

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of ) DOCKET NO. 950522-SU  
new class of wastewater service ) ORDER NO. PSC-95-0866-FOF-SU  
for customers of Tamiami Village ) ISSUED: July 17, 1995  
Utility, Inc., in Lee County, by )  
North Fort Myers Utility, Inc. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER APPROVING SPECIAL SERVICE AVAILABILITY AGREEMENT AND  
CORRESPONDING TARIFF SHEETS, AND DENYING ALTERNATIVELY-FILED  
TARIFF SHEETS

BY THE COMMISSION:

BACKGROUND

North Fort Myers Utility, Inc. (NFMU or utility), is a Class A utility which provides regional wastewater service to approximately 2,700 customers in northern Lee County. On September 13, 1994, NFMU filed an application for amendment of its Wastewater Certificate No. 247-S to include territory served by Tamiami Village Utility, Inc. (TVU), and cancellation of TVU's Wastewater Certificate No. 332-S, which we processed under Section 367.071, Florida Statutes, as an application for transfer of TVU's territory to NFMU, cancellation of Certificate No. 332-S, and amendment of Certificate No 247-S. On the same date, NFMU also filed a request for a limited proceeding to impose its current rates, charges, classifications, rules and regulations, and service availability policies upon TVU's existing customers and service area. These requests were processed in Docket No. 940963-SU.

Upon notification, numerous objections were timely filed by members of the Tamiami Village Lot Owners Association, Inc., the Tamiami Village Community Association, Inc. and the Tamiami Renter's Association, Inc. Consequently, the matter was set for formal hearing on February 2-3, 1995. On November 22, 1994, the Office of Public Counsel (OPC) filed a Notice of Intervention which was acknowledged by Order No. PSC-94-1475-PCO-SU, issued December

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1, 1994, in that docket. The formal hearing was held on February 2, 1995. Order No. PSC-95-0576-FOF-SU was issued May 9, 1995, approving NFMU's application to transfer the territory served by TVU to NFMU, cancel TVU's Certificate No. 332-S and amend NFMU's Certificate No. 247-S. In addition, the Commission approved NFMU's request to impose its current rates, charges, classifications, rules and regulations, and service availability policies. However, on May 24, 1995, OPC filed a Motion for Reconsideration and for Clarification of Order No. PSC-95-0576-FOF-SU.

Continued operation of the TVU wastewater plant would place the system in serious violation of environmental regulations. The system is currently operating under a Consent Final Judgement from the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, which requires TVU to deactivate the facility and connect it to the NFMU wastewater system within 150 days of the date of the judgement.

#### PETITION

On May 5, 1995, NFMU filed a Petition for a New Class of Service. On May 10, 1995, NFMU filed an Amendment to its Petition, to make clear that the purpose of the Petition is to provide bulk wastewater service to TVU on a temporary basis, pending the outcome of the Motion for Reconsideration of Order No. PSC-95-0576-FOF-SU. On May 12, 1995, at the suggestion of Staff, NFMU modified its Petition to a request for approval of a special service availability agreement with TVU, pursuant to Section 367.101, Florida Statutes, and Rule 25-30.550, Florida Administrative Code. Along with its request, NFMU filed proposed original tariff sheets, requesting approval of one of two alternatively-proposed methodologies for charging for the bulk service.

Because, as previously noted, TVU is currently operating its system under a Consent Final Judgement, and because its effluent disposal ponds are overloaded, TVU has requested that NFMU expedite the interconnection. Pursuant to that request, NFMU has begun construction to interconnect TVU. The anticipated construction completion date is June 15, 1995. In accordance with Rule 25-30.550(3), Florida Administrative Code, NFMU affirms that its current treatment plant connected load is a peak of 1 million gallons per day (mgd), the current treatment plant capacity is 2.0 mgd, and the amount of capacity reserved under its agreement with TVU is a peak of 143,400 gallons per day (gpd).

BILLING METHODOLOGIES

NFMU proposed to bill for the bulk service to TVU according to one of the two following methodologies:

1) NFMU will directly bill the customers of TVU the TVU existing rates, and will assume maintenance responsibilities for TVU's collection system. All revenue received will be retained by NFMU. Under this methodology, NFMU will merely "step in the shoes" of TVU pending the outcome of the Motion for Reconsideration of Order No. PSC-95-0576-FOF-SU; or

2) TVU will continue to bill its customers its approved rates, and will continue to maintain its collection system. Under this methodology, TVU is to remit 80% of the revenue collected to NFMU. The 20% retained by TVU covers the cost of billing, bookkeeping and maintenance for the lines. (A similar methodology was used in Docket No. 890545-WS. See Order No. 21539, issued in that docket on July 13, 1989, In re: Application of Martin Downs Utilities, Inc., for new class of service in Martin County).

We believe that billing methodology one, above, is appropriate in this situation. We note that this is also the preferred methodology of both NFMU and TVU, and it is the methodology outlined in the special service availability agreement. Under this methodology, TVU will continue to retain its certificate while allowing NFMU to manage its system. We view this arrangement as a management decision on the part of TVU, and we agree with this decision. Because we find that it is a reasonable solution pending the outcome of Order No. PSC-95-0576-FOF-SU, we hereby approve proposed billing methodology one, above. Based on the foregoing, NFMU shall hereby be authorized to collect the same rates and charges as are reflected in TVU's tariff for the provision of bulk service to the customers of TVU pending the final disposition of Order No. PSC-95-0576-FOF-SU.

TARIFF FILINGS

Along with its request, and pursuant to Section 367.091(2), Florida Statutes, NFMU submitted two sets of proposed, original tariff sheets which contain the rates and charges for the special service availability customers; one set of tariff sheets reflecting each of the two alternatively-proposed billing methodologies. Pursuant to Section 367.091(5), Florida Statutes, the sixty-day

suspension date for action on the proposed tariff sheets is July 4, 1995.

The rates and charges reflected on the proposed tariff sheets for billing methodology one, above, are the same as those currently approved for TVU. Therefore, we believe that these proposed rates and charges are just and reasonable. Accordingly, the proposed tariff sheets reflecting billing methodology one, above, shall also be approved, and the alternatively-proposed tariff sheets reflecting billing methodology two, above, shall be denied. The approved rates and charges shall be effective for service rendered on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code.

If a timely protest is not received by a substantially affected person, no further action will be required and this docket shall be closed. In the event that a timely protest is filed, the tariff sheets approved herein shall remain in effect, and the revenues shall be held subject to refund, pending resolution of the protest. In the event of a protest, the appropriate security of the monies will be addressed at that time.

Based on the foregoing, it is, therefore,

ORDERED that North Fort Myers Utility, Inc.'s, special service availability agreement with Tamiami Village Utility, Inc., for the provision of bulk wastewater service pending the final disposition of Order No. PSC-95-0576-FOF-SU, issued May 9, 1995, in Docket No. 940963-SU, is hereby approved. It is further

ORDERED that North Fort Myers Utility, Inc.'s, corresponding tariff request for the provision of bulk wastewater service to Tamiami Village Utility, Inc., according to proposed billing methodology one, as set forth in the body of this Order, is hereby approved. It is further

ORDERED that North Fort Myers Utility, Inc.'s, alternative tariff request for the provision of bulk wastewater service to Tamiami Village Utility, Inc., according to proposed billing methodology two, as set forth in the body of this Order, is hereby denied. It is further

ORDERED that the rates and charges approved herein shall become effective for services rendered on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code. It is further

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ORDERED that the tariff sheets approved herein are interim in nature and shall become final unless a substantially affected person files a petition for a formal proceeding which is received by the Director, Division of Records and Reporting, by the date in the Notice of Further Proceedings or Judicial Review set forth below. It is further

ORDERED that if a timely protest is filed in accordance with the requirements set forth below, the tariff sheets approved herein shall remain in effect, and the revenues shall be held subject to refund, pending resolution of the protest. It is further

ORDERED that if no timely protest is filed, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 17th day of July, 1995.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kary Flynn  
Chief, Bureau of Records

( S E A L )

RGC

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.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the action proposed files a petition for a formal

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proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 7, 1995.

In the absence of such a petition, this Order shall become final on the day subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this Order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this Order becomes final on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the date this Order becomes final, 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.