BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Lake Utility Company for amendment of Certificates Nos. 527-W and 461-S to add territory in Lake County.	DOCKET NO. 000041-WS ORDER NO. PSC-00-0804-PAA-WS ISSUED: April 24, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

ORDER AMENDING CERTIFICATE TO INCLUDE ADDITIONAL TERRITORY

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING RATE FOR RECLAIMED WATER SERVICE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein approving a rate for reclaimed water service 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

Lake Utility Company (Lake Utility or utility) is a Class B water and wastewater utility that provides water and wastewater service to approximately 1,410 water customers and 1,337 wastewater customers. The annual report for 1998 shows that the annual operating revenue for water and wastewater is $1,103,833 and the net loss is $238,503. Further review of the annual report indicates that the loss is primarily due to an interest expense of $461,222.

On January 12, 2000, the utility applied for an amendment to Water Certificate No. 527-W and Wastewater Certificate No. 461-S in Lake County, Florida, pursuant to Rule 25-30.036(3), Florida Administrative Code.

APPLICATION

The application is 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. The application contains a check in the amount of $2,000 which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence in the form of a warranty deed that the utility owns the land upon which its facilities are located, as required by Rule 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(3)(e), (f) and (i), Florida Administrative Code. A description of the territory requested by the utility is appended hereto as Attachment A.

The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, stating that it has tariffs and annual reports on file with this Commission. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application have been received and the time for filing such has expired. The local planning agency and the City of Leesburg (City) were provided notice of the application and did not file a protest to the amendment.

On February 4, 2000, a copy of the application was sent to the Department of Community Affairs (DCA) for comment, pursuant to the Memorandum of Understanding entered into between the Commission and DCA on June 5, 1998. A response was received on March 16, 2000. The DCA states it has no objection to the application. However, the City does have some concerns with the application.

The City voiced concerns over the application to the DCA. The City is currently constructing a wastewater facility that is in close proximity to the expansion area proposed by the utility. The City believes there might not be a need for the utility to expand into the proposed area since the City could easily provide

wastewater service when the new plant is completed. The City's plant will be completed by early summer of this year.

On March 20, 2000 the utility's attorney responded as follows:

1. Both the DCA and the City of Leesburg apparently have reached a conclusion that *"Lake Utility Company currently has adequate capacity to provide potable water to the area, but an expansion to its central wastewater plant will be required to provide service to the area proposed."* This conclusion, that apparently forms the basis for the City of Leesburg's concern, is inaccurate. As clearly stated within our Application, the Utility's present wastewater flows are less than 1/3 of its current rated and permitted wastewater plant capacity. Therefore, as stated clearly in the original Application, there is no expansion of the currently operated sewage treatment plant required to serve both the existing and proposed areas at build out.

2. The Plantation at Leesburg DRI, which this new territory will become a part of, will not increase its total units already approved for development under this Application. It is the intent of the Utility's related party developer to simply decrease the density of its development with the addition of this 206 acre parcel such that they still construct the same number of total units as would have already been approved for construction under the existing DRI for the Plantation at Leesburg. Therefore, the Utility's proposed build out as far as numbers of customers, ERCs and flows, <u>will not change</u> under the proposed Extension Application. Therefore, to some extent, this misunderstanding by the City of Leesburg and by the DCA is understandable, since the developer had not yet filed for development approval for the extension area. However, from a Utility standpoint, the DCA and the City of Leesburg's assumptions are inaccurate.

3. The City of Leesburg's proposed treatment facility mentioned in the DCA memorandum will only be a

secondary treatment facility, which will not provide a sufficient level of treatment to allow utilization of the treated effluent for reuse as contemplated in the Plantation at Leesburg Development Order. Therefore, not only is it less environmentally sound than the treatment plant already operated at far less than full capacity by Lake Utility Company, but it cannot supply needed highly treated effluent to the golf courses operated by the related party developer, even when completed. In addition, the cost of such effluent service, even if available, would likely be higher because of the costs inherent in transporting that effluent from the City's more distant treatment facility.

In conclusion, not only would service from the City's plant be less environmentally sound, it would also diminish the ability of Lake Utility Company to implement reuse, and substantially reduce the ability to fully utilize the existing Lake Utility Company currently permitted and operating wastewater facilities.

4. To the extent the City of Leesburg has an objection to the Application of Lake Utility Company, their opportunity under the law to object to that Application has long since passed. They were specifically noticed as required by Commission Rules, and the proof of that direct notification by Certified Mail has previously been provided to the Commission, (a copy of the Return Receipt related to the City is attached hereto for your ready reference). That noticing was completed on January 18, 2000 and as such, any objection by the City of Leesburg was due before the end of February. No such objection or even comments were filed by them.

5. While the DCA has ultimately determined that they have no "objection" to the Extension of Service Territory proposed by Lake Utility, I am very concerned that the DCA would ever "object" to an Application by a Utility regulated by the Florida Public Service Commission. It is my understanding that the Memorandum of Understanding (MOI) entered

> into several years ago between the DCA and the Public Service Commission, was intended to allow the DCA to offer comment concerning Applications for Extension related to territorial matters filed with the PSC. That MOI does not confer upon the DCA a right to "object" to a Utility's Extension Application, nor could it under the Statute. The DCA has no such power.
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> In addition, there is already in place, as noted above, a noticing requirement in order to obtain the comments of both the County Government and City Governments surrounding a regulated Utility's proposed extension area. I do not believe it is the place of the DCA to go back to those entities and to solicit additional comments or concerns on top of those already solicited under the noticing requirements contained within the Commission's Rules and Statutes. I believe such action by the DCA is above and beyond the requirements of the MOU between the two agencies, and is at the very least, redundant, if not indicative of some more troubling bias.

We contacted the Department of Environmental Protection (DEP) to determine additional information about the City's plant. According to DEP, the City's "turnpike" plant will have a capacity of 3.0 mgd. No current flows exist, but it is anticipated that .5 mgd to 1.0 mgd will be diverted to this facility. The plant will treat to secondary standards with nutrient removal. However, the effluent will not meet public access (spray irrigation) requirements and therefore cannot be used for spray irrigation on a golf course at this time.

Accordingly, we agree with the utility that it is more environmentally sound for it to treat and dispose of the effluent on the golf course. It is unfortunate that the City did not incorporate the use of the developer's golf courses to dispose of its effluent, and did not design the treatment plant to meet public access requirements to allow spray irrigation.

The application by the utility states that this area will be developed into low density housing consisting of a maximum of 550 single family homes. The existing water system consists of three wells, a treatment facility, and one 10,000 gallon hydropneumatic

tank. The water system can supply a maximum of 1,444,000 gallons per day (gpd). An expansion is currently in the design stage and will include the addition of a 12-inch deep well with chlorination and storage. This addition will increase the capacity to 2,880,000 gpd, and should be completed in late May or June of 2000. The estimated water demand for the proposed development is 192,500 gpd (350 gpd/unit x 550 units). According to the utility, the current water lines are within 100 feet of the proposed service area. The DEP has no outstanding notices of violation issued for this system.

According to the utility, the current permitted wastewater treatment capacity is 370,000 gpd. Current wastewater flows are 120,125 gpd. Based on actual and projected flow rates, that capacity is sufficient to provide service to all of the existing service territory at build out, plus the projected build out of the proposed service territory. The utility is currently utilizing reuse as a method of effluent disposal to the fullest extent possible. The development has two eighteen-hole golf courses, one of which is fully piped for utilization of effluent as a primary source of irrigation. Although no expansion appears to be needed, the utility will expand the wastewater treatment and disposal facilities should an expansion become necessary. As with the water system, the existing wastewater lines are within 100 feet of the proposed service area. The DEP has no outstanding notices of violation issued for this system.

The utility has filed revised tariff sheets incorporating the additional territory into its tariff. According to the utility, its original certificates could not be found. We will issue the utility new certificates and include the additional territory. Lake Utility's approved rates were effective pursuant to Order No. 22846, issued April 23, 1990, in Docket No. 891299-WS, an original certificate case. Lake Utility shall charge the customers in the territory added herein the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding.

Based on the above information, we find that it is in the public interest to approve the application of Lake Utility for amendment of Water Certificate No. 527-W and Wastewater Certificate No. 461-S to include the additional territory described in Attachment A, and we hereby approve the application.

RECLAIMED WATER SERVICE

According to the utility's application, the development has two eighteen-hole golf courses, Otter Creek Golf Club (Otter Creek) and Cranes Roost Golf Course (Cranes Roost). Otter Creek is fully piped for utilization of effluent as a primary source of irrigation. However, at the present time (and quite possibly even at build out of both the current and proposed facilities), the effluent flows available are not sufficient to meet the needs of Otter Creek for irrigation.

Due to growing concerns over water conservation, reclaimed water is increasingly being viewed as an alternative source of water for irrigation of golf courses and even residential communities in some cases. Along with the increased use of reclaimed water comes a recognition that there are costs associated with the provision of reclaimed water. Consequently, it has become our practice to recognize reclaimed water service (sometimes referred to as effluent service) as a class of service which should be included in a utility's tariff, even if the utility is not currently assessing a charge for the service.

Although there are costs associated with the provision of reclaimed water service, there are cases in which the "avoided costs" outweigh the actual cost of the service, and thus not charging for the effluent is justified. For example, disposing of effluent on non-utility property may delay or even eliminate the need for the utility to purchase additional land for spray fields or percolation ponds, thereby resulting in lower rates for the utility's existing wastewater customers.

In this case the effluent flows available from the utility for Otter Creek are not sufficient to meet the full needs of the golf course for irrigation. The utility believes that if a charge were to be imposed for the effluent, Otter Creek would no longer be willing to use the effluent. Further, the utility's disposal of the effluent to Otter Creek saves the utility from purchasing land to be used as spray fields.

We find that the service to Otter Creek Golf Club shall be continued at a zero rate, and shall be included in the utility's tariff. However, the utility shall return to us for determination regarding rates for reclaimed water service prior to providing that service to any other customers. This Order is consistent with our past practice. See Order No. PSC-95-1325-FOF-WS issued October 31,

1995, in Docket No. 941151-WS; and Order No. PSC-98-0475-FOF-WS issued April 1, 1998, in Docket No. 971157-WS.

Therefore, we hereby authorize the utility to continue providing the reclaimed water service at a zero rate. Additionally, the utility shall file a wastewater tariff sheet reflecting the reclaimed water class of service. The tariff shall be effective for services rendered on or after the stamped approval date of the tariff.

If no timely protest is received to the Proposed Agency Action issue, this Order shall become final and effective upon issuance of a Consummating Order and the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Lake Utility Company's application for amendment of Certificates Nos. 527-W and 461-S to include additional territory described in Attachment A is hereby approved. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that Attachment A, attached to this Order, is incorporated herein by reference. It is further

ORDERED that Lake Utility Company shall charge the customers in the territory added herein the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that Lake Utility Company shall file a revised tariff sheet reflecting the approved rate for reclaimed water service for the Otter Creek Golf Club, as set forth in the body of this Order. The rate shall be effective on or after the stamped approval date of the tariff sheet. It is further

ORDERED that the provision of this Order, authorizing Lake Utility Company to continue providing reclaimed water service at a zero rate, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the

close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

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

By ORDER of the Florida Public Service Commission this 24th day of April, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

JKF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

As identified in the body of this order, our action approving a rate for reclaimed water service is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 15, 2000. If such a petition is filed, mediation may be available on a case-by-

case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

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.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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 after the issuance 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.

ATTACHMENT A

LAKE UTILITY COMPANY

WATER AND WASTEWATER TERRITORY

LAKE COUNTY

In Section 27, Township 20 South, Range 24 East

E 1/4 of W 1/2 of NE 1/4, LESS the North 66 feet; NE 1/4 of NE 1/4, LESS the North 66 feet; W 3/4 of N 1/2 of SE 1/4 of NE 1/4; S 1/2 of SE 1/4 of NE 1/4; NE 1/4 of SE 1/4; E 1/4 of NW 1/4 of SE 1/4

AND

That part of S 1/2 of SE 1/4 lying N of the Florida Turnpike. All in Section 27, Township 20 South, Range 24 East

AND

In Section 34, Township 20 South, Range 24 East

That part of NE 1/4 of NE 1/4 lying N of the Florida Turnpike in Section 34, Township 20 South, Range 24 East.

Not including that part of the Florida Turnpike adjacent to subject property.

All in Lake County, Florida. A total of ± 206.5 Acres