

**STATE OF FLORIDA
PUBLIC SERVICE COMMISSION**

In re: Complaint Requesting Declaration)
That Connections Have Been Made and)
All Amounts Due Have Been Paid and)
Mandatory Injunction Requiring Refund)
of Amounts Paid Under Protest.)
)

Docket No.: _____

Filed: January 7, 2015

**COMPLAINT REQUESTING DECLARATION
THAT CONNECTIONS HAVE BEEN MADE AND
ALL AMOUNTS DUE HAVE BEEN PAID AND
MANDATORY INJUNCTION REQUIRING
REFUND OF AMOUNTS PAID UNDER PROTEST**

INTRODUCTION

Eagleridge I, LLC ("Eagleridge") developed a commercial shopping center property in Lake County, Florida. Pursuant to a written contract between the Eagleridge and Lake Utility Services, Inc. ("LUSI"), LUSI provides water and wastewater utility services to the subject property. Among other things, that contract provides for Eagleridge to pay an up-front system capacity charge, which amounts were timely paid. In consideration for that up-front payment, LUSI knowingly and explicitly waived any right to charge any further or additional tap fees or connection fees (though preserving the right to charge increases in usage rates). After Eagleridge paid all amounts due and owing under the contract, development proceeded, including having all water and wastewater connections made.

After Eagleridge proceeded with development and after those water and wastewater connections were made, LUSI requested and obtained an increase in various usage rates as well as connection fees and service charges from the Florida Public Service Commission ("PSC"). The PSC Order (defined below) approving the increase in various usage rates and connection

fees explicitly limits the application of those increased connection fees and service charges to services rendered or connections made after the date of the PSC Order (specifically, after the stamped approval date of the tariff). Despite the fact that the connections at the development were already made before the date of the PSC Order (and despite application of those PSC-approved connection fees only where such connections have not yet been made), LUSI is seeking to charge Eagleridge these increased connection fees and service availability charges.

LUSI paid these charges under protest and now seeks relief from the PSC. Specifically, Eagleridge seeks a declaration from the PSC that any approved increases do not apply after a connection has been made. Eagleridge also seeks a mandatory injunction directing LUSI to return all amounts paid under protest.¹

BACKGROUND

Parties

1. Eagleridge is a Florida Limited Liability Company with a principal address of 221 South Knowles Avenue, Winter Park, Florida.
2. LUSI is a utility providing water and wastewater service in Lake County, Florida. LUSI has a principal address of 200 Weathersfield, Altamonte Springs, Florida. LUSI is a wholly owned subsidiary of Utilities, Inc.

Jurisdiction

3. The PSC has jurisdiction pursuant to Section 367.011(2), Florida Statutes, which provides in pertinent part that "[t]he Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates".

¹ Eagleridge reserves the right to pursue a damages judgment in circuit court upon a ruling by the PSC in the event the PSC cannot provide full and complete relief.

The Development

4. Eagleridge developed a parcel of commercial property (the "Development") located on U.S. Highway 27 in Clermont, Florida. Eagleridge recently sold the Development. As part of that sale, however, Eagleridge explicitly retained all rights to pursue and recover a refund of the subject disputed fees.

5. The Development is commonly known as Golden Eagle Village, which consists of a Publix-anchored shopping center and includes other inline units and outparcels including a pools store, liquor store, nail salon, dry cleaner, AT&T store, and Chinese take out restaurant.

The Contract and LUSI's Waiver of Future Tap Fees and Connection Fees

6. On or about April 29, 2010, Eagleridge entered into a letter agreement (the "Contract") with LUSI.

7. A copy of the Contract is attached as **Exhibit A**.

8. Pursuant to the Contract, LUSI promised to provide water and wastewater services. Specifically, in exchange for LUSI making water and wastewater utility services available to the Development, Eagleridge agreed to pay an up-front System Capacity Charge in the amount of \$87,242.36, \$300 for Plan Review Fees, and \$150 in Inspection Fees.

9. Eagleridge timely paid all fees and charges identified in the Contract.

10. The Contract further provided that all other "tap fees/connection fees" would be "waived," while any water and wastewater usage charges would be levied as approved by the PSC. Specifically, the Contract provides in pertinent part:

In consideration of this contribution, we [i.e., LUSI] waive all other tap fees/connection fees. Water and wastewater usage charges will be levied in accordance with our authorized tariff as regulated and approved by the Florida Public Service Commission.

**Construction at the Development and
Water and Wastewater Connections Made**

11. Eagleridge diligently proceeded with the Development, including obtaining all necessary permits.

12. On August 10, 2010, Eagleridge, through the Senior Project Manager, applied for a wastewater certification.

13. On March 31, 2011, the Florida Department of Environmental Protection granted the application. The "Expected Date of Connection to Existing System or Treatment Plant" was identified as "April 2011."

14. All connections at the Development to LUSI's system were made during the month of April 2011 and substantial completion of the Development was achieved April 27, 2011.

**PSC Order and FAC Provide that
Rate Increases Do Not Apply to Eagleridge
Because Connections Already Made**

15. In November, 2011, over six (6) months after the connection was made at the Development, LUSI obtained, among other things, permission from the PSC to increase certain water and wastewater service availability charges (the "Fees"). See PSC Order No. PSC-11-0514-PAA-WS (the "PSC Order"), pp. 37-39. Cited portions of the PSC Order are attached as **Exhibit B**.

16. As noted explicitly in the PSC Order, pursuant to Rule 25-30.475 of the Florida Administrative Code, LUSI may not charge the Fees for services rendered or connections made prior to the effective date of the PSC Order. See PSC Order, pp. 38-39 (with respect to the approved water service availability charges, the PSC Order provides in pertinent part "[t]he

approved charges shall be effective for service rendered on or after the stamped approval date of the tariff, pursuant to Rule 25-30.475, F.A.C.").

17. Under the Florida Administrative Code rule cited in the PSC Order, the Fees are non-recurring charges, which cannot be charged by LUSI to a customer (such as Eagleridge) after the connection has been made at the subject property. See Fla. Admin. Code 25-30.475(2). Specifically, the Florida Administrative Code provides in pertinent part:

25-30.475 Effective Date of Approved Tariffs.

Effective dates shall be as follows unless otherwise authorized by the Commission:

(2) Non-recurring charges (such as service availability,² guaranteed revenue charges, allowance for funds prudently invested, miscellaneous services) **shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets provided customers have received notice.** The tariff sheets will be approved upon staff's verification that the tariffs are consistent with the Commission's decision and that the proposed customer notice is adequate. In no event shall the rates be effective for service rendered prior to the stamped approval date.

Fla. Admin. Code 25-30.475(2) (emphasis added).

18. The Florida Administrative Code provides definitions with respect to connections, all of which define the time of the connection as the point in time when the service pipe of the utility is connected with the customer. See Fla. Admin. Code 25-30.210(5) and 25-30.515(1). Specifically, the Florida Administrative Code defines connections as follows:

25-30.210 Definitions.

For the purpose of this part, the following definitions apply:

² There should not be any dispute that the main extension charges and plant capacity charges are service availability charges and, thus, non-recurring charges as that term is used in the Florida Administrative Code.

(5) "Service Connection" shall mean the point of connection of the customer's piping with the meter or service pipe owned by the utility.

Fla. Admin. Code 25-30.210(5) (emphasis added).

19. The Florida Administrative Code defines service pipe as "(4) "Service Pipe" shall mean the pipe between the utility's mains and the point of delivery and shall include all of the pipe, fittings and valves necessary to make the connection excluding the meter." Fla. Admin. Code 25-30.210(4) (emphasis added).

20. The Florida Administrative Codes further provides:

25-30.515 Definitions.

When used in this part or in service availability policies or in service availability contracts or agreements, the following terms have the following meanings:

(1) Active Connection means a connection to the utility's system at the point of delivery of service, whether or not service is currently being provided.

Fla. Admin. Code 25-30.515(1) (emphasis added).

21. Simply put, once the point of connection has been made between the customer's piping and the utility's service pipe, regardless of whether or not service is currently being provided, the connection exists, the service has been rendered, and any new non-recurring charges approved by the PSC may not be passed along to the customer.

22. When the PSC Order became effective (i.e., November 2011), with respect to where the connections had already been made, LUSI was explicitly prohibited by the Florida Administrative Code and the PSC Order from charging the Fees to Eagleridge.

**LUSI Attempts to Charge Eagleridge
the New Fees Where Connections Already Made
and Corresponding Dispute Between LUSI and Eagleridge**

23. By letter dated March 4, 2013, LUSI wrote to Eagleridge explaining that the PSC had granted LUSI the right to charge the (increased) Fees at a rate of \$4.44 per gallon. A copy of that March 4, 2013 letter is attached as **Exhibit C**.

24. Multiple correspondence have been exchanged between counsel for Eagleridge and LUSI regarding the Fees. There have also been phone calls and an in-person meeting between counsel in order to resolve the parties' dispute short of this Complaint.

25. Despite their efforts, the parties dispute whether LUSI is entitled to charge the Fees to LUSI.

26. Eagleridge proceeded to pay the Fees under protest, which funds LUSI still retains.

27. Eagleridge has repeatedly explained and argued to LUSI that LUSI does not have any legitimate basis to charge the Fees to Eagleridge. As an initial matter, the water and wastewater connections have already been made and, by rule (i.e., Florida Administrative Code) and the PSC Order, LUSI is prohibited from charging the Fee to Eagleridge. Despite the clarity of the Rules and the PSC Order, LUSI refuses to budge in its position (and refuses to refund the monies paid under protest).

28. Additionally, in the Contract, LUSI explicitly waived all "tap fees/connection fees" beyond those paid at the time of the Contract.

29. The PSC should not permit LUSI to charge the Fees in clear violation of the applicable rules and the clear explicit language in the PSC Order.

RELIEF REQUESTED

Eagleridge respectfully requests that the PSC:

- i. declare that the Fees are not applicable to Eagleridge where connections have already been made;
- ii. declare that Eagleridge has paid all amounts due and owing for service availability charges and connection fees with respect to where connections have already been made; and
- iii. order and direct that LUSI immediately return and refund all monies paid under protest.

Dated: December 7, 2015

Respectfully submitted,

/s/ Samuel A. Miller

Samual A. Miller, Esq.

Florida Bar No. 34991

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Secondary E-mail: susan.cali@akerman.com

AKERMAN LLP

420 South Orange Ave., Suite 1200

Orlando, FL 32801

407-423-4000 phone

407-843-6610 fax

Counsel for Eagleridge I, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the this document was furnished by email and first class mail this 7th day of December, 2015 to:

Martin S. Friedman, Esq.
Friedman, Friedman & Long, P.A.
766 N Sun Dr Ste 4030
Lake Mary, FL 32746-2554
mfriedman@ffllegal.com

/s/ Samuel A. Miller

EXHIBIT A



April 29, 2010

Mr. Daniel Butts, Senior Vice President
~~BPL-Eagleridge, L.L.C.~~ *Eagleridge I, LLC*
P.O. Box 3010
Winter Park, FL 32790 *DKB*

Re: Golden Eagle Village - Phase 1
US Highway 27
Clermont, Florida

Dear Mr. Butts:

As requested, our Company, Lake Utility Services, Inc. is willing to make water and wastewater utility service available to Phase 1 of the Golden Eagle Village in Lake County, Florida. It is our understanding that the project will consist of a 46,031 square foot grocery store, a combined 12,650 square foot building space for mixed retail and 5,800 square foot of building space with 387 seats for restaurant use.

As the Owner, the ~~BPL-Eagleridge, L.L.C.~~ *Eagleridge I, LLC* *DKB* will be responsible for the construction and installation of all necessary on-site water and wastewater collection facilities such as water services, water mains, fire hydrants, manholes, service laterals, valves and other facilities reasonably required to provide adequate utility service to your project. All facilities will be extended by the ~~BPL-Eagleridge, L.L.C.~~ *Eagleridge I, LLC* *DKB* to our existing 8" sanitary lateral located in the Lake County right of way on Eagle Ridge Boulevard and 12" potable water main also located within the right of way on Eagle Ridge Boulevard and the FDOT right of way on U.S. Highway 27 per utility plans.

All facilities installed by Owner will be in accordance with all governmental specifications and in conformance with the construction standards utilized in our existing facilities. Owner will indemnify our Company from any liability incurred during the installation of these facilities. All of the on-site and off-site sanitary facilities constructed up to the point of connection under the agreement shall remain under the ownership and responsibility of the Owner. All of the on-site and off-site water facilities up to the point of connection to each meter, as well as all necessary easements, shall be transferred to our Company at no cost. Plans and specifications will be submitted to our Company for review, and shall have received the written approval of our Company before construction is begun, which approval shall not be unreasonably withheld or delayed.

We are willing to provide the requested utility service in consideration of an up front System Capacity Charge in the amount of \$87,242.36, \$300 Plan Review Fee, and \$150 Inspection Fee. This reservation of capacity fee is based on your requested utility capacity requirements as provided through (7) 5/8" water meters, (5) 1.5" water meters, (1) 2" water meter and an 8" sanitary lateral. Meter and account set up fees will be assessed at the time of application. In consideration of this contribution, we waive all other tap fees/connection fees. Water and wastewater usage charges will be levied in accordance with our authorized tariff as regulated and approved by the Florida Public Service Commission.

a Utilities, Inc. company Lake Utility Services, Inc.

Mr. Butts
Page 2
April 29, 2010

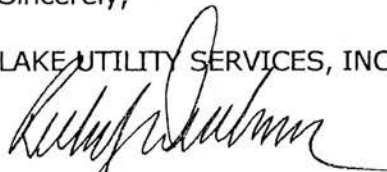
Eagleridge I, LLC *DWR*

If this proposal is acceptable to the ~~BPL~~ Eagleridge, L.L.C., please sign and forward the original of this letter along with the required \$87,692.36 payment by May 14, 2010 to the attention of Bryan K. Gongre in our Altamonte Springs office.

If you have any other questions or concerns, please contact Bryan at 1.800.272.1919, extension 1360.

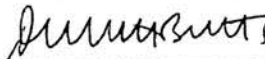
Sincerely,

LAKE UTILITY SERVICES, INC.

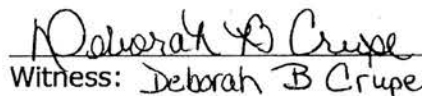


Richard J. Durham
Regional Vice President

ec: Patrick Flynn, Regional Director



Accepted: Daniel H. Butts



Witness: Deborah B. Crupe

EXHIBIT B

VIII. OTHER ISSUES

A. Water Service Availability Charges

LUSI requested to revise its water service availability charges to increase the main extension charge from \$270 to \$800, and the plant capacity charge from \$270 to \$1,783. For Lake Groves, the Utility is requesting to increase the main extension charge from “negotiable” to \$800, and the plant capacity charge from \$707 to \$1,783. In addition, for Lake Groves, LUSI is requesting to increase its meter installation charges for a 5/8” x 3/4” meter from \$67 to \$150, and for a 1” meter from \$114 to \$250, so that the charges mirror the present meter installation charges of the other LUSI systems. Service availability charges for water were last approved for LUSI on May 15, 1999. Rule 25-30.580, F.A.C., establishes guidelines for designing service availability policy. Pursuant to the rule, the maximum amount of contributions-in-aid-of-construction (CIAC), net of amortization, shall not exceed 75 percent of the total original cost, net of accumulated depreciation, of the Utility’s facilities and plant when the facilities and plant are at their designed capacity. The minimum amount of CIAC shall not be less than the percentage of such facilities and plant that is represented by the water transmission and distribution and sewage collection systems.

1. Main Extension Charge

The main extension charge is used to pay for the original cost of the water transmission and distribution plant. In the instant case, LUSI’s service availability policy requires that additional customers contribute property or donate lines to pay for the cost of the water transmission and distribution plant. However, the main extension charge would allow the Utility to collect the appropriate CIAC from a single property owner in lieu of donating lines in addition to developers who may be installing and donating lines.

In its filing, the Utility listed \$18,227,478 for the original cost of the water transmission and distribution plant. This amount represents the minimum amount of CIAC that shall be included in total plant. Hence, according to Rule 25-30.580, F.A.C., the main extension charge shall be designed to collect \$18,227,478. Although the total amount of LUSI’s proposed service availability charges fall within the guidelines set forth in Rule 25-30.580, F.A.C., we find the charges shall be designed so that the total amount of the original cost of the transmission and distribution plant is allocated to the main extension charge. This cost shall be equally allocated to all ERCs. LUSI determined that the water plant has a design capacity of 12,781 ERCs. As such, we find that the appropriate main extension charge shall be \$1,426 per ERC ($\$18,227,478 \div 12,781$). The approved main extension charge of \$1,426 is consistent with the guidelines in Rule 25-30.580, F.A.C., which require, at a minimum, the cost of the lines shall be contributed.

2. Plant Capacity Charge

The remainder of the CIAC received by the Utility shall be obtained through the plant capacity charge. The balance of CIAC for all of the water plant in service as of June 30, 2010, is \$17,040,299. LUSI’s proposed service availability charges (both main extension and plant

capacity charges) are projected to collect approximately \$9,032,750 in additional CIAC through December 31, 2023, which will increase the total amount of CIAC to \$26,073,050. The total amount of CIAC, less projected amortization of \$13,251,450, is 12,821,600 or 69 percent of the total original cost, less accumulated depreciation, of the Utility's water facilities and plant at its designed capacity. The total amount of revised service availability charges requested by LUSI is \$2,583 per ERC. We find that a main extension charge of \$1,426 per ERC is appropriate. Therefore, the plant capacity charge shall be the difference between the total amount of CIAC and the main extension charge, or \$1,157 (\$2,583 - \$1,426). The approved plant capacity charge of \$1,157 is consistent with the guidelines in Rule 25-30.580, F.A.C.

3. Meter Installation Charges

LUSI is requesting to increase the meter installation charge in Lake Groves for a 5/8" x 3/4" meter from \$67 to \$150, and for a 1" meter from \$114 to \$250. Current meter installation charges in the other LUSI systems are \$150 for a 5/8" x 3/4" meter and \$250 for a 1" meter. The Utility is requesting an increase for only Lake Groves so that the charges mirror the meter installation charges of the other LUSI systems. We find that the meter installation charges are reasonable and shall be approved.

4. Conclusion

We find that the Utility is authorized to revise its water service availability charges as set forth herein. We find that the charges are reasonable and consistent with the guidelines set forth in Rule 25-30.580, F.A.C., and shall be approved. The approved charges shall be effective for service rendered on or after the stamped approval date of the tariff, pursuant to Rule 25-30.475, F.A.C. The appropriate revised water service availability charges are reflected below.

<u>Type of Charge</u>	<u>Current</u>	<u>Requested</u>	<u>Approved</u>
Main Extension Charge	\$270	\$800	\$1,426
Plant Capacity Charge	\$270	\$1,783	\$1,157
Lake Groves Meter Installation			
5/8" x 3/4"	\$67	\$150	\$150
1"	\$114	\$250	\$250

B. Wastewater Service Availability Charges

In its filing, LUSI did not request to revise its wastewater service availability charges. The Utility's current wastewater service availability charges are set at a negotiable rate for the main extension charge and \$558 for the plant capacity charge. We find that the Utility's wastewater main extension charge shall be revised to include a dollar amount of \$1,243. Rule 25-30.580, F.A.C., establishes guidelines for designing service availability policy. Pursuant to the rule, the maximum amount of CIAC, net of amortization, shall not exceed 75 percent of the total original cost, net of accumulated depreciation, of the Utility's facilities and plant when the facilities and plant are at their designed capacity. The minimum amount of CIAC shall not be less than the percentage of such facilities and plant that is represented by the water transmission

and distribution and sewage collection systems. The main extension charge is used to pay for the original cost of the wastewater sewer collection system. According to LUSI's wastewater service availability policy, the sewer collection system is installed by the developer and contributed to the Utility. However, a main extension charge would allow the Utility to collect the appropriate CIAC from a single property owner in lieu of donating lines in addition to developers who may be installing and donating sewer collection lines.

1. Main Extension Charge

In response to our staff's data request, LUSI provided the necessary information to calculate the appropriate wastewater main extension charge. The Utility listed \$5,242,654 for the original cost of the sewer collection system. The majority of this amount was contributed by the developer. This amount represents the minimum amount of CIAC that shall be included in total plant. Hence, according to the guidelines in Rule 25-30.580, F.A.C., the main extension charge shall be designed to collect \$5,242,654. This cost shall be equally allocated to all ERCs. LUSI determined that the wastewater plant has a design capacity of 4,217 ERCs. As such, we find that the appropriate wastewater main extension charge shall be \$1,243 per ERC ($\$5,242,654 \div 4,217$). The approved main extension charge of \$1,243 is consistent with the guidelines in Rule 25-30.580, F.A.C., which require at a minimum the cost of the lines shall be contributed.

2. Plant Capacity Charge

The remainder of the CIAC received by the Utility shall be obtained through the plant capacity charge. LUSI's wastewater plant capacity charge is currently \$558. We find that it is not necessary to change the plant capacity charge. The approved wastewater service availability charges (both main extension and plant capacity charges) are projected to collect approximately \$1,916,497 in additional CIAC through October 30, 2021, which will increase the total amount of CIAC to \$12,856,179. The total amount of the wastewater service availability charges approved by us is \$1,801 per ERC. The total amount of CIAC, less projected amortization of \$8,731,071, is \$4,125,108 or 70 percent of the total original cost, less accumulated depreciation, of the Utility's wastewater facilities and plant at its designed capacity. The current wastewater plant capacity charge of \$558 is consistent with the guidelines in Rule 25-30.580, F.A.C.

3. Conclusion

We find that it appropriate to revise LUSI's wastewater service availability charges. The approved charges are reasonable and consistent with the guidelines set forth in Rule 25-30.580, F.A.C., and shall be approved. The approved charges shall be effective for service rendered on or after the stamped approval date of the tariff, pursuant to Rule 25-30.475, F.A.C. The appropriate revised water service availability charges are reflected below.

<u>Type of Charge</u>	<u>Current</u>	<u>Approved</u>
Main Extension Charge	Negotiable	\$1,243
Plant Capacity Charge	\$558	\$558

EXHIBIT C



March 4, 2013

Ms. Shannon Mitchell
BPL Eagleridge, LLC
P.O. Box 3010
Winter Park, FL 32790

RE: Golden Eagle Village – Phase 1
Increase in Wastewater Main Extension Charges

Dear Ms. Mitchell:

In December 2011, the Florida Public Service Commission granted Lake Utility Services, Inc. an increase in the amount of Wastewater Main Extension Charges that the Utility is entitled to recover per gallon of General Service (commercial) customers.

Per ERC	Previous Rate	New Rate
Main Extension	\$ none	\$4.44/gallon
Net Increase		\$4.44/gallon

This charge will be applied to the balance of the prepaid capacity fees for units that have yet to be connected for service. Our conversation the week of 2/25/2013 verified the number of units currently being served and their assigned capacity within the Golden Eagle Village indicating that there is 14,330 gallons of reserved capacity yet to be assigned. I have enclosed a spreadsheet with the breakdown. As a result, BPL Eagleridge, LLC will need to remit \$63,625.20 (\$4.44 x 14,330 gallons) in Wastewater Main Extension Charges. This amount will need to be received by Lake Utility Services, Inc. prior to any new meters being set within the project.

Should you have any questions, please feel free to contact me by calling 800.272.1919, extension 1360.

Sincerely,
LAKE UTILITY SERVICES, INC.

Bryan K. Gongre
Regional Manager

Enclosure