



JACK SHREVE  
PUBLIC COUNSEL

**STATE OF FLORIDA**  
**OFFICE OF THE PUBLIC COUNSEL**

c/o The Florida Legislature  
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RECORDS AND REPORTING

September 3, 1999

**ORIGINAL**

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

Re: Docket No. 971220-WS

Dear Ms. Bayo:

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

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Harold McLean  
Associate Public Counsel

AFA	_____
APP	_____
CAF	_____ CJB:bsr
CMU	_____
CTR	_____ Enclosures
EAG	_____
LEG	_____ 2
MAS	_____ 3
OPC	_____
PAI	_____
SEC	_____ 1
WAW	_____
OTH	_____

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*Kay Jones*

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

10650 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, Florida )

Docket No. 971220-WS

Filed: September 3, 1999

ORIGINAL

CITIZENS' PREHEARING STATEMENT

The Citizens of the State of Florida, by and through JACK SHREVE, Public Counsel,

(Citizens) file their Prehearing Statement as say as follows:

**WITNESSES:**

1. All Known Expert Witnesses:

Hugh Larkin, Jr.  
15728 Farmington Road  
Livonia, Michigan 48154

Mr. Larkin has prepared eight pages of prefiled testimony.

**EXHIBITS:**

2. All Known Exhibits:

The Citizens will offer no exhibits in their direct testimony before the commission. The Citizens reserve the right to offer exhibits supporting cross examination of adverse witnesses where appropriate.

**POSITIONS:**

3. Basic Position:

Cypress Lakes Utilities, Inc. (Utilities Inc.) in neglecting to request a negative acquisition adjustment, is seeking to retain a rate base in this docket upon investment which it did not make. Utilities Inc. invested \$820,000 in utility property; yet the effect of Commission Order PSC-98-0993-FOF-WS, were it allowed to stand, would be to recognize a fictitious investment of approximately \$1,500,000. The Commission is compelled by Florida

Statutes to provide utility investors a return upon that investment prudently made which is used and useful in providing utility service to the public. The Commission should impose a negative acquisition adjustment in this case to reflect utilities investment. Lastly, the Commission may not insist upon a showing of extraordinary circumstances as a prerequisite to a negative acquisition adjustment without an evidentiary showing in this record that such a non rule policy is justified.

4. Issues and Citizens' Position:

**Issue 1:** What is the level of Utilities Inc.'s investment in the Cypress Lakes utility system?

**Position:** Utilities Inc. Invested \$820,000 in the Cypress Lakes utility system. (Larkin)

**Issue 2:** Upon what investment are current rates charged in the Cypress Lakes utility system based?

**Position:** Approximately \$1,474,082 (Larkin)

**Issue 3:** Upon what investment should current rates be based?

**Position:** \$820,000, with appropriate adjustments to used and useful, if any.

**Issue 4:** Will this transfer result in Utility Inc's earning excessively on its investment?

**Position:** Yes. (Larkin)

**Issue 5:** Does net book value accurately reflect Cypress Lakes Associates, Ltd.'s investment in utility assets?

**Position:** No. For circumstances which are not apparent, the value of the Cypress lakes assets had declined materially to those reflected in the purchase price as contrasted with those reflected in the Commission Staff's original cost estimates. (Larkin)

**Issue 6:** Does the Purchase Agreement between Cypress Lakes Associates, Ltd, (seller) and Utilities, Inc. (buyer) include any element of contingency regarding any acquisition adjustment approval or imposition by the Commission?

Position: No.

**Issue 7: Should certain revenue generated by rates based upon investment not made by Utilities, Inc. Be placed immediately subject to refund?**

Position: Yes.

**Policy Issue:**

**Issue 8: Should the Commission establish rate base in this proceeding?**

Position: Yes. Although Section 367.071(5), Florida Statutes, provides that the Commission may establish rate base in a proceeding such as this, the Citizens submit that the Commission must establish a rate base in an instance where failure to do so would result in excessive earnings for a utility. As is set forth in other issues, the rate base upon which current rates are based is considerably greater than Utilities Inc.'s investment. Current rates would, in that case, provide an excessive rate of return to Utilities, Inc.

**Legal issues:**

**Issue 9: Does the Commission have any rule which address the circumstances under which negative acquisitions should be imposed?**

Position: No.

**Issue 10: May the Commission rely upon a non rule policy which requires a showing of extraordinary circumstances as a prerequisite to a negative acquisition adjustment where the non rule policy is not shown to be justified in this record?**

Position: The Commission may not rely upon its non rule policy excluding negative acquisition adjustments unless it explicates, supports, and defends the policy with competent substantial evidence in this record.

**OTHER MATTERS:**

**Pending Motions:**

Motions pending before the Commission are:

- 1) Utility's Third motion to dismiss OPC's protest and petition for Section 120.57(12) hearing based on lack of case or controversy. Filed: 7/30/99
- 2) Citizens' response to Cypress Lakes' 7/19/99 motion to strike or in alternative Citizens' motion to strike utility's testimony. Filed: 7/26/99
- 3) Utility's Motion to strike OPC's direct testimony of Hugh Larkin, Jr. Filed: 7/19/99
- 4) Utility's Motion to dismiss OPC's protest and petition for Section 120.57(1) hearing. Filed: 7/12/99

Stipulations and matters with which the parties cannot comply:

The Citizens are aware of neither stipulated items, nor requirement of the proposed prehearing order with which it cannot comply.

Respectfully submitted,

JACK SHREVE  
PUBLIC COUNSEL

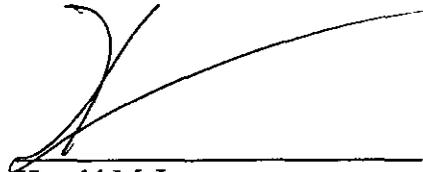


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Attorney for the Citizens of the  
State of Florida

**CERTIFICATE OF SERVICE  
DOCKET NO. 971220-WS**

I HEREBY CERTIFY that a true and correct copy of the foregoing Prehearing Statement has been furnished by U.S. Mail or \*hand delivery to the following parties, this 3rd day of September, 1999.



Harold McLean

Jennifer Brubaker, Esquire  
Division of Legal Services  
Florida Public Service Commission  
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Tallahassee, Florida 32399-0850

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200 Weathersfield Avenue  
Altamonte Springs, Florida 32714

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