

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a rate ) DOCKET NO. 911188-WS  
increase in Lee County by Lehigh ) ORDER NO. PSC-93-1023-FOF-WS  
Utilities, Inc. ) ISSUED: 07-12-93  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
SUSAN F. CLARK  
THOMAS M. BEARD

ORDER ON RECONSIDERATION

BY THE COMMISSION:

BACKGROUND

Lehigh Utilities, Inc. (Lehigh or utility) is a class A water and wastewater utility providing service to approximately 10,000 customers in Lehigh Acres, Lee County, Florida. By Order No. PSC-93-0301-FOF-WS, issued on February 25, 1993, this Commission authorized an increase in the utility's rates and charges. On March 11, 1993, the Office of Public Counsel (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.

ORAL ARGUMENT

The utility argues that oral argument should be granted because it would facilitate the Commission's understanding of the evidence and precedents and their relationship to the issues raised on reconsideration. We find that the pleadings filed on reconsideration have presented every possible argument and that oral argument is not necessary to further explicate the utility's view. Therefore, Lehigh's request for oral argument is denied.

DOCUMENT NUMBER-DATE

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1993 RECONSIDERATION

NEGATIVE ACQUISITION ADJUSTMENT

In its petition for reconsideration of Order No. PSC-93-0301-FOF-WS, OPC states that a negative acquisition adjustment of \$3,600,000 should have been made to the utility's rate base as a result of the purchase of the system by transfer of stock to Seminole Utility Company, a wholly-owned subsidiary of Southern States Utilities, Inc. (SSU). OPC also 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 argued, the Commission erred in its decision.

In its response, the utility alleged that OPC's petition did not meet the standard required for the reconsideration of final orders and that OPC made arguments in its petition which were not previously raised and should therefore be deemed as having been waived. The utility further responded that the Commission determined that the acquisition adjustment was not appropriate in this instance, and held accordingly; thus, the Commission did not overlook or fail to consider the issue of the negative acquisition adjustment in this case. In making the argument that an acquisition adjustment was not warranted at the time of transfer, the utility relied on Order No. 25391, issued November 25, 1991, in which the Commission stated that the transfer of stock did not change the utility's rate base. Lehigh also relied on Order No. 25729, issued February 17, 1992, the Acquisition Adjustment Policy docket, in support of this position. Lehigh further stated 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. In addition, the utility asserted that the assets of a selling utility would be irrelevant in a stock transfer, and therefore, would not be appropriately made subject to any acquisition adjustment.

The utility correctly cited Diamond Cab Company of Miami v. King, 146 So. 2d 889 (Fla. 1962), as the standard for determining when 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." In addition, Lehigh correctly 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."

We find that our decision on the acquisition adjustment issue was based on the evidence in the record that the purchase of Lehigh was by a transfer of stock which had no affect on the value of the utility's rate base. We also find that OPC failed to identify in its petition any error in fact or law or any point that the Commission overlooked or failed to consider. Therefore, OPC's Petition for Reconsideration on this issue is denied.

#### GAIN ON SALE

United Florida Utilities Corporation (UFU) sold substantially all of the assets of its St. Augustine Shores water and wastewater utility division to St. Johns County in 1991. The net after-tax gain associated with this sale was \$4.2 million. In Order No. PSC-93-0301-FOF-WS, we determined that a portion of the net after-tax gain was not to be allocated to the Lehigh ratepayers for the following reasons: the ratepayers did not acquire a proprietary interest in the utility property being used for utility service; the shareholders bear the risk of loss on 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 disagreed with our finding that ratepayers do not acquire a proprietary interest in utility property that is being used for utility service. However, OPC then stated that in seeking reconsideration it is not relying upon any claim of proprietary interest.

In support of its petition, OPC argued that our decision in Lehigh was inconsistent with our decision in Order No. PSC-93-0295-FOF-WS, issued February 24, 1993, a final rate case order for Mad Hatter Utilities, Inc., as well as our decisions in the telecommunications industry when utility plant is retired due to technological obsolescence. In addition, OPC argued that in Order No. 11307, issued November 10, 1982, the Commission cited its earlier Gulf and FP&L cases, Dockets Nos. 810136-EU and 810002-EU, respectively, as authority for the recognition of gains or losses on utility assets above the line. It is OPC's position that the Commission routinely requires customers to answer for risks associated with utility assets and that it is unfair for the Commission to rely on the customers' lack of a proprietary interest to deprive them of the benefits of a gain.

Lehigh responded that OPC had not identified a mistake of fact or law that was the basis for the Commission's decision. Furthermore, Lehigh stated that OPC acknowledged in its motion for reconsideration it is not relying upon any claim of proprietary interest in the St. Augustine Shores facilities. Lehigh also argued that OPC raised arguments previously addressed in OPC's testimony and the parties' posthearing briefs.

Lehigh stated in its response that OPC was attempting to raise a new theory in support of its previously rejected argument. As to OPC's reference to the Mad Hatter case, Lehigh responded that, in the Mad Hatter case, the Commission found that the utility was entitled to recover a loss arising out of the abandonment of two wastewater treatment plants where the record demonstrated that the utility's decision to abandon the plants and interconnect with Pasco County was reasonable and prudent. Lehigh also pointed out the distinction that St. Augustine Shores was a condemnation of property and Mad Hatter was a loss on abandonment of property. In addition, Lehigh argued that one could only presume that if the loss was determined to be imprudent, the loss would have been borne by the shareholders. Consequently, Lehigh argued, OPC's generic position that the customers normally bear the loss of abandoned property ignores the factual basis for the Mad Hatter decision.

The utility also points out other distinguishing facts in the Lehigh case: the St. Augustine Shores 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.

We agree that the Mad Hatter case involved different facts and circumstances distinguishing it from the Lehigh case. One of the most important distinguishing facts is that St. Augustine Shores condemnation resulted in both the sale of the assets and the customer base; whereas, in Mad Hatter, the ratepayers who were served by the abandoned plants were the same ratepayers being served by the interconnection with Pasco County. Therefore, because we find that the facts of the Mad Hatter case can be distinguished from the facts in this case, we find no reason to reconsider our decision on the gain on St. Augustine Shores.

We also agree 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, we find OPC's argument that the Commission routinely allows the recovery of losses on utility plant to be in error.

Based on the foregoing, we find 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, OPC's Petition for Reconsideration of this issue is denied.

#### INCOME TAX EXPENSE

In its Motion for Reconsideration, Lehigh argued that the negative income tax expense was incorrectly calculated in Order No. PSC-93-0301-FOF-WS. Lehigh raised several points on reconsideration of the income tax calculation: 1) there was no record support for the negative income tax expense calculation; 2) the calculation was inconsistent with previous Commission decisions; 3) Commission staff bears the burden of proving that tax loss carry-forwards exist because staff raised the tax issues; 4) the Order violates the prohibition against retroactive ratemaking; 5) Lehigh was denied due process by not being on notice of the imposition of a negative income tax expense and by not being allowed to supplement the record with its tax sharing agreement with its parent. Most of the utility's argument for reconsideration is based on the mistaken perception that we calculated income tax expense using historic test year data. Only projected test year data was used in our determination of the appropriate amount of income tax expense.

#### Record Support

Lehigh argued in its petition that there was no record support for the negative income tax expense calculation. We disagree. At the beginning of these proceedings, all parties agreed that the income tax expense amount was to be a mathematical calculation based on other adjustments made by the Commission to Lehigh's filing. We find that it is mathematically possible for a negative income tax expense to be the result of those adjustments. Our Order takes the tax effect of each adjustment made to either revenues or expenses as reflected in the column headed Utility

Adjusted Test Year, makes adjustments for changes to rate base and capital structure, corrects the parent debt adjustment to exclude the state income tax rate, and reconciles it to the rate base and capital structure as 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 the utility's application, a total income tax expense from jurisdictional wastewater operations of negative \$227,966 was projected. This was a larger negative total income tax expense than the projected negative \$224,293 total income tax expense per books for the same period. In the application, the amount of state income tax expense was decreased by the net operating loss (NOL). Further record evidence of NOLs during the projected test year is found in witness Gangnon's testimony on cross-examination.

We find Lehigh's argument regarding the absence of a negative tax expense in, or net operating loss carry-forwards from, the historic test year unpersuasive because our calculation was based on a projected test year calculation, not on the historic test year. Our Order does not address NOLs or NOL carry-forwards from the historic test year.

We agree with the utility's argument that there is testimony indicating that with rate relief there would be no NOLs in the projected test year. However, that testimony clarified whether Lehigh could use investment tax credit carry-forwards. Our calculation of income tax expense, attached hereto as Schedule No. 2, shows that the size of the original negative total tax expense and the relative size of the rate increase would determine whether or not there actually would be a positive tax expense after the rate increase.

Based on the foregoing, we find that the utility has failed to show any mistake in fact, law or policy, nor has it shown any point which this Commission overlooked or failed to consider on this issue.

#### Previous Commission Decisions

In its motion, Lehigh argued that the calculation of income tax expense should be based on the prospective cost of service, not on NOLs, and that to do otherwise would be inconsistent with previous Commission decisions. Lehigh cited three decisions of this Commission as support for its position: Order No. 20017,

issued September 16, 1988, St. Augustine Shores Utilities; Order No. 24928, issued August 19, 1991, Magnolia Manor Water Works; and Order No. 25139, issued September 30, 1991, Homosassa Utilities, Inc. Each of these orders addresses net operating loss carry-forwards on either a consolidated or stand alone basis. However, we find that these 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.

#### Burden of Proof

In its motion, Lehigh also argued that Commission staff bears the burden of proving that tax loss carry-forwards exist because staff raised the tax issues. We find that 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, we find that proof of tax loss carry-forwards for the historic test year was not necessary in order to calculate the income tax expense because our calculation was based on projected test year data, not on historic test year data.

#### Retroactive Ratemaking

The utility further 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, this argument arises out of the utility's misunderstanding of how the income tax expense was calculated. Therefore, we deny reconsideration on this point.

#### Due Process

Lehigh argued that this Commission has denied the utility due process by not putting the utility on notice of the imposition of a negative income tax expense and by not permitting the utility to supplement the record with its tax sharing agreement with its parent. As discussed in an earlier portion of this Order, prior to hearing, the parties to this proceeding agreed that the determination of the appropriate amount of the tax expense was a mathematical calculation or a "fall-out number" resulting from the tax effect of various adjustments made to the utility's revenues, expenses, rate base and capital structure. Therefore, we find that the utility was on notice that the amount of income tax expense

would be the number, positive or negative, resulting from our adjustments made based on record evidence. In addition, we find that even if it were permissible to rely on the Tax Sharing Agreement between Minnesota Power and Light and Lehigh, it would add no information to the record to change our tax calculation.

Based on the foregoing, we find that the utility has failed to show any mistake in fact, law or policy, nor has it shown any point which this Commission overlooked or failed to consider. Therefore, the utility's Motion for Reconsideration regarding income taxes is denied.

#### COMMISSION'S ADJUSTMENT TO INCOME TAX EXPENSE

In our review of the tax calculation in response to the utility's motion, we found that interest had been double counted. Therefore, we have reconsidered the income tax expense calculation on our own motion and find it appropriate to decrease income tax expense by \$5,730 for water and to increase it by \$122,979 for wastewater. Our revised calculation of income tax expense is shown on Schedule 2, attached hereto.

#### OPEBS

In its Motion for Reconsideration, the utility argues that the Commission erred in adjusting the utility's costs related to the Financial Accounting Standards Board pronouncement 106 (FAS 106) to reflect costs associated with an "Other Post-retirement Employee Benefits" (OPEB) plan referred to as Proposed Plan 2. Each of the several points raised by the utility is discussed separately below.

First, the utility argued 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. Our review of the Commission vote sheet from the January 19th Agenda Conference indicates that the Commissioners voted on this issue and all other issues of the Lehigh recommendation. The vote sheet is dispositive of our decision. Therefore, we find that no mistake of fact, law or policy has been shown on this point.

The second issue raised by Lehigh is that the Order mischaracterized witness Gangnon's testimony as contradictory with regard to the OPEB plan. We find that the record supports a finding that witness Gangnon's testimony was contradictory where he



stated that SSU was considering several plans in its actuarial study as a way to reduce OPEB costs, 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." Therefore, we find no mistake in our conclusion that the testimony was contradictory.

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 another SSU rate case for the Marco Island system, 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).

Our review of Order No. 20489 shows that we have taken official recognition of a federal court decision entered into after the final hearing in the docket but prior to the Commission's final decision. Lehigh requests we take official recognition after the Commission's final decision. Further review of Order No. 20489 shows that the Commission denied, as untimely, General Telephone Co. of Florida's (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 cited Sections 90.202(6) and 120.61, Florida Statutes, as authority for its request to supplement the record. These statutory provisions allow sworn testimony from the record of one case to be entered into the record of another case; however, none of them provides for supplementing the record post-hearing or after entry of a final order. We find that the record is adequate to dispose of the utility's motion for reconsideration on this issue. Therefore, we find that the utility's request to supplement the record with the testimony and exhibits of witnesses Neuwirth and Phillips is both untimely and unnecessary for the disposition of Lehigh's Motion for Reconsideration.

The fourth issue raised by Lehigh is that it was a mistake of fact to conclude that Lehigh has not yet adopted an OPEB plan. Lehigh misapprehends the Commission's conclusion that a plan will not be adopted until sometime in 1993. The basis for our adjustment allowing recovery of OPEB expenses related to Proposed Plan 2 is that, as an accounting standard, FAS 106 would not be adopted by Lehigh until 1993. Witness Gangnon stated that SSU adopted a formal OPEB plan on January 1, 1991. We find 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.

Lehigh has correctly identified one factual error in Order No. PSC-93-0301-FOF-WS regarding witness Gangnon's testimony on this issue. In the last paragraph on page 26 of the Order we incorrectly attributed to Mr. Gangnon testimony to the effect that a plan will not be adopted until sometime in 1993. This is incorrect because witness Gangnon did testify that Lehigh adopted a formal OPEB plan on January 1, 1991. This phrase did not appear in the Staff Recommendation on which the Commission voted, nor did this information form the basis approving Proposed Plan 2. Our 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 other evidence in the record. Therefore, although we misstated a fact, we did not rely on that fact in reaching our decision. Therefore, reconsideration of the Commission's decision with regard to this issue is denied.

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. Therefore, reconsideration on this point is denied.

The utility also sought reconsideration on the basis that there is no competent substantial evidence to support the conclusion that there is a trend to reduce FAS 106 costs. The issue of the competency of the evidence is not an appropriate basis for reconsideration. The utility has shown no mistake of fact, law or policy nor has it shown that the Commission overlooked or failed to consider any point.

Lehigh's final argument on OPEBs was that use of FAS 106 requires reliance on the utility's substantive plan over any other plan. In support of this argument the utility relies on Orders Nos. PSC-92-0708-FOF-TL, issued July 24, 1992, and PSC-92-1197-FOF-EI, issued October 22, 1992, regarding the United Telephone Company of Florida and the Florida Power Corporation rate cases, respectively. When we approved FAS 106 for ratemaking purposes in

these Orders, we also made adjustments to the utility's requested FAS 106 costs. (See Orders Nos. PSC-92-0708-FOF-TL, p. 36, and PSC-92-1197-FOF-EI, p. 11) We find our substituting Proposed Plan 2 for SSU's current OPEB plan to be an appropriate regulatory adjustment based on our findings that SSU may reduce its OPEB costs in the future and the weaknesses and inconsistencies in SSU's case. Although the utility had failed to demonstrate that its plan was prudent, we appropriately determined that a plan would be offered. Therefore, we chose the lower cost plan. Further, we find that, for regulatory purposes, the Commission is not bound by the utility's substantive plan.

In conclusion, we find that the utility has failed to show any mistake of law, fact or policy on the issue of OPEBs.

#### REVENUE REQUIREMENT

Based on our changes in the income tax expense, discussed in an earlier portion of this Order, the revenue requirement approved in Order No. PSC-93-0301-FOF-WS has been revised. We find the appropriate revenue requirement for water to be \$1,858,685 which represents a \$6,000 or .32 percent decrease. For wastewater, we find the appropriate revenue requirement to be \$2,151,746, which represents an increase of \$128,774 or 6.37 percent. Our calculation of the appropriate revenue requirement is shown on Schedules Nos. 1-A and 1-B for water and wastewater, respectively. Our adjustments to the operating statements are shown on Schedule No. 1-C.

#### RATES

Based on the foregoing changes in the revenue requirement, we have adjusted the rates as shown below:

Rate Schedule  
Water  
Monthly

Residential and General Service

<u>Commission</u>	<u>Commission</u>
<u>Approved Final Rates</u>	<u>Approved</u>
<u>Order No. PSC-93-0301-FOF-WS</u>	<u>Rates on Reconsideration</u>

Meter Size

5/8" x 3/4"	\$ 8.89	\$ 8.87
3/4"	13.34	13.31
1"	22.23	22.18
1-1/2"	44.45	44.35
2"	71.12	70.96
3"	142.24	141.92
4"	222.25	221.75
6"	444.50	443.50
8"	711.20	709.60
10"	1,022.35	1,020.05
Gallorage Charge (per 1,000 gallons)	2.37	\$ 2.36

Rate Schedule  
Wastewater  
Monthly  
Residential

<u>Commission</u>	<u>Commission</u>
<u>Approved Final Rates</u>	<u>Approved</u>
<u>Order No. PSC-93-0301-FOF-WS</u>	<u>Rates on Reconsideration</u>

Meter Size  
All Sizes

<u>Rates</u>	<u>Rates</u>
\$ 14.65	\$ 15.28
Gal. Charge (per 1,000 gals.) ( 6 MG Cap)	\$ 3.48
	\$ 3.82 (1) (Max. 6 MG)

Rate Schedule  
Wastewater  
Monthly  
General Service

<u>Commission</u>	<u>Commission</u>
<u>Approved Final Rates</u>	<u>Approved</u>
<u>Order No. PSC-93-0301-FOF-WS</u>	<u>Rates on Reconsideration</u>

Meter Size

5/8" x 3/4"	\$ 14.65	\$ 15.28
3/4"	21.98	22.92
1"	36.63	38.20
1-1/2"	73.25	76.40
2"	117.20	122.24
3"	234.40	244.48
4"	366.25	382.00
6"	732.50	764.00
8"	1,172.00	1,222.40
10"	1,684.75	1,757.20
 Gallonage Charge	 \$ 4.18	 \$ 4.58
(per 1,000 gallons)		
(No Max)		

REMARKS: (1) Rate after adjustment was made for effluent pumped to the golf course at the rate of \$.1065 cents per 1,000 gallons.

APPORTIONMENT OF RATE CASE EXPENSE

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.

At the end of four years, the water rates should be reduced by \$39,259 and the wastewater rates should be reduced by \$29,616 as shown in Schedules Nos. 3-A and 3-B for water and wastewater, respectively. The revenue reductions reflect the annual rate case expense amounts amortized plus the gross-up for regulatory assessment fees.

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The utility shall file tariffs no later than one month prior to the actual date of the required rate reduction. The utility also shall 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.

This docket may be closed upon the utility's filing and staff's approval of tariff sheets consistent with our decision herein, as well as the utility's meeting any outstanding requirements of Order No. PSC-93-0301-FOF-WS.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Petition for Reconsideration of Order No. PSC-93-0301-FOF-WS filed by the Office of Public Counsel is hereby denied. It is further

ORDERED that the Motion for Reconsideration of Order No. PSC-93-0301-FOF-WS and Request for Oral Argument filed by Lehigh Utilities, Inc. is hereby denied to the extent set forth in the body of this Order. It is further

ORDERED that on our own motion, income tax expense is adjusted to the extent set forth in the body of this Order. It is further

ORDERED that each of the findings made in the body of this Order are by reference incorporated herein. It is further

ORDERED that all that is contained in the schedules attached hereto are by reference incorporated herein. It is further

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ORDERED that this docket may be closed upon the utility's filing and staff's approval of tariff sheets consistent with our decision herein, as well as the utility's meeting any outstanding requirements of Order No. PSC-93-0301-FOF-WS.

By ORDER of the Florida Public Service Commission this 12th day of July, 1993.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

CB/LK

by: Kary Flynn  
Chief, Bureau of Records

NOTE: On the issue of OPEBs, there was a split vote by the panel; the Chairman cast the deciding vote after reviewing the record.

NOTICE OF 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 the Commission's final action in this matter may request 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 by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

LEHIGH UTILITIES, INC. STATEMENT OF WATER OPERATIONS TEST YEAR ENDED SEPTEMBER 30, 1992						SCHEDULE NO. 1-A 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	\$ 1,621,243	\$ 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	5.82%		10.06%		6.14%		9.69%



LEHIGH UTILITIES, INC.		STATEMENT OF WASTEWATER OPERATIONS						SCHEDULE NO. 1-B	
		TEST YEAR ENDED SEPTEMBER 30, 1992						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	\$ 946,170	\$ 2,151,746		
OPERATING EXPENSES						78.48%			
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	42,578	289,197		
6 INCOME TAXES	(227,966)	407,677	179,711	(421,389)	(241,678)	293,353	56,675		
7 TOTAL OPERATING EXPENSES	\$ 1,228,711	\$ 531,734	\$ 1,760,445	\$ (525,878)	\$ 1,234,567	\$ 340,930	\$ 1,575,497		
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)	
	=====	=====	

LEHIGH UTILITIES, INC. ADJUSTMENTS TO OPERATING STATEMENTS TEST YEAR ENDED SEPTEMBER 30, 1992		SCHEDULE NO. 1-C PAGE 2 of 2 DOCKET NO. 911188-WS	
EXPLANATION	WATER	WASTEWATER	
(6) OPERATING REVENUES -----			
A. Additional revenues to achieve revenue requirement.	\$237,442	\$946,170	
	=====	=====	
(7) TAXES OTHER THAN INCOME -----			
A. To reflect RAFs on the revenue increase.	\$10,685	\$42,578	
	=====	=====	
(8) PROVISION FOR INCOME TAXES -----			
A. To reflect income taxes on the revenue requirement.	\$99,697	\$298,353	
	=====	=====	

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

Calculation of Income Taxes – Water

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

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

Calculation of Income Taxes – Wastewater

<u>(612,840)</u>	State taxable income (MFR Sch. C-2, Page 1 of 2)
(77,504)	O&M increase (MFR Sch. B-2, Page 1 of 1)
(3,730)	Net depreciation increase (MFR Sch. B-2, Page 1 of 1)
(42,823)	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)
478,185	Sub-total
(1,215,082)	Revenue decrease (PSC-93-0301-FOF-WS, Sch. 3-B)
38,895	O&M decrease (PSC-93-0301-FOF-WS, Sch. 3-B)
10,916	Net depreciation decrease (PSC-93-0301-FOF-WS, Sch. 3-B)
54,679	Taxes other than income decrease (PSC-93-0301-FOF-WS, Sch. 3-B)
<u>(632,407)</u>	Sub-total
45,169	Interest reconciliation $((4.96\% * 10916722) - (4.93\% * 8517043)) * (5947368/9517043)$ (MFR Sch. D-1, page 1 of 2 & PSC-93-0301-FOF-WS, Sch. 3-B)
<u>(587,238)</u>	Sub-total
<u>605,240</u>	NOI deficiency (PSC-93-0301-FOF-WS, Sch. 3-B)
18,002	Sub-total
<u>175,466</u>	Taxes on ROE
<u>193,468</u>	Taxable income after revenue increase
<u>0.3763</u>	Tax rate
72,802	Tax expense before parent debt adjustment and deferred taxes
(18,752)	Parent debt adjustment
2,625	Deferred income taxes
<u><u>56,675</u></u>	Tax expense

Rate Schedule

Water

Schedule of Commission Approved  
Rates and Rate Decrease in  
Four Years

Monthly Rates

Residential and General Service

	<u>Commission Approved Rates</u>	<u>Rate Decrease</u>
Base Facility Charge:		
<u>Meter Size:</u>		
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
Gallonge Charge (per 1,000 gallons)	\$ 2.36	\$ 0.05

Rate Schedule

Wastewater

Schedule of Commission Approved  
 Rates and Rate Decrease in  
 Four Years

Monthly Rates

	<u>Commission Approved Rates</u>	<u>Rate Decrease</u>
<u>Residential</u>		
Base Facility Charge:		
<u>Meter Size:</u>		
All Meter Sizes	\$ 15.28	\$ 0.21
Gallonge Charge (Per 1,000 gallons) (Maximum 6,000 gallons)	\$ 3.82 (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	1.05
2"	122.44	1.68
3"	244.48	3.36
4"	382.00	5.26
6"	764.00	10.51
8"	1,222.40	16.82
10"	1,757.20	24.18
Gallonge Charge (per 1,000 gallons)	\$ 4.58	\$ 0.06

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