State of Florida



Aublic 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:

September 2, 2008

TO:

Ann Cole, Commission Clerk - PSC, Office of Commission Clerk

FROM:

Erik L. Sayler, Senior Attorney, Office of the General Counsel

RE:

DOCKET NO. 080428-WS - Joint application for transfer of water and wastewater

systems from Keith and Clara Starkey d/b/a Heather Hills to Ni Florida, LLC, in

Manatee County.

Please place the attached fax correspondences in the above-referenced docket file. Thank you.

ELS/th

DOCUMENT HUMBER-DATE

08044 SEP-28

FPSC-COMMISSION CLERK

8/29/08

TO: ERIK SAYLER Flom: JOHN MOREILI

THESE ARE THE OTHER (3) PAGES THAT WE (KENNA & I) SAID WE WOULD FAX YOU.

JOHN MORELLI

DOCUMENT NUMBER-DATE 08044 SEP-28

ORDER NO. PSC-06-0075-PAA-WS DOCKET NO. 060003-WS PAGE 23

ATTACHMENT A

1083

FROM : PHK



Hublic Service Commission

January 31, 2006

All Florida Public Service Commission Regulated Water & Wastewater Utilities

Re: Docket No. 060005-WS - 2006 Price Index

Since March 31, 1961, pursuant to the guidelines escabilished by Section 367.081(4)(a), Florida Statettes, and Rale 25-30.420, Florida Administrative Code (F.A.C.), the Countrision has combilished a prior index increase or decrease for study categories of operating cents. The breast of this rale is to insure that inflictonery pressures are not debrimanial to utility croners, and that are possible dedistionary pressures are not adverse to stat payers. By keeping up with index and pass-drough adjustancies, utility operations out to maintained at a level sufficient to insure quality of service for the rate payers.

Pursuant to Rule 25-30.420 (1)(a), F.A.C., all operation and meint indexed with the exception of:

- Page-through items pursuant to Section 367.081(4)(b);
- Any enorthetion of rate case expense; and b)
- rences or edjartm Dirello

Upon the filling of a sequent for an index and/or pass-through innexes, staff will review the application end modify estaining rates accordingly. If for no other reason them to keep up white scandaring costs, willties throughout Florida should file for this rate relief on an ansual basis. Dillities may apply for a 2006 Price Index arytime between April 1, 2006, through Mesch 31, 2007.

EMK

2 04 3

Presentation to Heather Hills Property Owners' Association Board of Directors on February 14, 2003

- Since 1976 there has not been a Heather Hill Estates, Inc.
 The Starkeys do not own Heather Hills Estates.
 The Starkeys own the recreation area including the clubhouse.
 The Starkeys are doing business under a fictitious name of dbe Heather Hills.
- 5. The Restrictive Covenants as published in the directory and posted is not a valid official document.
- The Corrective of Restrictive Covenants filed in Manatoc County Official
 Records over 9 months late state there are 3 Restrictive Covenants, one for Unit
 I and one for Unit 3. The Unit 4 Restrictive Covenant is filed incorrectly. There are no Restrictive Covenants on Unit 2 and 5.
- ast, for the privilege to use the 7. The Restrictive Covenants states that our asse
- recreation facilities, can only be increased on March 8.

 8. The Starkeys increase our assessment on January 1, each year.

 9. The association members and all residents have the privilege of using the
- recreation areas and clubhouse by paying the Starkeys the assessment of approximated \$500 individually and \$180,000 collectively each year.

 10. The association has a lease with the Starkeys to use the recreation area and
- clubhouse.

 11.By leasing, the association accepts liabilities, expenses and responsible for the
- 11. By leasing, the association accepts liabilities, expenses and responsible for the recreation area and clubhouse.

 12. The association can cancel the lease at any time by written notice delivered to the Starkeys 30 days before September 30.

 13. According to Mr. Starkey and the Heather Hills Property Owners' Association neither have any knowledge of the whereabouts or the contents of Exhibit A or Exhibit B of the Lease Agreement.

 14. According to budget provided by Starkeys to Judge Farrance, each year the Starkeys spend \$2,000 of our recreation area assessment on board dianers.

 15. The Starkeys according to Florida Law have to provide us with an annual financial statement on the assessments we are required to pay. It is due March 1.

 16. Our watersewer system installed in 1967 is 36 years old and needs updating.

 17. According to the 2001 Florida Public Service Commission records submitted by the Starkeys the utility plant is worth \$7,906 and had a net loss of \$1,901 in 2001.

- 2001
- 18.At this depreciation rate the utility plant will be worth nothing in 2007.

KUN

3 06 3

- 19 The Florida Public Service Commission states that many small utility owners.
- 19. The Frortica Propic Service Commission states that many small utually own like the Starkeys, abandon their plant when it is fully depreciated because is very little profit or none for small utility owners.
 20. The subdivision residents have a right to petition Manatee County Utility Operations Division to directly provide us with a new water/sewer system fiveplugs. Fureplugs will reduce our household insurance costs. er system with
- treptage. Furptage wall reduce our household insulance could.

 21. A strong association that represents resident issues in relation to the recreation area and water/sever systems is needed.

 22. Call the Federation of Manufactured Home Owners of Florida, Inc., 888-319-3696, for information and presentations. The dues are \$15 a year. This
- organization is an advocacy group for owners of manufactured houses. It meets the third (3rd) Tuesday of every month.

Motions are needed on Items 7, 12, 15, 20 and 22.

Respectively Submitted, Janet Voorheis

FROM:

9-2-08

ADDENDUM TO KENNA GUNN'S LETTER

To: ATTORNEY BRIK SAYLER

FAXED: 4 Pg ADDENDUM

" I pg WATER & SEWER BILL

n 1 pg "Notice" OF 2002 INFO.

6 PAGES TO FOLLOW

FROM:

9-22-08

ADDENDUM: From KENNA GUNN, to my letter dated July 25th, 2008 Re: DOCKET # 080428-WS (OK to include per Attorney Erik Sayler).

The 5 pages of said letter contained about 10 questions, please may I have answers?

(I wish to amend the word in the last paragraph from "wholehearted" to the adverb "wholeheartedly". I had retyped the sentence and missed the necessary correction).

I would appreciate answers to these questions regarding my concerns of the 'applied for' transfer of a Water & Sewer Utility to Ni Florida from M/M Keith Starkey which I believe to definitely NOT be in the best interests of its customers.



1) Below are 'cut & pastes' directly from the JOINT APPLICATION and owing to the fact that there were indeed "written objections filed to this Application within 30 days" then it appears that both parties have failed to adhere to their written words by the act of posting a notice on the Heather Hills Estates clubhouse door stating "NOTICE FOR ALL Water or sewer information Contact the Home office of: Florida Utility Group, LLC....." etc and dated Aug 27 2008 and inside on the counter were sheets from F.U.G., LLC reading "We are proud to announce to the residents of Heather Hills Estates that, as of August 27, 2008. Florida Utility Group, LLC has assumed the responsibility for the operation and maintenance of the water distribution and wastewater collection systems that serve your home".....etc.

Has this deal "closed" already at Ni Florida's option <u>prior to</u> FPSC approval? How can we trust any of their other written words? See below:

- 8. Exhibit "C" to the Application contains a copy of the Asset Purchase Agreement by and between Ni Florida, LLC, Keith C. Starkey and Clara B. Starkey concerning the purchase and sale of the Heather Hills water and wastewater systems. Under Section 7.1 ** of the Agreement, the parties will close on the transaction following approval of this Application by the Commission, but may, at Ni Florida's option, close prior to final approval (and subject to rescission) if no written objections are filed to this Application within 30 days after required notices have been filed.
 - (g) all consents, approvals and waivers necessary to permit the Sellers to transfer the Assets to the Buyer, or necessary to permit the Buyer to conduct the Business as presently conducted, shall have been obtained, including the Regulatory Approval; provided that, if no written objection to the purchase and sale of the Assets as contemplated berein is received by the FPSC within thirty (30) days after notice of the sale was mailed to the FPSC or published by the applicant(s), this condition shall be deemed to be satisfied;

2) Kindly review below, the beginning page of JOINT APPLICATION as per below, (bolding mine) "367.045(2) is quoted as per the FL Statute with Florida Administrative Code Rules 25-30.036 (3) and 25-30.037 yet on page 5, PART III NOTICE OF ACTUAL APPLICATION it quotes FS 367.045(1) (a) and FAC Rule 25-30.030.

Is this an error? Or are they both accurate? See below:

"JOINT APPLICATION

** 7.1

OF KEITH AND CLARA STARKEY d/b/a HEATHER HILLS ESTATES AND NI FLORIDA, LLC FOR APPROVAL OF TRANSFER OF HEATHER HILLS ESTATES'S (sie) WATER AND WASTEWATER SYSTEMS

Keith and Clara Starkey d/b/a Heather Hills Estates ("Heather Hills") and Ni Florida, LLC ("Ni Florida"), by and through their undersigned counsel, and pursuant to Sections 367.045(2) and 367.071, Florida Statutes, and Rules 25-30.036(3) and 25-30.037, Florida Administrative Code, hereby file this Application for approval of the transfer of Heather Hills's water and wastewater system to Ni Florida. In support of this Application, the Joint Applicants state as follows:

PART III NOTICE OF ACTUAL APPLICATION

A) Exhibit J - An affidavit that the notice of actual application was given in accordance with Section FS 367.045(1)(a), Florida Statutes, and Rule 25-30.030, Florida Administrative Code, by regular mail to the following:

3) Please see below verbiage regarding evidence that the Utility owns the land. In the FLORIDA PUBLIC SERVICE COMMISSION MEMORANDUM dated August 1st, 1996, Re: Docket #960814-WS, page 6 it states,

"LAND AND LAND RIGHTS: The utility owns no land but does own land rights for the easements for the water distribution and wastewater collection lines. The 1995 utility annual report did not record any land or land rights". Hence, NO LAND OWNERSHIP AND NO 99-YEAR LEASE EITHER!! According to the Joint Application SCHEDULE 6.1(a) states that #2 EASEMENTS AND SETBACKS:, ARE NO LONGER APPLICABLE then combine that statement with the developers' "CERTIFICATE OF OWNERSHIP AND DEDICATION" whereby he dedicated "all of the streets, walks, alleys, thorough fares, parks and other open spaces, canals and drainage or other easements shown on this Plat to the use of the general public forever." So pray tell me just what land does the Utility Co. own? You may wish to re-acquaint yourselves with my original letter pages 3 and 4 for a more detailed explanation on this issue.

PART V OTHER

A) Exhibit M - Evidence that the utility owns the land where the utility treatment facilities are located. Or, where the utility does not own the land, a copy of the agreement which provides for the long term, continuous use of the land, such as a 99-year lease. The Commission may consider a written easement or other cost-effective alternative.

4) Is it legal for persons in business who are not incorporated to actually claim auspices under any of the Florida Statutes? If they could do business legally under any or all such Statutes how would the Dept of Business and Professional Regulation and/or the Division of Florida Land Sales, Condominiums And Mobile Homes receive any 'incorporating' fees? Keith & Clara Starkey quote from sections of FS 367 in the opening statement of the Joint Application for transferal of Water & Sewer Certificates to Ni Florida. They are attempting to transfer under Keith & Clara Starkey d/b/a Heather Hills Estates which is NOT incorporated. The legal name of the W & S business is Heather Hills Utility, Inc. under the (generic corporation act) "FS 607 Corporations" yet HHU, Inc appears no where in the Joint Application, a document consisting of over 260 pages! Also, can a corporation under FS 607 legally "pass-thru" charges to customers under "FS 367 Water & Waste Water Systems" without M/M Starkey having paid the required additional incorporation fee/and or the fee to amend the Articles of Incorporation and/or the amendment fees to change the By Laws?

- 5) I believe that it is common knowledge within Heather Hills Estates that Keith Starkey approached Manatee County with the intention of offering the Utility to them for free (suggesting knowledge of its depreciation) if they would oblige him by taking it over. (He has been trying to "dump it" (unquote) for a long time). They declined the offer unless the Utility was first brought up to code. This overhaul never occurred. Now, a couple of years later the asking price is \$277,500 and Ni Florida would pass that cost onto the customers. Is that not a cause for "unjust enrichment" to and for M/M Starkey? Especially as all the costs of all the updating would also be on the shoulders of the customers, customers who have already paid for such costs by virtue of HHE receiving automatic yearly 'cost of living' rate raises?

 Jan Voorheis, resident of Heather Hills Estates may know more explicit details of this issue.
- 6) Re: The article in The Tampa Tribune published March 21*, 2008 written by Christian M. Wade titled "Texas Company Buys Hudson Utilities" a portion of which reads "Mark Myers, Vice president of business development for Ni America, said he thinks private companies like his are better positioned financially to buy and operate utilities than local governments, which pay too much and then pass that along to customers". (Italics, mine).

He claims his company can buy and operate the utility so why would Ni Florida buy a utility and then HIRE ANOTHER COMPANY entirely such as FUGH, LLC to operate it?

Ni Management claims their 19 employees have a combined 162 years of experience in the operation of managing and operating water & wastewater utilities. Well, what good is all that experience if they are not the persons who will actually be operating it? And he states that 'local governments pay too much which then gets passed on to the customers'!! (Bolding mine).

Is that not precisely what Ni Florida is planning on doing?!!

- 7) Has the Florida Governmental Utilities Authority been advised of and approached by the county commission, regarding their potential assistance in and toward the viable purchase of this utility by Manatee County?
- 8) Would it not behoove the FPSC to actually obtain copies of the ORIGINAL 2 certificates which applications were filed for on December 7th, 1995 and granted with issuance on March 28th, 1996 by FPSC Order PSC-96-0434-FOF-WS for the HHE W & S Utility which the current owners claim are not in their possession? As per Joint Application **EXHIBIT 0**

"The current water and wastewater certificates issued for each system, and where not available, a statement providing an explanation of the steps taken by Ni Florida to obtain the certificates.

Attached is a copy of Certificate Nos. 577-W and 498-S, which are the current water and wastewater certificates issued to Heather Hills. Ni Florida was advised that the current owners do not have the original certificates". (Bolding mine).

The 2 documents included as the last 2 pages of the "Joint Application" are believed to **not** be copies of the *original* certificates which may well have contained verbiage to the effect of, "This Certificate is valid for 5 years after which it shall come up for review in March 2001," or "This Certificate is void after 10 (ten) years' etc. The Certificates shown in the JOINT APPLICATION are not dated, **highly irregular for official legal documents.** How would the FPSC et al know the Certificates were "current" if they are not dated? How can we the customers, be privy to copies of the original Certificates?

8a) Why would the Utility Co. incorporate under FS 607 when the Certificate <u>specifically</u> states them to be authorized "to provide water/wastewater services in accordance with the provisions of Chapter 367?

Enquiring minds want to know......

- 9) If Ni Florida is incorporated under the state of Delaware Statutes can they legally plan to and claim auspices under Florida Statutes (ie: FS 367) and/or the Florida Administrative Code, whilst doing business in Florida without having paid one penny into the State of Florida's 'Incorporation' coffers? This would be most unfair to Florida corporations who have had to pay. N'est pas?
- 10) As per copies of John Morelli's HHE (IIHU, Inc) two (2) W & S bills now on record (kindly review); plus mine from the very first bill, all reflect the identical wastewater gallon usage as the gallons of water used. According to "K & C Starkey d/b/a Heather Hills Estates Schedule of Purchased Wastewater Treatment and Gallons Sold For the 12 Months Ended September 30, 2007, Schedule No. 3 Page 2 of 2, #34 (3)," the "Wastewater gallons sold are based on 85% of water gallons sold".

I also enclose a copy of Heather Hills Estates page 4 of 4 from their "packet of information" to "prospective homeowners" from "Management" (M/M Starkey) providing pertinent costs of Water & Sewer rates. Nota bene:

Back in 2002 they were charging Wastewater at "\$2.57 per 1000 gallons and (85% of 1000 gallons @ \$3.02)"!! Will the FPSC please consider to deem these issues worthy of inspection and rectification/reparation?

11) Under ASSET PURCHASE AGREEMENT you will find the statement below:

"Regulatory Approval" shall mean any approval and compliance required pursuant to Chapter 30 of Chapter 367, Florida Statutes and the rules and regulations promulgated thereunder, to operate the Business or in connection with the consummation of the transactions contemplated b; this Agreement; such approval and compliance is administered by and through the FPSC.

Where is "Chapter 30 of Chapter 367?"

Can there be any accountability for past alleged unlawful practices by M/M Starkey during their stewardship of this Utility for 30 odd years PRIOR TO THE FPSC SIGNING THE 'APPROVAL'?

For your perusal:

367.071 Sale, assignment, or transfer of certificate of authorization, facilities, or control.-

- (1) No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferce will fulfill the commitments, obligations, and representations of the utility. However, a sale, assignment, or transfer of its certificate of authorization, facilities or any portion thereof, or majority organizational control may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.
- (2) The commission may impose a penalty pursuant to s. 367.161 when a transfer occurs prior to approval by the commission. The transferor remains liable for any outstanding regulatory assessment fees, fines, or refunds of the utility.

Thank you for your time and considerations toward these issues.

Respectfully submitted, Kenna Olno Muc

 $C^{(2)}(\mathcal{C}_{+})$

FROM:

NOTICE

Please take the time to review the regulations carefully, especially noting rules mumber 1, 5, 6, 11, 12, and 14. If there are questions concerning these rules, please call the office and arrange to meet with us and we will explain them to you.

*VEHICLE PARKING—recreational, etc. For our permanent

residents, (those owning the property) the time limitation will be:
Arriving in Heather Hills 48 hours 48 hours

Returning to your northern home Short vacations during your time here 48 hours 24 hours

Preparing for storage when returning 24 hours Please call the office when you are bringing your recreational vehicle into

the park, if one of the above applies.

NO OVERNIGHT PARKING PRIVILEGES WILL BE GIVEN TO VISITORS IN RECREATIONAL VEHICLES, UNLESS APPROVED BY THE OFFICE.

Thank you for your cooperation.

* 2002 <u>Quarterly</u> fees

ASSESSMENT Single lot Ready to Serve (base rate) \$121.08 WATER \$21.38 SEWER Ready to Serve (base rate) \$28.36

QUARTERLY MINIMUM FOR SINGLE LOT

\$170.82

(Does not include water & sewer usage) WATER

(per 1,000 gallons)

\$1.32

M (85% of 1,000 gallons) (per 1,000 gallons) WASTE WATER

\$2.57

TOTAL quarterly bill will be \$170.82 PLUS water and sower usage.

5

m: Keith and Clara Starkey dbg Heather Hills Estates 4925 Third St W Bradenson Ft. 34267

Quarterly Invoice January 01, 2002

Shirley Boone 105 48th Ave Dr W edenton FL 34207 nt (Lot) Number 70

6 58 96 0

| Service From | 9/24/01 | Water Meter Readings Current Previous | Water Ceed (Gallone) |
|--|-----------------|--|-------------------------|
| ••• | 12/24/01 | 858700 - 658700 | = 2000 |
| Water: 2000 Gallons at \$1.32 per 1000 Gallons | | | \$2.64 |
| Water: Customer Charge (Base Rete) | | | \$21.38 |
| Sewer: 2000 Gallous et \$2.57 per 1000 Gallous | | | \$5.14 |
| Sewer: Customer Clarge (Base Rate) | | | \$28.36 |
| Sewer: Custon | uet canta /come | ECHAC) | |

Past due after 1/21/02. If suppoid, water will be abut off on 1/29/02.

nto make the portion ABOVE psymble to HEATHER HILLS ESTATES UTILITIES

-Please make the portion BELOW payable to HEATHER HILLS ESTATES

\$121.08

3121.06

Total Amount due Heather Hills Estate

Past due after 1/21/02, 10% penalty on unpaid balance.

Aug. 29th, 2008

FROM: JOHN MORELLI - HH RESIDENT.

TO: ERIK SAYLER.
PER CONVERSATION BETWEEN US TODAY.
DEAR ERIK,

THIS IS A COVER LETTER TO COMBINE WITH THE 3 PAGES YOU ARE BEING FAXED TODAY

- 1) THE "NOTICE"
 18 POSTED UPON 3 CLUBHOUSE DOORS.
- 2) THE LETTER WAS LYING ON A TABLE INSUPE THE CLUBHOUSE.
- (P.S) MOST OF THE OWNERS ARE STILL OUT OF TOWN, UP NORTH.

WITH F.U.G. LLC BRING SO FAR AWAY IF AN EMERGENCY ARISES, SOME FOLKS COULD ALREADY BEA AT RISK FOR THEIR HEALTH BY PARTAKING OF CONTAMINATED WATER. AT LEAST THE STARKEYS COULD RESPOND IN ABOUT WO MINUTES !

> THAUK YOU, JOHN MOREULI

1

NOTICE

For ALL Water or sewer information Contact the

Home office of:

Florida Utility Group, LLC 13825 Us Highway 19, Suite 301 Hudson, Fl 33667

Phone: 727-863-0205

Toll free: 877-233-0101

Fax: 727-869-5913

AUG 2 7 2008



Florida Utility Group, LLC. 13825 US HWY 19 Suite 301 Hudson, FL 34667 August 27, 2008

Subject: Operation of the Water Distribution and Wastewater Collection Systems.

We are proud to announce to the residents of Heather Hills Estates that, as of August 27, 2008, Florida Utility Group, LLC has assumed the responsibility for the operation and maintenance of the water distribution and wastewater collection systems that serve your home. We will continue to maintain these systems until Ni Florida completes its purchase of the utilities.

"We Are Committed To Providing The Highest Quality Of Service While Protecting Our Environment."

The quality of service we provide to our customers is and always has been important to us. Equally as important are environmental issues and the quality of water and effluent passing through our collection systems. Our first priority at Florida Utility Group is delivering the highest level of service to each of our water and wastewater customers.

From time to time, you may see our trucks driving through the area or exercising valves or flushing the system. These vehicles are easily identified with our company name and logo on the doors. If you have an emergency to report, need to contact or visit the office, or mail your payment, the phone numbers and local address is:

Florida Utility Group, LLC 13825 US Highway 19, Suite 301 Hudson, FL 33667

Phone:

727-863-0205

Toll free:

877-233-0101

Fax:

727-869-5913

We will be installing a drop box to receive after-hours payments. It will be located at the front entrance of the community building for your convenience. If you have any questions or concerns regarding this or any other matter, please feel free to contact Florida Utility Group.

Sincerely.

John Wittenzeilner Jr.

President



The 2005 Florida Statutes

RAILROADS AND OTHER REGULATED UTILITIES WATER AND WASTEWATER SYSTEMS

Chapter 367

367.071 Sale, assignment, or transfer of certificate of authorization, facilities, or control.—

- (1) No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility. However, a sale, assignment, or transfer of its certificate of authorization, facilities or any portion thereof, or majority organizational control may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.
- (2) The commission may impose a penalty pursuant to s. 367.161 when a transfer occurs prior to approval by the commission. The transferor remains liable for any outstanding regulatory assessment fees, fines, or refunds of the utility.
- (3) An application for proposed sale, assignment, or transfer shall be accompanied by a fee as provided by s. 367,145.
- (4) An application shall be disposed of as provided in s. 367.045, except that:
- (b) When paragraph (a) does not apply, the commission shall amend the certificate of authorization as necessary to reflect the change resulting from the sale, assignment, or transfer.
- (5) The commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof, except for any sale, assignment, or transfer to a governmental authority.