

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: June 7, 2007

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Brown)
Division of Economic Regulation (Fletcher, Bulecza-Banks, Rendell)

RE: Docket No. 060285-SU – Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven.

AGENDA: 06/19/07 – Regular Agenda – Motion for Reconsideration – No Oral Argument Requested

COMMISSIONERS ASSIGNED: Edgar, Carter, McMurrian

PREHEARING OFFICER: Carter

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060285.RCM.DOC

Case Background

Utilities, Inc. of Sandalhaven (Sandalhaven or utility) is a class B wastewater utility providing service to approximately 910 customers in Charlotte County. Sandalhaven is a wholly-owned subsidiary of Utilities, Inc. In its 2005 Annual Report, the utility reported operating revenues of \$270,518 and a net operating loss of \$45,037. On May 15, 2006, Sandalhaven filed an Application for a rate increase, but because the MFRs contained a number of deficiencies that required revisions, Sandalhaven filed an Amended Application on December 28, 2006. The Amended Application also included a request for increased service availability charges. On January 16, 2007, the utility filed a request for authority to collect revised service availability charges on a temporary basis, pending the determination of final rates and charges in

this proceeding. Placida HG, LLP (Placida), a developer operating in Sandalhaven's territory, and the Office of Public Counsel (OPC) intervened in the case.

The Commission addressed Sandalhaven's request for temporary service availability charges at its March 27, 2007, Agenda Conference. After hearing discussion from Placida opposing temporary service availability charges, responses by Sandalhaven and OPC, and comments by staff, the Commission voted to approve the temporary charges subject to refund at the conclusion of the case. The decision was memorialized in Order No. PSC-07-0327-PCO-SU, issued April 16, 2007. The Commission based its decision to approve temporary service availability charges on section 367.101, Florida Statutes, and Commission precedent and calculated the charges pursuant to Rule 25-30.580, Florida Administrative Code. Order PSC-07-0327-PCO-SU, page 3.

On April 25, 2007, Placida filed a Motion for Reconsideration of Order No. PSC-07-0327-PCO-SU, asserting that the Commission's Order failed to explicitly address the arguments it had raised and the documents it had handed out at the Agenda Conference, and therefore the Commission had made a mistake of fact or law warranting reconsideration. Placida's Motion is governed by Rule 25-22.036, Florida Administrative Code, Reconsideration of Non-Final Orders, which provides that a party adversely affected by a preliminary or non-final order may seek reconsideration by the Commission panel assigned to the proceeding within 10 days of issuance of the order. Placida complied with the time-frame and other requirements of Rule 25-22.036. Sandalhaven filed a response in opposition to Placida's motion on May 1, 2007. OPC did not file a response.

Placida did not file a separate written request for oral argument at the time it filed the motion for reconsideration. Rule 25-22.0021(3), Florida Administrative Code, Agenda Conference Participation, provides that informal participation at agenda is not permitted on dispositive motions and motions for reconsideration. Participation is governed by Rule 25-22.022(1), Florida Administrative Code, Oral Argument Rule, which requires that a request for oral argument must be made by a separate written request filed concurrently with the motion for which oral argument is sought. Failure to file a timely request for oral argument constitutes a waiver.

This is staff's recommendation to deny Placida's Motion for Reconsideration. The Commission has jurisdiction pursuant to sections 367.011, 367.081, 367.101, and 367.121, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission deny Placida HG, LLC's Motion for Reconsideration of Order No. PSC-07-0327-PCO-SU?

Recommendation: Yes. The Motion for Reconsideration does not identify a point of fact or law which was overlooked or which the Commission failed to consider in its order granting temporary service availability charges. (Brown, Fletcher, Rendell)

Staff Analysis:

Placida's Motion

In its motion for reconsideration, Placida requests that the Commission reverse or rescind Order No. PSC-07-0327-PCO-SU granting Sandalhaven a temporary increase in service availability charges, because the Order did not explicitly address the documents and legal arguments that Placida presented to the Commission at its March 27, 2007, Agenda Conference. Placida states that the Commission therefore failed to consider the information and legal argument when it made its decision approving the temporary increase. Under the applicable standard for review of a motion for reconsideration, Placida argues, the Commission overlooked facts and legal principles that should have been considered. Placida refers to the case of State v. Green, 105 So. 2d 817, 818 (Fla. 1st DCA 1958) for the proposition that sometimes a fact, a controlling decision, or a principle of law discussed in oral argument will be inadvertently overlooked in rendering the Court's decision and in that instance reconsideration would be warranted.

The fact Placida believes the Commission overlooked concerns Sandalhaven's intent to use bulk wastewater treatment capacity purchased from the Englewood Water District to serve both existing and future wastewater customers. Placida also refers to recent staff data requests about the Englewood Water District agreement as demonstration that the Commission overlooked an important fact. The legal decision and principle that Placida argues should have controlled the Commission decision is City of Cooper City v. PCH Corp., 496 So. 2d 843 (Fla. 4th DCA 1986), where the Court held that the municipal utility's proposed connection fee increase was unreasonable because the fees would recover costs for new facilities that would benefit both existing and future customers, but the fees would be imposed only on new customers. Based on the above, Placida asks the Commission to direct Sandalhaven to file an amended request for temporary service availability charges that allocates increased charges between existing and future customers.

Sandalhaven's Response

Sandalhaven states in its response that Placida acknowledges that it should only be entitled to reconsideration if the Commission overlooked some fact, precedent or rule of law in rendering its decision. According to Sandalhaven, Placida makes the same substantive arguments in its motion for reconsideration that it made at the Commission's March 27th Agenda Conference, but then makes the assertion that the Commission must have overlooked those arguments because they were not specifically discussed in the Order. Sandalhaven points out

that the State v. Green opinion upon which Placida relies is actually an opinion chastising attorneys for filing too many meritless motions for reconsideration. According to Sandalhaven, that opinion confirms the established legal principle that a petition for rehearing (or a motion for reconsideration) is not intended to allow counsel to advise the court that they disagree with the court's conclusions or to reargue matters already discussed in briefs and oral argument.

Sandalhaven contends that the possibility that an argument made to the court in briefs or oral argument in an appellate proceeding would be overlooked when the opinion is written is not applicable to a Commission Agenda Conference where a decision is announced immediately following arguments. Sandalhaven asserts that the transcript of the conference (Attachment A) shows that Placida's arguments and documents were carefully considered before the Commission announced its decision. Sandalhaven finds the argument that since they were not addressed in the written order they were not considered to be without merit.

Sandalhaven argues that the Commission's Order under consideration here does not conflict with City of Cooper City, because the two cases have different procedural histories. City of Cooper City was an appellate decision rendered after a trial in which the parties had the opportunity to present evidence. This case, Sandalhaven argues, is in a preliminary stage and Placida will have the opportunity to request an evidentiary hearing to assert its position before the Commission sets final rates and service availability charges for Sandalhaven. Any temporary service availability charges collected from Sandalhaven at this point are subject to refund in the final proceeding, and therefore Placida is protected. The same would not be true for Sandalhaven's existing customers if temporary charges are not assessed.

Sandalhaven states that the questions posed by staff regarding the interconnection with the Englewood Water District have no bearing on when the service availability charges go into effect, and they do not show that the Commission failed to consider any material fact in making its decision to establish the temporary charges.

Discussion

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See, Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959) citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958).

Staff has reviewed State v. Green and agrees with Sandalhaven that the case is primarily a reprimand to attorneys for filing meritless requests for reconsideration. Other portions of the opinion are relevant here:

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

to a matter which has already received the careful attention of the judges, or to further delay the termination of litigation.

It may be that some petitions for rehearing stem from an erroneous conception of the purpose of an opinion prepared by the court. The only justification for inflicting upon the bar the duty of reading the great mass of opinions prepared by appellate courts is that an opinion is necessary for the guidance of the trial court and the litigants in the subsequent stages of the same litigation, or that a question of law is of such importance that its discussion and decision will be of assistance to the bar and other courts in ascertaining the rights of persons and the proper decision of other cases. An opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant. For this reason it frequently occurs that an opinion will discuss some phases of a case, but will not mention others. Counsel should not from this fact draw the conclusion that the matters not discussed were not considered.

State v. Green, pps. 818-819. (Emphasis supplied.)

For confirmation of this view as it relates to the Commission's orders, see Occidental Chemical Company v. Mayo, 351 So. 2d 336, 341 (Fla. 1977) ("Obviously, the Commission was not required to include in its order a summary of the testimony it heard or a recitation of every evidentiary fact on which it ruled."). See also, Florida Chapter of the Sierra Club V. Orlando Utilities Commission, 436 So. 2d 383 (Fla. 5th DCA 1983) (Hearing officer in power plant citing proceeding not required to specifically address facts and law ". . .deemed irrelevant, immaterial, unsupported by competent substantial evidence or otherwise unnecessary to the determination of this cause.").

As Sandalhaven points out, the transcript of the Commission's Agenda Conference shows that the Commission considered, but was not persuaded by, the documents and argument Placida presented. Rather, the Commission, noting OPC's support of the temporary service availability charge increase, was persuaded that the increase should be approved to protect current customers, especially since the charges would be collected subject to refund at the conclusion of the rate case when permanent service availability charges would be set. Agenda Transcript p. 22. In response to a question concerning the remedies available to the developer if the Commission granted the temporary increase, Sandalhaven, staff, and Placida itself confirmed that Placida would have the opportunity to present its evidence and arguments in the rate case. As Placida's attorney explained:

Certainly as a party to the rate case we have full party rights to present positions similar to those that I have talked about today through our testimony and through the evidence in the case.

Agenda Transcript p. 23.

Upon hearing confirmation from staff that Placida's issues could be addressed in the rate case and the charges would be held subject to refund, the Commission approved the recommendation to grant temporary service availability charges. The Commission's Order

granting the temporary charges was based on existing statutory authority, Commission precedent, and the Commission's service availability rule. The Commission did not address Placida's evidence and arguments in the Order, not because it failed to consider them, but because they were not material to the decision the Commission made at the time. The motion for reconsideration should be denied. Placida has not identified a point of fact or law that was overlooked or that the Commission failed to consider in rendering its Order.

Issue 2: Should this docket be closed?

Recommendation: No. The docket should remain open to address the substantive issues of the case. (Brown)

Staff Analysis: The docket should remain open to address the substantive issues of the case.

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060285-SU

In the Matter of:

APPLICATION FOR INCREASE IN WASTEWATER
RATES IN CHARLOTTE COUNTY BY UTILITIES,
INC. OF SANDALHAVEN.

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PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 12

BEFORE: CHAIRMAN LISA POLAK EDGAR
 COMMISSIONER MATTHEW M. CARTER, II
 COMMISSIONER KATRINA J. MCMURRIAN

DATE: Tuesday, March 27, 2007

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

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

1 PARTICIPATING:

2 STEPHEN C. REILLY, ESQUIRE, Office of Public Counsel,
3 representing the Citizens of the State of Florida.

4 MARTIN S. FRIEDMAN, ESQUIRE, FRANK SEIDMAN and JOHN
5 WILLIAMS, representing Utilities, Inc. of Sandalhaven.

6 KENNETH HOFFMAN, ESQUIRE, and M. MCDONNELL, ESQUIRE,
7 representing Placida HG, LLC.

8 MARTHA BROWN, ESQUIRE, and BART FLETCHER,
9 representing the Florida Public Service Commission Staff.

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1 P R O C E E D I N G S

2 CHAIRMAN EDGAR: And we will be moving on to Item 12.

3 Okay. Mr. Fletcher, before we begin, Item 12,

4 Commissioner Carter.

5 COMMISSIONER CARTER: Thank you, Madam Chairman. I

6 asked for this moment just to say how much I'm honored to serve

7 with you and Commissioner McMurrian. I know that took a lot of

8 time on that last issue, but, you know, it just, just -- we're

9 always trying to resolve issues for customers, and I just, I

10 just appreciate your indulgence in allowing us to do that. I

11 know we're within the confines of the docket that was presented

12 before us, but I do appreciate the opportunity to, to have our

13 staff to go further, go above and beyond the call of duty, and

14 I thank both of you for indulging me in that. But that's, I

15 think that's what we're about. The heart and soul of this

16 Commission is the fact that we care about people, and I don't

17 want to let any opportunity pass when we do something like that

18 for people for us not to just continue doing the work. So

19 thank you very much.

20 CHAIRMAN EDGAR: Thank you, Commissioner Carter. As

21 you know, we strive daily, each of us, and with our staff to be

22 fair and to be helpful.

23 Okay. Mr. Fletcher.

24 MR. FLETCHER: Commissioners, Item 12 is staff's

25 recommendation to approve the temporary service availability

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1 charge increase for Utilities, Inc. of Sandalhaven. Subsequent
2 to the filing of staff's recommendation, Placida HG, LLC, a
3 developer who has been granted intervention in this docket,
4 requested that it be allowed to participate on this item.
5 Participation is at the discretion of the Commission. Staff
6 recommends Placida be allowed to participate, and staff is
7 prepared to answer any questions the Commission may have.

8 CHAIRMAN EDGAR: Thank you.

9 MS. FREEDSON: Yes. I'm Martin Friedman, the Law
10 Firm of Rose, Sundstrom & Bentley. Also with me is Frank
11 Seidman and John Williams. We support the staff's
12 recommendation, and I would like to reserve, after Mr. Hoffman
13 has made comments, I would like to reserve some time to respond
14 to his comments. Thank you.

15 CHAIRMAN EDGAR: Thank you.

16 Mr. Hoffman.

17 MR. HOFFMAN: Thank you, Chairman Edgar,
18 Commissioners. My name is Ken Hoffman. With me is Marty
19 McDonnell. We are appearing on behalf of Placida HG, LLC. I
20 have a handout that I'm going to ask Mr. McDonnell to
21 distribute to Commissioners and counsel and staff that I will
22 be referring to throughout my remarks.

23 Commissioners, Placida is a developer of over
24 400 residential units that are located in Sandalhaven's service
25 territory. Placida and Sandalhaven entered into a developer's

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1 agreement in September of 2006. Under that agreement, Placida
2 paid Sandalhaven the current tariffed connection charge of
3 \$1,250 per residential ERC. When you multiply that number,
4 that dollar figure by Placida's 422 units, you would come up
5 with a figure of \$522,500. That's what Placida has paid
6 Sandalhaven, and it was paid in September of 2006. Now at that
7 point we had been monitoring this rate case that had been filed
8 before the Commission, and at that time in September of '06
9 Sandalhaven had not requested any increase in their tariffed
10 service availability charges. But about three months later
11 toward the end of December of 2006, you know, after we had
12 signed our agreement and had paid Sandalhaven over \$500,000,
13 the utility filed an amended application to increase their
14 service availability charges approximately 125 percent. So
15 hypothetically if that request were approved in full, the
16 effect would be to more than double the amount that Placida has
17 already paid Sandalhaven.

18 Now after they filed their amended application, the
19 utility filed a request to impose those charges on an interim
20 basis for your approval to do so. Placida opposes that
21 request. That's why we're here.

22 In discussing the request, there are a few principles
23 that I think you need to keep in mind in considering
24 Sandalhaven's request.

25 First of all, a request for an interim increase in

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1 service availability charges is different than an interim
2 increase in monthly rates, which is what you typically see.
3 The Commission statutes specifically provide a statutory
4 methodology and a formula for calculating an interim increase
5 in monthly rates. It's specifically designed to allow a
6 utility to increase monthly rates, subject to refund, to allow
7 the utility to earn at the bottom of its last authorized range
8 of its rate of return.

9 Now the Commission doesn't have any specific statutes
10 or rules when it comes to an increase in service availability
11 charges. That's not to say that we are saying that you can't
12 do this. What I am saying is that there are no specific
13 statutory formulas as there are with interim increases in
14 monthly rates. In my judgment, that means that the Commission
15 has an even greater level of discretion in reviewing
16 Sandalhaven's request for an interim increase in these
17 connection charges.

18 Secondly, in the 4th DCA's decision in an appellate
19 court case by the name of City of Cooper City versus PCH
20 Corporation, which is at 496 So.2d 843, the appellate court
21 there held that a utility's proposed increase in connection
22 fees is unreasonable and invalid if the new fees are intended
23 to recover costs for new facilities or new programs that
24 benefit both existing and future customers, but the fees are

25 imposed only on, entirely on the new future customers. In the

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1 court's words, such costs are to be allocated on a fair share
2 pro rata basis to avoid providing a windfall to the existing
3 customers.

4 As I'm going to attempt to demonstrate through the
5 documents in my handout, if the Commission utilizes and relies
6 only on the documents and the numbers that the utility has
7 filed and if the Commission accepts the utility's repeated
8 representation that the costs that it proposes to recover
9 through these new fees are for the purpose of providing
10 wastewater treatment to all of their customers, existing and
11 new, then we believe the only fair, equitable and supportable
12 action is for the Commission to have Sandalhaven refile this
13 request and come back to you with an allocation of these
14 projected costs which provides a fair share, a fair allocation
15 between existing and future customers.

16 If you look at Page 1 of the handout, that's a copy
17 of Sandalhaven's currently tariffed service availability
18 charge. It's a plant capacity charge of \$1,250. The
19 Commission's rules define a plant capacity charge as a charge
20 made by the utility for the purpose of covering all or part of
21 the utility's capital costs in the construction or expansion of
22 treatment facilities. So up to this point, up 'til today
23 Sandalhaven's only service availability charges has been this

24 plant capacity charge of \$1,250, and the purpose is to offset
25 the costs of their existing wastewater treatment plant.

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1 As I mentioned, that's what Placida paid to
2 Sandalhaven, but that's not what, according to Sandalhaven,
3 Placida is going to be receiving. We are not going to be
4 served, according to Sandalhaven, through their existing
5 wastewater treatment plant. We are going to be served through
6 this interconnection to the Englewood Water District, and I'll
7 talk a little bit more about that later.

8 Now we don't concede at this point in this whole
9 proceeding that we owe anything else other than what we've
10 already paid when we negotiated and paid for plant capacity.
11 But we know that Sandalhaven has made it clear that they think
12 we do have to pay this proposed increase in their service
13 availability charges, which is why we're here.

14 Sandalhaven has an existing wastewater treatment
15 plant that is running substantially close to its full capacity
16 and providing service to 910 existing customers. The 910 is a
17 number that I took from Page 1 of the staff recommendation.
18 Again, I am not -- this is not based on discovery. This is
19 based on the numbers Sandalhaven has filed and the numbers in
20 the staff recommendation.

21 Now Sandalhaven understands that it cannot serve the
22 estimated number of future customers. And from what I could

23 tell they've given two numbers; they've given a 1,700 number
24 and a 1,300 number, 1,313. They can't provide service to,
25 excuse me, to the future customers without the interconnection

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1 to the Englewood Water District. Sandalhaven understands that
2 its existing wastewater treatment facility lacks the capability
3 and the capacity to serve the future customers. That's why
4 they've entered into this contract. Sandalhaven has a contract
5 with an entity that's known as the Englewood Water District.
6 And Englewood is going to provide wastewater treatment service
7 for all of Sandalhaven's customers, and Sandalhaven has signed
8 up for 300,000 gallons per day of capacity for that purpose and
9 they've paid capacity reservation charges for that purpose.

10 If you look at Page 5 of your handout, you will see
11 that Sandalhaven has now come in through this amended
12 application and they've eliminated that plant capacity charge
13 that I talked about before because their capacity is about to
14 be used up. And now they've proposed a system capacity charge
15 of \$2,627 for residential ERC. And the purpose of this fee,
16 according to their application, is to recover approximately
17 \$3 million that they say it will cost to interconnect their
18 existing network and the Englewood treatment facility, the
19 Englewood wastewater treatment facility.

20 Now it should be obvious that the 300,000 gallons per
21 day of wastewater treatment capacity is intended to be used by
22 the utility to serve both the existing customer base and the

23 projected number of future customers. We provided you copies
24 of their own documents which confirm that to be the case. If
25 you look on Pages 6 and 7 of your handout, I've provided you a

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1 copy of a letter that's dated March 10, 2006, from
2 Sandalhaven's attorney to one of Placida's attorneys where
3 Sandalhaven's counsel states in the third paragraph that the
4 arrangements with the Englewood district have been reached to
5 treat all of Sandalhaven's wastewater needs.

6 If you fast forward to the amended application that
7 they filed in December of '06, and that's on Page 3 of your
8 handout, there they state that they will secure treatment
9 capacity of 300,000 gallons per day and that this capacity will
10 be used to serve anticipated developments, plus existing
11 customers will utilize all of this capacity.

12 Now what about the projected costs of
13 interconnection? If you turn to Page 4 of your handout, which
14 is taken from the amended application, it states there that
15 Sandalhaven intends to install a 12-inch force main, which we
16 believe to be well beyond what's necessary to serve the
17 1,300 to 1,700 future customers. We think the fact that
18 they're showing a 12-inch force main only further confirms that
19 the Englewood treatment facility will be used to serve all of
20 their customers.

21 So where does that leave us? We think that based on

22 the information that Sandalhaven has provided that the
23 projected costs for the interconnection are too high because
24 the line is oversized. But really more importantly for
25 purposes of what is in front of you today, we know, because

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1 Sandalhaven has said it, that whatever the final costs for this
2 interconnection are, those costs are costs that will be used to
3 provide facilities to serve and that will benefit existing and
4 future customers. And we think under the case law there has to
5 be a fair allocation of those costs between the existing and
6 future customers before, before you can grant any interim
7 increase.

8 So really the first thing that Placida is asking the
9 Commission to do today is to order Sandalhaven to go back and
10 come up and develop a fair and equitable cost allocation of the
11 costs of the interconnection between existing and future
12 customers and bring it back before the Commission. If the
13 Commission disagrees with that approach and believes it's
14 appropriate to make a decision today, I have taken the liberty
15 of preparing alternative calculations for an interim refund or
16 an interim increase -- an interim decrease or an interim
17 increase, which are on Pages 8 and 9 of the handout. If you
18 look at Page 8 of the handout and if you accept Sandalhaven's
19 projected costs as reasonable, which we don't but for purposes
20 of today we will, if you utilize the future customer number of

21 1,700 which they have used in the text of their application and
22 which staff uses in their recommendation, the result is
23 actually an interim reduction in their current service
24 availability charges of \$74 per residential ERC.

25 If, on the other hand, you use the number that was in

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1 their schedule, Schedule SAC-1 where they show a projected
2 number of future customers of approximately 1,300 and you run
3 the math, the result is an interim increase of \$132 per
4 residential ERC.

5 So to wrap it up, Chairman, we think they need to be
6 ordered to go back and do a fair allocation of these projected
7 costs. We think if you're not inclined to do that, we have
8 offered you alternative calculations using their numbers. And
9 to the extent the Commission were to decide to grant an interim
10 increase, we do request that you order them to provide security
11 beyond that recommended by staff. In other words, we would ask
12 that you require the utility to post a bond, a letter of credit
13 or at least a guarantee by the parent company of their
14 corporate undertaking.

15 Thank you, Madam Chairman. That concludes my
16 remarks.

17 CHAIRMAN EDGAR: Thank you.

18 Commissioners, any questions for Mr. Hoffman before
19 we give Mr. Friedman the opportunity to respond? No? Okay.

20 Mr. Friedman.

21 MR. FRIEDMAN: Thank you, Madam Chairman,
22 Commissioners. Martin Friedman again. Mr. Hoffman may have
23 raised a number of interesting questions; however, his comments
24 go to the merits of the case and not whether the utility is
25 entitled to an interim or temporary increase in its service

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1 availability cases. If Mr. Hoffman objects to the allocation
2 and he believes there should be an allocation and he objects to
3 the amount being allocated between current and future
4 customers, then that's something that's going to be determined
5 at the end of the day after you hear testimony from expert
6 witnesses one way or the other. That's, that's what's going to
7 happen ultimately. What we're asking to do is just to
8 implement that increase whatever it is on a temporary basis
9 subject to refund. Now Mr. Hoffman is suggesting you lower the
10 amount that the utility is entitled to collect. That doesn't
11 protect the utility and the, and the, and the other customers
12 who will have the CIAC that will reduce the future rates.

13 If you, if you follow what Mr. Hoffman is asking you
14 to do, here's what it will motivate a developer to do. The
15 developer will be motivated to file an objection to the case to
16 an increase in service availability charges, to delay the
17 implementation of the service availability charges until such
18 time as he has already made a connection, in which case the
19 service availability charge would not apply to them. That's

20 the whole purpose of implementing this on an interim basis.
21 Otherwise, this developer will drag this case out for a year, a
22 year and a half. The developer will go ahead and connect to
23 the system and then say, "You can increase the service
24 availability charges. They don't apply to me because I'm
25 already connected." That's what the interim, collecting on an

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1 interim basis is intended to do is to make sure that everybody
2 is on the same page. Also, if you allow the developer to, to
3 do that, what happens is at the end of the day your calculation
4 of what that service availability charge ought to be will
5 change because you will have this developer who you expected to
6 be subject to future service availability charges not in the
7 mix anymore and so now that affects the service availability
8 charge to all the other customers.

9 The, the comments that Mr. Hoffman made that implied
10 that the utility did something wrong by negotiating this deal
11 with, with this developer and then coming along later and
12 filing a protest is disingenuous. When this case was
13 negotiated, there's a specific provision in the contract, the
14 developer agreement, that allows this developer -- and he
15 negotiated this because the standard provision in the developer
16 agreement had a provision that said that you accept these rates
17 and this is the way it is. They wanted to put a provision in
18 there that says, no, we want to be able to protest or object if

19 you file for a future increase. So when the original developer
20 agreement was negotiated, the developer knew or at least his
21 attorney, Mr. Hoffman, who is astute in these matters, knew
22 that the utility was going to have to file for a service
23 availability case to recoup not only the \$3 million to build
24 the line, but something Mr. Hoffman left out is the service
25 availability charge that has to be paid or had to be paid to

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1 Englewood. So when Mr. Hoffman makes his analysis on this
2 schedule, it doesn't include the 300,000 gallons of capacity
3 which the utility had to pay Englewood for. So his numbers
4 would be, would be drastically skewed by leaving out that
5 significant amount of investment.

6 The upshot is the developer is not harmed by the
7 process that's, that's being suggested by the utility and
8 agreed by the, recommended by the staff in this case. It's
9 been done many times before. In fact, I have seen occasions --
10 at Mr. Reilly's request in a case we had recently that this
11 Commission implemented a service availability charge on an
12 interim basis to make sure exactly that didn't happen, that
13 people would go in and connect in that would then make that
14 charge moot if somebody protested the order. Now I don't
15 remember what case that was, but maybe Mr. Reilly can recall
16 and enlighten us.

17 So the developer is protected in this process.

18 Whatever the amount turns out to be at the end of the day, if
19 it's, if it's less than what the developer paid, the developer
20 gets a refund with interest. So he's not harmed by that. The
21 reverse is not true. If you don't collect enough at the end of
22 the day, when the correct amount of service availability charge
23 is determined, the utility didn't collect enough, it can't go
24 back to the developer, similar as you have in regular interim
25 rates. The purpose of that is to protect the utility and the

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1 customer both, and that's what this does. It protects the
2 utility and the other customers, and it protects the developer
3 in that if the number does come out to be less, as Mr. Hoffman
4 seems to think it will, the customer is going to get a refund
5 with interest. So the process -- this is a pretty typical
6 process that the Commission has used at least the 25 years I've
7 been doing this, and I don't see any basis to deviate from that
8 based on anything that I've heard Mr. Hoffman say. Thank you.

9 CHAIRMAN EDGAR: Thank you.

10 Commissioner Carter.

11 COMMISSIONER CARTER: Thank you, Madam Chairman.

12 I've just got a question for staff: That I notice in the, in
13 the documents that you provided to us you note in there twice
14 about the amended filing to correct for a number of
15 deficiencies by the utility. Can you tell me the nature of
16 those deficiencies? Does that make sense?

17 MR. FLETCHER: There were numerous deficiencies in

18 the MFRs that the utility did not meet, and then also I guess
19 throughout the case, as it was, they were deficient the -- I
20 believe the test year and the timing of the interconnection
21 became a concern, and that was another reason for the refiling
22 is the timing of the interconnection with the Englewood
23 district and the test year. And I think in the revised filing
24 they actually updated the test year to the projected '06.

25 COMMISSIONER CARTER: Follow-up? So based upon

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1 what's before us today, all of those deficiencies have been
2 met. And as we stand today, the issue that you've presented to
3 us that we should decide upon, there are no deficiencies in the
4 filing documents.

5 MR. FLETCHER: No, Commissioners. No, Commissioners.
6 They satisfied minimum filing requirements in February. And,
7 again, this is just for the temporary, to address the temporary
8 charge for service availability.

9 CHAIRMAN EDGAR: Commissioner McMurrin.

10 COMMISSIONER McMURRIAN: Yes. I just wanted staff to
11 respond to Mr. Hoffman's suggestion for Sandalhaven to go back
12 and calculate fair and equitable cost allocation. And based on
13 the information that they've provided today, I just wanted your
14 response on this.

15 MR. FLETCHER: Well, as the Commission has done in
16 the past, we have approved interim or temporary, excuse me,

17 temporary service availability charges. And seeing how we do
18 have -- the, the MFRs have been met, those concerns regarding
19 improper allocation can be addressed in the rate case. And,
20 again, they're subject to refund and the security is through a
21 corporate undertaking is what we've recommended.

22 COMMISSIONER McMURRIAN: I'm sorry. I didn't hear
23 the end there about the security.

24 MR. FLETCHER: And the security is, recommending it
25 as a corporate undertaking by the utility's parent.

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1 COMMISSIONER McMURRIAN: One follow-up to that.
2 Mr. Hoffman said that if the Commission disagrees, that -- I
3 believe he was going further to say that maybe you provide
4 greater security. Do you think the amount of security that
5 your recommendation contains is adequate, given the concerns
6 that we've heard?

7 MR. FLETCHER: Yes, Commissioner. This was based on
8 the growth that was provided in the MFRs. And since this is a
9 PAA rate case, it's over -- we estimated the collection of the
10 service availability charges would be over seven months. But
11 based on that historical growth over seven months we believe
12 the security is appropriate of \$124,497.

13 CHAIRMAN EDGAR: Mr. Reilly.

14 MR. REILLY: Just a few brief remarks. Public
15 Counsel is in support of staff's recommendation. Sandalhaven
16 is looking at a very substantial rate increase. It has a

17 projected test year. I think a lot of this tremendous increase
18 is based on substantial capital costs that are required in this
19 case, and I just think that we agree that we'd rather have this
20 money on the table and projected and at least available to be
21 considered by the Commission when this case is coming down. If
22 it happens that, that this developer is allowed to come in and
23 connect a bunch of lots prior to a proper amount being set, I
24 think that could compromise the current customers. So I feel
25 the protections are there for the developer, but at the same

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1 time to protect the current customers I think it's important to
2 approve staff's recommendation. Thank you.

3 CHAIRMAN EDGAR: Commissioner McMurrian.

4 COMMISSIONER McMURRIAN: So, Mr. Reilly, you agree
5 with what Mr. Friedman said about how the utility can't go back
6 but the developer is adequately protected.

7 MR. REILLY: And I do. And with the customers
8 looking at a 300 percent plus increase, I think it's critical
9 not to take that off the table. I have not had -- I didn't get
10 a copy of all that detailed analysis, and I think it's all
11 great evidence and it may at the end of the day prove that this
12 service availability charge should be something other than
13 what's been proposed. But the developer is protected. I just
14 think staff's recommendation is critical to protect the monies
15 so that we, you know, that this rate increase does not have to

16 be any higher than it's perhaps going to be.

17 CHAIRMAN EDGAR: Mr. Hoffman.

18 MR. HOFFMAN: Thank you, Madam Chairman. Three or
19 four points very quickly.

20 First of all, the issue of my being disingenuous, I
21 had no reason to know, I don't know how I could have known that
22 an amended application was going to be filed three months after
23 we filed this developer's agreement. That was never
24 communicated to me by Sandalhaven's lawyer. What I did know
25 was that they had a contract with Englewood Water District, but

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1 I had no way of knowing whether that was going to be used for
2 us. We paid plant capacity charges. By definition that would
3 apply to their existing wastewater treatment plant. But I
4 understand their position and that's why we're here, that they
5 intend to impose those charges on us.

6 Secondly, in terms of going back and, and whether
7 they can go back or not, that's really going to depend on the
8 issue of when a developer connects. So, for example, there's,
9 there's one case out there, a Florida Supreme Court case, I
10 believe, that talks about the ability of a utility to pass on
11 increased charges at the time of connection. Well, if these
12 increased charges that they've proposed are approved through
13 this process before Placida's units come onboard, then it would
14 seem to me that there's certainly an argument that Sandalhaven
15 has that they could, that they could impose them. Now that's

16 going to depend on whether or not we're connected now or
17 whether we're connected in the future because our network
18 actually, our development actually is connected to Sandalhaven
19 today. But all I'm trying to get across to you is that the
20 notion that it's just black and white and they can't go back
21 isn't necessarily the case.

22 Most importantly, let me go back to something I said
23 in the beginning, you're working here with a lot of discretion
24 in my judgment because you don't have an interim statute as you
25 do with an increase in monthly rates that tells you you've got

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1 to calculate it this way and it's got, the numbers have to be
2 brought to a certain level and that's how it's supposed to
3 work, and I think your discretion with an interim increase in
4 monthly rates is extremely limited.

5 This I think you have discretion on. But what I am
6 suggesting to you is that the City of Cooper City case that I
7 cited to you provides essentially the framework under which
8 this interim increase or proposed interim increase should be
9 filed. And here, based on the City of Cooper City case, I
10 think it's incumbent on the utility to make some good faith
11 attempt to comply with that allocation. It's easy for them to
12 say, "Let the developer pay." Well, that's another \$600,000.
13 It's not small change. And I think it's incumbent upon them,
14 and I am urging the Commission to use that precedent as

15 essentially its substitute to provide the framework for how an
16 interim increase in service availability charges should be
17 applied based on their documents, which recognize and concede
18 that this interconnection will be to provide service to all
19 customers. Thank you.

20 CHAIRMAN EDGAR: Commissioner Carter.

21 COMMISSIONER CARTER: Madam Chairman, thank you. I
22 was really listening on the edge of my seat to Mr. Reilly. We
23 had this, I think the last agenda we had, we were saying, look,
24 you know, I don't like to be here on these water cases where we
25 have a small -- I know this may not be relevant in y'all's mind

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1 but it is to me -- where the fees overweigh the costs of the
2 increase. And he said, look, I wanted to try to get here in
3 advance so we can protect the customers and all. And I was
4 really -- I mean, we had a discussion with him at length on
5 that. And now he's saying, look, you know, on a temporary
6 basis we'd rather have the money in there so it's not, you
7 know, a sticker shock for the customers later. And I'm
8 persuaded. I think that that makes sense, because at least you
9 have access to the proceeds when you go back and do the
10 true-up, you know, and everyone is made whole and comfortable
11 about that.

12 A lot of times the Public Counsel's office may, you
13 know, get kind of behind the thing. But on this one I think, I
14 think -- Mr. Reilly, you remember we had this discussion on

15 this in particular as we talked about small water companies and
16 all, and I know that's not related to this case, but it is
17 related in general to how we deal with this being proactive
18 versus reactive. And I'm really -- I think that at the
19 appropriate time I'm prepared to support staff on this.

20 CHAIRMAN EDGAR: Commissioner McMurrian.

21 COMMISSIONER McMURRIAN: I have one more question. I
22 suppose it's for legal staff and perhaps the other attorneys
23 here. What is, what is the developer's remedy? After this
24 decision is made today, let's assume we vote out the staff
25 recommendation, what, what is the next step in order to, I

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1 guess to provide information or make the case about the court
2 case he mentioned? Should I start with Mr. Hoffman?
3 Mr. Hoffman.

4 MR. HOFFMAN: I'm sorry, Commissioner. The fans
5 inhibited me a little bit on that one. Could you try again,
6 please?

7 CHAIRMAN EDGAR: Okay. Bear with us. Commissioner
8 McMurrian, if you would again.

9 COMMISSIONER McMURRIAN: No problem. I'm interested
10 in what would be your next step, assuming the staff
11 recommendation is voted out today as is, what is your next step
12 in trying to remedy the situation as you see it? Do you have
13 an ability -- I can't tell, frankly, if this is PAA or not or

14 is it just proceeding to the full rate case?

15 MR. HOFFMAN: Commissioner McMurrin, I'm not sure
16 what it is. Certainly as a party to the rate case we have full
17 party rights to present positions similar to those that I've
18 talked about today through our testimony and through the
19 evidence in the case. Whether or not we will choose to pursue
20 other remedies, if and when at some point in the future we
21 receive a bill, if the Commission approves the staff
22 recommendation today, I don't know. I'm just not prepared to
23 say.

24 COMMISSIONER McMURRIAN: Staff, that's for staff as
25 well.

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1 MS. BROWN: Commissioner, I agree with what
2 Mr. Hoffman said, they have full rights to participate in the
3 rate case, and that, I think, would be their, their next step.
4 I'm not convinced that they would have any interlocutory
5 appellate rights to challenge your decision here today because
6 it's an interim temporary decision.

7 CHAIRMAN EDGAR: Ms. Brown, I'm so sorry, but we are
8 having a hard time hearing you too.

9 MS. BROWN: Oh, I'm sorry.

10 CHAIRMAN EDGAR: There you go.

11 MS. BROWN: Is that better?

12 CHAIRMAN EDGAR: It is. I'm going to ask you to

13 start again.

14 MS. BROWN: I'll start again. I agree with what
15 Mr. Hoffman said about his ability to participate in the rate
16 case as a full party. That would be his next step, I would
17 think. I would suggest probably there would not be an
18 interlocutory appeal that would be successful to your decision
19 today because it's a temporary or interim decision and there is
20 a remedy at the end of refund.

21 The staff's recommendation is that Sandalhaven has
22 made a prima facie case that they are entitled to increased
23 service availability charges and, based on that, they're
24 recommending that you allow interim rates. If that case is
25 made or not made at the rate case, then the refund would be

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1 available.

2 Also, I would suggest to Mr. Friedman that the Aloha
3 case is the case he couldn't remember where service
4 availability charges were assessed to protect customers. I
5 think the H. Miller & Sons case controls this situation as
6 well.

7 CHAIRMAN EDGAR: Thank you, Ms. Brown.

8 Commissioners, any further questions? No?

9 Commissioner Carter.

10 COMMISSIONER CARTER: Madam Chairman, I move staff's
11 recommendation.

12 COMMISSIONER McMURRIAN: Second.
13 CHAIRMAN EDGAR: And I concur. All in favor, say
14 aye.
15 (Unanimous affirmative vote.)
16 CHAIRMAN EDGAR: Opposed? Show it adopted. That
17 concludes our business for the day. Once again, thank you all
18 for your patience, and we are adjourned.
19 (Agenda Item 12 concluded.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

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4 I, LINDA BOLES, RPR, CRR, Official Commission
5 Reporter, do hereby certify that the foregoing proceeding was
6 heard at the time and place herein stated.

7 IT IS FURTHER CERTIFIED that I stenographically
8 reported the said proceedings; that the same has been
9 transcribed under my direct supervision; and that this
10 transcript constitutes a true transcription of my notes of said
11 proceedings.

9 I FURTHER CERTIFY that I am not a relative, employee,
10 attorney or counsel of any of the parties, nor am I a relative
11 or employee of any of the parties' attorneys or counsel
connected with the action, nor am I financially interested in
the action.

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DATED THIS _____ day of April, 2007.

LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734

FLORIDA PUBLIC SERVICE COMMISSION