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RECORDS AND
REPORTING

February 2, 1999

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

Re: Docket No. 960444-WU

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizen's Motion to Dismiss. A diskette in WordPerfect 6.1 is also submitted.

- ACK _____ Please indicate the time and date of receipt on the enclosed duplicate of this letter
- AFA 1 and return it to our office.
- APP _____
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- DPC _____
- RCH _____ CJB:bsr
- SEC 1 Enclosures
- WAS Willis
- OTH _____

Sincerely,

Harold McLean
Associate Public Counsel

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FPSC-RECORDS/REPORTING

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
Date Filed: February 2, 1999

MOTION TO DISMISS

The Citizens of Florida ("Citizens"), by and through JACK SHREVE, Public Counsel, move the Florida Public Service Commission ("Commission") to dismiss the application for a rate increase and for an increase in service availability charges in Lake County by Lake Utility Services, Inc. ("LUSI") because: the 1995 test year used in this case can no longer be used to fix rates which are just, reasonable, and compensatory, as required by section 367.081(2)(a), Florida Statutes (1998).

A TEST YEAR MUST REFLECT TYPICAL CONDITIONS IN THE IMMEDIATE FUTURE

Section 367.081, Florida Statutes (1998) requires the Commission to fix rates which are just, reasonable, compensatory, and provide a fair return on the investment of a utility in property used and useful in the public service. A test year is used as a tool to reach this end. Case law makes it absolutely clear that a test year must reflect typical conditions in the immediate future. The propriety or impropriety of a test year depends on how well it accomplishes the objective of determining a fair rate of return in the future.

In *Gulf Power Company v. Beavis*, 289 So.2d 401 (Fla. 1974) the Commission determined that it would not recognize the effect of a new corporate income tax that became effective after the test year but during the period when the new rates would be in place. The Florida Supreme Court reversed the Commission decision and required the Commission to take the corporate income tax into account in setting rates.

The Court explained that rates are fixed for the future, and therefore a pre-fixed earlier period cannot be arbitrarily applied. It approved the following analysis contained a previous order of the Commission:

"In regulatory rate making, it is customary to select a test year or period for the purpose of testing the revenue requirements of the utility under consideration. The judicial decisions on the subject of the appropriate test year in a utility rate case uniformly adhere to the rule that the test period should be based on the utility's most recent actual experience with such adjustments as will make the test period reflect typical conditions in the immediate future. The propriety or impropriety of a test year depends upon how well it accomplishes the objective of determining a fair rate of return in the future. Thus, the realistic approach to this issue, since rates are fixed for the future and not for the past, is to use the most recently available data for a 12-months' period, adjusted for known changes which will occur within a reasonable time after the end of said period so as to fairly represent the future period for which the rates are being fixed." *Gulf Power* at 404.

See also *Westwood Lake, Inc., v. Dade County*, 264 So.2d 7 (Fla. 1972) ("Rate making is prospective, not retroactive, and therefore the test years should be the most current time in relation to the hearing date to fix rates for the future"); *In re: Petition for a Rate*

Increase by Florida Power Corporation, 92 F.P.S.C. 10:408,415 ("The purpose of the test year is to represent the financial operations of a company during the period in which the new rates will be in effect"); *Re: Southern Bell Telephone and Telegraph Company*, PSC Order No. 7018 issued December 4, 1975, 12 PUR4th 252 (1975) ("The judicial decisions on the subject of the appropriate test year in a utility rate case uniformly adhere to the rule that the test period should be based on the utility's most recent actual experience with such adjustments as will make the test period reflect typical conditions in the immediate future"); *Re: General Telephone Company of Florida*, PSC Order No. 7669 issued March 7, 1977, 19 PUR4th 227 (1977);

THE 1995 TEST PERIOD DOES NOT REFLECT TYPICAL CONDITIONS IN THE IMMEDIATE FUTURE

LUSI filed minimum filing requirements (MFRs) in this docket on June 3, 1996 using the calendar year 1995 as a test period. The MFRs indicate that the service area contained a total of 915 customers at the end of 1995 and reported adjusted test year operating revenues of \$313,946.

The 1995 test year used in this case no longer bears any resemblance to the company's current operations, much less any resemblance to typical conditions in the immediate future. For example, the company's operating revenues during 1998 are more than double the operating revenues of \$313,946 reported in the test year.

The attached affidavit of Hugh Larkin Jr. shows that 1995 test year used in this

case cannot be used to set rates for the future. That test year does not properly match investment with customer usage. In fact, the mismatch between investment and customer growth between 1995 and 1997 led to the company severely overearning during 1997.

Mr. Larkin shows how the 1995 test year was stale even by 1997. Customer growth averaged 28% per year from 1995 to 1997, while rate base rose at a rate of only 5%. O&M cost declined from \$193 per customer in 1995 to \$137 per customer in 1997. Obviously, it would have been a grave injustice to set permanent rates in 1997 based on conditions in 1995. The mismatch between the test year and the effective date for permanent rates becomes even more aggravated if the 1995 test year is used to set rates that take effect for the first time during the latter part of 1999.

THE INFORMATION BY THE COMPANY IS NOT SUFFICIENTLY RELIABLE TO SET RATES

Inconsistencies and incorrect information provided by the company have permeated this case. Staff presented the following description of this problem in its recommendation issued September 11, 1998:

"During the settlement negotiations after OPC's protest was filed, staff became aware that the utility had dramatically increased its customer base since 1995 and also may have understated its earnings in its 1997 annual report. When staff reviewed this, we found several areas of concern. In 1995, the utility reported 920 customers of record. As of the end of 1997, the utility reported 1,518 customers, or a 65 percent increase in two years. Further, the utility reflected that its achieved rate of return on its

1997 annual report was 5.31 percent. When staff recalculated LUSI's achieved rate of return, using the parent's capital structure, consistent with the capital structure used for rate setting purposes, we found that the utility had overstated income tax expense in its annual report. Staff's prima facie calculation reflected that LUSI was earning approximately 11.06 percent on its unadjusted rate base.

As discussed earlier, the interim rates from this current docket were in effect for all of 1997. When staff attempted to estimate the revenues that would have been collected prior to interim, we could not reconcile the revenues reported with the number of customers or bills that were reported. This made it appear that the utility understated its 1997 revenues by more than \$60,000. Had the utility collected this amount in revenues during 1997, the overearnings would have been even greater. Coupled with the fact that LUSI's 1997 annual report was not adjusted for the numerous rate base adjustments found during the PSC staff audit and discovery during this rate case, staff is very uncomfortable accepting the 1997 annual report figures without the opportunity to audit these amounts.

Based on our discussions with the utility, as well as reading utility Witness Rasmussen's prefiled rebuttal testimony, it appears that the utility is currently undertaking numerous capital improvement projects with estimated costs of \$1.4 million from 1998 to the year 2000. The majority of this construction will take place in 1999. Based on our cursory review, it appears that most of this construction will be non-revenue producing and relates to interconnecting the facilities and improving water pressure to current customers.

Based on all of the above points, staff does not believe that the 1995 test year is reasonable to establish rates on a going-forward basis. This case has been a regulatory quagmire from the beginning. The minimum filing requirements had to essentially be refiled twice, and the auditors had to perform a 100 percent review of all plant and rate base documentation from either the date of inception or purchase of the individual facilities, due to the lack of supporting documentation retained by the utility. The staff

engineers also had an extremely difficult time determining the amount of used and useful plant because of inaccurate flow data, no support for the margin reserve and inadequate maps of the systems. In the two plus years that this docket has been open, staff has spent more than double the amount of time on this Class B utility than we do on a staff assisted rate case.

While staff is greatly frustrated by this case, we do believe that we could establish reasonable and representative rates for this utility in the future. However, given the constraints of this case, the material growth in customers, and the staleness of the test year, we do not believe that the Commission, at this time, will be able to approve rates which are just, reasonable, compensatory, and not unfairly discriminatory, as required by Section 367.081(2)(a), Florida Statutes. Based on the foregoing circumstances, staff recommends that the Commission, on its own motion, dismiss LUSI's application for increased rates and service availability charges without prejudice, allowing the utility to refile if it so chooses."

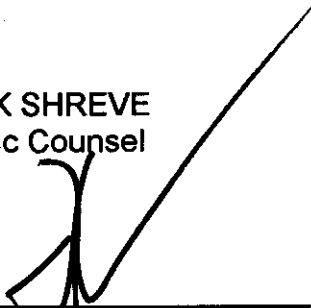
The unreliable information provided by LUSI in this case shows that it has not met its burden. Under the test set forth by the Florida Supreme Court in *South Florida Natural Gas Company v. Public Service Commission*, 534 So. 2d 695 (Fla. 1988), the company must demonstrate that its present rates are unreasonable and show by a preponderance of the evidence that the rates fail to compensate the company for its prudently incurred expenses and fail to produce a reasonable return on its investment. The affidavit of Hugh Larkin, Jr., shows that LUSI's present rates provide a reasonable return for the company even without an interim rate increase. This is the result of extraordinary customer growth since 1995 without a corresponding increase in investment.

The unreliable information provided by the company fails to meet the standard of South Florida natural Gas Company to warrant a rate increase. The Commission must dismiss LUSI's application for a rate increase.

WHEREFORE, for the reasons stated in this motion, the Citizens request the Commission to dismiss LUSI's application for a rate increase, and to order an immediate refund to the customers of any and all interim rates collected during the pendency of this case.

Respectfully submitted:

JACK SHREVE
Public Counsel



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Attorneys for the Citizens of the State of
Florida

CERTIFICATE OF SERVICE
DOCKET NO. 960444-WU

I HEREBY CERTIFY that a correct copy of the Motion to Dismiss has been furnished by U.S. Mail or hand-delivery to the following party representatives on this 2nd day of February, 1999.

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