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RECORDS AND
REPORTING

August 27, 1998

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Application for transfer of Certificates Nos. 592-W and 509-S from Cypress Lakes Associates, Ltd. to Cypress Lakes Utilities, Inc. in Polk County; Docket No. 971220-WS

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of a Response to Cypress Motion to Dismiss or Strike for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Harold McLean
Associate Public Counsel

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

- ACK _____
- AFA _____
- APP _____
- CAF _____ HM/dsb
- Enclosures
- CMU _____
- CTR _____
- EAG _____
- LEG 1
- LIN _____
- OPC _____
- RCH _____
- SEC 1
- WAS Johnson
- OTH _____

DOCUMENT NUMBER-DATE

09374 AUG 27 88

RECORDS AND REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of)
Certificates Nos. 592-W and 509-S)
From Cypress Lakes Associates,)
Ltd.. To Cypress Lakes Utilities,)
Inc. In Polk County, Florida)
/

Docket No. 971220-WS

Filed: August 27, 1998

RESPONSE TO CYPRESS MOTION TO DISMISS OR STRIKE

The Citizens of the State of Florida, (Citizens) by and through JACK SHREVE, Public Counsel, respond to Cypress Lakes Utilities, Inc.'s (Cypress) August 21, 1998 Motion to Dismiss or Strike OPC's Petition for Section 120.57(1) Hearing and Protest of Proposed Agency Action as follows:

1. Section 350.0611 Florida Statutes, 1997 provides, *inter alia*:

(1) To recommend to the commission, by petition, the commencement of any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or action before the commission and urge therein any position which he or she deems to be in the public interest, *whether consistent or inconsistent with positions previously adopted by the commission*, and utilize therein all forms of discovery available to attorneys in civil actions generally, subject to protective orders of the commission which shall be reviewable by summary procedure in the circuit courts of this state; (emphasis supplied)

Whereas the gist of the Cypress motion seeks to show that the Citizens - through the Office of Public Counsel - recommend by petition action which could be inconsistent with the findings of Order No. PSC-98-1092-FOF-WS, that specific authority is nonetheless expressly set forth among the powers and duties of the Public Counsel;

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FLORIDA PUBLIC SERVICE COMMISSION RECORDS/REPORTING

2. The list of issues presented in the Citizens' August 10, 1998 petition for formal hearing provide notice to Cypress and to the Commission exactly the factual, legal, and policy basis for denying present investors a return on investment which they did not make;

3. The Cypress motion is an invitation to the merits of the case in that it alleges that there are "no extraordinary circumstances in this case," that "there were no reasons to support an acquisition adjustment" and that "there is nothing in the case which would warrant an acquisition adjustment;"

4. Each and every allegation asserted by the petition for formal preceding must be taken as true for purposes of a motion to dismiss, including that portion of the referenced petition which alleges that the Commission proposes to approve a return on investment never made by Cypress investors.

WHEREFORE the Citizens of the State of Florida urge the Commission to deny the instant motion and to set the docket for a formal hearing at its convenience, and for such other relief as may be appropriate in the circumstances.

Respectfully submitted,

Jack Shreve
Public Counsel



Harold McLean
Associate Public Counsel

Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street
Tallahassee, Florida 32399-1400
(850) 488-9330

Attorneys for the Citizens
of the State of Florida

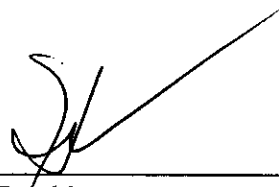
**CERTIFICATE OF SERVICE
DOCKET NO. 971220-WS**

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONSE TO CYPRESS MOTION TO DISMISS OR STRIKE has been furnished by U.S. Mail or *hand delivery to the following parties, this 27th day of August, 1998.

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Harold McLean
Associate Public Counsel