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June 21, 1991

Mr. Steve Tribble, Director  
 Division of Records and Reporting  
 Florida Public Service Commission  
 101 East Gaines Street  
 Tallahassee, Florida 32399-0850

Re: Complaint and Petition of Sandy Creek  
 Airpark, Inc; against Sandy Creek  
 Utilities, Inc. regarding provision of  
 water and sewer service in Bay County  
 PSC Docket No. 910111-WS  
Our File No. 28031.01

Dear Mr. Tribble:

Attached please find the original and fifteen (15) copies each  
 of the Prehearing Statement filed by Sandy Creek Airpark, Inc., in  
 the above referenced matter.


Should you have any questions or comments regarding this  
 matter, please do not hesitate to contact me.

- ACK
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG FMD:lcb
- LE Enclosures
- LIN cc: Mr. Greg Delavan
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- GTH \_\_\_\_\_

Sincerely,

*F. Marshall Deterding*  
 F. Marshall Deterding  
 For the Firm

Dictated by Mr. Deterding  
 but signed in his absence  
 to avoid delay in mailing.

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 FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
 06260 JUN 21 1991  
 FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and Petition of Sandy )  
Creek Airpark, Inc. against Sandy )  
Creek Utilities, Inc. regarding ) Docket No. 910111-WS  
provision of water and sewer service )  
in Bay County. )  
\_\_\_\_\_ )

PREHEARING STATEMENT

Petitioner, Sandy Creek Airpark, Inc., by and through its undersigned attorney, hereby files this Prehearing Statement pursuant to Order No. 24440 issued in Docket No. 910111-WS on April 25, 1991, and states:

I. WITNESSES.

(a) Mr. Greg Delavan, Vice President, Sandy Creek Airpark, Inc., 1 C Airway, Panama City, Florida 32404.

Mr. Delavan will testify as to the historical background of the relationship between Sandy Creek Airpark, Inc., and Sandy Creek Utilities, Inc., and the continuing assurances provided by the Utility to the Airpark that water and sewer service was available to serve both Phases I and II of the Airpark's property. Mr. Delavan will also testify concerning the appropriateness of the extension application as filed by the Utility and respond to issues raised by the Utility's witness, Swain, as to the assurances of services by the Utility, its ability to serve, and the reasonable conditions for such service.

(b) Other rebuttal witnesses.

Petitioner's rebuttal testimony is due to be filed with the Commission on Tuesday, June 25, 1991. While the Petitioner is currently in the process of preparing such rebuttal

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testimony, it is unclear at this time whether or not additional rebuttal witnesses will be required in addition to the testimony of Mr. Delavan. Therefore, until such time as all rebuttal testimony and exhibits are filed, the Petition cannot be sure what additional witnesses, if any, may be called.

II. EXHIBITS.

(a) Exhibit GD 1 - a July 25, 1988 letter from Greg Delavan to Serifin Leal, Executive Vice President of Summerset Development. Sponsored by Greg Delavan.

(b) Exhibit GD 2 - various correspondence between counsel to Sandy Creek Airpark and representatives and counsel for Sandy Creek Utilities. Sponsored by Greg Delavan.

(c) Exhibit GD 3 - letter from the Utility's engineer to Sandy Creek Airpark's engineer and a copy of a canceled check for the inspection and review fee paid to Utility by Airpark. Sponsored by Greg Delavan.

(d) Exhibit GD 4 - copy of correspondence dated September 24, 1990 from Greg Delavan to the President of Sandy Creek Utilities, Inc., with proposed service agreement. Sponsored by Greg Delavan.

(e) Exhibit GD 5 - letter dated May 18, 1990, from the Airpark's engineer to the Utility's engineer, including revised sewer plans, connection of Phase II of the Airpark; and letter from

Utility's engineer to Carol Anderson, Vice President of Sandy Creek Utilities, Inc., dated December 20, 1990, approving plans for connection of Phase II of Sandy Creek Airpark, Inc. Sponsored by Greg Delavan.

(f) Exhibit GD 6 - letter of April 2, 1991 from Greg Delavan, individually, requesting service to Lot 100 of Sandy Creek Airpark Phase II. Sponsored by Greg Delavan.

(g) Exhibit GD 7 - letter from Utility's counsel to Greg Delavan, individually, denying service to Lot No. 100 of Sandy Creek Airpark, Inc. Sponsored by Greg Delavan.

(h) Exhibit GD 8 - letter dated March 29, 1991 from W.C. Rogers requesting service to Lot 41 in Phase I of Sandy Creek Airpark, Inc.; April 9, 1991 letter from W.C. Rogers to Greg Delavan concerning that request for service; and letter dated April 9, 1991 from Utility's counsel to Carol Anderson concerning the denial of service to Mr. Rogers. Sponsored by Greg Delavan.

(i) Exhibit GD 9 - letter from John Heber, Environmental Health Consultant with Department of Health and Rehabilitative Services for the State of Florida, to Michael Paul, President of Sandy Creek Utilities, Inc., dated February 28, 1991, concerning the provision of sewer service to Sandy Creek Airpark. Sponsored by Greg Delavan.

(j) Exhibit GD 10 - DER permits for construction of water and wastewater systems signed by Utility representatives. Sponsored by Greg Delavan.

(k) Additional rebuttal exhibits. The Airpark will have additional exhibits which will be filed with its testimony on June 25, 1991. At this time, it is not known what those exhibits might be. Sponsored by Greg Delavan or such other witnesses as presented on rebuttal.

### III. PETITIONER'S STATEMENT OF BASIC POSITION.

While the Utility has informally agreed for many years to provide service to Sandy Creek Airpark, Phases I and II, and the Airpark has attempted to work with the Utility over several years in obtaining that service, it is now apparent that the Utility has no intention of providing service to the Airpark's Phase II, or any of the remaining undeveloped lots in Phase I. The Utility has filed an inappropriate and imprudent extension application with the Florida Public Service Commission to include only those specific lots currently served by the Utility in its certificated service territory, while excluding other lots immediately adjacent thereto, as well as excluding all of Phase II of the Airpark. The Airpark has, based upon the assurances of service from the Utility, constructed the internal water distribution and sewage collection systems as approved by the Utility, and has indicated a willingness for many months to construct all necessary additional lines to connect those systems directly to water and sewer plants of the

Utility. Despite the fact that the Utility will have no out-of-pocket costs related to providing service to the Airpark's Phase II, the Utility has refused to provide such service.

The Florida Public Service Commission should require the Utility to renote its extension application and extend its territory to provide service to Phases I and II of the Airpark, as well as all other properties currently served by the Utility's system, or where the facilities have been constructed and are available for immediate connection to the Utility's system. In addition, the Commission should require the Utility to provide such service based upon its existing service availability policy, which has been to require payment of service availability charges on an individual lot basis only when such lot requests service.

#### IV. ISSUES OF FACT, LAW AND POLICY.

(a) Does the Florida Public Service Commission have the authority to require the Utility to provide service outside its territory?

Position: Yes. Under the provisions of Section 367.121, Florida Statutes, the Commission may require a utility to extend its service outside the geographic area described in its Certificate of Authorization, and make additions to its plant or equipment to serve outside such area if the Commission first finds that the utility is financially able to make such additional investment without impairing its capacity to serve its existing customers.

(b) Should the Commission find that the Utility is financially able to make the additional investment, if any, necessary to provide water and sewer service outside the geographic area described in its Certificate of Authorization without impairing its capacity to service its existing customers?

Position: Yes. In order to provide service to Sandy Creek Airpark, Inc., Phases I and II, no additional investment will be required by the Utility. The Utility currently has all facilities necessary to provide service to Sandy Creek Airpark Phase I, as the line bordering all the lots in that development are in place. Sandy Creek Airpark, Inc., has constructed the facilities in Phase II under specifications provided by the Utility, and has had its plans approved for those facilities prior to their construction. That constructed has now been completed, and little or no additional investment by the Utility is necessary.

Even assuming that the Utility needs additional storage capacity, or pumping capacity for its water system, it is obvious that the Utility is able to obtain financing for such construction based upon its recent financing of substantial investment in its sewer system expansion.

(c) Does the Florida Public Service Commission have the authority to require the Utility to extend its service territory to include those properties in which it currently owns collection and distribution facilities, and to include Sandy Creek Airpark Phases I and II?

Position: Yes. Under the provisions of Section 367.045, Florida Statutes, the Commission has the authority to amend a certificate on its own motion, after proper notice.

(d) Should the Commission require the Utility to provide service outside its territory or to notice and extend its service territory to include Sandy Creek Airpark Phases I and II?

Position: Yes. The Commission should immediately require the Utility to extend service outside its territory to include all of Sandy Creek Airpark Phases I and II, to accept the lines constructed in Sandy Creek Airpark Phase II for connection to the Utility's systems, and to provide service to each individual homeowner upon payment of the appropriate service availability fee. The Commission should thereafter require the Utility to renotice an extension application to include all those territories in Sandy Creek Airpark Phases I and II, and to file an application for extension of certificate to include those territories within its certificated service territory, all at the Utility's sole cost and expense.

(e) Does the Utility have adequate water capacity to provide service to Sandy Creek Airpark Phases I and II?

Position: Yes. The Utility has sufficient water supply, treatment and distribution capacity within its water system to provide service to Sandy Creek Airpark Phases I and II.



**Position:** Yes. Under the provisions of Section 367.045, Florida Statutes, the Commission has the authority to amend a certificate on its own motion, after proper notice.

(d) Should the Commission require the Utility to provide service outside its territory or to notice and extend its service territory to include Sandy Creek Airpark Phases I and II?

**Position:** Yes. The Commission should immediately require the Utility to extend service outside its territory to include all of Sandy Creek Airpark Phases I and II, to accept the lines constructed in Sandy Creek Airpark Phase II for connection to the Utility's systems, and to provide service to each individual homeowner upon payment of the appropriate service availability fee. The Commission should thereafter require the Utility to renotice an extension application to include all those territories in Sandy Creek Airpark Phases I and II, and to file an application for extension of certificate to include those territories within its certificated service territory, all at the Utility's sole cost and expense.

(e) Does the Utility have adequate water capacity to provide service to Sandy Creek Airpark Phases I and II?

**Position:** Yes. The Utility has sufficient water supply, treatment and distribution capacity within its water system to provide service to Sandy Creek Airpark Phases I and II.

(f) Does Sandy Creek Utilities, Inc., have adequate sewer capacity to provide service to Sandy Creek Airpark Phases I and II?

Position: Yes. The Utility has adequate capacity to provide sewage collection, treatment and disposal service to Sandy Creek Airpark Phases I and II.

(g) Should the fire flow amounts allowed for rate case purposes be considered in determining whether or not the Utility has adequate water capacity to provide service to Sandy Creek Airpark Phases I and II?

Position: No. There are no specific requirements for fire flow within the service territory, and the facilities of the Utility are not only insufficient to provide fire flow service, but those facilities are not depended upon by the local fire authorities to provide such protection. As a result, the Utility has ample water capacity to provide water service to Sandy Creek Airpark Phases I and II.

(h) Should the Commission find that the Utility's expenditures in requesting an extension of service territory to only include those lots currently served while excluding other properties which the Utility has lines immediately adjacent to, and while excluding Sandy Creek Airpark Phase II, which the Utility repeatedly assured would be provided service, and which was led by such assurances to construct, in accordance with Utility approved

plans, necessary internal collection and distribution systems were imprudent and not in the public interest?

Position: Yes. The Commission should find, that unless the Utility will voluntarily extend its service territory to include all of those lots on lines currently owned and operated by the Utility, and Sandy Creek Airpark Phase II, in its certificated service territory, that the extension application, as filed, and all the costs related thereto were an imprudent expenditure by the Utility, and not in the public interest. As such, the Commission should disallow recognition of any of those costs in the establishment of the Utility's rate base, rates or charges.

(i) Is Sandy Creek Utilities, Inc., willing to provide service in accordance with the provisions of its existing tariff, and its long-standing service availability policy?

Position: No. The Utility has repeatedly refused to provide service in accordance with its current rates and charges and its historical service availability policy of requiring only the payment of an approved service availability charge prior to allowing each individual customer to connect to the system.

V. STIPULATED ISSUES.

The Petitioner herein is not aware of any issues that have been stipulated to by the parties.

VI. PENDING MOTIONS.

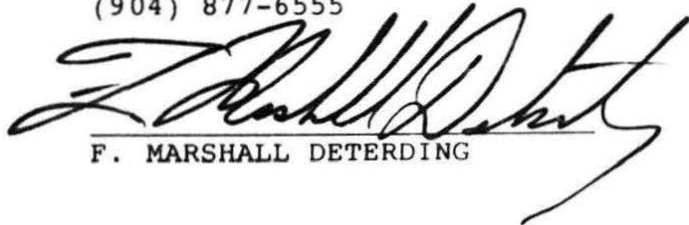
The Petitioner herein is aware of only one pending Motion, and that is the Motion of the respondent Utility for dismissal of the protest to its extension application in Docket No. 910260-WS. Petitioner requests that the Commission deny the Motion of Sandy Creek Utilities, Inc., for dismissal of its complaint and that of the other ten protestants in Docket No. 910260-WS.

VII. COMPLIANCE WITH PREHEARING ORDER REQUIREMENTS.

Petitioner is not aware at this time of any specific requirements of the Prehearing Order, as amended, that cannot be complied with other than the naming of all rebuttal witnesses and exhibits, as outlined in paragraphs I and II hereof. Those provisions will be complied with upon submittal of the Petitioner's rebuttal testimony on June 25, 1991.

Respectfully submitted this 21st  
day of June, 1991, by:

ROSE, SUNDSTROM & BENTLEY  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301  
(904) 877-6555



F. MARSHALL DETERDING

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Prehearing Statement has been furnished by Hand Delivery to the following this 21st day of June, 1991.

Matthew Feil, Esquire  
Division of Legal Services  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

Kenneth Gatlin, Esquire  
Gatlin Woods Carlson & Cowdery  
1709 Mahan Drive  
Tallahassee, Florida 32308



F. MARSHALL DETERDING