



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECORDS AND REPORTING

59 JAN 21 AM 10:18

RECEIVED-FPSC

DATE: JANUARY 21, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF ELECTRIC AND GAS (KUMMER) *RUE JAP*
DIVISION OF LEGAL SERVICES (PAUGH) *JOJ*

RE: DOCKET NO. 990051-EM - REQUEST BY ORLANDO UTILITIES COMMISSION FOR APPROVAL OF SPECIAL CONTRACT WITH UNIVERSAL CITY PROPERTY MANAGEMENT II.

AGENDA: FEBRUARY 2, 1999 - REGULAR AGENDA - TARIFF FILING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\EAG\WP\990051.RCM

DISCUSSION OF ISSUES

ISSUE 1: Should the Commercial Electric Service Agreement between Orlando Utilities Commission and Universal City Property Management II be approved?

RECOMMENDATION: Yes.

STAFF ANALYSIS: The Orlando Utilities Commission (OUC) has negotiated a special contract with Universal City Property Management II (Universal) which will keep Universal as an OUC customer for a minimum of 10 years or until retail competition is adopted in Florida, if that occurs in less than 10 years. Universal is a major commercial customer of OUC and is in the process of expanding its operations in the area. In return for the 10 year agreement, OUC will install approximately \$2.05 million of upgraded and expanded facilities such as feeders at no cost to Universal. However, OUC states that at least one-half of that amount is offset by the additional load to be served by the

DOCUMENT NUMBER-DATE

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facilities and would be waivable under a CIAC calculation. In addition, OUC will provide a 5% discount off existing base rates for the term of the contract prior to the adoption of retail wheeling in Florida. Fuel and taxes are not subject to the discount. Adjustments to the rates may occur in conjunction with OUC's annual rate review.

Universal agrees to take all of its electric service from OUC during the contract term for the locations shown in the contract. In the event deregulation occurs in the electric industry during the term of the contract, Universal has the right to renegotiate the rates based on competitive rates available in the market. In order to open negotiations, Universal must demonstrate that any alternative supplier is a bona fide retail electric supplier which has the financial and physical capacity to serve the customer's needs under the same terms and conditions as it receives service from OUC. If challenged, OUC has the right to continue to serve Universal's load at the lower rate or allow the customer to terminate the contract with 60 days notice. If the customer chooses to terminate in less than 10 years, an exit fee based on the depreciated cost of the additional facilities installed under the contract and a percentage of the discounts received will be payable to OUC.

The contract has been signed by Universal and OUC and appears to be an advantageous agreement for both parties. The rate discount is minimal compared to the potential loss of a customer the size of Universal and in the long term, Staff believes the general body of OUC's ratepayers will be better off with the 10 year agreement. Therefore, Staff recommends approval of the contract as presented.

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ISSUE 2: When should the contract become effective?

RECOMMENDATION: Staff recommends that the contract become effective on the date following the effective date of a final Commission order in this docket.

STAFF ANALYSIS: The terms of the contract state that it shall be come effective upon the date specified in the approval in writing by the Florida Public Service Commission. Staff recommends that the contract become effective on the date following the effective date of a final Commission order in this docket.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, if no adversely affected party files a protest within the appropriate time period.

STAFF ANALYSIS: If the Commission approves the proposed contract, no further action is required if no protest is received and the docket may be close.

500 South Orange Avenue
P.O. Box 3193
Orlando Florida 32802
Phone: 407.423.9100
Administrative Fax: 407.236.9616
Purchasing Fax: 407.423.9199
Website: <http://www.ouc.com>

Attachment 1
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ORLANDO UTILITIES COMMISSION COMMERCIAL ELECTRIC SERVICE AGREEMENT

THIS AGREEMENT is made and entered into this 7th day of December, 1998, by and between the **ORLANDO UTILITIES COMMISSION** (hereafter "OUC") whose address is 500 South Orange Avenue, Orlando, Florida 32801, and **UNIVERSAL CITY PROPERTY MANAGEMENT II, a Delaware corporation**, (hereafter "CUSTOMER") whose address is 1000 Universal Studios Plaza, Orlando, Florida 32819.

RECITALS

1. The **CUSTOMER** has locations currently being served electricity by OUC.
2. In return for the **CUSTOMER** agreeing to remain a long-term large commercial electric customer, **OUC** agrees to provide certain favorable considerations as set forth below.

ACCORDINGLY, for and in consideration of the Recitals, the mutual undertakings and agreements herein contained and assumed, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the **CUSTOMER** and **OUC** hereby covenant and agree as follows:

SECTION 1. RECITALS. The above Recitals are true and correct, and form a material part of this Agreement.

SECTION 2. PROVISION OF SERVICE. As the exclusive provider of electric power to those **CUSTOMER** locations included in Exhibit 1, which includes descriptions of existing accounts and a map defining the boundaries of the electric service to be supplied by **OUC** under this Agreement, **OUC** shall sell and deliver to **CUSTOMER**, and **CUSTOMER** shall purchase and receive from **OUC**, **CUSTOMER's** full requirements for electric service. As regulatory constraints permit, **OUC** and **CUSTOMER** may agree to extend this Service Agreement to include other **CUSTOMER** sites and locations in cases where such expansion is beneficial to both parties.

SECTION 3. TERM OF AGREEMENT.

3.1 This Agreement, terminating on its effective date all prior agreements between the parties, shall become effective upon the date specified in the approval in writing by the Florida Public Service Commission of the Agreement, if such approval is required, or otherwise on the date of execution of this Agreement, and shall remain in effect for an initial term of ten (10) years, and thereafter for additional terms of five (5) years hence, unless terminated by written notice of such intention from either party to the other at least one (1) year prior to the expiration date of the initial term or subsequent terms.

3.2 "Contract Year" shall be the twelve (12) month period beginning on the effective date of the Agreement and each anniversary thereafter.

3.3 Either party shall have the right to terminate this Agreement without penalty, following payment of any and all costs, liabilities or other payments which have accrued and become due prior to the termination date and sixty (60) days written notice to the other Party, upon the happening of any of the following events:

(a) Determination of any court or agency having any jurisdiction that all or any material portion of this Agreement is invalid or unenforceable.

(b) Any final court decision, Internal Revenue Service ruling, or any change in the applicable statutes or regulations, which in the reasonable opinion of OUC's General Counsel, results in the continued existence of this Agreement having a material adverse effect on OUC's ability to issue tax exempt bonds. For these purposes, "tax exempt bonds" shall mean bonds, the interest of which is excluded from gross income for Federal income tax purposes.

(c) A material breach of the Agreement by either party which is not cured within ninety (90) days upon written notification to the party alleged to be in breach by the party alleging the breach or, if not possible to cure within said ninety (90) days, then the breaching party is not diligently pursuing a cure.

(d) Voluntary or involuntary bankruptcy of one of the parties to the Agreement.

3.4 CUSTOMER shall have the right to terminate this Agreement, subject to the provisions of **SECTION 15.3**.

SECTION 4. ACCESS TO PREMISES. OUC shall, at all reasonable hours and with reasonable notice, have access to CUSTOMER's premises for any purpose connected with the delivery of electric power under this Agreement or the exercise of any rights secured to, or the performance of any obligations imposed on it by this Agreement. From time to time as needed to provide the electrical service contemplated

by the Agreement, **CUSTOMER** may grant non-exclusive easement(s) within **CUSTOMER's** property, without charge, to **OUC**. **OUC's** activities on **CUSTOMER's** property shall be conducted so as to minimize any disruption to **CUSTOMER's** on-going business activities. In addition, **OUC** shall restore to its initial condition any area of **CUSTOMER's** property disturbed by **OUC's** activities in connection with this Agreement.

SECTION 5. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of and shall be binding upon the parties hereto and their respective authorized successors and assigns and related entities and affiliates. Except as provided herein, no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a party to this Agreement or an authorized successor or assignee thereof.

SECTION 6. NO WAIVER. Any failure at any time by **OUC** or **CUSTOMER** to enforce a provision of this Agreement shall not constitute a waiver by such party of said provision.

SECTION 7. AMENDMENTS. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of the Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed by the parties.

SECTION 8. ASSIGNMENTS. Subject to the provisions contained herein, this Agreement shall be binding upon and shall inure to the benefits of the successor and assigns of the parties hereto. This Agreement may not be assigned by **CUSTOMER** without the prior written consent of **OUC**, such consent not to be unreasonably withheld by **OUC**. Notwithstanding the above, **CUSTOMER** shall have the right, upon written notification to **OUC**, to assign this Agreement to any subsidiary, affiliate, or parent of Universal Studios, Inc., so long as the subsidiary, affiliate or parent has net assets exceeding eighty-five (85) percent of **CUSTOMER's** assets.

SECTION 9. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced, and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.

SECTION 10. AUTHORITY TO EXECUTE AGREEMENT. The signature by any person to this Agreement shall be deemed a personal warranty by that person that he has the full power and authority to bind any corporation, partnership, or any other business entity for which he purports to act hereunder.

SECTION 11. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Should suit be filed for any reason arising out of this Agreement, the parties agree that venue for such action shall lie only in the courts with jurisdiction over such matters in Orange County, Florida, or the United States District Court for the Middle District of Florida, Orlando Division. Nothing herein shall prevent the parties from pursuing their legal rights associated with non-performance under this Agreement including instituting legal action seeking: (1) any remedies of specific performance, injunctive relief and declaratory relief available at equity; and/or (2) any money damages available at law. Both parties have contributed to the preparation, drafting and negotiation of this document and neither has had undue influence or control thereof. Both parties agree that in construing this Agreement, it shall not be construed in favor of either party by virtue of the preparation, drafting, or negotiation of this Agreement.

SECTION 12. NOTICES. Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail or by facsimile or national overnight carrier as sent to the respective address of each party as set forth at the beginning of this Agreement. Notices sent to **OUC** shall be addressed to the Vice President of the OUC Customer Connection Department. Notices sent to the **CUSTOMER** shall be addressed to Vice President, Business and Legal Affairs, Universal Studios Escape, 1000 Universal City Plaza, Orlando, Florida 32819; with a copy to Vice President, Corporate Facilities, Health, Safety and Environment, Universal Studios, Inc., 100 Universal City Plaza, Universal City, California 91608. Either party may change the recipient of notices by providing written notice to the other party by one of the means specified in this Section.

SECTION 13. DESIGN AND CONSTRUCTION OF EXTENSION LINES. **OUC** shall design, acquire all necessary permits and install the Electric Extension Lines described below, and all future electric extension lines as required to provide the services specified in this Agreement to the **CUSTOMER**. The formula in **SECTION 15.3(b)** pertaining to the **CUSTOMER's** obligation to **OUC** for the cost of construction of the initial Electric Extension Lines and any future electric extension lines shall apply to any **CUSTOMER** early termination of this Agreement, unless such early termination is pursuant to a material breach by **OUC** under **SECTION 3.3(c)** of this Agreement. The elements comprising the initial Electric Extension Lines included in this Agreement and the estimated cost of construction (hereafter "Construction Costs") are defined in **Table 1** below:

Table 1

Design Element	Estimated Cost
Manhole & Ductline System, Vineland to Conroy and on Turkey Lake Road	\$ 490,500.00
Three Primary Feeders from Sub. 21 to Islands of Adventure Switchyard	\$ 899,300.00
Portofino Bay Resort	\$ 244,000.00
Universal's City Walk	\$ 200,000.00
New Feeder Line to Hotel Combined Services Area	\$ 120,000.00
New Feeder to Serve Portofino Bay Resort	\$ 100,000.00
Total Estimated Construction Costs	\$2,053,800.00

The actual total Construction Costs for the Electric Extension Lines and any future electric extension lines shall be paid by OUC. OUC shall purchase, at its sole expense, or provide or arrange for all rights-of-way or easements necessary to allow OUC to build and install the Electric Extension Lines and any future electric extension lines, except with respect to any which pass over, under or through property of CUSTOMER. CUSTOMER shall provide OUC with all necessary non-exclusive easements or rights-of-way necessary to install the Electric Extension Lines and future electric extension lines serving CUSTOMER on any property owned by the CUSTOMER. CUSTOMER shall, upon request of OUC, provide reasonable assistance to OUC in its efforts to permit and build the Electric Extension Lines and any future electric extension lines.

SECTION 14. COMPETITIVE RATE AND RATE PROTECTION. Adjustments to the electric rate for service pursuant to the Agreement may occur once per year during OUC's annual rate adjusting period. The CUSTOMER shall be billed monthly during the term of this Agreement at the following rate: From the date of execution hereof until the final adoption of retail wheeling in the State of Florida, the CUSTOMER shall be charged for electric service subject to the provisions of SECTION 14.1. After the final adoption and applicability of retail wheeling to CUSTOMER's property, the CUSTOMER shall be charged for electric service at the point of delivery plus any Florida Public Service Commission or Florida State Law approved stranded costs applicable to CUSTOMER's rate class and CUSTOMER's service.

14.1 In recognition of this Agreement, OUC agrees to sell electric energy to the CUSTOMER, prior to the adoption of retail wheeling in the State of Florida at a

discount of 5% to the demand and variable (base) components of **OUC's** published rates for each applicable **CUSTOMER** class. Discounts shall be in effect from the date of execution of this Agreement, through the adoption date of retail wheeling in the State of Florida. Fuel shall be charged at **OUC's** published rate for each applicable **CUSTOMER** class. All rates are subject to applicable taxes. As of October 1, 1998 these taxes include City Utility Tax, Gross Receipt Tax, and State Sales Tax. The City Franchise Fee is presently included in **OUC's** published demand, base and fuel rates. If, during the term of this Agreement, the City Franchise Fee is separated from the published demand and base rates, the 5% discount applicable to such demand and base rates shall be adjusted so as to provide the same overall discount to **CUSTOMER** as that provided prior to such separation of the City Franchise Fee.

SECTION 15. FUTURE COMPETITIVE RATE PROTECTION. Pursuant to this Agreement, **OUC** shall provide electrical energy at prices and terms to **CUSTOMER** that are competitive with those that are then in effect by other major providers of electrical capacity and energy in peninsular Florida to similar large customers. If during the term of this Agreement, and after the deregulation of the Electric Utility Industry in the State of Florida, the **CUSTOMER** determines that electrical capacity and or energy is available at a market price more favorable than offered under the terms of this Agreement, **CUSTOMER** shall be allowed three (3) market openers (as hereinafter defined) during the initial term of the Agreement and one (1) market opener per each renewal. The **CUSTOMER** shall notify **OUC** in writing that they intend to solicit market pricing. The **CUSTOMER** shall provide information to **OUC** and **OUC** shall be provided fifteen (15) working days to compare the prices and terms of the alternative proposal.

The procedure utilized for the **CUSTOMER** market opener shall be as follows:

- 15.1 The **CUSTOMER** shall notify **OUC** in writing that they intend to solicit competitive electricity pricing for service to start not less than sixty (60) days from the notice date.
- 15.2 The comparisons shall include the following:
 - (a) The alternative proposal must be from a bona fide retail electricity supplier who has the demonstrated financial and physical capacity to serve **CUSTOMER's** electrical energy demand.
 - (b) The reliability and security of supply.
 - (c) Price stability and escalation provisions.
 - (d) Term of the competing proposal.
 - (e) Scope of supply of the competing proposal.

(f) Other conditions of service having economic value to the **CUSTOMER**.

15.3 If after consideration of the above, the **CUSTOMER** deems that the alternative proposal is superior to the conditions of service provided by **OUC**, **OUC** shall have the option of either:

(a) Providing electrical service to the **CUSTOMER** under the terms of the competing proposal, or other such terms as **CUSTOMER** and **OUC** shall mutually agree provide **CUSTOMER** with similar benefits as those contained in the alternative proposal.

(b) To allow the **CUSTOMER** to terminate this Agreement effective sixty (60) days from the notification date in **SECTION 15.1**. If the **CUSTOMER** elects to terminate this Agreement, the **CUSTOMER** shall compensate **OUC** a specific Fee (extension lines) based on the original cost of the design and construction of extension lines described in **SECTION 13** and any future construction of extension lines as provided by **OUC**. **CUSTOMER** shall have the option of selecting the Fee (Line Extensions) and standard **OUC** line distribution rate, or the calculated line distribution rate as described below. In addition, **CUSTOMER** shall pay discounts provided in **SECTION 14.1**, in accordance with the Fee Discounts formula described below:

Fee (Line Extensions) = Actual Costs x ((Construction Completion Year + 20 Years) - Termination Date) / 20

Calculated line distribution rate = Fee calculated on all remaining book value of distribution system required to provide service to **CUSTOMER** locations as specified in Exhibit 1. The remaining book value of any such distribution system components which also provide service to others besides **CUSTOMER** shall be pro-rated based on the ratio of **CUSTOMER**'s demand to the total demand for such component. Depreciation schedules and the rate of return requirement for each component of the distribution system shall be calculated utilizing **OUC** standard methodology. **CUSTOMER** shall have the right to review the calculation.

Fee (Discounts*) = (Discounts*/2) x ((2009 - Termination Year Date) / (2009 - First Year Of Deregulation))

* Total Discounts provided in **SECTION 14.1** up to the deregulation of the Electric Utility industry in the State of Florida.

IN WITNESS WHEREOF, OUC and CUSTOMER have caused this Agreement to be executed in duplicate in their names by their respective duly authorized officials, as of the day and year first above written.

ATTEST:

By: *Patty J. Perrow*
Print Name: Patty J. Perrow
Title: Assistant Secretary

APPROVED AS TO FORM
LEGAL DEPARTMENT

DATE: 12-10-98 BY: *W.A.M.*

ORLANDO UTILITIES COMMISSION

By: *[Signature]*
Robert C. Haven, P.E.
General Manager, CEO

Date: 12/10/98

ATTEST:

UNIVERSAL CITY PROPERTY
MANAGEMENT II
a Delaware corporation

By: *[Signature]*
Print Name: ALLEN M. EBERLY
Title: V.P.

By: *[Signature]*
Thomas L. Williams
President

Date: 1/7/98

[CORPORATE SEAL]

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

The foregoing instrument was acknowledged before me this ____ day of _____, 1998 by J. David Thomas, as _____ of UNIVERSAL STUDIOS, INC., and acknowledged before me that he executed the foregoing instrument on behalf of UNIVERSAL CITY PROPERTY MANAGEMENT II, a Delaware corporation

Signature of Notary Public

(Print Notary Name)
My Commission Expires: _____
Commission No. _____
____ Personally known
____ Produced Identification
Type of Identification Produced

AFFIX NOTARY STAMP

EXHIBIT 1

General Service Large Demand - Primary

Acct. No. 001002041-1197648 1000 Universal Studios Plaza Totalizer No. 00009

General Service Demand - Primary

Acct. No. 001002041-1197650 1000 Universal Studios Plaza Totalizer No. 00039

General Service Demand - Secondary

Acct. No. 001002041-1055658 7401 Dowden Road Meter No. 1ZM00513

Acct. No. 001002041-1079776 6268 Hollywood Way Suite A Meter No. 1JM01439

Acct. No. 001002041-1079777 6268 Hollywood Way Suite B-1 Meter No. 1JM01361

Acct. No. 001002041-1079778 6268 Hollywood Way Suite B-2 Meter No. 1JM00741

Acct. No. 001002041-1079787 6276 Hollywood Way Suite MSRA Meter No. 1JM1254

Acct. No. 001002041-1079788 6276 Hollywood Way Suite MSRB Meter No. 1JM01286

Acct. No. 001002041-1178082 1000 Universal Studios Plaza Suite XF10
Meter No. 1ZM00299

Acct. No. 001002041-1178084 1000 Universal Studios Plaza Suite XF14
Meter No. 1ZM00457

Acct. No. 001002041-1178085 1000 Universal Studios Plaza Suite XF15
Meter No. 1ZM00459

Acct. No. 001002041-1178086 1000 Universal Studios Plaza Suite XF16
Meter No. 1ZM00482

Acct. No. 001002041-1178087 1000 Universal Studios Plaza Suite XF17
Meter No. 1ZM00410

Acct. No. 001002041-1178092 1000 Universal Studios Plaza Suite XF5
Meter No. 1ZM00576

Acct. No. 001002041-1178094 1000 Universal Studios Plaza Suite XF7
Meter No. 1 ZM01204

Acct. No. 001002041-1182695 7137 Wallace Road Meter No. 1ZM01148

Acct. No. 001002041-1194842 1000 Universal Studios Plaza Fount1
Meter No. 1ZM00569

Acct. No. 001002041-1194843 1000 Universal Studios Plaza Fount2
Meter No. 1ZM01067

Acct. No. 001002041-1194881 1000 Universal Studios Plaza XF9
Meter No. 1ZM01132

Acct. No. 001002041-1197636 1000 Universal Studios Plaza ZPUMP
Meter No. 1ZM00421

Acct. No. 001002041-1197649 1000 Universal Studios Plaza
Totalizer No. 00029

General Service Non-Demand

Acct. No. 001002041-1077316 1786 S. Hiawasse Road Suite 55
Meter No. 5C57034

Acct. No. 001002041-1178081 1000 Universal Studios Plaza Suite XF1
Meter No. 1ZM00493

Acct. No. 001002041-1178083 1000 Universal Studios Plaza Suite XF11
Meter No. 1ZM00252

Acct. No. 001002041-1178088 1000 Universal Studios Plaza Suite XF18
Meter No. 1ZM01180

Acct. No. 001002041-1178089 1000 Universal Studios Plaza Suite XF2
Meter No. 1ZM00479

Acct. No. 001002041-1178090 1000 Universal Studios Plaza Suite XF3
Meter No. 1ZM00709

Acct. No. 001002041-1178091 1000 Universal Studios Plaza Suite XF4
Meter No. 1ZM00590

Acct. No. 00102041-1178093 1000 Universal Studios Plaza Suite XF6
Meter No. 1ZM00437

Included areas are:

Existing Theme Park
New Theme Park (Islands of Adventure, etc.)
City Walk and associated areas

North and South Garage and Hub
USF Common Support Facility
Portofino Hotel

