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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-WS
RECORDS AND REPORTING

NORTH FORT MYERS UTILITY, INC.'S
MOTION FOR SUMMARY FINAL ORDER

NORTH FORT MYERS UTILITY, INC. ("NFMU"), by and through its undersigned attorneys and pursuant to Rule 28-106.204(4), Florida Administrative Code, moves for a Summary Final Order in connection with its application filed in this Docket and in support thereof states:

1. NFMU has filed an application in this Docket for approval of its purchase of the water and wastewater systems previously owned by MHC Systems, Inc. which serves the Pine Lakes and Lake Fairways mobile home communities.

2. The only objection to the application was that filed by Alexander William Varga.

3. Rule 28-106.204(4), Florida Administrative Code, provides

APP _____
CAF _____
CMP _____ in part that "any party may move for summary final order whenever
COM 3 _____
CTR _____ there is no genuine issue as to any material fact". As discussed
ECR _____
LEG 1 _____ below, the pleadings, depositions, and admissions along with the
OPC _____
PAT _____
RGO _____ attached Affidavit show that there is no genuine issue of material
SEC 1 _____
SER _____
OTH _____

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PPSC-RECORDS/REPORTING

fact and NFMU is entitled to a final order on the issues of financial and technical ability as a matter of law, even drawing every possible inference in favor of Mr. Varga's argument. Cf. *Green v. CSX Transportation, Inc.*, 626 So.2d 974 (Fla. 1st DCA 1993). Mr. Varga's deposition was taken on October 5, 2000. References to his deposition are ("V:") followed by the relevant page number.)

4. Except for a diatribe by Mr. Varga impinging the ethics of NFMU's attorney¹, Mr. Varga's objection is based upon his assertion that NFMU does not have the financial or technical ability to operate the utility systems being acquired. Mr. Varga is fast and loose with the truth. He testified that certain files seized from the office of the undersigned attorneys by the FBI supported his position in the instant case (V:20). Upon further questioning, Mr. Varga admitted he was mistaken in that the FBI did not seize any files from the offices of NFMU's attorneys (V:21). The document he was referring to was what purports to be an audit of the Gulf Utilities acquisition by Lee County and which Mr. Varga says he "cannot say that this definitely relates to Pine Lakes in any way" (V:36). He further admitted that neither the FBI nor the

¹Mr. Varga's alleged ethics violations were based upon his belief that the undersigned attorneys represented both NFMU and MHC Systems, Inc. in this proceeding (V:10-14). That belief apparently arose from an error in Records and Reporting in listing on its website the undersigned law firm as attorneys for MHC Systems, Inc. even though there were no pleadings to that effect.

Sheriff's department would tell him what they were investigating (V:21). This was part of the smoke screen by which Mr. Varga hopes to obfuscate his total lack of real evidence supporting his position. He goes so far as to imply something sinister by virtue of the fact that MHC paid the DEP fine with a check drawn on the Bank of America's San Francisco office, instead of on a Chicago bank where their main offices are located (V:39).

5. Financial ability. Mr. Varga's challenge to NFMU's financial ability is based upon his analysis of NFMU's PSC Annual Reports for 1997, 1998 and 1999 (V:30-31). Based upon his analysis, NFMU has been on the verge of bankruptcy since at least 1997 (V:31). Mr. Varga surmised that NFMU's parent company must be keeping it afloat (V: 44). Mr. Varga had no knowledge of NFMU not meeting its financial obligations when they became due (V:43-44), or of NFMU being in default of any its loans (V:44).

This same issue was addressed by the Commission in Docket No. 981781-SU in a final hearing held on October 13, 1999. NFMU's Utility Director testified as follows:

- Q. It looks, from a review of North Fort Myers' annual reports, that from a financial standpoint North Fort Myers is losing money; is that true?
- A. That's correct.
- Q. If that is true, can you explain, please, how North Fort Myers has the financial ability to serve Buccaneer Estates as well as the rest of its certificated area?
- A. That financial statement shows a loss, but not complete. For cash flow purposes we're doing fairly well. And in

conjunction with that, Old Bridge Park is the parent company; if we should not have enough cash, has always come up with the cash to keep the utility on a sound financial basis.

Q. Has North Fort Myers Utility been able to meet the financial obligations as they arose?

A. Yes.

Based upon the evidence presented in that final hearing, the Commission concluded in Order No. PSC-99-2444-AS-SU that NFMU had both the financial ability to provide wastewater service to Buccaneer Estates, a nearby mobile home community. As recently as October 16, 2000, this Commission made a similar finding and conclusion in Order No. PSC-00-1892-PAA-SU. In doing so, this Commission considered the same annual reports which Mr. Varga relies upon in asserting that NFMU does not have the financial ability to serve Pine Lakes and Lake Fairways communities. NFMU's financial status is unchanged since that time (See Mr. Reeves' Affidavit). Mr. Varga has not presented any new evidence.

6. Technical ability. Mr. Varga's challenge to NFMU's technical ability is apparently based upon the Consent Order entered into with the Florida Department of Environmental Protection, OCG File No. 00-1116-36-DW, a copy of which has previously been filed by Mr. Varga with this Commission (V:40-43). Paragraph 3 of that Consent Order provides: "All of the violations at the Facility occurred under previous ownership". Even Mr. Varga was forced to admit that the language was pretty clear in absolving

NFMU from responsibility for what Mr. Varga termed a deplorable condition of the plant (V:14) prior to NFMU's purchase (V:43). Although NFMU had until December 7, 2000 within which to comply with the terms and conditions of the Consent Order, it has already done so (See Mr. Reeves' Affidavit).

Contrasted with NFMU's current operation of the utility facilities is the manner in which it was operated under prior ownership. Mr. Varga termed the operation as deplorable (V:14) and called the system a "wreck" (V:27, 38). He recounted under prior ownership when non-properly treated effluent was sprayed on the golf course and the substantial health hazard that it caused (V:25, 27-28). The prior owner's operation resulted in it entering into a Short Form Consent Order whereby the prior owner paid civil penalties of \$9,000 for its previous violations of environmental standards (V:38). Mr. Varga has previously provided the Commission with a copy of that Short Form Consent Order. Further, after an evidentiary hearing in October, 1999, this Commission found NFMU had the technical ability to provide wastewater service in North Fort Myers. Order No. PSC-99-2444-AS-SU. NFMU's technical ability was most recently reaffirmed by PSC Order No. PSC-00-1892-PAA-SU entered October 16, 2000.

Rate Base. The FPSC Staff conducted a limited scope audit of the rate base of the water and wastewater systems acquired by NFMU. See FPSC Staff audit, Audit Control No. 00-087-4-1. That audit

established a water rate base of \$754,108.75 and a wastewater rate base of \$1,466,007.76. NFMU accepts that audit and has already booked the entries consistent with that audit (See Mr. Reeves' Affidavit).

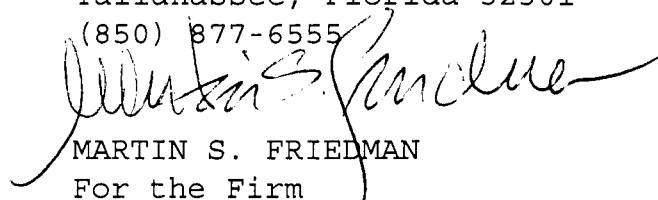
Acquisition Adjustment. NFMU is not requesting an acquisition adjustment in this proceeding (See Mr. Reeves' Affidavit). However, consistent with this Commission Order in Order No. PSC-99-1909-PAA-WS, NFMU reserves the right to raise the issue if it is appropriate in a future proceeding.

Rates and Charges. NFMU is charging these customers the same rates and charges which this Commission approved for the Seller (See Mr. Reeves' Affidavit). This action is consistent with Rule 25-9.044, Florida Administrative Code, which provides in part that in case of change of ownership of a utility the new owner must adapt and use the rates, classifications and regulations of the former owner unless otherwise authorized by the FPSC.

WHEREFORE, NFMU moves this Commission for a Summary Final Order.

Respectfully submitted on this 24th day of October, 2000, by:

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


MARTIN S. FRIEDMAN
For the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded via U.S. Mail this 24th 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



MARTIN S. FRIEDMAN

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AFFIDAVIT

STATE OF FLORIDA:
COUNTY OF LEE:


Before me personally appeared A.A. Reeves, III, who being first duly sworn deposes and says of his own personal knowledge:

1. He is Vice President and Utility Manager of North Fort Myers Utility, Inc. ("NFMU").
2. Although from a regulatory accounting standpoint, NFMU does not report any net income on the Annual Reports to the Florida Public Service Commission ("FPSC"), from a cash flow standpoint NFMU is doing fairly well.
3. NFMU has been able to meet the financial obligations as they arise; specifically, NFMU is not in default in its payments or its bonds or other debt.
4. NFMU has complied with the Consent Order it entered into with the Florida Department of Environmental Protection ("FDEP") in connection with the Lake Fairways WWTP. Attached hereto is a letter from FDEP to that affect. NFMU intends to follow FDEP's recommendations as set forth in that letter, even though they are not required by the Consent Order.
5. NFMU accepts the audit report of the FPSC staff prepared under Audit Control No. 00-087-4-1 and has already booked the adjustments set forth in that audit.
6. NFMU is not asking for an acquisition adjustment at this time.
7. Consistent with FPSC Rules, NFMU is charging the approval rates established by the FPSC for the Seller.

FURTHER AFFIANT SAYETH NAUGHT.


A.A. Reeves, III

Sworn to and subscribed by me this 23rd day of October, 2000, by AA Reeves III, who is personally known to me. ✓


Notary Public
My Commission Expires:

NPMU\MHC\Reeves.aff

