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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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RECORDS AND REPORTING

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.)

DOCKET NO. 990088-WS

RESPONSE TO MOTION IN LIMINE
TO LIMIT ISSUES

SHANGRI-LA BY THE LAKE UTILITIES, INC. ("Shangri-La"), by and through its undersigned attorneys and pursuant to Rule 28-106.204(1), Florida Administrative Code, hereby responds to Public Counsel's Motion in Limine to Limit Issues Consistent with Prior Commission Rulings. At the outset, it should be pointed out that the title to the pleading is misleading since Public Counsel's request is not consistent with prior Commission rulings. In fact, Public Counsel does not cite any written decisions of the Commission that support its interpretation of Section 120.80(13)(b), Florida Statutes. The sole situation upon which Public Counsel relies involved a Mid-County Services, Inc. rate case which apparently did not address the issue in a written ruling.

- 1. Section 120.80(13)(b), Florida Statutes, provides:

Notwithstanding ss. 120.569 and 120.57 a hearing on an objection to proposed agency action by the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed action which are not in dispute are deemed stipulated.

APP _____
CAF _____
CMP _____
COM 3
CTR _____
FCR _____
LEG Van Leuven
GPO _____
PAI _____
RBO 1
SEC 1
SER _____
CTR _____

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2. This Statute is silent as to the point in time that an issue becomes disputed. Had the Legislature intended that point to be when a protest of a PAA Order is filed, it would have done so. Practicality supports the conclusion that Public Counsel's position in this case is overly restrictive. Public Counsel's position would require every utility to challenge those issues in a PAA Order to which disagrees, even though the end result was acceptable in order to preserve those issues should someone else protest the PAA Order. This would serve no useful purpose than to increase rate case expense, and legal fees incurred by the utility.

3. In fact, the Public Counsel, at least implicitly took an opposite position on this issue in *In re: Investigation into earnings of Tampa Electric Company*, PSC-98-1619-PHO-EI, December 4, 1998. In that case, the Public Counsel took the position that an issue is deemed stipulated pursuant to Section 120.90(13)(b), Florida Statutes, if it was not protested nor placed in dispute in the parties prefiled testimony. No prefiled testimony has been filed in the instant case so it is not yet the point at which issues are defined.

4. Further, this Commission, in *In re: Establishment of Intrastate Implementation Requirements*, PSC-97-0860-PCO-TL, July 16, 1997, ruled that Section 120.80(13)(b), Florida Statutes, "does not limit the Commission's discretion to address all issues that it determines to be relevant to a full resolution of the case when an initial PAA Order is protested".

5. Thus, Section 120.80(13)(b), Florida Statutes, is not the broad limitation on the issues which may be addressed at hearing which Public Counsel asserts in this proceeding.

6. The procedure which this Commission has been utilizing in the past should remain unchanged. The issues are identified through the prefiled testimony of the parties and formalized in the prehearing statements of the parties. There is no need to change that procedure in the instant case.

WHEREFORE, Shangri-La requests this Commission deny Public Counsel's Motion.

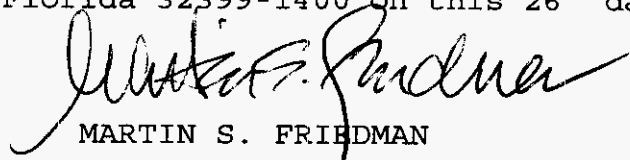
Respectfully submitted this 26th day of June, 2000, by:

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(850) 877 - 6555


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 Tyler VanLeuven, 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 26th day of June, 2000.


MARTIN S. FRIEDMAN