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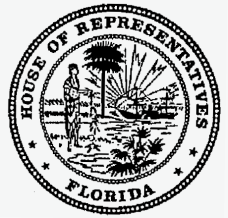

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September 1, 2004

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

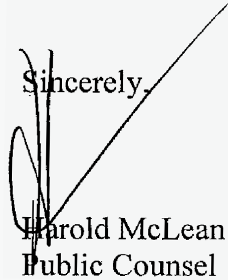
RE: Docket No. 030102-WS

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens' Post-Hearing Statement for filing in the above-referenced docket.

Also enclosed is a 3.5 inch diskette containing Citizens' Post-Hearing Statement in Microsoft Word format. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,



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HMcL/dsb
Enclosures

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DOCUMENT NUMBER-DATE
09582 SEP-1 04

BEFORE THE FLORIDA 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

Filed: September 1, 2004

POST-HEARING STATEMENT
OF THE OFFICE OF PUBLIC COUNSEL BASIC POSITION

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. As a fundamental requirement of the transfer, under Section 367.071(1) of the Florida Statutes, the Commission must find: (1) that the transfer is in the public interest; and (2) that the proposed new owners, the Camp Florida Property Owners Association, Inc., will "fulfill the commitments [and] obligations" of Woodlands. The statute states, in relevant part:

> No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility. However, a sale, assignment, or transfer of its certificate of authorization, facilities or any portion thereof, or majority organizational control may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.
>
> Section 367.071(1)

DOCUMENT NUMBER-DATE
09582 SEP-1 ፚ
FPSC-COMMISSION CLERK

TRANSCRIPT CITATION

References to the hearing transcripts will be identified with "T." followed by the page number, followed by a parenthetical identification of the respective volume as follows: "Service" and "Technical."

ISSUES AND POSITIONS

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

POSITION: *No. Based on the evidence produced at the hearing, Camp Florida is not an exempt entity*

DISCUSSION:

Section 367.022, Florida Statutes, enumerates twelve specific circumstances under which an entity is exempt from Chapter 367. The exemption that most closely applies to Camp Florida is the following:

> (7) Nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives.
> [Id.]

In order to attain exempt status, a nonprofit association cannot provide service to any person who is not a member of the association. Camp Florida does not meet this requirement for either water or wastewater operations.

The utility agrees that, even if this transfer is approved, Camp Florida's water operations would not be exempt because it provides service to homeowners outside of the association. [T 43 (Technical)].

Because of a similar circumstance, Camp Florida's wastewater operations are not exempt either. Currently, Camp Florida provides wastewater service to the front office of the Camp. That office is owned by Highvest, not Camp Florida. Highvest's membership in the Property Owners' Association (POA) stems from its ownership of the Camp Florida rental lots, not from its ownership of the front office. Highvest's position can be analogized to one of the private homeowners also owning a second house outside of the Camp. If service were supplied to that second home, the association would not be exempt under Section 367.022(7).

Similarly, the wastewater service provided to the front office prevents Camp Florida from attaining exempt status.

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?**

POSITION: *No. The transfer, as proposed, with the subsequent sale of the wastewater assets to Camp Florida Property Owners Association, Inc. (Camp Florida) and transfer of L.P. Utilities Corporation to Camp Florida does not meet the standard for transfer specified in Section 367.071 of the Florida Statutes.* (DeRonne)

DISCUSSION:

Under L.P. Utilities proposal, the ultimate outcome of the transfer of Certificate Nos. 620-W and 533-S results in the utility assets becoming the burden of the Camp Florida and the individual members of Camp Florida. These members are also the individual customers served by the water and wastewater facilities. The allowance of transferring the Certificates to L.P. Utilities Corporation is a necessary step in that proposed transfer. The proposed transfer of the wastewater assets and the transfer of ownership of L.P. Utilities Corporation to Camp Florida are

not in the public interest and will result in the utility being unable to meet its obligations. These issues are discussed further under issues 4, 5 and 6, below.

ISSUE 3: This issue was stipulated to by the Parties.

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

POSITION: *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)

DISCUSSION:

The Public Service Commission has broad discretion in determining what the public interest is. Public interest, and the definition thereof, has been addressed by the Commission in several past decisions. In Order PSC-94-0114-FOF-TI involving Atlas Communication Consultants, Inc., the Commission stated:

> The public interest standard gives latitude and discretion to the Commission to legislate regulatory rules of behavior and fashion appropriate remedies to fix regulatory problems. It is effectuated principally in fashioning protective mechanism to prevent abuse of consumers.
>
> Id., at p. 2

In Order No. PSC-93-1376-FOF-EI involving the Petition for approval of a plan to bring generating units into compliance with the Clean Air Act by Gulf Power Company, the Commission provided a definition of "public interest". The issue was specifically defined at page 15 of the Order as follows:

> The phrase "in the public interest" as used in Section 366.825, Florida Public Statutes, encompasses those matters within the

> jurisdiction of the Florida Public Service Commission. In this case, we find that the phrase "in the public interest," means the cost and effect on rates and services provided by Gulf Power Company to its ratepayers. This is not to say, however, that we are precluded from considering other factors where appropriate, including environmental and health concerns, in the interpretation of "in the public interest." Traditionally, however, the Commission has not done so, and there is no statutory mandate to consider such factors.

In Order No. PSC-94-0264-FOF-EI, dated March 8, 1994, in addressing the public interest definition in the above cited order (PSC-93-1376-FOF-EI), the Commission reiterated its definition at page 2, affirming that it is "not precluded from considering other factors where appropriate..." in determining public interest.

In Order No. PSC-93-1374-FOF-TI, dated September 20, 1993, the Commission found that it was not in the public interest for Cherry Payment Systems, Inc., dba Cherry Communications, to continue to operate in Florida. The Order addressed the public interest issue as follows:

> Briefly, the record indicates that Cherry:
>
> ...3. had ethical/marketing problems when it solicited customers in person; 4. had ethical/marketing problems when it solicited customers via telemarketing; 5. slammed an unprecedented number of Florida customers; 6. repeatedly failed to timely reply to Commission Staff inquiries; 7. operated as a reseller prior to certification; 8. despite implementation of new procedures, demonstrated no improvement in its slamming complain record during the pendency of this proceeding.
>
> Upon review, we find that it is not in the public interest for Cherry to continue to operate in Florida.

The above cited cases demonstrate that the Commission historically has recognized its broad discretion in determining what is in the public interest. In this case, the testimony shows that the proposed transfer of the utility facilities from The Woodlands of Lake Placid and the

transfer of the majority organization control of L.P. Utilities Corporation to Camp Florida Property Owners Association, Inc., along with the proposed sale of the wastewater utility assets to Camp Florida Property Owners Association, Inc., is not in the public interest and should be denied by the Commission. A finding that the proposed transfers are not in the public interest is clearly within the Commission's purview.

During his opening statement [T. 9 (Technical)], Mr. Friedman argued that the Commission must approve this transfer, and he cited two Supreme Court cases that purportedly support his claim. A reading of the two cases, however, shows that neither case has any useful application to the facts at hand. The first case, Storey v. Mayo, 217 So2d 304 (Fla. 1968), involved a territorial agreement between the City of Homestead (the City) and Florida Power and Light Company (FPL). Prior to that agreement, the City and FPL had competed for customers in the suburban areas. This competition led to inefficiencies described by the Court as:

> However, prior to the subject agreement, the Company and the City actively competed for customers in the suburban areas. This, of course, required duplicating, paralleling and overlapping distribution systems in the affected areas. This duplication of lines, poles, transformers and other equipment not only marred the appearance of the community but it also increased the hazards of servicing the area. Such overlapping distribution systems substantially increase the cost of service per customer because they simply mean that two separate systems are being supplied and maintained to serve an area when one should be sufficient. Obviously, neither system receives maximum benefit from its capital invested in the area. The ultimate effect of this is that the rates charged in the affected area are necessarily higher, or, alternatively, the customers in some other part of the system must help bear the added cost.
>
> [Id., at 306]

In Storey, then, there was a significant public interest to be served by the two competing utilities arriving at an agreement that would end the inefficiencies cited above. The public

interest was served when the Commission approved the territorial agreement that resolved the problems.

There is nothing even remotely similar involved in the case at hand. There are no inefficiencies created by two competing utilities vying for the Camp Florida customers. The instant question of public interest is whether customers should be forced into an ownership relationship with Mr. Cozier. That question is well within the PSC's regulatory purview.

If the Storey decision has any application at all to the instant case, it supports the PSC's authority to reject the pending transfer. In Storey, the Supreme Court stated:

> The regulatory powers of the Commission, as announced in the cited section, are exclusive and, therefore, necessarily broad and comprehensive, Fla. Stat. § 366.03 (1967), F.S.A.; Florida Power & Light Co. v. City of Miami, 72 So.2d 270 (Fla.1954).
>
> The powers of the Commission over these privately-owned utilities is omnipotent within the confines of the statute and the limits of organic law.
>
> [Id., at 307]

Mr. Friedman's reliance on Deltona v. Mayo, 342 So.2d 510 (Florida 1977), is likewise misplaced. That case involved the scope of the factors which the PSC was allowed to consider within the context of setting rates. The Court stated:

> The only issue brought to us for review is whether the Commission acted properly when it denied rate relief on the ground that Deltona had failed to present evidence as to the amount of its contributions in aid of construction, as a consequence of which the Commission could not establish Deltona's rate base or establish a fair rate of return. The alleged evidentiary deficiency is predicated on the Commission's determination that Deltona had promised home site purchasers between 1962 and 1969, through oral representations, advertisements, and other land sales materials, that the purchase price of their properties would include water and sewer facilities.
>
> [Id., at 511]

The Court reversed the PSC's rate decision, finding that the Commission acted "beyond the scope of its authority." Id.

Mr. Friedman's attempt to apply the Deltona case to the instant case demonstrates a fundamental misunderstanding of the basis for the Commission's authority. The Commission's scope of authority is defined by Florida Statutes. Whether an action is "within the scope" or "outside the scope" depends on the statutory language defining the action to be taken.

The Commission's ratesetting authority is described in Section 367.081, Florida Statutes. That section specifies a number of areas that the Commission must consider in determining proper rates, and it describes the proper treatment of contributions-in-aid-of-construction. The Deltona Court determined that the PSC considered elements that were beyond this scope and admonished the Commission that "it may not assume the existence of some indefinite amount of contributions in aid of construction which its own staff has found to be non-existent under accounting procedures prescribed by the Commission." Id., at 512.

The instant case, on the other hand, is entirely different. The statutory authority for the action in question is Section 367.071, Florida Statutes. Section 367.071 specifically and expressly includes "public interest" as one of the factors which the Commission must consider before taking action under this statutory section. Consequently, "public interest" cannot be beyond the scope of the Commission's decision making authority because it is expressly within that scope.

In determining public interest under Section 367.071 of the Florida Statutes, the individual customers receiving water and wastewater service from the utility assets must be considered. This is the public whose interest must be protected. In determining public interest,

the weight should not be given ratably to the number of votes in a property owners association, but rather to the individual customers receiving service from the utility [T. 86 (Technical)]. The majority of the individual customers who receive water and wastewater service from L.P. Utilities are opposed to the transfer of L.P. Utilities to Camp Florida. These individual customers are also members of the Camp Florida Property Owners Association, Inc. There are 397 votes in the Property Owners Association. Of the 397 votes, 276 voted in favor of the transfer, 85 voted against the transfer and 36 votes abstained. Highvest Corporation, for which Anthony Cozier makes the management decisions, owned 246, or 62%, of the 397 voting lots. [DeRonne PFT at 4; T. 71 (Technical)]. Of the remaining non-Highvest controlled lots, only 30 voted in favor of the transfer. Of these, some are employees of Mr. Cozier [T. 50 (Technical)]. Clearly, the majority of the individual customers that are served by the waster and wastewater assets were against the transfer. It is important to remember that in the event the transfer goes through as proposed, those very same customers, through their membership in the Camp Florida Property Owners Association, Inc., will be forced to become owners of the wastewater assets and owners of L.P. Utilities, thus also becoming owners of the water assets.

Through numerous forums, the individual customers have vehemently opposed the transfer. Public Counsel has submitted 57 letters to the Commission from customers who oppose the transfer, but were unable to attend hearings [T. 6 (Service)]. These letters opposing the transfer have been placed on the correspondence side of the docket. Those customers who were able to attend the service hearings, which were held on August 11, 2005 when many of the Camp Florida residents are away from Florida, vociferously expressed their opposition of the transfer to the Commission. Fourteen of the individual customers spoke at the August 11th hearing in opposition to the transfer and in opposition to being forced into an additional business

relationship with Mr. Cozier. Customers traveled from as far away as North Carolina [T.25 (Service)], Indiana [T.29 (Service)], Chelsea, Michigan [T.54 (Service)], and the upper peninsula of Michigan [T.12 (Service)] in order to speak before the Commission in opposition to the proposed transfer. Additionally, Public Counsel witness Donna DeRonne attended a meeting on March 31, 2004 in which over seventy-five residents met to give their input about the proposed transfer. Many people spoke at this meeting, with unanimous agreement that these customers vehemently opposed the transfer [DeRonne PFT at 3-4 and T.86 (Technical)].

The public whose interests are highly impacted by this case, i.e., the individual customers of the utility, have given many compelling reasons for their opposition to the transfer, clearly demonstrating that it is not in their interest to become owners of the wastewater system and the water system through the proposed shift of control of L.P. Utilities. The reasons for opposing the transfer, as has been expressed by the customers, was summarized in Ms. DeRonne's prefiled testimony, at page 5, as follows:

1. They believe they should not be forced to put up money to purchase a business.
2. They believe they should not be forced into a relationship of business co-ownership with someone whose ethics they seriously question.
3. They believe that they should not be forced to put up their money to purchase a business whose management is incompetent or has allegiances that are counter to the financial health of the business.

If the proposed transfer is approved, then the individuals who make up the public at issue in this case would essentially be forced into a business relationship with Anthony Cozier, whose ethics they seriously question. Commission Order No. PSC-03-1053-PAA-WS, at pages 7 – 8, provided a table showing relationships of the various entities involved in the current proceeding, along with Mr. Cozier's involvement in each of the entities [Exhibit 10]. This exhibit shows Mr.

Cozier is in direct control and is the primary decision maker of Woodlands of Lake Placid, L.P., L.P. Utilities Corporation, Highvest Corporation and Anbeth Corporation. Mr. Cozier also has complete control of the outcome of all votes brought before the Camp Florida Property Owners Association through his control of the decision making for Highvest Corporation, which currently controls 240 of the 376 property owners association votes [T.61 (Technical)]. Thus, if the transfer goes through as proposed, Mr. Cozier will be able to make all decisions regarding the water and wastewater system, as he currently and historically has done, but the responsibilities and liabilities associated with the ownership of the utility assets would then become the responsibility of all members of the Camp Florida Property Owners Association as opposed to being isolated to Mr. Cozier and his various business entities.

At the August 11th service hearing, many customers expressed their concerns with Mr. Cozier and gave many compelling and specific reasons for their questioning of Mr. Cozier's ethics [T. 13, 38-40, 35-37, 63-64, 66-67, 71-72, 75-79, 87-95 (Service)]. The Circuit Court, in Richard Peratoni, Sara Keller, et al, vs. Camper Corral, Inc., a Florida not for profit corporation, et. al., Case No. GC97-240,GC 98-158 (Consolidated), specifically found that Mr. Cozier, along with Teresa Lovelette, had breached their fiduciary duty to the Plantiffs in the case, as member of the Camp Florida Property Owners Association. The Circuit Court also found that Mr. Cozier negotiated in bad faith and used "suspect, underhanded, unethical, and bad faith tactics..." [Exhibit 11]. The Final Judgment reached in the case, which is included as Exhibit 11 in this docket, included the following findings of fact:

> The representatives of the association negotiated a sale in good faith. The Parties had created an enforceable contract for sale of the property but the Defendant Cozier and the Defendant Woodlands added additional requirements and conditions to its final offer. The Defendant Cozier negotiated in bad faith and

throughout the negotiation process used suspect, underhanded, unethical, and bad faith tactics to mislead the Plaintiffs to a timetable that exceeded the Statute of Limitations.

* * * * *

4. BREACH OF FIDUCIARY DUTY: Defendants Cozier and Lovelette breached their fiduciary duties to the Plaintiffs as members of the Property Owners Association thru a variety of acts including without limitation:

* * * * *

e. Intentionally misrepresenting the Developer's obligation for maintenance payments to the association, advising the members that the Developer had no legal obligation to pay any assessments.

f. Amending the bylaws, skirting the Covenants and Restrictions, to reduce the Developer's obligation for maintenance payments.

g. Diverting funds that should have been reimbursed to the members to the road reserve without requiring the Developer to make any proportionate contributions to that reserve.

* * * * *

i. Continuously meeting and discussing Property Owners Association business and issues including the budget without notice to the members as required by Statute.

j. Double charging for maintenance during the year 1998 by paying his own corporation Camper Corral by paying Cozier's own corporation Camper Corral, Inc. for maintenance that was not performed on behalf of the Property Owners Association.

* * * * *

As the final, insulting chapter of this lawsuit, Mr. Cozier then used his majority control of the POA to force his legal costs to be borne exclusively by the private homeowners of Camp Florida. Mrs. Keller's uncontroverted testimony states:

> He used his majority vote to impose costs for the POA attorney defending him in the infamous court trial to be charged to the individual property owners exempting his rental properties from this assessment.
> [T. 90, Service]

It is simply not in the public interest for the individual customers, as members of the Camp Florida Property Owners Association, to be forced into a business relationship and a joint ownership of utility assets with Mr. Cozier when he has already been found to have breached his fiduciary duty to them and to have dealt with them with "suspect, underhanded, unethical and bad faith tactics...."

L.P. Utilities argues that the vote of the Camp Florida Property Owners Association to purchase the wastewater assets and the stock of L.P. Utilities Corporation from Anbeth Corporation is outside the Commission's jurisdiction and governed by property owners association rules and regulation. However, the Commission statutes supersede any other statutes that may otherwise be read as conflicting as it pertains to utility matters [Section 367.011(4)]. The Commission has exclusive jurisdiction over utilities with respect to authority, service, and rates. [Section 367.011(2)] The Commission is to interpret its statutory authority liberally to protect the public interest and is to consider the public interest in determining whether a transfer is to be approved.

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

POSITION: *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. There is no reason to conclude the transferee would be able to fulfill the transferor's regulatory obligations and commitments.* (DeRonne)

DISCUSSION:

The transferor, Woodlands of Lake Placid, LP, and L.P. Utilities, has a substantial obligation outstanding with regards to the refund due to customers and ordered by the Commission in Order No. PSC-03-1051-FOF-WS (SARC). In the SARC, the utility was ordered to make refunds of the unauthorized increase in water rates that were collected from January 1998 through the date that the new SARC rates went into effect. The utility was ordered to make the refund with accrued interest by September 22, 2004, three weeks from the date of this filing. The attorney for L.P. Utilities, as well as the manager of L.P. Utilities, John Lovelette, has indicated that the Company will have made the refunds by September 22, 2004 and by the date of the proposed transfer [T. 7, 16 and 39 (Technical)]. However, the contention that the refunds would have been fully made by that time is inaccurate and misleading. L.P. Utilities has been providing the refund not through cash payments, but rather through credits on the individual customers' monthly bills. These credits are accumulating on the customers' bills, resulting in a credit balance due to customers that will remain at the time of the proposed transfer [T. 39 (Technical)]. The manager of L.P. Utilities, John Lovelette, was unable to provide even an estimate of the aggregate credit balance that will exist when the deadline for refund occurs [T. 41 (Technical)]. As was evident during the SARC, the unauthorized rates were collected from the individual customers during the same period that the owner of both the rental lots and the utility

assets, Mr. Cozier, was not paying for the provision of water and wastewater service to the rental lots. It is Mr. Cozier and the entities under his control who have the responsibility to refund the unauthorized rates to customers. A substantial credit balance for the refunds due to the individual customers should not be allowed at the time of transfer of the utility assets. This would essentially make the individual customers, as members of the Camp Florida Property Owners Association, responsible for the net credit balance on customers' bills at the time of transfer.

As of July 15, 2004, the amount of outstanding refund due to customers was $53,148.87. As of July 12, 2004, the total amount of the credit balance on customers' bills was $10,399 [T. 99-100 (Technical)]. With only a few months remaining from mid-July to the September 22, 2004 refund deadline, there will need to be a substantial outstanding credit due to the customers that paid the unauthorized rates. [T. 99-100 (Technical)] Mr. Lovelette has testified that the utility does not intend to make a cash refund, but rather to continue the recording of additional credits due to customers [T. 39 (Technical)]. Reflecting a substantial amount of credit due to customers does not, and should not, qualify as achieving and meeting the refund obligation. Clearly, L.P. Utilities or Highvest does not intend to fulfill its full refund obligation by the September 22nd deadline. The individual customers of the utility, who are also individual members of the Camp Florida Property Owners Association, should not now be required to be responsible for that substantial credit balance via the transfer of L.P. Utilities to Camp Florida.

If L.P. Utilities is transferred to the Camp Florida Property Owners Association as proposed by L.P. Utilities, a substantial number of individual customers will not pay a utility bill for an extended period due to the large credit balance owed to them. As a result, the Property Owners Association will not be able to collect enough from the remaining customers under the

currently authorized rates to pay the on-going operating costs associated with the water system [T. 99 – 100 (Technical)]. Consequently, the utility would not be a going-concern absent significant cash infusion during the first few years after transfer. Clearly this does not met the requirements under Florida Statute Section 367.071 as there has been no showing that the Property Owners Association will have the revenue stream, cash balance, or liquid assets necessary to meet the operating commitments and obligation of running the water operations. Furthermore, it is not in the public interest to allow a transfer in which it is clear that the purchaser may be unable to meet the on-going operating commitment and obligation. Absent the proposed transfer, the obligation for the large credit balance existing on customers bills would be the responsibility of L.P. Utilities and Highvest, each of which are owned and/or controlled by Mr. Cozier. It is Mr. Cozier who was responsible for collecting the unlawful rates causing the refund order and who received free service to his owned and/or controlled rental lots during that same period. The obligation for the refund, and the current large credit balance on customers accounts, should remain with him and the entities under his ownership and/or control.

Additionally, as is discussed in Issue 6, below, the Camp Florida Property Owners Association will be unable to pay all of its annual on-going operating costs and the full mortgage payment on the wastewater assets if the transfer is approved as currently proposed. Clearly this raises a significant going-concern issue and demonstrates that the Camp Florida Property Owners Association would be unable to meet the operating commitment and obligation of the utility.

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?**

POSITION: *No. 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)

DISCUSSION:

As previously addressed in Issue 4, above, the proposed transfer to the wastewater facilities is not in the public interest. That discussion will not be repeated here. However, in addition to not being in the public interest, Camp Florida Property Owners Association would not be able to fulfill the commitments and obligations of the utility. If the transfer of the wastewater assets to the Camp Florida Property Owners Association goes through as proposed by L.P. Utilities, it will not be possible for the Property Owners Association to make the full mortgage payment on the wastewater facilities and pay on-going wastewater system operating costs under the current wastewater rates that were recently set and approved by the Commission in Order No. PSC-03-1051-FOF-WS (absent additional cash infusion). Under the proposed transfer and purchase agreement, the POA would acquire the wastewater system assets for $191,523 with the entire amount paid in the form of a note to Anbeth Corporation. Under the proposal, the note would be paid over a ten-year period, with quarterly installments of principle and interest, at 6.99% interest per year [Exhibit 3]. This results in annual mortgage payments for the POA of $26,779.84. Exhibit 9 in this case shows that the POA would not be able to fund the annual level of recurring operating and maintenance expenses for operating the wastewater system and pay the full annual mortgage payments to Anbeth Corporation. Anbeth Corporation is owned Mr. Cozier and his wife. Exhibit 9 shows an annual shortfall of approximately $2,000.

This amount does not include any costs associated with capital items that will be incurred. It also assumes that Highvest will regularly pay for wastewater service provided to its owned lots.

There has been a long history during which Mr. Cozier did not pay for water and wastewater service on his owned and/or controlled lots. Fees for water and wastewater service were not charged nor paid for on the rental lots, which were previously owned by one of Mr. Cozier's entities and currently controlled by Mr. Cozier through his management of Highvest Corporation, until December 2003 [T. 95, 97, 112-113]. In the event the past practice of not billing Mr. Cozier's owned and/or controlled entities for the water and wastewater service reasserts itself, the shortfall would be exacerbated even further, with the shortfall increasing to over $23,000 per year [Exhibit 9].

As a result of the recent Staff Assisted Rate Case involving Woodlands of Lake Placid, LP, the remaining individual customers of the water and wastewater system were protected from the negative impacts of not charging the single largest customer for water and wastewater service. In the SARC, Staff imputed revenues associated with the Highvest owned rental lots in determining the revenue requirement, essentially isolating the remaining individual customers from the decision of Mr. Cozier, the owner of the utility assets, to not charge or collect water and wastewater fees on the rental lots. If the proposed transfer goes through, customers would no longer have this protection. As proposed by L.P. Utilities, the Public Service Commission would no longer regulate the wastewater system, resulting in the individual customers losing that vital protection. In fact, if the transfer goes through as proposed, all of the individual customers would be harmed in the event Mr. Cozier decides once again to provide free water and wastewater service to the 240 Highvest lots he controls. As joint owners of the water and wastewater assets, each member of the POA would essentially be responsible for any shortfalls

resorting from a decision to not bill a particular customer or customers; thus, all of the individual customer of the wastewater system would be harmed.

In his testimony, Mr. Lovelette has attempted to convince the Commission that the long history of providing Highvest with free service will not repeat itself [T. 122 (Technical)]. He claims that the POA Board would now be willing to stand up and "say no" to Mr. Cozier [T. 123 (Technical)]. Mr. Lovelette's assertion of the Board's newfound mettle is hardly convincing. Even now – even as Mr. Lovelette was claiming the POA Board would prevent "favoritism" – the utility is providing free utility service to Mr. Cozier's personal residence. Mr. Lovelette himself testified to the following:

Q. What about Mr. Cozier's personal residence, is that considered to be in the POA? Is that considered to be party of the territory that would be - -

A. He's in the - - in the legal description for the territory, his residence is in the territory, yes.

Q. So his personal lot is one of the lots that is being assessed for all the various assessments, and one of the ones upon which he exercises autonomy to vote?

A. Now, when you say his personal lot, you mean his residence at 241 Shoreline Drive?

Q. Yes.

A. He does not pay assessments on that lot there. Or it is not a lot, it is a parcel of land.

Q. But it is where his home is, it is where his residence is, isn't it?

A. Correct.

Q. And does he pay a water or wastewater bill?

A. He is on a septic system, sir.

Q. Does he pay a water bill?

A. No.

Q. Does he receive water service from L.P. Utilities?

A. Yes, he does.

[Tr. 44, 45 (Technical)]

This is hardly indicative of a new willingness to prevent favoritism to Mr. Cozier.

Additionally, the annual shortfalls would result in the Property Owners Association not being able to make the full annual mortgage payments to Anbeth Corporation on the note, absent a potential significant increase in the amounts collected from the POA members (which are the individual customers) for the wastewater service. Anbeth Corporation is an entity owned by Mr. Cozier. In the recent SARC, it was evident that Mr. Cozier has used entities under his control to foreclose on assets of other entities controlled by him. During the SARC, Highvest foreclosed on the water and wastewater assets of The Woodlands of Lake Placid, L.P., due to failure to make mortgage payments. This resulted in the transfer of control of the utility assets to L.P. Utilities [DeRonne PFT at 16-17 and T. 88 – 89 (Technical)]. Despite this history, the manager of L.P. Utilities has testified that L.P. Utilities is not current on its mortgage payments to Highvest for the water and wastewater assets. In fact, the manager could not even give Staff a ballpark range by which the mortgage payments are in arrearage [T. 46 (Technical)]. There is no reason to believe that Mr. Cozier would not foreclose on the wastewater assets in the event Camp Florida is unable to make all the mortgage payments to Anbeth Corporation.

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.?**

POSITION: *No. 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)

DISCUSSION:

Under Issue 4, above, it is demonstrated that the proposed transfer of the majority organizational control of L.P. Utilities Corporation to Camp Florida Property Owners Association, Inc. is not in the public interest. While it may be in Mr. Cozier's best interests, it is not in the interest of the individual customers of the water and wastewater service. It is imperative that the Commission evaluate the individual customers' interests as they are the public whose interest is at issue in this proceeding. Additionally, as discussed in Issues 5 and 6, above, it is likely that the Camp Florida Property Owners Association, Inc. will not have the financial capability to continually meet the obligation to operate and serve customers under the transfer as it has been proposed, unless substantial additional funding is received. It has been demonstrated that the large credit balance that will exist on customers' bills at the time of the proposed transfer will result in significant revenue shortfalls. It has also been demonstrated that under the proposed terms for the purchase of the wastewater assets, the amount of revenues being collected under the rates recently authorized by the Commission will not be sufficient to meet on-going annual operating costs and to make the full mortgage payment on the wastewater assets. The proposed transfer should be denied.

WHEREFORE, the Citizens of the State of Florida respectfully request the Commission deny the transfer of majority organizational control of the L.P. Utilities Corporation water

system to Camp Florida Property Owners Association, Inc. (Camp Florida), and deny the transfer the L.P. Utilities Corporation wastewater system to Camp Florida, consistent with the positions espoused herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 030102-WS

I HEREBY CERTIFY that a true and exact copy of the above and foregoing Citizens' Post-hearing Statement has been furnished by hand delivery or U.S. Mail to the following parties of record this 1st day of September, 2004.

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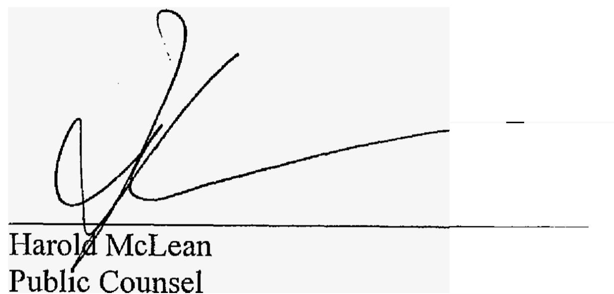

Harold McLean
Public Counsel