

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.)
_____)

DOCKET NO. 971220-WS

Filed: July 30, 1999

UTILITY'S THIRD MOTION TO DISMISS
THE OFFICE OF PUBLIC COUNSEL'S
PROTEST AND PETITION FOR SECTION 120.57(1) HEARING
BASED ON LACK OF CASE OR CONTROVERSY

COMES NOW Utilities, Inc. and its wholly owned subsidiary, Cypress Lakes

Utilities, Inc. (the Utility), and in support of the motion to dismiss state that:

1. One of the basic principles of all legal proceedings is that there must be a justiciable issue for the tribunal to consider and decide. In the instant case, there is no such justiciable issue, of either law or fact.
2. The Utility has pending its second motion to dismiss the proceeding, based on OPC's failure to timely file direct testimony as required by Order No. PSC-99-0383-PCO-WS, Order Revising Order Establishing Procedure. That motion was filed before OPC filed its direct testimony of Hugh Larkin, Jr. (in response to the Utility's pending Motion to Strike the direct testimony of the OPC witness).
3. A close examination of the OPC testimony clearly shows that not a single sentence therein states any fact or opinion, or raises any issue or matter which could or should be decided in this proceeding. The instant proceeding is a petition for transfer of the utility, which includes the setting of rate base, but only for transfer purposes.

Every point discussed by the OPC testimony deals with matters which necessarily must be considered, if relevant at all, in a rate proceeding and not in the instant proceeding.

4. The OPC testimony contains theoretical commentary, and does not contain any specifics about Cypress Lakes Utilities. The utility's name in the style of the case and in the testimony could be changed, to any other water and wastewater utility, and the testimony would be no less, or no more, relevant to that other utility than it does to Cypress Lakes. The testimony fails to state any fact or raise any issue relevant to the above-styled proceeding. (See the prefiled Testimony of Carl Wenz in Rebuttal to OPC Witness Larkin and Testimony of Frank Seidman in Rebuttal to OPC Witness Larkin, filed on July 30, 1999, filed while the Utility's second Motion to Dismiss and Motion to Strike the testimony of OPC's witness are still pending.)

WHEREFORE, OPC has filed to show that there is any justiciable issue in this proceeding. Utilities, Inc. and its wholly owned subsidiary, Cypress Lakes Utilities, Inc., move for the dismissal of the OPC's Petition for Section 120.57(1) Hearing and Protest of Proposed Agency Action for lack of any justiciable issue.

RESPECTFULLY SUBMITTED, this 30th day of July, 1999.

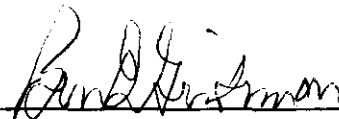


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Attorney for Utilities, Inc. and
Cypress Lakes Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been sent to Harold McLean, Esq. Office of Public Counsel, 111 W. Madison St., Tallahassee, FL 32399-1400; Jennifer Brubaker, Esq., Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee FL 32399-0850, by hand delivery this 30th day of August 1999.



Ben E. Girtman