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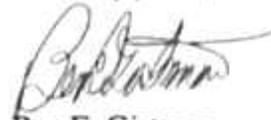
Ms. Blanca Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Docket No. 980483-WU, Investigation into Possible Overcollection of Allowance for Funds Prudently Invested (AFPI) in Lake County by Lake Utilities Services, Inc.

Dear Ms. Bayo:

Enclosed for filing in the above referenced docket are the original and fifteen copies of the rebuttal testimony of Carl Wenz.

Sincerely yours,



Ben E. Girtman

Encls.

ACK \_\_\_\_\_  
AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
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DOCUMENT NUMBER-DATE

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FPD-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into )  
possible overcollection of )  
Allowance for Funds Prudently )  
Invested (AFPI) in Lake County )  
by Lake Utility Services, Inc. )  
\_\_\_\_\_ )

DOCKET NO. 980483-WU

Submitted for Filing:  
December 4, 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been sent to Ms. Kathy Shutts, 12906 Anderson Hill Rd., Clermont, FL 34711; Ms. Sandy Baron, 12838 Anderson Hill Rd., Clermont, FL 34711; and to Tim Vaccaro, Esq.,<sup>\*</sup> Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, by U.S. Mail (or by hand delivery \* or by facsimile #) this 4 day of December 1998.



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Attorney for Utilities, Inc.  
and Lake Utility Services, Inc.

REBUTTAL TESTIMONY OF CARL WENZ  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
REGARDING THE INVESTIGATION INTO POSSIBLE OVERCOLLECTION OF  
ALLOWANCE FOR FUNDS PRUDENTLY INVESTED IN LAKE COUNTY  
BY LAKE UTILITY SERVICES, INC.  
DOCKET NO. 980483-WU

1 REBUTTAL TESTIMONY OF CARL WENZ  
2 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
3 REGARDING THE INVESTIGATION INTO POSSIBLE  
4 OVERCOLLECTION OF ALLOWANCE FOR FUNDS PRUDENTLY  
5 INVESTED  
6 IN LAKE COUNTY  
7 BY LAKE UTILITY SERVICES, INC.  
8 DOCKET NO. 980483-WU  
9

10 Q. Mr. Wenz, please state your business affiliation  
11 and address for the record?

12 A. I am the Vice President of Regulatory Matters for  
13 Utilities, Inc. and all of its subsidiaries,  
14 including Lake Utility Services, Inc. (LUSI). My  
15 business address is 2335 Sanders Road, Northbrook,  
16 Illinois 60062.

17  
18 Q. Have you previously filed direct testimony in this  
19 proceeding?

20 A. Yes.

21  
22 Q. What is the purpose of your rebuttal testimony?

23 A. The purpose of my rebuttal testimony is to respond  
24 to the direct testimony of PSC Staff witnesses  
25 Willis and Chase.

1        RESPONSE TO MR. WILLIS

2        Q.    On pages 5 and 6 of his prefiled direct testimony,  
3            Mr. Willis describes the basis for the  
4            determination in Order No. 19962 of AFPI charges  
5            for the Crescent Bay subdivision. Do you agree with  
6            his description?

7        A.    Yes. His description is accurate, but, it is  
8            incomplete. Because of that he misses the point  
9            with regard to its applicability to other service  
10           areas of LUSI and reaches the wrong conclusion.

11  
12       Q.    Would you please explain?

13       A.    Mr. Willis's premise is that AFPI charges were  
14            developed for the "Crescent Bay Subdivision" which  
15            had a build out expectation, at that time, of 106  
16            ERCs. Actually, the Order develops rates, service  
17            availability charges and AFPI charges for the  
18            entire LUSI service area. It just so happened that  
19            at the time of the original certificate application  
20            and the development of rates and charges, the  
21            entire service area consisted of the Crescent Bay  
22            subdivision, and the entire build out potential of  
23            the LUSI service area was 106 ERCs. Now, this may  
24            just seem like a matter of semantics, but it is  
25            not. It is an important distinction. Had the rates

1 and charges been developed solely for one  
2 subdivision within a service area and not for the  
3 entire service area, there might be some logic to  
4 Mr. Willis's argument that the charges are not  
5 applicable to "other service areas of LUSI."

6

7 Q. Mr. Willis makes the point that because the AFPI  
8 rates were calculated based solely upon the non-  
9 used and useful costs associated with the Crescent  
10 Bay Subdivision and that because costs for service  
11 areas can vary greatly especially due to their  
12 individual contribution levels, the AFPI charges  
13 developed for the original service area are not  
14 applicable to the extended service area. Do you  
15 agree?.

16 A. No. LUSI has not been applying the AFPI charges to  
17 another service area with a different contribution  
18 level. LUSI, as directed by the Commission in Order  
19 No. PSC-92-1369-FOF-WU, has applied those charges  
20 to the extended portion of the LUSI service area,  
21 for which the Commission has approved the same  
22 contribution level. The argument that "costs for  
23 service areas can vary greatly especially due to  
24 their individual contribution levels" is not  
25 applicable. In Order No. PSC-92-1369-FOF-WU, the

1 PSC specifically chose the same level of  
2 contributions developed for the original service  
3 area to be applicable to the extended service area,  
4 because those charges "will provide for future  
5 customers to pay their pro rata share of the cost  
6 of lines and treatment plant necessary to provide  
7 them service." (Order, page 3.) The Commission  
8 reached that conclusion based on the input from  
9 LUSI that the costs incurred in serving the  
10 original certificate area were indicative of the  
11 costs faced by LUSI in serving the extended service  
12 area.

13  
14 Q. Is Mr. Willis's statement correct that double  
15 recovery could occur if AFPI is collected from more  
16 than 106 ERCs?

17 A. It could be correct if the total cost to serve the  
18 potential 1,600 ERCs in the extended service area  
19 was the same dollar amount as to serve the 106 ERCs  
20 in the original Crescent Bay service area. In that  
21 hypothetical, but totally unrealistic, situation  
22 LUSI would incur no costs to serve customers in the  
23 extended service area, all plant would be 100% used  
24 and useful, and there would be an "overcollection"  
25 not only of AFPI, but also service availability

1 charges. But that is not the case. It is well  
2 documented that LUSI has invested many thousands of  
3 dollars in lines to be able to serve customers in  
4 the extended service area. That plant was not in  
5 rate base, and the recovery of related carrying  
6 charges properly came from the AFPI charges to the  
7 customers hooking up.

8

9 Q. Has LUSI overcollected AFPI, as alleged by Mr.  
10 Willis?

11 A. No. Mr. Willis's allegation is based solely on his  
12 misinterpretation of the tariff that it was  
13 improper to collect AFPI from more than 106 ERCs.  
14 It is not based on any analysis that the amounts  
15 collected from customers hooking up were in excess  
16 of the costs attributed to having service available  
17 for them. In fact, the Commission's approval in  
18 April, 1998 of a new AFPI charge, applicable to all  
19 new LUSI customers uniformly (including those in  
20 the extended services area), as testified to by Mr.  
21 Willis, is an indication that there has been no  
22 overcollection, and the justification to collect  
23 AFPI above 106 ERCs still exists.

24

25

1 Q. At page 8 of his prefiled direct testimony, Mr.  
2 Willis states that LUSI should have come before the  
3 Commission for new APPI charges if it wanted to  
4 "lift" the 106 ERC "restriction"; otherwise it is  
5 in violation of Section 367.091(3), Florida  
6 Statutes. Do you agree?

7 A. No. LUSI has fully complied with Section  
8 367.091(3), Florida Statutes. That section of the  
9 statutes states that a utility can only impose  
10 rates and charges approved by the Commission and  
11 cannot change rate schedules without Commission  
12 approval. LUSI is charging only rates and charges  
13 approved by the Commission. The rates and charges  
14 being applied by LUSI are those approved in Order  
15 No. PSC-92-1369-FOF-WU. Additionally, having to  
16 come before the Commission to fully justify rates  
17 or charges thwarts the Commission's whole purpose  
18 of reducing rate case expense by continuing  
19 existing rates and charges in a service area  
20 extension. And as I previously stated in my direct  
21 testimony, LUSI had no basis to come before the  
22 Commission for a new AFPI charge because the  
23 Commission had already authorized and required LUSI  
24 to collect the existing Crescent Bay rates and  
25 charges in the extended service area.

1 Further, Mr. Willis's position that LUSI must  
2 submit a recalculation of additional nonused plant  
3 in order to continue charging an existing AFPI  
4 charge is inconsistent and disingenuous. If he were  
5 correct, then it would also be necessary to submit  
6 a recalculation of used and useful in order to  
7 continue charging existing monthly rates and it  
8 would be necessary to submit a recalculation of  
9 plant investment per ERC in order to continue  
10 charging existing service availability charges. But  
11 he advocates neither of those positions and with  
12 good reason. Charging the existing AFPI charges is  
13 consistent. Again, as I previously testified in my  
14 direct testimony, the rates and charges at Crescent  
15 Bay were all developed together. They should be  
16 applicable in the extended service area together  
17 and the limiting number of ERCs to which the AFPI  
18 applies should continue to be for total buildout,  
19 until the rates and charges are changed in another  
20 proceeding. Mr. Willis accuses LUSI of picking and  
21 choosing, but it is Mr. Willis that is doing the  
22 picking and choosing.  
23  
24

1 Q. At page 10 of his prefiled direct testimony, Mr.  
2 Willis discusses the development of the new AFPI  
3 charges for LUSI that became effective on April 15,  
4 1998. How is that relevant to this situation?

5 A. It is relevant because it supports what LUSI has  
6 been claiming all along in this case - (1) that  
7 AFPI rates should be uniformly applied in the  
8 service area; and (2) that the 106 ERC  
9 "restriction" for the extended service area was  
10 artificial and the justification for AFPI charges  
11 still exists.

12  
13 Mr. Willis's justification for a uniform AFPI in  
14 the most recent LUSI rate application was the  
15 approval of uniform monthly rates. When the  
16 Commission approved LUSI's petition to extend its  
17 service area in 1992, it directed that existing  
18 service rates be applied uniformly to the extended  
19 service area. So, Mr. Willis's justification for a  
20 uniform application of AFPI charges in LUSI's  
21 extended service area, existed in 1992 as much as  
22 it does now. It is disingenuous of him to conclude  
23 otherwise. It is disingenuous to argue that  
24 applying monthly rates to 1,600 ERCs and SAC's to  
25 1,600 ERCs and AFPI to 106 ERCs is uniform when all

1 three types of charges were developed from the same  
2 numbers. The Commission direction, that "the  
3 customers in the territory added herein shall be  
4 charged the rate and charges approved in Lake  
5 Utility Services, Inc.'s tariff for the Crescent  
6 Bay system..." (emphasis added), is consistent in  
7 and of itself and consistent with the basis stated  
8 by Mr. Willis for his argument.

9  
10 **Q. What is your conclusion regarding Mr. Willis's**  
11 **testimony?**

12 **A.** While I may not disagree with Mr. Willis's general  
13 statement of the purpose of APPI, his theoretical  
14 testimony is simply not supported by facts in the  
15 LUSI case. LUSI has been collecting rates and  
16 charges, including APPI charges, from customers in  
17 the extended service area in accordance with the  
18 direction of the Commission's order. When those  
19 rates and charges were made applicable to the  
20 extended service area it was based on the  
21 Commission Staff's conclusion that they were most  
22 indicative of the costs to serve customers in the  
23 extended service area. LUSI continues to make  
24 sizable investments in plant to serve those  
25 customers, over and above the initial investment at

1 Crescent Bay, thus never placing itself in a  
2 position of having zero non-used plant against  
3 which to collect those charges.  
4

5 RESPONSE TO MS. CHASE

6 Q. At page 6 of her prefiled direct testimony, Ms.  
7 Chase indicates that in Exhibit O filed by LUSI in  
8 its certificate amendment application, it did not  
9 file a proposed tariff sheet containing the AFPI  
10 charges. Is she correct?

11 A. Yes. Exhibit O to the certificate amendment  
12 application responded to the Part VIII Tariffs and  
13 Annual Reports requirement for copies of "sample  
14 revisions to the utility's tariff(s) to incorporate  
15 the proposed change to the certificated territory."  
16 LUSI provided copies of tariff pages relating to  
17 the certificate history, the territorial and  
18 community descriptions, and the monthly and  
19 miscellaneous rate sheets, only. None of the other  
20 tariff factors were addressed in these sample  
21 revisions; there was no requirement that they be  
22 addressed, and there were no changes anticipated to  
23 be addressed.  
24  
25

1

2

3 Q. Then on page 7 of her prefiled direct testimony,  
4 Ms. Chase draws a conclusion that since LUSI had  
5 not filed AFPI tariff sheets with its application,  
6 it was "clear" that the utility was not requesting  
7 nor anticipating charging AFPI in the extended  
8 territory. Is her conclusion correct?

9 A. No. That is really reading something into the  
10 application that is not there. While she observed  
11 that we did not file an AFPI tariff sheet, she  
12 failed to observe that we did not file a Service  
13 Availability Charge tariff sheet either. Yet, there  
14 does not appear to be any dispute as to LUSI's  
15 intent to apply existing SAC charges in the  
16 extended territory.

17

18 Q. At page 6 of her prefiled direct testimony, Ms.  
19 Chase points out that in a developer agreement with  
20 Tony Hubbard, dated June 26, 1992, no mention was  
21 made of an AFPI charge. Is she correct?

22 A. Yes. It is true that there is no direct mention of  
23 an AFPI charge. But, that is not indicative of  
24 anything. To understand this, one only has to  
25 consider this agreement in the context in which the

1 developer agreement was prepared. Mr. Hubbard was  
2 considering developing some property in an area  
3 close to, but outside of the LUSI service area. The  
4 property was not within any utility's service area,  
5 but it was within the area into which LUSI was  
6 petitioning to extend service. LUSI entered into an  
7 agreement to express its willingness and commitment  
8 to serve and to provide evidence to the Commission  
9 of a need for service. Because the Hubbard property  
10 was not located within an existing service area,  
11 there were no rates or charges applicable to it. So  
12 LUSI prepared an agreement that established its  
13 ability and commitment to serve and Hubbard's  
14 monetary commitment to accept service. The  
15 commitment required of Hubbard was a letter of  
16 credit in the amount of \$85,000 from which LUSI was  
17 entitled to draw down toward the expenditures  
18 incurred in constructing interconnection  
19 facilities. LUSI, in turn would credit Hubbard with  
20 the collection of all approved tap-on fees for the  
21 first 85 dwelling units. In addition, the agreement  
22 stated that "water usage charges shall be rendered  
23 by utility in accordance with rates, rules,  
24 regulations and conditions of service from time to  
25 time on file with the Commission and then in

1 effect." (Emphasis added). So, at the time the  
2 agreement was constructed, LUSI had not committed  
3 to what any of the rates and charges for service  
4 and for connections would be. All that was  
5 committed to was that the utility would render  
6 charges approved by the Commission and in  
7 accordance with the utility's rules, regulations  
8 and conditions of service.

9

10 Q. You indicated that the Hubbard agreement was dated  
11 June 26, 1992. What was the timing of construction  
12 of the interconnection facilities and the requests  
13 for service to homes?

14 A. Engineering for the interconnection facilities  
15 began in the fall of 1992, after the Commission  
16 approved the extension of the service area. The  
17 first phase of construction was completed in the  
18 spring of 1993. During this time, LUSI was drawing  
19 down against Mr. Hubbard's funds.

20

21 Q. Did Mr. Hubbard pay AFPI charges when service was  
22 provided to his development?

23 A. Mr. Hubbard didn't pay any charges himself. The  
24 charges to connect to the system were paid by the  
25 individuals who built new homes. Those charges

1 included the approved service availability charges  
2 and AFPI charges. As those charges were paid, the  
3 service availability fees were credited to Mr.  
4 Hubbard up to the amount provided for in the  
5 agreement.

6  
7 Q. So, getting back to Ms. Chase's testimony, what  
8 bearing does the Hubbard agreement have on LUSI's  
9 intent as to AFPI?

10 A. It has no bearing at all. The intent of the  
11 agreement was to establish commitments on the part  
12 of participants to provide and accept service, and  
13 to fund the construction. There was no intent to  
14 address any rates and charges other than to  
15 indicate that whatever they were, they would be  
16 those approved by the Commission and they would be  
17 rendered in accordance with the utility's rules,  
18 regulations and conditions of service.

19  
20 Q. Do you have first hand knowledge of LUSI's intent  
21 at the time of the certificate amendment  
22 application?

23 A. Yes. Then, as now, I was responsible for the  
24 utility's rates, revenue requirements and filings  
25 with regulatory agencies. I was responsible for the

1 filing of LUSI's application to amend its  
2 certificate to which Ms. Chase refers.

3

4 Q. Did you intend for the existing AFPI charges to be  
5 applicable in the extended service area?

6 A. Yes. I intended for all of LUSI's existing rates  
7 and charges in the Crescent Bay service area to be  
8 applicable in the extended service area.

9

10 Q. At page 9 of her prefiled direct testimony, Ms.  
11 Chase states that it was not Staff's intent (in  
12 1992) to approve a tariff allowing the collection  
13 of AFPI charges in the additional territory. Were  
14 you aware of Staff's position?

15 A. No, not until I received Staff's prefiled testimony  
16 in this proceeding on November 23, 1998. I became  
17 aware, in September, 1997, through earlier  
18 correspondence regarding this investigation, that  
19 Staff had at that time interpreted (in September,  
20 1997), the tariff to not allow AFPI to be collected  
21 in the extended service area, but I had never been  
22 aware, until now, that they had not intended it to  
23 be allowed.

24

25

1 Q. Does it matter whether Staff intended the AFPI  
2 charge to be collected in the extended service  
3 area?

4 A. No. What matters is that the tariff's do allow it  
5 to be collected. What matters is that, on its face,  
6 Order No. PSC-92-1369-FOF-WU requires that the  
7 rates and charges approved in LUSI's tariff for the  
8 Crescent Bay system shall be charged in the  
9 extended territory.

10

11 Further, it appears that Staff's "intent" of what  
12 the Order (issued in 1992) meant and what the  
13 tariffs (approved in 1993) meant was not even  
14 formulated until 1998. LUSI informed Staff in 1993  
15 that it was charging AFPI in the extended service  
16 area, at the Olesen development. Staff raised no  
17 objection (either written, verbal or otherwise).  
18 But, in September, 1997 (Exhibit CW-1 \_\_\_\_\_, Doc.3,  
19 Staff suddenly "interpreted" that AFPI could not be  
20 collected from anyone in the extended service area.  
21 Then in January, 1998 (Exhibit CW-1 \_\_\_\_\_, Doc. 5),  
22 Staff changed its "interpretation", concluding that  
23 AFPI could be collected from within the extended  
24 service area, but only up to the same number (106  
25 ERCs) which applied to the original Crescent Bay

1 subdivision before the service territory was  
2 extended. Then in November, 1998, with the filing  
3 of its direct testimony, Staff indicated that  
4 regardless of its prior inconsistent  
5 "interpretations", it really never "intended" for  
6 AFPI to be collected at all from within the  
7 extended service area. Whatever Staff's "intent"  
8 may be, it is difficult to pin down. But  
9 regardless, it is irrelevant in this case.

10

11 Q. In your opinion, what is the real issue to be  
12 decided by the Commission in this proceeding?

13 A. The real issue is whether LUSI should be penalized  
14 for complying with the requirements of a Commission  
15 order and the provisions of a Commission approved  
16 tariff simply because the Staff belatedly has  
17 decided it doesn't like the terms of the tariff the  
18 Commission approved. As I pointed out in my direct  
19 testimony, that around September, 1993, only six  
20 months after the tariffs were placed in effect, the  
21 issue of the applicability of AFPI charges in the  
22 extended service area was addressed by Commission  
23 Staff in response to an inquiry from a developer.  
24 The Staff affirmed the service availability charges  
25 but did not address AFPI charges. LUSI immediately

1 pointed out this omission to the Commission Staff  
2 in a letter dated October 14, 1993 [Exhibit (CW-  
3)\_\_\_\_, Doc.2]. In that letter, LUSI informed Staff  
4 that it [Staff] had failed to mention the AFPI  
5 charges "which are a part of the approved Crescent  
6 Bay tariff." The Staff did not respond to our  
7 letter. The Staff admits it received the letter and  
8 never responded to it. Since that time, LUSI has  
9 collected thousands of dollars in good faith, the  
10 vast majority of which is from developers.  
11 Although Staff had full knowledge of what LUSI was  
12 collecting and from where it was collecting, it did  
13 not indicate that any disagreement or concern.  
14 Then, after six years of silence, Staff says, Oops!  
15 We never intended for that money to be collected -  
16 give it back to the developers. That is the issue  
17 for the Commission to decide. Is "Oops!" a valid  
18 reason to confiscate funds properly received by  
19 LUSI to compensate for the carrying charges  
20 associated with having plant available to service  
21 those developers?

22  
23 The Commission should find that LUSI has properly  
24 collected AFPI in accordance with the Commission's  
25 order and LUSI's approved tariff; that the

1           allegations of over collection of AFPI charges are  
2           unfounded and unsupported, and that LUSI should be  
3           allowed to retain, as revenues, the AFPI charges  
4           collected.

5

6           Q.    Does that complete your rebuttal testimony?

7           A.    Yes it does.

8

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