



-M-E-M-O-R-A-N-D-U-M- COMMISSION CLERK

DATE: JANUARY 22, 2004

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYO)

FROM: DIVISION OF ECONOMIC REGULATION (REVELL, MERCHANT, WILLIS) OFFICE OF THE GENERAL COUNSEL (C. KEATING)

RE: DOCKET NO. 030517-SU - APPLICATION FOR APPROVAL OF NEW RATE FOR BULK WASTEWATER SERVICE AGREEMENT WITH CITY OF CAPE CORAL IN LEE COUNTY, BY NORTH FORT MYERS UTILITY, INC.  
COUNTY: LEE

AGENDA: 02/03/04 - REGULAR AGENDA - TARIFF FILING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 8-MONTH EFFECTIVE DATE: FEBRUARY 10, 2004

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\030517.RCM

CASE BACKGROUND

North Fort Myers Utility, Inc. ("NFMU") is a Class A utility located in Lee County, Florida. NFMU has a water system at Pine Lakes and two wastewater systems, the Pine Lakes and North Fort Myers systems. According to its 2002 Annual Report, NFMU serves 1,845 water customers and 9,527 wastewater customers. NFMU reported annual revenues of \$3,414,966 and a net income of \$406,755 according to the same annual report.

On June 10, 2003, NFMU filed an application requesting approval of a new rate for a bulk wastewater service agreement between NFMU and the City of Cape Coral ("City"). By Order No. PSC-03-0961-PCO-SU, issued August 25, 2003, the Commission suspended the proposed new rate to obtain additional information

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concerning the service agreement. This recommendation concerns the appropriate final action the Commission should take to dispose of the pending application.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission decline to rule upon NFMU's application for approval of a new rate for a bulk wastewater service agreement between NFMU and the City?

**RECOMMENDATION:** Yes. The sale of bulk wastewater service to a governmental authority is exempt from the Commission's jurisdiction pursuant to Section 367.022(12), Florida Statutes, thus the Commission should decline to rule upon NFMU's application. (REVELL, MERCHANT, WILLIS, C. KEATING)

**STAFF ANALYSIS:** Section 367.022, Florida Statutes, exempts specific entities and activities from Commission regulation. Subsection (12) of the statute exempts the following:

(12) The sale or resale of bulk supplies of water or the sale or resale of wastewater services to a governmental authority or to a utility regulated pursuant to this chapter either by the commission or the county.

(Emphasis added.) Accordingly, the contemplated sale of bulk wastewater service by NFMU to the City of Cape Coral, a governmental authority, is exempt from this Commission's regulation.

The Commission has previously recognized this exemption. In Order No. PSC-00-1238-FOF-WS, issued July 10, 2000, in Docket No. 000315-WS, In re: Application by United Water Florida, Inc., for Approval of Tariff Sheets for Wholesale Water and Wastewater Service in St. Johns County, the Commission declined to rule upon United Water Florida's application for approval of tariff sheets for wholesale water and wastewater service. The contemplated sale of those services was to a utility regulated by a county and, thus, was exempt from Commission regulation by Section 367.022(12),

Florida Statutes. Further, in Order No. PSC-00-1902-AS-SU, issued October 17, 2000, in Docket No. 971638, In re: Application for Amendment of Certificate No. 226-S to Add Territory in Seminole County by Florida Water Services Corporation, the Commission declined to rule upon a portion of a proposed settlement agreement that provided for the sale of bulk wastewater service from Florida Water Services Corporation to the City of Longwood. As in the instant case, the contemplated sale of the bulk wastewater service was to a governmental authority and, thus, was exempt from Commission regulation.

Consistent with language set forth in the Commission orders referenced above, the Commission should provide the following guidelines to NFMU. First, for future ratemaking considerations, NFMU's cost of providing bulk wastewater service to the City, including the interconnection costs, shall not be subsidized by its jurisdictional customers. Second, the revenues generated from the provision of bulk wastewater service to the City shall not be considered in any proceedings before the Commission involving the NFMU. NFMU remains subject to the Commission's ongoing jurisdiction and regulation.

In conclusion, the Commission should decline to rule upon NFMU's application for approval of a new rate for a bulk wastewater service agreement between NFMU and the City of Cape Coral, because the contemplated sale of bulk wastewater service is exempt from Commission regulation.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** This docket should be closed after the time for filing an appeal has run. (C. KEATING)

**STAFF ANALYSIS:** This docket should be closed 32 days after issuance of the order, to allow the time for filing an appeal to run.