



Public Service Commission

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RECORDS AND REPORTING

DATE: JUNE 18, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAW)

FROM: DIVISION OF WATER AND WASTEWATER (REDEMANN) *BSM PAK*
DIVISION OF LEGAL SERVICES (REYES) *BUR YET JMW bl*

RE: DOCKET NO. 970657-WS - APPLICATION FOR CERTIFICATES TO OPERATE A WATER AND WASTEWATER UTILITY IN CHARLOTTE AND DESOTO COUNTIES BY LAKE SUZY UTILITIES, INC.
COUNTY: CHARLOTTE, DESOTO

AGENDA: 6/30/98 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\970657.RCM

CASE BACKGROUND

Lake Suzy Utilities, Inc. (Lake Suzy or utility) provides water and wastewater service to approximately 142 water customers and 141 wastewater customers in DeSoto and Charlotte Counties, Florida. The utility's 1996 annual report shows an annual operating revenue of \$182,904 and a net operating income of \$2,546. The utility is a Class C utility company.

By Order No. PSC-97-0603-FOF-WS, issued May 27, 1997, in Docket No. 970411-WS, the Commission canceled the certificates held by regulated utilities in DeSoto County following County Resolution 97-21 rescinding Commission jurisdiction. However, because Docket No. 960799-WS remained pending, the Commission voted to delay canceling Lake Suzy's certificates until the rate case proceeding was concluded. The rate case became final on July 24, 1997, when the protest period expired, and Docket No. 960799-WS was closed.

On June 3, 1997, Lake Suzy filed an application for amendment to include additional territory in DeSoto and Charlotte Counties. On August 8, 1997, the utility was advised that it needed to file an application for original in existence certificates instead of an

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application for amendment of certificates. On September 11, 1997, Lake Suzy filed an original certificate application to provide water and wastewater service in DeSoto and Charlotte Counties. On October 22, 1997, DeSoto County timely filed an objection to the application for original certificate. On October 24, 1997, Charlotte County timely filed an objection to Lake Suzy's application. On January 13, 1998 DeSoto County filed a withdrawal of the objection to Lake Suzy's application and a notice of voluntary dismissal. On January 14, 1998, Charlotte County also withdrew its objection and included a copy of the settlement agreement reached between the County and Lake Suzy. The official filing date for this application was March 17, 1998, when all the deficiencies were complete.

On March 4, 1998, Florida Water Services Corporation (FWSC) filed an Objection to Application(s) for Territory Amendment & Original Certificates by Lake Suzy Utilities, Inc. and Petition for Leave to Intervene. On March 20, 1998, Lake Suzy filed a Response to Objection of Florida Water Services Corporation and Florida Water Services Corporation's Petition to Intervene. On April 13, 1998, FWSC filed a Motion to Consolidate Dockets Nos. 970657-WS and 980261-WS (Application for amendment of Certificates Nos. 570-W and 396-S in Charlotte County by FWSC). On April 20 and 28, 1998, Lake Suzy and Haus Development, Inc. (Haus Development) respectively filed responses to FWSC's Motion to Consolidate. Finally, on April 21, 1998, FWSC filed a Motion in Limine and Motion for Cease and Desist Order. On April 23, 1998, Lake Suzy filed a Response to FWSC's Motion in Limine and Motion for Cease and Desist Order.

In addition, on March 4, 1998, FWSC served its First Request for Production of Documents and First Set of Interrogatories upon Lake Suzy. On March 20, 1998, Lake Suzy filed a Motion for Protective Order requesting that discovery not be had by FWSC in this proceeding. On April 10, 1998, FWSC filed a Notice of Withdrawal of its discovery request, and on April 17, 1998, Lake Suzy filed a Notice of Withdrawal of Motion for Protective Order. This recommendation addresses all outstanding motions and responses to those motions, as well as the application for original certificates filed by Lake Suzy.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant FWSC's Objection to Application(s) for Territory Amendment & Original Certificates by Lake Suzy Utilities, Inc. and Petition for Leave to Intervene?

RECOMMENDATION: The Commission should dismiss FWSC's objection as untimely and deny its request for a hearing. However, the Commission should grant FWSC's Petition for Leave to Intervene. FWSC takes the case as it finds it. (REYES)

STAFF ANALYSIS: On September 26, 1997, Lake Suzy provided notice of its application for original certificates, and on March 4, 1998, FWSC filed its objection and petition to intervene (emphasis added).

FWSC's Objection to Application

Section 367.045, Florida Statutes, provides that written objections to a notice of application must be received within 30 days after the last day the notice was mailed or published by the applicant. Because FWSC's objection was not filed until March 4, 1998, it appears that the objection is untimely.

However, in support of its objection, FWSC asserts, among other things, that Lake Suzy did not provide written notice as required by Sections 367.045(1) and (2), Florida Statutes, and Rule 25-30.030, Florida Administrative Code, which require that notice be provided by mail or personal delivery to all Commission-regulated utilities within the county where the requested territory lies. FWSC attached an affidavit of Mr. Charles Sweat, Vice President of Corporate Development for FWSC, averring that FWSC did not receive notice of Lake Suzy's applications.

FWSC argues that a sufficient factual basis exists for the Commission to find that Lake Suzy did not properly issue written notice in accordance with the law in light of the prior complaints by both Charlotte County and DeSoto County that they did not receive proper written notice. Additionally, FWSC contends that technical defects in Lake Suzy's applications and supporting documents cast doubt on the sufficiency and validity of the filing. Additionally, FWSC argues that neither Section 367.045, Florida Statutes, nor Rule 25-30.030, Florida Administrative Code, directly authorize the Commission to consider issues of constructive notice in amendment or original certification proceedings, and even if constructive notice may be properly considered, the facts, if any, which may tend to establish constructive notice did not occur until after the 30-day objection period would have expired had written notice been properly given.

On March 20, 1998, Lake Suzy filed a Response to Objection of Florida Water Services Corporation and Florida Water Services Corporation's Petition to Intervene. Staff believes that Lake Suzy's response is untimely pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, which provides that a written memorandum in opposition to a motion may be filed within seven days, plus an additional five days if service is by mail. Lake Suzy, however, contends that its response is timely because FWSC's pleading clearly falls within the definition of a petition pursuant to Rule 25-22.036, Florida Administrative Code, and FWSC's pleading states that it is a petition filed pursuant to Rules 25-22.036 and 25-22.039, Florida Administrative Code. While Rule 25-22.039, Florida Administrative Code, employs the term "petition" as the pleading which is to be filed to request intervention, this Commission has previously interpreted such a pleading as a motion for purposes of determining whether a response is timely. See Order No. PSC-97-0470-FOF-WU, issued April 23, 1997, in Docket No. 960867-WU. Accordingly, staff believes Lake Suzy's response is untimely. However, because Rule 25-22.039, Florida Administrative Code, employs the term "petition", staff believes that Lake Suzy in good faith may have believed it had twenty days in which to file a response. In light of this fact and given that no one will be prejudiced by the Commission's consideration of the utility's response, staff recommends that Lake Suzy's response be given consideration.

In its Response, Lake Suzy argues that the initial and fatal deficiency in FWSC's objection is that it is untimely. Lake Suzy further argues that the affidavit of Mr. Sweat does not create a factual issue as to whether Lake Suzy gave the required notices. Lake Suzy also included with its response an affidavit by Mr. Dallas Shepard, President of Lake Suzy, stating that not only did Lake Suzy provide notice to FWSC, but that representatives of the two utilities met on one occasion and had telephone conferences on two occasions regarding Lake Suzy's pending application which occurred prior to the time for filing an objection had run. Lake Suzy further argues that the name and address for FWSC on the Commission's list of water and wastewater utilities in Charlotte County is the same as the one used by FWSC's attorney in FWSC's pleadings and thus must be presumed to be correct. Lake Suzy also argues that FWSC had constructive notice through newspaper publication.

First, staff believes that FWSC's reliance on the allegations by Charlotte County and DeSoto County is misguided. Charlotte County and DeSoto County alleged that they did not receive notice of Lake Suzy's amendment application not because Lake Suzy never actually mailed notice, but rather because the county addresses contained on the Commission list provided to Lake Suzy were not the appropriate addresses for the proper branch of the County to

receive notice. FWSC makes no similar allegation. In fact, the address contained on the Commission list is the same address contained in FWSC's pleading.

FWSC also argues in a footnote to its objection that the noticing affidavits filed by Lake Suzy were previously cited by staff as deficient, and FWSC believes it necessary for it and the Commission to test the adequacy and accuracy of the original and corrected Lake Suzy affidavits. While FWSC is correct that staff previously cited the noticing affidavits as a deficiency, staff only did so because the utility failed to include a copy of the notice when it submitted its affidavit. The affidavits themselves were never cited as deficient in substance, and the utility subsequently submitted a copy of the notice and cured the noted deficiency. Staff does not believe that what was probably no more than an oversight by Lake Suzy rises to such a level as to call into question the adequacy and accuracy of the affidavit itself or the reliability or the veracity of the averments contained in the affidavit. In any event, FWSC's assertions do not reach the substance of the affidavits, but merely attack a procedural irregularity which was subsequently corrected by Lake Suzy.

In addition, staff notes that the affidavits filed by Lake Suzy indicate that notice was provided to Mr. Brian P. Armstrong, who is the individual designated on the Commission's list as the person to whom notice should be sent. In support of its allegation that it did not receive notice, FWSC filed an affidavit executed by Mr. Charles Sweat, Vice President, Corporate Development. Staff believes FWSC's position would have been more persuasive had it submitted an affidavit executed by Mr. Armstrong affirming that he did not receive notice. Again, staff also notes that the FWSC address that Lake Suzy provided in its affidavits regarding the notice is the same address listed on FWSC's pleadings. Furthermore, mail properly addressed, stamped, and mailed is presumed to have been received by the addressee. Brown v. Giffen Industries, Inc., 281 So.2d 897 (Fla. 1973). Lake Suzy's affidavits indicate that notice was mailed to the individual and address provided on the Commission's list for FWSC.

Lake Suzy argues that in any event FWSC had constructive notice through newspaper publication and cites to Osceola Service Co. v. Bevis, 289 So.2d 712 (Fla. 1974) for the proposition that constructive notice through newspaper publication would satisfy FWSC's due process rights. Section 367.045, Florida Statutes, provides that a utility shall provide notice of the actual application filed by mail or personal delivery to certain specified entities, as well as to such other persons and in such other manner as may be prescribed by Commission rule. Rule 25-30.030(5), Florida Administrative Code, provides that a utility shall provide a copy of the notice by regular mail to all water or wastewater

utilities contained on the list obtained from the Commission. In addition, the rule requires the utility to publish the notice once in a newspaper of general circulation in the territory to be served.

Staff does not believe that providing notice by way of publication in a newspaper would, standing alone, satisfy FWSC's due process rights in this particular instance. In Order No. PSC-94-1236-FOF-WS, issued October 11, 1994, in Docket No. 940743-WS, the Commission, quoting the U.S. Supreme Court in Schroeder v. New York, 371 U.S. 208, 212-13 (1962), stated that '[t]he general rule that emerges from the Mullane [c]ase is that notice by publication is not enough with respect to a person whose name and address are known or very easily ascertainable and whose legally protected interests are directly affected by the proceedings in question.' By Order No. PSC-94-1236-FOF-WS, the Commission denied the utility's request for a waiver or temporary exemption from the noticing requirements set forth in Rule 25-30.030, Florida Administrative Code, and required the utility to provide the requisite notice to its customers by mail. Similarly, staff believes that pursuant to Section 367.045, Florida Statutes, and Rule 25-30.030, Florida Administrative Code, FWSC was entitled to be provided with actual notice either by mail or personal delivery and that constructive notice through newspaper publication will not suffice to satisfy FWSC's due process rights in this instance.

In addition, staff believes Osceola is inapposite because Osceola involved the issue of providing notice to exempt utilities which are not listed in the records of the Commission. There the Court determined that it would have been impossible to ascertain those utilities entitled to actual notice if they were included within the actual notice requirement. Accordingly, the Court found that constructive notice by publication was sufficient. In the instant case, FWSC's name and address were contained in the list provided by the Commission and were readily and easily ascertainable. Therefore, the same justification for relying on constructive notice in Osceola does not exist in this case.

Based on the foregoing, staff believes that FWSC was entitled to actual notice which staff believes Lake Suzy provided in accordance with Section 367.045, Florida Statutes. Therefore, staff recommends that FWSC's objection and request for a hearing as filed are untimely and should be denied.

FWSC's Petition to Intervene

Rule 25-22.039, Florida Administrative Code, provides that "[p]ersons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for

leave to intervene" up to five days before the final hearing. The rule further provides:

Petition for leave to intervene must . . . include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding.

In its Petition, FWSC alleges that it has a substantially affected interest in this proceeding as Lake Suzy's applications request territory adjacent to, abutting and, in part, overlapping FWSC's existing Deep Creek Service area. FWSC states that it has lines which are capable of providing service to the disputed area and may not be fully utilized if Lake Suzy provides service. Further, FWSC and its customers will not benefit from the economies of scale associated with a larger customer base if Lake Suzy provides service.

FWSC also asserts that it has financial ability superior to that of Lake Suzy and could provide service at a lower cost to the future customers of the disputed area. FWSC also believes that Lake Suzy still operates its wastewater treatment and disposal facilities under a September 1994 consent order not disclosed in its application. FWSC argues that Lake Suzy's ability to comply with this order may subject it to fines, penalties, and fees which may affect Lake Suzy's financial condition and its ability to provide service. Finally, FWSC states that it currently has a pending application with the Commission to amend its service territories to include the disputed area.

In *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981), the Court set forth a two-prong test for determining substantial interest before a person or entity can be considered to have a substantial interest in the outcome of the proceeding. The person or entity must demonstrate 1) injury in fact which is of sufficient immediacy to warrant a formal hearing, and 2) the injury is of a type which the proceeding is designed to protect.

Staff notes that FWSC's allegation that Lake Suzy's application overlaps in part FWSC's certificated territory is no longer accurate given Lake Suzy's subsequent amendment of its application to delete that portion of its requested territory which overlapped FWSC's territory. However, Lake Suzy's amendment notwithstanding, staff believes that the other facts that FWSC has alleged are sufficient to demonstrate injury-in-fact of the type

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this proceeding was designed to protect. Therefore, staff recommends that FWSC's petition to intervene be granted.

Pursuant to Rule 25-30.039, Florida Administrative Code, FWSC takes the case as it finds it. Section 367.045, Florida Statutes, entitles substantially affected persons a right to a hearing only if they file a timely objection within thirty days of the last day the notice was mailed or published by the applicant. FWSC, therefore, may not use its petition to intervene to create a timely objection and is not entitled to a hearing on the basis of its petition to intervene. Although FWSC requests this Commission to schedule a hearing on its own motion, staff does not believe a hearing on this matter is necessary and recommends that FWSC's request be denied.

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ISSUE 2: Should Florida Water Services Corporation's Motion to Consolidate be granted?

RECOMMENDATION: No, Florida Water Services Corporation's Motion to Consolidate should be denied. (REYES)

STAFF ANALYSIS: On April 13, 1998, FWSC filed a Motion to Consolidate Docket No. 980261-WS with this docket. FWSC asserts that Lake Suzy's applications request territory in Charlotte County adjacent to, abutting, and in part, overlapping FWSC's existing Deep Creek service area, more commonly known as the Links subdivision, and that FWSC has already been granted authority by the Commission to serve a portion of this area. See Order No. PSC-95-1164-FOF-WS, issued September 20, 1995, in Docket No. 941301-WS.

FWSC also asserts that on March 4, 1998, FWSC filed an objection to Lake Suzy's applications, petitioned for leave to intervene in this docket, and requested a hearing. On February 19, 1998, FWSC filed an application to amend its Deep Creek service territory to include the disputed area in Docket No. 980261-WS. That application remains pending as well. On March 20, 1998, Lake Suzy filed an objection to FWSC's application and requested a hearing.

FWSC alleges that Dockets Nos. 970657-WS and 980261-WS involve the same principal parties: FWSC and Lake Suzy; involve the same ultimate issue of who should provide service to the disputed area; involve the same or similar issues of fact, law, and policy: the technical and financial ability of FWSC and Lake Suzy, a determination of whether it is in the public interest for FWSC or Lake Suzy to provide service.

FWSC also argues that the Commission does not process certification filings on a first-filed-first-served basis, but rather the Commission determines competing applications on the basis of which utility is better qualified to provide service and in accordance with the Commission's statutory duty to determine issues in accordance with the public interest. FWSC maintains that consolidation of the dockets would promote the just, speedy and inexpensive resolution of both proceedings and would not unduly prejudice the rights of any party.

On April 20, 1998, Lake Suzy filed its response to FWSC's motion to consolidate. In its response, Lake Suzy states that FWSC failed to file a timely objection to Lake Suzy's application and now seeks to remedy that failure through a consolidation of that docket with FWSC's application in Docket No. 980261-WS. Lake Suzy asserts that FWSC's motion was intended to delay the Commission's consideration of Lake Suzy's application and that FWSC's statement that a portion of the territory requested by Lake Suzy overlaps a

portion of FWSC's certificated territory is factually erroneous. Although the original legal description did include a portion of property which is within FWSC's certificated territory, Lake Suzy subsequently amended its requested territory to eliminate the overlap.

Lake Suzy argues that one criterion for consolidation is identical parties which does not exist in these dockets. Lake Suzy asserts that only one party, Lake Suzy, exists in Docket No. 970657-WS, and FWSC, Lake Suzy, Charlotte County, and Haus Development are parties in Docket No. 980261-WS. Lake Suzy also asserts that another criterion is that the dockets must involve similar issues of law or fact. Lake Suzy's application is to certificate territory in DeSoto and Charlotte Counties with only water service being provided to the Links subdivision by Lake Suzy. FWSC's application seeks authority to provide both water and wastewater service to the Links subdivision, as well as additional territory not being sought by Lake Suzy.

Finally, Lake Suzy asserts that it would be prejudiced by consolidation of these two dockets, as well as Haus Development who has entered into an agreement with Lake Suzy to provide service to almost all of the lots in question. Lake Suzy also asserts that Charlotte County would be prejudiced since it settled its protest of Lake Suzy's application and is entitled to provide wastewater service to the disputed area. Haus Development and Charlotte County would be further prejudiced by having to participate in a hearing involving Lake Suzy's application, and the additional expense of participation. Finally, Lake Suzy argues that two other developers, both of whom are proposing development in DeSoto County, are in need of water and wastewater service, and have water and wastewater agreements with Lake Suzy, will be affected by consolidation.

On April 28, 1998, Haus Development filed an objection to FWSC's motion to consolidate. Pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, staff believes that Haus' response is untimely.

Rule 25-22.035(2), Florida Administrative Code, provides that if there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

Applying the criteria set forth in Rule 25-22.035(2), Florida Administrative Code, staff believes FWSC's motion for consolidation should be denied. First, as stated by Lake Suzy, Dockets Nos. 970657-WS and 980261-WS do not contain identical parties as

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Charlotte County and Haus Development are parties in Docket No. 980261-WS, but not Docket No. 970657-WS. In fact, if the Commission approves staff's recommendation in Issue 1, the only party to Docket No. 970657-WS will be Lake Suzy. While staff believes that both dockets may involve similar issues of law or fact, more specifically a determination of the public interest, ability of each utility to serve, and need for service in the disputed area, staff nevertheless believes that FWSC's motion for consolidation should be denied if the Commission approves staff's recommendation in Issue 1.

If the Commission approves staff's recommendation in Issue 1, staff believes consolidation would be unjust and prejudicial to the applicant in this case, Lake Suzy. Consolidation of these proceedings would in essence allow FWSC to circumvent the objection procedure set forth in the statute. FWSC should not be allowed to remedy its failure to file a timely objection by filing an application of its own and then seeking consolidation of the two matters. Staff believes that such a result would be incongruent with both the spirit and the intent of Rule 25-22.035(2), Florida Administrative Code. Accordingly, staff recommends that FWSC's motion for consolidation be denied.

ISSUE 3: Should Florida Water Services Corporation's Motion in Limine and Motion for Cease and Desist Order be granted?

RECOMMENDATION: No, the Commission should decline to rule on Florida Water Services Corporation's Motion in Limine until such time as the evidence is proffered by Lake Suzy Utilities, Inc. In addition, Florida Water Services Corporation's Motion for Cease and Desist Order should be denied. (REYES)

STAFF ANALYSIS: On April 21, 1998, FWSC filed a Motion in Limine and Motion for Cease and Desist Order. FWSC states that Lake Suzy has admitted in both correspondence in this docket and in its objection in Docket No. 980261-WS that Lake Suzy began providing water service to Lot 18 in the Links Subdivision prior to receiving Commission authorization to do so. FWSC asserts that it would be improper and unlawful for FWSC's position in these proceedings to be prejudiced by virtue of Lake Suzy's violation of the statute. Therefore, FWSC moves this Commission to issue an order which (1) determines that any evidence showing that Lake Suzy currently provides service to the disputed area is admissible only for the limited purpose of the Commission's disposition of show cause issues, if any, raised in these proceedings, and (2) requires Lake Suzy to cease and desist from providing service to any other customers in the disputed area until receiving Commission authorization to do so.

On April 22, 1998, Lake Suzy filed its Response to FWSC's Motion in Limine and Motion for Cease and Desist Order. Lake Suzy asserts that it is not relying upon the Lot 18 service connection as the basis for its application and that it believes it is entitled to a certificate for the territory requested without regard to that service connection. Additionally, Lake Suzy states that it does not intend to provide service to any other lots within the requested territory until certificated to do so by the Commission, and thus a cease and desist order is unnecessary. Lake Suzy requests that the Commission deny FWSC's Motion in Limine and Motion for Cease and Desist Order.

While staff believes that it would be improper for the Commission to base its determination of Lake Suzy's ability to serve or the need for service in the territory solely upon the fact that Lake Suzy currently provides service to one lot in the requested territory without antecedent Commission approval, see McTyre v. Bevis, 300 So.2d 1 (Fla. 1974) and Wytrwal v. Bevis, 300 So.2d 13 (Fla. 1974), Lake Suzy has not proffered its unauthorized provision of service as evidence in its application. As previously stated, Lake Suzy states in its response that it is not relying on this provision of service as evidence in this case.

The purpose of a motion in limine is to exclude irrelevant and immaterial matters or to exclude evidence when its probative value is outweighed by the danger of unfair prejudice. Devoe v. Western Auto Supply Co., 537 So.2d 188 (Fla. 2d DCA 1989). A trial court has discretion in determining whether to rule on a motion in limine prior to trial or to rule on the admissibility of the evidence when it is actually offered. 1 Charles W. Erhardt, Florida Evidence 15 (2d ed. 1984). Given that the evidence has not been, nor does it appear that it will be, proffered as evidence by Lake Suzy in this proceeding, staff believes that a ruling on the motion is premature, and, therefore, staff recommends that the Commission either dismiss the motion as moot or decline to rule on the motion until such time as the evidence actually is proffered.

In addition, staff believes that FWSC's motion for a cease and desist order should be denied. If the Commission approves staff's recommendation in Issue 6, FWSC's motion for a cease and desist order becomes moot as Lake Suzy will be authorized to provide service to the territory. If the Commission denies staff's recommendation in Issue 6, staff still believes that FWSC's motion should be denied because Lake Suzy has stated that it has no intention of serving any other lots within the requested territory until it receives the requisite authorization from the Commission and that the provision of service to Lot 18 prior to Commission approval was done out of public necessity and convenience. Other than the connection of Lot 18, FWSC has not asserted any other basis for its belief that Lake Suzy will connect other customers in the disputed area in the absence of Commission approval, and based on Lake Suzy's response, staff does not believe Lake Suzy intends to pursue such a course of action.

In addition, staff believes Section 367.031, Florida Statutes, speaks for itself and hence there is no need for the Commission to issue an order telling Lake Suzy not to violate the statute. Section 367.031, Florida Statutes, provides that "[e]ach utility subject to the jurisdiction of the commission must obtain . . . a certificate of authorization to provide water or wastewater service." Pursuant to Section 367.171, Florida Statutes, if a utility knowingly refuses to comply with, or willfully violates, any provision of Chapter 367, such utility shall incur a penalty for each offense to be fixed, imposed, and collected by the Commission. Therefore, any violations of the statute by Lake Suzy will be dealt with accordingly. Based on the foregoing, staff recommends that FWSC's motion for a cease and desist order be denied.

ISSUE 4: Should the Commission order Lake Suzy Utilities, Inc. to show cause, in writing within twenty days, why it should not be fined for violation of Section 367.031, Florida Statutes?

RECOMMENDATION: No. Show cause proceedings should not be initiated. (REYES)

STAFF ANALYSIS: As noted in the Case Background, on June 2, 1997, Lake Suzy filed an application for amendment to include additional territory in DeSoto and Charlotte Counties. After being advised by Commission staff that an application for amendment was an inappropriate filing, Lake Suzy subsequently filed an application for an original in existence certificate on September 11, 1997. On August 26, 1998, without prior Commission approval, Lake Suzy began providing service to Lot 18 of the Links Subdivision which is located in Charlotte County and is part of the territory requested in Lake Suzy's application.

Section 367.031, Florida Statutes, provides that each utility subject to the jurisdiction of the Commission must obtain from the Commission a certificate of authorization to provide water or wastewater service. Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, Florida Statutes.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to obtain a certificate of authorization prior to providing water or wastewater service, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Failure to obtain a certificate of authorization prior to providing water or wastewater service is an apparent violation of Section 367.031, Florida Statutes. However, Lake Suzy has stated in its application that it began providing service to Lot 18 out of public necessity and convenience as requested by the owner of the property. The owner was experiencing taste and odor problems, as

well as low water pressure, with their well system. In addition, Lot 18 was in close proximity to the Lake Suzy system. On May 5, 1998, staff received a letter from the lot owner confirming these assertions, as well as further explaining the problems the owner had experienced in trying to treat sulfur well water and the destruction of the household appliances caused by the corrosive nature of the water. Lake Suzy further states that it felt it was in the public's best interest to serve this single house and was able to do so without any adverse affects to the existing ratepayers. Finally, Lake Suzy asserts that it was under the jurisdiction of DeSoto County at the time of the connection and states that it was not aware of any rule or regulation that prohibited such connection.

Pursuant to Section 367.171(7), Florida Statutes, the Commission is vested with exclusive jurisdiction over all utility systems whose service transverses county boundaries whether the counties involved are jurisdictional or nonjurisdictional. Therefore, staff believes that the Commission, and not DeSoto County, was vested with jurisdiction at the time of the connection since Lot 18 is located in Charlotte County which resulted in Lake Suzy's water facilities transversing counties boundaries from DeSoto County into Charlotte County. Accordingly, staff believes Lake Suzy was legally required to obtain prior Commission approval before serving Lot 18.

However, staff does not believe that this utility's apparent violation of Section 367.031, Florida Statutes, rises to the level of warranting that a show cause order be issued given the problems the owner was experiencing with his well. Staff recommends that the Commission not order Lake Suzy to show cause why it should not be fined for failing to obtain the Commission's approval prior to providing water service in Charlotte County.

ISSUE 5: Should the Commission acknowledge the withdrawal of the objections by Charlotte County and DeSoto County and grant the application of Lake Suzy Utilities, Inc. for water and wastewater certificates?

RECOMMENDATION: Yes, the Commission should acknowledge the withdrawal of the objections by Charlotte County and DeSoto County in this docket. Further, Lake Suzy Utilities, Inc. should be granted Water Certificate No. 599-W and Wastewater Certificate No. 514-S to serve the territory described in Attachment A. (REDEMANN, MESSER, REYES)

STAFF ANALYSIS:

Withdrawal of Objections

As discussed in the case background, on September 11, 1997, Lake Suzy filed an original certificate application to provide water and wastewater service in DeSoto and Charlotte Counties. On October 22, 1997, DeSoto County timely filed an objection to the application for original certificate, and on October 24, 1997, Charlotte County timely filed an objection to Lake Suzy's application. On January 13, 1998, DeSoto County filed a withdrawal of the objection to Lake Suzy's application and a notice of voluntary dismissal. On January 14, 1998, Charlotte County withdrew its objection and included, along with its withdrawal, a copy of the settlement agreement reached between Charlotte County and Lake Suzy. The agreement provides that Lake Suzy will provide water service to the Links (in Charlotte County), and Charlotte County will provide wastewater service to this property and provide water and wastewater service to the Byrd Property, which is located in DeSoto County - a 2.4 acre parcel. Staff recommends that the Commission acknowledge the withdrawal of both objections by Charlotte and DeSoto Counties.

Jurisdiction

The application of Lake Suzy indicates water service will be provided in DeSoto and Charlotte Counties and wastewater service will be provided in DeSoto County only. Accordingly, a jurisdictional question is presented in this case regarding whether Lake Suzy's water and wastewater facilities constitute a single system whose service transverses county boundaries such that this Commission has jurisdiction to process the utility's request for a wastewater certificate. A jurisdictional question is not raised regarding the utility's application for a water certificate because Lake Suzy's water facilities will physically transverse county boundaries. Lake Suzy's wastewater facilities, on the other hand, will not. Therefore, in order for the Commission to have jurisdiction over Lake Suzy's wastewater facilities, the Commission

must first make a finding that Lake Suzy's water and wastewater facilities are functionally related in such a way as to constitute a single "system" whose service transverses county boundaries. Staff notes that this is the first time the Commission has been presented with this particular factual scenario.

Pursuant to Section 367.171(7), Florida Statutes, the Commission has exclusive jurisdiction over "all utility systems whose service transverses county boundaries," whether or not the counties are jurisdictional. The term "system" is defined in Section 367.021(11), Florida Statutes, as "facilities and land used or useful in providing service, and upon a finding by the [C]ommission, may include a combination of functionally related facilities and land." A "system" can be comprised of both water and wastewater facilities, e.g., see Order No. PSC-97-0929-FOF-WS, issued August 4, 1997, in Docket No. 970210-WS, In re: Application by United Water Florida Inc. for amendment of Certificates Nos. 236-W and 179-S and for limited proceeding to adjust rates in St. Johns County.

In Board of County Com'rs of St. Johns County v. Beard, 601 So. 2d 590 (Fla. 1st DCA 1992), the First District Court of Appeal specifically addressed the interpretation of Sections 367.021(11) and 367.171(7), Florida Statutes. The court affirmed Commission Order No. 24335, issued April 8, 1991, in Docket No. 910078-WS, which found that facilities owned by Jacksonville Suburban Utilities Corporation (now known as UWF) in Duval, Nassau and St. Johns counties constitute a single system, whose service transverses county boundaries. The court noted the functional interrelatedness of the facilities, both operational and administrative, and that physical connection was not necessary to support the finding. Id. at 593. "[T]he relevant inquiry when determining the existence of jurisdiction under section 367.171(7) is the actual inter-relationship of two or more facilities providing utility services in a particular geographic area comparable to the 'service area' defined in section 367.021(10), over which the PSC ordinarily has jurisdiction." Hernando County v. Florida Public Service Com'n, 685 So.2d 48, 52 (Fla. 1st DCA 1996).

On May 7, 1998, Lake Suzy submitted a letter clarifying the functional relationship between its water and wastewater facilities from both an administrative and an operational perspective. Lake Suzy asserts that its customers are being served by the same personnel and that Lake Suzy's water and wastewater facilities share a common office in one location. Lake Suzy also asserts that the president of the corporation makes all the decisions for the water and wastewater facilities including but not limited to the day to day planning, strategic planning, budgeting, purchasing and personnel decisions. In addition, professional services are shared

on a common basis between the water and wastewater facilities for its accounting and regulatory matters. The office manager performs common duties such as billings, customer complaints, customer service, in-house accounting for receivables and payables, and other regular office functions for both water and wastewater customers. Unless an item is specifically designated for water and/or wastewater, Lake Suzy has allocated the foregoing administrative costs based on a percentage of customer basis because of the interrelationship of the two systems.

From an operational standpoint, Lake Suzy asserts that it has retained Avatar Utility Services, Inc. as the wastewater treatment plant operator who is responsible for the monthly wastewater tests to stay in compliance with the Florida Department of Environmental Protection (DEP), and Avatar is also responsible for taking the monthly bacteriological water samples as it is a consecutive water system. Also Avatar is on standby in case of an emergency for both of the water and wastewater systems in the event Lake Suzy personnel are not in the area.

Lake Suzy has one maintenance person along with its president who is responsible for both facilities. The responsibilities range from installing water meters to performing common maintenance at the wastewater treatment plant. If the time can be specifically designated to water and/or wastewater, the associated costs will be allocated as such or the time will be allocated on a percentage of water to wastewater customer basis. For billing purposes, the water meter readings are used to calculate the wastewater bills. Finally, Lake Suzy shares a common maintenance building located at the wastewater treatment plant. Within this building Lake Suzy has a basic inventory of materials to maintain the water and wastewater facilities along with common tools.

Based on the foregoing, staff believes that Lake Suzy's water and wastewater facilities are functionally related in such a way as to constitute a single system for purposes of Section 367.171(7), Florida Statutes. Furthermore, staff believes that Lake Suzy's provision of water service across county boundaries invokes this Commission's jurisdiction over the entire water and wastewater system even though Lake Suzy's wastewater service will not physically transverse county boundaries. If the physical provision of wastewater service across county boundaries were required in this case before the jurisdiction of this Commission were invoked over Lake Suzy's wastewater facilities, dual regulation by the Commission and DeSoto County would occur.

In addressing another situation involving the potential for dual regulation in Order No. 22459, issued January 24, 1990, in Docket No. 891190-WS, In re: Petition of General Development Utilities, Inc. for Declaratory Statement Concerning Regulatory

Jurisdiction over its Water and Wastewater System in DeSoto, Charlotte, and Sarasota Counties, the Commission stated,

We do not believe that the legislature intended . . . to perpetuate a situation where a utility would be subject to several regulators. On the contrary, we believe that the Legislature intended to eliminate the regulatory problems that exist when utility systems provide service across political boundaries and are subject to regulation by two or more regulatory agencies. . . . This duplicative economic regulation is inefficient and results in potential inconsistency in the treatment of similarly situated customers. Inefficiency stems from the need for multiple rate filings and multiple rate hearings. It also stems from the need to perform jurisdictional cost studies to attempt to allocate the costs of a single system across multiple jurisdictions. These inefficiencies could result in unnecessary and wasteful effort which would translate into higher rate case expense and higher rates to customers. Inconsistency can occur when regulators apply different ratemaking principles to the same system or make inconsistent determinations on the same issue.

The Legislature chose to promote efficient, economic regulation of multi-county systems by giving the Commission exclusive jurisdiction over all utilities whose service crosses county boundaries. . . . By concentrating exclusive jurisdiction over these systems in the Commission, the Legislature has corrected the problem of redundant, wasteful, and potentially inconsistent regulation.

In addition, dual regulation would impact the utility's customers. For example, under a dual regulatory scheme, some level of customer confusion inevitably would result regarding which regulatory body would be responsible for addressing their complaints, questions or concerns.

In a concerted effort to consider all possible ramifications of the Commission's decision on this issue, staff contacted the County Administrator for DeSoto County to determine the County's perspective regarding this matter. Although the County Administrator did not communicate the Board of County Commissioners' legal opinion on this matter, he did indicate that the Board had expressed to him that it would like to retain jurisdiction over Lake Suzy's wastewater facilities.

However, notwithstanding the County's position on this matter, staff believes that the Commission has jurisdiction pursuant to

Section 367.171(7), Florida Statutes, to process the utility's application both for water and wastewater certificates by virtue of Lake Suzy's physical delivery of water across county boundaries via its single system in DeSoto County even though Lake Suzy's wastewater lines will not physically transverse county boundaries. Any other interpretation in this case would create dual regulation with the Commission regulating the provision of water service and DeSoto County regulating the provision of wastewater service. Staff believes that such a result would be inconsistent with both the spirit and legislative intent of Section 367.171(7), Florida Statutes.

Application

The application is in compliance with the governing statutes, Sections 367.031 and 367.171, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for an existing utility that transverses county boundaries. As stated earlier, by Order No. PSC-97-0603-FOF-WS, issued May 27, 1997, in Docket No. 970411-WS, the Commission cancelled the certificates held by regulated companies in DeSoto County following County Resolution 97-21 rescinding Commission jurisdiction.

The application contains a check in the amount of \$1,500, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, and the applicant has provided evidence that the utility owns the land upon which its facilities are located as required by Rule 25-30.034(1), (e), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.034(1), (h), (i) and (j), Florida Administrative Code. A description of the territory requested by the applicant is appended to this memorandum as Attachment A.

Because of the unusual nature of this situation where two investor-owned utilities are at odds over territory, staff researched past Commission decisions to determine if the Commission had ever been presented with this issue, and if so, how it had been resolved. It appears that there are no recent cases under the current statutory and rule framework where two investor-owned utilities were competing for the same area. Under the old statute, Section 367.061, Florida Statutes, where utilities first noticed an "intent to serve", staff identified that in Docket No. 860766-WU, Spruce Creek Utilities of Ocala, Inc. had filed its "intent to serve" the Spruce Creek North area in Marion County and this was timely protested by two other private utilities. The Commission held a hearing and decided that Marion Utilities, Inc. should serve

the area because it was the nearest utility to the area. Marion Utilities, Inc. then filed for an amendment, which was granted by Order No. 18016, issued August 19, 1987, in Docket No. 879795-WU.

Pursuant to Section 367.045(2)(b), Florida Statutes, the Commission may require from a utility seeking to extend its service area information regarding the existence of service from other sources within geographical proximity to the area the applicant seeks to add. Based on Lake Suzy's application, as well as the various pleadings which have been filed in this docket, staff is aware that FWSC is in geographical proximity to the area Lake Suzy is seeking to add to its certificated area. In fact, both FWSC and Lake Suzy purchase bulk water from Charlotte County and have lines near the territory. Lake Suzy has mains which are located in the Northeast and Northwest corner of the Links Subdivision, and FWSC has lines which are also in the Northwest corner of the proposed territory in Charlotte County.

With regards to technical ability to provide service, according to the application, Lake Suzy has been in existence since November, 1981. As stated earlier, Lake Suzy has retained a licensed operator to take monthly water bacteriological samples and retains a professional engineer from A&M Engineering for engineering purposes and other technical advice. Staff has contacted the DEP and learned that there are no outstanding notices of violation with respect to either Lake Suzy's water or wastewater system.

As stated earlier, FWSC also receives bulk water and wastewater service from the County pursuant to a bulk service agreement. In its application, FWSC states it has been regulated by the Commission since 1964 and currently owns and operates in 138 water and wastewater service territories throughout the state. FWSC has a staff of engineers, scientists, accountants, and other professionals based in its Orlando headquarters, as well as licensed operators that maintain facilities located throughout the state. However, Charlotte County has filed a timely objection to FWSC's amendment application in Docket No. 980261-WS and states in its objection that at present, FWSC is in arrears for payments due Charlotte County for capacity reservation and for connection fees. Charlotte County is currently contemplating action against FWSC for the recovery of these funds, which may include a moratorium on all future connections to FWSC's water facilities which receive bulk service from Charlotte County. Therefore, FWSC may not have the capacity to provide service to the area.

With respect to financial ability, Lake Suzy's 1996 annual report indicates a net operating income for water of \$11,851. The utility recently completed a staff assisted rate case with the Commission, and the rates have been adjusted to provide financial

stability to render service to its existing and future customers. The staff has contacted the DEP with respect to fines related to the wastewater plant. Plant construction is complete and the DEP is satisfied with the operations. However, Lake Suzy evidently did not meet all the time frames stated in the consent order. Although a possibility of fines does exist, there is no pending action at this time.

FWSC's 1996 annual report shows total company annual operating revenue of \$44,805,000 and a net operating income of \$9,201,000. For this same time period the Deep Creek water system in Charlotte County shows an annual operating revenue of \$1,506,085 and an operating loss of \$98,214.

In addition to financial and technical ability, need for service is another facet of evaluating an application for original certificates. Section 367.045(2)(b), Florida Statutes. Lake Suzy has indicated in its application that it has entered into a water and wastewater territory expansion agreement with Haus Development to provide water and wastewater service in Charlotte County. The stipulation between Lake Suzy and Charlotte County provides that Charlotte County will provide wastewater service to the area and that Lake Suzy will provide water service. In addition, other property owners in part of the proposed area have been actively in contact with Lake Suzy concerning the need for service for a 400 unit project. Lake Suzy also has indicated that due to increased demands from DEP, Lake Suzy and the Charlotte/DeSoto College Foundation have entered into an agreement for Lake Suzy to provide water service. Wastewater service will be provided at a later date. In its application, FWSC indicated that a subdivision of approximately 50 lots (The Links) is developing in the proposed area, which is adjacent to FWSC's Deep Creek service area.

One final point is with respect to the rates and charges billed to the customers by each utility. Water and wastewater charges and rates are shown for FWSC since it is proposing to provide both services. However, only water charges and rates are identified for Lake Suzy in this comparison because Charlotte County will provide wastewater service directly to these customers. A review of both tariffs shows the following:

Service Availability Charges for a 5/8" x 3/4" Meter			
Description	FWSC - Deep Creek Water	FWSC - Deep Creek Wastewater	Lake Suzy Water
System Capacity Charge	\$ -	\$ -	Discontinued
Main Extension Charge	\$ 446.00	\$ 480.00	(1)
Meter Installation Charge	\$ 90.00	\$ -	\$ 150.00
Water - Service Installation Charge per connection	\$ 143.00		\$ -
Wastewater - Service Installation Charge per connection Paved 6 inch		\$ 605.00	\$ -
Plant Capacity Charge	\$ 700.00	\$1,300.00	\$ -
Allowance for Funds Prudently Invested Transmission/Distribution May, 1998	\$ 107.00	\$ 34.00	\$ -
Total	\$1,186.00	\$2,419.00	\$ 150.00

(1) Lake Suzy's tariff requires the developer to pay all costs of main extensions and upgrading of the utility's distribution system.

<u>Water Monthly Service Rates</u> for a 5/8" x 3/4" Meter			
	FWSC - Deep Creek Water	FWSC - Deep Creek Wastewater	Lake Suzy Water
Base Facility Charge	\$ 13.62	\$ 19.04	\$ 9.76
Gallonge Charge per 1,000 gallons:	\$ 3.88	\$ 4.91	\$ 4.88
Typical Bills:			
0 gallons	\$ 13.62	\$ 19.04	\$ 9.76
5,000 gallons	\$ 33.02	\$ 43.59	\$ 34.16
10,000 gallons	\$ 52.42	\$ 68.14	\$ 58.56

Based on the foregoing, staff believes that Lake Suzy has met all the criteria set forth in the applicable rules and statutes for the granting of the requested territory. The utility has either current or pending service agreements, and, hence, has demonstrated a need for service in the area. Additionally, staff believes Lake Suzy has demonstrated that it has both the technical and financial ability to provide service to the area. Furthermore, staff believes that there is no obvious financial or technical advantage provided by FWSC, based on its pleadings and application, in providing service to the area. From a customer's perspective, Lake Suzy's service availability charges are lower than those of FWSC, as well as its monthly base facility charge. However, the gallonage rate of Lake Suzy is somewhat higher, which could result in a slightly higher bill as a customer uses larger amounts of water. Nevertheless, staff believes that this could be considered a conservation incentive.

Based on the above information, staff believes it is in the public interest to grant Lake Suzy's application for a certificate. Accordingly, staff recommends that Lake Suzy be granted Water Certificate No. 599-W and Wastewater Certificate No. 514-S to serve the territory described in Attachment A.

LAKE SUZY UTILITIES, INC.

CHARLOTTE AND DESOTO COUNTIES

TERRITORY DESCRIPTION

DESCRIPTION OF WATER TERRITORY

All of the land in Sections 31 and 32, Township 39 S, Range 23 E DeSoto County, Florida less and except parcel 1 in section 31, plus a portion of land in Sections 29 and 30 Township 39 S, Range 23 E DeSoto County, Florida, plus a portion of land in Section 10 Township 39 S, Range 23 E DeSoto County, Florida and plus a parcel of land in Section 6, Township 40 S, Range 23 E Charlotte County, Florida with all parcels more particularly described as follows:

LESS AND EXCEPT LAND IN SECTION 31 DESOTO COUNTY

All that portion of Section 31 Township 39 S, Range 23 E DeSoto County Florida lying southwesterly of the Interstate Highway # 75 being more particularly described as follows:

Begin at the southwest corner of section 31, then North along section line to the right of way of I-75 (569.00 feet plus or minus) then Southeasterly along I-75 right of way to the intersection of South section line (672.1 feet plus or minus) then West to the point of beginning (370.99 feet plus or minus) containing 2.4 acres more or less being Parcel 1 of 1.

ADDITIONAL LAND IN SECTIONS 29 AND 30 DESOTO COUNTY

A portion of land in Sections 29 and 30, Township 39 South, Range 23 East, as recorded in the Public records of DeSoto County, Florida, being more particularly described as follows:

Commencing at the Southwest corner of aforesaid Section 30, Township 39 South, Range 23 East in DeSoto County, Florida as referenced by the recorded plat of the 46th addition to Port Charlotte Subdivision per plat thereof recorded in plat book 19, pages 45 through 45-FF in the public records of Sarasota County, Florida; thence S 89°06'37" E, along the South line of the Southwest quarter of said section 30, a distance of 2000.00 feet to the POINT OF BEGINNING; thence continue S 89°06'37" E along the South line of said section 30 a distance of 659.62 feet to the southwest corner of the Southeast 1/4 of said section 30; thence N 89°55'34" E along the south line of said section 30 a distance of

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2656.34 feet to the southwest corner of Section 29, Township 39 South, Range 23 East; thence N 89°49'49" E along the south line of said Section 29 a distance of 2365.45 feet to a point on the westerly right-of-way of Kings Highway (old State road S-741); thence northeast along said right-of-way along a curve concave to the southeast, with a radius of 2924.79 feet, a chord bearing of N 24°53'35" E, and a central angle of 02°35'08" an arc distance of 131.98 feet; thence continue along the westerly right-of-way of Kings Highway N 26°11'08" E a distance of 186.94 feet; thence continue along the westerly right-of-way of Kings Highway S 63°48'52" E a distance of 10.00 feet; thence continue along the westerly right-of-way of Kings Highway N 26°11'08" E a distance of 46.19 feet; thence continue along the westerly right-of-way of Kings Highway N 20°09'48" E a distance of 213.11 feet; thence continue along the westerly right-of-way of Kings Highway N 44°05'08" E a distance of 72.73 feet; thence continue along the westerly right-of-way of Kings Highway N 26°11'08" E a distance of 1743.50 feet; thence leaving said right-of-way N 89°53'41" W a distance of 3427.23 feet; thence N 89°14'16" W a distance of 3312.51 feet; thence S 00°04'14" W a distance of 2191.90 feet to the POINT OF BEGINNING.

ADDITIONAL LAND IN SECTION 10 DESOTO COUNTY

All that part of the southeast quarter of Section 10, Township 39 S, Range 23 E DeSoto County, Florida lying southerly of the S.C.L. RR. and westerly of County Road #761.

ADDITIONAL LAND IN SECTION 6 CHARLOTTE COUNTY

A parcel of land lying in Section 6, Township 40 South, Range 23 East, Charlotte County, Florida, being more particularly described as follows:

Begin at the Northeast corner of said Section 6 and run S 00°21'15" W a distance of 130.00 feet; thence S 89°38'45" E a distance of 75.84 feet to the point of curvature of a curve concave to the South, having a radius of 150.00 feet, a central angle of 24°44'38"; thence along said curve a distance of 64.78 feet to the point of tangency; thence S 64°54'07" E a distance of 49.33 feet, to the intersection with the westerly right-of-way line of Kings Highway; thence S 25°05'53" W along said right-of-way a distance of 100.00 feet; thence N 64°54'07" W a distance of 87.88 feet; thence S 00°21'15" W a distance of 101.54 feet; thence N 89°38'45" W a distance of 2721.64 feet; thence N 00°07'54" E a distance of 154.03 feet; thence N 39°05'37" E a distance of 98.67 feet to the intersection with a curve concave to the East, to the South, and Southwest, having a radius of 50.00 feet, and a central angle of 219°49'31"; thence along said curve a distance of 191.83 feet to a point of reverse curvature of a curve to the left having a radius

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of 25.00 feet, a central angle of $46^{\circ}01'19''$; thence along said curve a distance of 20.08 feet; thence $N 32^{\circ}53'49'' E$ along a radial line a distance of 66.67 feet to the interconnection with the Northerly line of said Section 6; thence $S 89^{\circ}38'45'' E$ along said Northerly line a distance of 2661.15 feet to the point of beginning. **Less and except** all the area in Section 5, Township 40 South, Range 23 East, Charlotte County, Florida.

LAKE SUZY UTILITIES, INC.

CHARLOTTE AND DESOTO COUNTIES

TERRITORY DESCRIPTION

DESCRIPTION OF WASTEWATER TERRITORY

All of the land in Sections 31 and 32, Township 39 S, Range 23 E DeSoto County, Florida less and except parcels 1, 2 and 3 in said section 31, plus a portion of land in Sections 29 and 30 Township 39 S, Range 23 E DeSoto County, Florida, and plus a portion of land in Section 10 Township 39 S, Range 23 E DeSoto County, with all parcels more particularly described as follows:

LESS AND EXCEPT LAND IN SECTION 31 DESOTO COUNTY

All three (3) parcels of land are in Section 31, Township 39 South, Range 23 East, DeSoto County Florida. Bearings used in this description are taken from a deed recorded in Official Record Book 130, Pages 570-571, of said public records of DeSoto County, Florida. Said tracts are described as follows:

Begin at the southeast corner of section 31; Thence N 89°38'45" W along the south line of said section 31, 2388.17 feet; thence N 25°01'05" W, 39.15 feet, thence N 32°09'31" W, 134.59 feet; thence N 58°16'39" W, 152.45 feet; thence N 08°41'03" E, 58.79 feet; thence N 11°35'37"E, 720.86 feet; thence N 22°03'27" W. 563.84 feet; thence N 20°08'35" E, 472.51 feet to the POB of Parcel 1 of 2. Said POB being a point on a curve concave to the southwest with a radius of 400.00 feet and a tangent bearing of S 78°44'54" E; thence Southeasterly along arc of said curve, 369.13 feet; thence S 50°22'47" W, 159.29 feet; thence S 17°21'14" E, 704.05 feet; thence S 20°42'20" W, 582.63 feet; thence S 68°11'54" E, 177.71 feet; thence N 74°35'19" E, 353.72 feet; thence S 65°20'26"E, 726.23 feet; thence N 30°55'45"E, 287.95 feet; thence N 45°35'19" W, 863.70 feet; thence N 26°26'28" W, 725.47 feet; thence N 47°17'25" W, 194.61 feet; S 65°37'18" W, 58.42 feet to a point on a curve concave to the southwest with a radius of 460.00 feet, said curve is radial to said curve; thence northwesterly along arc of said curve, 427.14 feet to a point on said curve to be labeled as POINT A; thence continuing along said curve 296.21 feet through a total angle of 90°06'00"; thence S 65°31'26" W, 239.89 feet to the easterly ROW of Kingsway Circle; thence S 24°28'34" E along the easterly ROW of Kingsway Circle, 60.00 feet; thence N 65°31'26" E, 241.76 feet to a point on a curve concave to the

southwest with a radius of 400.00 feet, thence northeasterly along arc of said curve 249.43 feet to the POB being parcel 1 of 3.

Thence beginning at above referenced POINT A; thence N 67°18'04" W, 240.34 feet; thence N 74°28'27" W, 56.04 feet; thence N 05°02'43" E, 309.07 feet; thence N 42°08'49" E, 189.00 feet; thence S 85°12'39" E, 778.88 feet; thence S 74°40'25" E, 365.65 feet; thence N 66°43'21" E, 116.00 feet; thence S 58°43'09" E, 183.27 feet to the POB of parcel 2 of 3; thence S 10°57'21" W, 110.00 feet; thence N 76°33'11" E, 814.18 feet; thence N 02°30'36" W, 169.87 feet to the ROW of Kingsway Circle; thence S 87°29'24" W, 465.49 feet along the ROW of Kingsway Circle to a point on a curve concave to the north with a radius of 530.00 feet; thence westerly along arc of said curve 67.52 feet; thence N 85°12'39" W, 217.99 feet; thence S 04°47'21" W, 221.24 feet; thence S 58°43'09"E, 51.12 feet to the POB being Parcel 2 of 3.

All that portion of section 31 township 39 S Range 23 E DeSoto County Florida lying southwesterly of the Interstate Highway # 75 being more particularly described as follows:

Begin at the southwest corner of section 31, then North along section line to the right of way of I 75 (569.00 feet plus or minus) then Southeasterly along I-75 right of way to the intersection of South section line (672.1 feet plus or minus) then West to the point of beginning (370.99 feet plus or minus) containing 2.4 acres more or less being Parcel 3 of 3.

ADDITIONAL LAND IN SECTIONS 29 AND 30 DESOTO COUNTY

A portion of land in Sections 29 and 30, Township 39 South, Range 23 East, as recorded in the Public records of DeSoto County, Florida, being more particularly described as follows:

Commencing at the Southwest corner of aforesaid Section 30, Township 39 South, Range 23 East in DeSoto County, Florida as referenced by the recorded plat of the 46th addition to Port Charlotte Subdivision per plat thereof recorded in plat book 19, pages 45 through 45-FF in the public records of Sarasota County, Florida; thence S 89°06'37" E, along the South line of the Southwest quarter of said section 30, a distance of 2000.00 feet to the POINT OF BEGINNING; thence continue S 89°06'37" E along the South line of said section 30 a distance of 659.62 feet to the southwest corner of the Southeast 1/4 of said section 30; thence N 89°55'34" E along the south line of said section 30 a distance of 2656.34 feet to the southwest corner of section 29, township 39 south, range 23 east; thence N 89°49'49" E along the south line of said section 29 a distance of 2365.45 feet to a point on the westerly right-of-way of Kings Highway (old State road S-741); thence northeast along said right-of-way along a curve concave to

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the southeast, with a radius of 2924.79 feet, a chord bearing of N 24°53'35" E, and a central angle of 02°35'08" an arc distance of 131.98 feet; thence continue along the westerly right-of-way of Kings Highway N 26°11'08" E a distance of 186.94 feet; thence continue along the westerly right-of-way of Kings Highway S 63°48'52" E a distance of 10.00 feet; thence continue along the westerly right-of-way of Kings Highway N 26°11'08" E a distance of 46.19 feet; thence continue along the westerly right-of-way of Kings Highway N 20°09'48" E a distance of 213.11 feet; thence continue along the westerly right-of-way of Kings Highway N 44°05'08" E a distance of 72.73 feet; thence continue along the westerly right-of-way of Kings Highway N 26°11'08" E a distance of 1743.50 feet; thence leaving said right-of-way N 89°53'41" W a distance of 3427.23 feet; thence N 89°14'16" W a distance of 3312.51 feet; thence S 00°04'14" W a distance of 2191.90 feet to the POINT OF BEGINNING.

ADDITIONAL LAND IN SECTION 10 DESOTO COUNTY

All that part of the southeast quarter of Section 10, Township 39 S, Range 23 E DeSoto County, Florida lying southerly of the S.C.L. RR. and westerly of County Road #761.

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ISSUE 6: Should Lake Suzy be required to pay regulatory assessment fees and file an annual report for 1997 with the Commission?

RECOMMENDATION: Yes. Lake Suzy should be required to remit regulatory assessment fees for water and wastewater service and file an annual report for 1997, for the period of August 26, 1997 through December 31, 1997, within 45 days of the Commission's order. (CHASE, MESSER)

STAFF ANALYSIS: Pursuant to Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code, annual reports and regulatory assessment fees are due from regulated utilities regardless of whether a certificate has been granted. Lake Suzy began providing service to a customer in the proposed certificated area on August 26, 1997, thus making the utility jurisdictional as of that date. The utility itself had been previously regulated by the Commission until DeSoto County rescinded jurisdiction in March, 1997. Therefore, the utility is familiar with these requirements. Staff recommends that Lake Suzy be required to remit regulatory assessment fees and file an annual report for the period August 26, 1997 through December 31, 1997. The report and fees for 1997 should be filed within 45 days of the Commission's order.

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ISSUE 7: What rates and charges should be approved for this utility?

RECOMMENDATION: The rates and charges as detailed in the staff analysis should be approved. The effective date of the rates and charges should be the stamped approval date on the tariff. (REDEMANN, MESSER)

STAFF ANALYSIS: The utility's current rates and service availability charges were established by the Commission in Docket No. 960799-WS on May 12, 1997 and July 3, 1997 by Orders Nos. PSC-97-0540-FOF-WS and PSC-97-0808-FOF-WS, a staff-assisted rate case order and an order recalculating and correcting AFPI charges. The utility's current rates and charges have not changed since that time and are as follows:

Monthly Service Rates

Water Service

Residential, Multi-residential and General Service

Base Facility Charge

Meter Size:

5/8" x 3/4"	\$ 9.76
3/4"	14.65
1"	24.41
1 1/2"	48.82
2"	78.11
3"	156.22
4"	244.10
6"	488.19

Gallonage Charge per 1,000 gallons: \$ 4.88

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Wastewater Service

Monthly Service

Residential

Base Facility Charge

Meter Size:

All sizes \$ 28.98

Gallonage Charge

per 1,000 gallons \$ 8.58

maximum gallons 6,000

Wastewater Service

Monthly Service

Multi-residential and General Service

Base Facility Charge

Meter Size:

5/8" x 3/4" \$ 28.98

3/4" 43.46

1" 72.44

1 1/2" 144.88

2" 231.80

3" 463.60

4" 724.38

6" 1,488.76

Gallonage Charge per 1,000
gallons:

\$ 10.33

MISCELLANEOUS CHARGES

Miscellaneous Service Charges

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

When both water and wastewater services are provided, only a single charge is appropriate unless circumstances beyond the control of the utility require multiple actions.

SERVICE AVAILABILITY CHARGES

The system capacity charge for water has been discontinued. The utility's existing meter installation charges are as follows:

Meter Installation Fees

5/8" x 3/4"	\$ 150.00
1"	200.00
1 1/2"	295.00
2"	355.00
Over 2"	Actual Cost

Service Availability Charges

Wastewater

	<u>Approved Charges</u>
Plant Capacity residential per ERC (209 gpd)	\$1,950.00
All others - per gallon	\$ 9.33
Main extension charge residential per ERC (209 gpd)	\$ 185.00
All others - per gallon	\$.86

ALLOWANCE FOR FUNDS PRUDENTLY INVESTED (AFPI)

The utility has approved AFPI charges for its wastewater treatment plant. Rule 25-30.434, Florida Administrative Code, allows a utility the opportunity to earn a fair return on prudently constructed plant held for future use from future customers to be served by the plant. This charge allows the recovery of carrying costs on the non-used and useful plant. This one-time charge is based on the number of ERCs and is generally applicable to all future customers who have not already prepaid connection fees, CIAC or customer advances.

At the time of the rate case application, the utility's existing wastewater facility could accommodate 199 future ERCs. We have calculated AFPI charges allowing carrying costs relative to the non-used and useful plant for the 199 ERCs. The amount of the AFPI charges are based on the date future customers connect. The utility should be allowed to collect AFPI charges as shown on Schedule 5 for the five year period ended June 2001. Carrying costs incurred beyond five years should be considered excessive, unless the utility demonstrates extraordinary or unusual circumstances. The charges should become effective on or after July 1996, the month following the end of the test period in accordance with Rule 25-30.434(4), Florida Administrative Code.

The utility has filed a tariff which reflects the above rates and charges. Staff recommends that they be approved as submitted. Staff further recommends that Lake Suzy be required to continue to charge these rates and charges until authorized to change by the Commission. The tariff should be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

ISSUE 8: Should Lake Suzy Utilities, Inc.'s water and wastewater rates be subject to a rate reduction pursuant to Section 367.0816, Florida Statutes?

RECOMMENDATION: Yes, pursuant to Section 367.0816, Florida Statutes, Lake Suzy Utilities, Inc.'s water and wastewater rates should be reduced immediately following the expiration of the four year recovery period. Revenues should be reduced by a total of \$262 for water and \$131 for wastewater to reflect the removal of rate case expense grossed up for regulatory assessment fees, which is being amortized over a four year period. The effect of the revenue reduction results in rate decreases as shown on Schedule Nos. 4 and 4-A. The decrease in rates should become effective immediately following the expiration of the recovery period, pursuant to Section 367.0816, Florida Statutes. The utility should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. (MESSER)

STAFF ANALYSIS: Section 367.0816, Florida Statutes, requires that the rates be reduced immediately following the expiration of the four year period by the amount of the rate case expense previously included in the rates.

By Orders Nos. PSC-97-0540-FOF-WS and PSC-97-0808-FOF-WS, issued May 12, 1997 and July 3, 1997, respectively, in Docket No. 960799-WS, Lake Suzy's current rates were established by the Commission. As stated previously, by Order No. PSC-97-0603-FOF, issued May 27, 1997, in Docket No. 970411-WS, the Commission canceled the certificates held by regulated utilities in DeSoto County following County Resolution 97-21 rescinding Commission jurisdiction. However, because Docket No. 960799-WS remained pending, the Commission voted to delay canceling Lake Suzy's certificates until the rate case proceeding was concluded. The rate case became final on July 24, 1997, when the protest period expired, and Docket No. 960799-WS was closed.

If the Commission approves staff's recommendation in Issue 5, Lake Suzy's utility system will be subject to this Commission's jurisdiction again, and, therefore, must comply with the provisions of Order No. PSC-97-0540-FOF-WS and Section 367.0816, Florida Statutes, requiring the rate reduction. The reduction will reflect the removal of the revenues associated with the amortization of rate case expense and the gross-up for regulatory assessment fees, which is \$262 for water and \$131 for wastewater. The reduction in revenues will result in the rates recommended by staff on Schedule Nos. 4 and 4-A.

DOCKET NO. 970657-WS

DATE: June 18, 1998

The utility should be required to file revised tariffs no later than one month prior to the actual date of the required rate reduction. The utility also should be required to 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 for the reduction in the rates due to the amortized rate case expense.

DOCKET NO. 970657-WS

DATE: June 18, 1998

ISSUE 9: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed. (REYES)

STAFF ANALYSIS: No further action is required, and this docket should be closed.

DOCKET NO. 970657-WS
DATE: June 18, 1998

STAFF RECOMMENDED RATE REDUCTION SCHEDULE

LAKE SUZY UTILITIES, INC.
TEST YEAR ENDING JUNE 30, 1996

SCHEDULE NO. 4
DOCKET NO. 960799-WS

CALCULATION OF RATE REDUCTION AMOUNT
AFTER RECOVERY OF RATE CASE EXPENSE AMORTIZATION PERIOD OF
FOUR YEARS

MONTHLY WATER RATES

<u>RESIDENTIAL, MULTI-RESIDENTIAL</u> <u>AND GENERAL SERVICE</u>	<u>MONTHLY</u> <u>RECOMMENDED</u> <u>RATES</u>	<u>MONTHLY</u> <u>RATE</u> <u>REDUCTION</u>
BASE FACILITY CHARGE:		
Meter Size:		
5/8" x 3/4"	\$ 9.76	\$ 0.02
3/4"	14.65	0.03
1"	24.41	0.05
1-1/2"	48.82	0.09
2"	78.11	0.15
3"	156.22	0.30
4"	244.10	0.46
6"	488.19	0.93
<u>GALLONAGE CHARGE</u>		
PER 1,000 GALLONS:	\$ 4.88	\$ 0.01

DOCKET NO. 970657-WS
DATE: June 18, 1998

STAFF RECOMMENDED RATE REDUCTION SCHEDULE

LAKE SUZY UTILITIES, INC.
TEST YEAR ENDING JUNE 30, 1996

SCHEDULE NO. 4A
DOCKET NO. 960799-WS

CALCULATION OF RATE REDUCTION AMOUNT
AFTER RECOVERY OF RATE CASE EXPENSE AMORTIZATION PERIOD OF
FOUR YEARS

MONTHLY WATER RATES

<u>RESIDENTIAL, MULTI-RESIDENTIAL</u> <u>AND GENERAL SERVICE</u>	<u>MONTHLY</u> <u>RECOMMENDED</u> <u>RATES</u>	<u>MONTHLY</u> <u>RATE</u> <u>REDUCTION</u>
BASE FACILITY CHARGE: Meter Size:		
5/8" x 3/4"	\$ 28.98	\$ 0.03
3/4"	43.46	0.05
1"	72.44	0.08
1-1/2"	144.88	0.16
2"	231.80	0.25
3"	463.60	0.51
4"	724.38	0.80
6"	1,488.76	1.59
<u>RESIDENTIAL GALLONAGE CHARGE</u> PER 1,000 GALLONS:	\$ 8.58	\$ 0.01
<u>GENERAL SERVICE GALLONAGE CHARGE</u> PER 1,000 GALLONS:	\$ 10.30	\$ 0.01

DOCKET NO. 970657 WS
DATE: June 18, 1998

STAFF RECOMMENDED RATE REDUCTION SCHEDULE

LAKE SUZY UTILITIES, INC.
TEST YEAR ENDING JUNE 30, 1996

SCHEDULE NO. 4A

CALCULATION OF RATE REDUCTION AMOUNT
AFTER RECOVERY OF RATE CASE EXPENSE AMORTIZATION PERIOD OF
FOUR YEARS

MONTHLY WASTEWATER RATES

<u>RESIDENTIAL, MULTI-RESIDENTIAL AND GENERAL SERVICE</u>	<u>MONTHLY RECOMMENDED RATES</u>	<u>MONTHLY RATE REDUCTION</u>
BASE FACILITY CHARGE:		
Meter Size:		
5/8" x 3/4"	\$ 28.98	\$ 0.03
3/4"	43.46	0.05
1"	72.44	0.08
1-1/2"	144.88	0.16
2"	231.80	0.25
3"	463.60	0.51
4"	724.38	0.80
6"	1,488.76	1.59
<u>RESIDENTIAL GALLONAGE CHARGE</u>		
PER 1,000 GALLONS:	\$ 8.58	\$ 0.01
<u>GENERAL SERVICE GALLONAGE CHARGE</u>		
PER 1,000 GALLONS:	\$ 10.30	\$ 0.01

DOCKET NO. 970657-WS
 DATE: June 18, 1998

COMPANY: Lake Suzy Utilities, Inc.
 SEWER TREATMENT PLANT
 TEST YEAR ENDED JUNE 30, 1996

REVISED JUNE 12, 1997
 SCHEDULE NO. 5
 DOCKET NO. 960799-WS

Allowance for Funds Prudently Invested
 Schedule of Charges:

	1996 ----	1997 ----	1998 ----	1999 ----	2000 ----	2001 ----	2002 ----
January		106.13	290.87	485.40	694.04	918.16	1,014.33
February		121.29	306.43	502.08	711.94	937.40	1,014.33
March		136.45	321.99	518.75	729.83	956.63	1,014.33
April		151.61	337.55	535.43	747.73	975.86	1,014.33
May		166.77	353.12	552.10	765.62	995.10	1,014.33
June		181.93	368.68	568.77	783.52	1,014.33	1,014.33
July	15.16	197.49 *	385.35	586.67	802.75	1,014.33	1,014.33
August	30.32	213.05 *	402.03	604.57	821.99	1,014.33	1,014.33
September	45.48	228.62 *	418.70	622.46	841.22	1,014.33	1,014.33
October	60.64	244.18 *	435.38	640.36	860.46	1,014.33	1,014.33
November	75.80	259.74 *	452.05	658.25	879.69	1,014.33	1,014.33
December	90.96	275.30 *	468.73	676.15	898.93	1,014.33	1,014.33

* Corrected Charges