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REPLY TO ALTAMONTE SPRINGS

MARTIN S. FRIEDMAN, P.A.  
VALERIE L. LORD, OF COUNSEL  
(LICENSED IN TEXAS ONLY)

June 25, 2003

**HAND DELIVERY**

RECEIVED-FPSC  
03 JUN 25 AM 10:16  
COMMISSION  
CLERK

Ms. Blanca Bayo  
Commission Clerk and Administrative Services Director  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

Re: Docket No. 020010-WS; Highvest Corporation's and L.P. Utilities Corporation's  
Protest of PAA SARC Order  
Our File No.: 37074.01

Dear Ms. Bayo:

Enclosed please find for filing in the above-referenced docket an original and fifteen (15) copies of L.P. Utilities, Inc.'s Motion to Strike Portion of Public Counsel's Post-Hearing Statement.

Should you have any questions regarding this matter, please do not hesitate to give me a call.

Very truly yours,

MARTIN S. FRIEDMAN  
For the Firm

AUS  
CAF  
CMP  
COM 3  
CTR  
ECR  
GCL  
OPC  
MMS  
SEC I  
OTH

MSF/dmp  
Enclosures

cc: Lawrence Harris, Esquire (w/enclosure)  
Katherine Echternacht, Esquire (w/enclosure)  
Stephen Burgess, Esquire (w/enclosure)  
Mr. John Lovelette (w/enclosure)

DOCUMENT NUMBER - DATE  
105652 JUN 25 8  
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted  
rate case in Highlands County by  
the Woodlands of Lake Placid, L.P.

DOCKET NO.: 020010-WS

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**L.P. UTILITIES, INC.'S MOTION TO STRIKE PORTION OF PUBLIC  
COUNSEL'S POST-HEARING STATEMENT**

L.P. UTILITIES, INC., by and through its undersigned attorneys moves this Commission for an Order striking a portion of Public Counsel's Post-Hearing Statement, and in support thereof states:

1. Beginning at page 16 of Public Counsel's Post-Hearing Statement, Public Counsel presents argument on two issues which were not raised in Public Counsel's Prehearing Statement nor listed as issues in the Prehearing Order.
2. On April 21, 2003, Public Counsel filed its Prehearing Statement which does not raise either of the last two issues argued in its Post-Hearing Statement.
3. At the May 5, 2003, Prehearing Conference, Public Counsel's attorney advised the Commission and other parties for the first time that he expected customers to testify on issues which were not included in any party's Prehearing Statement. In response to that statement by Public Counsel, and after hearing argument by the parties, Commissioner Deacon ruled as follows:

COMMISSIONER DEACON: Well, let me tell you what my main concern is an what I'm going to preserve to the extent that I can, and that is the ability for customers to appear at the

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customer phase of the hearing and to present their positions on this case, and I'm going to allow that.

At the point that there is a customer or customers who wish to address this particular issue, Mr. Friedman, that could be subject to objection at the time that testimony is attempted to be made. (Page 16 at lines 8-16)

Thus, there was no ruling at the Prehearing Conference that it was appropriate for customers to raise additional issues, the Commissioner having reserved ruling.

4. The Prehearing Order, Order No. PSC-03-0618-PHO-WS, includes thirteen issues. None of these issues are the two added to Public Counsel's Post-Hearing Statement.

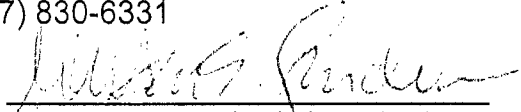
5. At the Final Hearing held on May 28, 2003, L.P., Utilities, Inc., objected each time a customer testified on an issue which was not one noticed for hearing in the Prehearing Order. Each time that objection was overruled.

6. The two additional issues included in Public Counsel's Post-Hearing Statement was not noticed, nor tried by consent. Thus, to allow the Commission to rule upon those issues which were without proper pleading and notice is violation of L.P. Utilities' due process rights. See, Epic Metals Corp. v. Samani East Condo Ass'n, Inc., 547 So. 2d 198, 199 (Fla. 3<sup>rd</sup> DCA 1989), where the court stated: "A trial court violates a litigant's due process rights when it expands the scope of a hearing to address and determine matters not noticed for hearing."

WHEREFORE, L.P. Utilities, Inc., requests this Commission strike pages 16 through 24 of Public Counsel's Post-Hearing Statement.

Respectfully submitted on this 25th day of June, 2003, by:

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By:   
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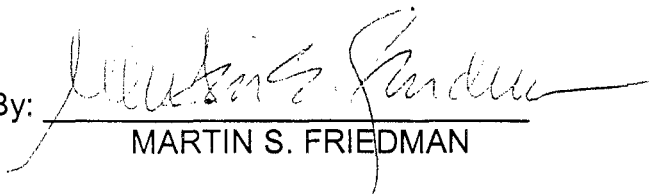
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 25th day of June, 2003, to:

Katherine Echternacht, Esquire  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
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By:   
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