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Public Service Commission

COMMISSION
CLERK

June 13, 2005

CERTIFIED MAIL

Ms. Ellen M. Penar
3640-3 Rue Alec Loop
Lot #1262
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 Ms. Penar:

We have received your letter which was filed with this Commission on May 24, 2005, regarding your objection "to the North Fort Myers Utility proposal notice dated May 16, 2005." North Fort Myers Utility, Inc. (NFMU) and Heron's Glen Utility (Heron's Glen) have submitted a joint application for transfer and authorization for NFMU to charge the current Heron's Glen customers the NFMU authorized rates, fees and charges in the above-referenced docket. In your letter, you indicated several areas of concern including: plant capacity charges; miscellaneous service charges and reuse charges; customer deposits; rate schedules; and notification to individuals with construction contracts.

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC _____
- OTH _____

These are all areas that will be addressed by the Commission in considering the proposed transfer and limited proceeding for change in rates and charges. Regarding your construction contract (and the contracts of others) and the proposed increase for the plant capacity charge, the current plant capacity charge of \$200 will not be changed until approved by the Commission. In your letter, you argue that this charge should not change because of your prior contract. However, in H. Miller & Sons v. Hawkins, 373 So. 2d 913 (Fla. 1979), the Florida Supreme Court concluded that the appropriate service availability charge (plant capacity charge) could only be determined as of the actual time of connection. Therefore, the plant capacity charge that you or others will have to pay can only be finally determined when you actually connect, and it will be the approved charge as of the time of the connection.

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Upon completion of the transfer, the wastewater treatment plant of Heron's Glen is to be dismantled and the wastewater is to be treated at the NFMU plant. Therefore, NFMU does not plan to use the capacity of the Heron's Glen wastewater plant when the transfer is complete.

Both Heron's Glen and NFMU have reuse charges. From the Agreement for Purchase and Sale Wastewater Assets, it appears that Heron's Glen will continue to provide the Central Lot Irrigation System (CLIS) to the developments and that NFMU has agreed not to interfere or compete with that system. Staff is seeking clarification at this time as to how that affects reuse charges, and what is meant by providing CLIS to the developments. However, as regards the parties, it appears that the CLIS will not be affected by this sale. The Commission will review the appropriate reuse rates to be charged by NFMU to the Heron's Glen customers.

Rule 25-30.311, Florida Administrative Code, governs customer deposits, and staff will review with the utility its appropriate handling of and the need for customer deposits. If you were previously a customer of NFMU and had established a good payment history, you may not be required to provide a new deposit to NFMU if the transfer is approved.

As noted by you, NFMU is requesting that it be allowed to charge its own rates to the Heron's Glen customers, which would amount to 7.26% and 13.63% increases for 3,000 gallons per month and 4,000 gallons per month usages, respectively. The Commission must act in the public interest and will determine if these increases are appropriate. Any actions on rates will be done in the limited proceeding and will be issued as proposed agency action. Staff is currently collecting additional information from the utility that will be necessary to allow the Commission to determine which rates are appropriate on a going forward basis.

Before taking further action, the Commission must know your intent regarding your letter. If you want your letter to be treated as an objection to this transfer, you should file another letter stating that you do object to the transfer, and are requesting a formal hearing. While there is no specific form used to request a hearing, I have attached Rule 28-106.201, Uniform Rules of Procedure, Florida Administrative Code, which sets forth the requirements for a formal hearing request. Upon 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.

On the other hand, if you do not wish to pursue a formal hearing, you may submit additional letters containing your concerns about this pending transfer and limited proceeding for a change in rates and charges. If there is no protest and request for hearing, the limited proceeding for a change in rates and charges will continue to be processed using the Proposed Agency Action process, and no hearing will be held unless there is a protest to the Proposed Agency Action Order.

The recommendation on the appropriate rates is tentatively 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. 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. Should the Commission determine that NFMU's rates and charges are appropriate for Heron's Glen, the


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Commission will issue a Proposed Agency Action Order and substantially affected persons, if they wish to protest, must protest such order within 21 days of its issuance.

Please advise this Commission by July 11, 2005, if you wish to protest the transfer and 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 11, 2005, we will assume that you do not wish to pursue a formal hearing at this time 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

Enclosure

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 timely 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.