BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for deletion of service area in Highlands County and amendment of Certificate No. 401-W by PLACID LAKES UTILITIES, INC.	DOCKET NO. 940562-WU ORDER NO. PSC-94-1529-FOF-WU ISSUED: December 12, 1994

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING AMENDMENT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Placid Lakes Utilities, Inc. (Placid Lakes or utility) is a Class C utility which provides water service in Highlands County and serves approximately 1,165 water customers. The utility is 100% owned by Lake Placid Holding Company, which is the primary developer of Placid Lake subdivision. Its 1993 annual report shows that the consolidated annual operating revenue for the system is $149,740 and the net operating loss is $7,003.

Placid Lakes was organized in 1970 and was granted a Certificate grandfathering in existing rates, charges and territory in 1983. In Order No. 16238, issued June 6, 1986, its last rate case, we found that the utility was over-contributed, therefore we eliminated the utility's service availability charges. The utility had a negative rate base at that time as a result of its CIAC level coupled with nonused and useful adjustments.

APPLICATION

On May 18, 1994, pursuant to Section 367.045, Florida Statutes, the utility applied for an amendment of Certificate No. 401-W to delete certain lots in Highlands County. In its request, Placid Lakes states that the proposed deletion is in the public interest because it will assure the financial viability of the utility. In support of this statement, it refers to the net operating loss identified in the annual report. The utility asserts that the loss demonstrates that the utility is financially unable to provide extensions to future home owners within its territory.

The application is not in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for amendment of certificate. There are still several outstanding deficiencies in its application. The territory description is not in the correct format. Rule 25-30.036(4)(b), Florida Administrative Code, requires a description of the territory proposed to be deleted, using township, range and section references. Rule 25-30.030(2), Florida Administrative Code, further states a complete and accurate description of the territory served or proposed to be served shall be written by using full or partial sections, or by using a metes and bounds description as outlined in Rule 25-30.036(4)(b), Florida Administrative Code. A description of the territory the utility proposes to delete consists of 42 pages that list the specific section in the subdivision, block and lot number. The description shall not rely on references to government lots, local streets, recorded plats or lots, tracts, or other recorded instruments.

The application contained a check in the amount of $1,750, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. The local planning agency was provided notice of the application and did not file a protest to the amendment. The utility has returned the certificate for entry to exclude the territory and filed revised tariff sheets which include the inappropriate amended territory description as mentioned above. We contacted the Department of Environmental Protection and learned that there are no outstanding notices of violation.

This utility has a long history with the Commission of conflicts over the application of service availability policies. While a net operating loss on the annual report may at first appear to substantiate the utility's claim of poor financial liquidity, we believe that reviewing the history of the utility's actions with regard to service availability demonstrates that the utility can continue to support future extensions and connections. In addition, we recently revised this utility's connection policies to specifically address the utility's financial status and allow for the provision of central water service to future customers.

On numerous instances since 1986, Placid Lakes Utilities has refused service when the applicant was unwilling to pay the cost of the line extension. Upon investigating certain customer complaints in 1992, our staff discovered that the utility was providing service to customers where lines were already installed, but was not providing service where lines were not available. At that time, the utility represented that it was not generating sufficient funds to install lines.

In Order No. 16238, we developed a main extension charge that was designed to recover 75% of the estimated cost for extending lines per connection ($240). The intent of the charge was that it be collected from all future connections whether or not lines were already available. We believed that this would provide the utility positive cash flow to meet future service demands and would eliminate any future claims of insufficient cash flow.

A customer complaint in February 1994, made it clear that this strategy had failed and there was some ambiguity in Order No. 16238, which resulted in the utility interpreting it as meaning that any extensions must be donated by customers. The utility believed it could refuse service if the lot was not directly accessible to an existing water line. This complaint lead to another docket to address the utility's service availability policy. In Order No. PSC-94-0699-FOF-WU, issued June 8, 1994, we determined that the most reasonable approach to solve this dilemma was to eliminate the utility's $240 main extension charge and allow the utility to enter into refundable advance agreements. As a result, when future connections are made, the utility should collect 75% of the lines' cost from each connection on a pro rata basis and refund 100% of the pro rata cost to the developer or customer who funded the line extension. Therefore, the utility would be required to fund no less than 25% of the total cost of the extension in the agreement. The term of each refundable advance should be ten years after which time the utility should cease collecting from future connections. We believe that this prevents the utility from collecting for connections where line costs have

already been recovered. It also forces an increase in the utility's contribution level.

We believe the utility's claim that it is operating at a loss is without merit. By Order No. 16238, the Commission set break-even rates, which did not include depreciation expense or a return. By Order No. 21851, issued September 7, 1989, the Commission reduced the utility's rates as a result of an overearnings investigation. This rate reduction was also calculated on a break-even basis. Placid Lakes has shown a loss on its annual reports because it has been erroneously reporting depreciation expense in excess of CIAC amortization. Eliminating depreciation expense results in a positive net income and cash flow. A desk audit of the utility's annual reports for the years 1987-1993 revealed a positive cash flow in at least six of those seven years.

During this period, there appeared to be some financial irregularities in the collection of rates and charges. During a staff engineering investigation in 1990, it was discovered that the utility's parent company, Lake Placid Holding Company was collecting from developers an unauthorized $575 CIAC charge in addition to a $175 meter installation charge authorized by the Commission. The amount of unauthorized collections totaled $141,525, which raised the utility's CIAC level to 107% of net plant in service. As a result of Order No. PSC-93-0524-AS-WU, issued on April 7, 1993, the utility paid $5,000 in the settlement of show cause proceedings concerning these collections.

However, we also recognized that the utility had a more critical problem, that it would likely never recover its investment if it was forced to make future line extensions. We noted that out of approximately 5,600 unconnected lots in the utility's territory, only 3,000 have service lines available. Most of the 2,600 lots without service lines are not adjacent to existing water mains. Because of the utility's low rate of growth coupled with the size of the territory, requiring the utility to extend lines to all applicants could result in large amounts of stranded investment. This resulted in Order No. PSC-94-0699-FOF-WU, where we eliminated the main extension charge and redetermined how the service availability charge would be collected by the utility.

Our additional concerns regarding the requested deletion are detailed below.

Section 367.045, Florida Statutes

Section 367.045(2)(b), Florida Statutes, states that a utility shall provide a detailed inquiry into the inability to provide

service to the territory which the applicant seeks to delete. We interpret "inability" to include both a determination of financial and technical ability. (emphasis added) The utility's application states that deletion is necessary because it "does not have the financial ability to extend its water lines to lots which do not abut existing water lines." We disagree with this statement. The utility has not adequately demonstrated that it lacks the financial and technical ability to serve this territory.

Noncontiguous service area

If we were to grant the utility's application, its service area would be noncontiguous and look similar to a checkered-board square in that service would be provided to only those lots that have a water line in front of the lot. In other words, some entire blocks within the subdivision are provided water service, because a water line runs in front of all the lots in that block. However, other blocks may only have a portion of the lots receiving water service, because the water line runs in front of only some of the lots. At this time, approximately 6,000 lots are in the service area and the requested deletion would remove approximately 2,000 lots. The result would be a hodge-podge of territory, where one neighbor may have water service and the next-door neighbor would not have water service, and would be required to drill a well. This would result in confusion because there would be no clear boundary where water service is or is not provided. Also, according to a rough calculation of the utility's existing water lines there would be approximately 73 dead-end lines. A majority of these dead-end lines would be eliminated if the utility continued to install water lines and loop the water distribution system.

Economics

According to the health department, all new private wells in the Placid Lakes subdivision would be required to undergo testing and meet potable water standards. These certified tests cost approximately $500. In addition to the testing, the lot owner would be required to have a shallow well drilled, which costs approximately $1,000-$1,200 (well, well pump, and small hydropneumatic tank). Therefore, it would cost each lot owner at least $1,500 to drill their own well and have the water tested. This cost does not include a water filter system, if needed. Because of the poor aesthetic quality of the water (hydrogen sulfide, dissolved iron and tannic acid in the water), most wells would require a water filter system.

This amount is substantially more than what homeowners would be required to pay under the new service availability tariff. For example, our staff had estimated a line extension cost of $4,700 for a 900 foot line past 9 other lots (to connect with an end lot) in the last case. Under the policy ordered in Order No. PSC-94-0699-FOF-WU, the developer would initially fund the extension. As customers connected, they would pay the utility 75% of the line cost on a pro rata basis, or $352.50 ($4,700 x .75 = $3525/10 lots). In addition, they would pay $175 meter installation charge, for a total connection charge of $527.50, which certainly compares favorably with the total costs of a well.

We have evaluated the possibility of another utility serving the lots/customers in the proposed deleted territory. There are no other utilities that can economically serve these customers because of the noncontiguous nature of the requested deleted territory.

Another factor is simply the lot owners' expectations in the type of house they would be able to build on their lot. According to the Environmental Health Director in Highlands County, a residential 1/4 acre lot served by a water utility can have a maximum of one five-bedroom dwelling unit built on the lot. This same lot, if served by a private well, is limited to one three-bedroom dwelling unit.

Reliability

When a power outage occurs, individual well systems are shut down. However, the utility has back up power, so that potable water service can be provided during a power outage. Also, the utility has full time operators to maintain the water system when maintenance needs to be made on the water system, whereas, a well owner does not. Therefore, in case of a power outage, it is safer for the lot owner to be on the utility's system, rather than have their own well.

Health

According to the health department, Highlands County has a severe groundwater/private well contamination problem. The sandy soils are vulnerable to pesticide, herbicide and nitrate contamination. Additionally, the water from the shallow wells has poor aesthetic qualities such as hydrogen sulfide, dissolved iron and tannic acid. The utility has two wells that are approximately 1,300 feet. The well water from these deep wells are significantly better than the shallow well water. Also, if a residential customers' well in the Placid Lakes subdivision becomes contaminated, it may take a long time for the residential customer

to find the problem. A modern water treatment facility is required by law to monitor a number of different contaminants on a routine basis. Therefore, the probability of a contamination problem going unnoticed at a modern water treatment facility is small. In addition, if a contamination problem does occur at the water treatment plant a more economical treatment solution can be obtained.

In conclusion, the application does not comply with Section 367.045, Florida Statutes. Further, Placid Lakes has in place a service availability policy that will allow it to provide extensions of mains without severely affecting its financial condition. A deletion of territory would: (1) place an unnecessary financial burden on lot owners; (2) may result in health concerns; and (3) create service problems for existing customers. Therefore, based on the foregoing, we hereby deny Placid Lakes' application for amendment of Certificate No. 401-W to delete territory. If there are no timely protests, no further action will be required and the docket shall be closed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Placid Lakes Utilities, Inc.'s application for amendment of Certificate No. 401-W is hereby denied.

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket should be closed.

By ORDER of the Florida Public Service Commission, this 12th day of December, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: _____
Chief, Bureau of Records

(S E A L)

MSN

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 3, 1995.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.