

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: November 18, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Rieger)
Office of the General Counsel (Fleming)

RE: Docket No. 040818-SU – Application for amendment of Certificate No. 247-S to delete territory in Lee County by North Fort Myers Utility, Inc.
County: Lee

AGENDA: 11/30/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\040818.RCM.DOC

Case Background

On August 5, 2004, North Fort Myers Utility, Inc. (NFMU or utility) filed an application with the Commission to amend Certificate No. 247-S to delete wastewater territory in Lee County, pursuant to section 367.045, Florida Statutes. The utility does not provide water service to this area. NFMU is a Class A utility which provides water and wastewater service in Lee County to approximately 1,845 water and 9,553 wastewater customers. The utility's 2003 annual report shows a combined water and wastewater annual operating revenue of \$3,504,049, and a net operating income of \$497,894.

The area requested to be deleted by NFMU is for wastewater only and consists of approximately 110 acres. It has been recently annexed by the City of Cape Coral (City). The city wishes to provide service to this area. The proposed area is in South Florida Water Management District. The Commission has jurisdiction pursuant to section 367.045, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve NFMU's application to amend Certificate No. 247-S?

Recommendation: Yes. The Commission should approve NFMU's application to amend Certificate No. 247-S to delete a portion of the utility's territory as reflected in Attachment A. (Rieger)

Staff Analysis: The application is in compliance with the governing statute, section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for amendment of certificate. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. The utility has no connections in the area proposed to be deleted. However, notice was given to each property owner. No objections were received and the time for filing objections has expired.

Pursuant to Rule 25-30.036, Florida Administrative Code, the utility indicated in its application that the recently annexed area will be provided wastewater service by the City. NFMU has a bulk wastewater service agreement with the City. The deletion is in the public interest because it will eliminate competition and/or duplication between the utility's and City's wastewater systems. The bulk service agreement between the parties will allow the City to adequately meet the reasonable needs of future customers. The utility also indicated that the proposed deleted area is not intended to, nor will it, affect the type or quality of service provided to its existing customers within its remaining service area. Also, the Department of Community Affairs has indicated that there is no inconsistency with the proposed service area deletion.

Based on the above information, staff believes it is in the public interest to approve the amendment application filed by NFMU to delete the territory described in Attachment A.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If staff's recommendation in Issue 1 is approved, this docket should be closed upon the issuance of a final order. (Fleming)

Staff Analysis: If staff's recommendation in Issue 1 is approved, this docket should be closed upon the issuance of a final order.

North Fort Myers Utility, Inc.
Deleted Territory Description
Lying In Sections 3 & 4, T-44-S, R-24-E,
Lee County Florida

(JUDD CREEK EAST UTILITY ANNEX PARCEL)

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 3 AND 4, TOWNSHIP 44 SOUTH, RANGE 24 EAST, BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 3, ALSO BEING THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 4; THENCE N.89°58'48"E. ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER OF SECTION 3, FOR 360.00 FEET TO THE POINT OF BEGINNING; THENCE ALONG THE APPROXIMATE CENTERLINE OF YELLOW FEVER CREEK FOR THE FOLLOWING 19 CALLS: THENCE S.00°01'31"W., FOR 163.86 FEET; THENCE S.16°42'38"E., FOR 274.23 FEET; THENCE S.12°48'47"E., FOR 174.29 FEET; THENCE S.28°50'55"E., FOR 196.92 FEET; THENCE S.46°53'44"E., FOR 196.92 FEET; THENCE S.73°58'38"E., FOR 145.68 FEET; THENCE N.71°23'52"E., FOR 145.68 FEET; THENCE N.57°39'00"E., FOR 143.63 FEET; THENCE N.73°42'57"E., FOR 143.63 FEET; THENCE S.69°49'14"E., FOR 152.01 FEET; THENCE S.16°41'16"E., FOR 152.01 FEET; THENCE S.21°35'27"E., FOR 89.92 FEET; THENCE S.86°48'43"E., FOR 89.92 FEET; THENCE N.58°26'58"E., FOR 48.26 FEET; THENCE N.63°57'47"E., FOR 68.76 FEET; THENCE S.81°44'18"E., FOR 68.76 FEET; THENCE S.84°26'51"E., FOR 87.41 FEET; THENCE N.30°21'00"E., FOR 87.41 FEET; THENCE N.22°59'32"E., FOR 69.57 FEET; THENCE N.75°02'36"E., FOR 183.08 FEET; THENCE S.84°10'13"E., FOR 86.12 FEET; THENCE N.02°50'09"W., LEAVING SAID APPROXIMATE CENTERLINE, ALONG A NORTHERLY PROLONGATION OF THE WEST LINE OF JUDD PARK, AS DESCRIBED IN DEED BOOK 302, PAGE 181, LEE COUNTY PUBLIC RECORDS, FOR 158.97 FEET; THENCE S.89°33'46"E., PARALLEL WITH AND 25.00 FEET NORTHERLY OF (AS MEASURED ON A PERPENDICULAR) THE NORTHERLY LINE OF SAID JUDD PARK, FOR 370.00 FEET; THENCE N.02°19'16"W., ALONG THE WEST RIGHT-OF-WAY LINE OF BROWN ROAD, BEING A 50 FOOT WIDE COUNTY ROAD AS DESCRIBED IN DEED BOOK 273 AT PAGE 447, SAID PUBLIC RECORDS, FOR 325.39 FEET; THENCE N.89°25'56"W., ALONG THE SOUTHERLY BOUNDARY OF MARIANA PARK THIRD ADDITION, A SUBDIVISION, AS RECORDED IN PLAT BOOK 12, PAGE 61, SAID PUBLIC RECORDS, FOR 751.45 FEET; THENCE N.03°22'16"W., PARALLEL WITH AND 25.00 FEET WESTERLY OF (AS MEASURED ON A PERPENDICULAR) THE WEST LINE OF LOT 34, SAID MARIANA PARK THIRD ADDITION, FOR 300.24 FEET; THENCE N.89°26'21"W., ALONG THE SOUTHERLY RIGHT OF WAY LINE OF EVERGREEN ROAD, FOR 25.00 FEET; THENCE N.05°18'56"W., ALONG THE WESTERLY RIGHT OF WAY LINE OF HERRON ROAD, FOR 50.26 FEET; THENCE N.89°26'21"W., ALONG THE NORTH LINE OF LOT 33A, SAID MARIANA PARK THIRD ADDITION, FOR 326.72 FEET; THENCE N.05°18'56"W., FOR 831.50 FEET ALONG THE WESTERLY LINE OF SAID MARIANA PARK THIRD ADDITION; THENCE N.84°41'04"E., ALONG THE SOUTH LINE OF LOT 27, SAID MARIANA PARK THIRD ADDITION. FOR 325.00 FEET; THENCE N.05°18'56"W., ALONG SAID WESTERLY RIGHT OF WAY LINE OF HERRON ROAD, FOR 149.96 FEET; THENCE S.84°42'04"W., ALONG THE NORTH LINE OF SAID LOT 27, FOR 325.00 FEET; THENCE N.05°18'56"W., ALONG SAID WESTERLY LINE OF SAID MARIANA PARK THIRD ADDITION, FOR 619.86 FEET; THENCE N.84°41'04"E., PARALLEL WITH AND 20.00 FEET NORTHERLY OF (AS MEASURED ON A PERPENDICULAR) THE SOUTH LINE OF LOT 22, SAID MARIANA PARK THIRD ADDITION, FOR 325.00 FEET; THENCE N.05°18'56"W., ALONG SAID WESTERLY RIGHT OF WAY LINE OF HERRON ROAD, FOR 130.00 FEET; THENCE S.84°41'04"W., ALONG THE NORTH LINE OF SAID LOT 22, FOR 325.00 FEET; THENCE N.05°18'56"W., ALONG SAID WESTERLY LINE OF MARIANA PARK THIRD ADDITION, FOR

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949.34 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF PINE ISLAND ROAD (STATE ROAD 78); THENCE N.89°57'42"W., ALONG SAID SOUTHERLY RIGHT OF WAY LINE, FOR 1171.62 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING: A RADIUS OF 2814.79 FEET, A CENTRAL ANGLE OF 01°52'49", A CHORD BEARING OF S.89°05'53"W. AND A CHORD LENGTH OF 92.38 FEET; THENCE ALONG SAID RIGHT OF WAY LINE AND THE ARC OF SAID CURVE, AN ARC LENGTH OF 92.38 FEET TO THE END OF SAID CURVE; THENCE S.01°45'25"E., ALONG SAID RIGHT OF WAY LINE, FOR 31.67 FEET TO A POINT ON A CURVE TO THE LEFT, HAVING: A RADIUS OF 1879.27 FEET, A CENTRAL ANGLE OF 19°08'41", A CHORD BEARING OF S.78°40'51"W. AND A CHORD LENGTH OF 625.02 FEET; THENCE ALONG SAID RIGHT OF WAY LINE AND THE ARC OF SAID CURVE, AN ARC LENGTH OF 627.94 FEET; THENCE ALONG SAID APPROXIMATE CENTERLINE OF YELLOW FEVER CREEK THE FOLLOWING 15 CALLS: THENCE S.69°04'29"E., FOR 194.50 FEET; THENCE N.75°26'01"E., FOR 144.58 FEET; THENCE S.35°03'06"E., FOR 297.25 FEET; THENCE N.76°42'00"E., FOR 156.46 FEET; THENCE S.21°22'54"E., FOR 364.26 FEET; THENCE S.17°34'11"W., FOR 203.67 FEET; THENCE S.85°57'28"W., FOR 244.08 FEET; THENCE S.03°14'07"E., FOR 371.64 FEET; THENCE S.39°18'19"E., FOR 333.39 FEET; THENCE N.67°35'43"E., FOR 290.07 FEET; THENCE S.65°10'59"E., FOR 247.45 FEET; THENCE S.08°35'18"E. FOR 179.58 FEET; THENCE S.21°19'44"W., FOR 147.46 FEET; THENCE S.02°54'45"W., FOR 395.84 FEET; THENCE S.06°38'13"W., FOR 383.24 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 4770541 SQUARE FEET OR 109.52 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 44 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, AS BEARING S.89°58'48"W.