

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for ) DOCKET NO. 930724-SU  
amendment of Certificate No. ) ORDER NO. PSC-95-0109-S-SU  
247-S and for a limited ) ISSUED: January 24, 1995  
proceeding to impose current )  
wastewater rates, charges, )  
classifications, rules and )  
regulations, and service )  
availability policies for Lazy )  
Days Mobile Village by NORTH FOR )  
MYERS UTILITY INC., and for )  
cancellation of Certificate No. )  
174-S issued to SUN-UP SOUTH, )  
INC. in Lee County. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER APPROVING STIPULATION

BY THE COMMISSION:

BACKGROUND

North Ft. Myers Utility, Inc. (NFMU or utility) is a Class B utility which provides regional wastewater service to approximately 2,700 customers in northern Lee County. The utility's 1992 annual report indicates an annual operating revenue of \$687,000 and a net operating deficit of \$204,000. Sun-Up South, Inc. (Sun-up) is a Class C utility also in Lee County with an annual operating revenue of \$46,065 and deficit of \$15,311.

On July 21, 1993, NFMU filed an application for amendment of its Wastewater Certificate No. 247-S to include service to the Lazy Days Village subdivision (Lazy Days) and an application for a limited proceeding to implement its rates and charges to customers within those subdivisions. The application proposed to cancel Sun-Up's certificate if the amendment is approved.

A customer meeting was held in the service territory on November 15, 1993, for the purpose of hearing the customers' comments concerning the interconnection. Approximately 350 customers attended the meeting. The customers were primarily

DOCUMENT NUMBER-DATE  
00861 JAN 24 85  
FPSC-RECORDS/REPORTING

concerned with the \$740 service availability charge and the increased rates. They also expressed their dissatisfaction with Sun-Up's owner with respect to the lack of notice of the pending sale and the fact that the owner is not attempting to repair the plant. The customers also addressed the necessity of the sale and the owner's obligation to continue providing service under the mobile home park's deed restrictions.

On June 13, 1994, we issued Order No. PSC-94-0726-FOF-SU, a proposed agency action order which granted the amendment of NFMU's certificate, cancelled Sun-up's certificate, and approved the limited proceeding to apply NFMU's rates and charges to the customers of Sun-up. The Order provided for temporary rates and charges in the event of protest.

On July 5, 1994, Harold McCort, President of the Lazy Days Property Association (Association), filed a protest to Order No. PSC-94-0726-FOF-SU, on behalf of the Association. On October 24, 1994, the Office of Public Counsel (OPC) filed a notice of intervention in this docket. On October 31, 1994, we acknowledged OPC's intervention by Order No. PSC-94-1343-PCO-SU.

On October 27, 1994, the parties filed a stipulation for our review and approval. The stipulation is an agreement among all of the parties of record: the utility, Association, OPC, and Sun-Up. The parties agreed that the only remaining issues to be resolved by the Commission were the appropriate amount of service availability charges to be paid to NFMU, and whether the Commission should establish a new "senior citizen mobile home owners" class of customers for service availability charges. The protestors agreed to withdraw their protests to the order as it related to granting NFMU an amendment of its certificate, cancelling Sun-up's certificate, imposing NFMU's rates and charges (with the exception of the service availability charges) on Sun-up's current customers. NFMU agreed not to collect any service availability charges from customers of Sun-up until the Commission makes a final determination of the proper amount of service availability charge. On December 12, 1994, we issued Order No. PSC-94-1537-FOF-SU which approved the stipulation and ordered that the portions of Order No. PSC-94-0726-FOF-SU that were not in dispute be made final and effective.

On December 13, 1994, NFMU filed a Motion for Summary Disposition. In its motion, NFMU argued that the issues presented in this docket are identical to the issues in Dockets Nos. 930373-SU and 930379-SU. Those dockets concerned the application of NFMU for commission approval to purchase the Lake Arrowhead Village, Inc. (LAVI) system and apply NFMU's rates and charges to LAVI's

customers. The Commission's final decision in that matter is set forth in Order No. PSC-94-1553-FOF-SU, issued December 13, 1994. NFMU alleged that in light of the decision made in Dockets Nos. 930373-SU and 930379-SU, it would not be prudent to hold a hearing in this matter. NFMU served its motion upon the Office of Public Counsel (OPC) by hand delivery. Therefore, OPC's response to the motion would have been due by December 20, 1994.

A Prehearing Conference was held on December 16, 1994, in Tallahassee, Florida. At the Conference, it was noted that OPC had not had the opportunity to file a response to NFMU's motion. It was further noted that the motion would be reviewed by the Commission panel assigned to hear this case, as it proposed a final disposition of the matter. Therefore, the parties initially agreed to request a continuance of the January 4, 1995 hearing in order to properly address the motion.

During the Prehearing Conference, the parties stipulated to the following: the final decision in Dockets Nos. 930373-SU and 930379-SU is binding upon and shall become the final decision in this docket. OPC requested and was granted additional time to file a motion for reconsideration of Order No. PSC-94-1553-FOF-SU, until January 6, 1995.

On December 22, 1994, the Prehearing Officer issued Order No. PSC-94-1586-PCO-SU, which acknowledged the parties' stipulation and the cancellation of the hearing, and stated that NFMU's Motion for Summary Disposition was moot.

#### APPROVAL OF THE STIPULATION

Although Order No. PSC-94-1553-FOF-SU was issued as a final order in the dockets dealing with LAVI, parties in those dockets may still file a motion for reconsideration or appeal within the appropriate time limits. The parties have agreed that once these rights have been exhausted, the final result of the LAVI decision is binding upon and shall become the final decision in this docket. The parties have essentially agreed that no hearing is necessary in this docket. Therefore, the stipulation results in a saving of resources and time for both the parties and the Commission.

We find that the parties' proposed stipulation is an appropriate resolution to this docket. Although this matter concerns a different application for amendment of certificate and a different group of customers, the issues are nearly identical to those addressed in Dockets Nos. 930373-SU and 930379-SU. Therefore, we hereby approve the stipulation and suspend any further action in this docket. Once Dockets Nos. 930373-SU and

ORDER NO. PSC-95-0109-S-SU  
DOCKET NO. 930724-SU  
PAGE 4

930379-SU are rendered final, we will address the final disposition of this matter.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the stipulation entered into the parties on December 16, 1994, is hereby approved. It is further

ORDERED that any further action in this docket shall be suspended pending the final disposition of Dockets Nos. 930373-SU and 930379-SU.

By ORDER of the Florida Public Service Commission, this 24th day of January, 1995.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay J. Lynn  
Chief, Bureau of Records

( S E A L )

MEO

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

ORDER NO. PSC-95-0109-S-SU  
DOCKET NO. 930724-SU  
PAGE 5

Records and Reporting 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.