

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
ORDER NO. PSC-03-0618-PHO-WS
ISSUED: May 20, 2003

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on May 5, 2003, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

MARTIN S. FRIEDMAN, ESQUIRE, Rose, Sundstrom & Bentley, LLP, 600 S. North Lake Boulevard, Suite 160, Altamonte Springs, Florida 32701
On behalf of Highvest Corporation and L. P. Utilities, Inc. (Utility).

JACK SHREVE, ESQUIRE, and STEPHEN C. BURGESS, ESQUIRE, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of Citizens of the State of Florida (OPC).

LAWRENCE D. HARRIS, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

II. CASE BACKGROUND

The Woodlands of Lake Placid, L.P. (Woodlands) is a Class C water and wastewater utility providing service in Highlands County. On January 2, 2002, Woodlands filed an application for a Staff Assisted Rate Case (SARC). On September 27, 2002, Highvest Corporation (Highvest) acquired the water and wastewater utility systems of the Woodlands through a foreclosure action. L.P. Utilities Corporation then purchased the water and wastewater utility systems from Highvest on October 1, 2002.

On December 10, 2002, Order No. PSC-02-1739-PAA-WS was issued, granting temporary rates in the event of a protest and approving a decrease in water rates, an increase in wastewater rates, and ordering a refund. On December 30, 2002, Highvest Corporation and L.P. Utilities Corporation filed a Petition for Formal Administrative Hearing, protesting Order No. PSC-02-1739-PAA-WS. A public hearing has been set for May 28 and 29, 2003, in Sebring, Florida.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 367, Florida Statutes. This prehearing conference will be governed by said Chapter and Chapters 25-30, 25-22, and 28-106, Florida Administrative Code.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the

information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided

to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files.

V. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

VI. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and

associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VII. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
John H. Lovelette	Highvest/L.P.	4,5,11,12
*Hugh Larkin, Jr. (Mr. Larkin's testimony is being adopted by Donna DeRonne, listed below)	OPC	1,4,5,10,11,12
Donna DeRonne	OPC	1,4,5,10,11,12
William Troy Rendell	Staff	4,11,12

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Kathy L. Welch	Staff	1,2,3,4,6

Direct Adverse

Anthony R. Cozier	Staff	4,7,11,12
John H. Lovelette	Staff	4,7,11,12
Teresa A. Lovelette	Staff	4,7,11,12

Rebuttal

John H. Lovelette	Highvest/L.P.	1
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VIII. BASIC POSITIONS

UTILITY: Highvest and L.P.'s basic position is that the liability for any refund is that of the entity which charged and collected the rates and which is responsible for any refund. L.P. is entitled to rates which include reasonable office rent.

OPC: OPC's position is that L.P. Utilities' protest of Order No. PSC-02-1739-PAA-WS should be rejected. The rates established in that order allowed L.P. Utilities to collect rates that at the very least are fair, just and reasonable. In one of the issues raised in L.P. Utilities' protest, Mr. Larkin identified one adjustment wherein L.P. Utilities' rate base should be adjusted to a level below that allowed by the PAA. Nevertheless, to avoid any justification for rate case expense, OPC has not asked for this reduction, except as an offset to any other issues on which the utility may prevail (however unlikely).

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based

upon all the evidence in the record and may differ from the preliminary positions.

IX. ISSUES AND POSITIONS

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

POSITIONS

UTILITY: The balance in the PAA Order should remain unchanged.

OPC: The level of CIAC proposed in the PAA should be increased by two separate adjustments. The first adjustment should be for \$30,608 that will be collected for the remaining meter installations. The PAA incorporated a pro forma adjustment for the meters which have not yet been installed. A substantial number of meters have been installed, almost exclusively on the privately-owned lots and the common areas. Virtually all of those meters have been covered by CIAC already collected from the private lot owners or the Property Owners Association. The lots for which meters have not yet been installed are all rental lots owned by Hi-Vest. The PAA incorporated a pro forma adjustment for the meters that will be installed on the rental lots owned by Hi-Vest. The PAA, however, does not reflect the concomitant CIAC that should be collected from the rental lots owned by Hi-Vest. (Larkin)

STAFF: Adopt OPC's position.

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

POSITIONS

UTILITY: The balance in the PAA Order should remain unchanged.

OPC: No position at this time.

STAFF: The final amounts are subject to the resolution of other issues.

ISSUE 3: What are the appropriate rate base amounts?

POSITIONS

UTILITY: The final amounts are subject to the resolution of other issues.

OPC: No position at this time.

STAFF: The final amounts are subject to the resolution of other issues.

NET OPERATING INCOME

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

POSITIONS

UTILITY: \$300 per month. (Lovelette)

OPC: \$0. The utility has never paid rent in the past, and there is no evidence presented to indicate that it ever will do so. The larger building in which the office is housed formerly had belonged to the POA, but now is owned by Hi-Vest. Mr. Anthony Cozier is the president of Hi-Vest and is the ultimate owner of the utility. Any potential future rental fees, therefore, could not possibly be based on arms-length bargaining. The utility has the burden of proving the reasonableness of its expenses, but has presented no evidence to demonstrate rental market value for the office space. Even if the PSC determines that some rental expense is appropriate, it would be more than offset by the additional CIAC that should be recognized (issue 1) and by the additional revenue that might be imputed (issue 4). (Larkin)

STAFF: The appropriate amount of rent is \$0. (Rendell)

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

POSITIONS

UTILITY: To be determined, but currently estimated at \$60,000.
(Lovelette)

OPC: \$0. This was a staff assisted rate case requested by the utility. Pursuant to that procedure, the Commission issued a PAA which granted rates which are at least compensatory. Not only has the utility utterly failed to produce evidence that shows the PAA is in error in any way, OPC has shown that the PAA actually allows a higher rate base (through deficient CIAC) than is proper. The utility has seen this CIAC issue, and knows perfectly well the validity of OPC's position. The utility also knows that OPC's position on CIAC would offset any rate issues the utility has raised. Nevertheless, the utility is pushing forward with this expensive litigation in the effort to avoid paying the customers their lawfully entitled refund. The utility seeks to avoid the refund on the rationale that the current utility owner (Anthony Cozier) should not be required to honor the refund obligations of the previous owner (Anthony Cozier). If the utility chooses to spend its own money pursuing this questionable (both morally and legally) position, it certainly is entitled to do so. There is absolutely no basis, however, for requiring the customers to fund the utility's totally unjustified attack on the PAA.
(Larkin)

STAFF: No position pending further development of the record.

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

POSITIONS

UTILITY: The final amounts are subject to the resolution of other issues.

OPC: No position at this time.

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

REVENUE REQUIREMENT

ISSUE 7: What are the appropriate revenue requirements?

POSITIONS

UTILITY: The final amounts are subject to the resolution of other issues.

OPC: No position at this time.

STAFF: The final amounts are subject to the resolution of other issues.

RATES AND RATE STRUCTURE

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

POSITIONS

UTILITY: The final amounts are subject to the resolution of other issues.

OPC: No position at this time.

STAFF: The final amounts are 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?

POSITIONS

UTILITY: The final amounts are subject to the resolution of other issues.

OPC: No position at this time.

STAFF: The final amounts are subject to the resolution of other issues.

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.

POSITIONS

UTILITY: Yes.

OPC: The entire net overearnings for water and wastewater combined was \$165,795, but it was not all captured by the PAA. This is considerably greater than the \$69,065 refund ordered by the PAA. The refund is based on the amount of the illegally collected water rates, and should not be confused with the total net overearnings. If the utility insists on netting wastewater underearnings against water overearnings, then it should refund \$165,795 instead of the \$69,065 ordered by the PAA. (Larkin)

STAFF: No position pending the further development of the record.

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

POSITIONS

UTILITY: Yes. (Lovelette)

OPC: No.

STAFF: No.

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.

POSITIONS:

UTILITY: No.

OPC: Yes.

STAFF: Yes.

X. **EXHIBIT LIST**

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Hugh Larkin, Jr.	OPC	_____ (HL-1)	Appendix of Qualifications
		_____ (HL-2)	Description of the interlocking ownership of various companies related to L. P. Utilities.
Kathy L. Welch	Staff	_____ (KLW-1)	Staff Audit Report

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
	Staff	Staff Composite 1	Highvest/L.P.Respo nses to Staff's Interrogatories Nos. 1-10, 13, 14, 16
	Staff	Staff 2	Matrix of Officers, Directors and owners of 5 related corporations

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

XI. PROPOSED STIPULATIONS

1. As established by Order No. PSC-02-1739-PAA-WS, a refund of \$69,065, plus accrued interest, is due to the customers for unauthorized revenue collections from January, 1998, through the issuance of that PAA Order.

2. The testimony of Kathy L. Welch, including Exhibit K LW-1, shall be stipulated into the record without the necessity of the live appearance of Ms. Welch.

XII. PENDING MOTIONS

There are no pending motions at this time.

XIII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIV. RULINGS

1. Opening statements, if any, shall be limited to 10 minutes.

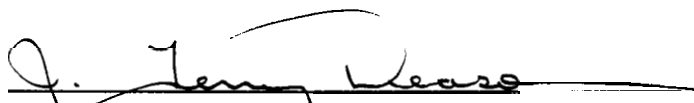
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2. The Utility shall file an updated accounting statement of Rate Case Expense, including forecasted expense and actual expense incurred to date, by May 21, 2003 (one week prior to the public hearing).

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 20th day of May, 2003.


J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

LDH

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

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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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.