

construction; \$50 per month for residential customers; and \$800 per month for water service to common areas within the subdivision. Order No. 30512.

On April 25, 2008, the Company filed an Amended Application and proposed a permanent monthly customer charge of \$81.60 for the first 10,000 gallons, and \$0.000651 for each gallon in excess of 10,000 gallons. The Company also requested an effective date for its newly proposed rates of August 1, 2008.¹

On April 9, 2008, the Commission issued a Notice of Public Hearing and adopted the parties' proposed schedule for processing this case. Accordingly, Staff conducted a public workshop in Kuna on May 19, 2008, and filed written comments on May 28, 2008. Mr. Corvino also filed written comments on May 28. Mayfield's scheduled date for reply to comments was extended until June 24, 2008, to allow the parties to meet for an attempt at settlement. Full settlement of the disputed issues was not achieved. Mayfield's reply comments were eventually filed on June 26, 2008.

The Commission held its public hearing in Kuna on July 1, 2008. Numerous customers testified at the public hearing and many submitted written comments. At the public hearing, the Commission requested that Mayfield Springs submit the Covenants, Conditions and Restrictions (CC&Rs) for the Arrowrock Subdivision. The CC&Rs were filed on July 22, 2008. On July 29, 2008, the Staff filed Supplemental Comments to reflect partial settlement of three disputed expense issues between Staff and the Company. On August 26, 2008, the Commission issued final Order No. 30628 approving a hook-up fee of \$725.

B. The Petition for Reconsideration

On September 15, 2008, Mr. Corvino filed for reconsideration based on four allegations. The Commission granted reconsideration on one limited issue of residential hookup fees. More specifically, reconsideration was limited to the issue of refunding the difference between the Company-collected hook-up fee of \$2,500 and the approved hook-up fee of \$725 collected prior to August 30, 2008. Order No. 30656 at 6.

Mr. Corvino asserted in his motion for reconsideration that Mayfield received a windfall profit when the Commission declined to order Mayfield Springs to refund the hookup fees. Mr.

¹ On July 30, 2008, the Commission suspended the effective date for the proposed rates until August 29, 2008. Order No. 30609.

Corvino insists that the Commission order a refund of the difference between the \$2,500 paid and the \$725 (i.e., \$1,775) for those customers not parties to the lawsuit. He contends that this is the only choice consistent with the Fourth District Court's findings. Reconsideration Comments at 2-3.

STAFF COMMENTS

In its Application, the Company requested authorization to charge a hookup fee of \$2,500 per customer to recover the "costs associated with building the water system, meter installation and connection." Amended Application, Exhibit 9. Following an audit of the Company's records, Staff determined that the hook-up fee was excessive and the Company failed to provide detailed documentation of how its hook-up fee was derived. Staff Comments at 13. Staff recommended a hookup fee of \$725 based on the cost of labor and equipment required to install a meter. *Id.* The Commission found Staff's analysis persuasive and approved the charge of \$725 for a non-recurring hookup fee. Order No. 30628.

After reviewing the documentation provided by the Company pursuant to the reconsideration schedule, it seems that the \$2,500 hook-up fee was embedded as part of the escrow closing transaction. Staff noted in its initial comments that the hook-up fee was collected with the sale of the subdivision lots as part of the escrow closing. Staff Comments at 13. In Mayfield's accounting of hook-up fees for all residential customers filed with the Commission on November 7, 2008, the charge appears as a line item on the purchasers' closing statements under "Other Charges / Credits."

Generally, a developer's cost of building a small domestic public water system is considered by Staff to be contributed capital. In this case, it appears that the cost of the water system was recovered through the sale of lots. Amended Application, Exhibit 9. Indeed, the "hookup fee" was paid by the construction companies or homeowners as part of the lot sale/purchase at closing. Although termed a "hookup fee" in the escrow closing documents, this fee was contributed capital that allowed the developer to recover the cost of the water system through the sale of lots/purchase of homes.² Moreover, Mr. Corvino asserted that "36 of the 56 total hook-up fees were paid by construction companies or others and not directly by the homeowner." Reconsideration Comments at 3.

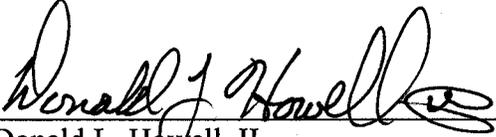
² The closing statements indicate a water hook-up fee of \$2,500 and a sewer hook-up fee of \$4,000.

Unfortunately, the parties used a regulatory term-of-art to refer to two different items. As used by the water company and the developer in the closing statements, "hook-up fee" refers to the contributed capital to pay for the cost of building the system and the meter installation and connection. The Staff (and presumably Mr. Corvino) use the term "hook-up fee" to refer to only the cost of the meter and its installation. Staff Comments at 13. Thus, the parties have used a specific regulatory term to mean two different things.

As the Commission is aware, contributed capital means that Mayfield's rate base is significantly reduced (from the actual cost of the water system to \$13,477 per Order No. 30628 at 8). By way of comparison, the Company asserted the cost to build the water system was approximately \$690,000. Application, Exhibit D at 2. Customers benefit by the small amount of rate base.

Because the \$2,500 fee was collected by the developer through the sale of lots, Staff treated most of this fee as contributed capital – not simply the cost of the meter and installation. Given the misapplication of the term, the contributed capital and the lack of privity for 36 of the 56 customers, Staff believes that Mr. Corvino's argument is not well-founded. Staff recommends that the Commission deny his request on reconsideration.³

Respectfully submitted this 22 day of December 2008.


Donald L. Howell, II
Deputy Attorney General

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³ Mr. Corvino also asked the Commission to "affirm the Court's decision and order" regarding full refunds to the plaintiffs in the civil action. Reconsideration Comments at 2. There is no need to "affirm" because the Court clearly has authority to order full refunds under its equity powers.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 2ND DAY OF DECEMBER 2008, SERVED THE FOREGOING **STAFF COMMENTS ON RECONSIDERATION** IN CASE NO. MSW-W-08-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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