ORIGINAL

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OFFICE OF THE PUBLIC COUNSEL

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JACK SHREVE
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June 18, 2003

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 020010-WS

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of a Post-Hearing Statement for filing in the above-referenced docket.

Also enclosed is a 3.5 inch diskette containing the Post-Hearing Statement in WordPerfect 10. 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,

Stephen C. Burgess
Deputy Public Counsel

SCB/dsb
Enclosures

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
FILED: June 18, 2003

POST-HEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through their attorney, the Public Counsel, and pursuant to Order No. PSC-03-0618-PHO-WS, hereby file this, their Post-Hearing Statement.

BASIC POSITION

Initially, the Citizens supported the PAA without modification. Although Ms. DeRonne testified about a CIAC adjustment that could actually reduce rates, the Citizens still did not seek to change the PAA rates. Rather, the Citizens sought to use CIAC issue only as an offset to other issues, if necessary. The Citizens adopted this strategy with the hope of avoiding rate case expense. The Citizens had hoped that in seeing the validity of OPC's (and Staff's) position, the utility would withdraw its protest and avoid the expense of the entire hearing process. Instead, however, the utility has pursued its ill-advised protest through the hearing process. In response, the Citizens now change their initial position supporting the PAA as is. Since the expense of the hearing process has been incurred by all parties, the Citizens now urge the Commission to lower the PAA rates by the amount which reflects OPC's positions on each of the issues. Specifically, the Citizens seek the Commission to reduce the PAA rates by the appropriate amount from: (1) increasing CIAC by $30,608 for meter installation fees collected for the remaining rental lots (Issue 1); (2) increasing the imputed revenue

by the amount resulting from decreasing the "unrentable lot" count to 24 (additional Customer Issue 13) and; (3) decreasing rate base by $2,191 to reflect a CIAC entry for Water Plant No. 1 (additional Customer Issue 14).

TRANSCRIPT CITATION

References to the transcripts will be identified with "T." followed by the page number, followed by a parenthetical identification of the respective volume as follows: "First Service Hearing," "Technical Hearing," or "Second Service Hearing."

ISSUES AND POSITIONS

ISSUE 1: What are the appropriate CIAC balances for the test year ended December 31, 2001?

POSITION: The level of CIAC proposed in the PAA should be increased by two separate adjustments. The first adjustment should be an increase of $30,608 that will be collected for the remaining meter installations. The second adjustment should be discussed within "Customer Issue" no. 14.

The utility's Consumptive Use Permit required it to install meters for all of its connections [T. 115 (Technical)]. Through Order No. PSC-02-0250-PAA-WS, the Commission approved a meter installation charge of $189 (id., at p. 17)[T. 116 (Technical)]. By the time of the test year used for this case, the utility had installed meters for all of the privately owned lots, as well as for the connections to the common areas. These customers were billed for the meter installation fees at the time their meters were installed [T. 27 (First Service Hearing)]. As a result, the PAA rate base

included all of the actual cost of purchasing and installing meters for the privately owned lots, as well as for the connections to the common areas. In addition to the cost for all of the actual meters, however, the PAA also allowed a pro forma adjustment to include the cost of future meters that were to be installed primarily on the rental lots. The PAA recognized a projected cost of $27,543, consisting of 162 meters at $170 a piece [T. 115 (Technical)]. Unfortunately, the PAA overlooked the need to include the offsetting CIAC that should be collected to cover the cost of the meter installations at the rental lots.

The omission of the CIAC results in an improperly inflated rate base. Because the utility should collect $189 per meter to cover the expected cost of $170, the net cost to the utility will actually be negative. Obviously, the utility should not include $27,543 in its rate base to cover a capital transaction in which the utility will actually make a profit.

The situation is further exacerbated by the makeup of the particular customers involved. The customers on the privately-owned lots have all been billed for the costs of their meters. Almost all have paid in full [T. 201 (Technical)]. This means that the private lot owners have fully covered the cost of their own meters. They should not be required to bear the cost of the other meters in addition to their own. Yet that is the result of the current standing of the PAA. By incorporating a pro forma cost for the meters intended for the rental lots, the PAA forces the private lot owners to bear some cost of meters for the rental lots, in addition to their own. This cost distribution is clearly inequitable, and may also amount to a discriminatory billing practice.

There is still another reason that the PAA should be adjusted for the meter installation CIAC. As of the hearing, the utility still had not installed the meters in question [T. 78 (Technical)]. When the Commission allowed a pro forma adjustment for the 2001 test year, it surely anticipated an

imminent installation of the meters, as required by the Consumptive Use Permit. As of May 28, 2003, however, the utility had not installed the meters which are included in the 2001 rate base. This inexcusable delay is just one more reason that the utility's 2001 rate base is overstated.

As Ms. DeRonne testified, the test year CIAC should be increased by the contribution that should be billed to the owner of the rental lots. The increase in CIAC should be $30,608 ($189 authorized collection times 162 meters) [T. 116 (Technical)].

ISSUE 2: What is the appropriate amount to be included in rate base for working capital?

POSITION: The final amount is subject to the resolution of other issues. For the remaining issues that affect working capital (rate case expense and rent), the Citizens agree with the PAA.

ISSUE 3: What are the appropriate rate base amounts?

POSITION: The final amount is subject to the resolution of other issues. Except for adjustments recommended in Issue 1 and Customer Issue 14, the Citizens agree with the PAA rate base.

NET OPERATING INCOME

ISSUE 4: What is the appropriate amount of office rent to be included in O&M expenses?

POSITION: No rent should be allowed.

DISCUSSION: The utility has the burden of proving the reasonableness of all of its expenses. The utility has failed to meet its burden of proving that the Commission should allow any expense for office rent.

During the test year, the utility did not pay any office rent. [T. 31; T. 117; T. 151 (Technical)]. This, then, is the beginning point of any consideration of the issue. Since no rent was charged or paid during the test year, the reasonable initial presumption is that no rent is appropriate for future rates. That presumption should stand unless the utility can present a clear and convincing case for the contrary. The utility has utterly failed to provide the Commission with any reason to depart from the actual amount of rent expense incurred in the test year.

In its direct case, the utility offered the testimony of Mr. John Lovelette. Mr. Lovelette offered only one line of testimony on the entire issue [T. 31 (Technical)]. The entirety of the utility's "proof" consisted of the following statement:

> Based on comparable office space, reasonable rent is $300.00 per month.
>
> Id.

Mr. Lovelette offered no study, no data, no documentation, and no methodology to support his conclusion. By itself, Mr. Lovelette's unsupported opinion provides no value to the Commission as fact finder, and is legally insufficient to support a finding of reasonableness.

Mr. Lovelette's failure to provide any depth or underpinning for his bare opinion was criticized directly by Ms. Deronne, who stated:

> Mr. Lovelette's testimony does not indicate that the utility has been billed for use of the facilities, nor does he provide any further discussion regarding why "...there have been insufficient funds" to pay rent. He does not elaborate on why the funds have been

> insufficient. To the best of my knowledge, the owner of more than 50% of the lots (i.e., the rental RV lots) has not paid revenues to the utility for the use of water and wastewater on those rental lots. This would presumably impact the "available funds." Mr. Lovelette also provides no information or support for how his determination that "reasonable rent is $300.00 per month." In my opinion, Mr. Lovelette's testimony does not support the inclusion of rent expense in rates. While he indicates that rent payments have not been made since October 1, 2002, he does not, in any way, address the fact that no rent payments have ever historically been made, nor have they been required, for use of the office facility. The fact also remains that no rent was charged or paid for the facilities during the test year used by Staff in its analysis. Mr. Lovelette's testimony on this issue, in my opinion, is unsubstantiated and moot.
>
> [T-118 (Technical)].

From this testimony (as well as PAA itself), the utility had received unequivocal notice that the insufficiency of its proof was being challenged. The utility still had the opportunity of rebuttal. Yet in his rebuttal testimony, Mr. Lovelette chose not to address the issue of rent at all [T. 200 (Technical)]. The record, therefore, remains without sufficient evidence to support the utility's claim of $300 per month for office rent expense.

In fact, the only evidence which specified a methodology to determine comparable rent was provided by Mr. Rendell in response to cross-examination. Mr. Rendell stated:

> ....So if there was an appropriate amount of rent expense that was determined to be allowed. I can fully support the audit amount which is included in Mr. Welch's audit report. And that was based on the auditor's assessment of rental fees in the area from two real estate agents. And they took an average per square footage and allocated an amount based on the square footage for that one utility office. And it is included in the audit.
>
> Q. [by Mr. Friedman] Do you remember what amount that you had recommended to be a rent expense when you took it down, as you say, to the customer meeting?

A. [by Mr. Rendell] Yes, I do. One moment. Based on the audit, and I believe this is in Exhibit Number 1 that has been identified today, there is an amount that was allocated of $573.89 for water, and $479.12 for wastewater. And that was based on rental spaces in the area from two rental agencies, or two real estate agencies.

[T-152 (Technical)].

Although Mr. Rendell recommended against any rental expense for specified reasons [T-151,152 (Technical)], his testimony indicates that a comparable market rate is below $100 per month.

The record clearly does not support the utility's office rental expense. Despite ample notice, the utility failed to offer any meaningful testimony to support its request of $300 per month. Because of the utility's failure in its challenge of the PAA, the holding of the PAA should stand. The utility should not receive any office rental expense.

ISSUE 5: What is the appropriate amount of rate case expense?

POSITION: $0. A utility is entitled only to expenses which are reasonable and prudent. The utility's pursuit of this case continues to be unreasonable and imprudent. The customers should not be required to pay for any of the expense for this rate case.

DISCUSSION:

This case was initiated by the utility as a staff-assisted rate case [Order No. PSC-02-1739-PAA-WS, at p. 4]. The utility then protested the Commission's PAA, raising several issues. Through the prehearing process, the utility dropped most of its initial contentions. By the time of the hearing, the level of rental expense was the only issue remaining which could increase rates on a going forward basis.

As pointed out in the Citizens' discussion on Issue 4, the utility presented only one line of testimony (direct and rebuttal combined) on the issue of rental expense. This one line consisted of a bare, unsubstantiated opinion of Mr. Lovelette. Surely, this one line of unsubstantiated opinion testimony does not justify the rate case expense being sought by the utility. The only competent testimony offered on the office rental expense was presented by Mr. Rendell of the Commission Staff. During the prehearing process, the Citizens raised the issue of CIAC, which also affects the rates on a going forward basis. PSC Staff agreed with the Citizens' position on CIAC [Order No. PSC-03-0618-PAA-WS, at p. 7]. Although the utility has not agreed, the accounting correctness of the Citizens' position is unassailable. It is also beyond debate that the revenue effect of the CIAC issue far exceeds the effect of the only office rental amount ($573 + $479, annually) for which a methodology has been offered for support.

In an effort to obviate the need for rate case expense, the Citizens initially offered the CIAC position only as it may be needed to offset any other issues raised by the utility. The Citizens reasoned that the utility would drop its imprudent pursuit of this case because: (1) the utility would see that the Citizens' clearly valid CIAC issue far exceeded any rental expense which might be justified, and (2) the Citizens were not pursuing the CIAC issue to reduce the PAA, so the utility would not need to see that issue as a "threat." The Citizens had hoped the utility would then see that it had no valid reason to go to hearing, and that the continued pursuit of a hearing clearly would be imprudent.

Unfortunately, the utility imprudently insisted on taking the case to hearing and encountering the additional associated rate case expense. Since the case has gone to hearing, the Citizens have now taken the more aggressive position that the PAA rates should be reduced by the effect of the

additional CIAC. The result, of course, is that the utility's protest and pursuit of this case can only result in rates which are lower than the PAA. Since the customers had been willing to accept the PAA as a reasonable balancing of interests, the utility's continued pursuit to capture some rental expense is clearly imprudent.

The only other issue being pursued by the utility is its effort to avoid its refund obligation. As discussed in Issue 12, the utility's position is patently absurd. The utility's position is that the "current" utility which is owned by Mr. Cozier and run by Mr. Lovelette should not be accountable for the actions of the "previous" utility, which was owned by Mr. Cozier and run by Mr. Lovelette. This offensive argument can be rejected outright. It is an insult to the customers, to the Commission and to the entire regulatory process. Any suggestion that the customers should pay the rate case expense incurred to have such an argument presented against themselves is outrageous.

Because the entirety of the rate case expense results from the utility's choice to pursue a totally untenable case, the Commission should reject all rate case expense as unreasonable and imprudent.

ISSUE 6: What is the appropriate test year operating income amount before any revenue increase?

POSITION: The final amount is subject to the resolution of other issues.

REVENUE REQUIREMENT

ISSUE 7: What are the appropriate revenue requirements?

POSITION: The final amount is subject to the resolution of other issues.

RATES AND RATE STRUCTURE

ISSUE 8: What are the appropriate water and wastewater rates for Woodlands?

POSITION: The final amount is subject to the resolution of other issues.

ISSUE 9: What are the appropriate amounts by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, Florida Statutes?

POSITION: Because the Citizens believe that no rate case expense is justified in this case (see Issue 5), there will be no need to change the rates in four years.

OTHER ISSUES

ISSUE 10: Should the utility be allowed to offset the underearnings from its wastewater system with the excess earnings from its water system?

POSITION: It is the Citizens' understanding that Stipulation No. 1 has rendered this issue moot as it would apply to the refund [T. 8-10 (Technical)].

ISSUE 11: Are the Woodlands of Lake Placid, L.P., Highvest Corporation, and L.P. Utilities, Inc., separate legal entities?

POSITION: Whether the three entities can be legally distinguishable for certain non-regulatory purposes is of no consequence to any decision required by the Commission in this case. The relevant issue, rather, is whether the Commission can hold L.P. Utilities responsible for making lawful refunds. It can (see Issue 12).

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: Upon its foreclosure, Highvest became obligated to provide a means for continuity of service. Its means for continuity was a transfer to L.P. Utilities. L.P. Utilities can be held legally responsible for making the refunds.

DISCUSSION: As the former provider of utility service, The Woodlands of Lake Placid, L.P. (hereinafter "Woodlands") was owned by Mr. Cozier and run by Mr. Lovelette [T. 37, 38 (Technical)]. Its utility assets were subject to a mortgage held by Highvest, of which Mr. Cozier is president [T. 39 (Technical)]. The Woodlands chose not to collect any revenue for the service it provided to the rental lots which were formerly owned by Mr. Cozier, but which are currently owned by Highvest [T. 53 (Technical)]. The rental lots made up a majority of customers to whom utility service was provided, so the choice not to bill or collect for service naturally left a huge deficit in the utility operations (just as it would if Florida Power and Light decided not to bill the majority of its customers). As president of Highvest, Mr. Cozier chose to foreclose on the utility assets owned by Woodlands [T. 39 (Technical)].

Mr. Cozier then created L.P. Utilities, a corporation which he ultimately owns. As president of Highvest, Mr. Cozier chose to sell the utility assets to L.P. Utilities [T. 31 (Technical)]. As owner of L.P. Utilities, Mr. Cozier chose to hire Mr. Lovelette to run the "new" utility operation. Id. The operating certificates are still held by Woodlands, but L.P. Utilities has sought a transfer.

There is the former utility provider - Woodlands:

(1) owned by Mr. Cozier
(2) run by Mr. Lovelette
(3) with assets subject to a mortgage held by Highvest, of which Mr. Cozier is president.

There is the current utility provider - L.P. Utilities:

(1) owned by Mr. Cozier
(2) run by Mr. Lovelette
(3) with assets subject to a mortgage held by Highvest, of which Mr. Cozier is president.

Now the utility comes forward with the astounding position that the current provider (which does not have a certificate) should not be responsible for refund obligations incurred by the previous provider (which still holds the certificates).

The insolence of the utility's position on this issue is nothing short of contemptible. Consider the chronology:

(1) Mr. Cozier's company imposes illegal rates which ultimately result in a regulatory obligation to make refunds to customers. All profits and losses (and obligations) ultimately inure to Mr. Cozier.

(2) Based on the exclusive unilateral decisionmaking of Mr. Cozier, the Woodlands is positioned where it can no longer provide utility service.

(3) Mr. Cozier creates a new utility company to provide service and all of its profits and losses ultimately inure to Mr. Cozier.

Yet notwithstanding these circumstances, Mr. Cozier believes that the regulatory process should not hold him accountable for the illegal rates imposed by the "previous" owner (himself).

If Mr. Cozier had his way, no utility could ever be held accountable. It could always create a situation under which it could unilaterally collapse its own operations whenever faced with a refund obligation – and simply begin all over again.

To anyone of reasonable sensibilities, nothing further should need to be considered. Nevertheless, because this issue has been brought before it, the Commission must examine the

statutory framework under which it imposes its regulatory authority. As a starting point, the Commission and all affected parties need to understand the legislative intent, as stated in Section 367.011(3), Florida Statutes:

> The regulation of utilities is declared to be in the public interest, and this law is an exercise of the police power of the state for the protection of the public health, safety, and welfare. The provisions of this chapter shall be liberally construed for the accomplishment of this purpose.
>
> Id.

Thus, the Commission's decision on this issue should protect the public welfare. In addition, all further examination of the statutory framework must be construed liberally to accomplish the protection of the public welfare.

In addition, it is the legislative intent that Chapter 367 "shall supercede all other laws on the same subject" [§367.011(4)], and that the Commission has exclusive jurisdiction over each utility with respect to its rates [§367.011(2)]. This, of course, means that any other Florida law which might address the continuity of a legal obligation through a company restructuring would be subordinate to the PSC jurisdiction over rates (including the refund of illegally collected rates).

With that framework in mind, the Commission must consider the effect of Mr. Cozier's unilateral decision to foreclose Highvest's mortgage on the Woodlands' utility property. Notwithstanding the foreclosure, Highvest was not at liberty to interrupt the regulated service in any fashion. Florida Statutes state:

> Any person, company, or organization that obtains ownership or control over any system, or part thereof, through foreclosure of a mortgage or other encumbrance, shall continue service without

> interruption and may not remove or dismantle any portion of the system previously dedicated to public use which would impair the ability to provide service, without the express approval of the commission. This provision may be enforced by an injunction issued by a court of competent jurisdiction.
>
> Section 367.071(6)

Accordingly, Highvest was under a statutory obligation to find some means to "continue service without interruption." To meet its obligation, Highvest chose to sell the assets to the newly created L.P. Utilities.

Whether that plan actually satisfies Highvest's statutory obligation for continuity of service, however, was subject to – and remains subject to – L.P. Utilities' ability to effect a transfer of the necessary operating certificates. L.P. Utilities can obtain the necessary certificates only if it meets the requirements of Section 367.071, Florida Statutes. That transfer is the subject of another docket, but there are two fundamental issues from that docket that are directly relevant to the question at hand.

As a fundamental requirement of the transfer, the Commission must find: (1) that the transfer is in the public interest and; (2) that L.P. Utilities will "fulfill the commitments [and] obligations" of Woodlands. The statute states, in relevant part:

> No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility. However, a sale, assignment, or transfer of its certificate of authorization, facilities or any portion thereof, or majority organizational control may occur

> prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.
>
> Section 367.071(1)

The statute explicitly requires the successor utility to fulfill the obligations of the former utility. Furthermore, it is beyond debate that any transfer which cheats customers out of a refund of excessive and illegally collected rates cannot possibly be considered "in the public interest." In order to satisfy two fundamental requirements for a certificate, then, L.P. Utilities must agree to fulfill the refund obligations of Woodlands. As a peripheral point, the Commission should note that Section 367.071(2) imposes a continuing obligation on the former utility, but this subsection in no way releases the successor utility from its obligation (predecessor and successor are severally liable).

The logical sequence, then, is the following. In order to obtain the operating certificates, L.P. Utilities must agree to make the refunds. If L.P. Utilities does not agree to the refund, it cannot obtain the certificates. If L.P. Utilities does not obtain the certificates, then Highvest has not met its obligation under Section 367.071(6). If Highvest fails to meet this obligation, the Commission can seek injunctive relief from the appropriate court.

Florida Statutes speak clearly on this issue. The Commission statutes supersede any other statutes that may otherwise be read as conflicting. The Commission is to interpret its statutory authority liberally to protect the public interest. Highvest is statutorily obligated to provide continuity of service, and has chosen L.P. Utilities as its vehicle for that continuity. L.P. Utilities is required to fulfill the obligations of Woodlands.

It is in that fashion that Highvest and L.P. Utilities are legally responsible for refunds of the excessive revenue collected by Woodlands of Lake Placid.

ADDITIONAL ISSUES RAISED BY CUSTOMERS

When the Commission issued Order No. PSC-02-1739-PAA-WS, the customers did not desire to protest. They understood that by its nature, the PAA was an aggregation of issues which call for subjective judgment to resolve. Although the customers believed that some issues could have been adjusted their way, they nevertheless believed that, on the whole, the PAA provided a reasonable balance of competing interests.

Since the utility insisted on bringing this case to hearing, however, the customers raised two specific issues that could impact the outcome of the case. The first issue involves the proper measure of the total number of rental lots which receive service at some point during the year. The second issue involves the proper rate base treatment of Water Plant No. 1.

At the hearing, the utility counsel argued that it was caught by surprise and could not prepare any response. Counsel's argument is disingenuous. The specific issues were identified and described in detail by OPC at the prehearing conference on May 5, three weeks before the hearing. Both issues involved fundamental facts that have always been within the utility's direct sphere of knowledge. The first issue questioned the number of lots which are rentable by Highvest. Since Mr. Cozier is president of Highvest and the utility already had provided a lot count for the PAA, this issue should have been a factually simple matter for the utility to address. The second issue involved the terms of the transaction through which "Water Plant No. 1" was conveyed to the utility. Since Mr. Lovelette, as president of the POA, made the quitclaim conveyance of the property to the utility which he runs, this issue also was a simple matter to address.

Instead, the utility chose to play the role of a procedurally aggrieved victim, opting not to cross-examine or present rebuttal. The Commission has always allowed customers to testify on any

issue. As a matter of fairness, the Commission has always allowed the utility to cross-examine and/or present responsive testimony. In this case, Chairman Deason allowed Mr. Friedman numerous opportunities to address these issues [T. 12 (First Service Hearing): "even if it means delaying a decision and giving you the opportunity to present some type of rebuttal testimony"] [T. 5 (Second Service Hearing): "I will give you the latitude that if new matters come up that you feel that you need to address in some manner to either request that you recall one of your witnesses to address that in some manner. And I will leave that to your discretion to request that if you see fit"]. Clearly Chairman Deason adequately safeguarded Mr. Friedman's procedural due process.

Moreover, the utility had the additional advantage of three weeks' notice from the Prehearing Conference. Over the years, there have been a vast number of instances wherein OPC counsel, or utility counsel, or Staff counsel have cross-examined adversarial witnesses on highly technical matters, with less than three weeks' notice. Yet the utility held to the excuse of not having time to prepare [T.38 (First Service Hearing): "I'm not adequately prepared to cross-examine on that issue."]. The utility had more than ample time and opportunity to prepare. The utility simply made the choice not to avail itself of the procedural tools available to it.

CUSTOMER ISSUE 13: What is the proper level of revenue to impute to the rental lots?

POSITION: The PAA has overstated the number of unrentable lots. The Commission should either reduce the unrentable lot count to 24, or undertake a further fact finding effort to determine an accurate number.

DISCUSSION: The first area of contention raised by the customers is the proper level of revenue to impute to the rental lots of Camp Florida Resort. The utility has never collected charges

from the rental lots (formerly owned indirectly by Mr. Cozier, now owned by Highvest). To properly establish rates, therefore, the PAA sought to impute revenue to the appropriate number of rental lots.

To establish the proper level of imputed revenue, the Commission began with the total number of unsold lots (232). From those 232, the Commission subtracted 70 lots that the utility represented to be unrentable. In relevant part the PAA Order states:

> Additionally, an adjustment was made to impute revenues for the rental lots served by this utility. As previously discussed, Woodlands provides water and wastewater service to Camp Florida Resort (Resort), a recreational vehicle and camping resort. As early as 1990, the Resort began selling its rental lots. The resort still owns 232 of the 397 lots located in the Resort and continues to rent these. However, according to the utility, for various reasons, it is unable to rent 70 of the 232 unsold lots. The utility provides water and wastewater services to the rental lots, but does not receive any compensation from the renters, since they are not customers of the utility. Since the Resort is the utility customer and receives compensation through the rental fees, it shall reimburse Woodlands for the cost of the utility service. Otherwise, the residential customers will be subsidizing the unregulated resort.
>
> [Order No. PSC-02-1739-PAA-WS, at p. 21]

As a result of this calculation, the Commission imputed revenue to 162 (232 - 70) rental lots.

Unfortunately, however, the utility's unrentable lot count is inaccurate. Two customers testified that the actual number of lots which are not rentable is well below seventy. First, Mr. Clifford concluded that there were no more than 18 to 20 lots which cannot be rented. Mr. Clifford testified:

> In June of last year there was a customer hearing at Lake Placid in the Woodlands Clubhouse. We spent the day and the following day - - I spent a major portion of the day with the engineer, Ted Davis, going through Camp Florida in all the sites. And he was questioning, and so I worked with him. There was a question that started out where there were 70 sites or lots supposedly not available

> for renting. I questioned that. And as I went around with the engineer, Davis, he saw the water connections, the sewer connections, the electrical connections, and he said he would sit down with the utility to go through where that 70 count was.
>
> Now, there is 397 sites in Camp Florida, 151 as you note here in the paper are residential customers. There are 15 unitized lots, meaning they were some people have two lots or one and a half lots. And then there is - - Highvest has homes in the site. I think there is 20 or 30, and then the others are padded.
>
> The last count I made there were 23 sites that did not have electrical connections. So if you start adding up, there is between 209 and 204 sites belonging to Highvest at this point, 151 customers, 15 unitized lots, that is 375. Subtract that from 397, there is about 18 to 20 that are not usable because they don't have the electrical connections.
>
> [T. 14, 15 (First Service Hearing)].

Mr. Clifford's refutation of the utility's number was supported by Ms. Pernod. Ms. Pernod concluded that, at most, 28 lots had not been rented, testifying as follows:

> But I have been there for 11 years, 11 seasons, and we walk the park and drive the park a lot, so I know just about any lot that wasn't rented. And during our survey we came up with the maximum amount that have not been rented would be 28. And we showed that they rent 196, and maybe, possibly, 28 have not been rented.
>
> [T. 37, 38 (First Service Hearing)].

Clearly, then, the utility overstated the number of lots that are not rentable. The Commission should not set the going-forward rates on the inaccurate information supplied by the utility. The Citizens recommend that the Commission resolve this issue through one of the following two alternatives. First, the Commission could adopt an unrentable lot count of 24 - midway between Mr. Clifford and Mr. Pernod. As a second alternative, the PSC Staff could undertake a fact finding effort to explore the issue of unrentable lots and bring to the Commission a number that reflects reality.

In the meantime, the PAA number would be operative, but subject to refund if a different number is ultimately adopted.

CUSTOMER ISSUE 14: How should Water Plant No. 1 be treated for rate base purposes?

POSITION: The property for Water Plant No. 1 should be reflected as zero value in rate base. The POA gave Water Plant No. 1 to the utility free of charge. It is inequitable to allow the utility to charge the same customers for property which they had just given the utility.

DISCUSSION: In the PAA, the Commission was concerned about whether the utility had ownership of Water Plant No. 1. The PAA states:

> The lawsuit resulted in a judgment that declared the Camp Florida Resort Homeowners Association as the owners of the property where Water Plant No. 1 is located. After the customer meeting, the utility provided us with a copy of a quick-claim deed that conveyed the property owned by the Homeowners Association to the utility on December 12, 2001, which is subsequent to the date of the judgment.
>
> Since the utility has produced a copy of the deed proving ownership of the land in question, we find that Woodlands has satisfied the requirements of Section 367.1213, Florida Statutes, and Rule 25-30.037(2)(q), Florida Administrative Code. Therefore, if the residents choose to challenge the validity of the deed, they must do so through the court system, since this Commission does not have jurisdiction over such matters.
>
> [Order No. PSC-02-1739-PAA-WS, at p. 17]

Accordingly, the PAA held that the utility had demonstrated ownership and any dispute over the validity of the quitclaim transaction is beyond the Commission's jurisdiction.

Unfortunately, the PAA's pronouncement did not properly reflect the regulatory effect of the customers' concerns about the transaction. After recognizing that the utility obtained its ownership of Water Plant No. 1 from the Property Owners, the PAA then proceeded to recognize an original cost valuation for that property. The PAA Order states:

> To determine the original land values, the auditor gathered information from the official records at the Highlands County Clerk of Court's office. According to the audit workpapers, the land for Water Plant No. 1 should be valued at $2,191 ($9,363 x .234) and the land for Water Plant No. 2 should be valued at $18,396 ($9,363 x. 1.965 per acre), with a combined total of $20,598, for both water plants.
>
> [Id., at p. 18]

The PAA's error is that for Water Plant No. 1, there is absolutely no reason to determine the original land value. An original cost determination is unnecessary and improper for Water Plant No. 1.

The PAA recognized that the property for Water Plant No. 1 had been owned by the lot owners. Whatever its value, the property for Water Plant No. 1 was in the possession of the lot owners, not the utility. The utility only gained ownership of that property in December, 2001, when the quitclaim deed was conveyed.

For rate base purposes, then, the threshold question is whether the utility had to pay any money for the property. The unrebutted evidence is that the utility paid nothing for the property. Ms. Keller described the entire transaction as follows:

[By Mr. Burgess] Ms. Keller, your first issue was about Water Plant No. 1, and you indicated that - - you read from a document. I believe, that you indicated that common elements were owned by the POA. Would you tell me first, when you use the acronym POA, what that refers to?

MS. KELLER: Property owners association.

MR. BURGESS: Thank you. And what was the document that you read from that arrived at that determination?

MS. KELLER: That was the court decision out of the Highlands County Court by Judge Durantz (phonetic) in August of 2000.

MR. BURGESS: And so that jurisdiction was county court, or do you know whether that jurisdiction was county court or circuit court?

MS. KELLER: Circuit court. And they validated the fact that anything on the plat that was not indicated as being lots was common property.

MR. BURGESS: And you indicated that the Water Plant Number 1 was one such of those common elements?

MS. KELLER: It is a part of the common property, that is correct, on both the plant and the replat.

MR. BURGESS: Then you indicated, I believe, that Mr. Lovelette, as president of the POA, conveyed the property to whom?

MS. KELLER: To Woodlands.

MR. BURGESS: To the utility?

MS. KELLER: To the utility for which he works, and which belongs to Cozier.

MR. BURGESS: So would I be correct in understanding that Mr. Lovelette was president of the POA?

MS. KELLER: Mr. Lovelette, his wife, his sister were put on the board by Mr. Cozier's majority votes. So they really have no option except to do what Mr. Cozier says. They are employees.

* * * *

MR. BURGESS: Okay. And then the deed was conveyed by the property owners association whereby Mr. Lovelette acted on behalf of the property owners association in the capacity you have described.

Do you know how much the property owners association received as a purchase price for this particular piece of property?

MS. KELLER: Nothing.

[T. 24-26 (First Service Hearing)].

This transaction can be compared to CIAC property contributed by a developer. In all such CIAC cases, the utility is not allowed to charge a return for property that it received free of charge. Allowing a utility to "earn" a return on property that cost nothing is clearly improper. How much more improper, then, is it for this utility to earn a return on the property of Water Plant No. 1. The customers contributed this property free of charge: it is an outright insult to allow the utility to now charge these same customers for the property which they had just given the utility for free.

WHEREFORE, the Citizens of the State of Florida respectfully request the Commission to amend Order No. PSC-02-1739-PAA-WS consistent with the positions espoused herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 020010-WS

I HEREBY CERTIFY that a true and exact copy of the above and foregoing Post-Hearing Statement has been furnished by hand delivery or U.S. Mail to the following parties of record this 18th day of June, 2003.

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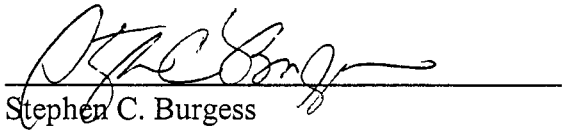

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