

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** July 17, 2008

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Walden)  
Office of the General Counsel (Bennett)

*AW P.D. T.J. [Signature]*  
*W.B. JSB*

**RE:** Docket No. 080179-SU – Application for amendment of Certificate No. 247-S to extend wastewater service area in Lee County by North Fort Myers Utility, Inc. County(ies): Lee

**AGENDA:** 07/29/08 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Argenziano

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\080179.RCM.DOC

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08 JUL 17 AM 9:02  
COMMISSION  
CLERK

### Case Background

North Ft. Myers Utility, Inc. (NFMU or utility) is a Class A utility providing wastewater service in Lee County. Rates were last considered in an index application on May 28, 2007. The utility's last general rate case increase was in Docket No. 790677-S and approved in Order No. 10152.<sup>1</sup>

On March 28, 2008, NFMU filed an amendment application for the addition of about 31 acres of land adjacent to U.S. 41 in North Ft. Myers and nearly 200 acres just east of the eastern

<sup>1</sup> See Order No. 10152, issued July 21, 1981, in Docket No. 790677-S, In re: Application of Old Bridge Corporation for a rate increase to its sewer customers in Lee County, Florida.

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FPSC-COMMISSION CLERK

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edge of its service area. Both parcels are located in the South Florida Water Management District. The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes (F.S.).

### **Discussion of Issues**

**Issue 1:** Should the Commission approve North Ft. Myers Utility, Inc.'s application for amendment of Certificate No. 247-S?

**Recommendation:** Yes, the Commission should approve North Ft. Myers Utility, Inc.'s amendment application to expand its territory. The proposed territory is described in Attachment A. The resultant order should serve as North Ft. Myers Utility, Inc.'s amended certificate and it should be retained by the utility. North Ft. Myers Utility, Inc. should charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding. (Walden)

**Staff Analysis:** On March 27, 2008, NFMU applied for an amendment to Certificate No. 247-S in Lee County to include the nearly 200 acres of additional territory on the eastern edge of its service area, as well as about 31 acres in the western section of its service area. The application is in compliance with the governing statute, Section 367.045, F.S., and other pertinent statutes and administrative rules concerning an application for amendment of certificate. The utility provides wastewater service from its existing wastewater plants and has adequate capacity to serve the area requested. Water service will be provided by Lee County Utilities.

An adequate service territory map and a territory description have been provided as prescribed by Rule 25-30.036(3)(e) and (i), Florida Administrative Code (F.A.C.). A description of the territory requested by the utility is appended to this recommendation as Attachment A. The utility has submitted an affidavit consistent with Section 367.045(2)(d), F.S., that it has tariffs and annual reports on file with the Commission. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C. No objections to the application have been received, and the time for filing such has expired. The local planning agency was provided notice of the application and did not file a protest to the amendment. The Department of Community Affairs (DCA) has reviewed the filing and commented on the two parcels of land requested to be approved in this application. The DCA further included a letter sent to that agency from Lee County's Director of Planning.

The 30 acre parcel along U. S. 41 causes no concern for either the DCA or Lee County. Concerns are discussed related to the 200-acre parcel east of State Road 31. Lee County asserts in its letter to DCA that this expansion is inconsistent with the Lee County Comprehensive Plan (the Lee Plan), since the area is designated as rural, being characterized by agricultural and low-density residential uses. The County states that one way of guiding development decisions is through the provision of infrastructure. The Lee Plan does not expressly prohibit the extension of a utility's territory in non-urban areas, but it has been the County's long standing policy that wastewater service not be provided in these areas.

The DCA shares the concerns voiced by the County, noting that extending wastewater service to this eastern area in Lee County is not consistent with the principles which guide development as specified in the County's Comprehensive Plan. The DCA encouraged coordination between the utility and the Lee County Planning Department.

The utility's counsel responded to the comments made by the DCA and Lee County, regarding the proposed amendment east of State Road 31, citing to Section 367.045(5)(b), F.S., which essentially states that the Commission does not need to consider whether an amendment of certificate is inconsistent with the local comprehensive plan unless a timely objection is made to the notice of amendment. If a timely objection is made, the Commission shall consider, but is not bound by, the local comprehensive plan. The utility's counsel also notes that Lee County is the provider of water service to the property in question.

A portion of the property east of State Road 31 fronts on the Caloosahatchee River. Existing development includes industrial marine uses, which would likely benefit from the connection to a central wastewater system. In addition, a portion of the property applied for is located in the Water Dependent overlay zone, where development priority is given to water-dependent uses.

The property owner has a pending Comprehensive Plan Amendment to change the land use from rural to a Future Urban Area. Central wastewater service would be a benefit to that new land use. Current land use for the eastern parcel allows 200 residential units to be developed, according to the utility. Further, Policy 2.1.3 of the Lee County Comprehensive Plan permits public utilities in all land use categories.

Staff notes that while the County had an opportunity to object to the amendment, no objection was filed. The County instead provided a position statement to the DCA, stating its observations or concerns.

After reviewing the documents and letters filed, staff believes that adequate mechanisms are in place to monitor the growth in the areas requested for amendment by the utility. The County will provide water service as needed. Development plans will require County permitting and approval.

Based upon the above information, staff recommends that the Commission should approve NFMU's application to expand its territory. The proposed territory amendment is described in Attachment A. The resultant order should serve as NFMU's amended certificates and the order should be retained by the utility. NFMU should charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding.

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

**Recommendation:** Yes. If the Commission approves Staff's recommendation in Issue 1, no further action is required and the docket should be closed. (Bennett)

**Staff Analysis:** If the Commission approves Staff's recommendation in Issue 1, no further action is required and the docket should be closed.

North Fort Myers Utility, Inc.  
Description of Wastewater Service Territory to be Added  
Lee County

**WEST OF U. S. 41:**

IN SECTIONS 15 & 16, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA,

A TRACT OR PARCEL OF LAND LYING IN SECTIONS 15 AND 16, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, WHICH TRACTS OR PARCELS ARE DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 15 RUN NORTH 90° 00' 00" EAST ALONG THE SOUTH LINE OF SECTION 15 FOR 47.20 FEET TO THE WESTERLY RIGHT-OF-WAY OF TAMAMI TRAIL (STATE ROAD 45); THENCE RUN NORTH 26° 07' 10" WEST ALONG SAID WESTERLY RIGHT-OF-WAY FOR 2,569.69 FEET; THENCE RUN NORTH 28° 59' 23" WEST ALONG SAID WESTERLY RIGHT-OF-WAY FOR 297.16 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY CORNER OF A PARCEL AS DESCRIBED IN A DEED AS RECORDED IN OFFICIAL RECORDS BOOK 3163, PAGE 1954, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTH 63° 52' 50" WEST ALONG THE NORTHERLY LINE OF SAID PARCEL FOR 476.42 FEET TO THE NORTHWESTERLY CORNER OF SAID PARCEL; THENCE RUN SOUTH 26° 07' 10" EAST FOR 2,624.93 FEET TO SOUTHWESTERLY MOST CORNER OF A PARCEL AS DESCRIBED IN A DEED AS RECORDED IN INSTRUMENT NUMBER 2005000075143, PUBLIC RECORDS OF LEE COUNTY, FLORIDA ALSO BEING THE A POINT ON THE SOUTH LINE OF SECTION 16; THENCE RUN SOUTH 89° 55' 59" EAST ALONG THE SOUTH LINE OF SAID SECTION FOR 500.27 FEET TO THE POINT OF BEGINNING. BEARINGS MENTIONED HEREON ARE BASED ON THE SOUTH LINE OF SECTION 16 TO BEAR NORTH 89° 55' 59" WEST.

**EAST OF STATE ROAD 31:**

A PORTION OF SECTIONS 18 AND 19, TOWNSHIP 43 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1

COMMENCE AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 43 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, SAID POINT BEING A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD 31; THENCE RUN S.88°45'47"E., ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 18, FOR A DISTANCE OF 100.00 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD 31 AND THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE RUN N.00°26'33"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 1,380.98 FEET; THENCE RUN S.88°52'26"E. FOR A DISTANCE OF 1,289.95 FEET; THENCE RUN S.88°52'02"E. FOR A DISTANCE OF 1,200.01 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 18; THENCE RUN S.00°17'01"W., ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 18, FOR A DISTANCE OF 1,177.03 FEET TO A POINT ON THE APPROXIMATE TOP OF BANK OF A MANMADE DITCH; THENCE RUN SOUTHEASTERLY, ALONG THE APPROXIMATE TOP OF BANK OF SAID DITCH THE FOLLOWING CALLS:

1. S.66°57'30"E. FOR A DISTANCE OF 51.84 FEET;
2. THENCE RUN S.62°42'59"E. FOR A DISTANCE OF 34.22 FEET;
3. THENCE RUN S.71°07'07"E. FOR A DISTANCE OF 40.46 FEET;
4. THENCE RUN S.75°05'44"E. FOR A DISTANCE OF 54.64 FEET;
5. THENCE RUN S.53°48'26"E. FOR A DISTANCE OF 60.20 FEET;
6. THENCE RUN S.40°53'39"E. FOR A DISTANCE OF 33.01 FEET;
7. THENCE RUN S.45°59'51"E. FOR A DISTANCE OF 43.84 FEET;
8. THENCE RUN S.32°06'08"E. FOR A DISTANCE OF 30.67 FEET;
9. THENCE RUN S.28°20'46"E. FOR A DISTANCE OF 39.90 FEET;
10. THENCE RUN S.12°43'52"E. FOR A DISTANCE OF 39.18 FEET;
11. THENCE RUN S.08°54'45"E. FOR A DISTANCE OF 28.95 FEET;
12. THENCE RUN S.06°50'11"E. FOR A DISTANCE OF 34.61 FEET;

13. THENCE RUN S.03°48'12"E. FOR A DISTANCE OF 29.62 FEET;
14. THENCE RUN S.24°12'11"E. FOR A DISTANCE OF 91.43 FEET;
15. THENCE RUN S.47°23'44"E. FOR A DISTANCE OF 64.61 FEET;
16. THENCE RUN S.17°16'30"E. FOR A DISTANCE OF 63 FEET, MORE OR

LESS, TO THE MEAN HIGH WATER LINE OF THE OLD RIVER BED OF THE CALOOSAHATCHEE RIVER; THENCE RUN SOUTHWESTERLY, ALONG THE MEAN HIGH WATER LINE OF THE CALOOSAHATCHEE RIVER, FOR A DISTANCE OF 3,500 FEET, MORE OR LESS, TO A POINT ON THE SOUTHERLY BOUNDARY OF THAT PARCEL OF LAND DESCRIBED IN THE WARRANTY DEED RECORDED IN INSTRUMENT #2007000297026 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN S.81°50'47"W., ALONG THE SOUTHERLY LINE OF SAID PARCEL, FOR A DISTANCE OF 186 FEET, MORE OR LESS, TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID STATE ROAD 31; THENCE RUN N.08°09'14"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 22.61 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE TO THE EAST; THENCE RUN NORTHERLY, ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 5356.41 FEET, THROUGH A CENTRAL ANGLE OF 03°17'19", SUBTENDED BY A CHORD OF 307.40 FEET AT A BEARING OF N.06°30'35"W., FOR A DISTANCE OF 307.44 FEET TO THE END OF SAID CURVE; THENCE RUN S.85°08'07"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 10.00 FEET TO A POINT ON A CIRCULAR CURVE, CONCAVE TO THE EAST, FROM WHICH THE RADIUS POINT BEARS N.85°08'05"E., A DISTANCE OF 5,366.41 FEET THEREFROM; THENCE RUN NORTHERLY, ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 5,366.41 FEET, THROUGH A CENTRAL ANGLE OF 08°19'10", SUBTENDED BY A CHORD OF 778.53 FEET AT A BEARING OF N.00°42'20"W., FOR A DISTANCE OF 779.21 FEET TO THE END OF SAID CURVE; THENCE RUN N.03°27'15"E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 855.44 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE TO THE WEST; THENCE RUN NORTHERLY, ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 1,959.86 FEET, THROUGH A CENTRAL ANGLE OF 03°55'00", SUBTENDED BY A CHORD OF 133.95 FEET AT A BEARING OF N.01°29'45"E., FOR A DISTANCE OF 133.97 FEET TO THE END OF SAID CURVE; THENCE RUN N.00°27'54"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 519.39 TO THE POINT OF BEGINNING.

AND

PARCEL 2

COMMENCE AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 43 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA;



THENCE RUN N.88°45'47"W., ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 18, FOR A DISTANCE OF 1257.89 FEET TO A POINT ON A LINE 30 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH, THE CENTERLINE OF AN EXISTING PAVED DRIVE AS DESCRIBED IN RESIDENCE PARCEL "A" RECORDED IN OFFICIAL RECORDS BOOK 2290 AT PAGE 3479 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE RUN SOUTHERLY, ALONG SAID PARALLEL LINE, THE FOLLOWING COURSES:

1. S.44°37'10"E. FOR A DISTANCE OF 331.91 FEET;
2. THENCE RUN S.15°00'10"E. FOR A DISTANCE OF 53.03 FEET;
3. THENCE RUN N.74°59'50"E. FOR A DISTANCE OF 18.55 FEET;
4. THENCE RUN S.15°00'10"E. FOR A DISTANCE OF 137.17 FEET;
5. THENCE RUN S.28°49'50"W. FOR A DISTANCE OF 219.46 FEET;
6. THENCE RUN S.37°56'50"W. FOR A DISTANCE OF 235.27 FEET;
7. THENCE RUN S.48°53'50"W. FOR A DISTANCE OF 266.81 FEET;
8. THENCE RUN S.44°50'41"W. FOR A DISTANCE OF 140.42 FEET;
9. THENCE RUN S.03°40'10"E. FOR A DISTANCE OF 86.00 FEET;
10. THENCE RUN S.42°11'10"E. FOR A DISTANCE OF 184.68 FEET;
11. THENCE RUN S.48°06'50"W. FOR A DISTANCE OF 270 FEET, MORE OR

LESS, TO THE MEAN HIGH WATER LINE OF THE OLD RIVER BED OF THE CALOOSAHATCHEE RIVER; THENCE RUN NORTHWESTERLY, ALONG THE MEAN HIGH WATER LINE OF THE CALOOSAHATCHEE RIVER, FOR A DISTANCE OF 975 FEET, MORE OR LESS, TO A POINT ON THE SOUTHERLY MEAN HIGH WATER LINE OF AN UNNAMED TRIBUTARY OF TROUT CREEK; THENCE RUN EASTERLY, ALONG THE SOUTHERLY MEAN HIGH WATER LINE OF SAID TRIBUTARY, FOR A DISTANCE OF 1000 FEET, MORE OR LESS; THENCE RUN NORTHERLY, ALONG THE MEAN HIGH WATER LINE OF SAID TRIBUTARY, FOR A DISTANCE OF 80 FEET, MORE OR LESS; THENCE RUN WESTERLY, ALONG THE MEAN HIGH WATER LINE OF SAID TRIBUTARY, FOR A DISTANCE OF 950 FEET, MORE OR LESS, TO A POINT ON THE SOUTHERLY MEAN HIGH WATER LINE OF TROUT CREEK; THENCE RUN NORTHERLY AND NORTHEASTERLY, ALONG THE SOUTHERLY MEAN HIGH WATER LINE OF TROUT CREEK, FOR A DISTANCE OF 1500 FEET, MORE OR LESS, TO A POINT ON A LINE 30 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH, THE CENTERLINE OF AN EXISTING PAVED DRIVE AS DESCRIBED IN RESIDENCE PARCEL "A" RECORDED IN OFFICIAL RECORDS BOOK

2290 AT PAGE 3479 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTHERLY, ALONG SAID PARALLEL LINE, THE FOLLOWING COURSES:

1. S.13°28'44"E. FOR A DISTANCE OF 190 FEET, MORE OR LESS;
2. THENCE RUN S.24°50'50"W. FOR A DISTANCE OF 318.05 FEET;
3. THENCE RUN S.29°52'10"E. FOR A DISTANCE OF 128.59 FEET;
4. THENCE RUN S.44°37'10"E. FOR A DISTANCE OF 134.63 FEET TO THE POINT OF BEGINNING.

BEARINGS REFER TO SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 43 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, AS BEING S.88°45'47"E.

**FLORIDA PUBLIC SERVICE COMMISSION**  
**authorizes**  
**North Ft. Myers Utility, Inc.**  
**pursuant to**  
**Certificate Number 247-S**

to provide wastewater service in Lee County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission.

This authorization shall remain in force and effect until suspended, suspended, canceled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
8025	10/25/77	770709-S	Grandfather
11300	11/02/82	820278-S	Extension
12572	10/04/83	830316-S	Extension
15659	02/12/86	830362-S	Extension
19059	03/29/88	871306-SU	Extension
PSC-92-0537-FOF-SU	06/22/92	920037-SU	Amendment/Del Tura Plaza
PSC-92-0588-FOF-SU	06/30/92	920273-SU	Amendment/Forest Park
PSC-93-0971-FOF-SU	06/29/93	930289-SU	Amendment/Fountain View
PSC-93-1851-FOF-SU	12/30/93	931040-SU	Amendment/Northside Pavilion
PSC-93-1821-FOF-WS	12/22/93	930373-SU	Amendment/Laurel Estates/ Lake Arrowhead
PSC-94-0450-FOF-SU	04/14/94	931164-SU	Amendment/Carriage Village
PSC-94-0726-FOF-SU	06/13/94	930724-SU	Amendment/Lazy Days
PSC-95-0576-FOF-SU	05/09/95	940963-SU	Amendment/Tamiami Village
PSC-99-2444- AS-SU	12/14/99	981781-SU	Amendment/Buccaneer Estates
PSC-00-1892-PAA-SU	02/09/01	991494-SU	Transfer/Pine Lakes/Lake Fairways
PSC-01-0995-AS -WS	04/23/01	000277-WS	Amendment
PSC-02-0481-FOF-SU	04/08/02	011006-SU	Amendment Addition
PSC-04-1218-FOF-SU	12/09/04	040818-SU	Amendment deletion/Judd
PSC-06-0055-PAA-SU	01/23/06	050323-SU	Transfer/Heron's Glen
PSC-07-0419-PAA-SU	05/14/07	060698-WU	Transfer Del Tura
*	*	080179-SU	Amendment

\* Order Number and date to be provided at time of issuance