

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

MEMORANDUM

MAY 11, 1993

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BEDELL, KNOWLES) *AKM*
DIVISION OF WATER AND WASTEWATER (WILLIS, CROUCH, FUCHS, *W*
MERCHANT, MESSER, WASHINGTON, K. WILLIAMS) *W*
DIVISION OF AUDITING AND FINANCE (LESTER, HICKS, *RH*
CAUSSEAU) *W*

RE: UTILITY: LEHIGH UTILITIES, INC.
DOCKET NO. 911188-WS
COUNTY: LEE

CASE: APPLICATION FOR A RATE INCREASE IN LEE COUNTY BY
LEHIGH UTILITIES, INC.

AGENDA: MAY 18, 1993 - CONTROVERSIAL - PARTIES MAY NOT
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\WAW\WP\911188A.RCM

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CASE BACKGROUND

Lehigh Utilities, Incorporated (Lehigh or utility) is a class A water and wastewater utility providing service to approximately 10,000 customers in Lehigh Acres, Lee County, Florida. On December 9, 1991, Lehigh filed an application in this docket for increased water and wastewater rates. On April 24, 1992, the utility filed revised information which satisfied the minimum filing requirements (MFRs). Accordingly, April 24, 1992, was established as the official date of filing for this proceeding.

By Order No. PSC-92-0300-PCO-WS, issued May 5, 1992, the Commission acknowledged the intervention of the Office of Public Counsel (OPC) in this docket. Also, on May 5, 1992, the Commission granted intervention to Lehigh Acres Fire Control and Rescue District by Order No. PSC-92-0299-PCO-WS.

A customer service hearing was held on October 1, 1992, in Lehigh Acres, Florida, and a formal hearing was held on October 28, 29, and 30, 1992, in Lehigh Acres, Florida. By Order No. PSC-93-0301-FOF-WS, issued on February 25, 1993, the Commission approved an increase in the utility's rates and charges. On March 11, 1993, OPC timely filed a Petition for Reconsideration of Order No. PSC-93-0301-FOF-WS. On March 12, 1993, Lehigh timely filed a Motion for Reconsideration of Order No. PSC-93-0301-FOF-WS and a Request for Oral Argument. On March 22, 1993, Lehigh filed a Response to Public Counsel's Petition for Reconsideration. This recommendation addresses the petitions for reconsideration and the request for oral argument.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Lehigh's Request for Oral Argument on its Motion for Reconsideration of Order No. PSC-93-0301-FOF-WS?

RECOMMENDATION: No, the Commission should deny Lehigh's request for oral argument. (BEDELL, KNOWLES)

STAFF ANALYSIS: On March 12, 1993, when Lehigh filed its Motion for Reconsideration of Order No. PSC-93-0301-FOF-WS, the utility also requested oral argument. In its request, Lehigh states that oral argument should be granted because it would facilitate the Commission's "understanding of the evidence and precedents and their relationship to the OPEB issue." Lehigh also states that oral argument will aid in the Commission's understanding of its view of the calculation of the correct income tax expense. Staff believes that the utility's motion and its response to OPC's petition has every possible argument presented and that oral argument is not necessary to further explicate the utility's view. Therefore, Staff recommends that Lehigh's request for oral argument should be denied.

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ISSUE 2: Should the Commission grant OPC's Petition for Reconsideration regarding its decision to disallow a negative acquisition adjustment related to the transfer of Lehigh to Seminole Utility Company?

RECOMMENDATION: No. Staff recommends that OPC's Petition for Reconsideration on this issue should be denied. (BEDELL, KNOWLES)

STAFF ANALYSIS: In its petition for reconsideration of Order No. PSC-93-0301-FOF-WS, OPC states that the Commission should have made a negative acquisition adjustment of \$3,600,000 to the utility's rate base as a result of the purchase of the system by the transfer of stock to Lehigh's parent company, Seminole Utility Company, a wholly-owned subsidiary of Southern States Utilities, Inc. (SSU). However, in Order No. 25391-A, issued February 24, 1992, the Commission stated that the utility's rate base did not change as a result of the stock transfer and, therefore, an acquisition adjustment was not warranted. OPC stated in its petition that evidence was provided at the hearing on this issue, but that the Commission did not address or consider the evidence in its Order. Therefore, OPC argues that the Commission erred in its decision.

Lehigh responded by stating that OPC's petition does not meet the standard required for the reconsideration of final orders. The utility cites Diamond Cab Company of Miami v. King, 146 So. 2d 889, 891 (Fla. 1962) for the circumstances in which reconsideration is appropriate. In Diamond Cab, the Court held that the purpose of a petition for reconsideration is to bring to the agency's attention a point which it ... "overlooked or failed to consider when it rendered its order in the first instance." Lehigh states that OPC's petition is defective due to its failure to meet this standard.

In addition, Lehigh cited the Court's decision in Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317, (Fla. 1974), wherein the Court held that a petition for reconsideration "should be based upon specific factual matters set forth in the record and susceptible to review." Lehigh argues that OPC's petition does not meet this standard and should be denied. Furthermore, in its response, Lehigh also states that OPC makes arguments in its petition which were not previously raised and should therefore be deemed as having been waived.

In its response to OPC's petition, Lehigh states that OPC failed to point out any factual matter that the Commission overlooked. The utility asserts that the Commission did not overlook or fail to consider the issue of the negative acquisition

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adjustment in this case, but instead that the Commission determined that the acquisition adjustment was not appropriate in this instance, and held accordingly.

Lehigh also cites Order No. 25729, issued February 17, 1992, as support for its contention that the Commission's decision to deny the negative acquisition adjustment was appropriate in this case. In Order No. 25729, the Commission determined that whether or not an acquisition adjustment is appropriate should be evaluated on the basis of the net book value of the assets of the selling utility. Lehigh states that it is not aware of any Commission precedent which applied an acquisition adjustment to the rate base of a utility which was purchased through a stock transfer. The assets of the selling utility would be irrelevant in the stock transfer, and therefore, would not be appropriately made subject to any acquisition adjustment.

Staff recommends that Lehigh's response to OPC's petition is correct as to the appropriate legal standard for a motion for reconsideration. Staff also agrees with Lehigh on the substantive point that the Commission based its decision on the evidence in the record that the purchase of Lehigh by a transfer of stock had no affect on the value of the utility's rate base. Accordingly, no negative acquisition adjustment is appropriate. OPC failed to identify in its petition any error in fact or law or evidence that the Commission overlooked or failed to consider. Therefore, Staff recommends that OPC's Petition for Reconsideration on this issue be denied.

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ISSUE 3: Should the Commission grant OPC's Request for Reconsideration regarding its decision on the allocation of a portion of the gain on the sale of St. Augustine Shores to the Lehigh customers?

RECOMMENDATION: No. (K. WILLIAMS)

STAFF ANALYSIS: United Florida Utilities Corporation (UFU) sold substantially all of the assets of UFU's St. Augustine Shores water and wastewater utility division to St. Johns County, Florida, in 1991. The net after-tax gain associated with this sale was \$4.2 million.

The Commission ordered that a portion of the net after-tax gain was not to be allocated to the Lehigh ratepayers because: the ratepayers did not acquire a proprietary interest in the utility property that is being used for utility service; the shareholders bear the risk of loss in their investments and not the ratepayers; and finally, Lehigh's ratepayers did not contribute to the utility's recovery of its investment in St. Augustine Shores.

In its petition, OPC first disagrees with the Commission's finding that "ratepayers do not acquire a proprietary interest in utility property that is being used for utility service." However, OPC then states that it is not relying upon any claim of proprietary interest in its petition.

In support of its petition, OPC cites Order No. PSC-93-0295-FOF-WS, which is a final rate case order for Mad Hatter Utilities, Inc. OPC states that the Mad Hatter order compensated the utility for the abandonment of plant in which the customers had no proprietary interest.

OPC further points out that, in the telecommunications industry, the customers bear the risk of loss when the utility plant becomes obsolete. OPC asserts that when utility plant is retired due to technological obsolescence, the Commission allows the recovery of the loss from the customers. Therefore, OPC argues that the customers do bear the risk of loss, even though the customers lack proprietary interest in the utility assets.

Lastly, OPC argues that there is nothing new about the Commission associating the customers' interest with the gain or loss of utility assets. OPC states that in Docket No. 820007-EU, Order No. 11307, the Commission cited its earlier Gulf and FP&L cases, Dockets Nos. 810136-EU and Docket No. 810002-EU,

respectively, as authority for the recognition of gains or losses on utility assets above the line.

In summary, OPC argues "that the isolation of customers from risk associated with utility assets is illusory and contrary to long standing Commission practice. Customers' interest is inextricably associated with the risk of loss of utility assets." OPC contends that the Commission routinely requires customers to answer for risks associated with utility assets and it is patently unfair for the Commission to rely on the customers' lack of a proprietary interest to deprive them of the benefits of a gain.

Lehigh responds first to OPC's disagreement with the Commission's finding that the "ratepayers do not acquire a proprietary interest in utility property that is being used for utility service." Lehigh states that "[T]he Office of Public Counsel does not specify any alleged mistake of fact or law as a basis for the Commission's decision." Furthermore, Lehigh points out that OPC acknowledges that OPC is not relying upon any claim of proprietary interest in the St. Augustine Shores facilities in its motion for reconsideration.

Lehigh states that OPC's petition reargues the unsupported claim made in its posthearing brief that "this Commission has historically required the gain (or loss) on the sale of utility property to be shared with customers." Lehigh claims that the substance of Public Counsel's theory is simply dressed up in different language in its petition where it states "the Commission routinely assigns to the Citizens the risk of price and loss." Lehigh contends that OPC's rehashing of arguments, including prior Commission orders previously addressed in OPC's testimony and the parties' posthearing briefs, provides no basis for reconsideration.

Lehigh contends that OPC attempts to raise a new theory in support of its previously rejected argument that the Commission routinely requires gains (or losses) on the sale of utility property to be shared with customers. As to OPC's reference to the Mad Hatter case, Lehigh argues that the Commission found that the utility was entitled to recover a loss arising out of the abandonment of two wastewater treatment plants. The record demonstrated that the utility's decision to abandon the plants and interconnect with Pasco County was reasonable and prudent.

Lehigh disagrees with OPC's belief that the Mad Hatter order provides a basis for a motion for reconsideration for a number of reasons. First, OPC attempts to draw a generic analogy between a gain or loss on condemnation of property in the St. Augustine

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Shores matter and a loss on abandonment of property in the Mad Hatter docket. Also, in the Mad Hatter decision, the Commission determined that the customers should bear the loss incurred from the abandonment of two wastewater plants; however, the Commission's decision in the Mad Hatter case was based on evidence that the utility's decision to abandon the plants and interconnect with Pasco County was reasonable and prudent. Therefore, the Commission determined that the loss should be borne by the ratepayers. Lehigh argues that one could only presume that if the loss was determined to be imprudent the loss would have been borne by the shareholders. Consequently, OPC's generic position that the customers normally bear the loss of abandoned property ignores the factual basis for the Mad Hatter decision.

In addition, Lehigh asserts that the facts of the Mad Hatter case do not overcome the distinguishing facts in the Lehigh case. Lehigh contends that the distinguishing facts in the Lehigh order are as follows: the St. Augustine Shores utility systems were condemned by St. Johns County and that the condemnation resulted in both the sale of the assets and the sale of the customer base; the sale of St. Augustine Shores was concluded before the transfer of Lehigh to Southern States; the entire utility system was regulated by St. Johns County and not the Florida Public Service Commission; and Lehigh ratepayers provided no contribution to or recovery of the investment.

Staff agrees with Lehigh's argument that the evidence presented in the Mad Hatter case involved different facts and circumstances distinguishing it from the Lehigh case. One of the distinguishing facts is that St. Augustine Shores condemnation resulted in both the sale of the assets and the customer base. Conversely, the ratepayers that were served by the Mad Hatter abandoned plants are the same ratepayers that were served by the interconnection with Pasco County. Therefore, Staff believes that the gain should not be allocated to ratepayers that did not provide any contribution to or recovery of the investment as did the ratepayers in the Mad Hatter case.

Staff also agrees with the utility's argument that the Mad Hatter case was based on evidence that reflected the utility's actions were prudent. That finding was critical to the Commission's determination that the loss should be borne by the ratepayers. In the alternative, had the Commission found the utility's decision to be imprudent, the shareholders would have borne the loss. Consequently, OPC's argument that the Commission routinely allows the recovery of losses on utility plant is in

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error. As such, the Commission should not routinely allow recovery of gains unless the circumstances warrant such treatment.

In the instant Lehigh order, the Commission did make a determination that the gain should not be allocated to Lehigh's ratepayers because ratepayers do not acquire a proprietary interest in utility property. In fact, the ratepayers never acquire any proprietary interest unless at some point a ratepayer actually purchases an equity ownership in a utility.

Pursuant to Diamond Cab (see Issue 1), the purpose of a petition for reconsideration is to bring to the agency's attention an issue or fact which it failed to consider or overlooked in making its decision. Staff agrees with Lehigh that OPC's petition for reconsideration of this issue does not present any arguments regarding the sale of utility assets that were not previously considered by the Commission. Therefore, staff recommends that OPC's request for reconsideration be denied.

ISSUE 4: Should the Utility's Motion for Reconsideration with respect to income taxes be granted?

RECOMMENDATION: No, the Utility's Motion for Reconsideration with respect to income taxes should be denied. However, the Commission on its own motion should reconsider its decision on income tax expense and decrease Lehigh's income tax expense by \$5,730 for water and increase wastewater by \$109,137 to correct an error from double counting interest. The record should not be supplemented with the Tax Sharing Agreement between Minnesota Power and Light Company and Lehigh.

STAFF ANALYSIS: In its Motion for Reconsideration, Lehigh argues that the negative income tax expense included in Order No. PSC-93-0301-FOF-WS is incorrect. Staff has reviewed the motion and recommends that the Utility has failed to show any error in fact, law or policy. However, in reviewing the income tax calculation, staff determined that the calculation double counted interest and recommends that income tax expense be decreased by \$5,730 for water and increased by for \$132,918 wastewater to reflect that double counting. The Utility's arguments and staff's recommended correction are addressed below.

All parties initially agreed that the tax expense was a fall-out issue meaning that the tax expense was a mathematical calculation resulting from the tax effect of various adjustments made to the Utility's revenues, expenses, rate base and capital. Most of the Utility's argument for reconsideration is based on the mistaken perception that the Commission calculated income tax expense using historic test year data. All data used in the calculation of income tax expense was based on projected test year data.

The Utility argues that there is no record support for the negative income tax expense calculation. However, Lehigh's MFRs for the projected test year for wastewater (Schs. B-2, Page 1 of 1; C-1, Page 1 of 2 and C-2, Page 1 of 2) show the starting point of the calculation contained in the Order. The Utility projected a negative total income tax expense from jurisdictional wastewater operations of (\$227,966) which was a larger negative total income tax expense than the projected (\$224,293) total negative income tax expense per books for the same period. On MFR schedule C-2, Page 1 of 2, the calculation of state income tax expense was limited due to the net operating loss (NOL). Further record evidence of NOLs during the projected test year is found at pages 382 and 383 of the transcript where witness Gangnon was cross-examined.

(By Ms. Bedell): Does that schedule indicate that the Company does have ITC carry-forwards?
(Witness Gangnon): Yes, it does.

(Ms. Bedell): Okay. Isn't it also correct that any ITC carry-forwards will cancel out any tax liability?
(Witness Gangnon): On a current basis, yes. Except for current basis before the rate increase, we show a negative current tax. In other words, there is a refund due to the Utility.

(Ms. Bedell): And you are saying a current basis, what -
(Witness Gangnon): For the current taxes payable.

(Ms. Bedell): For the test year or for --
(Witness Gangnon): For the test year.

(Ms. Bedell): Okay.
Commissioner Easley: Is that because of the ITC's?

(Witness Gangnon): No, ma'am. It's because it generates that projected income before the rate increase would show a net current loss.

Commissioner Easley: Thank you.

(Ms. Bedell): But assuming that you were to get a rate increase, would you then have a positive?
(Witness Gangnon): Yes.

(Ms. Bedell): And then would you be able to use the ITC carry-forwards?
(Witness Gangnon): Yes, we would.

(Ms. Bedell): Okay.
(Witness Gangnon): Or a portion thereof depending upon the dollar amount.

(Ms. Bedell): Correct.

Lehigh's discussion in its second, third, fourth and fifth paragraphs under part "A" of its motion, regarding the absence of negative tax expense in or net operating loss carry-forwards from the historic base year, fails to show any error since the historic test year was not used in the calculation. The Order does not address NOLs or NOL carry-forwards from the base year under this or

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any other issue. Therefore, the Utility has failed to show any mistake in fact, law or policy.

The Utility is correct in its argument that the testimony indicates that with rate relief, there would be no net operating loss in the projected test year. However, that line of questions was directed toward Issue 37 and the use of investment tax credit carry-forwards. Examination of the calculation attached as Schedule No. 2 indicates that the size of the original negative total tax expense and the relative size of the increase would determine whether or not there actually would be a positive tax expense after the increase. Again the Utility has failed to show any error of fact, law or policy.

As previously stated, all parties agreed that the income tax expense amount was a result of other adjustments that would be made to Lehigh's filing. It is mathematically possible for a negative tax expense to be the result of those other adjustments. The Order takes the tax effect of each of the Commission adjustments made to either revenues or expenses in the column headed Utility Adjusted Test Year, makes adjustments for changes to rate base and capital and corrects the parent debt adjustment to exclude the state income tax rate and reconcile it to the rate base and capital structure elsewhere determined in the Order. Use of some of the investment tax credit carry-forwards is recognized by incorporating them in the capital structure while not reducing the tax expense.

In its Motion for Reconsideration, Lehigh cites for support three decisions of this Commission: the St. Augustine Shores Utilities decision, Order No. 20017, at 29, issued September 16, 1988; the Magnolia Manor Water Works decision, Order No. 24928, at 9, issued August 19, 1991; and the Homosassa Utilities, Inc. decision, Order No. 25139, at 12, issued September 30, 1991. Those orders deal with net operating loss carry-forwards on either a consolidated or stand alone basis. Those cases are not applicable to this proceeding since the calculation in Order No. PSC-93-0301-FOF-WS was based entirely on the projected test year of Lehigh and did not consider net operating loss carry-forwards on either a consolidated or stand alone basis.

As for this proceeding, staff believes that the Utility's arguments concerning net operating loss carry-forwards do not show any error in the Commission's decision. The calculation began with Utility's projection for the test year and was a fall out of the adjustments contained in the Order.

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Paragraph 8 of the Utility's motion states that staff bears the burden of proving that tax loss carry-forwards exist because staff raised the tax issues. First, the Utility at all times bears the burden of proof in a rate proceeding. See South Florida Natural Gas v. Public Service Commission, 534 So.2d 695 (Fla. 1988). Also, the Commission did not calculate the income tax expense in the manner described by the Utility; therefore, no proof of tax loss carry-forwards was necessary for the historic test year in order to arrive at the income tax expense.

In paragraph 10 of its motion, the Utility argues that Order No. PSC-93-0301-FOF-WS violates the prohibition against retroactive ratemaking because it reduces the annual revenue requirements to recognize tax benefits arising out of past losses. Again the Utility's argument rises out of a misunderstanding of how the income tax expense was calculated.

Staff does not believe that the Tax Sharing Agreement between Minnesota Power and Light and Lehigh adds any necessary information to the record. The tax calculation was based on the Utility's MFRs as filed and amended by the tax effect of the various adjustments made to revenues, expenses, rate base and capital that are determined elsewhere in Order No. PSC-93-0301-FOF-WS.

Thus, staff recommends denying the Utility's Motion for Reconsideration as having failed to show any error in fact, law or policy. However, Staff recommends that the Commission reconsider on its own motion the income tax calculation to correct an error which staff found when reviewing the calculation in response to the Utility's petition. Staff recommends that income tax expense be decreased by \$5,730 for water and increased by \$132,918 for wastewater to correct an error from double counting interest.

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ISSUE 5: Should the Commission grant Lehigh's Motion for Reconsideration with respect to adjustments to the utility's FAS 106 costs?

RECOMMENDATION: No. However, the Commission should make one correction to Order No. PSC-93-0301-FOF-WS. (Lester, Bedell)

STAFF ANALYSIS: In its Motion for Reconsideration, the utility argues that the Commission erred in adjusting the utility's FAS 106 costs to reflect costs associated with an OPEB plan referred to as Proposed Plan 2. Each of the several points raised by the utility is discussed separately below.

First, the utility argues that the Commission did not vote on this issue at the January 19, 1993, Agenda Conference, and therefore the scope of review should not be limited by the rules for reconsideration. Staff has reviewed the Commission vote sheet from the January 19th Agenda Conference which reflects the Commissioners' votes on this issue and all other issues of the Lehigh recommendation. The vote sheet is dispositive of the Commissioners' decisions at Agenda and staff recommends that no mistake of fact, law or policy has been shown. Further, Staff would note that if the Commissioners had not voted on this issue, it would be totally inappropriate to entertain the rest of Lehigh's arguments discussed in this issue.

The second issue raised by Lehigh is that the Order mischaracterized witness Gangnon's testimony with regard to the OPEB plan. Staff believes that the record supports a finding that witness Gangnon's testimony was contradictory in that he acknowledged that Southern States Utilities, Inc., was considering several plans in its actuarial study as a way to reduce OPEB costs (EX 21, p 36), while also stating that, "there are no present plans to reduce either the kinds or level of post-retirement benefits now or in the future." (TR 375)

The third point of Lehigh's Motion is a request by the utility that the Commission take official recognition of the rebuttal testimony of Bert T. Phillips and the rebuttal testimony and exhibits of Peter J. Neuwirth, which are part of the record in Docket No. 920655-WS. As grounds for this request, the utility relies on the Commission's decision in Order No. 20489 issued December 21, 1988 (Docket No. 871394-TP - Review of the Requirements Appropriate for Alternative Operator Services and Public Telephones.)

Staff believes that Order No. 20489 shows that the Commission did take official recognition of a federal court decision entered into after the final hearing in the docket but prior to the Commission's final decision. The utility's request is to take official recognition after the Commission's final decision. Further review of Order No. 20489 also shows that the Commission denied, as untimely, GTE's motion for official recognition of an order where the motion for official recognition was filed on the day of the Special Agenda Conference. Lehigh also cites as authority for its position Sections 90.202 (6) and 120. 61, Florida Statutes. While these statutory provisions allow sworn testimony from the record of one case to be entered into the record of another case, none of them provide that it is appropriate to supplement the record posthearing or after entry of a final order. Therefore, staff recommends that the utility's request to supplement the record with the testimony and exhibits of witnesses Neuwirth and Phillips is an untimely request. Staff further recommends that supplementing the record is not appropriate or necessary for the disposition of Lehigh's motion for reconsideration.

The fourth issue raised by Lehigh for reconsideration of the FAS 106 cost adjustments is that it was a mistake of fact to conclude that Lehigh has not yet adopted an OPEB plan. Staff believes that Lehigh misapprehends the Commission's conclusion that a plan will not be adopted until sometime in 1993. The rationale for the adjustment based on Proposed Plan 2 is that, as an accounting standard, FAS 106 had not been adopted by Lehigh and would not be until 1993. (EX 21, p. 18) Witness Gangnon states that SSU adopted a formal OPEB plan on January 1, 1991. (EX 21, p. 51) Staff notes that the FAS 106 expense adjustment is a pro forma adjustment since the test year ends on September 30, 1992, and SSU will adopt FAS 106 accounting in 1993.

However, staff agrees with Lehigh that the one phrase in the Order that Lehigh has cited as factually incorrect, regarding witness Gangnon's testimony on this issue, is incorrect. That phrase is in the last paragraph on page 26 of the Order and is underlined in the text set forth below:

First, we have substituted the lowest cost OPEB plan to be used in calculating the OPEB expense for the following reasons: witness Gangnon's testimony that SSU is considering several proposed plans contained in its actuarial study; his testimony that a plan will not be adopted until sometime in 1993; his lack of knowledge concerning several aspects of Lehigh's OPEB plan; and OPC

witness Montanaro's testimony that there is a trend to reduce these costs. Accordingly, we have used the utility's Proposed Plan 2 to determine the appropriate SFAS 106 costs. The annual net periodic cost of this plan is \$730,793 for SSU.

The underlined phrase is incorrect in that Lehigh's witness Gangnon did testify that Lehigh adopted a formal OPEB plan on January 1, 1991 (although he also testified that the utility will not adopt FAS 106 until 1993). Therefore, Staff recommends that the Commission correct the Order by deleting this phrase. Staff would point out that this phrase did not appear in the Staff Recommendation on which the Commission voted, nor did this information form the basis for Staff's recommendation that the Commission approve Lehigh's Proposed Plan 2. Staff's recommendation and the Commission's decision was based on the evidence in the record that demonstrated that Lehigh was considering various alternative plans that might reduce its OPEB expenses, as well as all of the other evidence in the record that did not support the level of OPEB expenses Lehigh requested. For this reason, Staff is not recommending reconsideration of the Commission's decision.

The fifth issue raised by Lehigh as basis for reconsideration of the FAS 106 cost adjustments is the reference in Order No. PSC-93-0301-FOF-WS to witness Gangnon's lack of knowledge concerning the OPEB plan. Lehigh's argument in this regard makes a factual issue out of the Commission's discretion to give evidence whatever weight that it deserves. In this case, Mr. Gangnon's testimony was not given the weight the utility desired. This is not a mistake in fact, law or policy.

The utility also seeks reconsideration on the basis that there is no competent substantial evidence to support the Commission's conclusion that there is a trend to reduce FAS 106 costs and that, therefore, the OPEB Proposed Plan 2 is appropriate. Again the utility raises the issue of the competency of the evidence which is not an appropriate basis for reconsideration. The utility has shown no mistake of fact, law or policy.

Lehigh's final argument in support of the FAS 106 adjustments is that use of FAS 106 requires reliance on the utility's substantive plan over any other plan. In both the United Telephone Company of Florida and the Florida Power Corporation rate cases, the Commission approved FAS 106 for ratemaking purposes. The Commission also made adjustments to FAS 106 costs requested by the companies in these orders. (See PSC-92-0708-FOF-TL, p. 36 and PSC-

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92-1197-FOF-EI, p. 11) Staff believes substituting Proposed Plan 2 for SSU's current OPEB plan is an appropriate regulatory adjustment given the probability that SSU may reduce its OPEB costs in the future and the weaknesses and inconsistencies in SSU's case. Staff notes that, for regulatory purposes, the Commission is not bound by the substantive plan.

In conclusion, staff believes the utility's motion for reconsideration of the FAS 106 cost adjustments should be denied because the utility has not shown any mistake of law, fact or policy in its motion.

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ISSUE 6: What is the appropriate revenue requirement?

RECOMMENDATION: Based on the changes made in this recommendation, the following revenue requirement should be approved: (K. WILLIAMS)

	<u>TOTAL</u>	<u>DECREASE/INCREASE</u>	<u>PERCENTAGE</u>
Water	\$1,858,685	(\$6,000)	(0.32%)
Wastewater	\$2,022,972	\$114,280	5.65%

STAFF ANALYSIS: Based on the reconsideration of income taxes recommended in Issue No. 3, we recommend that the revised revenue requirement should be \$1,858,685 and \$2,137,252 for water and wastewater, respectively. The increases to the revenue requirements from Order No. PSC-93-0301-FOF-WS are shown in the following table for comparative purposes. The revised net operating income schedules are attached to this recommendation.

	<u>REVENUES PER STAFF RECOMM. RECONSIDERATION</u>	<u>REVENUES PER ORDER NO. PSC- 93-0301-FOF-WS</u>	<u>\$ CHANGE</u>	<u>% CHANGE</u>
WATER	\$1,858,685	\$1,864,685	(\$6,000)	(0.32%)
WASTEWATER	\$2,137,252	\$2,022,972	\$114,280	5.65%

ISSUE 7: What are the appropriate water and wastewater rates and what will be the appropriate statutory rate reduction in four years as required by Section 367.0816, Florida Statutes?

RECOMMENDATION: Based on the correction to income tax expense in Issue 3, the revenue requirement changed, therefore the rates as set forth on Schedules Nos. 3-A and 3-B have been adjusted accordingly. The recommended rates should be designed to generate revenues of \$1,858,685 for water and \$2,137,252 for wastewater using the base facility charge rate structure. The approved rates will be effective for meter readings on or after thirty days from the stamped approval date of the revised tariff sheets. The revised tariff sheets will be approved upon staff's verification that the tariffs are consistent with the Commission's decision and the proposed customer notice is adequate.

In compliance with Section 367.0816, Florida Statutes, the water rates should be reduced by \$39,259 and the wastewater rates should be reduced by \$29,616 at the expiration of four years. The Utility should be required to file tariffs no later than one month prior to the actual date of the required rate reduction. The Utility also should be required to file a proposed "customer letter" setting forth the lower rates and the reason for the reduction. (WASHINGTON)

STAFF ANALYSIS: The permanent rates requested by the utility are designed to produce revenues of \$2,051,795 and \$2,420,658 for water and wastewater, respectively. The requested revenues represent increases of \$430,552 (26.56%) for water and \$1,215,082 (100.79%) for wastewater based on the test year ending September 30, 1992.

Based on the correction to income tax expense in Issue 3, the revenue requirement changed, therefore the rates as set forth on Schedules Nos. 3-A and 3-B have been adjusted accordingly. Staff recommends that the final rates approved for the Utility should be designed to produce revenues of \$1,858,685 for water and \$2,137,252 for wastewater as recommended using the base facility charge rate design. These revenues represent an increase of 14.65% for water and 77.28% for wastewater.

Section 367.0816, Florida Statutes, requires that rate case expense be apportioned for recovery over a period of four years. The statute further requires that the rates of the utility be reduced immediately by the amount of rate case expense previously included in the rates. This statute applies to all rate cases filed on or after October 1, 1989.

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The water rates should be reduced by \$39,259 and the wastewater rates should be reduced by \$29,616 as shown in Schedules Nos. 4-A and 4-B. The revenue reductions reflect the annual rate case amounts amortized (expensed) plus the gross-up for regulatory assessment fees.

The Utility should be required to file tariffs no later than one month prior to the actual date of the required rate reduction. The Utility also should be required to file a proposed "customer letter" setting forth the lower rates and the reason for the reduction.

If the Utility files this reduction in conjunction with price index or pass-through rate adjustments, separate data shall be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense.

A comparison of the Utility's original rates, interim rates, requested rates, and staff's recommended rates is shown on Schedules Nos. 3-A and 3-B. Schedules Nos. 4-A and 4-B reflect staff's recommended rates and rate decrease in four years.

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ISSUE 8: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed after the final order showing any corrections to Order No. PSC-93-0301-FOF-WS which may be required by the Commission's Reconsideration and after the proper tariffs are filed. (BEDELL)

STAFF ANALYSIS: No refund is pending in this docket, therefore the docket may be closed upon the utility's filing and Staff's approval of reissued tariff sheets.

LEHIGH UTILITIES, INC.
 STATEMENT OF WATER OPERATIONS
 TEST YEAR ENDED SEPTEMBER 30, 1992

SCHEDULE NO. 1-A
 JOCKET NO. 911188-WS

DESCRIPTION	TEST YEAR PER UTILITY	UTILITY ADJUSTMENTS	UTILITY ADJUSTED TEST YEAR	COMMISSION ADJUSTMENTS	COMMISSION ADJUSTED TEST YEAR	REVENUE INCREASE	REVENUE REQUIREMENT
1 OPERATING REVENUES	\$ 1,621,243	\$ 430,552	\$ 2,051,795	(430,552)	\$ 1,621,243	\$ 237,442	1,858,685
OPERATING EXPENSES						14.65%	
2 OPERATION AND MAINTENANCE	\$ 946,416	\$ 99,578	\$ 1,045,994	(40,703)	\$ 1,005,291	\$ 0	1,005,291
3 DEPRECIATION	198,246	15,042	213,288	(18,791)	194,497	0	194,497
4 AMORTIZATION	0	0	0	0	0	0	0
5 TAXES OTHER THAN INCOME	228,164	7,113	235,277	(19,375)	215,902	10,685	226,587
6 INCOME TAXES	3,673	115,553	119,226	(133,030)	(13,804)	99,697	85,893
7 TOTAL OPERATING EXPENSES	\$ 1,376,499	\$ 237,286	\$ 1,613,785	(211,899)	\$ 1,401,886	\$ 110,382	1,512,268
8 OPERATING INCOME	\$ 244,744	\$ 193,266	\$ 438,010	(218,653)	\$ 219,357	\$ 127,060	346,417
9 RATE BASE	\$ 4,353,973		\$ 4,353,973		\$ 3,575,306		\$ 3,575,306
10 RATE OF RETURN	5.62%		10.06%		6.14%		9.69%

LEHIGH UTILITIES, INC.
 STATEMENT OF WASTEWATER OPERATIONS
 TEST YEAR ENDED SEPTEMBER 30, 1992

SCHEDULE NO. 1-B
 DOCKET NO. 911188-WS

DESCRIPTION	TEST YEAR PER UTILITY	UTILITY ADJUSTMENTS	UTILITY ADJUSTED TEST YEAR	COMMISSION ADJUSTMENTS	COMMISSION ADJUSTED TEST YEAR	REVENUE INCREASE	REVENUE REQUIREMENT
1 OPERATING REVENUES	\$ 1,205,576	\$ 1,215,082	\$ 2,420,658	(\$ 1,215,082)	\$ 1,205,576	\$ 931,676	\$ 2,137,252
OPERATING EXPENSES						77.28%	
2 OPERATION AND MAINTENANCE	\$ 842,574	\$ 77,504	\$ 920,078	(\$ 38,895)	\$ 881,183	\$ 0	\$ 881,183
3 DEPRECIATION	355,628	3,730	359,358	(10,916)	348,442	0	348,442
4 AMORTIZATION	0	0	0	0	0	0	0
5 TAXES OTHER THAN INCOME	258,475	42,823	301,298	(54,679)	246,619	41,925	288,545
6 INCOME TAXES	(227,966)	407,677	179,711	(421,389)	(241,678)	284,511	42,833
7 TOTAL OPERATING EXPENSES	\$ 1,228,711	\$ 531,734	\$ 1,760,445	(\$ 525,878)	\$ 1,234,567	\$ 326,436	\$ 1,561,003
8 OPERATING INCOME	\$ (23,135)	\$ 683,348	\$ 660,213	(\$ 689,204)	(\$ 28,991)	\$ 605,240	\$ 576,249
9 RATE BASE	\$ 6,562,749		\$ 6,562,749		\$ 5,947,368		\$ 5,947,368
10 RATE OF RETURN	-0.35%		10.06%		-0.49%		9.69%

LEHIGH UTILITIES, INC.
 ADJUSTMENTS TO OPERATING STATEMENTS
 TEST YEAR ENDED SEPTEMBER 30, 1992

SCHEDULE NO. 1-C
 PAGE 1 OF 2
 DOCKET NO. 911188-WS

EXPLANATION	WATER	WASTEWATER
(1) OPERATING REVENUES		

A. Reverse revenue increase utility contends is needed to achieve its revenue requirement.	(\$430,552)	(\$1,215,082)
	=====	=====
(2) OPERATION AND MAINTENANCE EXPENSES		

A. To record cash discounts above the line.	(\$360)	(\$360)
B. To adjust to index of 3.63%.	(2,268)	(1,722)
C. To remove test year DER fines.	0	(7,500)
D. To remove undocumented expenses.	(2,000)	(700)
E. To reflect adjustments to FASB 106 expense.	(41,474)	(32,450)
F. To remove gas promotional expenses.	(365)	(285)
G. To remove nonrecurring costs associated with mergers.	(605)	(474)
H. To remove charitable contributions.	(103)	(78)
I. To remove non-recurring professional study expenses.	(1,020)	(1,020)
J. To remove chamber of commerce dues & expenses.	(140)	(140)
K. To remove relocation expenses.	(1,681)	(1,316)
L. To adjust rate case expense.	9,313	7,150
	-----	-----
Total	(\$40,703)	(\$38,895)
	=====	=====
(3) DEPRECIATION EXPENSE		

A. To remove depreciation expense on non-used & useful plant.	(\$22,184)	(\$18,152)
B. To amortize CIAC on margin reserve.	3,393	7,236
	-----	-----
Total	(\$18,791)	(\$10,916)
	=====	=====
(4) TAXES OTHER THAN INCOME		

A. To remove RAFs on the requested revenue increase.	(\$19,375)	(\$54,679)
	=====	=====
(5) PROVISION FOR INCOME TAXES		

A. To reflect income taxes on the revenue requirement.	(\$133,030)	(\$421,389)
	=====	=====

EXPLANATION	WATER	WASTEWATER
(6) <u>OPERATING REVENUES</u>		
A. Additional revenues to achieve revenue requirement.	\$237,442	\$931,676
	=====	=====
(7) <u>TAXES OTHER THAN INCOME</u>		
A. To reflect RAFs on the revenue increase.	\$10,685	\$41,925
	=====	=====
(8) <u>PROVISION FOR INCOME TAXES</u>		
A. To reflect income taxes on the revenue requirement.	\$99,697	\$284,511
	=====	=====

DOCKET NO. 911188-WS
May 11, 1993

PETITION FOR INCREASED WATER AND WASTEWATER RATES
IN LEE COUNT BY LEHIGH UTILITIES, INC.

Schedule 2
Page 1 of 2

Calculation of Income Taxes - Water

<u>(1,823)</u>	State taxable income (MFR Sch. C-2, Page 1 of 2)
<u>(99,578)</u>	O&M increase (MFR Sch. B-1, Page 1 of 1)
<u>(15,042)</u>	Net depreciation increase (MFR Sch. B-1, Page 1 of 1)
<u>(7,113)</u>	Taxes other than income increase (MFR Sch. B-1, Page 1 of 1)
<u>430,552</u>	Revenue increase (MFR Sch. 1-2, Page 1 of 1)
<u>306,996</u>	Sub-total
<u>(430,552)</u>	Revenue decrease (PSC-93-0301-FOF-WS, Sch. 3-A)
<u>40,703</u>	O&M decrease (PSC-93-0301-FOF-WS, Sch. 3-A)
<u>18,791</u>	Net depreciation decrease (PSC-93-0301-FOF-WS, Sch. 3-A)
<u>19,375</u>	Taxes other than income decrease (PSC-93-0301-FOF-WS, Sch 3-A)
<u>(44,687)</u>	Sub-total
<u>27,153</u>	Interest reconciliation $((4.96\% * 10916722) - (4.93\% * 9517043)) * (3575306 / 9517043)$ (MFR Sch. D-1, page 1 of 2 & PSC-93-0301-FOF-WS, Sch. 3-A)
<u>(17,534)</u>	Sub-total
<u>127,060</u>	NOI deficiency (PSC-93-0301-FOF-WS, Sch. 3-A)
<u>109,526</u>	Sub-total
<u>105,483</u>	Taxes on ROE
<u>215,009</u>	Taxable income after revenue increase
<u>0.3763</u>	Tax rate
<u>80,908</u>	Tax expense before parent debt adjustment and deferred taxes
<u>(14,054)</u>	Parent debt adjustment
<u>19,039</u>	Deferred income taxes (MFR Sch. C-1, Page 1 of 2)
<u>85,893</u>	Tax expense

DOCKET NO. 911188-WS
May 11, 1993

PETITION FOR INCREASED WATER AND WASTEWATER RATES
IN LEE COUNTY BY LEHIGH UTILITIES, INC.

Schedule 2
Page 2 of 2

Calculation of Income Taxes - Wastewater

<u>(612,840)</u>	State taxable income (MFR Sch. C-2, Page 1 of 2)
<u>(77,504)</u>	O&M increase (MFR Sch. B-2, Page 1 of 1)
<u>(3,730)</u>	Net depreciation increase (MFR Sch. B-2, Page 1 of 1)
<u>(42,823)</u>	Taxes other than income increase (MFR Sch. B-2, Page 1 of 1)
<u>1,215,082</u>	Revenue increase (MFR Sch. B-2, Page 1 of 1)
<u>478,185</u>	Sub-total
<u>(1,215,082)</u>	Revenue decrease (PSC-93-0301-FOF-WS, Sch. 3-B)
<u>38,895</u>	O&M decrease (PSC-93-0301-FOF-WS, Sch. 3-B)
<u>10,916</u>	Net depreciation decrease (PSC-93-0301-FOF-WS, Sch. 3-B)
<u>17,896</u>	Taxes other than income decrease (PSC-93-0301-FOF-WS, Sch. 3-B)
<u>(669,190)</u>	Sub-total
<u>45,169</u>	Interest reconciliation $((4.96\% * 10916722) - (4.93\% * 9517043)) * (5947368 / 9517043)$ (MFR Sch. D-1, page 1 of 2 & PSC-93-0301-FOF-WS, Sch. 3-B)
<u>(624,021)</u>	Sub-total
<u>605,240</u>	NOI deficiency (PSC-93-0301-FOF-WS, Sch. 3-B)
<u>(18,781)</u>	Sub-total
<u>175,466</u>	Taxes on ROE
<u>156,684</u>	Taxable income after revenue increase
<u>0.3763</u>	Tax rate
<u>58,960</u>	Tax expense before parent debt adjustment and deferred taxes
<u>(18,752)</u>	Parent debt adjustment
<u>2,625</u>	Deferred income taxes
<u>42,833</u>	Tax expense

Rate Schedule
WATER

Residential and General Service

<u>Meter Size</u>	<u>Utility Original Rates</u>	<u>Commission Approved Interim Rates</u>	<u>Utility Proposed Final (1) Rates</u>	<u>Staff Recommended Final (1) Rates</u>
5/8" X 3/4"	\$ 4.19	\$ 4.32	\$ 7.59	\$ 8.87
3/4"	N/A	N/A	N/A	13.31
1"	10.47	10.80	18.98	22.18
1-1/2"	20.93	21.58	37.95	44.35
2"	33.49	34.54	60.72	70.96
3"	66.95	69.04	121.44	141.92
4"	104.60	107.86	189.75	221.75
6"	209.21	215.74	379.50	443.50
8"	N/A	N/A	607.20	709.60
10"	N/A	N/A	872.85	1,020.05
Gallonage Charge (per 1,000 gallons)	\$ 2.96	\$ 3.05	\$ 3.22	\$ 2.36

Typical Residential Bills
Meter Size

<u>5/8" X 3/4"</u>				
3M	\$ 13.07	\$ 13.47	\$ 17.25	\$ 15.95
5M	18.99	19.57	23.69	20.67
10M	33.76	34.82	39.79	32.47

Remarks:

(1) Projected Test Year from October 1, 1991 through September 30, 1992.

Rate Schedule
Wastewater
Monthly
Residential

<u>Meter Size</u>	<u>Utility</u> <u>Original</u> <u>Rates</u>	<u>Commission</u> <u>Approved</u> <u>Interim</u> <u>Rates</u>	<u>Utility</u> <u>Proposed</u> <u>Final (1)</u> <u>Rates</u>	<u>Staff</u> <u>Recommended</u> <u>Final (1)</u> <u>Rates</u>
<u>All Sizes</u>	\$ 5.53	\$ 7.18	\$15.33	\$15.28
Gal. Charge (Per 1,000 gals.) (Max 10M Gals. Except for final rates)	\$ 2.69	\$ 3.49	\$ 4.01	\$ 3.76 (2) (Max. 6 MG)

Typical Residential Bills
All Meter Sizes

3M	\$13.60	\$17.65	\$27.36	\$26.56
5M	\$18.98	\$24.63	\$35.38	\$34.03
6M	\$21.67	\$28.12	\$39.39	\$37.84
10M	\$32.43	\$42.08	\$55.43	\$52.88

General Service

<u>Meter Size</u>	<u>Utility</u> <u>Original</u> <u>Rates</u>	<u>Commission</u> <u>Approved</u> <u>Interim</u> <u>Rates</u>	<u>Utility</u> <u>Proposed</u> <u>Final (1)</u> <u>Rates</u>	<u>Staff</u> <u>Recommended</u> <u>Final (1)</u> <u>Rates</u>
5/8" X 3/4"	\$ 5.53	\$ 7.18	\$ 15.33	\$ 15.28
3/4"	N/A	N/A	N/A	22.92
1"	13.85	17.98	38.33	38.20
1-1/2"	27.67	35.92	76.65	76.40
2"	44.26	57.45	122.65	122.24
3"	88.57	114.97	245.28	244.48
4"	138.38	179.63	383.25	382.00
6"	276.76	357.52	766.50	764.00
8"	N/A	N/A	1,226.40	1,222.40
10"	N/A	N/A	1,762.95	1,757.20

Gallage Charge
(per 1,000
gallons)
(no. max)

\$ 2.69	\$ 3.49	\$ 4.81	\$ 4.51
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REMARKS: (1) Projected test year from October 1, 1991 through September 30, 1992.
(2) Rate after adjustment was made for effluent pumped to the golf course at the rate of \$.1065 cents per 1,000 gallons.

Rate Schedule
Water

Schedule of Staff Recommended
Rates and Rate Decrease in
Four Years

Monthly Rates

Residential and General Service

	<u>Staff</u> <u>Recommended</u> <u>Rates</u>	<u>Rate</u> <u>Decrease</u>
Base Facility Charge:		
Meter Size:		
5/8" X 3/4"	\$ 8.87	\$ 0.19
3/4"	\$ 13.31	\$ 0.28
1"	\$ 22.18	\$ 0.47
1-1/2"	\$ 44.35	\$ 0.94
2"	\$ 70.96	\$ 1.50
3"	\$ 141.92	\$ 3.01
4"	\$ 221.75	\$ 4.70
6"	\$ 443.50	\$ 9.40
8"	\$ 709.60	\$15.04
10"	\$1,020.05	\$21.61
Gallage Charge per 1,000 gallons	\$ 2.34	\$ 0.05

Rate Schedule
Wastewater

Schedule of Staff Recommended
Rates and Rate Decrease in
Four Years

Monthly Rates

	<u>Staff</u> <u>Recommended</u> <u>Rates</u>	<u>Rate</u> <u>Decrease</u>
<u>Residential</u>		
Base Facility Charge:		
<u>Meter Size:</u>		
All Meter Sizes	\$15.28	\$0.21
Gallonage Charge per 1,000 gallons (Maximum 6,000 gallons)	\$ 3.76 (1)	\$0.05
<u>General Service</u>		
Base Facility Charge:		
<u>Meter Size</u>		
5/8" X 3/4"	\$ 15.28	\$ 0.21
3/4"	\$ 22.92	\$ 0.32
1"	\$ 38.20	\$ 0.53
1-1/2"	\$ 76.40	\$ 1.06
2"	\$ 122.24	\$ 1.69
3"	\$ 244.48	\$ 3.39
4"	\$ 382.00	\$ 5.29
6"	\$ 764.00	\$10.59
8"	\$1,222.40	\$16.94
10"	\$1,757.20	\$24.35
Gallonage Charge per 1,000 gallons	\$ 4.51	\$ 0.06

REMARKS: (1) Rate adjustment for effluent charge to golf course.