

State of Florida



Public Service Commission

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

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

DATE: February 17, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Brady, Kaproth, Rieger)
Office of the General Counsel (Jaeger)

RE: Docket No. 040152-WS – Application for transfer of majority organizational control of FIMC Hideaway, Inc. in Levy County from Florida Investors Mortgage Corporation, a Florida corporation, to Robert and Janet McBride.
County: Levy

AGENDA: 03/01/05 – Proposed Agency Action for Issues 3 and 5 -- Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\040152.RCM.DOC

Case Background

On February 19, 2004, an application was filed for the transfer of majority organizational control of FIMC Hideaway, Inc. (FIMC or utility) from Florida Investors Mortgage Corporation (Seller) to Robert and Janet McBride (Purchasers). FIMC is a Class C water and wastewater utility currently providing service to approximately 108 mobile home lots in the Hideaway Adult Community in Levy County west of the City of Chiefland. The service area is located in the Suwannee River Water Management District (SRWMD) which has not imposed any special water use restrictions for the service area. The utility's 2003 annual report indicated combined annual revenues of \$43,267, with a combined net operating loss of \$6,946.

The utility has been in operation since July of 1984 when the Commission granted Certificate Nos. 426-W and 362-S under the name of Hideaway Service, Inc.¹ In December of 1990, the Commission received notice of Florida Investors Mortgage Corporation's (Mortgagor's) foreclosure on the utility. After an unsuccessful attempt to locate a permanent buyer, the Mortgagor formed FIMC Hideaway, Inc. to operate the utility facilities separate from its banking operations. In January of 1992, the Commission approved the transfer of certificates from Hideaway Service, Inc. to FIMC Hideaway, Inc.² On December 29, 2003, the Seller entered into a Stock Purchase Agreement (Stock Agreement) which transferred ownership of the stock interest in the utility to the Purchasers without provisions for the transfer to be contingent upon Commission approval. The utility also failed to pay the penalty for the late-filed 2003 annual report. In addition, the audit revealed that the utility overcharged service availability fees for three connections.

The purpose of this memorandum is to address failure of the utility to comply with the requirements of Section 367.071(1), Florida Statutes, and Rule 25-30.110, Florida Administrative Code, the transfer of majority control, rate base for transfer purposes, rates and charges, and refunds for service availability overcharges. The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes.

¹ Order No. 13497, issued July 10, 1984, in Docket No. 830552-WS, In Re: Application of Hideaway Service, Inc., for a certificate to operate a water and sewer utility in Levy County, Florida.

² Order No. 25584, issued January 8, 1992, in Docket No. 910672-WS, In Re: Application for transfer of Certificates Nos. 426-W and 362-S from Hideaway Service, Inc. to FIMC Hideaway, Inc. in Levy County.

Discussion of Issues

Issue 1: Should Florida Investors Mortgage Corporation be ordered to show cause in writing, within 21 days, why it should not be fined for its failure to comply with the requirements of Section 367.071(1), Florida Statutes, and for its failure to file its 2003 annual report by March 31, 2004, as required by Rule 25-30.110, Florida Administrative Code?

Recommendation: No. Florida Investors Mortgage Corporation should not be ordered to show cause. Further, staff recommends that the penalties calculated according to Rule 25-30.110(7), Florida Administrative Code, for delinquent annual reports should not be assessed. (Jaeger, Kaproth)

Staff Analysis: Pursuant to Section 367.071(1), Florida Statutes:

No utility shall sell, assign, or transfer . . . majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility. However, a sale, assignment, or transfer . . . of majority organizational control may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.

On December 29, 2003, the Seller entered into a Stock Agreement purportedly transferring all 700 shares of the stock held by the Seller to the Purchasers. This Stock Agreement was entered into prior to obtaining Commission approval for the transfer. Moreover, the Seller noted that it had the full right and authority to sell and deliver the stock in accordance with the Stock Agreement.

The Stock Agreement makes only two references to the Commission. Under paragraph 7., entitled Representations of Corporation, in subparagraph (d), FIMC warrants that:

Other than the above neither Seller nor the Corporation make any guarantys [sic] or other warranties or representations, express or implied as to title to the real property owned by the Corporation, the condition of any personal property or equipment owned by the Corporation and used in its operations, the acceptance by the Public Service Commission of the sale or any conditions of the status of the utility vis a vie the Public Service Commission[,] the Florida Department of Environmental Protection or any other agency having jurisdiction over the Corporation and it [sic] operations as to any regulatory issues.

Also, in paragraph 10 of the Agreement, the Purchaser was made responsible for payment of Public Service Commission taxes for 2003. Other than the above, there was no mention of the Commission, and there was no provision making the transfer contingent on Commission approval.

By letter to the attorney for the applicant (seller) dated March 22, 2004, staff questioned the absence of a provision in the Stock Agreement making the transfer contingent upon Commission approval. In that same letter, staff requested the applicant "provide either an unwind provision as an addendum to the stock transfer agreement, signed by both parties, or provide a reason why staff should not recommend that the seller be required to show cause in writing why a fine should not be imposed."

By letter dated May 3, 2004, the attorney for application responded as follows:

Transfer without Commission approval. The stock was transferred to Robert and Janet McBride from Florida Investors Mortgage Corporation and admittedly did not include a separate unwind provision. However, the former owner had no further interest in the Utility and had very few assets, other than the Utility, and as such the remaining assets have now been sold off and the corporation is in the process of being liquidated. As such, an unwind provision is not only unnecessary, in order to achieve the transfer in the public interest, it is difficult to obtain from an entity in the process of total liquidation and this [sic] will soon cease to exist. We will be glad to work with staff in any way we can on this issue, as we understand there technically may be an issue here with the way that the statutes are currently phrased. However, this is a situation where the prior owner, Florida Investors Mortgage Corporation, acquired the system through foreclosure and was not interested in continuing to operate the system and had been seeking an interested buyer for several years.

Also, Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to Commission jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Annual reports are considered filed on the day they are postmarked or received by the Commission. According to Commission records, this utility did not file its 2003 annual report until June 9, 2004 -- 69 days late. Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3 per day, based on the number of calendar days elapsed from March 31, or from an approved extended filing date. Using this \$3 figure and multiplying by 69 days, the total penalty would be \$207. Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, the Commission may, in its discretion, impose greater or lesser penalties for such noncompliance.

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), Florida Statutes, 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, Florida Statutes, or any lawful order of the Commission. By failing to comply with the provisions of Section 367.071(1), Florida Statutes, or by failing to file its 2003 annual report in a timely manner, the utility's acts were "willful" in the sense intended by Section 367.161, Florida Statutes. 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.

While the Seller has admitted to violating Section 367.071(1), Florida Statutes, there are mitigating circumstances which suggest that the seller should not be show caused. The Seller apparently did not intend to become the owner of all the stock of a utility and only did so in 1989 when it had to foreclose on the utility property to protect investors from fraudulent dealing. Ms. Weber, President of FIMC, states that she “was appointed by the court to oversee liquidation of the company and to attempt recovery of any amount of the investor funds.” She further states that for 13 years she has “made every effort to provide good service and” comply with state and local regulations. Ms. Weber says she has already disbursed the proceeds of this sale “to the remaining 198 investors, all of whom sustained substantial losses, and that the “bank account was closed and the parent corporation is being liquidated.” Moreover, she states that the seller had sought a buyer for 13 years and had had a difficult time in finding a willing buyer. With a purchase price of \$37,000, each of the 198 investors will on average receive less than \$190.

With respect to the annual report, upon sale of the stock of the utility to the McBrides in December of 2003, Ms. Weber timely provided the McBrides with a copy of the annual report. Apparently due to their inexperience, the McBrides did not realize that the annual report had to be filed by March 31, 2004, and the report was not filed until June 9, 2004. Ms. Weber, as the President of FIMC, has always been cooperative with staff, and Ms. Weber was greatly distressed to learn that the report had not been timely filed. Moreover, staff notes that in Order No. PSC-04-0615-FOF-WU, issued June 21, 2004, in Docket No. 040248-WU, In re: Initiation of show cause proceeding against Kincaid Hills Water Company in Alachua County for violation of Rule 25-30.110, F.A.C., Records and Reports, Annual Reports, and Rule 25-30.120, F.A.C., Regulatory Assessment Fees, Water and Wastewater Utilities, a case that involved multiple annual reports and regulatory assessment fees, the Commission declined to either initiate any show cause proceeding or assess any penalty pursuant to Rule 25-30.110(7)(b)3., Florida Administrative Code. Staff believe that the facts in this case show a lesser violation and even more mitigating circumstances than the facts in the Kincaid case.

Still, staff is concerned with the precedent of allowing even an unwilling owner to circumvent the statutes. However, based on this unique set of circumstances and the specific facts of this case which limit its precedential value, staff believes that a show cause proceeding against what apparently will be a dissolved corporation would not be the best use of the Commission’s time and money and would probably lead to court proceedings that would eventually prove fruitless. Moreover, staff notes that Ms. Weber has always been very cooperative and has always tried to make the best of the difficult situation she found herself in as an unwilling utility owner and operator and has no history of prior violations. Staff believes that it would only be adding insult to injury to initiate show cause proceedings against the Seller, and that Ms. Weber and the other investors have suffered enough aggravation.

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Accordingly, staff recommends that show cause proceedings not be initiated against FIMC Hideaway for its apparent violation of the aforementioned statutes and Commission rules. Staff also recommends that the Commission exercise its discretion as stated in Rule 25-30.110(6)(c), Florida Administrative Code, and not assess the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, for the delinquent annual report, for the reasons stated above.

Issue 2: Should the transfer of majority organizational control of FIMC Hideaway, Inc. from Florida Investors Mortgage Corporation to Robert and Janet McBride be approved?

Recommendation: Yes. The transfer is in the public interest and should be approved effective the date of the Commission's vote. The territory being transferred is described in Attachment A. Robert and Janet McBride should be responsible for filing the utility's 2004 annual report and paying 2004 regulatory assessment fees on or before March 31, 2005. (Brady, Rieger, Kaproth, Jaeger)

Staff Analysis: On February 19, 2004, an application was filed on behalf of FIMC for the transfer of majority organizational control from Florida Investors Mortgage Corporation to Robert and Janet McBride. The deficiencies were completed on May 13, 2004, and the utility's response to requests for additional information was filed on January 3, 2005. Except as discussed in Issue 1, the application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules pertaining to an application for the transfer of majority organizational control. The territory being transferred is described in Attachment A.

Noticing. Pursuant to Rule 25-30.030, Florida Administrative Code, the application contained the requisite proof of noticing. No objections to the application were received by the Commission and the time for filing such has expired.

Buyers. The application contained a copy of a Stock Agreement between Florida Investors Mortgage Corporation, as the Seller, and Robert and Janet McBride, as the Purchasers, in which all 700 shares of utility stock were sold. The total purchase price of the stock was \$37,000, all of which was paid in cash. The application further affirms that Robert and Janet McBride are the sole officers and shareholders of FIMC.

Proof of Ownership. Rule 25-30.037(3)(i), Florida Administrative Code, requires evidence that the utility owns the land upon which the utility treatment facilities are located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. As proof of ownership, the application contained a copy of the Certificate of Title which was issued by the Circuit Court to Florida Investors Mortgage Corporation pursuant to the 1990 foreclosure action. A Quit Claim Deed executed on March 11, 2002 from Florida Investors Mortgage Corporation to FIMC Hideaway, Inc. was subsequently provided along with Title Insurance. Staff believes that these are the appropriate documents to represent proof of ownership based on the circumstances of the transfer.

Annual Report and Regulatory Assessment Fees (RAFs). Except as discussed in Issue 1, staff has verified that the utility is current on annual reports and RAFs through 2003. The Purchasers, Robert and Janet McBride, are responsible for filing the utility's 2004 annual report and 2004 RAFs on or before March 31, 2005.

Books and Records. The audit conducted pursuant to this transfer revealed that all support documentation for plant additions subsequent to the date that rate base was last established as of December 31, 1991, was destroyed by Ms. Weber upon the advice of her accountant. In addition, Ms. Weber was under the impression that an audit of the utility's books

in 1997 had verified source documentation dating back to the last rate case and, as such, there was no need to continue to maintain the source documentation. Staff would note that the 1997 audit was a compliance audit for the twelve months ending December 31, 1996, during which period there were no plant additions. The Purchasers have provided a statement that they are now aware of the requirements of the Commission to maintain all current and future source documentation. The Purchasers have also provided a statement that they have worked with persons experienced in following the National Association of Regulatory Utility Commissioner's Uniform System of Accounts and are confident that the utility's books and records are now fully in conformance.

Environmental Compliance. Pursuant to Rule 25-30.037(3) (h), Florida Administrative Code, the application included a statement from the Purchasers that the utility's water and wastewater systems are in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (FDEP). Staff contacted the FDEP's water and wastewater environmental compliance groups as well as the SRWMD. According to the FDEP, the utility's water system does have outstanding deficiencies concerning disinfection by product monitoring and backflow prevention device testing. However, the utility is reportedly in the process of working towards compliance, and the FDEP has indicated that it will monitor the situation until the deficiencies are corrected. According to the FDEP, the utility's wastewater systems are currently in environmental compliance and according to the SRWMD, there are no water use consumption issues in the utility's service area.

The utility's water treatment plant is composed of two six-inch wells and one four-inch well with liquid chlorination used as the primary form of treatment. There is also an interconnection between the utility and Springside at Manatee, Ltd., another PSC regulated utility. The utility reported that the interconnection has existed for many years, and that its purpose has been to provide water from one system to the other as needed and in order to meet the FDEP's redundancy requirements. The utility's wastewater treatment plant is a 20,000 gallon per day extended aeration facility with percolation ponds used for treated effluent disposal.

Public Interest. Pursuant to Rule 25-30.037(3)(f), Florida Administrative Code, the application contained a statement indicating how the transfer is in the public interest, including a summary of the Purchasers' experience and financial ability. The application also contained a statement of the Purchasers' willingness to fulfill the commitments, obligations, and representations of the Seller with regard to utility matters.

According to the application, the community is close to build out with the few remaining undeveloped lots individually owned. Therefore there is no developer with a continuing interest in the property and operation of the utility facilities. In addition, the Seller has stated it has no further interest in the development. The Purchasers own the clubhouse within the development and, therefore, have stated a continuing interest in the efficient and effective operation of the water and wastewater systems. While the Purchasers have no direct experience in utility operations, Mr. McBride has had experience as the President and CEO of a water bottling plant in Florida. In addition, the Purchasers have stated their intent to continue to employ the same licensed operator and maintenance staff utilized by the Seller for the foreseeable future.

Since the utility was purchased with cash, there was no financing. The Purchasers provided personal financial statements which appear to indicate sufficient funds to maintain a utility near build out. In addition the Purchasers provided a statement indicating that they have provided and will continue to provide funding for the utility as needed to maintain a high quality of utility operations and maintenance.

Conclusion. Based upon all the above, staff recommends that the transfer of majority organizational control of FIMC Hideaway, Inc. from Florida Investors Mortgage Corporation to Robert and Janet McBride is in the public interest and should be approved. The territory being transferred is described in Attachment A. The effective date of the transfer should be the date of the Commission vote on March 1, 2005. Robert and Janet McBride should be responsible for filing the utility's 2004 annual report and paying 2004 RAFs on or before March 31, 2005.

Issue 3: What is the rate base for FIMC Hideaway, Inc.'s water and wastewater systems at the time of the transfer?

Recommendation: For transfer purposes, rate base should be \$42,693 for the water system and \$30,020 for the wastewater system as of December 31, 2003. Within 30 days from the date of the order approving the transfer, FIMC Hideaway, Inc. should be required to provide a statement that the utility's books have been adjusted to reflect the Commission approved rate base adjustments and balances. (Brady, Rieger)

Staff Analysis: The Commission last established rate base for FIMC pursuant to Order No. PSC-92-0479-FOF-WS, issued June 9, 1992, in the staff assisted rate case in Docket No. 911091-WS.³ The transfer of majority organizational control occurred on December 29, 2003. Therefore, staff recommends that rate base be established for transfer purposes as of December 31, 2003.

As noted in Issue 2, the source documentation for all plant additions since the prior rate case had been destroyed by the Seller. However, the Seller had maintained a ledger record of the plant additions, all of which were added between 1992 and 1995. A majority of the plant additions were proforma plant required to be installed in the prior rate case and, as such, were verified by staff prior to closing Docket No. 911091-WS. The Seller and Purchaser contacted all the utility's vendors and the utility's bank in an attempt to locate archived invoices and check records.

Utility Plant in Service (UPIS). Pursuant to Order No. PSC-92-0479-FOF-WS, the utility's water and wastewater UPIS balances as of December 31, 1991, were \$105,258 and \$111,684, respectively. The utility provided supporting documentation for water and wastewater plant additions of \$12,830 and \$1,875. The additions appear reasonable and should be included in rate base. As such, staff recommends that the utility's water and wastewater UPIS balances as of December 31, 2003, should be \$118,088 and \$113,559, respectively.

Land & Land Rights. Order No. PSC-92-0479-FOF-WS reflected water and wastewater land and land rights in the amount of \$3,858 and \$4,961, respectively. No changes to the land assets have occurred, therefore no adjustments are recommended.

Accumulated Depreciation. Pursuant to Order No. PSC-92-0479-FOF-WS, the utility's water and wastewater accumulated depreciation balances as of December 31, 1991, were \$25,901 and \$43,880, respectively. Using the guideline depreciation rates prescribed in Rule 25-30.140, Florida Administrative Code, the additional water and wastewater accumulated depreciation from January 1, 1992 through December 31, 2003, is \$50,947 and \$42,046, respectively. Therefore, staff recommends that water and wastewater accumulated depreciation as of December 31, 2003, is \$76,848 and \$85,926, respectively.

³ Order No. PSC-92-0479-FOF-WS, issued June 9, 1992, in Docket No. 911091-WS, In Re: Application for a staff-assisted rate case in Levy County by FIMC Hideaway, Inc.

Contributions-in-aid-of-Construction (CIAC) and Amortization of CIAC. Pursuant to Order No. PSC-92-0479-FOF-WS, the utility's water and wastewater CIAC balances as of December 31, 1991 were \$0 and \$172, respectively. The audit revealed that there were four connections added between January 1, 1991 and December 31, 2003. The utility's approved water and wastewater service availability charges are \$705 and \$725, respectively.⁴ Based on those charges, the utility's water and wastewater CIAC balances should be increased by \$2,820 and \$2,900, respectively. Therefore, staff recommends that the utility's water and wastewater CIAC balances as of December 31, 2003, are \$2,820 and \$3,072, respectively. It should be noted that the utility did not collect the correct service availability charges in some instances. This is discussed in Issue 5.

Pursuant to Order No. PSC-92-0479-FOF-WS, the utility's water and wastewater amortization of CIAC balances as of December 31, 1991, were \$0 and \$11, respectively. Based upon the additional CIAC described above, staff recommends that the utility's water and wastewater amortization of CIAC balances as of December 31, 2003, are \$415 and \$498, respectively.

Conclusion. Based upon all of the above, staff recommends that rate base for transfer purposes as of December 31, 2003, of \$42,693 for the utility's water system and \$30,020 for the utility's wastewater system be approved. Schedules 1 and 2 show the calculation for water and wastewater rate base, respectively. Schedule 3 shows staff's recommended adjustments to the rate base previously established by Order No. 92-0479-FOF-WS. Schedules 4 and 5 show staff's recommended water and wastewater account balances, respectively, for UPIS and accumulated depreciation as of December 31, 2003. Staff notes that rate base for transfer purposes does not include the normal rate making adjustments for used and useful or working capital. Within 30 days of the date of the order approving rate base, the utility should be required to provide a statement that the utility's books have been adjusted to reflect the Commission approved rate base adjustments and balances.

⁴ The charges were approved effective July 1, 1992, pursuant to Order No. PSC-92-0479-FOF-WS.

Issue 4: Should the utility's existing rates and charges be continued?

Recommendation: Yes. The existing rates and charges for the utility should be continued until authorized to change by the Commission in a subsequent proceeding. The tariff sheets reflecting the existing rates and charges should be effective for services rendered or connections made on or after the stamped approval date. (Brady)

Staff Analysis: Rule 25-9.044(1), Florida Administrative Code, provides that in the case of change of ownership or control of a utility which places the operation under a different or new utility, the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company unless authorized to change by the Commission.

FIMC's current service rates and charges were approved by Order No. PSC-92-0479-FOF-WS, as shown below. The utility does not have any approved customer deposits. However, it does have the Commission's standard miscellaneous service charges and meter test deposits.

Monthly General and Residential Water Service

<u>Meter Size</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 13.02
3/4"	19.52
1	32.53
1 1/2"	65.07
2"	104.11
3"	208.22
4"	325.35
6"	650.71
	<u>Gallonage Charge</u>
Per 1,000 Gallons	\$ 2.89

Water Service Availability Charges

Main Extension Charge	\$600.00
Meter Installation Fee	\$105.00

Monthly General and Residential Wastewater Service

<u>Meter Size</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 11.11
3/4"	16.67
1	27.78
1 1/2"	55.55
2"	88.90

3"	177.79
4"	277.79
6"	555.59

	<u>Gallonge Charge</u>
Per 1,000 Gallons	\$ 2.52
(10,000 gallon cap for residential service)	

Monthly Residential Wastewater Only Service

Flat Rate	\$ 25.25
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Wastewater Service Availability Charges

Main Extension Charge	\$725.00
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The audit revealed that, because the clubhouse was not metered, the utility was not billing the clubhouse its approved rates for water and wastewater service. Instead, the utility was billing the clubhouse \$6.00 per month. In response to the audit, the Purchasers provided a statement that they understand that all customers must be metered and billed, including the clubhouse, and will do so on a going-forward basis. Staff has confirmed that the Purchasers have installed a meter for the clubhouse and will begin billing the approved water and wastewater service charges in the next billing cycle. In addition, the utility did not collect the correct service availability charges in some instances. This is discussed in Issue 5.

Staff recommends that the existing rates and charges for FIMC be continued until authorized to change by the Commission in a subsequent proceeding. The tariff sheets reflecting the existing rates and charges should be effective for services rendered or connections made on or after the stamped approval date.

Issue 5: Should the utility be required to refund overcharged service availability charges?

Recommendation: Yes. Pursuant to Rule 25-30.360, Florida Administrative Code, the utility should make a credit on each overcharged customer's bill in the next billing cycle after the Commission's final order is issued in this docket for the amount of the overcharge, plus interest. The utility should provide a report of the completion of the refunds within 90 days from the date of the Commission's final order. (Brady, Jaeger)

Staff Analysis: The audit revealed that the utility had charged in excess of the Commission approved service availability charges for one connection in 2000 and two connections in 2002. The amount of the overcharges were \$115, \$270, and \$70, respectively. According to the utility's response to the audit, it was unaware it had collected service availability charges that were not in conformance with its approved charges, and the utility's records did not reveal the reasons for the discrepancies. Staff is not recommending a show cause proceeding for this error, because it was made by the previous owner and can be corrected by a credit.

Pursuant to Rule 25-30.360(2), (4), (5), and (7), Florida Administrative Code, staff recommends that the utility be required to make a credit on each of the three customers' bill for the amount of the overcharge, plus interest, in the next billing cycle after the Commission's requirement for a credit, issued as proposed agency action, is finalized by the issuance of a Consummating Order. The utility should be required to provide a report of the completion of the refunds within 90 days from the date of the Consummating Order.

Issue 6: Should this docket be closed?

Recommendation: No. If no timely protest is received to the proposed agency action issues on rate base and refunds, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending receipt of the utility's statement that the utility's books have been adjusted to reflect the Commission approved rate base adjustments and balances and a report of the completion of refunds. Upon receipt of the statement and report, the docket should be administratively closed. (Jaeger)

Staff Analysis: If no timely protest is received to the proposed agency action issues on rate base and refunds, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending receipt of the utility's statement that the utility's books have been adjusted to reflect the Commission approved rate base adjustments and balances and a report of the completion of refunds. Upon receipt of the statement and report, the docket should be administratively closed.

Attachment A

WATER AND WASTEWATER SERVICE TERRITORY

FIMC HIDEAWAY, INC.

LEVY COUNTY

The following described lands located in portions of Section 25, Township 11 South, Range 13 East, Levy County, Florida:

Section 25

The Northeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of said Section 25.

Schedule 1

**FIMC HIDEAWAY, INC.
 Water Rate Base
 As of December 31, 2003**

Description	Order No. PSC-92-0479-FOF-WS	Staff Adjustments	Recommended Balance
Utility Plant in Service	\$ 105,258	\$ 12,830 A	\$ 118,088
Land & Land Rights	\$ 3,858	\$ - 0 -	\$ 3,858
Accumulated Depreciation	\$(25,901)	\$(50,947) B	\$(76,848)
Contributions in Aid of Construction	\$(-0-)	\$(2,820) C	\$(2,820)
Accumulated Amortization of CIAC	\$ -0-	\$ 415 D	\$ 415
Total Water Rate Base	\$ 83,215	\$(40,522)	\$ 42,693

Schedule 2

**FIMC HIDEAWAY, INC.
 Wastewater Rate Base
 As of December 31, 2003**

Description	Order No. PSC-92-0479-FOF-WS	Staff Adjustments	Recommended Balance
Utility Plant in Service	\$ 111,684	\$ 1,875 A	\$ 113,559
Land & Land Rights	\$ 4,961	\$ - 0 -	\$ 4,961
Accumulated Depreciation	\$(43,880)	\$(42,046) B	\$(85,926)
Contributions in Aid of Construction	\$(172)	\$(2,900) C	\$(3,072)
Accumulated Amortization of CIAC	\$ 11	\$ 487 D	\$ 498
Total Wastewater Rate Base	\$ 72,604	\$(42,584)	\$ 30,020

FIMC HIDEAWAY, INC.
Schedule of Water and Wastewater Rate Base Adjustments
As of December 31, 2003

Explanation	Recommended Rate Base Adjustments	
	Water	Wastewater
A. Utility Plant In Service		
To add plant additions from January 1, 1992 through December 31, 2003	\$ 12,830	\$ 1,875
B. Accumulated Depreciation		
To add accumulated depreciation from January 1, 1992 through December 31, 2003	\$(50,947)	\$(42,046)
C. Contributions In Aid Of Construction (CIAC)		
To add CIAC from January 1, 1992 through December 31, 2003	\$(2,820)	\$(2,900)
C. Amortization of CIAC		
To add amortization of CIAC from January 1, 1992 through December 31, 2003	\$ <u>415</u>	\$ <u>487</u>
Total Adjustments	\$(40,522)	\$(42,584)

Schedule 4

**FIMC HIDEAWAY, INC.
 Staff Recommended Water Account Balances
 As of December 31, 2003**

Acct. No.	Account Name	Plant Balance	Accumulated Depreciation Balance
301	Organization	\$ 3,345	\$ 1,976
304	Structures & Improvements (Buildings)	\$ 4,965	\$ 3,462
307	Wells	\$ 20,094	\$ 10,566
311	High Service Pumping Equipment	\$ 9,742	\$ 7,689
320	Water Treatment Equipment	\$ 873	\$ 221
330	Distribution Reservoirs	\$ 28,442	\$ 18,717
331	Distribution Lines	\$ 32,588	\$ 21,822
333	Services	\$ 9,007	\$ 6,295
334	Meter & Meter Installation	<u>\$ 9,032</u>	<u>\$ 6,100</u>
		\$118,088	\$ 76,848

Schedule 5

**FIMC HIDEAWAY, INC.
 Staff Recommended Wastewater Account Balances
 As of December 31, 2003**

Acct. No.	Account Name	Plant Balance	Accumulated Depreciation Balance
351	Organization	\$ 2,340	\$ 1,676
361	Collection Sewers (Gravity)	\$ 66,622	\$ 44,124
363	Services to Customers	\$ 11,785	\$ 8,202
370	Receiving Wells	\$ 8,878	\$ 7,990
380	Treatment & Disposal Equipment	<u>\$ 23,934</u>	<u>\$ 23,934</u>
		\$113,559	\$ 85,926