

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of SUNRAY)
 UTILITIES, INC. for water and)
 sewer certificates in St. Johns)
 County, FL)

DOCKET NO. 870539-WS

ORDER NO. 24857

ISSUED: 7/29/91

Pursuant to notice, a prehearing conference was held on Wednesday, June 12, 1991 before Chairman Thomas M. Beard, as Prehearing Officer, in Tallahassee, Florida.

APPEARANCES:

Kathryn G.W. Cowdery, Esquire, Gatlin, Woods, Carlson & Cowdery, 1709-D Mahan Drive, Tallahassee, Florida 32308
On behalf of Sunray Utilities, Inc.

James L. Ade and Scott G. Schildberg, Esquires, Martin, Ade, Birchfield & Mickler, P.A., 3000 Independent Square, Jacksonville, Florida 32202

And

Robert Scheffel Wright, Class B Practitioner, Wiggins & Villacorta, P.A., 501 East Tennessee St., Tallahassee, Florida 32302

On behalf of Cordele Properties, Inc. and Cimarrone Property Owners Association

Catherine Bedell, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863

On behalf of the Commission Staff

Prentice Pruitt, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863

Counsel to the Commission

DOCUMENT NUMBER-DATE

07590 JUL 29 1991

PSC-RECORDS/REPORTING

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PREHEARING ORDER

I. Case Background

On August 28, 1987, Sunray Utilities, Inc. (Sunray or utility) applied for original water and wastewater certificates in St. Johns County. The application was protested by St. Johns North Utility Corporation (St. Johns North) and a hearing was held on the issue of which utility would serve the proposed territory. Pursuant to Order No. 19428, issued June 6, 1988, Sunray was granted Water Certificate No. 504-W and Sewer Certificate No. 438-S. St. Johns North appealed the Commission's decision in Order No. 19428. On September 13, 1989, Order No. 19428 was affirmed by the 1st DCA. The setting of rates and charges had been held in abeyance pending the final outcome of the appeal. Once Order No. 19428 was affirmed, the rate and charges setting portion of this docket was reactivated.

Sunray is a stand-alone utility which is not affiliated with developers within its service territory. However, Sunray is a subsidiary of ITT Rayonier, Inc., which owns a majority of the service territory and is the entity selling land for development. At build-out of its initial phase, Sunray will serve 1,428 equivalent residential connections (ERCs). These customers will be single family residences; however, 593 homes within the Cordele Properties land will be served through an eight-inch master meter. When the Utility reaches 80 percent of build-out it will be a Class B utility with water revenues of \$440,258 and wastewater revenues of \$684,642. This Commission will no longer have jurisdiction of Sunray upon completion of this docket because St. Johns County has taken back jurisdiction of its utilities.

In April, 1990, the Utility began providing service to the Cimarrone Property Owners Association (Cimarrone), without compensation, pending the establishment of initial rates and charges. On August 10, 1990, this Commission issued proposed agency action Order No. 23341 approving initial rates and charges. On August 30, 1990, Cimarrone, Sunray's sole existing customer and Cordele Properties, Inc. (Cordele), the developer of the Cimarrone Project, filed a joint protest to the Order.

On September 10, 1990, Sunray filed a request for implementation of temporary rates or, alternatively, a notice of placing rates into effect pursuant to Section 367.081(6), Florida Statutes (1988). On November 2, 1990, this Commission issued Order No. 23714, approving temporary rates subject to refund. This case

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is scheduled for an administrative hearing on August 28 and 29, 1991 to determine final rates and charges.

II. Prefiled Testimony and Exhibits

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

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

III. Order of Witnesses

<u>Witness</u>	<u>Appearing for</u>	<u>Issues #</u>
<u>Direct</u>		
Robert P. Todd	Sunray	3, 5-9, 11-27
Millard L. Forrester	Sunray	11, 12, 26
Sumner Waitz	Sunray	7, 18, 26
James C. Labar	Cimarrone/Cordele	2-5, 16, 20-23, 27
Richard C. Prosser	Cimarrone/Cordele	3, 6-8, 11, 14, 18
Stephen A. Moore	Cimarrone/Cordele	3, 6-8, 11, 14, 16-18, 21, 23
Ronald A. Nogas	Cimarrone/Cordele	7-8, 14, 18

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<u>Witness</u>	<u>Appearing for</u>	<u>Issues #</u>
<u>Rebuttal</u>		
Robert P. Todd Sunray		1-2, 4-7, 9, 20-24
Millard L. Forrester	Sunray	3, 6, 9, 17
Thomas W. Atkins	Sunray	6
Richard C. Prosser	Cimarrone/Cordele	3, 6-8, 11, 14, 18
Steven A. Moore	Cimarrone/Cordele	3, 6-8, 11, 14, 16-18
Ronald A. Nogas	Cimarrone/Cordele	7-8, 11-12, 14, 18
<u>Surrebuttal</u>		
Robert P. Todd	Sunray	16
Sumner Waitz	Sunray	16
Blanca R. Rodriquez	Cimarrone/Cordele	7-8, 11, 14, 18
Benjamin F. Watkins	Cimarrone/Cordele	7-8, 11, 14, 18

IV. Basic Positions

NOTE: For purposes of this section and the next section, Cordele Properties, Inc. and Cimarrone Property Owners Association are identified as C/C.

UTILITY: The original water and sewer rates should be approved as set forth in the MFRs, but Sunray will stipulate to the rates set forth in PAA Order No. 23341.

C/C: Cordele and Cimarrone stand ready to honor their parts of the bargain that is embodied in the Utility Service Agreement, the Spray Irrigation Agreement, and the Guarantee Agreement ("Agreements") executed by the parties and their owners in November 1988. As executed and as intended by the parties, these agreements provided that Cordele and Cimarrone would be responsible for

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payments to Sunray or its owners for water and sewer service availability of exactly \$900 per lot in the Cimarrone at Cartwheel Bay development, in accordance with a specified "takedown schedule." The parties specifically understood and intended that neither Cordele nor Cimarrone would be responsible for guaranteed revenue charges nor Allowance for Funds Prudently Invested (AFPI) charges. Sunray, however, now proposes to collect both guaranteed revenue charges and AFPI charges from Cimarrone and refuses to count such payments toward the \$900 per lot cap on capacity charges agreed upon by the parties in the Guarantee Agreement.

Cordele and Cimarrone stand ready to pay the full \$900 per lot required by the Utility Service Agreement (USA) and the Guarantee Agreement in accordance with the takedown schedule set forth in the USA, and to take back the specified volumes of spray effluent under the Spray Irrigation Agreement for application to the golf course at Cimarrone. This would give all parties -- Cordele, Cimarrone, Sunray, and its owners, ITT Rayonier and Jax Utilities Management -- exactly what they bargained for; imposing guaranteed revenue charges and AFPI charges on Cordele and Cimarrone would deprive Cordele and Cimarrone of the benefit of this bargain and would enrich Sunray and its owners far in excess of what they bargained for. Under the unique circumstances of this case, where Cordele abandoned its plans and significant investments already made in developing its own water and sewer utility in reliance on this bargain, the Commission should approve the agreements as intended by the parties, without modification.

Sunray's proposed rate design for Cimarrone is unjust and unreasonable. Cimarrone was expressly intended to be a bulk service customer of Sunray, yet Sunray now proposes to treat Cimarrone as a hypothetical number of residential customers. Sunray's proposed rate design fails to recognize that Cimarrone completely replaces Sunray at the distribution, collection, and customer service levels of utility. Additionally, the proposed rate design would unjustly discriminate against Cimarrone as compared to any other general service customers with identical usage characteristics.

Sunray has proposed that it be allowed to collect tax gross-up charges on CIAC. However, Sunray has not

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justified its proposal and it therefore should be rejected.

Sunray has proposed, and the Commission has implemented pursuant to temporary authority granted by Order No. , permanent rates based on water and wastewater plants each having a capacity of 500,000 gallons per day (GPD). Construction on these projected plants has not even begun, and Sunray does not need these projected plants in the reasonably imminent future. Therefore, the projected investment in these plants cannot be considered used and useful in the public interest, and Sunray's rates should be based on only that percentage of its so-called "interim" plants that is used and useful in the public interest.

If the Commission modifies the Utility Service Agreement at all, it should also modify it to reflect the realities of growth in Sunray's service area and should only hold Cordele and Cimarrone liable or responsible for their pro rata share of the interim plants that Sunray projected and expected to serve the Cordele property.

STAFF: The rates in the utility's application, as adjusted in Proposed Agency Action Order No. 23341, issued August 10, 1990, and as adjusted by the most recent leverage formula, are appropriate. The charges, as described in Order No. 23341, are appropriate.

V. Issues and Positions

ISSUE 1: What authority, if any, does the Commission have over the Guarantee Agreement?

POSITIONS

UTILITY: This is not an issue over which the Commission has jurisdiction because it addresses contractual obligations of nonregulated entities. This matter is currently subject to pending litigation in the Circuit Court in St. Johns County, Case No. 90-2003CA-A.

C/C: The Commission has authority over the Guarantee Agreement because it sets rates and charges for

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obtaining water and wastewater service from Sunray. The Commission may review, interpret, enforce, refuse to enforce, approve or disapprove the Guaranty Agreement in whole or in part. The Guarantee Agreement is a part of a single business transaction among Sunray, its shareholders (ITT Rayonier, Inc. and Jax Utilities Management, Inc.), a customer of Sunray (Cimarrone), and the developer of the land (Cordele) to be provided bulk water and wastewater service by Sunray. The single business transaction is evidenced by the Guarantee Agreement, a Utility Service Agreement and a Spray Irrigation Agreement. If the Commission were not to have the authority over the Guarantee Agreement, the parties would have the ability by private contract to circumvent the police power of the State and the jurisdiction of the Commission to set rates and charges to be paid by utility customers for water and wastewater services.

STAFF: The Commission sets rates and charges for all customers on a non-discriminatory basis and the agreement, in so far as it would affect rates and charges set by the Commission, is inconsistent with the provisions of Section 367.091(3), Florida Statutes.

ISSUE 2: If the Commission has the authority, should the Commission approve the Guarantee Agreement, in whole or in part?

POSITIONS

UTILITY: No position. Sunray is not a party to this agreement and is unaffected by its terms and conditions.

C/C: Yes, the Guarantee Agreement, Utility Service Agreement and Spray Irrigation Agreement all should be approved and enforced in a manner consistent with the original intentions of the parties. If the Agreements are not approved and enforced in a manner consistent with the original intentions of the parties, then none of the Agreements should be approved or enforced, all easements and other interests in land should be

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released to the original owners, and appropriate refunds should be made.

STAFF: No.

ISSUE 3: Should the Utility Service Agreement, filed with the application, between Sunray and Cimarrone Property Association, Inc. be approved, in whole or in part?

POSITIONS

UTILITY: Yes, the developer agreement should be approved. However, Sunray does not object to modification of the agreement in order to apply tariff provisions such as AFPI and guaranteed revenues to Cimarrone Property Owners Association, Inc., so as not to discriminate between customers. Sunray would be willing to stipulate on the issue if such stipulation is approved by the prehearing officer.

C/C: Yes, the Utility Service Agreement, Guarantee Agreement and Spray Irrigation Agreement all should be approved and enforced in a manner consistent with the original intentions of the parties. If the Agreements are not approved and enforced in a manner consistent with the original intentions of the parties, then none of the Agreements should be approved or enforced, all easements and other interests in land should be released to the original owners, and appropriate refunds should be made. However, Cordele and Cimarrone do not object to the modification of the Schedule of Reserved Capacity and Payments of the Utility Service Agreement in order to reflect realistic growth projections.

STAFF: Yes, the Utility Service Agreement should be approved. However, approval of the Agreement would not preclude the application of AFPI and guaranteed revenue charges.

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ISSUE 4: Should AFPI charges and guaranteed revenue charges be included in the term "capacity fees" as used in the Guarantee Agreement among Cordele and ITT and Jax Utilities Management, Inc., the shareholders of Sunray?

POSITIONS

UTILITY: This is not an issue over which the Commission has jurisdiction because it addresses contractual obligations of nonregulated entities. This matter is currently subject to pending litigation in the Circuit Court in St. Johns County, Case No. 90-2003CA-A..

C/C: Yes. Including AFPI charges and guaranteed revenue charges within the definition of "capacity fees" as used in the Guarantee Agreement is consistent with the intentions of the parties when the agreements were executed. To exclude such charges from the definition of "capacity fees" would be contrary to the intentions of the parties to the Agreements and would alter the Agreements between the parties by placing a substantial additional financial burden on Cordele and Cimarrone and bestowing a financial windfall on the shareholders of Sunray.

STAFF: The Commission has no jurisdiction to rule on the intentions of the parties to the Guarantee Agreement or whether the parties intended the term "capacity fees" to include AFPI charges and guaranteed revenue charges.

ISSUE 5: Should the Commission approve the spray irrigation contract, in whole or in part?

POSITIONS

UTILITY: Yes. The Spray Irrigation Agreement is a fully executed contract the terms of which are completely separate from the Utility Service Agreement. There are no terms or condition of the Spray Irrigation Agreement which have not been met by the parties.

C/C: Yes, the Spray Irrigation Agreement, Guarantee Agreement and Utility Service Agreement all should be enforced in a manner consistent with the original intentions of the parties. If the

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Agreements are not approved and enforced in a manner consistent with the original intentions of the parties, then none of the Agreements should be approved to enforced, all easements and other interests in land should be released to the original owners, and appropriate refunds should be made.

STAFF: Yes, this is a separate agreement.

Rate Base

ISSUE 6: What are the appropriate growth projections for the number of customers and the demand for utility service of Sunray's system in St. Johns County?

POSITIONS

UTILITY: As set forth in the MFRs.

C/C: The rate of growth in the number of customers and the demand for utility service in Sunray's service area in St. Johns County will be extremely slow. The growth projections used by Sunray are unrealistic.

STAFF: As shown in the utility's MFRs.

ISSUE 7: When will the planned 500,000 gallon per day ("GPD") water and wastewater treatment plants be needed?

POSITIONS

UTILITY: Pursuant to MFRs, project construction to occur 1992.

C/C: The planned 500,000 GPD water and wastewater treatment plants will not be needed in the reasonably foreseeable future. Sunray's only customer, Cimarrone, will not need the complete capacity of the initial water and wastewater treatment plants for many years and no other customers will connect in the reasonably foreseeable future.

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STAFF: When the planned 500,000 GPD plants will be needed depends on the determination of the growth rate and whether actual equivalent residential connections (ERC) or DER permitted ERCs trigger expansion.

ISSUE 8: What is the appropriate plant on which to base rates?

POSITIONS

UTILITY: As set forth in the MFRs.

C/C: The amount of plant used by Sunray in the calculation of its rates and charges is incorrect because Sunray used the costs of the 500,000 GPD treatment plants in its calculations.

STAFF: Rates should be based on eighty percent (80%) of the capacity of the initial, permanent phase of the utility.

ISSUE 9: What is Cimarrone's pro rata share of the appropriate plant?

POSITIONS

UTILITY: It is the pro rata share of the total DER permitted ERCs at build out as a percentage of rate setting ERCs. This issue is irrelevant to rate setting.

C/C: Cimarrone's pro rata share of Sunray's plant should be based entirely on the existing plant.

STAFF: A pro rata share of the amount of appropriate plant.

Return on Equity

ISSUE 10: What return on equity is appropriate for this utility?

NOTE: This issue is no longer in dispute. See Stipulation No. 6.

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Operating and Maintenance Expenditures

ISSUE 11: Are the operations and maintenance expenses appropriate and prudent?

POSITIONS

UTILITY: Yes.

C/C: No position at this time pending review of further information. If Sunray incurs additional operating and maintenance expenses by building its projected plants, those expenditures would not be prudent.

STAFF: Adjustments are appropriate to reflect the allocation of shared costs between the Nassau and St. John Divisions.

ISSUE 12: What adjustments should be made to remove operating costs associated with non-used and useful plant?

POSITIONS

UTILITY: As set forth in the MFRs, but the Utility is willing to stipulate to the adjustments in the P.A.A.

C/C: Chemicals, purchase power, property taxes and any other operating costs associated with non-used and useful plant should be removed.

STAFF: Any projected operating costs associated with non-used and useful plant should be removed.

Revenue Requirements

ISSUE 13: What are the appropriate revenue requirements to be used in setting rates for the water and sewer systems?

POSITIONS

UTILITY: The appropriate revenue requirements are those filed in the MFRs, with the addition of rate case expense, but the Utility is willing to stipulate to the revenue requirements in the PAA.

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C/C: Fall-out number.

STAFF: \$440,258 for the water system and \$684,642 for the sewer system.

ISSUE 14: What are the appropriate monthly service rates for the water and sewer systems?

POSITIONS

UTILITY: The rates set forth in the MFRs are appropriate if adjusted to include rate case expense. However, the utility does not object to the rates approved by the Commission in its Notice of Proposed Agency Action Order Setting Rates and Charges in this docket, Order No. 23341. Sunray would stipulate to these rates if the rates were revised to include rate case expense, upon approval of said stipulation by the prehearing officer. The return on equity should be established using the current leverage formula.

C/C: The rates proposed by Sunray are based on the construction of 500,000 GPD water and wastewater treatment plants, the expenses and revenues associated with such plants, and an unrealistic rate of growth in the number of customers and the demand for utility service in its service area. The 500,000 GPD water and wastewater treatment plants will not be needed for the reasonably foreseeable future. The rates proposed by Sunray are not appropriate.

STAFF: As filed in the Utility's application, with the exception that the sewer billing determinants should be 17,136 factored bills and 137,040,000 gallons representing 80 percent capacity of the system.

ISSUE 15: Should Sunray be allowed to charge a late payment fee of 1 1/2 percent?

POSITIONS

UTILITY: Yes.

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C/C: No. The resulting rate would be 18 percent, higher than Sunray's cost of capital. If any late fee is approved, its application should be limited to overdue payments for base facility charges and gallonage charges.

STAFF: Yes.

Rates and Rate Design

ISSUE 16: What is the appropriate monthly service rate structure for Cimarrone?

POSITIONS

UTILITY: Cimarrone should be billed based as an aggregation of the FDER permitted ERC's behind the master meter.

C/C: Cimarrone should be charged as any other general service customer receiving service through an 8-inch meter. Cimarrone receives its service from Sunray through a master meter. Cimarrone is responsible for the maintenance of the distribution system and the billing of the individual customers. Sunray receives a substantial benefit and Cimarrone incurs a substantial burden by the relationship.

STAFF: The rate structure should be based upon the ERCS behind the master meter. However, the wastewater gallonage rate should have a monthly cap of 10,000 gallons per connected ERC.

ISSUE 17: If Cimarrone is not billed as a General Service Customer with an eight inch meter, when should Sunray commence charging Cimarrone for utility service to a lot?

POSITIONS

UTILITY: Base facility charge begins upon execution of an FDER dry-line permit which commits Sunray's capacity to Cimarrone.

C/C: Sunray should not be charged utility service charges for a lot until a building on the lot has

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been connected to the utility system and a meter has been installed.

STAFF: Upon payment of service availability charges.

ISSUE 18: What are the appropriate service availability charges for Sunray Utilities?

POSITIONS

UTILITY: The service availability charges set forth within the MFRs are appropriate. However, Sunray does not object to those service availability charges set in Order No. 23341 which differ from those requested in Sunray's MFRs, and would stipulate to those service availability charges upon approval of such stipulation by the prehearing officer.

C/C: The service availability charges proposed by Sunray are based on the construction of 500,000 GPD water and wastewater treatment plants, the costs associated with such plants, and an unrealistic rate for the growth of the number of customers and the demand for utility service in its service area. The 500,000 GPD water and wastewater treatment plants will not be needed for the reasonably foreseeable future. The service availability charges proposed by Sunray are not appropriate. (Prosser, Moore, Nogas)

STAFF: The level of the charges should place the utility at a 75 percent contribution level at build-out.

CIAC Tax Gross-Up

ISSUE 19: Should Sunray's request to gross up CIAC be approved?

POSITIONS

UTILITY: Yes, the Utility's request for the tax gross-up on CIAC should be approved.

C/C: Sunray should not be permitted to collect any such charges because it has not proven its right or need to collect CIAC gross-up charges.

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STAFF: No, Sunray has provided no justification for the gross up.

ISSUE 20: What are the appropriate AFPI charges for Sunray Utilities?

POSITIONS

UTILITY: Charges should be approved as set forth in the Proposed Agency Action.

C/C: Sunray should not be permitted to collect AFPI charges from Cimarrone. If Sunray is permitted to collect such charges from Cimarrone, guaranteed revenue charges and AFPI charges should be included within the definition of "capacity fees" under the Guarantee Agreement.

STAFF: As set forth in the Proposed Agency Action.

ISSUE 21: Should Sunray be allowed to charge Cordele or Cimarrone a guaranteed revenue charge?

POSITIONS

UTILITY: Yes. Sunray requested Guarantee Revenue Charges in its MFRs. (See Exhibit RPT-1, Water Tariff Sheet Original Tariff Sheet 37.0, Rule 6.5; Sewer Tariff Sheet Original Tariff Sheet 32.0, Rule 6.5)

C/C: No. The parties did not intend for Cordele or Cimarrone to be charged guaranteed revenue charges. Cordele and Cimarrone gave valuable consideration for the Utility Service Agreement, Guarantee Agreement and Spray Irrigation Agreement. To allow Sunray to charge Cordele or Cimarrone guaranteed revenue charges would alter dramatically the Agreements between the parties by placing a substantial additional financial burden on Cordele and Cimarrone and bestowing a financial windfall on the shareholders of Sunray. If Sunray is permitted to collect such charges from Cimarrone, guaranteed revenue charges and AFPI charges should be included within the definition of "capacity fees" under the Guarantee Agreement. (LaBar, Moore)

STAFF: Yes, such charges are applicable to all customers.

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ISSUE 22: What are the appropriate guaranteed revenue charges for Sunray Utilities?

POSITIONS

UTILITY: The guaranteed revenue charges set forth in the MFRs are appropriate. However, Sunray does not object to the guaranteed revenue charges as set forth in Order No. 23341, and would stipulate to those charges upon approval of said stipulation by the prehearing officer.

C/C: Sunray should not be permitted to collect guaranteed revenue charges from Cimarrone. If Sunray is permitted to collect such charges from Cimarrone, guaranteed revenue charges and AFPI charges should be included within the definition of "capacity fees" under the Guarantee Agreement. (LaBar)

STAFF: As set forth in the Proposed Agency Action.

ISSUE 23: Should Sunray be allowed to charge Cordele or Cimarrone an allowance for funds prudently invested ("AFPI")?

POSITIONS

UTILITY: Yes. Sunray requested AFPI in its MFRs. (See Exhibit RPT-1, Water Tariff Sheet Original Tariff Sheet 35.0-36.0, Rule 6.1, and Sewer Tariff Sheet Original Tariff Sheet 30.0-31.0, Rule 6.1). It was Sunray's understanding that PSC policy was that AFPI would be applied to customers that connected to Sunray's system and utilized the capacity that was deemed nonused and useful in the current rate filing. Therefore, if Sunray's understanding of PSC policy is correct, AFPI will not apply to the first 1,142 ERCs.

C/C: No. The parties did not intend for Cordele or Cimarrone to be charged AFPI charges. Cordele and Cimarrone gave valuable consideration in exchange for the Utility Service Agreement. To allow Sunray to charge Cordele or Cimarrone AFPI charges would alter dramatically the Agreements between the parties by placing a tremendous financial burden on Cordele and Cimarrone and bestowing a financial

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windfall on the shareholders of Sunray. If Sunray is permitted to collect such charges from Cimarrone, guaranteed revenue charges and AFPI charges should be included within the definition of "capacity fees" under the Guarantee Agreement. (LaBar, Moore)

STAFF: Yes, such charges are applicable to all customers.

ISSUE 24: If the Commission authorizes Sunray to collect AFPI charges and guaranteed revenue charges, should the Commission cap Sunray's authority to collect AFPI charges and guaranteed revenue charges according to the maximum capacity of the existing plant?

POSITIONS

UTILITY: Utility agrees with Staff position. As to AFPI, the utility agrees with how AFPI is set in the PAA. The Commission should not cap guaranteed revenue charges. The guaranteed revenue charges should be applicable to all reserved ERCs. These charges reimburse the utility for expenses incurred through the reservation of capacity by a developer, prior to the generation of revenues which occurs upon connection by a customer. Such costs include property taxes, chemicals, electricity, interest, and return on investment.

C/C: Yes. Sunray's AFPI charges and guaranteed revenue charges are based on fixed costs associated with the existing plants. Because the existing plants have the capacity to serve only 286 water and 250 wastewater connections, the Commission should limit the number of connections responsible for AFPI charges and guaranteed revenue charges that all developers have to pay. The limit for water connections responsible for AFPI charges and guaranteed revenue charges should be 286 minus the number of active connections, and the limit for wastewater connections responsible for AFPI charges and guaranteed revenue charges should be 250 minus the number of active connections. Additionally, if the Commission modifies the Utility Service Agreement so as to make Cordele and Cimarrone responsible for guaranteed revenue charges and AFPI charges, then the Commission should also simultaneously modify

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the Utility Service Agreement to limit Cordele's and Cimarrone's liability for these charges to the proportionate number of ERCs that Sunray planned to serve at Cimarrone out of the total of Cimarrone and Southloop ERCs that either Sunray planned the interim plant to serve or that the interim plant is capable of serving. Failure to do so would unfairly shift the burden of Sunray's incorrect projections as to service and capacity requirements for Southloop onto Cordele and Cimarrone.

STAFF: No, only AFPI charges should be capped based upon the capacity of existing plants.

Allowance for Funds Used During Construction

ISSUE 25: What is the appropriate capital structure for the Utility?

POSITIONS

UTILITY: As filed in the MFRs.

C/C: No position at this time.

STAFF: As filed in the MFRs, and adjusted by the current leverage formula.

ISSUE 26: Did Sunray violate the provisions of section 367.041(2), Florida Statutes (1987), by failing to file "schedules showing all rates, classifications, and charges for service of every kind proposed by it and all rules, regulations, and contracts relating thereto" as required by that law?

POSITIONS

UTILITY: No, all required support was filed.

C/C: Yes. The required support was not timely filed.

STAFF: No.

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ISSUE 27: If there was any violation, did this failure materially harm Cordele and Cimarrone?

POSITIONS

UTILITY: See position above. Cordele and Cimarrone were not harmed by Sunray's Application for original rates and charges.

C/C: Yes. If the information was available at the time of the execution of the Agreements that Sunray intended to change AFPI charges and guaranteed revenue charges, Cimarrone would have built its own plants and served itself.

STAFF: No.

ISSUE 28: Should this docket be closed?

POSITIONS

UTILITY: Yes.

C/C: Yes, upon issuance of the final order and verification of any ordered refund.

STAFF: Yes, upon issuance of the final order and verification of any ordered refund.

VI. Proposed Stipulations

The parties and Staff agreed to the following:

1. Revenue from AFPI charges and guaranteed revenue charges is "below the line" revenue for rate making purposes.
2. Sunray's request that developers be required to take effluent for spray irrigation purposes as a condition to receive service should be approved.
3. Sunray should not charge a rate for effluent delivered to developments.
4. Refunds, if appropriate, will be made in accordance with Commission Rule 25-30.360 Florida Administrative Code.

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5. ITT has sold some of its land in Sunray's St. Johns County certificated territory for development.
6. The current leverage formula should be utilized to determine the appropriate return on equity.
7. AFUDC rates should be changed using the most current leverage formula.

VII. Rulings

1. Utility's Motion to Strike Testimony and Exhibits filed May 21, 1991 was denied.
2. Utility's Motion for Order Compelling Production of Documents by Cimarrone Property Owners Association, Inc. filed May 31, 1991 was denied.
3. Utility's Motion for an order Compelling Production of Documents by Cordele Properties, Inc. filed May 31, 1991 was denied.
4. Request for Oral Argument on Motions Compelling Production of Documents, filed May 31, 1991 was denied.
5. Utility's Motion to File Supplemental Direct Testimony and MFR Exhibit, filed June 5, 1991 was denied.
6. Request for Oral Argument on the Motions filed June 5, 1991 was denied.

VIII. Exhibits

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Todd	Utility	(RPT-1)	Sunray Utilities, Inc. St. Johns County Tariff
Todd	Utility	(RPT-2)	MFR document containing developer agreements, deeds, and easements
Todd	Utility	(RPT-2A)	MFR Exhibit consisting of various documents requested by PSC Staff during the rate-setting process

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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Todd	Utility	(RPT-3)	Rate case expense exhibit
Todd	Utility	(RPT-3A)	Rate case expense, exhibit (updated as of hearing date)
Todd	Utility	(RPT-4)	print-out of Lotus 1-2-3 AFPI Model used to compute AFPI
Waitz	Utility	(SW-1)	MFR Exhibit - water and sewage utility plant account analysis
Waitz	Utility	(SW-2)	Resume of Sumner Waitz, P.E.
Todd	Utility	(RPT-5)	letter from Robert Todd to Cordele Properties' managers Mike Danforth and Marcus Fields dates 7/18/88
Todd	Utility	(RPT-6)	letter from Robert Todd to Mike Danforth and Marcus Fields date 8/8/88
Todd	Utility	(RPT-7)	letter from Robert Todd to Mike Danforth dated 8/8/88
Todd	Utility	(RPT-8)	invoices to Cordele from Martin, Ade and Birchfield, unrelated to Cordele or Cimarrone providing their own utility service
Todd	Utility	(RPT-9)	invoices to Cordele from Martin, Ade and Birchfield, without sufficient detail to allocate costs to Cordele or Cimarrone providing their own utility service
Todd	Utility	(RPT-10)	invoices expressly stated as costs for establishing Cordele or Cimarrone's own plants or rights to serve themselves

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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Todd	Utility	(RPT-11)	Excerpt of testimony of Daniel Reed from certification hearing in this docket
Todd	Utility	(RPT-12)	Cimarrone Final Development Plan Utility Site
Todd	Utility	(RPT-13)	Sunray's 1990 Annual Report
Atkins	Utility	(TWA-1)	Rayland - St. Johns Forest estimate of total potential dwelling units
Atkins	Utility	(TWA-2)	Johns Creek estimate of total potential dwelling units
Atkins	Utility	(TWA-3)	Estimate of total potential dwelling units for Mainland County and Northwest Planning District
Atkins	Utility	(TWA-4)	Map 1
Atkins	Utility	(TWA-5)	Map 2 - Regional Influence Map
LaBar	C/C	(JCL-1)	FPSC Order No. 19428
LaBar	C/C	(JCL-2)	FPSC Order No. 20025
LaBar	C/C	(JCL-3)	Letter from Robert Todd to Daniel Reed and James LaBar
LaBar	C/C	(JCL-4)	Letter from Robert Todd to Daniel Reed
LaBar	C/C	(JCL-5)	Utility Service Agreement
LaBar	C/C	(JCL-6)	Spray Irrigation Agreement
LaBar	C/C	(JCL-7)	Guarantee Agreement

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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Moore	C/C	(SAM-1)	Development and Marketing Experience
Moore	C/C	(SAM-2)	Summary Pages of Multiple Listing Services, St. Johns County
Moore	C/C	(SAM-3)	Summary Pages of Multiple Listing Services, Jacksonville
Moore	C/C	(SAM-4)	Utility Service Agreement
Moore	C/C	(SAM-5)	Invoice from Jax Utilities Management, December 15, 1990
Moore	C/C	(SAM-6)	Invoice from Jax Utilities Management, January 15, 1991
Moore	C/C	(SAM-7)	Analysis of January 15, 1991 Invoice
Prosser	C/C	(RCP-1)	Sunray's Projected ERC Growth Rates
Prosser	C/C	(RCP-2)	Sunray's Tariff Assumptions
Prosser	C/C	(RCP-3)	FPSC Standard Questionnaire
Prosser	C/C	(RCP-4)	Florida Times-Union Article, April 29, 1991, "Northwest St. Johns Plans Stagnate"
Moore	C/C	(SAM-8)	Sunray's Projected ERC Growth Rates
Moore	C/C	(SAM-9)	Sunray's Tariff Assumptions
Moore	C/C	(SAM-10)	FPSC Standard Questionnaire
Nogas	C/C	(RAN-1)	Sunray's Projected ERC Growth Rates
Nogas	C/C	(RAN-2)	Sunray's Tariff Assumptions

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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Nogas	C/C	(RAN-3)	FPSC Standard Questionnaire
Nogas	C/C	(RAN-4)	Operating Reports for Sunray's St. Johns County Operations

The utility has requested administrative notice of DER Rule 17-600.300(4)(a) and (b), Florida Administrative Code.

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

Based upon the foregoing, it is

ORDERED by Chairman Thomas M. Beard, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings unless modified by the Commission.

By ORDER of Chairman Thomas M. Beard, as Prehearing Officer, this 28th day of JULY, 1991.


 THOMAS M. BEARD, Chairman
 and Prehearing Officer

(S E A L)

TMB/CB

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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