

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: August 02, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Rieger)
Office of the General Counsel (Fleming)

RE: Docket No. 070275-WS – Application for amendment of Certificates 592-W and 509-S to extend water and wastewater service area to include certain land in Polk County by Cypress Lakes Utilities, Inc.

AGENDA: 08/14/07 – Regular Agenda – Proposed Agency Action Issue 2 - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Carter

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\070275.RCM.DOC

Case Background

On April 17, 2007, Cypress Lakes Utilities, Inc. (Cypress Lakes or utility) filed an application with the Commission to amend Certificate Nos. 592-W and 509-S to add water and wastewater territory to its service area in Polk County, pursuant to section 367.045, Florida Statutes. Cypress Lakes is a Class B utility which provides water and wastewater service in Polk County to approximately 1,218 water customers and 1,123 wastewater customers. The utility's 2006 annual report shows combined water and wastewater annual operating revenues of \$745,699, and a net income of \$35,352. The proposed area is in the Southwest Florida Water Management District. The applicant proposes to serve 120 potential water and wastewater residential customers. The area requested by Cypress Lakes consists of approximately 50 acres

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which is the site of a new development (Phase 12) located inside Cypress Lakes Golf and Country Club. The Commission has jurisdiction pursuant to section 367.045, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve Cypress Lakes' application to amend Certificates 592-W and 509-S?

Recommendation: Yes. The Commission should approve Cypress Lakes' application to amend Certificates 592-W and 509-S to include territory as reflected in Attachment A. The resultant order should serve as Cypress Lakes' amended certificates and should be retained by the utility. The utility should charge the customers in the territory added herein the rates and charges contained in its current tariff until authorized to change by the Commission. (Rieger, Fleming)

Staff Analysis: The application is in compliance with the governing statute, section 367.045, Florida Statutes, and Rule 25-30.036, Florida Administrative Code. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code.

Staff believes that the utility has demonstrated its ability to serve the proposed extended areas and that it has the necessary financial and technical expertise to do so. The Department of Community Affairs has indicated that the utility's application is consistent with the Polk County Comprehensive Plan. The utility operates a .448 MGD water treatment facility, which consists of pumping and chlorine disinfection, with no storage capability. For wastewater, there is a .175 MGD extended aeration wastewater treatment facility with effluent disposal by means of reuse to two golf courses inside the Cypress Lakes community. To accommodate the additional flows from the proposed area, the utility indicated in its application that its water treatment plant has sufficient capacity. However, expansion will be needed for the wastewater treatment plant. Pursuant to an agreement between the utility and the developer of the property, the developer has agreed to share in funding the \$250,000 estimated cost of the improvements to the wastewater treatment plant. The agreement, which is further discussed in Issue 2, also indicates that the water distribution and sewer collection lines will be contributed.

The utility also provided verification of a deed to the water and wastewater treatment plant sites. Adequate service territory maps and a territory description have also been provided. No objections to the application have been received and the time for filing such has expired.

Based on the foregoing, staff believes it is in the public interest to approve the application filed by Cypress Lakes to amend its territory to reflect the area described in Attachment A. The resultant order should serve as Cypress Lakes' amended certificates and should be retained by the utility. The utility should charge the customers in the territory added herein the rates and charges contained in its current tariff until authorized to change by the Commission.

Issue 2: Should the special developer agreement be approved?

Recommendation: Yes. The special developer's agreement in Attachment B between Cypress Lakes Associates, Ltd. and Cypress Lakes Utilities, Inc. should be approved. The proposed developer agreement should not impact the service availability charges that may be established in the pending rate case Docket No. 060257-WS. (Rieger)

Staff Analysis: The utility's amendment application included an agreement for water and wastewater service for the new 120 connection, Phase 12 development located inside Cypress Lakes Golf and Country Club. Pursuant to Rule 25-30.550(2), Florida Administrative Code, each special service availability contract shall be approved by the Commission prior to becoming effective. Contained within the agreement, the developer agrees to construct and install the complete distribution, collection and interconnection facilities needed to serve Phase 12. Ownership of this property will be conveyed to the utility. The water treatment plant has sufficient capacity. However, expansion of the utility's wastewater treatment plant will be necessary to accommodate additional flows from the proposed amended area. In the proposed agreement, the developer agrees to pay the utility half of the \$250,000 estimated cost for necessary improvements to the utility's wastewater treatment plant. The utility will in turn provide water and wastewater service to all customers within the proposed area. Existing monthly service rates approved by the Commission shall apply.

Currently, the utility's service availability fees and charges do not include plant capacity charges for water or wastewater. Pursuant to Order No. PSC-07-0199-PAA-WS, issued March 5, 2007, in Docket No. 060257-WS,¹ the Commission authorized plant capacity charges of \$1,500 each for water and wastewater service for new connections. However, the order was protested by the developer. A hearing has been set for September 2007. Negotiations are ongoing among the parties to address the appropriate plant capacity charges for the proposed new development as well as the remaining undeveloped lots in Cypress lakes. The developer's attorney has provided a letter to staff on July 31, 2007, indicating his understanding that the approval of the certificate amendment and developer agreement does not impact any service availability charges that may be established in the pending rate case docket.

Pursuant to Rule 25-30.550(3), Florida Administrative Code, each special service availability contract and developer's agreement shall be accompanied by a statement from the utility affirming the current treatment plant connected load, the current treatment plant capacity, and the amount of capacity reserved under the agreement or contract. This information shows that the utility has the capacity to serve the customers in the proposed area with the wastewater expansion. Current CIAC levels for the utility are 23% for water and 34% for wastewater. If the developer's agreement is approved and the proposed plant capacity charges are approved in the pending rate case, the utility's CIAC levels for water and wastewater will be approximately 42% and 46%, respectively.

Staff recognizes that developer's agreements are negotiated transactions. If they are not approved and the utility declines to amend its service territory, the developers might have to

¹ In re: Application for increase in water and wastewater rates in Polk County by Cypress Lakes Utilities, Inc.

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provide their own water and wastewater service by building small water and wastewater plants, or installing individual wells and septic tanks, which are not the best environmental option.

Based on the above, staff believes that the special developer agreement in Attachment B between Cypress Lakes Associates, Ltd. and Cypress Lakes Utilities, Inc. should be approved. The proposed developer agreement should not impact the service availability charges that may be established in the pending rate case in Docket No. 060257-WS.

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Issue 3: Should this docket be closed?

Recommendation: Yes. If no protest to the approved special developer agreement is filed by a substantially affected person within 21 days of the issuance of this Order, the docket should be closed upon issuance of a Consummating Order. (Fleming)

Staff Analysis: If no protest to the approved special developer agreement is filed by a substantially affected person within 21 days of the issuance of this Order, the docket should be closed upon issuance of a Consummating Order.

CYPRESS LAKES UTILITIES, INC.

EXTENTION OF SERVICE TERRITORY

TO BE ADDED TO WATER AND WASTEWATER CERTIFICATES:

The East 2 of the Northwest 3 of the Northwest 3 of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida, LESS AND EXCEPT the East 132.0 feet of the South 330.0 feet thereof:

TOGETHER WITH

The West 2 of the Northeast 3 of the Northwest 3 of Section 3, Township 27 South, Range 23 East, Polk County, Florida; LESS AND EXCEPT the East 330.0 feet thereof an LESS AND EXCEPT the South 330.0 feet thereof.

TOGETHER WITH

The East 330.0 feet of the West 2 of the Northeast 3 of the Northwest 3 of Section 3, Township 27 South, Range 23 East, Polk County, Florida; LESS AND EXCEPT the South 330.0 feet thereof. Excepting therefrom any portion of the above described land lying within the maintained right-of-way known as Max Cash Road as depicted on Polk County Maintained Right-of-Way Map recorded May 16, 1990, in Map Book 11, Page 55, of the Public Records of Polk County, Florida.

TOGETHER WITH

The West 2 of the Northwest 3 of the Northwest 3 of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida

TOGETHER WITH

The South 30.0 feet of the West 2 of the Northeast 3 of the Northwest 3 of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida.

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

Cypress Lakes Utilities, Inc.
Pursuant to
Certificate Number 592-W

to provide wastewater service in Polk County in accordance with the provisions of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-00-0264-FOF-WS	02-08-2000	971220-WS	Transfer
*	*	070275-WS	Amendment

*** Order Number and date to be provided at time of issuance.**

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

Cypress Lakes Utilities, Inc.
Pursuant to
Certificate Number 509-S

to provide wastewater service in Polk County in accordance with the provisions of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-00-0264-FOF-WS	02-08-2000	971220-WS	Transfer
*	*	070275-WS	Amendment

*** Order Number and date to be provided at time of issuance.**

**AGREEMENT FOR WATER AND WASTEWATER SERVICE -
CYPRESS LAKES, PHASE 12**

This Agreement is entered into this 22 day of December, 2006 by and between Cypress Lakes Associates, Ltd. (hereinafter referred to as "Developer"), and Cypress Lakes Utilities, Incorporated, a Florida corporation (hereinafter referred to as "Utility").

WITNESSETH

WHEREAS Developer is the owner of or is duly authorized to act on behalf of the owners of certain real estate in Polk County, Florida, hereinafter referred to as "Property" and more fully described in Exhibit A attached hereto, and

WHEREAS, Utility is engaged in the business of furnishing water and wastewater service to the public in its service territory as authorized by its Certificate of Public Convenience and Necessity and

WHEREAS, Developer desires Utility to provide water and wastewater service to the Property to serve 120 residential building lots and Utility desires to provide water and wastewater service to the Property according to the terms and conditions of this Agreement.

WHEREFORE, in consideration of the mutual covenants as hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

Representations and Warranties of Developer

Developer represents and warrants:

1. That Developer is the owner of or is duly authorized to act on behalf of the owners of the Property, and;
2. That Developer will cooperate fully with the Utility in any and all applications or petitions to public authorities deemed necessary or desirable by Utility in connection with the construction and installation of the water and wastewater systems contemplated by this Agreement.
3. That Developer will convey to the Utility or provide by recorded subdivision plats such easements or rights of way as the Utility may require for the Utility's performance of its obligations under this Agreement. Any such plats, conveyances or licenses will be in form satisfactory to Utility's legal counsel, and in conformance with the amendment to the Declaration of Covenants, Conditions, Restrictions, and Easement Agreement, substantially in the form attached hereto as Exhibit B (the "Amendment Declaration")

ARTICLE II

Construction and Installation of Facilities by Developer

1. The Developer hereby agrees to construct and install the complete distribution, collection and interconnection facilities (hereinafter collectively referred to as "Facilities") including but not limited to water and wastewater mains, pumping stations, valves, services, and other facilities as are reasonably required to provide adequate water and wastewater service (in accordance with applicable governmental standards) to all units to be constructed within the Property. Developer shall be responsible for interconnecting the Facilities with adequate diameter water and wastewater mains to Utility's existing water and wastewater systems at a point specified by Utility.
2. The Facilities to be constructed by Developer pursuant to Paragraph 1 of this Article II when installed, will meet the reasonable needs of the customers within the Property. All plans, specifications and construction shall be in accordance with applicable standards, requirements, rules and regulations and agencies of the State of Florida and respective County authority.
3. All materials used shall be new, first-class, and suitable for the uses made thereof.
4. Developer warrants all construction, materials, workmanship, and the trouble-free operation of the Facilities for one year after completion of each phase or section.
5. Developer shall save and hold Utility harmless from and against all suits or claims that may be based upon any injury to any person or property that may occur in the course of the performance of the construction of the Facilities by Developer or by anyone acting on Developer's behalf, or under Developer's supervision and control, including but not limited to claims made by employees of Developer, and Developer shall, at its own cost and expense, pay all costs and other expenses arising therefrom, or incurred in connection therewith, including reasonable attorneys' fees.
6. All of the Facilities installed by Developer pursuant to this Agreement shall become the property of Utility as installed. Developer shall execute all conveyances, licenses and other documents reasonably requested by Utility that are necessary or desirable in its opinion to ensure its ownership of, ready access to, and operation of the Facilities. Developer shall furnish Utility with lien waivers in a form satisfactory to Utility's counsel from Developer and from all suppliers, subcontractors and all others who furnish labor, equipment, materials, rentals, or who perform any services in connection with the Facilities construction herein.

7. Developer shall, prior to the transfer to Utility of the Facilities, grant permanent, assignable easements satisfactory to Utility, authorizing Utility to own, operate and maintain the Facilities and providing reasonably adequate rights of access and working space for such purposes.
8. Developer shall, upon transfer to Utility of the Facilities, provide to Utility operating manuals, permits, as-built drawings, and all other information reasonably required to operate, maintain, and repair the Facilities.

ARTICLE III

Developer Contribution/Connection Fees

Developer agrees to pay Utility half of the cost of necessary improvements to the Utility's wastewater treatment facility, including costs associated with engineering, design, permitting, and construction activities, and whose total estimated cost is \$250,000. Developer agrees to pay Utility \$125,000 upon execution of this Agreement, which will be applied toward its obligation to pay half of the actual cost of engineering design, permitting, and construction activities.

ARTICLE IV

Utility Service, Rates and Charges

1. Upon installation of the Facilities, completion of the interconnection and payment of fees by Developer, Utility agrees to supply all customers within the Property with adequate and customary water and wastewater service.
2. Water and wastewater usage charges shall be rendered by Utility in accordance with Utility's rates, rules and regulations and conditions of service from time to time on file with the Florida Public Service Commission and then in effect.

ARTICLE V

Inclusion in Service Area

Upon the execution of this Agreement, Utility shall petition the Florida Public Service Commission for permission to include the Property in Utility's service area as approved by the Florida Public Service Commission. In the event that the Florida Public Service Commission shall fail to approve and grant said petition to include the Property in Utility's service area within twelve (12) months from the date hereof, either party hereto shall have the right to terminate this Agreement at any time until the Property is included in the said service area. The Developer shall be responsible for payment of all costs associated with said

petition and make a deposit in the amount of \$12,000 with the Utility for said expenses

ARTICLE VI

General

1. This Agreement is intended to be performed in the State of Florida and shall be governed by the laws of the State of Florida.
2. Except as provided for in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligation hereunder, if such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident; fire; acts of the public enemy; interference by civil authorities, acts or failure to act, decisions or orders or regulations of any governmental or military body or agency, office or commission; delays in receipt of materials; or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence such party is unable to prevent or overcome, except as otherwise provided for herein. Should any of the foregoing events occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.
3. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.
4. Utility agrees to indemnify Developer, its successors and assigns, and hold Developer harmless against any loss, damage, liability, expense or cost accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Utility under this Agreement; Developer agrees to indemnify Utility, its successors and assigns, and hold it and them harmless against any loss, damage, liability, expense or cost of Utility, accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Developer under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Utility by Developer.
5. This Agreement sets forth the complete understanding between Developer and Utility, and any amendments hereto to be effective must be made in writing.
6. Notices and correspondence required hereunder shall be given to Developer and to Utility at the following addresses, or at any other addresses designated in writing by either party subsequent to the date hereof:

If to Utility: Cypress Lakes Utilities, Inc.
2335 Sanders Road
Northbrook, Illinois 60062
Attn: Ms. Tasa Crossell, Chief Operating Officer

If to Developer: Cypress Lakes Associates, Ltd.
C/L Community Investment Corporation
11300 4th Street North, STE 130
St. Petersburg, Florida 33716
Attn: Mr. Alan Taylor

With copy to: Ballast Point Group
11300 4th Street North, Ste 200
St. Petersburg, FL 33716
Attn: Julie Fanelli

Delivery when made by registered or certified mail shall be deemed complete upon mailing.

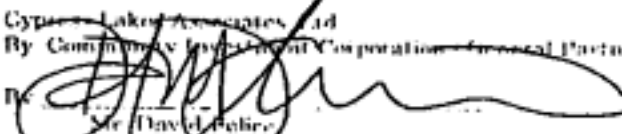
7. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
8. The Exhibits to this Agreement are a part hereof and are hereby incorporated by reference.
9. If this Agreement is not executed prior to December 27, 2006, then the terms and conditions contained herein will be waived, with no further obligations or responsibilities to either party.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the 2nd day of August 2007.

Cypress Lakes Utilities, Incorporated

By 
Mr. John M. Logan, General Vice President

ATTEST

Cypress Lakes Associates, Ltd.
By Community Investment Corporation (General Partner)
By 
Mr. David Poline


ATTEST:

EXHIBIT "A"

The East $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida; LESS AND EXCEPT the East 132 feet of the South 330 feet thereof;

TOGETHER WITH

A non-exclusive easement for ingress, egress and utility purposes as provided for and described in an instrument entitled "Declaration of Easement" recorded in Official Records Book 2978, Page 1031, of the public records of Polk County, Florida, over and across the following described land:

The South 30 feet of the West $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 3, Township 27 South, Range 23 East, Polk County, Florida;

TOGETHER WITH

The West $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 3, Township 27 South, Range 23 East, Polk County, Florida; LESS AND EXCEPT the East 330.0 feet thereof and LESS AND EXCEPT the South 330.0 feet thereof;

TOGETHER WITH

The East 330.0 feet of the West $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 3, Township 27 South, Range 23 East, Polk County, Florida; LESS AND EXCEPT the South 330.0 feet thereof. Excepting therefrom any portion of the above described land lying within the maintained right of way known as Max Cash Road as depicted on Polk County Maintained Right-of-Way Map recorded May 16, 1990, in Map Book 11, Page 55, of the public records of Polk County, Florida;

TOGETHER WITH

The West $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida;

TOGETHER WITH

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The South 30 feet of the East $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 3, Township 27 South, Range 23 East, Polk County, Florida;

AND

The South 30 feet of the West $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida.