

ORIGINAL

19808 Frenchman's Court
North Fort Myers, FL 33903

Mr. D. Tyler Van Leuven
Staff Attorney
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

00 OCT 31 AM 10:22

MAIL ROOM

October 30, 2000

Docket 000277 W-S

Dear Mr. Van Leuven:

The Staff's Preliminary Issues, as presented in the October 24, 2000, teleconference, appear to be implicitly biased and standardized, and to my way of thinking, inadequate and expressly designed to limit a plaintiff's ability to present meaningful arguments against the proposed transfer of certificates in this proceeding. For example, the Staff writes:

- 1. Does North Fort Myers Utility, Inc. have the financial ability to provide water and wastewater services to the customers of MHC Systems, Inc. d b a FFEC-Six?

Any reasonably competent CPA or auditor performing Due Diligence on the 1999 and 1998 Annual Reports of NFMU would conclude that a company with a net worth of \$19.5 million and bond debts of \$13.2 million and long term debts of \$1.3 million and **no Operating Reserves**, should not be able to buy FFEC-Six, for \$4.2 million...without the infusion of "outside" money. Why is it, that the potential customers of NFMU are unable to receive the statutory protection and assurances from the PSC and/or NFMU, that this "outside" money is forthcoming, secure and legitimate? It is not a lot to ask.

In NFMU's current "Motion for Summary Final Order," (which I will be responding to in detail within a few days), Mr. Friedman thought it was a good idea to drag in the following testimony between Antone Reeves, III, and an unidentified interrogator. (Final Hearing, October 13, 1999 -Docket # 981781-SU).

Q. It looks, from a review of North Fort Myers' annual reports, that **from a financial standpoint North Fort Myers is losing money**; is this 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.(sic)

For cash flow purposes we're dong (sic) fairly well. And in conjunction with that, Old Bridge Park (sic)* is the parent company; if we should not have enough cash, has (sic) 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.

These responses do not fill me with a great sense of confidence. Do they impress Staff? And why?

* Old Bridge Village is a modestly sized (115 acres) manufactured home community of 650 homes, with a scheduled build-out of 750 homes. As construction is still going on...it seems problematical that they would have the extra cash to reasonably finance a \$4.2 million dollar purchase of the FFEC-Six waste water facility.

APP _____
 CAF _____
 CMP _____
 COM _____
 CTR _____
 ECR _____
 LEG _____
 OPC _____
 PAI _____
 RGO _____
 SEC _____
 SER _____
 OTH _____

DOCUMENT NUMBER-DATE

NOV 3 8

2. *Does North Fort Myers Utilities, Inc. have the technical ability to operate and maintain MHC Systems, Inc. d b a FFEC-Six's water and wastewater facilities?*

While NFMU may have the technical "ability" to operate and maintain the MHC Systems, Inc.'s wastewater systems, their recent performance **has not been in the public interest or safety**. Between March 8, 2000, when they took over the operation from FFEC-Six and August 10, 2000, the date of entry, when they were required to sign a consent order with the Department of Environmental Protection (DEP), they did, **presumably, operate the wastewater plant in violation of several DEP rules**. Major violations were:

- a) F.A.C. Rule 62-600.410(6)
- b) F.A.C. Rule 62-610.523(6)
- c) F.A.C. Rule 62-600.410(8)
- d) F.A.C. Rule 62-600.740(1)(b)1.d
- e) F.A.C. Rule 62-610.510(1)

These violations, in effect while MHC Systems owned and operated FFEC-Six, were continuously in effect until an undetermined date. NFMU should be **required to prove when** they began to make repairs to the system, if in fact it was before date of entry of the DEP consent order:

OGC FILE NO. 00-1116-36-DW
Florida DEP Complainant vs.
North Fort Myers Respondent

See this Consent Order or **my letter and e-mail to D. Tyler Van Leuven (September 14, 2000)**

These violations resulted in hundreds of thousands of gallons of **water contaminated by solids being discharged** in the percolation ponds and on the Pine Lakes golf course (38.8 million gallons annually per the MHC Systems 1999 annual report, or 106,00 gallons daily). This exposure, of **susceptible elderly residents**, to potentially dangerous levels of coliform bacteria, which may include E-coli and Salmonella, is definitely not in the "public interest" and **indicates a callous disregard for health, life and public safety**.

3. *What is(sic)(was) the rate base of MHC Systems, Inc. d b a FFEC-Six at the time of transfer?*

On January 17, 2000, MHC Systems, Inc. became entitled under provisions of Section 367.181(4)(a), Florida Statutes and the Public Service Commission Rule 25-30-420, to a rate increase, which they uncharacteristically declined to implement. Traditionally all increases were billed in January. Following the sale of FFEC-Six, NFMU began billing at the increased rate (May 1, 2000 for the period 3/15/00 to 4/25/00), despite their promise not to increase rates over those charged by MHC Systems.

Meter reading cycles and billing to residents continues to be erratic and frequently in error. Billing continues to come from the same Ohio postmark that was used by MHC Systems, Inc.

4. *Has North Fort Myers Utilities, Inc. or MHC Systems considered the financial impact of this proposed transfer on the home values and residents who are members of the Pine Lakes Golf Association?*

With a properly operated wastewater plant, 38.8 million gallons of recycled effluent have been used to irrigate the golf course. After "hook up" to NFMU, **this supply of "already paid for" water will no longer be available for use by 450 Pine Lakes Golf Association Members**. It will go "down the drain" to NFMU's water treatment plant at 1700 Tucker Lane in North Fort Myers. Pine Lakes will then have to purchase additional water. One option will be to use **more expensive potable well water**, except that the potable water aquifers are being rapidly depleted and golf course usage may soon become **limited or totally forbidden** in this area of Lee County. Stricter regulations for residential

and golf course watering have already gone into effect and more may be expected as the population grows, and aquifers become more depleted.

Another option would be to tap deeper, more brackish wells, but these waters may require varying degrees of **expensive treatment to lower the saline content**. Is NFMU and/or MHC Systems prepared to compensate these golfers, who are locked into annual contracts with Manufactured Home Communities, Inc., and whose **homes will be subjected to drastic devaluation** due to this lack of less expensive water, and the potential loss of the golf course, itself?

Here is the math based on the MHC Systems, Inc. 1999 Annual Report.

Page S-13, Group 1, Line 7 Annual Effluent Disposal on Pine Lakes Golf Course = **38,861,000 gals**
Multiply by the current Minimum General Service Rate of **\$5.21 per 1,000 gals** equals **\$202,465.81**, which when divided among the 450 household members of the Golf Association, comes to an household increase in water charges of **\$449.92**, or if divided equally (but inequitably) among the 865 Total Households in Pine Lakes, amounts to **\$234.06** per household. This is how a concerned citizen would conduct a "financial analysis" in the **Public Interest**.

5. *Is it more in the public interest to have Lee County Utilities, an operating division of the Lee County Board of Commissioners, own and operate the water and wastewater facilities of Pine Lakes and Lake Fairways Country Clubs.*
6. *Is it the policy of the Public Service Commission to allow parties, in a previously sanctioned dispute, to intimidate by threats, another **party of record** from making a **legitimate effort to prevent a transfer of certificate?***

If this is permitted, it makes this entire procedure a farce and an exercise in futility. How can a single member of "the public" hope to prevail against rich and politically connected companies and lawyers? Mr. Friedman and Ms. Cowdery have both asked, in a thinly veiled threat to me personally, to have included in the Issue Identification List a provision of the Florida Statutes. Namely, the responsibility for their expenses under Florida Statute 120.595. (How this Statute is relevant is a mystery to me? Can the Staff explain?)

I will expand on these issues and introduce other arguments concerning **Ethics** and Chapter 4 of the Florida Bar Association's "**Rules of Professional Conduct**" and the **Lee County Clerk of Courts' "Audit of Lee County Utilities - Acquisitions"** (June 27, 2000), in my response to NFMU's request for Summary Final Order and request for Oral Argument (October 24, 2000),, or as I like to call it, their "**rush to judgment.**"

It is my hope that you will permit me to **present my arguments in full** and not rely on the purposely proscribed Deposition, of myself, on October 5, 2000. Thank you for your attention.

Sincerely,


Alexander William Varga

cc: Martin Friedman - Counsel
Kathryn Cowdery - Council
Steve Riley - Office of Public Council
Leon Beekman - President Pine Lakes Estate Home Owners Association, Inc.
Jermaine Troiano - President Pine Lakes Homeowners II, Inc.