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October 11, 1999

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

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RECORDS AND REPORTING

Re: Docket No. 980242-SU

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Lindrick Service Corporation ("Lindrick") are the following documents:

- Original and fifteen copies of the Notice of Filing Affidavit of Mailing Notice to Customers of Temporary Wastewater Rate Increase;
- Original and fifteen copies of Lindrick's Petition Protesting Proposed Agency Action Order No. PSC-99-1883-PAA-SU and Request for Formal Administrative Proceeding; and

- A disk in Word Perfect 6.0 containing a copy of the Petition.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman
Kenneth A. Hoffman

KAH/rl
Enclosures
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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Petition on PAA
DOCUMENT NUMBER-DATE

12352 OCT 11 99

FPSC-RECORDS/REPORTING

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Amended Petition of Lindrick)	
Service Corporation for a Limited)	Docket No. 980242-SU
Proceeding to Implement a Two-Step)	
Increase in Wastewater Rates.)	Filed: October 11, 1999
_____)	

**LINDRICK SERVICE CORPORATION'S
 PETITION PROTESTING PROPOSED
 AGENCY ACTION ORDER NO. PSC-99-1883-PAA-SU
AND REQUEST FOR FORMAL ADMINISTRATIVE PROCEEDING**

Lindrick Service Corporation ("Lindrick"), by and through its undersigned counsel, hereby files this Petition Protesting Proposed Agency Action Order No. PSC-99-1883-PAA- SU ("PAA Order") issued September 21, 1999 as to the specific determinations of the Commission set forth in this Petition and requests a formal administrative hearing to resolve Lindrick's challenge to such Commission proposed determination. In doing so, Lindrick does not waive its right to a formal administrative hearing and to seek affirmative relief concerning other proposed determinations of the Commission reflected in the PAA Order which may be timely protested by any party to this proceeding. In support of its Petition, Lindrick states as follows:

1. The name, address and telephone number of the Petitioner is:

Lindrick Service Corporation
 4925 Cross Bayou Boulevard
 New Port Richey, Florida 34656-1176
 (727) 849-2266 (Telephone)

DOCUMENT NUMBER-DATE
12352 OCT 11 99
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2. The names, address and telephone number of Lindrick's representatives are:

Kenneth A. Hoffman, Esq.
John R. Ellis, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302
(850) 681-6788 (Telephone)
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3. Lindrick is a Class B water and wastewater utility located in Pasco County, subject to rate regulation by the Commission.

4. On April 19, 1999, Lindrick filed its Second Amended Petition for A Limited Proceeding seeking increased water and wastewater rates ("Second Amended Petition"). Lindrick previously had been granted an emergency temporary increase in wastewater revenues, subject to refund, of 15.89% pursuant to Order No. PSC-99-1010-PCO-SU issued May 20, 1999. Pursuant to its Second Amended Petition, Lindrick seeks a final wastewater rate increase of 142.67%, assuming no change in related party services. The requested final wastewater rate increase is 158.13% if all related party expenses are replaced with contract services from third parties, as requested by Lindrick.

5. Pursuant to the PAA Order, the Commission refused to consider increased expenses resulting from the securing of accounting, engineering, administrative and management services at reasonable, market rates from third parties; and, imposed specific downward adjustments to Lindrick's request for increased wastewater rates. Lindrick's substantial interests are substantially affected by specific proposed determinations of the Commission PAA Order which deny Lindrick recovery of specific reasonable and prudently incurred wastewater costs and impose a downward adjustment to Lindrick's return on equity of 50 basis points.

A. 50 BASIS POINT REDUCTION TO RETURN ON EQUITY DUE TO ALLEGED MISMANAGEMENT AND UNSATISFACTORY QUALITY OF SERVICE

6. The Commission proposes to reduce Lindrick's return on equity by 50 basis points on allegations that Lindrick's collection system has not met Department of Environmental Protection ("DEP") standards for at least ten years and that "the service provided to the customers is deficient in areas of response time and the complaint log." PAA Order, at 21-22, 30-31. The Commission's proposed action is not supported in fact or law.

7. The DEP did not have and, therefore, did not impose chloride restrictions on Lindrick when Lindrick operated as a surface water discharge facility. Less than two years ago, when Lindrick applied to renew the permit for operation of its wastewater treatment plant, DEP advised Lindrick that it was required to meet new regulations immediately in order to continue surface water discharge from the plant. Following the issuance of a Notice of Violation and Orders for Corrective Action by DEP on January 13, 1998, Lindrick worked with DEP in analyzing three alternatives to find the most cost effective solution to resolve pending issues concerning the level of chlorides being discharged by Lindrick's wastewater treatment plant. Lindrick entered into a Bulk Wastewater Agreement with the City of New Port Richey (approved May 19, 1998) and a Consent Order with DEP (issued June 26, 1998) resolving the issues raised in the DEP Notice of Violation by, inter alia, requiring Lindrick to: (a) make improvements to its collection system to reduce chloride levels below 600 mg/l; (b) convert its wastewater treatment plant into a new transfer pumping facility; and (c) ultimately transport influent to the City for treatment and disposal to the Pasco County reuse system. This work (primarily rehabilitation of 37 miles of collection pipes submerged in salty Gulf waters) was timely and cost effectively accomplished by Lindrick in a little over one year.

8. The DEP Notice of Violation did not result in any adverse finding of fact that Lindrick had violated any DEP statute, rule or regulation and Lindrick currently is in compliance with all applicable DEP requirements, rules and standards. In fact, only one of the categories of allegations made by DEP in the Notice of Violation impacted the quality of water discharged by Lindrick. Contrary to the proposed finding of the Commission,¹ the fact that Lindrick is under the Consent Order does not indicate that Lindrick has been in violation of DEP standards over the past ten years. Lindrick is aware of no Commission precedent which indicates that alleged violations of DEP requirements and entry into a consent order justify a reduction to a utility's authorized return on equity.

9. Although a number of customers voiced complaints at the customer meeting held on February 17, 1999, the majority of those complaints pertained to Lindrick's water system and very few, if any, were justified. In response to customer and Commission staff concerns regarding Lindrick's complaint log and complaint response time, Lindrick promptly and fully computerized and improved its system for responding to customer complaints (including the complaint log). In addition, at the Commission staff's request, Lindrick has improved its system for sending notices to customers, cleaned out offices, revised its dress code for office employees, and provided adequate space for customers to remit payment of bills at the business office. Lindrick's cooperation and prompt remedial actions and improvements in the area of customer response and customer satisfaction were acknowledged by the Commission in the PAA Order, at 24.

10. Lindrick is a well-managed and operated utility. The environmental compliance

¹See PAA Order, at 23.

issues raised by DEP have been promptly and cost effectively addressed and cured by Lindrick. Customer service improvements and efficiencies also have been implemented for the benefit of Lindrick's customers. In fact, as a recent example, in July 1999, Lindrick sustained an isolated wastewater spillage into the Gulf of Mexico emanating out of Lift Station No. 1. DEP was promptly advised of the occurrence and a meeting was held to discuss the status of the incident with representatives of DEP and Lindrick, as well as interested customers and their legislative representative. At the meeting, DEP praised Lindrick's prompt, competent resolution and repair of the affected facilities.

11. Disputed issues of material fact concerning this issue include, but are not limited to:
 - a. Whether Lindrick's wastewater service meets all applicable DEP rules and requirements?
 - b. Whether Lindrick's collection system and plant have been in violation of any applicable and existing DEP rules or standards for at least ten years?
 - c. Whether there are any justified complaints concerning Lindrick's wastewater operations and, if so, whether the number of such justified complaints warrants the proposed 50 basis point reduction to Lindrick's return on equity?
 - d. Whether Lindrick has adequately, sufficiently and cost-effectively cured environmental compliance concerns raised by DEP, as well as the quality, efficiency and promptness of its customer service operations.
 - e. Whether the Commission's proposed imposition of the 50 basis point downward adjustment to Lindrick's return on equity is discriminatory, inconsistent with Commission precedent, arbitrary or capricious?

12. The ultimate facts as set forth in paragraphs 7 through 10 above demonstrate that Lindrick's quality of service is adequate, sufficient and in compliance with all applicable DEP statutes, rules and regulations. The 50 basis point reduction to Lindrick's return on equity, particularly with no defined termination point, is discriminatory, arbitrary and capricious, inconsistent with Commission precedent, and violative of Lindrick's right to equal protection.

B. DENIAL OF CAPITALIZATION OF INTEREST EXPENSE

13. In its Second Amended Application, Lindrick requested recovery of actual interest expense during construction of \$100,063. In the PAA Order, the Commission proposes to deny Lindrick recovery of this actual, known and measurable expense on the ground that Lindrick does not have a Commission approved Allowance for Funds Used During Construction ("AFUDC") rate. PAA Order, at 26.

14. Rule 25-30.116, Florida Administrative Code, the Commission's AFUDC rule applicable to water and wastewater utilities, does not require approval of an AFUDC rate as a predicate to capitalization of interest and inclusion of same in rate base. Indeed, Lindrick's customers benefit by capitalization of the actual interest expense since Lindrick's cost of debt is well below a blended AFUDC rate which includes a higher component for return on equity. The Commission has previously allowed a utility recovery of non-AFUDC interest expense through capitalization and inclusion in rate base and, indeed, capitalization of the interest expense is required under generally accepted accounting principles and Internal Revenue Code Section 263.

15. Disputed issues of material fact concerning this issue include, but are not limited to:

a. Whether the Commission's AFUDC rule requires approval of an AFUDC rate as a precondition to capitalization of interest and recovery of same in rate base?

b. Whether Lindrick requested recovery of the interest expense prior to or at the time of construction of the required improvements to Lindrick's collection system and related facilities?

c. Whether the proposed disallowance of the interest expense is discriminatory, inconsistent with Commission precedent, arbitrary or capricious?

d. Whether the proposed disallowance of the interest expense violates generally accepted accounting principles and/or Internal Revenue Code Section 263?

e. Whether the interest expense is a known and measurable expense item reflecting an actual expense which should be recovered through Lindrick's wastewater rates?

16. The ultimate facts as set forth in paragraph 14 above support the conclusion that Lindrick is entitled to recover its actual interest expense incurred prior to completion of the required improvements to Lindrick's collection system and associated wastewater facilities.

C. NON-RELATED PARTY EXPENSES FOR ENGINEERING, ACCOUNTING, ADMINISTRATIVE AND MANAGERIAL SERVICES

17. In its Second Amended Petition, Lindrick provided documentation supporting increased expenses of approximately \$278,000 of increased costs for non-related party expenses for accounting, engineering, administrative and managerial services critical to the operation of the utility. Lindrick provided documentation confirming to the Commission that the below market related party expenses for such services have been/will be terminated as reflected by letter dated May 27, 1999 filed with the Commission confirming the resignation and removal of such services previously provided by Borda Engineering and Energy Consultants ("Borda").

18. The third party contractual expenses constitute arms-length transactions with non-affiliated parties to secure services at market rates. The below market costs for accounting,

engineering, administrative and managerial services previously provided by Borda have been terminated to allow Lindrick to recover the reasonable, prudent and current market costs for such services. In the PAA Order, the Commission failed to even consider the increased costs necessitated by the commencement of these reasonable, necessary and prudently incurred third party services.

19. The disputed issues and material fact concerning this issue include, but are not limited to:

a. Whether the costs of the accounting, engineering, administrative and managerial services provided by Borda reflect current market costs for such services?

b. Whether the costs of the administrative, engineering, administrative and managerial services provided by the third party vendors as reflected in the documentation supporting Lindrick's Second Amended Petition reflect current market costs for such services?

c. Whether the costs of the accounting, engineering, administrative and managerial services to be provided by the third party vendors are reasonable and prudent?

20. The ultimate facts as set forth in paragraphs 17 and 18 above demonstrate that the increased costs for third party accounting, engineering, administrative and managerial services are reasonable and prudent and reflect current market costs for such services.

D. OTHER OPERATIONS AND MAINTENANCE EXPENSES FOR 1997 TEST YEAR

21. In the PAA Order, the Commission proposes to disallow approximately \$6,277 of certified public accounting expense for outside accountants (services not provided by Borda) whose services were required by Lindrick's lender for preparation and review of financial statements, and whose services also included year-end accounting adjusting entries and the preparation and filing of federal and state corporate income tax returns. PAA Order, at 17. Such services are outside the

scope of expertise, work and certification of the individuals employed by Borda who have provided accounting services to Lindrick. The costs for the services provided by the outside certified public accountants to Lindrick for the purposes stated above are reasonable and prudent.

22. The Commission also proposes to reclassify \$14,757 for repairs and maintenance for materials and supplies to Contract Services - Other and then proposes to amortize the expense over five years, eliminating 80% of the expense from recovery. PAA Order, at 18-19. This adjustment was imposed on the belief that repairs and maintenance "should decrease after the interconnection with the City." PAA Order, at 19. The Commission's proposed adjustment is based on mere speculation and effectively eliminates Lindrick's ability to recover the substantial portion of this expense on a timely basis.

23. Disputed issues of material fact concerning these issues include, but are not limited to:

a. Whether the accounting expense described above was reasonably and prudently incurred?

b. Whether the Commission's proposed adjustment to repairs and maintenance expense was reasonable and justified?

c. Whether the Commission's proposed five year amortization of the repairs and maintenance expense is authorized by Commission rule, policy and/or consistent with Commission precedent.

24. The ultimate facts as set forth in paragraphs 21 and 22 above demonstrate that it is appropriate to permit Lindrick to recover these expenses in full.

E. PURCHASED SEWAGE TREATMENT EXPENSE

25. In the PAA Order, the Commission reduced the amount of purchased wastewater expense previously approved in its order granting an emergency rate increase (Order No. PSC-99-1010-PCO-SU). The PAA Order reduces purchased wastewater expense from \$458,776 to \$447,629. At the same time actual invoices from the City of New Port Richey for June, July and August, 1999 are averaging approximately \$10,000 more each month than the revenue generated by this emergency rate increase. Although the Commission used a projection of gallons provided by Lindrick in April 1999, such projection was made prior to completion of the collection system improvements and without the benefit of any actual experience. The fact remains that Lindrick is not recovering the full cost of purchased sewage treatment from the City.

26. The cost of purchased sewage treatment is a prudent expense and essentially a pass-through of the purchased sewage treatment expense of the City. The Commission should permit Lindrick to recover the full cost of this prudent expense by making an appropriate adjustment to the projected number of treated gallons of wastewater and the current cost per 1,000 gallons (currently \$2.93) for purposes of establishing final rates.

27. The disputed issues of material fact concerning this issue include, but are not limited to:

a. What are the appropriate gallons of purchased wastewater treatment which will allow Lindrick to recover its actual costs?

b. Whether the Commission should calculate purchased sewage treatment expense to be recovered in final rates by applying recent monthly amounts reflecting the number of gallons treated and updated projections of treated gallons of wastewater?

c. The appropriate cost per 1,000 gallons charged by the City of New Port Richey for wastewater treatment.

28. The ultimate facts as set forth in paragraphs 25 and 26 above demonstrate that the Commission should allow Lindrick to recover its prudent costs of purchased sewage treatment from the City based on a more accurate projection of gallons treated and current cost per 1,000 gallons.

F. OPERATIONS AND MAINTENANCE EXPENSES FOR THE 1999 TEST YEAR NOT RELATED TO THE INTERCONNECTION

29. In the PAA Order, the Commission limited increases to operations and maintenance ("O&M") expenses for the 1999 test year to those related to the construction of the improvements to the collection system and dependant facilities required to complete the interconnection to the City of New Port Richey. See, e.g., PAA Order, at 32-39. The Commission arbitrarily and unlawfully failed to adjust remaining O&M expenses from 1997 amounts to reflect customer growth and an appropriate inflation factor for the years 1998 and 1999. The Commission's failure to adjust the non-interconnection related O&M expenses denies Lindrick recovery of reasonable and prudently incurred increases in O&M expenses to account for customer growth and inflation.

30. The disputed issues of material fact concerning this issue include, but are not limited to:

a. Whether it is appropriate to increase non-interconnection related O&M expenses for the 1999 test year to adjust such expenses for customer growth and inflation experienced during 1998 and 1999 and, if so, the appropriate levels of increases to such expenses?

31. The ultimate facts as set forth in paragraph 29 above demonstrate that it is reasonable and prudent to establish Lindrick's prospective final rates by allowing Lindrick to recover its 1997

costs for non-related interconnection O&M expenses, as adjusted for customer growth and an appropriate inflation factor for 1998 and 1999.

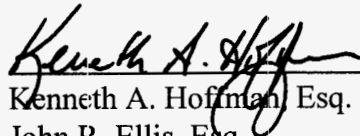
32. With respect to all of the proposed Commission determinations challenged by Lindrick in this Petition, Lindrick reserves the right to raise additional issues, positions and ultimate facts concerning such proposed determinations as may be revealed by discovery or otherwise through the remainder of this proceeding. Lindrick also reserves the right to seek additional affirmative relief concerning any issue which may be raised by a petition protesting the PAA Order challenging a proposed Commission determination not reflected in Lindrick's Petition.

WHEREFORE, Lindrick requests that the Commission grant Lindrick's request for a formal administrative proceeding on the issues raised in this Petition and grant the affirmative relief sought by Lindrick in this Petition including:

1. Determine that it would be inappropriate to impose a 50 basis point reduction to Lindrick's return on equity based on a finding that Lindrick's quality of service is satisfactory and in compliance with applicable DEP statutes, rules and regulations;
2. Grant Lindrick full recovery of interest expense incurred for construction of improvements to Lindrick's wastewater collection system and attendant facilities and allow capitalization of such interest expense in rate base;
3. Grant Lindrick full recovery of the reasonable and prudently incurred increased expenses for non-related accounting, engineering, administrative and managerial services;
4. Grant Lindrick full recovery of the reasonable and prudently incurred expense for outside certified public accountant services for the 1997 test year;

5. Grant Lindrick full recovery of the reasonable and prudently incurred expenses for repairs and maintenance for the 1997 test year;
6. Grant Lindrick full recovery of its purchased sewage treatment expense based on an updated, more accurate projection of gallons treated and current cost per 1,000 gallons;
7. Grant Lindrick full recovery of reasonable and prudently incurred O&M expenses for the 1999 test year that are not related to the interconnection by applying appropriate customer growth and inflation factors for 1998 and 1999 to the 1997 levels of such expenses; and
8. Grant Lindrick such further relief as the Commission deems just, reasonable and appropriate.

Respectfully submitted,



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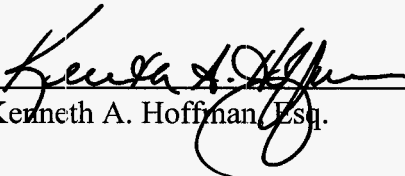
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 11th day of October, 1999:

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