

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer
of Certificates Nos. 592-W and
509-S from Cypress Lakes
Associates, Ltd. to Cypress
Lakes Utilities, Inc. in Polk
County.

DOCKET NO. 971220-WS
ORDER NO. PSC-99-2143-PHO-WS
ISSUED: November 1, 1999

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on October 4, 1999, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

Ben Girtman, Esquire, 1020 East Lafayette Street #207,
Tallahassee, Florida 32301-4552
On behalf of Cypress Lakes Utilities, Inc.

Harold McLean, Esquire, Office of Public Counsel, c/o The
Florida Legislature, 111 West Madison Street, Suite 812,
Tallahassee, Florida 32399-1400
On behalf of the Citizens of Florida.

Jennifer S. Brubaker and Stephanie A. Crossman, Esquires,
Florida Public Service Commission, 2540 Shumard Oak
Boulevard, Tallahassee, Florida, 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER AND ORDER REVISING DATE FOR BRIEFS

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

On September 19, 1997, Cypress Lakes Associates, Ltd. (Cypress Lakes or utility) filed an application for approval of the transfer of Certificates Nos. 592-W and 509-S to Cypress Lakes Utilities, Inc. (CLUI) pursuant to Section 367.071, Florida Statutes. By

DOCUMENT NUMBER-DATE

13346 NOV-1 99

FPSO-REGISTRATION/REPORTING

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Order No. PSC-98-0993-FOF-WS, issued July 20, 1998, the transfer was approved by final agency action and rate base was established for purposes of the transfer as proposed agency action. On August 10, 1998, the Office of Public Counsel (OPC) filed a timely Petition for Section 120.57(1) Hearing and Protest of Proposed Agency Action. Accordingly, an administrative hearing for this docket was scheduled for October 20, 1999.

On August 21, 1998, Cypress Lakes filed a Motion to Dismiss or Strike OPC's Petition for Section 120.57(1) Hearing and Protest of Proposed Agency Action. On August 27, 1998, OPC filed a Response to Cypress' Motion to Dismiss or Strike. By Order No. PSC-98-1566-FOF-WS, issued November 23, 1998, in this docket, we denied the utility's Motion to Dismiss.

On July 12, 1999, the utility filed a second Motion to Dismiss the Office of Public Counsel's Protest and Petition for Section 120.57(1) Hearing. On July 16, 1999, OPC timely filed a Citizens' Response to Utility's July 12th Motion to Dismiss.

On July 19, 1999, Cypress Lakes filed Utility's Motion to Strike the Office of Public Counsel's Direct Testimony of Hugh Larkin, Jr. On July 26, 1999, OPC filed a Citizens' Response to Utility's July 19th Motion to Strike or in the Alternative Citizens' Motion to Strike Utility's Testimony. On July 30, 1999, Cypress Lakes filed Utility's Response to Citizens' Motion to Strike Utility's Testimony, as well as the Utility's Third Motion to Dismiss the Office of Public Counsel's Protest and Petition for Section 120.57(1) Hearing Based on Lack of Case or Controversy. On August 3, 1999, OPC filed a Citizens' Response to Utility's July 30th Motion to Dismiss.

By Order No. PSC-99-1809-PCO-WS, issued September 20, 1999, the Commission denied the Utility's Second and Third Motions to Dismiss, denied the Utility's Motion to Strike Testimony, and denied OPC's Motion to Strike Testimony.

On September 10, 1999, the utility filed a Motion to Strike Issues 9 and 10 as set forth in OPC's prehearing statement. The motion was taken up as a pending matter to be considered at the October 4, 1999 Prehearing Conference. Because the final issues which were developed, and which are set forth in this Order, did not include Issues 9 and 10 as set forth in OPC's prehearing statement, the utility's motion was found to be moot.

As a result of discussions held at the September 23, 1999 issue identification conference and October 4, 1999 Prehearing Conference, it was agreed that the testimony and exhibits filed to date could serve as the evidence, with all cross-examination waived by all parties and staff. Accordingly, the hearing which had been scheduled for October 20, 1999, pursuant to Section 120.57(1), Florida Statutes, has been canceled.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

No confidential information will be presented in this proceeding.

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

As discussed in the Case Background and Stipulations sections of this Order, the record in this case shall include the prefiled testimony and exhibits filed by the parties and staff. The parties have further stipulated to waive cross-examination of the witnesses.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Carl Wenz	Utility	1, 2, 3, 4, 5, 6, 7, 8

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Hugh Larkin, Jr.	OPC	3, 4, 5, 6
Jeffery A. Small	Staff	4
<u>Rebuttal</u>		
Carl Wenz	Utility	1, 2, 3, 4, 5, 6, 7, 8
Frank Seidman	Utility	2, 3, 4, 5, 6, 7, 8

VII. BASIC POSITIONS

UTILITY: The rate base for the purposes of this transfer is \$617,609 and \$921,439, for the water and wastewater systems, respectively. In accordance with established Commission policy, no acquisition adjustment should be included in the rate base calculation. The purchaser has not requested any such adjustment, and there are no extraordinary circumstances to warrant it.

OPC: Cypress Lakes Utilities, Inc. (Utilities Inc.) in neglecting to request a negative acquisition adjustment, is seeking to retain a rate base in this docket upon investment which it did not make. Utilities Inc. invested \$820,000 in utility property; yet the effect of Commission Order PSC-98-0993-FOF-WS, were it allowed to stand, would be to recognize a fictitious investment of approximately \$1,500,000. The Commission is compelled by Florida Statutes to provide utility investors a return upon that investment prudently made which is used an useful in providing utility service to the public. The Commission should impose a negative acquisition adjustment in this case to reflect utilities investment. Lastly, the Commission may not insist upon a showing of extraordinary circumstances as a prerequisite to a negative acquisition adjustment without an evidentiary showing in this record that such a non rule policy is justified.

STAFF: The information gathered through prefiled testimony indicates, at this point, that Cypress Lakes has made an initial showing that no extraordinary circumstances exist that would warrant the inclusion of an acquisition adjustment, positive or negative, in rate base determination. The Office of Public Counsel bears the burden of persuasion that extraordinary circumstances do,

in fact, exist; however, the ultimate burden of rebutting OPC's allegation rests upon Cypress Lakes. Based upon prior Commission decisions, extraordinary circumstances must be shown in order to warrant the inclusion of an acquisition adjustment in rate base. Rate base for the water and wastewater systems, for the purposes of the transfer, should match the net book values of the acquired assets.

VIII. ISSUES AND POSITIONS

ISSUE 1: What was the condition of the assets sold to Cypress Lakes Utilities, Inc.?

POSITIONS

UTILITY: Both the water and wastewater systems appeared to be in satisfactory condition, with no outstanding operating violations. (Wenz)

OPC: No position.

STAFF: It appears that the utility assets sold to Cypress Lakes Utilities, Inc. are in satisfactory condition.

ISSUE 2: Was Cypress Lakes Associates, Ltd. a "troubled" system?

POSITIONS

UTILITY: Yes. Agree with Staff (Wenz, Seidman)

OPC: No position.

STAFF: The system was a functioning utility, but has experienced losses of over \$138,000 based on the 1996 and 1997 Annual Reports, during which time it has been under Commission regulation.

ISSUE 3: Are there any extraordinary circumstances which warrant an acquisition adjustment to rate base, and if so, what are they?

POSITIONS

UTILITY: No. Agree with Staff. (Wenz, Seidman)

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OPC: No position at this time. (Larkin)

STAFF: No, there are no extraordinary circumstances which warrant an acquisition adjustment.

ISSUE 4: What is the net book value for the water and wastewater system?

POSITIONS

UTILITY: Agree with staff. (Wenz, Seidman)

OPC: No position. (Larkin)

STAFF: For the purposes of transfer, the net book value for the water system is \$617,609 and for the wastewater system is \$921,439. These numbers are based on the staff audit and additional adjustments pursuant to Order No. PSC-98-0993-FOF-WS, issued July 20, 1998, in this docket. (Small)

ISSUE 5: Should a negative acquisition adjustment be included in the rate base determination?

POSITIONS

UTILITY: No. Agree with Staff. (Wenz, Seidman)

OPC: Yes. (Larkin)

STAFF: Rate base inclusion of a negative acquisition adjustment is not appropriate in this case.

ISSUE 6: What is the rate base for the water and wastewater systems, for the purposes of this transfer?

POSITIONS

UTILITY: Agree with Staff. (Wenz, Seidman)

OPC: The rate base should reflect a negative acquisition adjustment. (Larkin)

STAFF: The rate base amount should match the net book values of the acquired assets.

ISSUE 7: Who bears the burden of proving whether an acquisition adjustment should be included in the rate base?

POSITIONS

UTILITY: The burden of proof is discussed in Order No. PSC-98-1092-FOF-WS, Docket No. 960235-WS, Wedgefield Utilities, Inc. The Utility has met its burden, but OPC has not. (Wenz, Seidman)

OPC: No position.

STAFF: Rate base inclusion of an acquisition adjustment ultimately affects the utility's rates. The utility must support its rate base balance. A showing of extraordinary circumstances must be made to warrant a rate base inclusion of an acquisition adjustment. Once the utility makes an initial showing that there are not extraordinary circumstances, the burden of persuasion shifts to the opposing party to demonstrate that extraordinary circumstances are present. If the opposing party meets the burden of persuasion, the ultimate burden of rebutting the opposing party's allegations rests upon the utility.

ISSUE 8: Must extraordinary circumstances be shown in order to warrant rate base inclusion of an acquisition adjustment?

POSITIONS

UTILITY: Yes. Agree with Staff. (Wenz, Seidman)

OPC: No.

STAFF: Yes, consistent with previous Commission decisions, extraordinary circumstances must be shown in order to warrant rate base inclusion of an acquisition adjustment.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
	<u>Direct</u>		
Jeffery Small	Staff	JAS-1	Staff Audit Report

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Rebuttal</u>			
Carl Wenz	Utility	CW-1	Comparison of Staff Audit and Staff recommendation for Rate Base Components
		CW-2	Application for Transfer of Certificate and Facilities of Cypress Lakes Associates, Ltd. To Cypress Lakes Utilities, Inc., filed September 18, 1997 [Commission Document No. 09553-97, September 19, 1997], inclusive of Exhibits G and H, filed subsequent to the Application
Frank Seidman	Utility	FS-1	Prior Commission Orders on acquisition adjustments

X. PROPOSED STIPULATIONS

The parties have agreed to stipulate to the following:

1. The record in this case shall include the prefiled testimony and exhibits filed by the parties and staff.
2. Cross-examination of the witnesses is waived.

XI. PENDING MOTIONS

On September 10, 1999, the Utility filed a Motion to Strike Issues 9 and 10 as set forth in OPC's prehearing statement. The motion was taken up as a pending matter to be considered at the October 4, 1999 Prehearing Conference. Because the issues ultimately agreed upon, which are set forth in this Order, did not include Issues 9 and 10 as set forth in OPC's prehearing statement, the utility's motion was determined to be moot.

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XII. RULINGS

1. As discussed in the Pending Motions section of this Order, the Motion to Strike Issues 9 and 10 as set forth in OPC's prehearing statement, filed by the utility on September 10, 1999, was ruled to be moot.

2. All parties have agreed that the record in this case shall include the prefiled testimony and exhibits filed by the parties and staff, and that cross-examination of the witnesses is waived. Staff has contacted all parties, who have stated no objection to proceeding under Section 120.57(2), Florida Statutes. Therefore, I find that it would be efficient for this case to proceed under Section 120.57(2), Florida Statutes. The parties shall file briefs on November 3, 1999, and the briefs shall follow the requirements of the Section IV, Post-Hearing Procedures, Section of this Order.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission. It is further

ORDERED that date for filing briefs is hereby changed as set forth in the body of this Order.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 1st day of November, 1999.



SUSAN F. CLARK
Commissioner and Prehearing Officer

(S E A L)

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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.