BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint Requesting Declaration That Connections Have Been Made and All Amounts Due Have Been Paid and Mandatory Injunction Requiring Refund Of Amounts Paid Under Protest	DOCKET NO. 150026-WS

LAKE UTILITY SERVICES, INC.'S ANSWER TO COMPLAINT

LAKE UTILITY SERVICES, INC. ("LUSI"), by and through its undersigned attorneys files this response to the Complaint filed by EAGLERIDGE I, LLC ("Eagleridge") in this Docket.

Introduction

Eagleridge makes two arguments for asserting that LUSI did not have the right or obligation to impose upon it the increase in service availability charges granted by PSC Order No. PSC-11-0514-PAA-WS ("PSC Order"). First it argues that in the service agreement LUSI waived the collection of any fees other than those set forth therein, and second, that the connection had already been made at the time of the entry of the PSC Order.

LUSI Did Not Waive the Right to Collect the Increased Charges

Eagleridge misconstrues the waiver language in the service agreement. The relevant portion provides:

> In consideration of this contribution, we waive all other tap fees/connection fees. Water and wastewater usage charges will be levied in accordance with our authorized tariff as required and approved by the Florida Public Service Commission.

The obvious meaning of the waiver language is that LUSI waived any other tap fees/connection fees that were in existence at that time. There is no significance in the language regarding usage charges. That language merely incorporates the water and wastewater usage rates

as approved by the Commission instead of setting forth all of those various rates in the service agreement. The waiver of tap fees/connection fees and the acknowledgement of water and wastewater user charges both address those charges in existence at the time the service agreement was entered into. There is no specific reference in the service agreement to "preserving the right to charge increases in user rates" as asserted by Eagleridge in its Introduction. The reason should be obvious.

The Florida Supreme Court held in *H. Miller & Sons v. Hawkins*, 373 So. 2d 913 (Fla. 1979) [an opinion that Eagleridge does not even address even though LUSI's attorneys advised its attorneys of such] that "contracts with public utilities are made subject to the reserved authority of the state, under the police power of express statutory or constitutional authority, to modify the contract in the interest of the public welfare without unconstitutional impairment of contracts." In *H. Miller & Sons*, this Commission ordered a utility to increase the service availability charges to a developer notwithstanding the prior contract rate that had been entered into by the utility pursuant to its tariff. The Florida Supreme Court agreed, concluding that despite contract law to the contrary, the Commission had complete authority to change rates in a private contract between a utility and a developer independent of the contracting authority of the parties.

Thus, even if Eagleridge's argument was not erroneous, it would have no import since a utility cannot contract away this Commission's authority over the rates and charges imposed by a utility.

Not All Connections Had Been Made When The Increased Charges Were Implemented

Eagleridge asserts that since there were physical pipes connected to building units (while admitting that meters were not installed) its interpretation of Rules of the Commission preclude LUSI from imposing the increased charges established in the PSC Order. Those Rules must be

construed not in isolation but in the context of their purpose. In interpreting those Rules, Eagleridge ignores the purpose of the principle enunciated by this Commission in its Order which precipitated the Florida Supreme Court's opinion in *H. Miller & Sons* which is critical to such interpretation. A connection is not a connection for purposes of applying increases in service availability charges unless service has been previously implemented (even though service may not be being provided at the time of the increase).

This Commission stated in *In re: H. Miller & Sons, Inc. v. Cooper City Utilities Inc.*, Order No. 7851 (6/21/77):

> The Complainant alleges that plant capacity was fully purchased and reserved. That is, 175,000 gpd of plant capacity (500 connections X 350 gpd), was, in effect, the property of Miller on January 19, 1975, when payment therefor was completed. Yet, the utility still had to pay interest, taxes, insurance, etc., on the value represented thereby, with no income therefrom until a customer was connected. The utility must continue to pay these costs, whether the capacity is used or not. To adopt Miller's rationale, would force either the customers to support idle capacity, or, since plant not used and useful must be excluded from rate base investment for rate-making purposes (Section 367.081(2), Florida Statutes), the utility must support this idle plant. To cite the conclusions of Miller's premise, demonstrates its fallacy.

In other words, the actual cost of maintaining sufficient capacity cannot be determined until the date that service actually initially commences. Increasing service availability charges prevents current customers from subsidizing costs associated with future plant capacity.

The only recourse to avoid current customers subsidizing future plant is to pay guaranteed revenues charges. Rule 25-30.515(9), F.A.C. defines a Guaranteed Revenue Charge as a charge designed to cover the utility's costs including, but not limited to the cost of operation, maintenance, depreciation, and any taxes, and to provide a reasonable return to the utility for facilities, a portion of which may not be used and useful to the utility or its existing customers. Guaranteed Revenues are designed to help the utility recover a portion of its cost from the time capacity is reserved until

a customer begins to pay monthly service rates. Eagleridge must admit that not all building units have received actual service. LUSI provided Eagleridge with a schedule of units that had never received water or wastewater service and calculations of the appropriate increase in service availability charges and Eagleridge did not question the accuracy of that schedule.

This principle was directly addressed by this Commission in *In re: Petition of Edward L. Keohane for a Declaratory Statemen*t, Order No. 16625 (9/23/86) where it concluded that, since guaranteed revenues reimbursed the utility for expenses and a return on investment, such charges could only apply to existing plant. Therefore, when a utility included a charge for guaranteed revenues in a service availability contract, it committed the necessary existing utility system capacity to the developer. Increased service availability charges would therefore be inapplicable.

Conclusion

Based upon the foregoing arguments and authorities, this Commission should enter an Order finding that the increase in service availability charges imposed by Lake Utility Services, Inc. to Eagleridge I, LLC were done so in accordance with Commission Rules and Orders.

Respectfully submitted this 19th day of January, 2015, to:

FRIEDMAN, FRIEDMAN & LONG, P.A.
766 N. Sun Drive, Suite 4030
Lake Mary, FL 32746
PHONE: (407) 830-6331
mfriedman@ffllegal.com

/s/ Martin S. Friedman
MARTIN S. FRIEDMAN
Florida Bar No.: 0199060
For the Firm

CERTIFICATE OF SERVICE
DOCKET NO. 150026-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E- Mail to the following parties this 19th day of January, 2015:

Samual A. Miller, Esquire
Akerman, LLP
420 South Orange Ave., Suite 1200
Orlando, FL 32801
samual.miller@akerman.com
susan.cali@akerman.com

/s/ Martin S. Friedman
MARTIN S. FRIEDMAN
Florida Bar No.: 0199060
For the Firm