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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of)
NORTH FORT MYERS UTILITY, INC.)
for extension of wastewater)
service in Lee County, Florida.)
_____)

Docket No. 011006-SU

MOTION TO DISMISS OBJECTION OF MR. HALE

NORTH FORT MYERS UTILITY, INC. ("NFMU"), by and through its undersigned attorneys and pursuant to Section 367.045(4), Florida Statutes, and Rule 28-106.204, Florida Administrative Code, files this Motion to Dismiss the objection filed by Norman Hale to NFMU's Application for Amendment to Certificate of Authorization, and in support thereof states:

1. On August 2, 2001, NFMU filed an Application for Amendment of Certificate 247-S to extend its wastewater service area in Lee County, Florida.

2. On August 1 and 2, 2001, NFMU sent the required notice to each property owner in the proposed territory.

3. On August 28, 2001, the Commission received a letter from Norman Hale objecting to his property being included in NFMU's service area.

4. On August 30, 2001, the Commission Staff Attorney wrote to Mr. Hale inquiring as to whether his objection was intended to

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be a request for formal hearing, and giving Mr. Hale until September 20, 2001 to advise the Commission of his intent.

5. On September 20, 2001, the Commission received a letter from Mr. Hale indicating that he wanted a formal hearing. A copy of that letter was not sent to NFMU or its attorneys, who learned of it while making a routine review of docket filings on the Commission web site on October 1, 2001. NFMU subsequently wrote Mr. Hale advising him that the Application only affected the south 500 feet of his property abutting State Road 78 and requesting that he voluntarily withdraw his request for a formal hearing. NFMU received no response to that request, which has necessitated the filing of this Motion.

6. Simultaneously herewith, NFMU has filed an Amendment to its Application to eliminate Mr. Hale's property from its Application.

7. Section 367.045(4), Florida Statutes, provides a point of entry for persons substantially affected by an application for a certificate amendment to object and request a formal administrative hearing.

8. Rule 25-30.031, Florida Administrative Code, requires that a "written objection must state the grounds for the objection with particularity".

9. The basis for Mr. Hale's objection is that his property is a 120 acre certified tree farm with only one residence 1/3 of a

mile from State Road 78 and is in a rural area. Actually, NFMU's Application only applies to the south 500 feet of Mr. Hale's property that abuts State Road 78. Mr. Hale's reference to his neighbors agreeing with him is irrelevant since he cannot represent their interests and his request for a formal hearing does not purport to include anyone but himself.

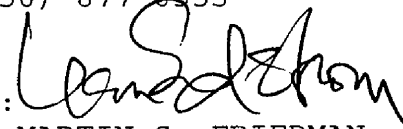
10. In light of NFMU's amendment to eliminate Mr. Hale's property from its proposed service area, Mr. Hale is no longer substantially affected as that term is used in Section 367.045(4), Florida Statutes, and Sections 120.569 and 120.057, Florida Statutes.

11. In *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981), a two-pronged test was established to determine whether someone's substantial interests were affected by proposed governmental action. There must be a showing of 1) injury in fact which is of sufficient immediacy to warrant a formal hearing, and 2) that the injury is of the type which the proceeding is designed to protect. As NFMU has restrictively amended its Application so as to exclude Mr. Hale's property, and Mr. Hale's property is therefore no longer within the territory which is the subject of this Application, he fails to meet either of the *Agrico* tests. This Commission's analysis in Order No. PSC-00-0757-PCO-SU is equally applicable to Mr. Hale's objection.

WHEREFORE, NFMU requests this Commission dismiss Mr. Hale's objection and grant its Application.

Respectfully submitted on this
24th day of October, 2001, by:

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By: 
for MARTIN S. FRIEDMAN


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail this 24th day of October, 2001, to:

Jennifer Brubaker, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. Norman Hale
10611 Bayshore Road
N. Ft. Myers, FL 33917


for MARTIN S. FRIEDMAN