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December 29, 1999

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Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 981781-SU

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Response to Motion to Reconsider and Rehear. A diskette in WordPerfect 6.1 is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Stephen C. Reilly
Associate Public Counsel

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Original

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

Docket No.: 981781-SU
Filed: December 29, 1999

**CITIZENS' RESPONSE TO
MOTION TO RECONSIDER AND REHEAR**

The Citizens of the State of Florida ("Citizens"), by and through their undersigned attorney, pursuant to Rule 25-22.060, Florida Administrative Code, file this response to correct many of the inaccurate statements made by Donald Gill and Joseph Devine in their Motion to Reconsider and Rehear and state:

1. In paragraph 1 of their motion Donald Gill and Joseph Devine ("Intervenors") state that the law firm of Roosa, Sutton, Brandt (correct spelling is "Burandt") & Adamski, L.L.P. authored and submitted the Settlement Agreement to the Buccaneer Homeowners' Association Board. This statement is untrue. Neither Bob Burandt or anyone in his law firm proposed, authored or submitted this Settlement Agreement to the Buccaneer Homeowners' Association Board. Bob Burandt was only involved in drafting the language in paragraph 6 of the Agreement which dealt with the Board's litigation against the Park Owner.
2. In paragraph 2 the Intervenors state that Mr. Burandt had a pecuniary interest in the outcome of the NFMU matter before this Commission. The Citizens believe this statement to be untrue. The Citizens are not aware of Mr. Burandt having

any pecuniary interest in the outcome of the NFMU matter, except for his right to receive legal fees for providing legal services to the Board with reference to the civil suits filed in Lee County Circuit Court.

3. In paragraph 4 the Intervenors state that the Office of Public Counsel ("OPC") has represented to this Commission and others that the vote taken by the Buccaneer residents on August 26, 1999 legally bound the residents to a Settlement Agreement that was never binding, because all of the necessary parties did not execute the Agreement. This statement is untrue. The vote taken on August 26, 1999 by the Buccaneer residents present and voting at the meeting was nothing more than a vote of support for the actions of the Association's Board and Utility Committee, which proposed the Settlement Agreement executed by OPC and North Fort Myers Utility, Inc. ("NFMU, Utility or Company"). The August 26, 1999 vote was only one of many factors which prompted Public Counsel to execute the proposed Settlement Agreement. The primary reason Public Counsel executed the Agreement, at the request of the Association's Board and Utility Committee, was that it offered the best legally permissible result for the customers, after the residents rejected owning and operating the Buccaneer wastewater collection system.
4. In paragraph 5 the Intervenors state that the Settlement Agreement was rendered null and void without any legal force and effect when the three Intervenors refused to sign it. The Citizens have always agreed and have always stated that when the three Intervenors refused to sign the Settlement

Agreement it became null and void as a "Settlement Agreement" that could be acted upon by the Commission to resolve the issues in this docket without an evidentiary hearing. However, the failure of the three Intervenors to sign the proposed Settlement Agreement did not render the Agreement null and void as a "proposal" by two of the parties (NFMU and OPC) to resolve the issues in this docket. That is precisely what the "Settlement Agreement" became..... a "proposal" by two of the parties to resolve the issues in this docket. The Commission did not act on this "proposal" until after it took evidence in a formal Chapter 120.57, Florida Statutes, evidentiary hearing.

5. In paragraph 8 the Intervenors state that OPC and others presented the non-binding Settlement Agreement to the Commission as a binding document that represented the will of the residents. This statement is not true. OPC has always represented that the Settlement Agreement is a proposal by two of the parties to resolve the issues in this docket. A proposal originally proposed by the duly elected officers and directors of the Buccaneer Homeowners' Association and the duly elected members of the Associations' Utility Committee, and supported by about 95% of the present and voting residents in the Park as of August 26, 1999. We have always acknowledged the opposition of the three Intervenors and the various residents that were persuaded by the Intervenors to oppose the proposed Settlement. The extent of this opposition has never been documented or authenticated by any of the three Intervenors. While Intervenor Ludington claims to have clear proof that a "great many" of the homeowners supported the

Ludington Proposal rather than the OPC/NFMU proposed Settlement, he chose not to share this proof (making it subject to verification) with the Commission at the final hearing in Fort Myers or even as late as the oral argument on November 16, 1999.

6. In paragraph 10 the Intervenors state that the OPC misled the Commission at the November 16, 1999 oral argument that the proposed Settlement represented the will of the residents. This statement is untrue. A review of the transcript of the November 16, 1999 oral argument will not reveal any representations made by OPC concerning the will of the Buccaneer residents. In fact, OPC confirmed that it executed the Agreement, that it was bound by that Agreement and that OPC still fully supported the Agreement. No representations were made by OPC at the November 16, 1999 oral argument concerning the will of the Buccaneer residents. However, the only official vote taken by the residents concerning this issue evidenced overwhelming resident support for the Settlement proposal that was ultimately approved by this Commission.
7. In paragraph 11 the Intervenors state that Florida law does not authorize OPC to execute Settlement Agreements on behalf of Homeowners' Association Corporations or Boards. OPC executed the proposed Settlement at the request of the Buccaneer Homeowners' Association's Board of Directors and the Association's Utility Committee on behalf of all of the residents of Buccaneer Estates. When the three Intervenors refused to sign the Settlement Agreement, OPC merely offered the proposed Settlement as a blueprint to resolve the issues

in this docket. An offer which was accepted by the Commission as being in the public interest after conducting a formal evidentiary hearing.

8. In paragraph 15 the Intervenors restate the Commission's finding that "OPC had originally been asked by the Buccaneer Estates Homeowner's Association to represent the Association and sign the Settlement Agreement." In paragraph 16 the Intervenors state that OPC exceeded its jurisdiction by representing the BHA. As stated above OPC is charged by statute to represent all of the Citizens, including all of the wastewater customers in Buccaneer Estates. It is not uncommon for various affected customers and organizations to expressly ask for and authorize OPC to represent their interests in dockets before the Commission. The Association could have intervened and become a party in this docket, just as the three Intervenors elected to do. The Association, however, elected not to become a party. It elected to rely upon OPC's representation of the general body of customers to adequately represent its interests. OPC has never expressly acted on behalf of, or executed any document on behalf of the Association or its Board of Directors, per se. In fact, the Board and its Utility Committee separately executed the proposed Settlement Agreement evidencing their support of the Agreement, even though neither were official parties to this docket nor proper signatories to the proposed Settlement Agreement.
9. In paragraph 19 the Intervenors state that OPC failed to timely notify all parties of record of its change in position, i.e., reversing its position and now

supporting the "Settlement Agreement." This statement is untrue. First, there was no change in OPC's position. At the October 13, 1999 hearing OPC announced to the Commission that the Homeowners Association had changed its mind and had requested that OPC withdraw its support of the Settlement Agreement, but since OPC never represented the Association, per se, but rather the general body of utility customers, such a request was advisory only. At no time during the October 13, 1999 hearing did OPC announce that it had withdrawn its support of the proposed Settlement Agreement. To the contrary, after making the announcement concerning the Board's position to the Commission, the Public Counsel restated that he had, nevertheless, signed the proposed Settlement. In fact, on several occasions after the October 13, 1999 hearing OPC confirmed to Intervenor Ludington that OPC continued to support the proposed Settlement and would reaffirm this continued support at the oral argument to be held on November 16, 1999.

10. In paragraph 21 the Intervenors restate on behalf of themselves and Intervenor Ludington of their complete surprise that OPC continued to support the proposed Settlement Agreement. This representation is disingenuous at best in light of the several full disclosures to Intervenor Ludington, in the weeks after the October 13, 1999 hearing and before the November 16, 1999 oral argument, that OPC continued to support the proposed Settlement Agreement.
11. In paragraph 22 the Intervenors state that it was only after the Public Counsel announced OPC's continued support of the Settlement Agreement in his oral

argument that they learned that the Settlement Agreement had been resurrected and was being used to support NFMU's Application for Extension of its Service Area. This statement is both untrue and preposterous. The primary issue which was considered at the October 13, 1999 hearing, as stated in the Prehearing Order issued on September 13, 1999 was: "Should the stipulation (proposed settlement) between the Office of Public Counsel and North Fort Myers Utility be approved?" All of the parties' statements of basic positions, as expressed in the Prehearing Order, including all three Intervenors, spoke expressly and exclusively about their support or opposition to the provisions of the proposed Settlement Agreement. The Settlement Agreement was not resurrected at the oral argument, it was the subject of the hearing. The claim of surprise is made even more meritless when it is understood that OPC confirmed on several occasions its continued support of the Settlement to Intervenor Ludington after the October 13, 1999 hearing.

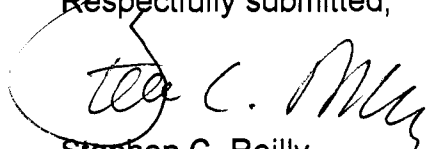
12. In paragraphs 23, 24 and 26 the Intervenors restate their allegations that OPC failed to notify the Intervenors of its change of position and the resurrection of the Settlement Agreement, and of OPC's misrepresentations concerning the residents support of the Agreement. All of these statements are untrue for the reasons previously stated.
13. In paragraph 31 the Intervenors state that Mr. Ludington had informed OPC and Staff that there was a large number of residents that rejected the proposed Settlement rather than supported it. While Mr. Ludington made these

assertions, he elected not to provide the evidence of this opposition (actual signed ballots) at either the October 13, 1999 hearing, or even the November 16, 1999 oral argument.

14. In paragraph 35 the Intervenors allege that OPC, the Commission, its staff, attorneys Burandt and Friedman and the Association's Board engaged in fraud, deception and surprise. The statement is both offensive and untrue. At no time has OPC engaged in fraud, deception or surprise in this docket. At all times we scrupulously attempted to represent, in good faith, as best we could, the interests of all of the wastewater customers of Buccaneer Estates.
15. In paragraph 40 the Intervenors again allege that OPC withheld material information from the three Intervenors. Again, this statement is untrue.
16. In paragraph 41 the Intervenors again allege that OPC introduced previously undisclosed information in its closing arguments, after the three Intervenors had made their arguments and could not comment further. Again, this statement is untrue. In fact, when the Intervenors were running out of time during their oral arguments, OPC yielded some of its time to permit the Intervenors to finish. When it was OPC's turn to offer its final argument, its statement was limited to confirming OPC's execution of the Agreement and of its continued full support of that Agreement. Absolutely no new or surprising arguments were added which could be said to have effectively denied the Intervenors of their Federal Constitution Right (14th Amendment) and their Florida Constitutional Right (Article I, Section 9) of due process.

WHEREFORE, for the reasons stated above the Intervenors' Motion
to Reconsider and Rehear is without merit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen C. Reilly", is written over a circular stamp or mark.

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Associate Public Counsel

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Attorney for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
DOCKET NO. 981781-SU

I HEREBY CERTIFY that a correct copy of the foregoing Citizens' Response to Motion to Reconsider and Rehear has been furnished by U.S. Mail or *hand-delivery to the following parties on this 29th day of December, 1999.

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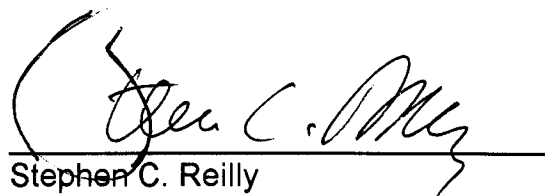
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