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COMMISSION CLERK

September 1, 2004

HAND DELIVERY

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

Re: Docket No.: 030102-WS; Application for Authority to Sell, Assign or Transfer Utility Facilities of The Woodlands of Lake Placid, L.P., in Highland County, Florida to Camp Florida Property Owners Association, Inc., and Application to Transfer Majority Organizational Control of L.P. Utilities, Inc., to Camp Florida Property Owners Association, Inc.
Our File No.: 37074.03

Dear Ms. Bayo:

Enclosed please find for filing in the above-referenced docket the original and fifteen (15) copies of L.P. Utilities Corporation's Post-Hearing Statement along with a floppy disk containing the Post-Hearing Statement in both Word and Word Perfect formats.

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

Very truly yours,

MARTIN S. FRIEDMAN
For the Firm

CMP ____
COM 3
CTR ____
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cc: Mr. John Lovelette (w/enclosure)
Katherine E. Fleming, Esquire (w/enclosure)
Stephen C. Burgess, Esquire (w/enclosure)

M:\1 ALTAMONTE\LP UTILITIES\(03) Sale to POA\PSC Clerk 014 (Post Hearing Brief) ltr.wpd

DOCUMENT NUMBER-DATE
09558 SEP-1 04
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for Authority to Sell, Assign or Transfer Utility Facilities of **THE WOODLANDS OF LAKE PLACID, L.P.** in Highlands County, Florida to **CAMP FLORIDA PROPERTY OWNERS ASSOCIATION, INC.**, and Application to Transfer Majority Organizational Control of L.P. Utilities Corporation to **CAMP FLORIDA PROPERTY OWNERS ASSOCIATION, INC.**

Docket No. 030102-WS

POST HEARING

STATEMENT OF ISSUES AND POSITIONS

OF

L.P. UTILITIES CORPORATION

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DOCUMENT NUMBER-DATE
09558 SEP-1 ⌀
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for Authority to Sell, Assign or Transfer Utility Facilities of **THE WOODLANDS OF LAKE PLACID, L.P.** in Highlands County, Florida to **CAMP FLORIDA PROPERTY OWNERS ASSOCIATION, INC.,** and Application to Transfer Majority Organizational Control of L.P. Utilities Corporation to **CAMP FLORIDA PROPERTY OWNERS ASSOCIATION, INC.**

Docket No. 030102-WS

/

POST HEARING STATEMENT OF ISSUES AND POSITIONS OF L.P. UTILITIES CORPORATION

L.P. UTILITIES CORPORATION, by and through its undersigned attorneys and pursuant to Order No. PSC-04-0753-PHO-WS, files this Post Hearing Statement of Issues and Positions:

> [Since the Court Reporter has designated the transcripts of the service hearing and technical hearing both as Volume 1, references to the transcript of the technical hearing will be (TH-) followed by the page number, and references to the transcript of the service hearing will be (SH-) followed by the page number.]

ISSUE 1: IS CAMP FLORIDA PROPERTY OWNERS ASSOCIATION, INC., AN EXEMPT ENTITY PURSUANT TO SECTION 367.022 (7), FLORIDA STATUTES?

POSITION:

* Yes, Camp Florida Property Owners Association, Inc., is a Florida not-for-profit corporation formed on July 10, 1990, and is in good standing with the Florida Department of State.*

ARGUMENT:

Section 367.022 (7), Florida Statutes provides an exception from PSC jurisdiction of

"[n]onprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives." The unrefutted testimony of Mr. Lovelette is that the Camp Florida POA is a nonprofit Florida corporation with its membership consisting of all lot owners in the Camp Florida Resort (TH-22). This is also reflected in the corporate filings with the Florida Department of State, the Articles of Incorporation, and the By-Laws of the POA. (Ex. 3) Public Counsel attempted to assert that Mr. Cozier's personal residence, which is not a lot in the Resort (TH-45), was connected to the wastewater system, which would have resulted in the exception not being applicable (TH-45). However, Mr. Cozier's residence is on a septic tank and thus does not receive wastewater service from L.P. Utilities. All of the wastewater customers are within the Camp Florida Resort (TH-21).

Thus, the unrefutted evidence is that the Camp Florida Resort POA is an exempt entity that would not be subject to the PSC's jurisdiction if it acquired the wastewater assets of L.P. Utilities. (Ex. 7)

ISSUE 2: SHOULD THE COMMISSION APPROVE THE TRANSFER OF CERTIFICATE NOS. 620-W AND 533-S FROM WOODLANDS TO L. P. UTILITIES?

POSITION:

Yes.

ARGUMENT:

In Order No. PSC-03-1053-PAA-WS issued September 22, 2003, this Commission ordered L.P. Utilities to file a new transfer application within 30 days of that Order becoming final, agreeing to accept the regulatory obligations of The Woodlands of Lake

Placid, LP. The specific regulatory obligations contemplated in that Order were to install the water meters on the rental lots owned by Highvest, and make a refund as required by the Commission in a companion Staff Assisted Rate Case. The deadline for filing the new application was November 12, 2003. On October 20, 2003, well in advance of that deadline, L.P. Utilities filed such an application.

L.P. Utilities has not only accepted the regulatory obligations to install meters and make refunds, but it has substantially accomplished those tasks (TH-16). At the time of the final hearing, all of the water meters had been installed (TH-35). L.P. Utilities has been crediting customers who paid the overcharge $43.88 per month and the refunds will be completed within the time required by the SARC Order (TH-25).

It should not go unnoticed that of all of the customer comments, not one customer complained about the quality of service. The conclusion that must be drawn from that fact is that the current personnel of the utility, who will continue to operate the utility systems after the transfer, is doing a good job and the quality of service is at least satisfactory.

The water and wastewater assets formerly owned by The Woodland of Lake Placid, L.P., were foreclosed upon (Ex. 3, TH-22). That entity's authority to transact business was revoked on September 26, 2003, and that entity is no longer in existence. (Ex. 4). The current owner of those assets is L.P. Utilities (Ex. 3, TH-22).

Although the Public Counsel took the position in the Prehearing Order that the transfer to L.P. Utilities was not in the public interest and listed Donna DeRonne as its witness on that issue, there is no testimony from Ms. DeRonne or any of the customers in opposition to the transfer to L.P. Utilities.

ISSUE 3: Stipulated.

ISSUE 4: **IS THE TRANSFER OF L.P. UTILITIES TO CAMP FLORIDA IN THE PUBLIC INTEREST?**

POSITION:

Yes.

ARGUMENT:

L.P. Utilities argument on this issue (which was added by Public Counsel) is subsumed in the arguments on issues 6 and 7. The Public Counsel through its witness, Ms. DeRonne, argues that the members of the POA should not be forced to be in business with Mr. Cozier (TH-75). Apparently, she is referring to Mr. Cozier in his capacity of President of Highvest Corporation. In fact, the members of the POA are already in business with Highvest, as one of the customers reluctantly admitted (SH-68). Ms. DeRonne also admitted that the business relationship already exists (TH-97).

Public Counsel will no doubt also refer to the letters from customers objecting to the transfer that were placed in the correspondence side of the docket file pursuant to the parties' stipulation. The Florida Supreme Court has laid this issue to rest, when, in Storey v. Mayo, 217 So. 2d 304 (Fla. 1968), it ruled:

> An individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself.

ISSUE 5: **DOES THE EVIDENCE DEMONSTRATE THAT CAMP FLORIDA WILL FULFILL THE OBLIGATIONS AND COMMITMENTS OF WOODLANDS?**

POSITION:

Yes.

ARGUMENT:

L.P. Utilities argument on this issue (which was added by Public Counsel) is subsumed in the arguments on issues 6 and 7. Further, there is direct testimony that the POA will fulfill the commitment, obligations and representations with regard to utility matters (TH-28).

ISSUE 6: SHOULD THE COMMISSION APPROVE THE TRANSFER OF THE WASTEWATER FACILITIES TO CAMP FLORIDA OWNERS ASSOCIATION, INC., AND CANCEL CERTIFICATE NO. 533-S?

POSITION:

Yes.

ARGUMENT:

Much attention in the hearing was directed to the vote of the members of the POA in favor of the acquisitions. There did not appear to be any dispute that Highvest had the right to 246 votes which represented 62% of the votes in the POA since it owned at that time 246 lots within the Resort. In other words, the owner of each lot is entitled to one vote (TH-17, 22). It should not be forgotten that along with the right to vote 62% of the lots comes the obligation to pay 62% of the assessments. Mr. Cozier offered that if Highvest would only have one assessment, he would agree that Highvest would only be entitled to one vote (SH-108). One could easily imagine how high the assessments would go if the 62% being paid by Highvest was spread among the remaining lots. This is not just the assessment for

the utility acquisition, but the regular quarterly assessment for maintenance of the common areas. It is obvious that the minority members of the POA who are protesting the transfer want Highvest's assessments but want to deny Highvest the rights that go along with the assessments. Even the Public Counsel's expert admitted that there was nothing inappropriate with Highvest having 62% of the votes (TH-93).

The POA members knew when they purchased their property in Camp Florida Resort that they would have to be members of the POA (SH-16, 80). They also knew that in all votes by the POA that the majority of voting interests would control (SH-34, 39).

The Articles of Incorporation for the POA provide that the purpose of the POA is to "promote health, safety, welfare, comfort and convenience of the residents and owners of lots within Lake Placid Camp Florida Resort." (Ex. 2). The POA is specifically authorized to borrow money and mortgage property in furtherance of those purposes. The question is, who decides how those purposes are fulfilled? The Articles of Incorporation and By-Laws provide that the owners of each lot are entitled to one vote, and that the majority decides what is in the best interest of the POA. (Ex. 2)

In this case, the minority members of the POA are trying to establish what is in the public interest of the entire POA membership, which is contrary to the basis of the democratic process that the majority rules. Granted, a particular member of the POA may not think that the action of the majority is in his or her personal interest. That is no different than in the elections which we are about to undertake in this Country. Many men and women will be elected to public office by the will of the majority, which is not in the personal interest of those who voted for other candidates. The democratic process allows

for everyone to express their views. That is certainly true in this case where everyone's views were allowed to be voiced. Even though everyone has the right to express their views in the democratic process, ultimately it must be the majority rule that controls what is in the public interest.

It is not within this Commission's jurisdiction to take exception to the one vote per lot process that governs this, and virtually all, property owners associations (See, Chapter 720, Florida Statutes). The Florida Supreme Court in Deltona v. Mayo, 342 So. 2d 510 (Fla. 1977) was a case where the Public Counsel asserted, and the PSC Order recited, that Deltona would not be entitled to a rate increase because of what it perceived to be fraudulent land sales practices by Deltona. In reversing the PSC Order, the Court stated:

> If Deltona has engaged in an unfair business practice or committed fraud, however, it may be of concern to other state agencies or the basis for private lawsuits (on which we express no opinion), but it is not a matter of statutory concern to the Public Service Commission.

The Court went on to state that the PSC has no authority to vindicate breaches, if any, in land sales practices or private contracts. What the objecting customers are asking the PSC to do is to consider some perceived injustice that they feel they have received in the way the POA is being run. They are not without a remedy, it is just not at the PSC. The authority of the PSC is not all-pervasive; it cannot remedy every wrong that it perceives exists. Even Public Counsel's expert admitted that the appropriate forum to address a dispute over property owners association matters was in the civil courts (TH-96).

While the dissenting POA members attempt to make this an issue of individual lot owners versus Highvest, the vote belies that attempt. Thirty (30) non-Highvest lot owners voted in favor of the acquisition and the thirty six (36) who abstained could be classified as

not caring one way or the other. Thus, even if the Highvest votes were disregarded, forty-five percent (45%) of the votes did not vote against the acquisition (TH-11).

The Agreement for Purchase and Sale ("Purchase Agreement") provides for the sale of the wastewater assets from L.P. Utilities to the Camp Florida POA for One Hundred Ninety-One Thousand Five Hundred Twenty-Three Dollars ($191,523.00), (Ex. 7), which is the rate base established by the PSC in the SARC. (Ex. 6). Public Counsel's expert witness admitted that rate base was a fair price (TH-109). The wastewater assets will be conveyed free and clear of all liens and encumbrances. The purchase price will be financed 100% with a loan from Anbeth Corporation at an interest rate of 6.99%, with quarterly payments of principal and interest amortized over ten years (Ex. 7).

Public Counsel's expert witness went to great lengths to attempt to analyze the financial aspects of the cash flow of the wastewater system. Ms. DeRonne's prognostication of financial doom was based largely upon her erroneous assumption that Highvest was not paying for water and wastewater service to its rental lots (TH-117). Surprisingly, she rendered that opinion without even asking anyone at L.P. Utilities if Highvest was paying for such service (TH-94). Ms. DeRonne now acknowledges that Highvest is paying for water and wastewater service (TH-94). This was confirmed by Mr. Lovelette (TH-37).

Ms. DeRonne's analysis failed to take into consideration several other issues of significance. It became obvious during cross-examination that Ms. DeRonne did not understand the difference between regulatory commission expenses and regulatory assessment fees (TH-100-105). She gave no consideration to the fact that the current revenues include 4.5% for regulatory assessment fees that will not have to be paid to the

PSC (TH-28). This additional revenue more than makes up for the small annual short fall in revenues. In addition, L.P. Utilities installed more meters on Highvest lots than contemplated in the SARC Order which should account for almost $6,000 in additional revenue on an annual basis (TH-119). Ms. DeRonne admitted that she did not know that utilities could avail themselves of annual rate increases based upon inflation factors (TH-106). Assuming the rates set in the SARC are correct, there is no reason why the wastewater system should not be on a sound financial basis (TH-117).

There are several other long-term benefits which were overlooked by Ms. DeRonne. It is not currently financially feasible for the POA to have a full-time manager to oversee the POA properties. By adding the responsibilities of utility manager, the POA intends to hire a full-time manager to oversee all POA properties (TH-17-18, 58). Another benefit, which is substantial, is that in ten years the wastewater system will be debt-free, which will allow the POA to reduce wastewater rates, or will provide the POA with $27,000 in revenue for other POA purposes (TH-119).

Since the entire customer base are members of the POA, it makes sense for the wastewater system to be under POA ownership and control (TH-27).

There was some discussion in response to questions from the Staff regarding quarterly assessments to make the mortgage payment on the purchase of the wastewater assets (TH-51, 52). As can be discerned from the financial analysis discussed herein, the current rates will cover the operating expenses and debt service without having to make any additional assessments. In addition, if there is any shortfall, there is operating income from the water system to offset any shortfall. (Ex. 6)

Some of the POA members, as well as Ms. DeRonne, expressed concern that if the wastewater system was not jurisdictional, Highvest may try to exert pressure as the POA Board to exempt Highvest from paying for wastewater service on its rental lots, or not shutting off service should Highvest refuse to pay for such service (TH-95). While those concerns are not well-founded (TH-122, 123), L.P. Utilities is cognizant of Commissioner Bradley's admonition to find a compromise. In that spirit, L.P. Utilities is willing to restructure the transaction to leave the wastewater assets in L.P. Utilities when its stock is sold to the POA, if such compromise will result in the approval of the transfer of the L.P. Utilities stock to the POA.

ISSUE 7: SHOULD THE COMMISSION APPROVE THE TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL OF L.P. UTILITIES FROM ANBETH CORPORATION TO CAMP FLORIDA PROPERTY OWNERS ASSOCIATION, INC.?

POSITION:

Yes.

ARGUMENT:

The argument in Issue 6 regarding the vote by the POA to acquire the utility is equally applicable here. The Agreement for Purchase and Sale ("Purchase Agreement") between Anbeth Corporation as the sole shareholder of L.P. Utilities and the Camp Florida POA, provided for the sale of the stock of L.P. Utilities (after the wastewater assets had been conveyed) for One Hundred Thousand Dollars ($100,000.00). The purchase price is a reduction from the rate base established by the PSC in the SARC (Ex. 6) of Eighty-Nine Thousand Eighty-Six Dollars ($89,086.00) in consideration of L.P. Utilities assuming the obligation to make the refunds (Ex. 7). The purchase price will be paid by a special

assessement on the members of the POA, and Highvest will be paying 62% of that assessment (TH-62). While the assessments have been imposed by the POA, there has been no attempt to collect those assessments pending the PSC's decision in this docket. [1] Where there is a sale of a lot, the assessment must either be paid by the current owner or assumed by the purchaser, just as with the normal quarterly assessments (TH-32).

Some customers and at least one Commissioner misconstrued the effect of the purchase price reduction. As stated in the Purchase Agreement, L.P. Utilities was going to assume the refund obligation. It was not a reduction in purchase price that would inure to the benefit of all of the members of the POA, L.P. Utilities would be obligated to make the refunds to those customers entitled to the refunds as required by the SARC Order (TH-28). This is a substantial benefit to the customers entitled to refunds who are also members of the POA, since sixty-two percent (62%) of the purchase price will be paid by Highvest Corporation (SH-108), which is not entitled to any refunds. Other than the refunds, the benefits and burdens of ownership of the utility will be shared pro rata by the lot owners as it is with the POA's ownership of all other assets of the POA.

Since the parties decided not to avail themselves of their statutory right to close the sale prior to PSC approval, the reduction in purchase price, and the refunds required by the SARC, are no longer relevant. By the time the PSC approves the sale, the refunds will have been made. To the extent that there are credit balances on customer accounts at the time of transfer, the purchase price will be reduced accordingly (TH-43).

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[1] There was no evidence corroborating the hearsay statements in Exhibits 13 and 14 and they must be disregarded.

This transfer is in the public interest for the same reasons as discussed in Issue 6. The great majority of the water customers are members of the POA and it makes sense that the POA should control the water system (TH-29). There are only about 38 customers outside the Resort who receive water service (TH-45). Not one customer complained about the quality of service.

Ms. DeRonne did not articulate any financial concerns regarding the water system. Assuming the PSC sets appropriate rates in the SARC, there should not be any reason the utility system is not financially sound (TH-117). In other words, if the rates are adequate when Anbeth owned the stock, they should be equally adequate under POA ownership.

Respectfully submitted this 1st day of September, 2004

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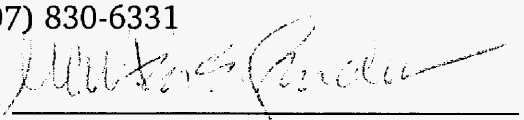
BY: 
Martin S. Friedman
For the Firm

CERTIFICATE OF SERVICE

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

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By: _____
MARTIN S. FRIEDMAN

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