

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate increase and for increase in service availability charges in Lake County by Lake Utility Services, Inc.

DOCKET NO. 960444-WU  
ORDER NO. PSC-98-1582-PCO-WU  
ISSUED: November 25, 1998

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.

ORDER REJECTING WITHDRAWAL OF SETTLEMENT OFFER  
AND WITHDRAWAL OF PROTEST

BY THE COMMISSION:

BACKGROUND

Lake Utility Services, Inc., (LUSI or utility) is a Class B utility located in Lake County. LUSI is a wholly-owned subsidiary of Utilities, Inc. and provides no wastewater service. The service area is composed of eighteen subdivisions, which are served by twelve water plants. All of the plants are basically pump and chlorinate with hydro pneumatic tanks. There are ten plants in the South Clermont Region. In this region there are groups of two (Oranges-Vistas), three (Clermont I-Amber Hill-Lake Ridge Club) and four (Highland Point-Crescent Bay-Crescent West-Lake Crescent Hills) interconnected plants with one stand alone plant (Clermont II). The other two plants (Lake Saunders & Four Lakes) are outside this area. The minimum filing requirements (MFRs) filed in this docket indicate that the service area contained a total of 915 customers at the end of 1995. The utility reported adjusted test year operating revenues of \$313,946 for its water operations for 1995. According to the St. Johns River Water Management District, LUSI is in a water conservation area.

The utility filed this application for a rate increase on June 3, 1996. The utility was notified of several deficiencies. Those deficiencies were corrected, and the official filing date was

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established as July 9, 1996. The utility's requested test year for both interim and final rates is the historical period ended December 31, 1995. Also, the utility requested that this case be processed using the Proposed Agency Action (PAA) procedure pursuant to Section 367.081(8), Florida Statutes.

During the course of this PAA rate case, our staff identified a large number of errors in both the MFRs and the utility books. The attempts to correct these errors resulted in several staff information requests and three five-month statutory time extensions. The responses from the utility contained more errors. The first numbers resulted in a negative rate base. Although the second set of numbers indicated a relatively small rate base, staff proceeded with its recommendation to avoid further delay.

By PAA Order No. PSC-97-0531-FOF-WU issued May 9, 1997, we set rates and approved an overall rate of return of 9.26%. On May 30, 1997, LUSI filed a Petition on PAA, protesting certain portions of the PAA Order No. PSC-97-0531-FOF-WU. Pursuant to Section 120.80 (13)(b), Florida Statutes, those portions of the PAA Order which were not protested are deemed stipulated. On July 21, 1997, the Office of Public Counsel (OPC) filed a notice of intervention in this docket. By Order No. PSC-97-0899-PCO-WU, issued July 30, 1997, we acknowledged OPC's intervention.

On September 17, 1997, LUSI filed an offer of settlement to avoid the time and expense of further litigation in this docket. LUSI also filed a motion for continuance, requesting that further activity in this docket cease, pending final negotiation with the OPC. By Order No. PSC-97-1092-PCO-WU, issued September 19, 1997, LUSI's motion was granted. Pending our review of the utility's offer of settlement, LUSI filed three eight-month statutory time extensions. By PAA Order No. PSC-98-0683-AS-WU, issued May 18, 1998, we accepted LUSI's settlement offer. OPC opposed the settlement at the time of our consideration of that matter. On June 8, 1998, OPC filed a petition on PAA, protesting Settlement Order No. PSC-98-0683-AS-WU and requesting a hearing on its protest. As a result of OPC's protest of Order No. PSC-98-0683-AS-WU, this matter was scheduled to proceed to hearing on September 15-16, 1997.

Following OPC's protest, the parties attempted to settle this case in lieu of proceeding to a hearing. During settlement negotiations, review of data presented in LUSI's 1997 annual report suggested that LUSI may be overearning under the interim rates set

in this docket, due to increased customer growth. Settlement negotiations reached a stalemate, and, as a result, on August 27, 1998, LUSI filed a Notice of Withdrawal of Offer of Settlement and Notice of Withdrawal of Protest of PAA. By its notice, LUSI indicated its intent to withdraw its September 17, 1997 settlement offer and to withdraw its May 30, 1997 petition on PAA, by which it protested Order No. PSC-97-0531-FOF-WU. It is LUSI's opinion that its withdrawal makes Order No. PSC-98-0683-AS-WU moot, eliminates the need for a hearing and allows Order No. PSC-97-0531-FOF-WU to be effective on the date the utility provided its notice. Following LUSI's notice of withdrawal, a Prehearing Conference was held on August 31, 1998.

At the Prehearing Conference, the Prehearing Officer continued that proceeding, based on our staff's recommendation that the prehearing and hearing dates be rescheduled by the Chairman. This would allow our staff sufficient time to address LUSI's notice of withdrawal in a recommendation, at the earliest possible Agenda Conference. The Chairman's office postponed further action pending review of our staff's recommendation.

#### NOTICE OF WITHDRAWAL

As discussed earlier, LUSI has filed a notice of withdrawal of its settlement offer and withdrawal of its May 30, 1997 protest of the first PAA order in this docket. This is a case of first impression, and in order to properly address this matter, we find it necessary to turn back to LUSI's protest of Order No. PSC-97-0531-FOF-WU and then proceed to each subsequent event leading up to LUSI's notice of withdrawal.

On May 30, 1997, LUSI filed a petition on PAA, protesting Order No. PSC-97-0531-FOF-WU. LUSI limited its protest to the following issues contained in that order: the proposed findings with regard to LUSI's quality of service; the proposed determination of the amount of plant in service; the proposed determination of the amount of non-used and useful plant; the proposed determination of contributions in aid of construction to be deducted from rate base; the proposed determination of rate case expense; the proposed determination of fall-out issues including margin reserve, depreciation, accumulated depreciation, amortization, accumulated amortization, revenue requirement and monthly rates, as affected by the preceding issues; and the proposed service availability charges. Pursuant to Section 120.80 (13)(b), Florida Statutes, those portions of the PAA Order which

were not protested were deemed stipulated. The portions of the PAA Order which were protested ceased to exist, because LUSI's request for a hearing on those issues "is a de novo proceeding, which . . . is intended 'to formulate final agency action, not to review action taken earlier and preliminarily.'" See Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778, 786-787 (Fla. 1st DCA 1981) citing McDonald v. Department of Banking and Finance, 346 So. 2d 569 (Fla. 1st DCA 1977).

Following the utility's protest and its prefiling of direct testimony, our staff made discovery requests on the utility and conducted depositions of its witnesses. Based on the information provided by LUSI, our staff prefiled its direct testimony, which supported higher rates and charges than those approved by this Commission in the PAA Order, but lower than those requested by LUSI. As a result of our staff's testimony, the utility filed an offer of settlement, in which it stated that "in order to avoid the time and expense of litigation it [was] willing to compromise its position and to accept the rates and charges supported by the staff's testimony as the basis for a settlement of this rate proceeding."

Under the specific terms of the settlement, LUSI agreed to accept the following: our staff's calculated individual account balances of plant in service; the amount of CIAC calculated by our staff; rate case expense in the amount contained in the PAA Order; our staff's fall-out calculations, including depreciation, accumulated depreciation, amortization, accumulated amortization, revenue requirement and rates; our staff's calculation of service availability charges; a return on equity of 11.61 percent; and amortization of rate case expense over four years. LUSI further indicated in its settlement that it did not agree to our staff's position regarding methodology and calculation of used and useful, or any other issue not specifically addressed in the offer of settlement.

By Order No. PSC-98-0683-AS-WU, issued May 18, 1998, we accepted the utility's settlement offer. In that Order, we specifically stated that we accepted LUSI's offer of settlement "as a reasonable resolution of this matter." We reiterated on page six of the Order that the issues which were not protested were deemed stipulated and stated that our acceptance of the settlement offer "resolves all issues in PAA Order No. PSC-97-0531-FOF-WU." Therefore, this second Order superseded the original PAA Order, thus, eliminating the existence of the original PAA Order, with

regard to the disputed issues. Further, because LUSI's settlement offer specifically excluded the protested issues of used and useful and quality of service, and because Order No. PSC-98-0683-AS-WU resolved the first PAA Order, those issues cease to exist in this docket.

On June 8, 1998, OPC filed a petition on PAA, protesting Order No. PSC-98-0683-AS-WU, and requesting a formal hearing on its protest. OPC protested the following issues approved in the Order: plant in service; CIAC; fall-out issues, including accumulated depreciation and revenue requirement; service availability charges; and return on equity. OPC did not protest the approved rate case expense, and pursuant to Section 120.80(13), Florida Statutes, that issue is deemed stipulated. OPC also raised the following issues in its protest: LUSI's quality of service; the appropriate calculation of LUSI's used and useful plant; LUSI's cost of capital and capital structure; and LUSI's alleged over collection of allowances for fund prudently invested charges. OPC is precluded from raising these issues, because they go beyond the scope of Order No. PSC-98-0683-AS-WU.

Order No. PSC-98-0683-AS-WU accepted LUSI's settlement offer as a resolution of the protested issues in the original PAA Order. Rule 25-22.029(4), Florida Administrative Code, provides, in part, that one whose substantial interest will be affected by the Commission's proposed action may file a petition for a Section 120.57, Florida Statutes, hearing. This is exactly what OPC did; it filed a protest of our Order as provided for by rule. There is no provision in the Florida Administrative Code or Chapter 120, Florida Statutes, which allows a utility to withdraw a settlement offer once this Commission issues a proposed agency action accepting that offer, and a substantially affected person files a protest of that action. Therefore, LUSI is precluded from withdrawal of its settlement offer.

Furthermore, LUSI is precluded from withdrawing its protest of the original PAA Order. Order No. PSC-98-0683-AS-WU superseded the original PAA Order, thus, eliminating the existence of the original PAA Order, at least with regard to the disputed issues. Therefore, with regard to those issues in dispute, the original PAA Order no longer exists. Section 367.011(2), Florida Statutes, grants us exclusive jurisdiction over each utility with respect to its rates. OPC has requested a formal hearing based on issues under our exclusive jurisdiction. LUSI's withdrawal of its PAA protest is an attempt to divest this Commission of its jurisdiction over OPC's

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protest, which it is prohibited from doing. See Wiregrass Ranch, Inc. v. Saddlebrook Resorts, Inc., 645 So. 2d 374 (Fla. 1994).

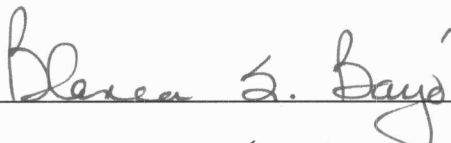
Based on the foregoing, we have decided not to recognize LUSI's notice of withdrawal. Therefore, LUSI's Notice of Withdrawal of Offer of Settlement and Notice of Withdrawal of Protest of Proposed Agency Action is hereby rejected. This matter shall proceed to hearing. A revised Order Establishing Procedure will be issued if needed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Lake Utility Services, Inc.'s Notice of Withdrawal of Offer of Settlement and Notice of Withdrawal of Protest of Proposed Agency Action is hereby rejected. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 25th day of November, 1998.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative

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hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.