

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for ) DOCKET NO. 930892-WU  
amendment of Certificate No. ) ORDER NO. PSC-96-0044-PHO-WU  
488-W in Marion County by ) ISSUED: January 12, 1996  
VENTURE ASSOCIATES UTILITIES )  
CORP. )  
\_\_\_\_\_)

Pursuant to Notice, a Prehearing Conference was held on December 18, 1995, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

F. Marshall Deterding, Esquire, Rose, Sundstrom & Bentley, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301  
On behalf of Venture Associates Utilities Corporation.

Walter H. Hallberg, 5079 N. W. 25th Pl. Ocala, Florida 34482  
On behalf of Himself.

Charles L. Lobdell, 5027 U. S. Highway 27 N., Ocala, Florida 34482  
On behalf of Himself.

Harold McLean, Associate Public Counsel, Office of the Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400  
On behalf of the Citizens of the State of Florida.

Tim Vaccaro, Esquire, Lila Jaber, Esquire, Florida Public Service Commission, Gerald L. Gunter Building, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Commission Staff.

Prentice P. Pruitt, Esquire Florida Public Service Commission, Gerald L. Gunter Building, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Commissioners.

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FPSC-RECORDS/REPORTING

**PREHEARING ORDER**

**I. CASE BACKGROUND**

Venture Associates Utilities Corporation (Venture, VAUC or utility) is a developer-owned class B water utility which presently provides service to the Palm Cay subdivision within Marion County. On September 9, 1993, Venture filed its application to amend its existing water certificate to include additional territory to provide service to the Ocala Palms Subdivision. This property, as well as the existing Palm Cay property, is being developed by Venture Associates, an affiliated company. Within the additional territory, Venture proposes to serve an additional 798 equivalent residential connections (ERCs) consisting of single family homes and townhouses as well as a club house and community center. Venture proposes to provide only water service. Wastewater service will be provided to individual customers directly by the City of Ocala.

Venture provides service to its Palm Cay system through an on-site water treatment plant. To provide service to the Ocala Palms Subdivision, Venture will purchase water from the City of Ocala through a master meter and resell to the individual water users within the development.

By Order No. PSC-94-1621-FOF-WU, issued December 30, 1994, this Commission, by final action, amended Venture's certificate to include the additional territory (Ocala Palms Subdivision) and by proposed agency action (PAA), approved rates and charges for the Ocala Palms Subdivision. On January 20, 1995, six customers timely filed protests to Order No. PSC-94-1621-FOF-WU. On the same date, the utility timely filed a protest to the Order. Accordingly, this matter has been scheduled for an administrative hearing. On March 24, 1995, Venture filed a Motion for Interim Rates. The basis for this request was that the utility is presently providing service, without compensation, to 90 homes and would like to recover costs pending finalization of this docket scheduled for June of 1996. By Order No. PSC-95-0624-FOF-WU, issued May 22, 1995, this Commission denied Venture's motion but granted Venture's PAA rates and charges as temporary rates, subject to refund.

**II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION**

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section

119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

### III. POST-HEARING PROCEDURES

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

### IV. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits

appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

V. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
Norman F. Mears	VAUC	1-6
Arthur F. Tait, Jr.	VAUC	1, 2, 4-6
Michele L. Madrak, C.P.A.	VAUC	1, 2, 4
George E. Munt, Jr.	VAUC	1-4
Walter H. Hallberg	Himself	1, 4, 5
Charles L. Lobdell	Himself	1, 4, 5
John M. Grayson	Staff	1
<u>Rebuttal</u>		
Norman F. Mears	VAUC	1-6
Arthur F. Tait, Jr.	VAUC	1, 2, 4-6
Michele L. Madrak, C.P.A.	VAUC	1-4

VI. BASIC POSITIONS

**VAUC:** The application of VAUC to extend its certificated service territory into the Ocala Palms Subdivision was in accordance with all appropriate Commission rules and requirements. The certificate extension has now been granted and the focus of this hearing is to determine the appropriate cost of service and rates for such water service. The appropriate rates and charges are those calculated and provided in the testimony of Mr. Norman F. Mears in his direct and rebuttal testimonies. The proposal as outlined in the Commission's PAA order to eliminate certain costs are discussed fully in the testimony and exhibits of Mr. Mears, Mr. Tait, Mr. Munt, and Ms. Madrak. Specifically, the failure to recognize the costs of the off-site main constructed by Venture in order to enable it to obtain bulk water service from the City of Ocala is contrary to the public interest and is confiscatory.

**CUSTOMERS & CITIZENS:** The water rates paid by the Petitioners should not materially differ from the rates charged by the City of Ocala, since the City of Ocala is furnishing the service and since all parties, including the Florida Public Service Commission staff apparently believe that the City of Ocala will take the water system owned by Venture over.

**STAFF:** The information gathered through discovery and prefiled testimony indicates, at this point, that the utility is entitled to initial rates and charges for the Ocala Palms subdivision. The specific level cannot be determined until the evidence presented at hearing is analyzed. The initial information also indicates that the supply main should be excluded from the calculation of rates and charges. Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VII. ISSUES AND POSITIONS

ISSUE 1: What are the appropriate rates and charges for the Ocala Palms subdivision?

POSITIONS:

VAUC: The rates and charges as outlined in the direct and rebuttal testimony, including those adjustments from the Staff audit which are appropriate as outlined in Mr. Mears' direct and rebuttal testimonies. (Witnesses Mears, Munt, Tait and Madrak)

CUSTOMERS &

CITIZENS: The Ocala Rates. Venture obtains water at a substantial discount from the City of Ocala. Venture can look to the difference between the revenue to be generated by charging Ocala's "retail" rates to its customers, less the bill it receives for its compensation.

STAFF: The rates and charges for the Ocala Palms subdivision cannot be determined until additional information is provided at the hearing.

ISSUE 2: Should the cost of the water supply main connecting the City of Ocala and the Ocala Palms subdivision be included in Venture Associates Utilities Corp.'s rate calculation?

POSITIONS:

VAUC: There is no sound ratesetting or accounting basis for failure to recognize such costs. The evidence demonstrates that construction of that main was in the best interests of the customers of VAUC-Ocala Palms, the public interest, and the Utility's interest. Such investment represents a valid and appropriate cost of service and similar investments have been recognized previously by the FPSC. Failure to recognize such costs is not only contrary to public interest, but contrary to law and bad regulatory policy. (Witnesses Mears, Tait, Madrak, and Munt)

**CUSTOMERS &**

**CITIZENS:** If the main has been transferred to the City then the cost should not be allowed. If the main has not been transferred, agree with staff.

**STAFF:** Based on the information provided to date, it appears that the cost of the water supply main should not be included in Venture's rate calculation. Final determination will be based upon the completed record.

**ISSUE 3:** Is the disallowance of the off-site main costs in accordance with established Commission policy?

**POSITIONS:**

**VAUC:** No, the Commission has previously recognized investment in similar intangible assets incurred by utilities regulated the Commission in several previous cases.

**CUSTOMERS &**

**CITIZENS:** Agree with staff.

**STAFF:** Staff's preliminary position is that the off-site main is a developer, not a utility cost, and, therefore, should not be recovered in utility rates.

**ISSUE 4:** Is the disallowance of the costs of the off-site main constructed by VAUC in conformance with sound public policy and regulatory philosophy?

**POSITIONS:**

**VAUC:** The proposed disallowance is contrary to sound regulatory philosophy and appropriate Commission policy for the reasons outlined in the testimony of Mr. Mears, Mr. Tait, Mr. Munt, and Ms. Madrak.

**CUSTOMERS &**

**CITIZENS:** Agree with staff.

**STAFF:** Staff's preliminary position is that the off-site main is a developer, not a utility cost, and, therefore, should not be recovered in utility rates.

**ISSUE 5:** Has the Commission taken proper account of the contributions of the customers to the utility plant through the purchase price for their homes?

**POSITIONS:**

**VAUC:** Yes. There is no contribution by the customers to the Utility's plant through the purchase price of their homes, and therefore the Commission's failure to recognize that is taking proper account of this non-existent contribution.

**CUSTOMERS &**

**CITIZENS:** No consideration of CIAC is necessary if the Commission properly sets rates for Venture at no greater level than the City of Ocala charges. However, if the Commission engages in any analysis of rate base, it should recognize that Petitioners--and similarly situated customers of Venture--contributed part of the price of their homes to the utility system.

**STAFF:** No position pending development of the record.

**ISSUE 6:** Does Venture receive water at a bulk rate from the City of Ocala?

**POSITIONS:**

**VAUC:** Venture receives water at a rate equal to the standard base rate and gallonage rates charged to all residential and commercial customers of the City of Ocala, plus a 25% surcharge for being outside the city limits. Therefore, to the extent the issue questions whether VAUC is receiving some favorable or special rate from the City of Ocala, the Utility is not.

**CUSTOMERS &**

**CITIZENS:** Yes. The City of Ocala furnishes water to Venture at a bulk rate.

**STAFF:** Yes. However, the level of the rate is unknown.

**ISSUE 7:** Is the exclusion of the off-site main costs as proposed in the Commission's Proposed Agency Action order contrary to law?

**POSITIONS:**

**VAUC:** Yes, the proposed exclusion of those costs is contrary to the requirements of law and represents a taking of property without compensation in violation of applicable provisions of Florida and Federal Constitutions.

**CUSTOMERS & CITIZENS:** No. It is compelled by the law.

**STAFF:** No. This is not a utility cost. It is a developer cost and can be rolled into the development costs.

**ISSUE 8:** Does Florida law permit the Commission to provide for temporary rates in a certificate application? (Legal Issue)

**POSITIONS:**

**VAUC:** Yes.

**CUSTOMERS & CITIZENS:** No.

**STAFF:** Chapter 367, Florida Statutes, requires the Commission to set fair and reasonable rates. The utility was providing service to its customers at no compensation for which it is entitled to compensation. The temporary rates were granted subject to refund and are not precluded by statute.

**ISSUE 9:** Once the Commission issues a certificate or amendment thereto, is it compelled to authorize rates if requested? (Legal Issue)

**POSITIONS:**

**VAUC:** Yes.

**CUSTOMERS & CITIZENS:** No.

**STAFF:** Section 367.011(2), Florida Statutes, grants the Commission exclusive jurisdiction over utilities with respect to rates. Section 367.081(1), Florida Statutes, requires the Commission to set rates which are just, reasonable, compensatory and not unfairly discriminatory. Section 367.045, Florida Statutes, requires a utility applying for an initial certificate or amendment thereto, to file with the Commission a schedule showing all proposed rates, classifications and charges for service by the utility, thereby contemplating the authorization of appropriate rates.

VIII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			<u>Direct</u>
Norman F. Mears	VAUC	_____ (NFM-1)	Original filing of Application for Amendment of Certificate 488-W for VAUC.
Norman F. Mears	VAUC	_____ (NFM-2)	Water tariff and service availability and main extension policy of VAUC.
Norman F. Mears	VAUC	_____ (NFM-3)	Comparison of rates and charges between Palm Cay's and Ocala Palms' systems.
Norman F. Mears	VAUC	_____ (NFM-4)	Cost studies supporting proposed rates for VAUC's Ocala Palms system and rates and charges with the Utility constructing its own production facilities.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Norman F. Mears	VAUC	_____ (NFM-5)	Cost studies supporting proposed rates for Ocala Palms service area (VAUC) with water supply main.
Arthur F. Tait, Jr.	VAUC	_____ (AFT-1)	Development Agreement for water extension between VAUC and the City of Ocala.
Michele L. Madrak, C.P.A.	VAUC	_____ (MLM-1)	Accounting principles, Board opinion No. 17.
George E. Munt, Jr.	VAUC	_____ (GEM-1)	Alternative cost of the water source, pumping treatment and storage facilities.
Charles L. Lobdell	OPC	_____ (WHH-1)	Development Agreement for water extension between VAUC and the City of Ocala.
John M. Grayson	Staff	_____ (JMG-1)	Audit Report.
<u>Rebuttal</u>			
Norman F. Mears	VAUC	_____ (NFM-6)	Audit response letter with attachments.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Rebuttal</u>			
Arthur F. Tait, Jr.	VAUC	_____ (AFT-2)	Copies of excerpts of purchase contracts and Utility facts sheets for Mr. Hallberg, Mr. Lobdell and current facts sheets.
Michele L. Madrak, C.P.A.	VAUC	_____ (MLM-2)	Excerpts from tax returns of VAUC filed with IRS.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

IX. PROPOSED STIPULATIONS

There are no pending stipulations at this time.

X. PENDING MOTIONS

Venture Associates Utilities Corporation's Motion to Strike. This Motion is scheduled to be ruled upon by the full panel at the January 16, 1996 Agenda Conference.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

ORDER NO. PSC-96-0044-PHO-WU  
DOCKET NO. 930892-WU  
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By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 12th day of January, 1996.

  
\_\_\_\_\_  
J. TERRY DEASON, Commissioner and  
Prehearing Officer

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.