

M E M O R A N D U M

September 3, 1999

ORIGINAL

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BRUBAKER, CROSSMAN) *JB*

RE: DOCKET NO. 971220-WS - APPLICATION FOR TRANSFER OF CERTIFICATES NOS. 592-W AND 509-S FROM CYPRESS LAKES ASSOCIATES, LTD. TO CYPRESS LAKES UTILITIES, INC. IN POLK COUNTY.

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Attached is a PREHEARING STATEMENT, to be issued in the above-referenced docket.

(Number of pages - 6)

JSB/SAC/lw

Attachment

cc: Division of Water and Wastewater (Johnson, Redemann)

I:971220PS.JSB

AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
LEG \_\_\_\_\_  
MAS 3 \_\_\_\_\_  
OPC \_\_\_\_\_  
PAI \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
WAW \_\_\_\_\_  
OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE  
10616 SEP-3 99  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer  
of Certificates Nos. 592-W and  
509-S from Cypress Lakes  
Associates, Ltd. to Cypress  
Lakes Utilities, Inc. In Polk  
County.

DOCKET NO. 971220-WS  
FILED:

ORIGINAL

COMMISSION STAFF'S PREHEARING STATEMENT

Pursuant to Order No. PSC-99-0383-PCO-WS, issued February 23, 1999, the Commission Staff (Staff) files its prehearing statement as follows:

A. Witnesses

Staff intends to call the following witness:

Jeffrey A. Small of the Florida Public Service Commission Division of Auditing and Financial Analysis. He will testify to the staff audit report.

B. Exhibits

Staff intends to sponsor the following exhibit:

JAS-1: Staff Audit Report

Staff further reserves the right to identify additional exhibits at the Prehearing Conference and at hearing for purposes of cross-examination.

C. Basic Position

The information gathered through discovery and prefiled testimony indicates, at this point, that Cypress Lakes has made an initial showing that no extraordinary circumstances exist that would warrant the inclusion of an acquisition adjustment, positive or negative, in rate base determination. The Office of Public Counsel bears the burden of persuasion that extraordinary circumstances do, in fact, exist; however, the ultimate burden of rebutting OPC's allegation rests upon Cypress Lakes. Based upon prior Commission decisions, extraordinary circumstances must be

DOCUMENT NUMBER-DATE

10616 SEP-38

FPSC-RECORDS/REPORTING

COMMISSION STAFF'S PREHEARING STATEMENT  
DOCKET NO. 971220-WS

shown in order to warrant the inclusion of an acquisition adjustment in rate base. Rate base for the water and wastewater systems, for the purposes of the transfer, should match the net book values of the acquired assets.

D. Issues of Fact, Law and Policy

The following are issues identified by Staff and its positions on these issues. Staff's positions are preliminary, are based upon materials filed by the utility or obtained through discovery and are intended to inform the parties of Staff's preliminary positions. Staff's final positions will be based upon an analysis of the evidence presented at the hearing.

**ISSUE 1:** What was the condition of the assets sold to Cypress Lakes Utilities, Inc.?

**POSITION:** It appears that the utility assets sold to Cypress Lakes Utilities, Inc. are in satisfactory condition. Final determination will be dependent on the record developed at the hearing.

**ISSUE 2:** Was Cypress Lakes Associates, Ltd. a "troubled" system?

**POSITION:** The system was a functioning utility, but has experienced losses of over \$138,000 based on the 1996 and 1997 Annual Reports, during which time it has been under Commission regulation.

**ISSUE 3:** Are there any extraordinary circumstances which warrant an acquisition adjustment to rate base, and if so, what are they?

**POSITION:** No, there are no extraordinary circumstances which warrant an acquisition adjustment.

**ISSUE 4:** What is the net book value for the water and wastewater system?

**POSITION:** For the purposes of transfer, the net book value for the water system is \$617,609 and for the wastewater system is \$921,439. These numbers are based on the staff audit and

COMMISSION STAFF'S PREHEARING STATEMENT  
DOCKET NO. 971220-WS

additional adjustments pursuant to Order No. PSC-98-0993-FOF-WS, issued July 20, 1998, in this docket. (Small)

**ISSUE 5:** Should a negative acquisition adjustment be included in the rate base determination, and if so, what is the appropriate amount?

**POSITION:** Rate base inclusion of a negative acquisition adjustment is not appropriate in this case.

**ISSUE 6:** What is the rate base for the water and wastewater systems, for the purposes of this transfer?

**POSITION:** The rate base amount should match the net book values of the acquired assets.

**ISSUE 7:** Who bears the burden of proving whether an acquisition adjustment should be included in the rate base?

**POSITION:** Rate base inclusion of an acquisition adjustment ultimately affects the utility's rates. The utility must support its rate base balance. A showing of extraordinary circumstances must be made to warrant a rate base inclusion of an acquisition adjustment. Once the utility makes an initial showing that there are not extraordinary circumstances, the burden of persuasion shifts to the opposing party to demonstrate that extraordinary circumstances are present. If the opposing party meets the burden of persuasion, the ultimate burden of rebutting the opposing party's allegations rests upon the utility.

**ISSUE 8:** Must extraordinary circumstances be shown in order to warrant rate base inclusion of an acquisition adjustment?

**POSITION:** Yes, consistent with previous Commission decisions, extraordinary circumstances must be shown in order to warrant rate base inclusion of an acquisition adjustment.

E. Stipulated Issues

There are no issues that have been stipulated at this time.

COMMISSION STAFF'S PREHEARING STATEMENT  
DOCKET NO. 971220-WS

F. Pending Matters

The utility and Office of Public Counsel have each filed the following motions and responses:

July 12, 1999	Utility's Motion to Dismiss the Office of Public Counsel's Protest and Petition for Section 120.57(1) Hearing.
July 16, 1999	Citizens' Response to Utility's July 12th Motion to Dismiss.
July 19, 1999	Utility's Motion to Strike the Office of Public Counsel's Direct Testimony of Hugh Larkin, Jr.
July 26, 1999	Citizen's Response to Utility's July 19th Motion to Strike or in the Alternative Citizens' Motion to Strike Utility's Testimony.
July 30, 1999	Utility's Response to Citizens' Motion to Strike Utility's Testimony and 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.
August 3, 1999	Citizens' Response to Utility's July 30th Motion to Dismiss.

Staff will be presenting a recommendation at the September 7, 1999, agenda conference to dispose of these matters.

The utility has outstanding discovery owed to Staff. Counsel for the utility has verbally agreed to file the utility's responses by September 10, 1999, or, in the alternative, file a motion for an extension of time.

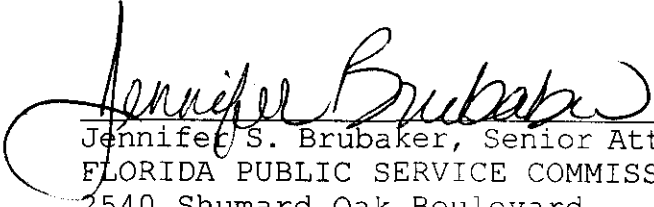
G. Pending Confidentiality Claims or Requests

There are no pending confidentiality claims or requests at this time.

COMMISSION STAFF'S PREHEARING STATEMENT  
DOCKET NO. 971220-WS

H. Requirements That Cannot Be Complied With

There are no requirements of Order No. PSC-99-0383-PCO-WS that cannot be complied with at this time.

  
Jennifer S. Brubaker, Senior Attorney  
FLORIDA PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Boulevard  
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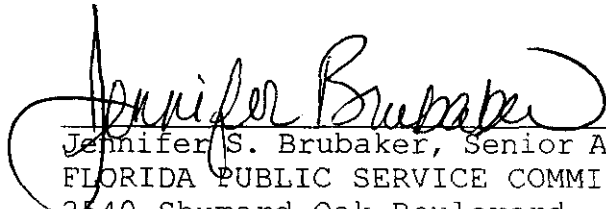
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FILED:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the  
**COMMISSION STAFF'S PREHEARING STATEMENT** has been furnished by U.S.  
Mail, this 3rd day of September, 1999, to the following:

Ben Girtman, Esquire  
1020 E. Lafayette St., #207  
Tallahassee, FL 32301-4552

Harold McLean  
Office of Public Counsel  
c/o The Florida Legislature  
111 W. Madison St., #812  
Tallahassee, FL 32399-1400

  
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