



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison St.
Room 812
Tallahassee, Florida 32399-1400
850-488-9330

ORIGINAL

RECEIVED - PSC
SEP 21 PM 3:45
RECORDS AND REPORTING

September 21, 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. 971220-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Response to Utility's September 13th Motion to Strike.

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

DOCUMENT NUMBER-DATE

11352 SEP 21 99

PSC-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 21, 1999

CITIZENS' RESPONSE TO UTILITY'S SEPTEMBER
13TH MOTION TO STRIKE

The Citizens of the State of Florida, by and through JACK SHREVE, Public Counsel, (Citizens) respond to Utilities, Inc. And its wholly owned subsidiary, Cypress Lakes Utilities, Inc. (the utility) Motion to Strike Issues 9 and 10 as set forth in Citizen's Prehearing Statement, filed on September 13, 1999, and say:

1. The Citizens' Prehearing Statement filed in this Docket on September 3, 1999, identifies the following two legal issues which the Citizens submit that the Commission must consider prior to a resolution of the remaining issues in this docket:

Legal issues:

Issue 8: Does the Commission have any rule which address the circumstances under which negative acquisitions should be imposed?

Position: No.

Issue 9: 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.

2. Contrary to the unfounded assertion of the utility, the Citizens make no challenge to the non rule policy which, according to the Utility, the Commission has embraced for years.¹ The Citizens simply pose the issue of whether the non rule policy will have been sustained in this -- and this docket alone -- by competent and substantial evidence in this record, as indeed according to Florida case law on the point, it must be, before the Commission can apply non rule policy to the facts of this case.

3. As to the specifics of Citizens' issues 8 and 9, issue 8 is likely to become the subject of a stipulation among the staff and the parties. Issue 9 is the appropriate topic for post hearing brief and nothing more.

4. The Utility's reliance upon Order No. PSC-97-1510-FOF-WS attached to its motion is misplaced: the referenced order sounds in relevance, whereas whether the Commission has sustained its non-rule policy in this docket is not only relevant, it is dispositive; the order implicitly faults the Citizens for having failed to raise the issue at the prehearing conference as opposed to the hearing: the Citizens here raise issues (issues quite different from that raised in Wedgefield) in its prehearing statement, well before the hearing. The Citizens will raise no relevance objection to prior Commission orders which establish its non rule policy.

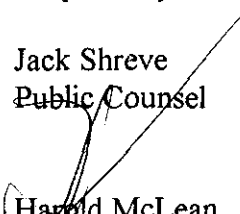
Finally, the non-rule policy issue raised in the instant docket has noting to do with the relevance of former Commission orders. It has all to do with whether the Commission can substitute a non-rule policy in the place of evidence when that non rule policy is neither explicated, supported, nor defended with competent substantial evidence in a record.

¹ In any case, the Citizens make no such challenge in this docket. Should a challenge of the Commission's non rule policy be taken, it would be taken in an appropriate forum.

WHEREFORE, upon these grounds the Citizens of the State of Florida, herein represented by the Office of the Public Counsel, say that the instant motion must be denied.

Respectfully submitted,

Jack Shreve
Public Counsel

Harold McLean
Associate Public Counsel

Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street
Tallahassee, Florida 32399-1400
(850) 488-9330

Attorneys 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 CITIZENS' RESPONSE TO UTILITY'S SEPTEMBER 13TH MOTION TO DISMISS has been furnished by U.S. Mail or *hand delivery to the following parties, this 21st day of September, 1999.

Jennifer Brubaker, Esquire*
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Cypress Lakes Utilities, Inc.
200 Weathersfield Avenue
Alamonte Springs, FL 32714

Ben E. Girtman, Esquire
1020 East Lafayette Street
Suite 207
Tallahassee, Florida 32301



Harold McLean
Associate Public Counsel

971220.r1