

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Authority )  
to Transfer the Facilities of )  
MHC SYSTEMS, INC. and ) Docket No. 000277-WS  
Certificate Nos. 353-W and 309-S )  
in Lee County, Florida to )  
NORTH FORT MYERS UTILITY, INC. )  
\_\_\_\_\_ )

MOTION TO DISMISS OBJECTION

NORTH FORT MYERS UTILITY, INC., by and through its undersigned attorneys and pursuant to Rule 28-106.204, Florida Administrative Code, files this Motion to dismiss the objection filed by Alexander William Varga and in support thereof states:

1. On March 2, 2000, NFMU filed an Application to transfer the Certificates and assets of MHC Systems, Inc. which serves the Pine Lakes Country Club and Lake Fairways Country Club.

2. On March 4, 2000, the Notice required by Rule 25-030.030(7), Florida Administrative Code, was published in the *Fort Myers News Press*.

3. On March 7, 2000, the Notice required by Rule 25-30.030(6), Florida Administrative Code, was mailed to each of the customers of the system being transferred.

- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- EGR \_\_\_\_\_
- LEG   I
- OPC \_\_\_\_\_
- PAL \_\_\_\_\_
- RGO   I
- SEC   I
- SER \_\_\_\_\_
- OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

4. Pursuant to Rule 25-30.031, Florida Administrative Code, in the instant case any objection to the Notice must have been filed by no later than April 6, 2000.

5. Apparently on March 31, 2000, Mr. Varga sent an e-mail to the Commission purportedly to object to this transfer. The Commission has no procedure for filing documents by e-mail and thus the e-mail does not constitute an objection to this transfer. Although Mr. Varga states in his e-mail that he is going to mail a copy of his e-mail, he apparently did not do so, or if he did, he did not take precautions to assure that it would be received. Mr. Varga now seeks to have this e-mail which was not received by the Commission until May 18, 2000 treated as a timely objection. There is no Commission procedure to do so.

6. This is not a case where the application of the doctrine of equitable tolling is applicable. Unlike the facts in *In re: Application for Amendment of Certificate No. 347-W to add territory in Martin County by Marion Utilities, Inc.*, Order No. PSC-97-0781-FOF-WU (July 1, 1997), where this Commission accepted a late filed objection, the Notice given by NFMU to Mr. Varga was in accordance with the Rule and not misleading. Unless a Rule so provides, the placing of an objection in the mail does not constitute a valid objection absent receipt with the required period of time. Cf.

*Enriquillo Export & Import, Inc. v. M.B.R. Industries, Inc.*, 733 So.2d 1124, 1126-27 (Fla. 4<sup>th</sup> DCA 1999). The Courts are clear in distinguishing between a document being "served" and "filed". See, for example, *Salyers v. State*, 705 So.2d 1024 (Fla. 5<sup>th</sup> DCA 1998).

7. Further, Mr. Varga's purported objection is based solely upon a newspaper article in the *Lee County Examiner*. For the Commission's information, a copy of that article is attached hereto. The *Lee County Examiner* is not a legitimate newspaper. What newspaper would allow its reporter to travel from Fort Myers to Tallahassee with one of the parties to an adversarial proceeding? Mr. Joseph Devine admitted in pleadings filed with the First District Court of Appeal that the reporter for the *Lee County Examiner* traveled to Tallahassee with Mr. Gill for Mr. Gill's oral argument before the Commission in the *Buccaneer Estates* proceeding. The purpose of this point is that the dismissal of Mr. Varga's purported objection will not result in any legitimate issue being overlooked by the Commission in considering NFMU's Application in this Docket. In fact, financial ability is a threshold issue which this Commission routinely considers in proceedings such as this.

WHEREFORE, NFMU requests this Commission dismiss Mr. Varga's objection as being untimely.

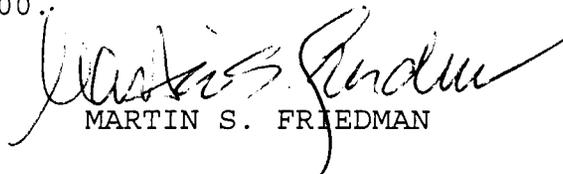
Respectfully submitted on this 30<sup>th</sup> day of May, 2000, by:

ROSE, SUNDSTROM & BENTLEY, LLP  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301  
(850) 877-6555

By:   
MARTIN S. FRIEDMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Filing was forwarded via U.S. Mail to Tyler Van Leuven, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 and to Mr. Alexander William Varga, 19808 Frenchman's Court, North Fort Myers, Florida 33903 this 30<sup>th</sup> day of May, 2000.

  
MARTIN S. FRIEDMAN

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Bill Suddreth  
Mary Feldman  
EYE  
AM  
3-29-00

# Lee County EXAMINER

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MARCH 29, 2000

## COUNTY WANTS TO BAIL OUT UTILITY

The Lee County Board of County Commissioners voted to investigate the possibility of purchasing N. Ft. Myers Utility, Inc (NFMU) for \$9.5 million. This would be the second sewer utility purchased by the county in less than one year.

NFMU reported losses of over \$600,000 in their last annual report to the Florida Public Service Commission. NFMU currently has 9,150 sewer customers in N. Ft. Myers, making the purchase price of \$6,503 per customer. Since the county will bond the purchase, figuring a 20 year bond, with interest will double the purchase price to \$119 million, and assuming each customer has an average sewer bill of \$50 per month, with the current customer base it will take the county 21.6 years to pay off the purchase, assuming no operating costs.

NFMU has been in constant legal battles for the past ten years. Beginning in the early 90's when they attempted to get county government to build a sewer system in N. Ft. Myers and force the residents to connect. That was defeated by a citizens organization called FAST, Fair Assessment of Sewer Taxes.

Since then, NFMU has been involved in court case after court case concerning the legalities of forcing residents in manufactured home parks to connect to NFMU. In the case of Widgeonville Village, County Public Works Director admitted in a deposition he condemned their package sewer plant only upon the request of an attorney friend. NFMU went out of their franchise area to connect Buccaneer Estates. That case is under appeal in the First Circuit Court of Appeals.

Tony Reeves, Vice President of NFMU is an employee of J.W. French, County Public Works Director, as a manager for Gulf Environmental Services, a water and sewer utility in south Lee County.

Commissioner Andrew Coy intended to sue Mr. Joseph Devine, President of Buccaneer Estates Homeowner Estates Association (BHOA) over his remarks at the Board of County Commissioners on March 14, 2000. Both Mr. Devine and Mr. Don Gill of Buccaneer Estates attended the meeting because the preliminary steps to buy-out N. Ft. Myers Utility, Inc. (NFMU)

which assumed on its own the sewer service for that park in 1998. Since then, the take-over has been, and still is, in litigation.

Three residents, Mr. Gill, Mr. Devine, and Mr. Ron Luffington have taken pro se this matter of the extension of NFMU to the Public Service Commission and now to the First Circuit Court of Appeals. NFMU admits that it made a "mistake" in assuming control of the sewer service in a deal with Manufactured Homes Communities (MHC) and was subsequently fined for the "error". Currently, Lake Palways Park, another MHC park, is going through a similar situation.

At the BOCC meeting Mr. Devine spoke to the campaign contributions given to Commissioner Coy by J.W. French, Lee County Public Works Director and partner of Anthony Reeves, III, another contributor to Coy and vice-president of NFMU. Also on the list is Attorney Martin Friedman representing NFMU before the PSC, Attorney Frank Aloha, Jr., who represents Manufactured Home

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Communities, and Attorney Adamski, a partner of Robert Burandt, who has represented BHOA. Mr. Devine asked Coy to remove himself from voting on this issue, which he did not.

Mr. Gill announced to the BOCC that the case is now before the First District Court of Appeals and reminded the group that NFMU is in debt from not collecting any monies from Buccaneer Estates residents since 1998.

Both facts had been discussed at the Homeowners meeting the previous night and therefore a group of residents came to the meeting to present their opinions.

Immediately before the BOCC meeting another resident, Mr. Charles Connors found and had been able to speak to Mr. Coy in his office before the Commissioners meeting to see what Mr. Coy was going to do at the meeting. Mr. Connors repeated the opinion that the NFMU takeover was illegal on several fronts. Mr. Connors was told by Coy that he would sue Mr. Devine for divulging the contributions information.

Later in the week Mr. Connors did stand by the fact that Mr. Coy threatened to sue Mr. Devine for saying his list of contributors, which is available to anyone at Lee County Elections or over the internet.

Mr. Coy told Mr. Devine in a telephone conversation after the BOCC meeting that he never did threaten to sue him. A meeting of Mr. Devine and Mr. Gill with Coy was arranged for this week to include Lee County attorneys and Public Works department officials.

At that meeting, attended by Lee County Attorney David Owen and Larry Johnson from Lee county Public Works, Devine outlined the appeal which the BHOA had filed.

When Lee County purchased Florida Cities Water Company, Inc., last year, Lee County attorneys were not aware of at least one outstanding lien against FCWC which cost the county \$2,000.