



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison St.
Room 812
Tallahassee, Florida 32399-1400
850-488-9330

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RECORDS AND
REPORTING

August 3, 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 30th Motion
to Dismiss 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

HM/dsb
Enclosures

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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: August 3, 1999

CITIZENS' RESPONSE TO UTILITY'S JULY 30TH
MOTION TO DISMISS

The Citizens of the State of Florida, by and through JACK SHREVE, Public Counsel, (Citizens) respond to Utilities, Inc. and its wholly owned subsidiary, Cypress Lakes Utilities, Inc. (the utility) July 30th Third Motion to Dismiss the Office of Public Counsel's Protest and Petition for Section 120.57(1) Hearing Based on Lack of Case or Controversy (instant motion) and say as follows:

Summary

The instant motion must be denied because the adequacy of the Citizens' petition has been expressly ruled upon by the Commission; because it is both untimely and cumulative, and because the Commission has before it a justiciable issue which the Commission has authority to resolve.

The law of the Case

Order No. PSC-98-1566-FOF-WS addressed the sufficiency of the Citizen's petition for a formal hearing of this matter; nothing has changed since that time. Once again, the utility misapprehends the import of prefiled testimony which, the Citizens say, is not part of the record, and even were it so, not part of the evidence upon which this Commission can rely. The Commission

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now, as before, must look to the four corners of the petition to determine its legal sufficiency, and not beyond, to prefiled testimony or to any other matter.

The Commission has expressly denied an earlier motion to dismiss, which as a matter of law, must be based upon the same ground urged by the instant motion; thus the instant motion must be denied.

The instant motion is cumulative and untimely

The instant motion, like its two predecessors, must be evaluated upon the four corners of the petition which it addresses. This is the third motion addressed to that matter, the first having been denied and the second now pending. Moreover, the third, like the second is untimely according to the plain language of the Florida Administrative Code, which requires motions to dismiss to be filed within twenty days of the petition therein attacked. It is a matter of timing which the Commission, as pointed out by the Citizens in earlier response, has dutifully enforced against the Citizens.

This docket presents a justiciable issue to the Commission

Florida Statutes require this Commission to base rates upon, among other things, the prudent investment made by utility investors in facilities used and useful in providing utility service to the public. By means of this docket, the utility will eventually lay claim to a return on an investment greater than that it made. The Citizens will show that the transferee utility invested considerably less than the former rate base of this utility, and that the utility's laying claim to an investment that it did not make is unlawful.

WHEREFORE, upon these grounds the Citizens of the State of Florida, herein represented by the Office of the Public Counsel, say that the instant motion must be denied.

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 CITIZENS' RESPONSE TO UTILITY'S JULY 30TH MOTION TO DISMISS has been furnished by U.S. Mail or *hand delivery to the following parties, this 3rd day of August, 1999.

Jennifer Brubaker, Esquire*
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Ben E. Girtman, Esquire
1020 East Lafayette Street
Suite 207
Tallahassee, Florida 32301

Michael L. Resnick, Esquire
1342 E. Vine Street, Suite 236
Kissimmee, Florida 34744

Cypress Lakes Utilities, Inc.
200 Weathersfield Avenue
Altamonte Springs, FL 32714



Harold McLean
Associate Public Counsel