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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Complaint and request for)
hearing by Linda J. McKenna and 54)
petitioners regarding unfair rates)
and charges by SHANGRI-LA BY-THE-LAKE)
UTILITIES, INC. in Lake County, FL.)
_____)

RECORDS AND REPORTING
DOCKET NO. 990080 GWS

MOTION FOR RECONSIDERATION OF
ORDER NO. PSC-00-0629-PCO-WS AND TO ESTABLISH
BURDEN OF PROOF

SHANGRI-LA BY THE LAKE UTILITIES, INC. ("Shangri-La"), by and through its undersigned attorneys and pursuant to Rule 25-22.0376, Florida Administrative Code, files this Motion to Reconsider that portion of Order No. PCO-00-0629-PCO-WS ("Procedural Order") which requires it to file its prefiled testimony before that of the Complainants, and to establish the burden of proof in this proceeding, and in support thereof states:

1. The Procedural Order requires that Shangri-La file its prefiled testimony on August 11, 2000 and that the "Intervenors" file their prefiled testimony on September 11, 2000. The Intervenors are, in fact, the Complainants who initiated this proceeding, and not true Intervenors.

2. This proceeding was initiated by the Complainant, Ms. McKenna, and others raising miscellaneous complaints regarding

AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG 1
MAS 3
OFC _____
RRR _____
SEC 1
MAW _____
OTH _____

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[Signature]
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Shangri-La. This Commission issued Proposed Agency Action Order No. PSC-00-0259-PAA-WS which was protested by the Public Counsel on behalf of the Complainants.

3. The Complainants, as the initiators of this proceeding, carry the initial burden of proof and must make an initial showing before Shangri-La has to go forward with its evidence. *Metropolitan Dade County Water and Sewer Board v. Community Utilities Corporation*, 200 So.2d 831 (Fla. 3d DCA 1967). As to any rate issues raised by Complainants, that Court stated:

There is no presumption that the existing rates of a public utility company are unreasonable; to the contrary, there is a presumption of reasonableness. [citations omitted.]

Thus, merely because the Complainants raise rate issues does not shift the initial burden to Shangri-La.

4. There is no practical difference between this proceeding and that of *In re: Complaint of Hugh Keith against Beverly Beach Enterprises, Inc., etc.*, Docket No. 890450-WS. That case involved a customer complaint that he had paid too much CIAC. In that case, the Order Establishing Prehearing Procedure, Order No. 21592, required the Complainant to prefile his testimony before that of the utility. Similarly, in the Prehearing Order, Order No. 22070, the complainant was to present his witnesses prior to the utility presenting its witnesses. Thus, it is clear that the Complainant

in the instant case must prefile testimony prior to Shangri-La filing its prefiled testimony.

5. As to the burden of proof, this Commission, in its final Order Disposing of Complaint in *In Re: Complaint of Hugh Keith against Beverly Beach Enterprises, Inc., etc.*, Order No. 22605, this Commission correctly stated:

It is a well established administrative law principle that the burden of proof is on the party asserting the affirmative of an issue. *Florida Department of Transportation v. J.W.C. Company, Inc.*, 396 So.2d. 778 (Fla. 1st DCA 1981); *Balino v. Department of Health and Rehabilitative Services*, 348 So.2d 349 (Fla. 1st DCA 1977). Mr. Keith is asserting the affirmative that Beverly Beach collected an improper amount of CIAC from him and, therefore, carries the burden of proof on this issue.

Since in the instant case the Complainants are asserting that Shangri-La is imposing unfair rates and charges, they carry the burden of proof. Shangri-La is not asserting the affirmative on any issues in this proceeding and thus has no burden of proof.

6. Obviously, the prehearing officer overlooked, or failed to consider the procedural nuances of this proceeding in establishing the order of prefiled testimony. This is clear from the Procedural Order incorrectly referring to the Complainants as Intervenors. They did not intervene in this proceeding; they initiated it.


7. This Commission has often in the past struggled with the question of who has the ultimate burden of proof when the customers initiate a proceeding and seek affirmative relief. See, most recently, *In re: Investigation of utility rates of Aloha Utilities, Inc.*, Order No. PSC-99-1233-PCO-WS. In light of that struggle, Shangri-La believes that oral argument would be of assistance to the Commission.

WHEREFORE, Shangri-La requests this Commission enter an Order:

1. Requiring that the Complainants file their prefiled testimony prior to that of Shangri-La; and
2. Establishing that the Complainants have the ultimate burden of proof; and
3. Granting oral argument pursuant to Rule 25-22.0376(5), Florida Administrative Code.


Respectfully submitted this 10th
day of April, 2000, by:

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MARTIN S. FRIEDMAN
For the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Appearance of Counsel has been forwarded by U.S. Mail to Tim Vacarro, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850, Linda J. McKenna, 134 Shanghai Island Road, Leesburg, Florida 34788 and Steve Burgess, Esquire, Office of Public Counsel, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400 on this 10th day of April, 2000.


MARTIN S. FRIEDMAN

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