

DOCKET NO. 960799-WS
September 4, 1996

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CASE BACKGROUND

Lake Suzy Utilities, Inc. (utility) is a Class C water and wastewater utility located in Desoto County. The Commission granted the utility's Certificate Nos. 490-W and 416-S in Docket No. 850790-WS, by Order No. 16935, issued December 9, 1986.

The utility purchases water from Desoto County and resells it to its customers. The utility is currently providing wastewater treatment for some of its customers. However, some of the utility's wastewater customers are being serviced by Kingsway Properties, Inc., a jurisdictional utility. Based on the utility's 1995 annual report, the utility provides wastewater service to 54 customers.

The utility's initial rates and rate structure were approved by Desoto County. These rates with some modification were approved by the Commission when the utility was granted operating certificates for water and wastewater. Since that time, the utility's rates have been increased through price index and pass through applications from 1987 through 1991. The utility has not had a prior rate case.

On July 3, 1996, the utility applied for this staff assisted rate case. In its application, the utility requested interim (emergency) rates and interim service availability charges for wastewater. This recommendation addresses the utility's request for emergency rates and service availability charges.

DISCUSSION OF ISSUES

ISSUE 1: Should Lake Suzy Utilities, Inc.'s request for emergency wastewater rate relief be granted and if so, what is the appropriate increase and what are the appropriate rates?

RECOMMENDATION: Yes, staff is recommending that the Commission in this case allow a broader application of emergency rates than it has done in past cases. The utility should be granted emergency wastewater relief designed to generate additional annual revenues of \$13,353, an increase of 31.01%. The recommended rates are incorporated into staff's recommendation below. (BETHEA, DEWBERRY, DAVIS, WILLIAMS)

STAFF ANALYSIS: Lake Suzy has requested an emergency rate increase pending completion of its staff assisted rate case (SARC). Traditionally, the Commission has granted emergency rates only in unique circumstances, because there is typically a lack of adequate financial data to set rates until the staff audit is completed. The Commission has also been reluctant to grant emergency rates due to its concern over Class C utilities' ability to refund. Both of these concerns stem from a desire to protect the ratepayers in the event rates are set too high. See, e.g., Order No. PSC-93-0633-FOF-SU, Order Granting Emergency Temporary Rates and Placing Docket in Monitor Status, In Re: Application for Staff-Assisted Rate Case by L.C.M. Sewer Authority in Lee County, 93 FPSC 4:608, April 22, 1993.

In past cases, the Commission has considered a unique circumstance to be when a utility is in receivership and is unable to cover operating expenses. In restricting emergency relief to such circumstances, the Commission has attempted to encourage timely seeking of rate relief. See, e.g., Order No. PSC-94-1053-FOF-WS, Order Denying Petition for Emergency Rates or for Reconsideration of Order No. 24653, In Re: Application for Staff-Assisted Rate Case in Volusia County by PINE ISLAND UTILITY CORPORATION, 94 FPSC 8:510, August 29, 1994 (emergency rates denied because appropriate only where immediate and urgent need in very unique circumstances). Cf. Order No. PSC-93-1844-FOF-WS, Order Granting Emergency Rates and Charges, In Re: Application for Staff-Assisted Rate Case in Marion County by ASTOR WEST, INC., 93 FPSC 12:528, December 28, 1993 (Commission does not ordinarily consider emergency rates in a SARC unless utility is in receivership, in order to encourage timely seeking of rate relief).

Staff believes that one of the most urgent needs in ratemaking is to provide the utility with the opportunity to generate funds for its financial and operational stability. Florida Statutes recognize this objective by providing means for

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Class A and B utilities to remain whole during a rate proceeding. However, it appears that the statutes provide no such express protection for Class C utilities. In fact, regulatory lag actually works against this objective. For example, by following the time schedule of a typical staff-assisted rate case, the earliest date at which Lake Suzy could hope to receive compensatory rates would be March 1997. At that point, the utility would have incurred an additional \$8,501 in unrecoverable losses. In order to provide a perspective on the magnitude of these losses, \$8,501 is 24 percent of the utility's annual revenues. Since denial of the emergency rate request will adversely impact this utility, staff believes that Lake Suzy's wastewater revenue shortfall is a circumstance that presents an immediate and urgent need for rate relief.

Although, Lake Suzy is not in receivership, its operating expenses do exceed its revenues by a significant amount. Without emergency rate relief, these losses will be unrecoverable, thereby, harming the financial and operational stability of the utility. Staff believes a utility's operational stability and the health of its customers can be jeopardized if it is not financially sound. Therefore, staff is recommending that the Commission in this case allow a broader application of emergency rates than it has done in past cases. Staff believes that emergency rates should be allowed in this case in order to protect the utility from unrecoverable losses and to improve its financial and operational stability.

Staff has analyzed O & M expenses reported on the 1995 annual report, compared them to expenses the Commission has allowed in past cases for like sized utilities, and found them to be reasonable. Consistent with past cases, the recommended rates allow recovery of only necessary day-to-day operating expenses and real estate and payroll taxes. These rates are conservative in that they do not include depreciation expense or return on investment, although the utility requested inclusion of these expenses.

The utility has been certificated and under present management since 1986. Past operating losses have been covered by cash advances from related parties, and the utility has secured funding for the needed improvements. Staff therefore believes the utility has the ability to comply with the escrow requirements recommended in Issue 3.

In conclusion, staff recommends that the utility's wastewater system be granted emergency rate relief as follows.

The utility requested an emergency increase in revenue of \$23,579, (67.11%). The requested increase included the recovery of the difference between annual revenues of \$35,134 and total operating expense, which includes operation and maintenance expense

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(O&M), depreciation expense and taxes other than income. The utility's request also included budgeted officers salaries and employee benefits for 1996. Staff's recommended rates cover only necessary day-to-day O&M expenses and real estate and payroll taxes as reported in 1995. The increase should be designed to generate additional annual revenues of \$13,353, an increase of 38.01%. The calculation of staff's recommended emergency rates are shown on Schedule No. 1. A schedule of the utility's existing rates and staff's recommended rates follows:

Wastewater
Monthly Rates

Residential Service

<u>Meter Size</u>	<u>Existing Rates</u>	<u>Recommended Emergency Rates</u>
All Sizes	\$13.59 x 1.3801	\$ 18.76
 <u>Gallage Charge</u>		
Per 1,000 gallons (10,000 gall. max.)	\$ 2.00 : 1.3801	\$ 2.76

Multi-Residential and General Service

<u>Meter Size</u>	<u>Existing Rates</u>	<u>Recommended Emergency Rates</u>
5/8" x 3/4"	\$13.59 x 1.3801	\$ 18.76
1"	32.63 x 1.3801	45.03
1 1/2"	65.22 x 1.3801	90.01
2"	105.63 x 1.3801	145.78
 <u>Gallage Charge</u>		
Per 1,000 gallons	\$ 2.39 x 1.3801	\$ 3.30

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ISSUE 2: Should Lake Suzy Utilities, Inc.'s request for emergency wastewater service availability charges be granted and if so, what are the appropriate charges.

RECOMMENDATION: Yes, the utility's request for emergency wastewater service availability charges should be granted. The utility should be authorized to charge the recommended charges listed in the staff analysis. (DEWBERRY, DAVIS)

STAFF ANALYSIS: Order No. 16935, issued December 9, 1986, in Docket No. 850790-WS, approved service availability charges for the utility's water system. At that time the utility's wastewater was being treated by Kingsway Properties, Inc., a jurisdictional utility. The utility had no investment in the Kingsway System and a wastewater service availability charge was not needed. Since that time the utility constructed its own 50,000 gpd treatment plant. The Department of Environmental Protection (DEP), by a consent order, during the first part of 1994, required the utility to upgrade its wastewater system to comply with treatment and discharge standards. In its application for this rate case the utility has provided estimated costs for upgrading the existing wastewater treatment system for compliance, the capacity of the upgraded plant and the gpd usage per equivalent residential connection (ERC). The utility also calculated and requested a service availability charge of \$2,135 per connection.

Based on information submitted by the utility, the utility's existing capacity for the wastewater treatment plant is 50,000 gpd. The utility is adding capacity of 37,000 gpd, which will increase total capacity to 87,000 gpd. The utility's stated average usage is 190 gpd per ERC. Using this information the utility's wastewater treatment plant can accommodate 458 ERCs (87,000 gpd/190 gpd).

Based on the utility's 1995 annual report, the utility provides wastewater service to 54 customers. The utility has no Commission approved service availability charges and has connected these customers without collecting a charge. The annual reports show contributions in aid of construction (CIAC) for wastewater, which appears to have been contributed by a developer. Even though the utility never collected service availability charges from the existing customers, staff believes that emergency service availability charges should be calculated to include the total number of ERCs the wastewater system can accommodate. Spreading the cost over total ERCs provides a more equitable share for future connections.

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Staff has calculated service availability charges using information provided by the utility and net plant and CIAC balances from the 1995 annual report. Total ERCs have been used with an estimated build out of ten years. This information is unaudited. However, following the schedule for this rate case the earliest date the utility can collect Commission approved charges for wastewater is March 1997. If new customers are connected to the system prior to this date without the approval of emergency charges, the utility will never be able to collect from those customers. As addressed in Issue 3, staff is recommending that the emergency service availability charges collected prior to the Commission's final decision be held subject to refund. The Commission has approved interim service availability charges. See, e.g., Order No. 20639, issued January 20, 1989, granting interim service availability charges subject to refund for Continental Country Club, Inc. and Order No. 20822, issued February 28, 1989, granting interim service availability charges for Radnor/Plantation Corporation d/b/a Plantation Utilities. A schedule of staff's recommended charges follows:

Wastewater
Service Availability Charges

	<u>Staff's Recommended</u> <u>Emergency Charges</u>
Plant capacity	\$ 639
Main extension	<u>\$ 920</u>
	\$1,559

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ISSUE 3: Should Lake Suzy Utilities, Inc. be required to provide emergency rate protection, and if so, in what form and in what amount?

RECOMMENDATION: Yes, Lake Suzy Utilities, Inc. should be ordered to establish an escrow account with an independent financial institution, to remain in effect until a final Commission Order is issued. The utility should provide refund security by placing in escrow the difference in the old and new emergency wastewater rates, and the total amount of emergency wastewater service availability charges.

The utility should maintain a record of the amount of the revenues that are subject to refund. In addition, after the increased rates and charges are in effect, the utility should file reports with the Division of Water and Wastewater no later than 20 days after each monthly billing. These reports shall indicate the amount of revenue collected under the increased rates and charges.
(DEWBERRY)

STAFF ANALYSIS: This recommendation proposes an increase in wastewater rates and service availability charges. In order to protect the customers in the event that the final rates and charges are less than those received as a result of the emergency increase authorized, it is recommended that the utility provide refund security by placing in escrow the difference in the old and new emergency wastewater rates, and the total amount of emergency wastewater service availability charges. The recommended rates and charges collected by the utility shall be subject to the refund provisions discussed below.

The utility should be authorized to collect the emergency rates and charges after staff approves: the security for potential refund, the copy of the proposed customer notice, and the revised tariff sheets. The utility should establish an escrow agreement with an independent financial institution.

The following conditions should be part of the agreement:

- 1) No funds in the escrow account may be withdrawn by the utility without the express approval of the Commission.
- 2) The escrow account shall be an interest bearing account.
- 3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.

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- 4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.
- 5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
- 6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 7) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Consentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.
- 8) The Director of Records and Reporting must be a signatory to the escrow agreement.

In no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility. An accounting of all monies received as a result of the rate increase should be maintained by the utility. This accounting must specify by whom and on whose behalf such monies were paid. If a refund is ultimately required, it should be paid with interest calculated pursuant to Rule 25-30.360(4), Florida Administrative Code.

The utility should also maintain a record of the amount of the revenues that are subject to refund. In addition, after the increased rates and charges are in effect, the utility should file reports with the Division of Water and Wastewater no later than 20 days after each monthly billing. These reports shall indicate the amount of revenue collected under the increased rates and charges.

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ISSUE 4: What is the appropriate effective date of the increased emergency wastewater rates and service availability charges?

RECOMMENDATION: The approved emergency wastewater rates and service availability charges should be effective for service rendered as of the stamped approval date on the revised tariff sheets provided customers have received notice, in accordance with Rule 25-30.475, Florida Administrative Code. The utility must provide proof that the customers have received notice within ten days of the date of the notice. Tariff sheets will be approved upon staff's verification that the tariff sheets are consistent with the Commission's decision, that the proposed customer notice is adequate, and that the required security has been provided. In no event shall the rates be effective for services rendered prior to the stamped approval date. (DEWBERRY)

STAFF ANALYSIS: The approved emergency rates should be effective for service rendered as of the stamped approval date on the revised tariff sheets, provided customers have received notice, in accordance with Rule 25-30.475, Florida Administrative Code. The utility must provide proof that the customers have received notice within ten days of the notice. Tariff sheets will be approved upon staff's verification that the tariff sheets are consistent with the Commission's decision, that the proposed customer notice is adequate, and that the required security has been provided. In no event shall the rates be effective for services rendered prior to the stamped approval date.

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ISSUE 5: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open for the processing of the staff-assisted rate case. (DEWBERRY, DAVIS, WILLIAMS)

STAFF ANALYSIS: This petition for emergency rate relief was filed within the context of a staff-assisted rate case. Staff has scheduled a recommendation considering all pertinent aspects of the SARC for the January 21, 1997, agenda conference. Staff will make a recommendation regarding closing the docket at that time.

LAKE SUZY UTILITIES, INC.
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CALCULATION OF EMERGENCY RATE INCREASE (WASTEWATER)
SCHEDULE NO. 1

<u>ACCOUNT NUMBER</u>	<u>ACCOUNT TITLE</u>	<u>PER 1995 ANNUAL REPORT</u>
522	Revenue	\$ 35,134
701	Salaries and Wages - Employees	\$ 1,419
710	Purchased Wastewater Treatment	2,875
711	Sludge Removal Expense	1,365
715	Purchased Power Expense	5,406
720	Materials and Supplies	6,812
730	Contractual Services	18,368
740	Rents	5,268
750	Transportation Expenses	1,089
755	Insurance Expense	705
775	Miscellaneous Expenses	2,213
	Total O & M Expense	\$ 45,520
	Operating Loss	\$ (10,386)

Components for Increase grossed up for regulatory assessment fees

Operating Loss	\$10,386		
Real Estate Taxes	2,208		
Payroll Taxes	158		
	<u>\$12,752</u>	/ .955 =	\$13,353 Increase in Revenue
Increase in Revenue	<u>\$13,353</u>	=	38.01% Increase
Existing Revenue	\$35,134		