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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of	:	DOCKET NO. 960444-WU
Application for rate	:	
increase and for increase	:	
in service availability	:	
charges in Lake County by	:	
Lake Utility Services,	:	
Inc.	:	



PROCEEDINGS: **PREHEARING CONFERENCE**

BEFORE: COMMISSIONER SUSAN F. CLARK
 Prehearing Officer

DATE: **Monday, August 31, 1998**

TIME: Commenced at 1:35 p.m.
 Concluded at 1:50 p.m.

PLACE: Betty Easley Conference Center
 Room 140
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR
 Chief, Bureau of Reporting

DOCUMENT NUMBER-DATE
09547 SEP-1 98

1 **APPEARANCES:**

2 **RICHARD D. MELSON**, Hopping Green Sams and
3 Smith, Post Office Box 6526, Tallahassee, Florida
4 32314, appearing on behalf of **Lake Utility Services,**
5 **Inc.**

6 **JACK SHREVE and HAROLD McLEAN**, Associate
7 Public Counsel Office of Public Counsel, 111 West
8 Madison Street, Room 812, Tallahassee, Florida
9 32399-1400, appearing on behalf of the **Citizens of the**
10 **State of Florida.**

11 **TIM VACCARO**, Florida Public Service
12 Commission, Division of Legal Services, 2540 Shumard
13 Oak Boulevard, Tallahassee, Florida 32399-0870,
14 appearing on behalf of the **Commission Staff.**

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2 **P R O C E E D I N G S**

3 **(Hearing convened at 1:35 p.m.)**

4 **COMMISSIONER CLARK:** Let's call the
5 prehearing to order. You read the notice.

6 **MR. VACCARO:** Pursuant to notice this time
7 and place have been designated for a prehearing
8 conference in Docket No. 960444-WS, application for
9 rate increase and for increase in service availability
10 charges in Lake County by Lake Utility Services, Inc.

11 **COMMISSIONER CLARK:** We'll take appearances.

12 **MR. MCLEAN:** Harold McLean, Office of Public
13 Counsel, 111 West Madison Street, Tallahassee, Florida
14 32399. With me is Mr. Shreve, the Public Counsel, and
15 Sam Gatlin from our office.

16 **MR. MELSON:** Richard Melson of Hopping Green
17 Sams & Smith, PA, P. O. Box 6526, Tallahassee, on
18 behalf of Lake Utility Services, Inc.

19 **MR. VACCARO:** Tim Vaccaro on behalf of the
20 Florida Public Service Commission Staff.

21 **COMMISSIONER CLARK:** Okay. Is there
22 anything I need to take up as a preliminary matter?

23 **MR. VACCARO:** Yes, there is a preliminary
24 matter. The parties met with Staff in an attempt to
25 settle this matter and eliminate the need for a
hearing.

1 Settlement negotiations fell through. This
2 was due in large part to the fact that the information
3 contained in the Utility's 1997 Annual Report
4 suggests, at least to Staff and to OPC, that the
5 Utility is overearning under the interim rates
6 approved in this docket as a result of customer
7 growth.

8 After settlement negotiations fell through
9 the Utility filed a notice of withdrawal of its
10 settlement offer and its protest of the PAA order in
11 which it approved increased rates and lowered service
12 availability charges.

13 The Utility believes that its withdrawal
14 eliminates the need for hearing and enables it to
15 automatically put into effect the rates and charges
16 proven in the Commission's PAA order. Staff does not
17 agree with the Utility on that point, and the Staff
18 believes their recommendation addressing the Utility's
19 notice of withdrawal should be presented to the
20 Commission at the earliest possible agenda conference,
21 which would be September 22nd. As such, Staff
22 recommends this prehearing be continued and that you
23 consult with the Chairman in our quest that the
24 prehearing and hearing dates be rescheduled pending a
25 determination on the Utility's Notice of Withdrawal.

1 Staff also notes the hearing should be continued
2 regardless of the Utility's notice due to the
3 possibility of overearning by the Utility. Additional
4 time is needed to conduct an audit of the Utility's
5 books and records so that we can confirm whether or
6 not the Utility is, in fact, overearning. If so,
7 additional time would be necessary to afford the
8 parties an opportunity to revise their testimony.

9 **COMMISSIONER CLARK:** So it's your
10 recommendation that we continue the prehearing and
11 hearing to later dates at the direction of the
12 Chairman.

13 **MR. VACCARO:** Yes.

14 **COMMISSIONER CLARK:** Who should I hear from
15 next? Mr. Melson.

16 **MR. MELSON:** Commissioner, I think
17 Mr. Vaccaro gave you the nutshell version. If we get
18 into the history of this case, it's got a long one. I
19 finally wrote it all down this morning so I could
20 remember if we get into that kind of a discussion.

21 As Mr. Vaccaro said, we were meeting with
22 regards to settlement as late as Thursday of last
23 week, and when it appeared that we had reached an
24 impasse, we failed a notice that we were withdrawing
25 our settlement offer, which had been the subject of a

1 PAA Order, which in turn had been protested by
2 Mr. Shreve. We also gave notice -- and we believe
3 that moots the current case and eliminates the need
4 for a hearing.

5 We understand Staff's position that that
6 does not happen automatically and requires further
7 action by the Commission. We probably disagree with
8 that legal conclusion, but if the Staff believes it's
9 necessary to take that to an agenda and present it to
10 the Commission and hear argument from the parties,
11 we're happy to do that.

12 At that time we also withdrew our protest of
13 the original PAA Order which dates back to May of
14 1997, and we believe the effect of the withdrawal of
15 that protest is to essentially allow that order to
16 become final and to allow the PAA rates to go into
17 effect. Where we go on a forward-looking basis I
18 think is up to the Company in terms of deciding does
19 it believe with some of the customer growth we've seen
20 over the past couple of years that we need to be in
21 for another rate case. It depends in part on Staff
22 and Mr. Shreve, if they believe that there's an
23 overearning situation even after the partial refund of
24 interim rates that's called for by the PAA order, that
25 I assume they will take whatever action they believe

1 is appropriate.

2 But in our view our -- the Utility's action
3 filing the Notice of Withdrawal essentially moots the
4 hearing and the hearing ought to be cancelled rather
5 than continued, although that's an argument we're
6 willing to reserve and make in more detail at the end
7 of the September agenda.

8 **COMMISSIONER CLARK:** Okay. Mr. Shreve.

9 **MR. SHREVE:** I think what both gentlemen
10 said is accurate, but I'd like to make sure you
11 understand a part of it -- and you probably do, but a
12 part of it is easy to misunderstand.

13 The settlement offer that both are talking
14 about is a settlement offer in regards to a second PAA
15 in this case. The first proposed agency action came
16 out and was protested by the Company. Later there
17 was, frankly an agreement -- there was Staff testimony
18 supporting a level of rates which was agreed to, and
19 agreed to by the Staff, and the Company filed a
20 proposed settlement. We were not a part of that; a
21 party to it. We were aware that it was being filed.
22 That was in this year, May, June, somewhere in there.
23 At that time, when the Commission voted out that
24 proposed settlement as a proposed agency action, that
25 was for an additional increase over the first PAA.

1 I've never had one where we have had two PAAs like
2 that. We had that discussion at one time when we
3 voted out. According to the Company's own annual
4 reports and own figures, there was already an
5 overearnings in 1997 without that additional rate
6 increase.

7 We've had -- I'm not sure exactly where we
8 stand right now. Now, Mr. Melson says it's over
9 because he withdrew that from the first PAA, in a
10 sense overcoming our protest of the PAA, their offer
11 of settlement and your PAA and going back to the first
12 PAA. I'm not sure exactly what the Staff is saying.
13 Because if we're talking with coming in and filing
14 additional testimony, I guess with a different test
15 year we don't have a case. So I guess I really don't
16 know even exactly what my position is at this time
17 until somebody is able to tell me what the answers are
18 to all of the questions.

19 **COMMISSIONER CLARK:** You mean answers to the
20 Notice of Withdrawal of Settlement and Withdrawal of
21 Protest and Reinstatement of the PAA.

22 **MR. SHREVE:** That, as well as if the Staff
23 is talking about continuing the hearing and filing
24 additional testimony after an audit, I'm not even sure
25 exactly where that takes us.

1 **COMMISSIONER CLARK:** I'm not either. But it
2 seems pretty clear that we're not going to resolve
3 that today, and it's unlikely we'll be ready in two
4 weeks.

5 **MR. SHREVE:** Unfortunately, I think that's
6 the case. I would prefer to go to hearing. I don't
7 know exactly how we can.

8 **COMMISSIONER CLARK:** Let's do this: We seem
9 to be confident -- at least in agreement that appears
10 to be the only course we can take, so I will consult
11 with the Chairman on rescheduling the prehearing and
12 the hearing.

13 But I will say that, you know, Staff has
14 kind of come to me with a little bit of the history,
15 Rick, and, you know, if you want to go through it and
16 talk about it we can do that. But here's my concern
17 about what you suggested.

18 While you may be legally correct, and I'm
19 not saying that you are, it just doesn't really
20 satisfy the notion we could deal with everything fair
21 and equitably, get the rates right and without a whole
22 lot more activity.

23 I suppose you could win on that issue but
24 Staff would probably come in and say we need to put
25 revenues subject to refund right away.

1 I want to suggest I think you have been in
2 settlement talks for a while, and I think that
3 probably the best way out of this morass is for you
4 all to keep talking and come up with a settlement.
5 But having said that, we're certainly -- we will be
6 prepared to move forward any way we legally can. But
7 I think it needs to be kept in mind that we intend to
8 find a way to make sure that these delays, and the
9 fact that we have had a PAA and another PAA, don't
10 adversely affect the ratepayers. And I'm just
11 concerned that -- you know, one of the issues may be
12 the test year is too stale, and maybe we should just
13 say, "Fine, give back all of the interim rates" and
14 we'll start again.

15 **MR. MELSON:** Commissioner Clark, let me
16 respond. I understand the concerns you've expressed,
17 and we are certainly willing to continue to work with
18 both Mr. Shreve and with the Staff toward a possible
19 settlement.

20 I have thought for many months that this
21 case was one that ought to settle. Just to get the
22 dates, I think Jack referred to a settlement in May of
23 this year. That was actually the PAA Order accepting
24 a settlement offer that was made in September of 1997.

25 **COMMISSIONER CLARK:** Right. I have been

1 reminded that it was pending for a while and we didn't
2 have a position yet for Public Counsel. And I think
3 the Commission went ahead and approved the settlement
4 knowing -- to sort of get this ball moving. And I
5 wanted to impress upon you I don't think we're going
6 to want to delay much long in that if it doesn't look
7 like it's going to resolve itself, we're going to take
8 the most expeditious action to make sure we get things
9 right.

10 **MR. MELSON:** Let me throw another
11 complicating factor into the mix, and, frankly, I
12 haven't thought it completely through to know how it
13 works out.

14 Under the new provisions of the APA,
15 everything that is not protested is deemed stipulated.
16 If we were to go to hearing on the original protest,
17 that order approved a test year. I think we all
18 recognize that there's been a lot of growth in this
19 utility since that time, but that test year
20 determination was never challenged. And I'm not sure
21 in the context of the first protest, at least, that
22 you can get from Point A to Point B.

23 **COMMISSIONER CLARK:** I appreciate the fact
24 that there may be, especially in light of the new P.A.,
25 that legally you may be in a strong position to, you

1 know, go forward and have it limited to those issues
2 you want to have it limited. But it won't -- I just
3 want to remind you that we have a concern that we get
4 things right. I understand that some customers -- we
5 delayed readjusting the rates because you all were
6 filing a test year and a rate case, and I'm concerned
7 that the delay has created a morass that may be
8 difficult to extract ourselves from. But I can tell
9 you upon of the polestars is going to be it not
10 adversely affect the ratepayers. And, you know, I
11 think the Company has to be thinking about what is
12 fair.

13 You know, it may be well to have your client
14 at the table when these things are discussed so that
15 they have an appreciation for what we're trying to do
16 and trying to get it resolved. I understand he hasn't
17 really been in the settlement.

18 **MR. WILLIS:** He has been on the telephone.

19 **MR. MELSON:** He has and he would be here
20 today but for -- his right-hand person accepted a job
21 with Ernst and Young and so he's now giving testimony
22 in another state unexpectedly today.

23 **MR. SHREVE:** Commissioner --

24 **COMMISSIONER CLARK:** Communicate for me that
25 I think there's some urgency in trying to get this

1 settled and to be flexible about, you know, what
2 strictly the legalities may be.

3 **MR. SHREVE:** I don't disagree with anything
4 you've said. And I think our feeling is there --
5 regardless of where we go legally, I don't think the
6 Commission or the Staff is going to vote out a rate
7 increase when a company is overearning. It's just not
8 going to happen.

9 The other thing, I don't know how this cuts
10 for or against us, but I think with Rick's withdrawal,
11 I think you have some real questions as to the first
12 PAA. The first PAA has a date that if it is not
13 protested it becomes final. And I guess that's the
14 effective date of the rates and service availability
15 charges.

16 You have almost a year and a half now that
17 other rates have been in effect. And if a different
18 rate became final, at that point, rather than as
19 Mr. Melson says when he files his document, then I
20 think we have a real problem. I don't know how it
21 cuts against me or the party, but I think it's
22 something this has to be considered.

23 I don't know if we want to oppose what
24 Mr. Melson has done or not. I don't think I want it
25 out there as anything that's going to be a precedent

1 for the future.

2 So we're taking a look at the whole thing
3 that's been discussed this morning to try and see
4 where it falls out. And there are some real questions
5 as to what would happen on some of the rates. Because
6 I think there's an argument to be made if Mr. Melson
7 is successful and that Order becomes final, it became
8 final as of the date of the Order. I mean if the
9 whole Order is final, that's it. So I don't know
10 where we go from there with the service availability
11 charges and rates on there.

12 **COMMISSIONER CLARK:** I think the desire
13 would be let's get the rates where they should be and
14 move forward, instead of trying to continually deal
15 with something that the information that we have
16 becomes more stale.

17 **MR. MELSON:** And part of the problem,
18 frankly, is figuring out where the rates should be.
19 Because we have had some unusual customer growth. We
20 have had some unusual sales this year due to weather.
21 We have customers I was told at one point during the
22 month of February that were using a thousand gallons
23 per day per customer.

24 **COMMISSIONER CLARK:** New houses I would
25 imagine.

1 **MR. SHREVE:** A lot of money.

2 **MR. MELSON:** We've got rates, Commissioner,
3 that are about the lowest I have ever seen.

4 **COMMISSIONER CLARK:** Yeah.

5 **MR. MELSON:** And we have a utility that is
6 on the verge of making substantial capital
7 improvements to basically be able to continue to
8 provide the quality of service.

9 And if you look at 1997 in isolation, I'm
10 not sure we know yet exactly what the numbers show.
11 Staff and Mr. Shreve believe they show some level of
12 overearnings. But if you look going forward, we don't
13 believe that's going to be the case in the future and
14 we don't want to get into a situation where we agree
15 to a rate that requires us to turn around and be back
16 in in another 12 months for a rate case.

17 That all said, it is not a simple case. But
18 we will continue to work with Jack and with Staff and
19 see if we can possibly settle it, because I think that
20 is probably ultimately the best way to deal with this.

21 **COMMISSIONER CLARK:** Then we are all on the
22 same page as far as that goes. I will let the
23 Chairman know that we need a continuance of this
24 prehearing and the hearing, and I'll ask you, Tim, to
25 work with her on the dates.

1 **MR. SHREVE:** Do you have any idea how long a
2 postponement we're talking about?

3 **COMMISSIONER CLARK:** Who is on this case?

4 **MR. VACCARO:** You, Commissioner Deason
5 and --

6 **MR. MELSON:** Commissioner Jacobs.

7 **COMMISSIONER CLARK:** I can't tell. And I
8 guess what we'll tell her is if you need to reassign
9 it to a different panel to get it heard sooner, that's
10 an option.

11 **MR. SHREVE:** Which, there again, I think we
12 need to know what the Staff's thoughts are on -- they
13 mentioned an audit and refiling testimony. Like I say
14 I don't know where we are at this point.

15 **COMMISSIONER CLARK:** That's why it strikes
16 me we could spend a whole lot of time talking about
17 how to get where we want to go procedurally, when it
18 may be the best solution is to reach outside of the
19 strict procedural requirements that we may find
20 ourselves in.

21 **MR. VACCARO:** And other than the possibility
22 of settlement, I feel that this all will make a lot
23 more sense after we can get a recommendation to the
24 agenda that sets forth exactly what our position is.

25 **COMMISSIONER CLARK:** Maybe you'll settle it

1 before it comes to agenda.

2 **MR. MELSON:** That could be.

3 **COMMISSIONER CLARK:** If there's nothing
4 further to take up, I'll adjourn this prehearing with
5 the idea it will be continued at a later date, and the
6 hearing. All right? Thank you all very much.

7 (Thereupon, the hearing concluded at 1:50
8 p.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

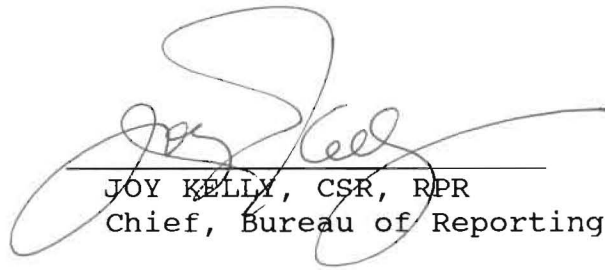
CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Prehearing
6 Conference in Docket No. 960444-WS was heard by the
7 Prehearing Officer at the time and place herein
8 stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 17 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 1st day of September, 1998.

15 
16 JOY KELLY, CSR, RPR
17 Chief, Bureau of Reporting

18 (904) 413-6732

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