

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for authority  
to transfer Certificate Nos.  
620-W and 533-S in Highlands  
County from The Woodlands of  
Lake Placid, L.P. to L. P.  
Utilities Corporation.

DOCKET NO. 030102-WS  
ORDER NO. PSC-03-1053-PAA-WS  
ISSUED: September 22, 2003

The following Commissioners participated in the disposition of  
this matter:

J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION  
ORDER DENYING APPLICATION FOR AUTHORITY TO TRANSFER CERTIFICATE  
NOS 620-W AND 533-S IN HIGHLANDS COUNTY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action discussed herein is preliminary in  
nature and will become final unless the applicant whose interests  
are substantially affected files a petition for a formal  
proceeding, pursuant to Section 367.045(3), Florida Statutes, and  
Rule 25-22.029, Florida Administrative Code.

BACKGROUND

The Woodlands of Lake Placid, L.P. (Woodlands) is a Class C  
water and wastewater utility providing service in Highlands County.  
It has been providing water and wastewater service to 151  
residential customers located within the Lake Placid Camp Florida  
Resort RV park (RV park) and water service to 33 residential  
customers located outside the RV park in Hickory Hills and Lake  
Ridge Estates. It has also been providing water service to four  
general service customers outside the RV park, and water and  
wastewater service to two general service customers located within  
the RV park. The Camp Florida Resort Homeowners Association, one  
of the general service customers in the RV Park, has nine  
connections. The other general service customer is the RV park

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with 164 connections, consisting of 162 rental lots, the Community Center, and the Guard House. Woodlands is in both the Highlands Ridge and Southern Water Use Caution Areas of the Southwest Florida Water Management District.

In December, 1996, Woodlands informed its customers that it was increasing its rates for water and wastewater from \$25 to \$35 per month. Prior to that time, the Commission had considered the utility exempt under Section 367.022(4), Florida Statutes. A review of customer complaints about the rate increase, however, made it apparent that Woodlands was no longer exempt because it was charging the homeowners' association for water and wastewater service, and it was serving customers outside of the RV park. In light of this new status, Woodlands filed an application for certification on March 24, 1999, and was granted Certificate Nos. 620-W and 533-S in Order No. PSC-02-0250-PAA-WS, issued February 26, 2002, in Docket No. 990374-WS, In Re: Application for certificates to operate a water and wastewater utility in Highlands County by The Woodlands of Lake Placid, L.P., and for deletion of portion of wastewater territory in Certificate No. 361-S held by Highlands Utilities Corporation. That order also required the utility to hold the amount of the unauthorized rate increase from \$25 to \$35 per month subject to refund from the date of implementation to February 5, 2002, with interest, pursuant to Rule 25-30.360, Florida Administrative Code.<sup>1</sup>

On January 29, 2003, L. P. Utilities Corporation (LPUC) filed an application for authority to transfer Water Certificate No. 620-W and Wastewater Certificate No. 533-S from Woodlands to LPUC.<sup>2</sup>

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<sup>1</sup> The utility had also filed an application for a staff-assisted rate case (SARC) in Docket No. 020010-WS, In re: Application for staff-assisted rate case in Highlands County by The Woodlands of Lake Placid, L.P. on January 2, 2002. The SARC docket, and the first certificate docket were consolidated in PAA Order No. PSC-02-1739-PAA-WS, issued on December 10, 2002. The SARC portion of that order was protested and a public hearing was held in Sebring, Florida, on May 28, 2003.

<sup>2</sup> Our staff had learned of the transfers when Highvest and LPUC filed a protest of the SARC case. Our staff informed Highvest and LPUC that they should file an application for transfer.

According to the application, Highvest Corporation (Highvest), lender of funds to Woodlands, foreclosed on a lien on the utility assets and purchased the assets at the foreclosure sale. The Woodlands did not defend against the foreclosure. Highvest then immediately sold the assets to LPUC, lent LPUC the funds to purchase them, and executed a new lien on the assets it had just sold to the new utility.

On February 12, 2003, after receiving notice of the application for authority to transfer the Woodlands certificate and assets, one customer filed an objection, suggesting that the foreclosure, sale of assets, and transfer was a "shell game" designed to avoid the Woodlands' refund obligations to its customers.<sup>3</sup> On March 24, 2003, the Office of Public Counsel (OPC) intervened in the docket, and on June 27, 2003, having learned of new plans by LPUC's owners to sell the utility assets to the Camp Florida Property Owners' Association (POA), OPC filed a Motion to Order LPUC to Cease Activities to Sell Utilities until the Commission rules on this transfer docket and the pending protest from the SARC. LPUC filed a response in opposition to OPC's motion on July 7, 2003.

We considered the transfer application and OPC's motion at our September 2, 2003, Agenda Conference. We decided to deny the transfer of Certificate Nos. 620-W and 533-S from Woodlands to LPUC, but we also decided that within 30 days from the date this decision is final, LPUC shall file another application for transfer of the certificates in which LPUC agrees to accept all regulatory obligations of the Woodlands, as Section 367.071(1), Florida Statutes, and Rule 25-30.037(2), Florida Administrative Code, require. We held Highvest, the current owner of the Woodlands utility assets, responsible for providing service to the utility's customers, for submitting the utility's present and past due regulatory assessment fees, plus penalties and interest, for the period January 1, 2002, through September 30, 2002, and for honoring the refunds to the utility customers ordered by the

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<sup>3</sup> See, Letter of Sara S. Keller, dated February 12, 2003, Document No. 03-01556, which may be found in the correspondence side of the docket file.

Commission, until an appropriate transfer to LPUC is approved.<sup>4</sup> The reasons for our decisions are explained in detail below.

DECISION

LPUC applied for the transfer of Water Certificate No. 620-W and Wastewater Certificate No. 533-S in Polk County from Woodlands to LPUC on January 29, 2003. The application was incomplete and a deficiency letter was sent on March 3, 2003. The deficiency response was received on March 31, 2003. According to the application and the deficiency response, LPUC was created in 2001 for the purpose of acquiring the Woodlands utility assets and operating the utility. It appears that this was accomplished by transferring the Woodlands assets into the name of LPUC on October 1, 2002, shortly after the foreclosure by Highvest. No contract for sale was executed or made contingent upon our approval of the transfer. The application for approval of the transfer was only filed after our staff learned of the transfer and informed Highvest and LPUC that an application was required.

In the application, LPUC asserts that it will not assume any obligations of the Woodlands prior to the foreclosure by Highvest.<sup>5</sup> LPUC also asserted in the application that the prior obligations of Woodlands "would have been discharged in the bankruptcy," but indicated in its deficiency response and at our Agenda Conference that there has been no bankruptcy proceeding involving the Woodlands utility. All of the Woodlands' utility-related debts and obligations thus remain extant, subject to our regulatory jurisdiction, and subject to the regulatory requirements of Chapter 367, Florida Statutes.

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<sup>4</sup> We also determined that OPC's Motion to Order LPUC to Cease Activities to Sell Utilities was moot in light of our decision on the substantive matters of the case.

<sup>5</sup>See page 3 of the Application of L.P. Utilities Corporation, at page 2, where LPUC states: "14. The Buyer will fulfill the commitments, obligations and representations of the Utility with regard to utility matters that accrued subsequent to the foreclosure. For these reasons, it is in the public interest to grant approval of the transfer to the Buyer."

LPUC's application fails to comply with section 367.071(1), Florida Statutes, and Rule 25-30.037(2)(g), (h), (j) and (r), Florida Administrative Code.

Section 367.071(1), Florida Statutes, provides:

(1) 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.

Rule 25-30.037(2)(g), (h), (j) and (r) provides:

(2) Each application for transfer of certificate of authorization, facilities or any portion thereof, to a non-governmental entity shall include the following information:

\* \* \*

(g) a copy of the contract for sale and all auxiliary or supplemental agreements . . . ;

(h) the contract for sale shall also provide for the disposition, where applicable, of the following:

1. customer deposits and interest thereon;
2. any guaranteed revenue contracts;
3. developer agreements;
4. customer advances;
5. debt of the utility;
6. leases;

\* \* \*

(j) a statement indicating how the transfer is in the public interest, including a summary of the buyer's experience in water or wastewater utility operations, a showing of the buyer's financial ability to provide service, and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters;

\* \* \*

(r) a statement regarding the disposition of any outstanding regulatory assessment fees, fines, or refunds owed . . .

The Woodlands assets were transferred without prior Commission approval or pursuant to a contract for sale contingent upon Commission approval. More significantly, LPUC has not provided any meaningful assertion that the transfer is in the public interest, and LPUC has not demonstrated that it will fulfill the commitments, obligations, and representations of the utility. Instead, it has specifically asserted that it will not fulfill the commitments, obligations, and representations of the utility. Therefore, we find that the transfer application is not in the public interest and we deny it.

The facts of this case also indicate that no real transfer between separate entities has occurred, and we deny the application as contrary to the public interest for that reason as well. Woodlands is a limited partnership with Camper Corral, Inc. as a general partner and R. Anthony Cozier as a limited partner. The sole officer and shareholder of Camper Corral, Inc., is R. Anthony Cozier. The transfer application contains an explanation that Woodlands borrowed funds from the Nancy Ayres Charitable Remainder Unit Trust to purchase the utility facilities. The note for this loan was later assigned to Highvest, whose sole shareholder is Nancy Ayres and whose president is R. Anthony Cozier. The assertion is made in the application that the utility failed to meet its obligations under the loan, and therefore Highvest filed for judicial foreclosure of its security. The Woodlands did not defend against that lawsuit. The final judgment of foreclosure was entered by default on August 7, 2002, and Highvest purchased the utility facilities and associated real property at a foreclosure sale. The Clerk of the Court issued Highvest a Certificate of

Title on September 27, 2002. Four days later, on October 1, 2002, Highvest transferred its interest in the utility facilities and associated real property to LPUC, whose sole shareholder is Anbeth Corporation. Anbeth Corporation is solely owned by a trust formed by R. Anthony Cozier and his wife, Elizabeth Cozier. The following matrix charts the relationships among these entities.

<b>Entity</b>	<b>Shareholders, Members, Partners</b>	<b>Officers, Directors</b>
Woodlands of Lake Placid, L.P.	Camper Corral, Inc., general partner R. Anthony Cozier, limited partner	R. Anthony Cozier
Camper Coral, Inc.	R. Anthony Cozier, sole shareholder	R. Anthony Cozier
Highvest Corporation	Nancy Ayres, sole shareholder	R. Anthony Cozier - President John H. Lovelette - Vice President Teresa A. Lovelette - Secretary
Anbeth Corporation	Trust formed by R. Anthony Cozier and Elizabeth Cozier	R. Anthony Cozier - Director Elizabeth Cozier - Director
L. P. Utilities Corporation (LPUC)	Anbeth Corporation, sole shareholder	R. Anthony Cozier - Director John H. Lovelette - Director Teresa A. Lovelette - Director

The entities listed above are interrelated. The office, management, and personnel of the utility will remain essentially unchanged. There will be no change in the operations or level of service. The entities involved in this case functioned as the alter egos of Anthony Cozier in the decision by Highvest to foreclose on the Woodland's mortgage and purchase the Woodlands' utility assets at the foreclosure sale; in the decision by the Woodlands not to defend against the foreclosure; and in the decision by Highvest to sell, and LPUC to purchase, the Woodlands utility. Mr. Cozier admitted under oath in the SARC hearing in Docket No. 020010-WS that he made the ultimate decisions for The Woodlands, for Highvest, and for LPUC. Mr. Cozier also admitted that he made the decision that Highvest would foreclose on the Woodlands because of the Woodlands' liabilities and obligations.<sup>6</sup>

It is clear that the transactions which ostensibly transferred the utility from the Woodlands to Highvest and from Highvest to LPUC were not arms length transactions and no real transfer of facilities or operational control has taken place. As OPC's witness in Docket No 020010-WS testified, from an accounting standpoint the companies and the transactions in question here fit the definition of related parties under generally accepted accounting standards. See the Testimony of Donne DeRonne, Technical Hearing transcript Vol. 2 TR-98-99. (Attachment B to this Order.) See also, Financial Accounting Standard Number 57. (Attachment C to this Order.)

At best, the transactions chronicled here might demonstrate a reorganization and name change from Woodlands to LPUC.<sup>7</sup> LPUC,

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<sup>6</sup> See May 28, 2003 SARC Technical Hearing transcript, Vol. 2, TR-169-173, in Docket No. 020110-WS (Attachment A to this Order)

<sup>7</sup> At worst the transactions represent a fraudulent transfer of the utility property to avoid the utility's liabilities and regulatory obligations to its customers and to the Commission. Black's Law Dictionary defines a fraudulent conveyance as a "[c]onveyance made with intent to avoid some duty or debt due by or incumbent upon the person making the transfer." As an example of a fraudulent transfer, see Nelson v. Spiegel, 529 So. 2d 311 (4<sup>th</sup> DCA 1988). In that case the Court found that the transfer of a sublease by a corporation was fraudulent where the corporation was



however, has not requested a name change and has indicated that it does not intend to honor the existing obligations of the utility to the Commission or to its ratepayers. Under these circumstances, we find that the transfer application should also be denied because no real or legitimate transfer has occurred.

Rule 25-30.110(3), Florida Administrative Code, requires that an annual report be filed for any year a utility is jurisdictional as of December 31st. Woodlands is current with respect to annual reports through 2002. Woodlands has paid regulatory assessment fees (RAFs) through 2001. On March 28, 2003, LPUC submitted RAFs for the period October 1, 2002, through December 31, 2002.

Regulatory assessment fees, plus penalties and interest, remain outstanding for January 1, 2002, through September 30, 2002. The application states that the Woodlands will be responsible for payment of all regulatory assessment fees through September 26, 2002. While in usual foreclosure cases we have not required the successor to pay the predecessor utility's past due regulatory assessment fees, in this case no legitimate transfer has occurred. The entities involved are all the alter egos of Anthony Cozier. Therefore, until we approve a legitimate transfer of the Woodlands utility, we hold Highvest responsible for all the Woodlands' regulatory responsibilities under Section 367.071(6), Florida Statutes, which provides that:

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. . . .

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insolvent, two creditors were engaged in litigation with the corporation, and the shareholders participated in the transfer by filing suit against the corporation and then, as officers and owners of the corporation, electing not to defend against the suit.

Since Highvest acquired the utility assets at foreclosure, it is responsible to provide the utility services under this statute until an appropriate transfer in the public interest is made. The proper provision of utility service requires the collection of rates, the payment of fees and refunds, and the fulfillment of other utility-related obligations.

#### CONCLUSION

For all of the reasons explained above, we deny the transfer of Certificate Nos. 620-W and 533-S from Woodlands to LPUC, but we direct LPUC to file another application for transfer of the certificates within 30 days from the date this decision is final, in which LPUC agrees to accept all regulatory obligations of the Woodlands, as Section 367.071(1), Florida Statutes, and Rule 25-30.037(2), Florida Administrative Code, require. The Department of State, Division of Corporations website and the Commission's Master Commission Directory indicate that the Woodlands of Lake Placid L.P. is still active, and therefore the certificates shall remain with the Woodlands until the new transfer is approved. Further, Highvest, as the company that has current ownership of the Woodlands utility through foreclosure, is responsible for the proper provision of utility service, including the fulfillment of the utility's obligations to the Commission and to its ratepayers, until a transfer is approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Application for Authority to Transfer Certificate Nos. 620-W and 533-S in Highlands County from the Woodlands of Lake Placid, L.P. to L.P. Utilities Corporation is denied. It is further

ORDERED that L.P. Utilities Corporation shall file another application for transfer of the Certificates within 30 days from the date this decision is final, in which L.P. Utilities Corporation agrees to accept all regulatory obligations of the Woodlands of Lake Placid, L.P. It is further

ORDERED that Highvest, the current owner of the utility's assets, is responsible for providing service to the utility's customers, submitting the utility's present and past due regulatory

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assessment fees, plus penalties and interest, for the period January 1, 2002, through September 30, 2002, and honoring any refunds to the utility customers ordered by the Commission, until an appropriate transfer to LPUC is approved by the Commission. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Codes, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall remain open to address the new transfer application or to address a protest filed by the applicant.

By ORDER of the Florida Public Service Commission this 22nd Day of September, 2003.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

( S E A L )

MCB

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. The applicant whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 13, 2003.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

**ATTACHMENT A**  
Transcript

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1                   BEFORE THE  
2                   FLORIDA PUBLIC SERVICE COMMISSION

3   DOCKET NO. 020010-WS

4                   In the Matter of

5                   APPLICATION FOR STAFF-ASSISTED  
6                   RATE CASE IN HIGHLANDS COUNTY  
7                   BY THE WOODLANDS OF LAKE  
8                   PLACID, L.P.

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9   ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE  
10    A CONVENIENCE COPY ONLY AND ARE NOT  
11    THE OFFICIAL TRANSCRIPT OF THE HEARING.  
12    THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

13    VOLUME 2  
14    Pages 86 through 207

15                   PROCEEDINGS:           TECHNICAL HEARING

16                   BEFORE:                   COMMISSIONER J. TERRY DEASON  
17    COMMISSIONER RUDOLPH BRADLEY  
18    COMMISSIONER CHARLES DAVIDSON

19                   DATE:                        Wednesday, May 28, 2003

20                   TIME:                       Commenced at 11:00 a.m.  
21    Concluded at 5:00 p.m.

22                   PLACE:                       Sebring Civic Center  
23    355 W. Center Avenue  
24    Sebring, Florida

25                   REPORTED BY:           JANE FAUROT, RPR  
  Chief, Office of Hearing Reporter Services  
  FPSC Division of Commission Clerk and  
  Administrative Services  
  (850) 413-6732

                  APPEARANCES:       (As heretofore noted.)

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1 Q A salary And that is in your role as an officer of  
2 Highvest, is that correct?

3 A Yes.

4 Q Does your spouse receive any income of any type,  
5 either salary, or bonuses, or profit distributions from any of  
6 those five corporations?

7 A I believe she gets something from Anbeth. She used  
8 to get from Camper Corral, but doesn't any more.

9 Q With regard to Highvest Corporation, do you receive  
10 any type of fees as a consultant, or an independent contractor,  
11 or anything?

12 A No.

13 Q Do you consider yourself or are you legally a  
14 creditor of any of those five corporations?

15 A Yes. They owe me money, yes.

16 Q No. Do you receive interest from those corporations,  
17 then, as a creditor?

18 A No.

19 Q Do you receive any type of property or monetary  
20 distributions in your role as a creditor of those corporations?

21 A Not to my knowledge, no.

22 Q There was a substantial amount of testimony earlier  
23 today from Mr. Lovelette about the different corporations, and  
24 I don't intend to revisit that at any length, but would it be a  
25 fair characterization to say that with respect to Highvest, and

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1 L.P. Utilities, and the Woodlands of Lake Placid, you are  
2 basically the ultimate decision-maker?

3 A I am the ultimate what, sir?

4 Q The ultimate decision-maker.

5 A Yes.

6 Q And there was some discussion about a decision that  
7 Highvest Corporation would foreclose its interest in the  
8 Woodlands of Lake Placid. Do you recall that discussion?

9 A Yes.

10 Q Would it be fair to say that it was your decision for  
11 Highvest Corporation to foreclose on the Woodlands of Lake  
12 Placid?

13 A Well, finally it was my decision, but it was in  
14 consultation with the other board members and our attorney.

15 Q Can you explain to me why you or the board that made  
16 the decision to foreclose Highvest's interest in the Woodlands  
17 of Lake Placid, when it was made last year, about the time it  
18 was made?

19 A Yes. I can explain that. Highvest Corporation had  
20 taken over the mortgage from a trust corporation out of  
21 Indianapolis when Woodlands was unable to meet the  
22 requirements, financial requirements of that mortgage.  
23 Woodlands made periodic payments on their mortgage, but it was  
24 very much in arrears.

25 Now, through that period it was not in the interest

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1 of Highvest Corporation to foreclose on the mortgage. However,  
2 when our security was threatened by a judgment, and I know in  
3 my banking career of many years, one of the first things that  
4 we would do as a banker is to foreclose a mortgage if either  
5 that mortgage was threatened by judgments or by unpaid taxes.  
6 And so that prompted our decision when there was a judgment to  
7 call the mortgage in and foreclose on it.

8 Q And why was it not in Highvest's corporate interest  
9 to foreclose on the Woodlands -- you mentioned it wasn't in  
10 their interest to foreclose, why is that?

11 A Well, mostly the mortgage covered land, acreage to be  
12 developed, and we were hoping that at some period Woodlands  
13 would get the permission to develop. And, secondly, Highvest  
14 had no desire to run a utilities company.

15 Q You mentioned there were periodic payments made from  
16 Woodlands to Highvest. Could you give me an idea of what you  
17 mean by periodic?

18 A Well, I couldn't tell you offhand what dates and when  
19 they were. All I know is that they were in arrears in their  
20 mortgage and they had not met the requirements of the mortgage  
21 as per the mortgage agreement.

22 Q So you don't have any precise information on how many  
23 payments or with what frequency the Woodlands made payments to  
24 Highvest?

25 A No, I couldn't tell you that offhand. I deal with a



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1 number of different corporations and different mortgages. I  
2 can't tell you exactly which one is in arrears at what time.

3 Q Would it be a fair characterization to say that --  
4 let me withdraw that question for the moment.

5 Mr. Cozier, I would like to ask you to explain to me  
6 what difference you see, if any, in the corporate structure of  
7 the Woodlands of Lake Placid and L.P. Utility Corporation  
8 today?

9 A What difference?

10 Q What difference.

11 A Well, I don't know. I have heard a lot of things  
12 about corporations, and because one owner has different  
13 corporations, it sounds to me like it is some kind of criminal  
14 activity. And I believe that this is the essence of corporate  
15 structures in the United States, that many companies have  
16 different entities for different purposes.

17 Now Woodlands was in arrears, their security was  
18 threatened, and we exercised our right to foreclose. And we  
19 did this according to law. We had legal opinion. We went  
20 through the proper channels. There was nothing underhanded or  
21 disguised, it was public knowledge. Now, Highvest has no  
22 interest in running a utility company. And, therefore, to  
23 continue it, a corporation was formed in order to ensure the  
24 continuance of that utility company.

25 Q Is it true that you will be the ultimate

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1 decision-maker for L P Utilities Corporation?

2 A Well, ultimately all decisions have to come back in  
3 my lap. I mean, it is like running the country. You know, you  
4 have got Senates and Houses and everything else, but ultimately  
5 when you are going to go to war it is the president that has to  
6 press the button, and he has got to take the responsibility.  
7 And that happens in corporations. And I am quite prepared to  
8 take that responsibility when it is necessary to do so.

9 Q Would it be a fair characterization of your testimony  
10 today that you believe the fact that the Woodlands of Lake  
11 Placid L.P. was a different corporate entity than the L.P.  
12 Utilities, Incorporated, means that L.P. has no liability for  
13 any refunds to the customers?

14 A Well, I don't even think Woodlands has any  
15 responsibility. And when we foreclosed on it, Woodlands had no  
16 responsibility. We were not made aware of any responsibility  
17 to refund money to anybody.

18 Q You don't believe the Woodlands of Lake Placid owed  
19 any refunds to anybody?

20 A No, I don't, sir. I think they got a -- they were  
21 charged a reasonable fee. They got good service throughout all  
22 the years. Now, we were not aware that there was anything like  
23 a public utility commission that was responsible for what we  
24 were doing. We thought we were just running -- we took it  
25 over, we were running a little utility there for the benefit of



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1           Had this been an independent arm's-length transaction  
2 that was nonrelated, you wouldn't have a company closing on a  
3 mortgage and then four days later turning around and entering  
4 another mortgage with essentially the same owner. This clearly  
5 is not -- they are not independent parties, and they are not  
6 arm's-length transactions, and the utility should not be  
7 allowed through these foreclosures and setting up different  
8 companies to get out of refunding to these customers these  
9 amounts that they paid illegally and they are lawfully due.

10           COMMISSIONER DAVIDSON: I have a question here. Upon  
11 what do you base your conclusion, is this based upon your  
12 experience in similar cases, generally accepted accounting  
13 principles and transactions such as this? I'm trying to get at  
14 sort of what is your -- basing your conclusion, your ownership  
15 conclusions on?

16           THE WITNESS: That they are related parties. Well,  
17 the first sentence is the Woodlands of Lake Placid L.P. is  
18 owned by Camper Corral and Mr. Cozier jointly, and Mr. Cozier  
19 owns Camper Corral. For Highvest, Mr. Cozier is the president.  
20 And in his April 29th of this year deposition, it was indicated  
21 that he makes ultimate decision as to whether or not the  
22 foreclosure proceeds.

23           And, finally, L.P. Utilities is owned by Anbeth  
24 Corporation, which is also owned by Mr. Cozier. Under  
25 generally accepted accounting principles, specifically under

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1 Statement of Financial Accounting Standard Number 57, it gives  
2 definitions of related parties. And these clearly -- joint  
3 management, joint decision control, all fall under the  
4 definition of related parties.

5           And I don't see how even just from a common sense  
6 standpoint beyond the regular accounting rules and principles  
7 one can consider these independent parties. They are under the  
8 same control, the same person makes the decisions in all three  
9 of these entities. So I guess my position is based on the  
10 management structure of the corporations in question, and the  
11 definition of related parties under generally accepted  
12 accounting principles.

13           To continue, the next issue I get into is the issue  
14 of whether or not the refund -- actually it is my understanding  
15 that has been stipulated to, so the next issue I wish to  
16 address is contributions in aid of construction, and Mr.  
17 Burgess did address this quite a bit in his opening statement.

18           Back in the time period of late 2000, early 2001 the  
19 individual privately owned lots were required to put meters.  
20 And it is my understanding that under the company's consumptive  
21 use permit they are required to install meters on all the lots.  
22 This wasn't a requirement come up with by a utility, it is  
23 required under their consumptive use permit. And at that time  
24 they charged the individual private lot owners \$189 per meter  
25 to recover the cost of those lots. And the proposed agency

**ATTACHMENT C**  
Financial Accounting Standard

## FAS 57: Related Party Disclosures

### FAS 57 STATUS

Issued: March 1982

Effective Date: For fiscal years ending after June 15, 1982

Affects: No other pronouncements

Affected by: Paragraph 2 amended by FAS 96 and FAS 109  
Footnote 2 amended by FAS 95

Other Interpretive Pronouncement: FIN 45

### FAS 57 Summary

This Statement establishes requirements for related party disclosures. The requirements of this Statement are generally consistent with those in Statement on Auditing Standards No. 6, *Related Party Transactions*, issued by the Auditing Standards Executive Committee of the American Institute of Certified Public Accountants.

### INTRODUCTION

1. The FASB has been asked to provide guidance on disclosures of transactions between **related parties**.<sup>1(1)</sup> Examples of related party transactions include transactions between (a) a parent company and its subsidiaries; (b) subsidiaries of a common parent; (c) an enterprise and trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of the enterprise's **management**; (d) an enterprise and its **principal owners**, management, or members of their **immediate families**; and (e) **affiliates**. Transactions between related parties commonly occur in the normal course of business. Some examples of common types of transactions with related parties are: sales, purchases, and transfers of realty and personal property; services received or furnished, for example, accounting, management, engineering, and legal services; use of property and equipment by lease or otherwise; borrowings and lendings; guarantees; maintenance of bank balances as

compensating balances for the benefit of another; intercompany billings based on allocations of common costs; and filings of consolidated tax returns. Transactions between related parties are considered to be related party transactions even though they may not be given accounting recognition. For example, an enterprise may receive services from a related party without charge and not record receipt of the services.

## STANDARDS OF FINANCIAL ACCOUNTING AND REPORTING

### Disclosures

◆2. Financial statements shall include disclosures of material related party transactions, other than compensation arrangements, expense allowances, and other similar items in the ordinary course of business. However, disclosure of transactions that are eliminated in the preparation of consolidated or combined financial statements is not required in those statements.2(2) The disclosures shall include:3(3)

- a. The nature of the relationship(s) involved
- b. A description of the transactions, including transactions to which no amounts or nominal amounts were ascribed, for each of the periods for which income statements are presented, and such other information deemed necessary to an understanding of the effects of the transactions on the financial statements
- c. The dollar amounts of transactions for each of the periods for which income statements are presented and the effects of any change in the method of establishing the terms from that used in the preceding period
- d. Amounts due from or to related parties as of the date of each balance sheet presented and, if not otherwise apparent, the terms and manner of settlement

3. Transactions involving related parties cannot be presumed to be carried out on an arm's-length basis, as the requisite conditions of competitive, free-market dealings may not exist. Representations about transactions with related parties, if made, shall not imply that the related party transactions were consummated on terms equivalent to those that prevail in arm's-length transactions unless such representations can be substantiated.

4. If the reporting enterprise and one or more other enterprises are under common ownership or management ◆control and the existence of that control could result in operating results or financial position of the reporting enterprise significantly different from those that would have been obtained if the enterprises were autonomous, the nature of the control relationship shall be disclosed even though there are no transactions between the enterprises.

### Effective Date and Transition

5. This statement shall be effective for financial statements for fiscal years ending after June 15, 1982. Earlier application is encouraged but is not required.

**The provisions of this Statement need  
not be applied to immaterial items.**

*This Statement was adopted by the unanimous vote of the seven members of the Financial Accounting Standards Board:*

Donald J. Kirk, *Chairman*  
Frank E. Block  
John W. March  
Robert A. Morgan  
David Mosso  
Robert T. Sprouse  
Ralph E. Walters

## **Appendix A: BACKGROUND INFORMATION AND BASIS FOR CONCLUSIONS**

6. This appendix discusses the factors that the Board considered significant in reaching the conclusions in this Statement. Individual Board members gave greater weight to some factors than to others.
7. AICPA Statement on Auditing Standards No. 6, *Related Party Transactions* (SAS 6), and interpretations of SAS 6 provide guidance on related party financial statement disclosures. However, authoritative auditing pronouncements are intended to direct the activities of auditors, not of reporting enterprises.
8. As part of Accounting Series Release No. 280, *General Revisions of Regulation S-X*, the Securities and Exchange Commission integrated the disclosure requirements of SAS 6 pertaining to related party transactions into Regulation S-X. Regulation S-X, however, applies only to enterprises subject to the filing requirements of the SEC.
9. Because guidance for related party disclosures was not included in the authoritative literature on generally accepted accounting principles, the Accounting Standards Division of the AICPA asked the FASB to consider providing such guidance in a Statement of Financial Accounting Standards.



10. As discussed in paragraphs 12-18, the Board believes that it is appropriate to establish standards that apply to all enterprises for disclosure of information about related party transactions and certain control relationships. The Board has not undertaken a comprehensive reconsideration of the accounting and reporting issues discussed in SAS 6 and related interpretations thereof. The related party disclosure requirements contained in those documents have been extracted without significant change, except that this Statement does not address the issues pertaining to economic dependency. Other FASB projects may address issues related to those in this Statement, and the Board may reconsider the standards in this Statement when those projects are completed.

11. An Exposure Draft of a proposed Statement, *Related Party Disclosures*, was issued on November 6, 1981. The Board received 66 comment letters in response to that Exposure Draft. Certain of the comments received and the Board's consideration of them are discussed in paragraphs 19-22 of this appendix.

#### **Usefulness of Related Party Disclosures**

12. FASB Concepts Statement No. 2, *Qualitative Characteristics of Accounting Information*, examines the characteristics of accounting information that make it useful. That Statement concludes that for accounting information to be useful, it should be relevant (meaning that it has predictive or feedback value) and reliable (meaning that it has representational faithfulness, verifiability, and neutrality). That Statement further concludes that information about an enterprise increases in usefulness if it can be compared with similar information about other enterprises and with similar information about the same enterprise for some other period or point in time.

13. Accounting information is relevant if it is "capable of making a difference in a decision by helping users to form predictions about the outcomes of past, present, and future events or to confirm or correct expectations."<sup>4</sup>(4) Relationships between parties may enable one of the parties to exercise a degree of influence over the other such that the influenced party may be favored or caused to subordinate its independent interests. Related party transactions may be controlled entirely by one of the parties so that those transactions may be affected significantly by considerations other than those in arm's-length transactions with unrelated parties. Some related party transactions may be the result of the related party relationship and without the relationship may not have occurred or may have occurred on different terms. For example, the terms under which a subsidiary leases equipment to another subsidiary of a common parent may be imposed by the common parent and might vary significantly from one lease to another because of circumstances entirely unrelated to market prices for similar leases.

14. Sometimes two or more enterprises are under common ownership or management control but do not transact business with each other. The common control, however, may result in operating results or financial position significantly different from that which would have been

obtained if the enterprises were autonomous. For example, two or more enterprises in the same line of business may be controlled by a party that has the ability to increase or decrease the volume of business done by each. Disclosure of information about certain control relationships and transactions with related parties helps users of financial statements form predictions and analyze the extent to which those statements may have been affected by that relationship.

15. Reliability of financial information involves "assurance that accounting measures represent what they purport to represent." 5(5) Without disclosure to the contrary, there is a general presumption that transactions reflected in financial statements have been consummated on an arm's-length basis between independent parties. However, that presumption is not justified when related party transactions exist because the requisite conditions of competitive, free-market dealings may not exist. Because it is possible for related party transactions to be arranged to obtain certain results desired by the related parties, the resulting accounting measures may not represent what they usually would be expected to represent. Reduced representational faithfulness and verifiability of amounts used to measure transactions with related parties weaken the reliability of those amounts. That weakness cannot always be cured by reference to market measures because in many cases there may be no arm's-length market in the goods or services that are the subject of the related party transactions.

16. The Board believes that an enterprise's financial statements may not be complete without additional explanations of and information about related party transactions and thus may not be reliable. Completeness implies that "... nothing material is left out of the information that may be necessary to insure that it validly represents the underlying events and conditions." 6(6)

17. The Board also believes that relevant information is omitted if disclosures about significant related party transactions required by this Statement are not made. "Completeness of information also affects its relevance. Relevance of information is adversely affected if a relevant piece of information is omitted, even if the omission does not falsify what is shown." 7(7)

18. Information about transactions with related parties is useful to users of financial statements in attempting to compare an enterprise's results of operations and financial position with those of prior periods and with those of other enterprises. It helps them to detect and explain possible differences. Therefore, information about transactions with related parties that would make a difference in decision making should be disclosed so that users of the financial statements can evaluate their significance.

#### **Consideration of Comments on Exposure Draft**

19. Some respondents were troubled by the proposal in the Exposure Draft to require disclosure of only those transactions "that are necessary for users to understand the financial statements." They generally expressed the view that it would be difficult to apply such a criterion

and that it was unclear how that criterion interacted with materiality judgments. In addition, some respondents also interpreted that language combined with the Exposure Draft's omission of the specific exclusion provided in SAS 6 for disclosure of compensation arrangements, expense allowances, and other similar items in the ordinary course of business as a requirement that such items be disclosed. The Board does not intend to imply that disclosure of related party transactions and certain control relationships is a separate objective of financial reporting, nor does the Board intend to introduce a new concept of materiality. Rather, disclosure of related party transactions and certain control relationships is required solely for the purpose of enhancing the understanding of the financial statements and the fact that such matters have, or could have, an effect on the financial statements. Disclosure of compensation arrangements, expense allowances, and other similar items in the ordinary course of business is not necessary for a user to understand the financial statements. The standard has been revised accordingly.

20. The Exposure Draft would have prohibited representations to the effect that related party transactions were consummated on an arm's-length basis. While recognizing the difficulty in many situations of determining the terms on which a transaction might have occurred if the parties were unrelated, many respondents pointed out that certain related party transactions occur on terms available to unrelated parties or on terms established by regulatory agencies. They believe that representations as to the terms of a related party transaction should not be prohibited if they can be substantiated. The Board agreed, and the requirement (paragraph 3) has been modified accordingly.

21. SAS 6 and interpretations thereof call for disclosure of the nature of common control relationships if the controlling party has the ability to affect the reporting enterprise in a manner that could lead to significantly different operating results or financial position than if the enterprises were autonomous. The Exposure Draft would have gone beyond those requirements to require disclosure of all control relationships. Some respondents expressed doubt about the usefulness of some of the disclosures that would result. They indicated that the requirement would be burdensome particularly for closely held enterprises that might have numerous relationships with owners and their families, lenders, and possibly others that might be deemed to be "control." The Board agreed that requiring disclosure of all control relationships might be of limited usefulness. Accordingly, the requirement (paragraph 4) was revised to conform more closely to that discussed in SAS 6.

22. Several respondents asked the FASB to provide additional guidance on disclosures about economic dependency but did not provide information to define the issues involved, nor did they provide evidence as to why additional guidance is needed. Therefore, the Board concluded that issuance of this Statement should not be delayed to consider that issue.

23. The Board has concluded that it can reach an informed decision on the basis of existing information without a public hearing and that the effective date and transition specified in paragraph 5 are advisable in the circumstances.

## Appendix B: GLOSSARY

24. For purposes of this Statement, certain terms are defined as follows:
- a. **Affiliate.** A party that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an enterprise.
  - b. **Control.** The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract, or otherwise.
  - c. **Immediate family.** Family members whom a principal owner or a member of management might control or influence or by whom they might be controlled or influenced because of the family relationship.
  - d. **Management.** Persons who are responsible for achieving the objectives of the enterprise and who have the authority to establish policies and make decisions by which those objectives are to be pursued. Management normally includes members of the board of directors, the chief executive officer, chief operating officer, vice presidents in charge of principal business functions (such as sales, administration, or finance), and other persons who perform similar policymaking functions. Persons without formal titles also may be members of management.
  - e. **Principal owners.** Owners of record or known beneficial owners of more than 10 percent of the voting interests of the enterprise.
  - f. **Related parties.** Affiliates of the enterprise; entities for which investments are accounted for by the equity method by the enterprise; trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management; principal owners of the enterprise; its management; members of the immediate families of principal owners of the enterprise and its management; and other parties with which the enterprise may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. Another party also is a related party if it can significantly influence the management or operating policies of the transacting parties or if it has an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

### Endnotes

**1 (Popup - Popup)**

FAS57, Footnote 1--Terms defined in the glossary (Appendix B) are in **boldface type** the first time they appear in this Statement.

**2 (Popup - Popup)**

FAS57, Footnote 2--The requirements of this Statement are applicable to separate financial statements of each or combined groups of each of the following: a parent company, a subsidiary, a corporate joint venture, or a 50-percent-or-less owned investee. However, it is not necessary to duplicate disclosures in a set of separate financial statements that is presented in the financial report of another enterprise (the primary reporting enterprise) if those separate financial statements also are consolidated or combined in ~~◆ a complete set of financial statements~~ and both sets of financial statements are presented in the same financial report.

**3 (Popup - Popup)**

FAS57, Footnote 3--In some cases, aggregation of similar transactions by type of related party may be appropriate. Sometimes, the effect of the relationship between the parties may be so pervasive that disclosure of the relationship alone will be sufficient. If necessary to the understanding of the relationship, the name of the related party should be disclosed.

**4 (Popup - Popup)**

FAS57, Appendix A, Footnote 4--Concepts Statement 2, ◆paragraph 47.

**5 (Popup - Popup)**

FAS57, Appendix A, Footnote 5--Ibid., ◆paragraph 81.

**6 (Popup - Popup)**

FAS57, Appendix A, Footnote 6--Ibid., ◆paragraph 79.

**7 (Popup - Popup)**

FAS57, Appendix A, Footnote 7--Ibid., ◆paragraph 80.