

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-

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**DATE:** October 11, 2007

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Revell, Rendell, Bulecza-Banks)  
Office of the General Counsel (Fleming)

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

**AGENDA:** 10/23/07 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Argenziano

**CRITICAL DATES:** 11/26/07 (8-Month Effective Date)

**SPECIAL INSTRUCTIONS:** None

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

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### 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 Proposed Agency Action (PAA) Order No. PSC-07-0199-PAA-WS,<sup>1</sup> the Commission approved increased 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. (CLA), 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.

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<sup>1</sup> 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.

By Order No. PSC-07-0454-PCO-WS,<sup>2</sup> the Commission acknowledged Cypress Lakes' implementation of the PAA rates pursuant to Section 367.081(8), F.S. and required the Utility to obtain either a surety bond or escrow agreement to guarantee the funds collected subject to refund. By Order No. PSC-07-0607-PCO-WS<sup>3</sup>, the Commission modified Order No. PSC-07-0454-PCO-WS to allow the utility to secure its PAA rates subject to refund with a corporate undertaking.

On September 24, 2007, CLA, OPC and the Utility (collectively, "Parties"), filed a Motion To Approve Settlement Agreement. That motion and settlement agreement are included in this recommendation as Attachment A.

This recommendation addresses the Parties' Settlement Agreement. The Commission has jurisdiction pursuant to Section 367.081 and 367.121, Florida Statutes.

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<sup>2</sup> 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.

<sup>3</sup> Order No. PSC-07-0607-PCO-WS, issued July 30, 2007.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the Motion To Approve Settlement Agreement?

**Recommendation:** Yes. The Motion To Approve Settlement Agreement should be approved. Additionally, the PAA rates previously implemented by Cypress Lakes should be considered final. The utility should file a proposed customer notice and revised tariff sheets reflecting the appropriate service availability charges which are consistent with the Commission's decision within 30 days of the Final Order. The approved plant capacity charges should be effective for connections made on or after the stamped approval date of the tariff pursuant to Rule 25-30.475(1), Florida Administrative Code, if staff has verified that the proposed customer notice is adequate and the notice has been provided to the customers. The utility should provide proof that the customers have received notice within 10 days after the date of the notice. The customer notice should be mailed to all persons in the service area who have filed a written request for service or who have been provided a written estimate for service within the prior 12 calendar months from the effective date of the Order. (Revell, Fleming)

**Staff Analysis:** In the Settlement Agreement, the parties have agreed that the PAA Order should be amended to require plant capacity charges of \$750 and \$1,275 for water and wastewater, respectively, per residential connection. Additionally, all water distribution and wastewater collection plant in service needed to serve future customers must be fully contributed to the utility.

The parties have also agreed 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 remaining 93 lots in Cypress Lakes' existing service territory and the additional 120 lots located in Phase 12. Also, CLA should be credited with having previously paid \$920 per lot of the \$1,275 per lot wastewater capacity charge for the 213 lots (120 + 93). As a result, CLA will be required to pay the \$750 per lot water capacity charge and \$355 (\$1,275-\$920) per lot of the wastewater plant capacity charge.

Further, staff believes that it is in the public interest for the Commission to approve the Settlement Agreement because it promotes administrative efficiency and avoids the time and expense of a hearing. In keeping with the Commission's long-standing practice of encouraging parties to settle contested proceedings whenever possible,<sup>4</sup> staff recommends that the Commission approve the parties' Joint Motion and Settlement Agreement.

As stated previously, by Order No. PSC-07-0454-PCO-WS,<sup>5</sup> the Commission acknowledged Cypress Lakes' implementation of the PAA rates pursuant to Section 367.081(8),

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<sup>4</sup> Order No. PSC-06-0092-AS-WU, issued February 9, 2006, in Docket No. 000694-WU, In re: Petition by Water Management Services, Inc. for limited proceeding to increase water rates in Franklin County; Order No. PSC-05-0956-PAA-SU, issued October 7, 2005, in Docket No. 050540-SU, In re: Settlement offer for possible overearnings in Marion County by BFF Corp.; and Order No. PSC-00-0374-S-EI, issued February 22, 2000, in Docket No. 990037-EI, In re: Petition of Tampa Electric Company to close Rate Schedules IS-3 and IST-3, and approve new Rate Schedules GSLM-2 and GSLM-3.

<sup>5</sup> 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.

F.S. With the approval of the Parties' Settlement Agreement, the PAA rates previously implemented by Cypress Lakes should be considered final.

The utility should file a proposed customer notice and revised tariff sheets reflecting the appropriate service availability charges which is consistent with the Commission's decision within 30 days of the Final Order. The approved plant capacity charges should be effective for connections made on or after the stamped approval date of the tariff pursuant to Rule 25-30.475(1), Florida Administrative Code, if staff has verified that the proposed customer notice is adequate and the notice has been provided to the customers. The utility should provide proof that the customers have received notice within 10 days after the date of the notice. The customer notice should be mailed to all persons in the service area who have filed a written request for service or who have been provided a written estimate for service within the prior 12 calendar months from the effective date of the Order.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If the Commission approves staff's recommendation in Issue 1, CLA's petition and OPC's cross-petition for hearing shall be deemed withdrawn pursuant to the Settlement Agreement. Thus, PAA Order No. PSC-07-0199-PAA-WS will become final and the corporate undertaking amounts approved by the Commission for interim and PAA rates should be released. However, the docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff. When the the tariff and notice actions are complete, this docket may be closed administratively. (Fleming, Revell)

**Staff Analysis:** If the Commission approves staff's recommendation in Issue 1, CLA's petition and OPC's cross-petition for hearing shall be deemed withdrawn pursuant to the Settlement Agreement. Thus, PAA Order No. PSC-07-0199-PAA-WS will become final and the corporate undertaking amounts approved by the Commission for interim and PAA rates should be released. However, the docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff. When the tariff and notice actions are complete, this docket may be closed administratively.

**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

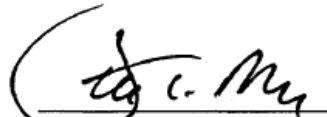
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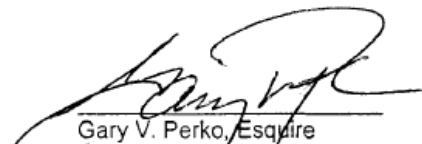
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approve without modification the attached Settlement Agreement and to close Docket No. 060257-WS in accordance with the terms of the Settlement Agreement.

Respectfully submitted this 24<sup>th</sup> day of September 2007 by:

  
Stephen C. Reilly, Esquire  
Associate Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
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On behalf of the Citizens  
of the State of Florida

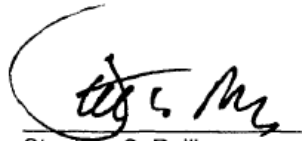
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On behalf of the Cypress Lakes Utilities, Inc.

  
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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 24<sup>th</sup> 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<sup>TH</sup> 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:

- i. 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.

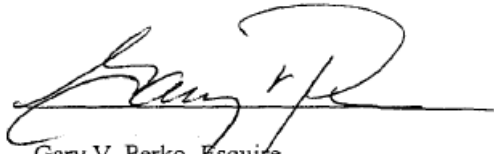
6. The undersigned personally represent that they have authority to execute this Settlement Agreement on behalf of their respective Parties.

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.

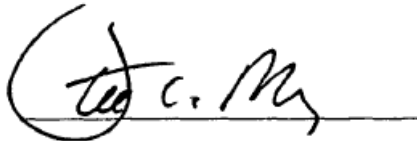
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EXECUTED this 24<sup>th</sup> day of September, 2007.

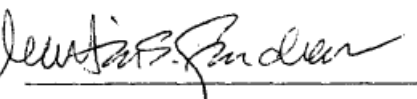
CYPRESS LAKES ASSOCIATES, LTD.

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