

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY, FLORIDA**

***In re:* Application of UTILITIES, INC. OF  
SANDALHAVEN for an increase in wastewater  
rates and charges**

---

**Docket No. 2011-001-S**

**PROPOSED RECOMMENDED ORDER  
FOR  
CHARLOTTE COUNTY, FLORIDA**

Dated: October 1, 2012

Martha Young Burton, Esq.  
Assistant County Attorney  
Charlotte County, Florida  
Fla. Bar #0398179  
18500 Murdock Circle  
Port Charlotte, FL 33948  
Tel: 941.743.1329  
Fax: 941.743.1551  
Email: [marty.burton@charlottefl.com](mailto:marty.burton@charlottefl.com)

## TABLE OF AUTHORITIES

### FLORIDA STATUTES

Chapter 367 Water and Wastewater Systems.

### FLORIDA ADMINISTRATIVE CODE

Rule 25-30.130 Record of Complaints.

Rule 25-30.431 Used and Useful Consideration.

Rule 25-30.432 Wastewater Treatment Plant Used and Useful Calculations.

Rule 25-30.4325 Water Treatment and Storage Used and Useful Calculations.

Rule 25-30.433 Rate Case Proceedings.

Rule 25-30.434 Application for Allowance for Funds Prudently Invested (AFPI) Charges.

### CHARLOTTE COUNTY CODE

Chapter 1-10 Article XII Hearings Involving Regulated Companies.

Chapter 3-8 Article II Standards for Water and Wastewater Utilities.

### FLORIDA PUBLIC SERVICE COMMISSION CASES IN

Docket No. 000694-WU, *In re: Application by Water Management Services, Inc. for limited proceeding to increase water rates in Franklin County.*  
(FS Reb 18).

Docket No. 060246-WS, *In re: Application for increase in water and wastewater rates in Polk County by Gold Coast Utility Corp.*  
(FS Reb 7).

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

Docket No. 090381-SU, *In re: Application for increase in wastewater rates in Seminole County by Utilities, Inc. of Longwood.*  
[Excerpt on rate case expenses.] (Ex U-3).

Docket No. 090402-WS, *In re: Application for increase in water and wastewater rates in Seminole County by Sanlando Utilities Corporation.*  
[Excerpt on rate case expenses.] (Ex U-2).

Docket No. 090462-WS, *In re: Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas and Seminole Counties by Utilities, Inc. of Florida.*  
[Excerpt on rate case expenses.] (Ex U-4).

Docket No. 110153-SU, *In re: Application for increase in wastewater rates in Lee County by Utilities, Inc. of Eagle Ridge.*  
[Excerpt on rate case expenses.] (Ex OPC-4).

Docket No. 110264-WS, *In re: Application for increase in water and wastewater rates in Pasco County by Labrador Utilities, Inc.*  
[Excerpt on rate case expenses.] (Ex OPC-3).

#### U.S. SUPREME COURT CASES

- Duguesne Light Co. v. Barasch, 488 U.S. 299 (1989). (FS Reb 14).
- Federal Power Com'n v. Hope Natural Gas Co., 320 U.S. 591 (1944). (FS Reb 17).

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY

Docket No. 2011-001-S

*In re:* Application of UTILITIES, INC., OF  
SANDALHAVEN for an increase in wastewater  
rates and charges

---

**CHARLOTTE COUNTY'S  
PROPOSED RECOMMENDED ORDER**

Charlotte County, by and through its undersigned attorney, hereby submits this Proposed Recommended Order, including the issues as previously identified by the parties, Findings of Fact for each issue, Argument for issues that have not been fully stipulated (except for fall-out issues), Conclusions of Law, and Recommendation.

**Preliminary Statement:** References to the transcript are by the letter "T" followed by the page number within parentheses, e.g., (T 38). References to Pre-filed Written Testimony are by witness initials followed by "Dir" and the page number within parentheses, e.g., (JW Dir 23). References to exhibits are the letters "Ex" followed by the exhibit number within parentheses, e.g., (Ex JW-3). The following abbreviations are used throughout: Charlotte County (County), Charlotte County Code (Co. Code), Englewood Water District (EWD), Equivalent Residential Connections (ERCs), Florida Administrative Code (FAC), Florida Department of Environmental Regulation (DEP), Florida Public Service Commission (PSC), Florida Statutes (FS), Office of Public Counsel (OPC), Utilities Inc. of Sandalhaven (Utility), and Wastewater Treatment Plant (WWTP).

**QUALITY OF SERVICE**

**Issue 1:** Is the quality of service provided by the Utility considered satisfactory?

*Partial Stipulation:* The parties agree to use the process established by the Florida Public Service Commission (PSC) Rule 25-30.433(1), F.A.C., in establishing whether the Quality of Service is satisfactory. ("This shall be derived from an evaluation of three separate components of water and wastewater utility operations: quality of utility's product (water and wastewater); operational conditions of utility's plant and facilities; and the utility's attempt to address customer satisfaction.") In addition, the parties agree that the Utility's Wastewater Treatment Plant is operating in compliance with applicable regulatory requirements. (Ex J-1).

## **Finding of Fact 1:**

1. *Quality of Utility's product:* All chemical analysis and test results are satisfactory, and the quality of the Utility's product (wastewater) appears to meet or exceed regulatory standards. (DJ Dir 2).

2. *Operational conditions of Utility's plant and facilities:* The operational conditions of the Utility's plant and facilities are very good, with the WWTP well operated and very efficient. (T 225, DJ Dir 2). The Utility is in compliance with its DEP permit. (T 224, Ex DJ-2).

3. *The Utility's attempt to address customer satisfaction:*

Most of the customer comments presented at the Quality of Service hearings or submitted through OPC or the County were about the size of the Utility's requested rate increase (T 10-67, Ex OPC-1, Ex RD-7E), but a few specific comments were also made about customer service matters, such as attempts to reach a Utility customer service staff person by phone and continuing billing issues. Two of the customers who testified at the Quality of Service Hearings mentioned problems trying to contact a live person when using the Utility's call center, either to ask a billing question or to report an emergency. (Jan Elsea T 23-29, Mark Ruffner T 49-51, Jan Elsea T 67). And one customer, Suzanne Murray (property manager for non-profit with 100 units of HUD-subsidized housing for the elderly and disabled), said the Utility is not responsive to either phone or email inquiries (Ex RD-7E, p. 24). Ms. Murray also described the Utility taking over a month during the November 2010 – January 2011 time frame to repair a sinkhole caused by a leaking sewer pipe (Mr. Godwin from the Utility said that he was "backed up"). (Ex RD-7E, p. 24-25).

Several comments related to billing issues. One customer, Cape Haze Resort Property Manager Clark Gillaspie, submitted written comments to OPC and also spoke at the Informal Customer Meeting, both times concerning continued billing errors. (Ex

OPC-1, Ex RD-7D). Ms. Murray also described problems with receiving alternating “do not pay” and past-due/cut-off notices. (Ex RD-7E, p. 24).

County witness Davis testified that the Utility does not appear to maintain one complaint log, as the information he had requested came to him from the Utility in pieces, and he described his concern as to whether he was reviewing a complete log. (T 195-196). The information was sent to Mr. Davis through several different emails and appeared to have been compiled by different staff members. (T 218-219, Ex RD-7F).

The County had not received a lot of complaints over the years (T 197-198, RD Dir 3), but the complaints received in response to the rate case process indicated problems with communications, billing issues, and phone wait times. (T 197-198, RD Dir 3-4). County witness Davis identified customer responsiveness in general as a main issue. (T 205-208, 215).

**Argument:**

Although the number of customer complaints may not warrant the County’s requesting that the Utility’s return on equity be lowered, there were enough repeat issues concerning customer responsiveness in general that the Utility should address several issues: problems reaching a live person through the call center, length of time to respond to complaints such as alarm bells and sewage spills, and continuing billing issues, especially for large properties with more than one account. This is especially important because the Utility does not have a local customer service office in its local service area. (RD Dir 4).

Going forward, the Utility should consider keeping one central Complaint Log containing all billing and customer service issues. The PSC requires in Rule 25-30.130 “Record of Complaints” that each utility maintain a record of all signed written

complaints received by the utility from any customers, including the disposition of the complaint and the date. Although the County does not presently have the same requirement, the Utility management staff might be more aware of customer service issues if such a central record is kept, rather than the piecemeal situation described by County witness Davis above and also by Mr. Flynn during cross examination. (T 347-348).

Utility witness Flynn described many customer service improvements that the Utility has made since buying the Utility, but the stated call response time of 80 seconds for 90% of all incoming calls doesn't match the customers' comments described above. (Flynn Reb 5). During cross examination, Mr. Flynn described a call center where customers can reach a customer service representative to document the call and discuss the issues with the customers, and where training and communications are important to the Utility (T 358), but the ideal situation described does not match the experiences of the customers who wrote in or presented oral testimony. Mr. Flynn said the Utility has the means to track its responsiveness to customer calls although he was not familiar with the details, but he was sure that the customer care staff is doing that as well as shortening wait times. (T 358-360). In other words, Mr. Flynn described a near-perfect customer service program in general terms that apparently is not working in real life, but he is not aware of the customers' difficulties. (T 141-142).

## **RATE BASE**

**Issue 2:** Are any adjustments necessary to plant for undocumented additions and if so, in what amount?

*Stipulation: Yes. Based on the initial auditing of the Utility's Books and Records and additional information received from the Utility, County Rate Consultant has identified and the parties agree that Plant In Service Account 354.3 - Structures and Improvements shall be reduced by (\$11,155) related to undocumented plant additions. The parties agree that a corresponding reduction to Accumulated Depreciation Account*

354.3 – Structures and Improvements in the amount of (\$1,171) shall also be made for the Test Year related to undocumented plant additions. (Ex J-1).

**Finding of Fact 2:**

Plant in Service Account 354.3 – Structures and Improvements shall be reduced by (\$11,155) related to undocumented plant additions. A corresponding reduction to Accumulated Depreciation Account 354.3 – Structures and Improvements in the amount of (\$1,171) shall also be made for the Test Year related to undocumented plant additions. (JW Dir 4, Ex JW-1 Tables 5 & 6, Ex JW-7 Tables 5 & 6).

**Issue 3:** What are the used and useful percentages of the Utility's wastewater treatment plant, wastewater collection system, impact fees paid to EWD and facilities to interconnect to EWD?

**Finding of Fact 3:**

The appropriate used and useful percentage for the Utility's wastewater treatment plant (WWTP) is 59.89%. The appropriate used and useful percentage for the impact fees paid to EWD for capacity is 31.57%. The appropriate used and useful percentages for the facilities to interconnect to EWD are as follows:

- Master Lift Station – 18.94%
- Force Main – 9.47%
- Pumping Plant – 34.44%

(JW Dir 6, Ex JW-1 Table 10, Ex JW-7 Table 10). (ATW Dir 5, Ex ATW-2).

**Argument:**

The County's expert for the used & useful issue followed the general methodology of the PSC in calculating the used and useful percentages for the Utility's wastewater system: he evaluated the capacity of each individual component, reviewed the test year flow for each component as contained in the Application, adjusted the test year flow for five years of projected growth and for excessive inflow and infiltration (I&I), and then divided the resulting adjusted flow by capacity to reach a used and useful percentage. (T 315-316, ATW Dir 3, Rule 25-30.432 FAC, Section 367.081 FS). In response to a cross examination question, Mr. Woodcock defined "used and useful" by

saying it is the portion of the facilities being used by current customers, as adjusted for five years of growth and for excess inflow and infiltration. (T 328).

The test year was adjusted for five years of projected growth because building in a five-year margin of growth allows utilities to better plan for proper sizing of the facilities. (T 320-321). Florida Statutes considers utility property to be used and useful to serve customers five years after the end of the test year at a growth rate of ERCs not to exceed five percent per year; if the property is needed to serve customers more than five full years after the end of the test year, the utility must present justification in the form of clear and convincing evidence. (Section 367.081(2)(a)1., FS).

County witness Woodcock calculated the used and useful percentages of the plant and its components separately because they represent distinct parts of the system, each with its own individual capacity. (T 316-317). The design capacity for the components was corroborated by the Utility's last rate case. (T 319, Ex. FS-2 Application, Order No. PSC-07-0865-PAA-SU issued October 29, 2007 in PSC Docket No. 060285-SU).

For purposes of his used and useful analysis, Mr. Woodcock broke the Utility's system down into five parts: the WWTP, the purchased EWD capacity, and the transmission facilities that were constructed to convey the service area wastewater to EWD (force main, lift station, and wastewater pumps/pumping plant). (T 315, ATW Dir 3-5).

#### WWTP

In determining the appropriate used and useful percentage for the WWTP, the County used the WWTP's 150,000 gallon design capacity rather than the 99,000 gallon DEP permit capacity because as an investment that becomes a part of the Utility's rate

base, it's important to use the real capacity. (T 320, T 324, ATW Dir 4). Even if the plant is presently operating at 99,000 gallons per day, and the DEP permit limits its operations to 99,000 gallons per day, the plant still represents an investment in a 150,000 gallons per day plant, and it's the capacity that is important for valuing the plant as an investment for rate base purposes.

The PSC rule governing WWTP used and useful calculations allows for the consideration of design capacity if there is a difference between permitted and design capacity, the exact situation for the Utility. That is why County expert Woodcock used the original 150,000 gallons per day design capacity as it is representative of the capacity of the rate base investment. (ATW Dir 4, Rule 25-30.432 FAC).

County rate consultant Wilson agreed when he explained the difference between a non-used and useful adjustment for the WWTP and the investment that the WWTP represents, especially when it can be rerated to 150,000 gallons per day. (T 303). Mr. Wilson was not making an adjustment to the plant for revenue requirement purposes that would affect rate base for the present rate case, but rather he was making an expense adjustment to delete an expense that no longer existed because the plant had been rerated to 99,000 gallons per day. (T 299-301).

No non-used and useful adjustment is proposed for rate making purposes for the WWTP, because the Utility's contribution level would cause the Utility to incur a negative investment balance. This treatment is consistent with the Utility's most recent PSC rate case and Order No. PSC-07-0865-PAA-SU issued October 29, 2007 in PSC Docket No. 060285-SU. If future investments for improvements are made to the WWTP, the County's used and useful determinant will be used for the future rate case.

The County does not agree with the Utility's position that this represents an inconsistency of any sort. Ratemaking principles require that the calculation of the asset for rate base purposes be analyzed separately from the cost of service, as stated by County witness Wilson. County maintains that the treatment side of the asset still has a significant value that should not be subject to the Utility's rerating of the plant to agree with its disposal options.

### EWD Capacity & Transmission System

Because the remaining components of the Utility's system are all associated with providing treatment capacity to the Utility's service area over and above that of the WWTP, the adjustments for growth and excess I&I are the same for all four components. This is similar to the approach taken by the PSC in the Utility's last rate case. (ATW Dir 4, Order No. PSC-07-0865-PAA-SU issued October 29, 2007 in PSC Docket No. 060285-SU). The County agrees with the PSC's most recent used and useful determinations for the Utility's wastewater transmission system and finds no reason to disagree with the PSC methodology. Rule 25-30.432 sets forth the standards for used and useful determination for a WWTP, and the PSC applied them to the components of the Utility's wastewater transmission system. County expert Woodcock took the same approach. (T 328).

The County believes regulatory certainty is a core principle for the regulated utility and has endeavored to maintain consistency; ignoring the findings and methods approved in the prior PSC case undermines that certainty. The Utility agreed to the terms of the PSC PAA Order in that case, and Utility witness Seidman admitted that the Utility did not appeal the decision. (T 375-376).

The Utility's wastewater transmission system is not in the service of the Utility's current customers, so a non-used and useful adjustment must be made. The record clearly shows the underutilization of the new transmission system and the continued use of the existing WWTP. Utility witness Seidman under cross examination stated that the WWTP is still capable of serving the customers with the rerating down to 99,000 gallons per day. (T 380-381). Utility witness Flynn admitted that the retirement of the WWTP would take place only upon the completion of a force main and lift station along Gasparilla Pines Blvd., that he did not have a future date for this to happen, and that it was not on the Utility's five-year capital planning horizon. (T 352-353). Perhaps most telling was Mr. Flynn's response to a question about the purchase of extra capacity from EWD, by saying that it was to serve future customers. (T 138). Then later on in response to a question about whether sending excess flows to EWD was predominantly designed to serve future customers, Mr. Flynn said, "Correct." (T 171). But in response to questioning after his Rebuttal testimony about the PSC finding that the EWD interconnect was to serve new and future customers, Mr. Flynn responded that it was designed to serve current and future customers, even though he admitted that "It's not written there." (T 355).

### Prudency

County rate expert Woodcock stated that prudency and being used and useful are two separate concepts that should be considered separately. (ATW Dir 5-6). This is contrary to the Utility's apparent belief that if a decision leading up to a purchase is prudent, then it should also be considered 100% used and useful. However, County rate consultant Wilson explained that utilities aren't necessarily allowed to recover the interest expense on their prudently invested plant, only on the used and useful portion.

(T 305). Even if the Utility's decision to purchase EWD capacity and construct the transmission facilities was prudent at the time, that doesn't also mean that the same components are 100% used and useful. (ATW Dir 5).

One of the fundamental principles of rate making is that costs should follow the cost causer, and current Sandalhaven customers should not therefore pay for future growth; for this reason both the County and the PSC have applied the used and useful adjustment. Utility witness Siedman under cross examination admitted to the cost causer concept but also stated that the Utility at the time believed the interconnect would serve all customers. (T 390).

Saying that an investment that was prudently made at the time is of necessity considered used and useful does not match the PSC understanding of prudence, which has adopted a rule entitled "Allowance for Funds Prudently Invested" to address that very thing. (Rule 25-30.434 FAC). County rate consultant Wilson explained that this rule is a mechanism which allows a utility the opportunity to recover its return on investment for non-used and useful investments, or to earn an allowed rate of return on prudently constructed plant held for future use by future customers. (T 250).

But a utility's investment, although prudent when made, does not guarantee the full recovery of its investment. Mr. Wilson explained that the rule is meant to allow utilities to have the opportunity to recover from future customers and customer growth. (T 250). As the Sandalhaven area is not built out and there only modest growth occurring in the area, the County does not believe the Utility is entitled to a full recovery of its investment as of this time. Yet Utility witness Seidman seems to think that because a purchase was prudent when made, then it should also be used and useful:

A It was a prudent purchase based on the information we had, best information we had at the time, yes.

Q But isn't a prudent determination somewhat different from a used and useful calculation?

A Yes. It doesn't change anything about my opinion. (T 389-390).

### Economies of Scale

County rate expert Woodcock defined "economies of scale" as how incremental costs to construct generally go down as a facility gets larger. (T 319-320, ATW Dir 6). But he also cautioned that constructing larger than needed facilities adds to the operations a maintenance cost of a utility which in turn will lead to higher rates, which is why any consideration of economies of scale in the context of used and useful should include specific, measurable advantages, along with offsets for corresponding increases in costs in other aspects of the utility. (ATW Dir 6). In the present case, the Utility did not present any evidence supporting its non-used and useful position on the economies of scale. (T 320). The Utility in its testimony provided no new evidence that would justify the system to be 100% used and useful or a departure from following the method agreed upon in the previous PSC case. When asked if there were any specific schedules or figures in the application on the issue of economies of scale, Utility witness Seidman responded that there were none. (T 114-115). On the contrary, the Utility suggests a change in method on the basis that the investment was deemed prudent at the time and because there are economies of scale. Utility witness Flynn, when asked what would be the difference between installing a 10 and a 12 inch pipe, responded that the material cost would be the most important difference, but he did not know what it was. (T 163).

It thus appears that the Utility wants to take advantage of the two-phase rate structure of the PSC order in the Utility's last rate case, even though the expected

growth did not occur. For the phase two rates to apply, the WWTP would be retired; and the used and useful adjustment would be eliminated when the plant reached 80% capacity. But that is not the situation with the Utility, which still has much excess capacity because growth is moving at a much slower pace than what was anticipated. (Ex FS-2 Application, Order No. PSC-07-0865-PAA-SU issued October 29, 2007 in Docket No. 060285-SU).

**Issue 3A:** Should any adjustment be made to Wastewater Treatment Land Account 353.4 for the land, which was purchased for the proposed plant expansion, and if so, in what amount?

*Stipulation: Yes, a non-used and useful adjustment in the amount of \$73,089 should be made for the .96 acre portion held for future use. (Ex J-1)*

**Finding of Fact 3A:**

A non-used and useful adjustment in the amount of \$73,089 should be made for the .96 acre portion held for future use. (JW Dir 7, Ex JW-1 Table 5, Ex JW-7 Table 5).

**Issue 4:** What is the appropriate working capital allowance? (Fall-out issue)

**Finding of Fact 4:**

Following the standard industry practice of using one-eighth of the Operation and Maintenance Expenses, an adjustment of (\$15,306) should be made to the Utility's filed allowance for working capital, resulting in a working capital allowance of \$58,469 for the Test Year. (JW Dir 8, Ex JW-1 Table 9, Ex JW-7 Table 9).

**Issue 5:** What is the appropriate rate base for the test year period ended December 31, 2010? (Fall-out issue)

**Finding of Fact 5:**

The appropriate rate base for the test year period ended December 31, 2010 is \$852,216. (JW Dir 8, Ex JW-1 Table 4, Ex JW-7 Table 4).

**COST OF CAPITAL**

**Issue 6:** What is the appropriate return on equity?

*Stipulation: The parties agree to use the most recent leverage formula approved in Florida Public Service Commission Docket No. 120006-WS at the June 19, 2012 Commission Conference which was memorialized in Order No. PSC-12-0339-PAA-WS, issued June 28, 2012. (Ex J-1).*

**Finding of Fact 6:**

The PSC’s most recent leverage formula was approved in Docket No. 120006-WS at the June 19, 2012 Commission Conference, as memorialized in PSC Order No. PSC-12-0339-PAA-WS issued June 28, 2012. Applying this leverage formula to the components of the Utility’s capital structure, the appropriate return on equity is 10.52 percent. (T 246, JW Dir 8, Ex JW-1 Table 11, Ex JW-7 Table 11).

**Issue 7:** What is the appropriate weighted average cost of capital including the proper components, amounts, and cost rates associated with the capital structure? (Fall-out issue)

**Finding of Fact 7:**

The appropriate weighted average cost of capital including the proper components, amounts, and cost rates associated with the capital structure are as follows:

	Restated Rate Base	Rate Base Percentage	Cost of Capital	Required Return	Average Weighted Return on Rate Base
Long Term Debt	\$274,449	32.20%	6.65%	\$18,251	2.14%
Short Term Debt	12,960	1.52%	7.36%	954	0.11%
Preferred Stock	-	0.00%	0.00%	-	0.00%
Common Shareholder Equity	260,728	30.59%	10.52%	27,429	3.22%
Customer Deposits	7,327	0.86%	6.00%	440	0.05%
Accumulated Deferred Taxes	296,752	34.82%	0.00%	-	0.00%
Total Sewer	<u>\$852,216</u>	<u>100.00%</u>		<u>\$47,073</u>	<u>5.52%</u>

County rate consultant Wilson explained that the 5.52 percent rate of return reflected in this chart might appear to be low, because the Utility has a large percentage of accumulated deferred taxes in its capital structure, which is at a zero cost. Thus it appears as if the rate of return is low, because such a large portion of the funding for

rate base is a zero cost funding source. (T 248, JW Dir 9, Ex JW-1 Table 11, Ex JW-7 Table 11).

## **NET OPERATING INCOME**

**Issue 8:** Are any adjustments necessary to test year revenues, and if so, in what amount?

### **Finding of Fact 8:**

Yes. The Utility inadvertently did not bill certain residential and general customers who were connected to the Utility during the Test Year. Test year revenues should be increased to reflect the specific additional revenues, bills, and gallons of wastewater consumption from those customers who were not billed during the test year. Based on information provided by the Utility and water consumption data provided by the County, an adjustment in the amount of \$53,529 should be made to Test Year Revenues for certain customers who did not receive bills from the Utility during the test year. (T 247-248, T 291-292, JW Dir 9, Ex JW-3, Ex JW-7 Table 13).

### **Argument:**

It is obviously better to use actuals than to use the method of averaging, as used by the Utility. The Utility based consumption for these extra customers on an average usage for that particular type of customer, whereas the County's expert calculated the adjustment based on the same customers, but with the actual consumption for those customers for the test year, based on water consumption data from the County, which provided the water service for these customers. For rate setting purposes, it is much more accurate to use actual consumption for a general service customer than to use average consumption for a whole class of customers; therefore, the County's method of performing the calculations is more accurate for rate making purposes. (T 291-292, 294).

Utility witness Aquilino stated the Utility's position that if these customers had actually received bills, they would have reduced their water consumption going forward to lower their resulting sewer bills. (EA Dir 5). But she also admitted under cross-

examination that she did not perform any kind of regression analysis for those previously unbilled customers, so there was no evidence presented to support her position. (T 343). County witness Wilson explained that the majority of the customers affected were living in homes built by Habitat for Humanity and that their average water consumption for that time period was already low, with most of it general service consumption, as they don't have a lot of irrigation space. (T 311-312).

**Issue 8A:** Are any adjustments necessary to test year expenses, and if so, in what amount?

**Finding of Fact 8A:**

Yes, operating expenses should be reduced by \$14,535.00 to reflect the cost savings from no longer being required to perform ground water monitoring. (T 308-310, JW Dir 11-12, Ex JW-4, Ex JW-7 Table 14).

**Argument:**

Because the Utility has recently rerated the WWTP from 150,000 gallons per day to 99,000 gallons per day, DEP will no longer require the Utility to perform ground water monitoring, and in fact the monitoring wells will be capped. (JW Dir 11, T 308-310). Plugging and abandoning the monitoring wells was DEP compliance item number two in County witness Johnston's WWTP Visit Summary (Ex DJ-3), which was amended during the Technical Hearing to delete reference to all three DEP compliance items because the Utility is now in compliance. (T 223-225). If the Utility's operating costs decrease because a specific expense is eliminated (here, ground water monitoring previously required by DEP before the plant was rerated down from 150,000 gallons per day to 99,000 gallons per day), it is unreasonable for its customers to continue to pay for that non-existent expense. Likewise, if there are any other expenses related to rerating the plant, then they should also be removed. (T 309-310).

In response to questioning during the Technical Hearing, County witness Wilson clarified that his recommended reduction of this operating expense was simply to recognize the expense savings for Utility operations, and not to perform any calculations related to the issue of what part of the plant is used and useful. (T 312-313). He explained that this does not represent an inconsistency because the plant has no revenue requirement, and there is no asset adjustment or depreciation expense adjustment for non-used and useful; but he did want to recognize an operating expense reduction for rerating the plant. (See Ex JW-1 Table 10 Line 25 Column (b)). No assets are being removed for non-used and useful for the plant, so there is no rate impact. (T 299-300). The County is not making a revenue requirement adjustment, or reducing the Utility's revenue requirements for the WWTP. (T 301-302). This is because the treatment side of the asset still has a significant value that should not be subject to the Utility's rerating of the plant to agree with the disposal options.

**Issue 9:** Should any adjustments be made to the Utility's contractual services, testing and other, and if so, in what amount?

**Finding of Fact 9:**

Yes, an adjustment should be made to the Utility's operating expenses for contractual services, materials and supplies and miscellaneous expenses in the amount of (\$15,081). (T 249, JW Dir 9-10, Ex JW-1 Table 15, Ex JW-7 Table 15).

**Argument:**

This adjustment was determined based on a benchmark analysis for the Utility's contractual services, materials and supplies and miscellaneous expenses on a combined basis, because the Utility treated certain expenditures differently in its filing for its last rate case from the test year. (JW Dir 9-10). (Ex FS-2 Application, Order No. PSC-07-0865-PAA-SU dated October 29, 2007 in PSC Docket No. 060285-SU). Benchmarking is a common practice for utilities in evaluating the reasonableness of

how expenses have increased over time. (T 249). The County's rate consultant took the Utility's expenses from its last PSC case, increased them for inflation and customer growth to check the test year, and benchmarked those against test year expenses in the present case to check for reasonableness. (T 249).

No support was provided by the Utility for why its reported expenses escalated faster than customer growth and inflation, to justify its increased costs and expenditures. (T 249). Such cost increases over and above the benchmark analysis are excessive and not reasonable or necessary for providing service, with the exception of required Testing Expenses, which were excluded for the analysis. (JW Dir 10).

**Issue 10:** Is the Utility's level of inflow and infiltration (I&I) excessive, and if so, what adjustments are necessary?

**Finding of Fact 10:**

Yes, the Utility's level of inflow and infiltration (I&I) is excessive by 10.85%. The corresponding adjustments to purchased wastewater, purchased power and chemicals are (\$20,273), (\$2,295), and (\$1,344) respectively. (JW Dir 10, Ex JW-1 Table 16, Ex JW-7 Table 16).

**Argument:**

There is no specific PSC rule on I&I, but the methodology used by County's rate consultant to calculate the excessive I&I percentage is consistent with that used by the PSC in determining excessive I&I. (JW Dir 10). Utility rate consultant Seidman stated he agreed with County rate consultant Woodcock's I&I calculations of 16,795 gpd excess, with 9,165 gpd assigned to the WWTP and 7,630 gpd to the EWD flows. (FS Reb 8). These calculations were then used by County rate consultant Wilson to calculate the excessive I&I percentage of 10.85%. (Ex JW-1 Table 16).

**Issue 11:** Should any adjustments be made to the Utility's miscellaneous expenses, and if so, in what amount?

[Miscellaneous expenses are included in Issue 9 above.]

**Issue 12:** What is the appropriate amount of rate case expense?

**Finding of Fact 12:**

The appropriate amount of rate case expense is subject to the evidence produced by the Utility up through October 8, 2012. (T 286). Only prudently incurred rate case expenses should be allowed and amortized over four years. (T 256, JW Dir 11, Ex JW-1 Table 18, Ex JW-7 Table 18).

**Argument:**

The Utility may continue to augment its record of rate case expenses until documentation has been submitted on all valid rate case expenses. (T 269). Expenses should not be out of line with those allowed in Utility's last rate case (T 277), which would make them appear to be reasonable. (T 278). Utility has until October 8 to submit final information, including information showing that staff did perform the work included. (T 286). The Utility also is seeking recovery of rate case expense for work performed by Water Services Corporation (T 265), but such expense should be allowed only to the extent that it is reasonable. The PSC found in the Utility's previous rate case on Page 37 that the ratepayers should not bear the related costs of having the records located out of state. (Ex FS-2 Application, Order No. PSC-07-0865-PAA-SU issued October 29, 2007 in PSC Docket No. 060285-SU Page 37).

**Issue 13:** What is the test year wastewater operating income or loss before any revenue increase? (Fall-out issue)

**Finding of Fact 13:**

The test year operating loss for the Utility is (\$118,559) with an achieved rate of return for the Utility for the test year of (13.91%). (JW Dir 13, Ex JW-1 Table 13, Ex JW-7).

**REVENUE REQUIREMENT**

**Issue 14:** What is the appropriate revenue requirement? (Fall-out issue)

**Finding of Fact 14:**

The appropriate revenue requirement is \$729,986 or a 35.86% increase. (T 245, JW Dir 13, Ex. JW-1 Table 3, Ex. JW-7).

**Issue 15:** What are the appropriate wastewater rates for the Utility? (Fallout Issue)

**Finding of Fact 15:**

The appropriate wastewater rates for the Utility as based on the Findings of Fact contained herein are included in Exhibit JW-1 Table 1. (JW Dir 13, Ex. JW-7 Table 1).

**Issue 16:** What are the appropriate miscellaneous charges for the Utility?

*Stipulation: County and the Utility agree that the appropriate miscellaneous charges are as follows. OPC takes "No Position" on the appropriate miscellaneous charges agreed to by County and the Utility. (Ex J-1).*

**Finding of Fact 16:**

The appropriate miscellaneous charges for the Utility are as follows:

<u>Type Charge</u>	<u>Recommended</u>	
	<u>Bus. Hrs.</u>	<u>After Hrs.</u>
(a)	(d)	(e)
Initial Connection Fee	\$21.00	\$42.00
Normal Reconnection Fee	\$21.00	\$42.00
Violation Reconnection Fee	Actual Cost	Actual Cost
Premises Visit	\$21.00	\$42.00

	<u>Recommended</u>
<b>System Capacity Charge:</b>	
Residential-per ERC	
or per Lot	\$2,628.00
All others-per Gallon/Day	\$13.83/gallon

<b>Other:</b>	
Flow Meter Installation	
Residential	Actual Cost
All others	Actual Cost
Plan Review Charge	Actual Cost
Inspection Charge	Actual Cost

**Issue 17:** What are the appropriate Allowance for Funds Prudently Invested (AFPI) charges for the Utility?

*Stipulation: The AFPI charges will be a fall-out based on the approved amount of non-used and useful plant, expenses and ERCs. The charge will increase monthly until 5 years from the effective date at which time the charge will be capped. The charge will be discontinued when the number of ERCs used to establish the charge have been collected. (Ex J-1).*

**Finding of Fact 17:**

The term AFPI, or Allowance for Funds Prudently Invested, is a charge recognized by the PSC to allow a utility to recover its return on investment for non-used and useful investments that the utility might have, and it provides the utility an opportunity to earn an allowed rate of return and to recover from future customers and customer growth. But it is not a guarantee that the utility will actually receive those funds. If the growth does not materialize, then it is only an opportunity. (T 250).

It is designed to provide the utility with the opportunity to recover its carrying costs for the non-used and useful plant that is prudently designed. It is not appropriate to make current customers pay for excess capacity held for use by future customers. Funds to support the prudently constructed plant should be collected from the future customers through plant capacity or connection fees. (Rule 25-30.434, FAC).

Following is a detailed calculation of the recommended AFPI charges for the Utility, as shown on Exhibit JW-1 Table 24. (JW Dir 14, Ex JW-7 Table 24).

**AFPI Charges**

	2012	2013	2014	2015	2016
Monthly Add-In Cost Factor	\$35.06	\$35.06	\$35.06	\$35.06	\$35.06
Average Test Year					
December	\$35.06	\$455.78	\$876.50	\$1,297.22	\$1,717.94
January	70.12	490.84	911.56	1,332.28	1,753.00
February	105.18	525.90	946.62	1,367.34	1,788.06
March	140.24	560.96	981.68	1,402.40	1,823.12
April	175.30	596.02	1,016.74	1,437.46	1,858.18
May	210.36	631.08	1,051.80	1,472.52	1,893.24
June	245.42	666.14	1,086.86	1,507.58	1,928.30
July	280.48	701.20	1,121.92	1,542.64	1,963.36
August	315.54	736.26	1,156.98	1,577.70	1,998.42
September	350.60	771.32	1,192.04	1,612.76	2,033.48
October	385.66	806.38	1,227.10	1,647.82	2,068.54
November	420.72	841.44	1,262.16	1,682.88	2,103.60

The use of AFPI charges to recover the Utility's non-used and useful investment is consistent with the Utility's last rate case (Ex FS-2 Application, Order No. PSC-07-0865-PAA-SU dated October 29, 2007 in Docket No. 060285-SU). Based on this Order at Page 49, the total buildout ERCs are 2,298. The Utility currently serves 1,123 ERCs, therefore there are 1,175 ERCs remaining to reach buildout. Once the 1,175 ERCs have been connected to the Utility, the charge shall be discontinued. (JW Dir 14).

**Issue 18:** Should rates be reduced four years after the established effective date to reflect the removal of the amortized rate case expense, and if so, what is the appropriate amount by which rates should be reduced?

*Stipulation: Yes. Rate case expense should be amortized and recovered over a four-year period, with the Utility following the procedure for automatic rate reduction and notifying customers as established by the PSC. The exact amount will be determined based upon the amount of rate case expense approved in Issue No. 12 above. (Ex J-1).*

**Finding of Fact 18:**

Rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense, in the amount contained in Exhibit JW-1 Table 1. (JW Dir 14). The Utility should follow the procedure for automatic rate reduction and notifying customers as established by the PSC.

**Issue 19:** Should the Utility be required to provide documentation, within 90 days of an effective order finalizing this docket, to show that it has adjusted its general ledger for all

the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) primary accounts associated with the County-approved adjustments?

*Stipulation: Yes. The Utility will provide copies of its general ledger pages reflecting the adjustments within 90 days of an effective order finalizing this docket. (Ex J-1).*

**Finding of Fact 19:**

The Utility is required to provide documentation, within 90 days of an effective order finalizing this docket, to show that it has adjusted its general ledger for all the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) primary accounts associated with the County-approved adjustments. (JW Dir 15).

**CONCLUSIONS OF LAW:**

1. The Charlotte County Board of County Commissioners has exclusive jurisdiction to decide the Utility's rate application pursuant to County Code Chapter 3-8 Article II and Board of County Commissioners Resolution No. 2007-143. Section 367.171, FS. However, the Board must follow the minimum standards of regulation found in Section 367.081, FS, concerning rates. Section 367.171(6), FS. The County shall proceed as though the County is the PSC. Section 367.171(8), FS.

2. The County's regulatory function shall operate within the Budget Department, and County Budget Department staff's primary duty is to represent and consider the public interest and see that all relevant facts and issues are clearly presented to the Board for its consideration. County Code Chapter 3-8 Article II Section 3-8-25.

3. The Hearing officer was duly appointed in accordance with County Code Chapter 3-8 Article II and Chapter 1-10 Article XII.

4. Before filing an application for a general rate increase, utilities must submit a written request for a test year, which the Board must approve within 60 days. County

Code Chapter 3-8 Article II Sections 3-8-47 and 3-8-58. The Utility submitted such a request, which was timely approved by the Board. (RD Dir 2, Ex RD-3).

5. The Utility's Rate Application was sufficient and complete, meeting all required minimum filing requirements. County Code Chapter 3-8 Article II. (RD Dir 2, Ex RD-4).

6. The public hearings in this case were properly advertised and noticed in accordance with County Code Chapter 3-8 Article II. (RD Dir 3, Ex RD-6).

7. The Board of County Commissioners is empowered to fix reasonable rates and charges for services rendered by certificated water and wastewater utilities. A utility's rates and charges shall continue in effect as lawful rates and charges until changed by the Board. County Code Chapter 3-8 Article II Section 3-8-45.

8. All rates and charges must be fair and reasonable and approved by the Board. County Code Chapter 3-8 Section 3-18-18. Any increase approved by the Board of County Commissioners must result in rates which are just, reasonable, compensatory, and not unfairly discriminatory. County Code Chapter 3-8 Article II Section 3-8-14 and Section 367.081(2)(a)1., FS.

9. Charges made by a utility shall be just and reasonable, allowing the utility a fair return on investment. County Code Chapter 3-8 Article II Section 3-8-24.

10. In all rate proceedings, the Board shall determine and investigate the actual original cost of the property of each utility used and useful in public service and keep a current record of the net investment of the utility in such property, using the value so determined for rate-making purposes, less accrued depreciation. County Code Chapter 3-8 Article II Section 3-8-62. Similarly, the [PSC] shall consider the value and quality of the service and the cost of providing the service, including 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. Section 367.081(2)(a)1., FS.

11. In each instance, the utility shall be able to support any schedule submitted as well as any adjustments or allocations relied on by the utility. Co. Code Chapter 3-8 Article II Section 3-8-55.

12. Rate case expense shall be included as a reimbursable expense. County Code Chapter 3-8 Article II Section 3-8-73(a).

13. The "Stipulated Issues" as agreed to by the parties and listed in Exhibit Joint-1, and the rates attributed to said Issues, are hereby approved as reflecting rates that are reasonable and not unfairly discriminatory. (RD Dir 2-3).

14. The quality of service provided by the Utility is found to be satisfactory. Although a small percentage of the Utility's customers challenged the quality of the services being provided by the Utility, the greater weight of the relevant evidence does not sustain a reduction in the proposed rates due to quality of service issues. However, the Utility should consider the information provided by those customers and attempt to improve customer responsiveness through its call center, which was the chief complaint of those who submitted comments, as well as address continuing billing issues for customers who are managing properties with multiple units.

15. The Findings of Fact contained herein are hereby approved.

**Recommendation**

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Charlotte County Board of County Commissioners enter a Final Order and therein approve and adopt this Recommended Order and the rates set forth in the attached Exhibit \_\_\_\_.

Respectfully submitted this 1st day of  
October, 2012, by:

Martha Young Burton, Esq.  
Assistant County Attorney  
CHARLOTTE COUNTY  
18500 Murdock Circle  
Port Charlotte, FL 33948  
Phone: (941) 743-1328  
Fax: (941) 743-1550  
[marty.burton@charlottefl.com](mailto:marty.burton@charlottefl.com)

  
MARTHA YOUNG BURTON  
Florida Bar No.: 0398179

**CERTIFICATE OF SERVICE**

**DOCKET NO.: 2011-001-S**

I HEREBY CERTIFY that a true and correct copy of the foregoing Proposed Recommended Order has been furnished by e-mail this 1st day of October, 2012, to:

Martin S. Friedman  
SUNDSTROM, FRIEDMAN & FUMERO, LLP  
Attorneys at Law  
766 North Sun Drive, Suite 4030  
Lake Mary, FL 32746  
[mfriedman@sflaw.com](mailto:mfriedman@sflaw.com)

Erik Sayler, Esq.  
OFFICE OF THE PUBLIC COUNSEL  
c/o The Florida Legislature  
111 West Madison Street, Rm. 812  
Tallahassee, FL 32399-1400  
[sayler.erik@leg.state.fl.us](mailto:sayler.erik@leg.state.fl.us)

  
MARTHA YOUNG BURTON  
Florida Bar No.: 0398179

P:\WPDATA\BURTON\Regulated Utilities\Sandalhaven Rate Case LR#11-1267\PLEADINGS\County's Proposed Recommended Order.doc  
LR11-1267