

Ruth Nettles

From: DAVIS.PHYLLIS [DAVIS.PHYLLIS@leg.state.fl.us]
Sent: Monday, September 24, 2007 4:07 PM
To: Filings@psc.state.fl.us
Cc: mfriedman@rsbattorneys.com; GARY V PERKO; REILLY.STEVE
Attachments: 060257 Motion to Approve Settlement Agreement 09-24-07-.pdf

On behalf of Stephen C. Reilly, Office of Public Counsel
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Email: reilly.stephen@leg.state.fl.us
Phone: (850) 488-9330
Fax: (850) 488-4491

1. This filing is to be made in Docket No. 060257-WS,
In re: Application for increase in water and wastewater rates in Polk County by Cypress Lakes Utilities,
Inc.

2. Attached for filing on behalf of Office of Public Counsel is Office of Public Counsel's Motion to Approve
Settlement Agreement

3. There are a total of eight (8) pages for filing

Phyllis W. Philip-Guide
Assistant to Stephen Reilly

9/24/2007

DOCUMENT NUMBER-DATE

08739 SEP 24 5

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA 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

Filed: September 24, 2007

MOTION TO APPROVE SETTLEMENT AGREEMENT

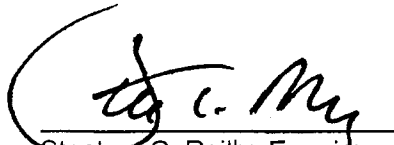
The Office of Public Counsel ("OPC"), Cypress Lakes Utilities, Inc. ("CLUI") and Cypress Lakes Associates, Ltd. ("CLAL"), by and through their undersigned attorneys, file this motion requesting the Florida Public Service Commission ("Commission") to approve the attached Settlement Agreement. In support of this motion, OPC, CLUI and CLAL state:

1. OPC, CLUI and CLAL have entered into a Settlement Agreement that avoids the time, expense and uncertainty associated with adversarial litigation, in keeping with the Commission's long-standing policy and practice of encouraging parties in protested proceedings to settle issues whenever possible. The Settlement Agreement is attached to this motion as Attachment "1".
2. The Settlement Agreement resolves the remaining disputed issues in this docket. OPC, CLUI and CLAL believe that Settlement Agreement serves the public interest and accordingly request the Commission to expeditiously accept and approve the Settlement Agreement as filed and to close Docket No. 060257-WS.

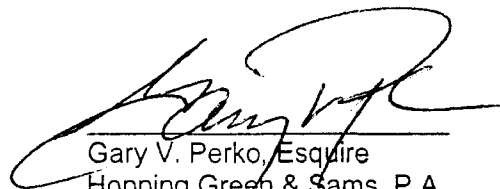
WHEREFORE, OPC, CLUI and CLAL respectfully request the Commission to

approve without modification the attached Settlement Agreement and to close Docket No. 060257-WS in accordance with the terms of the Settlement Agreement.

Respectfully submitted this 24th day of September 2007 by:


Stephen C. Reilly, Esquire
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Phone: (850) 488-9330
reilly.steve@leg.state.fl.us
On behalf of the Citizens
of the State of Florida

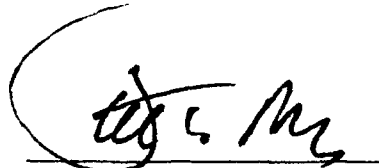
s/Martin S. Friedman
Martin S. Friedman, Esquire
Rose, Sundstrom & Bentley, LLP
2180 West State Road 434
Suite 2118
Longwood, FL 32779
Phone: (407) 830-6331
mfriedman@rsbattorneys.com
On behalf of the Cypress Lakes Utilities, Inc.


Gary V. Perko, Esquire
Hopping Green & Sams, P.A.
Post Office Box 6526
Tallahassee, FL 32314-6526
Phone: (850) 425-2359
garyp@hgslaw.com
On behalf of the Cypress Lakes Associates,
Ltd.

CERTIFICATE OF SERVICE
DOCKET NO. 060257-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. Mail on this 24th day of September 2007, to the following:

Katherine Fleming, Esquire
OFFICE OF THE GENERAL COUNSEL
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399


Stephen C. Reilly
Associate Public Counsel

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
FILED: AUGUST 24^{TK}, 2007

SETTLEMENT AGREEMENT

Cypress Lakes Associates, Ltd. (CLA), Cypress Lakes Utilities, Inc. (CLU), and the Office of Public Counsel (OPC) (collectively, the Parties) hereby agree as follows:

WHEREAS, in 1997, CLA, a development company, sold the water and wastewater facilities serving the Cypress Lakes community to CLU; and

WHEREAS, in accordance with the Memorandum of Closing associated with the 1997 sale of the utility, CLA contributed \$300,000 toward the construction of additional treatment and disposal facilities to accommodate service to lots within CLU's current service territory; and

WHEREAS, lands owned or developed by CLA currently comprise the entire service territory of CLU; and

WHEREAS, CLA has constructed and installed all collection and distribution systems necessary to serve all existing lots within CLU's service territory, 93 of which have not yet been connected to CLU's facilities; and

WHEREAS, as part of an agreement executed in December 2006, CLA has committed to construct and install all distribution, collection and interconnection facilities necessary to facilitate CLU's service to 120 additional lots (referred to as Phase 12).

WHEREAS, as part of that same December 2006 agreement, CLA has paid CLU the amount of \$125,000, which represents half the estimated cost of additional improvements to CLU's wastewater treatment facility; and

WHEREAS, on March 5, 2007, the Florida Public Service Commission (Commission) issued its Notice of Proposed Agency Action Order Approving Increased Rates and Charges and Order Initiating Show Cause Proceedings, Order No. PSC-07-0199-PAA-WS (PAA Order); and

WHEREAS, in the PAA Order, the Commission proposed to approve plant capacity charges of \$1,500 for water and \$1,500 for wastewater; and

WHEREAS, CLA timely filed a petition for formal administrative hearing to protest the PAA Order to the extent it proposed to approve the plant capacity charges noted above; and

WHEREAS, OPC timely filed a cross-petition to the PAA Order; and

WHEREAS, in order to avoid the time and expense of litigation, the Parties desire to settle their differences in this proceeding.

NOW THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. the PAA Order should be amended to provide the following:
 - a. CLU's tariff shall require a water plant capacity charge of \$750.00 per residential connection (per ERC), and a \$1,275.00 wastewater plant capacity charge per residential connection (per ERC), together with the requirement that all water distribution and wastewater collection plant-in-service needed to serve future customers must be fully contributed to CLU.
 - b. In recognition of the above construction of water distribution and wastewater collection plant-in-service by CLA, which was contributed to CLU, the Parties agree that CLA should be credited with having satisfied its obligation to fully contribute the water distribution and wastewater collection plant-in-service associated with the 93 remaining lots in CLU's existing service territory, and for the 120 additional lots located in Phase 12. Further, as a result of the cash

payments previously made by CLA to CLU, the Parties agree that CLA should be credited with having previously paid to CLU the amount of \$920.00 per lot of the \$1,275.00 per lot wastewater capacity charges payable for the 93 remaining lots in CLU's existing service territory, and for the 120 additional lots located in Phase 12. As a result of the above credits, the only additional service availability charges that must be paid by CLA to CLU for the remaining 93 lots in the existing service territory and the additional 120 lots in Phase 12 shall be a \$750.00 per lot water plant capacity charge and a \$355.00 per lot unpaid portion of the wastewater plant capacity charge. These capacity charges shall be due and payable by CLA to CLU at the time the meters are set. After applying the above credits to CLA, the total amount of additional service availability charges that must be paid by CLA to CLU for the 93 lots in the existing service territory and the 120 lots in Phase 12 shall be \$235,365.00 or \$1,105.00 per lot. Pursuant to this Settlement Agreement, CLA shall not be required to pay CLU more than the above \$235,365.00 for service availability charges associated with CLU's provision of service to the 93 lots in the existing service territory and the 120 lots in Phase 12. Consequently, no additional payments are due and payable from CLA to CLU under the December 2006 Developer Agreement between CLA and CLU.

2. **The Parties shall submit this Settlement Agreement to the Commission and request approval on an expedited basis. CLA's petition and OPC's cross-petition to the PAA Order shall be deemed to be withdrawn upon Commission approval of this Settlement Agreement.**

3. Upon approval of this Settlement Agreement, the Parties request that the Commission enter a final order which consummates Order No. PSC-07-0199-PAA-WS, with the modifications agreed to herein. This Settlement Agreement shall be attached to and incorporated by reference in that Final Order.

4. Within 30 days from the date of the Final Order, CLU shall file revised tariff sheets reflecting the service availability policy prescribed in paragraph 1a. of this Settlement Agreement.

5. This Settlement Agreement is intended only to establish the service availability policy of CLU, and to recognize the water distribution and wastewater collection plant-in-service constructed by CLA and contributed to CLU, as well as credit CLA with cash contributions paid by CLA to CLU, as provided above, and does not otherwise alter any rights or obligations between the Parties.

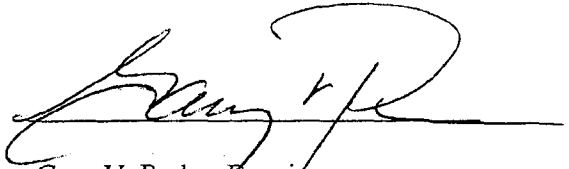
6. The undersigned personally represent that they have authority to execute this Settlement Agreement on behalf of their respective Parties.

7. In the event this Settlement Agreement is not approved by the Commission, it shall be of no further force and effect and shall not be admissible in any future proceedings.

[Remainder of page purposely left blank]

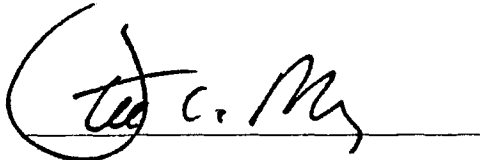
EXECUTED this 24th day of September, 2007.

CYPRESS LAKES ASSOCIATES, LTD.

By: 

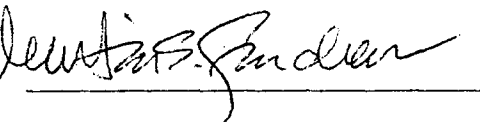
Gary V. Perko, Esquire
Hopping Green & Sams, P.A.
On behalf of CLA

OFFICE OF PUBLIC COUNSEL

By: 

Stephen C. Reilly, Esquire
Associate Public Counsel
On behalf of the Citizens of the
State of Florida

CYPRESS LAKES UTILITIES, INC.

By: 

Martin S. Friedman, Esquire
Rose, Sundstrom & Bentley, LLP
Attorney for CLU