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June 27, 1991

Mr. Steve Tribble, Clerk
Division of Records & Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

RE: Complaint and petition of Sandy Creek Airpark, Inc. against
Sandy Creek Utilities, Inc.; Docket No. 910111-WS; Applica-
tion for Amendment of Certificate Nos. 514-W and 446-S;
Docket No. 910260-WS.
Our File No. 28031.01

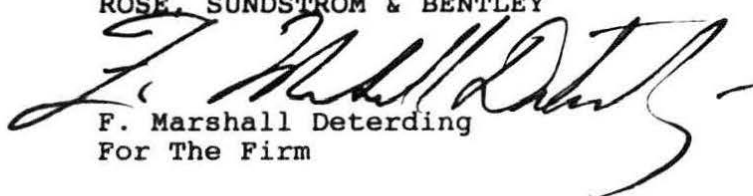
Dear Mr. Tribble:

Enclosed for filing on behalf of Sandy Creek Airpark, Inc. is
the original and fifteen copies of our Motion To Strike Or, In The
Alternative, Motion To Allow Rebuttal Testimony In Docket No.
910260-WS.

Should you have any questions or concerns regarding the above,
please do not hesitate to contact me at your earliest convenience.

Sincerely,

ROSE, SUNDBSTROM & BENTLEY



F. Marshall Deterding
For The Firm

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG FMD/lm
- LEG W/100
Enc.
- LIN 3
cc.
- OPC _____
- RCH _____
- SEC 1
- WAS 1
- OTH Lead dt

Mr. Greg Delavan
Nard S. Helman, Esq.
Mr. Ralph Von Fossen
Matthew Feil, Esq.

DOCUMENT NUMBER-DATE

06499 JUN 27 1991

PSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint and petition of)
Sandy Creek Airpark, Inc. against)
SANDY CREEK UTILITIES, INC.) Docket No. 910111-WS
regarding provision of water and)
sewer service in Bay County.)
_____)
In Re: Application for Amendment)
of Certificate Nos. 514-W and)
446-S in Bay County of Sandy) Docket No. 910260-WS
Creek Utilities, Inc.)
_____)

**MOTION TO STRIKE OR, IN THE ALTERNATIVE,
MOTION TO ALLOW REBUTTAL TESTIMONY IN DOCKET NO. 910260-WS**

Sandy Creek Airpark, by and through undersigned counsel, hereby files this Motion To Strike Or, In The Alternative, Motion To Allow Rebuttal Testimony In Docket No. 910260-WS, and in support thereof would state and allege as follows:

1. In Docket No. 910111-WS, the Order establishing procedure, the provisions of which "shall govern this proceeding unless modified by the Commission," contemplated the following controlling dates:

- A) Complainant's testimony and exhibits - May 7, 1991
- B) Utility's direct testimony and exhibits - June 7, 1991
- C) Staff's direct testimony and exhibits, if any - June 17, 1991
- D) Prehearing statements - June 21, 1991
- E) Rebuttal testimony and exhibits - June 25, 1991

2. Sandy Creek Airpark filed testimony and exhibits as contemplated by the procedure order. The Utility filed direct testimony and exhibits as contemplated by the procedure order. Staff did not file any direct testimony and exhibits in this case.

3. On or around June 25, 1991 the Utility filed rebuttal testimony and exhibits in this case. The Utility's direct testimony and exhibits, filed on June 7, 1991, were the last testimony and exhibits filed prior to that date. Stated simply, there is nothing for the Utility to "rebut," since no testimony had been filed since the date on which the Utility had filed its earlier direct testimony. Accordingly, no rebuttal testimony was appropriate.

4. It is clear that the procedure order contemplated that June 25, 1991, was the date on which the Complainant, Sandy Creek Airpark, could file rebuttal testimony to the Utility's direct testimony, if the same was deemed advisable. Even assuming, arguendo, that the rebuttal testimony due date on June 25, 1991 was to provide both parties an opportunity to respond to staff's direct testimony in this case, in fact staff chose to file no testimony.

5. It is fundamental to the American and Floridian system of justice that the party who carries the burden in a particular proceeding presents direct testimony to carry his prima facie burden, to which the opposing party offers a response. The party with the burden is then allowed an opportunity to rebut the opposing party's response. This procedural mechanism is equally applicable whether presenting testimony or oral argument to an appellate court, whether in a judicial or a quasi-judicial context.

6. The Utility contends that its "responsive" testimony filed on June 7, 1991 is not intended to respond to the Utility's

direct testimony in this docket. If true, then such testimony filed on June 7, 1991 was inappropriate in this docket. The Utility has now filed what they refer to as "rebuttal" testimony in this case which is not rebuttal in any true sense of the word. Rather, the Utility has attempted to present further direct testimony (in circumvention of the spirit of the procedure order) in furtherance of its theories and issues in this case. Such action denies Sandy Creek Airpark an opportunity to rebut the Utility's "responsive" testimony in a case in which the Airpark carries the burden.

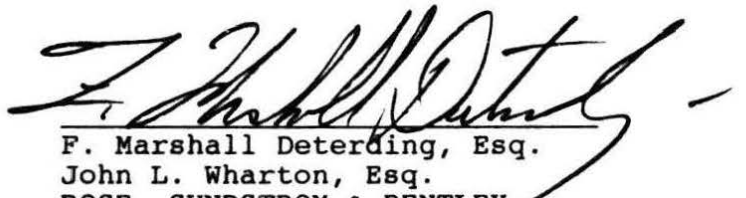
7. Any theory that the Utility's direct testimony was not the proper vehicle through which to rebut Complainant's initial testimony and exhibits is without merit in the face of the one month delay between Utility's direct testimony and exhibit due date and Complainant's testimony and exhibit due date. If Utility's direct testimony was contemplated by the procedure order to be filed in a vacuum, as Utility apparently asserts, and not to rebut the contentions in Complainant's initial testimony and exhibits, then the May 7-June 7 period was essentially a waste, and it is not the habit of the Commission to schedule these proceedings so that 30 days is essentially lost for no constructive reason. If Utility's testimony was not required to address Complainant's direct testimony, then why the staggered due dates regarding the same?

8. Utility's "rebuttal testimony" should be stricken as it is an attempt to: a) Present direct testimony and exhibits in furtherance of Utility's theories (which necessarily flow from Complainant's testimony and exhibits) some three weeks after the same is due; and, (b) to deny the Complainant the opportunity to present rebuttal to these theories.

9. In the alternative, and should this request to strike be denied, Sandy Creek Airpark requests that if the procedure order is to be interpreted so that rebuttal testimony may be filed by either party (even if a given party was given the last opportunity to file direct testimony and exhibits in the case) that Sandy Creek Airpark be allowed seven days from the Commission's ruling on this motion to file "rebuttal" testimony and exhibits in Docket No. 910260-WS. Sandy Creek Airpark respectfully submits that it could not have reasonably foreseen this interpretation of the procedure order and that no party will be prejudiced by a similar treatment of the parties, under very similar procedure orders, in each of the two dockets.

WHEREFORE, and in consideration of the above, Sandy Creek Airpark requests that the rebuttal testimony of the Utility in Docket No. 910111-WS be stricken or, in the alternative, that Sandy Creek Airpark be allowed to file rebuttal testimony and exhibits within seven days after the Commission's ruling on this Motion in Docket No. 910260-WS.

Dated this 27th day of June, 1991.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the following on this 27th day of June, 1991.

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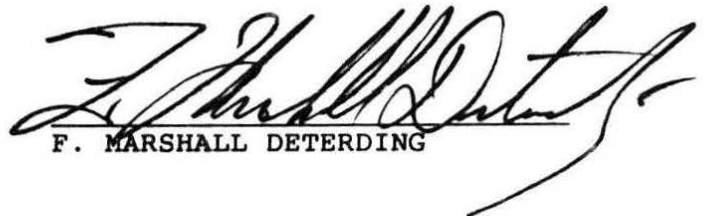
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