

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Authority )  
to Transfer the Facilities of )  
MHC SYSTEMS, INC. and )  
Certificate Nos. 353-W and 309-S )  
in Lee County, Florida to )  
NORTH FORT MYERS UTILITY, INC. )

Docket No. 000277-

RECORDS AND REPORTING

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NORTH FORT MYERS UTILITY, INC.'S  
RESPONSE IN OPPOSITION TO PINE LAKES HOMEOWNERS  
ASSOCIATION, II, INC.'S MOTION TO INTERVENE

NORTH FORT MYERS UTILITY, INC. ("NFMU"), by and through its undersigned attorneys and pursuant to Rule 28-106.204(1), Florida Administrative Code, files this Response in Opposition to Pine Lakes Homeowners Association II, Inc.'s ("HOA II") Motion to Intervene and states:

1. HOA II purports to file its Motion pursuant to Rule 25-2.039<sup>1</sup>(sic), Florida Administrative Code; however, it is procedurally deficient. That Rule provides that it "must conform with Commission Rule 25-22.036(7)(a)".<sup>2</sup> The Motion does not conform with Commission Rule 25-22.036(4), but is merely a rambling

<sup>1</sup>The actual Rule is 25-22.039, Florida Administrative Code.

<sup>2</sup>The applicable Rule is actually 25-22.036(4), Florida Administrative Code.

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diatrails primarily addressing the reasons why it did not seek to intervene in this proceeding earlier. The purpose of Commission Rule 25-22.036(4) is to put the opposing party on notice of the basis of the party's claim. If the Commission decides to allow intervention by HOA II, then it should require HOA II to clearly articulate the factual and legal basis for its position, and the relief which it seeks.

2. Although NFMU has no knowledge with regard to the members of HOA II, it does appear from the records of the Florida Department of State that it is a valid not for profit corporation. However, the response to HOA II's Motion to Intervene by Mr. Varga raises substantial questions regarding its purpose and continued viability as a representative entity of customers of the Utility. Thus, subject to HOA II proving its standing at any formal hearing, NFMU acknowledges that based upon its statements HOA II's interests are affected by this proceeding.

3. Pursuant to Rule 25-22.039, Florida Administrative Code, interveners take the case as they find it. HOA II did not file a timely protest, and thus does not enjoy all of the rights of a true party. NFMU has taken the deposition of Mr. Varga, the only objecting party in this proceeding, and intends to file a Motion for Summary Disposition as soon as the transcript of Mr. Varga's deposition is prepared (which NFMU understands to be by October 13,

2000). Any intervention by HOA II should not be allowed to defeat any otherwise appropriate summary disposition of this matter.

WHEREFORE, NFMU requests this Commission take the following action with regard to HOA II's Motion to Intervene:

1) Deny such Motion until it complies with Rule 25-22.035(4), Florida Administrative Code, or in the alternative, grant the Motion subject to compliance with that Rule within 30 days of the date of the Order granting intervention; and

2) Require HOA II to prove its standing at any upcoming final hearing; and

3) Address this Motion at the same agenda at which NFMU's Motion for Summary Disposition is addressed since the granting of summary disposition will render HOA II's motion moot; and

4) HOA II's intervention does not allow it to expand issues beyond those raised by the parties.

Respectfully submitted on this  
9<sup>th</sup> day of October, 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 Response in Opposition to Motion to Intervene was forwarded via U.S. Mail this 6<sup>th</sup> day of October, 2000 to:

Tyler Van Leuven, Esquire  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Mr. Alexander William Varga  
19808 Frenchman's Court  
North Fort Myers, Florida 33903

Kathryn Cowdery, Esquire  
Ruden, McCloskey, Smith, et al  
215 South Monroe Street  
Suite 815  
Tallahassee, FL 32301

Jermaine Troiano, President  
19419 Saddlebrook  
North Fort Myers, FL 33903

  
for MARTIN S. FRIEDMAN

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