



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: December 16, 1996
TO: Blanca Bayo, Director of Records and Reporting
FROM: Bob Casey, Regulatory Analyst, Water and Wastewater Division
RE: Docket No. 960984-WS, Investigation of Possible Overearnings by North Peninsula Utilities Corporation

Please place a copy of the attached letter from North Peninsula Utilities Corporation in the above Docket file. The letter is in response to the PSC audit. Thank You.

cc: Division of Water and Wastewater (Hill, Bethea, Rieger)
Division of Legal Services (Capeless)

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NORTH PENINSULA UTILITIES CORP.

P.O. Box 2005
Ormond Beach, FL 32175
904-673-8781

Form 413		Form 441	
Doc#	Regulatory	Doc#	Regulatory
Case#	413 6225	Case#	441 7508
Doc#	413 6225	Doc#	441 3449
To: Bob Casey		To: Greg Wilson	
cc: PSC		cc: NPU	
Dept: Regulatory		Dept: Regulatory	
Date: 4/13/97		Date: 4/13/97	
Page: 1		Page: 1	
Total Pages: 1		Total Pages: 1	

December 12, 1996

Mr. Robert Casey
Regulatory Analyst
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Docket No. 960984-SU -- North Peninsula Utilities Corporation
Overearnings Investigation Audit Report - Period Ended June 30, 1996
Audit Control #96-243 3 1

Dear Mr. Casey:

This is in response to your audit report on North Peninsula Utilities for a period of twelve (12) months ending June 30, 1996. It appears in this report that the recommendation is for a reduction in our allowable monthly rate. We believe our rates are fair and equitable, and if anything, too low at this time.

North Peninsula Utilities Corporation purchased this operation in 1989 and has since that time vastly improved the quality of service and the quality of the physical plant by upgrading and replacing most of the operational parts and tanks of the utility. When we acquired this plant from Shore Utilities it was in dire need of a complete overhaul both from a physical standpoint and a billing and collection position. We endeavored from the beginning to provide efficient service to our customers and in doing so have absorbed many of the costs both personally and through other companies we control.

This is a small utility and every hook up and every dollar is important for a successful operation, more so than other large statewide utilities. Up until now we have not had a formal management agreement in place for the operation of North Peninsula Utilities Corporation. That was probably an error on our part, and I am enclosing with this letter a new management agreement between North Peninsula Utilities Corporation and Peninsula Management Inc. which will take effect January 1, 1997. We would appreciate it if you would take into consideration the fact that in past years from a debt income standpoint, operational income was marginal at best. We also feel that your audit year of June to June may not reflect a true picture.

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT, made this 1st day of January, 1997 by and between North Peninsula Utilities Corporation, a corporation organized and existing under the law of Florida, (hereinafter called the "Utility") and Peninsula Management, Inc., a corporation organized and existing under the laws of Florida, (hereinafter called the "Manager");

WHEREAS, the Utility is charged with the responsibility to provide water and sewer service to its certificated territory in Volusia County, Florida, pursuant to Certificate 249-S issued by the Florida Public Service Commission; and

WHEREAS, the Utility desires to contract with Manager such that Manager will provide the services with which Utility is charged, with responsibility in an efficient and professional manner to the benefit of the Utility and its customers; and

WHEREAS, Manager is fully capable and desirous of providing such management services to the Utility under the terms and conditions set forth herein; and

WHEREAS, Utility has contracted with Wetherell Treatment to provide on-site operations and maintenance. Manager will accept the responsibility to oversee and manage that contract. Items listed as Wetherell Treatment responsibilities pursuant to that contract are specifically excluded from Manager's duties under this Agreement. However, this in no way limits Managers's capability to perform and be compensated for those duties.

NOW, THEREFORE, for and in consideration of the premises and the sum of Ten Dollars and 00 Cents (\$10.00) and other good and valuable considerations exchanged between the parties hereto the receipt of which is acknowledged, the parties hereby warrant, covenant and agree as follows:

1. **EXCLUSIVE AGENCY.** Peninsula Management, Inc. agrees to be the Manager of the Utility pursuant to the terms and conditions hereinafter provided.

2. **TERM.** This Agreement shall remain in full force and effect from January 1, 1997 through December 31, 1997 and is automatically renewable for successive one (1) year terms unless cancelled by either party upon written notice given to the others at least ninety (90) days prior to the effective date of the termination.

3. **APPOINTMENT OF MANAGER.** In order to provide for centralized management of the system, the parties hereto acknowledge and agree that Manager shall act as, and is hereby appointed by Utility as, the manager of the system. Manager is a Florida corporation and shall have the right to subcontract for portions of the services described herein. Manager shall manage the System using its discretion in discharging the duties described herein. However, all work performed by Manager will be done in accordance with the provisions of this Agreement and subject to Utility's continuing right of inspection.

4. **MANAGER'S DUTIES.** The Manager shall be responsible for the maintenance and operation of the Utility's facilities and infrastructure and such other duties and responsibilities from time to time as may be assigned by the Utility including, but not limited to, those which may be required by applicable law. The cost of all maintenance and operations to be borne by the Utility.

The Manager shall also provide consultation, advice, guidance and managerial services to the Utility as required by it. Managerial services include, but are not strictly limited to, the following:

- a) Employment and supervision of all individuals or companies hired or contracted with for the performance of any duties or services to, or for, Utility. The cost of any employees or subcontractors to perform Managers' duties shall be borne by the Manager.
- b) Purchasing, leasing, contracting or otherwise arranging services, supplies, equipment, vehicles, maintenance agreements, bonds or materials necessary to maintain, preserve and repair any property under management. Cost of which to be borne by the Utility.
- c) Oversee day-to-day accounting services and the maintenance of proper accounting records as required by the statutes, Administrative Code Rules and policies of the Florida Public Service Commission. The cost of all accounting services to be borne by the Utility.
- d) Obtain and maintain all required licenses and permits and the name of the Utility at Utility's expense.
- e) Supervise and manage all construction, repairs and emergency situations..
- f) Correspond and meet with City, County, State and Federal Agencies concerning utility matters, in the name of the Utility.
- g) Provide administrative services, such as word processing, corporate correspondence and other computer services in performance of its management services.
- h) Provide budgets and cash flow projection.
- i) Provide customer service, other than billing, in the name of the Utility.

h) Loss or damage, consequential or direct, arising from the operation of, or failure of the System, or any portion thereof, or for the failure of manufacturers to honor warranties, obsolescence, oxidation or corrosion, pollution, contamination or fire, unless such loss or damage is the result of or caused by an act or omission of the Manager in the performance of its obligations pursuant to this Agreement.

i) The replacement or replacement cost of any portion of the System or of its equipment. Manager reserves the right to Advise Utility when its equipment is obsolete and non-repairable, and which requires replacement; however, Utility will make the final decision as to when and if said equipment is to be replaced.

6. **MANAGER'S COMPENSATION.** The Utility agrees to pay a Management Fee of \$9.34 per connected sewer customer per month. As of 01/01/97, said fee equates to \$4,548.00 per month for 467 connections. This fee shall be adjusted monthly based on new connections and disconnects. In addition to the Management Fee the Utility shall pay all reasonable costs and expenses incurred by Manager in the performance of its duties (including but not limited to reasonable attorneys' fees and all costs of utilizing Manager's own employees, seminars, dues and subscriptions, travel, office supplies or other materials). Manager shall be entitled to withdraw from the revenues of the Utility system the adjusted Management Fee monthly plus have the Utility pay direct or reimburse Manager the other expenses as billed. Such reimbursement shall be in addition to and not a part of the cost of providing the services described herein. In the event that the revenues of the Utility's system are insufficient to meet the expenses of operating the system and the Manager's fee, Utility shall advance its own funds to make up such short falls.

7. REIMBURSEMENT FOR ADDITIONAL SERVICES AND EXTRAORDINARY COSTS. In the event Utility requests Manager to undertake any services not reasonably incurred as included in this Agreement, Manager shall be entitled to receive additional reimbursement therefore, upon agreement with the Utility in writing and setting forth the terms and conditions and reimbursement for such services. In addition, upon submission of justification and approval of the Utility, Manager shall be entitled to receive a monthly fee in any one month exceeding the above stated amount. Utility shall be obligated to pay or reimburse Manager for any extraordinary cost incurred in the management, operation and maintenance of the Utility's system. The Utility shall have the opportunity to review and approve such extraordinary cost prior to incurring an obligation to pay, which approval shall not be unreasonably withheld. Manager shall advise Utility in writing of the need for such expenditures, the cost, and the system improvements expected from such expenditure. The Utility shall respond with written approval and payment within 30 days of such written notice from Manager of the actual or expected incursion of such extraordinary costs. The above does not apply in emergency cases whereby the Manager shall take whatever action and incur whatever costs necessary to protect life and facilities in an emergency situation, without Utility's prior approval. All such costs shall be paid by Utility as billed.

8. DEVELOPER AGREEMENT. Manager shall have the authority to negotiate Developer Agreements with third party Developers seeking service from Utility's system. Manager shall adopt a standard form Developer Agreement, which form shall be approved for utilization by Utility. All Developer Agreements shall follow that form, except in the case of extraordinary circumstances, in which event any such extraordinary or unusual

Developer Agreement shall be subject to prior approval of the Utility. All Developer Agreements shall be signed by a designated representative of the Utility on its behalf.

9. **INSPECTION.** Utility shall have the right to conduct inspections of the system's facilities to insure adequate maintenance and operation of the system in compliance with all state and federal laws. Manager shall provide access to the system for Utility's personnel during regular business hours, with 24 hours per day access in case of emergency. Inspections may be made by any of Utility's employees so designated by the Utility. Manager shall identify for Utility in writing and deficiencies noted and reference statute or rule standards being violated, and Manager shall be required to correct any deficiencies so noted as soon as reasonably possible.

10. **FORCE MAJEURE.** With respect to the matters contemplated by this Agreement, neither party shall be liable or responsible to the other as a result of any injury to property or person, which was caused by force majeure. The term "force majeure" as employed herein shall include, but not limited to, acts of God, strikes, lockouts, or other industrial disturbances, acts of any public enemy, wars, blockades, riots, acts of the armed forces, epidemics, delays by carriers, inability to obtain materials or right-of-way on reasonable terms, acts or failures to act by public authorities or acts or failures to act by regulatory authorities.

11. **OPERATIONAL INDEMNIFICATIONS.** Manager shall indemnify Utility against all liability or loss, and against all claims or actions based upon or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with the performance of this Agreement or by conditions created thereby, or based upon any violation of any statute, ordinance, building code or regulation, and the defense of

any such claims or actions. Manager shall also indemnify Utility against all liability and loss in connection with, and shall assume full responsibility for, payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to Manager's employees engaged in performance of this Agreement. Notwithstanding the foregoing, Manager shall not be responsible for resulting injury or harm, absent intentional acts or gross negligence, for the carrying out of specific directives of Utility and Utility shall indemnify Manager for same. The indemnification provided for herein shall survive termination of this Agreement.

12. **FURTHER ASSURANCES.** The parties hereto agree to execute any and all further instruments and documents and to take all action as may be reasonably required by either party to effectuate the terms and provisions of this Agreement and the transactions contemplated herein.

13. **GOVERNING LAW.** This Agreement shall be governed in its enforcement and construction and interpretation by the laws of the State.

14. **LIABILITY.** Except as provided for in this Agreement, Manager shall not incur any liability or obligation on account of the Utility without written approval by the Utility.

15. **ASSIGNMENT.** Manager may assign this Agreement to any of its related companies provided, however, that this Agreement shall not be other wise assigned by Manager without the prior written consent of the Utility.

16. **SUCCESSORS.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

17. **NOTICE.** When either party decides to give notice to the other, or to make demands, such notice shall be in writing and shall be delivered either by facsimile machine or Certified Mail, Return Receipt Requested, addressed to the party to whom it is or as follows:

For Manager: Robert L. Hillman
 Peninsula Management, Inc.
 P.O. Box 1364
 Ormond Beach, FL 32175

For Utility: Tyree F. Wilson
 North Peninsula Utilities Corporation
 1460 Oceanshore Blvd.
 Ormond Beach, FL 32176

18. **TERMINATION.** During the 90 day period after notice of termination and before the effective date of any termination, the parties shall account to each other with respect to all pending matters including, but not limited to, work in progress, existing contracts, accounts receivable, accounts payable or other matters notice by the Utility.

19. **ENTIRE AGREEMENT.** This Agreement shall constitute the entire Agreement between the parties and no variance or modification thereof shall be valid and enforceable, except by supplemental agreement in writing, executed and approved in the same manner as this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

Carole L. May

ATTEST

Secretary

Carole L. May

NORTH PENINSULA UTILITIES CORP.

By: Tyree F. Wilson
Tyree F. Wilson

PENINSULA MANAGEMENT, INC.

By: [Signature]