

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into possible overcollection of Allowance for Funds Prudently Invested (AFPI) in Lake County, by Lake Utility Services, Inc.

DOCKET NO. 980483-WU
ORDER NO. PSC-99-0103-PHO-WU
ISSUED: January 21, 1999

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on January 15, 1999, in Tallahassee, Florida, before Commissioner E. Leon Jacobs, as Prehearing Officer.

APPEARANCES:

BEN E. GIRTMAN, ESQUIRE, 1020 East Lafayette Street, Suite 207, Tallahassee, Florida 32301-4552
On behalf of Lake Utility Services, Inc.

FRANK SEIDMAN, Post Office Box 13427, Tallahassee, Florida 32317-3427
As qualified representative of Lake Utility Services, Inc.

TIM VACCARO and LILA JABER, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

Lake Utility Services, Inc., (LUSI or utility) is a Class B utility located in Lake County. LUSI is a wholly-owned subsidiary of Utilities, Inc. and provides no wastewater service.

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ORDER NO. PSC-99-0103-PHO-WU
DOCKET NO. 980483-WU
PAGE 2

A complaint was received from a customer in August of 1996. The customer was concerned about the fees she was required to pay for service. At the time of complaint, the utility had three schedules of fees and charges for service that differed depending on the location of the customer's residence. The customer's residence was in the territory approved for LUSI by Order No. PSC-92-1369-FOF-WU issued November 24, 1992, in Docket No. 920174-WU. By that order, LUSI's service territory was amended to include additional territory. The rates and charges for the additional territory were also established in the aforementioned order.

In the initial investigation of the complaint, our staff determined that the fees the customer was required to pay were appropriate. Those fees were a plant capacity charge of \$569, a main extension charge of \$509, a meter installation charge of \$100, and an allowance for funds prudently invested (AFPI) charge of \$608.09. After analysis done in the utility's rate case in Docket No. 960444-WU, staff determined that the collection of the AFPI from customers in the territory approved by Order No. PSC-92-1369-FOF-WU may have been inappropriate. An informal investigation into the AFPI charges was conducted. Staff sent the utility a data request relating to its AFPI charges. The utility responded to the questions. After a few letters of correspondence with the utility, staff notified LUSI by letter dated January 27, 1998, that it was appropriate for the utility to collect AFPI from the customers in the additional territory pursuant to a tariff page contained in the utility's policy section of its Commission approved tariff. However, staff also indicated to the utility that, in its opinion, the collection of AFPI should have ceased after 106 equivalent residential connections (ERCs). Staff further indicated that the utility should refund all AFPI collected beyond 106 ERCs.

The utility requested that the issue be submitted to the Commissioners for a final decision if staff did not reconsider its position. By Proposed Agency Action (PAA) Order No. PSC-98-0796-FOF-WU, issued June 8, 1998, this Commission required that LUSI record AFPI collected beyond 106 ERCs as contributions in aid of construction. On June 26, 1998, two utility customers, Ms. Kathy Shutts and Ms. Sandy Baron, filed a protest to the PAA Order and requested a hearing on their protest. Likewise, LUSI filed a Petition on PAA on June 29, 1998 and requested a hearing on its protest. Accordingly, this matter was set for hearing.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Carl Wenz	LUSI	All Issues
JoAnn Chase	Staff	1,2,3,4,5
Marshall Willis	Staff	1,3,4,5,6,8, 9,10
<u>Rebuttal</u>		
Carl Wenz	LUSI	All Issues

VII. BASIC POSITIONS

LUSI: The rates and charges in LUSI's tariff, including the AFPI charges, are in accordance with Order No. PSC-92-1369-FOF-WU and are applicable to all customers in

the Crescent Bay subdivision and in the additional territory granted by the order. Those rates and charges remain in effect for all customers until different rates and charges are approved by the Commission. In accordance with the tariff, the collection of AFPI is effective until the utility reaches design capacity which was an estimated 106 ERCs buildout for the original certificated area and an estimated 1,600 ERCs buildout including the additional territory. The 106 ERCs is not a valid limitation for AFPI in the additional territory any more than the 106 ERCs is a valid limitation for the application of services availability charges or other rates and charges in the additional territory. The issue of whether AFPI was applicable in the additional territory was raised in 1993 in response to a Commission informal investigation related to a developer inquiry. The Commission was made aware, at that time, that LUSI was collecting AFPI in the additional territory, and no objection was raised by staff. On and after May 12, 1998, a new AFPI charge was implemented in compliance with the staff's request, applicable in the entire LUSI service area, confirming that the justification for an AFPI charge continues to exist inside of and outside of Crescent Bay.

STAFF:

The Commission did not formally approve AFPI charges specifically for the additional territory granted LUSI in Order No. PSC-92-1369-FOF-WU. However, through the administrative tariff approval process, staff inadvertently approved AFPI charges for this additional territory. Regardless, the 106 ERC limitation contained on LUSI's Original Sheet No. 25.1 and First Revised Sheet No. 25.1A applies to the additional territory. Further, LUSI overcollected AFPI charges from the Crescent Bay Subdivision and the additional territory approved in Order No. PSC-92-1369-FOF-WU on a combined basis. Therefore, LUSI should be required to refund the overcollection of AFPI charges, consistent with Rule 25-30.360, Florida Administrative Code. Non-testifying staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: Were the AFPI charges, previously approved for Crescent Bay in Order No. 19962 and included in LUSI's tariff, also approved for the additional territory in Order No. PSC-92-1369-FOF-WU in Docket No. 920174-WU?

POSITIONS

LUSI: Yes. Order No. PSC-92-1369-FOF-WU specifically required "the rates and charges approved in Lake Utility Services, Inc.'s tariff" (the Crescent Bay tariff) be charged in the additional territory. AFPI was a charge which was previously approved in the Crescent Bay tariff and, therefore, was specifically approved for the additional territory. (Wenz)

STAFF: No. (Chase, Willis)

ISSUE 2: Were the rates and charges required in Order No. 19962 (including monthly rates, service availability charges, and AFPI charges) developed based on the estimated buildout of the entire LUSI service area and made applicable to all customers in the entire LUSI service area?

POSITIONS

LUSI: Yes. The monthly rates, service availability charges, and AFPI charges were developed in concert, based on the costs of serving the entire utility service area. (Wenz)

STAFF: The rates and charges approved in Order No. 19962 were based upon the estimated design capacity of the utility plant to serve the Crescent Bay service area approved in the original certificate docket. (Chase)

ISSUE 3: Was the AFPI charge, approved in Order No. 19962, designated to be in effect until the utility reached capacity?

POSITIONS

LUSI: Yes. The charges were approved based upon the design capacity of the "water system" and not the design capacity of any particular item of plant. (Wenz)

STAFF: The AFPI charges approved in Order No. 19962 were approved based upon the design capacity of the plant projected to serve the Crescent Bay system, which was the service territory approved in the original certificate docket. The design capacity of the utility was determined to be 106 ERCs. (Chase, Willis)

ISSUE 4: Was the 106 ERC buildout determined in Order No. 19962 the total number of potential customers in the entire service area?

POSITIONS

LUSI: Yes. When Order No. 19962 (issued September 8, 1988) was issued setting initial rates, there were no customers in the service area. 106 ERCs represented all of the potential customers in the entire service area first approved in Order No. 18605 (issued December 24, 1987). (Wenz)

STAFF: The design capacity of the utility to serve the Crescent Bay system, which was the service territory approved in the original certificate docket, was determined to be 106 ERCs. (Chase, Willis)

ISSUE 5: Did Third Revised Sheet No. 27.3, filed subsequent to the issuance of Order No. PSC-92-1369-FOF-WU, by reference to Original Sheet No. 25.1 and First Revised Sheet No. 25.1-A, make the AFPI charges applicable to the additional territory effective until the utility reached design capacity?

POSITIONS

LUSI: Yes. Staff's initial position during the informal investigation was that the AFPI charge did not apply

outside Crescent Bay. Staff subsequently reversed its position and acknowledged that, in accordance with the tariffs, AFPI could be charged in the additional territory. See also, LUSI's response to Issue No. 1. (Wenz)

STAFF: Yes, however, these AFPI charges were inadvertently approved by staff through the administrative tariff approval process and only applied up to and including 106 ERCs. (Chase, Willis)

ISSUE 6: Does the 106 ERC limitation contained on the Original Sheet No. 25.1 and First Revised Sheet No. 25.1-A also apply to the additional territory?

POSITIONS

LUSI: No. Original Sheet No. 25.1 and First Revised Sheet No. 25.1-A require that AFPI continue to be collected "until the utility reaches design capacity." The design capacity of the "utility" service area approved by Order No. 19962 was approximately 106 ERCs. The design capacity of the "utility" service area approved by Order No. PSC-92-1369-FOF-WU is approximately 1,600 ERCs. Therefore, the 106 ERC limitation does not apply to the additional territory.

If the staff takes the position that the Commission orders and the approved tariffs apply only to the Crescent Bay "subdivision" and not to the entire "utility" service area (which now includes the additional territory), then staff's interpretation would mean that either:

- 1) AFPI could only be collected from within the Crescent Bay subdivision up to a limit of 106 ERCs and none could be collected from within the additional territory that makes up the remainder of the "utility" service area. Such an interpretation is contrary to staff's acknowledgment that LUSI's approved tariffs allow for the collection of AFPI in the additional territory, and is clearly in error.

or

2) The 106 ERC limitation applies to Crescent Bay plus the additional territory, so collection of AFPI from within Crescent Bay would have to be limited to fewer than 106 ERCs, which is contrary to the tariff, even as staff is interpreting it. That interpretation also is clearly in error.

Therefore, the 106 ERC limitation does not apply to the additional territory. (Wenz)

STAFF: Yes. (Willis)

ISSUE 7: Did LUSI inform the Commission that it was charging AFPI to new customers in the additional territory because that was ordered by the Commission and was a part of the approved tariff?

POSITIONS

LUSI: Yes, the Commission was notified by letter dated October 14, 1993 addressed to Charlotte Hand, Regulatory Analyst, Division of Water and Wastewater. In response to a Commission informal investigation of developer Olesen's inquiry, LUSI informed the Commission that it was collecting AFPI charges in the additional territory in accordance with the Commission's order and the utility's tariff. No objection was raised by the Commission or its staff. (Wenz)

STAFF: A letter was received indicating that the utility may be charging AFPI charges to a developer in the future. However, pursuant to the approved tariffs, the AFPI charges would apply to the 106 ERC limitation.

ISSUE 8: Has LUSI applied the AFPI charge to new customers in the additional territory in compliance with Order No. PSC-92-1369-FOF-WU and the tariffs approved by the Commission?

POSITIONS

LUSI: Yes. (Wenz)

STAFF: AFPI charges were not approved in Order No. PSC-92-1369-FOF-WU. To the extent AFPI charges were collected over the 106 ERC limitation, this would not be in compliance with the approved tariff. (Willis)

MIXED ISSUES OF FACT AND LAW

ISSUE 9: Did Lake Utility Services, Inc. overcollect AFPI charges from the Crescent Bay Subdivision and the additional territory approved in Order No. PSC-92-1369-FOF-WU?

LUSI: No.

STAFF: Yes, Lake Utility Services, Inc. overcollected AFPI charges from the Crescent Bay Subdivision and the additional territory approved in Order No. PSC-92-1369-FOF-WU on a combined basis. (Willis)

ISSUE 10: If there was overcollection of AFPI, what is the appropriate action?

LUSI: There has been no showing that there was any overcollection. Therefore, LUSI has no position on the issue at this time.

STAFF: Lake Utility Services, Inc. should be required to refund the overcollection of AFPI charges, consistent with Rule 25-30.360, Florida Administrative Code. (Willis)

IX. EXHIBIT LIST

<u>Witness</u> -	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Carl Wenz	LUSI	CW-1	Investigation correspondence, consisting of seven documents.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
	LUSI	CW-2	Side-by-side comparison of LUSI tariff sheets in effect before and after additional territory was granted.
	LUSI	CW-3	Prior AFPI correspondence, consisting of three documents.
	LUSI	CW-4	Staff response to request for documents.
	LUSI	CW-5	December 23, 1998 ⁷ correspondence from LUSI to staff.
JoAnn Chase	Staff	JC-1	Proposed tariff revisions filed by LUSI in Docket No. 920174-WU.
	Staff	JC-2	LUSI developer agreement.
	Staff	JC-3	Staff recommendation in Docket No. 920174-WU
	Staff	JC-4	Tariff approval No. WS-92-0035.
Marshall W. Willis	Staff	MWW-1	Commission Order No. 19962.
	Staff	MWW-2	Commission Order No. PSC-97-0531-FOF-WU.

Parties and staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

1. LUSI and staff propose that the exhibits which LUSI and staff intend to sponsor with their respective prefiled testimony be stipulated into the record at hearing. LUSI and staff reserve the right to conduct cross examination on all documents in evidence.
2. Order No. 19962 determined that the utility would reach design capacity at 106 ERCs.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. RULINGS


1. Ms. Kathy Shutts and Ms. Sandy Baron were excused from attending the Prehearing Conference. Pursuant to Order No. PSC-98-1038-PCO-WU (Order Establishing Procedure), Ms. Baron and Ms. Shutts are precluded from raising any new issues in this proceeding. However, they may participate at the customer service portion of the January 25, 1999 hearing.
2. Frank Seidman, utility representative for LUSI, was authorized to appear as a qualified representative at the prehearing conference on behalf of LUSI, pursuant to Uniform Rule 28-106.106, Florida Administrative Code.

It is therefore,

ORDERED by Commissioner E. Leon Jacobs, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

ORDER NO. PSC-99-0103-PHO-WU
DOCKETS NO. 980483-WU
PAGE 14

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 21st Day of January, 1999.


E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR 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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.