

ORIGINAL

M E M O R A N D U M

September 28, 1999

TO: DIVISION OF RECORDS AND REPORTING (BAYO)

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

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.

The attached Response of Donald Gill and Joseph Divine was received in the Legal Division on September 23, 1999. Please place the document in the above-referenced docket file.

JSB/lw

Attachment

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

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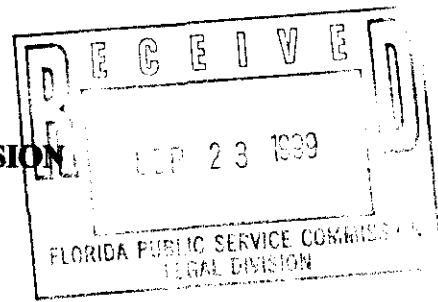
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DIVISION OF RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION



IN RE: **Application of North Fort Myers Utility, Inc. for extension of wastewater service in Lee County, Florida.**)
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Docket No. 981781-SU

DONALD GILL AND JOSEPH DEVINE'S REPOSE TO APPLICANT NORTH FORT MYERS UTILITY, INC.'S, EMERGENCY MOTION TO CHARGE RATES SUBJECT AND TO EXPEDITE RESCHEDULING OF FINAL HEARING

Donald Gill (GILL) and Joseph Devine (DEVINE), parties in the above captioned matter, object to North Fort Myers Utility, Inc.'s (NFMU) Emergency Motion to Charge Rates Subject to Refund and to Expedite Rescheduling of Final Hearing, and in support state:

1. Other than a Motion to charge rates, NFMU's Emergency Motion fails to state what the nature of the emergency is.
2. GILL and DEVINE state they are confused by NFMU's Emergency Motion to "Charge Rates Subject to Refund and to Expedite Rescheduling of Final Hearing ("Motion")." GILL and DEVINE assume that NFMU's use of the phrase, "... *the Settlement Agreement entered into between NFMU and the OPC...*," means that there now exist a 2nd signed "Settlement Agreement," between NFMU and the OPC; however, none of the other Parties to this matter, i.e., GILL, DEVINE or Ronald Ludington (LUDINGTON) are in possession, or are they aware of the content, or the existence of the alleged 2nd "Settlement Agreement," nor have the residents of the Parks ratified such an agreement.
3. To add to GILL and DEVINE'S confusion, in item #1 of NFMU's Motion, NFMU states that this matter ("Settlement Agreement") was scheduled for "Final Hearing" on September 14, 1999. GILL and DEVINE are under the impression that the PSC may be in the business of approving or rejecting the

“rates and charges” stated in a contract concerning a private utility, but the PSC is not in the business of approving or rejecting the other terms of “private contracts.”

4. The Office of Public Counsel and the Staff have in the past indicated that at a “special meeting” of the Buccaneer Homeowners’ Association, a majority of the homeowners in the Park supported the “Settlement Agreement (1st agreement).” The Office of Public Counsel and the Staff’s statements are only partly true. Approximately 307 persons attended the Association’s special meeting. Because husbands and wives were each allowed to cast one vote, or two votes per home (per wastewater connection), the vote was mostly reflective of homes where there were two homeowners. The 307, residents, who were in attendance and voted, did not represent 307 of the 971 homes in the Park. The 307 residents, who voted, represented approximately 160 of the 971 homes in the park. For the special-election the Homeowners’ Association did not give notice to all the residents of the park, nor did the Association inform, provide mail-in ballots or ask for proxy ballots from the winter residents. Because of the nature of the Association’s special meeting the vote was non-binding and only reflected the sentiments of a chosen minority of the homeowners.
5. Item #1 of NFMU’s Motion states, *1. This matter was scheduled for Final Hearing on September 14, 1999 in Fort Myers, Florida, on whether the Settlement Agreement entered into between NFMU and the Office of Public Counsel (“OPC”) should be approved.* What Item #1 fails to state is that LUDINGTON, DEVINE, GILL and many other residents have categorically rejected the NFMU and OPC’s Settlement Agreement.”
6. In item #4 of its Motion, NFMU states: *“Obviously, if NFMU is allowed to collect rates prior to the Commission entering a Final Order, then NFMU will provide adequate security for a refund, if necessary, in accordance with the Staff’s recommendation at the September 7, 1999 agenda conference.”* Like the proverbial “getting the foot in the door,” it is equally obvious that NFMU only seeks to use the Commission to get its foot in the door and lock-in the residents of Buccaneer Estates to NFMU’s rates and charges to a time certain.

This being done with a complete disregard for the law. The PSC should not allow NFMU to collect rates and charges from a territory, for any period of time that NFMU has no legal claim on.

7. NFMU wants to be rewarded for its illicit acts by billing its "new customers" retroactive to the date of a Commission's Ruling, a Commission Ruling that may, or may not approve NFMU's "Application." NFMU's retroactive billing date would be September 1, 1999. It should be pointed out that to this date, the PSC has not allowed or denied NFMU's Application for extension of wastewater service; therefore, NFMU is presently and has been servicing a territory that is not within its approved charter. This unauthorized wastewater service to Buccaneer Estates is a blatant illegal act that should not be go unrecognized, condoned or rewarded by the PSC.
8. It also should be pointed that without a governmental mandate to the contrary, Buccaneer Estates' wastewater system is outside of the PSC's jurisdiction. Until the PSC properly gains jurisdiction of Buccaneer Estates' wastewater system, pursuant to Florida Law, Buccaneer Estates' wastewater system is and shall remain outside of the PSC's jurisdiction and the PSC is without jurisdiction to approve NFMU's emergency rates within a territory that is not within its charter.
9. GILL and DEVINE would once again point out to the Commission that NFMU is unconscionably asking for emergency retroactive rates and charges for a territory that the Commission has yet to allowed or denied and a territory that NFMU is currently illegally serving.
10. NFMU has filed an application that is docketed as No. 981781, and it states: *IN RE: Application of North Fort Myers Utility, Inc. for extension of wastewater in Lee County, Florida.* To date the Public Service Commission (PSC) has not granted NFMU's "Application for Extension of Wastewater Service" into Buccaneer Estates (PARK); therefore, even though the residents and Manufactured Homes Communities, Inc., are presently being served (illegally) by NFMU, the PARK'S tenants and the PARK'S wastewater system remains outside of the PSC's jurisdiction.

11. Until the PSC has proper jurisdiction and grants NFMU's Application for an extension of service into the PARK, the PARK'S wastewater system remains under the jurisdiction of Chapter 723 of the Florida Statutes.
12. NFMU has been and is currently negotiating the sale of its wastewater system to Lee County. NFMU illegally hook-up to Buccaneer Estates, to its wastewater system, is a seemingly calculated move to enhance the overall value of its system in an impending sale of its system. Now NFMU wants to use the Commission to protect and enhance NFMU's overall financial interest by having the Commission allow its Emergency Motion.
13. NFMU's Emergency Motion is unclear as to how or why funds deposited in a escrow account, funds that it would not have access to prior to their receiving the Commission's approval for the extension of its territory, would somehow prevent some kind of irreparable harm. The question that remains here is – Can a utility charge a resident for services, the resident does not want, in a territory that a utility is not a charter to service?
14. Allowing NFMU to set rates and charges and bill the residents prior to allowing or disallowing NFMU's application for extension of service would effectively allow NFMU to lock-in their rates and deny the residents their "day in court" and the due process of the law. If the Commission was to "lock-in" NFMU's rates and charges at this time it would cause irreparable harm to the civil rights and the property of the residents.
15. Although, GILL, DEVINE and LUDINGTON have on numerous occasions complained to the Office of Public Counsel and the Staff that the issue of their civil rights, and the issue of the residents' civil rights has not been given properly consideration in this matter, their voices have fallen on deaf ears.
16. GILL and DEVINE further object to any "*Final Hearing by teleconference with the Commissioners in Tallahassee and the witness presentation in Fort Myers.*" It is inappropriate to have a Final Hearing, by a "teleconference" means, when it is expected that a minimum of several hundred persons will attend the hearing at Buccaneer Estates in North Fort Myers.

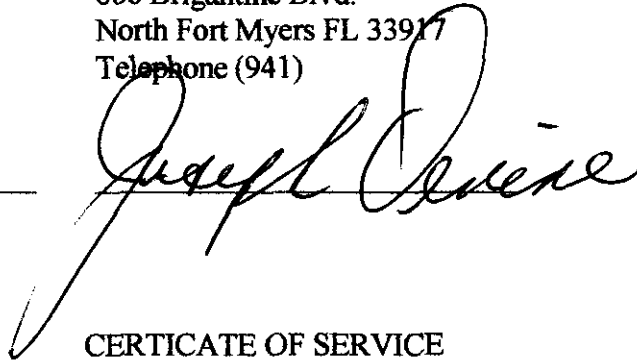
17. It has been the recent experience of GILL and DEVINE that the teleconferencing equipment, provided by the Commission, produces an extremely objectionable voice feedback to the person on the telephone, causing the person speaking on the phone to be extremely distracted from their thoughts and presentation.

WHEREFORE: In the absence of a well defined public interest that may be served, GILL and DEVINE respectfully request this Commission disallow NFMU's Emergency Motion to Charge Rates Subject to Refund, and any Final Hearing conducted telephonically.

Respectfully submitted on this 19th of September, 1999, by:

Donald Gill
674 Brigantine Blvd.
North Fort Myers FL 33917
Telephone (941) 656-5029

Joseph Devine
688 Brigantine Blvd.
North Fort Myers FL 33917
Telephone (941)



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded via U.S. Mail to Steve Reilly, Esq., Office of Public Counsel, 111 West Madison Street, Suite 812, Tallahassee FL 32301-1906, Cleveland Ferguson, Esq., Jennifer Brubaker, Esq. *, Florida Public Service Commission, Legal Division, 2540 Shumard Oak Boulevard, Tallahassee FL32399-0850, Martin Friedman, Esq., 2548 Blairstone Pines Drive, Tallahassee FL 32301, Ronald Ludington, 509 Avanti Way, North Fort Myers FL 99317 on this 21st day of September, 1999.


Donald Gill

* Also faxed