

1 BEFORE THE
2 FLORIDA PUBLIC SERVICE COMMISSION

3 In the Matter of:

4 DOCKET NO. 150026-WS

5 COMPLAINT BY EAGLERIDGE I, LLC
6 AGAINST LAKE UTILITY SERVICES,
7 INC. FOR DECLARATION THAT
8 CONNECTIONS HAVE BEEN MADE AND
9 ALL AMOUNTS DUE HAVE BEEN
10 PAID, AND MANDATORY INJUNCTION
11 REQUIRING REFUND OF AMOUNTS
12 PAID UNDER PROTEST.
13 _____/

14 PROCEEDINGS: COMMISSION CONFERENCE AGENDA
15 ITEM NO. 3

16 COMMISSIONERS
17 PARTICIPATING: CHAIRMAN ART GRAHAM
18 COMMISSIONER LISA POLAK EDGAR
19 COMMISSIONER RONALD A. BRISÉ
20 COMMISSIONER JULIE I. BROWN
21 COMMISSIONER JIMMY PATRONIS

22 DATE: Thursday, December 3, 2015

23 PLACE: Betty Easley Conference Center
24 Room 148
25 4075 Esplanade Way
 Tallahassee, Florida

 REPORTED BY: LINDA BOLES, CRR, RPR
 Official FPSC Reporter
 (850) 413-6734

P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** Okay. Let's flip back
3 around to the front of our agenda, and let's go with
4 Item No. 3.

5 **MS LHERISSON:** Good morning, Commissioners.
6 Bianca Lherisson, Commission staff.

7 **CHAIRMAN GRAHAM:** Hold on just a second. I
8 applaud your enthusiasm.

9 Okay.

10 **MS LHERISSON:** Item No. 3 concerns a complaint
11 filed by Eagleridge I, LLC, in Docket No. 150026-WS
12 regarding a wastewater service availability charge.
13 Eagleridge I, LLC, is a Florida limited liability
14 company who has filed a complaint against Lake Utility
15 Services, Inc., a Class A water and wastewater utility.
16 LUSI is a wholly owned subsidiary of Utilities, Inc.

17 Eagleridge alleges that LUSI charged
18 additional service availability charges and connection
19 fees after LUSI received a rate increase that should not
20 have been applied because of a pre-existing agreement
21 between the companies. Eagleridge is requesting a
22 refund of the additional service availability charges
23 and connection fees.

24 As to Issues 1 and 2, staff is recommending
25 that the Commission find that it was not appropriate for

1 LUSI to charge increased fees to Eagleridge and,
2 therefore, Eagleridge should be granted a refund in the
3 amount of \$63,625.20 plus interest of \$1,737.32. Both
4 parties are available to answer any questions, and staff
5 is also available to answer any questions.

6 **CHAIRMAN GRAHAM:** Thank you, staff.

7 Mr. Friedman.

8 **MR. FRIEDMAN:** Mr. Chairman, Commissioners, my
9 name is Marty Friedman. I'm the attorney for Lake
10 Utility Services. Also with me on my left is John Hoy,
11 who is the president.

12 And in this recommendation the staff has set
13 forth two bases for recommending that the developer
14 should not have had to pay this increase in wastewater
15 main extension charge that the Commission approved for
16 Lake Utility Services in 2011. They are two separate
17 and distinct bases, so you can either agree with one,
18 you can agree with the other, or we think you should
19 disagree with both of them. But they are -- each basis
20 is independent, so I would like you to think about them
21 independently because they have different repercussions
22 down the road for how the utility deals with main
23 extension charges for wastewater service depending upon
24 whether you agree with the staff on one issue or the
25 other.

1 The first -- the staff believes that the 2011
2 establishment of the wastewater main extension charge
3 does not apply to a developer who donates lines. The
4 2001 order explicitly states otherwise. The order in
5 2001 specifically states, on dealing with wastewater
6 main extension charges, "This cost shall be equally
7 allocated to all ERCs." There's absolutely nothing in
8 this paragraph dealing with wastewater main extension
9 charges that implies that developers or anybody else
10 that donates lines are exempt from payment of this
11 charge. And the reason for that is if you look at the
12 basis of establishing this charge, this charge was based
13 upon only existing lines, so it didn't take into
14 consideration that developers in the future were going
15 to donate X number of thousands of dollars of lines and
16 then calculate it. They based it on the amount of the
17 lines that were in existence at that time. So whoever
18 is going to connect to that line, then they divided that
19 by the number of ERCs that they expect to connect, and
20 so the amount is based upon the existing lines. This
21 customer, this developer connected to those existing
22 lines. So the order is very explicit that it applies to
23 everybody that connects to those lines. And it makes
24 you wonder secondarily, how do you -- I mean, if
25 somebody had to only build a three-foot line across the

1 street to connect, does that mean they're exempt from
2 the main extension charge although they're connecting
3 into that same main or do you have to spend, you know,
4 hundreds of thousands of dollars to connect to qualify?
5 It doesn't say because it wasn't considered.

6 The main extension charge for wastewater
7 service is applicable to every connection to that
8 main -- or to those mains, whether or not that customer
9 also donates lines. That amount is clear from the
10 manner in which it was calculated in the 2001 rate
11 order.

12 The second basis for exempting the developer
13 from having to pay the main extension charge for
14 wastewater service is the staff's erroneous belief that
15 there is an active connection. In doing so, the staff
16 construes Rule 25-30.515(1) without regard to the
17 context in which it's being applied. In other words,
18 they're looking at it and saying this is what it says
19 without thinking of the big picture. What does it
20 really mean in the context of a utility collecting
21 service availability charges?

22 The term "active connection" as -- in that
23 rule includes that an active connection is whether or
24 not service is currently being provided, and it's that
25 language that the staff has latched onto and the

1 developer has latched onto to say, well, it's connected,
2 it's physically connected. Service isn't currently
3 being provided. In fact, in these cases service has
4 never been provided, and they're hanging their hat on
5 the fact that it says "currently being provided," which
6 doesn't mean that there ever has had to be a connection,
7 and I think that's a strained interpretation of what
8 that means in light of service availability charges. It
9 may make complete sense if you're dealing with other
10 issues, but when dealing with an issue of a service
11 availability charge, it makes no sense whatsoever. And
12 I'm going to go into further explanation later.

13 In the instant case, there's a physical
14 connection. There's a service line from a building to
15 the main. There's no facilities in that unit. There's
16 no toilets, there's no sinks. In fact, there's no water
17 going to those facilities, so they could never have
18 produced any wastewater into the system which would
19 have -- which would give the utility a basis for earning
20 on that plant that they have been holding available for
21 developers.

22 And if you look back at this Commission's
23 opinion when it dealt with the infamous H. Miller & Sons
24 case that requires that utilities collect an increase in
25 service availability charge as of the date of connection

1 even if the developer had paid previously, if you look
2 at the rationale for that principle, it said -- this
3 Commission said, "The complainant alleges that plant
4 capacity was fully purchased in reserve; that is, 175
5 gallons per day of plant capacity was in effect the
6 property of Miller," the developer, "when the payment
7 was completed, yet the utility," and this is the
8 important part because this applies to this particular
9 development also, "yet the utility still has to pay
10 interest, taxes, insurance, et cetera, on the value
11 represented thereby with no income until a customer is
12 connected. The utility must continue to pay these costs
13 whether the capacity is used or not. To adopt Miller's
14 rationale would force either the customers to support
15 idle capacity or, since plant is not used and useful,
16 must be excluded from rate base investment for
17 ratemaking purposes. The utility must support this idle
18 plant. To conclude otherwise demonstrates Miller's
19 fallacy."

20 In other words, the actual cost of maintaining
21 that sufficient capacity cannot be determined until the
22 actual customer comes online and starts paying a monthly
23 service bill, whether it's a base facility charge when
24 you install a water meter or otherwise.

25 So the -- for purposes of the responsibility

1 for the payment of a main extension charge, any service
2 availability charge, if there's no -- there's no active
3 wastewater connection until there is a revenue stream
4 from that connection. And that's the important
5 distinction to make is that active connection is when
6 there's a revenue stream from that connection. That's
7 how this court -- this Commission in H. Miller & Sons
8 interpreted what an active connection is. They didn't
9 just look and say, well, there's a physical connection;
10 therefore, end of inquiry. And they did it the right
11 way when they did the Miller & Sons decision.

12 Lastly, and I think I'm within my five
13 minutes, even if you accept the staff's flawed reasoning
14 with regard to the wastewater main extension charge, I
15 would ask that you make it clear that the order has
16 absolutely nothing to do with whether the developer will
17 owe for water plant capacity charges. Because I think
18 everyone, including the staff, agrees -- excuse me --
19 that there is no active connection for water service
20 because the rule says that active connection for water
21 service requires a meter. And that's more in accord
22 with the principle that this Commission enunciated in
23 the H. Miller & Sons case because when you put a meter
24 in, a customer starts paying at least a base facility
25 charge. And I would request that the Commission deny

1 the staff's recommendation and not require a refund.

2 Thank you.

3 **CHAIRMAN GRAHAM:** Eagleridge.

4 **MR. MILLER:** Good morning, Commissioners. My
5 name is Sam Miller. I'm here on behalf of Eagleridge.
6 I have with me -- my apologies. My name is Sam Miller.
7 I'm here on behalf of Eagleridge. I have with me Daniel
8 Butts, who is the Chief Operating Office of Battaglia
9 Group.

10 We request that the Commission adopt the
11 staff's recommendation, and I would like to respond to
12 the points that were made. First, with respect to the
13 donation of lines, looking at the November 2011 order,
14 the order goes through, parts of it, where it identifies
15 the rationale and the principle for having the
16 wastewater extension charge. And if I may read from
17 just one sentence of it, "However, a main extension
18 charge would allow the utility to collect the
19 appropriate CIAC from a single property owner in lieu of
20 donating lines in addition to developers who may be
21 installing and donating sewer collection lines."

22 The situation we have here is by virtue of the
23 contract, the agreement between Eagleridge and the
24 utility, Eagleridge donated all of the lines that it had
25 installed. That is completely consistent with the

1 principle that this Commission had in its November 2011
2 order. And by the way, it makes sense from just an
3 economic point of view. If a developer is not going to
4 donate the lines, then it makes sense that there should
5 be some sort of economic transfer, if you will, to the
6 utility. But given that Eagleridge here had actually
7 donated the lines, quite a valuable economic benefit to
8 the utility, having to not have to pay that main
9 extension charge because they had made the donation
10 actually from a policy view makes complete sense, and so
11 we believe that staff is actually correct on that point.

12 I do want to move, however, to the second
13 point, which is what is a connection? And what I'm
14 asking the Commission to do is to simply look at the
15 plain and unambiguous language in the *Florida*
16 *Administrative Code*. The code defines explicitly what a
17 connection is. And actually in getting to that, I do
18 want to back up because I guess the question is why does
19 this matter?

20 What happened was the Commission enters its
21 order in November 2011, and what the order provides and
22 what the *Florida Administrative Code* provides is that
23 any tariffs provided in that November 2011 order does
24 not apply to any services already provided or any
25 connections already made. So that's why the

1 identification of what exactly is a connection matters
2 here. In our situation, and the record has evidence of
3 this, the connection was made in March 2011, over six
4 months prior. And, in fact, the record in this case has
5 documentation, and it was provided with a supplemental
6 filing that we made on behalf of Eagleridge, where the
7 utility company itself certified to the Florida
8 Department of Environmental Protection, and this is
9 March 2011, that the connection had, in fact, been made
10 to the utility's satisfaction. And that document is in
11 the record.

12 So not only do we have the utility's
13 certification to the Florida DEP that the
14 certification -- or that the connection has been made to
15 its satisfaction, but if we look at the plain language
16 in the *Florida Administrative Code*, there's certain
17 language there that is key.

18 The definition of active connection -- and
19 Mr. Friedman actually points this out, he doesn't hide
20 the ball there. Active connection -- and I'm reading
21 from the *Florida Administrative Code*, and this is
22 25-30.515. "Active connection means a connection to the
23 utility system at the point of delivery of service,
24 whether or not service is currently being provided."

25 If service had to be provided, if a revenue

1 stream was key for an active connection to actually be
2 in place, then that language clearly would not be in the
3 code. The fact that that language is in the code means
4 something. It must have some import. And so what we're
5 asking the Commission to do is simply apply the plain
6 and unambiguous language of the *Florida Administrative*
7 *Code* and to follow the staff's recommendation.

8 I'm here for any questions and, as I said, I
9 have Mr. Butts here for any questions as well.

10 **CHAIRMAN GRAHAM:** Okay. Commissioners, any
11 questions of staff or anyone else?

12 Commissioner Edgar.

13 **COMMISSIONER EDGAR:** Excuse me. Thank you,
14 Mr. Chairman. I would like us to ask our staff to reply
15 to the points that were raised by Mr. Friedman,
16 recognizing that counsel for the company has done so,
17 but speaking to the recommendation and if the points
18 raised by Mr. Friedman today vary this analysis at all.
19 If you could speak to that, please.

20 **MS. DANIEL:** Commissioners, Patti Daniel with
21 Commission staff. I'll take a shot at this.

22 Mr. Miller correctly points out in response to
23 Mr. Friedman's argument about whether customers should
24 pay a main extension charge that the November 2011 order
25 does say, "However, a main extension charge would allow

1 the utility to collect the appropriate CIAC from a
2 single property owner in lieu of donated lines." It is
3 my understanding that a significant portion of the Lake
4 Utility Services lines are, in fact, donated, so a main
5 extension charge in my mind and according to this order
6 has to do with the need for the utility to construct the
7 line and for the customer to pay their fair pro rata
8 share.

9 Mr. Friedman points out that the main
10 extension charge is based on the cost of existing lines,
11 and that is correct. That's how we identify what a
12 reasonable main extension charge is. Of course, a
13 customer's proximity to an adjacent line affects the
14 cost, but a main extension charge just sort of levelizes
15 that cost to any given customer. So I believe that the
16 argument with respect to the donated lines -- I believe
17 staff continues to be correct on that point.

18 For the active connection, again, I believe
19 Mr. Miller has correctly characterized the plain
20 language of the *Florida Administrative Code*. Whether or
21 not service is currently being provided seems clear to
22 me.

23 Mr. Friedman brings up the point that in
24 H. Miller & Sons it talks about guaranteed revenues. I
25 would point out that the Lake Utility Services

1 wastewater system has allowance for funds prudently
2 invested that was available to the company to charge.
3 AFPI is similar to guaranteed revenues in that
4 guaranteed revenues is a monthly charge and AFPI is an
5 accumulative charge, but they both address carrying
6 costs for non-used and useful property. So in my mind,
7 while the utility, it appears, did not choose to collect
8 that tariff charge that was available to them, they
9 certainly could have, and that, again, would have
10 addressed the H. Miller & Sons case.

11 Mr. Friedman brings out that they would like
12 for the order to reflect that this does not interfere
13 with their ability to collect for water. And to the
14 extent the utility is entitled to charge service
15 availability charges for water, which perhaps they are,
16 if those connections have not been made for water, I do
17 not disagree with that issue as well.

18 **CHAIRMAN GRAHAM:** Commissioner Edgar.

19 **COMMISSIONER EDGAR:** Thank you.

20 **CHAIRMAN GRAHAM:** Okay. Any further
21 discussion? Seeing none, I'll entertain a motion.

22 Commissioner Edgar.

23 **COMMISSIONER EDGAR:** Mr. Chairman, I agree
24 with the analysis from staff from the information that
25 we have available and also the description that

1 Ms. Daniel has given regarding the applicability of the
2 case in H. Miller & Sons, and I would move staff
3 recommendation.

4 **COMMISSIONER BROWN:** Second.

5 **CHAIRMAN GRAHAM:** It's been moved and
6 seconded, staff recommendation on Item No. 3. Any
7 further discussion? Seeing none, all in favor, say aye.

8 (Vote taken.)

9 Any opposed? By your action, you've approved
10 the staff recommendation on this item.

11 (Agenda item concluded.)

1 STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
2 COUNTY OF LEON)

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 10th day of December, 2015.

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