

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 930373-SU
amendment of Certificate No.)
247-S by NORTH FT. MYERS)
UTILITY, INC. and cancellation)
of Certificate No. 240-S issued)
to LAKE ARROWHEAD VILLAGE, INC.)
in Lee County.)
_____))
In Re: Application for limited) DOCKET NO. 930379-SU
proceeding for approval of) ORDER NO. PSC-94-0737-FOF-SU
current service rates, charges,) ISSUED: June 15, 1994
classifications, rules and)
regulations, and service)
availability policies for)
customers of LAKE ARROWHEAD)
VILLAGE, INC. in Lee County, by)
NORTH FT. MYERS UTILITY, INC.)
_____))

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

ORDER APPROVING STIPULATION,
GRANTING AMENDMENT OF CERTIFICATE NO. 247-S
BY NORTH FORT MYERS UTILITY, INC., CANCELING
CERTIFICATE NO. 240-S ISSUED TO LAKE ARROWHEAD VILLAGE
AND IMPLEMENTING NORTH FT. MYERS' RATES AND CHARGES FOR
ADDITIONAL TERRITORY AND HOLDING SERVICE AVAILABILITY
CHARGES OPEN FOR HEARING

BY THE COMMISSION:

BACKGROUND

North Fort Myers Utility, Inc. (NFMU or applicant) is a Class B utility which provides regional wastewater service to approximately 2,700 customers in northern Lee County. The utility's 1992 annual report indicates an annual operating revenue of \$687,000 and a net operating deficit of \$204,000.

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RECORDS SECTION

On April 9, 1993, NFMU filed an application for amendment of its Wastewater Certificate No. 247-S to include service to the Lake Arrowhead Village and Laurel Estates subdivisions. On April 13, 1993, NFMU filed for a limited proceeding to implement its rates and charges for those subdivisions. NFMU asserts that continued operation of the wastewater plant (Lake Arrowhead Village, Inc. or LAVI) serving the subdivisions would place the system in serious violation of environmental regulations. The system is currently operating under a Consent Order from the Florida Department of Environmental Protection (DEP). NFMU will take over the on-site collection lines, the two existing lift stations and will construct, at its own expense, the necessary force main to the master lift station of Lake Arrowhead.

The service territory of the two subdivisions is currently served by LAVI under Certificate No. 240-S and consists of approximately 550 mobile homes. The NFMU treatment plant and disposal system has a capacity of 2 million gallons per day and has considerable excess capacity. NFMU's primary means of disposal is by effluent spray irrigation. NFMU and Lake Arrowhead Village, Inc. entered into a wastewater service agreement dated April 1, 1993, for connection to NFMU, the payment of service availability charges and the implementation of NFMU's monthly service charges.

Order No. PSC-93-1821-FOF-WS, issued on December 22, 1993, as proposed agency action (PAA), approved the request to amend NFMU's certificate and approved the limited proceeding request to charge its current rates and charges in the approved territory. A timely petition was filed by Lake Arrowhead Homeowners Association, Inc. and Laurel Estates Lot Owners Association, Inc., and the protests have been set for formal hearing on August 17, 1994.

On January 18, 1994, NFMU filed a Motion to Convert Protest to Informal Proceeding, on the grounds that there were no disputed issues of material fact. OPC filed a timely response, claiming that there were several factual issues which had been raised by the protestors, and that a remand to an informal proceeding was inappropriate. On January 25, 1994, OPC filed a Motion to Clarify Order No. PSC-93-1821-FOF-WS, seeking to resolve what OPC believed was an inconsistency in the Order. OPC's primary concern was the collection of the service availability charge prior to the resolution of the PAA protest. The utility filed a timely response, claiming that the Order clearly stated that NFMU was to collect service availability charges during the pendency of the proceeding.

Order No. PSC-93-1821-FOF-WS inadvertently failed to specify the amount or type of security to be provided by NFMU in the event

of protest. However, prior to our staff recommending that we address the security issue, the parties filed a stipulation for our approval.

APPROVAL OF THE STIPULATION

The Stipulation is an agreement among all of the parties of record: the utility, the protestors, OPC, and LAVI. The parties have agreed to the following pertinent matters:

1. NFMU will withdraw its Motion to Convert Protest to an Informal Hearing.
2. OPC will withdraw its Motion to Clarify Order No. PSC-93-1821-FOF-WS.
3. The protestors will withdraw their protests to the Order as it relates to granting NFMU an amendment of its certificate, cancelling LAVI's certificate, imposing NFMU's rates on LAVI's current customers, and imposing NFMU's charges (with the exception of the service availability charges) on LAVI's current customers.
4. NFMU will not collect any service availability charges from customers of LAVI until the Commission makes a final determination of the proper amount of service availability charge.
5. The parties stipulate that the only remaining issues to be resolved by the Commission are:
 - A. The appropriate amount of service availability charges to be paid to NFMU.
 - B. Whether LAVI should be required to pay all or any portion of the service availability charges payable to NFMU.
6. The parties agree that the terms of this stipulation are inadmissible in any judicial proceeding.

Upon consideration, we find it appropriate to approve the stipulation submitted by the parties as set forth in this Order. In essence, the parties have agreed that the protestors have limited their protests to the amount of the service availability charge,

and whether LAVI should pay for a portion of the service availability charge. Order No. PSC-93-1821-FOF-WS permitted NFMU to collect rates and charges from customers of LAVI on a temporary basis in the event of a protest, subject to refund. However, the protestors have now stipulated that a refund of the rates will not be necessary as the parties have agreed that the rates have not been protested. A refund of the utility's service availability charges will not be necessary as the parties agree that the service availability charges will not be collected until after a final order resolving the protest is issued. Although NFMU was authorized by Order No. PSC-1821-FOF-WS to collect rates and charges on a temporary basis subject to refund, we find it appropriate to approve the parties' stipulation to delay payment of service availability charges pending the resolution of the customers' protest regarding the appropriate service availability charge.

As previously stated, we find it appropriate to approve the stipulation as described in this Order and hereby adopt and make final and effective, the undisputed portions of Order No. PSC-93-1821-FOF-WS. By our approval of this stipulation, we approve NFMU's application for amendment of its certificate and its request for a limited proceeding to implement its currently approved rates and charges for the customers of LAVI, except, of course, the service availability charge.

This docket shall remain open in order to conduct a formal hearing on the remaining protest at issue in Order No. PSC-93-1821-FOF-WS, as set forth in the stipulation.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the stipulation filed by the parties is hereby approved. It is further

ORDERED that the portions of Order No. PSC-93-1821-FOF-WS which are undisputed as set forth by the parties' stipulation are hereby adopted and made final and effective as of May 3, 1994. It is further

ORDERED that the application for amendment of territory for Certificate No. 247-S, held by North Ft. Myers Utility, Inc., is hereby approved. It is further

ORDERED that Certificate No. 240-S, held by Lake Arrowhead Village, Inc., is hereby cancelled. It is further

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ORDERED that the authorized rates and charges of North Ft. Myers Utility, Inc., with the exception of the service availability charge, shall be the authorized rates and charges for the customers of the amended territory, as of May 3, 1994. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 15th day of June, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.