

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for amendment of Certificate No. 247-S by North Fort Myers Utility, Inc. and cancellation of Certificate No. 240-S issued to Lake Arrowhead Village, Inc. in Lee County	)	DOCKET NO. 930373-SU
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In Re: Application for limited proceeding for approval of current service rates, charges, classifications, rules and regulations, and service availability policies for customers of Lake Arrowhead Village, Inc. in Lee County, by North Fort Myers Utility, Inc.	)	DOCKET NO. 930379-SU ORDER NO. PSC-96-0348-FOF-SU ISSUED: March 11, 1996

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER GRANTING PETITION TO TERMINATE ESCROW ACCOUNT,  
GRANTING MOTION TO STRIKE REPLY, AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

On April 9, 1993, North Fort Myers Utility, Inc. (NFMU) filed an application for amendment of its Wastewater Certificate No. 247-S to include service to the Lake Arrowhead Village (LAVI) and Laurel Estates subdivisions (Docket No. 930373-SU). On April 13, 1993, NFMU filed for a limited proceeding to implement its rates and charges for those subdivisions (Docket No. 930379-SU). The Office of Public Counsel (OPC) filed a notice of intervention on January 21, 1994, which we acknowledged by Order No. PSC-94-0173-PCO-WS, issued February 11, 1994.

By Order No. PSC-93-1821-FOF-WS, issued on December 22, 1993, as proposed agency action (PAA), we approved the request to amend NFMU's certificate and approved the limited proceeding request to charge its current rates and charges in the approved territory.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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That order was protested. Pending the outcome of the protests, NFMU began providing service but did not charge or collect service availability charges, pursuant to the order.

Prior to the hearing, the parties agreed that the protests were limited to the service availability charge. Although service availability charges are generally paid at the time of connection, NFMU agreed not to collect those charges from the customers of LAVI until after a final order was issued. We approved this stipulation by Order No. PSC-94-0737-FOF-SU, issued June 15, 1994.

Prior to the hearing, the parties, with our approval, agreed that only two issues were left to be considered: the appropriate service availability charge to be collected by NFMU from the customers formerly served by LAVI; and whether the Commission should establish a new "senior citizen mobile home owners" category.

We held a technical hearing on August 17, 1994, in Fort Myers, Florida. By Order No. PSC-94-1553-FOF-SU, we determined the service availability charge to be collected by NFMU to serve the LAVI customers to be \$740 per mobile home connection (\$462 plus gross-up). The order also provided the customers an option to pay for the charge on an installment plan. We also denied OPC's request to implement a senior citizen mobile home service availability charge.

At the time that we issued Order No. PSC-94-1553-FOF-SU, a similar circumstance was pending before us in Docket No. 930724-SU regarding NFMU and Lazy Days Mobile Home Park. At the December 16, 1994, prehearing conference for that docket, the parties stipulated that the outcome of Docket No. 930724-SU would be tied to the result in Dockets Nos. 930373-SU and 930379-SU following any potential reconsideration or appeal of Order No. PSC-94-1553-FOF-SU. That stipulation had to be approved at the next available Agenda Conference, scheduled for January 3, 1995. After considerable discussion, OPC was granted an extension to file its motion for reconsideration regarding Order No. PSC-94-1553-FOF-SU until January 6, 1995. We approved the stipulation by Order No. PSC-95-0190-S-SU.

The Office of Public Counsel (OPC) filed a Motion for Reconsideration of Order No. PSC-94-1553-FOF-SU on January 6, 1995. We granted this motion in part and denied it in part by Order No. PSC-95-0419-FOF-SU, issued March 27, 1995. In that order we struck those portions of Order No. PSC-94-1553-FOF-SU which were not based

on the record, but found that "despite the amendment of our order, our ultimate decision in Order No. PSC-94-1553-FOF-SU remains correct and is in fact supported by the record."

On April 25, 1995, OPC filed a notice of appeal of Orders Nos. PSC-94-1553-FOF-SU and PSC-95-0419-FOF-SU. On April 26, 1995, NFMU filed a motion to vacate the automatic stay which was imposed following OPC's notice of appeal. By Order No. PSC-95-0612-PCO-SU, issued May 19, 1995, we granted NFMU's motion to vacate the automatic stay. That order permitted NFMU to collect the service availability charge, but required the utility to place half of the funds in an escrow account pending the result of the appeal. This was done as only half of the \$740 service availability charge was in dispute. NFMU entered into an escrow agreement with First Union Bank and the Commission. The agreement provides that First Union Bank will disburse funds only upon our order. On May 30, 1995, OPC filed a motion for reconsideration of Order No. PSC-95-0612-PCO-SU. We denied OPC's motion for reconsideration by Order No. PSC-95-0788-FOF-SU, issued June 30, 1995.

On October 19, 1995, the First District Court of Appeal issued an order to show cause why OPC's appeal should not be dismissed for lack of jurisdiction, on the grounds that this Commission did not have the authority to extend the filing for reconsideration of Order No. PSC-94-1553-FOF-SU. The Court cited City of Hollywood v. Public Employees Relations Commission, 432 So.2d 79 (Fla. 4th DCA 1983), which held that an agency cannot extend the time for filing a motion for reconsideration in an administrative proceeding, absent express authority. On November 16, 1995, the Court issued an order dismissing OPC's appeal for lack of jurisdiction.

#### NFMU'S MOTION TO TERMINATE ESCROW ACCOUNT

On November 28, 1995, NFMU filed a motion to terminate the escrow account which was established upon OPC's filing of its appeal. In its petition, NFMU stated that because the First District Court of Appeal has dismissed OPC's appeal, and because there is no appeal pending, our orders are final and NFMU is entitled to the escrowed funds. Therefore, NFMU requested that we issue an order terminating the escrow agreement.

In its December 11, 1995 response, OPC stated its objection to NFMU's request. OPC contended that the legal status of Order No. PSC-0419-FOF-SU is uncertain because it was issued following an untimely motion for reconsideration. OPC therefore argued that there is no final pronouncement on the issues in this docket and it would be premature to consider NFMU's request to terminate the

escrow agreement "until the Commission clarifies this matter" and takes final action "without error." NFMU filed a reply to OPC's response on December 22, 1995, which is addressed below.

In the November 7, 1995, response to the Court's order to show cause, this Commission admitted error in permitting OPC leave to file its motion for reconsideration past the 15 day time limit, in light of the City of Hollywood decision. As noted herein, the First District Court of Appeal determined that it did not have jurisdiction to consider OPC's appeal because the time for appeal had run from the date of the final order. Because we did not have the authority to extend the time for filing for reconsideration, the time for appealing the final order was not tolled.

However, contrary to OPC's assertion that final action is necessary, we find that Orders Nos. PSC-94-1553-FOF-SU and PSC-95-0419-FOF-SU are properly the final determination in these dockets. While we may not have had authority to grant an extension of time for the filing of the motion for reconsideration, this Commission does have the authority to correct errors in its orders. Because we are charged with the statutory duty of regulating rates, we have the authority to amend an order when we find an error. See Reedy Creek Utilities Co. v. Public Service Commission, 418 So.2d 249 (Fla. 1982). Furthermore, in the Order on Reconsideration (PSC-95-0419-FOF-SU), we found that "our ultimate decision in Order No. PSC-94-1553-FOF-SU remains correct and is in fact supported by the record." We further note that the Court did not remand the matter for further action, require us to clarify the matter or take any further action with regard to the final order.

In consideration of the above, we find it appropriate to order that all funds related to the escrow account shall be released to NFMU, pursuant to the escrow agreement with First Union Bank.

#### OPC'S MOTION TO STRIKE REPLY

NFMU filed a reply to OPC's response on December 22, 1995. In that reply, NFMU objected to OPC's suggestion that final action was necessary in this docket. On December 27, 1995, OPC filed a motion to strike NFMU's reply, alleging that our rules do not permit a reply to a response.

We have considered all issues raised in NFMU's initial motion and OPC's response. Moreover, our rules do not contemplate a reply to a response. The pleading cycle must stop at a reasonable point. Therefore, we find it appropriate to grant OPC's motion to strike.

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Because we find that Orders Nos. PSC-94-1553-FOF-SU and PSC-95-0419-FOF-SU are the final determination in these dockets and that the escrowed funds may be released, no further action is necessary and these dockets shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the petition to terminate the escrow account filed by North Fort Myers Utility, Inc., is hereby granted. It is further

ORDERED that the Office of Public Counsel's motion to strike the reply filed by North Fort Myers Utility, Inc., is hereby granted. It is further

ORDERED that these dockets shall be closed.

By ORDER of the Florida Public Service Commission, this 11th day of March, 1996.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.