

Commissioners:
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ORIGINAL

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

October 9, 2000

Mr. Larry Schaupp
10911 Circle Pine Road
North Fort Myers, Florida 33903

Re: Docket No. 000277-WS - Application for transfer of facilities and Certificates Nos. 353-W and 309-S in Lee County from MHC Systems, Inc. d/b/a FFEC-Six to North Fort Myers Utility, Inc., holder of Certificate No. 247-S; amendment of Certificate No. 247-S; and cancellation of Certificate No. 309-S.

Dear Mr. Schaupp:

I am writing in response to your letter dated October 1, 2000, concerning service availability charges and the status of this matter. I have enclosed another copy of my correspondence dated April 11, 2000, which addresses the Commission's role in the regulatory process. As to your questions concerning "hook in" fees (service availability charges), the residents of the Buccaneer community did not have to pay service availability charges as a result of the transfer because the fees were waived as part of the settlement agreement. I have enclosed a copy of the Orders which reflect the Settlement Agreement and the Mediated Settlement Agreement.

As to this docket, a hearing is presently scheduled to be held on May 31 and June 1, 2001. A schedule of the events in this matter can be obtained from the Commission's website. However, it should be noted that the schedule of events could change. In addition to the schedule of events, the Commission's website contains a list of all the parties of record, interested persons, and documents filed in the docket. The Commission's website address is www.floridapsc.com.

Hopefully, I have addressed all of your questions. However, should you have additional questions concerning this letter or the transfer, please contact me at (850) 413-6185.

Sincerely,

D. Tyler Van Leuven
Staff Attorney

DTV/dm

Enclosures (3)

cc: Division of Records and Reporting
(without enclosures)
Division of Regulatory Oversight (Johnson, Redemann)
Martins S. Friedman, Esquire
Kathryn G.W. Cowdery, Esquire
Alexander William Varga

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STATE OF FLORIDA

Commissioners:
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E. LEON JACOBS, JR.
LILA A. JABER



DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

April 11, 2000

Mr. Larry Schaupp
10911 Circle Pine Road
N. Fort Myers, Florida 33903

RE: Docket No. 000277-WS - Application for transfer of facilities and Certificates Nos. 353-W and 309-S in Lee County from MHC Systems, Inc. d/b/a FFEC-Six to North Fort Myers Utility, Inc., holder of Certificate No. 247-S; amendment of Certificate No. 247-S; and cancellation of Certificate No. 309-S.

Dear Mr. Schaupp:

I am writing in response to your questions concerning rates and who regulates MHC Systems, Inc. ("MHC") and North Fort Myers Utility, Inc. ("NFMU"). First, it is necessary to discuss the Public Service Commission's ("PSC") role in Florida's regulatory scheme. It is the PSC's duty and responsibility to regulate investor-owned utility companies in various counties throughout the State of Florida. However, in order for a company to be subject to our regulation, the county has to have relinquished its authority to regulate companies within its boundaries. Lee County relinquished its authority on February 18, 1970, and the PSC correspondingly acknowledged its jurisdiction by issuing Order No. 4836 on March 2, 1970. Therefore, both MHC and NFMU are subject to Chapter 367, Florida Statutes, and the rules and regulations of the PSC.

One of the PSC's primary functions is to review, evaluate, monitor, and set rates for regulated companies. In reviewing a company's requested rates, the Commission's staff will preform engineering and financial reviews of the company's books, records, and facilities. After all the reviews have been preformed, the Commission's staff makes a formal recommendation to the Commissioners as to whether the requested rates are just, reasonable, compensatory, and not unfairly discriminatory. At this point, the Commissioners may either approve or deny the rates requested by the company. Therefore, as you can see the PSC takes great care in setting rates.

In addition, the Office of Public Counsel acts as an advocate for the citizens of the State of Florida. It is in this capacity that the Public Counsel acts on the behalf of the customers should they feel that the Commission's decisions or the Commission staff's recommendation to the Commissioners is not in the best interests of the customers.

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Mr. Larry Schaupp

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April 7, 2000

Next, as to MHC's name, I can understand your surprise when you learned that FFEC-Six was actually a part of MHC because there have been several changes in the past few years. Hopefully, the following summary of these recent changes will help clarify any questions you may have as to the utility's name. Certificates Nos. 353-W and 309-S were originally issued on June 3, 1982, pursuant to Order No. 10833, in the name of FFEC-Six, Inc. On March 14, 1991, the Commission issued Order No. 24240 acknowledging a restructuring and name change to FFEC-Six, Ltd. However, on October 17, 1995, FFEC-Six, Ltd.'s application for the transfer of its facilities and Certificates to MHC Systems, Inc. was approved by Order No. PSC-95-1271-FOF-WS. But, on July 27, 1999, pursuant to staff's request, MHC filed a name change application in order to provide the Commission with sufficient information to correct its records and issue new Certificates reflecting MHC's correct name. MHC's reason for the correction was that it failed to inform the Commission of its intention to continue to operate under the full name MHC Systems, Inc. d/b/a FFEC-Six to avoid customer confusion because FFEC-Six has been and continues to be the name customers know. By Order No. PSC-99-1881-FOF-WS, issued September 21, 1999, the Commission approved the name correction and issued certificates reflecting the name MHC Systems, Inc. d/b/a/ FFEC-Six.

Finally, I would like to address your questions concerning rates. Should the PSC grant this transfer it will not result in a rate change. The transfer will not increase or decrease your water rates because Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a utility to adopt and use the rates, classifications and regulations of the former company unless authorized to change by the Commission. Therefore, since NFMU has not requested to change its rates and charges, the rates and charges will remain the same until authorized to change by the Commission in a subsequent proceeding. However, if NFMU should file a request for a rate increase in the future, you will be able to participate at that time.

I have enclosed a brochure titled Your Water and Wastewater Service which may be of interest to you. Although this brochure is general in nature, it does discuss billing practices and rate structure. Hopefully, you will find the enclosed literature helpful. However, should you have any questions concerning this letter or the transfer, please contact me at (850) 413-6185.

.Sincerely,

D. Tyler Van Leuven
Staff Attorney

DTV/dm
Enclosure

cc: Division of Water and Wastewater (Johnson, Redemann)
Division of Records and Reporting

1000277LT DTV

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 981781-SU
ORDER NO. PSC-00-1522-AS-SU
ISSUED: August 22, 2000

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.

ORDER APPROVING MEDIATED SETTLEMENT AGREEMENT

BY THE COMMISSION:

BACKGROUND

On December 1, 1998, North Fort Myers Utility, Inc. (NFMU or utility) filed an Application for Amendment to Certificate of Authorization to include the wastewater service area of Buccaneer Utility. Water service is provided to the park by the park owner, MHC-DeAnza Financial Limited Partnership, d/b/a Buccaneer Water Service (MHC), a Commission-regulated utility. On December 7, 1998, NFMU filed an Emergency Motion to Implement Rates and Charges with respect to the interconnection of existing wastewater customers within the Buccaneer Estates mobile home community (Buccaneer) to NFMU. On December 9, 1998, NFMU responded to Commission staff's request for additional information on the connection of Buccaneer with a letter referencing various parts of Chapter 723, Florida Statutes.

On December 10, 1998, NFMU mailed a notice to the Buccaneer customers which stated that utility service had been assigned to NFMU, that connection fees would be collected, and that effective December 1, 1998, the utility would begin billing for monthly service and the lot rent would decrease by a specific amount.

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On December 18, 1998, we received numerous customer protests concerning the application of NFMU's monthly rates and connection fees. Among the protesting customers were Mr. Donald Gill, Mr. Joseph Devine and Mr. Ronald Ludington, whose protest letters were filed on December 18, 1998, December 21, 1998, and December 21, 1998, respectively. On January 14, 1999, several customers filed letters requesting that the Office of Public Counsel (OPC) represent the Buccaneer residents in this matter. However, our records indicate that neither Messrs. Gill, Devine nor Ludington agreed to be represented by OPC or other counsel, nor did they file requests to be considered qualified representatives pursuant to Rule 28-106.106, Florida Administrative Code. Therefore, these three individuals were considered pro se litigants.

On December 21, 1998, OPC filed a Response to the Emergency Motion to Implement Rates and Charges. On January 14, 1999, OPC filed a Notice of Intervention pursuant to Section 350.0611, Florida Statutes, which was acknowledged by Order No. PSC-99-0180-PCO-SU, issued January 29, 1999.

On September 2, 1999, OPC and the utility filed an executed proposal for the settlement of the case. Messrs. Gill, Devine and Ludington opposed the proposed settlement agreement and refused to sign it. At the September 7, 1999, agenda conference, we deferred ruling on the OPC/NFMU proposal and instructed that the matter proceed to hearing and that the Settlement Agreement could be presented for consideration at that time.

On September 7, 1999, a Motion for Dismissal of Settlement Agreement was filed by Mr. Ludington. On September 9, 1999, a Motion to Strike Settlement Agreement was filed by Mr. Gill.

A hearing was held on October 13, 1999, in North Fort Myers, Florida, and continued to November 16, 1999, in Tallahassee, Florida. By Order No. PSC-99-2444-AS-SU, issued December 14, 1999, we accepted the proposed settlement offered by OPC and NFMU, approved the transfer of Buccaneer to NFMU, and amended NFMU's certificate of authorization to include Buccaneer Estates.

On December 22, 1999, Mr. Gill and Mr. Devine timely filed a joint Motion to Reconsider and Rehear Order No. PSC-99-2444-AS-SU. On December 27, 1999, Mr. Ludington's Motion For Reconsideration of

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Order No. PSC-99-2444-AS-SU was timely filed. On December 28, 1999, NFMU timely filed its responses to Mr. Gill and Mr. Devine's motion and Mr. Ludington's motion. On December 29, 1999, OPC timely filed its responses to these motions.

By Order No. PSC-00-0370-FOF-SU, issued February 21, 2000, we granted the motions for reconsideration in part, but for the limited purpose of clarifying that Mr. Ludington and Mr. Gill's respective motions to dismiss the OPC/NFMU offer of settlement were denied by virtue of the fact that we approved the agreement by Order No. PSC-99-2444-AS-SU. The motions for reconsideration were denied in all other respects by Order No. PSC-99-2444-AS-SU. On March 13, 2000, a notice of administrative appeal of Order No. PSC-99-2444-AS-SU was filed by Mr. Devine.

There has been an ongoing dispute between NFMU and a number of the Buccaneer customers regarding NFMU becoming the new wastewater provider for the mobile home park. We have become aware of a recent manifestation of this controversy with respect to the payment of bills for wastewater service provided by NFMU pursuant to Order No. PSC-99-2444-AS-SU.

NFMU began billing the Buccaneer customers for service in April, once Order No. PSC-99-2444-AS-SU became final. Pursuant to Order No. PSC-99-2444-AS-SU, NFMU was required to bill the Buccaneer customers within the park for service rendered from September 1, 1999, forward, based upon NFMU's residential rate schedule. NFMU notified the Buccaneer customers that rather than collect this amount in a lump sum, the utility would bill in two-month increments each month, beginning with September/October 1999, until all past indebtedness was paid and the customer accounts brought to the current month.

According to utility estimates, between 500 and 600 of the park's 971 homeowners have not paid the billed amounts and owe about \$50 or \$60 each. It is our understanding that the majority of these customers are refusing to pay until the appellate court renders its decision.

In order to discontinue wastewater service for nonpayment of bills pursuant to Rule 25-30.320, Florida Administrative Code, NFMU would be required to bring a backhoe onto each nonpaying customer's

property, dig up the wastewater line, and install a shut-off valve. The utility estimates that the cost of discontinuing wastewater service would be several hundred dollars per customer, depending where the line is buried on each respective lot. NFMU's tariff provides that wastewater service shall be restored only after the utility has received payment for all past-due bills and reconnect charges from the customer, in accordance with Rule 25-30.320, Florida Administrative Code. In this instance, the customer would be required to pay the tariffed reconnection fee and the actual cost of disconnection and reconnection, in addition to his or her outstanding bill from September 1999 forward.

On May 10, 2000, NFMU provided notice to each of the nonpaying customers that pursuant to NFMU's tariff and Rule 25-30.320, Florida Administrative Code, wastewater service would be subject to disconnection if the customer did not pay his or her outstanding bill within five days. The time noticed in which to cure the customers' nonpayment expired on May 16, 2000. Upon Commission staff's request, the utility verbally agreed to an extension until May 30, 2000, before pursuing customer disconnections, in order to determine whether settlement of the matter could be reached without the necessity of customer disconnections.

In the interest of resolving the matter without the resort of disconnection, Commission staff proposed mediation of the dispute over nonpayment of bills, which was agreed to by NFMU, Mr. Gill, the Buccaneer Estates Homeowner's Association (BHA), with Mr. Devine as the current BHA President, and OPC. Mr. Ludington was invited to attend the mediation, but as he was residing in Canada at the time, asked that Mr. Devine represent his interests at the mediation. Four separate mediation sessions ultimately took place in Fort Myers, Florida on May 24, June 2, June 6 and June 12, 2000, the last of which was also attended by a representative of MHC. At the June 12, 2000, a "Final Wastewater Settlement Agreement" (Agreement) was signed by representatives for NFMU, MHC, and BHA, which proposes a resolution not only of the disconnection issue, but also of the continuing dispute over the transfer of Buccaneer Estates to NFMU.

On May 22, 2000, pursuant to Rule 28-104.004, Florida Administrative Code, OPC filed a Petition for Emergency Variance or Waiver from Rules 25-30.135 and 25-30.320, Florida Administrative

Code, and from NFMU's Commission-approved tariff in accordance with those rules (Petition). On May 23, 2000, NFMU filed an Answer to OPC's Petition for Emergency Variance or Waiver (Answer). Pursuant to Rule 28-104.005, Florida Administrative Code, we must grant or deny a petition for emergency variance or waiver within 30 days of its receipt, unless the time limit is waived by the petitioner. In this instance, in recognition of the parties' efforts to mediate the matter and NFMU's agreement to suspend disconnections until mediation was attempted, counsel for OPC agreed to waive the 30-day limit.

Commission staff initially filed its recommendation in this matter for our consideration at the July 11, 2000 Agenda Conference. The mediated Agreement specifies that, as a condition precedent to our consideration of that Agreement, a separate agreement shall be executed between MHC and the Buccaneer Estates residents to dispose of the existing circuit court dispute under Chapter 723, Florida Statutes (Mobile Home Act). Commission staff subsequently learned in a telephone conference with counsel for MHC that this separate agreement had in fact not yet been executed, nor would it be finalized in time for the July 11, 2000 Agenda Conference. Upon request to the Chairman's Office, the item was deferred.

For informational purposes, we also note with respect to the appeal of Order No. PSC-99-2444-AS-SU, that by Order dated July 12, 2000, the First District Court of Appeal dismissed the appeal for "failure to comply with the orders of the court and the rules of appellate procedure."

On July 27, 2000, we received confirmation from the office of Robert Burandt, Esquire, who represents BHA for the purposes of the Chapter 723 dispute, that the Buccaneer Estates residents have executed a settlement agreement which disposes of their dispute with the mobile home park owner. Commission staff subsequently filed its recommendation for our consideration at the August 1, 2000 Agenda Conference.

MEDIATED SETTLEMENT AGREEMENT

The offer of settlement approved by Order No. PSC-99-2444-AS-SU provided the following:

1. NFMU will bill customers within the park for service rendered from September 1, 1999, based upon NFMU residential rate schedule of \$10.98 base facility charge and \$3.98 per 1,000 gallons, with a cap of 10,000 gallons. Water meter reading information will be obtained from Buccaneer Water Company.
2. NFMU waives the right to collect service availability charges from the customers in Buccaneer estates. Further, NFMU waives the right to collect any pass-through charges from the residents, holding the residents forever harmless from the payment of any pass-through charges potentially collectible under Chapter 723, Florida Statutes, relating to Buccaneer Estates' interconnection with NFMU's system.
3. The residents shall not pay for wastewater service through August 31, 1999.
4. The agreement does not affect the rights of the residents of Buccaneer estates to pursue their contract rights against the Park Owner under Chapter 723, Florida Statutes.
5. The show cause proceeding pending against NFMU in this docket should be dismissed without penalty to NFMU.

The June 12, 2000 mediated Agreement provides as follows (several imprecise terms and typographical errors appear in the mediated Agreement; our clarification of those terms is provided in brackets and are not a part of the mediated Agreement itself):

1. The foregoing recitations are true, correct, and incorporated herein as though fully set forth;
2. For and in consideration of the agreement set forth below, each party hereto releases the other from any and all claims it has against the other relative to the provision of wastewater services set forth herein;
3. In compromise and settlement of the issues between the parties, Owner [MHC] will pay at closing to NFMU a portion of the appropriate connection charge for the 971 units within Buccaneer Estates in the amount of \$180,000;

4. Subject to the provisions of paragraph (6) hereinbelow, NFMU will bill Owner [MHC] monthly according to its approved Florida Public Service Commission approved bulk rate [general service rate], plus an agreed upon amount of \$1.93 per unit within Buccaneer Village [Buccaneer Estates] per month for services rendered on and after July 1, 2000, and owner [MHC] will pay NFMU for such services in the ordinary course of business;
5. Owner [MHC] will bill [Buccaneer Estates] Homeowners on a pro rata flat rate of one nine hundred and seventy first (1/971st) per residential lot for the total of such wastewater services monthly;
6. NFMU will re-compute its billing for service rendered to the homeowners for wastewater treatment subsequent to September 1, 1999, through June 30, 2000, and will collect for said ten months in arrears by rendering its normal bill for the months of July, 2000 through the end of March 2001, plus re-computed bills for each month commencing in September 1999 and concluding for services rendered May, 2000 in order that NFMU will be made whole on its arrears. Essentially, this means that NFMU's invoices will be approximately double that which it would otherwise normally be entitled to through the month of April, 2000 [2001]. For bills rendered on and after April 1, 2001, therefore, billing would be at the normal NFMU tariff rate plus an agreed-upon fee for maintenance of the onsite system as described herein above, or at an expected approximate amount of \$12.15 per dwelling unit per month thereafter;
7. Concurrently with the closing hereon, NFMU will issue refund checks to all of those homeowners within Buccaneer Estates who have paid NFMU directly for service rendered subsequent to September, 1999;
8. This Agreement is executed in connection with a complete settlement of all outstanding claims of the Homeowners against the Owner [MHC], pursuant to Chapter 723, F.S., and otherwise which will be stated further and in greater detail in a separate definitive agreement between homeowners and owner

[MHC], the approval thereof being a condition precedent to the lawful effectiveness hereof; and

9. Each party hereto, for itself, its successors and assigns hereby releases and discharges the other from and against any claim that it may have against the other save and except for the matters contained herein and the separate writing between the homeowners and the owner [MHC] as described in Paragraph 8 above and each party shall dismiss any pending actions that it now has against the other, including the pending appeal of the Final Order of the Florida Public Service Commission now pending before the First District Court of Appeal and filed by Messers Devine, Gill, and Ludington, with prejudice and without cost.
10. Closing shall occur within one week of approval of this agreement by the Florida Public Service Commission, if necessary and approval by the Homeowners and Owner [MHC] of the definitive agreement referenced herein.
11. Any subsequent Owner of NFMU shall bill in a basis of its tariff for similar wastewater services.

There are four areas of the Agreement which we believe merit some additional comment and analysis. These are the authority of Mr. Devine as President of the Home Owners Association to execute the Agreement on behalf of the residents of the park, the necessity for signatures of Mr. Donald Gill and Ronald Ludington on the Agreement, the impact of the proposed billing methodology to customers within the park, and the last provision in Agreement which states that "any subsequent owner of NFMU shall bill in a basis of its tariff for similar wastewater services."

Authority of the BHA President to Enter into a Stipulation on Behalf of the Buccaneer Estates Residents

The signatories to the stipulation include Mr. Joseph Devine, as President of BHA; Mr. Howard Walker, Chief Executive Officer of MHC; Mr A. A. Reeves, Vice President of NFMU; Mr. Donald Gill, and Mr. Ronald Ludington. We had an initial concern as to whether Mr. Devine, as President of BHA, had sufficient authority to represent

the Buccaneer homeowners, or whether the stipulation would need to be approved by a majority vote of the residents themselves.

However, on June 19, 2000, the BHA conducted a vote of its membership to determine whether a majority of the residents were in support of the mediated Agreement. Votes were distributed to all customers currently in residence at the park, as well as to all of those not in residence but whom had provided an e-mail or mailing address by which they might be reached. Of the 668 total votes which were distributed, 562 votes were returned. The BHA reported of those votes returned, 549 voted in favor of the mediated Agreement.

Based upon the foregoing, we believe that Mr. Devine, as the elected president of BHA, has the authority to enter into the mediated Agreement on behalf of the Buccaneer residents.

Mr. Gill and Mr. Ludington's Execution of the Agreement

The second concern we had regarding the Agreement is with regard to Mr. Gill and Mr. Ludington's approval of that document. Neither Mr. Gill nor Mr. Ludington were present during the June 12, 2000 mediation session which ultimately concluded with the drafting and execution of the mediated Agreement. Moreover, we note that Commission staff has contacted Mr. Gill and Mr. Ludington and confirmed that both gentlemen have been made aware and approve of the Agreement's contents.

Impact of Proposed Billing to Customers

The proposed stipulation states that NFMU will bill MHC for the total wastewater service to the park. MHC will then divide that amount by the number of lots, 971 units, and bill the homeowners the flat amount. The general service rate schedule, rather than the residential rate schedule, shall be used for the calculation of this amount.

Throughout the proceeding of this matter, many of the homeowners have expressed a desire to have utility service billed the same way it had been done before; that is, as a flat amount included in the monthly lot rental fee. The billing in the stipulation would be more consistent with this billing preference

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rather than the individually metered, residential rate authorized by Order No. PSC-99-2444-AS-SU.

The billing scenario proposed in the Agreement raises some concerns regarding our policy of promoting conservation through rate structures, and the impact on customers through flat rate billing versus the use of metered billing.

Order No. PSC-99-2444-AS-SU authorized NFMU to bill the individually-metered residents under NFMU's approved residential wastewater rates. Because these wastewater rates are based on water consumption, NFMU would obtain each resident's individual meter information from Buccaneer Water Service, and then bill for wastewater service. The residents all have 5/8" x 3/4" meters. Therefore, the monthly rate would have been a base facility charge of \$10.98 and a gallonage charge of \$3.98, capped at 10,000 gallons. Residential wastewater gallonage charges are capped at a level which represents the average water usage of the park residents, taking into consideration that all water used does not flow back into the wastewater collection system, but is used for other purposes such as washing cars or watering plants or lawns.

The proposed Agreement will apply the general service rates to the water consumption of all park residents. Buccaneer Water Service purchases its water from Lee County, which connection occurs with a 4-inch meter. The general service rate of NFMU for a 4-inch meter is \$269.83 per month, with a \$3.98 gallonage charge. No cap is placed on general service gallonage rates, because the assumption is that all gallons used in a business-type setting (to which the general service rate typically applies) will be returned to the wastewater collection system.

We concur with the application of general service rates to the master metered water gallons. However, we note that the result of this rate application will be that individuals who conserve water or are away from the park will not be able to obtain the full benefit of those actions. Under the prior scenario, the wastewater bill could be minimized if lower gallons were used by the resident. The maximum wastewater bill would be \$3.98 x 10, plus the base charge of \$10.98, or \$50.78. Under the proposed stipulation, customers' bills will be an amount based on all water usage to the

park, divided by 971 units. Essentially, those residents who use less water will be subsidizing the residents who use more water.

In order to estimate what the monthly wastewater bills might be under the proposed stipulation, we used information from the water utility's 1998 Annual Report, which identified the number of purchased gallons of water. The Annual Report states a total annual amount of 32,020,000 gallons or an average of 2,668,000 gallons per month purchased from Lee County. Applying the \$3.98 gallonage charge, the bill to the park by NFMU would be \$10,619 for water, plus the base facility charge of \$269.83, for a total of \$10,888. This amount would be divided by 971, for a monthly amount of \$11.21 per resident. The minimum amount a customer could be billed under the previously approved arrangement would be the base charge of \$10.98.

Although cross-subsidization will occur and customers will not have the ability to control their individual bill, it appears that the proposed stipulation will have the effect of leveling the residents' bills to an amount which the customers find more reasonable. Therefore, we find that the Agreement provides a viable option for this specific situation.

Billing of Buccaneer Estates for Service by Any Future Owner of the Utility

The final provision of the mediated Agreement provides that "any subsequent owner of NFMU shall bill in a basis of its tariff for similar wastewater services." The intent of this language is not clear. However, in the event that its purpose is to bind any future owner of NFMU to the Agreement with respect to rates, we provide the following clarification. If the utility were to be sold to an entity exempt from our regulation, the proviso would essentially be moot because we would have no authority over that utility's rates and charges. However, if NFMU were sold to an entity which is regulated by the Commission, the language could be construed as an attempt to limit our authority to change the utility's rates in a future rate proceeding.

To the extent that provision eleven of the Agreement purports to bind our authority to act in a future rate proceeding of a regulated utility, we note that the language is unenforceable

against the Commission. We have approved similar agreements in the past where we have determined that the parties could not bind our authority. By Order No. PSC-99-0635-FOF-WU, issued on April 5, 1999 in Docket No. 960444-WU, In Re: Application for Rate Increase and Increase in Service Availability Charges in Lake County by Lake Utility Services, Inc., we approved a settlement agreement between the utility and the Office of Public Counsel which purported to bind the Commission from instituting future proceedings to change the utility's rates and charges set forth in the settlement. In approving the parties' settlement, we noted at page six that "the specific provisions were . . . 'not fatal flaws; they are simply unenforceable against the Commission and are void ab initio. The parties cannot give away or obtain that for which they have no authority.' Order No. PSC-94-0172-FOF-TL at page six." Likewise, we find that, to the extent that the Agreement may contain unenforceable language, it is still appropriate to approve the Agreement.

Therefore, clarification is provided herein that we are not bound by the mediated Agreement to the extent it purports to limit our authority to make rate determinations in future proceedings of regulated entities.

The mediated Agreement provides that NFMU will collect for ten months in arrears by rendering its normal bill for the months of July, 2000 through the end of March 2001, plus re-computed bills for each month commencing in September 1999 and concluding for services rendered May, 2000 in order that NFMU will be made whole on its arrears. It has taken a greater amount of time to bring the mediated Agreement before us for our consideration than was anticipated in the Agreement. Further clarification is made herein that NFMU is entitled to bill for the additional months of arrearage incurred during the pendency of this matter.

The parties have filed this mediated Agreement to avoid the time and expense of further litigation, to avoid the specter of a mass disconnection of the residents' wastewater service, and to resolve the ongoing dispute regarding NFMU's provision of wastewater service. This Agreement appears to resolve all outstanding issues in this docket to the satisfaction of all of the parties. Although we have some concerns about the impact of the proposed billing schedule, as addressed above, we find that the

parties have reached a reasonable compromise and that the Agreement fairly resolves all of the issues remaining in this docket and the ongoing controversy between the parties. As a negotiated settlement, the terms of the Agreement shall not carry precedential value with respect to any matters outside of this docket. We also note that negotiated settlements are highly favored under the law. The parties' mediated Agreement, as clarified herein, is hereby approved as a reasonable resolution of this matter. Within 30 days of this Order, NFMU shall file a revised tariff reflecting our decision herein. The tariff will be administratively approved by our staff upon verification that the tariff is consistent with our decision.

REQUEST FOR EMERGENCY RULE WAIVER OR VARIANCE

On May 22, 2000, pursuant to Rule 28-104.004, Florida Administrative Code, OPC filed a Petition for Emergency Variance or Waiver from Rules 25-30.135 and 25-30.320, Florida Administrative Code, and from NFMU's Commission-approved tariff in accordance with those rules (Petition). On May 23, 2000, NFMU filed an Answer to OPC's Petition for Emergency Variance or Waiver (Answer). Pursuant to Rule 28-104.005, Florida Administrative Code, we must grant or deny a petition for emergency variance or waiver within 30 days of its receipt, unless the time limit is waived by the petitioner. In this instance, in recognition of the parties' efforts to mediate the matter and NFMU's agreement to suspend disconnections until mediation was attempted, counsel for OPC agreed to waive the 30-day limit.

In its Petition, OPC alleges that if NFMU caps the wastewater lines of the nonpaying wastewater customers with active water service, a serious public health emergency will be created which represents a clear and present danger to the public's health, safety and welfare. OPC further alleges that the customers with active water service and capped wastewater service will suffer immediate adverse effects unless a variance or waiver to Rules 25-30.135 and 25-30.320, Florida Administrative Code, and NFMU's implementing tariff is granted on an expedited, emergency and temporary basis, until the appeal of Order No. PSC-99-2444-AS-SU is finally resolved.

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However, NFMU agreed to suspend disconnection until the parties could attempt mediation of the matter. As discussed previously, the mediation successfully concluded with the parties reaching settlement not only of the disconnection issue, but also of the overall controversy which has continued with respect to NFMU's provision of wastewater service to Buccaneer. The terms of the mediated Agreement, as approved herein, should resolve to the parties' satisfaction all outstanding issues in this docket, and should remedy the issue of pending nonpayment disconnections.

Because the public health emergency of which OPC bases its petition is no longer a pending risk to the public health, safety and welfare, we find that OPC's request is moot and need not be ruled upon.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the June 12, 2000 mediated settlement agreement between North Fort Myers Utility, Inc., the Buccaneer Estates Homeowners Association, and Snowbirdland Vista, Inc., MHC-DeAnza Financing Limited Partnership, Manufactured Home Communities, Inc. is hereby approved, as clarified within the body of this Order. It is further

ORDERED that within 30 days of the date of this Order, NFMU shall file a revised tariff reflecting our decision herein. The tariff shall be administratively approved by Commission staff upon verification that the tariff is consistent with our decision herein. It is further

Ordered that the Office of Public Counsel's request for emergency rule waiver or variance is moot. It is further

ORDERED that this docket is hereby closed.

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By ORDER of the Florida Public Service Commission this 22nd
day of August, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: /s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records

This is a facsimile copy. A signed
copy of the order may be obtained by
calling 1-850-413-6770.

(S E A L)

JSB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate

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Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 981781-SU
ORDER NO. PSC-99-2444-AS-SU
ISSUED: December 14, 1999

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

FINAL ORDER APPROVING OFFER OF SETTLEMENT,
APPROVING TRANSFER, AMENDING CERTIFICATE,
DECLINING TO INITIATE A SHOW CAUSE PROCEEDING
AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

North Fort Myers Utility, Inc. (NFMU or utility) is a Class A utility located in Lee County which provides only wastewater service. According to the 1997 annual report, the utility has 5,753 wastewater customers and reported operating revenues of \$1,958,553 and a net loss of \$598,220.

On August 24, 1998, NFMU executed a Developer Agreement with MHC-DeAnza Financial Limited Partnership (Park Owner), which is the owner of Buccaneer Mobile Estates (Buccaneer Estates), and Buccaneer Utility (Buccaneer). This Developer Agreement was filed with the Commission on September 4, 1998, and deemed approved on October 4, 1998, pursuant to Rule 25-30.550, Florida Administrative Code.

Buccaneer Estates consists of 971 manufactured home sites which had previously received wastewater service from the Park Owner as part of the lot rental amount. Pursuant to a letter from

Commission staff dated May 14, 1976, the provision of service in this manner in this manner rendered the wastewater utility system exempt from regulation pursuant to Section 367.022(5), Florida Statutes.

Water service to Buccaneer Estates is provided by Buccaneer Water Service, a Commission-regulated utility. The water utility purchases its water from Lee County Utilities, and therefore, does not have a water treatment plant. All tenants are charged metered rates for water, pursuant to Order No. PSC-96-1466-FOF-WU, issued December 3, 1996, in Docket No. 960133-WU.

On November 23, 1998, Buccaneer's existing wastewater permit expired. NFMU connected to Buccaneer on November 24, 1998. On December 1, 1998, NFMU filed an Application for Amendment to Certificate of Authorization to include the wastewater service area of Buccaneer. On December 7, 1998, NFMU filed an Emergency Motion to Implement Rates and Charges with respect to the interconnection of existing wastewater customers within the Buccaneer Estates mobile home community to NFMU. On December 9, 1998, NFMU responded to our staff's request for additional information on the connection of Buccaneer with a letter referencing various parts of Chapter 723, Florida Statutes.

On December 10, 1998, NFMU mailed the notice to the Buccaneer customers which stated that utility service had been assigned to NFMU, that connection fees would be collected, and that effective December 1, 1998, the utility would begin billing for monthly service and the lot rent would decrease by a specific amount.

On December 18, 1998, we received numerous customer protests concerning the application of NFMU's monthly rates and connection fees. Among the protesting customers were Mr. Donald Gill, Mr. Joseph Devine and Mr. Ronald Ludington, whose protest letters were filed on December 18, 1998, December 21, 1998, and December 21, 1998, respectively. On January 14, 1999, several customers filed letters requesting that the Office of Public Counsel (OPC) represent the Buccaneer residents in this matter. However, our records indicate that neither Messrs. Gill, Devine nor Ludington agreed to be represented by OPC or other counsel, nor did they file requests to be considered qualified representatives pursuant to

Rule 28-106.106, Florida Administrative Code. Therefore, these three individuals were considered pro se litigants.

On December 21, 1998, OPC filed a Response to the Emergency Motion to Implement Rates and Charges. On January 14, 1999, OPC filed a Notice of Intervention pursuant to Section 350.0611, Florida Statutes, which was acknowledged by Order No. PSC-99-0180-PCO-SU, issued January 29, 1999. By Order No. PSC-99-0420-PCO-SU, issued March 1, 1999, this matter was set for an administrative hearing on September 14 and 15, 1999.

At the February 16, 1999 agenda conference, we considered staff's recommendation addressing whether a show cause proceeding should be initiated with respect to the utility's interconnection of Buccaneer without prior Commission approval, and the request to collect rates and charges by NFMU from Buccaneer customers, pending the outcome of the hearing. Counsel for NFMU and OPC addressed the Commission regarding their respective positions. We issued Order No. PSC-99-0492-SC-SU, on March 9, 1999, which required NFMU to show cause, in writing, within 21 days, why it should not be fined \$5,000 for its apparent violation of Section 367.045(2), Florida Statutes, for the failure to obtain our approval prior to serving territory outside of its certificate. Order No. PSC-99-0492-SC-SU also denied NFMU's Emergency Motion to Implement Rates and Charges, stating that: (1) we had the jurisdiction to entertain the utility's motion; (2) it was inappropriate to approve a connection fee at that time; and (3) we would not set monthly service rates until a determination is made as to whether the transfer is in the public interest.

On March 10, 1999, NFMU filed a Motion for Reconsideration of Order No. PSC-99-0492-SC-SU. NFMU also filed a Request for Oral Argument on March 17, 1999. On March 22, 1999, OPC filed a response to NFMU's Motion for Reconsideration. On that same date, an Objection to NFMU's Motion for Reconsideration was filed by Mr. Donald Gill, a resident of Buccaneer Estates who had also filed a letter with the Commission objecting to NFMU's amendment application. On April 14, 1999, NFMU filed a Notice of Additional Authority in support of its Motion for Reconsideration. On July 27, 1999, we issued Order No. PSC-99-1463-FOF-SU, denying the utility's motion for reconsideration and notice of additional authority.

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On August 27, 1999, the utility filed a Motion to Strike Parties. By its motion, the utility asserted that Messrs. Gill, Devine and Ludington should be stricken as parties because OPC and the utility entered into a Settlement Agreement which resolves all issues of the case; that Messrs. Gill, Ludington, and Devine failed to file any testimony or exhibits and a prehearing statement as required by Order Establishing Procedure No. PSC-99-0420-PCO-SU; that the hearing will only consist of evidence which supports the Settlement Agreement, thus requiring a hearing will be "futile, time consuming and expensive"; and that Messrs. Gill, Ludington and Devine have "done nothing to represent themselves in this proceeding" and as a consequence must accept the settlement that OPC has negotiated.

A prehearing conference was held on August 30, 1999. At the prehearing conference, Messrs. Devine, Gill and Ludington made separate oral motions for an extension of time for the prehearing and hearing. The prehearing officer denied all three motions, finding that adequate notice of the procedures and prehearing conference and hearing dates was given and that there would be no benefit to delaying the prehearing conference and hearing.

Also at the prehearing conference, the utility's Motion to Strike Parties, filed on August 30, 1999, was addressed. The prehearing officer denied the motion to strike Messrs. Gill, Devine and Ludington as parties; however, because they failed to prefile testimony and prehearing statements as required by Order No. PSC-99-0420-PCO-SU, the Prehearing Officer found that Messrs. Gill, Devine and Ludington may not offer witnesses or exhibits at the hearing and that their participation at the hearing would be limited to a concise statement of their objection and to cross-examining witnesses presented by the other parties.

OPC and the utility stated during the prehearing conference that an executed Settlement Agreement would be filed on August 31, 1999. Based on this information, the prehearing conference was continued until September 8, 1999, to allow our staff to file a recommendation on the proposed settlement.

On September 2, 1999, OPC and the utility filed the executed Settlement Agreement. Messrs. Gill, Devine and Ludington opposed the Settlement Agreement and refused to sign it. A recommendation

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on the Settlement Agreement was considered at the September 7, 1999, agenda conference. At the agenda conference, we deferred ruling on the Settlement Agreement, instructing that the matter proceed to hearing as scheduled on September 14, 1999, and that the Settlement Agreement could be presented for our consideration at that time.

On September 7, 1999, a Motion for Dismissal of Settlement Agreement was filed by Mr. Ludington. On September 9, 1999, a Motion to Strike Settlement Agreement was filed by Mr. Gill.

The prehearing conference was continued on September 8, 1999. This matter was scheduled for an administrative hearing on September 14 and 15, 1999; however, the hearing was canceled due to the threat of Hurricane Floyd and rescheduled for October 13, 1999.

On September 15, 1999, an Emergency Motion to Charge Rates Subject to Refund and to Expedite Rescheduling of Final Hearing was filed by NFMU. On September 28, 1999, a response to NFMU's motion was filed by Mr. Ludington. Also on September 28, 1999, a response to NFMU's motion was filed jointly by Messrs. Gill and Devine.

On October 7, 1999, a proposed Settlement Agreement was filed by Mr. Ludington. On October 12, 1999, an Emergency Motion to Remove Jack Shreve and Steve Reilly as Counsel of Record in the Above Captioned Matter was jointly filed by Mr. Gill and Mr. Devine. Also on October 12, 1999, a document was filed captioned as "Donald Gill's Testimony for the October 13, 1999 PSC Hearing at North Fort Myers in Opposition to North Fort Myers Utility, Inc.'s (NFMU) Application for Extension of its Service Area into Buccaneer Estates and NFMU Request for Rates and Charges".

A hearing was held on October 13, 1999, in North Fort Myers, Florida. At the hearing, numerous customers presented testimony on the proposed Settlement Agreement and the transfer of Buccaneer to NFMU. The document filed by Mr. Gill on October 12, 1999, was read into the record on his behalf by Mr. Devine. At the outset of the October 13, 1999 hearing, we deferred ruling on the offers of settlement filed by Mr. Ludington and by OPC and NFMU, and the on Motion for Dismissal of Settlement Agreement filed by Mr. Ludington, in order to afford an opportunity to take evidence on the respective offers.

During the course of the hearing, OPC stated that the Buccaneer Homeowners' Association had advised OPC during a brief intermission that it wanted OPC to withdraw its support of the Settlement Agreement.

The hearing was continued to November 16, 1999, in Tallahassee, Florida, to allow each party an opportunity to orally argue their positions. The procedure for continuation of the hearing was set forth in Order No. PSC-99-2154-PCO-SU, issued November 4, 1999. Pursuant to the Order, the parties were afforded an opportunity to file a written brief on or before November 12, 1999, which would serve either in addition to or in place of their oral arguments. The parties were also put on notice that the Commission may render a final decision on the matter from the bench at the conclusion of the November 16, 1999 hearing.

On November 12, 1999, the utility and OPC each filed a post-hearing statement in accordance with Order No. PSC-99-2154-PCO-SU. In its brief and during its oral argument on November 16, OPC clarified that it continued to support the Settlement Agreement it had entered with NFMU.

At the conclusion of the parties' oral argument, the hearing was recessed so that the scheduled Agenda Conference could take place. At the conclusion of the November 16, 1999 Agenda Conference, the panel reconvened in order to allow Commission staff to present an oral recommendation on this matter. Pursuant to Rule 25-22.0021, Florida Administrative Code, participation at this point was limited to the Commissioners and staff. As noticed in the original notice of hearing and in Order No. PSC-99-2154-PCO-SU, we rendered a final decision in this from the bench.

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND POLICY

Having heard the evidence presented at the hearing in this proceeding and having heard the recommendation of the Commission staff, as well as the briefs and arguments of the parties, we now enter our findings and conclusions.

RULINGS

1. At the October 13, 1999 hearing, we denied Mr. Devine and Mr. Gill's joint motion to remove Jack Shreve and Steve Reilly as counsel, finding no basis to grant the motion.

2. At the October 13, 1999 hearing, we deferred ruling on NFMU's Emergency Motion to Charge Rates Subject to Refund, in light of the fact that the parties had agreed to expedite the conclusion of this proceeding. NFMU's Motion is rendered moot by our other findings herein.

3. Also at the October 13, 1999 hearing, we deferred ruling on the offers of settlement filed by Mr. Ludington and by OPC and NFMU, and the on Motion for Dismissal of Settlement Agreement filed by Mr. Ludington, in order to afford an opportunity to take evidence on the respective offers. Consistent with our ruling set forth below, the proposed settlement by OPC and NFMU is approved, and the proposal filed by Mr. Ludington is rejected.

SETTLEMENT AGREEMENT

As discussed previously, two different offers of settlement have been proposed by parties in this case. The record shows that the proposed settlement offered by OPC and NFMU (OPC/NFMU Agreement) consists of the following elements:

1. NFMU will bill customers within the park for service rendered from September 1, 1999, based upon NFMU residential rate schedule of \$10.98 base facility charge and \$3.98 per 1,000 gallons, with a cap of 10,000 gallons. Water meter reading information will be obtained from Buccaneer Water Company.
2. NFMU waives the right to collect service availability charges from the customers in Buccaneer estates. Further, NFMU waives the right to collect any pass-through charges from the residents, holding the residents forever harmless from the payment of any pass-through charges potentially collectible under Chapter 723, Florida Statutes, relating to Buccaneer Estates' interconnection with NFMU's system.
3. The residents shall not pay for wastewater service through August 31, 1999.

4. The agreement does not affect the rights of the residents of Buccaneer estates to pursue their contract rights against the Park Owner under Chapter 723, Florida Statutes.
5. The show cause proceeding pending against NFMU in this docket should be dismissed without penalty to NFMU.

The record shows that the essential elements in the proposal offered by Mr. Ludington (Ludington Agreement) include the following:

1. NFMU collects from the Park Owner for all service provided to the homeowners of Buccaneer by NFMU from March 1, 1999. A general service rate schedule would be used for this payment.
2. NFMU agrees to forgo collection of any service availability charges or monthly service charges that it thought were to be collected through clauses in the developers agreement signed with the park owners in 1998.
3. NFMU agrees that it has the right to obtain water meter readings from Buccaneer Water Company, and that the PSC may force Buccaneer Water Company to provide that information, if it resists.
4. Mr. Ludington will abide by these conditions as long as the PSC renders adoption of them in the public interest, and will drop all other matters of objection before the PSC.
5. NFMU agrees now and in the future not to affect the rights of the residents in pursuit of contract rights granted them under Chapter 723, Florida Statutes.
6. Mr. Ludington agrees that the show cause order against NFMU should be dismissed without penalty.
7. Mr. Ludington agrees that NFMU is the sole owner of the wastewater collection system in Buccaneer Estates.

The utility and OPC both stated that their proposed settlement should be approved, and the offer of settlement proposed by Mr. Ludington should be rejected. Messrs. Gill, Ludington and Devine

have stated that the NFMU/OPC Agreement should be rejected, and that the Commission should adopt instead the Ludington Agreement.

OPC had originally been asked by the Buccaneer Estates Home Owners' Association to represent the Association and sign the proposed settlement agreement. However, the three pro se customers did not agree with the proposed settlement, therefore negating the ability of the settlement to be considered a stipulation. As mentioned previously, OPC was informed at the October 13, 1999 hearing that the Homeowners' Association wished OPC to withdraw its support of the settlement. However, after subsequent conversations with the Homeowners' Association, OPC renewed and clarified its support of the OPC/NFMU Agreement in its brief filed on November 12, 1999, as well as during its closing arguments on November 16, 1999.

The elements of the proposed settlement agreements were addressed during the hearing by the parties, as well as by numerous customer witnesses. We believe that the OPC/NFMU Agreement provides a fair and reasonable resolution of this matter. We are persuaded by the fact that the utility and the representative of the citizens jointly endorse this proposed offer of settlement. The OPC/NFMU Agreement consists of a stipulation reached between those parties, which reaches a reasonable compromise and is in the public interest, in that the utility appears to have the capacity and financial and technical ability to provide satisfactory and continuous service (as discussed in greater detail below). The Ludington Agreement is rejected as not being a more persuasive or reasonable solution to this matter.

Adoption of the OPC/NFMU settlement would allow the customers several benefits. The customers would not be back-billed for the year of service they have received at no cost from NFMU, nor would the customers be required to pay service availability fees. The proposal would not interfere with the customers' rights to pursue litigation with the park owner pursuant to issues relating to Chapter 723, Florida Statutes. Buccaneer Estates would be provided with reliable, continuous wastewater service. Furthermore, adoption of the proposal would address the many requests of the Buccaneer customers for the Commission to make a decision quickly, and end the turmoil in the park over this matter.

As a matter of clarification, utility witness Reeves stated his understanding at the October 13, 1999 hearing that, pursuant to the OPC/NFMU Agreement, service availability charges would not be imputed to NFMU. He was also questioned about the potential impact to the utility of foregoing this contribution in aid of construction (CIAC) and not having it imputed as if it had been collected by the utility. He stated that this would have a material impact on NFMU's capital structure and also on its other customers.

Section 367.081(1), Florida Statutes provides that a utility may only charge rates and charges that have been approved by the Commission. We generally impute CIAC when a utility has not collected CIAC in accordance with its tariffed rates and charges. In this case, other customers of NFMU could end up paying for that portion of the settlement if a rate increase were to be approved because of the overall financial impact of not collecting the \$448,602 of CIAC from the Buccaneer customers. There is no language in the proposed settlement requesting that the Commission not perform an imputation at some future rate evaluation. Therefore, we clarify herein that the Commission has the authority to impute CIAC for ratemaking purposes in the future.

For the reasons stated above, we hereby approve the proposed terms of the OPC/NFMU Agreement.

TRANSFER

As discussed previously, we find that the Agreement endorsed by OPC and NFMU provides a fair and reasonable resolution of this matter. On that basis, we find that the transfer of Buccaneer Utility's wastewater facilities to North Fort Myers Utility, Inc., is in the public interest and is hereby approved. Furthermore, the record shows that the utility appears to have the financial and technical ability and the capacity to provide satisfactory and continuous service, as discussed below.

Financial Ability

At the October 13, 1999 hearing, utility witness Reeves testified that although the annual report filed with the Commission showed a net operating loss, for cash flow purposes, the utility

was doing "fairly well". Also, the parent of NFMU, Old Bridge Park, has always provided additional funding to keep the utility on a sound financial basis. Further, NFMU had been able to meet its financial obligations as they arose.

Mr. Devine questioned witness Reeves with respect to the purpose and use of two different bond issuances received by NFMU. One was in 1995 for \$12.5 million and another was a short time later, for \$1.2 million. Witness Reeves stated that the money was used to pay off short-term debt and to complete several construction projects. Witness Reeves was also questioned whether NFMU had ever been condemned and stated that to his knowledge, it had not.

Witness Reeves was later asked how NFMU could handle recovering the approximately \$90,000 cost of interconnection with the Buccaneer system, when the proposed offer of settlement included a provision to forego the collection of connection fees of \$462 from each of the residents of the park, which had been authorized by the park owner through an assignment agreement. He stated that the utility would have to absorb the loss, but that it did have the financial ability to provide service to the Estates both now and in the future.

According to witness Reeves' testimony, NFMU had been providing utility service to Buccaneer Estates since September 1998, although it has not collected revenues since November 1998. Witness Reeves also stated that NFMU had been providing service and has the financial ability to continue to provide service. This appears to be largely due to the continued support of the parent, Old Bridge Park. Because NFMU has actually been providing the service to the Estates with no compensation since November without incident, this financial support does seem to be sufficient,

While some questions were raised with respect to NFMU's finances, we believe that nothing was identified which outweighed the evidence presented as to NFMU's overall financial ability to provide service. Therefore, the preponderance of the evidence indicates that NFMU has the financial ability to provide wastewater service to Buccaneer Estates.

Technical Ability and Capacity

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Attached to the testimony of utility witness Reeves was a summary of his personal experience in the utility industry. The testimony also states that the Buccaneer wastewater treatment system could not hydrologically or biologically handle flows during peak months of occupancy and during peak rainfall months.

The utility's application for amendment and transfer states that NFMU currently operates a 2.0 million gallon per day extended aeration wastewater treatment facility with tertiary filtration. Witness Reeves was questioned about whether the system was operating at full capacity, and he stated that it was not. He was also questioned on the level of flows received from Buccaneer Estates, and whether NFMU had been able to adequately treat those flows, to which he responded affirmatively. Also, no Department of Environmental Protection violations have occurred during this time.

The record shows that Mr. Reeves has a technical background in the wastewater treatment industry. Further, the record shows that the Buccaneer system could not handle peak flows resulting from customer usage or weather conditions. However, NFMU has been providing service to the park during these times without incident.

Therefore, the preponderance of the evidence indicates that NFMU has the technical ability and capacity to provide wastewater service to Buccaneer Estates.

RATE BASE

The determination of rate base is a standard issue identified in all transfer cases. Because this case was initially filed as an amendment, we did not identify the necessity for an audit to determine the estimated value of the Buccaneer collection system until well into the processing of the case. We note that audits are usually performed on utilities previously regulated by the Commission. However, in this case, the Buccaneer wastewater system was not a Commission-regulated utility system.

Witness Reeves testified that the original cost of the Buccaneer wastewater collection system was \$365,299.20, with accumulated depreciation of \$219,179.52, resulting in a current value of \$146,119.68. He also testified that NFMU paid \$139,987 for the collection system.

At the October 13, 1999 hearing, staff counsel questioned witness Reeves with respect to any additional information that might exist with respect to the value of the collection system, such as whether or not any study had been done to develop the purchase price. Staff counsel also questioned the witness with respect to information that might affect the overall value of the system, such as whether customers had made contributions to the system owners for wastewater utility service, or whether the owners wrote the plant off to cost of goods sold on its tax return. Witness Reeves responded negatively to all these questions.

There were no other evidence presented by the parties with respect to this issue.

Upon consideration of the foregoing, we therefore find that for the purposes of this transfer, the net book value of the Buccaneer collection system is \$146,119.68, which does not include adjustments for working capital or used and useful calculations. We note that further investigation into this amount shall be required at the time of a future rate case.

SHOW CAUSE

By Order No. PSC-99-0492-SC-SU, issued March 9, 1999, we required NFMU to show cause, in writing, within 21 days, why it

should not be fined \$5,000 for its apparent violation of Section 367.045(2), Florida Statutes, for the failure to obtain our approval prior to serving territory outside of its certificate.

Pursuant to the terms of the OPC/NFMU Agreement which we have approved herein, the utility and OPC have agreed that the loss of revenues from service availability charges and monthly service charges from September 1998 to September 1999, constituted a sufficient penalty and therefore no further actions with respect to a show cause order should be pursued by the parties. We agree.

Pursuant to the terms of the settlement agreement, we therefore find that NFMU shall not be fined for the apparent violation of Section 367.045(2), Florida Statutes.

RATES AND CHARGES

As discussed above, the Buccaneer wastewater system was not previously regulated by the Commission. In accordance with the terms of the agreement we have approved herein, NFMU will bill the Buccaneer customers within the park for service rendered from September 1, 1999, forward, based upon NFMU's residential rate schedule. NFMU shall continue charging its rates and charges as set forth in its tariff until authorized to change by this Commission in a subsequent proceeding. Pursuant to the terms of the agreement, the rates and charges shall be effective for service provided on or after September 1, 1999.

AMENDMENT OF CERTIFICATE

The utility has filed revised tariff sheets incorporating the additional territory into its tariff and returned its certificate for entry reflecting the additional territory. In accordance with our findings herein, Certificate No. 247-S shall be amended to include the territory described in Attachment A of this Order, which by reference is incorporated herein.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each of the findings made in the body of this Order is hereby approved in every respect. It is further

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ORDERED that the October 12, 1999, Emergency Motion to Remove Jack Shreve and Steve Reilly as Counsel of Record filed by Mr. Gill and Mr. Devine is denied. It is further

ORDERED that the settlement agreement filed on October 7, 1999, by Mr. Ludington is hereby rejected. It is further

ORDERED that the September 2, 1999 settlement agreement between the Office of Public Counsel and North Fort Myers Utility, Inc. is hereby approved. It is further

ORDERED that the transfer of Buccaneer Utility's wastewater facilities to North Fort Myers Utility, Inc., is approved. It is further

ORDERED that North Fort Myers shall charge the customers in the territory added herein the rates and charges approved in its tariff until authorized to change by this Commission. It is further

ORDERED that Certificate No. 247-S, held by North Fort Myers Utility, Inc., is hereby amended to include the territory described in Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 14th Day of December, 1999.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

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JSB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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Attachment A

NORTH FORT MYERS UTILITY, INC.

WASTEWATER SERVICE AREA

LEE COUNTY

SERVING THE BUCCANEER ESTATES MOBILE HOME COMMUNITY

TOWNSHIP 43 SOUTH, RANGE 24 EAST, SECTION 35

THAT PART OF THE NORTH 1/2 OF SECTION 35 LYING EAST OF STATE ROAD
45-A (ALSO KNOWN AS U.S. HIGHWAY 41 BUSINESS) EXCEPT THE SOUTHWEST
1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 35.