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MARTIN S. FRIEDMAN, P.A.

VALERIE L. LORD, OF COUNSEL
(LICENSED IN TEXAS ONLY)

July 7, 2003

HAND DELIVERY

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

COMMISSION
CLERK

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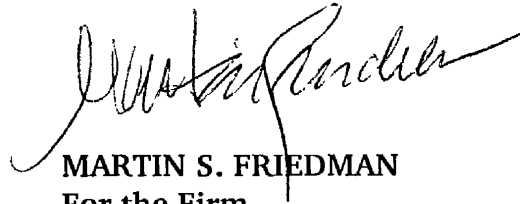
Re: Docket No. 020010-WS; Highvest Corporation's and L.P. Utilities Corporation's
Protest of PAA SARC Order
Our File No.: 37074.01

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 Response to Public Counsel's Amended Motion to Order L.P. Utilities to Cease Activities to Sell Utilities.

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 _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- SEC
- OTH _____

MSF/dmp
Enclosures

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

cy to 030102

DOCUMENT NUMBER-DATE

05981 JUL-7 8

CPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificates to operate a water and wastewater utility in Highlands County the The Woodlands of Lake Placid, L.P., and for deletion of portion of wastewater territory in Certificate No. 361-S held by Highlands Utilities Corporation.

DOCKET NO.: 990374-WS

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

DOCKET NO.: 020010-WS

IN RE: Application for Authority to Sell, Assign or Transfer Certificate and Utility Facilities of The Woodlands of Lake Placid, L.P. in Polk County, Florida to L.P. Utilities Corporation

DOCKET NO.: 030102-WS

**RESPONSE TO PUBLIC COUNSEL'S AMENDED MOTION TO ORDER
L.P. UTILITIES TO CEASE ACTIVITIES TO SELL UTILITIES**

L.P. UTILITIES, INC., by and through its undersigned attorneys, files this Response to Public Counsel's Amended Motion to Order L.P. Utilities to Cease Activities to Sell Utilities.

Public Counsel has made the unprecedented argument that this Commission exercise jurisdiction which is not granted to it by law. Specifically, Public Counsel requests that the Commission enjoin L.P. Utilities from exercising its statutory right to transfer assets prior to Commission approval, so long as the transfer is made subject to the Commission's jurisdiction over such transfer. Public Counsel goes one step further and requests the Commission enjoin L.P. Utilities and its officers and

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FPSC-COMMISSION CLERK

employees “from activities toward the sale of L.P. Utilities.” This would include enjoining the negotiation of an agreement, which again, this Commission does not have jurisdiction to do. Parenthetically, as the Commission is aware, CS/SB 140 which is awaiting action by the Governor amends Section 367.071, Florida Statutes, to require prior Commission approval of a transfer. Secondly, Public Counsel requests this Commission order L.P. Utilities to inform its customers that it has not placed a value on the utility facilities. Each of those two issues will be addressed separately.

1. The Legislature has granted to water and wastewater utilities the right to sell facilities prior to Commission approval if the contract for sale is made contingent upon Commission approval. Section 367.071 (1), Florida Statutes. This Commission does not have the statutory authority to enjoin L.P. Utilities’ exercise of that right. The Courts have that exclusive jurisdiction.

This Commission has previously acknowledged its lack of authority to enjoin a utility from exercising its statutory right to sell prior to Commission approval, when in connection with the Florida Water Sale, the Commission went to court to seek that remedy. See, Florida Public Service Commission v. Florida Water Services Corporation, Case No. 03-CA-358, Second Judicial Circuit of Florida. This case is virtually identical and the Commission’s remedy is in the courts. The most the Commission has the jurisdiction to do is to order an application be filed. See, Order No. PSC-03-0193-FOF-WS.

To the extent the Public Counsel is seeking for this Commission to enjoin negotiating and entering into an agreement to purchase and sell the utility facilities,

there is absolutely no precedence for such action, and Public Counsel has provided no legal authority supporting the Commission's authority to enjoin any such pre-closing actions, Public Counsel's Motion is all theoretical and with no legal basis.

2. The Public Counsel's request that the Commission become involved in the negotiation process is absurd. There are ongoing negotiations between L.P. Utilities and the Property Owners' Association, and this Commission has no jurisdiction over those negotiations. What Public Counsel is also asking this Commission to do is become involved in the operation and management of the Property Owners' Association. This Commission has no jurisdiction over any Property Owners' Association. Property Owners' Associations are controlled by Chapters 617 and 720, Florida Statutes. Jurisdiction over the resolution of disputes under these laws lies with the judiciary and not the Commission.

Although this Commission has no jurisdiction over the negotiations, certain allegations regarding those negotiations need to be addressed. There is no misrepresentation regarding the value placed on the system. At this point, the value referenced by the Property Owners' Association is correct. It is pure speculation on the Public Counsel's part to assert some other value. This Commission further should not confuse Mr. Lovelette's position as President of the Property Owners' Association with his position with L.P. Utilities. Public Counsel represents the voice of only several residents, and not the majority of the property owners. Further, there is nothing in the information attached to Public Counsel's Motion which asserts that the customers will not receive a refund from L.P. Utilities should such an order be entered and


upheld on appeal. Public Counsel confuses the difference between an arms-length negotiated sale as is proposed in the instant L.P. Utilities' sale, and a foreclosure, which occurred prior to L.P. Utilities' acquisition.

The assertion that the customers' refund would disappear is not based upon anything in this galaxy. It is another attempt by the Public Counsel to obfuscate issues to make them appear legitimate. Obviously, this Commission will have the jurisdiction to determine whether any transfer is in the public interest, and one would expect the refund issue to play a part in that determination. Public Counsel also continues to comment upon the fact that Highvest Corporation, as the holder of the majority of lots, controls the Property Owners' Association. Majority owners many times take action over the objection of the minority. See, Woodside Village Condominium Association, Inc., v. Johnson, 806 So. 2d 452 (Fla. 2002) in which the Florida Supreme Court ruled that restrictions on the rental of units would apply to individuals who had previously purchased units when there were no restrictions on rentals. The covenants and restrictions applicable to the Property Owners' Association control what the majority may do. This Commission has been admonished in the past by the Florida Supreme Court that the Commission is not empowered to right any wrong which it perceives regardless of its relationship to water and wastewater service. Deltona Corp. v. Mayo, 342 So. 2d 510 (Fla. 1977), in which the Florida Supreme Court reminded the Commission that it has only those powers granted by statute expressly or by implication, and even if the company had engaged in an unfair business practice or committed fraud, it was not a matter with which the Commission may be concerned.

This Commission had no authority to vindicate breaches in the land sales law in that case, nor does it have that authority with regard to the laws regulating homeowner's associations in the instant case.

Respectfully submitted on this 7th day of July, 2003, by:

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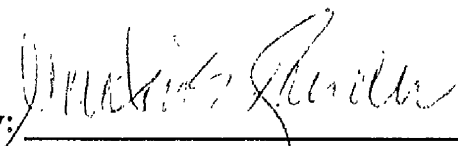
By: 
MARTIN S. FRIEDMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 7th day of July, 2003, to:

Lawrence Harris, Senior Attorney
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Stephen C. Burgess, Associate Public Counsel
Office of Public Counsel
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

By: 

MARTIN S. FRIEDMAN