

FLORIDA PUBLIC SERVICE COMMISSION  
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MEMORANDUM

AUGUST 28, 1997

RECEIVED

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11:40  
FPSC - Records/Reporting

TO: DIRECTOR OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER AND SEWER (WALKER, REDEMANN, BETHEA)  
DIVISION OF LEGAL SERVICES (CROSBY)

RE: DOCKET NO. 961535-WU - APPLICATION FOR TRANSFER OF  
CERTIFICATE NO. 53-W IN PALM BEACH COUNTY FROM LAKE  
OSBORNE UTILITIES COMPANY, INC. TO CRYSTAL RIVER  
UTILITIES, INC.

AGENDA: SEPTEMBER 9, 1997 - REGULAR AGENDA - PROPOSED AGENCY  
ACTION FOR ISSUES NOS. 2 and 3 - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: THIS ITEM DEFERRED FROM AUGUST 5, 1997  
AGENDA. ISSUE 4 IS NEW. FILENAME: I:\PSC\WAW\WP\961535A.RCM

CASE BACKGROUND

Lake Osborne Utilities Company, Inc. (Lake Osborne or utility) is a Class C utility that provides water service for about 464 residential customers in Palm Beach County. In 1995, Lake Osborne recorded operating revenues of \$96,288, operating expenses of \$102,584, and a consequent \$6,296 net operating loss.

On December 6, 1996, Mr. Richard Bowles, the Vice President of Crystal River Utilities, Inc. (Crystal River), filed an application for permission to transfer Water Certificate No. 53-W from Lake Osborne to Crystal River. Crystal River provides water and wastewater service for about eleven different utility systems in Florida. As stated in its application, Crystal River intends to fulfill the commitments, obligations, and representations of Lake Osborne with regard to utility concerns.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of Water Certificate No. 53-W from Lake Osborne to Crystal River be approved?

RECOMMENDATION: Yes, the transfer should be approved. (WALKER, REDEMANN)

STAFF ANALYSIS: The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of a certificate. The application contains a check in the amount of \$750, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

The Lake Osborne water system resells finished water that is obtained from the City of Lake Worth. Lake Osborne does not own or operate any water treatment facilities and its distribution lines lie within easements and public right-of-ways. Since it owns no land, the usual filing requirement relative to ownership of plant sites (Rule 25-30.037(1)(o), Florida Administrative Code) does not apply in this case.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system to be transferred. No objections to the notice of application have been received and the time for filing such has expired.

A description of the territory served by the utility is appended to this memorandum as Attachment A.

We believe the public interest is served by approving the proposed transfer. Crystal River owns and operates eleven utility systems throughout Florida and has agreed to fulfill the commitments, obligations, and representations of Lake Osborne with regard to utility concerns. We believe that Crystal River has shown that it possesses the technical and financial capabilities needed to maintain satisfactory service for this community.

We contacted the Department of Environmental Protection (DEP) concerning Lake Osborne's compliance status relative to any Notices of Violation or any DEP consent order. We were informed that this system is not subject to any outstanding violation or consent orders. Crystal River reported that the Lake Osborne system is in reasonably good operating condition and no major repairs or improvements are anticipated.

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The application contains a copy of the contract for sale which includes the purchase price, terms of payment and a list of the assets purchased and the liabilities assumed. Crystal River provided a statement in its application that it will fulfill the commitments, obligations, and representations of Lake Osborne. This system is current with respect to payment of regulatory assessment fees through 1996. Crystal River will pay all of the utility's regulatory assessment fees for 1997.

Based on the above, staff believes the transfer of Water Certificate No. 53-W from Lake Osborne to Crystal Rivers is in the public interest. Accordingly, we recommend that the requested transfer should be approved.

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ATTACHMENT A

CRYSTAL RIVER UTILITIES, INC.

TERRITORY DESCRIPTION

PER ORDER NO. 5298

In Township 44 South, Range 43 East

Section 32

That part of the East  $\frac{1}{4}$  lying East and South of the center line of Lake Osborne Drive.

SECTION 33

That part of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  lying west of the west right-of-way of Seaboard Air Line Railway right-of-way; the south 330.11 feet of the south  $\frac{1}{2}$  of the southwest  $\frac{1}{4}$  of the northwest  $\frac{1}{4}$  also lying west of the west right-of-way of Seaboard Air Line Railroad.

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**ISSUE 2:** What is the rate base of Lake Osborne at the time of transfer?

**RECOMMENDATION:** The rate base amount, which for transfer purposes reflects the net book value, is \$1,842. (WALKER)

**STAFF ANALYSIS:** According to Crystal River, the net book value of the transferred assets would be \$41,029 at December 31, 1996, if depreciation during 1996 and working capital are considered. This amount was estimated using Lake Osborne's 1995 Annual Report and projected provisions for depreciation in 1996. However, staff believes that further corrections are needed.

Lake Osborne's rate base was last determined by the Commission in Docket No. 950641-WU, a staff-assisted rate case based upon audited information through June 30, 1995 (See Order No. PSC-96-0357-FOF-WU). In that proceeding, the Commission found that Lake Osborne failed to book certain plant and reserve account adjustments required in a previous docket. With those corrections, the approved rate base amount was \$17,446, including \$11,886 for working capital. In a transfer proceeding, the rate base balance excludes working capital. Thus, the net book value approved in Docket No. 950641-WU, without working capital, was \$5,560. With additional adjustments to reflect actual 1995 additions to plant and accumulated depreciation during 1996, the resulting rate base amount would be \$1,842.

Staff's recommended rate base balance for Lake Osborne is attached as Schedule No. 1. Adjustments are reviewed on Schedule No. 2. Based on the adjustments set forth herein, staff recommends that rate base for the Lake Osborne water system be established as \$1,842. This rate base calculation is used purely to establish the net book value of the property being transferred and does not include the normal ratemaking adjustments for working capital or used and useful adjustments.

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SCHEDULE NO. 1

LAKE OSBORNE UTILITIES COMPANY, INC.  
SCHEDULE OF WATER RATE BASE  
AS OF DECEMBER 31, 1996

<u>Description</u>	<u>Balance per Utility</u>	<u>Adjust</u>	<u>Balance per Staff</u>
Utility Plant in Service	\$158,582	(\$39,121)	\$119,461
Accumulated Depreciation	(\$121,457)	\$11,943	(\$109,514)
CIAC	(\$19,904)	\$0	(\$19,904)
Accumulated Amortization	\$11,922	(\$123)	\$11,799
Working Capital	<u>\$11,886</u>	<u>(\$11,886)</u>	<u>\$0</u>
Totals	<u>\$41,029</u>	<u>(\$39,187)</u>	<u>\$1,842</u>

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SCHEDULE NO. 2

A) Plant in Service

1) Remove undocumented addition in prior docket	\$ (39,222)
2) Misclassified meter installation costs	\$ (245)
3) Misclassified meter installation costs	\$ 346
Total	\$ <u>(39,121)</u>

B) Accumulated Depreciation

1) Adjust to agree with Order No. PSC-96-0357-FOF-WU	\$ 17,769
2) Additional depreciation to 12/31/96	\$ <u>(5,826)</u>
Total	\$ <u>11,943</u>

C) Accumulated Amortization

1) Adjust to agree with Order No. PSC-96-0357-FOF-WU	\$ (1,094)
2) Additional amortization to 12/31/96	\$ 971
	\$ <u>(123)</u>

D) Working Capital

1) Remove working capital for transfer docket	\$ <u>(11,886)</u>
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**ISSUE 31** Should a positive acquisition adjustment be approved?

**RECOMMENDATION:** No. The \$123,158 positive acquisition adjustment should not be included in the calculation of rate base for transfer purposes. (WALKER)

**STAFF ANALYSIS:** An acquisition adjustment results when the purchase price differs from the original cost calculation. In this proceeding, the purchase price for the Lake Osborne system is \$125,000. That amount exceeds the recommended \$1,862 rate base amount by \$123,158. In the absence of extraordinary circumstances, it has been Commission policy that a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. The circumstances in this exchange do not appear to be extraordinary; therefore, the positive acquisition adjustment should not be included in the rate base determination. Further, Crystal River did not request rate base inclusion of a positive acquisition adjustment.

The acquisition adjustment resulting from the transfer of Lake Osborne is calculated as follows:

Purchase Price:	\$125,000
Staff Calculated Rate Base:	<u>\$1,862</u>
Positive Acquisition Adjustment:	<u>\$123,158</u>

When the buyer's actual investment is compared to the seller's net plant balance, and the resulting acquisition adjustment is excluded, a corresponding revenue shortfall may result. As noted above, Lake Osborne does not produce its own water; instead, it purchases water for resale and profits only to the extent its revenues exceed its operating costs. In Lake Osborne's most recent rate case, Docket No. 950641-WU (See Order No. PSC-96-0357-FOF-WU), its rates were established using an operating ratio methodology. Osborne's operating expenses for incidence of excessive costs, allowing only \$15,000 to offset contractual salaries and miscellaneous office costs. Then, Lake Osborne's operating expenses, less purchased water charges, were increased by 10%, or \$3,692, to provide added flexibility in meeting future income requirements. However, with an actual investment of \$125,000, a consequent requirement of \$11,000 would not be unreasonable for Crystal River. Thus, other things being equal, a revenue shortfall of \$7,000, or more, would follow.



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Staff discussed this anticipated earnings shortfall with Mr. Richard Bowles, Crystal River's operating officer. Mr. Bowles explained that this prospect was not sufficient to dissuade Crystal River from its desire to acquire the Lake Osborne system. However, he explained that Lake Osborne's profit margin would tend to discourage Crystal River or any company from incurring any substantial repair and replacement costs. Nonetheless, Crystal River is not requesting rate base inclusion of an acquisition adjustment in this docket. Further, Crystal River has indicated its willingness to retain the utility's existing rates for the immediate future.

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**ISSUE 4:** In a transfer proceeding, should the utility's rates be retained if they were designed using an operating ratio?

**RECOMMENDATION:** Yes, the existing rates should be retained in the absence of special circumstances. (WALKER, CROSBY, BETHEA)

**STAFF ANALYSIS:** In a transfer proceeding, it is customary to retain the rates of the former utility under new ownership unless special circumstances are shown. In this case, the Commission has an opportunity to decide whether existing rates should be retained if those rates were designed using an operating ratio rather than traditional return on investment principles. As provided in Rule 25-9.044(1), Florida Administrative Code, the acquiring company "must adopt" the former utility's existing rates unless authorized to change by the Commission. Crystal River, the acquiring company in this case, proposed that Lake Osborne's rates be retained, except as modified to reflect increased revenue taxes. As discussed below, staff also believes that existing rates should be retained.

At this time, Lake Osborne is the only utility with rates that were derived using the operating ratio methodology. The rate setting principles used in that docket are described in detail in Commission Order No. PSC-96-0357-FOF-WU, issued on March 13, 1996, in Docket No. 950641-WU. A brief review of some of the critical elements in that case follows. On June 13, 1995, Lake Osborne filed an application for a staff assisted rate case. During the course of that proceeding, the Commission's staff calculated that Lake Osborne's rate base would be \$17,446 under traditional return on investment practices. A consequent, but inadequate earnings condition was thus predicted. Accordingly, the staff proposed application of an operating ratio method for designing rates for Lake Osborne. A 10% increment for operating expenses, excluding purchased water charges, was deemed reasonable for this system. The resulting revenue impact of the operating ratio portion of the rate increase was \$3,692, or 3.5% of Lake Osborne's approved revenues. Otherwise, 96.5% of Lake Osborne's approved revenues, or \$103,243, was allowed to offset traditional operating expenses, including \$58,169 for purchased water. For the Lake Osborne system, we believe the revenue impact due to use of the operating ratio method was instrumental, but not material.

As provided in Rule 25-30.456, F.A.C., alternative rate setting procedures are available for utilities that meet certain filing conditions. These eligibility conditions include: a) the utility's revenues may not exceed \$150,000 if water or wastewater service is provided, or \$300,000 if both are provided; b) the utility should be current with respect to submission of annual reports and payment of revenue taxes; c) the utility's operating expenses exceed its rate base amount; d) the utility will maintain

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its Class C filing status indefinitely; and e) the applicant is in general compliance with Commission decisions and data requests. Also, pursuant to Rule 25-30.456, F.A.C., the maximum rate increase allowed under alternative rate setting practices is 50%.

For these reasons, no utility is assured that its rates will be established using an identical operating ratio or some other alternate rate setting practice. For example, although it operates several small systems, since Crystal River is a Class B utility, it cannot utilize the operating ratio for rate setting purposes. This system's achieved return on investment will be disclosed each year when Crystal River files its annual report. If excessive earnings are indicated, corrective measures may be undertaken at that time. If inadequate earnings are indicated, the utility may likewise propose collection of increased rates.

Taken alone, the operating ratio formula does not insure that rates developed under former ownership will be sufficient under new ownership. Still, an underlying premise in most transfer dockets is a belief that similar costs would be incurred irrespective of ownership conditions. Since about 96.5% of Lake Osborne's revenue requirement is directly associated with recovery of operating expenses, the probability of excessive earnings is consequently reduced. Indeed, a recent staff investigation disclosed that the Lake Osborne system incurred operating losses in 1996 following implementation of the rates approved in Docket No. 950641-WU.

In summary, the overall sufficiency of current rates under new ownership cannot be assured. Rates developed under traditional rate base principles or operating ratio concepts may produce inadequate or excessive earnings. However, if new rates are proposed, special circumstances must be shown to justify those rates. For example, United Water Florida Utilities, a water and wastewater utility system in Northeast Florida, consistently requests authority to collect its rates and charges, and does so in the context of a limited proceeding when it acquires new systems. In those cases, customers are directly noticed concerning the intended imposition of new rates. Also, the Commission's approval of uniform rates was treated as a proposed agency action in those proceedings. In limited proceedings that involve changing rates, customers are usually noticed and the Commission staff will conduct a customer meeting.

An alternative to the usual rate retention practice would be adoption of rates that would be compensatory for the new owner with its particular set of operating costs. That practice may entail presentation of projected expenses and income requirements for the new owner, whether by the applicant or the Commission staff. Such a task may be complicated and controversial. Instead, the staff

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believes that the Commission should examine the rationale for changing rates in a transfer proceeding on a case-by-case basis, where special conditions may justify special treatment. Absent some special showing, the staff believes the acquired utility's rates should be retained independent of the rate setting procedure used to establish those rates.

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**ISSUE 5:** Should Crystal River adopt and use the rates and charges approved by this Commission for Lake Osborne?

**RECOMMENDATION:** Yes, Crystal River should continue charging the rates and charges approved for this utility system. (WALKER)

**STAFF ANALYSIS:** The utility's approved rates and charges were effective June 29, 1996, (See WS-96-0113) per an administratively approved price index rate adjustment.

Rule 25-9.044(1), Florida Administrative Code, provides that:

In cases of change of ownership or control of a utility which places the operation under a different or new utility...the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission)...

Crystal River has not requested a change in the rates and charges of the utility, and staff is not aware of any reason to change them at this time. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges. The utility has filed a tariff reflecting the transfer of ownership. Staff will approve the tariff filing effective for services provided or connections made after the stamped approval date.

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**ISSUE 6:** Should this docket be closed?

**RECOMMENDATION:** Yes, this docket should be closed if no timely protests are filed to the proposed agency action issues. (CROSBY)

**STAFF ANALYSIS:** If there are no timely protests to the proposed agency action issues (Issues Nos. 2 and 3), no further action will be required and the docket should be closed.