

FLORIDA PUBLIC SERVICE COMMISSION
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MEMORANDUM

APRIL 30, 1998

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FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (AUSTIN)
DIVISION OF LEGAL SERVICES (VACCARO) *GA DW*

RE: DOCKET NO. 980483-WU - LAKE UTILITY SERVICES, INC. (LUSI)
- INVESTIGATION INTO ALLOWANCE FOR FUNDS PRUDENTLY
INVESTED
COUNTY: LAKE

AGENDA: 05/12/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\980483WU.RCM

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 980483-WU
DATE: APRIL 30, 1998

CASE BACKGROUND

Lake Utility Services, Inc., (LUSI or utility) is a Class B utility located in Lake County. LUSI is a wholly-owned subsidiary of Utilities, Inc. and provides no wastewater service.

A complaint was received from a customer in August of 1996. The customer was concerned about the fees she was required to pay for service. At the time of complaint, the utility had three schedules of fees and charges for service that differed depending on the location of the customer's residence. The customer's residence was in the territory approved for LUSI by Order No. PSC-92-1369-FOF-WU issued November 24, 1992, in Docket No. 920174-WU. By that order, LUSI's service territory was amended to include additional territory. The rates and charges for the additional territory were also established in the aforementioned order.

In the initial investigation of the complaint, staff found that the fees the customer was required to pay were appropriate. Those fees were a plant capacity charge of \$569, a main extension charge of \$509, a meter installation charge of \$100, and an Allowance for Funds Prudently Invested (AFPI) charge of \$608.09. After analysis done in the utility's rate case in Docket 960444-WU, staff determined that the collection of the AFPI from customers in the territory approved by Order No. PSC-92-1369-FOF-WU may have been inappropriate. Staff decided to initiate an informal investigation into the AFPI charges. Staff sent the utility a data request relating to its AFPI charges. The utility responded to the questions. After a few letters of correspondence with the utility, staff determined that it was appropriate for the utility to collect AFPI from the customers in the additional territory pursuant to a tariff page contained in the utility's policy section of its Commission approved tariff. However, the collection of AFPI was to cease after 106 equivalent residential connections (ERCs). Staff believes the utility has collected AFPI from more than 106 ERCs.

The utility requested that the issue be submitted to the Commissioners for a final decision if staff did not reconsider its position. This recommendation is a result of that request.

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DISCUSSION OF ISSUES

ISSUE 1: Should Lake Utility Services, Inc. be required to refund Allowance for Funds Prudently Invested (AFPI) collected from connections beyond 106 ERCs?

RECOMMENDATION: Yes. Lake Utility Services, Inc. should be required to refund AFPI collected from customers beyond the 106 ERCs approved in its tariff.

STAFF ANALYSIS: In August of 1996, a complaint was received from a customer about the service availability charges of LUSI. In staff's initial investigation, it was determined that the service availability charges and the AFPI the customer was required to pay were appropriate. However, as a result of analysis done in the rate case (Docket No. 960444-WU), staff now believes the AFPI was inappropriately collected.

LUSI's AFPI charges were first established by Order No. 19962, issued September 8, 1992, in Docket No. 871080-WU for the utility's Crescent Bay Subdivision. The purpose of the AFPI charge was to provide for a return on the plant which had been prudently constructed but exceeded the needs of the customers in the early years of development. The charge was to be in effect until the utility reached the capacity of 106 ERCs. Per the approved tariff, the charge stopped escalating at 80% design capacity (85 ERCs).

By Order No. PSC-92-1369-FOF-WU, LUSI's service territory was amended to include additional territory. The rates and charges for the additional territory were also established in the aforementioned order. The order indicated that the rates and charges approved in the utility's tariff for the Crescent Bay system would be the same for the additional territory. For service availability purposes, the charges approved for the additional territory were the plant capacity charge of \$569 per ERC, the main extension charge of \$506 per ERC, and the meter installation charges by meter size including a charge of \$100 for a 5/8 x 3/4 inch meter. Those charges would serve to increase the utility's level of Contribution-in-aid-of-Construction (CIAC).

In response to the order, the utility filed several tariffs sheets for the territory amendment. One of the tariff pages was Third Revised Sheet No. 26.0 (Attachment 1) which shows the service availability schedule of fees and charges for the additional territory approved by Order No. PSC-92-1369-FOF-WU. On this tariff page the only charges shown were the plant capacity charge, main extension charge, and meter installation charges as inscribed in the order. Nowhere on the schedule of fees and charges tariff page

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for the additional territory did it mention AFPI. Therefore, staff believed the AFPI was only applicable to the Crescent Bay Subdivision.

Staff wrote the utility a letter on September 8, 1997 indicating that the AFPI was applicable only to connections in the Crescent Bay Subdivision and only up to 106 ERCs. Staff indicated that anything collected outside the aforementioned parameters should be refunded. Staff defined the Crescent Bay Subdivision to be the territory approved in the utility's original certificate pursuant to Order No. 18605, issued December 24, 1987, in Docket No. 871080-WU. The letter further stated that Order No. PSC-92-1369-FOF-WU did not address AFPI. Therefore, it was not intended to be collected from the additional territory.

In the utility's response, it stated that the AFPI was appropriate because Order No. PSC-92-1369-FOF-WU made an all-inclusive reference to the rates and charges set forth in the Crescent Bay tariff, and it did not exclude any of the rates and charges. It further explained that staff's interpretation of the AFPI being only for 106 ERCs is out of context. The utility stated that the Commission was aware that the rates and charges would apply to more than 106 ERCs and that additional investment was involved in serving the ERCs. The utility requested that staff reconsider its preliminary statement that the AFPI was only intended for the Crescent Bay Subdivision and only up to 106 ERCs and recognize that the intent of Order No. PSC-92-1369-FOF-WU was that all of the rates and charges applicable to Crescent Bay were to be applicable to connections and customers in the additional territory. The utility further requested that staff recognize that LUSI had properly collected AFPI from connections in the additional territory.

Staff responded by letter dated January 27, 1998 to the utility that it did not agree nor recognize that the intent of the order was that all of the rates and charges were applicable to the additional territory. However, upon further review of the utility's entire tariff, staff recognizes that Third Revised Sheet No. 27.3 (Attachment 2) contained in the utility's policy section of the tariff does reference the AFPI for the Crescent Bay Subdivision and the additional territory approved in Order No. PSC-92-1369-FOF-WU. Third Revised Sheet No. 27.3 refers to Sheet Nos. 25.1 - 25.1A (Attachment 3A and 3B) for a schedule of applicable AFPI charges which are the Crescent Bay Subdivision service availability schedule of fees and charges. Staff believes that the inclusion of AFPI for the additional territory in the policy section was an oversight during the tariff approving process.

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The utility also requested that staff find that LUSI has properly collected AFPI from connections in the additional territory. Staff believes that LUSI has properly collected AFPI from the additional territory in accordance with Third Revised Sheet No. 27.3. However, the utility has collected AFPI for connections over the number approved in its tariff. The utility was to continue collecting AFPI until the utility reached design capacity of 106 ERCs. Specifically, Sheet Nos. 25.1 and 25.1A states:

The above Allowance for Funds Prudently Invested (AFPI) Charges will stop escalating when the utility is serving 85 ERCs which is currently projected to occur in December 1990. AFPI will continue to be collected until the utility reaches design capacity, which is 106 ERCs. This is currently projected to occur in December, 1991.

Staff expressed in its letter dated January 27, 1998 that it recognized that the utility does have a tariff authorizing the collection of the AFPI in the additional territory. However, the utility's tariff for AFPI was approved only for 106 ERCs. Pursuant to Section 367.091(2), Florida Statutes, each utility's rates, charges, and customer service policies must be contained in a tariff approved by and on file with the Commission. Further, Section 367.091(3), Florida Statutes provides that a utility may only impose and collect those rates and charges approved by the Commission for the particular class of service involved and a change in any rate schedule may not be made without Commission approval. The collection of the AFPI charge for the 107th ERC and above is not consistent with the Commission approved tariff and the statute. Therefore, staff believes that the utility should refund the AFPI collected beyond the 106th ERC.

By letter dated February 19, 1998, the utility responded to staff's letter of January 27, 1998. The utility acknowledged that Third Revised Sheet No. 27.3 makes the AFPI charge in Sheet Nos. 25.1 - 25.1A applicable to the additional territory. However, the utility believes the 106 ERCs only applies to the Crescent Bay Subdivision and not the additional territory. The utility's reasoning is that the 106 ERC limitation is only mentioned and only applies to the Crescent Bay Subdivision because the title on both Sheet Nos. 25.1 and 25.1A read as follows:

SERVICE AVAILABILITY SCHEDULE OF FEES AND CHARGES
Crescent Bay Subdivision

Therefore, using the utility's logic, any fees and charges on that schedule would be limited to Crescent Bay and not the additional territory. Following this argument, the title on Third Revised

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Sheet No. 26 filed in conjunction with the territory amendment reads as follows:

SERVICE AVAILABILITY SCHEDULE OF FEES AND CHARGES

This schedule applies to the additional territory approved by Order No. PSC-92-1369-POP-WU for which no other schedule applies

Therefore, it would appear that only the fees and charges contained on Third Revised Sheet No. 26 apply to the additional territory. Nowhere on the aforementioned tariff sheet does it list AFPI as a charge applicable for the additional territory.

Further, it is evident from the utility's letter dated February 19, 1998 that the utility believes that there is no limitation on how many ERCs it can collect AFPI from in the additional territory. When the utility addressed the 106 ERCs in its letter dated September 27, 1997, it explained that the AFPI along with the other rates and charges were developed based on the assumption that there would be no future expansion anticipated and with the purpose of providing a full return on the projected investment to serve 106 ERCs. The utility further explained that the Commission was aware that additional investment would be involved in the serving of the ERCs in the additional territory and that the rates and charges would apply to more than 106 ERCs. This is totally out of context with the concept of the AFPI charge. An AFPI charge is design to allow a utility the opportunity to recover a fair rate of return on the portion of the plant facilities which were prudently constructed, but exceed the amount necessary to serve current customers. In order to determine that charge per ERC, the net investment is divided by the specific number of ERCs remaining until build-out. If the utility wanted to recover a fair rate of return for additional investment and additional ERCs, it should have requested that new AFPI charges be established at that time in September 1993.

The above discussion of the utility's reasoning on the 106 ERC limitation only substantiates staff's belief that the AFPI charge was never intended for the additional territory. It is only as a result of the tariff sheet (Third Revised Sheet No. 27.3) found in the policy section of the utility's tariff that gives it authority to collect the AFPI from the additional territory. Staff believes that portion of the tariff sheet approving the AFPI for the additional territory was an oversight in the tariff approving process. However, pursuant to Section 367.091(3), Florida Statutes each utility's rates, charges, and customer service policies must be contained in a tariff approved by and on file with the Commission. Since the AFPI charge is in its tariff for the additional territory, staff concedes that it appropriate.

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Nonetheless, the tariff specifically states that the AFPI charge was only for 106 ERCs.

The utility provided in a response dated July 21, 1997 that it had collected \$134,995.98 for AFPI as of December 1996. Based on staff's calculation, if the utility collected all of the AFPI at the higher charge of \$608.09, for the 106 ERCs, it should have collected no more than \$64,457.54. Further, by dividing the total amount collected, \$134,995.98, by the maximum AFPI charge, \$608.09, it appears the utility has collected AFPI from at least 222 ERCs. The 222 ERCs is far more than the 106 ERCs for which the AFPI was intended.

Staff is recommending that the utility refund the AFPI collected over the tariff approved 106 ERCs. The utility should be required to provide a refund plan for review within 20 days of the effective date of the order. The refund plan should include the names of all customers from whom the utility collected AFPI, the date the AFPI was paid, and the amount of AFPI paid. Staff should be given administrative authority to approve the refund plan. Once the refund plan is approved, the refund should be administered according to Rule 25-30.360, Florida Administrative Code.

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ISSUE 2: Should the docket be closed?

RECOMMENDATION: The docket should be closed if no person, whose interest are substantially affected by the proposed action, files a protest within the 21 day protest period, upon staff's verification that the utility has completed the required refund.
(VACCARO)

STAFF ANALYSIS: If a protest is not received within 21 days of issuance of the Proposed Agency Action order, the order will become final. This docket should be closed upon staff's verification that the utility has completed the required refund.

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ATTACHMENT 1

THIRD REVISED SHEET NO. 28.0
CANCELS SECOND REVISED SHEET NO. 28.0

LAKE UTILITY SERVICES, INC.
Water Tariff

SERVICE AVAILABILITY SCHEDULE OF FEES AND CHARGES

This schedule applies to the additional territory approved by Order No. PSC-93-1369-FOF-WU
for which no other schedule applies

PLANT CAPACITY CHARGE Per ERC	\$500.00
MAIN EXTENSION FEE Per ERC	\$500.00

METER INSTALLATION FEES

(The actual or average cost to the utility to install the water measuring device at the point of delivery,
including materials and labor required).

<u>Water Size</u>	<u>Fee</u>
3/8" x 3/4"	\$100.00
1"	\$143.00
1 1/2"	\$290.00
2"	\$400.00
Over 2"	Actual Cost (1)

(1) Actual Cost is equal to the total cost incurred for services rendered by a customer.

EFFECTIVE DATE - April 2, 1993

TYPE OF FILING - Territory Amendment

Patrick J. O'Brien
Vice President, Finance

DOCKET NO. 980483-WU
DATE: APRIL 30, 1998

ATTACHMENT 2

Third Revised Sheet No. 27.3
Cancel Second Revised Sheet No. 27.3

LAKE UTILITY SERVICES, INC.
Water Tariff

Crescent Bay Subdivision and that Additional Territory Approved in
Order #PSC-92-1589-POF-WU

40 OFF-SITE FACILITIES

Off-site systems may be provided by the Contributor in accordance with the Utility's specifications and conveyed to the Utility by bill of sale with necessary maintenance and replacement easements and right-of-way together with as-built drawings of the facilities and accurate cost records establishing the construction cost of the facilities, to include material, labor, engineering, administrative and other related costs, as a condition precedent to their acceptance by the Utility and the initiation of service.

50 ADVANCE

If the off-site or on-site facilities can serve other areas than those of the Contributor, the service company may require that they be oversized to enable service to be provided to additional territory and that the Contributor advance the cost of such oversize facilities. So much of the cost as exceeds the hydraulic share of the Contributor will be refunded by the Utility as refundable advances over a period not to exceed eight years, from extension fees paid by other Contributors connecting to the main or mains in accordance with their hydraulic share.

60 SYSTEM CAPACITY CHARGE

In addition to the foregoing fees, customer shall pay service availability fees as follows:

Appropriate Meter Installation Fees	See Sheet No. 25.1-A
System Capacity Charge Per ERC	\$500.00
Line Extension Fee per ERC (for Lines Constructed by the Utility)	\$606.00
Allowance for Funds Prudently Invested	See Sheet No. 25.1-25.1-A

Effective: April 2, 1993

Territory Amendment

Patrick J. Cobrien
Vice President, Finance

DOCKET NO. 980483-WU
DATE: APRIL 30, 1998

ATTACHMENT 3A

ORIGINAL SHEET NO. 25.1
CANCELS SECOND REVISED SHEET NO. 27.6

LAKE UTILITY SERVICES, INC.
WATER TARIFF

SERVICE AVAILABILITY SCHEDULE OF FEES AND CHARGES

Crescent Bay Subdivision

<u>PLANT CAPACITY CHARGE</u> Per ERC	\$ 569.00
<u>MAIN EXTENSION FEE</u> (Connect to Lines Constructed by the Utility) Per ERC	\$ 506.00
<u>GUARANTEED REVENUE CHARGE</u> Per ERC/Month	\$ 14.28
Per ERC/Year	\$ 171.34
<u>ALLOWANCE FOR FUNDS PRUDENTLY INVESTED</u>	-

SCHEDULE OF CHARGES IF CONNECT TO LINES CONSTRUCTED BY UTILITY

	1988	1989	1990	1991	1992
January	\$ 15.10	\$198.05	\$401.85	\$608.09	\$608.09
February	30.20	214.57	420.60	608.09	608.09
March	45.31	231.69	439.35	608.09	608.09
April	60.40	248.52	458.10	608.09	608.09
May	75.51	265.34	476.85	608.09	608.09
June	90.61	282.16	495.60	608.09	608.09
July	105.71	298.99	514.34	608.09	608.09
August	120.81	315.81	533.09	608.09	608.09
September	135.92	332.63	551.84	608.09	608.09
October	151.02	349.46	570.59	608.09	608.09
November	166.12	366.28	589.34	608.09	608.09
December	181.22	383.10	608.09	608.09	608.09

EFFECTIVE DATE - April 12, 1991

TYPE OF FILING - Corporate Reorganization

(Continued to Sheet No. 25.1A)

Patrick J. O'Brien
Vice President, Finance

FIRST REVISED SHEET NO. 25.1-A
 CANCELS ORIGINAL SHEET NO. 25.1-A

LAKE UTILITY SERVICES, INC.
 WATER TARIFF

(Continued from Sheet No. 25.1)

SERVICE AVAILABILITY SCHEDULE OF FEES AND CHARGES

Crescent Bay Subdivision

ALLOWANCE FOR FUNDS PROBABLY INVESTED

SCHEDULE OF CHARGES BY MONTH TO LINES CONTRIBUTED TO UTILITY

	1988	1989	1990	1991	1992
January	\$ 7.45	\$ 97.72	\$196.23	\$299.97	\$299.97
February	14.90	196.81	297.30	299.97	299.97
March	22.35	114.31	216.74	299.97	299.97
April	29.81	122.61	225.99	299.97	299.97
May	37.26	130.91	235.24	299.97	299.97
June	44.71	139.21	244.49	299.97	299.97
July	52.16	147.51	253.73	299.97	299.97
August	59.61	155.81	262.98	299.97	299.97
September	67.06	164.11	272.23	299.97	299.97
October	74.51	172.41	281.47	299.97	299.97
November	81.96	180.71	290.72	299.97	299.97
December	89.42	189.00	299.97	299.97	299.97

The above Allowance for Funds Probably Invested (AFPI) Charges will stop escalating when the utility is serving 85 ERC's which is currently projected to occur in December, 1990. AFPI will continue to be collected until the utility reaches design capacity, which is 106 ERC's. This is currently projected to occur in December, 1991.

METER INSTALLATION FEES

(The actual or average cost to the utility to install the water measuring device at the point of delivery, including materials and labor required).

Meter Size	Fee
3/8" x 3/4"	\$100.00
1"	\$143.00
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EFFECTIVE DATE - April 12, 1991

TYPE OF FILING - Corporate Reorganization

Patrick J. O'Brien
 Vice President, Finance