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June 29, 1998

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Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32301

Re: Docket No. 980483-WU, Lake Utility Services, Inc.
Allowance for Funds Prudently Invested (AFPI)

Dear Ms. Bayo:

Enclosed for filing on behalf of Lake Utility Services, Inc. are the original and fifteen copies of the following documents:

- 1) Lake Utility Services, Inc., Petition on Proposed Agency Action for Section 120.57(1) Hearing and Protest of Proposed Agency Action.

Thank you for your assistance.

Sincerely yours,

Ben E. Girtman

cc w/encl:

Mr. Carl Wenz
Mr. Frank Seidman

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into)
possible overcollection of)
Allowance for Funds Prudently)
Invested (AFPI) in Lake County)
by Lake Utility Services, Inc.)

DOCKET NO. 980483-WU

Submitted for Filing:
June 29, 1998

LAKE UTILITY SERVICES, INC.
PETITION ON PROPOSED AGENCY ACTION
FOR SECTION 120.57(1) FORMAL HEARING
and
PROTEST OF PROPOSED AGENCY ACTION

Lake Utility Services, Inc. ("the Utility" or "LUSI"), files its protest of proposed agency action and its petition for a formal Section 120.57(1) hearing pursuant to Rules 25-22.029 and 25-22.036, F.A.C., and in support thereof states that:

1. Lake Utility Services, Inc. provides water and wastewater services to customers in Lake County, and is subject to the jurisdiction of the Florida Public Service Commission pursuant to Ch. 367, Florida Statutes. It is a wholly owned subsidiary of Utilities, Inc.

2. On June 8, 1998, the Florida Public Service Commission issued its Order No. PSC-98-0796-POF-WU (the Order) in the above styled docket. The Order was identified as "Notice of Proposed Agency Action Order Requiring Utility to Record AFPI as Contributions-in-Aid-of Construction". The Order set forth a proposed "compromise" of converting certain AFPI charges into CIAC. It was received via facsimile by Petitioner's undersigned counsel on June 10, 1998.

3. The Order adversely affects the substantial interests of the Utility by taking from the Utility AFPI charges which were lawfully collected pursuant to the governing statutes, rules, orders and

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FPC-RECORDS/REPORTING

tariffs, and by requiring the conversion of those AFPI charges to Contributions-in Aid-of-Construction (CIAC).

4. The AFPI charges were lawfully collected pursuant to the applicable statutes, rules, orders and tariffs, including but not limited to Section 367.081, Florida Statutes; Rule 25-30.434, F.A.C.; Order No. 19962 issued September 8, 1992; Order No. PSC-92-1369-FOF-WU issued November 24, 1992; and tariff pages Original Sheet No. 25.1, First Revised Sheet No. 25.1-A, and Third Revised Sheet No. 27.3.

5. The Utility submits the following issues of fact, law and policy for resolution by the Commission in a hearing held pursuant to Section 120.57(1), Florida Statutes:

- a. Does the previous tariff, or the current tariff, for Crescent Bay limit the collection of AFPI charges to 106 ERCs in the Crescent Bay territory?
- b. Is the Utility authorized to collect AFPI charges in the additional territory pursuant to Order No. PSC-92-1369-FOF-WU granting amendment of the Crescent Bay certificate?
- c. Is the 106-ERC limitation in Crescent Bay applicable to the additional territory outside Crescent Bay?
- d. If the 106-ERC limitation were applicable to the additional territory outside Crescent Bay, would that require a commensurate ERC reduction inside Crescent Bay?
- e. Does the tariff for Crescent Bay (or any other authority) allow a reduction below the 106-ERC level for the

territory in Crescent Bay?

- f. Beginning in or about 1993, did the Commission Staff investigate a customer's inquiry about appropriate charges for utility services in the service area? Furthermore, in regard thereto:
- 1) Did the Utility notify the Commission Staff by letter dated October 14, 1993, that it was collecting the AFPI charge (and other charges) in the additional territory?
 - 2) Has the Utility relied not only on the revised tariffs and the Commission Order approving the application of existing rates and charges in Crescent Bay to the additional territory, but also relied on the investigation by Commission Staff in 1993 for authority to collect, and continuing to collect, the AFPI charges?
 - 3) Is the Commission barred by the legal doctrine of laches from converting the AFPI to CIAC?
- g. Has the Utility maintained records showing the amounts and sources of the AFPI charges collected?
- h. Do the governing statutes, rules, orders and tariffs authorize the Utility to collect AFPI for more than 106 ERCs in the total certificated territory in question?
- i. Does the Public Service Commission have the authority to require the conversion of the AFPI charges to CIAC?
- j. Does Order No. PSC-92-1369-FOF-WU, granting amendment of the Crescent Bay certificate to add territory, make all of Crescent Bay's rates and charges, including AFPI,

- applicable to the additional territory approved by that order?
- k. Does Order No. PSC-92-1369-FOF-WU mention the 106-ERC limitation as being applicable to the additional territory?
 - l. Do the applicable tariffs specifically mention the 106-ERC limitation as being applicable to the additional territory?
 - m. What design capacity was the 106-ERC limitation based upon?
 - n. Did the design capacity of the applicable service area change when the Crescent Bay service area was amended to add new territory?
 - o. What is the practice of the Commission regarding the setting of rates and charges when new territory is added to an existing territory with previously approved rates and charges?
 - p. Is the Commission authorized to select just one element of the overall rates and charges and change it now, or would that be retroactive ratemaking, in violation of due process and equal protection guarantees of the U.S. and Florida Constitutions, and/or be unlawful confiscation of property?
 - q. Would either a refund, or the conversion of AFPI charges to CIAC, be contrary to the Utility's tariff, contrary to the applicable statutes and rules, contrary to prior


Commission practice, and/or be contrary to the contractual agreements and the financial expectations of those who paid the AFPI charges and of the Utility?

- r. Have revised AFPI charges been set by the Commission, and should the change in AFPI charges be prospective only, from May 12, 1998, the effective date of the new AFPI charges?

These are the issues identified at this time. Additional issues may be identified as the case progresses.

WHEREFORE, Lake Utility Services, Inc. files this protest of proposed agency action contained in Order No. PSC-98-0796-FOF-WU and requests a formal hearing pursuant to Section 120.57(1), Florida Statutes.

RESPECTFULLY SUBMITTED, this 29th day of June, 1998.



Ben E. Girtman
FL BAR NO. 186039
1020 E. Lafayette St.
Suite 207
Tallahassee, Fl 32301
Attorney for Petitioner,
Lake Utility Services, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent to Tim Vaccaro, Esq. Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, by U.S. Mail (or by hand deliver*) this 29th day of June, 1998.



Ben E. Girtman