

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment of Certificate No. 247-S to extend wastewater service area in Lee County by North Fort Myers Utility, Inc. | DOCKET NO. 080179-SU
ORDER NO. PSC-08-0539-FOF-SU
ISSUED: August 18, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER AMENDING NORTH FORT MYERS UTILITY, INC.'S
CERTIFICATE NO. 247-S TO INCLUDE ADDITIONAL TERRITORY

BY THE COMMISSION:

North Ft. Myers Utility, Inc. (NFMU or utility) is a Class A utility providing wastewater service in Lee County. Rates were last considered in an index application on May 28, 2007. The utility's last general rate case increase was in Docket No. 790677-S and approved in Order No. 10152.¹

On March 28, 2008, NFMU filed an amendment application. NFMU seeks an amendment to Certificate No. 247-S in Lee County to add about 31 acres of land adjacent to U.S. 41 in North Ft. Myers and nearly 200 acres just east of the eastern edge of its service area. Both parcels are located in the South Florida Water Management District. We have jurisdiction pursuant to Section 367.045, Florida Statutes (F.S.).

The application is in compliance with the governing statute, Section 367.045, F.S., and other pertinent statutes and administrative rules concerning an application for amendment of certificate. The utility provides wastewater service from its existing wastewater plants and has adequate capacity to serve the area requested. Water service will be provided by Lee County Utilities.

An adequate service territory map and a territory description have been provided as prescribed by Rule 25-30.036(3)(e) and (i), Florida Administrative Code (F.A.C.). A description of the territory requested by the utility is appended to this Order as Attachment A. The utility has submitted an affidavit consistent with Section 367.045(2)(d), F.S., that it has tariffs and annual reports on file with us. In addition, the application contains proof of compliance with the

¹ See Order No. 10152, issued July 21, 1981, in Docket No. 790677-S, In re: Application of Old Bridge Corporation for a rate increase to its sewer customers in Lee County, Florida.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

noticing provisions set forth in Rule 25-30.030, F.A.C. We did not receive objections to the application, and the time for filing such has expired. The local planning agency was provided notice of the application and did not file a protest to the amendment. While Lee County had an opportunity to file an objection to the amendment with us, it did not do so. The County instead provided a position statement to the Department of Community Affairs (DCA), stating its observations or concerns. The Department of Community Affairs (DCA) reviewed the County's filing and sent comments to us on the two parcels of land requested to be approved in this application. The DCA included the letter it received from Lee County's Director of Planning.

According to DCA, the 30 acre parcel along U. S. 41 causes no concern for either DCA or Lee County. The letter addressed Lee County's concerns related to the 200-acre parcel east of State Road 31. Lee County asserts in its letter to DCA that this expansion is inconsistent with the Lee County Comprehensive Plan (the Lee Plan), since the area is designated as rural, being characterized by agricultural and low-density residential uses. The County states that one way of guiding development decisions is through the provision of infrastructure. The Lee Plan does not expressly prohibit the extension of a utility's territory in non-urban areas, but it has been the County's long standing policy that wastewater service not be provided in these areas.

The DCA shares the concerns voiced by the County, noting that extending wastewater service to this eastern area in Lee County is not consistent with the principles which guide development as specified in the County's Comprehensive Plan. The DCA encouraged coordination between the utility and the Lee County Planning Department.

The utility responded to the comments made by the DCA and Lee County regarding the proposed amendment east of State Road 31, by citing to Section 367.045(5)(b), F.S., which provides that if no timely objection is made to the notice of amendment to the certificate, then the Commission need not consider whether an amendment of certificate is inconsistent with the local comprehensive plan. According to the statute, even if a timely objection is made, we do consider the local comprehensive plan, but are not bound by it. The utility also notes that Lee County is the provider of water service to the property in question.

A portion of the property east of State Road 31 fronts on the Caloosahatchee River. Existing development includes industrial marine uses, which would likely benefit from the connection to a central wastewater system. In addition, a portion of the property applied for is located in the Water Dependent overlay zone, where development priority is given to water-dependent uses.

The property owner has a pending Comprehensive Plan Amendment to change the land use from rural to a Future Urban Area. Central wastewater service would be a benefit to that new land use. Current land use for the eastern parcel allows 200 residential units to be developed, according to the utility. Further, Policy 2.1.3 of the Lee County Comprehensive Plan permits public utilities in all land use categories.

After reviewing the documents and letters filed, it appears that adequate mechanisms are in place to monitor the growth in the areas requested for amendment by the utility. The County will provide water service as needed. Development plans will require County permitting and approval.

Based upon the above information, we approve NFMU's application to expand its territory, which is more specifically described in Attachment A. This Order shall serve as NFMU's amended certificate and shall be retained by the utility. NFMU shall charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by us in a subsequent proceeding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that North Fort Myers Utility, Inc.'s Application for Amendment of Certificate No. 247-S to extend its service area is approved. It is further

ORDERED that this Order shall serve as North Fort Myers Utility, Inc.'s amended certificate and shall be retained by the utility. It is further

ORDERED that North Fort Myers Utility, Inc. shall charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by the Florida Public Service Commission in a subsequent proceeding. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 18th day of August, 2008.



ANN COLE
Commission Clerk

(S E A L)

LCB

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 Office of Commission Clerk, 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 Office of Commission Clerk, 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.

North Fort Myers Utility, Inc.
Description of Wastewater Service Territory to be Added
Lee County

WEST OF U. S. 41:

IN SECTIONS 15 & 16, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA,

A TRACT OR PARCEL OF LAND LYING IN SECTIONS 15 AND 16, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, WHICH TRACTS OR PARCELS ARE DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 15 RUN NORTH 90° 00' 00" EAST ALONG THE SOUTH LINE OF SECTION 15 FOR 47.20 FEET TO THE WESTERLY RIGHT-OF-WAY OF TAMIAMI TRAIL (STATE ROAD 45); THENCE RUN NORTH 26° 07' 10" WEST ALONG SAID WESTERLY RIGHT-OF-WAY FOR 2,569.69 FEET; THENCE RUN NORTH 28° 59' 23" WEST ALONG SAID WESTERLY RIGHT-OF-WAY FOR 297.16 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY CORNER OF A PARCEL AS DESCRIBED IN A DEED AS RECORDED IN OFFICIAL RECORDS BOOK 3163, PAGE 1954, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTH 63° 52' 50" WEST ALONG THE NORTHERLY LINE OF SAID PARCEL FOR 476.42 FEET TO THE NORTHWESTERLY CORNER OF SAID PARCEL; THENCE RUN SOUTH 26° 07' 10" EAST FOR 2,624.93 FEET TO SOUTHWESTERLY MOST CORNER OF A PARCEL AS DESCRIBED IN A DEED AS RECORDED IN INSTRUMENT NUMBER 2005000075143, PUBLIC RECORDS OF LEE COUNTY, FLORIDA ALSO BEING THE A POINT ON THE SOUTH LINE OF SECTION 16; THENCE RUN SOUTH 89° 55' 59" EAST ALONG THE SOUTH LINE OF SAID SECTION FOR 500.27 FEET TO THE POINT OF BEGINNING. BEARINGS MENTIONED HEREON ARE BASED ON THE SOUTH LINE OF SECTION 16 TO BEAR NORTH 89° 55' 59" WEST.

EAST OF STATE ROAD 31:

A PORTION OF SECTIONS 18 AND 19, TOWNSHIP 43 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1

COMMENCE AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 43 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, SAID POINT BEING A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD 31; THENCE RUN S.88°45'47"E., ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 18, FOR A DISTANCE OF 100.00 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD 31 AND THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE RUN N.00°26'33"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 1,380.98 FEET; THENCE RUN S.88°52'26"E. FOR A DISTANCE OF 1,289.95 FEET; THENCE RUN S.88°52'02"E. FOR A DISTANCE OF 1,200.01 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 18; THENCE RUN S.00°17'01"W., ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 18, FOR A DISTANCE OF 1,177.03 FEET TO A POINT ON THE APPROXIMATE TOP OF BANK OF A MANMADE DITCH; THENCE RUN SOUTHEASTERLY, ALONG THE APPROXIMATE TOP OF BANK OF SAID DITCH THE FOLLOWING CALLS:

1. S.66°57'30"E. FOR A DISTANCE OF 51.84 FEET;
2. THENCE RUN S.62°42'59"E. FOR A DISTANCE OF 34.22 FEET;
3. THENCE RUN S.71°07'07"E. FOR A DISTANCE OF 40.46 FEET;
4. THENCE RUN S.75°05'44"E. FOR A DISTANCE OF 54.64 FEET;
5. THENCE RUN S.53°48'26"E. FOR A DISTANCE OF 60.20 FEET;
6. THENCE RUN S.40°53'39"E. FOR A DISTANCE OF 33.01 FEET;
7. THENCE RUN S.45°59'51"E. FOR A DISTANCE OF 43.84 FEET;
8. THENCE RUN S.32°06'08"E. FOR A DISTANCE OF 30.67 FEET;
9. THENCE RUN S.28°20'46"E. FOR A DISTANCE OF 39.90 FEET;
10. THENCE RUN S.12°43'52"E. FOR A DISTANCE OF 39.18 FEET;
11. THENCE RUN S.08°54'45"E. FOR A DISTANCE OF 28.95 FEET;
12. THENCE RUN S.06°50'11"E. FOR A DISTANCE OF 34.61 FEET;

13. THENCE RUN S.03°48'12"E. FOR A DISTANCE OF 29.62 FEET;
14. THENCE RUN S.24°12'11"E. FOR A DISTANCE OF 91.43 FEET;
15. THENCE RUN S.47°23'44"E. FOR A DISTANCE OF 64.61 FEET;
16. THENCE RUN S.17°16'30"E. FOR A DISTANCE OF 63 FEET, MORE OR

LESS, TO THE MEAN HIGH WATER LINE OF THE OLD RIVER BED OF THE CALOOSAHATCHEE RIVER; THENCE RUN SOUTHWESTERLY, ALONG THE MEAN HIGH WATER LINE OF THE CALOOSAHATCHEE RIVER, FOR A DISTANCE OF 3,500 FEET, MORE OR LESS, TO A POINT ON THE SOUTHERLY BOUNDARY OF THAT PARCEL OF LAND DESCRIBED IN THE WARRANTY DEED RECORDED IN INSTRUMENT #2007000297026 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN S.81°50'47"W., ALONG THE SOUTHERLY LINE OF SAID PARCEL, FOR A DISTANCE OF 186 FEET, MORE OR LESS, TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID STATE ROAD 31; THENCE RUN N.08°09'14"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 22.61 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE TO THE EAST; THENCE RUN NORTHERLY, ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 5356.41 FEET, THROUGH A CENTRAL ANGLE OF 03°17'19", SUBTENDED BY A CHORD OF 307.40 FEET AT A BEARING OF N.06°30'35"W., FOR A DISTANCE OF 307.44 FEET TO THE END OF SAID CURVE; THENCE RUN S.85°08'07"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 10.00 FEET TO A POINT ON A CIRCULAR CURVE, CONCAVE TO THE EAST, FROM WHICH THE RADIUS POINT BEARS N.85°08'05"E., A DISTANCE OF 5,366.41 FEET THEREFROM; THENCE RUN NORTHERLY, ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 5,366.41 FEET, THROUGH A CENTRAL ANGLE OF 08°19'10", SUBTENDED BY A CHORD OF 778.53 FEET AT A BEARING OF N.00°42'20"W., FOR A DISTANCE OF 779.21 FEET TO THE END OF SAID CURVE; THENCE RUN N.03°27'15"E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 855.44 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE TO THE WEST; THENCE RUN NORTHERLY, ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 1,959.86 FEET, THROUGH A CENTRAL ANGLE OF 03°55'00", SUBTENDED BY A CHORD OF 133.95 FEET AT A BEARING OF N.01°29'45"E., FOR A DISTANCE OF 133.97 FEET TO THE END OF SAID CURVE; THENCE RUN N.00°27'54"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 519.39 TO THE POINT OF BEGINNING.

AND

PARCEL 2

COMMENCE AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 43 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA; THENCE RUN N.88°45'47"W., ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 18, FOR A DISTANCE OF 1257.89 FEET TO A POINT ON A LINE 30 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH, THE CENTERLINE OF AN EXISTING PAVED DRIVE AS DESCRIBED IN RESIDENCE PARCEL "A" RECORDED IN OFFICIAL RECORDS BOOK 2290 AT PAGE 3479 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE RUN SOUTHERLY, ALONG SAID PARALLEL LINE, THE FOLLOWING COURSES:

1. S.44°37'10"E. FOR A DISTANCE OF 331.91 FEET;
2. THENCE RUN S.15°00'10"E. FOR A DISTANCE OF 53.03 FEET;
3. THENCE RUN N.74°59'50"E. FOR A DISTANCE OF 18.55 FEET;
4. THENCE RUN S.15°00'10"E. FOR A DISTANCE OF 137.17 FEET;
5. THENCE RUN S.28°49'50"W. FOR A DISTANCE OF 219.46 FEET;
6. THENCE RUN S.37°56'50"W. FOR A DISTANCE OF 235.27 FEET;
7. THENCE RUN S.48°53'50"W. FOR A DISTANCE OF 266.81 FEET;
8. THENCE RUN S.44°50'41"W. FOR A DISTANCE OF 140.42 FEET;
9. THENCE RUN S.03°40'10"E. FOR A DISTANCE OF 86.00 FEET;
10. THENCE RUN S.42°11'10"E. FOR A DISTANCE OF 184.68 FEET;
11. THENCE RUN S.48°06'50"W. FOR A DISTANCE OF 270 FEET, MORE OR

LESS, TO THE MEAN HIGH WATER LINE OF THE OLD RIVER BED OF THE CALOOSAHATCHEE RIVER; THENCE RUN NORTHWESTERLY, ALONG THE MEAN HIGH WATER LINE OF THE CALOOSAHATCHEE RIVER, FOR A DISTANCE OF 975 FEET, MORE OR LESS, TO A POINT ON THE SOUTHERLY MEAN HIGH WATER LINE OF AN UNNAMED TRIBUTARY OF TROUT CREEK; THENCE RUN EASTERLY, ALONG THE SOUTHERLY MEAN HIGH WATER LINE OF SAID TRIBUTARY, FOR A DISTANCE OF 1000 FEET, MORE OR LESS; THENCE RUN NORTHERLY, ALONG THE MEAN HIGH WATER LINE OF SAID TRIBUTARY, FOR A DISTANCE OF 80 FEET, MORE OR LESS; THENCE RUN WESTERLY, ALONG THE MEAN HIGH WATER LINE OF SAID TRIBUTARY, FOR A DISTANCE OF 950 FEET, MORE OR LESS, TO A POINT ON THE SOUTHERLY MEAN HIGH WATER LINE OF TROUT CREEK; THENCE RUN NORTHERLY AND NORTHEASTERLY, ALONG THE SOUTHERLY MEAN HIGH WATER LINE OF TROUT CREEK, FOR A DISTANCE OF 1500 FEET, MORE OR LESS, TO A POINT ON A LINE 30 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES

TO AND PARALLEL WITH, THE CENTERLINE OF AN EXISTING PAVED DRIVE AS DESCRIBED IN RESIDENCE PARCEL "A" RECORDED IN OFFICIAL RECORDS BOOK 2290 AT PAGE 3479 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTHERLY, ALONG SAID PARALLEL LINE, THE FOLLOWING COURSES:

1. S.13°28'44"E. FOR A DISTANCE OF 190 FEET, MORE OR LESS;
2. THENCE RUN S.24°50'50"W. FOR A DISTANCE OF 318.05 FEET;
3. THENCE RUN S.29°52'10"E. FOR A DISTANCE OF 128.59 FEET;
4. THENCE RUN S.44°37'10"E. FOR A DISTANCE OF 134.63 FEET TO THE POINT OF BEGINNING.

BEARINGS REFER TO SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 43 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, AS BEING S.88°45'47"E.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
North Ft. Myers Utility, Inc.
pursuant to
Certificate Number 247-S

to provide wastewater service in Lee County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission.

This authorization shall remain in force and effect until suspended, suspended, canceled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
8025	10/25/77	770709-S	Grandfather
11300	11/02/82	820278-S	Extension
12572	10/04/83	830316-S	Extension
15659	02/12/86	830362-S	Extension
19059	03/29/88	871306-SU	Extension
PSC-92-0537-FOF-SU	06/22/92	920037-SU	Amendment/Del Tura Plaza
PSC-92-0588-FOF-SU	06/30/92	920273-SU	Amendment/Forest Park
PSC-93-0971-FOF-SU	06/29/93	930289-SU	Amendment/Fountain View
PSC-93-1851-FOF-SU	12/30/93	931040-SU	Amendment/Northside Pavilion
PSC-93-1821-FOF-WS	12/22/93	930373-SU	Amendment/Laurel Estates/ Lake Arrowhead
PSC-94-0450-FOF-SU	04/14/94	931164-SU	Amendment/Carriage Village
PSC-94-0726-FOF-SU	06/13/94	930724-SU	Amendment/Lazy Days
PSC-95-0576-FOF-SU	05/09/95	940963-SU	Amendment/Tamiami Village
PSC-99-2444- AS-SU	12/14/99	981781-SU	Amendment/Buccaneer Estates
PSC-00-1892-PAA-SU	02/09/01	991494-SU	Transfer/Pine Lakes/Lake Fairways
PSC-01-0995-AS -WS	04/23/01	000277-WS	Amendment
PSC-02-0481-FOF-SU	04/08/02	011006-SU	Amendment Addition
PSC-04-1218-FOF-SU	12/09/04	040818-SU	Amendment deletion/Judd
PSC-06-0055-PAA-SU	01/23/06	050323-SU	Transfer/Heron's Glen
PSC-07-0419-PAA-SU	05/14/07	060698-WU	Transfer Del Tura
PSC-08-0539-FOF-SU	08/18/08	080179-SU	Amendment