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September 7, 1999

RECORDS AND REPORTING

TO: DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (BRUBAKER) *JB*

RE: DOCKET NO. 981781-SU - APPLICATION FOR AMENDMENT OF CERTIFICATE NO. 247-S TO EXTEND SERVICE AREA BY THE TRANSFER OF BUCCANEER ESTATES IN LEE COUNTY TO NORTH FORT MYERS UTILITY, INC.

Please place the attached Motion for Dismissal of Settlement Agreement in the docket file. This document was received by the Division of Legal Services on September 3, 1999.

JSB/lw

Attachment

cc: Division of Water and Wastewater (Messer, Redemann)

- AFA _____
- APP _____
- CAF _____
- CMU _____
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- EAG _____
- LEG _____
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DOCUMENT NUMBER-DATE

10738 SEP-7 475

PPSC-RECORDS/REPORTING

Before the Florida Public Service Commission

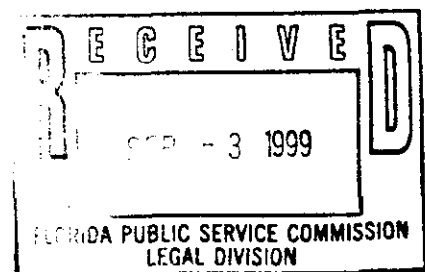
IN RE: Application for Certificate No 247-S to extend waste water service area by transfer of Buccaneer Estates in Lee Co., Florida, to North Fort Myers Utility, Inc., as per PSC docket 981781-SU

MOTION FOR DISMISSAL OF SETTLEMENT AGREEMENT

The undersigned homeowners of Buccaneer Estates (homeowners) do object to the terms of a settlement agreement ("settlement") purported to be presented to this Commission for their approval, firstly at a PSC hearing on Sept. 7, 1999, and again at a hearing on Sept. 14 and 15, 1999. Said settlement is the contrivance of both the Florida Office of Public Counsel ("OPC") and North Fort Myers Utility, Inc. ("NFMU"), and we ask that it be dismissed for the following good and sufficient reasons.

1. The settlement was not negotiated in good faith because it was hastily put together and thrust into the hands of some needed signatorys, who were given no time to study it properly. No provisos were given for the signatorys to make any changes to it. No allowance was made for opinions expressed by the signatorys. Both OPC and NFMU rendered coercive language and tactics to spur on the signatorys' acceptance.

It seems that the effective date of the settlement was of prime importance and was to override all other conditions.



Tactics were used to have the signatorys stricken as parties of record in this case but were disallowed by the commission at pre trial hearing only to be amended and moved again by NFMU; clearly a move of desperation; but one that should not be allowed under any circumstance in civil proceedings. Neither was proper notice given to the signatorys on some matters .

2. Several questions concerning the consequences of signing this settlement still remain unanswered. It appears that this settlement has placed the homeowners in a position that will surely jeopardize their standing in an upcoming court battle, assurances to the contrary, notwithstanding. Homeowners are concerned that this settlement "locks them in" as customers of NFMU and offers no "escape clause" should future court decisions work in their favor.

Homeowners feel that his settlement will place them in a disadvantaged position with regard to their rights granted under other Florida statutes, such as statute 723.

3 Homeowners still have legal leases for their homesites in Buccaneer Estates, and no court in this land has decided otherwise ! Some of these leases, commonly called "Residency Agreements", state, in no uncertain terms, on page 42, paragraph 3:

"Services included in lot rental amount. The following services are provided by the PARK in exchange for payment of the lot rental amount: sewer, trash, storm drainage, lawn mowing, use of common area facilities , and a place to locate Homeowner's mobile home".

The homeowners would respectfully ask the commission to note the word "sewer" and also to note the fact that these are still legal contracts between parties in the State of Florida.

With this in mind the homeowners would humbly state to the commission that the Constitution of the State of Florida , Article 1, Declaration of Rights, Section 10 , Prohibited Laws; states the following:

"No bill of attainder, ex post facto law, or law impairing the obligation of a contract shall be passed."

The homeowners state that this settlement contains conditions which will impair their legal contracts and cause them to pay for a service that is already paid for; and as such should be dismissed as unconstitutional, under the terms as set by the constitution of the State of Florida.

Respectfully submitted on this 3rd day of September, 1999, by



Ronald Ludington,
509 Avanti Way ,
North Fort Myers FL 33917

Certificate of Service

I hereby certify that true and correct copy of the foregoing MOTION FOR DISMISSAL OF SETTLEMENT AGREEMENT has been forwarded on the 3rd day of September, 1999, via Postal Service to:

M. Friedman; Rose, Sundstrom and Bentley, LLP, 2548 Blirstone Pines Dr., Tallahassee, FL, 32301

Stephen Reilly, Office of Public Counsel, 111 West Madison St., Room 812, Tallahassee FL 32399-1400

Jennifer Brubaker*, Legal Division, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee FL 32399-0850;

and that copies were delivered to:

Donald Gill, 674 Brigantine Blvd., North Ft. Myers FL 33917

Joseph Devine, 688 Brigantine Blvd., North Ft. Myers FL 33917

* overnight postal service.



Ronald Ludington