

State of Florida



Public Service Commission

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

DATE: June 27, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Springer, Revell, Rendell, Bulecza-Banks) *ma in e*
Office of the General Counsel (Fleming) *KEF NAX* *10/2*

RE: Docket No. 060257-WS – Application for increase in water and wastewater rates in Polk County by Cypress Lakes Utilities, Inc.

AGENDA: 07/10/07 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: ~~Argenziano, Carter, McMurrian~~ *All Commissioners - ac*

PREHEARING OFFICER: Argenziano

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060257.RCM.DOC

Case 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. Pursuant to Order No. PSC-07-0199-PAA-WS,¹ issued March 5, 2007, the Commission approved increased proposed agency action (PAA) rates and charges, resulting in annual revenue increases of \$42,874 for water and \$143,167 for wastewater. On March 26, 2007, Cypress Lakes Associates, Ltd., a developer, filed a timely protest of the proposed service availability charges authorized in Order No. PSC-07-0199-PAA-WS. On April 6, 2007, the Office of Public Counsel (OPC) filed a cross-protest.

¹ Order No. PSC-07-0199-PAA-WS, issued March 5, 2007, in Docket No. 060257-WS, In re: Application for increase in water and wastewater rates in Polk County by Cypress Lakes Utilities, Inc. DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Docket No. 060257-WS

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By Order No. PSC-07-0454-PCO-WS,² the Commission required Cypress Lakes to obtain either a surety bond or escrow agreement to guarantee the funds collected subject to refund in order to implement PAA rates. This recommendation addresses the Utility's request to modify the Commission's Order to allow it to use a corporate undertaking guaranteed by its parent in lieu of a surety bond or escrow agreement to secure the incremental funds collected under the PAA rates. The Commission has jurisdiction pursuant to Section 367.081, Florida Statutes.

² Order No. PSC-07-0454-PCO-WS, issued May 29, 2007, in Docket No. 060257-WS, In re: Application for increase in water and wastewater rates in Polk County by Cypress Lakes Utilities, Inc.

Discussion of Issues

Issue 1: Should Order No. PSC-07-0454-PCO-WS be modified to allow Cypress Lakes Utilities, Inc. to use a corporate undertaking to secure any refund resulting from its implementation of PAA rates in this docket?

Recommendation: Yes. Order No. PSC-07-0454-PCO-WS should be modified to allow Cypress Lakes Utilities, Inc. to use a corporate undertaking to secure any refund resulting from the implementation of PAA rates in this docket. (Springer, Revell)

Staff Analysis: In Order No. PSC-07-0454-PCO-WS, the Commission acknowledged the implementation of proposed agency action (PAA) rates by Cypress Lakes. Following a protest of a Commission PAA order, pursuant to Section 367.081(8), F.S., there is a period of time from when the rates are approved on a PAA basis until the rates are deemed final following a hearing. During this period, the money collected under these temporary rates is held subject to refund. In order to protect any potential refund, the utility is required to demonstrate the ability to support a corporate undertaking or provide some other form of financial security such as a letter of credit, an escrow account, or a surety bond.

Under the appropriate circumstances, the Commission has approved corporate undertakings for Utilities, Inc. (UI or Company) subsidiaries where UI has guaranteed the incremental revenues collected subject to refund. The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff reviews the financial statements of the parent company to determine if UI can support a corporate undertaking on behalf of its subsidiaries. An additional condition for the use of a corporate undertaking in this instance is that UI does not have corporate undertakings outstanding on behalf of utility systems in other states. UI has filed numerous attestations with this Commission confirming that it does not have any outstanding guarantees on behalf of UI-owned utilities in other states.

At the time the PAA rates for Cypress Lakes were approved, UI had a cumulative corporate undertaking amount outstanding of approximately \$1.7 million. Included in this \$1.7 million amount is approximately \$59,000 to secure interim rates that had been implemented for Cypress Lakes earlier in this proceeding. Based on the total amount outstanding at the time the Commission considered the Utility's request to implement PAA rates, the Commission determined it would not be appropriate to allow UI to support additional corporate undertaking amounts. In Order No. PSC-07-0454-PCO-WS, the Commission ordered Cypress Lakes to provide a surety bond or escrow agreement to guarantee the funds collected under the PAA rates.

At the June 5, 2007, Agenda Conference, the Commission accepted settlement agreements between OPC and three UI systems that have outstanding corporate undertakings. Final orders in these dockets were issued on June 26, 2007.³ Now that final orders have been issued in these three dockets, the amounts held subject to refund for these systems have been released. Accordingly, the cumulative corporate undertaking amount guaranteed by UI has dropped from \$1,727,605 to \$557,351.

In light of the reduction in the amount of the cumulative corporate undertaking as a result of the approval of these settlement agreements, UI has requested the Commission authorize the \$158,475 approved in Order No. PSC-07-0454-PCO-WS be secured by corporate undertaking instead of a surety bond or escrow agreement as stated in the Order. This latter amount is necessary to secure the money collected under the PAA rates and is incremental to the \$59,000 already secured by and included in the \$557,351 presently guaranteed by UI. Approval of UI's request in this matter would bring the cumulative amount outstanding to \$715,826.

UI's 2004, 2005, and 2006 financial statements were used to determine the financial condition of the Company. This analysis shows that UI's 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. These positive measures are somewhat tempered by the decline in the Company's interest coverage ratio and relative level of net income over the three year review period. However, net income has been on average six times greater than the requested cumulative corporate undertaking amount. In summary, UI's financial performance has demonstrated adequate levels of both equity capitalization and profitability on an absolute basis to offset the decline in interest coverage and profitability on a relative basis.

Staff believes UI has adequate financial resources to support a corporate undertaking in the amount requested. Based on this analysis, staff recommends that Order No. PSC-07-0454-PCO-WS be modified to allow Cypress Lakes to secure money collected under its PAA rates with a corporate undertaking. If staff's recommendation is approved, the cumulative corporate undertaking of \$715,826 should be approved contingent upon receipt of the written guarantee of UI and written confirmation that UI does not have any outstanding guarantees on behalf of UI-owned utilities in other states.

Finally, regardless of the type of security provided, Cypress Lakes should keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-30.360(6), F.A.C., the Utility should 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 should be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. In no instance should maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and should be borne by, the Utility.

³ Order No. PSC-07-0529-AS-SU, issued June 26, 2007, in Docket No. 060256-SU, In re: Application for increase in wastewater rates in Seminole County by Alafaya Utilities, Inc.; Order No. PSC-07-0535-AS-WS, issued June 26, 2007, in Docket No. 060258-WS, In re: Application for increase in water and wastewater rates in Seminole County by Sanlando Utilities Corp.; and Order No. PSC-07-0528-AS-WS, issued June 26, 2007, in Docket No. 060260-WS, In re: Application for increase in water and wastewater rates in Highlands County by Lake Placid Utilities Inc.

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Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open to complete the hearing process.
(Fleming, Revell)

Staff Analysis: Because a protest has been filed to the Proposed Agency Action Order No. PSC-07-0199-PAA-WS, this docket should remain open to complete the hearing process.