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August 21, 1998

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32301

RECEIVED-FPSC  
98 AUG 21 PM 3:13  
RECORDS AND REPORTING

Re: Docket No. 971220-WS, Application for transfer of Certificate Nos. 592-W and 509-S from Cypress Lakes Association, Ltd., to Cypress Lakes Utilities, Inc., in Polk County, Florida.

Dear Ms. Bayo:

Enclosed for filing in the above referenced docket are the original and fifteen copies of the following document:

1. Cypress Lakes Utilities, Inc.'s Motion to Dismiss or Strike OPC's Petition for Section 120.57(1) Hearing and Protest of Proposed Agency Action.

Thank you for your assistance.

Sincerely yours,

RECEIVED & FILED

FPSC-BUREAU OF RECORDS



Ben E. Girtman

ACK      Encl.  
cc w/encl. Mr. Carl Wenz

AFA     

APP     

CAF     

CMU     

CTR     

EAG     

LEG   1  

LIN     

OPC     

RCH     

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WAS   Johnson  

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DOCUMENT NUMBER-DATE

09070 AUG 21 98

FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 971220-WS

Date Filed: August 21, 1998

RECEIVED-FPSC  
AUG 21 PM 3:13  
RECORDS AND REPORTING

CYPRESS LAKES UTILITIES, INC.'s  
MOTION TO DISMISS OR STRIKE  
OPC's PETITION  
FOR SECTION 120.57(1) HEARING AND  
PROTEST OF PROPOSED AGENCY ACTION

COMES NOW Utilities, Inc. and its wholly owned subsidiary, Cypress Lakes Utilities, Inc., (hereinafter collectively referred to as "Cypress Lakes" or "Applicant"), and in support of its Motion to Dismiss or Strike states that:

1. On July 20, 1998, the Florida Public Service Commission entered its Order No. PSC-98-0993-FOF-WS, containing a final order approving the transfer and a proposed agency action order establishing rate base for purposes of the transfer.

2. On or about August 10, 1998, the Office of Public Counsel (OPC) filed a Petition for Section 120.57(1) Hearing and Protest of Proposed Agency Action. A copy of the Petition was sent by U.S. Mail to Applicant's Florida headquarters in Altamonte Springs, Florida, but no copy was ever served on Applicant's attorney of record in this Docket. Applicant's Motion to Dismiss or Strike is filed pursuant to Rule 25-22.037(1) and (2), F.A.C., in response to the OPC Petition, and is not due until 20 days after service of the Petition.

3. In its Petition, OPC does not allege any grounds why the Commission should include a negative acquisition adjustment in the rate base.

4. In the recently decided case of Wedgefield Utilities, Inc., Order No. PSC-98-1092-FOF-WS, issued August 12, 1998, the Commission confirmed that:

. . . the current Commission practice regarding acquisition adjustments is that, absent extraordinary circumstances, the purchase of a utility system at a premium or discount, shall not affect rate base. . . . [Wedgefield, at 17.]

In that same order, the Commission also stated:

. . . We find that a showing of extraordinary circumstances must be made to warrant a rate base inclusion of an acquisition adjustment. Once the utility makes an initial showing that there are no extraordinary circumstances, the burden of persuasion shifts to the opposing party to demonstrate that extraordinary circumstances are present. If the opposing party meets the burden of persuasion, the ultimate burden of rebutting the opposing party's allegations rests upon the utility. [Emphasis added. Wedgefield, at 8.]

5. Not only does OPC's Petition fail to make a showing of extraordinary circumstances, the Petition also fails to even allege that any "extraordinary circumstance" exists. Because the existence of "extraordinary circumstances" is the sole ground for including an acquisition adjustment, the Petition is insufficient and should be dismissed.

6. In its Application for transfer, Utilities, Inc. set forth the reasons why the transfer is in the public interest. [See, Application, page 3, Part II, paragraph A.] A copy of that

statement is attached as Exhibit "1" and incorporated herein.

7. The Application also required the Applicant to set forth the reasons why an acquisition adjustment, if requested, was appropriate. There were no reasons to support an acquisition adjustment, and Applicant stated that no acquisition adjustment was requested. [See, Application, page 4, Part II, paragraph H];

8. There are no extraordinary circumstances in this case, and there is nothing in this case which would warrant an acquisition adjustment. Pursuant to the standard set by the Commission in the Wedgfield case, the Applicant herein has met its burden, and the OPC has failed to meet its burden to show why a negative acquisition adjustment is warranted. Therefore, the Petition should be dismissed.

9. The only possible "ground" which OPC might arguably claim to have alleged in its Petition is "Did the former owners properly maintain the utility assets?". The Petition does not allege that extraordinary circumstances exist; and it does not allege any law or facts which would warrant holding a formal hearing in this case, much less support a ruling in favor of an acquisition adjustment

10. Furthermore, 25-22.029, F.A.C., sets forth the requirements for initiating a formal proceeding.

(2) Initial Pleading. . . . Where the Commission has issued notice of proposed agency action, the initial pleading shall be entitled "Petition on Proposed Agency Action."

\* \* \*

(7) Form and Content. . . .

(a) Generally except for orders or notices issued by the Commission, each initial pleading should contain:

\* \* \*

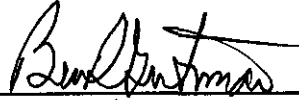
3. A statement of all known disputed issues of material fact. If there are none, the petition must so indicate.

4. A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief . . . .

11. Not only are there no extraordinary circumstances, the Petition does not even allege any extraordinary circumstances warranting a negative acquisition adjustment. The Petition fails to set forth any issues of material fact, fails to give a concise statement of the ultimate facts alleged, and fails to set forth any rules and statutes which entitle the petitioner to relief. The only statutory allegation in the Petition is Section 350.0611, F.S., the statutory authority under which OPC claims to have the right to appear in a proceeding held under Section 120.57(1), F.S., not the substantive or procedural authority under which it can prevail or even meet the minimum threshold necessary to require the Commission to accept the Petition and hold a hearing pursuant to Chapter 120, F.S. or the statutes or rules governing procedures before this Commission.

WHEREFORE, Cypress Lakes respectfully requests that the Commission dismiss or strike the OPC Petition and make its Order No. PSC-98-0993-FOF-WS final.

RESPECTFULLY SUBMITTED, this 21st day of August, 1998



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Tallahassee, FL 32301

Attorney for Utilities, Inc. and  
Cypress Lakes Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent to Harold McLean, Esq., Office of Public Counsel, 111 W. Madison St., Tallahassee, FL 32399-1400; Bobbie Reyes, Esq., Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850; and to Michael L. Resnick, Esq. 1342 E. Vine St., Suite 236, Kissimmee, FL 34744, by U.S. Mail (or by hand delivery \* or facsimile #) this 21st day of August, 1998.



Ben E. Girtman

**PART II FINANCIAL AND TECHNICAL INFORMATION**

- A) **Exhibit \_\_\_\_\_ - A statement indicating how the transfer is in the public interest, including a summary of the buyer's experience in water and/or wastewater utility operations, a showing of the buyer's financial ability to provide service and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters.**

This transfer is in the public interest. Utilities, Inc. (UI) has approximately 31 years of experience in the water and wastewater utility industry. UI was formed in 1965 with the objective of acquiring small water and sewer companies. By centralizing the management, accounting, billing and data processing functions, these companies can achieve economies of scale that would be unattainable on a stand-alone basis. These companies are typically troubled and undercapitalized. They are primarily developer owned and with little experience in operating utilities. At the present time, UI provides safe and reliable water and sewer service to approximately 165,000 customers in 15 states. A list of Utilities, Inc.'s Florida subsidiaries is shown on Exhibit A. UI focuses solely on the ownership and operation of small utility systems and has vast experience improving and operating facilities. In addition, UI has both the regulatory experience and financial wherewithal to ensure consistent compliance with environmental regulations. UI's experience in operating water and sewer utilities will provide depth to Cypress Lakes Utilities, Inc. on both a day-to-day basis as well as during emergencies. UI has operated other water and wastewater utilities in Florida under the regulation of the Florida Public Service Commission since 1976. UI's existing Florida subsidiaries are in good standing with the Commission. For these reasons, the public interest would be best served by the proposed transfer of ownership.

- B) **List the names and locations of other water and/or wastewater utilities owned by the buyer and PSC certificate numbers, if any.**

Please see Exhibit A for a list of Utilities, Inc. subsidiaries.

- C) **Exhibit B - A copy of the contract for sale and all auxiliary or supplemental agreements, which shall include, if applicable:**

- 1) **Purchase price and terms of payment;**
- 2) **A list of and the dollar amount of the assets purchased and liabilities assumed or not assumed, including those of nonregulated operations or entities.**
- 3) **A description of all consideration between the parties, for example, promised salaries, retainer fees, stock, stock options, assumption of obligations.**

The contract for sale shall also provide for the disposition, where applicable, of the following:

- 1) **Customer deposits and interest thereon;**
- 2) **Any guaranteed revenue contracts;**
- 3) **Developer agreements;**
- 4) **Customer advances;**
- 5) **Debt of the utility; and**
- 6) **Leases.**

Please see Exhibit B for a copy of the water and sewer asset purchase agreement.

EXHIBIT "1"