

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a Staff-) DOCKET NO. 920828-SU
Assisted Rate Case by L.C.M.) ORDER NO. PSC-93-1824-FOF-SU
SEWER AUTHORITY in Lee County.) ISSUED: December 23, 1993
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER TO SHOW CAUSE AND GRANTING TEMPORARY RATES IN
THE EVENT OF PROTEST

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING RATES AND CHARGES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein, except for the granting of temporary rates in the event of a protest, and the ordering of the utility to show cause, is preliminary in nature and will become final unless a person, whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

LCM Sewer Authority, Inc. (LCM or utility) is a class C wastewater utility serving approximately 176 residential and 46 multi-residential customers in the Leitner Creek Manor, Forest Creek and Spanish Gardens subdivisions near Bonita Springs in Lee County. The utility was granted Certificate No. 352-S by Order No. 13119, issued March 22, 1984. The utility began service in 1971. In June 1989, the utility filed for a staff-assisted rate case in part due to an unauthorized rate increase. The utility asserted this increase was necessary as a result of having insufficient funds to operate the utility. By Order No. 22568, issued February 19, 1990, the utility was granted a revenue increase of \$8,596.

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FPSC-RECORDS/REPORTING

The utility's operating permit expired in August 1989. During the course of the permit renewal process, the Department of Environmental Protection (DEP) found the utility to be in noncompliance in several areas. In September 1990, DEP and the utility entered into a Consent Order, whereby the utility agreed to correct the compliance violations. In July 1991, DEP issued the utility a five-year operating permit, with the condition that the utility replace its existing treatment plant with a new treatment plant.

In January 1992, the utility was abandoned by its owner, Curtis Tomlinson. In April 1992, the Circuit Court of the Twentieth Judicial Circuit in Lee County (Circuit Court) issued a Final Order naming Staco, Inc. (Staco) as the court-appointed receiver for the utility. By Order No. PSC-92-0751-FOF-SU, issued August 5, 1992, this Commission acknowledged Staco as the receiver for LCM. In September 1992, both the Circuit Court and the Commission received notice from Staco of its intention to withdraw as receiver for LCM. In November 1992, the Circuit Court granted Staco's motion to withdraw as receiver, and thereafter appointed Water Spectrum, Inc. (WSI) as the new receiver of the utility. By Order No. PSC-93-0374-FOF-SU, issued March 9, 1993, we acknowledged WSI as the utility's new receiver.

On March 25, 1993, Bonita Springs Utilities, Inc. (BSU) filed a petition to intervene in the instant staff-assisted rate case. BSU is a customer-owned non-profit regional water and wastewater system providing service to unincorporated Bonita Springs. By Order No. PSC-93-1054-PCO-SU, issued July 19, 1993, the Prehearing Officer denied BSU's Petition to Intervene, stating that BSU does not have a substantial interest in the instant case. Additionally, BSU's pleading did not meet any of the criteria for intervention set forth in Rule 25-22.039, Florida Administrative Code. BSU did not have a right to intervention based on any constitutional or statutory provision or on any Commission rule, and BSU's substantial interests were not subject to determination by nor could they be affected by the outcome of the instant case. BSU has petitioned the Circuit Court for intervention in the case of Lee County v. L.C.M. Sewer Authority, Inc., Case No. 92-2192-CA-WCM, wherein it requested that the Court find that LCM should be connected to the facilities and plant of BSU.

We have selected the test period ended September 30, 1992, which represents five months of utility operations under the receivership of Staco. During that five-month period, the utility

booked wastewater system operating revenues of \$18,756 and operating expenses of \$26,214, resulting in a net operating loss of \$7,457. Although the party that requested staff assistance (Staco) is no longer the receiver of the utility, WSI notified us, by letter dated December 29, 1992, of its desire to continue the instant staff-assisted rate case.

By letter dated February 19, 1993, WSI requested that the instant case be placed in monitor status, and that the preliminary rates, calculated by our Staff for the customer meeting, be granted as emergency temporary rates. Although the data contained in our Staff's audit, upon which the preliminary rates are based, represents the operating results of the prior receiver, we reviewed these results and believed the expenses were representative of the utility's needs, regardless of which receiver was operating the utility. Therefore, by Order No. PSC-93-0633-FOF-SU, issued April 22, 1993, the utility was granted emergency, temporary rates.

In addition, the case was placed in monitor status for a period of six months. It was contemplated that, during the monitor period, the utility would obtain signed contracts and financing for the DEP-required improvements. However, not only has the utility failed to provide us with the contracts and financing arrangements, but the utility has yet to obtain a construction permit from DEP for the required improvements.

Despite the lack of information regarding the cost of the DEP-required plant improvements, we believe that, based on the utility's current operating position, it is appropriate to establish permanent rates for this utility. Our findings and adjustments are discussed below.

QUALITY OF SERVICE

A customer meeting was held at Leitner Manor Clubhouse in Bonita Springs, Florida, on January 28, 1993. Approximately 110 customers attended this meeting. Many customers who testified commented about the poor quality of service from the utility. Specifically, customers testified about a leaking force main that sprayed raw sewage, and about raw sewage seeping out from under a manhole cover. Customers complained about generally poor

operations. Additionally, the majority of customers expressed an overwhelming interest in interconnecting with BSU.

While the plant in service problems appear to be improving, the quality of service remains deficient. The leaking force main, mentioned during the customer meeting, had been inspected by our engineer during his field investigation. The four inch force main from Leitner Creek Manor Mobile Home Park crossed Leitner Creek at a private bridge site. The bridge collapsed causing the force main to break, and a leak resulted from the break. Someone attempted to repair the break, but the leak persisted, causing raw sewage to spray each time one of the pumps at the lift station would engage. The Lee County Department of Transportation and Engineering removed the bridge and relocated the force main during January, 1993. The leak has now been repaired.

Prior to Staco being appointed as receiver, one of the lift stations failed, causing raw sewage to seep from a manhole. The pumps were repaired by Staco and, even though the lift station is in need of additional repairs, this matter is considered resolved.

From the general condition of the plant and the system, it is apparent that the quality of service has suffered from deferred maintenance and lack of attention. Both receivers have made some of the necessary repairs. However, neither has been successful in bringing the system into compliance with DEP standards.

The earliest history of plant deficiencies began after the completion of the plant's construction in January, 1973. In an interoffice memorandum dated February 1, 1973, the State of Florida Department of Pollution Control listed 18 differences between the plans and specifications approved by the Division of Health and the actual plant that was constructed during 1972/1973. Despite these differences, the system succeeded in meeting regulatory standards until the past few years.

The utility's most current operating permit expired on August 23, 1989. On October 6, 1989, the utility applied for a renewal of its permit. As part of its routine investigation to renew the utility's permit, DEP found the utility to be in noncompliance with DEP's standards for Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD), and adequate disinfection. After some correspondence with DEP, the utility withdrew its application for permit renewal. On September 18, 1990, DEP issued a Consent Order

(OGC Case No. 90-1301) against the utility, calling for the correction of the violations of the discharge standards.

On March 1, 1991, DEP issued a temporary operating permit contingent upon the utility filing a correct, complete application that included an engineering review and recommendation to correct the operational problems. In the utility's application, the utility's engineer submitted plans to remove the existing plant and to construct a new 80,000 gallon per day (gpd) plant. On July 16, 1991, DEP issued a five-year permit to the utility with the condition that it replace its existing plant with a proposed 80,000 gpd facility.

The utility's latest temporary operating permit expired on July 30, 1993, and the utility continues to operate with an expired operating permit. As discussed earlier, BSU has petitioned for intervention in the Circuit Court case. As an attempt to secure an operating permit during the impending dispute between WSI and BSU, the receiver filed for a second temporary operating permit. DEP denied this request since the receiver would not provide any reasonable assurance that compliance could be reached within a given time period.

On October 21, 1993, DEP petitioned the Circuit Court for intervention in the Circuit Court case. In addition, DEP filed a complaint in intervention, wherein DEP seeks to bring civil action against the utility. In its Complaint, DEP states that the utility is operating without a permit, and has violated several rules and statutes, as well as several conditions of its temporary operating permit. A hearing regarding DEP's intervention in the Circuit Court case has been scheduled for December 20, 1993. In response to DEP's petition and complaint, the receiver contends that both the intervention of BSU and BSU's attempts to secure service rights to the LCM territory have prevented any progress toward reaching compliance with DEP.

Customer satisfaction appears low. Opinions expressed at the customer meeting declared a distrust in the current receiver's ability to bring the system up to acceptable standards. The overall attitude expressed at the customer meeting indicates the majority of customers support the idea of an interconnection with BSU. In fact, two of the three subdivisions being served by the utility, Spanish Gardens and Forest Creek, are sufficiently designed and constructed with 8 inch PVC pipe to provide adequate transfer of flow. Both have master lift stations that appear to be

operating adequately, and both have apparently been sufficiently maintained. BSU has stated that both systems are in good condition and would require very few upgrades (\$10,000 to \$15,000 each) before an interconnection with BSU could take place.

The collection system in the Leitner Creek Mobile Home Park, however, was constructed with eight-inch vitrified clay pipe, located primarily along the front property lines. In general, vitrified clay is brittle, making it a poor choice for gravity lines in a mobile home park due to the heavy activity of moving the modular homes. It appears that the collection system serving the Leitner Creek Mobile Home Park has numerous cracks and points of infiltration. In addition, the master lift station within the Leitner Creek system is in poor condition and would require extensive reconstruction (\$80,000 to \$100,000) before it is acceptable to BSU.

In consideration of the above, we find that the utility's quality of service is unsatisfactory. Consent Order (OGC Case No. 90-1301) remains outstanding, and will remain outstanding until the utility completes any or all improvements necessary to achieve compliance with DEP. According to DEP's consent order, the utility must either satisfy all terms outlined in the Consent Order and remain under the jurisdiction of DEP, or upgrade the system to an acceptable level sufficient for takeover by BSU and cease treatment activities under DEP's jurisdiction.

RATE BASE

Our calculation of the appropriate rate base for the purpose of this proceeding is depicted on Schedule No. 1, and our adjustments are itemized on Schedule No. 1A. Those adjustments which are self-explanatory or which are essentially mechanical in nature are reflected on those schedules without further discussion in the body of this Order. The major adjustments are discussed below.

Used and Useful

The wastewater treatment facility has a maximum capacity of 50,000 gallons per day. The highest average of five consecutive daily flows during the test period was 61,000 gpd. Therefore, even without consideration of the margin reserve requirements, we find that the wastewater treatment plant is considered 100 percent used and useful.

The utility's collection system has the capacity to serve 344 equivalent residential connections (ERCs). During the test period, the utility provided service to 176 ERCs. A straight ratio of the number of existing ERCs, plus a margin reserve allowance of 12 ERCs, to the potential capacity of 344 ERCs, yields a used and useful figure of 54.7 percent. WSI contends that collection lines believed to be located to serve the utility's entire service area in fact do not exist in an area of the Leitner Creek Mobile Home Park. This would reduce the potential capacity to 256 ERCs. This reduced capacity increases the used and useful figure to 70.9 percent.

However, as discussed in Order No. 22568, this Commission found that, based on an analysis of the service area's three subdivisions, no less than 75 percent of the collection system is needed to provide service. Therefore, consistent with our decision in the last staff-assisted case regarding the collection system, we find that the utility's collection system is 75 percent used and useful.

Depreciable Plant in Service

The utility recorded a balance of \$163,440 at the beginning of the test period, and \$164,272 at the end of the test period. The beginning balance is consistent with the Commission's finding of the appropriate value of utility plant as discussed in Order No. 22568. There have been no plant additions since the last staff-assisted rate case. Therefore, we have reduced this account by \$832 to maintain the appropriate balance of \$163,440 in depreciable plant in service.

Land

The utility recorded a land balance of \$23,772 at the end of the test period. This amount is consistent with our finding of the appropriate value of land in Order No. 22568; therefore, we find that no adjustment is necessary.

Plant Held for Future Use

As we found earlier, the wastewater treatment plant is 100 percent used and useful, and the wastewater collection system is 75.0 percent used and useful. To determine the average amount of plant held for future use, the non-used and useful percentages of 0 percent and 25 percent, respectively, are applied to the

corresponding average balances of the various plant in service and accumulated depreciation accounts. The effects of these adjustments result in an average plant held for future use balance of \$21,344.

Contributions in Aid of Construction (CIAC)

The utility recorded \$100,579 in its CIAC account at the end of the test period. This amount represents a beginning of the period balance of \$100,079 (consistent with the balance in Order No. 22568, plus the appropriate amount of pre-test year additions), plus \$500 associated with an addition during the test period. Our end of the period balance matches the balance recorded by the utility. The averaging adjustment of \$250 reduces the average balance to \$100,329. In addition, based on the utility's current service availability charge of \$500 per ERC, we have increased this account by \$6,000 to reflect our margin reserve allowance. Therefore, we find that the appropriate CIAC average balance is \$106,329.

Accumulated Depreciation

The utility recorded a beginning of the test period balance of \$66,036 for the accumulated depreciation account, consistent with the balance in Order No. 22568, plus the appropriate amount of pre-test year additions. The utility recorded test period additions of \$5,963, resulting in a test period ending balance of \$71,999. We have calculated test period depreciation expense in accordance with Rule 25-30.140, Florida Administrative Code. The appropriate balance is \$5,948. Therefore, we have reduced depreciation expense by \$15. We made an averaging adjustment of \$2,974, resulting in the appropriate average accumulated depreciation balance of \$69,010.

Accumulated Amortization of CIAC

The utility recorded a beginning of the test period balance of \$36,916 in this account. Based on the findings in Order No. 22568, plus the appropriate amount of pre-test year additions, we believe the appropriate beginning balance is \$37,833. Therefore, we have made an adjustment of \$917 to increase the beginning balance to its appropriate amount.

The utility recorded test period additions of \$3,661, resulting in a test period ending balance of \$40,577. Our test

period amortization, calculated in conformity with Rule 25-30.140, Florida Administrative Code, is \$3,652. Therefore, an adjustment of \$9 is necessary to reduce the amount of test period amortization on the utility's books. An averaging adjustment of \$1,826 was made, resulting in the appropriate average accumulated depreciation balance of \$39,659.

Working Capital

We find it appropriate to use the formula method in calculating the working capital requirement of this utility, or one-eighth of operation and maintenance expenses. In a later section of this Order, we approve an operation and maintenance expense of \$43,876. Therefore, we have included one-eighth of that amount, \$5,485, in rate base.

Test Year Rate Base

Based on the foregoing, we find the appropriate average rate base to be \$35,673.

COST OF CAPITAL

Our calculation of the appropriate cost of capital, including our adjustments, is depicted on Schedule No. 2. Those adjustments which are self-explanatory or which are essentially mechanical in nature are reflected on that schedule without further discussion in the body of this Order. The major adjustments are discussed below.

The utility's capital structure is comprised of equity that was transferred from the utility's prior owner. In instances when our approved rate base balance is less than the sum of the balances in the utility's capital structure, it has been our practice to reduce each component in the capital structure by its weighted share of the excess capital. The pro rata adjustment is necessary in this instance. A discussion of each component of the utility's capital structure and the related pro rata adjustment follows.

Return on Equity

The only component in the utility's capital structure is \$116,000 in stock and a negative \$45,667 in retained earnings that was transferred from the utility's prior owner. The resulting combined balance is \$70,333. The pro rata adjustment results in a \$34,660 reduction to the equity balance. In accordance with Order

No. PSC-93-1107-FOF-WS, issued July 29, 1993, the appropriate return on equity for utilities with capital structures of 100 percent equity is 9.30 percent.

Cost of Debt

As of April 1992, the utility owed the Barnett Bank approximately \$63,000. However, Barnett Bank has subsequently written off the debt. This was confirmed by the Court's attorney who handled the initial receivership case. Therefore, since the utility has no outstanding debt, the appropriate cost rate for \$0 debt is 0 percent.

Overall Rate of Return

As a result of the pro rata adjustment discussed above, the capital structure was reconciled to the average rate base balance. Since the only component in the capital structure is equity, and the return on equity is 9.30 percent, the resulting overall rate of return is also 9.30 percent.

NET OPERATING INCOME

Our calculation of net operating income is depicted on Schedule No. 3, and our adjustments are itemized on Schedules Nos. 3A and 3B. Those adjustments which are self-explanatory or which are essentially mechanical in nature are reflected on those schedules without further discussion in the body of this Order. The major adjustments are discussed below.

Test Year Operating Revenues

The utility recorded revenues of \$18,756 during the five-month test period. Based on the number of test year bills and the current rate of \$17.86 per month, we find that the appropriate amount of annualized test year revenues is \$47,204. Therefore, we have made adjustments totalling \$28,448 to increase the utility's balance to our approved amount.

Operating Expenses

The appropriate amount of test year operating expense is \$49,455, and the appropriate amount of operating expense for rate setting purposes is \$49,718. The components of the utility's operating expenses include operation and maintenance expenses,

depreciation expense (net of related amortization of CIAC), taxes other than income taxes, and income taxes. For the purpose of the following discussion, all amounts recorded by the utility represent the totals incurred during the five-month period after Staco was appointed as the utility's receiver, but before the utility's operations were taken over by WSI. A discussion of each component follows.

Operation and Maintenance (O&M) Expenses

The utility charged \$23,111 to O&M during the five-month test period. Explanations of the utility's recorded expenses and our findings are discussed below.

1) Sludge Removal - The utility recorded \$1,000 in this account during the five-month period. After annualizing the components of this expense, we find that \$4,125 is a reasonable annual allowance for sludge removal. Therefore, we have made an adjustment of \$3,125 to increase the utility's recorded amount.

2) Purchased Power - The utility recorded \$2,367 in this account during the five-month period. We find that \$5,623 is a reasonable annual allowance. Therefore, we have increased this amount by \$3,256.

3) Chemicals - The utility recorded \$478 in this account during the five-month period. We made an adjustment of \$261 to reflect chemicals expense incurred but not yet paid. After annualizing the components of this expense, we find that \$2,160 is a reasonable allowance for chemicals expense. Therefore, we have made an adjustment of \$1,420 to increase the utility's chemicals balance.

4) Materials and Supplies - The utility recorded \$344 in this account during the five-month period. We made an adjustment of \$214 to reflect the reclassification of postage expense from miscellaneous expense. We made an adjustment of \$639 to reflect an additional allowance for postage and office supplies. Therefore, we find that the appropriate balance is \$1,197.

5) Contractual Services - The utility charged \$13,257 to this account during the five-month period. We made an adjustment of \$9,624 to reflect expenses incurred but not yet paid. In addition, numerous other adjustments were necessary to reflect reclassifications, annualizations, allowances, disallowances of

excessive labor charges, and the removal of unamortized expenses. After making these adjustments, we find that the appropriate contractual services balance is \$28,948.

6) Transportation Expense - The utility recorded \$0 during the five-month period. We find it appropriate to allow the utility to cover the costs of transportation. We find that the appropriate annual allowance is \$1,200.

7) Regulatory Commission Expense - The utility recorded no expense during the test period. The filing fee for the instant rate case is \$150. This expense will be amortized over four years. The resulting annual expense is \$38.

8) Miscellaneous Expense - The utility recorded \$410 during the five-month period. We adjusted this account by \$214 to remove misclassified postage expense, and reclassified \$1,950 associated with the utility's temporary operating permit to this account from the contractual services account. We removed \$1,560 of that expense to reflect the unamortized portion of the temporary operating permit. We find that the remaining balance appears reasonable on an annual basis; and therefore, no further adjustments are necessary.

Operation and Maintenance Expenses Summary

Based on the foregoing, we find that the appropriate amount of annual operation and maintenance expenses is \$43,876.

Depreciation Expense (Net of Amortization of CIAC)

The test period depreciation expense associated with used and useful plant is \$4,853. This expense was calculated in accordance with Rule 25-30.140, Florida Administrative Code. The corresponding annual amortization of CIAC is \$2,991. Therefore, we find that depreciation expense net of amortization of CIAC is \$1,862.

Taxes Other Than Income Taxes

The utility recorded \$1,944 on its books during the five-month period. This amount was based on property taxes paid during the year. However, we reduced this amount by \$351 to reflect the disallowance of taxes associated with nonused and useful plant. In addition, the regulatory assessment fees based on our approved test

year revenues is \$2,124. Therefore, we find that the appropriate test year balance is \$3,717.

For rate setting purposes, we increased the taxes other than income taxes account by an additional \$262 to reflect the regulatory assessment fees of 4.5 percent to be paid resulting from our approved revenue increase.

Income Tax Expense

The utility is an 1120 corporation. Although the utility would be expected to pay income taxes, there are sufficient operating loss carryforwards to eliminate income tax expense for the next few years. Therefore, we did not include an allowance for income tax expense.

Operating Expenses Summary

Based on the foregoing, the appropriate amount of test year operating expenses is \$49,455, and the appropriate amount of operating expenses for rate setting purposes is \$49,718.

REVENUE REQUIREMENT

Based upon our review of the utility's books and records and the adjustments made herein, we find that the appropriate annual revenue requirement for this utility is \$53,035. This revenue requirement will allow the utility the opportunity to recover its operating expenses and earn a 9.30 percent return on its investment.

RATES AND RATE STRUCTURE

The preferred rate structure is the base facility and gallonage charge rate structure, because of its ability to track costs and give customers some control over their wastewater bills. However, several of the utility's customers obtain their water from private wells, thereby making the calculation of rates based on water consumption impractical. As a result, consistent with our decision in the utility's last staff-assisted rate case, we find that it is appropriate that the utility continue the flat rate structure.

The approved flat monthly rates were calculated by dividing the approved revenue requirement of \$53,035 by 222 customers

divided by 12 months. This results in a flat monthly rate of \$19.91 per ERC. The utility's current and our approved rates are shown below.

MONTHLY FLAT RATES - WASTEWATER

	<u>Current Rates</u>	<u>Commission Approved Rates</u>
Residential	\$ 17.86	\$ 19.91
Multi-Residential (per living unit)	\$ 17.86	\$ 19.91

Service Availability Charges

The utility is authorized to collect a system capacity charge of \$500 per ERC. Although the treatment plant is 100 percent used and useful, DEP has required the utility to make substantial improvements to its system. Therefore, no change to the utility's service availability charge is appropriate at this time. However, the appropriate service availability charges for this utility should be re-examined after all of the DEP-required improvements have been made.

Miscellaneous Service Charges

The utility's current tariff contains the following provisions for miscellaneous service charges:

	<u>Wastewater</u>
Initial Connection	\$ 15.00
Normal Reconnection	15.00
Violation Reconnection	Actual Cost
Premises Visit (in lieu of disconnection)	10.00

We find that the utility's current charges are appropriate. These charges are designed to more accurately reflect the costs associated with each service and to place the burden of payment on the person who causes the cost to be incurred rather than on the entire rate paying body as a whole.

Customer Deposit, Late Fee, and Connection Fee

The utility has no provision in its current tariff for customer deposits, a late fee or a collection fee. However, the utility requested approval of each of these items. When designing the appropriate amount for customer deposits, it is important to refer to Rule 25-30.311(7), Florida Administrative Code, which provides that:

- (7) A utility may require, upon reasonable written notice of not less than 30 days, such request or notice being separate and apart from any bill for service, a new deposit, where previously waived or returned, or an additional deposit, in order to secure payment of current bills; provided, however, that the total amount of required deposit should not exceed an amount equal to the average actual charge for water and/or sewer service for two billing periods for the 12-month period immediately prior to the date of notice. In the event the customer has had service less than 12 months, then the utility shall base its new or additional deposit upon the average monthly billing available.

Based on information contained in the audit, the average monthly delinquency rate for the utility is 16 customers (or 7 percent) of the utility's 222 customers. Although the delinquency rate does not appear to be significant, since the utility is in receivership, we believe that the delinquency rate may be sufficient to cause cash flow problems for the utility. To compound this problem, as of the end of the test year, 26 accounts had been delinquent for a period of 30 days or more; the revenues associated with those accounts is approximately \$1,900. We believe that requiring customer deposits from both new customers and existing customers who have demonstrated consistent delinquency in paying the utility for service will help secure payment of current bills.

In accordance with Rule 25-30.311, Florida Administrative Code, the deposit should not exceed an amount equal to twice the average monthly charge for service. The approved flat rate for this utility is \$19.91 per month. Therefore, we find that the appropriate amount for a customer deposit is \$39.82.

The utility has requested a late fee of \$5 plus 1.5 percent monthly interest on accounts delinquent for more than 20 days.

However, the utility has provided no detailed, cost-based documentation that would support its request. Therefore, we find it appropriate to deny the utility's request for late fees. However, as discussed earlier, approximately 7 percent of the utility's customers do not timely pay their bills. The Commission has approved late payment charges for other utilities in the past, based on the rationale that the general body of ratepayers should not shoulder the burden of costs caused by those customers who do not timely pay their bills. In addition, a late fee provides customers with an incentive to pay their bills within the 20-day period provided in the utility's tariff. Based on the typical incremental costs associated with collecting from late-paying customers, the Commission has found that a late fee of \$3 recovers those incremental collection costs. Therefore, we find it appropriate to approve a \$3 late fee in this instance.

The utility has also requested a collection fee of \$75, in lieu of disconnect charges, if the account is paid on the date of disconnect. This charge would essentially be a miscellaneous service charge representing a premises visit in lieu of disconnect. However, the utility's requested charge of \$75 greatly exceeds the \$10 charge that is typically approved. As discussed above, the utility has failed to provide any detailed cost-based documentation to support its request in this regard. Therefore, we find that it is appropriate to deny the utility's request for a collection charge.

TREATED EFFLUENT

Water use in the utility's service area is under the jurisdiction of the South Florida Water Management District. The District has designated the utility's area as a critical use area, thereby requiring that water conservation methods be implemented. Currently, the utility disposes of its effluent into a percolation pond. The use of the percolation pond allows the treated wastewater to return to the water table through the ground as ground flow recharge. DEP and the South Florida Water Management District have confirmed that the percolation pond remains a viable method of disposal for the utility. If the utility adheres to the requirements of its operations as established by DEP, we believe that no additional action regarding effluent reuse is necessary.

STATUTORY RATE REDUCTION AND RECOVERY PERIOD

The statutory recovery period for rate case expenses is four years. The appropriate annual revenue reduction at the end of that period is \$39.

Section 367.0816, Florida Statutes, states that:

The amount of rate case expense determined by the Commission pursuant to the provisions of this chapter to be recovered through a public utilities rate shall be apportioned for recovery over a period of 4 years. At the conclusion of the recovery period, the rate of public utility shall be reduced immediately by the amount of rate case expense previously included in rates.

The only rate case expense to be recovered in this proceeding is the \$150 filing fee. The four-year recovery period for this fee allows the utility to recover \$38 per year through its rates. Once the annual regulatory commission expense recovery is grossed-up to reflect regulatory assessment fees, the annual recovery increases to \$39.

At the end of four years, LCM's rates should be reduced by \$39 annually. Assuming no change in the utility's current revenues, expenses, capital structure and customer base, the effect of this rate reduction is a \$.02 reduction in the approved flat rates.

The utility shall file revised tariff sheets no later than one month prior to the actual date of the required rate reduction. The utility shall also file a proposed customer notice setting forth the lower rates and the reason for the reduction. If the utility files this reduction in conjunction with a price index or pass-through rate adjustment, 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.

SHOW CAUSE

In May 1993, the utility deposited \$4,000 into a refund account at an independent financial institution, and authorized that financial institution to deny withdrawal of those funds without the permission of the Commission. The utility then began charging the emergency, temporary rates effective June 1, 1993.

However, the utility was notified by letter in June 1993 that the account does not provide for security for a refund in a manner that conforms with the provisions of Order No. PSC-93-0633-FOF-SU. Repeated attempts by our Staff have been made to instruct and assist the utility regarding the technical requirements of providing proper security. However, no security for a refund has been properly provided for, and the tariff sheets reflecting the emergency, temporary rates have not been approved.

As discussed previously, due to the tenuous financial condition of the utility, the Commission found it appropriate to grant emergency, temporary rates. But for the receiver's failure to follow the Commission's procedural requirements regarding providing security for a refund, the utility would in fact be authorized to collect those emergency, temporary rates. Therefore, we will not order the utility to refund the unauthorized portion of the rates collected at this time.

However, the utility shall show cause why it should not be fined \$250 for charging unauthorized rates. Further, any additional instances of the utility charging unauthorized rates could result in our taking more serious action against this utility.

TEMPORARY RATES IN THE EVENT OF PROTEST

This Order proposes an increase in wastewater rates. A timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the utility. Therefore, in the event of a protest filed by a party other than the utility, we hereby authorize the utility to collect the rates approved herein, on a temporary basis, subject to refund, provided that the utility first furnish and have approved by Commission Staff, adequate security for a potential refund through a bond or letter of credit in the amount of \$3,973 or an escrow account, a proposed customer notice, and revised tariff sheets.

If the utility chooses a bond as security, the bond should contain wording to the effect that it will be terminated only under the following conditions:

- 1) The Commission approves the rate increase; or

- 2) If the Commission denies the increase, the utility shall refund the amount collected that is attributable to the increase.

If the utility chooses a letter of credit as a security, it should contain the following conditions:

- 1) The letter of credit is irrevocable for the period it is in effect.
- 2) The letter of credit will be in effect until a final Commission order is rendered, either approving or denying the rate increase.

If security is provided through an escrow agreement, the following conditions should be part of the agreement:

- 1) No refunds in the escrow account may be withdrawn by the utility without the express approval of the Commission.
- 2) The escrow account shall be an interest bearing account.
- 3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
- 4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.
- 5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
- 6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 7) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Consentino v. Elson, 263 So.2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.

- 8) The Director of Records and Reporting must be a signatory to the escrow agreement.

If the utility chooses to provide the security for a refund by establishing an escrow account, the utility shall not, under any circumstances, implement the rates approved herein without prior approval by Staff that the escrow agreement conforms to each requirement listed above.

In no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility. Irrespective of the form of security chosen by the utility, an account of all monies received as result of the rate increase should be maintained by the utility. This account must specify by whom and on whose behalf such monies were paid. If a refund is ultimately required, it shall be paid with interest calculated pursuant to Rule 25-30.360(4), Florida Administrative Code.

The utility shall maintain a record of the amount of the bond, and the amount of revenues that are subject to refund. In addition, after the increased rates are in effect, the utility shall file reports with the Division of Water and Wastewater no later than 20 days after each monthly billing. These reports shall indicate the amount of revenue collected under the increased rates.

EFFECTIVE DATE

The revised flat monthly rates shall be effective for service rendered on or after the stamped approval date on the revised tariff sheets. Tariff sheets will not be approved until Staff verifies that the tariff sheets are consistent with our decision herein, that the proper security for refund has been provided, and that the proposed customer notice is adequate.

If no protest is timely filed and the revised tariff sheets have been approved, and the show cause matter is resolved, this docket may be closed administratively. However, tariff sheets will not be approved until our Staff verifies that the tariff sheets are consistent with the Commission's decision, that the proper security for refund has been provided, and that the proposed customer notice is adequate.

Furthermore, our Staff shall closely monitor both the utility's ongoing quality of service as well as the utility's

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compliance with DEP. If necessary, Staff will open a new docket to further investigate the quality of service provided by the utility, and show cause proceedings may be initiated.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the application of LCM Sewer Authority, for an increase in wastewater rates in Lee County is approved as set forth in the body of this Order. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

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

ORDERED that the provisions of this Order, except for the granting of temporary rates in the event of protest and the requirement that the utility show cause regarding its charging of rates without approved security, are issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the Notice of Further Proceedings or Judicial Review attached hereto. It is further

ORDERED that LCM Sewer Authority, is authorized to charge the new rates, customer deposits, and late fees as set forth in the body of this Order. It is further

ORDERED that the rates approved herein shall be effective for service rendered on or after thirty days after the stamped approval date on the revised tariff pages. It is further

ORDERED that prior to its implementation of the rates approved herein, LCM Sewer Authority, shall submit and have approved a proposed customer notice of the increased rates and charges and the reasons therefor. The notice will be approved upon Staff's verification that it is consistent with our decision herein. It is further

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ORDERED that prior to its implementation of the rates approved herein, LCM Sewer Authority, shall submit and have approved a bond or letter of credit in the amount of \$3,973 or an escrow agreement as a guarantee of any potential refund of revenues collected on a temporary basis. It is further

ORDERED that prior to its implementation of the rates approved herein, LCM Sewer Authority, shall submit and have approved revised tariff pages. The revised tariff pages will be approved upon Staff's verification that the pages are consistent with our decision herein and that the protest period has expired. It is further

ORDERED that in the event of a protest by any substantially affected person other than the utility, LCM Sewer Authority, is authorized to collect the rates approved herein on a temporary basis, subject to refund, in accordance with Rule 25-30.360, Florida Administrative Code, provided that LCM Sewer Authority, has furnished satisfactory security for any potential refund and provided that it has submitted and Staff has approved revised tariff pages and a proposed customer notice. It is further

ORDERED that LCM Sewer Authority shall show cause in writing, within twenty days, why it should not be fined for collecting unauthorized rates. It is further

ORDERED that LCM Sewer Authority's written response must contain specific allegations of fact and law. It is further

ORDERED that LCM Sewer Authority's opportunity to file a written response shall constitute its opportunity to be heard prior to final determination of noncompliance and assessment of penalty by this Commission, as required under Rule 25-30.110(6)(c), Florida Administrative Code. It is further

ORDERED that a failure to file a timely response to this show cause order shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that, in the event that LCM Sewer Authority files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57, Florida Statutes, further proceedings may be scheduled before a final determination on these matters is made. It is further

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ORDERED that this docket may be closed if no timely protest is filed and the revised tariff sheets have been approved and once the show cause matter has been resolved.

By ORDER of the Florida Public Service Commission, this 23rd day of December, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
LAJ

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.

As identified in the body of this Order, our action, except for the granting of temporary rates in the event of a protest and the requirement that the utility show cause regarding its charging of rates without approved security, is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street,

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Tallahassee, Florida 32399-0870, by the close of business on January 12, 1994.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.

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LCM SEWER AUTHORITY, INC.
 DOCKET NO. 920828-SU
 TEST YEAR ENDED SEPTEMBER 30, 1992

SCHEDULE NO. 1
 RATE BASE

Account Title =====	Balance per Utility =====	Commission Adjustments to Utility Balance =====	Balance per Commission =====
Depreciable Plant in Service	\$164,272	(\$832) A	\$163,440
Land/Nondepreciable Assets	23,772	0	23,772
Plant Held for Future Use	0	(21,344) B	(21,344)
Contributions in Aid of Construction	(10,329)	(10,329) C	(106,329)
Accumulated Depreciation	(71,999)	2,989 D	(69,010)
Accumulated Amortization of CIAC	40,577	(918) E	39,659
Working Capital Allowance	0	5,485 F	5,485
RATE BASE	----- \$56,043 -----	----- (\$20,370) -----	----- \$35,673 -----

LCM SEWER AUTHORITY, INC.
 DOCKET NO. 920828-SU
 TEST YEAR ENDED SEPTEMBER 30, 1992

SCHEDULE NO. 1A
 ADJUSTMENTS TO
 RATE BASE

A. DEPRECIABLE PLANT IN SERVICE:		

1. Remove improperly recorded item		(832)
B. PLANT HELD FOR FUTURE USE (PHFU):		

1. Average PHFU		(33,810)
2. Accumulated depreciation associated with PHFU		12,466

	Subtotal	(21,344)
C. CONTRIBUTIONS IN AID OF CONSTRUCTION (CIAC):		

1. Averaging adjustment		250
2. Allowance for margin reserve		(6,000)

	Subtotal	(5,750)
D. ACCUMULATED DEPRECIATION:		

1. Adjustment that results in the appropriate amount of test year depreciation expense		15
2. Averaging adjustment		2,974

	Subtotal	2,989
E. ACCUMULATED AMORTIZATION OF CIAC:		

1. Adjustment to reflect the appropriate balance at the beginning of the test year		917
2. Adjustment that results in the appropriate amount of test year amortization of CIAC		(9)
3. Averaging adjustment		(1,826)

	Subtotal	(918)
F. WORKING CAPITAL ALLOWANCE:		

1. Working capital allowance based on one-eighth of O&M expenses		5,485

	TOTAL ADJUSTMENTS:	(20,370)
		=====

LCM SEWER AUTHORITY, INC.
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SCHEDULE NO. 2
 COST OF CAPITAL

Component =====	Balance Per Utility =====	Commission Adjustments to Utility Balance =====	Adjusted Balance =====	Pro Rata Adjustments =====	Balance per Commission =====	Percent of Total =====	Cost =====	Weighted Cost =====
Equity	\$70,333	\$0	\$70,333	(\$34,660)	\$35,673	100.00%	9.30%	9.30%
Debt	0	0	0	0	0	0.00%	0.00%	0.00%
TOTAL	----- \$70,333	----- \$0	----- \$70,333	----- (\$34,660)	----- \$35,673	----- 100.00%		----- 9.30% =====

Zones of Reasonableness:
 =====

	Low =====	High =====
Equity	8.30%	10.30%
Debt	8.30%	10.30%

LCM SEWER AUTHORITY, INC.
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SCHEDULE NO. 3
 OPERATING INCOME
 WASTEWATER

	Balance Per Utility =====	Commission Adjustments to Utility Balance =====		Balance per Commission =====	Commission Adjustments for increase =====		Balance per Commission =====
Operating Revenues	\$18,756	\$28,448 A		\$47,204	\$5,831 E		\$53,035
Operating Expenses:							

Operation and Maintenance	\$23,111	\$20,765 B		\$43,876	\$0		\$43,876
Depreciation	1,158	704 C		1,862	0		1,862
Amortization	0	0		0	0		0
Taxes Other Than Income	1,944	1,773 D		3,717	262 F		3,980
Income Taxes	0	0		0	0		0

Total Operating Expenses	\$26,213	\$23,242		\$49,455	\$262		\$49,718

Operating Income (Loss)	(\$7,457)			(\$2,252)	\$5,569		\$3,317
Rate Base	\$56,043			\$35,673			\$35,673
Rate of Return	-13.31%			-6.31%			9.30%
=====							

LCM SEWER AUTHORITY, INC.
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SCHEDULE NO. 3A
ADJUSTMENTS TO
OPERATING INCOME
PAGE 1 OF 2

A. OPERATING REVENUES:

1.	Adjustment to reflect the test year receipts	27,068
2.	Annualization of price index rate adjustment	1,380

	TOTAL REVENUE ADJUSTMENTS:	28,448
		=====

B. OPERATION AND MAINTENANCE EXPENSES:

1.	Sludge Removal Expense:	
1.	Adjustment to reflect the Commission's approved annual allowance	3,125
2.	Purchased Power Expense:	
1.	Adjustment to reflect annualization of expense	3,256
3.	Chemicals Expense:	
1.	Record expense incurred but not yet paid	261
2.	Adjustment to reflect the Commission's approved annual allowance	1,420

	Subtotal	1,582
4.	Materials and Supplies Expense:	
1.	Reclassify postage from miscellaneous expense	214
2.	Additional allowance for postage and supplies	639

	Subtotal	853
5.	Contractual Services Expense:	
1.	Record expenses incurred but not yet paid	9,624
2.	Reclassify temporary operating permit expense to miscellaneous expense	(1,950)
3.	Additional allowance for contract labor	684
4.	Annualization of contract operator's fee	6,650
5.	Annualization of management fee	10,500
6.	Remove disallowed portion of contract operator's fee	(3,600)
7.	Adjustment to reflect the Commission's approved allowance for management fee	(5,260)
8.	Adjustment to reflect annual allowance for grounds keeping as approved by the Commission	520
9.	Adjustment to reflect annual allowance for lab testing fees as approved by the Commission	360
10.	Disallowance of excess contract labor charges	(240)
11.	Remove unamortized portion of repairs expense amortized over a two-year period	(1,597)

	Subtotal	15,691

LCM SEWER AUTHORITY, INC.
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SCHEDULE NO. 3A
 ADJUSTMENTS TO
 OPERATING INCOME
 PAGE 2 OF 2

6.	Transportation Expense	
1.	Annual allowance as approved by the Commission	1,200
7.	Regulatory Commission Expense:	
1.	To amortize the rate case filing fee in the instant case	38
8.	Miscellaneous Expense:	
1.	Reclassify postage expense to materials and supplies expense	(214)
2.	Reclassify temporary operating permit expense from contractual services	1,950
3.	Remove unamortized portion of temporary operating permit	(1,560)
	Subtotal	176
	TOTAL O&M ADJUSTMENTS:	26,021
		=====
C. DEPRECIATION EXPENSE:		

1.	To remove test year depreciation expense recorded by the utility	(1,158)
2.	To reflect the Commission's approved used and useful depreciation expense	4,853
3.	To reflect the Commission's approved used and useful amortization of CIAC	(2,991)
	TOTAL DEPRECIATION EXPENSE ADJUSTMENTS:	704
		=====
E. TAXES OTHER THAN INCOME TAXES (TOIT):		

1.	Disallowance of property tax associated with nonused and useful plant	(351)
2.	Regulatory assessment fees based on the Commission's approved amount of test year revenues	2,124
	TOTAL TOIT EXPENSE ADJUSTMENTS:	1,773
		=====
F. OPERATING REVENUES:		

1.	To reflect the Commission's approved increase in revenue requirement	5,831
G. TAXES OTHER THAN INCOME TAXES:		

1.	To reflect increase in regulatory assessment fees associated with the Commission's approved increase in revenue requirement	262

LCM SEWER AUTHORITY, INC.
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SCHEDULE NO. 3B
 DETAIL OF OPERATION AND
 MAINTENANCE EXPENSES

----- Account ----- No. Description =====	Balance per Utility =====	Commission Adjustments =====	Balance per Commission =====
701 Salaries and Wages - Employees	50	50	50
703 Salaries and Wages - Officers	0	0	0
704 Employee Pensions and Benefits	0	0	0
710 Purchased Sewage Treatment	0	0	0
711 Sludge Removal Expense	1,000	3,125 1	4,125
715 Purchased Power	2,367	3,256 2	5,623
716 Fuel for Power Production	0	0	0
718 Chemicals	478	1,682 3	2,160
720 Materials and Supplies	344	853 4	1,197
730 Contractual Services	13,257	15,691 5	28,948
740 Rents	0	0	0
750 Transportation Expenses	0	1,200 6	1,200
755 Insurance Expense	0	0	0
765 Regulatory Commission Expense	0	38 7	38
770 Bad Debt Expense	0	0	0
775 Miscellaneous Expenses	410	176 8	586
TOTAL OPERATION AND MAINTENANCE EXPENSES	\$17,855	\$26,021	\$43,876

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LCM SEWER AUTHORITY, INC.
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SCHEDULE 4
RATE REDUCTION AFTER
RECOVERY OF RATE CASE
EXPENSES

MONTHLY FLAT RATES - WASTEWATER

	APPROVED RATES	RATE DECREASE
	-----	-----
Residential	\$19.91	\$0.02
Multi-Residential (per living unit)	19.91	0.02