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ORIGINAL

June 18, 2003

HAND DELIVERY

Ms. Blanca Bayo
Commission Clerk and Administrative Services Director
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

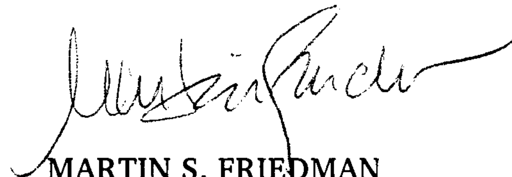
Re: Docket No. 020010-WS; Highvest Corporation's and L.P. Utilities Corporation's Protest of PAA SARC Order
Our File No.: 37074.01

Dear Ms. Bayo:

Enclosed please find for filing in the above-referenced docket an original and fifteen (15) copies of Highvest Corporation's and L.P. Utilities Corporation's Post Hearing Statement of Issues and Positions along with a floppy disk.

Should you have any questions regarding this matter, please do not hesitate to give me a call.

Very truly yours,



MARTIN S. FRIEDMAN
For the Firm

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COM 3 Enclosures
CTR ____
ECR ____
GCL ____ cc: Lawrence Harris, Esquire (w/enclosure)
OPC ____ Stephen Burgess, Esquire (w/enclosure)
MMS ____ Mr. John Lovelette (w/enclosure)
SEC 1
OTH ____

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in Highlands County by The Woodlands of Lake Placid, L.P.
_______________________________/

DOCKET NO.: 020010-WS

POST HEARING

STATEMENT OF ISSUES AND POSITIONS

OF

HIGHVEST CORPORATION

AND

L.P. UTILITIES, INC.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in Highlands County by The Woodlands of Lake Placid, L.P.
_______________________________/

DOCKET NO.: 020010-WS

POST HEARING STATEMENT OF ISSUES AND POSITIONS OF HIGHVEST CORPORATION AND L.P. UTILITIES, INC.

HIGHVEST CORPORATION and L.P. UTILITIES, INC., by and through their undersigned attorneys and pursuant to Order No. PSC-03-0110-PCO-WS, file this Post Hearing Statement of Issues and Positions:

ISSUE 1: WHAT ARE THE APPROPRIATE CIAC BALANCES FOR THE TEST YEAR ENDED DECEMBER 31, 2001?

Position:

The appropriate amount of CIAC balance for the test year ended December 31, 2001, is the same as in the PAA Order.

Argument:

Public Counsel argues to only lower rate base "in the event that the Commission determines that the Petitioners are correct in any of the items disputed in their petition." (Tr. 116) In addition, this is an issue raised by Petitioners and subsequently withdrawn. It is inappropriate for the Commission to adjust the amount of CIAC set forth in the PAA Order. The appropriate amount of CIAC is $204,307 for the water system and $65,600 for the wastewater system.

ISSUE 2: WHAT IS THE APPROPRIATE AMOUNT TO BE INCLUDED IN RATE BASE FOR WORKING CAPITAL?

Position:

One-eighth of operating and maintenance expenses.

Argument:

Pursuant to Rule 25-30.433 (2), Florida Administrative Code, working capital for L.P. Utilities, Inc., is calculated using the formula approach (one-eighth of operation and maintenance expense). The amount of working capital in the PAA Order should be increased by as a result of the increase in O&M expense for office rent, and rate case expense.

ISSUE 3: WHAT ARE THE APPROPRIATE RATE BASE AMOUNTS?

Position:

The appropriate rate base amount is the same as in the PAA Order.

Argument:

Public Counsel argues to only lower rate base "in the event that the Commission determines that the Petitioners are correct in any of the items disputed in the Petition." (Tr. 116) This is a bootstrap position to make up for the fact that Public Counsel did not protest any of the issues in the PAA Order. Such bootstrapping cannot be allowed and still maintain the substantive and procedural integrity of this process. Thus, the water system rate base should be $218,860, and the wastewater rate base should be $191.616.

ISSUE 4: WHAT IS THE APPROPRIATE AMOUNT OF OFFICE RENT TO BE INCLUDED IN O & M EXPENSES?

Position:

Reasonable office rent is $300 per month, divided equally between water and sewer.

Argument:

The PAA Order did not include any expense for the rent of the office. The Audit Report (Ex. 1) notes that the Utility office is in the Camp Florida sales/rental office. The Auditor allocated office space based upon the amount of time the people working in the office spent on Utility business. This resulted in 129 square feet being allocated to the Utility. The Auditor spoke with a local real estate agent and concluded that $573.89 should be included in water expenses and $479.12 be included in wastewater

expenses. The Auditor concluded: "If the Utility were to have stand-alone offices, rent would be higher."

The Public Counsel's witness was working on her first Staff Assisted Rate Case. (Tr. 136) She did not know how the Commission typically dealt with rent in Staff Assisted Rate Cases, but did not believe that rent should be included if none was paid in the test year. (Tr. 136) She testified she had never seen an instance where a Utility had rent expense imputed in the revenue requirement. (Tr. 137-138) The Public Counsel's witness' lack of knowledge, and in fact erroneous conclusion, renders her testimony unreliable, and it should be disregarded. It would have been a simple task for her to review previous PSC SARC Orders before rendering her opinion.

Since L.P. Utilities took over the utility operations on October 1, 2002, it has not paid rent to the owner of the office building which the Utility shares with the Camp Florida Sales' Office since there were insufficient monies to pay rent. (Tr. 31) Brookline Development has an office building across the street from L.P. Utilities' current office. The smallest office space available there is 600 square feet at $8.50 per square foot ($425/mo), plus sales tax, common area maintenance and utilities. (Ex. 2) This cost per square foot compares reasonably with the Auditor's finding, but the Auditor apparently did not consider the additional expenses incidental to rental of office space. (Ex. 1)

The Staff witness recommended no rent expense because he believed the building was owned by the HOA. (Tr. 140) He stated that he did not learn that the office building was not owned by the HOA until he heard testimony of that fact at the hearing. (Tr. 153) The ownership issue was made clear during Mr. Cozier's deposition on April 23, 2003. (Tr. 134) It is perplexing as to why the Staff Attorney did not provide this important piece of information to the Staff's witness who was to testify on this issue. It is particularly troublesome since the Staff witness' prefiled testimony was erroneous as to the ownership of the office building.

Interestingly, the Staff witness had originally included rent expense consistent with the Audit until he went to the customer meeting and was told by customers that the HOA owned the building. (Tr. 151) Now that the Staff witness knew the true fact that the office building was owned by Highvest, he stated, "I can fully support the audit amount which is included in Ms. Welch's Audit Report." (Tr. 152) Under examination by the Staff Attorney, the Staff witness again stated that he could support the rent amount included in the Audit. (Tr. 159) It was only when the Staff witness was questioned by one of his bosses, Commissioner Davidson, did he state that it would be proper to deny any rent expense. (Tr. 161) This points out the problematic situation when Commissioners question their employees, especially when it is clear what response is sought by the Commissioner.

There are many expenses which the Staff looks at in a SARC that may not have been paid in the test year. (Tr. 153) It is "very common" to allow expenses which were not booked. (Tr. 153) Office rent is one of those expenses. It is also common to allow office rent when the office is shared by a related party. (Tr. 162) While the Staff witness testified that the "believed" there may have been a couple of cases where office rent expense was not included, he could not recall any. (Tr. 161) Obviously, if such cases exist, they are an anomaly.

As an example, in Order No. PSC-02-1114-PAA-WS (Bieber Enterprises, Inc., SARC) issued August 14, 2002, the utility had recorded no rent expense in the test year. The Commission allowed $100 per month for the use of a spare room in the utility manager's house. That's even more than the Auditor recommended for L.P. Utilities for an office in a building readily accessible to customers. The total revenue required for Bieber Enterprises, Inc., was about one-half of that of L.P. Utilities, and one-third the number of ERCs.

In Order No. PSC-03-0008-PAA-WS (Pinecrest Ranches, Inc., SARC), no office rent was recorded. Since there were three companies utilizing the office space, the Commission allowed one-third of the total cost of $600 per month. Pinecrest Ranches, Inc., had less than one-half the revenue requirement of L.P. Utilities and twenty percent of the number of ERCs as L.P. Utilities.

Similarly, see, Order No. PSC 01-1246-PAA-WS (Pennbrooke Utilities, Inc.) and Order No. PSC-00-2117-PAA-SU (Usoppa Island Utility, Inc.), where in each case $300 per month was approved even though no rent was recorded in the test year. The sum of $300 was also recently approved by the Commission at its Agenda Conference on June 3, 2003, in Docket No. 021067-WS (River Ranch Water Management, LLC, SARC).

Finally, in Order No. PSC-01-1162-PAA-WU (Sunrise Water Company SARC), this Commission allowed an allocated office rent expense of over $440 per month for a water only system serving 267 residential customers and 1 general service customer, with a revenue requirement of twenty-five percent less than that of L.P. Utilities which has 335 water ERCs and 276 wastewater ERCs.

The undisputed fact is that L.P. Utilities has an office, which is shares with other companies. It is unrefutted (and in fact the Auditor concurs) that to rent separate office space would be more expensive than sharing space. The Audit does not disclose the breadth of the area investigated by the Auditor, however, the office space in the service area that is currently available would cost more than $425 per month. Consistent with the previous PSC Orders referenced above, reasonable rent would be $300 per month, divided equally between the water and wastewater systems.

ISSUE 5: **WHAT IS THE APPROPRIATE AMOUNT OF RATE CASE EXPENSE?**

Position:

Reasonable legal rate case expense is $29,112.00, which should be in addition to the Regulatory Commission Expense in the PAA Order.

Argument:

Pursuant to Section 367.0816, Florida Statutes, L.P. Utilities, Inc., is entitled to reasonable rate case expenses apportioned for recovery over four years. Reasonable legal rate case expense is set forth in Exhibit 6, which should be approved in its entirety.

ISSUE 6: **WHAT IS THE APPROPRIATE TEST YEAR OPERATING INCOME AMOUNT BEFORE ANY REVENUE INCREASE?**

Position:

Test year operating income before any revenue increase is set forth in the PAA Order as modified by L.P. Utilities' positions in this proceeding.

Argument:

This is a fallout amount based upon the PAA Order and the position taken by L.P. Utilities in this matter.

ISSUE 7: **WHAT ARE THE APPROPRIATE REVENUE REQUIREMENTS?**

Position:

The revenue requirements for the water system is $74,082 and for the wastewater system is $65,293.

Argument:

This is a fallout amount based upon the PAA Order and the positions taken by L.P. Utilities in this matter.

ISSUE 8: **WHAT ARE THE APPROPRIATE WATER AND WASTEWATER RATES?**

Position:

The appropriate water and wastewater are those set forth in the PAA Order as modified to eliminate the RV rental lots, and based upon the fallout revenue requirements after increases based upon L.P. Utilities' positions in this proceeding.

Argument:

This is a fallout amount based upon the PAA Order and the positions taken by L.P. Utilities in this matter. The rates, because they are being set on a prospective basis, must recognize the fact that the rental RV lots will be disconnected from the water and wastewater system if the PAA Order is adopted. (Tr. 31) The owner of the rental RV lots has advised L.P. Utilities that it is not economically feasible to rent the RV lots with water and wastewater service. (Tr. 65) The RV lots could still be rented since there are common facilities in close proximity to the rental lots. (Tr. 66) These common facilities include, men's and women's showers, bathroom facilities, and washers and dryers. (Tr. 66) The majority of RV renters use those common facilities even when service is provided to the lot. (Tr. 66) To accomplish the shut off of the rental RV lots, the services would be capped so whoever rented the lot could not just open a faucet to restore service. (Tr. 81)

ISSUE 9: **WHAT ARE THE APPROPRIATE AMOUNTS BY WHICH RATES SHOULD BE REDUCED FOUR YEARS AFTER THE ESTABLISHED EFFECTIVE DATE TO REFLECT REMOVAL OF THE AMORTIZED RATE CASE EXPENSE AS REQUIRED BY SECTION 367.0816, FLORIDA STATUTES?**

Position:

Rates should be reduced to reflect an annual decrease in revenue of $7,278.00.

Argument:

This is a statutory requirement and no argument is necessary.

ISSUE 10: **SHOULD THE UTILITY BE ALLOWED TO OFFSET THE UNDEREARNINGS FROM ITS WASTEWATER SYSTEM WITH THE EXCESS EARNINGS FROM ITS WATER SYSTEM?**

Position:

Yes.

Argument:

The PAA Order finds excess earnings in the water system of $38,134 per year, and underearnings in the wastewater system of $4,975 per year. These amounts should be adjusted to include office rent, and the underearnings in the wastewater system should be applied to offset the overearnings in the water system.

Pursuant to Order No. PSC-01-1246-PAA-WS, issued June 4, 2001, in the staff-assisted rate case for Pennbrooke Utilities in Docket No. 001382-WS, the Commission found that a reallocation of the revenue requirement between water and wastewater systems has the same net effect on customers as a reduction to one system and an increase to the other. In the Lindrick Service Corporation case, in Docket No. 980242-SU, the Commission found in Order No. PSC-99-1883-PAA-SU, issued September 21, 1999, that it was appropriate to net revenue requirements to determine overearnings. Also, in another Lindrick Service Corporation case, the Commission found in Order No. PSC-97-1501-FOF-WS, issued November 25, 1997, in Docket No. 961364-WS, that a reallocation of revenue requirements was appropriate for overearnings purposes. Finally, in the Indiantown Company, Inc., case, the Commission found in Order No. PSC-96-1205-FOF-WS, issued September 23, 1996, in Docket No. 960011-WS, that because of common service areas and, for the most part, common customers, it was appropriate to net revenue requirements for overearnings purposes.

The policies represented by these Orders are sound policies and applicable in the instant case.

ISSUE 11: **ARE THE WOODLANDS OF LAKE PLACID, L.P., HIGHVEST CORPORATION AND L.P. UTILITIES, INC., SEPARATE LEGAL ENTITIES?**

Position: *Yes.*

Argument:

It is without question that The Woodlands of Lake Placid, L.P., Highvest Corporation, and L. P. Utilities, Inc., are separate legal entities. The Staff

acknowledges this in its preparation of Exhibit 2. The Woodlands of Lake Placid, L.P., was formed in 1995 to purchase the property of the Camp Florida Resort and the Utility. (Tr. 33) L.P. Utilities, Inc., was formed a number of years ago in anticipation of purchasing utilities in the area. (Tr. 34) Highvest Corporation was incorporated in 1989 to invest in real estate in Highlands County. (Tr. 178) Thus, these three entities were formed at separate times for separate purposes.

The foundation of corporate law is that the existence of a corporate entity is not affected by changes in its ownership or changes in its management. The corporate owner or employee is distinct from the corporation itself, a legally different entity with different rights and responsibilities due to its different legal status. Cedric Kushner Promotions, Ltd., v. King, 533 U.S. 158, 163 (2001). The general rule is that corporations are legal entities separate and distinct from the persons comprising them. American States Ins. Co. v. Kelley, 446 So. 2d 1085 (Fla. 4th DCA 1984) Taking that principle another step, ownership of one corporation by another corporation does not destroy the identity of the latter as a separate legal entity. St. Petersburg Sheraton Corp. v. Stuart, 242 So. 2d 185 (Fla. 2nd DCA 1970)

Both the Public Counsel and the Staff, without articulating any legal basis, seek to disregard these legal entities. Their argument is that since Mr. Cozier ultimately controlled The Woodlands of Lake Placid, L.P., the prior owner of the utility assets, and now controls L.P. Utilities, Inc., the current owner of the utility assets, that somehow terminates the separate legal status of those entities.

Public Counsel's witness believes that the various entities are related parties from an accounting standpoint which would require a disclosure in financial statements of transactions among them. (Tr. 133) Even assuming that is true, it is a mere accounting requirement and does not affect the independence of the entities from a liability standpoint.

Even though the Public Counsel's witness had never been an officer or director of a corporation, she acknowledged that officers and directors owe a fiduciary duty to their shareholders. (Tr. 127)

As the Court articulated in Rehabilitation Advisors, Inc., v. Floyd, 601 So. 2d 1286 (Fla. 5th DCA 1992):

> Corporation directors owe a fiduciary duty to the corporation and to the shareholders and must act in good faith and in the best interest of the corporation. Under the Florida Statutes, a director is under an obligation to discharge her duties in good faith, with the care an ordinarily prudent person in a like position would exercise,

> and in a manner she reasonably believes to be in the best interest of the corporation. §607.0830 (1), Fla. Stat. (1991)

In cases such as the instant case where there are business dealings among various corporations with common officers and directors, the officers or directors must exercise extreme care in carrying out their fiduciary duties. See, Cohen v. Hattaway, 595 So. 2d 105 (Fla. 5th DCA 1992), recognizing that the burden is on the fiduciary to show the fairness and honesty of such transaction. Mr. Cozier recognizes this higher level of fiduciary duty. (Tr. 179)

The fiduciary duty of an officer or director is not to be taken lightly. The Florida Supreme Court in Doe v. Evans, 814 So. 2d 370 (Fla. 2002) cited approvingly from the Restatement (Second) of Torts:

> Under section 874 of the Restatement (Second) of Torts, Violation of Fiduciary Duty, "one standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation." Thus, "[a] fiduciary who commits a breach of his duty as a fiduciary is guilty of tortious conduct to the person for whom he should act. .... The liability is not dependent solely upon an agreement or contractual relation between the fiduciary and the beneficiary but results from the relation." Restatement (Second) of Torts §874 cmt. b (1979).

It is the separate fiduciary duty owned by officers and directors to the specific legal entity they serve and its shareholders that mandates the separate legal identity of the entities in question. This is particularly true of Highvest Corporation which is owned by Nancy Ayers, who is not related to Mr. Cozier or the Lovelettes. (Tr. 42) It is this fiduciary duty of Mr. Cozier to Highvest Corporation and Ms. Ayers, which led Mr. Cozier, in consultation with other board members and attorneys to foreclose on the assets of The Woodlands of Lake Placid, L.P., even though that limited partnership was ultimately controlled by Mr. Cozier. (Tr. 171)

The Staff and Public Counsel, in a show of naivete, believe that there is something sinister when someone controls several legal entities doing business with each other. As Mr. Cozier explained, people form corporations for different purposes. (Tr. 172) Merely, because someone may want to limit their risk in particular ventures by separating those ventures into separate corporations does not terminate the separate legal identity of each. Frankly, it is sound business practice to do so, so that if one business venture fails, it does not take down another business venture that may be successful. That is a legitimate reason why corporations are formed. Limiting

liability by forming a corporation is a legitimate purpose and the entities cannot be disregarded merely because of it. See, Advertechs, Inc., v. Sawyer Industries, Inc., 84 So. 2d 21 (Fla. 1955), where the Florida Supreme Court did not find it improper when the defendants organized the corporation solely to do business without subjecting themselves to liability, they were the only stockholders, they habitually operated through corporations, many unsuccessfully, and handled the business affairs of the instant corporation poorly.

ISSUE 12: WHETHER HIGHVEST AND L.P. CAN BE HELD LEGALLY RESPONSIBLE FOR MAKING THE REFUNDS FOR REVENUE COLLECTED BY THE WOODLANDS OF LAKE PLACID, L.P.?

Position:

No.

Argument:

The PAA Order is directed to The Woodlands of Lake Placid, L.P., which operated the Utility from the commencement of the overearnings refund period through the foreclosure sale in late September, 2002. L.P. Utilities operated the Utility thereafter, and continues to do so today. Although Highvest Corporation never operated the Utility, and thus did not collect any revenue that would be subject to refund, it joined in the Petition because the PAA Order provides a particular schedule for making the refund that would be applicable "if Highvest Corporation can provide assurance that it will assume the liability" for making the refund. Highvest Corporation has not operated the Utility nor collected revenue from providing utility service and thus does not intend to provide such assurance. Even Public Counsel's witness acknowledged that Highvest Corporation was not involved since it was not the owner of the Utility in the test year, nor is it the current owner. (Tr. 112) Thus, the issue regarding liability for making any refund is whether such obligation was assumed by L.P. Utilities when it purchased the utility assets from Highvest Corporation after the foreclosure sale.

Commissioner Davidson has the misconception that the theory of piercing the corporate veil has some applicability to the instant case. (Tr. P.M. Service Hearing at 18) Thus, L.P. Utilities is compelled to address the inapplicability for that theory even though it was not raised as an issue in this proceeding and thus is not properly a basis for determining liability for the refund. At the outset, it should be kept in mind that the burden of proof is on the person seeking to disregard the corporate entity. Computer Center, Inc. v. Vedapco, Inc., 320 So. 2d 404 (Fla. 4th DCA 1975)

The theory of piercing the corporate veil is one where the shareholders of a corporation are held personally liable for the actions of the corporation. Dania Jai-Alai v. Sykes, 450 So. 2d 1114 (Fla. 1984) The issue here is not whether Anbeth Corporation as the shareholder of L.P. Utilities or Mr. and Mrs. Cozier as the shareholders for Anbeth Corporation are responsible for the refunds. The issue is whether L.P. Utilities is responsible for refunds of revenues collected when the utility system was owned by The Woodlands of Lake Placid, L.P. There is no stretch of the theory of piercing the corporate veil that transfers liability from a partnership or its corporate general partner to an entirely separate corporation, when the latter corporation has no ownership interest in the partnership or its corporate general partner. Thus, the theory of piercing the corporate veil has no applicability to whether or not L.P. Utilities is liable for refunds of revenue collected prior to its ownership of the utility assets.

In connection with the purchase of property in the Camp Florida Resort, The Woodlands of Lake Placid, L.P., borrowed money from the Nancy Ayers Remainder Trust and executed a Mortgage to that Trust. (Tr. 30, 33) This was indisputably an arms-length transaction with the Trust's attorneys in Indianapolis, Indiana preparing voluminous documentation, the closing on which lasted from 8:00 a.m., until 4:30 a.m., the next morning. (Tr. 178) The documentation was such that one would have thought Mr. Cozier was taking over General Motors Corporation. (Tr. 178)

When the Mortgage went into default, there was an issued raised with the Trust holding a non-performing asset. The Mortgage was then assigned to Highvest Corporation, of which Ms. Ayers, individually, was the sole shareholder. (Tr. 30, 170, 178; Ex. 3) Ms. Ayers has no relationship to Mr. Cozier or the Lovelettes, and has no ownership interest in any of the other entities involved in this proceeding. (Tr. 42; Ex. 3)

When a judgment was entered against The Woodlands of Lake Placid, L.P., in connection with litigation unrelated to the Utility, it placed the security of the Mortgage at issue. (Tr. 46-47, 49-50) Even though the Mortgage was prior to the judgment, the judgment affected The Woodlands of Lake Placid, L.P.'s ability to continue to make Mortgage payments, which had previously been sporadic. (Tr. 46-47)

The decision by Highvest Corporation to foreclose on the Mortgage was made by the Board in consultation with the owner and the corporation's attorneys. (Tr. 45, 170) In making that decision, Mr. Cozier as president of Highvest Corporation had a greater fiduciary duty to Highvest Corporation and its shareholder since that corporation engaged in business dealings with other entities which were controlled by Mr. Cozier. (Tr. 30, 179) He could not allow personal issues to interfere with his

fiduciary duty, the breach of which would subject him to personal liability to Highvest Corporation and its shareholder. (Tr. 183) Also, see legal argument on this issue in "Issue II".

Highvest Corporation filed the foreclosure action against The Woodlands of Lake Placid, L.P., in July, 2002, and a Final Judgment was entered by the Court the next month. (Tr. 30) The property that was the security for the Mortgage, which included raw land and the utility systems, was offered for sale on the courthouse steps. No one bid the amount of the Final Judgment and Highvest Corporation took ownership of the property. (Tr. 30-31) It is undisputed that the foreclosure was done in accordance with law. (Tr. 172) At the time the foreclosure action was filed, The Woodlands of Lake Placid, L.P., had no responsibility for making any refunds. (Tr. 173) This is supported by the fact the Staff Audit issued in April of 2002, showed the Utility had an operating loss of over $10,000 per year in the water system. Mr. Cozier testified the auditors told him the Utility could expect a 12% return. (Tr. 182) Thus, any argument that the foreclosure was a ruse to avoid making a refund is unsupported by the record. Since Highvest Corporation was not in the business of operating a utility company, the utility assets were sold almost immediately to L.P. Utilities, Inc., for the value placed upon those assets by the Commission. (Tr. 31)

A foreclosure does not wipe out a debt of the party whose property is foreclosed upon, and a person acquiring the property at a foreclosure sale assumes none of the debts which are inferior to the mortgage. Thus, when Highvest Corporation acquired the utility assets at the foreclosure sale, it did not assume the obligation to pay the judgment entered against The Woodlands of Lake Placid, L.P., nor any unmatured or unknown liabilities, such as for the refund in question. Since such obligations are not assumed by Highvest Corporation, they could not have been passed along to a subsequent purchaser of the utility assets.

Had Highvest sold the utility assets to any entity other than one controlled by Mr. Cozier, it is clear from the positions taken by Public Counsel and Staff (as well as Commission precedent) that the new utility owner would not be responsible for the obligations of the prior owner. The Public Counsel's witness admitted that she had no experience with utilities going through foreclosure. (Tr. 126) She had obviously not researched prior Commission Orders when she testified she did not know whether a third party purchaser of the utility assets in foreclosure would have been responsible for a refund. (Tr. 126)

L.P. Utilities, Inc.'s research of Commission Orders did not disclose any in which a party purchasing a utility system in foreclosure was responsible for the obligations to this Commission of the prior. All Commission decisions are to the contrary.

As early as 1987 in Order No. 18594, the Commission concluded that the obligation to pay regulatory assessment fees owed by the owner prior to foreclosure remained with the former regulated entity. In Order No. PSC-94-0083-FOF-WU, this Commission went so far as to give a credit to a utility who purchased assets in foreclosure who had paid regulatory assessment fees accruing to the system prior to its purchase. In Order No. PSC-00-0579-PAA-SU and subsequent actions in Docket No. 990975-SU, this Commission recognized that Bonita Country Club Utilities was responsible for the regulatory fees, penalties and interest which accrued prior to its foreclosure. This Commission did not pass that obligation to the bank which had foreclosed its mortgage on the utility assets.

Earlier this year, in Order No. PSC-03-0518-FOF-WS, This Commission addressed this issue in some detail. It was noted that River Ranch American controlled the utility from December 1, 1997, through February, 2000, when the utility assets were foreclosed upon, and Ocwen Bank which initiated the foreclosure proceeding, controlled the utility from that date until the foreclosure sale to the current owner. This Commission concluded that River Ranch American was responsible for the RAFs and penalties for failure to file annual reports for the time periods it controlled the utility, and Ocwen Bank was responsible for the RAFs during the time period it controlled the utility.

Following this clear legal procedure, The Woodlands of Lake Placid, L.P., is responsible for the payment of RAFs and making refunds for the time period it controlled the utility, and L.P. Utilities, Inc., is responsible for the refund of the rates received when it controlled the utility. (L.P. Utilities, Inc., has paid the RAFs for the portion of 2002 in which is owned the utility assets.)

Respectfully submitted this 18th day of June, 2003

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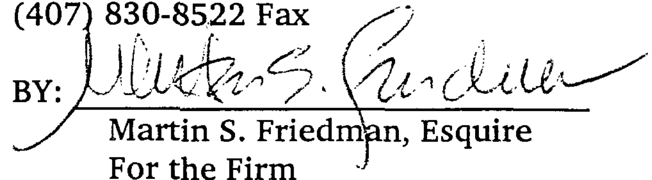
BY: 

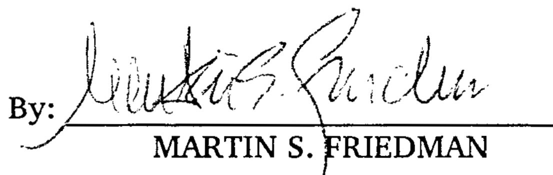
Martin S. Friedman, Esquire
For the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail (*Hand Delivery) this 18TH day of June, 2003, to:

Lawrence Harris, Senior Attorney *
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Stephen C. Burgess, Associate Public Counsel
Office of Public Counsel
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

By: 
MARTIN S. FRIEDMAN

ASO\LP Utilities\(01) Protest PAA Order\Post Hearing Statement
6/17/03