

State of Florida



Public Service Commission

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RECORDS AND REPORTING

DATE: JANUARY 6, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (BRUBAKER, CROSSMAN) *JB*
DIVISION OF POLICY ANALYSIS & INTERGOVERNMENTAL LIAISON (MANN) *JM*
DIVISION OF WATER AND WASTEWATER (WALDEN) *CA*

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.
COUNTY: POLK

AGENDA: 01/18/00 - REGULAR AGENDA - DECISION ON WRITTEN SUBMITTALS PURSUANT TO SECTION 120.57(2), F. S. - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\971220.RCM

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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CASE BACKGROUND

On September 19, 1997, Cypress Lakes Associates, Ltd. (CLA) filed an application for approval of the transfer of Certificates Nos. 592-W and 509-S to Cypress Lakes Utilities, Inc. (CLU or utility) pursuant to Section 367.071, Florida Statutes. CLU is a wholly-owned subsidiary of Utilities, Inc. By Order No. PSC-98-0993-FOF-WS, issued July 20, 1998, the transfer was approved by final agency action and rate base was established for purposes of the transfer as proposed agency action. On August 10, 1998, the Office of Public Counsel (OPC) filed a timely Petition for Section 120.57(1) Hearing and Protest of Proposed Agency Action. Accordingly, an administrative hearing for this docket was scheduled for October 20, 1999.

On August 21, 1998, CLU filed a Motion to Dismiss or Strike OPC's Petition for Section 120.57(1) Hearing and Protest of Proposed Agency Action. On August 27, 1998, OPC filed a Response to CLU's Motion to Dismiss or Strike. By Order No. PSC-98-1566-FOF-WS, issued November 23, 1998, in this docket, the Commission denied the utility's Motion to Dismiss.

On July 12, 1999, the utility filed a second Motion to Dismiss the Office of Public Counsel's Protest and Petition for Section 120.57(1) Hearing. On July 16, 1999, OPC timely filed a Citizens' Response to Utility's July 12th Motion to Dismiss.

On July 19, 1999, CLU filed Utility's Motion to Strike the Office of Public Counsel's Direct Testimony of Hugh Larkin, Jr. On July 26, 1999, OPC filed a Citizens' Response to Utility's July 19th Motion to Strike or in the Alternative Citizens' Motion to Strike Utility's Testimony. On July 30, 1999, CLU filed Utility's Response to Citizens' Motion to Strike Utility's Testimony, as well as the 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. On August 3, 1999, OPC filed a Citizens' Response to Utility's July 30th Motion to Dismiss.

By Order No. PSC-99-1809-PCO-WS, issued September 20, 1999, the Commission denied the Utility's Second and Third Motions to Dismiss, denied the Utility's Motion to Strike Testimony, and denied OPC's Motion to Strike Testimony.

On September 10, 1999, the utility filed a Motion to Strike Issues 9 and 10 as set forth in OPC's prehearing statement. The motion was taken up as a pending matter to be considered at the October 4, 1999 Prehearing Conference. The final issues which were

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ultimately set forth in the Prehearing Order did not include Issues 9 and 10 of OPC's prehearing statement, and by Prehearing Order No. PSC-99-2143-PHO-WS, issued November 1, 1999, the utility's motion was found to be moot.

As a result of discussions held at the September 23, 1999 issue identification conference and October 4, 1999 Prehearing Conference, the parties stipulated that the testimony and exhibits filed to date could serve as the evidence, with all cross-examination waived by all parties and staff. Therefore, by Order No. PSC-99-2143-PHO-WS, the case was set to proceed under Section 120.57(2), Florida Statutes. The Order further required that the parties file briefs by November 3, 1999. Accordingly, the hearing which had been scheduled for October 20, 1999, pursuant to Section 120.57(1), Florida Statutes, was canceled.

On November 3, 1999, the utility timely filed its post-hearing statement along with a motion requesting to exceed the page limitation by 37 pages. On November 4, 1999, OPC filed its post-hearing statement, along with a Motion to Accept Late Post-Hearing Statement and response to the utility's September 13, 1999, motion to exceed page limitation. By Order No. PSC-99-2232-PCO-WS, issued November 10, 1999, the Prehearing Officer granted both OPC's motion to late-file its post-hearing statement and the utility's motion to extend the post-hearing statement page limit.

This recommendation addresses the issues set forth in the Prehearing Order, together with the testimony and arguments presented by the parties on those issues.

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

RECOMMENDATION: The water and wastewater systems appear to be in satisfactory condition, with no outstanding operating violations.
(WALDEN)

POSITION OF THE PARTIES

CLU: Both the water and wastewater systems appeared to be in satisfactory condition, with no outstanding operating violations.

OFFICE OF PUBLIC COUNSEL: No position.

STAFF ANALYSIS: In its application, the utility explains that its representative performed an investigation of the system, and found that the water plant is in satisfactory condition, but the wastewater plant has capacity problems during peak flow periods. A warning letter was sent to the prior owner by the DEP in January, 1997. This letter pointed out deficiencies relating to reports that had not been filed with the DEP, maintenance items that had not been completed, and operational problems. An internal memorandum from the DEP in October 1993 noted potential capacity deficiencies due to commitments against the plant. To resolve these problems, the seller's and buyer's engineers have discussed improvements needed, and a list of those improvements with estimated prices has been compiled and submitted with the application. The estimated cost of these improvements are \$535,000, although no time frame is stated for completions of the items. (Attachment C of EXH CW-2)

The Purchase Agreement details how these improvements are to be made, and essentially states that the seller will make them at the seller's sole cost and expense, giving clear title to the purchaser at no cost or expense to the purchaser. This provision intimates that the plant improvements will be contributions in aid of construction (CIAC) to the Purchaser. (Attachment B of EXH CW-2)

Witness Wenz states that representatives of Utilities Inc. inspected the water and wastewater systems prior to the purchase. The condition of the system at that time appeared to be satisfactory, and there were no outstanding violations. (Wenz, Direct Testimony, p. 10) The status of the proposed improvements referred to in the application (EXH CW-2) were not addressed.

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OPC witness Larkin testified that the assets may have deteriorated at a rate greater than the depreciation rate, and therefore be less valuable than the books have indicated. Further, Mr. Larkin states that the utility facilities may have deteriorated due to a lack of maintenance, or improper installation in the initial phase. He did not state which reasons, if any, caused the seller to accept less than net book value for the system, nor did he give an opinion on the condition of the assets. (Larkin testimony, pp. 4-5) OPC did not address this issue substantively in its brief, and stated in its post-hearing statement that it had "no position" on the issue.

Staff concludes that while there were some operating problems and some capacity problems, the solutions had been addressed by the utility's engineers. The evidence in the record indicates that the physical assets were in satisfactory condition.

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

RECOMMENDATION: The record indicates that Cypress Lakes Associates, Ltd. was a functioning utility but was economically troubled. (MANN)

POSITION OF THE PARTIES

CLU: Yes. Agree with staff.

PUBLIC COUNSEL: No position.

STAFF ANALYSIS: Utility systems may be considered as either financially or operationally "troubled." Operationally, as detailed in Issue No. 1, CLA was not found to be a "troubled" system. But viewing the system financially, a different story emerges. CLU argues that CLA was a fiscally "troubled" utility, but unlike the seller, the buyer has the financial ability and capacity to commit funds to the operation of this utility. For the past two years, the periods of time that CLA has been under Commission jurisdiction, the utility has incurred cumulative losses of over \$138,000. The losses account for the negative equity position of the utility as of the end of 1998. In addition to the fiscal straits of the utility, the mobile home park has shown losses for the period 1997-1998 of \$2.3 million dollars. (Wenz, Direct Testimony, p. 8) OPC did not address this issue substantively in its brief, and stated in its post-hearing statement that it had "no position" on the issue.

Based upon the evidence in the record, staff believes that it is reasonable to conclude that CLA is a functioning utility but is economically troubled.

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

RECOMMENDATION: The record in this case does not support a finding that extraordinary circumstances exist, and, therefore, an acquisition adjustment should not be applied. (MANN)

POSITION OF THE PARTIES

CLU: No. Agree with staff.

PUBLIC COUNSEL: No position at this time.

STAFF ANALYSIS: CLU contends that rate base inclusion of an acquisition adjustment is not appropriate since there are no extraordinary circumstances in this case. CLU witness Wenz testified that the purchase price paid for the utility was lower than the book value, but that there was nothing extraordinary about the utility or the circumstances leading up to the purchase. (Wenz, Direct Testimony, p. 11) Wenz further testified that the Commission recently held hearings to determine whether to include a negative acquisition adjustment in rate base with regard to the purchase of Econ Utilities Corporation by Wedgefield Utilities, Inc., a subsidiary of Utilities, Inc., and that there are no circumstances in the purchase of Cypress Lakes that were not addressed by the Commission in the Wedgefield/Econ case (Dockets Nos. 960235-WS and 960283-WS), in which it was the decision of the Commission that extraordinary circumstances did not exist, that price differential alone does not constitute an extraordinary circumstance, and that in accordance with past Commission practice a negative acquisition adjustment should not be imposed. (Wenz, Direct Testimony, pp. 11-12) The utility further argues that the purchase price paid for the utility was 53.28% of the rate base, an amount above the middle of the range of the ratios of purchase price to rate base paid in other cases decided by the Commission. (Seidman, EXH FS-1, pp. 11-12)

OPC did not address this issue substantively in its brief, and stated in its post-hearing statement that it had "no position" on the issue.

An acquisition adjustment results when the purchase price differs from the seller's net book value. The Commission has found that, in the absence of extraordinary circumstances, a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation.

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In past cases, the Commission found support for including a positive acquisition adjustment in cases where a larger utility bought a smaller troubled utility, where a purchase price determination was supported by a competitive bid process, and lastly, where inclusion of a positive acquisition adjustment still allowed for lower rates and the promise of improved utility management. See Order No. 23111, issued June 25, 1990, in Docket No. 891110-WS; Order No. PSC-92-0895-FOF-WS, issued August 27, 1992, in Docket No. 920177-WS; Order No. PSC-93-1819-FOF-WS, issued December 22, 1993 in Docket No. 930204-WS. The above circumstances are not applicable to the transfer in this case.

On the negative side of the acquisition adjustment equation, the Commission has recognized four negative acquisition adjustments since 1988, two of which were based on settlement agreements with OPC, a finding that a transfer involved a non-arms length/non-taxable transaction between related parties, and lastly, a case involving an adjustment that was used to correct "lost CIAC." See Order No. 22962, issued May 21, 1990, in Docket No. 881500-WS; Order No. PSC-93-0011-FOF-WS, issued January 5, 1993 in Docket No. 920397-WS; Order No. PSC-93-1675-FOF-WS, issued November 18, 1993, in Docket No. 920148-WS; Order No. PSC-97-0034-FOF-WS, issued January 7, 1997, in Docket No. 960040-WS. The current case record is devoid of any evidence that these factors are present in this transfer.

Staff believes that the record evidence in the instant case fails to demonstrate that extraordinary circumstances exist. Without a showing of extraordinary circumstances, staff recommends that a rate base inclusion of an acquisition adjustment should not be applied.

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

RECOMMENDATION: The respective net book values for the water and wastewater systems were \$617,609 and \$921,439 at December 31, 1997. (MANN)

POSITION OF THE PARTIES

CLU: Agree with staff. Net book value is \$617,609 for water and \$921,439 for wastewater.

PUBLIC COUNSEL: No position.

STAFF ANALYSIS: In its brief, CLU explains that there is no dispute regarding the net book value of the acquired assets, which was \$617,609 for the water system and \$921,439 for the wastewater system. These amounts agree with the amounts which were stated in PAA Order No. PSC-98-0993-FOF-WS. While staff and the utility are in agreement as to these amounts, OPC did not address this issue substantively in its brief, and stated in its post-hearing statement that it had "no position" on the issue.

Staff notes that these amounts were not protested, and that pursuant to Section 120.80(13)(b), Florida Statutes, they are therefore deemed stipulated. For informational purposes, CLA's water and wastewater rate base schedules from Order No. PSC-98-0993-FOF-WS have been attached to this recommendation as Attachment A, Schedules 1-4.

Based upon the foregoing, staff believes it is reasonable to conclude that the net book values for the acquired water and wastewater systems, at December 31, 1997, were \$617,609 and \$921,439, respectively.

ISSUE 5: Should a negative acquisition adjustment be included in the rate base determination?

RECOMMENDATION: Rate base inclusion of a negative acquisition adjustment is not appropriate. (MANN)

POSITION OF THE PARTIES

CLU: No. Agree with staff.

PUBLIC COUNSEL: Yes. Please see the discussion under Issue 8.

STAFF ANALYSIS: In its brief, CLU argues that because no claim of extraordinary circumstances is raised by any party, that a negative acquisition adjustment should not be included in this case. Neither OPC witness Larkin nor utility witness Wenz make any claim that this case involves extraordinary circumstances. (Larkin Testimony, pp. 2-7, and Wenz, Rebuttal to Larkin Testimony, pp. 3 and 6) While the record includes argument regarding whether or not an accounting entry should be made to reflect the purchase price differential, staff believes the substance of this issue goes to the ratemaking effect of an acquisition adjustment. (Wenz, Rebuttal to Larkin Testimony, p. 2)

OPC witness Larkin also raised issues that this system may have been over built, may have deteriorated at a rate greater than that reflected in booked depreciation, and that improper installation or maintenance of the plant may have caused this plant to be valued at less than book value. (Larkin, Direct Testimony, pp. 3-6) However, the record does not support any of these allegations. Witness Wenz testified, and staff agrees, that these arguments would be more properly addressed in a rate case filing. (Wenz, Rebuttal to Larkin Testimony, pp. 4-5) OPC did not address this issue substantively in its brief, other than to state its position that the rate base should reflect a negative acquisition adjustment, in accordance with the arguments OPC makes with respect to Issue No. 8.

Absent a showing of extraordinary circumstances, one is left to examine whether a negative acquisition adjustment is warranted in this case, based solely on the fact that the purchase price is lower than the net book value at the date of transfer. However, as noted in Order No. PSC-98-1092-FOF-WS, issued August 12, 1998, the Commission has stated that it did not believe that the acquisition adjustment issue should depend upon the magnitude of the price differential alone.

The evidence in the record indicates that the developer is no longer interested in running the utility (Wenz, Direct Testimony, p. 7); that the buyer is interested in committing funds to properly run the utility and has the financial ability to do so (Wenz, Direct Testimony, pp. 8-9); that the purchase will allow the ratepayers to access professional and experienced utility management (Wenz, Direct Testimony, p. 9); that the utility should be able to experience savings as a result of economies of scale (Wenz, Direct Testimony, p. 9); and lastly, that the rate payers should experience a better quality of service as a result of the transfer (Wenz, Direct Testimony, pp. 12-15).

Based upon the record evidence, and as noted in Issue 3, staff believes it is reasonable to conclude that there has not been a showing of extraordinary circumstances in this case, and therefore, that no acquisition adjustment should be applied. Further, staff does not believe that the price differential, alone, constitutes an extraordinary circumstance. Based on the information in the record, staff believes that rate payers are being placed in a better position through the transfer of this utility. Therefore, in accordance with Commission policy that an acquisition adjustment will only be applied upon a showing of extraordinary circumstances, a negative acquisition adjustment should not be imposed in this proceeding. Rather, staff believes the incentive provided through the Commission's current acquisition adjustment policy should be made available to CLU. For the reasons discussed above, staff recommends that a negative acquisition adjustment should not be included in CLU's rate base balance.

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

RECOMMENDATION: The rate base amount should match the net book values of the acquired assets. Rate base is \$617,609 for water and \$921,439 for Wastewater. (MANN)

POSITION OF THE PARTIES

CLU: Agree with staff. Rate base is \$617,609 for water and \$921,439 for wastewater.

PUBLIC COUNSEL: The rate base should reflect a negative acquisition adjustment. Please see the discussion under Issue 8.

STAFF ANALYSIS: In its brief, CLU argues that, pursuant to Section 367.081, Florida Statutes, the Commission must establish rates using the original cost of the company who dedicated that property to public service. Based on the depreciated net book value at the time of transfer, the utility believes that rate base for transfer should be \$617,609 for water and \$921,439 for wastewater. In its brief, OPC argues that rate base for this utility, at the time of transfer, should reflect a negative acquisition of \$719,048 to account for the difference of the net book value of the utility (\$1,539,048) and the purchase price (\$820,000).

As discussed in Issue No. 4, the recommended rate base values at December 31, 1998, were \$617,609 and \$921,439 for the respective water and wastewater systems, based upon CLA's net plant investment in the facilities. In Issue No. 5, staff recommended that the rate base determination should not include the negative acquisition adjustment. Staff believes that CLA's rate base balance should match CLU's net book balance at the transfer date, which is consistent with Commission policy. Therefore, staff recommends approval of rate base balances of \$617,609 and \$921,439 for the respective water and wastewater systems. (See Attachment A, Schedule Nos. 1-4, for informational purposes)

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

RECOMMENDATION: 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. (BRUBAKER)

POSITION OF THE PARTIES:

UTILITY: The burden of proof is discussed in Order No. PSC-98-1092-FOF-WS, Docket No. 960235-WS, Wedgefield Utilities, Inc. The Utility has met its burden, but OPC has not.

OPC: No position.

STAFF ANALYSIS: In its brief, CLU argues that the burden of proving whether an acquisition adjustment should be included in the rate base was discussed in the recent Wedgefield decision, in Order No. PSC-98-1092-FOF-WS issued August 12, 1998, in Dockets Nos. 960235-WS and 960283-WS. In that Order, the Commission stated that:

We find that in the instant case, as in rate proceedings, the ultimate burden of proof rests upon the utility. As stated previously, the utility always has the ultimate burden of proof with regard to its rates. Because the imposition of an acquisition adjustment will eventually affect the utility's rates, we find that the utility must carry the ultimate burden of proof as to why an acquisition adjustment should or should not be included in the rate base determination. As discussed in greater detail below, we find that 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 no 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.

CLU states in its brief that the utility has met its burden, and OPC has not shown, or even alleged that extraordinary circumstances exist in this case. Again citing to Order No. PSC-98-1092-FOF-WS, CLU argues that ". . . Because OPC did not carry its burden of persuasion and there was no subsequent shift in the burden of proof, it was not required . . . that the utility rebut OPC's allegations and carry the ultimate burden of proof."

OPC did not address this issue substantively in its brief, and stated in its post-hearing statement that it had "no position" on the issue.

Staff recommends that in the instant case, as in rate proceedings, the ultimate burden of proof rests upon the utility. As stated previously, the utility always has the ultimate burden of proof with regard to its rates. Because the imposition of an acquisition adjustment will eventually affect the utility's rates, staff believes that the utility must carry the ultimate burden of proof as to why an acquisition adjustment should or should not be included in the rate base determination. As discussed in greater detail in Issue 8, staff believes that 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 no 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. This recommendation is consistent with the Commission's decision in Order No. PSC-98-1092-FOF-WS.

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

RECOMMENDATION: Yes, extraordinary circumstances must be shown in order to warrant rate base inclusion of an acquisition adjustment.
(BRUBAKER)

POSITIONS OF THE PARTIES

UTILITY: Yes. Agree with Staff.

OPC: No.

STAFF ANALYSIS: This issue, as stated, asks whether extraordinary circumstances must be shown in order to warrant rate base inclusion of an acquisition adjustment. In their briefs, the parties have included argument as to whether the issue of extraordinary circumstances constitutes non-rule policy or should be subject to rulemaking. In staff's opinion, such arguments expand beyond the scope of the stated issue, and are not properly before the Commission in this case.

In its brief, the utility argues that the Commission's practice regarding acquisition adjustments, which has been in effect at least since 1983, is that absent extraordinary circumstances, the purchase of a utility system at a premium or discount, shall not affect rate base. CLU further contends that all of the arguments set forth by OPC with respect to this issue have been heard and rejected in a prior Commission cases.

In its brief, OPC argues that because the Commission does not have a rule regarding acquisition adjustments, it cannot have in place a policy which requires a showing of extraordinary circumstances in order to warrant the recognition of an acquisition adjustment. If the Commission had such a policy, OPC argues that extant case law requires that the policy be supported by expert testimony, documentary opinion, or other evidence which justifies the policy's application to the facts of this case.

Staff agrees with CLU's contention that the current Commission practice regarding acquisition adjustments is that, absent extraordinary circumstances, the purchase of a utility system at a premium or discount, shall not affect rate base. Although what constitutes "extraordinary circumstances" must be determined on a case-by-case basis, extraordinary circumstances must be shown to warrant rate base inclusion of an acquisition adjustment. This is

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consistent with the investigation conducted as to the acquisition adjustment policy in Docket No. 891309-WS, and subsequent Commission Orders in which acquisition adjustments are at issue. See Order No. 20707, issued February 6, 1989, in Docket No. 880907-WU; Order No. 23970, issued January 1, 1991, in Docket No. 900408-WS; Order No. 25584, issued January 8, 1992, in Docket No. 910672-WS; Order No. PSC-95-0268-FOF-WS, issued February 28, 1995, in Docket No. 940091-WS; Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS; Order No. PSC-98-1092-FOF-WS, issued August 12, 1998, in Dockets Nos. 960235-WS and 960283-WS.

As noted previously, staff believes that the matters raised in OPC's brief regarding non-rule policy are beyond the scope of the stated issue. Staff notes for informational purposes that the acquisition adjustment issue has been part of an on-going Commission staff project on viability and capacity development in the water and wastewater industry. On November 12, 1999, a Notice of Rule Development on the acquisition adjustment issue was published in Volume 25, Number 45 of the Florida Administrative Weekly. Furthermore, a noticed rule development workshop was held on December 2, 1999, which was attended by representatives from OPC and the utility industry.

Staff believes that the arguments made by OPC have been made and rejected in prior cases. Staff recommends that, consistent with previous Commission decisions, extraordinary circumstances must be shown in order to warrant rate base inclusion of an acquisition adjustment. Staff believes that to do otherwise would constitute a change in policy which is unsupported by the record.

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ISSUE 9 (NEW): Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issues 1 through 8, nothing will remain to be done in this docket and the docket should be closed. (BRUBAKER)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issues 1 through 8, nothing will remain to be done in this docket and the docket should be closed.

ATTACHMENT A

SCHEDULE NO. 1

CYPRESS LAKES ASSOCIATES, LTD.

SCHEDULE OF WATER RATE BASE

As of December 31, 1997

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>COMMISSION ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	\$1,059,914	(\$151,339)	(1) \$908,757
Land	509	0	509
Plant Held for Future Use	0	0	0
Accumulated Depreciation	(\$189,257)	\$ 3,700	(2) (\$185,557)
Contributions-in-aid-of-Construction	(\$116,719)	0	(\$116,719)
CIAC Amortization	<u>\$ 10,801</u>	<u>0</u>	<u>10,801</u>
TOTAL	<u>\$765,248</u>	<u>\$147,639</u>	<u>\$617,609</u>

ATTACHMENT A

SCHEDULE NO. 2

CYPRESS LAKES UTILITIES, INC. WATER SERVICE

SCHEDULE OF WATER RATE BASE ADJUSTMENTS

<u>EXPLANATION</u>	<u>ADJUSTMENT</u>
Utility Plant in Service	
A. To remove franchise cost which were capitalized	(\$ 30,322)
B. To remove unaudited phase V-1 plant costs	<u>(\$121,017)</u>
TOTAL (1)	<u>(\$151,339)</u>
Accumulated Depreciation	
A. Adjustment related to removal of franchise cost	\$ 2,274
B. Adjustment related to unaudited plant costs	<u>\$ 1,426</u>
TOTAL (2)	<u>\$ 3,700</u>

ATTACHMENT A

SCHEDULE NO. 3

CYPRESS LAKES ASSOCIATES, LTD.

SCHEDULE OF WASTEWATER RATE BASE

As of December 31, 1997

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>COMMISSION ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	\$1,728,299	(\$344,430)	(1) \$1,383,869
Land	\$2,610	0	\$2,610
Plant Held for Future Use	\$2,500	0	\$2,500
Accumulated Depreciation	(\$393,401)	\$ 7,438	(2) (\$383,963)
Contributions-in- aid-of-Construction	(\$ 96,929)	0	(\$ 96,929)
CIAC Amortization	<u>\$ 15,352</u>	<u>0</u>	<u>15,382</u>
TOTAL	<u>\$1,258,431</u>	<u>\$336,992</u>	<u>\$921,439</u>

ATTACHMENT A

SCHEDULE NO. 4

CYPRESS LAKES ASSOCIATES WASTEWATER SERVICE

SCHEDULE OF WASTEWATER RATE BASE ADJUSTMENTS

<u>EXPLANATION</u>	<u>ADJUSTMENT</u>
Utility Plant in Service	
A. To remove franchise cost which were capitalized	(\$ 30,322)
B. To remove unaudited phase V-1 plant costs	<u>(\$314,108)</u>
TOTAL (1)	<u>(\$344,430)</u>
Accumulated Depreciation	
A. Adjustment related to removal of franchise cost	\$ 2,274
B. Adjustment related to unaudited plant costs	<u>\$ 5,164</u>
TOTAL (2)	<u>\$ 7,438</u>

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

RECOMMENDATION: The water and wastewater systems appeared to be in satisfactory condition, with no outstanding operating violations.
(WALDEN)

ISSUE 2: Was Cypress Lakes Associates, Ltd. (CLA) a "troubled" utility?

RECOMMENDATION: The record indicates that Cypress Lakes Associates was a functioning utility but was economically troubled.
(MANN)

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

RECOMMENDATION: There are extraordinary circumstances that have supported rate base inclusion of an acquisition adjustment, however the record in this case does not support a finding that extraordinary circumstance exist and therefore a acquisition adjustment should not be applied. (MANN)

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

RECOMMENDATION: The respective net book values for the water and wastewater systems were \$617,609 and \$921,439 at December 31, 1997.
(MANN)

ISSUE 5: Should a negative acquisition adjustment be included in the rate base determination?

RECOMMENDATION: Rate base inclusion of a negative acquisition adjustment is not appropriate. (MANN)

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

RECOMMENDATION: The rate base amount should match the net book values of the acquired assets. Rate base is \$617,609 for water and \$921,439 for Wastewater. (MANN)

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

RECOMMENDATION: 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. (BRUBAKER)

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

RECOMMENDATION: Yes, extraordinary circumstances must be shown in order to warrant rate base inclusion of an acquisition adjustment. (BRUBAKER)

ISSUE 9 (NEW): Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issues 1 through 8, nothing will remain to be done in this docket and the docket should be closed. (BRUBAKER)