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# Hopping Green & Sams

Attorneys and Counselors

Writer's Direct Dial Number  
(850) 425-2359

March 26, 2007

**BY HAND DELIVERY**

Blanca Bayó  
Director, Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Petition of Cypress Lakes Associates, Ltd., for Formal Administrative Proceedings.

Dear Ms. Bayó:

Enclosed for filing on behalf of Cypress Lakes Associates, Ltd. ("Cypress Lakes"), are the original and seven copies of its Petition for Formal Administrative Proceedings, along with a diskette containing the Petition in Word Format.

Please stamp and return the enclosed extra copy of this filing. If you have any questions

**CMP** \_\_\_\_\_ regarding this filing, please give me a call at 425-2359.

**COM** \_\_\_\_\_

**CTR** \_\_\_\_\_

**ECR** \_\_\_\_\_

**GCL** \_\_\_\_\_

**OPC** \_\_\_\_\_

**RCA** \_\_\_\_\_ GVP/dwg

**SCR** \_\_\_\_\_ Enclosures

**SGA** \_\_\_\_\_

**SEC** \_\_\_\_\_

**OTH** *K. Pena*

*H. Wang*

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*Oh*

**FPSC-BUREAU OF RECORDS**

Very truly yours,

*Gary V. Perko*  
Gary V. Perko

DOCUMENT NUMBER-DATE

02618 MAR 26 05

## BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for increase in water and wastewater rates in Polk County by Cypress Lakes Utilities, Inc. | DOCKET NO. 060257-WS  
 FILED: March 26, 2007

**PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS**

Cypress Lakes Associates, Ltd. ("Cypress Lakes"), pursuant to Sections 120.569 and 120.57, Florida Statutes ("F.S."), and Rules 25-22.029 and 28-106.201, Florida Administrative Code ("F.A.C"), petitions for an administrative hearing to protest certain portions of the Florida Public Service Commission's (Commission's) Order No. PSC-07-0199-PAA-WS (PAA Order), issued March 5, 2007, which approved increased rates and charges for Cypress Lakes Utilities, Inc. ("CLUI"). Specifically, Cypress Lakes challenges those portions of the PAA Order which present the estimated amount of Contribution in Aid of Construction ("CIAC") for water and wastewater plant and which would establish Service Availability Charges. In support of this Petition, Cypress Lakes states:

**Identification of Parties**

1. The name and address of the agency affected and the agency's file number are:

Florida Public Service Commission  
 2540 Shumard Oak Boulevard  
 Tallahassee, FL 32399-0850  
 Docket No. 060257-WS

2. The name and addresses of the Applicant who initiated this docket is:

Cypress Lakes Utilities, Inc.	c/o Utilities, Inc.
2335 Sanders Road	200 Weathersfield Court
Northbrook, IL 60062	Altamonte Springs, FL 32714-4099

3. The name and address of Petitioner is:

Cypress Lakes Associates, Ltd.  
 11300 4<sup>th</sup> Street North, Suite 200  
 St. Petersburg, FL 33716

DOCUMENT NUMBER-DATE

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4. The name and address of the Office of Public Counsel, which has intervened in this proceeding, is:

Stephen C. Reilly  
Associate Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400

**Receipt of Notice of Agency Action**

5. Cypress Lakes received notice of the Commission's proposed agency action on or about March 5, 2007.

**Substantial Interests**

6. Cypress Lakes, a development company, was the original owner and operator of the utility at issue and, in 1997, sold it to Utilities, Inc. ("Utilities"), whose successor by assignment is the Applicant, Cypress Lakes Utilities, Inc. ("CLUI"). Lands owned or developed by Cypress Lakes comprise the entire service territory of CLUI. In accordance with various agreements with Utilities and CLUI, Cypress Lakes originally contributed \$300,000 to construct additional sewer treatment and disposal facilities to accommodate service to lots to be developed within CLUI's service territory. In addition, Cypress Lakes has constructed and installed all collection and distribution systems necessary to serve all existing lots within CLUI's service territory, 100 of which have not yet been connected to CLUI's facilities. Cypress Lakes has transferred ownership of such collection and distribution systems as CIAC to CLUI for nominal consideration. As part of an agreement executed in December 2006, Cypress Lakes has further committed to construct and install all distribution, collection and interconnection facilities necessary to facilitate CLUI's service of 120 additional lots (referred to as Phase 12) to be developed by Cypress Lakes on land which CLUI has agreed to petition the Commission for

inclusion into its service area. As part of that same agreement, Cypress Lakes has paid CLUI \$125,000, which represents half the estimated actual cost of additional improvements to CLUI's wastewater treatment facility. Under the agreement, the water and sewer lines in Phase 12 are to be conveyed by Cypress Lakes to CLUI as CIAC.

7. As a result of the payments and construction activities discussed above, Cypress Lakes has paid or will pay for all costs for distribution and transmission facilities necessary to serve all lots that are currently served or may be served by CLUI, and has committed to pay for the vast majority of costs necessary for necessary upgrades to CLUI's wastewater treatment plant. Nevertheless, the Commission's proposed agency action would require Cypress Lakes to pay a service availability charge of \$1,500 for each connection to CLUI's wastewater system and to pay a \$1,500 service availability for each connection to CLUI's water system. If those service availability charges stand, Cypress Lakes would be required to pay an additional \$660,000 to interconnect the 220 lots remaining for development, effectively requiring it to pay twice to ensure that lots within its developments can be served by CLUI. As such, Cypress Lakes' substantial interests are affected by the proposed agency action as that term is used in Section 120.569, F.S., and Rules 25-22.029 and 28-106.201, F.A.C. For the reasons discussed below, the service availability charges are not only unjust and unreasonable; they lack basis in fact or law and therefore should be rejected.

#### **The Service Availability Charges**

8. Prior to this proceeding, CLUI has never charged or requested approval of a service availability or "plant capacity" charge. Likewise, CLUI did not request approval of a service availability charge in this docket. However, at the February 13, 2007 agenda conference during which the Commission considered Staff's recommendation on the requested rate increase, a representative of the Office of Public Counsel ("OPC") suggested that the Commission

establish service availability charges of \$1,500 for each water interconnection and \$1,500 for each wastewater connection.

9. During the February 13, 2007, agenda conference, the OPC representative stated that proposed service availability charges are “not based on any scientific calculation.” Rather, she surmised that “if you went through the standard calculation that we would go through it would be extremely high for water and wastewater because the [CIAC] ratios are so low.” The OPC representative explained:

[T]he current CIAC ratios are low for this company [CLUI]. It’s about 23 percent for water and 34 percent for wastewater, which is real low. The minimum amount of CIAC, the guideline rates are the dollar amounts of lines you have, and that is essentially the minimum. So whatever investment [the utility] has in the lines is what the guideline level of CIAC should be.<sup>1</sup>

She further opined that the charges would provide “a source of funding if [CLUI] need[s] to make some water improvement plant investments or . . . wastewater plant improvements[.]” In addition, she stated that the proposed charges “are pretty much in the ballpark of what other companies charge.” Transcript of discussion of Item No. 24A at February 13, 2007 Agenda Conference, at pp. 37- 38.

#### **Disputed Issues of Material Fact and Law**

10. Disputed issues of material fact and law include but are not necessarily limited to:
  - a. Whether the service availability charges can be approved in light of the fact that CLUI has not submitted, among other things, a “statement explaining the basis for the requested changes in charges and conditions” and a “summary schedule of how the proposed service availability charge was calculated” in accordance with Rule 62-30.565, F.A.C.

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<sup>1</sup> For the reasons stated below, Cypress Lakes specifically disputes the CIAC ratios included in the PAA Order and referenced by the OPC representative.

b. Whether the amount of CIAC reflected in the PAA Order is consistent with the requirements of Rule 25-30.570, F.A.C.?

b. Whether the proposed service availability charges are consistent with the Commission's Guidelines for Establishing Service Availability Policy in Rule 25-30.580, F.A.C.?

c. Whether the proposed service availability charges are just and reasonable as required by Section 367.101, F.S.?

d. Whether the proposed service availability charges are arbitrary and capricious?

### **Ultimate Facts Alleged**

11. Rule 62-30.565, F.A.C., establishes specific filing requirements for applications for approval of new or revised charges. Although the minimum filing requirements (MFRs) filed by CLUI in this proceeding provide some of the information required by the rule, essential information has not been provided, including but not limited to a "statement explaining the basis for the requested changes in charges and conditions" and a "summary schedule of how the proposed service availability charge was calculated." See Rule 25-30.565(d) and (s), F.A.C. Such information is necessary to ensure a thorough and reasoned evaluation of the proposed service availability charges.

12. Pursuant to Rule 25-30.570, F.A.C., if the amount of CIAC has not been recorded on CLUI's books and CLUI does not submit competent substantial evidence as to the amount of CIAC, the amount of CIAC shall be imputed to be the amount of plant cost attributable to the water distribution and sewage collection systems. As discussed in Paragraph 6 above, Cypress Lakes has made substantial contributions to CLUI's water and utility plant in the form of construction of water distribution and sewer collection systems and cash contributions toward the

upgrading of CLUI's wastewater treatment plant. Based on information provided in CLUI's MFRs, however, it appears that Cypress Lakes' contributions have not been appropriately recorded on CLUI's books as CIAC. Accordingly, Cypress Lakes' contributions should be imputed as CIAC under Rule 25-30.570, F.A.C.

13. Pursuant to the Commission's Guidelines for Establishing Service Availability Policy in Rule 25-30.580, F.A.C., the maximum amount of CIAC should not exceed 75% of the total original cost of CLUI's facilities and plant at design capacity. If the estimated cost of Cypress Lakes' contribution to CLUI's water and wastewater utility plant discussed above is imputed as CIAC, the appropriate amount of CIAC would exceed the 75% at design capacity for both CLUI's water utility plant and its wastewater utility plant, all in contravention of Rule 25-30.580, F.A.C. When Cypress Lakes' contribution of Phase 12 water and sewer lines and the Phase 12 improvements to the sewer treatment facility is included, the resultant CIAC ratios are even higher. Likewise, the proposed capacity charges of \$1,500 for each new water and wastewater connections would only increase the percentages of CIAC to utility plant and, therefore, would further contravene Rule 25-30.580, F.A.C.

14. As discussed above, the proposed service availability charges would effectively require Cypress Lakes to pay twice for distribution and collection facilities necessary to serve lots within its developments and for contributions to the upgrading of CLUI's wastewater plant. In addition, for the reasons discussed above, the proposed service availability charges contravene Commission rules promulgated in furtherance of the requirement in Section 367.101, F.S. that service availability charges be just and reasonable. As such, the proposed charges are not just and reasonable and therefore contravene Section 367.101, F.S.

15. As indicated in the transcript of the February 13, 2007 agenda conference, the proposed service availability charges were not derived from a thorough and reasoned analysis of

CLUI's books and records as contemplated in Rules 25-30.565, 25-30.570, and 25-30.580, F.A.C., but were instead apparently based on supposition and a "ballpark estimate" of what other utilities are charging. Furthermore, as discussed above, the proposed service availability charges are contrary to a proper application of Commission rules. As such, the proposed service availability charges are arbitrary and capricious or otherwise contrary to law.

**Laws Entitling Petitioner to Relief and  
Relation to the Alleged Facts**

16. The rules and statutes entitling Cypress Lakes to relief include but are not necessarily limited to the following: Sections 120.569 and 120.57(1), F.S., which entitle Cypress Lakes to an administrative hearing for the reasons discussed above; Section 367.101, F.S., which requires any service availability charges established by the Commission to be "just and reasonable;" Rule 25-30.570, F.A.C., which requires imputation of CIAC in the circumstances discussed above; and Rule 25-30.580, F.A.C., which provides guidelines for designing service availability policies which have not been followed in this case.

**Reservation of Rights**

17. Because CLUI's application in this proceeding did not request approval of any service availability charges and because Cypress Lakes did not receive the notice contemplated in Rule 25-30.4345 and 25-30.565, F.A.C., until after the Commission's vote in this proceeding, Cypress Lakes has not had an opportunity to fully explore CLUI's filing or to obtain other information that may be relevant to the proposed service availability charges. Accordingly, Cypress Lakes reserves the right to amend this petition based on information obtained from discovery or other means.



**Request for Relief**

WHEREFORE, Petitioner, Cypress Lakes Associates, Ltd. ("Cypress Lakes"), respectfully requests:

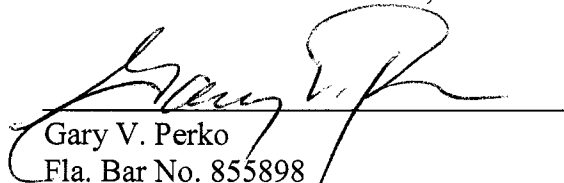
(a) That the Commission conduct an administrative hearing and issue a final order concluding:

1. that the service availability charges included in the notice of proposed agency action are arbitrary and capricious or otherwise contrary to law for the reasons stated above; and
2. that no service availability charges be approved in this docket.

(b) That Cypress Lakes be granted such other relief as may be deemed appropriate.

Respectfully submitted this 20<sup>th</sup> day of March, 2007.

HOPPING GREEN & SAMS, P.A.



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ASSOCIATES, LTD.

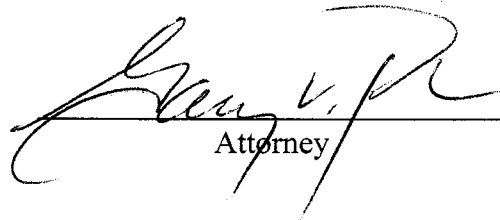
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by hand delivery (\*) or overnight delivery (\*\*) to the following this 26<sup>th</sup> day of March, 2007:

Katherine Fleming \*  
Senior Attorney  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 370  
Tallahassee, FL 32399-0850

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