

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-**

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**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.

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RECEIVED-FPSC  
08 SEP - 2 PM 3:25  
COMMISSION CLERK

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

ELS/th

DOCUMENT NUMBER-DATE

08044 SEP-28

FPSC-COMMISSION CLERK

8/29/08

TO: ERIK SAYLER  
FROM: JOHN MORELLI

ERIK,  
THESE ARE THE OTHER (2) PAGES THAT  
WE (KENNA & I) SAID WE WOULD  
FAX YOU.

THANKS FOR YOU TIME,  
JOHN MORELLI

DOCUMENT NUMBER-DATE

08044 SEP-28

EPSC-COMMISSION CLERK

ERIK

PHONE NO. :

PAGE

ORDER NO. PSC-06-0075-FAA-WS  
DOCKET NO. 06005-WS  
PAGE 23

ATTACHMENT A 10F

COMMISSIONERS:  
LEA POLAK BOGGS, CHAIRMAN  
J. TRENT DRAGON  
MILO ARMSTRONG  
MATTHEW M. CARTER II  
KATHLEEN J. TAYLOR

STATE OF FLORIDA



TOMMYE DAVILA, DIRECTOR  
DIVISION OF REGULATORY AFFAIRS  
(352) 413-6800

### Public Service Commission

January 31, 2006

All Florida Public Service Commission  
Regulated Water & Wastewater Utilities

DRAFT

Re: Docket No. 06005-WS - 2006 Price Index

Dear Utility Owner:

Since March 31, 1981, pursuant to the guidelines established by Section 367.081(4)(a), Florida Statutes, and Rule 25-30.420, Florida Administrative Code (F.A.C.), the Commission has established a price index increase or decrease for major categories of operating costs. The intent of this rule is to insure that inflationary pressures are not detrimental to utility owners, and that any possible deflationary pressures are not adverse to rate payers. By keeping up with index and pass-through adjustments, utility operations can be 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 maintenance expenses shall be indexed with the exception of:

- a) Pass-through items pursuant to Section 367.081(4)(b);
- b) Any amortization of rain case expense; and
- c) Disallowances or adjustments made in an applicant's most recent rate proceeding.

Upon the filing of a request for an index and/or pass-through increase, staff will review the application and modify existing rates accordingly. If for no other reason than to keep up with escalating costs, utilities throughout Florida should file for this rate relief on an annual basis. Utilities may apply for a 2006 Price Index anytime between April 1, 2006, through March 31, 2007.

ERIK

2 of 3

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

1. Since 1976 there has not been a Heather Hill Estates, Inc.
2. The Starkeys do not own Heather Hills Estates.
3. The Starkeys own the recreation area including the clubhouse.
4. The Starkeys are doing business under a fictitious name of dba Heather Hills Estates.
5. The Restrictive Covenants as published in the directory and posted is not a valid official document.
6. The Corrective of Restrictive Covenants filed in Manatee County Official Records over 9 months late state there are 3 Restrictive Covenants, one for Unit 1 and one for Unit 3. The Unit 4 Restrictive Covenant is filed incorrectly. There are no Restrictive Covenants on Unit 2 and 5.
7. The Restrictive Covenants states that our assessment, for the privilege to use the 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 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 \$2000 of our recreation area assessment on board dinners.
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 water/sewer 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.
18. At this depreciation rate the utility plant will be worth nothing in 2007.

ERIK

3 of 3

19. The Florida Public Service Commission states that many small utility owners, like the Starkeys, abandon their plant when it is fully depreciated because there 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 with fireplugs. Fireplugs will reduce our household insurance costs.
21. A strong association that represents resident issues in relation to the recreation area and water/sewer 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 homes. It meets the third (3rd) Tuesday of every month.

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

Respectively Submitted,  
Janet Voorheis

9-2-08

ADDENDUM TO KENNA GUNN'S LETTER

TO: ATTORNEY ERIK SAYLER

FAXED: 4 pg ADDENDUM

" 1 pg WATER &amp; SEWER BILL

" 1 pg "NOTICE" OF 2002 INFO.

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6 PAGES TO FOLLOW

9-2-08

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

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 prior to 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.

\*\* 7.1

- (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 objections to the purchase and sale of the Assets as contemplated herein 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  
OF KEITH AND CLARA STARKEY d/b/a HEATHER HILLS ESTATES AND NI FLORIDA, LLC FOR APPROVAL OF TRANSFER OF HEATHER HILLS ESTATES'S (sic) WATER AND WASTEWATER SYSTEMS



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<sup>st</sup>, 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 7<sup>th</sup>, 1995 and granted with issuance on March 28<sup>th</sup>, 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 **specifically** states them to be authorized "to provide water/wastewater services in accordance with the provisions of Chapter 367?"





NOTICE

Please take the time to review the regulations carefully, especially noting rules number 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
- Returning to your northern home 48 hours
- Short vacations during your time here 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 QUARTERLY FEES

ASSESSMENT	Single lot	\$121.08
WATER	Ready to Serve (base rate)	\$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
WASTE WATER	(per 1,000 gallons)	\$2.57
* (85% of 1,000 gallons @ \$3.02)		

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

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From: Keith and Clara Starkey  
dba Heather Hills Estates  
4925 Third St W  
Bradenton FL 34207

Quarterly Invoice  
January 01, 2002

To: Shirley Boone  
100 40th Ave Dr W  
Bradenton FL 34207

Account (Lot) Number 70

658960

Service From	Water Meter Readings		Water Used (Gallons)
	Current	Previous	
02/24/01			
To 12/24/01	658700	658700	= 2000

Water: 2000 Gallons at \$1.32 per 1000 Gallons	\$2.64
Water: Customer Charge (Base Rate)	\$21.38
Sewer: 2000 Gallons at \$2.57 per 1000 Gallons	\$5.14
Sewer: Customer Charge (Base Rate)	\$28.36
<b>Total Amount due Heather Hills Estates Utilities</b>	<b>\$87.52</b>

Paid due after 1/21/02. If unpaid, water will be shut off on 1/29/02.

Please make the portion ABOVE payable to HEATHER HILLS ESTATES UTILITIES

Please make the portion BELOW payable to HEATHER HILLS ESTATES

Assessment for January, February and March	\$121.08
<b>Total Amount due Heather Hills Estates</b>	<b>\$121.08</b>

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

121.08  
57.52  
178.60  
# 1564  
1-17-02

6

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"

IS POSTED UPON 3 CLUBHOUSE DOORS.

2) THE LETTER WAS LYING ON A TABLE INSIDE THE CLUBHOUSE.

3) FS. 367

(P.S) MOST OF THE OWNERS ARE STILL OUT OF TOWN, UP NORTH.

WITH F.U.G. LLC BEING SO FAR AWAY IF AN EMERGENCY ARISES, SOME FOLKS COULD ALREADY BE AT RISK FOR THEIR HEALTH BY PARTAKING OF CONTAMINATED WATER. AT LEAST THE STARKEYS COULD RESPOND IN ABOUT 20 MINUTES.

THANK YOU,  
JOHN MORELLI

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 27 2008

(2)

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.

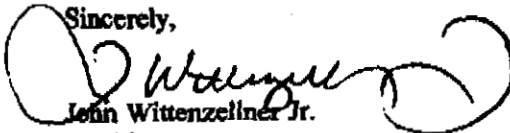
From time to time, you may see our trucks driving through the area or exercising valves or flushing the system. These vehicles are easily identified with our company name and logo on the doors. If you have an emergency to report, need to contact or visit the office, or mail your payment, the phone numbers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