say if it were
9 30 feet instead of 20 feet, would there, is there a
10 process in place that they, that East Marion could apply
11 for more money?

12 A If there is a charge that they don't have
13 approval for now, they can always elect, pursuant to the
14 statute and rules, to ask for any other charge that
15 they're not currently approved by the Commission.

16 Q But I don't believe that that pertains to, and
17 correct me if I'm wrong, I don't believe it pertains to
18 an individual cost. I think -- yes, that's my
19 statement. I don't believe that it's, it would pertain
20 to an individual cost. If 30 feet were put in and, and
21 East Marion tried to charge \$1,600 and they came back to
22 you for a \$200 upcharge, I don't believe that that
23 applies under that rule, does it?

24 A You can only charge what's -- at the time of
25 charging of any customer, any person, you can only

1 charge what's in effect or authorized, what's in effect
2 in their utility's tariff or approved by the Commission.

3 So if their -- at the time of connection the
4 utility can only charge what's in their approved tariff.
5 They can't come back later after the connection and ask
6 for more money if it's been connected. But prior to the
7 connection, if they come and seek an increase in any of
8 their charges or establishment of new charges before the
9 connection, that will apply in the future. It all is
10 determined on the date of connection what the approved
11 rate is.

12 Q Can they apply for and receive individual
13 approvals?

14 MS. MALLON: One-time charges.

15 BY MR. WILL:

16 Q A one-time charge.

17 A For what particular charge? I'm not
18 understanding the question.

19 Q \$1,400 covers 20 feet. If it ran 30 feet,
20 could they apply for a one-time charge to get paid for
21 the extra ten feet?

22 A If it's prior to, if it's not covered in these
23 three tariffs, some other charge that doesn't fall
24 within these three, they can apply to the Commission to,
25 to seek that charge be approved, that it be approved.

1 As long as they provide cost justification for a new
2 charge that is not covered in these three tap-in fees
3 that's been approved they can seek that. And as long as
4 they get approval prior to the connection of that
5 charge, then they can, they can receive that from the
6 individual.

7 Q I think just one more question. I'm imagining
8 that the utility would come up to the job and open it up
9 and discover then that at last it wasn't 20 feet, it was
10 30 feet. Could they then stop the job or would they be
11 required to then stop the job and apply for a \$200
12 increase?

13 A I get your question now. If it doesn't fall
14 within that -- if I could clarify your --

15 Q Please.

16 A Make sure I'm understanding your question.

17 If it's, the meter is going to be placed on
18 the same side as the main --

19 Q Yes, sir.

20 A -- and it is greater than 20 feet, what
21 happens?

22 Currently they don't have an authorized charge
23 tap-in fee for that scenario. If it is that -- what
24 they can only charge is what's been approved by the
25 Commission, which is if you have a meter that's going to

1 be installed on the same side of the main, that's
2 \$1,400.

3 What -- then we also have rules where a
4 utility must provide service within a reasonable time.
5 And that reasonable time, they can't wait and file a
6 rate and then get that new charge. They have to charge
7 what their, what's in their tariff now.

8 So within a reasonable time to install a meter
9 and the time I know it takes to process a tariff filing,
10 it seems to me that that would be too long and they
11 would have to charge the tap-in fee that meets that, as
12 close as it can be, that, that installation, which is
13 the main and the meter on the same side of the road.
14 And the only one that I'm aware of now that they have
15 currently approved is the short at \$1,400.

16 **THE COURT:** So the statement that the short
17 includes a connection of 20 feet or less, that's really
18 meaningless, assuming the meter is on the same side of
19 the road as the main?

20 **THE WITNESS:** That's all they had requested.
21 I'm not sure the -- they could only charge \$1,400 if
22 it's going to be, the meter is going to be on the same
23 side of the main.

24 **THE COURT:** Whether it's 20 feet or 200 feet?

25 **THE WITNESS:** That's correct. That was what

1 they're currently authorized for.

2 THE COURT: All right. Anything else,
3 Mr. Will?

4 MR. WILL: You summed it up just fine, Your
5 Honor.

6 THE COURT: All right. Anything else,
7 Ms. Barrera, from this witness?

8 MS. BARRERA: No, Your Honor.

9 THE COURT: Thank you, Mr. Fletcher.

10 MS. BARRERA: My next witness would be James
11 McRoy.

12 THE COURT: Mr. McRoy, if I could get you to
13 raise your right hand, please.

14 JAMES ELLIS McROY

15 was called as a witness on behalf of the Florida Public
16 Service Commission and, having been duly sworn,
17 testified as follows:

18 THE COURT: Please state your full name, spell
19 your last name, and give us your business address.

20 THE WITNESS: James Ellis McRoy, Sr. My
21 business address is 2540 Shumard Oak Boulevard,
22 Tallahassee, Florida 32399-0850.

23 THE COURT: And that's M-C, capital R, O-Y?

24 THE WITNESS: M, little C, big R, O-Y.

25 THE COURT: Thank you, sir.

1 **THE WITNESS:** Thank you, sir.

2 **EXAMINATION**

3 **BY MS. BARRERA:**

4 **Q** Mr. McRoy, by whom are you employed and in
5 what capacity?

6 **A** I am employed with the Public Service
7 Commission, and I'm a Utility Systems Engineer
8 Specialist.

9 **Q** And how long have you been employed by the
10 Commission?

11 **A** I was, began my employment with the Commission
12 in February of 1990. I subsequently left the Commission
13 in February of 2007. I became, worked in private
14 practice for three years, worked with the Department of
15 Environmental Protection for a year, and began my career
16 back with the Public Service Commission in December of
17 2011.

18 **Q** And what are your general responsibilities as
19 a Utility System Engineer?

20 **A** My general responsibilities are to review all
21 engineering filings for file and suspend rate cases,
22 staff assisted rate cases, transfers, amendments, a
23 deletion, or anything associated with utility
24 activities.

25 **Q** And does that include water systems?

1 A Yes, that includes water systems.

2 Q Do you hold any licenses or registrations?

3 A Yes. I'm a state certified general contractor
4 and a state certified underground utility contractor.

5 Q And are you familiar with the East Marion
6 Sanitary Systems, Inc.? And please explain your
7 involvement with this case as a Utility Systems
8 Engineer.

9 A I have reviewed the file for this case,
10 including the testimony that was filed and all exhibits
11 and the applications and orders.

12 Q And did you particularly review the sections
13 concerning the installation of irrigation meters?

14 A Yes. I reviewed that section.

15 Q Okay. And is there a particular configuration
16 that's required for the installation of an irrigation
17 meter?

18 A In this particular case, the Commission
19 approved in the 2011 docket a specific design for the
20 installation of meters.

21 Q Okay. And is there another way of installing
22 an irrigation meter that includes a tap-in fee?

23 A Yes. That would be a dedicated service tap-in
24 fee, which the Commission applied the three options of
25 the short, medium, and long connections, which was the

1 14, 18, and \$2,600 cost.

2 MS. BARRERA: I have no more questions.

3 THE COURT: Okay. Any cross-examination?

4 MR. WILL: Yes.

5 THE COURT: Go ahead, Mr. Will.

6 EXAMINATION

7 BY MR. WILL:

8 Q I couldn't keep up with you as to how many
9 years you've had experience. Basically how many years
10 have you worked for the PSC?

11 A Eighteen years for the Public Service
12 commission.

13 Q Eighteen years?

14 A Yes.

15 Q Congratulations. Do you have practical
16 experience, field experience?

17 A Yes, sir. I worked for a design construction
18 company for six years, actually ten years, different
19 companies. So I do have private experience.

20 Q In this private experience, was it in the
21 field or was it design?

22 A I was a field and design engineer.

23 Q I'm looking for hands-on and paperwork. You
24 were both guys?

25 A Unfortunately I've done it both.

1 Q Very good. Very good. And particularly about
2 the irrigation meters, are you comfortable with that?
3 That is to say -- let me clarify that.

4 A Okay.

5 Q Are you aware of all the standard requirements
6 for Florida regarding irrigation meters?

7 A I'm aware of the Commission requirements of
8 utilities on how they place their meters. Beyond the
9 meter on the customer side is not our purview. That's
10 the Department of, the Department of Environmental
11 Protection.

12 Q That's clear. Okay. Perhaps I didn't ask the
13 question properly. Forgive me.

14 A Sure.

15 Q Are there regulations for installing an
16 irrigation meter from the main up to the meter?
17 Disregard the, what the customer -- after the meter.
18 That's his problem.

19 A Uh-huh.

20 Q Are you, are you familiar with the regulations
21 of which I described?

22 A The Public Service Commission regulates the
23 utilities. The utilities apply their installation based
24 on the local state regulations. So, yes.

25 Q Okay. It was stated earlier that there are

1 different, different ways to skin the cat, different
2 ways to install the meter. How many meter -- how many
3 ways are you aware of to install a meter?

4 A Well, in this particular case, the current
5 system allows for --

6 Q Excuse me. Just in general, not --

7 MS. BARRERA: Excuse me, Judge. Would you --

8 MR. WILL: Not this --

9 MS. BARRERA: I'm requesting that --

10 THE COURT: Hold on just a second. I think I
11 hear an objection here.

12 MS. BARRERA: Yes, I object. I'm requesting
13 that the witness be allowed to finish his statement.

14 THE COURT: Mr. Will, let's, let's allow the
15 witness to complete their response before you interpose
16 your next question.

17 Okay. Do you remember the question you were
18 in the process of answering?

19 THE WITNESS: Could you repeat the question,
20 sir?

21 BY MR. WILL:

22 Q Yes. How many different ways are there to
23 install a meter, irrigation meter in your experience?

24 A The Public --

25 Q That would require a number: One, two, three,

1 five, ten different ways.

2 A The Public Service Commission's regulation
3 stops at the meter. We do not regulate the installation
4 of meters, irrigation meters for private residents.
5 That's the privy of the Department of Environmental
6 Protection, Marion County, or whatever agency that
7 regulates that. We're concerned with the main supplies
8 and up to that meter.

9 Q How many different ways are there to install
10 that meter that you just described?

11 A In this particular case there is a 4-inch main
12 that serves the community, there is a 1-inch service
13 line, and there's a T that branches off to two meters
14 that serve different residents.

15 Q You've just, you've just described the service
16 to the home; is that correct?

17 A That's the main meter off the service line.
18 Yes. Correct.

19 Q That's the main home meter?

20 A Yes.

21 Q Okay. If I requested an irrigation meter,
22 what would that meter look like and what would it cost?

23 A Currently, based on this case, the utility was
24 allowed to install an irrigation meter off of the
25 existing line.

1 Q Okay. If you had an option to do -- I'm
2 holding up a drawing. It's part of Exhibit Number 6.

3 MS. BARRERA: Is that attached to the order?

4 MR. WILL: Yes. 8, I think it's 8. Yes, it
5 is.

6 MS. BARRERA: Yes.

7 BY MR. WILL:

8 Q It's PSC Number 8. If you had an option
9 between this way and tapping in for your home -- strike
10 that, please.

11 Is it true that, that if it were installed,
12 according to exhibit, the last page on Exhibit 8, this
13 drawing, I could, in your opinion, I could impact my
14 neighbor? That is to say I could impact my neighbor
15 with the amount of water they could use based on a
16 1-inch line off the main, given pressures, the T, we're
17 both sourcing the same 1-inch line. Is it your
18 professional opinion that I could impact the neighbor
19 with regard to the amount of water they could access
20 because I've exceeded the volume of the, of the 1-inch
21 line? Is it possible?

22 A Is it possible?

23 Q Is it possible? It requires a yes or a no.

24 A You had a rambling question, so you kind of --
25 if you would, redirect the question, then I'll try to

1 answer it for you.

2 Q Yes. I'll try it again.

3 A All right.

4 Q Given the service that we have fed by a 1-inch
5 line off of two homes being fed with a 1-inch line, can
6 I impact my neighbor by running my irrigation and using
7 the amount of water that I can use? Can I -- is it
8 possible for me to impact my neighbor?

9 A Yes, depending on when you --

10 Q Thank you. That's good.

11 A Depending on --

12 Q Yes is the answer, I think.

13 **THE COURT:** Mr. Will. Go ahead and answer it.

14 **THE WITNESS:** Yes, depending on when the
15 operation of the system is engaged.

16 **BY MR. WILL:**

17 Q That's good. Let's talk about that, if we
18 could.

19 So if I had the setup that we just described,
20 the 1-inch main, the two people, I would -- would I have
21 to enter into an agreement with my neighbor whereby I --
22 you mentioned depending on the time of day that I used
23 it. Would I have to enter into an agreement with my
24 neighbor or would it be a courtesy to enter into an
25 agreement with my neighbor that I would irrigate at

1 4:00 in the morning so I wouldn't impact their water?

2 A It's been my understanding, and typically in
3 the State of Florida we've been on rations for water,
4 and they would direct people who have lawn systems to
5 irrigate during an offpeak time period. An offpeak time
6 period in this case would be anywhere from 2:00 in the
7 morning to 5:00 in the morning where the system is not
8 being impacted by other users. So in their case, you
9 would not impact them since neither one of you will be
10 operating other than the lawn system itself.

11 Q But it currently -- I'm sorry. Were you
12 through?

13 A Yes, sir.

14 Q Thank you. Currently that's not the case.
15 You can water during, during the day right now in our
16 community, in our area in Marion County. Do you know
17 that to be true?

18 A I do not know the requirements in Marion
19 County since I am not a resident here.

20 Q Okay. All right. Back to my, my original
21 question that I so poorly stated, if you were with this
22 situation and you had an option between the two meters,
23 whether to impact your neighbor that you may or may not
24 get along with or a standard meter installation that is
25 required right now, as I understand it there's, there's

1 no more grandfathered meters, so which one would you
2 prefer?

3 A Being the frugal individual that I am, I would
4 take the lesser of the two, which would be the \$70
5 meter. But that's my personal choice.

6 Q That's clear. However, if they both cost you
7 70 bucks, then what would you do?

8 A I would take the \$70 meter that's being
9 offered to me.

10 Q If both meters, that is to say one meter is
11 like this drawing in Exhibit 8 and another meter,
12 irrigation meter comes directly from the main and has no
13 impact on your neighbor, what would you do?

14 A Again, based on what's in the record, that
15 meter is not \$70. That meter can be three options. It
16 could be the 14, 18, and \$2,600. For me, I would pick
17 the \$70 meter.

18 Q Yes. If both meters cost \$70, which one would
19 you choose?

20 A I would pick the \$70 meter.

21 Q That's clear. The \$70 meter, in my mind, is
22 the one that comes directly from the main. Is that
23 true?

24 A In your mind. But in the tariff requirements
25 in this filing that's not correct. The one that costs

1 \$70 is a single serve existing meter, and the one that
2 costs 14, 18, and \$2,600 are tap meters with dedicated
3 lines. There's a difference.

4 Q Okay. We can, we can continue doing this,
5 Mr. McRoy. In the interest of wasting all these
6 people's time --

7 A Yes, sir.

8 Q -- if it were me and I had a choice, I'd take
9 the one that doesn't impact my neighbor. How about you?
10 If you had a choice, if money was not involved, not at
11 all, it's just the meter, one that impacts your neighbor
12 and one that doesn't, which one would you choose?

13 A You're giving me a hypothetical that I just
14 can't fathom that, when money is not an option and not
15 included in any kind of conversation. So my contention
16 is that that question is really an unrealistic question.

17 Q We'll try it again and we'll continue to try
18 it.

19 A Yes, sir.

20 Q That's foolish.

21 A Yes, sir.

22 Q No. In the interest of the Court, thank you
23 for answering the question. You've answered it well.

24 A Thank you, sir.

25 MR. WILL: I turn it over to Ms. Mallon, Your

1 Honor, and --

2 MS. MALLON: I have no questions.

3 THE COURT: Before you do your redirect, I've
4 got a couple of questions for you, Mr. McRoy.

5 THE WITNESS: Yes, sir.

6 THE COURT: In looking at the schematic that's
7 the last page of PSC Exhibit 8, am I correct in
8 understanding that the irrigation meter that's at issue
9 and the irrigation line is totally independent from the
10 potable water line?

11 THE WITNESS: In that exhibit I believe that
12 is an existing line with an irrigation meter T'd from
13 that. The other proposals here are separate tap-in
14 lines which would feed the irrigation system. That
15 system feeds off an existing line. What the other
16 options do is provide a dedicated line from the, from
17 the service line, the 4-inch service line, it taps into
18 that 4-inch service line where -- and provides a
19 separate line to the irrigation system, which is not
20 shown on that, on that document.

21 THE COURT: All right. I want you to have
22 this in front of you because I'm confused by what you
23 just said.

24 THE WITNESS: Okay.

25 THE COURT: The diagram shows to me a meter --

1 you see to the, on the right-hand side of the rectangle
2 there.

3 **THE WITNESS:** That's correct.

4 **THE COURT:** And it says, "To potable water."

5 **THE WITNESS:** That's correct.

6 **THE COURT:** Okay. And what you're, what
7 you're telling me is that the situation that Mr. Will is
8 concerned about, that is that his use of irrigation
9 water could affect the use of potable water by his
10 neighbor, that's a different situation than what is
11 shown on the diagram.

12 **THE WITNESS:** No. Mr. Will is discussing this
13 particular diagram, and there is a limitation on flows.
14 It's like any other pipe that we have; if it's a
15 limitation on the flows, then it does affect it if you
16 have additional flow.

17 But my comment back to Mr. Will was that
18 typically on a landscape situation there's parameters to
19 get around that flow issue by running them offpeak
20 hours. The system is designed for the flows that's
21 there. You can't change that. You have to design a
22 system based on the capacity of the existing system. So
23 everything should be based upon that capacity.

24 And another way they do that is when you
25 install a residential landscaping design, you, you check

1 your pressures and you design different zones which
2 allows different heads to turn on at different times to
3 stay within that design criteria for pressure.

4 **THE COURT:** Okay. How many gallons per minute
5 can be delivered through a 1-inch line?

6 **THE WITNESS:** I do not have that design
7 capacity analysis with me.

8 **THE COURT:** All right. Any redirect?

9 **MS. BARRERA:** Yes.

10 **EXAMINATION**

11 **BY MS. BARRERA:**

12 **Q** Can you operate a sprinkler system without an
13 irrigation meter?

14 **A** Can you operate a sprinkler system without an
15 irrigation meter? From -- are you meaning -- I guess
16 I'm not following that question.

17 **Q** Okay. From, from the main line there is a
18 main meter. And the water that goes into the meter, can
19 it go to the house and also to the irrigation system?

20 **A** Yes.

21 **Q** So you can operate -- if I chose not to have
22 an irrigation meter, I could still run my sprinkler
23 system.

24 **A** The utility probably would not allow you to do
25 that since that's the way they bill based on the meter

1 readings. But, yes, you could do it without a meter.

2 Q And would the purpose of the irrigation meter
3 be to determine a lower cost for the water that's being
4 used solely for irrigation?

5 A Yes. That would be deducted from the sewer
6 bill, which would mean that that water is not impacting
7 the sewer system. So that would be a deduct and a
8 reduction in cost.

9 Q And that would be the purpose for an
10 irrigation meter.

11 A Yes.

12 MS. BARRERA: I have no more questions.

13 THE COURT: It's the same water that's being
14 delivered to the residence whether it comes through the
15 irrigation meter or through the potable water meter.
16 The only difference is in the rates because the
17 irrigation water does not impact the sewage system; is
18 that correct?

19 THE WITNESS: That's correct.

20 THE COURT: All right. But it's the exact
21 same water being delivered through the 4-inch main.

22 THE WITNESS: Exact same water.

23 MR. WILL: Redirect, please?

24 THE COURT: Go ahead.

25 EXAMINATION

1 BY MR. WILL:

2 Q Mr. McRoy, we talked earlier about impacting
3 the neighbor --

4 A Yes, sir.

5 Q -- with the grandfathered. And that's what
6 I'll refer to Exhibit, as part of package, Number 8, the
7 last page is the drawing or, or irrigation meter
8 drawing. I think we've established, have we not, that
9 it could impact a neighbor?

10 A Yes, sir.

11 Q Okay. With the dedicated irrigation meter
12 from the main, would it then impact that neighbor?

13 A It would not impact the neighbor to the degree
14 that this system would.

15 Q Could you elaborate on that to the degree that
16 it would?

17 A You are still affecting the pressure and the
18 service even if you connect a separate line to the
19 service main. I agree that it will not affect them as
20 directly as this system would, but any time you add a
21 new connection to the existing system, you affect the
22 system.

23 Q So between the two, the desirable one is a
24 dedicated irrigation meter, is that what you're saying,
25 between the two options?

1 A I'm not saying either one is desirable, more
2 desirable. It depends on the individual, what they,
3 what they choose to, to want. If you --

4 Q Of the, of the two installations, you have
5 the, you have the irrigation meter that's piggybacking
6 off of this dual system, dual in the sense that it
7 serves two ratepayers. Then you piggyback off of this
8 system for an irrigation system; correct?

9 A That is what the proposal on this says.

10 Q Versus, Your Honor -- or is this correct,
11 Mr. McRoy, that a dedicated irrigation meter -- I'm
12 going to draw on this drawing, all right? And forgive
13 my, my sketching ability.

14 What I've drawn on here, and I'll present it
15 to everyone, is this is the irrigation meter that's
16 proposed. It comes off of this bottom line here, which
17 is the main, and it runs up to here and it T's off to
18 this customer. And what's not shown here is it also T's
19 and you would have an identical situation right here,
20 drawn over here versus coming directly from the main
21 with probably a what size, a 1-inch tap?

22 A That would be my --

23 Q Yes. That's what's required is a 1-inch tap
24 to go directly from the main to the meter to the
25 irrigation completely independent from this system.

1 Would that be a correct analysis of this sketch?

2 A Yes.

3 Q Thank you. And between the two, between this
4 dedicated meter line and this -- what do they refer,
5 Millie -- the grandfathered system would greatly impact
6 by comparison if I impacted this direct -- if I impacted
7 this customer over here with this irrigation meter
8 direct, dedicated from the main, what would the
9 percentage in your opinion, I'm not asking for flows,
10 you've already quantified that, what impact in a scale
11 of one to ten, this being one, impact of one, what would
12 the dual meter impact this customer in your, in your
13 opinion?

14 A Well, again, it depends on the operational
15 procedures, what are you trying to do? I don't know the
16 design criteria that you're trying to set your sprinkler
17 systems up for. The direct tap is a better option.

18 Q Thank you.

19 A I agree with that.

20 Q Oh, yes.

21 A But the direct tap constitutes a separate
22 charge that the tariff represents, which is the 14, 18,
23 and \$2,600.

24 Q That's clear. Should I inform my neighbor
25 that I'm going to get an irrigation system and that I

1 might impact their water use?

2 **MS. BARRERA:** At this point I object, Your
3 Honor. This is getting far afield of the case, and it's
4 also not in any rule or regulation that the Commission
5 would have any jurisdiction over.

6 **THE COURT:** Sustained.

7 **BY MR. WILL:**

8 **Q** Is there a regulation for me for putting in a
9 certain number of zones for irrigation? And, again, you
10 probably -- well, that's my question.

11 **A** The Public Service Commission regulation stops
12 at the meter, so that's --

13 **Q** That's what I thought you were going to say.

14 So as far as the Public Service Commission is
15 concerned, I could put 20 heads up there and the Public
16 Service Commission wouldn't have a problem with that
17 either way because they're not concerned about what
18 happens after the meter.

19 **A** No. But Marion County or someone in that area
20 would have to review your plans, would dictate on how
21 you have to set your system up. But, yes, the
22 Commission's purview stops at the meter.

23 **Q** Currently, currently we don't have those
24 regulations.

25 **A** Okay.

1 MR. WILL: Thank you.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Anything else for Mr. McRoy?

4 MS. BARRERA: No, sir.

5 THE COURT: Thank you, Mr. McRoy.

6 THE WITNESS: Thank you, sir.

7 THE COURT: I appreciate your time.

8 MS. BARRERA: At this time the Commission has
9 no further witnesses.

10 THE COURT: Okay. We've got the Commission's
11 Exhibits 1 through 10 in evidence. The Commission rests
12 their case.

13 Intervenors, Ms. Mallon and Mr. Will, do you
14 have witnesses other than yourselves?

15 MS. MALLON: No.

16 THE COURT: Okay. Does anyone need a break at
17 this time? And let me just tell you my, my inclination,
18 I don't know how long your cases in chief will take, but
19 I'd just as soon keep pushing on unless we're going to
20 have four or five hours of testimony from you folks,
21 which I would be surprised.

22 So let's, let's go ahead and, Ms. Mallon or
23 Mr. Will, who wants to go first?

24 MS. MALLON: Terry, I think I would like you
25 to because of --

1 MR. WILL: Okay.

2 MS. MALLON: Exhibits first.

3 MR. WILL: Yes.

4 MS. MALLON: Do you want me to do the
5 exhibits?

6 MR. WILL: Yeah.

7 MS. MALLON: Okay.

8 For the record, I am Millie Mallon.

9 MR. WILL: Do you want to swear us, or not
10 yet?

11 THE COURT: Not yet. We're going to deal with
12 exhibits first?

13 MS. MALLON: Yes. Yes, sir.

14 THE COURT: Okay. Great.

15 MS. MALLON: Okay. Exhibit Number 1, Docket
16 No. 080064-WU, dated February 21st, 2008. This is a
17 complaint against East Marion Sanitary Systems by
18 Mabelle Gregorio, Angela and Dennis Fountain, and Terry
19 Will.

20 THE COURT: Okay. And, Ms. Mallon, do you
21 have copies for me?

22 MS. MALLON: Yeah, I do. I'm going to give
23 you these. Okay.

24 THE COURT: Okay. I'm going to mark as Mallon
25 Exhibit Number 1, composite exhibit that has a -- the

1 first page is dated February 21, 2008.

2 MS. MALLON: Yes.

3 THE COURT: Any objection to Mallon Number 1?

4 MS. BARRERA: No, sir.

5 THE COURT: Without objection, it's received.

6 (Mallon-1 marked for identification and

7 admitted into the record.)

8 MS. MALLON: Okay. Exhibit Number 2 is

9 exhibit -- Docket No. 080064 dated March 25th, 2008,

10 Notice of Proposed Agency Action, Order Requiring

11 Refunds -- excuse me -- and Order Declining to Initiate

12 Show Cause Proceedings. Okay. That is Exhibit Number

13 2.

14 THE COURT: Any objection to Mallon Exhibit 2?

15 MS. BARRERA: No, sir.

16 THE COURT: Without objection, it's received.

17 And, ma'am, if you could pass that down here, I'll keep

18 a copy.

19 (Mallon-2 marked for identification and

20 admitted into the record.)

21 MS. MALLON: Exhibit Number 3, Settlement of

22 Docket No. 080562-WU, dated June 16th, 2010.

23 THE COURT: Any objection to Mallon Exhibit 3?

24 MS. BARRERA: If I may look at the exhibit.

25 THE COURT: Sure.

1 MS. BARRERA: Thank you.

2 MR. WILL: Has it already been entered?

3 THE COURT: Not yet.

4 MS. MALLON: No. You mean on theirs?

5 MR. WILL: Yes.

6 MS. MALLON: No, that wasn't one of them.

7 MR. WILL: Okay.

8 MS. BARRERA: Okay. Thank you.

9 THE COURT: Any objection from the PSC to
10 Mallon Exhibit 3?

11 MS. BARRERA: No, sir. But I note that
12 page 2 of the exhibit, which is a letter from counsel
13 for Public Counsel, I'm not sure if it has a second page
14 or not. Or is that a one-page --

15 MS. MALLON: I don't know.

16 THE COURT: It says Exhibit A, page 1 of 3.

17 MS. MALLON: 1 of 3.

18 MS. BARRERA: And we would just ask that the
19 complete --

20 MS. MALLON: Okay. That might show up with
21 something that you have given me from your exhibits.

22 MS. BARRERA: No objection. Just noting that
23 page 2 and 3 are missing.

24 MS. MALLON: Okay. Okay.

25 THE COURT: Okay. And if you want to

1 supplement your exhibits with additional pages to make
2 it a complete document, then you certainly will be
3 allowed to do that.

4 Without objection, Mallon Exhibit 3 is
5 received.

6 (Mallon-3 marked for identification and
7 admitted into the record.)

8 **MS. MALLON:** Exhibit Number 4, Respondent's
9 First Request for Admissions to East Marion Sanitary
10 Systems, Inc., numbers 1 through 21.

11 **THE COURT:** Any objection to Mallon Exhibit 4?

12 (No response.)

13 Without objection, 4 is received.

14 (Mallon-4 marked for identification and
15 admitted into the record.)

16 **MS. MALLON:** Number 5 is part of evidence
17 of number 5, Docket No. 080562-WU, Order No.
18 PSC-11-0566-AS-WU issued December 12th, 2011. And this
19 is the Order Approving Settlement Agreement and
20 Requiring Remaining Parties to File Acknowledgment.

21 **THE COURT:** Any objection to Mallon Exhibit 5?

22 **MS. BARRERA:** No, except that that is, that is
23 exhibit, let's see, 8, PSC Exhibit 8. So we could, I
24 guess, designate it as a joint exhibit or --

25 **THE COURT:** Okay. It's the same document?

1 **MS. BARRERA:** Yes, sir.

2 **MS. MALLON:** Yes.

3 **THE COURT:** Then PSC-8 will be a joint
4 exhibit.

5 **MS. MALLON:** Okay. Number 6, tariffs in
6 effect prior to Order No. PSC-09-0263-TRF-WU. It is the
7 Order Denying in Part and Granting in Part East Marion
8 Sanitary Systems, Inc.'s, Application to Amend Tariffs
9 Addressing Previous Applications for Irrigation Meters
10 for East Marion. And I believe that that might be one
11 of your exhibits also.

12 **THE COURT:** Number 2.

13 **MS. MALLON:** Oh, okay.

14 **THE COURT:** So that will become joint exhibit,
15 PSC joint Exhibit 2.

16 **MS. MALLON:** Okay. Number 6 is Number 2. And
17 also the same would go for East Marion -- oh, I'm sorry.
18 Tell me when you're ready.

19 **MR. WILL:** Ready.

20 **MS. MALLON:** All right. Number 7 is East
21 Marion's 2008 Application for Tariff Amendment, and I
22 believe that's also one of your exhibits.

23 **MS. BARRERA:** No, we didn't introduce it.
24 Excuse me.

25 **MS. MALLON:** This one?

1 **MS. BARRERA:** Yes, we didn't introduce it. We
2 had it on the list but we didn't introduce it.

3 **MS. BENNETT:** That's the tariff itself.

4 **MS. BARRERA:** That's the tariff or the
5 application?

6 **MS. BENNETT:** That's the tariff.

7 **MS. BARRERA:** Okay. If it's the tariff then,
8 that would be Exhibit Number 1, PSC Exhibit 1. I'm
9 sorry.

10 **THE COURT:** All right. So PSC Exhibit 1 is
11 also a joint exhibit?

12 **MS. MALLON:** Yes.

13 And this also is a joint exhibit, I believe.
14 Number 8, PSC's deficiency letter to East Marion.

15 **MS. BARRERA:** Okay. That one we did not
16 enter. We have no objection.

17 **THE COURT:** And, Ms. Mallon, let's, just to
18 keep your numbers in order, let's make that Number
19 5, Mallon Exhibit 5.

20 **MS. MALLON:** For the deficiency letter to East
21 Marion?

22 **THE COURT:** Yes.

23 **MS. MALLON:** Okay.

24 **THE COURT:** Any objection to Mallon Exhibit 5?

25 **MS. BARRERA:** No, sir.

1 **THE COURT:** It's received.

2 (Mallon-5 marked for identification and
3 admitted into the record.)

4 **MS. MALLON:** Okay. So number 9 for me is also
5 East Marion supplement to application in response of
6 deficiency letter. Is that one of your exhibits,
7 Martha?

8 **MS. BARRERA:** No. No. We didn't introduce
9 it.

10 **MS. MALLON:** Okay.

11 **THE COURT:** And that's Mallon Exhibit 6.

12 **MS. MALLON:** Uh-huh.

13 **THE COURT:** Any objection to Mallon Exhibit 6?

14 **MS. BARRERA:** No.

15 **THE COURT:** Without objection, 6 is received.

16 (Mallon-6 marked for identification and
17 admitted into the record.)

18 **MS. MALLON:** Do you have it? I don't have it.
19 This is the response to deficiency letter and I don't
20 have a date. Oh, this might be it.

21 **THE COURT:** Ma'am, I don't have a copy of your
22 Exhibit 6 yet.

23 **MS. MALLON:** Tariffs in effect, is that what
24 we're looking for?

25 **THE COURT:** Linda, what did we identify

1 Exhibit Number 6?

2 (Exhibit title read by court reporter.)

3 THE COURT: Supplement to application.

4 MS. MALLON: Okay. That's what I'm looking
5 for. All right.

6 MS. BARRERA: Okay. I have a copy of it. Is
7 that what you're looking for?

8 MS. MALLON: Yeah. No.

9 MR. WILL: No, this isn't it.

10 MS. BARRERA: Okay.

11 MS. MALLON: This isn't it either. I thought
12 that was one of theirs. Okay. We're not going to have
13 Exhibit 6.

14 THE COURT: The exhibits, Mallon Exhibit 6 is
15 withdrawn.

16 (Mallon-6 withdrawn.)

17 MS. MALLON: Withdrawn. Yeah.

18 Okay. Now my Number 10 is Order No.
19 PSC-09-0263-TRF-WU, Order Denying in Part and Granting
20 in Part East Marion Sanitary Systems' Application to
21 Amend Tariffs Addressing Previous Applications for
22 Irrigation Meters. And that was also one of your
23 exhibits, Martha?

24 MS. BARRERA: Yes. That's already been
25 designated as joint Exhibit 2.

1 MS. MALLON: Okay.

2 THE COURT: Anything else?

3 MS. MALLON: Yes.

4 THE COURT: Okay.

5 MS. MALLON: East Marion's Protest of Order
6 PSC-09-0263-TRF-WU.

7 MS. BARRERA: That's been admitted as PSC
8 Exhibit 4.

9 MS. MALLON: That's, okay, Number 4.

10 THE COURT: So we'll make that a joint exhibit
11 also.

12 MS. MALLON: Yes.

13 MR. WILL: Yes.

14 MS. MALLON: East Marion, Number 12 for me is
15 East Marion Supplemental Protest of Order No.
16 PSC-09-0263-TRF-WU. That was a supplemental protest
17 order.

18 MS. BARRERA: That is, has been admitted as
19 PSC Exhibit 3.

20 MS. MALLON: Okay. Thank you. That would be
21 a joint exhibit.

22 THE COURT: Yes, ma'am.

23 MS. MALLON: And Direct Testimony, Number 13,
24 Direct Testimony and Exhibit of Terry Will filed in PCS,
25 PSC Docket No. 080562-WU. And that is a joint exhibit

1 also?

2 MS. BARRERA: Yes. That would be PSC
3 Exhibit 5.

4 MS. MALLON: Okay. Number 14, Direct
5 Testimony and Exhibit of Millicent Mallon filed in PSC
6 Docket No. 080562-WU.

7 MS. BARRERA: That is, has been admitted as
8 Exhibit 6, PSC Exhibit 6.

9 THE COURT: Now a joint exhibit.

10 MS. MALLON: Okay. Number 15, East Marion's
11 Protest of Order -- I wonder if that's a -- no, it's
12 not. East Marion's Protest of Order No.
13 PSC-11-0566-AS-WU. Is that a joint exhibit, Martha?

14 MS. BARRERA: Well, that is PSC Exhibit 9.

15 THE COURT: Okay. We'll make PSC Exhibit 9 a
16 joint exhibit.

17 MS. MALLON: Okay. All right. Number 16,
18 Terry Will's Protest of Order No. PSC-11-0566-AS-WU.
19 Terry Will's protest of order.

20 MS. BARRERA: That's --

21 MR. WILL: It's Exhibit 10.

22 MS. BARRERA: Yes. That's been --

23 MS. MALLON: Exhibit 10?

24 MS. BARRERA: Yes. PSC Exhibit 10.

25 THE COURT: PSC-10 is now a joint exhibit.

1 **MS. MALLON:** Okay. And we are going to
2 scratch or withdraw number 17, our last one, was Docket
3 No. 080562-WU, dated September 29, 2011. I think that
4 was a duplication, so we're not going to be using that
5 one. And that is all I have for exhibits.

6 **THE COURT:** All right. Ms. Mallon, I then
7 have Mallon Exhibits 1 through 4, and 5 received in
8 evidence and PSC Exhibits 1, 2, 3, 4, 5, 6, 8, 9, and
9 10 are joint exhibits.

10 **MS. MALLON:** Uh-huh. Terry, so you should
11 have -- oh, no, I gave it to him. Oh, here it is. This
12 is 1, this is 2, this is 3. Okay. What I'm missing is
13 4 for us. It's First Request for Admissions to East
14 Marion.

15 **MS. BARRERA:** I believe we have extras.

16 **MS. MALLON:** Do you? I know, Lisa, you gave
17 me a bunch of extras that I was working off of also, but
18 I don't have that one.

19 Okay. Good. That is Number 4, so that's your
20 next one. And then your Number 5. I've got two Number
21 5s here.

22 **MR. WILL:** I have all of them out here.

23 **MS. MALLON:** Those, are those Martha's
24 exhibits here?

25 **MR. WILL:** They're all the exhibits and --

1 MS. MALLON: Okay.

2 MR. WILL: 1 through 10 of theirs, and the
3 rest is, is ours.

4 MS. MALLON: Okay. Okay. Okay. So you need
5 that, and then you need -- I've got two 6s, 6, 7. Okay.
6 You can go ahead and start. I'm finished with --

7 THE COURT: Did you want to offer any
8 testimony, Ms. Mallon? You don't have to, but you have
9 that opportunity now if you'd like to.

10 MS. MALLON: Well, I think the bottom line is
11 that --

12 THE COURT: If you're going to testify, I need
13 to swear you.

14 MS. MALLON: Oh.

15 THE COURT: Please raise your right hand.

16 **MILLICENT MALLON**

17 was called as a witness on behalf of Intervenors and,
18 having been duly sworn, testified as follows:

19 THE COURT: Okay. You don't have an attorney
20 here, so go ahead and tell me in a narrative fashion
21 whatever you'd like me to know.

22 **DIRECT STATEMENT**

23 MS. MALLON: Okay. This case started in 2008
24 and it's been frustrating, I'm sure, for all of us. And
25 I want to thank everyone involved in this for, for the

1 cooperation that we have received. It's been a long, a
2 long haul with this guy.

3 The bottom line is that we have, we have asked
4 for an irrigation meter for three years and we still
5 don't have it. The Intervenors before us are the ones
6 that signed. They still don't have theirs either. What
7 we want is this up-to-date legal irrigation meter at the
8 cost of \$70. That's what we want. That's all we've
9 ever wanted. And, and we didn't sign that protest
10 because we weren't comfortable with his Oklahoma type
11 installation of, of the meters that he was going to give
12 these other Intervenors. We weren't comfortable with
13 that installation. So we want, we want the installation
14 that is right and legal to have with no compromise on
15 that. I think that's all I have to say.

16 **THE COURT:** Thank you, ma'am. Any, any
17 questions from you?

18 **MS. BARRERA:** No, sir.

19 **THE COURT:** Mr. Will, any questions of this
20 witness?

21 **MR. WILL:** Yes.

22 **THE COURT:** Go right ahead.

23 **EXAMINATION**

24 **BY MR. WILL:**

25 **Q** What, in your opinion, in your own words, what

1 was the reason why this has taken four, five, six years?
2 What advantage would, does the utility have in delaying
3 this thing like the cost of currently if we irrigate,
4 that is also on our sewage bill? What reason do you,
5 would you imagine East Marion has to, to prolong this
6 thing?

7 A Money, number one. And just I think that
8 Mr. Hein is just a little vindictive. He, he doesn't
9 pay much attention to the law, as we've experienced in
10 other situations, not necessarily this one, but a whole,
11 a whole bunch of other situations, he ignores as much as
12 he can. And, and I don't know if it's money as much as
13 it is vindictiveness or -- I don't, I don't, I can't
14 read his mind.

15 But I know that regarding this situation, he's
16 just ignored us from the beginning 'til now, from 2008,
17 2007, this is 2012 and we're here, we're still here, all
18 of us, you know, for \$70. It has come up into the
19 thousand and thousands of dollars to bring you to Ocala
20 and for us to be on the phone with Public Service, hours
21 and hours of conferencing and paperwork back and forth,
22 duplications of paperwork back and forth. He doesn't
23 adhere to any of those requests, and so it just keeps
24 going. It just, it's just a circle that never stops.
25 It just keeps on going.

1 Q Is it true that he, he has an advantage in not
2 giving you an irrigation meter because you then pay more
3 for watering your grass?

4 A Is it true that he has an advantage of not
5 giving me an irrigation meter and I pay more, what his
6 advantage would be?

7 Q Financial advantage.

8 A His advantage is he's only going to get \$10 a
9 month more over this meter and that's it. I would think
10 he, for \$10 a month he would have taken care of this
11 issue three years ago.

12 Q Okay. I have one more question for you.
13 Remember that question and ask me that question when I
14 testify.

15 A Okay. That's all, Terry?

16 Q Yes. Thank you.

17 **THE COURT:** Okay. Is that it for this
18 witness?

19 **MS. BARRERA:** Yes, sir.

20 **THE COURT:** Thank you, Ms. Mallon.

21 **MS. MALLON:** You're welcome.

22 **THE COURT:** Does that complete your case in
23 chief? Any more exhibits, any more witnesses that you
24 plan to call?

25 **MS. MALLON:** No. No more witnesses, no more

1 exhibits.

2 **THE COURT:** Okay. Mr. Will, we're on your
3 case now. Did you have additional exhibits that you
4 wanted to offer?

5 **MR. WILL:** No, thank you.

6 **THE COURT:** Did you want to offer the
7 testimony of yourself or other witnesses?

8 **MR. WILL:** Yes. Myself.

9 **THE COURT:** Okay. If you'd raise your right
10 hand, please.

11 **TERRY M. WILL**

12 was called as a witness on behalf of Intervenors and,
13 having been duly sworn, testified as follows:

14 **THE COURT:** Please state your full name.

15 **MR. WILL:** Terry M. Will, W-I-L-L.

16 **THE COURT:** Right. As with Ms. Mallon, you
17 don't have an attorney with you, so feel free to tell me
18 in a narrative fashion what it is you'd like me to know.

19 **DIRECT STATEMENT**

20 **MR. WILL:** The case started many years ago, as
21 Ms. Mallon stated. And if I could draw your attention
22 to Exhibit 1 of Ms. Mallon -- this is the Public Service
23 Commission Docket No. 080064-WU. Do you guys have that?
24 Do those guys -- do you guys have it?

25 On February 14th of 2007, Mabelle Gregario

1 filed a complaint in this, in this document. And she
2 was charged an exorbitant amount of money. Ms. Gregario
3 paid \$897 for an irrigation meter, and it was illegal to
4 be -- they were illegally charged.

5 Staff's analysis in the document dated
6 February 14th of '07, the Gregarios again filed that
7 complaint, and it was the staff's analysis that during
8 this period of February 8 of '07 to June 15th of '07 the
9 Gregarios gave the check, gave the utility a check in
10 the amount of \$597, another check for \$497, another
11 check for \$100, another check for \$597, and another
12 check for \$197. Then the meter cost \$70 at that time.
13 They were grossly overcharged.

14 And during this complaint -- also on
15 October 2nd of 2007, Angela and Dennis Fountain filed a
16 complaint regarding \$597 they were required to pay for
17 an irrigation meter, again in violation of the current
18 tariff sheet at that time.

19 At that time staff advised Mr. Hein that he
20 could request a change, a meter installation change;
21 however, the date that this was filed, the old tariff
22 sheet was in place.

23 I could read into the record an analysis. On
24 December 17th, 2007, Mr. Will filed a complaint. His
25 meter was shut off. On September 28th service was

1 disconnected without notice and a charge of \$241.55 was
2 charged for a reconnection fee. This charge included a
3 customer deposit of \$141, and a fee of \$50 for
4 disconnection, and reconnection of \$15. The outstanding
5 balance was \$35.55.

6 Further in the record, on January 18th, 2008,
7 Mr. Hein responded to staff's inquiry about the
8 complaint. According to Mr. Hein, Mr. Will's bill was
9 mailed out on August 29th, 2007. A disconnect notice
10 was mailed out on September 21st, 2007, and service was
11 disconnected September 28th, 2007. However, Mr. Will
12 provided a copy of a cancelled check and an envelope
13 showing the postmark date of September 20th, 2007, in
14 compliance with the requirement of the utility.

15 PSC recommended -- it says, "Based on the
16 above, it appears that Mr. Will should have paid \$15 per
17 violation -- for violation reconnection instead of \$60,
18 and the deposit of \$104 instead of \$141, and he should,
19 the utility should have required \$45 for, for the
20 overcharge on the recommended changes provided to the
21 state.

22 "The -- further, staff recommends the utility
23 be required to provide a statement to the Commission
24 that Mr. Will was, was credited \$37 on his bill within
25 30 days." That didn't happen. None of that happened.

1 "Mr. Will should have never charged -- been charged
2 anything."

3 Recommendations. "East Marion should be
4 ordered to show cause in writing within 21 days that it
5 should not be fined a total of \$1,500 for its apparent
6 violations of Section 367.081(1), *F.S.*, and Rule
7 25-30.135 and 25-30.311(7) of the *F.A.C.*" Okay. That
8 concludes document one.

9 Mr. Hein of East Marion stated that the
10 payment was not received by the utility until
11 October 4th, 2007.

12 **MS. MALLON:** Are you on document two?

13 **MR. WILL:** Yes. Thanks.

14 **THE COURT:** And, Mr. Will, just so you know --

15 **MR. WILL:** Yes.

16 **THE COURT:** -- these documents that are in
17 evidence means that I can consider the facts that are
18 set forth in those documents.

19 **MR. WILL:** So I don't need to read it.

20 **THE COURT:** You don't need to reread them. If
21 there are -- if you have personal testimony or
22 observations or wish to highlight things that you
23 believe are particularly significant about the
24 documents, certainly you're entitled to do that. You
25 will be entitled to do that in your written submittal,

1 if you choose to file a proposed recommended order to
2 me. When you do that, you can cite to particular
3 passages within exhibits that have been received in
4 evidence.

5 **MR. WILL:** That helps, Your Honor. Thank you.

6 **THE COURT:** Yes, sir. But you can, you can
7 proceed how you choose to proceed.

8 **MR. WILL:** Okay. Thank you. That helps.

9 The utility, East Marion, and the owner, Herb
10 Hein, have both, with the PSC and with all of the
11 Intervenors has had a total disregard for any
12 requirements put forth by the PSC. And, in turn, the
13 PSC's attorney, Mr. Steve Reilly, has made --

14 **MS. BARRERA:** If I may.

15 **THE COURT:** Yes.

16 **MS. BARRERA:** I would like to clarify.
17 Mr. Steve Reilly is not an attorney with the PSC. He is
18 an attorney with the Office of the Public Counsel.
19 Sorry.

20 **THE COURT:** Okay. That's clarified.

21 **MR. WILL:** Thank you. I've made several
22 efforts to try to resolve this issue, and total and
23 absolute disregard for any communications for many
24 years. There's chronicles in these documents, Your
25 Honor, that, that show a step-by-step process that the

1 PSC went through in regard to certified letters and
2 returned, again a certified letter, returned. The third
3 time a certified letter signed for and returned
4 unopened. Phone numbers, incorrect phone numbers. All
5 the correspondence goes to a P.O. Box. As far as the
6 ratepayers, totally impossible to get ahold of the, the
7 utility for any complaints. You file a complaint and
8 then you in turn then file one with the PSC. That's
9 common knowledge.

10 That's, that's my statement, Your Honor.

11 **THE COURT:** Okay. Any cross-examination from
12 the PSC?

13 **MS. BARRERA:** No, Judge.

14 **THE COURT:** Ms. Mallon, any questions for
15 Mr. Will?

16 **MS. MALLON:** Yes. Thank you.

17 Can I -- this is out of context. I don't know
18 if I -- there's something that kind of bothers me that I
19 would like to, I would like to say and it has -- it
20 doesn't have anything to do with this present case right
21 now, but it's something that, just to give you an idea
22 of my experience with the water system and Mr. Hein.

23 Eight years ago my husband and I retired here
24 from Colorado and -- may I continue with this? It kind
25 of, it kind of does, it does, it has to do with the

1 water sanitary system.

2 THE COURT: Okay. The only problem is that
3 we're now on the testimony of Mr. Will. What, what I'll
4 allow you to do is recall yourself as a witness.

5 MS. MALLON: Okay. All right.

6 THE COURT: Unless there's objection from the
7 PSC to that process.

8 MS. BARRERA: No.

9 MS. MALLON: When do you want me to do that?

10 THE COURT: When you're done cross examining
11 Mr. Will.

12 MS. MALLON: Okay. All right. Thank you.

13 EXAMINATION

14 BY MS. MALLON:

15 Q Mr. Will, you asked me to ask you, what
16 advantage does Mr. Hein and East Marion Sanitary System
17 have, what, what is his advantage to, to dragging this
18 out for as long as he has and not giving us the
19 irrigation meter?

20 A Okay. The advantage of an irrigation meter is
21 that any water that we use to water our yards with does
22 not use the sewage system. So the sewage system is, is
23 based on a specific rate asked for and received by the
24 PSC, as is the potable water. That has a specific rate.
25 And the amount of water that you use as tallied by the

1 meter tells the utility how much water was used. And
2 then you're billed by how much water, and then it is
3 assumed that the, the amount of water that's being used
4 also uses the sewer. And so you are charged according
5 to the amount of water that you use by your sewer
6 rate -- by your -- I apologize. Strike that. The
7 amount of water you use predicts the amount of money
8 that you pay for the sewer rate.

9 The advantage of a meter would be it would not
10 run through that system. The -- it is assumed that,
11 that an irrigation meter puts water on your yard. It
12 doesn't service your house. And so you're not using the
13 sewer system, so you won't be charged that extra sewage
14 rate.

15 Mr. Hein was charging, and is still charging,
16 and it is to his advantage that, that he charges, even
17 though you're irrigating your yard with that water,
18 you're paying for the sewer too. So there's an
19 advantage for him to drag this out through as many
20 people that irrigate in our subdivision times the four,
21 five, or six years that this has taken. And so that's
22 his advantage, if that's clear.

23 Q Uh-huh. It is. That's all I have.

24 THE COURT: Okay. Let me ask you this,
25 Mr. Will. Does East Marion Sanitary Systems,

1 Incorporated, is that the utility that's providing
2 potable water to your residence?

3 MR. WILL: Yes.

4 THE COURT: And they're also providing the
5 sewer system to your residence?

6 THE WITNESS: That, that is correct.

7 THE COURT: Okay. Any follow-up to that
8 question, Ms. Barrera?

9 MS. BARRERA: None. We have no questions.

10 THE COURT: Okay. Mr. Will, anything else in
11 your case in chief?

12 MR. WILL: Do I have time for -- is it time
13 for a summation?

14 THE COURT: No, not yet.

15 Okay. Ms. Mallon, you wanted to offer
16 additional testimony?

17 MS. MALLON: Yes.

18 THE COURT: Go right ahead.

19 MILLICENT MALLON

20 was recalled as a witness on behalf of Intervenors and,
21 having been duly sworn, testified as follows:

22 DIRECT STATEMENT

23 MS. MALLON: In 2004 we had our house built in
24 Lakeview Woods and, my husband and I, and, and we did
25 not have a certificate of occupancy until a certain date

1 and we had that in our hand. And I can't remember that
2 date exactly, but it was sometime in, in June of 2004.

3 A year after we had taken, you know, after we
4 had moved into our house, a year later I got a bill from
5 East Marion Sanitary Systems for \$1,400 for water that
6 they had failed to charge me for when we first took
7 occupancy of the house. And I said, well -- and it was
8 for a three-day period. And I said, "Well, that can't
9 be, you know. You can't use \$1,400 worth of water in
10 three days." They had put sod in and our, our lawn had
11 been, you know, pretty much for three days being
12 continuously watered. We had not moved in yet because
13 we had not taken occupancy of the house yet, so it
14 wasn't ready for us.

15 But, anyway, our builder had watered the grass
16 for three days, and a year later Mr. Hein charged me
17 \$1,400. I said, "That cannot be possible." And he
18 said, "Well, it is. And if you don't pay it, we're
19 going to shut your water off." Well, we just, we had
20 no, no idea about Florida law or water or anything. We
21 were brand new in, in the State of Florida, and so we
22 didn't know what to do except he intimidated us and we
23 thought, boy, the worst thing that can happen to a
24 person is to have their water shut off. And so we paid
25 in payments 14 -- no, he brought it down to 12 when I

1 protested, he brought it down to \$1,200. And I said,
2 "We shouldn't have to pay that. We didn't even own the
3 house at that point." And he said, "Well, you can get
4 it from your builder, if you want to." And the builder
5 had done a lot of business with East Marion Sanitary
6 Systems, and so I thought, well, okay, we'll just get it
7 from the builder.

8 When I went to the builder, he said, "He's
9 crazy. We're not going to give you -- I'm not going to
10 pay him that money. That's, this has never happened
11 before and, you know, don't pay it." We paid it. And
12 that's the end of that story.

13 **THE COURT:** Okay. Any cross-examination from
14 any party?

15 **MR. WILL:** Have you --

16 **THE COURT:** Yes. Go ahead, Mr. Will.

17 **EXAMINATION**

18 **BY MR. WILL:**

19 **Q** Have you had any knowledge of any other
20 incidents like that that's occurred in the subdivision?

21 **MS. BARRERA:** I'm sorry. I'm going to object
22 to the line of questioning. It just goes beyond what
23 the issue is presently.

24 **THE COURT:** Sustained.

25 **MR. WILL:** No further questions.

1 **THE COURT:** All right. Then, Mr. Will, your
2 case is concluded. Ms. Mallon, your case is concluded.

3 **MS. MALLON:** We are going to have these
4 exhibits -- these exhibits have all gone to you, so --

5 **THE COURT:** Yes, ma'am.

6 **MS. MALLON:** Okay.

7 **THE COURT:** As I recited in the record.
8 Okay. Back to the PSC, anything further from
9 the PSC?

10 **MS. BARRERA:** No, sir.

11 **THE COURT:** Okay. Any other evidence to be
12 offered by any party in this proceeding?

13 (No response.)

14 Okay. Then the record is closed.

15 As I mentioned at the outset of this
16 proceeding, it's my job to prepare a recommended order
17 which sets forth the findings of fact that I make based
18 upon the evidence, that is testimony and documents;
19 apply the facts to the law; and issue a recommended
20 order. And the parties have an opportunity to provide
21 input to that process by submitting a proposed
22 recommended order, if you want to do that. You're not
23 required to do that, but it's an opportunity to tell
24 your side of the story if you want to do that.

25 If you go to the Division of Administrative

1 Hearings' website, you can see examples of other
2 proposed orders that have been submitted by what we call
3 pro se litigants, meaning folks that don't have lawyers.
4 And the process at the Division of Administrative
5 Hearings is and has always intended to be citizen
6 friendly. So whatever you submit, if you decide to
7 submit something, it does haven't to be in legalese, it
8 can be in plain language. Sometimes those kind of
9 submittals are even more effective than what is
10 submitted by lawyers. So you can avail yourself of the
11 resources of the website of the Florida Division of
12 Administrative Hearings.

13 If you do include proposed findings of fact,
14 make reference to the documents or the testimony that
15 you are directing my attention to. Okay. Let me ask,
16 do the parties intend to order a transcript?

17 **MS. BARRERA:** Yes, sir.

18 **THE COURT:** Okay. And Mr. Will and
19 Ms. Mallon, the court reporter is going to prepare a
20 transcript, if ordered to do so by the Public Service
21 Commission. You have the right to purchase a copy of
22 that from the court reporter, if you choose to do that,
23 and that will allow you to review what was said today.
24 Again, that's not a requirement but you might find it
25 helpful.

1 There is a deadline in statute of ten days for
2 the parties to submit proposed orders from the date of
3 the filing of the transcript. And the transcript, the
4 original gets filed with my office, but the court
5 reporter will notify you when it's been filed. That's
6 the beginning of the ten-day time period to prepare and
7 submit proposed orders should you choose to do that. If
8 any party feels they need more than ten days, that can
9 be extended, with the understanding that that then
10 waives my obligation to have my order out within 30 days
11 of the filing of the transcript. In other words, if any
12 party needs more than ten days, that's fine. I'll in
13 all likelihood grant that request, but then I can't
14 promise that my order will be out 30 days from the
15 filing of the transcript. Is that clear to everybody?

16 **MR. WILL:** Yes, sir.

17 **THE COURT:** All right.

18 **MS. BARRERA:** At this time we would, the PSC
19 would like to ask for 30 days to file our proposed
20 recommended order after the filing of the transcript.

21 **THE COURT:** Any objection to that?

22 **MR. WILL:** Is that what the Judge said, 30
23 days?

24 **MS. BARRERA:** Well, I'm asking -- oh, I'm
25 sorry.

1 **THE COURT:** Yeah. The ordinary time frame
2 under the statute which would obligate me to have my
3 order out within 30 days would require the parties to
4 file their proposed orders within ten days of the
5 submittal of the transcript. Ms. Barrera is asking for
6 30 days from the filing of the transcript.

7 **MR. WILL:** I have no objection to that.

8 **THE COURT:** Okay. Then proposed findings of
9 fact and conclusions of law will be due 30 days from the
10 date the transcript is filed with the Division of
11 Administrative Hearings.

12 Yes, sir.

13 **MR. WILL:** Can Ms. Mallon and I file a joint
14 --

15 **THE COURT:** You can, and I think that's an
16 excellent idea in this circumstance. Since your, your
17 factual circumstances are aligned, you may find that to
18 be an efficient use of your time to do one submittal.

19 The other thing that I would suggest, if there
20 are undisputed facts and if the parties want to put
21 together a stipulation of facts for inclusion in the
22 orders, that's always helpful to me. If, in other
23 words, if there's agreement as to, you know, when the
24 protest was filed or whatever the facts may be that are,
25 that there's no dispute, stipulated facts are always

1 welcomed. Okay.

2 MR. WILL: Yes.

3 THE COURT: Okay.

4 MS. MALLON: I'm not sure I understand what
5 you mean when you say that we can -- after you, after
6 this transcript goes in, we have 30 days to file a
7 written statement, and in that statement we're going to
8 state what we want from this.

9 THE COURT: Yes.

10 MS. MALLON: Just like we just did.

11 THE COURT: Yes. You're going to pretend that
12 you're the judge and you're going to write an order as
13 you would like me to write the order.

14 MS. MALLON: Okay.

15 THE COURT: So, yes, your submittal should
16 include precisely what it is you want me to find in
17 terms of the facts and the law. And, of course, my
18 recommendation, my order then goes back to the Public
19 Service Commission, who will issue a final order. And
20 just for your information, under the law, the Public
21 Service Commission may disagree with my conclusion and,
22 my conclusions of law and recommendation, but there are
23 restrictions on their ability to modify any facts that I
24 may find in my order.

25 Yes, ma'am.

1 **MS. MALLON:** Another question. Mr. Hein
2 probably is going to protest whatever you, you submit,
3 and this will go on again forever?

4 **THE COURT:** Again, the process, once I issue
5 my recommended order, any party who disagrees with my
6 order has the right to file exceptions to my recommended
7 order. Those are filed with the Public Service
8 Commission, not my office. Because as soon as I issue
9 my recommended order, I no longer have jurisdiction over
10 this case. Jurisdiction is returned to the Public
11 Service Commission. So any party who disagrees with my
12 order files exceptions to the Public Service Commission.
13 They then are obliged to rule on those exceptions in
14 their final order, so.

15 **MS. MALLON:** And then what's the punishment
16 if, if the final order is not adhered to?

17 **THE COURT:** That I couldn't comment on.

18 **MR. WILL:** Is that up to the PSC?

19 **THE COURT:** Again, I can't comment on that.

20 **MR. WILL:** Is that up to the PSC?

21 **MS. BARRERA:** We don't know at this point.

22 **MR. WILL:** If he, if he doesn't comply, do you
23 have -- can you compel him to comply?

24 **MS. BENNETT:** Do you want me to answer?

25 **MS. BARRERA:** Yes.

1 **MS. BENNETT:** The process would be to issue an
2 Order to Show Cause. We would have to send a letter
3 saying you have violated the Commission's whatever,
4 rules, statutes, orders. And at that point in time if
5 he -- there's a step process and he could say, you're
6 right, I'm going to go comply, you're wrong, I want a
7 hearing on -- when we issue an Order to Show Cause we're
8 going to tell him you've got to be -- you're going to be
9 fined X number of dollars. It's \$5,000, up to \$5,000
10 per day by statute for violations. And so we will say
11 in a letter that says you failed to comply with
12 whatever, and we recommend to the Commission, we will
13 recommend to the Commission a fine. And you have a
14 right to a hearing on the fine, not on the statute, but
15 on the fine whether or not you violated that order,
16 statute, rule.

17 **MR. WILL:** So if I understand you correctly,
18 the, the show cause that's in these documents, and he
19 had 21 days to show cause for the \$1,500 fine that was
20 levied and then nothing happened. He didn't pay the
21 fine, he didn't respond, nothing happened, and it wasn't
22 followed up. Is that correct?

23 **MS. BENNETT:** No. The -- you're talking about
24 the prior order, 080064?

25 **MR. WILL:** Yes.

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MS. BENNETT: The staff recommended that the Commission fine Mr. Hein. The Commission declined to fine Mr. Hein at that time. That doesn't mean that they can't fine him for another violation another time. They just declined in the Gregarios' and Fountains' and your complaint in that docket. But we would start another process if he were to refuse to comply with the Commission order.

THE COURT: Okay. Anything further before we go off the record?

MS. BARRERA: No, sir.

THE COURT: All right. Thank you all for your time and cooperation and participation, and the record is closed.

(Proceeding adjourned at 12:15 p.m.)

