

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Increase in Wastewater Rates in Charlotte County by Utilities, Inc. of Sandalhaven.

DOCKET NO. 150102-SU

FILED: January 27, 2016

PETITION PROTESTING PORTIONS OF THE PROPOSED AGENCY ACTION

The Citizens of the State of Florida (Citizens), by and through the Office of Public Counsel (OPC), pursuant to Section 120.57, Florida Statutes (F.S.), and Rules 25-22.029 and 28-106.201, Florida Administrative Code (F.A.C.), file this protest of the Florida Public Service Commission's (Commission) Order No. PSC-16-0013-PAA-SU, issued January 6, 2016, (PAA Order). In the PAA Order, the Commission approved, in part, the requested rate increase for Utilities, Inc. of Sandalhaven (Sandalhaven or utility). In support of their Petition, Citizens state as follows:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No. 150102-SU

2. The Citizens include the customers of Utilities, Inc. of Sandalhaven whose substantial interests are affected by the PAA Order because the PAA Order authorizes Sandalhaven to collect the proposed rate increase from the customers.

3. Pursuant to Section 350.0611, F.S., the Citizens who file this Petition are represented by the Office of Public Counsel with the following address and telephone number:

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
Telephone No. (850) 488-9330

4. The Citizens obtained a copy of the PAA Order via Commission email, on Wednesday, January 6, 2016.

5. At this time, the disputed issues of material fact, including a concise statement of the ultimate facts alleged and those facts which Citizens contend warrant reversal and/or modification of the PAA Order, are discussed below. Pursuant to Sections 367.081 and 367.121, F.S., the Commission has the authority and duty to prescribe and fix just and reasonable rates and charges. Adjustments should be made to the rates and charges approved by the PAA Order. The issues delineated in and by Citizens' protest should be interpreted broadly in order to effectuate full discovery on the disputed issues of material fact, thereby allowing the parties to adequately determine the scope of the issues for consideration and determination by the Commission through a full administrative hearing. Further, Citizens' protest encompasses any additional issues logically arising from the specifically identified areas, including related issues that may arise during the process of discovery issued in this case. Citizens' protest pertains to the following portions of the PAA Order:

(a) Those aspects of Quality of Service, including but not limited to, the imprudent operation and maintenance of the wastewater treatment plant (WWTP) and the utility's failure to maintain the WWTP's permitted capacity as noted in the Commission's 2007 PAA Order.¹ These failures were imprudent and directly resulted in the premature retirement of the WWTP, which was the company's lowest cost available wastewater treatment option for the approximately 72,000 gallons per day (annual average daily flow) that was redirected to the Englewood Water District (EWD). *See* PAA Order at 3-7.

¹ Order No. PSC-07-0865-PAA-SU at 5.

(b) The Net Loss on Abandonment and the cost of removal of the decommissioned WWTP. *See* PAA Order at 11-12. These unreasonable, imprudent costs imposed on the customers resulted from the imprudent, premature retirement of the WWTP.

(c) The incremental increased cost to the utility of purchasing sewage treatment for the wastewater flows diverted from the WWTP to the EWD instead of treating the wastewater at the WWTP. *See* PAA Order 22-23. These imprudently incurred costs imposed on the customers resulted from the imprudent, premature retirement of the WWTP.

(d) Improper calculation of the used and useful (U&U) percentages for the following plant items: Purchased Water Treatment Capacity, Interconnection Force Main, and Primary Master Lift Station. *See* PAA Order at 15-17. The used and useful calculation fails to follow the prescriptive requirements of Section 367.081(2)(a)(2), F.S., setting forth the calculation of utility property used and useful in the public service. Moreover, the estimated flows associated with “guaranteed revenue agreements” and “prepaid commitments from developers” in the used and useful calculation do not comport with the plain language of the statute nor the Wastewater Treatment Plant Used and Useful Calculations Rule, Rule 25-30.432, F.A.C., and must be removed.

(e) Any fall-out issues that may logically result from these protested portions of the PAA Order.

6. Citizens reserve the right to fully participate in the hearing process, take positions and file testimony on any additional issues raised by any other party’s protest or cross-petition, and resolve any issues which come to light during the pendency of this docket.

7. Citizens are entitled to a *de novo* proceeding on the disputed issues of material fact raised in Citizens’ protest of the PAA Order. Citizens further maintain that the utility has the burden of

proof in all aspects of the requested evidentiary hearing pursuant to Section 120.57(1), F.S., and if the burden of proof is not satisfied, the disputed issues of material fact must be resolved in the favor of the ratepayer.

8. By Order No. PSC-16-0013-PAA-SU, protests of the PAA Order shall be filed with the clerk of the Office of Commission Clerk no later than the close of business on January 27, 2016. This Petition has been timely filed.

9. Sections 367.081, 367.0816, and 367.121, F.S., are the specific statutes that require reversal or modification of the PAA Order.

10. Citizens request that the Commission take the following actions with respect to this protest and objection to the PAA Order:

a) Establish a hearing schedule to resolve the disputed issues of material fact as described above, including any additional issues raised by a party's protest or cross-petition and on any issues which come to light during the pendency of this docket.

b) Determine that the utility failed to prudently operate and maintain the WWTP and its permitted capacity, find that its actions, whether by omission or commission, led to the premature retirement of the WWTP, and make appropriate adjustments to remove those imprudently incurred costs now burdening the customers.

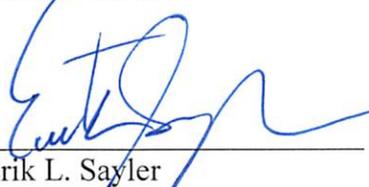
(c) Deny the utility's request that Purchased Water Treatment Capacity, Interconnection Force Main, and Primary Master Lift Station be deemed 100% used and useful, and recalculate the used and useful percentages using the statutory formula for determining those percentages. The removal of the estimated guaranteed revenue payments and prepaid commitments, while adding back in the corrected growth allowance, will result in a substantially lower used and useful percentage for each of these plant items

and lower revenue requirement. *See Attachment A, Excerpt from the Citizens' December 3, 2015 Agenda Conference Handout for Issue 5, Used and Useful.*

WHEREFORE, the Citizens hereby protest and object to Commission Order No. PSC-16-0013-PAA-SU, as provided above, and petition the Commission to conduct a formal evidentiary hearing, as required under the provisions of Section 120.57(1), F.S., at a convenient time within or as close as practical to the utility's certificated service area.

Respectfully Submitted,

JR Kelly
Public Counsel



Erik L. Saylor
Associate Public Counsel
Florida Bar No. 29525
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

CERTIFICATE OF SERVICE

I, **HEREBY CERTIFY** that a true and correct copy of the Office of Public Counsel's Petition Protesting Portions of the Proposed Agency Action has been furnished by electronic mail to the following parties on this 27th day January, 2016.

Suzanne Brownless
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd., Room 110
Tallahassee, FL 32399-0850

Utilities, Inc. of Sandalhaven
200 Weathersfield Avenue
Altamonte Springs, FL 32714-4027

Martin S. Friedman
Friedman Law Firm
766 N. Sun Drive, Suite 4030
Lake Mary, FL 32746



Erik L. Saylor
Associate Public Counsel

Attachment A

*Excerpt from the Citizens' December 3, 2015 Agenda Conference
Handout for Issue 5, Used and Useful.*

ISSUE 5
USED AND USEFUL
PAGES 18 – 21

OPC submits that staff's used and useful calculations are overstated.

- The used and useful calculation does not follow the statutory formula. Section 367.081(2)(a)2, F.S., states that property is used and useful in the public service, IF it is:
 - a. needed to serve current customers, or
 - b. needed to serve customers five years after the test year at an ERC growth rate up to 5 percent per year.
- The flows related to the *guaranteed revenues* and the *prepaid commitments* are not permitted by Section 367.081(2)(a)2, F.S. The statutory used and useful formula only allows property needed to serve current customers or customers 5 years after the end of the test year. The guaranteed revenues and the prepaid commitments should be removed from the used and useful calculation.
- The growth allowance is overstated and results in approximately 10% annual ERC growth for the purchased capacity and force main, and approximately 21% annual ERC growth for the primary lift station. As a result, the growth allowance exceeds the 5 percent per year ERC growth rate mandated by statute and should be corrected.
- The adjustment for excessive infiltration should be applied to the used and useful calculation for the interconnection force main and primary lift station.

To conform to the statute, staff's used and useful calculation should be adjusted as shown on OPC's attached used and useful calculation.

If the correct adjustments are applied, OPC believes that the revenue requirement will be reduced by approximately \$457,000.

Parties/Staff Handout
Internal Affairs/Agenda
on 12 / 3 / 15
Item No. 19

**ISSUE 5
USED AND USEFUL**

Purchased Wastewater Treatment Capacity

	<u>Staff</u>	<u>OPC</u>
Test Year annual average daily flow	135,978	135,978
Growth allowance ⁽¹⁾	67,755	33,994
Guaranteed revenue flows ⁽²⁾	12,920	0
Prepaid commitment flows ⁽²⁾	152,570	0
Excessive Infiltration	(35,456)	(35,456)
Projected flows	<u>333,767</u>	<u>134,516</u>
Capacity	300,000	300,000
Used and Useful	100.0%	44.8%

Interconnection Force Main

	<u>Staff</u>	<u>OPC</u>
Test Year peak flow	276,000	276,000
Growth allowance ⁽¹⁾	137,526	69,000
Guaranteed revenue flows ⁽²⁾	26,228	0
Prepaid commitment flows ⁽²⁾	309,717	0
Excessive Infiltration ⁽³⁾	0	(35,456)
Projected flows	<u>749,471</u>	<u>309,544</u>
Capacity	1,000,000	1,000,000
Used and Useful	74.9%	31.0%

Primary Master Lift Station

	<u>Staff</u>	<u>OPC</u>
Test Year peak flow	129,000	129,000
Growth allowance ⁽¹⁾	137,526	69,000
Guaranteed revenue flows ⁽²⁾	26,228	0
Prepaid commitment flows ⁽²⁾	309,717	0
Excessive Infiltration ⁽³⁾	0	(35,456)
Projected flows	<u>602,471</u>	<u>162,544</u>
Capacity	500,000	500,000
Used and Useful	100.0%	32.5%

Note 1: Growth allowance = Using 2014 Total ERCs (Schedule F-10)

Note 2: Removed per Section 367.081(2)(a)2., F.S.

Note 3: Infiltration included by staff for EWD but excluded for force main and lift station

Used and Useful Statutory Formula

Excerpt from Section 367.081, Florida Statutes

367.081 Rates; procedure for fixing and changing.—

(1) Except as provided in subsection (4) or subsection (6), a utility may only charge rates and charges that have been approved by the commission.

(2)(a)1. The commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. In every such proceeding, the commission shall consider the value and quality of the service and the cost of providing the service, which shall include, but not be limited to, debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service. However, the commission shall not allow the inclusion of contributions-in-aid-of-construction in the rate base of any utility during a rate proceeding, nor shall the commission impute prospective future contributions-in-aid-of-construction against the utility's investment in property used and useful in the public service; and accumulated depreciation on such contributions-in-aid-of-construction shall not be used to reduce the rate base, nor shall depreciation on such contributed assets be considered a cost of providing utility service.

2. For purposes of such proceedings, the commission shall consider utility property, including land acquired or facilities constructed or to be constructed within a reasonable time in the future, not to exceed 24 months after the end of the historic base year used to set final rates unless a longer period is approved by the commission, to be used and useful in the public service, if:

a. Such property is needed to serve current customers;

b. Such property is needed to serve customers 5 years after the end of the test year used in the commission's final order on a rate request as provided in subsection (6) at a growth rate for equivalent residential connections not to exceed 5 percent per year; or

c. Such property is needed to serve customers more than 5 full years after the end of the test year used in the commission's final order on a rate request as provided in subsection (6) only to the extent that the utility presents clear and convincing evidence to justify such consideration.

Notwithstanding the provisions of this paragraph, the commission shall approve rates for service which allow a utility to recover from customers the full amount of environmental compliance costs. Such rates may not include charges for allowances for funds prudently invested or similar charges. For purposes of this requirement, the term "environmental compliance costs" includes all reasonable expenses and fair return on any prudent investment incurred by a utility in complying with the requirements or conditions contained in any permitting, enforcement, or similar decisions of the United States Environmental Protection Agency, the Department of Environmental Protection, a water management district, or any other governmental entity with similar regulatory jurisdiction.

(b) In establishing initial rates for a utility, the commission may project the financial and operational data as set out in paragraph (a) to a point in time when the utility is expected to be operating at a reasonable level of capacity.