

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

In Re: Utilities Inc. of Sandalhaven Application  
for Rate Increase.

Docket No. 2011-001-S

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**PROPOSED RECOMMENDED ORDER**  
**SUBMITTED BY THE OFFICE OF PUBLIC COUNSEL**

Pursuant to notice, this cause came on for formal evidentiary hearing before Diane K. Kiesling, duly appointed Hearing Officer, on August 22-23, 2012, in Port Charlotte, Florida.

**APPEARANCES**

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**ISSUES PRESENTED**

The ultimate issue in this case is what rates, fees and charges are "just, reasonable, compensatory, and not unfairly discriminatory" for the services provided to residential and commercial customers in Charlotte County, Florida, by Utilities, Inc. of Sandalhaven (Utility or Sandalhaven) in its service territory.

## BACKGROUND AND PROCEDURAL HISTORY

On September 28, 2011, pursuant to Chapter 3-8, Article II of the Charlotte County Code, the Utility filed an Application with the Charlotte County Board of County Commissioners (Board) for increased wastewater rates based on a historic test year ending December 31, 2010. The Utility is the holder of Certificate 804-S. The Application is assigned Docket No. 2011-001-S, and November 22, 2011, was established as the official date of filing. The Utility has requested a permanent revenue increase for its wastewater system in Charlotte County of \$1,059,807 or 219%. The requested increase would produce annual revenues of \$1,543,579. The Utility did not request interim rates.

The wastewater utility was originally established in 1983 when water and wastewater ratemaking regulation was under the jurisdiction of Charlotte County. In 1994, Charlotte County ceded ratemaking jurisdiction to the Florida Public Service Commission (FPSC). The Utility's last rate proceeding before the FPSC was in Docket No. 060285-SU. Rates and charges were established by Order No. PSC-07-0865-PAA-SU, issued October 29, 2007, and made final by consummating Order No. PSC-07-0980-CO-SU, issued December 7, 2007. This is the Utility's first rate case before the Board since the County resumed ratemaking regulation over water and wastewater utilities in 2007.

A duly advertised prehearing conference was held on December 12, 2011, and May 21, 2012. An order establishing pre-hearing schedule was entered on March 7, 2012. An order granting the Office of Public Counsel (OPC) intervention was entered on March 7, 2012. There are no other Intervenors. Witness lists and exhibits lists were exchanged and the procedures and issues for the formal evidentiary hearing were established. The parties filed Prehearing Statements on May 18, 2012, containing a list of witnesses and exhibits, and a list of potential stipulated issues and non-stipulated issues for adjudication by full administrative hearing before the prehearing officer. A duly noticed customer meeting was held on May 21, 2012. The parties filed pre-filed testimony and exhibits pursuant to the order establishing pre-hearing schedule.

The parties entered into negotiations that produced stipulations on certain issues. The stipulations on certain issues were memorialized and entered into the record as Exh. Joint-1 (Stipulated Issues), attached hereto as Exhibit A. Evidence and testimony was taken on remaining non-stipulated issues at the quality of service hearing held on August 22, 2012, and the technical hearing held on August 23, 2012, consistent with the requirements of Chapter 3-8, Article II, and Chapter 1-10, Article XII, of the Charlotte County Code.

At hearing, a number of exhibits were admitted into the record. Those exhibits are described in the transcript of the hearing. When citing to the record, the hearing transcript is indicated by TR, exhibits by Exh, and prefiled testimony of witnesses by Last name, D/R (direct

or rebuttal), and page number (e.g., Wilson D at 10, means County Witness Wilson's prefiled direct testimony, page 10).

The public was given the opportunity to testify on the quality of service provided by the Utility. Eleven members of the public attended the hearing and offered testimony. (TR 11-69) During the technical portion of the hearing, the Utility presented the written and live testimony of Frank Seidman, Erin Aquilino, and Patrick C. Flynn. The County presented the written and live testimony of Roger Davis, David Johnson, Jeffery M. Wilson, and Andrew T. Woodcock. OPC did not offer the testimony of any witnesses. Each witness, as appropriate, adopted his written testimony as his testimony at hearing as if it were fully read. Cross-examination was conducted. The parties rested their cases and agreed to file written briefs with proposed findings of fact and conclusions of law. The record in this proceeding consists of the Stipulated Issues (Exh Joint-1), the list of admitted exhibits, and the transcript of the oral and written testimony of the witnesses and customers who testified. This Proposed Recommended Order is based on the record as defined.

The Proposed Findings of Fact and Recommended Conclusions of Law are organized by issue by issue according to OPC's prehearing statement. The Recommended Conclusions of Law for each issue are discussed under each issue instead of at the end of the Proposed Recommended Order. OPC's Proposed Recommended Order concludes that the Utility should receive a rate increase no greater than recommended by County witnesses Roger Davis, David Johnson, Jeffery M. Wilson, and Andrew T. Woodcock.

## PROPOSED FINDINGS OF FACT

### QUALITY OF SERVICE

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

**Partial Stipulation:** The parties have stipulated to use the process established by the FPSC 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 operation: quality of utility's product (water and wastewater); operational condition of the utility's plant and facilities; and the utility's attempt to address customer satisfaction.") The parties stipulated that the Utility's Wastewater Treatment Plant is presently operating in compliance with applicable regulatory requirements of the Florida Department of Environmental Protection (DEP). (Exh Joint-1) However, the following facts were adduced at the quality of service hearing held on August 22, 2012.

### Proposed Findings of Fact Issue 1

1. The Quality of Service hearing was held on August 22, 2012, and 11 customers testified. (TR11-69)
2. At least three customers testified as to customer service problems they had in connection with the Utility's customer call center. (TR 24-29, 31, 49-52) They testified about long hold times, dropped calls, customer service representatives who were not aware of the pending rate case, and a malfunctioning automated phone directory ("phone tree") that did not properly route calls. (TR 24) One customer testified that the "report emergency" selection on the automated phone directory did not even work. (TR 24)
3. One customer provided testimony regarding billing issues: late arriving bills from the utility, being received later each month. (TR 25-27)
4. At least two customers testified that lift station alarms would sound off on a regular basis, and, in some instances, the alarm sounded continually for more than 24 hours straight without being addressed or resolved by the Utility. (TR 30, 32)
5. One customer testified about a recent sewage spill at or near the Sandalhaven wastewater treatment plant (Sandalhaven WWTP or WWTP) location. (TR 12)
6. In addition to live testimony, customers raised Quality of Service concerns, including back billing issues, in other venues. Some customer concerns were recorded in the Utility's composite complaint log which was provided to the County. Other Quality of Service concerns with the Utility were provided to the County via the County's website. All the written concerns collected by the County were submitted into the hearing record as evidence. See Exhibits RD-7A, 7B, 7C, 7D, 7E, and 7F (attached to Mr. Roger Davis' testimony).
7. Additional written Quality of Service concerns were provided directly to OPC and submitted into the record as Exh OPC-1, Composite Customer letters and emails.
8. Exh OPC-1, Composite Customer letters and emails, contains a letter from a Sandalhaven customer, dated August 21, 2012, stating that he was the manager of Cape Haze Resort, a 144-unit condominium project on Placida Road within the Sandalhaven service territory. He complained that the Utility's billing process was atrocious. He receives seven bills from the Utility each month, and that payments are frequently applied to the wrong accounts. Of the over 200 bills he pays monthly, Sandalhaven makes the most errors. He stated that the sewer meter reading does not match the water meter reading even though the sewer bill is supposed to be based on the water meter reading done by Charlotte County. The customer stated that, due to the extremely poor quality of the billing process, the cost for the billing system should be deleted from the rate application. He also stated that if the utility is granted the full rate increase, it would increase Cape Haze Resort's bill by \$1,000,000 over the next ten years. (See Exh OPC-1, last two pages.)
9. Cape Haze Resort is located near the southern end of the service territory, along Placida Rd. (Exh OPC-2, enlarged service territory map). There is a lift station (LS #12) on the northwest corner of the Cape Haze Resort property, along the 12 inch force main. (Id.)

The letter from the Cape Haze Resort manager also referenced a sewage spill that took place approximately 2 years ago. He said he saw it with his own eyes, but the regular utility operator Lenny was not present for the cleanup. His letter also stated he was told the spill was not reported to the proper authorities, which he found troubling. (See Exh OPC-1, last two pages.)

10. Utility witness Flynn testified he heard the customers' August 22, 2012, testimony about problems at the Utility's customer service call center, lift station alarm times, and other various concerns customers voiced. He did not attend the informal customer meeting. He testified he was not aware of these problems at the call center. He testified that he had not had the opportunity to check on the automated phone tree issues or the other customer service problems. (TR 139, 141-143)
11. Utility witness Flynn testified that he was not aware of the long, sometimes 24-hour, lift station alarm alert times. He testified that the Utility does not have a dedicated emergency call number. Customers must call the customer service call center and use the automated directory to report an emergency. (TR 142-145)
12. Utility witness Flynn testified as to the frequency of the lift station inspection times, and that the inspection period was approximately three times a week, which means it could be as long as two days in between regular inspections. (TR 146)
13. County witness Johnson testified that he inspected and reviewed operational condition of the plant and facilities, and he had not raised any quality of service concerns. (TR 225) However, if there was an emergency, County witness Johnson was concerned that the company would not have anyone to timely respond. (TR 225, 232-233)

### **Argument**

Quality of Service as stipulated by the parties concerns these three criteria: 1) quality of utility's product (water and wastewater); 2) operational condition of the utility's plant and facilities; and 3) the utility's attempt to address customer satisfaction. Rule 25-30.433, F.A.C., states that in every rate case proceeding, the FPSC shall make a determination of quality of service provided by the utility. When a utility's quality of service has been determined to be less than satisfactory, the FPSC has required further actions ranging from FPSC staff monitoring for marginal service to a reduction of a utility's return on equity (ROE) for unsatisfactory service. See Order No. PSC-09-0385-FOF-WS, issued May 29, 2009, in Docket No. 080121-WS at page 21.<sup>1</sup>

In this docket, regarding the quality of product, the parties stipulated that the Utility is presently operating in compliance with applicable regulatory requirements for water quality (e.g., Department of Environmental Protection (DEP) rules and guidelines). Based on these facts, the quality of product should be considered *satisfactory*. For operational condition of the utility's

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<sup>1</sup> Order No. PSC-09-0385-FOF-WS, issued May 29, 2009, in Docket No. 080121-WS, at page 21, In re: Application for increase in water and wastewater rates in Alachua, Brevard, DeSoto, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

plant and facilities, other than customer testimony about a recent sewage spill and lengthy lift station alarm times, there is no evidence in the record supporting any serious concerns with the operational condition of the utility's plant and facilities. However, due to the length of time that the utility took to respond to a lift station alarm (apparently on more than one occasion), the Utility's emergency response mechanisms are not sufficient. To rely upon an operator inspection three times per week (every two to three days) or for customers or passers-by to alert the Utility in the case of an emergency or alarm-inducing event is very inadequate. Further, the lack of a dedicated emergency call-in number to report emergencies directly to the Utility's operations staff is troubling. The Utility should implement an alert system that notifies the utility when an alarm is sounded as soon as an event occurs in order to prevent an accidental spill or other potential environmental hazard, and to eliminate the disruption to surrounding residents caused by loud continual alarms. Fixing this for the lift stations, in today's electronic environment should not be a considerable expense. Based on these facts, the quality of the Utility's operational condition should be considered *fair*.

Regarding the utility's attempt to address customer satisfaction, there were concerns expressed with the customer service call center involving reaching a customer service specialist in a timely manner; difficulty getting through to a "live person"; dropped calls; systemic problems with the automated phone directory; and an inability to report potential emergencies to the Utility. The record evidence is insufficient surrounding the Utility's ability to address customer satisfaction with respect to communicating on a timely basis with its customers. The quality of service problems highlighted in customer testimony, if systemic, would support a finding of unsatisfactory for this criterion. It is unknown whether these are isolated events or serious ongoing concerns. Because Utility witness Flynn testified that he was not aware of the customer concerns nor has he had an opportunity to verify the concerns raised by the customers, and because the customers testified under oath, the customers' concerns with the customer service call center cannot be dismissed. Based on the facts, the Utility's attempt to address customer satisfaction should be *marginal*.

#### **Recommended Conclusion of Law Issue 1**

The record supports a conclusion that the overall quality of service for the Utility should be no greater than *fair*, but trending toward *marginal* because of the significant customer service problems which appear to exist and have yet to be resolved. The record certainly does not support an overall conclusion of satisfactory.

#### **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, the 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. (Exh Joint-1)

**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?

### **Proposed Findings of Fact Issue 3**

14. The bulk of the cost driver for the Utility's requested rate increase is related to the interconnection with Englewood Water District and associated costs. (TR 164) The growth the utility projected in the Sandalhaven territory since the last rate case did not occur according to Utility witness Seidman. (Seidman R at 18; TR 388-389)
15. In 2004, the Utility commissioned an engineering study to examine how best to address the potential loss of the Wildflower Golf Course (Wildflower site) as a means to dispose of the Sandalhaven WWTP effluent as well as to provide recommendations on how best to expand the Utility's capacity to treat and dispose of wastewater associated with potential new customer growth and development activity in the service territory. (Flynn D p. 3-5; Exh PCF-1A; Seidman R at 12).
16. The 2004 engineering study (Exh PCF-1A, pages 5-6) addressed future development in the service territory and contained a table that described both known and potential future development and estimated flows (gallons per day or "gpd") associated with each development greater than the then current wastewater flows treated by the WWTP. (Exh PCF-1A, pages 5-6)
17. In 2004, the total number of known and potential flows was 793,360 gpd associated with 13 known and potential development projects. (Exh PCF-1A, pages 5-7).  
*Note: for ease of reference, Table 1: Future Development from Exh PCF-1A, p. 6 of the 2004 engineering study is attached hereto as "Attachment A"*
18. Estimated flows with the *known* development projects were approximately 114,600 gpd and flows for *potential* projects were approximately 678,760 gpd. (Exh PCF-1A, p. 6, Table 1, mathematical difference between known and potential flows).
19. According to the known and potential development projects listed in Table 1 of the 2004 engineering study, the *potential* development accounted for approximately 85% of the total future known and potential wastewater flows. (Exh PCF-1A, p. 6, mathematical percentage)
20. The known and potential flows from these development projects would overwhelm the permitted capacity of the Utility's Sandalhaven WWTP, which at the time was permitted for 150,000 gpd. (Flynn D at 3-4; (Exh JW-6, contains Order No. PSC-07-0865-PAA-

- SU, issued October 27, 2007, in Docket No. 060285-SU (hereinafter “Exh JW-6, 2007 Sandalhaven Order”))
21. Utility witness Seidman testified that the Utility had many requests for future capacity from potential developers. (TR 117) However, the Utility did not include those requests in this case. (TR 121). The notices from builders for increased demand were not attached to Mr. Seidman’s testimony. (TR 384)
  22. Utility witness Flynn testified that almost all of the growth associated with the *known* development listed on Exh PCF-1A, p. 6, Table 1 has materialized in that these *known* projects were constructed. (TR 172-173).
  23. Utility witness Flynn further testified very few of the *potential* projects were constructed. (TR 173).
  24. Utility witness Seidman testified that growth which the Utility projected and expected in the service the service territory in 2006 has not occurred. (TR 388-389).
  25. In October 2005, the Utility contracted to purchase 100,000 gpd of wastewater treatment capacity from Englewood Water District (Englewood or EWD). (Exh PCF-2) In April 2006, the Utility contracted to purchase an additional 400,000 gpd capacity from Englewood, 200,000 gpd of capacity to be purchased on or before February 2007 and another 200,000 gpd of capacity to be purchased on or before February 2008. (Exh PCF-2A) The Utility ultimately purchased 300,000 gpd of capacity from Englewood, paying approximately \$2.3 million. (Exh JW-6, 2007 Sandalhaven Order at 10; TR Flynn R 13).
  26. In addition to purchasing 300,000 gpd in capacity, the Utility installed a master lift station, 12-inch force main, and pumping plant to interconnect with and send raw wastewater to Englewood for treatment, paying approximately \$2.7 million. (Exh JW-6, 2007 Sandalhaven Order at 10)
  27. Utility witness Seidman testified that the Utility believes it was prudent in planning for the known and potential growth. (Seidman R 9,13) Utility witness Seidman testified that if a utility is prudent in building for future growth, then the installed plant must be 100% used and useful. (Seidman R 19-20, 22, TR 389)
  28. In the Utility’s last rate case, the FPSC approved an allowance for funds prudently invested (AFPI) charge. (Exh JW-6, 2007 Sandalhaven Order at 47-49) On page 48 of the order allowing the AFPI charge, the FPSC order stated that the Utility’s decision to interconnect with Englewood to accommodate the wastewater demand for existing and future customers was prudent. (Id. at 48) The FPSC order stated “[t]here are 872 ERCs remaining to reach buildout [sic] . . . future growth can take unforeseen and unpredictable paths sometimes, customer growth may not exactly materialize as the utility has estimated. . . .” and “[o]nce the 872 ERCs have been connected to the utility’s system, the [AFPI] charge shall be discontinued.” (Id. at 48)
  29. The FPSC order stated that the Utility revised its rate case application on December 28, 2006. (Exh JW-6, 2007 Sandalhaven Order at 10) In the revised application, the Utility stated that it entered into an agreement with Englewood “whereby the EWD will provide

- bulk wastewater treatment and disposal to service new customers.” (Id. at 10) (Emphasis added).
30. The Utility also requested a change to its service availability charges “to pass through the costs of the interconnection to the future customers who will be connected after the interconnection is complete.” (Exh JW-6, 2007 Sandalhaven Order at 10) (Emphasis added).
  31. At the time, the Sandalhaven WWTP was permitted to treat 150,000 gpd of wastewater and the Utility planned to retire the Sandalhaven WWTP and interconnect the rest of the service territory that was served by the Sandalhaven WWTP to Englewood. (Id. 17).
  32. The FPSC made several findings regarding the amount of Englewood capacity purchased, the master lift station, the 12-inch force main, and the pumping plant recently installed by the Utility. (Exh JW-6, 2007 Sandalhaven Order at 9-14)
  33. The FPSC determined the used and useful percentages for items associated with the Englewood interconnection. Based on calculated flows of 52,963 gpd, the 300,000 gpd of capacity reserved from Englewood was 17.65% used and useful. (Id. at 11). The master lift station had a capacity of 500,000 gpd and the 12-inch force main had a capacity of 1,000,000 gpd. (Id.) Based on calculated flows of 52,963 gpd, the master lift station was 10.59% used and useful and the force main was 5.30% used and useful. (Id. at 11-12). There does not appear to be a used and useful percentage isolated for the pumping plant in the 2007 Sandalhaven Rate Case Order. (Exh JW-6, 2007 Sandalhaven Order)
  34. From the 2007 rate case until the 2010 test year, the annual average daily flows (AADF) treated by Englewood have increased from 52,963 gpd to 70,345 gpd. (FS-2, MFRs Vol. 1, Schedule E-2). The average daily flow max month (January 2010) to Englewood was 92,900 gpd. (FS-2, MFRs Vol. 1, Schedule E-2).
  35. Since the last rate case, the Utility has not interconnected the remainder of the Sandalhaven system to Englewood, and the Utility has not retired the Sandalhaven WWTP. (TR 352-353, Seidman R 6 )
  36. In this rate case, for the used and useful calculation for the Sandalhaven WWTP, Utility witness Seidman used a growth rate of 80 equivalent residential connections (ERCs) per year (or the 5% maximum rate permitted by statute) for the growth rate used in his used and useful calculation. (FS-2, MFRs Vol. 1, Schedule E-5).
  37. The Utility requests a finding that the WWTP be considered 85% used and useful. (TR 122; FS-2, MFRs Vol. 1, Schedule E-5)
  38. The Utility requests a finding that the Englewood capacity, the master lift station, the 12-inch force main, and the pumping plant to interconnect with Englewood are each 100% used and useful. (FS-2, Schedule E-3). The Utility did not perform a calculation to support this requested 100% used and useful finding. (See Utility’s U&U narrative explanation in Exh FS-2, Schedule E-3).

39. In support for its 100% used and useful request for the Englewood interconnection, the Utility believes it “took advantage of the economies of scale” for the master lift station, the 12-inch force main and the pumping plant to interconnect with Englewood. (See Utility’s U&U narrative explanation in Exh FS-2, Schedule E-3).
40. County witness Woodcock testified that the Utility had not provided specific evidence to document the level of economies of scale associated with these facilities. (Woodcock D at 6; TR 320).
41. Utility witness Seidman testified that the Utility did not provide any documents supporting cost savings associated with economies of scale. (TR 114, 120-122).
42. In the last rate case, Sandalhaven purchased treatment capacity and interconnection from Englewood for future customers. (Exh JW-6, 2007 Sandalhaven Order at 9-14). Utility witnesses Flynn and Seidman now testify that the Englewood capacity and interconnection was designed to serve *current* as well future customers. (Flynn R 8-9; Seidman R at 13; TR 385) Both of these Utility witnesses recognized that the planned growth and development in the service territory never materialized. (TR 172-173; 388-389) The Utility is now seeking for current customers to pay for 100% of the cost incurred by the Utility for future growth and development that never materialized. (Seidman R at 3, 18, 19, 22; FS-2, Schedule E-3).
43. When preparing his used and useful calculation, County witness Woodcock testified that he did not dispute the growth rate utilized by the Utility for its used and useful calculation. (TR 325). County witness Woodcock did not do any additional analysis to determine whether the Utility’s growth rate was accurate. (TR 325; Exh ATW-2)
44. County witness Woodcock relied upon FPSC Rule 25-30.432, F.A.C., and Section 367.081, F.S., when calculating the used and useful percentage for Sandalhaven. (Woodcock D p. 3)
45. County witness Woodcock testified that the used and useful amounts for the Englewood capacity should be 31.57%; the master lift station should be 18.94%; the force main should be 9.47%; and the pumping plant should be 34.44%. (Woodcock D p. 5).
46. County witness Woodcock’s recommended used and useful percentages are higher than used and useful adjustment approved by the FPSC in its last rate case. (Exh JW-6, 2007 Sandalhaven Order at 11-12, showing used and useful percentages approved in the last rate case).
47. For the appropriate used and useful formula growth rate, County witness Woodcock followed the allowed statutory formula in Section 367.081(2)(a)2., F.S., for calculating used and useful which allows a maximum 5% growth rate. (Woodcock D at 5)
48. The Utility performed a growth rate analysis. (Exh FS-2, Schedule E-5, E-6). Without seemingly performing the appropriated used and useful calculation or analysis for the Englewood interconnection, the Utility simply stated it was 100% used and useful. (Exh FS-2, Schedule E-3, narrative description).
49. Section 367.081(2)(a)2., F.S., states in pertinent part:

“For purposes of [rate fixing] proceedings, the commission shall consider utility property . . . to be used and useful in the public service, if: . . . 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 . . . at a growth rate for equivalent residential connections not to exceed 5 percent per year; . . . .”

50. At the Quality of Service hearing, a Utility customer testified that he owned a unit in one of the condominiums since 2004, was a real estate broker, and was familiar with what was being built in the Sandalhaven service territory. He testified that property values only recently stabilized; many existing condominium units in the service territory are for sale or remain unsold by the developer; and that there are several years of condominium inventory. Based on the number units for sale, he testified that he expected nothing new to be built for the next three to five years in the service territory. (TR 53-55)
51. Exh OPC-1, composite customer concerns, contains a letter from a Sandalhaven customer, dated August 21, 2012, stating this customer was the manager of Cape Haze Resort, a 144-unit condominium project on Placida Road within the Sandalhaven service territory. (See OPC-1, composite, last two pages.) In addition, this customer is a real estate broker who handles all of the developer sales at Cape Haze Resort, engages in short and long-term leasing of units, and represents buyers and sellers in sales of real estate. (Id.) He states there was a building boom in the Cape Haze corridor in 2005 and 2006; however, since then nothing new has been built. (Id.) He states that the three big projects in the Sandalhaven service territory – Cape Haze Resort, Hacienda, and the Hammocks – were partially built but were stopped by the recession and still have additional land for additional units. Another project immediately north of Cape Haze Resort was stopped by the recession. (Id.) Since he represented the developer of Cape Haze Resort, he was familiar with the costs, prices, and market demand. (Id.) The Cape Haze Resort developer would not consider building new units until the market prices for units double in order to cover the wide variety of costs to be incurred in building and selling new units. (Id.) Because of the current level of demand and the considerable quantity of mortgage defaults and foreclosure, he stated he believed that it is highly unlikely that any new condominiums will be constructed in the Cape Haze corridor in the next five years. (See OPC-1, composite, last two pages.)
52. When asked if the Utility has any plans to retire the current WWTP and interconnect existing customers to Englewood, Utility witness Flynn said there were no current plans and no date for the retirement of the existing WWTP or to build the necessary interconnection with the 12-inch force main to send flows from the WWTP to Englewood. (TR 352-353 )

### Argument

The used and useful percentage requested by the Utility is driving the bulk of the Utility's proposed rate increase. It is clearly excessive, unsupported, and unwarranted. In the Utility's last rate case, the Utility told the FPSC that the Englewood capacity was solely for new customers, and that a portion of the interconnection was designed to serve new and existing customers once the existing Sandalhaven WWTP was retired. However, instead of retiring the treatment plant, the Utility recently rerated it to 99,000 gpd capacity. Moreover, the Utility has no current plans to retire the Sandalhaven WWTP.

OPC asserts that the Utility's investment in its interconnection with Englewood is, and remains, solely dependent upon future growth in the service territory. While witness Seidman testified that there were many developers requesting future capacity, there is no documentary evidence of any of the written requests from these potential developers in the record for this case. The record shows that the potential growth, accounting for approximately 85% of all flows from potential development, has not yet materialized. The record shows the potential growth to make the Englewood interconnection cost effective has never materialized. As testified to by at least one customer, growth in the service territory is not expected to materialize in the near future. OPC asserts the Utility overestimated the amount of potential future growth in the service territory which led the Utility to overestimate the need for additional capacity and to overbuild the constructed plant necessary to interconnect to Englewood.

The master lift station, the 12-inch force main, and the pumping plant are much too large based on what the Utility knew to be *known* future development as evidenced by the Utility's own 2004 engineering study. The Utility knew it had to plan for at least 114,000 of *known* additional gpd of wastewater flows. The Utility should have been more careful and circumspect with respect to the estimate of over 600,000 gpd of *potential* future development. However, without any written guarantees, deposits, or prepayments for capacity from potential developers, the Utility unwisely moved forward and contracted for 500,000 gpd of capacity from Englewood, of which the Utility has paid for 300,000 gpd capacity. In addition, the Utility overbuilt its infrastructure for interconnecting with Englewood – the master lift station has a capacity of 500,000 gpd and the 12-inch force main has a capacity of 1,000,000 gpd. Current flows to Englewood do not exceed 93,000 gpd in the maximum month. Thus, the current Englewood interconnection is vastly underutilized and there are no plans in the near future to interconnect the flows from the existing Sandalhaven WWTP to Englewood and retire that plant. Consistent with FPSC's order in the Utility's last rate case, current customers should not be required to pay for future customers.

Further, the Utility's argument for economies of scale should likewise be discarded. Other than unsupported assertions by Utility witnesses Flynn and Seidman, the record contains no evidence to support the Utility's assertions that it "took advantage of the economies of scale." To support a finding that "economies of scale" should be considered in establishing the level of used and useful plant, the utility should have provided evidence in the hearing record that shows the incremental cost difference between the installed plant and the non-installed plant.

Therefore, the Utility's request for a finding that the Englewood capacity and Englewood interconnection plant (lift station, force main, and pumping plant) is 100% used and useful should be rejected as unsupported by the evidence in the record. Moreover, it is unreasonable to find that this plant is 100% used and useful based on the contradictory evidence in the record.

OPC maintains that to make the *current* ratepayers pay for 100% of the Utility's investment in such a large unused investment is not fair, just or reasonable and the Utility's used and useful methodology and requested percentages should be rejected. Furthermore, the purpose of making a used and useful calculation is to remove from rate base any investment that the utility has in non-used and useful plant held for future customers. The record clearly supports the finding that the Utility constructed the size of the Englewood interconnect plant and purchased 300,000 gpd of capacity from Englewood for *future* customers the Utility expected to service.

While OPC supported the County's recommended used and useful percentages as stated in OPC's prehearing statement, OPC had no reason to question the growth rate embedded in the County's recommended used and useful percentage calculation. Based on further development of the record and testimony by Utility and County witnesses, OPC continues to support the County's used and useful methodology with the exception that OPC believes the growth rate utilized by the Utility and County are overstated and should reflect current expected growth in the service territory.

There is record evidence to support that the expected growth rate for the next several years will be significantly less than 80 ERCs per year which the Utility utilized. There is testimony by a Utility customer who is a real estate broker that there is little to no current growth and little to no future expected growth in the service territory. There is a corroborating letter from another Utility customer who is also a real estate broker and manager of the Cape Haze Resort that there is little to no current or planned growth in the service territory. The Utility had the opportunity to cross examine the customer who testified in person as to lack of growth in the service territory, but declined to do so. The corroborating letter while hearsay should be given the weight it is due.

While the statute may permit a growth rate "not to exceed 5 percent per year," OPC believes that a 5% per year ERC growth rate is too high. OPC acknowledges that annual average daily wastewater flows to Englewood have increased from 52,963 gpd to 70,345 gpd. Both the Utility and County witnesses applied the historical growth rate capped at the statutorily allowed "not to exceed 5 percent per year," yet no witness provided any testimony, exhibits, or record evidence to support the reasonableness of an 80 ERC growth rate. OPC believes the record supports a finding of 0% to 1% growth rate, and recommends using a growth rate of one percent or 20 ERCs per year. It is more reasonable and comports with the actual and expected future growth in the service territory. With this exception, OPC agrees with all other aspects of County witness Woodcock's used and useful calculation.

Therefore, OPC recommends that County witness Woodcock's used and useful calculation be modified to utilize a growth rate of a one percent per year or 20 ERCs per year.

OPC's recommended used and useful percentages for the Englewood capacity, as well as the used and useful percentages for the master lift station, force main, and pumping plant, are calculated and displayed in **Attachment B** which is a modification of County witness Woodcock's used and useful calculation, Schedule ATW-2.

### **Recommended Conclusions of Law Issue 3**

Using OPC's recommended growth allowance of one percent or 20 ERCs per year, the appropriate used and useful percentage for the wastewater treatment plant should be reduced to 52.61%; the appropriate used and useful percentage for the impact fees paid to Englewood Water District should be reduced to 23.59%; and the appropriate used and useful percentages for the facilities to interconnect to Englewood Water District should be reduced as follows: Master Lift Station: 14.15%; Force main: 7.08%; and Pumping Plant: 25.74%. **See Attachment B**

**ISSUE 3A:** Should any adjustment be made to account 353.4, for the land that 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. (Exh Joint-1)

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

### **Proposed Findings of Fact and Recommended Conclusion of Law Issue 4**

53. This is a fall-out issue. The appropriate amount of working capital allowance is based on the formula method (1/8 of O&M expenses) and is subject to the resolution of other issues. (Wilson D at 7-8).

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

### **Proposed Findings of Fact and Recommended Conclusion of Law Issue 5**

54. This is a fall-out issue. The appropriate rate base is a fall-out and is subject to the resolution of other issues.

### **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. (Exh Joint-1)

**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)

**Proposed Findings of Fact and Recommended Conclusion of Law Issue 5**

55. This is a fall-out issue. OPC agrees with the County and the Utility regarding the methodology for determining the appropriate weighted average cost of capital. The cost of capital is a fall-out based upon the stipulated return on equity and any reconciling adjustments that result from other rate base adjustments. (Wilson D 9)

**NET OPERATING INCOME**

**ISSUE 8:** Are any adjustments necessary to test year revenues?

**Proposed Findings of Fact Issue 8**

56. County witness Wilson testified that the Utility inadvertently did not bill certain customers during the test year. (Wilson D p. 9) These customers received wastewater service from the Utility but no invoices. (Wilson D p. 9; TR 247)
57. The unbilled customers included both residential and commercial customers. (TR 292)
58. It was County witness Wilson's opinion that the unbilled Habitat for Humanity residential customers are more likely year round residents instead of seasonal residents. (TR 290-292)
59. For the unbilled Habitat customers and commercial customers, County witness Wilson testified that the County used actual consumption to calculate the unbilled revenues. (TR 292). For rate setting purposes, it is more accurate to use actual consumption for a general service customer as opposed to average consumption for a whole class of customers. (TR 292).
60. Instead of using actual consumption data, which the Utility did not have at the time, the Utility used average consumption to calculate the unbilled revenues. (TR 291; 343)
61. County witness Wilson testified that he did not believe the Habitat customers could reduce their water usage; he doubted they wasted much water. (TR 311)
62. County witness Wilson testified that Test year revenues should be increased to reflect the specific additional revenues, bills, and gallons of wastewater consumption from the customers not billed by the Utility during the test year. (Wilson D p. 9)
63. The Utility used the average level consumption instead of actual consumption for the affected class of customers to calculate unbilled revenues to be \$34,086. (Aquilino R at 5; TR 291). Utility witness Aquilino testified that, if the unbilled customers had actually received bills, they would have responded to price signals and repressed their

consumption to a level closer to the average consumption level calculated by the Utility. (Aquilino R at 5).

64. Ms. Aquilino opined this is the level of consumption that can be expected going forward. (Aquilino R at 5) Ms. Aquilino testified that she did not do a regression analysis to determine how much, if any, consumption the customers would have repressed. (TR 343)
65. Based on information provided by the Utility and actual consumption data provided by the County staff for the unbilled customers, County witness Wilson calculated unbilled revenues to be \$53,529. (Wilson D at 9, TR 247-248, 290-292; Exh JW-3)

### **Argument**

An adjustment should be made to increase test year revenues to reflect the specific additional revenues, bills, and gallons of wastewater consumption by those customers who were not billed during the test year. The gallons of consumption should be calculated based on the individual customers' consumption, not on the annual average consumption for each class of service. The Utility's method of using average annual consumption is weighted based on the seasonality of many customers and will understate test year revenues if the unbilled customers are year-round residents. The Utility's argument that the Habitat customers will repress their consumption is unsupported, unreasonable, and speculative.

### **Recommended Conclusions of Law Issue 8**

It is appropriate to calculate unbilled revenues based on actual consumption data rather than average consumption data. The adjustment to test year revenues to account for the unbilled revenues is \$53,529. The following bills and gallons for residential and general service customers should also be added to the test year billing determinants.

	Bills	Gallons
<b>Residential</b>		
5/8" Meter	132	1,080
1.5" Meter	12	71
Total Residential	144	1151
<b>General Service</b>		
5/8" Meter	36	2,638
1.5" Meter	36	498
2" Meter	36	2957
Total General Service	108	6093
Total	252	7,244

**ISSUE 8A:** Are any adjustments necessary to test year expenses related to the recently rerated sewage treatment plant?

**Proposed Findings of Fact Issue 8A**

66. The WWTP was previously rated at 150,000 gpd and was recently rerated to treat 99,000 gpd of wastewater. (Wilson D at 11) As a result of the rerating, the Utility will no longer be required to perform certain groundwater monitoring. (Id.) Utility witness Flynn testified that the Utility has capped the old groundwater monitoring wells. (TR 141) The Utility calculated costs associated with primary and secondary drinking water sampling associated with the WWTP before it was rerated to be \$14,535 in 2010 and going forward. (Wilson D at 11 & Exh JW-4, Item 6(e)).

**Argument**

The test year expenses related to recently rerated sewage treatment plant should be reduced to account for decreased levels of expenditures related to staffing, testing, and other expenses. No evidence is in the record that quantifies the reduced level of staffing expense or other expenses. However, there is evidence in the record that groundwater monitoring testing has been reduced following the de-rating of the WWTP. The Utility estimated in 2010, before the plant was rerated, that it would need to spend \$14,535 annually. As a result of the de-rating, Sandalhaven WWTP no longer needs the entire \$14,535 for groundwater testing. Neither the Utility nor the County quantified the amount of going-forward groundwater testing needed for the rerated plant. The Utility did not put forward any testimony stating how much it would need to expend on continued groundwater testing. There are two options: (1) the \$14,535 could be reduced completely to account for the lack of going-forward ground water testing along with approximate savings associated with the reduced staffing levels and other expenses; or (2) alternatively, since the plant was rerated by one-third of its capacity, its groundwater testing going-forward expense could be reduced by a proportional amount or by one-third.

**Recommended Conclusions of Law Issue 8A**

OPC recommends that, absent evidence in the record to support how much expense for groundwater testing was needed, the test year expenses related to the recently rerated sewage treatment plant should be reduced by \$14,535.

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

**Proposed Findings of Fact Issue 9**

67. County witness Wilson performed a benchmark analysis for the Utility's contractual services, materials and supplies and miscellaneous expenses on a combined basis. (TR 249-250; Wilson D at 9-10). This review compared the Utility's 2005 historical expenses

- from its last rate case indexed by customer growth and inflation, to the current 2010 test year expenses. (Wilson D at 9-10). This analysis revealed that the Utility's expenses for these accounts exceeded the benchmark, and County witness Wilson recommended an adjustment to decrease expenses by \$15,081. (Wilson D at 9-10). County witness Wilson testified the cost increases over and above the benchmark analysis are excessive and are not reasonable or necessary for providing service, except for the required testing expenses which were excluded from the analysis. (Wilson D at 10; Exh JW-1, Table 15).
68. County witness Wilson agreed that benchmark analyses are not performed in calculating rates for government-owned utilities; however, those entities do look at the reasonableness of expenses and compare how the actual amounts compare to the budgeted amounts. He further testified that many things are done differently for government-owned utilities. (TR 305-306)
  69. Utility witness Aquilino disagreed with County witness Wilson's benchmarking adjustment. (Aquilino R at 2-4). She stated that changes in expenses do not necessarily track changes in inflation and growth, and instead should be evaluated on their own merit. (Aquilino R at 2-4). In her opinion, benchmarking adjustments examine expenses over an arbitrary period, provide an arbitrary result, and relieve regulatory bodies from having to evaluate actual expenses in the test year. (Aquilino R at 2-4).
  70. Utility witness Aquilino believed that County witness Wilson's adjustment would reduce expenses to pay for meter reading and DEP-required plant coverage expenses; however, she did not provide any specific amounts that were being removed by County witness Wilson's adjustment. (Aquilino R at 3-4).
  71. As an alternative to County witness Wilson's proposed adjustment, Utility witness Aquilino presented an averaging adjustment to reduce expenses by \$7,311. (Aquilino R at 4-5). She testified that the FPSC has used averaging to "normalize" certain expenses. (Aquilino R at 4-5). She also testified that she did not think an averaging adjustment was needed or that it was a proper ratemaking principle. (Aquilino R at 4-5).
  72. On cross examination, Utility witness Aquilino reiterated that she did not see the need for a benchmarking adjustment. (TR 339, 341-342). When asked if averaging was a better method or methodology than benchmarking, she stated it was not better but another method. (TR 339).
  73. The Sandalhaven WWTP was previously rated at 150,000 gpd and was recently rerated to treat 99,000 gpd of wastewater. (Wilson at 11) Utility witness Flynn testified that the Utility has abandoned and capped the old groundwater monitoring wells on the former golf course property that are no longer within the purview of the utility to utilize or maintain. (TR 141)

#### **Argument**

OPC asserts that the Utility's contractual services testing, materials and supplies, and miscellaneous expenses are overstated. Instead of attempting to explain why each are overstated which would be a cumbersome task, OPC supports the County Rate Consultant's benchmark

analysis for the Utility's contractual services, materials and supplies, and miscellaneous expenses on a combined basis. Further, the Utility's attempt to rebut this adjustment fails the reasonableness test. First, Utility witness Aquilino's averaging method is just another means of performing a reasonableness measure for the requested test year expenses. When asked, she could not distinguish why her alternative averaging method was better than County witness Wilson's benchmarking adjustment method; she just reiterated that she did not see the need for a benchmarking adjustment. Second, her mere unsupported statement that necessary expenses will be reduced if the adjustment is made does not include sufficient evidence of the amounts relating to the specific items that would be eliminated if the benchmark adjustment is made. Further, with the post-test year de-rating of the treatment plant, it is clear that contractual services, staffing and other maintenance costs will decrease as the monitoring of abandoned wells will no longer be performed. Therefore, the Utility's test year expenses are higher than necessary and will be on a going-forward basis and should be adjusted.

#### **Recommended Conclusions of Law Issue 9**

Based on the above, it is appropriate to decrease expenses by \$15,081 in accordance with County witness Wilson's benchmark analysis.

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

#### **Proposed Findings of Fact**

74. The methodology used by County witness Wilson to calculate the Utility's inflow and infiltration (I&I) is consistent with the methodology used by the FPSC in determining excessive I&I. (Wilson D at 10). The Utility's level of I&I is excessive by 10.85%. (Wilson D at 10). The corresponding adjustments to purchase wastewater, purchased power, and chemicals are (\$20,273), (\$2,295), and (\$1,344), respectively. (Wilson D at 10). Table 16 in Exh JW-1 reflects a detailed calculation of the 10.85% excessive I&I percentage as well as the corresponding expense adjustments. (Exh. JW-1, Table 16)

#### **Argument**

OPC supports County witness Wilson's recommended adjustment for excessive I&I. The Utility's level of I&I is excessive by at least 10.85%. The corresponding adjustments to purchase wastewater, purchased power and chemicals are (\$20,273), (\$2,295), and (\$1,344), respectively.

#### **Recommended Conclusions of Law Issue 10**

OPC recommends a finding that the Utility's level of I&I is excessive by at least 10.85%. The corresponding adjustments to purchase wastewater, purchased power and chemicals are (\$20,273), (\$2,295), and (\$1,344), respectively.

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

**Proposed Findings of Fact Issue 11**

OPC adopts the Proposed Findings of Fact under Issue 9.

**Recommended Conclusion of Law Issue 11**

OPC adopts the Recommended Conclusion of Law Issue 9. Expenses should be decreased by \$15,081 as a result of County witness Wilson’s benchmark analysis

**ISSUE 12:** What is the appropriate amount of rate case expense through August 24, 2012?

**ISSUE 12A:** What is the appropriate amount of rate case expense from August 24, 2012 through October 1, 2012?

*Note: OPC divided Issue 12 into Issue 12 and 12A in order to separately analyze the appropriate amount of rate case expense. These proposed findings of fact and conclusions of law for Issue 12 pertain only to rate case expense incurred through August 24, 2012. OPC will submit additional proposed findings of fact and conclusions of law for Issue 12A for rate case expense incurred after August 24, 2012, to be filed by October 8, 2012, consistent with the ruling of the Hearing Officer.*

**Proposed Findings of Fact Issue 12**

- 75. In the Utility’s 2007 rate case, the FPSC approved \$141,019 in total rate case expense. (Exh JW-6, 2007 Sandalhaven Order at 38). This was rate case expense associated with a PAA rate case. (Id.)
- 76. The Utility’s original estimate of rate case expense contained in its application is \$245,552. The breakdown of this requested amount was as follows: (Exh FS-2, Schedule OI-4)

Type of Charge	Description	Amount
Legal	fees and expenses	\$86,600
Consultant	Engineering, U/U, Prepare MFRs	\$45,150
WSC Employees Charges	16 employees to assist with the MFRs, data requests and audit facilitation. 4 employees preparing testimony and attending the hearing,	\$89,302
WSC Other Charges	Customer notices, travel, miscellaneous expenses	\$21,000
County Filing Fee		\$3,500
Total		\$245,552

- 77. On its rate case expense schedule in its MFRs, the Utility listed each WSC employee by name that it projected would work on the rate case, the hourly rate per person and the

projected number of hours spent per person. This information was not confidential nor did the Utility request confidential treatment of this information. (Exh FS-2, Schedule OI-4, page 30)

78. With her direct testimony, Utility witness Aquilino filed a revised Schedule OI-4 as of May 31, 2012. (Exh EA-1). It reflected an actual to date amount of \$103,894 and an estimate to complete amount of \$60,868, for a total revised expense of \$170,761. The breakdown of the amounts are as follows: (Exh EA-1)

Description	Actual	Estimated	Total
Legal	\$27,382	\$30,618	\$58,000
Consultant, Engineering	\$36,000	\$12,450	\$48,450
WSC Employees Charges	\$30,233	\$19,800	\$50,033
WSC Other Charges	\$1,127	\$4,000	\$5,127
Total	\$103,894	\$60,868	\$170,761

79. In its May 31, 2012, revised rate case expense exhibit for the WSC Employee Charges, the Utility no longer provided details for the employee names, hourly rates per person or the number of hours spent or projected to spend to complete the case. (Exh EA-1). The description for WSC employee charges was listed as "Various Personnel," with the description of work performed as "Assist with MFRs, data requests, audit facilitation." (Exh EA-1). The Utility provided no additional documentation or support, such as timesheets, descriptions of actual work performed by employee, or the number of employees, other than the generic description to support its request. (Exh EA-1). This exhibit failed to include invoices supporting the other categories of actual rate case expense incurred with descriptions of work performed and hourly rates charged. (Exh EA-1). The exhibit did include detailed estimates to complete for legal and engineering fees with descriptions and hourly rates. (Exh EA-1)
80. At the hearing, Utility witness Aquilino updated her exhibit on rate case expense and provided a revised Schedule OI-4 as of August 24, 2012. (Exh Revised/Updated EA-1). The Utility claims total actual incurred rate case expense, as of August 24, 2012, to be \$148,590 with \$9,427 estimated to complete. (Exh Revised/Updated EA-1).<sup>2</sup> The breakdown of the amounts are as follows: (Exh Revised/Updated EA-1)

Description	Actual	Estimated	Total
Legal	\$53,248	\$4,890	\$58,138
Consultant, Engineering	\$48,075	\$2,400	\$50,475
WSC Employees Charges	\$45,536	\$1,435	\$46,971
WSC Other Charges	\$1,731	\$702	\$2,433
Total	\$148,590	\$9,427	\$158,017

<sup>2</sup> The copy of the official hearing exhibits for Exhibit EA-1 does not contain the original EA-1 Schedule, only the revised schedule as of August 24, 2012.

81. With respect to Water Services Corporation (WSC) expenses to assist in developing the Utility's MFRs for this rate case, County witness Wilson was asked a number of questions about certain WSC invoices. (TR 261-265).
82. Utility Exhibit EA-1 was designed to support the Utility's requested rate case expense. County witness Wilson was unable to tie or cross-reference certain WSC invoices submitted in that exhibit as support for the Utility's requested level of rate case expense for this rate case. (TR 261-265).
83. County witness Wilson stated that at the hearing he was provided a separate file from the Utility related to expenses associated with WSC billing; he stated the County did not have supporting documentation to support WSC personnel dollar amounts. (TR 265).
84. County witness Wilson testified that the file was not part of Utility witness Aquilino's revised/updated Exh EA-1. County witness Wilson further testified it was not part of the hearing record. (TR 265-266).
85. When asked whether the exhibit that Utility witness Aquilino submitted with her prefiled direct testimony contained any documentation supporting the rate case expense request from WSC (time sheets, breakdown of work performed, number of hours, or hourly rates charged, etc.), County witness Wilson testified that it did not. (TR 266).

#### **Argument**

Only reasonable and prudent rate case expenses that are supported by competent substantial evidence should be allowed. Competent substantial evidence for rate case expense includes, but is not limited to, sufficient documentation that describes the detailed work performed, the number of hours and hourly rate, and the type of work performed. As discussed below, the Utility has the burden to prove up its rate case expense request; therefore, if the Utility fails to submit the level of detail or documentation necessary to determine the specific work performed, then those costs must be disallowed.

It is clear from the record that the Utility has incurred rate case expense and has provided some rate case expense documents and invoices. (Exh EA-1; revised/updated EA-1) The Utility claims total actual incurred rate case expense, as of August 24, 2012, to be \$148,590 with \$9,427 estimated to complete. (See Exh Revised/updated EA-1)<sup>3</sup> As it relates to supporting the \$148,590 in rate case expense incurred through August 24, 2012, OPC asserts that the Utility failed to provide necessary evidence to support expenses for WSC employees for this rate case before August 24, 2012. No additional supporting documentation was supplied by the Utility during the hearing and none was entered into the record to support its requested rate case expense through August 24, 2012.

There was a lengthy side bar discussion at the hearing that the Utility could potentially provide additional supporting documentation and detail for its rate case expense; however, no additional evidence was entered into the hearing record. To allow the Utility to provide additional opportunity to support rate expense incurred up to the close of the hearing on August

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<sup>3</sup> OPC understands that Revised, updated EA-1, contains invoices from June 10, 2012 through August 24, 2012.

24, 2012, would give the Utility a second bite at the apple. OPC has no objection to keeping the record open for the limited purpose of allowing additional detail about rate case expense incurred by the Utility from August 25, 2012, to October 1, 2012, to file its proposed recommended order (PRO). However, OPC believes it is highly irregular to allow the Utility to supplement rate case expense detail after the fact when it clearly had the burden to provide to all parties with such detail by close of business on August 24, 2012.

During the side bar discussion, the Utility argued that the hourly rate of the WSC employees was confidential and, due to the difficult nature of handling confidential information, it chose not to provide support into the hearing record. This was the main justification for not providing a greater level of detail about the work performed by WSC personnel.<sup>4</sup> OPC notes that the Utility did not provide OPC any detail regarding this supposedly confidential information. This argument that WSC employee billing rates are somehow confidential is groundless.

The MRFs filed by the Utility in this rate case contain the hourly rates and the names of the individual employees performing work on the rate case and clearly were not confidential. The Utility included an "Analysis of Rate Case Expense" as part of its MFR filing which clearly shows the names of employees, their hourly rate, and number of hours they expected to work on this rate case. See MFRs Vol. 1, Schedule OI-4, page 1 of 1, prepared by Nicole Wynam. The Utility did not claim that those hourly rates in the "Analysis of Rate Case Expense" were confidential or mistakenly made public. Any argument that current hourly billing rates of Utilities, Inc. or WSC employees are now confidential simply does not hold water. Moreover, Utilities, Inc. regularly provides a breakdown by employee name and the hourly rate in its rate case in MFRs filed in rate cases before the FPSC. The schedule that Utilities, Inc. provides the FPSC is the same "Analysis of Rate Case Expense" schedule that the Utility filed in this rate case.<sup>5</sup> Thus, the Utility's argument that it cannot support its requested rate case expense because the documentary support is confidential is baseless and contradicted by its own MFRs filed in this rate case. See MFRs Vol. 1, Schedule OI-4, page 1 of 1, prepared by Nicole Wynam.

There was also discussion during the side bar about the Utility potentially filing affidavits in support of employee time spent on the rate case. As described above, there is no need for the Utility to perform such an exercise. The time and rate of employees is not confidential, and that information could have, and should have, been provided to the parties in this case by close of business August 24, 2012.

The burden of proof belongs to the Utility to support its requested costs. It had the opportunity in its direct case and at hearing to satisfy this burden prior to closing the record for the costs incurred through the end of the hearing. The Utility has failed to meet this burden. Thus, the only support in the record for its rate case expense incurred through August 24, 2012,

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<sup>4</sup> In recent cases before the FPSC, Utilities, Inc. has asserted confidential treatment of the salaries of individual WSC employees. However, Utilities, Inc. as not requested confidential treatment of the hourly billing rates per employee for rate case expense purposes.

<sup>5</sup> See e.g., FPSC Docket No. 110153-SU, Schedule B-1, page 1 of 1, Analysis of Rate Case Expense, pdf page 33 of 107, available at <http://www.psc.state.fl.us/library/FILINGS/11/04386-11/04386-11.pdf>.

is contained in Exhibit EA-1, and EA-1 updated, and in testimony by Utility witness Aquilino and County witness Wilson.

By statute, a utility's requested level of rate case expense should be reviewed for reasonableness and any unreasonable amount of rate case expense should be disallowed. See Section 367.081(7), F.S.; see also Exh JW-6, 2007 Sandalhaven Order at 34. It is always the utility's burden to justify requested rate case expense. See *Florida Power Corp. v. Cresse*, 413 So. 2d 1187, 1191 (Fla. 1982). The hearing officer, sitting in the place of the County Commission, has broad discretion with respect to allowance of rate case expense so long as the requested rate case expense is supported by competent substantial evidence. See *Meadowbrook Util. Sys., Inc. v. FPSC*, 518 So. 2d 326, 327 (Fla. 1st DCA 1987), review denied, 529 So. 2d 694 (Fla. 1988).<sup>6</sup>

In cases where the requested rate case expense has not been supported by detailed documentation, it has been the practice of the FPSC to disallow some portion or all of the unsupported amounts. See Exh JW-6, 2007 Sandalhaven Order at 36; see also Exh OPC-3, Order No. PSC-12-0206-PAA-WS, issued April 17, 2012, in Docket No. 110264-WS at 24 (Labrador Utilities, Inc.); and Exh OPC-4, Order No. PSC-11-0587-PAA-SU, issued December 21, 2011, in Docket No. 110153-SU at 16 (Utilities, Inc. Eagle Ridge). It is a utility's burden of proof and if requested rate case expense is not supported by competent substantial evidence, then it must be allowed. OPC asserts that this FPSC practice of disallowing unsupported rate case expense should be adopted and followed in rate cases before the Charlotte County Commission.

In its last rate case, the Utility requested \$196,080 in rate case expense; however, the FPSC disallowed \$50,543 for varying reasons, mostly because it was unsupported. See Exh JW-6, 2007 Sandalhaven Order at 33-38. After making its adjustments, the FPSC approved \$141,019 in total rate case expense. See Exh JW-6, 2007 Sandalhaven Order at 38. In two recent Utilities, Inc. cases, the FPSC disallowed estimated charges for WSC. See Order No. PSC-12-0206-PAA-WS, issued April 17, 2012, in Docket No. 110264-WS at 24 (Labrador Utilities, Inc.); and Order No. PSC-11-0587-PAA-SU, issued December 21, 2011, in Docket No. 110153-SU at 16. In this case, rate case expense for WSC should also be disallowed because it is unsupported.

As it relates to the Utility's documentation in EA-1 and revised/updated EA-1, the level of detail in the rate case expense support documentation in some instances is minimal or non-existent, and does not contain a detailed description of the work performed, estimated hours, hourly rate, etc., which is necessary to support granting the requested amount of rate case expense through August 24, 2012. (See EA-1; EA-1 updated) Specifically with regards to WSC, County witness Wilson was unable to tie certain WSC invoices submitted as support for rate case

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<sup>6</sup> *Meadowbrook Util. Sys., Inc. v. FPSC*, 518 So. 2d 326, 327 (Fla. 1st DCA 1987) ("... the principle is well settled that the Commission enjoys a broad discretion with respect to allowance of rate case expense. *Florida Crown Utility Services, Inc. v. Utility Regulatory Board of the City of Jacksonville*, 274 So.2d 597 (Fla. 1st DCA 1973). While an automatic award of rate case expense in every case, without reference to the prudence of the costs incurred in the rate case proceedings, clearly would constitute an abuse of discretion, we find no such abuse of discretion in the record before us.")

expense to the requested level of rate case expense. No additional detail was placed in the record expressly related to WSC. According to EA-1 updated, the \$45,536 of rate case expense incurred through August 24, 2012, for WSC employee charges is not supported and should be disallowed. Other adjustments to rate case expense should be made if not properly supported by the record evidence. OPC supports any additional adjustments recommended by the County.

#### **Recommended Conclusions of Law Issue 12**

Unsupported rate case expense should be disallowed if not properly supported by record evidence. At a minimum, all the charges by WSC employees for this rate case incurred through August 24, 2012, should be disallowed because the charges were not properly supported by a detailed description of the work performed, estimated hours, hourly rate, etc. That disallowance would reduce allowed rate case expense by \$45,536. OPC supports any additional adjustments to rate case expense recommended by the County.

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

#### **Proposed Findings of Fact Issue 13**

86. The test year wastewater operating income/loss should be the amount recommended by the County in exhibits JW-1 through JW-7, which are consistent with the requirements of Chapter 3-8 and are fair, just, reasonable, compensatory, and not unfairly discriminatory. (JW-1 through JW-7)

#### **Argument**

The appropriate test year wastewater operating income or loss before any revenue increase is subject to the resolution of other issues, or is a fall-out issue, and will be based upon adjustments made to the Utility's requested rate increase. With reference to the used and useful issue, an adjustment to the used and useful percentage should be calculated using the lower growth rate for the service territory along with a corresponding adjustment to the operating income/loss before revenue increase. OPC supports the County's calculated income or loss before revenue increase and believes it should be adjusted further to account for the necessary adjustment to the used and useful percentage to account for the lower growth rate for the service territory.

#### **Recommended Conclusions of Law Issue 13**

After OPC's recommended used and useful adjustment is applied, this issue is a fallout issue based on the resolution of other issues.

## REVENUE REQUIREMENT

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

### **Proposed Findings of Fact Issue 14**

87. The revenue requirement recommended by the County in hearing exhibits JW-1 through JW-7 are consistent with the requirements of Chapter 3-8 and are fair, just, reasonable, compensatory, and not unfairly discriminatory. (JW-1 through JW-7)

### **Argument**

The appropriate revenue requirement is subject to the resolution of other issues. The appropriate revenue requirement is a fall-out issue based upon adjustments made to the Utility's requested rate increase. With reference to the used and useful issue, an adjustment to the used and useful percentage should be calculated using the lower growth rate for the service territory along with a corresponding adjustment to the revenue requirement. OPC supports the County's calculated revenue requirement and believes it should be adjusted further to account for the necessary adjustment to the used and useful percentage to account for the lower growth rate for the service territory.

### **Recommended Conclusions of Law Issue 14**

After OPC's recommended used and useful adjustment is applied, this issue is a fallout issue based on the resolution of other issues.

**ISSUE 15:** What are the appropriate wastewater rates for the Utility? (Fall-out)

### **Proposed Findings of Fact Issue 15**

88. The rates recommended by the County are in hearing exhibits JW-1 through JW-7. (JW-1 through JW-7)

### **Argument**

The appropriate rates are subject to the resolution of other issues. The appropriate rates are a fall-out based upon adjustments made to the Utility's requested rate increase. The rates, recommended by the County in hearing exhibits JW-1 through JW-7 are consistent with the requirements of Chapter 3-8 and are fair, just, reasonable, compensatory, and not unfairly discriminatory; however, an adjustment to the used and useful percentage should be calculated using the lower growth rate for the service territory along with a corresponding adjustment to the rates recommended in JW-1 through JW-7. These rates, after the OPC recommended used and useful adjustment is included, should be approved for this Utility.

### **Recommended Conclusions of Law Issue 15**

After OPC's recommended used and useful adjustment is applied, this issue is a fallout issue based on the resolution of other issues.

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

**OPC takes no position on this issue.** The Staff and Utility have reached a stipulation as to the appropriate miscellaneous charges to which OPC does not object. See Exh Joint-1.

**ISSUE 17:** What are the appropriate Allowance for 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. (Exh Joint-1)

**ISSUE 18:** Should rates should be reduced four year 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. (Exh Joint-1)

**ISSUE 19:** Should the Utility be required to provide documentation, within 90 days of an effective order finalizing this docket, to show that is has adjusted its general ledger for all the applicable National Associate 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. (Exh Joint-1)

### **RECOMMENDED CONCLUSIONS OF LAW**

These proceedings are controlled by County Code Chapter 3-8. The rates recommended by the County in hearing exhibits JW-1 though JW-7, as modified by OPC's recommended used and useful adjustment, are consistent with the requirements of Chapter 3-8 and are fair, just, reasonable, compensatory, and not unfairly discriminatory. The recommended conclusions of law for each issue are discussed above under each issue.

**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 \_\_\_\_\_.

DONE AND ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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## Attachment A

Excerpt from Utility's 2004 Engineering Study  
(Exh. PCF-1A, p. 6, Table 1: Future Development)

developer is interested in the light density industrial area. The Utility was informed that the developer wants to construct a hotel and other amenities in this area. Currently, the developer is estimating 100,000 gpd of wastewater, which is equivalent to 500 connections.

**Table 1: Future Development**

Name of Development	Number of Units	Estimated Flow (gpd)	Known / Potential	Time
Pines at Sandalhaven	73	14,600	Known	Currently Accepting Residents
Mangrove Point	250	47,500	Known	December 2006
Ships Lantern Hotel	48	9,600	Known	Unknown
Marina Redevelopment	-	150,000	Potential	September 2006
Hacienda Del Mar	112	17,400	Known	Under Construction
Wild Flower Golf Course Redevelopment	465	93,000	Potential	Property for Sale
Cape Haze Plaza	-	5,260	Known	Under Design
Low Intensity Residential (east of Wild Flower)	100	20,000	Potential	Unknown
Low Intensity residential (west of Fiddlers Green)	50	10,000	Potential	Unknown
Medium Density Residential (south of Hacienda Del Mar)	100	20,000	Known	Under Design
High Density Residential Areas Surrounding the Park	1,640	328,000	Potential	Unknown
Medium Density Residential Areas Along County Road 775	340	68,000	Potential	Unknown
Undeveloped Commercial Areas	-	10,000	Potential	Unknown
<b>TOTAL</b>	<b>*3,178</b>	<b>**793,360</b>		

\*Not including the commercial connections.

\*\*Not including the current wastewater flows.

At build-out the Facility could have approximately 4,937 service connections. Since the service area contains a minimal amount of wetlands, it is feasible the remaining undeveloped areas could be developed.

### 3.2 FUTURE DEMANDS

## Attachment B – OPC Recommended Used and Useful Adjustment

Utilities, Inc. of Sandalhaven  
 Determination of Non-Used and Useful - Sewer  
 OPC Recommended Revision to County Witness Woodcock Calculations  
 For the Test Year Ended 12/31/2010

ATW-2 (Revised OPC)  
 Page 1 of 2

Description	Treatment Plant	Capacity Fees Paid to EWD	Master Lift Station	Force Main	Pumping Plant
Daily Flow Capacity	150,000	300,000	500,000	1,000,000	275,000
Annual Average Daily Flow	84,505	70,345	70,345	70,345	70,345
Current ERC - Test Year 2010	1,162	445	445	445	445
Current Growth Using Linear Regression	186	186	186	186	186
Growth Cap at 5% per Year (Five Years) (Utility Proposed)	291	111	111	111	111
Adjustment for Growth that Cannot be Treated by the Treatment Plant	(91)	91	91	91	91
Adjusted Growth for Margin Reserve Purposes	200	202	202	202	202
OPC Recommended Growth (Note 1)	49	51	51	51	51
Gallons Per Day Per ERC - Annual Average Daily Flow	73	158	158	158	158
Margin Reserve Allowance Based on OPC Growth	3,563	8,062	8,062	8,062	8,062
Current Usage Plus OPC Margin Reserve Allowance	88,068	78,407	78,407	78,407	78,407
Excessive Inflow and Infiltration	9,165	7,630	7,630	7,630	7,630
Adjusted Average Daily Flow With OPC Margin Reserve Allowance	78,903	70,777	70,777	70,777	70,777
OPC Used and Useful Percentage (Note 2)	52.60%	23.59%	14.16%	7.08%	25.74%
OPC Non-Used and Useful Percentage	47.40%	76.41%	85.84%	92.92%	74.26%

Note 1 – OPC does not believe that minimal historical growth experienced by the Utility prior to the test year is indicative of Utility's present or near future growth rate. While the statute permits upto a 5% growth rate, the record supports a growth rate between 0% and 1% for the service territory. Thus, OPC recalculated ATW-2, page 1 of 2, using a 1% growth rate.

Note 2 – OPC Used and Useful Percentage calculated using a 1% growth rate.

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 2011-001-S**

I HEREBY CERTIFY that a true and correct copy of the foregoing Proposed Recommended Order Submitted by the Office of Public Counsel has been furnished by electronic mail and U.S. Mail to the following parties on this 1<sup>st</sup> day of October, 2012.

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