

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for increase in water and
wastewater rates in Polk County by Cypress
Lakes Utilities, Inc.

DOCKET NO. 060257-WS
ORDER NO. PSC-07-0454-PCO-WS
ISSUED: May 29, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER ACKNOWLEDGING THE IMPLEMENTATION OF PROPOSED AGENCY
ACTION RATES SUBJECT TO REFUND

BY THE COMMISSION:

Background

Cypress Lakes Utilities, Inc. (Cypress Lakes or utility) is a Class B utility providing water and wastewater service to approximately 1,287 residential and 43 general service customers in Polk County. The utility is a wholly-owned subsidiary of Utilities, Inc. (UI). Water and wastewater rates were last established for this utility in its 2002 proceeding.¹

On May 15, 2006, Cypress Lakes filed the Application for Rate Increase at issue in the instant docket. By Order No. PSC-07-0199-PAA-WS (PAA Order), issued March 5, 2007, we approved rates that were designed to generate a water revenue requirement of \$297,976 and a wastewater revenue requirement of \$508,186.

On March 26, 2007, Cypress Lakes Associates, Ltd., a developer, timely filed a protest of the proposed service availability charges proposed by this order. On April 6, 2007, the Office of Public Counsel (OPC) filed a cross-petition to protest the PAA Order pursuant to Rule 25-22.029(3), Florida Administrative Code (F.A.C.). By letter dated April 9, 2007, Cypress Lakes stated that it intends to put the PAA Order rates in effect during the pendency of the administrative hearing.

Sanlando Utilities Corporation (Sanlando) also filed an Application for Rate Increase in Docket No. 060258-WS on May 15, 2006. Sanlando is another subsidiary of UI. By Order No. PSC-07-0205-PAA-WS (Sanlando PAA Order), issued March 6, 2007, in Docket No. 060258-

¹ See Order No. PSC-03-0647-PAA-WS, issued May 28, 2003, in Docket No. 020407-WS, In re: Application for rate increase in Polk County by Cypress Lakes Utilities, Inc.

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WS, we approved increased PAA rates and charges, which included annual revenue increases of \$404,581 for water and \$664,394 for wastewater. On March 27, 2007, OPC filed a protest of the Sanlando PAA Order. On April 5, 2007, Sanlando timely filed a cross-protest of the Sanlando PAA Order. By letter dated April 9, 2007, Sanlando stated that it also intends to put the Sanlando PAA Order rates in effect during the pendency of the administrative hearing.

This Order addresses the implementation of the PAA rates and the security to guarantee the increased revenues collected under the PAA rates for Cypress Lakes. We have jurisdiction pursuant to Section 367.081, Florida Statutes, (F.S.).

Acknowledgement of the Implementation of the Proposed Agency Action Rates

As discussed in the Case Background, the PAA Order was protested by a developer and cross-protested by OPC. On April 9, 2007, Cypress Lakes submitted its notice of intent to implement rates pursuant to Section 367.081(8), F.S., pending the resolution of the protest filed in this docket. The utility also submitted tariff sheets and a proposed customer notice.

Section 367.081(8), F.S., states:

At the expiration of 5 months following the official filing date, if the commission has not taken action or, if the commission's action is protested by a party other than the utility, the utility may place its requested rates into effect under bond, escrow, or corporate undertaking subject to refund, upon notice to the commission and upon filing the appropriate tariffs.

The filing of the developer's objection triggers the applicability of subsection 367.081(8), F.S. Although the utility has the right to implement its requested final rates, Cypress Lakes has elected to implement the rates approved by this Commission in the PAA Order. These PAA rates are lower than the rates requested by the utility in its filing.

Our staff reviewed the tariff sheets and the proposed customer notice. Once the utility has provided the appropriate security, the effective date can be established and incorporated in the tariff sheets and customer notice. The security for the rate increase is discussed below. Based on the above, we acknowledge the utility's implementation of the PAA rates on a temporary basis pending the outcome of this rate proceeding.

Appropriate Security

As previously discussed, the utility may place its requested rates into effect under bond, escrow, or corporate undertaking subject to refund pursuant to Section 367.081(8), F.S. In addition to allowing the utility to implement its requested rates, the statute requires that "[t]he utility shall keep accurate records of amounts received as provided by subsection (6)." Subsection (6) specifies that "[t]he utility shall keep accurate, detailed accounts of all amounts received because of such rates becoming effective under bond, escrow, or corporate undertaking subject to refund, specifying by whom and in whose behalf such amounts were paid."

Pursuant to the PAA Order, we approved PAA rates and charges for Cypress Lakes, which included an annual revenue increase of \$42,874 for water and \$143,167 for wastewater. In addition, by Order No. PSC-07-0205-PAA-WS, issued March 6, 2007, we approved PAA rates and charges for Sanlando Utilities Corporation (Sanlando), which included an annual revenue increase of \$404,581 for water and \$664,394 for wastewater. By letter dated April 9, 2007, Sanlando also stated that it intends to put the PAA Order rates in effect during the pendency of the administrative hearing in Docket No. 060258-WS.

Cypress Lakes and Sanlando are wholly-owned subsidiaries of UI, which provides all investor capital to its subsidiaries. UI's present cumulative corporate undertaking amount is \$1,784,788. UI has requested an additional corporate undertaking to secure the implementation of temporary PAA rates granted for Cypress Lakes and Sanlando. In accordance with Rule 25-30.360, F.A.C., our staff calculated the potential refund of revenues and interest collected to be \$158,475 for Cypress Lakes and \$910,583 for Sanlando. The total incremental amount of \$1,069,057 is based on an estimated ten months of revenue being collected. Adding the total incremental amount for Cypress Lakes and Sanlando, the total cumulative corporate undertaking amount would be \$2,853,845 (\$1,784,788 plus \$1,069,057).

The criteria for a corporate undertaking includes sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Our staff reviewed the financial statements from 2004 to 2006 to determine the financial condition of the parent company. This review shows that UI's average equity ratio over the most recent three-year period has remained stable at 40%. In addition, UI's relative level of liquidity has improved compared to 2005. However, both the Company's interest coverage and relative level of net income have declined over the three year review period. In addition, if granted, UI's total cumulative corporate undertaking would be approximately \$2.9 million, and would represent 78% of the parent Company's average annual net income in 2005 and 2006. Based upon this analysis, we find that UI cannot support any incremental amount of corporate undertaking above the current cumulative amount of \$1,784,788. Therefore, the utility shall provide a surety bond or escrow agreement to guarantee the funds collected subject to refund.

If the security provided is an escrow account, the utility shall deposit 16.81% of water and 39.22% of wastewater revenues into the escrow account each month. In addition, the following conditions shall be part of the agreement:

- 1) No refunds in the escrow account may be withdrawn by the utility without the express approval of the Commission.
- 2) The escrow account shall be an interest bearing account.
- 3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
- 4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.

- 5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
- 6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 7) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.
- 8) The Commission Clerk must be a signatory to the escrow agreement.
- 9) This account must specify by whom and on whose behalf such monies were paid.

If the security provided is a surety bond, said instrument shall be in the amount of \$158,475. In addition, the surety bond shall state that it will be released or shall terminate only upon subsequent order of this Commission.

Regardless of the type of security provided, the utility shall keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-30.360(6), F.A.C., the utility shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. In no instance shall maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and shall be borne by, the utility.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the notice of implementation of the Proposed Agency Action rates is hereby acknowledged as set forth herein. It is further

ORDERED that Cypress Lakes Utilities, Inc. shall provide a surety bond or escrow agreement to guarantee the funds collected subject to refund. It is further

ORDERED that if the security provided is an escrow account, Cypress Lakes Utilities, Inc. shall deposit 16.81% of water and 39.22% of wastewater revenues into the escrow account each month. It is further

ORDERED that if the security provided is a surety bond, said instrument shall be in the amount of \$158,475 and shall state that it will be released or shall terminate only upon subsequent order of this Commission. It is further

ORDERED that pursuant to Rule 25-30.360(6), F.A.C., the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. It is further

ORDERED that should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 29th day of May, 2007.



ANN COLE
Commission Clerk

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in

the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.