

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for transfer) DOCKET NO. 940963-SU
of territory served by Tamiami) ORDER NO. PSC-95-0138-PHO-SU
Village Utility, Inc. in Lee) ISSUED: January 27, 1995
County to North Fort Myers)
Utility, Inc., cancellation of)
Certificate No. 332-S and)
amendment of Certificate No.)
247-S; and for a limited)
proceeding to impose current)
rates, charges, classifications,)
rules and regulations, and)
service availability policies.)
_____)

Pursuant to Notice, a Prehearing Conference was held on January 9, 1995, in Tallahassee, Florida, before Commissioner Diane K. Kiesling, as Prehearing Officer.

APPEARANCES:

MARTIN S. FRIEDMAN, ESQUIRE, Rose, Sundstrom & Bentley,
2548 Blairstone Pines Drive, Tallahassee, Florida 32301
On behalf of North Fort Myers Utility, Inc.

STEPHEN C. REILLY, ESQUIRE, Office of Public Counsel, c/o
The Florida Legislature, 111 West Madison Street Room
813, Tallahassee, Florida 32399-1400
On behalf of the Office of Public Counsel.

ROSANNE G. CAPELESS, ESQUIRE, Florida Public Service
Commission, 101 East Gaines Street, Tallahassee, Florida
32399-0863
On behalf of the Commission Staff.

PRENTICE PRUITT, ESQUIRE, Florida Public Service
Commission, 101 East Gaines Street, Tallahassee, Florida
32399-0862
On behalf of the Commissioners.

PREHEARING ORDER

I. CASE BACKGROUND

North Fort 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

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utility's 1993 annual report indicates an annual operating revenue of \$687,000 and a net operating deficit of \$204,000.

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 is being 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 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.

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 Judgment 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 judgment, or by February 20, 1995. In order to serve the TVU service area, NFMU proposes to construct a force main and upgrade a lift station at its own expense.

TVU's service area consists of approximately 732 mobile homes with a clubhouse and recreation area, an RV park with approximately 243 sites, and several commercial buildings. The NFMU treatment plant and disposal system has a capacity of 2 million gallons per day and has considerable excess capacity. NFMU's primary means of disposal is by effluent spray irrigation. NFMU and TVU entered into a wastewater service agreement on August 31, 1994, for the connection to NFMU, the payment of service availability charges, and the implementation of NFMU's monthly service charges.

Pursuant to Section 367.071, Florida Statutes, and Rule 25-30.030, Florida Administrative Code, NFMU provided appropriate notice of the application to all required entities, as well as notice by publication, on September 13, 1994. Notice by mail was appropriately sent to each of TVU's current wastewater customers on September 15, 1994. 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, this matter has been set for formal hearing on February 2 - 3, 1995, in Fort Myers. On November 22, 1994, the Office of Public Counsel (OPC) filed a Notice of Intervention in this docket, which was acknowledged by Order No. PSC-94-1475-PCO-SU, issued December 1, 1994.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not

subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

III. POST-HEARING PROCEDURES

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

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IV. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the

testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

V. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
A. A. Reeves, III	NFMU	All
Kimberly H. Dismukes	OPC	7, 8, 9, 10, 11, 12, 13
James Grob	Staff	1, 2
*Kathy L. Welch	Staff	Stipulated Issue
<u>Rebuttal</u>		
A. A. Reeves, III	NFMU	All

*All parties have stipulated that Ms. Welch's testimony and exhibits may be entered into the record, and have waived any cross-examination of this witness. Further, the parties have agreed that Ms. Welch's presence at the hearing is not necessary.

VI. BASIC POSITIONS

NFMU: Due to the inability of TVU to dispose of its wastewater effluent in accordance with the standards established by DEP, it entered into a Consent Order with DEP to interconnect with NFMU. NFMU has the technical and financial ability to serve the TVU customers, and it is in the public interest for it to do so. The mobile home customers served by TVU should pay NFMU service availability charges of \$740 each (including gross-up), based upon NFMU's tariff for mobile homes. If NFMU's tariff for mobile homes is determined not to have been approved by the Commission, then the appropriate service availability charge for mobile homes should be \$1,018 (including gross-up). NFMU should not be required to negotiate service availability charges with customers who claim that their usage is different from the gallons per day assumptions in NFMU's service availability tariff.

OPC: The appropriate service availability charge to be collected by NFMU to serve the former customers of TVU should be \$375 (if gross-up is appropriate) per mobile home connection, rather than the \$740 (including gross-up) per customer being proposed by NFMU. The charge proposed by NFMU is not fair because it assumes that the Tamiami Village homeowners will utilize more than twice as much wastewater services as they have historically used in the past. The Commission should authorize NFMU to collect no more than the \$375 per mobile home connection to serve the Tamiami Village subdivision and it should direct NFMU to amend its tariff to provide for a service availability charge of \$231 (before gross-up) for mobile home customers.

STAFF: Staff's positions are preliminary and are based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all of the evidence in the record and may differ from the preliminary positions. The information gathered through discovery and prefiled testimony indicates, at this point, that NFMU's application for transfer of territory served by TVU, and for a limited proceeding to impose its current rates, charges, classifications, rules and regulations, and service availability policies upon the customers of TVU,

should be granted provided that NFMU complies with all portions of Rule 25-30.037, Florida Administrative Code. A final determination cannot be made until the evidence presented at hearing is analyzed.

VII. ISSUES AND POSITIONS

ISSUE 1: Is the quality of service provided to NFMU's existing customers satisfactory?

POSITIONS

NFMU: Yes. (Reeves)

OPC: No position pending further development of the record.

STAFF: Yes. (Grob)

ISSUE 2: Does NFMU have the technical ability to serve the wastewater needs of the customers currently served by TVU?

POSITIONS

NFMU: Yes. (Reeves)

OPC: No, unless the utility establishes at the hearing that it has the technical ability to serve the wastewater needs of the customers currently served by TVU.

STAFF: Yes. Based on the preliminary information already received, it appears that NFMU has the technical ability to serve the wastewater needs of the customers of TVU. (Grob)

ISSUE 3: Does NFMU have the financial ability to serve the wastewater needs of the customers currently served by TVU?

POSITIONS

NFMU: Yes. (Reeves)

OPC: No, unless the utility establishes at the hearing that it has the financial ability to serve the wastewater needs of the customers currently served by TVU.

STAFF: Yes. Based on the preliminary information already received, it appears that NFMU has the financial ability to serve the wastewater needs of the customers of TVU.

ISSUE 4: Is it in the public interest to grant NFMU the transfer of territory requested in its application?

POSITIONS

NFMU: Yes. (Reeves)

OPC: No position pending further development of the record.

STAFF: No position pending further development of the record.

ISSUE 5: Should NFMU impose all current rates, charges, rules and regulations, and service availability policies upon the customers of TVU?

POSITIONS

NFMU: Yes. (Reeves)

OPC: No.

STAFF: Yes. The charges should be based on those charges set forth in the agreement between NFMU and TVJ, and as set forth in NFMU's tariff.

ISSUE 6: Was the original approval of NFMU's service availability charge for mobile home customers made in accordance with the requirements of Section 367.101, Florida Statutes, and Rules 25-22.0408, 25-30.135, and 25-30.565, Florida Administrative Code?

POSITIONS

NFMU: No. Since NFMU had a Commission-approved service availability charge, and the purpose of the amendment to its tariff was to create a lesser charge for mobile home single-family residences, the requirements of Section 367.101, Florida Statutes, and Rules 25-22.0408, 25-30.135, and 25-30.565, Florida Administrative Code, were unnecessary.

OPC: No. The Commission Staff accepted NFMU's proposal to establish the disputed charge without the review and scrutiny required by the Florida Statutes and the Commission's rules. Since the Commission and its Staff have never conducted a proper review of this charge, no special credence should be given to the fact that the charge is currently included in the utility's tariff or that it is referenced in subsequent orders of the Commission.

STAFF: Yes, the original approval of NFMU's service availability charge for mobile home customers was made in accordance with the requirements of Section 367.101, Florida Statutes, and Rules 25-22.0408, 25-30.135, and 25-30.565, Florida Administrative Code.

ISSUE 7: Is the 275 gpd used by NFMU to set its service availability charge based upon average flow or peak flow?

POSITIONS

NFMU: It is irrelevant to this proceeding whether NFMU's service availability charge is based upon average flow or peak flow, although it is believed that peak flow would be the more appropriate measure for determining service availability charges, particularly due to the seasonal nature of NFMU's customers. (Reeves)

OPC: The 275 gpd used by NFMU to set its service availability charge is based upon an average flow for a typical residential connection. (Dismukes)

STAFF: Peak flows were used by NFMU to develop its service availability charges.

ISSUE 8: Should NFMU's service availability charge be based upon average flow or peak flow?

POSITIONS

NFMU: Whether NFMU's service availability charge should be based upon average flow or peak flow is irrelevant to this proceeding, although peak flow is the more appropriate measure for determining service availability charges due to the seasonal nature of NFMU's customers. (Reeves)

OPC: Either peak or average flow can be used to establish service availability charges. However, because the basis of NFMU's charge is based upon an average annual flow of 275 gallons per day, the service availability charge for mobile home customers should likewise be based upon an average annual flow. (Dismukes)

STAFF: Peak flows are generally used to develop service availability charges.

ISSUE 9: If NFMU's service availability charge should be based upon a peak flow, is the basis of its charge (that is, the 275 gpd for a typical residential connection) correct?

POSITIONS

NFMU: Whether NFMU's service availability charge based upon 275 gpd for a typical residential connection is correct is irrelevant to this proceeding. NFMU's service availability charge was established by Commission Order No. 11359, issued in 1982, and may not be collaterally attacked in this proceeding. (Reeves)

OPC: No, the 275 gpd basis of NFMU's service availability charge is not correct. The peak flow for a typical residential connection served by NFMU is substantially less than 275 gpd. (Dismukes)

STAFF: Yes.

ISSUE 10: If NFMU's service availability charge should be based upon peak flow, how should the peak flow be measured (i.e., peak month, three month peak, peak day, peak hour, or an assumed peak), and what peak flow should be used to establish the service availability charge for mobile home customers?

POSITIONS

NFMU: NFMU's service availability charge has been established by the Commission and whether peak or average flows from the TVU customers is different from that in the tariff is irrelevant. (Reeves)

OPC: The maximum peak flow that should be used is the peak month. For the mobile home customers served by NFMU the peak month flow is 140 gpd. (Dismukes)

STAFF: The methodology used to establish service availability charges is not cast in stone. Service availability charges are established on a case by case basis.

ISSUE 11: Is the 200 gallon per day assumption used by NFMU to set the service availability charges for mobile home customers valid and based upon any operative rule, authority, or valid documentation?

NFMU: Yes. However, if the mobile home service availability charge is not based upon an operative rule, authority, or valid documentation, then mobile home customers should pay the same service availability charges as other single family residences, which is \$1,018 (including gross-up). (Reeves)

OPC: No. The 200 gpd assumption used by NFMU is based upon an inoperative and outdated HRS rule that does not even apply to utilities the size of NFMU. The 200 gpd assumption used by NFMU is not based upon any operative rule, authority, or valid documentation. (Dismukes)

STAFF: Yes. The 200 gpd assumption used by NFMU is based upon Rule 25-30.515(10), Florida Administrative Code, and NFMU's approved tariff.

ISSUE 12: What is the appropriate (fair, just, and reasonable) amount of service availability charge to be collected by NFMU to serve the customers formerly served by TVU?

POSITIONS

NFMU: The appropriate amount of service availability charge to be collected by NFMU to serve the customers formerly served by TVU is \$740 per residential connection. (Reeves)

OPC: The appropriate amount of service availability charge to be collected by NFMU to serve the customers formerly served by TVU is \$375 per residential connection (if gross-up is appropriate). If peak flow is used to set the charge, the basis of NFMU's charge is incorrect. Nevertheless, if peak flow is used, the charge should be set at \$518 (if gross-up is appropriate), based upon a peak month flow for all NFMU's mobile home customers of 140 gpd. (Dismukes)

STAFF: The appropriate amount of service availability charge to be collected by NFMU to serve the customers formerly served by TVU is \$740 per residential connection.

ISSUE 13: In the absence of a tariff service availability charge for mobile homes, is it appropriate for new customers to negotiate a service availability charge based upon actual consumption, and if not, what is the appropriate service availability charge for mobile homes?

POSITIONS

NFMU: If the service availability charge for mobile homes is determined not to be properly approved, then the mobile home customers should be required to pay the same amount as other single family residences, which is \$1,018 (including gross-up). (Reeves).

OPC: In the absence of a tariffed service availability charge for mobile home customers, mobile home customers should be charged nothing until a proper charge is established. The customers of TVU are not attempting to negotiate a service availability charge based upon actual consumption. The customers of TVU are requesting that the Commission establish a fair, just, and reasonable service availability charge for all mobile home customers served by NFMU.

STAFF: This issue involves a hypothetical situation. Because there is a specific charge relating to service availability for mobile homes in NFMU's approved tariff, this issue is irrelevant.

VIII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
A. A. Reeves, III	Utility	AAR-1	Resume
"	"	AAR-2	Wastewater Agreement
"	"	AAR-3	Consent Final Judgment
Kimberly H. Dismukes	OPC	Appendix I	Qualifications of witness
"	"	KHD-1	Schedules 1-4
James Grob	Staff	JG-1	DEP's Second Amended Complaint
"	"	JG-2	Consent Final Judgment
"	"	JG-3	Amended Order
Kathy L. Welch	"	KLW-1	Staff Audit Report
"	"	KLW-2	Analysis of plant in service and CIAC
<u>Witness</u>			
<u>Rebuttal</u>			
A. A. Reeves, III	Utility	AAR-4	Copy of application and supplemental information

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

IX. PROPOSED STIPULATIONS

The rate base at the time of the transfer should be \$63,700.16.

X. PENDING MOTIONS

There are no motions pending at this time.

It is therefore,

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

BY ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 27th day of January, 1995.



DIANE K. KIESLING, Commissioner and
Prehearing Officer

(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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida

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Administrative Code, if issued by the Commission; or 3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

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*All parties have stipulated that Ms. Welch's testimony and exhibits may be entered into the record, and have waived any cross-examination of this witness. Further, the parties have agreed that Ms. Welch's presence at the hearing is not necessary.

VI. BASIC POSITIONS

NFMU: Due to the inability of TVU to dispose of its wastewater effluent in accordance with the standards established by DEP, it entered into a Consent Order with DEP to interconnect with NFMU. NFMU has the technical and financial ability to serve the TVU customers, and it is in the public interest for it to do so. The mobile home customers served by TVU should pay NFMU service availability charges of \$740 each (including gross-up), based upon NFMU's tariff for mobile homes. If NFMU's tariff for mobile homes is determined not to have been approved by the Commission, then the appropriate service availability charge for mobile homes should be \$1,018 (including gross-up). NFMU should not be required to negotiate service availability charges with customers who claim that their usage is different from the gallons per day assumptions in NFMU's service availability tariff.

OPC: The appropriate service availability charge to be collected by NFMU to serve the former customers of TVU should be \$375 (if gross-up is appropriate) per mobile home connection, rather than the \$740 (including gross-up) per customer being proposed by NFMU. The charge proposed by NFMU is not fair because it assumes that the Tamiami Village homeowners will utilize more than twice as much wastewater services as they have historically used in the past. The Commission should authorize NFMU to collect no more than the \$375 per mobile home connection to serve the Tamiami Village subdivision and it should direct NFMU to amend its tariff to provide for a service availability charge of \$231 (before gross-up) for mobile home customers.

STAFF: Staff's positions are preliminary and are based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all of the evidence in the record and may differ from the preliminary positions. The information gathered through discovery and prefiled testimony indicates, at this point, that NFMU's application for transfer of territory served by TVU, and for a limited proceeding to impose its current rates, charges, classifications, rules and regulations, and service availability policies upon the customers of TVU,

should be granted provided that NFMU complies with all portions of Rule 25-30.037, Florida Administrative Code. A final determination cannot be made until the evidence presented at hearing is analyzed.

VII. ISSUES AND POSITIONS

ISSUE 1: Is the quality of service provided to NFMU's existing customers satisfactory?

POSITIONS

NFMU: Yes. (Reeves)

OPC: No position pending further development of the record.

STAFF: Yes. (Grob)

ISSUE 2: Does NFMU have the technical ability to serve the wastewater needs of the customers currently served by TVU?

POSITIONS

NFMU: Yes. (Reeves)

OPC: No, unless the utility establishes at the hearing that it has the technical ability to serve the wastewater needs of the customers currently served by TVU.

STAFF: Yes. Based on the preliminary information already received, it appears that NFMU has the technical ability to serve the wastewater needs of the customers of TVU. (Grob)

ISSUE 3: Does NFMU have the financial ability to serve the wastewater needs of the customers currently served by TVU?

POSITIONS

NFMU: Yes. (Reeves)

OPC: No, unless the utility establishes at the hearing that it has the financial ability to serve the wastewater needs of the customers currently served by TVU.

STAFF: Yes. Based on the preliminary information already received, it appears that NFMU has the financial ability to serve the wastewater needs of the customers of TVU.

ISSUE 4: Is it in the public interest to grant NFMU the transfer of territory requested in its application?

POSITIONS

NFMU: Yes. (Reeves)

OPC: No position pending further development of the record.

STAFF: No position pending further development of the record.

ISSUE 5: Should NFMU impose all current rates, charges, rules and regulations, and service availability policies upon the customers of TVU?

POSITIONS

NFMU: Yes. (Reeves)

OPC: No.

STAFF: Yes. The charges should be based on those charges set forth in the agreement between NFMU and TVU, and as set forth in NFMU's tariff.

ISSUE 6: Was the original approval of NFMU's service availability charge for mobile home customers made in accordance with the requirements of Section 367.101, Florida Statutes, and Rules 25-22.0408, 25-30.135, and 25-30.565, Florida Administrative Code?

POSITIONS

NFMU: No. Since NFMU had a Commission-approved service availability charge, and the purpose of the amendment to its tariff was to create a lesser charge for mobile home single-family residences, the requirements of Section 367.101, Florida Statutes, and Rules 25-22.0408, 25-30.135, and 25-30.565, Florida Administrative Code, were unnecessary.

OPC: No. The Commission Staff accepted NFMU's proposal to establish the disputed charge without the review and scrutiny required by the Florida Statutes and the Commission's rules. Since the Commission and its Staff have never conducted a proper review of this charge, no special credence should be given to the fact that the charge is currently included in the utility's tariff or that it is referenced in subsequent orders of the Commission.

STAFF: Yes, the original approval of NFMU's service availability charge for mobile home customers was made in accordance with the requirements of Section 367.101, Florida Statutes, and Rules 25-22.0408, 25-30.135, and 25-30.565, Florida Administrative Code.

ISSUE 7: Is the 275 gpd used by NFMU to set its service availability charge based upon average flow or peak flow?

POSITIONS

NFMU: It is irrelevant to this proceeding whether NFMU's service availability charge is based upon average flow or peak flow, although it is believed that peak flow would be the more appropriate measure for determining service availability charges, particularly due to the seasonal nature of NFMU's customers. (Reeves)

OPC: The 275 gpd used by NFMU to set its service availability charge is based upon an average flow for a typical residential connection. (Dismukes)

STAFF: Peak flows were used by NFMU to develop its service availability charges.

ISSUE 8: Should NFMU's service availability charge be based upon average flow or peak flow?

POSITIONS

NFMU: Whether NFMU's service availability charge should be based upon average flow or peak flow is irrelevant to this proceeding, although peak flow is the more appropriate measure for determining service availability charges due to the seasonal nature of NFMU's customers. (Reeves)

OPC: Either peak or average flow can be used to establish service availability charges. However, because the basis of NFMU's charge is based upon an average annual flow of 275 gallons per day, the service availability charge for mobile home customers should likewise be based upon an average annual flow. (Dismukes)

STAFF: Peak flows are generally used to develop service availability charges.

ISSUE 9: If NFMU's service availability charge should be based upon a peak flow, is the basis of its charge (that is, the 275 gpd for a typical residential connection) correct?

POSITIONS

NFMU: Whether NFMU's service availability charge based upon 275 gpd for a typical residential connection is correct is irrelevant to this proceeding. NFMU's service availability charge was established by Commission Order No. 11359, issued in 1982, and may not be collaterally attacked in this proceeding. (Reeves)

OPC: No, the 275 gpd basis of NFMU's service availability charge is not correct. The peak flow for a typical residential connection served by NFMU is substantially less than 275 gpd. (Dismukes)

STAFF: Yes.

ISSUE 10: If NFMU's service availability charge should be based upon peak flow, how should the peak flow be measured (i.e., peak month, three month peak, peak day, peak hour, or an assumed peak), and what peak flow should be used to establish the service availability charge for mobile home customers?

POSITIONS

NFMU: NFMU's service availability charge has been established by the Commission and whether peak or average flows from the TVU customers is different from that in the tariff is irrelevant. (Reeves)

OPC: The maximum peak flow that should be used is the peak month. For the mobile home customers served by NFMU the peak month flow is 140 gpd. (Dismukes)

STAFF: The methodology used to establish service availability charges is not cast in stone. Service availability charges are established on a case by case basis.

ISSUE 11: Is the 200 gallon per day assumption used by NFMU to set the service availability charges for mobile home customers valid and based upon any operative rule, authority, or valid documentation?

NFMU: Yes. However, if the mobile home service availability charge is not based upon an operative rule, authority, or valid documentation, then mobile home customers should pay the same service availability charges as other single family residences, which is \$1,018 (including gross-up). (Reeves)

OPC: No. The 200 gpd assumption used by NFMU is based upon an inoperative and outdated HRS rule that does not even apply to utilities the size of NFMU. The 200 gpd assumption used by NFMU is not based upon any operative rule, authority, or valid documentation. (Dismukes)

STAFF: Yes. The 200 gpd assumption used by NFMU is based upon Rule 25-30.515(10), Florida Administrative Code, and NFMU's approved tariff.

ISSUE 12: What is the appropriate (fair, just, and reasonable) amount of service availability charge to be collected by NFMU to serve the customers formerly served by TVU?

POSITIONS

NFMU: The appropriate amount of service availability charge to be collected by NFMU to serve the customers formerly served by TVU is \$740 per residential connection. (Reeves)

OPC: The appropriate amount of service availability charge to be collected by NFMU to serve the customers formerly served by TVU is \$375 per residential connection (if gross-up is appropriate). If peak flow is used to set the charge, the basis of NFMU's charge is incorrect. Nevertheless, if peak flow is used, the charge should be set at \$518 (if gross-up is appropriate), based upon a peak month flow for all NFMU's mobile home customers of 140 gpd. (Dismukes)

STAFF: The appropriate amount of service availability charge to be collected by NFMU to serve the customers formerly served by TVU is \$740 per residential connection.

ISSUE 13: In the absence of a tariff service availability charge for mobile homes, is it appropriate for new customers to negotiate a service availability charge based upon actual consumption, and if not, what is the appropriate service availability charge for mobile homes?

POSITIONS

NFMU: If the service availability charge for mobile homes is determined not to be properly approved, then the mobile home customers should be required to pay the same amount as other single family residences, which is \$1,018 (including gross-up). (Reeves).

OPC: In the absence of a tariffed service availability charge for mobile home customers, mobile home customers should be charged nothing until a proper charge is established. The customers of TVU are not attempting to negotiate a service availability charge based upon actual consumption. The customers of TVU are requesting that the Commission establish a fair, just, and reasonable service availability charge for all mobile home customers served by NFMU.

STAFF: This issue involves a hypothetical situation. Because there is a specific charge relating to service availability for mobile homes in NFMU's approved tariff, this issue is irrelevant.

VIII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
A. A. Reeves, III	Utility	AAR-1	Resume
"	"	AAR-2	Wastewater Agreement
"	"	AAR-3	Consent Final Judgment
Kimberly H. Dismukes	OPC	Appendix I	Qualifications of witness
"	"	KHD-1	Schedules 1-4
James Grob	Staff	JG-1	DEP's Second Amended Complaint
"	"	JG-2	Consent Final Judgment
"	"	JG-3	Amended Order
Kathy L. Welch	"	KLW-1	Staff Audit Report
"	"	KLW-2	Analysis of plant in service and CIAC
<u>Witness</u>			
<u>Rebuttal</u>			
A. A. Reeves, III	Utility	AAR-4	Copy of application and supplemental information

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

IX. PROPOSED STIPULATIONS

The rate base at the time of the transfer should be \$63,700.16.

X. PENDING MOTIONS

There are no motions pending at this time.

It is therefore,

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

BY ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 27th day of January, 1995.



DIANE K. KIESLING, Commissioner and
Prehearing Officer

(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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida

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Administrative Code, if issued by the Commission; or 3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.