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

June 10, 2004

HAND DELIVERY

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

RECEIVED-PPSC
JUN 10 PM 2:57
COMMISSION
CLERK

Re: Docket No. 040179-WS; Utilities, Inc. of Hutchinson Island's Application for Authority to Transfer Facilities and Certificate Nos. 336-W and 291-S
Our File No.: 30057.77

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and seven (7) copies of Utilities, Inc. of Hutchinson Island's Motion to Dismiss Petitioners' Request for Hearing.

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

CMP _____
COM _____
CTR _____
ECR _____
GCL _____
OPC _____
MMS MSF/mp
RCA Enclosures
SCR ee Mr. Steve Lubertozzi (w/enclosures)
SEC 1 Mr. Patrick Flynn (w/enclosures)
OTH _____

Very truly yours,



MARTIN S. FRIEDMAN
For the Firm

BEFORE **THE** FLORIDA PUBLIC SERVICE **COMMISSION**

In **re:** Application for Authority)
to **Transfer the** Facilities of)
COLUMBIA-PROPERTIES STUART, LLC) Docket No. 040179-WS
and Certificate Nos. **336-W and**)
291-S in Martin County, Florida)
to UTILITIES, **INC. OF HUTCHINSON**)
ISLAND)

MOTION TO DISMISS PETITIONERS' REQUEST FOR HEARING

UTILITIES, INC. OF HUTCHINSON ISLAND ("Utility"), pursuant to Rule **28-106.201(4)**, F.A.C., files this Motion to Dismiss Petitioners' Request for Hearing, and states as follows:

1. By letter dated June 3, 2004, Petitioners have requested a hearing in this proceeding, such hearing **to** be held in Martin County, Florida ("Request").

2. The Request does not give any reasons for Petitioners' action in requesting a hearing from the Commission in this proceeding, or for any other relief that the **Commission** is authorized by law to grant them. Therefore, the Utility has not been given full and fair disclosure **of** the basis **for** the Request **or** **an** opportunity to respond to the Request appropriately.

3. The Utility reserves its rights, to the extent that such rights exist, to respond to the Request once the true intent of Petitioners has been determined.

4. **Without** waiving any **rights** it may have as **to** the lack of specificity, **due process** or any other defects, the Request, despite

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FPSC-COMMISSION CLERK

its faults, appears to be a petition to intervene under Rule 28-106.205, **F.A.C.**, and for purposes of this Motion, the Utility will treat the Request as such.

5. Rule 28-106.205, **F.A.C.**, provides that any person who desires to become a party to a proceeding may petition the presiding officer for **leave** to intervene. The Rule requires that the petition must conform to Rule 208-106.201(2), **F.A.C.**, and that it must include allegations sufficient to demonstrate that the "intervenor **is** entitled to participate in the proceeding as a matter **of** constitutional or statutory right or pursuant **to** agency rule, or that the substantial interests **of** the intervenor are **subject** to determination or will **be** affected through the proceeding."

6. The Request does not comply with Rule 28-106.205 because it **fails** to state how the Petitioners are entitled to participate in the proceeding.

7. Further, the Request does not comply with Rule 28-106.201(2), **F.A.C.** in the following respects:

(a) **As** required by Sub-section (2)(b), it fails to provide the name, address and telephone number of each Petitioner, and an explanation **of** how the Petitioners' substantial interests will be affected by the Commission's decision.

(b) **As required by** Sub-section (2)(c), it fails to state when **and** how the Petitioners received notice of the Commission's

decision;

(c) As required by Sub-section (2)(d), it fails to provide a statement of all disputed issues of material facts, **or** if none, a statement that there are no disputed issues of material facts;

(d) As required by Sub-section (2)(e), it fails to provide a **concise** statement of the ultimate facts alleged, including the specific facts the Petitioners contend warrant a reversal or modification **of** the Commission's proposed action;

(e) As required by Sub-section (2)(f), it fails to provide a statement **of** the specific rules or statutes the Petitioners contend require reversal or modification of the Commission's proposed action; and

(f) As required by Sub-section (2)(g), it fails to provide a statement of the relief sought by the Petitioners, stating precisely the action Petitioners wish the Commission to take with respect to the Commission's proposed action.

8. Rule 28-106.201(4), F.A.C., provides that a petition "shall **be** dismissed if it is not in substantial compliance" the Rule. The Request is clearly not in substantial compliance with the Rule and must be dismissed.

9. Petitioners are represented by counsel who can reassert their request for a hearing properly and in accordance with the rules and regulations of this Commission. Thus, they will not be prejudiced **by** a dismissal **of** the Request.

10. If Petitioners are granted intervenor status, they **should** be required to **comply** with the rules and regulations of this Commission, including the filing of a prehearing **statement**, attendance of **any** pre-hearings and the **final** hearing in Tallahassee, the examination of witnesses, and the filing of written briefs after the conclusion of the hearing.

11. For the forgoing reasons, the Utility respectfully requests that the Commission dismiss the Request.

Respectfully submitted on this 9 day
of June, 2004, by:
ROSE, SUNDSTROM & BENTLEY, LLP
600 S. North Lake Boulevard
Suite 160
Altamonte **Springs**, Florida 32701
(407) 830-6331
(407) 830-8522 Fax

By:




MARTIN S. FRIEDMAN

CERTIFICATE OF SERVICE
DOCKET NO. 040179-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing
has been furnished by U.S. Mail to the following parties on this
1 day of June, 2004:

Jane L. Cornett, Esq.
Cornett, Googe & Associates, P.A.
401 East Osceola Street
First Floor
River Oak Center
Stuart, FL 34994



MARTIN S. FRIEDMAN