

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: MARCH 23, 2000

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

FROM: DIVISION OF WATER AND WASTEWATER (REDEMANN, MESSER) *ppr BSM*
DIVISION OF LEGAL SERVICES (FUDGE) *grf RS* *gaw* *SP*

RE: DOCKET NO. 000041-WS - APPLICATION OF LAKE UTILITY COMPANY
FOR AMENDMENT OF CERTIFICATES NOS. 527-W AND 461-S TO ADD
TERRITORY IN LAKE COUNTY.
COUNTY: LAKE

AGENDA: APRIL 4, 2000 - REGULAR AGENDA - PROPOSED AGENCY ACTION ON
ISSUE 2 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\000041.RCM

CASE BACKGROUND

Lake Utility Company (Lake Utility or utility) is a Class B water and wastewater utility that provides water and wastewater service to approximately 1,410 water customers and 1,337 wastewater customers. The annual report for 1998 shows that the annual operating revenue for water and wastewater is \$1,103,833 and the net loss is \$238,503. Further review of the annual report indicates that the loss is primarily due to an interest expense of \$461,222.

On January 12, 2000 the utility applied for an amendment to Water Certificate No. 527-W and Wastewater Certificate No. 461-S in Lake County, Florida pursuant to Rule 25-30.036(3), Florida Administrative Code. On February 4, 2000, a copy of the application was sent to the Department of Community Affairs (DCA) for comment, pursuant to the Memorandum of Understanding entered into between the Commission and DCA on June 5, 1998. A response

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was received on March 16, 2000. The DCA states it has no objection to the application. However, the City of Leesburg (City) does have some concerns with the application. The City's concerns and the utility's response are addressed in Issue 1. The utility is currently providing wastewater effluent service, but does not have a current charge. The proposed charge is addressed in Issue 2.

DISCUSSION OF ISSUES

ISSUE 1: Should Lake Utility Company's application for amendment of Water Certificate No. 527-W and Wastewater Certificate No. 461-S be approved?

RECOMMENDATION: Yes, Lake Utility Company's application for amendment should be approved for Water Certificate No. 527-W and Wastewater Certificate No. 461-S to include the additional territory described in Attachment A. Lake Utility Company should charge the customers in the territory added herein the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding. (REDEMANN, FUDGE)

STAFF ANALYSIS: As stated earlier, on January 12, 2000, the utility applied for an amendment to Water Certificate No. 527-W and Wastewater Certificate No. 461-S in Lake County, Florida pursuant to Rule 25-30.036(3), Florida Administrative Code. The application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for amendment of certificate. The application contains a check in the amount of \$2,000 which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence in the form of a warranty deed that the utility owns the land upon which facilities are located, as required by Rule 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(3)(e), (f) and (i), Florida Administrative Code. A description of the territory requested by the utility is appended to this memorandum as Attachment A.

The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, stating that it has tariffs and annual reports on file with the Commission. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application have been received and the time for filing such has expired. The local planning agency and the City were provided notice of the application and did not file a protest to the amendment. As stated earlier, on February 4, 2000, a copy of the application was sent to the DCA for comment, pursuant to the Memorandum of Understanding. A response was received on March 16, 2000. The DCA states it has no objection to the application. However, the City does have some concerns with the application. The City voiced concerns over the application to the DCA. The City is currently constructing a wastewater facility that is in close proximity to the expansion area proposed by the utility. The City believes there might not be a need for the utility to expand into the proposed area since the City could easily provide wastewater service when the new plant is completed. The City's plant will be completed by early summer of this year.

On March 20, 2000 the utility's attorney responded as follows:

- "1. Both the DCA and the City of Leesburg apparently have reached a conclusion that *"Lake Utility Company currently has adequate capacity to provide potable water to the area, but an expansion to its central wastewater plant will be required to provide service to the area proposed."* This conclusion, that apparently forms the basis for the City of Leesburg's concern, is inaccurate. As clearly stated within our Application, the Utility's present wastewater flows are less than 1/3 of its current rated and permitted wastewater plant capacity. Therefore, as stated clearly in the original Application, there is no expansion of the currently operated sewage treatment plant required to serve both the existing and proposed areas at build out.
2. The Plantation at Leesburg DRI, which this new territory will become a part of, will not increase its total units already approved for development under this Application. It is the intent of the Utility's related party developer to simply decrease the density of its development with the addition of this 206 acre parcel such that they

still construct the same number of total units as would have already been approved for construction under the existing DRI for the Plantation at Leesburg. Therefore, the Utility's proposed build out as far as numbers of customers, ERCs and flows, will not change under the proposed Extension Application. Therefore, to some extent, this misunderstanding by the City of Leesburg and by the DCA is understandable, since the developer had not yet filed for development approval for the extension area. However, from a Utility standpoint, the DCA and the City of Leesburg's assumptions are inaccurate.

3. The City of Leesburg's proposed treatment facility mentioned in the DCA memorandum will only be a secondary treatment facility, which will not provide a sufficient level of treatment to allow utilization of the treated effluent for reuse as contemplated in the Plantation at Leesburg Development Order. Therefore, not only is it less environmentally sound than the treatment plant already operated at far less than full capacity by Lake Utility Company, but it cannot supply needed highly treated effluent to the golf courses operated by the related party developer, even when completed. In addition, the cost of such effluent service, even if available, would likely be higher because of the costs inherent in transporting that effluent from the City's more distant treatment facility.

In conclusion, not only would service from the City's plant be less environmentally sound, it would also diminish the ability of Lake Utility Company to implement reuse, and substantially reduce the ability to fully utilize the existing Lake Utility Company currently permitted and operating wastewater facilities.

4. To the extent the City of Leesburg has an objection to the Application of Lake Utility Company, their opportunity under the law to object to that Application has long since passed. They were specifically noticed as required by Commission Rules, and the proof of that direct notification by Certified Mail has previously been provided to the

Commission, (a copy of the Return Receipt related to the City is attached hereto for your ready reference). That noticing was completed on January 18, 2000 and as such, any objection by the City of Leesburg was due before the end of February. No such objection or even comments were filed by them.

5. While the DCA has ultimately determined that they have no "objection" to the Extension of Service Territory proposed by Lake Utility, I am very concerned that the DCA would ever "object" to an Application by a Utility regulated by the Florida Public Service Commission. It is my understanding that the Memorandum of Understanding (MOI) entered into several years ago between the DCA and the Public Service Commission, was intended to allow the DCA to offer comment concerning Applications for Extension related to territorial matters filed with the PSC. That MOI does not confer upon the DCA a right to "object" to a Utility's Extension Application, nor could it under the Statute. The DCA has no such power.

In addition, there is already in place, as noted above, a noticing requirement in order to obtain the comments of both the County Government and City Governments surrounding a regulated Utility's proposed extension area. I do not believe it is the place of the DCA to go back to those entities and to solicit additional comments or concerns on top of those already solicited under the noticing requirements contained within the Commission's Rules and Statutes. I believe such action by the DCA is above and beyond the requirements of the MOU between the two agencies, and is at the very least, redundant, if not indicative of some more troubling bias."

Staff contacted the Department of Environmental Protection (DEP) to determine additional information about the City's plant. According to DEP, the City's "turnpike" plant will have a capacity of 3.0 mgd. No current flows exist, but it is anticipated that .5 mgd to 1.0 mgd will be diverted to this facility. The plant will treat to secondary standards with nutrient removal; however, the effluent will not meet public access (spray irrigation) requirements and therefore, cannot be used for spray irrigation on a golf course at this time.

Accordingly, staff agrees with the utility that it is more environmentally sound for Lake Utility to treat and dispose of the effluent on the golf course. In addition, it is unfortunate that the City did not incorporate the use of the developer's golf courses to dispose of its effluent, and did not design the treatment plant to meet public access requirements to allow spray irrigation.

The application by the utility states that this area will be developed into low density housing consisting of a maximum of 550 single family homes. The existing water system consists of three wells, a treatment facility, and one 10,000 gallon hydro-pneumatic tank. The water system can supply a maximum of 1,444,000 gallons per day (gpd). An expansion is currently in the design stage and will include the addition of a 12-inch deep well with chlorination and storage. This addition will increase the capacity to 2,880,000 gpd, and should be completed in late May or June of 2000. The estimated water demand for the proposed development is 192,500 gpd (350 gpd/unit x 550 units). According to the utility, the current water lines are within 100 feet of the proposed service area. The DEP has no outstanding notices of violation issued for this system.

According to the utility, the current permitted wastewater treatment capacity is 370,000 gpd. Current wastewater flows are 120,125 gpd. Based on actual and projected flow rates, that capacity is sufficient to provide service to all of the existing service territory at build out, plus the projected build out of the proposed service territory. The utility is currently utilizing reuse as a method of effluent disposal to the fullest extent possible. The development has two eighteen-hole golf courses, one of which is fully piped for utilization of effluent as a primary source of irrigation. More information about the golf course irrigation is addressed in Issue 2. Although no expansion appears to be needed, the utility will expand the wastewater treatment and disposal facilities should an expansion become necessary. As with the water system, the existing wastewater lines are within 100 feet of the proposed service area. The DEP has no outstanding notices of violation issued for this system.

The utility has filed revised tariff sheets incorporating the additional territory into its tariff. According to the utility, its original certificates could not be found. Staff will issue the utility new certificates and include the additional territory, if approved. Lake Utility's approved rates were effective pursuant to Order No. 22846, issued April 23, 1990, in Docket No. 891299-WS, an original certificate case. Lake Utility Company should charge the customers in the territory added herein the rates and charges

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contained in its tariff until authorized to change by this Commission in a subsequent proceeding.

Based on the above information, staff recommends that it is in the public interest to approve the application of Lake Utility for amendment of Water Certificate No. 527-W and Wastewater Certificate No. 461-S to include the additional territory described in Attachment A, and that the application be approved.

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ATTACHMENT A

LAKE UTILITY COMPANY

WATER AND WASTEWATER TERRITORY

LAKE COUNTY

In Section 27, Township 20 South, Range 24 East

E 1/4 of W 1/2 of NE 1/4, LESS the North 66 feet; NE 1/4 of NE 1/4, LESS the North 66 feet; W 3/4 of N 1/2 of SE 1/4 of NE 1/4; S 1/2 of SE 1/4 of NE 1/4; NE 1/4 of SE 1/4; E 1/4 of NW 1/4 of SE 1/4

AND

That part of S 1/2 of SE 1/4 lying N of the Florida Turnpike. All in Section 27, Township 20 South, Range 24 East

AND

In Section 34, Township 20 South, Range 24 East

That part of NE 1/4 of NE 1/4 lying N of the Florida Turnpike in Section 34, Township 20 South, Range 24 East.

Not including that part of the Florida Turnpike adjacent to subject property.

All in Lake County, Florida. A total of ± 206.5 Acres

ISSUE 2: Should the utility file a wastewater tariff reflecting the reclaimed water class of service?

RECOMMENDATION: Yes. The utility should file a wastewater tariff sheet reflecting the reclaimed water class of service at a zero rate. The tariff should be effective for services rendered on or after the stamped approval date of the tariff. The utility should return to the Commission for a determination regarding rates for reclaimed water service prior to providing that service to any other customers. (REDEMANN, MESSER)

STAFF ANALYSIS: According to the utility's application, the development has two eighteen-hole golf courses, one of which is fully piped for utilization of effluent as a primary source of irrigation. However, at the present time (and quite possibly even at build out of both the current and proposed facilities), the effluent flows available are not sufficient to meet the needs of the golf course for irrigation.

Due to growing concerns over water conservation, reclaimed water is increasingly being viewed as an alternative source of water for irrigation of golf courses and even residential communities in some cases. Along with the increased use of reclaimed water comes a recognition that there are costs associated with the provision of reclaimed water. Consequently, it has become Commission practice to recognize reclaimed water service (sometimes referred to as effluent service) as a class of service which should be included in the utility's tariff, even if the utility is not currently assessing a charge for the service.

Although there are costs associated with the provision of reclaimed water service, there are cases in which the "avoided costs" outweigh the actual cost of the service, and thus not charging for the effluent is justified. For example, disposing of effluent on non-utility property may delay or even eliminate the need for the utility to purchase additional land for spray fields or percolation ponds, thereby resulting in lower rates for the utility's existing wastewater customers.

In this case the effluent flows available from the utility for the eighteen-hole golf course are not sufficient to meet the full needs of the golf course for irrigation. The utility believes that if a charge were to be imposed for the effluent, the golf course would no longer be willing to use the effluent. Further, the utility's disposal of the effluent to the golf course saves the utility from purchasing land to be used as spray fields.

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Staff agrees that the service should be continued at a zero rate, and should be included in the utility's tariff. However, the utility should return to the Commission for a determination regarding rates for reclaimed water service prior to providing that service to any other customers. This recommendation is consistent with past Commission practice. See Order No. PSC-95-1325-FOF-WS issued on October 31, 1995, in Docket No. 941151-WS; and Order No. PSC-98-0475-FOF-WS, issued on April 1, 1998, in Docket No. 971157-WS.

Therefore, staff recommends that the utility be authorized to continue providing the reclaimed water service at a zero rate. Additionally, the utility should be required to file a wastewater tariff sheet reflecting the reclaimed water class of service. The tariff should be effective for services rendered on or after the stamped approval date of the tariff.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: If no timely protest is received to the Proposed Agency Action issue, the order should become final and effective upon issuance of a Consummating Order and the docket should be closed. (FUDGE)

STAFF ANALYSIS: If no timely protest is received to the Proposed Agency Action issue, the order should become final and effective upon issuance of a Consummating Order and the docket should be closed.