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RECORDS AND REPORTING

July 26, 1999

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 Citizens' Response to Utility's July 19th Motion to Strike or in the alternative Citizens' Motion to Strike Utility's Uestimony 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

- AFA _____
- APP _____
- CAF _____
- CMU _____ HM/dsb
- CTR _____ Enclosures
- EAG _____
- LEG _____
- MAS _____
- OPC _____
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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/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: July 26, 1999

CITIZENS' RESPONSE TO UTILITY'S JULY 19th MOTION TO STRIKE
or in the alternative
CITIZENS' MOTION TO STRIKE UTILITY'S TESTIMONY

The Citizens of the State of Florida, by and through JACK SHREVE, Public Counsel, (Citizens) respond to the Utility's Motion to Strike the Office of Public Counsel's Direct Testimony of Hugh Larkin, Jr. (the instant motion) as follows:

1. Cypress Lakes Associates, Ltd. and/or Cypress Lakes Utilities, Inc. (Cypress) by means of the instant motion claims that the Citizens' prefiled direct testimony should be stricken because it does not comport with the dates set forth in the most recent order establishing procedure; the Citizens concede that it does not;

2. The Citizens, for reasons set forth in their July 16th response to Cypress' July 12th motion to dismiss, submit that the only appropriate time to challenge prefiled testimony is the point at which a tendering party seeks to have that prefiled testimony entered into the record by a sponsoring witness; accordingly, the Citizens submit that the instant motion is premature and ought to be denied;

3. If, however, the Commission is disposed to entertain a motion to strike prefiled testimony at this juncture -- before it is tendered to the record -- the Citizens move to strike the

prefiled testimony of Carl Wenz, which was either handed or mailed to the Director of Records and Reporting, notably lacking in any representation that it was in fact served to any of the party, and further notably lacking in any certificate of process, both in contravention of Rule 28-106.104 Florida Administrative code, which governs practice and procedure before the Commission. The rule provides:

28-106.104 Filing.

(4) Whenever a party files a pleading or other document with the agency, that party shall serve copies of the pleading or other document upon all other parties to the proceeding. A certificate of service shall accompany each pleading or other document filed with the agency.

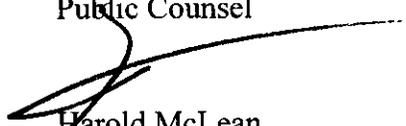
As is set forth in argument and cases cited in the referenced response to motion filed by the Citizens on July 16, 1999, the Citizens submit that the failure to comply with Rule 28-106.104 is fatal to the filing and that it is in fact a nullity upon which the Commission cannot base a decision in this case;

4. The considerations of fairness set forth in GTE Florida, Inc. v. Clark, 668 So.2d 971 (Fla. 1996) require that if the Citizens' prefiled testimony is to be stricken for failure to comply with the Commission order establishing procedure, that the utility's prefiled testimony be stricken for failure to comply with the Florida Rules of Administrative Procedure, and the Citizens so move;

WHEREFORE, the Citizens of the Sate of Florida submit that the instant motion should be denied, or in the alternative that the 'prefiled' testimony of Carl Wenz be stricken forthwith.

Respectfully submitted,

Jack Shreve
Public Counsel



Harold McLean
Associate Public Counsel

Office of the Public Counsel
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111 West Madison Street
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Attorneys for the Citizens
of the State of Florida

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

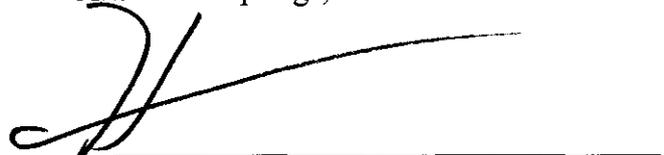
I HEREBY CERTIFY that a true and correct copy of the foregoing CITIZENS' RESPONSE TO UTILITY'S JULY 19th MOTION TO STRIKE or in the alternative CITIZENS' MOTION TO STRIKE UTILITY'S TESTIMONY has been furnished by U.S. Mail or *hand delivery to the following parties, this 26th day of July, 1999.

Jennifer Brubaker, Esquire*
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Harold McLean
Associate Public Counsel