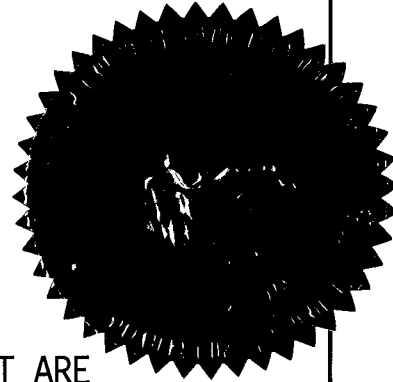


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020010-WS

In the Matter of

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



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VOLUME 1
Pages 1 though 85

PROCEEDINGS: TECHNICAL HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER RUDOLPH BRADLEY
COMMISSIONER CHARLES DAVIDSON

DATE: Wednesday, May 28, 2003

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

PLACE: Sebring Civic Center
355 W. Center Avenue
Sebring, Florida

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
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I N D E X

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NUMBER:

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2 Staff Composite Exhibit 1
3 Staff Composite Exhibit 2

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P R O C E E D I N G S

1
2 COMMISSIONER DEASON: Call the hearing back to order.
3 Mr. Harris, we are now going to proceed into the
4 technical phase of the hearing. Are there any preliminary
5 matters we need to address at this time?

6 MS. FLEMING: Yes, Commissioners. There are two
7 proposed stipulations on Page 13 of the prehearing order. It
8 is my understanding that the parties do not agree to the
9 Proposed Stipulation 1. However, Staff recommends that the
10 Commission accept the second stipulation.

11 COMMISSIONER DEASON: Give us just a moment to turn
12 to Page 13 of the prehearing order. Okay. There are two
13 proposed stipulations listed.

14 Mr. Burgess, do you wish to address these?

15 MR. BURGESS: Commissioner, we have no problems with
16 the second stipulation, proposed stipulation. We would
17 stipulate to that. With regard to the first stipulation, first
18 it is my understanding that the number is not a discreet number
19 that is unchanging throughout time, but rather is indicative of
20 a methodology and is an amount that existed at a particular
21 point in time and would continue on.

22 But, nevertheless, some of the testimony that was
23 presented by the customers, I think, would bear on that. And
24 therefore I cannot stipulate to the amount that is in there.
25 As I understand it, the imputed revenue would affect the amount

1 of the refund calculation, and customers have raised disputes
2 in those areas, and therefore I cannot stipulate to Proposed
3 Stipulation 1.

4 COMMISSIONER DEASON: Mr. Friedman, do you have
5 anything to add or clarify on the proposed stipulations?

6 MR. FRIEDMAN: No, Mr. Deason. If Public Counsel
7 isn't willing to stipulate, he's not going to stipulate.

8 COMMISSIONER DEASON: Very well.

9 Commissioners, we have one proposed stipulation at
10 this point apparently.

11 COMMISSIONER BRADLEY: I have --

12 COMMISSIONER DEASON: Commissioner, you may proceed.

13 COMMISSIONER BRADLEY: I want to make sure I
14 understand what Mr. Burgess -- what his statement means. You
15 are saying that you disagree with the dollar amount, therefore
16 you are not willing to accept the stipulation?

17 MR. BURGESS: That is correct, Commissioner Bradley.
18 That based on the customer testimony that was presented, that
19 the calculation should have included a greater amount of
20 imputed revenue from the rental lots, and thereby that would
21 have increased the amount of the refund.

22 COMMISSIONER BRADLEY: The response from staff is?

23 MR. HARRIS: It is our understanding that -- you
24 heard the argument this morning, OPC is -- the customers
25 testified as they think the 70 rental lot calculation is

1 incorrect. If the Commission makes some finding based on that
2 testimony, that would, in fact, change the amount that we have
3 as the stipulation. It is my understanding that if the
4 Commission makes a finding affecting that 70 lot number, it
5 will change the amount of the refund.

6 If the Commission makes no finding, then it is my
7 understanding that this number that is listed would end up
8 being the correct number of the refund as of the PAA. It is
9 continuing to accrue interest. And staff has a calculation of
10 the interest accrued to date for the final number. But I guess
11 what I'm saying is depending on what finding the Commission
12 makes as to the number of unrentable lots, it will affect the
13 amount of the refund.

14 COMMISSIONER DEASON: Commissioner?

15 MR. FRIEDMAN: I don't think that's right.

16 COMMISSIONER DEASON: Let the Commissioner ask his
17 question.

18 MR. FRIEDMAN: I'm sorry, I didn't mean --

19 COMMISSIONER DAVIDSON: That's all right. My
20 question is if there are -- hypothetically, if there were no
21 adjustments made based on rented and nonrented lots, would the
22 parties agree that the number in Stipulation 1 is accurate?
23 Would the parties stipulate to that number as of a certain
24 date, absent any additional adjustments? I understand that we
25 are going to be talking about that today. But based on where

1 we are right now, is there agreement on that number?

2 MR. BURGESS: Yes. From us, Commissioner, there is
3 an agreement.

4 MR. FRIEDMAN: Certainly. That is the PAA number.

5 MR. HARRIS: And, Commissioners, I'm sorry, I
6 misinformed you a moment ago. My technical staff has corrected
7 me. The refund that we have calculated is based on the lot
8 owning customers, the number of customers. Changing the amount
9 of the 70 unrentable lots will not affect the number of
10 customers that there were. It won't affect the rate that the
11 Commission ordered in the PAA order as the refund. So it
12 really isn't going to have any effect on the dollar amount of
13 the refund, so I misinformed you when I spoke before.

14 MR. BURGESS: And, Commissioner, if I might, that is
15 correct. I have been corrected that the refund is based on the
16 \$6.29 times the current customers, and would not be affected by
17 the imputed revenue, although the going-forward rates would.

18 COMMISSIONER DAVIDSON: So do the parties stipulate
19 to the first one, as well?

20 MR. BURGESS: Yes. We stipulate to the first one.

21 COMMISSIONER DEASON: I'm glad all of that has been
22 clarified, because I was having difficulty understanding how
23 the amount of the refund would change. I can understand how it
24 could have an affect on going-forward rates, but I was having
25 difficulty understanding the connection with a refund for past

1 services. So, I think we do have a stipulation then on both
2 Items 1 and 2 under Section 11 of the prehearing order.

3 COMMISSIONER BRADLEY: So, Mr. Burgess, do you now
4 agree?

5 MR. BURGESS: Yes, sir. Yes, Commissioner, we do.
6 We stipulate to proposed Stipulation Number 1.

7 COMMISSIONER BRADLEY: Mr. Friedman?

8 MR. FRIEDMAN: Certainly we stipulate to that.

9 COMMISSIONER DEASON: Now would be an appropriate
10 time to take up the stipulations, I take it, Mr. Harris?

11 MR. HARRIS: Yes.

12 COMMISSIONER DEASON: Okay. Commissioners, what is
13 your pleasure, do you wish to address the proposed stipulations
14 at this time or later? What is your pleasure?

15 COMMISSIONER BRADLEY: Well, I would just have one
16 question of both parties. You all are absolutely positively
17 sure about the stipulations? I mean, have you viewed them to
18 the extent that you are comfortable with them? And my
19 question -- what my question is going at is this, if you all
20 are comfortable with the stipulations, Mr. Burgess --

21 MR. BURGESS: Yes, sir.

22 COMMISSIONER BRADLEY: -- then that means that you
23 all have adequately viewed and analyzed the data before you,
24 and I'm trying to avoid any future conflict that might come
25 about as a result of someone deciding that they didn't agree

1 with what they really agreed to.

2 MR. BURGESS: Your point is well taken, Commissioner,
3 and I appreciate that. And we do stipulate to the proposed
4 stipulation.

5 MR. FRIEDMAN: We do, also, Commissioner Bradley.
6 There is an issue about who is responsible for making that
7 refund, that is another issue in the case. But certainly as to
8 the amount, we certainly stipulate to that.

9 COMMISSIONER DEASON: Commissioner Davidson.

10 COMMISSIONER DAVIDSON: That said, I move that the
11 Commission accept Proposed Stipulation 1 and Proposed
12 Stipulation 2 appearing at Page 13 of the prehearing order.

13 COMMISSIONER DEASON: A motion.

14 COMMISSIONER BRADLEY: I second that motion.

15 COMMISSIONER DEASON: Moved and seconded. All in
16 favor say aye.

17 (Unanimous affirmative vote.)

18 COMMISSIONER DEASON: Show that motion carries
19 unanimously. Proposed Stipulations 1 and 2 are approved.
20 Other preliminary matters?

21 MS. FLEMING: Yes. Commissioner, we ask that the
22 testimony of Kathy L. Welch be inserted into the record as
23 though read.

24 COMMISSIONER DEASON: Just a moment, let me get to my
25 witness list here.

1 MS. FLEMING: This is made pursuant to Stipulation
2 Number 2.

3 COMMISSIONER DEASON: Staff has moved that we insert
4 into the record the prefiled testimony of Witness Kathy L.
5 Welch. Since that has been stipulated to, I assume there is no
6 objection to that. So show then that that testimony is
7 inserted into the record.

8 MR. FRIEDMAN: Could I suggest something just for
9 consistency, is that when it is inserted into the record that
10 it be inserted maybe at the beginning of the Staff -- that it
11 be inserted maybe as the Staff's first witness and not inserted
12 right at the beginning of the transcript just so that the case
13 flows, our witnesses, Public Counsel, staff, rebuttal. So that
14 when we read the transcript -- I'm just doing that for my own,
15 you know, sanity when I sit down and try to read these things.
16 To me it helps me if it is in order.

17 COMMISSIONER DEASON: I understand. Is there any
18 problem with the court reporter inserting that in that order as
19 listed in the prehearing order? Show then it will be inserted
20 in that particular place as consistent with the listing in the
21 prehearing order.

22 MR. FRIEDMAN: Thank you very much.

23 COMMISSIONER DEASON: Exhibits for Ms. Welch?

24 MS. FLEMING: Yes. We ask that Exhibit K LW-1 be
25 marked and identified for the record.

1 COMMISSIONER DEASON: It will be identified as
2 Hearing Exhibit Number 1. And it will be admitted into the
3 record.

4 MR. HARRIS: Commissioner, again, that will be with
5 her testimony further in the record, right, for the court
6 reporter?

7 COMMISSIONER DEASON: I'm sorry?

8 MR. HARRIS: Is that going to be inserted here or
9 with her testimony further in the record?

10 COMMISSIONER DEASON: It doesn't really matter.
11 Exhibits are just identified by number, and it is what it is.

12 Okay. Other preliminary matters?

13 MS. FLEMING: Yes. Additionally, Staff has
14 identified two exhibits, and it is my understanding that they
15 can be stipulated into the record by agreement of the parties.
16 And those are -- do the parties have any objection?

17 MR. FRIEDMAN: We have no objection.

18 MR. BURGESS: We have no objection, Commissioner.

19 COMMISSIONER DEASON: We will identify Staff
20 Composite Exhibit 1 as Hearing Exhibit Number 2, and we will
21 identify Staff Exhibit Number 2 as Hearing Exhibit Number 3.
22 And show that Exhibits 2 and 3 are admitted.

23 (Hearing Exhibits 2 and 3 marked for identification
24 and admitted into the record.)

25

1 COMMISSIONER DEASON: Other preliminary matters?

2 MS. FLEMING: No, Commissioner, that's all.

3 COMMISSIONER DEASON: Mr. Burgess, do you have any
4 preliminary matters?

5 MR. BURGESS: No, Commissioner, other than at the
6 proper time I would ask to make a brief opening statement.

7 COMMISSIONER DEASON: Very well.

8 Mr. Friedman, any preliminary matters?

9 MR. FRIEDMAN: No preliminary matters.

10 COMMISSIONER DEASON: Okay. Mr. Burgess, you may
11 proceed with your opening statement. I'm sorry.

12 COMMISSIONER DAVIDSON: One question. I don't want
13 to disrupt the flow of the openings, but I wanted to get this
14 question out there. If counsel for both sides could in their
15 openings, hopefully at the beginning, address Issues 11 and 12,
16 the ownership issue, in really a brief thesis sentence, and
17 then I promise I won't interrupt any of the openings. But, for
18 example, the entities are separate legal entities because one,
19 two, three, and then move on. The entities are not separate
20 because of one, two, three. Sort of lay out the thesis and
21 then I will be quiet the rest of the openings.

22 MR. BURGESS: Thank you, Commissioner. And, Chairman
23 Deason, I would suggest that given that the utility is the one
24 who protested the Commission's proposed order and has
25 petitioned for this proceeding, that it would be more

1 popular -- popular. It would be more proper -- I hope it would
2 be less popular -- it would be more proper for the company to
3 proceed with its opening statement before --

4 MR. FRIEDMAN: I don't think I'm going to win a
5 popularity contest here against you, Steve.

6 COMMISSIONER DEASON: Mr. Friedman, I think what Mr.
7 Burgess is saying is he thinks you should go first.

8 MR. FRIEDMAN: I think he is probably right, as hard
9 as that is for me to agree with something Mr. Burgess is
10 saying. But I think procedurally it does make sense.

11 COMMISSIONER DEASON: Okay.

12 MR. FRIEDMAN: And, Commissioners, we have really
13 narrowed this case down in the staff-assisted rate case to
14 basically three issues. I will address Commissioner Davidson's
15 issue last, since it is last on the prehearing. The first is
16 that the staff had recommended in the prehearing order it does
17 not reflect any rent for this utility.

18 And I believe that it is consistent with past
19 Commission policy, particularly in staff-assisted rate cases,
20 that even if a utility does not book rent in the test year,
21 that it has an office and is entitled to some rent expense.
22 Mr. Lovelette will testify about a rent expense that he
23 recommends of \$300, and he will advise you about how he came up
24 with that number, which we believe is a fair and reasonable
25 amount of rent, and that is \$300 a month.

1 I think that some of the Staff's earlier premise was
2 based upon the assumption that the association owned that
3 building. And I think it is clear now, and Ms. Keller
4 acknowledged that the association does not own that building.
5 It is owned by other parties and is being shared by the
6 utility, and therefore the utility is entitled to rent expense.
7 They would be paying substantially more than \$300 a month if
8 they rented -- there is a building in close proximity, I don't
9 know if you have been down there, but there is a shopping
10 center right next door to it, and then near the road there are
11 some buildings there. And if you were to rent some of those
12 buildings, the rent would be substantially more than \$300 a
13 month. So we think it is fair to allocate \$300 a month as a
14 reasonable rent.

15 The second issue is what you have heard a lot about,
16 which is the imputed amount of revenue attributable to RV lots
17 that are not what we have generally referred to as individually
18 owned, not owned by people that are living there full-time.
19 The rates are based upon those lots having meters on them and
20 the owner of those lots paying the standard monthly water and
21 sewer bill that everybody else pays.

22 The owner of those lots has written and advised the
23 utility that if the PSC order goes into effect, and they are
24 required to spend \$40,000 to get meters and to pay -- and I
25 think I roughly calculated almost half the revenue requirement

1 for this utility goes to these vacant lots, that the utility
2 has been advised by the owner of those lots that it is not
3 financially feasible for them to continue to rent those lots
4 with water and sewer service, and that if this order goes into
5 effect they will cease to do so. So we have a known change in
6 the future that the Staff's recommendation and the PAA order
7 does not address, and as a result it substantially understates
8 the revenue.

9 You will hear either through Mr. Lovelette or Mr.
10 Cozier the further explanation of how this is done. And if you
11 remember looking at that, that plot plan, or plat, or whatever
12 of the resort, you will notice that the lots are kind of built
13 around circles. And in the middle of each of those circles is
14 a common bathhouse facility with showers and toilets. So if
15 the owner of those RV lots can continue, if he wants to, to
16 rent those lots and those people can utilize those common
17 facilities, just like some of the permanent people may utilize
18 those common facilities, so he doesn't need water and sewer
19 service in order to rent the RV lots. And, in fact, as I
20 mentioned, he is not going to provide water and sewer service
21 under the plan outlined in the PAA order because it is not
22 financially feasible for him to do so.

23 The last question that we are addressing is the one
24 that Commissioner Davidson asked us to address and that is the
25 various entities. And through the prefiled testimony and

1 through further testimony today you will see that there is an
2 entity called the Nancy Ayers Charitable Remainder Trust. That
3 is a trust located up in Indiana, and that entity loaned money
4 to the Woodlands of Lake Placid to purchase property in the
5 Camp Florida Resort, including the utility. This was back in
6 1995. That transaction was handled by the trust as Indiana
7 lawyers, and you will see on some of the documents where you
8 have to list who the documents were prepared by, you will see
9 the Indiana law firm.

10 The Nancy Ayers -- when the Woodlands quit paying the
11 mortgage, charitable trusts have certain responsibilities
12 different from others, and their lawyers advised them that the
13 trust could no longer continue to hold an asset that was
14 nonperforming and in default. So that note was assigned to
15 Highvest Corporation, and Highvest Corporation is owned solely
16 by Nancy Ayers individually. So the note was moved from her
17 trust to her corporation that she individually owns, and that
18 corporation is Highvest.

19 And Highvest Corporation, although you will hear a
20 lot of testimony and you will see this exhibit, that there
21 are -- Mr. Cozier, and Mr. Lovelette, and Ms. Lovelette to some
22 extent are involved in these various legal entities. The point
23 that must be kept in mind, however, is that they are separate
24 legal entities, and have separate shareholders, particularly
25 with regard to Highvest Corporation. Its shareholder has no

1 relationship, as you all think of that term, to any of the
2 other corporations or to the individuals I just mentioned.

3 And so officers and director of corporations owe
4 fiduciary duties to the shareholder of the respective
5 corporation. And if they breach that fiduciary duty to that
6 corporation, they can be liable personally for damages. That
7 is particularly true when you have a corporation like Highvest
8 that has loaned money to another entity, the Woodlands, in
9 which an officer of Highvest also has an ownership interest in
10 the other entity. In that situation that person must be
11 particularly careful to keep the responsibilities as an officer
12 of one entity separate and distinct from what they may do for
13 another entity.

14 And when Highvest foreclosed upon its mortgage, just
15 like you foreclose on a mortgage on a house when somebody
16 hasn't paid, it goes to the courthouse steps. Anybody could
17 have bid on this property at the courthouse steps. As it turns
18 out, as is normally the case, nobody bids, and the lender
19 usually ends up taking the property back.

20 As I mentioned, Highvest Corporation is owned by
21 Nancy Ayers. And since Highvest Corporation was not in the
22 business of running utility systems, it transferred the utility
23 system almost immediately. Actually three, four, five days
24 later to L.P. Utilities Corporation which gave back a note and
25 mortgage in an amount that is substantially equal to what this

1 Commission said the rate base was.

2 So, Highvest, again, had to be particularly careful
3 in selling the property to another entity that had a
4 relationship with one of the officers of Highvest. Because,
5 again, if Highvest would have sold that property to L.P.
6 Utilities for less than a fair amount of money, then the
7 officers of Highvest, in particular Mr. Cozier who owns L.P.
8 Utilities, would be subjected to a breach of fiduciary duty and
9 have to personally be liable for selling that property at less
10 than the fair market value.

11 So the upshot is -- and I believe that there is
12 Commission precedence that when property is foreclosed upon, if
13 there are any delinquent regulatory assessment fees or other
14 obligations, that those obligations remain the obligation of
15 the party that was foreclosed upon. That when you buy
16 something at a foreclosure sale, you are buying the property
17 that is covered by the security interest, the note and
18 mortgage, and you are not assuming obligations of the person
19 who is foreclosed upon.

20 And so it is clear that when that transaction
21 occurred, and we suggest to you that it was clearly an
22 arm's-length transaction that had to take place because of
23 Nancy Ayers being the owner of that and being represented by
24 Indiana lawyers. And, therefore, L.P. Utilities is not legally
25 responsible for making that refund. As has been pointed out

1 earlier, L.P. has been -- since the PAA order came out, L.P.
2 has been depositing money in escrow in accordance with that
3 order. So obviously we are not talking about any refund that
4 is going to be required as a result of the order if, in fact,
5 there is a refund, as far as L.P. Utilities is concerned.

6 We are not saying they are not obligated to refund
7 the revenue collected while they were the owner of the utility.
8 They are going -- if you say there is a refund, L.P. is going
9 to refund what you say they are entitled to refund. L.P. is
10 not legally obligated to refund money of the Woodlands which
11 was foreclosed upon. Thank you.

12 COMMISSIONER DEASON: Mr. Burgess.

13 MR. BURGESS: Thank you, Commissioner. I would like
14 to address the issues that are central to the case, those which
15 were addressed by Mr. Friedman. But, first, I would like to
16 back up and just give this a little bit of context of the
17 history of the case. It started out with a staff-assisted --
18 as a staff-assisted rate case that the utility petitioned for,
19 and the Staff came in and did its analysis, and arrived at a
20 conclusion and the Commission presented that as a proposed
21 agency action.

22 Now, after the PAA came out, we spoke with the
23 customers, and you have heard the testimony of some of the
24 customers that basically there were areas where they did not
25 agree with the PAA. There were areas that they thought the PAA

1 perhaps could have been a little bit more aggressive in their
2 favor, but they recognized, and in our discussions with them
3 they recognized that these are matters of subjectivity, and
4 that these are areas wherein interests, competing interests
5 often need to be balanced, and so that the end product is
6 something of a compromise, and it was a compromise they were
7 willing to accept. They said even though we have some problems
8 with individual issues, we accept the totality of the proposed
9 agency action.

10 The utility, on the other hand, did not. The utility
11 protested the proposed agency action for the Staff-assisted
12 rate case that it petitioned for. And it has raised a few
13 issues. The primary one, though, is the one that Mr. Friedman
14 spent the most time talking about, and is very unique.
15 Basically -- very unique, if that is not a redundancy --
16 basically what you have is the utility saying we are not
17 obligated to refund a refund obligation incurred by the
18 predecessor utility, by the utility that was providing service
19 before we are. We do not -- we are not obligated to do so.
20 And the reason that that is such a remarkable argument, first,
21 because as in any other circumstance when you transfer, there
22 are a number of obligations that are incurred just like, for
23 example, a successor utility collects revenues for some period
24 of time for service that was provided by the predecessor
25 utility. But besides that, in this case it is a very unique

1 circumstance because the predecessor utility, Woodlands
2 Utility, Woodlands was owned by Mr. Cozier, it was run by Mr.
3 Lovelette, the utility assets it received were based on a loan
4 for which a mortgage was held, and the mortgagee was Highvest.
5 The president of Highvest is Mr. Cozier, the owner of the
6 utility. The current utility, the successor utility, L.P.
7 Utilities, is owned by Mr. Cozier. It is run by Mr. Lovelette.
8 Its utility assets are subject to a mortgage that is held by
9 Highvest, which is a corporation the president of which is Mr.
10 Cozier, the owner of the utility.

11 The only reason that the new utility was created was
12 to avoid the financial obligations incurred by the predecessor
13 utility. So for the company to come in now and say we know
14 there is a refund obligation, but it was incurred by the
15 previous company, it wouldn't be fair to impose that on us is
16 more than remarkable. It is absurd.

17 Now, we have raised after the proposed agency action
18 was protested by the utility, one of the issues they raised was
19 the proper level of contributions in aid of contribution. And
20 as a result of that we raised an issue indicating that the
21 proposed agency action actually overstated the rate base by
22 understating the contributions in aid of construction. In
23 order to explain this, I'm going to go into a little bit of the
24 background that you have already heard from the testimony of
25 Ms. Keller, and that is that what we have is a constituency of

1 customers that are comprised of two fundamental groups, one of
2 which are the property owners that own their individual lots,
3 and that constitutes a substantial minority of the customers
4 that are being served. And the second constituency are rental
5 lots, and the rental lots are owned by Highvest Company of
6 which Mr. Cozier is president.

7 Now, the utility was ordered to place meters for all
8 of its service. And it placed meters for the most part on all
9 of the privately owned lots, and for those areas that are
10 common areas for which the property owners association picks up
11 the cost. For each of these meters, the company also collected
12 or billed the customers the cost of the meter. Actually a
13 little bit more than the cost of the meter. So that when the
14 bills are fully collected, what they will have for these meters
15 is the entire amount of the cost of the meters offset by the
16 CIAC collected from the customers.

17 Now, in addition to that amount that is basically an
18 offset with the customers, with the meter costs for the
19 customers and the contributions offsetting, in the PAA it
20 recognized a pro forma adjustment for the cost of the meters
21 for the other lots that were being required. Now as of today,
22 those meters still have not been put in. However, the pro
23 forma adjustment for the cost of those meters is in the rate
24 base that we are dealing with right now and that was in the
25 PAA. The contribution that would be or should be collected to

1 offset those, similar to the contributions that were collected
2 from the owners of the other lots, those contributions were not
3 recognized in the PAA as a pro forma. So what you have is a
4 situation with the PAA where the current -- where the privately
5 owned lots are paying for their own meters as a complete
6 offset, and by including in the rate base a pro forma for the
7 meters for the rental lots, that is being spread across these
8 customers, too. So they have had to pay for their own meters
9 and then they have the meters of the rental lots included in
10 the establishment of the rate.

11 Now, this is just wrong. This is clearly wrong. It
12 really -- either the pro forma needs to be reversed or the
13 contributions in aid for the additional meters need to be
14 reflected. And I will say that if you look at Staff's position
15 on this issue, they agree with our position.

16 And, what I want to say, first, though let me as an
17 aside say that I commend Staff, and I think the Commission
18 should commend its staff for remaining openminded on this
19 issue, for being willing to reexamine this issue. And as they
20 have reexamined it, they have concluded that, in fact, this
21 adjustment should be made. It is over \$30,000. And we raised
22 it, and raised it in a particular way that we were seeking to
23 try to avoid rate case expense.

24 We were so concerned especially with this small a
25 company about rate case expense being foisted onto the

1 customers by decisions made by the utilities, that we said we
2 are not even looking for the Commission to necessarily make
3 this adjustment, but just to hold this back as an adjustment to
4 be made to other issues, if you feel like the PAA should be
5 adjusted otherwise in some of the other issues that are raised.
6 And we did that for the explicit purpose of trying to avoid
7 rate case expense.

8 We brought it out in the hope that the utility would
9 see this issue, would see the validity of this issue, would see
10 that the issue offsets the issues that they raised, and would
11 say we're not going to go forward with our issue. But, no,
12 they have, as you can hear from Mr. Friedman and from the very
13 fact that we are here, they have come forward. They have come
14 forward to push their issue on the refund, that they shouldn't
15 be required to make the refund.

16 And so what we ask is that you consider this now at
17 this point, since we are already here, since we have already
18 incurred the expense, I would ask the Commission to go ahead
19 and make the CIAC adjustment. There is no additional rate case
20 expense associated with it with the company responding to it,
21 so I would ask that the Commission go ahead and make that CIAC
22 adjustment as well as making the adjustments for the issues
23 that have been raised by the customers in the customer
24 testimony.

25 But I would ask you to consider one other thing, as

1 well. I would ask you to consider that notwithstanding our
2 effort to try to show the company that we had issues that went
3 the other way, and that these issues are valid issues, the
4 company is pressing forth with its case and is spending money.
5 And they are asking these customers to pay for that case. And
6 so I ask you when you get to the rate case expense issue that
7 you think about that, too. That you keep that in mind, too.
8 That we have done everything we can. The customers did
9 everything they could to keep from having to pay rate case
10 expense, and they shouldn't be now burdened with the cost of
11 the company coming forward with these ill-advised issues that
12 they have raised. Thank you.

13 COMMISSIONER DEASON: Staff, do you have an opening
14 statement?

15 MR. HARRIS: Staff does not have an opening
16 statement. Thank you.

17 COMMISSIONER DEASON: I believe we have reached the
18 phase where we can swear in the witnesses that are listed in
19 the prehearing statement. So I'm going to ask all the
20 witnesses who will be testifying in the technical phase of the
21 hearing to please stand and raise your right hand.

22 (Witnesses collectively sworn.)

23 COMMISSIONER DEASON: Mr. Friedman, I believe your
24 witness is scheduled first.

25 MR. FRIEDMAN: Yes. Mr. John Lovelette.

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JOHN H. LOVELETTE

was called as a witness on behalf of Highvest/L.P. Utilities
and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FRIEDMAN:

Q Mr. Lovelette, would you please state your name and
give us your business address.

A My name is John H. Lovelette, spelled
L-O-V-E-L-E-T-T-E. My business address is 100 Shoreline Drive,
Lake Placid, Florida.

Q And, Mr. Lovelette, have you prefiled direct
testimony in this proceeding?

A Yes, I have.

Q And do you have a copy of that before you?

A Yes, I do, sir.

Q Consisting of five pages?

A Yes.

Q And if I asked you each of those questions, Mr.
Lovelette, would you answer the same as in your prefiled
testimony?

A Yes.

Q Do you have any changes or corrections to your
prefiled direct testimony?

A No, sir.

(REPORTER NOTE: For the convenience of the record,

1 the prefiled direct testimony of John Lovelette is inserted
2 into the record.)

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1 TESTIMONY OF JOHN LOVELETTE
2 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
3 REGARDING THE STAFF ASSISTED RATE CASE
4 HIGHLANDS COUNTY
5 BY L.P. UTILITIES CORPORATION
6 AND
7 HIGHVEST CORPORATION
8 DOCKET NO. 020010-WS

9 Q. Please state your name, occupation and business address for the record.

10 A. My name is John Lovelette. As it relates to this case, I am a Director of L.P. Utilities
11 Corporation, the current owner of the water and wastewater assets formerly owned
12 by The Woodlands of Lake Placid, L.P.

13 Q. Are you familiar with an entity called "The Woodlands of Lake Placid, L.P."?

14 A. Yes, I am. That is a limited partnership with a Florida corporation named Camper
15 Corral, Inc., as its general partner. Anthony Cozier is the President and sole
16 shareholder of Camper Corral, Inc.

17 Q. Do you hold any position with The Woodlands of Lake Placid, L.P., or Camper
18 Corral, Inc.?

19 A. I was employed by The Woodlands of Lake Placid, L.P., as its manager. I am not a
20 partner nor have I ever been a partner in The Woodlands of Lake Placid, L.P. I have
21 not held any office with Camper Corral, Inc.

22 Q. Are you familiar with the mortgage given by The Woodlands of Lake Placid, L.P.,

1 which was subsequently assigned to Highvest Corporation?

2 A. Yes, I am. In connection with the purchase of The Woodlands development,
3 including the utility, The Woodlands of Lake Placid, L.P., borrowed the purchase
4 price from the Nancy Ayers Charitable Remainder Trust, and executed a mortgage
5 to the Trust. That Trust is unrelated to The Woodlands of Lake Placid, L.P., Camper
6 Corral, Inc., or L.P. Utilities Corporation. When that mortgage went into default,
7 there were some issues regarding the Trust holding a non-performing asset, and the
8 mortgage was assigned to Highvest Corporation, of which Nancy Ayers, individually,
9 is the sole shareholder. Anthony Cozier is President of Highvest Corporation and I
10 am Vice-President.

11 Q. Since you and Mr. Cozier were involved in managing The Woodlands of Lake Placid
12 L.P., why would you foreclose the mortgage as that business' asset?

13 A. As officers of Highvest Corporation, we have a fiduciary duty to the shareholder, and
14 since The Woodlands of Lake Placid, L.P., could not pay the mortgage, which was
15 on the real estate as well as the utility assets, we had no option but to foreclose. They
16 are separate entities with separate owners, and thus, separate interests.

17 Q. What transpired as a result of the foreclosure action?

18 A. On July 3, 2002, a foreclosure complaint was filed with regard to that mortgage and
19 a Final Judgment was entered by the circuit judge on August 7, 2002. The property,
20 which consisted of the real estate and utility assets, was sold on the courthouse steps
21 at a public sale, on September 4, 2002. AS is typically the case, no one bid more
22 than the amount of the Final Judgment and Highvest Corporation purchased the

1 property, which included the utility system. Since Highvest Corporation is not in the
2 business of operating utility systems, nor did it want to, it conveyed the utility assets
3 almost immediately to L.P. Utilities Corporation and took back a Note and Mortgage.
4 Highvest Corporation kept the development lots.

5 Q. Are you familiar with L.P. Utilities Corporation?

6 A. Yes, I, along with my wife and Mr. Cozier, am a director of that corporation. The
7 corporation is owned by Anbeth Corporation which is owned by Mr. and Mrs.
8 Cozier, who are also the directors.

9 Q. Do you dispute the amount of revenue which the Commission Staff believes will be
10 received by L.P. Utilities, Inc., from the Resort's rental R.V. lots.

11 A. Yes, I do. The owner of the R.V. lots has advised that it will physically disconnect
12 those lots from the water and wastewater system. Thus, it is in appropriate to impute
13 any revenue to the R.V. park.

14 Q. Does the Utility operate out of an office?

15 A. Yes, the Utility shares an office with the Camp Florida Sales Office.

16 Q. Does the Utility pay rent for use of that office?

17 A. They have not since taking over the Utility on October 1st of last year because there
18 have been insufficient funds with which to do so.

19 Q. What do you believe to be a reasonable rent?

20 A. Based upon comparable office space, reasonable rent is \$300.00 per month.

21 Q. Has the law firm of Rose, Sundstrom & Bentley, LLP, been retained to represent the
22 Utility in this proceeding?

- 1 A. Yes. And we have agreed to pay \$225 per hour plus reimbursement of reasonable
2 expenses.
- 3 Q. Do you have an estimate of rate case expense to complete this proceeding through
4 final Commission action?
- 5 A. Yes, we estimate legal rate case expense in the amount of \$60,000.00.
- 6 Q. Have you compared the revenues which the Utility would have received based upon
7 the metered rates with the flat rate which the Utility was previously charging.
- 8 A. Yes. In October, 2002, based upon the flat rate the Utility would have received
9 \$6,326.00, and based upon the PSC recommended rates, the Utility would have
10 received \$7,420.26. Thus, the Utility had a deficit of \$1,094.26 for October, 2002.
11 In November, 2002, the flat rate would have yielded revenues of \$6,326.00 and the
12 metered rates would have yielded revenue of \$7,649.74 for a deficit of \$1,323.74.
13 In December, 2002, the flat rate would have yielded revenues of \$6,326.00, and the
14 metered rates would have yielded revenues of \$9,907.52 for a deficit of \$3,581.52.
15 The total deficit for the quarter was \$4,691.52. Since the flat rates yielded less
16 revenues than the metered rates, how could the Utility's existing rates be excessive,
17 and thus subject to refund?
18

1 Q Could you, then, take a very short period of time,
2 less than five minutes, and briefly summarize for the
3 Commissioners your prefiled direct testimony?

4 A In my testimony that I prefiled here it states that I
5 was employed as manager at the Woodlands of Lake Placid, which
6 was a limited partnership, and I was employed as a manager, or
7 my position there was a manager with them. Woodlands of Lake
8 Placid was a separate entity, and that it came about in 1995.
9 It started when they purchased property that was adjacent to
10 Camp Florida Resort and also which included the utilities.
11 There was a wastewater treatment plant located north of Camp
12 Florida Resort and it served solely the Camp Florida Resort.

13 The property was mortgaged. The loan came from Nancy
14 Ayers Remainder Trust. She at that time was the sole owner,
15 the trust was the sole owner of Highvest Corporation, who held
16 the mortgage. And during the history, Woodlands was starting
17 to default on their loans, was not making payments, and the
18 trust wanted to ask questions of, or Highvest asked questions
19 of Woodlands why.

20 And also I am the vice president of Highvest and
21 director, and as such we have a duty to our shareholders to
22 manage the properties. And it became a decision of Highvest
23 that we needed to foreclose on the Woodlands, that it was
24 nonperforming. So we proceeded in a foreclosure action there.
25 This took place this year.

1 And, let's see, what else did we have in my
2 testimony? I testified, pretestified that I am with L.P.
3 Utilities. Currently I am a director with L.P. Utilities,
4 which is the current owner of the utilities that services Camp
5 Florida Resort and two of the surrounding subdivisions, plus a
6 couple of commercial properties. This utility or the
7 corporation was formed a number of years ago in anticipation of
8 purchasing utilities in the surrounding area.

9 One of the things I also testified in my prefiled
10 testimony was that the amount of rent that was based, and I
11 feel that \$300 was a fair amount. In the surrounding area,
12 there is a -- in fact, it is right across the street from our
13 office that we occupy, there is a building that is of similar
14 construction it is next to a Kash N Kary grocery store --

15 MR. BURGESS: Excuse me. Commissioners, I hate to do
16 this, but this is beyond the testimony itself. This particular
17 testimony that Mr. Lovelette is offering now is not included in
18 his prefiled testimony. The general notion of the rental
19 agreement and his statement that it is \$300 a month is
20 reasonable is, but the comparison to other real estate in the
21 area I don't think is in the prefiled testimony.

22 COMMISSIONER DEASON: Mr. Friedman, there is an
23 objection, it goes beyond the scope of the prefiled.

24 MR. FRIEDMAN: Well, he is just explaining the \$300.

25 COMMISSIONER DEASON: Does his testimony mention the

1 basis for the \$300, his prefiled?

2 MR. FRIEDMAN: His testimony does not, that is
3 correct.

4 COMMISSIONER DEASON: The objection is sustained.
5 Mr. Lovelette, you needed to wrap up your summary.

6 THE WITNESS: One of the things in there that I
7 prefiled testimony that we dispute the amount of revenue that
8 L.P. Utilities will receive from the rental lots. We have
9 received from the owner of the rental lots that if the order is
10 continued that they have determined that it is economically
11 infeasible for them to continue to pay, and so they will
12 withdraw service from the utility which will result in a
13 substantial loss of revenue to the utility at that time.

14 There are other minor points in there, in my prefiled
15 testimony about the rate case expense or the expense that we
16 are going to incur, that I believe I estimated a \$60,000
17 figure. This was based on a preliminary number that was given
18 to me by our attorney that represents us. Briefly that is the
19 statement.

20 COMMISSIONER DEASON: Does that conclude your
21 summary?

22 THE WITNESS: Yes, sir.

23 COMMISSIONER DEASON: The witness is tendered for
24 cross examination?

25 MR. FRIEDMAN: That is correct.

1 COMMISSIONER DEASON: Okay. Mr. Burgess.

2 MR. BURGESS: I don't know whether Staff wants to go
3 first or wants me to go first. Either way, it doesn't matter.

4 COMMISSIONER DEASON: Staff, do you have a
5 preference?

6 MR. HARRIS: I think traditionally OPC, as a party,
7 would go before Staff.

8 MR. BURGESS: That's fine. Thank you.

9 CROSS EXAMINATION

10 BY MR. BURGESS:

11 Q Mr. Lovelette, as I understand it, you are vice
12 president of Highvest, is that correct?

13 A Yes, sir.

14 Q And are you also known as or titled real estate
15 project manager of Highvest?

16 A Yes.

17 Q And in that regard, are you a licensed real estate
18 broker or anything, licensed by the state in any fashion in
19 this regard?

20 A I am licensed by the state as a land surveyor, but
21 I'm not a licensed real estate broker.

22 Q Thank you. Let me ask you about the -- what I'm
23 going to do is ask some questions about L.P. Utilities and
24 Woodlands. Up until what point did Woodlands provide water and
25 wastewater service to the Camp Florida Resort?

1 A Up until the time it was foreclosed.

2 Q And do you have a sense as to when that was?

3 A The sale of the property took place, I believe, in
4 the latter part of September. Without looking at the document,
5 I don't know the exact date. I don't recall.

6 Q I'm sorry, September of what year?

7 A 2002.

8 Q Thank you. Now, can you tell me -- and you worked as
9 manager of Woodlands of Lake Placid, L.P., the former utility?

10 A I managed the day-to-day operations of Woodlands, the
11 utility part.

12 Q Do you manage the day-to-day operations of L.P.
13 Utilities?

14 A Yes, sir.

15 Q And L.P. Utilities is the utility currently providing
16 service for Camp Florida Resort, is that correct?

17 A Yes, sir.

18 COMMISSIONER BRADLEY: Excuse me. Did you say
19 managed, E-D, or manage?

20 THE WITNESS: I'm not a licensed operator. We
21 hire -- we have contracted to hire two licensed operators. I
22 oversee, like I say, I manage the day-to-day operations, the
23 billing, the collections and things like that. Is that what
24 you are asking, sir?

25 COMMISSIONER BRADLEY: Well, I'm trying to find out

1 if you are managing both simultaneously, or if you are
2 managing -- you have in the past managed one, and now you are
3 managing the other.

4 THE WITNESS: In the past. I ceased to manage the
5 Woodlands at the foreclosure, sir.

6 COMMISSIONER BRADLEY: Okay.

7 BY MR. BURGESS:

8 Q And am I correct that Woodlands of Lake Placid was a
9 partnership, and its two partners were Camper Corral and Mr.
10 Cozier?

11 A Yes, sir.

12 Q Am I correct that Mr. Cozier was the sole owner of
13 Camper Corral?

14 A I believe that is true, sir.

15 Q So as we run through the various legal entities, Mr.
16 Cozier was the owner of Woodlands of Lake Placid, is that
17 correct?

18 A There was two entities. It was a limited
19 partnership.

20 Q And the two limited partners were Camper Corral,
21 which was owned by Mr. Cozier, and the other partner was Mr.
22 Cozier?

23 A That is correct, sir.

24 Q Now, is it true that the Woodlands of Lake Placid
25 owned the assets that were used to provide utility service?

1 A Yes, sir.

2 Q And did they own them subject to a mortgage that was
3 held by Highvest Company?

4 A Yes, sir.

5 Q Is Mr. Cozier president of Highvest Company?

6 A Yes, sir.

7 Q And you are vice president?

8 A Yes, sir.

9 Q And Highvest Company foreclosed on that mortgage
10 because Woodlands of Lake Placid could not meet its financial
11 obligations to Highvest as mortgagee, is that correct?

12 A That is correct, sir.

13 Q Subsequently, Highvest sold the utility assets to
14 L.P. Utilities, is that correct?

15 A Yes, sir.

16 Q And L.P. Utilities --

17 COMMISSIONER DEASON: I'm sorry, Mr. Burgess, let me
18 ask a question.

19 MR. BURGESS: Please.

20 COMMISSIONER DEASON: The mortgage was defaulted
21 upon, correct?

22 THE WITNESS: Yes.

23 COMMISSIONER DEASON: And I assume that meant the
24 mortgage payments simply were not made?

25 THE WITNESS: That is correct, sir.

1 COMMISSIONER DEASON: Who made the decision not to
2 make the mortgage payments?

3 THE WITNESS: Well, there was no money to pay that
4 mortgage. There were certain bills that we couldn't pay, so we
5 slid on payments that we could.

6 COMMISSIONER DEASON: You say we, who is we?

7 THE WITNESS: The officers and directors. In this
8 case in Woodlands, the owner of Woodlands.

9 COMMISSIONER DEASON: And that is?

10 THE WITNESS: Camper Corral and Mr. Cozier.

11 BY MR. BURGESS:

12 Q And so Highvest Utilities -- I mean, Highvest
13 Corporation sold utility assets to L.P. Utilities, is that
14 correct?

15 A Yes, sir.

16 Q And Highvest Corporation took back a mortgage on
17 those assets for the note?

18 A Yes, sir.

19 Q L.P. Utilities is -- you have testified that you run
20 the day-to-day operations of L.P. Utilities?

21 A Yes, sir.

22 Q And L.P. Utilities is owned by Anbeth Corporation, is
23 that correct?

24 A Yes, sir, they are.

25 Q And Anbeth Corporation is owned by Mr. and Mrs.

1 Cozier, is that correct?

2 A Yes, sir.

3 Q With regard to the CIAC, the contributions in aid of
4 construction --

5 COMMISSIONER DAVIDSON: Excuse me, Counsel, can I ask
6 a question before we move into that --

7 MR. BURGESS: Please.

8 COMMISSIONER DAVIDSON: -- topic related to Chairman
9 Deason's question regarding the mortgage.

10 Did Woodlands ever go through any type of bankruptcy
11 proceeding?

12 THE WITNESS: No, sir.

13 COMMISSIONER DAVIDSON: Were its debts ever formally
14 or obligations ever formally discharged or released by a court?

15 THE WITNESS: No, sir.

16 COMMISSIONER DAVIDSON: If you could explain to me
17 just sort of factually, given the similarity of ownership and
18 management between Woodlands and L.P., what in your mind caused
19 you to think that possibly the obligations of Woodlands would
20 not become the obligations of L.P. Utilities? I mean, sort of
21 walk me through your thought process.

22 THE WITNESS: They are two separate entities. It is
23 completely separate and not related other than there may be
24 some same people either as partners or officers and directors.
25 Woodlands was foreclosed by Highvest, which has a separate

1 owner, a single owner, and it was foreclosed and sold on the
2 courthouse steps similar as a bank would foreclose on a
3 property. And then the bank would have turned over the
4 property, sold it, to which Highvest did.

5 COMMISSIONER DAVIDSON: Who is Nancy Ayers and what
6 is her relationship to the various parties here?

7 THE WITNESS: She is an individual that resides in
8 the Indianapolis area in Indiana, has no relationship, is not
9 related to myself or to Mr. Cozier.

10 COMMISSIONER DAVIDSON: How was she involved in these
11 transactions? I mean, I know she was the sole shareholder of
12 Highvest, but what was her role? Why did she just sort of
13 disappear out of the picture? She doesn't appear as a partner,
14 a director, a manager of Woodlands, and L.P. Utilities, and
15 Camper Corral, and Anbeth. I mean, she just seems to disappear
16 out of these other entities.

17 THE WITNESS: She is not involved in that. Highvest
18 is a corporation that she has as the owner, it is a real estate
19 development --

20 COMMISSIONER DAVIDSON: Do you know her?

21 THE WITNESS: I have not personally met her to my
22 knowledge, although there has been -- I personally don't think
23 I have met her.

24 COMMISSIONER DAVIDSON: Thank you.

25 BY MR. BURGESS:

1 Q Mr. Lovelette, you have answered in response to both
2 Commissioner Davidson and earlier to Commissioner Deason that
3 Woodlands could not make the payments on its obligation to
4 Highvest and, therefore, Highvest foreclosed on the mortgage.
5 How long had Woodlands not been making payments, full payments
6 on the outstanding obligations to Highvest?

7 A Without looking at a bank account to see, I don't
8 know exactly. But, like I say, the loan had been in service
9 since 1995 when it was originally with the remainder trust, and
10 then it was transferred over to Highvest Corporation as Nancy
11 Ayers individually.

12 Q And for how long did Woodlands make the payments that
13 it was obligated under the mortgage initially to the remainder
14 trust and then subsequently to Highvest after that interest was
15 transferred?

16 A I'm sorry, I don't quite understand your question.

17 Q Was Woodlands ever in compliance with the terms of
18 the note on which it borrowed the money from -- initially from
19 the remainder trust and subsequently owed to Highvest
20 Corporation? Did Woodlands ever make payments?

21 A I believe they did, yes.

22 Q For how long did they make payments before they began
23 failing to meet their obligation?

24 A I don't know. It was sporadic, not on a regular
25 basis.

1 Q So they made payments sometimes and didn't make
2 payments sometimes?

3 A Yes, sir.

4 Q When did they first not make a payment?

5 A I cannot give you a date. I don't write the checks.
6 I have no idea on that.

7 Q But you are vice president of Highvest and you do run
8 the day-to-day operation, did run the day-to-day operations of
9 Woodlands?

10 A I managed the operations of Woodlands such as
11 repairs, maintenance, collecting of bills.

12 Q What I'm just trying to get an idea for the
13 Commission is an idea of how much forbearance Highvest showed
14 before it foreclosed on the mortgage. Did it foreclose within
15 two missed payments, did it foreclose after a year, did it
16 foreclose 30 days after the first missed payment?

17 A No, it was sometime -- it was a secured mortgage, and
18 there was nothing that was jeopardizing the secured mortgage up
19 until just recently when there was a judgment filed against
20 Woodlands.

21 Q So there was some --

22 COMMISSIONER DAVIDSON: Mr. Burgess, please, one
23 question.

24 MR. BURGESS: Yes, please.

25 COMMISSIONER DAVIDSON: And I apologize if counsel

1 has covered this. Were you the day-to-day manager of Highvest?

2 THE WITNESS: I worked for Highvest.

3 COMMISSIONER DAVIDSON: Well, who was the day-to-day
4 manager, you or Mr. Cozier?

5 THE WITNESS: We both are.

6 COMMISSIONER DAVIDSON: Who made the decision to
7 foreclose, who you actually said, you know what, we have got to
8 foreclose?

9 THE WITNESS: It was a corporate decision.

10 COMMISSIONER DAVIDSON: Who made that decision, who
11 participated in the decision?

12 THE WITNESS: It was a corporate decision by officers
13 and directors, and I imagine the owner, also.

14 COMMISSIONER DAVIDSON: When was it made?

15 THE WITNESS: Probably in 2002. That's when we
16 started the foreclosure procedures.

17 COMMISSIONER DAVIDSON: When in 2002?

18 THE WITNESS: May I look?

19 COMMISSIONER DAVIDSON: Sure, absolutely.

20 THE WITNESS: On July 3rd, 2002 a foreclosure
21 complaint was filed.

22 COMMISSIONER DAVIDSON: Who filed the complaint?

23 THE WITNESS: Highvest Corporation.

24 COMMISSIONER DAVIDSON: Who on behalf of Highvest?
25 Who actually signed the complaint?

1 THE WITNESS: I don't have that in front of me, so I
2 can't tell you.

3 COMMISSIONER DAVIDSON: We can ask that same question
4 of Mr. Cozier. If I could a few more questions on the facts
5 and circumstances surrounding this decision to foreclose. Was
6 the initial decision made at a face-to-face meeting of the
7 directors and managers?

8 THE WITNESS: We met, yes.

9 COMMISSIONER DAVIDSON: Where?

10 THE WITNESS: In our office in Lake Placid.

11 COMMISSIONER DAVIDSON: Do you recall the time frame,
12 generally?

13 THE WITNESS: It would be prior to July.

14 COMMISSIONER DAVIDSON: And who first raised the idea
15 of the foreclosure? Did you raise it, did Mr. Cozier raise it,
16 did your wife raise it?

17 THE WITNESS: I don't know, it was probably Mr.
18 Cozier.

19 COMMISSIONER DAVIDSON: And what were some of the
20 reasons that he gave for the foreclosure? Just tell me -- I
21 will let you talk. Tell me what you can about that meeting,
22 what was said, the reasons given for the foreclosure, what the
23 business strategy would be going forward, why this was being
24 done, et cetera.

25 THE WITNESS: Well, the mortgage was a secured

1 mortgage up until the time of -- there was a judgment filed
2 against -- Woodlands was one of the named parties, and so then
3 that jeopardized the mortgage. That was the reasoning why, one
4 of the reasons why.

5 COMMISSIONER DAVIDSON: Counselor.

6 COMMISSIONER DEASON: Explain to me how the judgment
7 threatened the security you had in the form of a mortgage on
8 real property?

9 THE WITNESS: Well, there was a judgment against the
10 Woodlands and it was part of the named suit, and I don't know
11 the exact figure, but it was over \$100,000 or something like
12 that, in that neighborhood. And that Woodlands had no means to
13 pay that amount of money.

14 COMMISSIONER DEASON: But as mortgage holder you had
15 first claim on the value of those assets, did you not, that
16 real property?

17 THE WITNESS: I believe that is true.

18 COMMISSIONER DEASON: Commissioner Bradley, I think,
19 has a question.

20 COMMISSIONER BRADLEY: Yes. I need to clear up
21 something in my mind. Debt service. In order for the mortgage
22 to be paid or for the debt to be serviced, you would have to
23 have sufficient cash flow. Can you explain maybe why there was
24 not sufficient cash flow in order to service the debt?

25 THE WITNESS: Well, the only source of income was

1 from the water and sewer income, the payments on the water and
2 sewer. That was the only source of income that Woodlands had.
3 And so if there was insufficient funds coming in from payments
4 on water and sewer --

5 COMMISSIONER BRADLEY: Okay. Is there any particular
6 reason why -- can you give me a reason as to maybe why the
7 funds were insufficient? I mean, were there any particular
8 outstanding reasons that stand out in your mind?

9 THE WITNESS: Possibly the rates.

10 COMMISSIONER BRADLEY: The rates?

11 THE WITNESS: Yes. If there was not sufficient
12 income coming in, it could possibly have been the rates may not
13 have been correct.

14 COMMISSIONER BRADLEY: As it relates to the rates,
15 what percentage of the billable rates were being collected?

16 THE WITNESS: On a month-to-month basis, the ones
17 that we sent bills to, probably about 95 or 96 percent. Every
18 month there is one or two that does not pay. I say one or two,
19 there is maybe about -- I'm trying to think. The last couple
20 of months on our annual report or the monthly reports that we
21 send to the Public Service Commission, it averages from two to
22 four, sometimes more that don't pay one month and then the next
23 month they make a payment or they pay late.

24 COMMISSIONER BRADLEY: Can you maybe -- and if you
25 can't you need to let me know. Can you maybe break that out

1 based upon ownership versus rental income?

2 THE WITNESS: I'm not quite understanding what your
3 question is, sir.

4 COMMISSIONER BRADLEY: Some of the lots were -- some
5 of the debt service was being made by lots that were owned by
6 individuals or by families, is that correct? And you also had
7 rental, lots that you were renting.

8 THE WITNESS: Woodlands did not have any lots that
9 they rented, no.

10 COMMISSIONER BRADLEY: Okay. So all of your income
11 was being generated solely from owner occupants?

12 THE WITNESS: Yes. All of our income came from water
13 and sewer payments.

14 COMMISSIONER BRADLEY: And that was generated from
15 individuals who actually owned their lot?

16 THE WITNESS: Yes, individuals, or corporations, or
17 whatever entity that owned them, yes.

18 COMMISSIONER BRADLEY: Thank you.

19 BY MR. BURGESS:

20 Q You indicated that after the judgment was issued that
21 at that point Highvest, the Highvest officers perceived a
22 threat to the security of their mortgage. What judgment is
23 that you are referring to?

24 A It goes back to the case that Ms. Keller was reading
25 from, that the judge entered in a cost that since Woodlands was

1 one of the parties named in that suit, that Ms. Keller and
2 others were entitled to attorneys fees.

3 Q And is that the judgment in the circuit court, then,
4 that she was referring to and read from?

5 A Yes.

6 Q Is it correct that Camper Corral was one of the
7 defendants?

8 A Yes, I believe so.

9 Q And it is correct that Mr. Cozier was one of the
10 co-defendants?

11 A Yes.

12 Q And this is the judgment in which the court
13 determined that Mr. Cozier negotiated in bad faith and used a
14 suspect, underhanded, unethical, and bad faith tactics?

15 MR. FRIEDMAN: Your Honor, or Chairman Deason, I
16 mean, it seems like to me he is getting -- if he is going to
17 try to utilize language quoted from an order he should properly
18 used that order in testimony. I don't think you can read from
19 an order which is clearly hearsay and expect to have that taken
20 as gospel.

21 COMMISSIONER DEASON: I'm going to -- Mr. Burgess,
22 I'm going to allow you -- it is customary to read from an order
23 and ask a question. If the witness has knowledge of that he
24 can answer it. But, Mr. Burgess, I'm going to ask you to move
25 along.

1 MR. BURGESS: Yes. That was my point, was that if he
2 doesn't know, then that is fine, as well.

3 BY MR. BURGESS:

4 Q Do you know whether that is the order that was
5 involved that you are referring to?

6 A Is sounds like it. I have read --

7 Q Okay. Now, you indicated that for sometime that you
8 can't define, but for sometime the Woodlands was in default or
9 had not met its obligations --

10 COMMISSIONER BRADLEY: I have a question before we
11 move from that point.

12 MR. BURGESS: Sure.

13 COMMISSIONER BRADLEY: Since the chair has allowed
14 Mr. Burgess to ask that question, in spite of that statement
15 that was made, the final order still was made by the court.

16 THE WITNESS: Yes, sir.

17 COMMISSIONER BRADLEY: The final order still was
18 issued.

19 THE WITNESS: Yes, it was a civil action and had
20 nothing to do, other than that they named the Woodlands L.P.
21 It had nothing, to my knowledge, to do with the utility.

22 COMMISSIONER BRADLEY: Okay. So that particular
23 question or that statement was made as a part of the ruling
24 that resulted in the final order being issued, that's what I'm
25 really trying to ask. We are not talking about a separate

1 order or a separate issue?

2 THE WITNESS: No. I believe the defendant's attorney
3 wrote that up and the judge signed that.

4 COMMISSIONER BRADLEY: Okay.

5 BY MR. BURGESS:

6 Q And you also answered some earlier questions by
7 Commissioner Bradley about the company not being able to
8 collect enough money, and Commissioner Bradley was asking about
9 the particular billings. Am I not correct that the utility did
10 not bill the owner of the rental property for any of the
11 service that it provided?

12 A Yes, that is true.

13 Q It is correct that the rental properties were not
14 charged for utility service, for water and wastewater service?

15 A Yes.

16 Q And that contributed to the revenue shortfall that
17 prevented the utility from being able to meet its financial
18 obligations, didn't it?

19 A Well, it would have been a wash. What revenue that
20 would have been realized from the rental lots would have been
21 an even wash, or even I believe a shortfall even to the
22 Woodlands of Lake Placid.

23 Q Are you saying because Highvest owned the rental
24 property that they would be paying that which they charged
25 Highvest as the owner of the rental property, and they would be

1 paying that on the note, is that the point of the wash that you
2 are making?

3 A No, sir. Up until the foreclosure, Highvest only
4 owned approximately 15 to 18 lots in Camp Florida Resort. Camp
5 Florida Resort L.P. owned what you call the rental lots.

6 Q Who owned Camp Florida Resort L.P.?

7 A It was a limited partnership, Camper Corral and Mr.
8 Cozier.

9 Q And Camper Corral -- again, Camper Corral is owned by
10 Mr. Cozier, so it was owned by Mr. Cozier?

11 A Yes, it was owned by two entities.

12 Q So except for 18 rental lots, all of the rental lots
13 were owned by Mr. Cozier?

14 A Well, they were lots that were rented by private
15 individuals in the park. But you are grouping everything as
16 a -- calling everything as a rental lot owned by Camp Florida
17 Resort L.P.

18 Q And Mr. Cozier was not charged for the water and
19 wastewater service provided for those lots?

20 A That is true.

21 Q Now, as L.P. Utilities -- and that is what lead to
22 the failure, this failure to generate enough revenues is what
23 lead to the default and what lead to the foreclosure of the
24 mortgage?

25 A No, sir.

1 Q Where was the --

2 COMMISSIONER BRADLEY: Repeat that question, please.

3 MR. BURGESS: Pardon?

4 COMMISSIONER BRADLEY: Repeat the question, please.

5 BY MR. BURGESS:

6 Q Is the failure to generate enough revenues from the
7 water and wastewater system to cover all of the operating costs
8 and the debt obligations a contributing factor to the
9 foreclosure of the mortgage, or foreclosure on the utility
10 property?

11 A Not being able to meet its obligations, yes, that was
12 a contributing factor.

13 Q Now, as it stands today with L.P. Utilities owning
14 the property and the mortgage being held by Highvest Company,
15 is L.P. Utilities charging the owner of the rental properties
16 for the service of water and wastewater being provided to it?

17 A We have billed them, yes.

18 Q Are you billing them monthly at the same basis that
19 you bill the privately owned lots?

20 A They are billed at the same rate. Right now it is
21 currently, and as in the past, \$35 a month.

22 Q And how long have you been billing them this amount?

23 A We have been doing it on a quarterly basis, so since
24 we owned the utilities, or L.P. Utilities sent them a quarterly
25 invoice every quarter like at the end of last year and at the

1 end of this first quarter.

2 Q So there has been two quarters worth of billings for
3 Highvest Company from L.P. Utilities?

4 A Yes, sir.

5 Q Have they made payments?

6 A No, sir.

7 Q So the payment that you have received, the revenue
8 you have received is that which you have received from the
9 privately owned lots, is that correct?

10 A Highvest also owns lots in there when you say
11 privately owned lots. So Highvest as an investment --

12 Q How many lots besides the rental lots that are
13 included in the quarterly billing, how many lots does Highvest
14 own in the Camp Florida?

15 A I believe it is 18.

16 Q 18.

17 COMMISSIONER DAVIDSON: Counsel?

18 MR. BURGESS: Please.

19 COMMISSIONER DAVIDSON: Thank you. Does Highvest own
20 all of the rental lots?

21 THE WITNESS: Well, it is a generic term that you are
22 coming up with, rental lots. There are private individuals
23 that rent lots to others in the park, but what you are doing is
24 lumping everything in there and calling it rental lots. But
25 the majority --

1 COMMISSIONER DAVIDSON: Well, taking the universe of
2 rental lots and separating out private owners, individuals who
3 may rent their lots --

4 THE WITNESS: Okay.

5 COMMISSIONER DAVIDSON: -- does Highvest own the
6 remainder of the lots?

7 THE WITNESS: Yes, sir.

8 COMMISSIONER DAVIDSON: L.P. Utilities has sent two
9 quarterly billings to Highvest. Who at Highvest is responsible
10 for paying utility bills? Would that be Mr. Cozier, yourself,
11 or your wife?

12 THE WITNESS: My wife writes the checks.

13 COMMISSIONER DAVIDSON: Does she make the decision to
14 pay or does she take instruction from someone else, pay this,
15 and then she just writes the check?

16 THE WITNESS: I can't answer that for you, sir. You
17 will have to ask her.

18 COMMISSIONER DAVIDSON: Well, if a bill comes in, who
19 is responsible for saying this bill needs to be paid?

20 THE WITNESS: Well, it depends on a number of
21 factors, as how much money we have in your bank account.

22 COMMISSIONER DAVIDSON: Well, no, I'm asking the
23 question of what entity, what person at Highvest is responsible
24 for the initial we have to pay this bill or we are not paying
25 this bill. Is that Mr. Cozier, yourself, or your wife? And

1 then let's get into the factors. Who has responsibility for
2 paying the utility bills? It's a simple question. A bill
3 comes to my house, I pay the bill. Who at Highvest has
4 responsibility for paying utility bills?

5 THE WITNESS: Well, my wife writes all the checks.
6 She is on there. There are some bills that come in that I
7 receive. I approve them, for like services that has been
8 provided, you know, like if we hire a contractor. Highvest
9 hires a contractor.

10 COMMISSIONER DAVIDSON: Let's leave it focused on
11 water and wastewater, the type of bills that L.P. would be
12 sending to Highvest. L.P. bills Highvest. Is it your wife's
13 responsibility to pay the bills or to let you or Mr. Cozier
14 know there is no money to pay the bills?

15 THE WITNESS: She would let us know whether there is
16 any money to pay them or not.

17 COMMISSIONER DAVIDSON: Thank you.

18 COMMISSIONER BRADLEY: I have a question. Rental
19 properties always have a cost that is associated with
20 maintenance and security and other related issues. Sometimes
21 property that -- property that is owned has the same issues,
22 but the owner sometimes will do those, will perform those two
23 duties as an in-kind or as something that is just a natural
24 obligation of a piece of property that is owned by an
25 individual or a corporation. But I'm going back to your

1 earlier statement about not being able to service your debt.
2 Can you break out maintenance and security, and is that an
3 issue with the rental property? Is that an expense?

4 THE WITNESS: The association has a quarterly
5 assessment that includes maintenance and whatever else. Now,
6 when you say maintenance on our rental properties --

7 COMMISSIONER BRADLEY: Somebody has to cut the grass
8 and pick up the paper.

9 THE WITNESS: Yes, we have a lawn service that
10 Highvest pays to cut the grass on our properties.

11 COMMISSIONER BRADLEY: What about security?

12 THE WITNESS: It's a gated community, so we really
13 don't have security as a separate line item. Is that what you
14 are getting at?

15 COMMISSIONER BRADLEY: Yes.

16 COMMISSIONER DAVIDSON: A couple more. Mr.
17 Lovelette, does Highvest intend to pay the two most recent
18 bills that it has received from L.P. Utilities?

19 THE WITNESS: Do they intend to pay? Yes, we intend
20 to pay.

21 COMMISSIONER DAVIDSON: Are you going to pay?

22 THE WITNESS: If we have money, yes.

23 COMMISSIONER DAVIDSON: What are the sources of the
24 income flow to Highvest, just rental income from the rental
25 lots?

1 THE WITNESS: No, we buy and sell real estate. We
2 own property in Highlands County. We other rental property
3 outside of Camp Florida Resort.

4 COMMISSIONER DAVIDSON: What types of distributions
5 of income or profits are made to the parties involved in
6 Highvest? Are there quarterly distributions, annual
7 distributions, checks written? How is the income distributed
8 to the owners and the partners, officers, directors?

9 THE WITNESS: As an officer or director I never
10 received any remuneration from it. I can't answer for the
11 other ones.

12 COMMISSIONER DAVIDSON: So you are working at
13 Highvest for free?

14 THE WITNESS: No, I am employed by Highvest.
15 Actually employed by Highvest, but I am also an officer of
16 Highvest.

17 COMMISSIONER DAVIDSON: So your remuneration at
18 Highvest would simply be employee pay?

19 THE WITNESS: Yes, sir.

20 COMMISSIONER DAVIDSON: I guess what I'm concerned
21 about, and maybe counsel can explore this and get to the
22 bottom, is we have got two quarterly billings, so billings for
23 approximately six months to Highvest by L.P. Utilities. A lot
24 of similarity of interest and the bills just aren't getting
25 paid.

1 BY MR. BURGESS:

2 Q Mr. Lovelette, how much -- do you know how much the
3 debt service payment is to Highvest Company for the utility
4 assets on the loan from Highvest?

5 A In the neighborhood of \$5,500 a month.

6 Q Is the utility making those payments?

7 A No, sir.

8 COMMISSIONER DAVIDSON: Let me jump in here with a
9 question. What is your best guess at the monthly income flow
10 into Highvest? Aside from their expenses, but I am assuming
11 that if it is a legitimate company it maintains balance sheets
12 and income statements. And as vice president, I would expect
13 this would be information that you would have. What is the
14 roughly best estimate on monthly income flow in and then
15 monthly expenses out? Income would be income from whatever
16 sources, rental income, sales of real estate. Expenses would
17 be employee wages and whatever other expenses that the company
18 would incur. But what is your best guess, income in, income
19 out?

20 THE WITNESS: It would have to be just a wild stab in
21 the dark, sir.

22 COMMISSIONER DAVIDSON: Well, who would know that? I
23 would think the vice president would, but would Mr. Cozier have
24 that knowledge?

25 THE WITNESS: He would probably have a better feel on

1 it on a day-to-day basis, yes.

2 COMMISSIONER DAVIDSON: Okay. Well, we can ask Mr.
3 Cozier, but what is your sort of best guess stab in the dark?

4 THE WITNESS: I can give you a rough guess based on
5 the utility income, because that is mostly what I'm dealing
6 with.

7 COMMISSIONER DAVIDSON: Okay. What is that income?

8 THE WITNESS: We are probably looking in the
9 neighborhood of around \$5,500 total a month.

10 COMMISSIONER DAVIDSON: In?

11 THE WITNESS: Yes. Like I say, without having bank
12 statements in front of me, I can't say for sure. It is not
13 something I carry around in my head.

14 COMMISSIONER DAVIDSON: And your best guess at
15 expenses out, just on the utility side. Actual expenses.

16 THE WITNESS: Based on the utility side? Well, I
17 know we pay Short Utilities, who is our operator for chemicals,
18 somewhere in the neighborhood of around \$1,500 a month for
19 that. Electricity to Florida Power or Progress Energy now runs
20 from a couple hundred dollars to a little over \$500. It
21 depends on things. Other than that, there is probably nickel
22 and dime stuff. We pay odds and ends. Contractors, like I
23 say, most of our work is done by contractors. We pay LaGrow
24 whenever needed repairs, and it varies anywhere from a couple
25 hundred dollars to 15 or 1,600.

1 COMMISSIONER DAVIDSON: So you have indicated about
2 5,500 on the inside, and my best guess is anywhere from 2,200,
3 based on what you said, to right under 4,000 on the outside.

4 THE WITNESS: Like I say, without having the things,
5 it is hard for me to tell you the numbers, sir.

6 COMMISSIONER DAVIDSON: Thank you.

7 BY MR. BURGESS:

8 Q Following that line, Mr. Lovelette, if I said -- if I
9 threw these numbers out that the residential customers, I mean,
10 that the private homeowners are paying \$35 a month for water
11 and wastewater, and let's use the number of 140, that would be
12 a pretty close number, would it not?

13 A Well, I think on my monthly report that I send in, I
14 think we have residential customers inside Camp Florida Resort
15 active of, I think, 149.

16 Q 149. Okay. At 140 I came up with \$4,900 a month.
17 So we are a little over 5,000 a month. The number that you
18 suggested is about your revenue collections per month, is that
19 right?

20 A Somewhere in that neighborhood. Yes.

21 Q So you have revenue collections a little over 5,000,
22 and you have \$5,500 a month that you have to pay in debt
23 service to Highvest, and then you have the other expenses of
24 running the day-to-day operations, is that right?

25 A Yes, sir.

1 Q And the revenue shortfall is because Highvest has not
2 paid their bills, is that right?

3 A I would not say that is correct. No.

4 Q Well, you indicated that you didn't use to bill them,
5 and then you began billing them and they haven't paid anything
6 yet?

7 A That is correct. But I would not say that the
8 revenue shortfall can be attributed only to Highvest.

9 Q The number of lots that -- how many are the number of
10 lots that are rented that are owned by Highvest? Do you have
11 an approximate number?

12 A The number of lots that are rented?

13 Q Yes. Or the number of lots that are rented by
14 Highvest?

15 A Well, there is approximately -- I'm not counting the
16 18 that was previously owned, or whatever else that were in
17 there. These were taken over by the foreclosure action, it
18 would be a total of 232. And approximately 70 of those are not
19 rentable.

20 Q Okay. So there is 232. There is a dispute over what
21 is rentable. But even at 70, there is a greater number of lots
22 that are rented by Highvest than are privately owned by the
23 customers in the Camp Florida area, is that correct?

24 A Yes.

25 Q And no revenue is being collected to cover the

1 service for those lots. Now, one of the things I understand
2 your testimony to be, correct me if I'm wrong, but on this
3 issue of requiring them to make payments, even though you have
4 billed them, they are not making it, you have indicated that
5 you have received word that they will disconnect if you are
6 required to impute revenue. Is that a decision by Highvest or
7 by the utility?

8 A That was a letter that we received from Highvest
9 Corporation. Highvest Corporation wrote to L.P. Utilities.

10 COMMISSIONER DAVIDSON: Who at Highvest?

11 THE WITNESS: Highvest Corporation.

12 COMMISSIONER DAVIDSON: Who wrote the letter, though?

13 THE WITNESS: The president.

14 COMMISSIONER DAVIDSON: Mr. Cozier?

15 THE WITNESS: Mr. Cozier.

16 COMMISSIONER DAVIDSON: Wrote to L.P. Utilities. To
17 whom did he write at L.P. Utilities?

18 THE WITNESS: I believe that it came to my desk, sir.

19 COMMISSIONER DAVIDSON: Thank you.

20 BY MR. BURGESS:

21 Q Doesn't that mean the deal is that they are willing
22 to stay connected as long as they get free service paid for by
23 the rest of the customers. But if they have to pay for their
24 own service, they want to disconnect? I mean is that how you
25 read that letter?

1 A No, sir.

2 Q Well, I understand -- am I correct that if they are
3 not being charged that they are willing to remain connected?

4 A They are being charged.

5 Q Right. But you are saying that what they have
6 written is that -- this threat or this alternative that if they
7 continue to be charged, they are going to disconnect. Does
8 that mean that if they do not get charged, they will not
9 disconnect?

10 A I'm not sure where you're going.

11 COMMISSIONER DAVIDSON: Let me ask you this. How do
12 you interpret the letter? What does the letter mean to you?
13 And the letter speaks for itself, but what does it mean to you?
14 It says what?

15 THE WITNESS: What the letter means to me is that
16 Highvest is taking a look at the proposed agency action to see
17 what it is. And it has punched numbers in and crunched it out,
18 and the amount of revenue that they receive on these lots does
19 not equal or is not economically feasible with all the expenses
20 that are related to them. And they are looking at some way of
21 trimming expenses. One would be cutting back paying water
22 expenses. They have also negotiated with other utilities like
23 Comcast. Highvest in the past during off-season has shut off
24 electricity to their lots to save money.

25 COMMISSIONER DEASON: What does it mean when you say

1 they would -- or maybe this is not your terminology, but using
2 Mr. Burgess' terminology, to disconnect, what does that mean?
3 Does that mean that the lots would no longer be rentable, or
4 that the lots would be rentable it just would not be connected
5 to the system, and that whomever is renting that lot would have
6 to use some type of a central facility?

7 THE WITNESS: Yes. If you will refer to that map
8 that Ms. Pernod gave you, that one right there, in the center
9 of each one of those large circles there is community
10 facilities; men's and women's showers, bathroom facilities,
11 washer and dryers. The majority right now of the RVers that
12 come and stay there use those facilities instead of using the
13 ones in their RV. And there is a number of our homeowners in
14 here that have park homes that also use those facilities, also.

15 COMMISSIONER DEASON: Who provides the water service
16 to those central or common facilities?

17 THE WITNESS: Right now L.P. Utilities provides it.

18 COMMISSIONER DEASON: And how does L.P. Utilities
19 recover the expense of providing that service?

20 THE WITNESS: It is paid for by the property owners
21 association.

22 COMMISSIONER DEASON: And the property owners
23 association, how do they collect the money to pay that?

24 THE WITNESS: They send a quarterly invoice to all
25 property owners.

1 COMMISSIONER DEASON: And that invoice, does it cover
2 just -- in that invoice, what expenses are recovered, just the
3 expenses for those community facilities?

4 THE WITNESS: Yes. The assessment that the property
5 owners association sends to all property owners covers a myriad
6 of things, insurance, but it is cost and upkeep on common areas
7 that the property owners association owns.

8 COMMISSIONER DEASON: So part of that would be the
9 cost of providing water service for those common facilities?

10 THE WITNESS: Yes, sir.

11 COMMISSIONER DEASON: Are those common facilities
12 metered?

13 THE WITNESS: Yes, sir.

14 COMMISSIONER DEASON: And how is the metered service
15 allocated to the home owners association, the property owners
16 association?

17 THE WITNESS: How is it allocated? There is a meter
18 on each one of those bathhouses. It is read on a monthly basis
19 and they are sent a bill based on their usage.

20 COMMISSIONER DEASON: So if there are rental lots
21 that are no longer going to be connected to the water system
22 and have to rely upon the common facility, is the usage of the
23 common facility going to increase?

24 THE WITNESS: There will be a slight increase
25 because, like I say, there is -- a good number of the people

1 use the facilities. Like I say, most of them come in motor
2 homes, or fifth wheels, or travel trailers, which space,
3 bathroom facilities are very small and cramped, and so they use
4 the shower, restrooms, et cetera, in the community.

5 COMMISSIONER DEASON: But if there is an increase,
6 that increase is going to be allocated to all the property
7 owners?

8 THE WITNESS: Yes, sir.

9 BY MR. BURGESS:

10 Q Mr. Lovelette, do you know how much Highvest charges
11 for these rental lots?

12 A It varies. They have a daily rate, they have a
13 weekly rate, and then monthly rates if they rent from one to
14 three months, or greater.

15 Q Well, let's say a monthly rate during the period of
16 October through March for a three-month rental?

17 A I believe a three-month rental is \$550.

18 Q Has L.P. Utilities made any payments to Highvest on
19 the note that is outstanding for the utility assets?

20 A There was an invoice sent that L.P. Utilities
21 received and it was turned over to our accounting firm to pay,
22 and I don't know if she has paid it or not.

23 Q In that you have capacity with both L.P. Utilities
24 and Highvest, what is your concern or consideration with regard
25 to Highvest, which has shown it is willing to foreclose, with

1 the possibility of it foreclosing again?

2 A Would you rephrase that. I'm not sure what the
3 question --

4 Q Well, you have said that Highvest -- that L.P.
5 Utilities has missed a number of payments, am I correct?

6 A Yes. I believe, yes.

7 Q And so that means Highvest has the opportunity to
8 foreclose on the utility assets, is that correct?

9 A They have an opportunity, yes.

10 Q What is the assurance to the Commission of our not
11 being right where we were before you came in with Woodlands
12 and, that is, Highvest deciding to foreclose on the utility
13 assets, repurchasing it at the courthouse steps, and selling it
14 to a third corporation down the road?

15 A What assurances?

16 Q Yes. I mean, what is happening here with regard to
17 protecting the customers from a similar event taking place?

18 A What protection are the customers look for and
19 assurances?

20 Q Well, I'm asking -- let me back up. What is the
21 likelihood that Highvest is going to foreclose again on the
22 note that is owed to it by L.P. Utilities?

23 A The likelihood?

24 Q Yes.

25 A I don't know, sir. I can't answer that.

1 Q One of the issues is rent. And am I correct that the
2 area which is being rented for office space by L.P. Utilities
3 is in a larger building at the front of Camp Florida Resort?

4 A Yes, sir.

5 Q Was that building formerly owned by the property
6 owners association?

7 A The property owners association received that
8 building in that court judgment. Previous to that I believe
9 the Woodlands or Camper Corral owned that building.

10 Q Well, didn't the court determine that, in fact, the
11 property owners association had legal ownership of that
12 building, that was part of the controversy before the court is
13 who actually owned the building, is that not right?

14 A Yes. They were awarded that property, yes.

15 Q And the court determined that the property owners
16 association owned the building?

17 A Yes.

18 Q Did the property owners association charge rent for
19 the building, charge the Woodlands?

20 A No. There was something in the declaration of
21 covenants and restrictions that says that the developer
22 corporation had a right to maintain an office, and that is what
23 they were doing.

24 Q And at what point did the property owner's
25 association lose their ownership interest in that building?

1 A They -- the terminology lose, they sold their
2 interest.

3 Q I didn't mean a pejorative by it. They no longer had
4 an ownership interest.

5 A Right. Without looking at the deed, but it went
6 through a whole process that the majority of the property
7 owners in the park, other than a few small minority wanted that
8 building. They felt that it was a liability to the
9 association, and they didn't want the additional expense and
10 upkeep on it. So there was a ballot issued, and the majority
11 of the property owners voted on whether they wanted to sell the
12 property, and that was the majority. And the board offered it
13 for sale, advertised it for sale, and I believe Camper Corral
14 made an offer on it, and the property owners association
15 accepted that offer, and they sold it.

16 Q So there was a ballot to the membership of the
17 property owners association?

18 A Yes, sir.

19 Q And at that point, at the point of that ballot, who
20 owned the rental lots in Camp Florida?

21 A At that point Camp Florida Resort L.P. owned the
22 rental lots, but they did not vote on the issue.

23 Q So the vote was by the homeowners?

24 A The vote was by the majority of property owners.

25 COMMISSIONER DAVIDSON: Question, Counsel. Who was

1 represented in that majority?

2 THE WITNESS: Every homeowner, every property owner
3 in the park.

4 COMMISSIONER DAVIDSON: We had heard from one of the
5 customers that the majority interest in the property owners
6 association was held by, I believe we heard Mr. Cozier, I may
7 be mistaken on that. Is that inaccurate?

8 THE WITNESS: That is a common misconception that
9 they lump Mr. Cozier as an owner, when it is actually a
10 corporation or something that's --

11 COMMISSIONER DAVIDSON: Well, hypothetically let's
12 say that there are 100 property owners out there. Was it
13 simply that the majority of those 100 property owners cast the
14 vote here, or did a corporation owned, or controlled, or
15 involved in by Mr. Cozier control that majority vote?

16 THE WITNESS: No. In this case, at the time of the
17 ballot Camp Florida Resort L.P. was the majority property owner
18 in there. When you say Mr. Cozier controlled --

19 COMMISSIONER DAVIDSON: Well, who owned Camp Florida
20 Resort? Who are the shareholders, the owners?

21 THE WITNESS: It was a limited partnership.

22 COMMISSIONER DAVIDSON: Who are the partners?

23 THE WITNESS: Mr. Cozier and Camper Corral. But in
24 this ballot issue --

25 COMMISSIONER DAVIDSON: So Mr. Cozier and Camper

1 Corral, which the sole shareholder and president was Mr.
2 Cozier, correct?

3 THE WITNESS: He is the sole holder, yes. Well, in
4 Camper Corral he is the sole holder, yes.

5 COMMISSIONER DAVIDSON: So the majority block was
6 controlled directly or indirectly by Mr. Cozier, either
7 directly through his involvement or indirectly through entities
8 that he owned or controlled?

9 THE WITNESS: Yes. Mr. Cozier through his
10 corporations was a majority property owner in there.

11 COMMISSIONER DAVIDSON: Thanks.

12 THE WITNESS: But in the ballot issue that I was
13 explaining, he abstained -- or the major property owner, Camp
14 Florida Resort L.P., abstained from voting on that. So the
15 majority that voted for this was the simple property owners, or
16 the nonrental lots if you want to call it that.

17 COMMISSIONER DAVIDSON: So a point of clarification,
18 by the simply property owners you mean sort of the individuals
19 like sitting in the audience?

20 THE WITNESS: Yes.

21 COMMISSIONER DAVIDSON: Thank you.

22 COMMISSIONER BRADLEY: Is it the intent of the
23 corporation to eventually sell the rental lots, or does the
24 corporation intend to maintain the lots as rental property?

25 THE WITNESS: We have always offered them for sale.

1 To help pay for expenses we do offer them for rent. It entices
2 people to come in so they can see the park, and then we try to
3 get them to purchase.

4 COMMISSIONER BRADLEY: So ultimately your goal is to
5 have them occupied.

6 THE WITNESS: Yes, would be to sell them out, yes.

7 BY MR. BURGESS:

8 Q I have to ask some questions on that. That is the
9 ultimate goal, but isn't it true that Highvest Corporation has
10 purchased more than it has sold since it has become involved in
11 these rental lots?

12 A Highvest Corporation has been in existence for a
13 number of years, sir.

14 Q Uh-huh.

15 A Previously Camp Florida Resort L.P. owned the rental
16 lots. During that time, Highvest purchased property from
17 individuals that wished to sell their property on the open
18 market, and they bought them as investments.

19 Q And isn't it true that they own more -- that they
20 have purchased more in that fashion than they have sold off?

21 A Yes, because they are income producing properties.

22 Q Now, the amount that the building was sold for was
23 201,000, is that correct?

24 A Yes, sir.

25 Q Was that money distributed to the property owners, to

1 the property owners association members?

2 MR. FRIEDMAN: Commissioner Deason, I don't know what
3 this has to do with anything to do with this case. The
4 question is, on the rent issue is is the building owned by
5 somebody other than the property owners association? Everybody
6 has said yes. And then would they be entitled, since the
7 utility is operating out of that building, should it be
8 entitled to rent? All this issue about what happened to the
9 money that they paid for it, did it go to the homeowners
10 association, what has that got to do with the issue of are they
11 entitled to reasonable rent, and if they are, what is that
12 amount of reasonable rent?

13 COMMISSIONER DEASON: Mr. Burgess, I think we have an
14 objection on relevancy.

15 MR. BURGESS: Yes. And I would say it is relevant
16 because the property owners association formerly owned this
17 property and never charged rent. Now the question is upon the
18 sale of that is the utility entitled to include rent? And my
19 concern is if this was sold on behalf of the property owners
20 association, and the property owners association as previous
21 owners of this never received the proceeds for it, then the
22 claim that now the company, because of decisions made beyond
23 their minority capability to do anything about, is the company
24 now entitled to start imputing rent. And that is where the
25 issue is relevant.

1 MR. FRIEDMAN: With all due respect, I don't think
2 this Commission's job is to protect members of minority
3 interests in homeowners associations. Your interest is to
4 protect the consumers, the customers.

5 COMMISSIONER DEASON: The objection is overruled, I
6 will allow the question. The Commission will give it whatever
7 weight we deem appropriate.

8 MR. BURGESS: Thank you, Commissioner.

9 BY MR. BURGESS:

10 Q Was the proceeds from the sale of that property
11 distributed to the members of the property owners association?

12 A It was deposited in the general fund of the
13 association.

14 Q Has any of it been distributed to the homeowners
15 association members?

16 A Not to individuals, no.

17 Q Has there been any solicitation to the property
18 owners association members as to whether they would like the
19 proceeds to be distributed to them?

20 MR. FRIEDMAN: Commissioner Deason, again, what has
21 that question got to do with --

22 COMMISSIONER DEASON: Mr. Friedman, your objection
23 has been listened to, and noted, and has been overruled. I
24 don't hear that this is a different objection from before. If
25 it is different, explain it to me.

1 MR. FRIEDMAN: It's not. He has asked a different
2 question. And if he asks a different question, if I expect to
3 preserve my objection, I have to object every time he asks a
4 question.

5 COMMISSIONER DEASON: Very well. Your objection is
6 noted and is overruled.

7 BY MR. BURGESS:

8 Q Did you as president of the property owners
9 association solicit the property owners association members to
10 determine whether they wanted a distribution of their share of
11 the proceeds from this sale?

12 A One of the questions on the ballot issue when the
13 property was -- whether we should sell the property or not,
14 there were some questions of what we should do with the
15 proceeds from the sale. And it was the result of the majority
16 of the members that voted to use the proceeds for various
17 things, upgrading some landscaping in the park, new security
18 gates, and use a portion of it along with what was in the road
19 reserve to resurface the roads, do maintenance and repairs and
20 upkeep on the common property buildings, the bathhouses.

21 Q Do you provide an accounting of these expenditures to
22 the property owners association members?

23 A Personally I do not, but our accountant does. And it
24 is available either on a quarterly basis or an annual basis.
25 And at every meeting when I have -- as president, if it is

1 available, I announce it.

2 COMMISSIONER DEASON: Mr. Burgess, how much more do
3 you have for this witness?

4 MR. BURGESS: I have very little more. I had a
5 question or two about the contributions in aid of construction.

6 COMMISSIONER DEASON: Let's see if we can go ahead
7 and finish your cross-examination before we break.

8 BY MR. BURGESS:

9 Q Mr. Lovelette, are you familiar with the proposed
10 agency action that has been protested here?

11 A Yes, sir. Not intimately, but I am familiar with it.

12 Q Do you understand that there has been a pro forma
13 adjustment to include into the L.P. Utilities rate base an
14 amount for meters to be installed in the remaining lots in Camp
15 Florida?

16 A During the audit process for this, they asked us for
17 what it would cost to install the meters. I gave them that
18 information. So I guess that is what we are using.

19 Q Do you know whether that has been included in the
20 rate base for the calculation of the rates as proposed by the
21 proposed agency action?

22 A I would have to assume that it is.

23 Q Have you installed these meters, yet?

24 A The utility has not installed these meters.

25 MR. BURGESS: Thank you. That's all we have.

1 Thank you, Commissioner.

2 COMMISSIONER DEASON: Staff, how much do you have for
3 this witness?

4 MR. HARRIS: We only have a few questions,
5 Commissioner, but I don't know how long it will take. I would
6 guess less than ten minutes.

7 COMMISSIONER DEASON: Let's go ahead and conduct your
8 cross-examination, as well.

9 MR. HARRIS: Thank you.

10 CROSS EXAMINATION

11 BY MR. HARRIS:

12 Q I do have to admit that I am a little bit confused
13 over the past couple of hours worth of testimony about what is
14 going on with all of these interrelationships. But one simple
15 question that I do have is you indicated that L.P. Utilities is
16 billing Highvest for utility service to what has been called
17 rental lots on a quarterly basis, is that correct?

18 A Yes.

19 Q Does L.P. Utilities have a tariff for how it can
20 charge rates?

21 A Pardon?

22 Q Do you have a tariff in effect for how you charge
23 rates?

24 A Yes.

25 Q Does that tariff call for quarterly billing or

1 monthly billing?

2 A Monthly billing.

3 Q So then why are you charging on a quarterly basis in
4 violation of your tariff?

5 A It was just convenience.

6 Q So you are ignoring a Commission order and your
7 tariff for convenience?

8 A I guess if that is the way you want to put it, yes.

9 Q The second question I had is there has been some talk
10 that the rental -- what we call the rental lots may be
11 disconnected from receiving water and wastewater service, is
12 that correct?

13 A I'm sorry, would you --

14 Q It is my understanding that you have discussed the
15 possibility that in the event of some type of Commission
16 decision Highvest might, or the rental lots, what has been
17 termed as rental lots might be disconnected from receiving
18 water and wastewater services from L.P. Utilities, is that
19 correct?

20 A Yes, sir.

21 Q How would those be disconnected?

22 A That I don't know, sir.

23 Q Are you going to tear the lines out of the ground?

24 A Am I?

25 Q Does L.P. Utilities or Highvest intend to tear the

1 lines out of the ground?

2 A I don't know. I doubt that they would tear the lines
3 out of the ground, sir.

4 Q Would they be capped physically some way that would
5 be undoable in any way permanently?

6 A If they were going to be shut off, they would have to
7 be capped.

8 Q Would they be capped in such a way that whoever was
9 on the lot couldn't just open a faucet and restore service?

10 A If they were capped there wouldn't be a faucet on
11 there, sir.

12 Q I had another question that I wasn't quite clear on.
13 You mentioned that in the event that the lots were disconnected
14 physically that the people renting the lots could use the
15 bathhouses. And my question is, and I am confused on this,
16 doesn't that mean that the people who are paying the bills to
17 L.P. Utilities are then paying for the bathhouses that the
18 renters are using for free?

19 A One of the people that are paying is the Highvest
20 Corporation, they are property owners so they also pay for all
21 expenses for those bathhouses.

22 Q So your testimony is that even if those lots are
23 disconnected because Highvest doesn't want to pay for the
24 individual lots, it will still make some payments to L.P.
25 Utilities to cover the cost of the use of the bathhouses?

1 A In a round about way, because it would be billed
2 through the property owners association.

3 Q Well, that is my question. If it is billed through
4 the property owners association, the individual property owners
5 would have to bear some burden of that cost of the bathhouses,
6 correct?

7 A The individual property owners, which include all 397
8 property owners.

9 Q Including the 140, whatever, owners who aren't
10 affiliated with any of the Cozier owned or controlled entities,
11 is that correct?

12 A Yes. They use the facilities, also.

13 Q And just to be clear, Highvest has not paid L.P.
14 Utilities for any water and wastewater service it has received
15 since L.P. has been in inception, is that correct?

16 A Yes, sir.

17 Q Now, there was some discussion about a meeting that
18 was held sometime prior to a foreclosure action being
19 initiated, and I am gathering you are fairly confused about
20 that meeting, you don't recall exactly who was there, what was
21 discussed, but it is my recollection that you seem to feel that
22 somebody brought up the idea of foreclosing on the Woodlands
23 because the mortgage was in jeopardy due to a judgment that had
24 been obtained, is that correct?

25 A Yes, sir.

1 Q And I guess I just want to clarify, you are unclear
2 about exactly how long the Woodlands had not been paying
3 Highvest prior to that meeting, is that correct?

4 A They made sporadic payments since 1995.

5 Q How would you characterize sporadic? Once a month,
6 once a year, once every two years?

7 A Whenever. Not on a regular basis.

8 Q Well, I'm trying to get an idea of what whatever is.
9 Is whatever once every other month, or once every six months,
10 or once a year, or --

11 A From what I know, from what Terri told me, my wife,
12 is they did make payments. But I don't know the frequency or
13 if it was like once every three months or once every year.

14 MR. HARRIS: I think in the interest of brevity, I
15 don't have any further questions.

16 Thank you, commissioners.

17 COMMISSIONER DEASON: Commissioners, other questions?
18 I think we probably asked quite a few as we went along.

19 Mr. Friedman, how extensive is your redirect?

20 MR. FRIEDMAN: I don't have any.

21 COMMISSIONER DEASON: That's not extensive at all, is
22 it? Okay. And we have no exhibits for this witness.

23 Thank you, sir, you are excused.

24 Are you going to be recalling this witness, is that
25 correct, Mr. Harris?

1 MR. HARRIS: I will be recalling him, Commissioner.

2 COMMISSIONER DEASON: I'm sorry?

3 MR. HARRIS: I will be recalling him as a direct
4 adverse, and I believe he has also filed rebuttal testimony.

5 COMMISSIONER DEASON: Okay. So you are excused for
6 the time being, sir.

7 We are going to take a lunch recess. We will
8 reconvene at -- it is 1:20 now, we will reconvene at 2:15.

9 (Lunch recess.)

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 5th day of June, 2003.



JANE FAUROT, RPR
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