

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for approval of new rate for bulk wastewater service agreement with City of Cape Coral in Lee County, by North Fort Myers Utility, Inc.

DOCKET NO. 030517-SU
ORDER NO. PSC-04-0199-FOF-SU
ISSUED: February 24, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER DECLINING TO RULE UPON APPLICATION FOR APPROVAL
OF BULK WASTEWATER SERVICE AGREEMENT

BY THE COMMISSION:

North Fort Myers Utility, Inc. ("NFMU") is a Class A utility located in Lee County, Florida. NFMU has a water system at Pine Lakes and two wastewater systems, the Pine Lakes and North Fort Myers systems. According to its 2002 Annual Report, NFMU serves 1,845 water customers and 9,527 wastewater customers. NFMU reported annual revenues of \$3,414,966 and a net income of \$406,755 according to the same annual report.

On June 10, 2003, NFMU filed an application requesting approval of a new rate for a bulk wastewater service agreement between NFMU and the City of Cape Coral ("City"). We decline to rule upon NFMU's application for the reasons set forth below.

Section 367.022, Florida Statutes, exempts specific entities and activities from Commission regulation. Subsection (12) of the statute exempts the following:

(12) The sale or resale of bulk supplies of water or the sale or resale of wastewater services to a governmental authority or to a utility regulated pursuant to this chapter either by the commission or the county.

(Emphasis added.) Accordingly, the contemplated sale of bulk wastewater service by NFMU to the City of Cape Coral, a governmental authority, is exempt from this Commission's regulation.

DOCUMENT NUMBER-DATE

02706 FEB 24 8

FPSC-COMMISSION CLERK

This Commission has previously recognized this exemption. In Order No. PSC-00-1238-FOF-WS, issued July 10, 2000, in Docket No. 000315-WS, In re: Application by United Water Florida, Inc., for Approval of Tariff Sheets for Wholesale Water and Wastewater Service in St. Johns County, we declined to rule upon United Water Florida's application for approval of tariff sheets for wholesale water and wastewater service. The contemplated sale of those services was to a utility regulated by a county and, thus, was exempt from Commission regulation by Section 367.022(12), Florida Statutes. Further, in Order No. PSC-00-1902-AS-SU, issued October 17, 2000, in Docket No. 971638, In re: Application for Amendment of Certificate No. 226-S to Add Territory in Seminole County by Florida Water Services Corporation, we declined to rule upon a portion of a proposed settlement agreement that provided for the sale of bulk wastewater service from Florida Water Services Corporation to the City of Longwood. As in the instant case, the contemplated sale of the bulk wastewater service was to a governmental authority and, thus, was exempt from Commission regulation.

Consistent with language set forth in our prior orders referenced above, we provide the following guidelines to NFMU. First, for future ratemaking considerations, NFMU's cost of providing bulk wastewater service to the City, including interconnection costs, shall not be subsidized by its jurisdictional customers. Second, the revenues generated from the provision of bulk wastewater service to the City shall not be considered in any proceedings before this Commission involving the NFMU. NFMU remains subject to this Commission's ongoing jurisdiction and regulation.

In conclusion, we decline to rule upon NFMU's application for approval of a new rate for a bulk wastewater service agreement between NFMU and the City of Cape Coral, because the contemplated sale of bulk wastewater service is exempt from Commission regulation.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that this Commission declines to rule upon North Fort Myers Utility, Inc.'s application for approval of a new rate for a bulk wastewater service agreement between the utility and the City of Cape Coral. It is further

ORDERED that this docket shall be closed.

ORDER NO. PSC-04-0199-FOF-SU
DOCKET NO. 030517-SU
PAGE 3

By ORDER of the Florida Public Service Commission this 24th day of February, 2004.



BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

WCK

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.

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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.