



# Public Service Commission

ORIGINAL

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

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**DATE:** December 27, 1999  
**TO:** Division of Records and Reporting  
**FROM:** Division of Legal Services (Brubaker, Cibula) *SMC*  
**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.

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Please file the attached Motion for Reconsideration, dated December 22, 1999, in the docket file for the above-referenced docket.

JSB/SMC/dr

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

L\981781FMJSB

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- MAS \_\_\_\_\_
- OPC \_\_\_\_\_
- RRR \_\_\_\_\_
- SEC \_\_\_\_\_
- WAW \_\_\_\_\_
- OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

15763 DEC 27 99

FPSC-RECORDS/REPORTING

692

Before the Florida Public Service Commission

IN RE: Application for Certificate )  
No 247-S to extend wastewater )  
service area by transfer of Buccaneer )  
Estates in Lee Co., Florida, to North )  
Fort Myers Utility, Inc., )  
.....)

Docket No 981781-SU



MOTION FOR RECONSIDERATION

Ronald Ludington ("Ludington") a party in the above referenced matter, respectfully requests the Public Service Commission ("PSC"), pursuant to PSC Rules of Procedure no. 25-22.060, to reconsider their decision on this matter, and in support thereof states:

1. Ludington advises the PSC that he sent a MOTION FOR DISMISSAL OF SETTLEMENT AGREEMENT to the PSC, and all other concerned parties, on Sept. 3, 1999. This motion was filed with the PSC on Sept. 7, 1999, and neither North Fort Myers Utility, Inc ("NFMU"), or Office of Public Counsel ("OPC"), has ever responded to this motion thus making Ludington's motion for dismissal prevalent!

PSC Practice and Procedure Rules 25-22.028 clearly show that the time for any response has long since passed .

Since the proper time for any response, by any party, has long since passed, the settlement agreement which was presented for PSC consideration on September 2, 1999 does not exist because good arguments against its existence have prevailed.

This exact argument will also apply to the MOTION TO STRIKE SETTLEMENT AGREEMENT that was filed on Sept. 9, 1999 by Donald Gill . No response from any party was made to that motion either.

PSC order no. PSC-99-1786-PHO-SU, issued on September 13, 1999 makes note of the fact that these two motions are to be ruled upon at the September 14 hearing. They may have been mentioned during the course of the Oct. 13 hearing, which replaced the earlier scheduled hearing; but PSC staff failed to ever bring them forward for ruling by PSC.

Ludington states that the failure of the PSC to rule on these motions has prejudiced this matter to a great extent because the PSC has relied heavily upon this settlement agreement to form their decisions involving the final order on this matter. It appears to Ludington that there was no settlement agreement upon which the PSC could use as a basis for their final order of Dec. 14, 1999. The settlement agreement was dismissed for all intents and purposes as motions to that effect went unopposed.

PSC has seemingly approved a matter which it failed to adjudicate properly according to long established legal proceedings, and in doing so has done an injustice to the very people it is sworn to serve.

2. Ludington also states that he made a proposed settlement agreement ("Ludington Proposal") which was filed on Oct. 7, 1999; but during the PSC legal staffs' ("staff") recommendations, given in this matter on Nov. 16, 1999, it clearly appears that staff gave an incorrect answer to a question, when staff replied; " Yes. That is correct.", when asked by Commissioner Clark, if the clients of OPC, meaning the Buccaneer Homeowners Association ("BHA") still supported the settlement agreement negotiated between NFMU and OPC.

Ludington can show conclusively that no great level of support existed at the time of the recommendation, as Ludington has in his possession clear proof that a great many of the homeowners supported the Ludington Proposal, which was also a topic for discussion during the hearing, and not the OPC/NFMU settlement, as staff stated.

Staff has since made it known to Ludington, that staff was told by OPC, that a letter existed which purported to show this homeowner support; but OPC does not recall telling staff of the existence of a letter

before the Nov. 16 hearing. As staff admits to never having seen this letter prior to the November 16 hearing, staff's statement to the commissioner was based on hearsay, and should be stricken from the records.

The letter in question (attached exhibit L-1) was written by the BHA president, and sent to OPC on Nov. 10, 1999, and the letter says in no uncertain terms "due to the meeting of Oct. 13, the Commission is well aware of our position", and also states "as they", meaning the Commission, "well know we were forced to withdraw our proposal during the meeting of October 13th for what we felt was the well being of the residents of our park."

When examining these two quoted statements Ludington asks how anyone could determine that this was a change in the direction of support for the settlement agreement as staff has suggested.

No matter who told what to whom; staff did indicate to the PSC that this support was there, which was not true, and Ludington regards this as a very critical statement on the part of staff; a statement which may very well have turned some commissioners' decisions on this matter to one of acceptance of the settlement, rather than one of rejection. This is a statement, by staff, that has clearly prejudiced our case.

3. In staffs' Nov. 16 recommendations in this matter, staff, in the discussion of the points brought up in the Ludington Proposal, and also in reference to the original developer's agreement between NFMU and the park owner, and in an attempt to make the homeowners into "customers" of NFMU, points out the fact that NFMU had purchased the underground services from the developer and thus had established a connection to each metered home, and having done so, could now consider the homeowner as an NFMU "customer". In fact staff refers to Ludington several times as "Customer Ludington" when staff makes reference to the Ludington Proposal. Ludington takes offense at this use of the word in this instance, as Ludington has made it known he does not consider himself a customer of NFMU and also does not wish to be addressed as one.

Ludington reminds the PSC that this aforementioned purchase is contrary to the very PSC tariffs established for NFMU in that the developer is required to just hand over the services and not sell them to the utility. NFMU's tariff sheet 26.0 clearly states:

" On-site collection and other waste water facilities shall be provided by the developer or contractor at no cost to the Utility pursuant to the requirements and specifications of the Utility."

The purchase of this collection system is clearly contrary to the NFMU tariffs, and just adds more support to Ludington's arguments against the legality of the developers' agreement between NFMU and the park owner, and it in no way makes Ludington, or anyone else, a customer of NFMU just by its very existence.

An illegally purchased collection system is just that; illegal, and it carries that stigma with it to all its attached legal baggage including making Ludington or anyone else a "customer". How can an illegal act create anything but more illegality?

Ludington also has to wonder, and so should the PSC, if the aforementioned facilities would have been made available to NFMU by the park owner except for this payment of nearly \$140,000.00 for same.

4. Staff refers to the original OPC/NFMU settlement agreement as if it was a "done deal"; but Ludington would remind the PSC that the signatures of Gill, Devine and Ludington were also required to make this a completed settlement. Ludington states emphatically that only one party to this agreement, out of the five parties involved, actually signed this agreement with full support for his involvement. That was the signature of A. A. Reeves of NFMU. OPC can be shown as not having full

support by the very fact that three other signatorys refused to sign and these signatorys were Buccaneer Homeowners themselves. This also makes a lie of the fact that the President of the Buccaneer Homeowners Association signed a statement attesting to the fact that he signed on behalf of " ALL" homeowners. He did not sign for, Ludington, Devine or Gill, or for the thousand or more homeowners he never bothered to contact to inform them of the settlement agreement; and that makes his signed statement a lie.

The BHA president failed to mention to the OPC and PSC that the original settlement agreement was presented to the homeowners in a manner in which the homeowners were intimidated and coerced into voting for it at a hastily called "special meeting" on August 26, 1999. Audio tapes of that meeting clearly show that the homeowners were given half truths, fed lie after lie, and intimidated into voting for not only the settlement agreement, but also for voting to have Ludington, Gill and Devine, stricken as parties of record ! All this was presented in one motion that was read to the voting homeowners.

This meeting was clearly "rigged" to obtain a favorable vote on the motion.



At this "special meeting" statements were made such as;

COLVIN: " You will pay sewer charges whether you like it or not! " and "the PSC said you will pay sewer charges regardless".

DURBIN: "PSC is going to tell them they have the right to be here" (in reference to NFMU)

DURBIN: "If we don't accept it you will pay the \$462 and the retro to January 1999". (in reference to voting for the agreement)

COLVIN: "This vote tonight does not give the right to do this, but only interested to tell the PSC". (in reference to the PSC decision).

COLVIN: "the PSC said there would be a surcharge because we prolong this matter".

DURBIN: "Finally, the choice was do we take our chances with the PSC, who will hurt us badly, or do we take the fact we have this opportunity to get out from under". (in reference to the agreement).

DURBIN: "If we don't do it we are going to be in trouble---- the lid will be off.". ( in reference to voting for the agreement).

These very statements, and many more like them, were made to the voting homeowners at that "special meeting", and all this after the settlement agreement had already been signed by the OPC and NFMU, and

endorsed by the BHA Executive. The PSC is advised that all the parties that signed the settlement agreement did so before it was presented to the homeowners for their vote of approval, a rather backwards situation in anyone's eyes, and one Ludington regards as illegal.

Ludington also wonders just how NFMU was able to file a motion with PSC, the very next day, August 27, 1999, to have the three interveners stricken, without some sort of collusion occurring between NFMU, OPC and the BHA executive.

5. PSC witnessed the fact that homeowner support for the signing of this agreement by OPC was withdrawn officially at the PSC hearing of Oct. 13, 1999, when OPC stood up and announced this to all attending. Ludington has seen no evidence that the support for OPC's signing of the settlement has been renewed.

OPC also made it very clear at that Oct. 13 hearing that this was not an agreement in any sense of the word until all parties had signed it. (See Oct. 13 transcript, pg 29, lines 17 to 20).

Ludington also stated fact, at the Oct. 13 hearing, to prove that OPC itself, had never obtained the approval of a majority of the homeowners for any settlement agreement as OPC claims to have done . (See Oct 13

transcript, pg 47 lines 15 to 25 and pg 48 lines 1 to 25 and pg 49, line 1)

For OPC to suggest that this was ever a bonafide agreement between the parties involved is absurd as it still has not been officially documented by the Buccaneer Homeowners Association executive who failed to follow proper procedures in obtaining approval of the many absentee homeowners, the absentee executive members, and the recording of the details as required under Fs 617.0821 (1), (2).

6. If staff is suggesting that this is a modified version of the original settlement agreement, (See Oct. 13 transcripts, pg 46 lines 8 to 14), then this is also an agreement that has never been seen by the homeowners; and as it has never been shown to them, therefore could never have been approved by them as staff has stated in recommendations. When staff recommended changes be made to the original settlement agreement during an agenda conference on Sept. 7, 1999, staff at the same time would have lost the homeowners' support because those changes were never approved by the homeowners.

7. Ludington also states that the recommendations of staff in this matter, should be totally disregarded . Should a recommendation from staff be considered as anything meaningful when that same staff cannot

even get dates of filing of motions correct, or titles of filed motions correct? (See Oct. 13 transcript pg 40, lines 9 to 19). Staff clearly gave misinformation to the PSC in that statement that day. Dates and titles were given incorrectly! When matters of this much importance are left in the hands of staff who cannot get facts even listed, or stated, correctly, then just what are we to make of the meaningfulness of their recommendations? Other staff errors:

a.. Staff still insists that this settlement agreement was modified by staff recommendations made on September 7th; but the final order clearly shows that it was the earlier version, as filed on September 2, 1999 which was ordered approved, and not one that was modified later. It is this settlement agreement, filed September 2, 1999, that Ludington and Gill have also successfully moved to have dismissed/stricken !

b. Staff also continues to advise PSC that NFMU connected to Buccaneer on Nov. 24, 1998 when in fact the connection was made on or about September 30, 1998. This was done to meet a condition set by the Florida Department of Environmental Protection which required the park owner to connect by Oct. 1, 1998 or else face a \$10,000 fine.

c. Staff also stated that we would be discussing the "modified"

settlement agreement when asked by Ludington at the Oct. 13 hearing (see transcript pg 45 line 11 to 13), when in fact we were not; and if Ludington had been informed correctly by staff he would have vigorously objected to statements made by both NFMU and OPC that day in support of the settlement agreement; this same agreement which he had moved to have dismissed, and to which they had not responded in a timely fashion thereby forfeiting their opportunity to do so. Once again a misleading statement from staff had prejudiced our standing in this matter .

8. Ludington states that the settlement agreement was a product of many hands, not the least of which was OPC. OPC has stated in a letter of Nov. 24, 1999, (attached exhibit L-2) to Mr Donald Gill, that OPC did not execute this agreement until "after approximately 95% of the present and voting residents voted in favor" of it. Ludington states that this is a untruth on the part of OPC as a fax date stamp on the OPC signature sheet (attached exhibit L-3) shows clearly that Jack Shreve of OPC signed the sheet two full days before the homeowners' vote was called. If this is not Shreve's signature then OPC has supplied falsified evidence to Ludington to aid in gaining Ludington's favor towards the

settlement agreement.

9. In the PSC Memorandum of Dec. 14, 1999 containing the Final Order, Ludington also finds false or misleading statements, to wit:

(a). Page 8, paragraph following item 7 of the Ludington agreement, is a statement to the fact that both NFMU and OPC have said that the Ludington proposal should be rejected. This is untrue, as OPC has never said that the Ludington proposal should be rejected in any of its correspondence that Ludington, Gill or Devine have seen.

(b). Page 9, second last paragraph, line 8, states "there is no language" etc. Ludington understands that the PSC is saying here that NFMU can come back in the future and ask PSC for a change in rates to cover this CIAC shortfall. This is very misleading on the part of PSC as Ludington states that the park owners paid this CIAC to NFMU only to have the money returned as part of the developers' agreement. As the return of this money fell under the legislation granted in Fs 723 Ludington believes there would be no way that the PSC could force another increase to cover an already paid fee which had been paid under PSC governed legislation.

It is also Ludington's belief that language in the developers' agreement covers any CIAC shortfall by allowing NFMU to recover from

the park owner any amount that NFMU cannot obtain from other sources.

10. Ludington states that when this motion to reconsider is ruled as accepted by PSC that it would be in the best interests of the public to have a full hearing on this matter, and that it be rescheduled as soon as possible, and that the two parties involved in the developers' agreement be ordered to participate and explain fully to the PSC, and all other parties concerned , all parts of this developers' agreement; and that they be prepared to back up their portions of the developers' agreement with factual evidence such as any dated government mandates.

This would bring all the essential parties together and allow PSC to become better informed on this matter; something that has been lacking up to now.

11. Ludington also advises the PSC that he would like to make oral arguments, if possible, at the next conference held to discuss this matter.

Respectfully submitted this 22nd day of December, 1999



Ronald Ludington  
509 Avanti Way  
N. Fort Myers FL 33917  
1-941-656-8263

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was hand delivered to:

Steve Reilly, Esq., Office of Public Counsel, Suite 812, 111 West Madison St., Tallahassee, FL

Jennifer Brubaker, Esq., Public Service Commission, Legal Division, 2540 Shumard Oak Blvd., Tallahassee, FL

Martin S. Friedman, Esq., Rose, Sundstrom & Bentley, 2548 Blirstone Pines Drive, Tallahassee, FL

Joseph Devine, 688 Brigantine, N. Fort Myers, FL

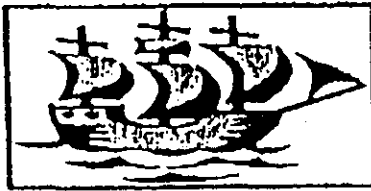
Donald Gill, 674 Brigantine, N. Fort Myers, FL

on or before the 23rd day of December, 1999.



Ronald Ludington





BUCCANEER HOMEOWNERS' ASSOCIATION  
2210 North Tamiami Trail  
North Fort Myers, Florida 33917

November 10, 1999

Mr. Steven Reilly  
State of Florida  
Office of Public Counsel  
% Florida Legislature  
111 West Madison Street-Room 812  
Tallahassee, Florida 32399-1400

Dear Mr. Reilly:

On behalf of the Board of Directors of Buccaneer Estates, I am writing this letter to confirm our conversations regarding how we feel in the matter before the Public Service Commission. As they well know, we were forced to withdraw our proposal during the meeting of October 13th, for what we felt was the well being of the residents of our park.

We wish for you to continue representing us before the Commission Meeting scheduled for November 16th, keeping in mind our goals as follows:

1. Due to their lack of jurisdiction NFMU should forego the hook-up charge of \$462.00.
2. NFMU should also forego any retroactive sewer charges until they are certified.

In essence, due to the meeting of October 13th, the Commission is well aware of our position and we will await their decision.

Please also know that during our conversations it has been made very clear that we, the Board of Directors of Buccaneer Estates, are not recognizing the proposal of Mr. Luddington, Mr. Devine and Mr. Gill put before the Commission October 13, 1999.

Looking forward to a favorable decision from the Public Service Commission, we remain

Sincerely,

Thomas G. Gaylord, President  
Buccaneer Homeowners' Assoc.

**Exhibit L-1**



JACK SHREVE  
PUBLIC COUNSEL

STATE OF FLORIDA  
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature  
111 West Madison St.  
Room 812  
Tallahassee, Florida 32399-1400  
850-488-9330

November 24, 1999

Mr. Donald Gill  
674 Brigantine Blvd.  
North Fort Myers, FL 33917

Dear Mr. Gill:

On November 22, 1999, I received your letter dated November 20, 1999. It is true that our office (OPC) received a letter from the President of the Buccaneer Homeowners' Association after the hearing in Fort Myers and before the Commission's Agenda Conference on November 16, 1999. (See copy of the letter attached) It is also true that I received a phone call on November 19, 1999, from Mr. Ludington inquiring about the letter and its contents. However, your statement that I told Mr. Ludington that I "had no recollection of the letter, or the subject matter of the letter" is not correct. In our November 19, 1999 brief telephone conversation Mr. Ludington asked me if our office had received a letter from the Board of Directors or the Utility Committee stating that the Board once again supports the "Settlement Agreement," also referred to as "Settlement Proposal." In response to this question I confirmed that our office had received a letter from the Board since the hearing, but that I could not confirm that it explicitly stated the Board's position in those terms. While the letter rejected the alternative "Ludington Proposal" I could not confirm that it expressly re-established the Board's support for the proposed "Settlement Agreement," originally authored by the Board and executed by OPC and North Fort Myers Utility (NFMU). I told Mr. Ludington that I would have to read the letter again before I could confirm exactly how the Board articulated its position.

After reading the Board's letter again I believe it would be an accurate characterization to say that the Board expressed its disapproval of the "Ludington Proposal." The letter also affirmed the Board's support of OPC to urge the Commission to issue an order approving the extension of NFMU's service territory to serve Buccaneer Estates, but denying NFMU the right to collect its \$462.00 hook-up charge from the residents and denying it the right to collect retroactive charges for providing wastewater service since December, 1998. The letter could be read to indicate the Board's support for the Commission to issue an order consistent with the terms of the "Settlement Proposal" originally sponsored by the Board. However, there is no explicit language reaffirming the Board's support of the "Settlement Agreement," per se.

*Exhibit L-2*

Mr. Donald Gill  
November 24, 1999  
Page 2

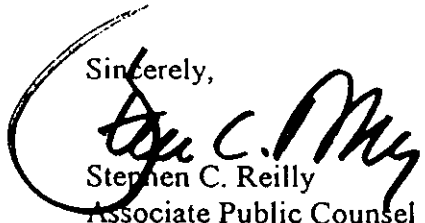
After OPC was unable to establish the Homeowners' Association as a bulk customer of NFMU we actively pursued the "Settlement Proposal" deemed the best by the Board and its Utility Committee. OPC executed the "Settlement Proposal" at the urging of the Board, the Utility Committee and after approximately 95% of the present and voting residents voted in favor of the "Settlement Proposal" at a meeting called by the Board for that purpose. After executing the "Settlement Proposal" with NFMU, OPC was bound to support it, both in its post hearing statement and oral argument at the November 16, 1999 Agenda Conference. Jack Shreve discussed with Mr. Ludington prior to the Agenda Conference, OPC's obligation to support the "Settlement Agreement," which would guarantee that the customers would not have to pay the \$462.00 connection charge or pay for wastewater service before September 1, 1999, regardless of the Commission's decision.

The existence or contents of the November 10, 1999 letter from the Board was not shared with any party (until 11/19/99) nor mentioned in OPC's Post Hearing Statement or oral argument at the November 16, 1999 Agenda Conference. It is possible that in a telephone conversation with Ms. Brubaker I might have characterized my current understanding of the Board's position as being opposed to the "Ludington Proposal" and in favor of the Commission issuing an order to accomplish the objectives of the "Settlement Proposal" originally proposed by the Board and executed by OPC and NFMU. However, I did not inform Ms. Brubaker about the existence of the November 10, 1999 letter until after Mr. Ludington made his inquiries on November 19, 1999. A fact which was confirmed by Ms. Brubaker when I spoke to her by phone on November 19, 1999. After Mr. Ludington spoke to me and Ms. Brubaker seeking a clarification of the Board's position, I called the President of the Association seeking the clarification. He said he would send a letter to Ms. Brubaker to further clarify the Board's position. As of the writing of this letter, Ms. Brubaker has not received the Board's letter. I have asked her to send me a copy of the letter when it arrives. As soon as I get a copy of the letter I will forward a copy to you.

In your letter to me you request an expedited response so that you can prepare your Motion for Reconsideration. Pursuant to Commission Rule 25-22.060, Florida Administrative Code, you have 15 days after the Commission issues its Order within which to file your Motion for Reconsideration. The Order is not scheduled to be issued until December 6, 1999.

I trust the foregoing answers your questions concerning the Board's November 10, 1999 letter and OPC's use of that letter in this docket.

Sincerely,

  
Stephen C. Reilly  
Associate Public Counsel

SCR/dsb

cc: Jennifer Brubaker  
Tom Gaylord

**Exhibit L-2**

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NORTH FORT MYERS UTILITY, INC.

OFFICE OF PUBLIC COUNSEL

\_\_\_\_\_  
By: A.A. Reeves, III, Vice President

  
\_\_\_\_\_  
By: Jack Shreve

\_\_\_\_\_  
Ronald Ludington

\_\_\_\_\_  
Donald Gill

\_\_\_\_\_  
Joseph Devine

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**Exhibit L-3**