

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for authority to transfer  
Certificate Nos. 620-W and 533-S in  
Highlands County from The Woodlands of  
Lake Placid, L.P. to L. P. Utilities Corporation.

DOCKET NO. 030102-WS  
ORDER NO. PSC-04-0753-PHO-WS  
ISSUED: August 4, 2004

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on August 2, 2004, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

MARTIN S. FRIEDMAN, ESQUIRE, Rose, Sundstrom & Bentley, LLP, 600 S.  
North Lake Boulevard, Suite 160, Altamonte Springs, Florida 32701  
On behalf of L. P. Utilities, Corporation (Utility).

STEPHEN C. REILLY, ESQUIRE, Office of the Public Counsel, c/o The Florida  
Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-  
1400  
On behalf of Citizens of the State of Florida.

KATHERINE E. FLEMING, ESQUIRE, Florida Public Service Commission,  
2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Florida Public Service Commission.

**PREHEARING ORDER**

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On January 29, 2003, L.P. Utilities Corporation (L.P. or utility) filed an application for authority to sell, assign, or transfer the certificates and utility facilities of the Woodlands of Lake Placid, L.P. (Woodlands) to L.P. On September 22, 2003, the Commission issued Order No. PSC-03-1053-PAA-WS, denying the application and requiring the utility to file another application within 30 days in which the utility would agree to accept all the regulatory obligations of Woodlands.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

On October 20, 2003, L.P. filed an application for authority to transfer the utility facilities of Woodlands to L.P., transfer majority organizational control of the L.P. water system to Camp Florida Property Owners Association, Inc. (Camp Florida), and transfer the L.P. wastewater system to Camp Florida and cancel Certificate No. 533-S. The Office of Public Counsel (OPC) objected to the application. Accordingly, this matter has been scheduled for an administrative hearing on August 11-12, 2004.

### III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 367, Florida Statutes. This hearing will be governed by said Chapter and Chapters 25-9, 25-22, 25-30, and 28-106, Florida Administrative Code.

### IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any parties intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the

beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files.

#### V. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

VI. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VII. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
John H. Lovelette	Utility	1, 2, 3, 4, 5
Donna DeRonne	OPC	1, 2, 3, 4, 5
<u>Rebuttal</u>		
John H. Lovelette	Utility	1, 2, 3, 4, 5

The utility reserves the right to call additional witnesses to respond to Commission inquiries not addressed in direct or rebuttal testimony and witnesses to address issues not presently designated but that may be designated by the Prehearing Officer at the Prehearing Conference.

VIII. BASIC POSITIONS

**L.P.:** The transfer of the wastewater system assets, and the stock of L.P. Utilities, LLC, as owner of the water system to the Camp Florida Property Owners Association,

Inc., is in the public interest and should be approved. The wastewater system will become non-jurisdictional.

**OPC:** The Public Service Commission should not approve this transfer because it is not in the public interest and because the transferee will not meet its regulatory obligations.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions. Then prehearing statement basic position here.

#### **IX. ISSUES AND POSITIONS**

**ISSUE 1:** **Is Camp Florida Property Owners Association, Inc. an exempt entity pursuant to Section 367.022(7), Florida Statutes?**

#### **POSITIONS**

**L.P.:** 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.

**OPC:** As it is currently configured, Camp Florida is not an exempt entity.

**STAFF:** No position at this time pending further development of the record.

**ISSUE 2:** **Should the Commission approve the transfer of Certificate Nos. 620-W and 533-S from The Woodlands of Lake Placid, L.P. to L.P. Utilities Corporation?**

#### **POSITIONS**

**L.P.:** Yes, simultaneously with the approval of the transfer to Camp Florida Property Owners Association, Inc.

**OPC:** No. (DeRonne)

**STAFF:** No position at this time pending further development of the record.

**ISSUE 3:** Proposed Stipulation. See Section XI.

**ISSUE 4:** **Is the transfer of L.P. Utilities to Camp Florida in the public interest?**

**POSITIONS**

**L.P.:** Yes.

**OPC:** No. Before the transfer of majority organizational control can take place, the Commission must approve the transfer as being in the public interest. Based on all the reasons presented in the evidence, it is clear that the transfer to Camp Florida is not in the public interest. (DeRonne)

**STAFF:** No position pending further development of the record.

**ISSUE 5:** **Does the evidence demonstrate that Camp Florida will fulfill the obligations and commitments of Woodlands?**

**POSITIONS**

**L.P.:** Yes.

**OPC:** No. Florida Statutes require that before a transfer can be approved, the Commission must make an affirmative determination that the transferee will fulfill the obligations and commitments of the transferor. Based on the history of the transferee, the Commission has no reason to believe the transferee intends to fulfill the transferor's regulatory obligations and commitments. (DeRonne)

**STAFF:** No position pending further development of the record.

**ISSUE 6:** **Should the Commission approve the transfer of the wastewater facilities to Camp Florida Property Owners Association, Inc. and cancel Certificate No. 533-S?**

**POSITIONS**

**L.P.:** Yes. It is in the public interest to do so.

**OPC:** No. Section 367.071, Florida Statutes, explicitly prohibits the transfer of certificates unless the PSC makes a “determination and approval . . . that the proposed . . . transfer is in the public interest and that the . . . transferee will fulfill the commitments, obligations, and representations of the utility.” The facts of this case are such that the Commission should not approve this transfer as in the public interest or determine that the transferee will fulfill all of the obligations of the utility. (DeRonne)

**STAFF:** No position at this time pending further development of the record.

**ISSUE 7:** **Should the Commission approve the transfer of majority organizational control of L.P. Utilities Corporation from AnBeth Corporation to Camp Florida Property Owners Association, Inc.?**

**POSITIONS**

**L.P.:** Yes. It is in the public interest to do so.

**OPC:** No. Section 367.071, Florida Statutes, explicitly prohibits the transfer of certificates unless the PSC makes a “determination and approval . . . that the proposed . . . transfer is in the public interest and that the . . . transferee will fulfill the commitments, obligations, and representations of the utility.” The facts of this case are such that the Commission should not approve this transfer as in the public interest or determine that the transferee will fulfill all of the obligations of the utility. (DeRonne)

**STAFF:** No position at this time pending further development of the record.

X. **EXHIBIT LIST**

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
John H. Lovelette	L.P.	JHL-1	Application.
John H. Lovelette		JHL-2	Meter Installation Contract.
Donna DeRonne	OPC	DD-1	Schedule 1 – Analysis of Ability of Camp Florida Property Owners Association, Inc. to Pay Mortgage

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			on Wastewater Property Under Current Rates. Schedule 2 – Estimate of Revenue Requirement Allocated to Rental Lots.
Donna DeRonne	OPC	DD-2	Portions of PSC Order No. PSC-03-1053-PAA-WS
Donna DeRonne	OPC	DD-3	Circuit Court Final Judgment
Donna DeRonne	OPC	DD-4	District Court Opinion

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

**XI. PROPOSED STIPULATIONS**

**ISSUE 3: Should the Commission approve an acquisition adjustment for the transfer of The Woodlands of Lake Placid, L.P. to L.P. Utilities Corporation?**

**POSITION:** No. The purchase price resulting from the loan from Highvest Corporation to L.P. Utilities Corporation in the amount of \$409,959 is greater than the combined amount of water and wastewater rate base in the amount of \$380,609. Therefore, pursuant to Rule 25-30.0371, Florida Administrative Code, no acquisition adjustment should be made.

**XII. PENDING MOTIONS**

There are no pending motions at this time.

**XIII. PENDING CONFIDENTIALITY MATTERS**

There are no pending confidentiality matters at this time.

**XIV. RULINGS**

After any customers have testified in the customer service hearing, L.P. will have the opportunity to file their deeds as a late-filed exhibit, subject to objection by OPC.

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Opening statements, if any, shall not exceed ten minutes per party.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 4th day of August, 2004.



J. TERRY DEASON  
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.