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COMMISSION  
CLERK

# Public Service Commission

June 13, 2005

CERTIFIED MAIL

Mr. Raymond S. Davis  
2110 Faliron Road  
North Fort Myers, FL 33917

Re: Docket No. 050323-SU – Joint application for authority to transfer facilities of Coolidge-Ft. Myers Realty Limited Partnership d/b/a Heron's Glen Utilities and Certificate No. 456-S to North Fort Myers Utility, Inc., request for cancellation of Certificate No. 456-S, amendment of Certificate No. 247-S, and limited proceeding for authority to charge customers of Heron's Glen Utilities its authorized rates, fees and charges.

Dear Mr. Davis:

We have received your letter which was filed with this Commission on May 24, 2005, regarding your concern about the clarity of the notice for the docket referenced above. In the joint application filed by North Fort Myers Utility, Inc. (NFMU) and Heron's Glen Utility (Heron's Glen), NFMU requests that it be allowed to charge Heron's Glen the same rates that NFMU now charges to its current customers. The residential base facility charge for NFMU is actually lower than the base facility charge for Heron's Glen by \$3.76. However, the gallonage charge per one thousand gallons is \$1.73 greater. Therefore, if NFMU is allowed to charge its own rates, it depends on how much you use as to what percentage increase you will experience. If there are months that you are not there or

CMP \_\_\_\_\_ use two thousand gallons or less, then you will actually experience a decrease in rates for those  
COM \_\_\_\_\_ months. At 3,000 gallons of water usage your bill would be \$22.05 from Heron's Glen and \$23.48  
CTR \_\_\_\_\_ from NFMU, a \$1.43 increase. The difference would then go up in the \$1.73 increments for each  
ECR \_\_\_\_\_ 1,000 gallons used above 3,000 up to the maximum of 10,000 gallons (both Heron's Glen and NFMU  
\_\_\_\_\_ have a 10,000 gallon cap on the wastewater rates).

GCL \_\_\_\_\_ Before taking further action, the Commission must know your intent regarding your letter. If  
OPC \_\_\_\_\_ you want your letter to be treated as an objection to this transfer, you should file another letter stating  
MMS \_\_\_\_\_ that you do object to the transfer, and are requesting a formal hearing. While there is no specific form  
RCA \_\_\_\_\_ used to request a hearing, I have attached Rule 28-106.201, Uniform Rules of Procedure, Florida  
SCR \_\_\_\_\_ Administrative Code, which sets forth the requirements for a formal hearing request. Upon  
SEC \_\_\_\_\_ submission of a request for formal hearing pursuant to the requirements of that rule, a formal hearing  
\_\_\_\_\_ will be scheduled, and you will be required to provide testimony and other evidence to support your  
\_\_\_\_\_ protest.

OTH Kim P.

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The recommendation on the appropriate rates is scheduled to be considered by the Commission at its October 20, 2005 Agenda Conference held in Tallahassee. This date could change and may be held either earlier or later. If you wish, I could put you on a list to receive staff recommendations and Commission orders in this docket. Customers are welcome to address the Commission either in person at the agenda conference or by writing to the Division of the Commission Clerk and Administrative Services as you have already done and referencing the above-noted docket. The Commission will use the proposed agency action process, and any order issued changing the rates, service availability charges, or miscellaneous service charges will be issued as proposed agency action with a 21 day protest period.

Please advise this Commission by July 8, 2005, if you wish to request a formal hearing. Your request should be made in writing and should be addressed to Blanca Bayó, Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and reference Docket No. 050323-SU. If we do not hear from you by July 8, 2005, we will assume that you do not wish to pursue a formal hearing and your letter will be placed in the correspondence side of the docket file in this case for informational purposes, and we will proceed with the proposed agency action process.

The opinions stated in this letter are my own personal opinions and in no way bind the Commission in any future proceeding. If you have any questions, you may contact me at (850) 413-6234.

Sincerely,



Ralph R. Jaeger  
Senior Attorney

RRJ:jb

cc: Division of the Commission Clerk and Administrative Services  
Martin S. Friedman and Valerie L. Lord, Esquires  
Division of Economic Regulation (Clapp, Rieger)

presiding officer may enter an order requiring that the absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS.

*History—New 4-1-97.*

**28-106.110 Service of Papers.** Unless the presiding officer otherwise orders, every pleading and every other paper filed in a proceeding, except applications for witness subpoenas, shall be served on each party or the party's representative at the last address of record.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS.

*History—New 4-1-97.*

**28-106.111 Point of Entry into Proceedings and Mediation.**

(1) The notice of agency decision shall contain the information required by Section 120.569(1), F.S. The notice shall also advise whether mediation under Section 120.573, F.S., is available as an alternative remedy, and if available, that pursuit of mediation will not adversely affect the right to administrative proceedings in the event mediation does not result in a settlement.

(2) Unless otherwise provided by law, persons seeking a hearing on an agency decision which does or may determine their substantial interests shall file a petition for hearing or for mediation with the agency within 21 days of receipt of written notice of the decision.

(3) An agency may, for good cause shown, grant a request for an extension of time for filing an initial pleading. Requests for extension of time must be filed with the agency prior to the applicable deadline. Such requests for extensions of time shall contain a certificate that the moving party has consulted with all other parties, if any, concerning the extension and that the agency and any other parties agree to said extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

(4) Any person who receives written notice of an agency decision and who fails to file a written request for a hearing or mediation within 21 days waives the right to request a hearing or mediation on such matters.

(5) The agency may publish, and any person who has time requested

mediation may, at the person's own expense, cause the agency to publish, a notice of the existence of the mediation proceeding in the Florida Administrative Weekly or in a newspaper of general circulation in the affected area. The mediation notice can be included in the notice of intended agency action.

(a) The notice of the mediation proceeding shall include:

1. A statement that the mediation could result in a settlement adopted by final agency action;

2. A statement that the final action arising from mediation may be different from the intended action set forth in the notice which resulted in a timely request for mediation;

3. A statement that any person whose substantial interests may be affected by the outcome of the mediation shall within 21 days of the notice of mediation proceeding file a request with the agency to participate in the mediation; and

4. An explanation of the procedures for filing such a request.

(b) The notice shall also advise that in the absence of a timely request to participate in the mediation, any person whose substantial interests are or may be affected by the result of the mediation waives any right to participate in the mediation, and that waiver of participation in the mediation is also a waiver of that person's ability to challenge the mediated final agency action pursuant to Chapter 120, F.S.

(6) If mediation does not result in the settlement of the administrative dispute, the agency shall, within 7 days of the conclusion of the mediation, advise all participants in writing of the right to request, within 14 days, an administrative hearing pursuant to Sections 120.569 and 120.57, F.S.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57, 120.573 FS.

*History—New 4-1-97.*

**PART II HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT**  
**28-106.201 Initiation of Proceedings.**

(1) Unless otherwise provided by statute, initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the

existence of a disputed issue of material fact. Each petition shall be legible and on 8½ by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be doublespaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and

(f) A demand for relief.

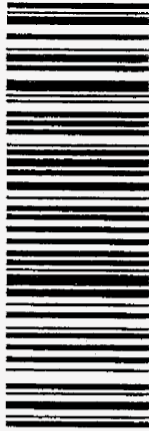
(3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

(4) A petition may be dismissed if it is not in substantial compliance with subsection (2) of this rule or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.

(5) The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS.

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE  
**CERTIFIED MAIL**



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**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

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Sent To **Raymond S. Davis**  
 Street, Apt. No.,  
 or PO Box No. **2110 Faliron Road**  
 City, State, ZIP+4 **North Fort Myers, FL 33917**  
 PS Form 3800, April 2002 See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
**Raymond S. Davis**  
**2110 Faliron Road**  
**North Fort Myers, FL 33917**

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly)	B. Date of Delivery
C. Signature <b>X</b> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <b>XX</b> No	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

2. Article Number (Transfer from service label) **7002 0860 0001 1757 3092**