BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for transfer of territory served by TAMIAMI VILLAGE UTILITY, INC., in Lee County, to NORTH FORT MYERS UTILITY, INC., cancellation of Certificate No. 332-S and amendment of Certificate No. 247-S; and for a limited proceeding to impose current rates, charges, classifications, rules and regulations, and service availability policies.	DOCKET NO. 940963-SU ORDER NO. PSC-95-0576-FOF-SU ISSUED: May 9, 1995

The following Commissioners participated in the disposition of this matter:

JOE GARCIA
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On behalf of North Fort Myers Utility, Inc.

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On behalf of the Office of Public Counsel.

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On behalf of the Commission Staff.

FINAL ORDER APPROVING TRANSFER, CANCELLING CERTIFICATE NO. 332-S, AMENDING CERTIFICATE NO. 247-S, AND APPROVING REQUEST TO IMPOSE CURRENT RATES, CHARGES, CLASSIFICATIONS, RULES AND REGULATIONS, AND SERVICE AVAILABILITY POLICIES

BY THE COMMISSION:

BACKGROUND

North Fort Myers Utility, Inc. (NFMU or utility), is a Class B utility which provides regional wastewater service to approximately 2,700 customers in northern Lee County. The utility's 1993 annual report indicates an annual operating revenue of $687,000 and a net operating deficit of $204,000.

On September 13, 1994, NFMU filed an application for amendment of its Wastewater Certificate No. 247-S to include territory served by Tamiami Village Utility, Inc. (TVU), and cancellation of TVU's Wastewater Certificate No. 332-S, which we have processed under Section 367.071, Florida Statutes, as an application for transfer of TVU's territory to NFMU, cancellation of Certificate No. 332-S, and amendment of Certificate No. 247-S. On the same date, NFMU also filed a request for a limited proceeding to impose its current rates, charges, classifications, rules and regulations, and service availability policies upon TVU's existing customers and service area.

Continued operation of the TVU wastewater plant would place the system in serious violation of environmental regulations. The system is currently operating under a Consent Final Judgement from the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, which requires TVU to deactivate the facility and connect it to the NFMU wastewater system within 150 days of the date of the judgement. In order to serve the TVU service area, NFMU proposed to construct a force main and upgrade a lift station at its own expense.

TVU's service area consists of approximately 732 mobile homes, with a clubhouse and recreation area, an RV park with approximately 243 sites, and several commercial buildings. The NFMU treatment plant and disposal system has a capacity of 2 million gallons per day (mgd) and has considerable excess capacity. NFMU's primary means of disposal is by effluent spray irrigation. NFMU and TVU entered into a wastewater service agreement dated August 31, 1994, for connection to NFMU, the payment of service availability charges, and the implementation of NFMU's monthly service charges.

Pursuant to Section 367.071, Florida Statutes, and Rule 25-30.030, Florida Administrative Code, NFMU provided appropriate notice of the application to all required entities, as well as notice by publication, on September 13, 1994. Notice by mail was appropriately sent to each of TVU's current wastewater customers on September 15, 1994. Numerous objections were timely filed by members of the Tamiami Village Lot Owners Association, Inc., the Tamiami Village Community Association, Inc., and the Tamiami Renter's Association, Inc. Consequently, this matter was set for formal hearing on February 2-3, 1995, in Fort Myers, Florida. On November 22, 1994, the Office of Public Counsel (OPC) filed a Notice of Intervention in this docket, which was acknowledged by Order No. PSC-94-1475-PCO-SU, issued December 1, 1994.

The Prehearing Conference was held on January 9, 1995, in Tallahassee, Florida. At that conference, the parties and our staff identified thirteen issues to be addressed at the formal hearing and acknowledged a stipulation which is addressed in Order No. PSC-95-0138-PHO-SU, the Prehearing Order, issued January 27, 1995.

The formal hearing was held in this matter on February 2, 1995, in Fort Myers, Florida. Approximately 350 customers attended the hearing. Twenty-three residents of Tamiami Village (customers of TVU) and one resident of another subdivision (customer of NFMU) offered testimony. The testimony received from customers of TVU includes statements to the effect that NFMU's service availability charge is unfair because it is based on an average usage of 200 gallons per day (gpd), and that the customers believe their average usage is less than 200 gpd. Several customers testified that they are part-time residents of Fort Myers, and that several of the customers live in one-person households. Certain customers expressed concern about paying the charge while living on a fixed income. The customer of NFMU raised similar concerns.

Rule 25-22.056(3)(a), Florida Administrative Code, requires parties to file a post-hearing statement and indicates that issues or positions not included in a post-hearing statement shall be considered waived. On March 1, 1995, NFMU and OPC filed post-hearing briefs. Along with its brief, OPC filed certain proposed findings of fact and conclusions of law or policy.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having heard the evidence presented at the hearing and having reviewed the recommendation of our staff, as well as the briefs and

proposed findings of the parties, we now enter our findings and conclusions.

TESTIMONY OF WITNESS FOR NFMU

In its post-hearing brief, OPC argues that because NFMU's witness was not offered as an expert, we may not rely upon the opinion testimony of this witness to support any findings. OPC argues that the opinion testimony of this witness should be afforded no greater weight than that of a lay witness.

At the hearing, counsel for OPC interposed a potential objection, questioning whether NFMU's witness had laid the proper predicate as an expert witness to endorse certain language contained within his prefiled rebuttal testimony which was later entered into the record. Upon questioning by a Commissioner as to whether NFMU's witness had been tendered as an expert at all, counsel for OPC indicated that he understood that the witness was being tendered as an expert. However, counsel for NFMU indicated that the NFMU witness was not being tendered as an expert, and that the witness was not offered for expert opinion testimony.

Often in technical hearings before the Commission, party witnesses have particular expertise in their fields, as evidenced by their credentials contained in their prefiled testimony. Perhaps because so many witnesses testifying before the Commission have expert qualifications, generally when they are shown to have particular expertise in an area regarding which they are testifying, absent objection, their testimony is presumed to be expert witness testimony. ("In order to qualify as an expert in a given area, a witness must show that he has acquired special knowledge of the subject matter by either education, training, or experience." Kelly v. Kinsey, 362 So. 2d 402, 404 (Fla. 1st DCA 1978).)

In practice, these witnesses are often not formally tendered as expert witnesses at hearing. For example, at the hearing in this docket, neither NFMU's nor OPC's technical witness was formally tendered as an expert. Counsel for OPC explained that it is the Citizens' understanding that during the technical part of a proceeding before the Commission, the opinions of expert witnesses is offered. OPC understood that NFMU's witness was being offered as an expert by virtue of the qualifications that were put in his testimony. OPC did not challenge the expertise of NFMU's witness, or voir dire him to claim that he was not an expert, because NFMU's witness has had umpteen years of experience operating wastewater treatment plants.

We find that the utility's witness was not offered for expert opinion testimony. This was confirmed by the utility's counsel. However, that finding alone does not preclude us from considering the testimony of this witness. This witness was offered for testimony on factual issues and that is what we will consider here. Certainly, we may rely upon the factual testimony of this witness based on his years of utility experience.

Moreover, it is significant to note that OPC did not timely object to any specific testimony offered by NFMU on the basis that the testimony was an improper opinion offered by a lay witness. It is well established in the law that errors in admitting evidence are generally waived unless a proper, timely objection was made during the hearing. See Section 90.104(1)(a), Florida Statutes; McMillan v. Reese, 55 So. 388, 390 (Fla. 1911) (finding that "[o]bjections to the admissibility of evidence must, as a general thing, be made when it is offered, or its admissibility cannot be assigned as error"); Charles W. Ehrhardt, Florida Evidence § 104.1, at 9 (1994) (noting that "[u]nder our adversary system of trial, the burden is upon counsel to make an objection prior to a witness answering a question; thus, objections which are not timely made are waived").

In consideration of the foregoing, we hereby reject OPC's post-hearing argument that we cannot properly rely upon the testimony of NFMU's witness. Although this witness was not tendered as an expert, we may rely on his factual testimony based on his years of utility experience.

OPC'S PROPOSED FINDINGS OF FACT

Along with its brief, OPC submitted seven proposed findings of fact. According to Order No. PSC-94-1278-PCO-SU, issued October 14, 1994, establishing procedure to be followed in this docket:

> A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. . . . Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

Among other things, Rule 25-22.056(2)(b), Florida Administrative Code, specifies that "[e]ach proposed finding of fact shall cite to the record, identifying the page and line of the transcript or exhibit that supports the particular finding."

According to Rule 25-22.059(3), Florida Administrative Code, "[i]f a party . . . submits proposed findings of fact to the Commission, the final order shall include an explicit ruling on each . . . proposed finding of fact; provided however, the Commission will not rule upon proposed findings of fact unless submitted in conformance with Rule 25-22.056(2)."

We believe that the requirements of these rules are clear. Nevertheless, OPC has failed to supply any citations to the record to support any of its proposed findings of fact. OPC has thus failed to submit its proposed findings of fact in conformance with Rule 25-22.056, Florida Administrative Code. In accordance with Rule 25-22.059(3), Florida Administrative Code, we therefore decline to rule upon them.

OPC'S PROPOSED CONCLUSIONS OF LAW OR POLICY

We have reviewed each of the proposed "conclusions of law or policy" which OPC submitted along with its brief. The proposed conclusions of law and our findings are as follows:

We accept proposed conclusions of law nos. 2 and 3, and they shall be incorporated in the appropriate section of this Order. We reject the following proposed conclusions of law or policy for the reasons shown below.

1. NFMU has the burden to provide competent and substantial evidence to justify the reasonableness of its charges, including the subject service availability charge for its mobile home customers.

Rejected because the subject service availability charge is an approved charge. Therefore, the burden of proof rests upon OPC to justify that NFMU's established charges should be changed. See Florida Power Corp. v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982) (finding that the "[b]urden of proof in a [C]ommission proceeding is always on a utility seeking a rate change, and upon other parties seeking to change established rates") (citation omitted).

4. HRS Rule 10D-6.48, Florida Administrative Code, does not constitute competent and substantial evidence to justify NFMU's service availability charge for its mobile home customers.

Rejected as containing argument not adequately supported by the record.

As stated earlier, OPC has also submitted two proposed conclusions of policy. We find it appropriate to reject both because there is no statutory provision or rule which requires the Commission to rule on proposed conclusions of Commission policy. Section 120.57(1)(b)4, Florida Statutes, invites all parties to submit proposed findings of facts, but is silent on whether parties may make proposed conclusions of law or of policy. Rule 25-22.056(d), Florida Administrative Code, and Order No. PSC-94-1278-PCO-SU, establishing procedure in this docket, provide that parties may submit proposed findings of fact and conclusions of law. However, neither authority provides that parties may make "proposed conclusions of policy." Had OPC wished for the Commission to specifically rule on them as issues, we believe that it should have identified them as issues in its Prehearing Statement, or prior to the issuance of Order No. PSC-95-0138-PHO-SU. That order specified that "[a]ny issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown." Even if we were to attempt to consider these proposed "policies," the record does not contain sufficient evidence to make such findings.

QUALITY OF SERVICE

No customers testified about the quality of service of NFMU. According to staff witness Grob, who supervises compliance and enforcement with the Department of Environmental Protection (DEP), the NFMU wastewater treatment plant has a permitted capacity of 2 mgd. After treatment, the reclaimed water is sent to a 1.7 mgd golf course irrigation system with a back-up system for disposal by a Class I injection well. Operation of the wastewater treatment system is performed by certified operators, as required by Chapter 17-602, Florida Administrative Code. We find that the overall maintenance of the wastewater plant and equipment is satisfactory and the wastewater treatment facility and collection system is adequate to serve the present customers. Additionally, the treatment plant is located so as to minimize odors, noise and lighting.

Further, Mr. Grob testified that the NFMU wastewater treatment facility meets all applicable Technology Based Effluent Limitations (TBELS) and Water Quality Based Effluent Limitations (WQBELS). There are no current citations, violations, or corrective orders with respect to NFMU's wastewater treatment plant and effluent disposal system.

In conclusion, according to the testimony of Mr. Grob, the operation and maintenance of the NFMU wastewater treatment system is satisfactory. There was no testimony offered by the customers

or by OPC to dispute this testimony. Therefore, we hereby find that the quality of service provided to the existing customers of NFMU is satisfactory.

TECHNICAL ABILITY

Operation of the wastewater treatment system is performed by certified operators as required by Chapter 17-602, Florida Administrative Code. As previously noted, the NFMU wastewater treatment facility meets all applicable TBELS and WQBELS, and there are no current citations, violations, or corrective orders with respect to NFMU's wastewater treatment plant and effluent disposal system.

NFMU has provided wastewater service in North Fort Myers since 1978. It employs experienced operators, employees and consultants to provide it with the technical experience necessary to provide regional wastewater service. Moreover, there is no testimony in the record to challenge NFMU's technical ability. Based on the foregoing, we find that NFMU has the technical ability to serve the wastewater needs of the current customers of TVU.

FINANCIAL ABILITY

NFMU takes the position that it has the financial ability to serve the customers of TVU. According to NFMU, the utility has sufficient plant capacity to serve the customers of TVU, the interconnection will be funded by its approved service availability charges, the annual operating losses reflected in its annual report are covered by non-cash items and service availability charges, and it receives financial support from its parent company, Old Bridge Corporation (Old Bridge). On the other hand, OPC's position is that the record does not support a positive finding on NFMU's financial ability.

In his testimony, Mr. Reeves stated that NFMU has the financial ability to serve the wastewater customers formerly served by TVU. NFMU expects to incur a cost of approximately $200,000 to extend its wastewater collection system to the customers of TVU. The amount will cover the construction of a main and the upgrade of a lift station. The construction of the collection system will be financed by service availability charges collected from the TVU customers. Therefore there will be no material impact on NFMU's capital structure.

In order to verify the utility's financial status, it is important to review its most recent financial statements. NFMU's 1993 annual report reflects that the utility is currently operating

at a deficit. However, as Mr. Reeves testified, this is an operating loss that does not include cash flow items such as capacity fees collected and other noncash items. In addition, as shown in its 1993 annual report, NFMU has received a total of $1.4 million from its parent company, Old Bridge, for construction and deficits.

In addition to its argument that the testimony of Mr. Reeves cannot be relied upon because Mr. Reeves was not offered as an expert witness, OPC believes that NFMU's 1993 annual report does not show that the utility has the financial ability to serve the customers of TVU. Rather, OPC states that it shows that the utility suffered an operating loss in excess of $1.0 million dollars in 1993 and 1992.

We acknowledge that NFMU's 1993 annual report reflects an operating loss for 1993 and 1992. However, we agree with NFMU that an operating loss does not reflect cash flow items such as capacity fees collected and other noncash items. We also recognize the financial support which NFMU receives from its parent corporation. We believe that these items combined outweigh any deficit reflected in the annual report. Therefore, based on the foregoing, we find that NFMU has the financial ability to serve the wastewater needs of the customers currently served by TVU.

PUBLIC INTEREST

NFMU takes the position that it is in the public interest to grant it the transfer of territory requested in its application. OPC did not take a position on this issue at the prehearing conference nor in its post-hearing brief.

Section, 367.071, Florida Statutes, and Rule 25-30.037, Florida Administrative Code, set out the requirements to be met in order for the Commission to approve a transfer application. In addition to filing an application, by letter dated October 27, 1994, NFMU responded to various questions of our staff regarding the proposed transfer. Exhibit 27 contains the names of the NFMU officers and directors. Mr. Reeves testified as to the address of the officers and directors, as well as to the disposition of customer deposits and interest thereon, as required by Rule 25-30.037(2), Florida Administrative Code. Exhibit 37 is a copy of the warranty deed which shows that NFMU owns the land upon which its facilities are located, as required by Rule 25-30.037(2)(q), Florida Administrative Code.

In addition to meeting all of the criteria as set forth in Section 367.071, Florida Statutes, and Rule 25-30.037, Florida

Administrative Code, and as previously stated, TVU is currently operating under a Consent Final Judgement from the Circuit Court of the Twentieth Judicial Circuit in and for Lee County. The Consent Final Judgement requires TVU to deactivate the facility and to connect it to the NFMU wastewater system within 150 days of the date of the judgement.

According to the testimony of Mr. Reeves, during NFMU's negotiations with TVU, other options were discussed for TVU, in the event that the transfer is not approved. According to an engineering report, it is virtually impossible to build facilities off-site. The option of TVU becoming a bulk wastewater customer was also discussed, but a quick cost/benefit analysis showed that the rates would be too high. The only viable option was for TVU to connect to NFMU.

We note that no public testimony was given by any of the customers of TVU against the interconnection of TVU with NFMU. As previously noted, OPC took no position on this issue, and did not address this issue in its post-hearing brief.

Based on the foregoing, we find it is in the public interest to grant the application of NFMU for transfer of TVU's territory to NFMU, to cancel TVU's Wastewater Certificate No. 332-S, and to amend NFMU's Certificate No. 247-S. A description of the territory requested by NFMU is appended to this Order as Attachment A, and is incorporated herein by reference.

RATES AND CHARGES

NFMU takes the position that we should allow it to impose all of its current rates, charges, rules and regulations, and service availability policies upon the customers of TVU. OPC's position is that we should not allow NFMU to impose its service availability charge for mobile home customers upon the customers of TVU, as this charge is unjust, unreasonable, and not supported by competent and substantial evidence.

NFMU's position is based on the notion that it would be unfair to charge different rates to customers receiving substantially identical service. In addition, the Commission has allowed NFMU to impose all rates, charges, rules and regulations, and service availability policies in other cases substantially identical to this case. See Order No. PSC-92-1357-FOF-SU, issued November 23, 1992, in Dockets Nos. 920273-SU and 920379-SU (Forest Park); Order No. PSC-94-0450-FOF-SU, issued April 14, 1994, in Docket No. 931164-SU (Carriage Village); Order No. PSC 94-1553-FOF-SU, issued

December 13, 1994, in Dockets Nos. 930373-SU and 930379-SU (Lake Arrowhead).

It is our opinion that the utility should not charge different rates to customers who receive substantially the same service. We agree with NFMU that the Commission has previously granted NFMU's request to impose all rates, charges, rules and regulations, and service availability policies in other cases which are substantially identical to this case. Based on our analysis of the record as further discussed below, we find no reason to deny NFMU's request. Therefore, we hereby grant NFMU's request to impose all current rates, charges, rules and regulations, and service availability policies upon the customers of TVU.

ORIGINAL APPROVAL OF SERVICE AVAILABILITY CHARGE

OPC takes the position that NFMU's service availability charge for mobile home customers was not made in accordance with the requirements of Section 367.101, Florida Statutes, and Rules 25-22.0408, 25-30.135, and 25-30.565, Florida Administrative Code, because the Commission staff accepted NFMU's proposal to establish the disputed charge without the review and scrutiny required by the Florida Statutes and the Commission's rules. NFMU's position is that its service availability charge for mobile home customers was not made in accordance with the above-cited statutory and rule requirements, as NFMU had a Commission-approved service availability charge, and the purpose of the amendment to its tariff was to create a lesser charge for a mobile home single-family residence.

OPC's position is based on the fact that the service availability charges first established by the Commission in Order No. 11359 did not include a service availability charge for mobile home customers. In addition, OPC argues that the mobile home service availability charge currently outlined in the utility's tariff was administratively approved without the scrutiny required by Section 367.101, Florida Statutes, and Rules 25-22.0408, 25-30.135, and 25-30.565, Florida Administrative Code. OPC also argues that Order No. PSC-92-1357-FOF-SU (Forest Park) incorrectly states that the mobile home service availability charge was outlined in the utility's existing tariff. The mobile home service availability charge was not listed in the tariff until September 7, 1993, almost one year after the order was issued approving the mobile home service availability charge.

Further, in its brief, OPC contends that through its prehearing position, our staff suggests that Section 367.101, Florida Statutes, and Rules 25-22.0408, 25-30.135, and 25-30.565,

Florida Administrative Code, were appropriately followed. OPC argues that it is at an extreme disadvantage to refute or rebut staff's potential contention because staff did not offer any direct evidence or testimony on this subject.

NFMU's position is based on the fact that its original service availability charges were approved by the Commission by Order No. 11359, issued November 24, 1982, in Docket No. 810462-S. In 1985, NFMU entered into its first mobile home developer agreement with Bayshore Mobile Home Park. It was at this time that the utility calculated its service availability charge for mobile home customers based on Department of Health and Rehabilitative Services (HRS) Rule 10D-6.48, Florida Administrative Code. The utility also argues that its purpose was to create a lesser charge for mobile home customers, as it believed that single-family mobile home flows would be lower than site-built, single-family home flows.

With regard to OPC's concern that our staff did not present direct testimony on this issue, we note that Commission rules do not require our staff to offer direct evidence or testimony when participating at hearings as a party before the Commission. Rule 25-22.026(3), Florida Administrative Code, permits staff to participate as a party in any proceeding, and provides that staff's "primary duty is to represent the public interest and see that all relevant facts and issues are clearly brought before the Commission for its consideration." Staff may perform this duty without presenting direct evidence or testimony, primarily through cross-examination of party witnesses, as it did with respect to this issue. Further, as stated on page six of the Prehearing Order:

> Staff's positions are preliminary and are based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all of the evidence in the record and may differ from the preliminary positions.

We agree with OPC and NFMU that the mobile home service availability charge was not approved under Section 367.101, Florida Statutes, and Rules 25-22.0408, 25-30.135, and 25-30.565, Florida Administrative Code. These rules contemplate the initial establishment of service availability charges or changes in the foundation of the charges. In fact, these rules were contemplated when NFMU's original service availability charge was established.

On December 4, 1981, Old Bridge Utilities, Inc., n/k/a NFMU, filed an application for approval of uniform main extension and sewer service policy, in Docket No. 810462-S. Before this time,

Old Bridge Utilities, Inc., had not made a complete service availability filing. In staff's recommendation to the Commission dated October 22, 1982, staff recommended the plant capacity charges that would generate a contributions-in-aid-of-construction (CIAC) level of 55.2%, which was within the range recommended by the Commission's proposed rules. Rule 25-30.580, Florida Administrative Code, subsequently enacted in June, 1983, outlines the guidelines for designing a service availability policy. This rule provides, in relevant part, that the maximum amount of CIAC should not exceed 75% of the total original cost of a utility's facilities and plant. By Order No. 11359, the Commission approved the following service availability charges for NFMU:

Single family units	$635.00
Multi-family units	$520.00
Commercial structures	$635.00/ERC ($2.31/gallon)

When NFMU entered into its first developer agreement with Bayshore Mobile Home Park in 1985, the utility calculated a service availability charge for mobile homes based on the above charges which were previously approved by Order No. 11359. To calculate the charge, NFMU used an estimated gallonage level, 200 gpd, as outlined in Table I of HRS Rule 10D-6.48, Florida Administrative Code. Using this gallonage level for mobile homes, NFMU calculated a service availability charge of $462.00 (200 gpd x $2.31/gallon). Mr. Reeves stated that that rule was the best available information for determining what the estimated flows for plant capacity were for mobile homes. In addition, the utility believed that this lower charge for mobile homes, as compared to its approved charge for single-family homes, was fair because wastewater flows from single-family mobile homes was expected to be lower than those from site-built, single-family homes. NFMU testified that it was unwilling to spend the $40,000 to $100,000 necessary to file a full service availability case, and believed that the procedure it used was fair and reasonable under the circumstances. As OPC pointed out through cross-examination of Mr. Reeves, there is not a rule or statute which states that because the utility believed that the charge was lower for the mobile home customers, it did not have to follow the statutes or rules applicable to service availability charges.

On March 3, 1992, NFMU entered into an interconnection agreement with Forest Park Mobile Home Subdivision (Forest Park). As a result, on March 23, 1992, NFMU filed an application with the Commission to amend its certificate to include Forest Park and to cancel Certificate No. 175-S by Forest Park Property Owner's Association, Inc. On May 22, 1992, NFMU filed a petition for interim relief, requesting authorization to charge NFMU's

authorized rates to the residents of Forest Park, and to collect service availability charges. By Order No. PSC-92-0588-FOF-SU, issued June 30, 1992, the Commission approved the amendment application, granted NFMU temporary authority to charge its rates and charges within the Forest Park subdivision, and suspended the approved rates and charges of the Association. The Order states that the plant capacity charge of $462, before gross-up, ($741 including gross-up) per mobile home lot was consistent with the NFMU's approved tariff. The Order also states that:

> As to the utility's request for application of its current rates and the increased availability charges on a final basis, we find it appropriate to require further investigation and amplification of the requested rates and charges, including the calculation of the gross-up amount and the actual cost of interconnection. In addition, a customer meeting to discuss the proposed rates and charges will be held in the service territory in July.

After full staff evaluation, by Order No. PSC-92-1357-FOF-SU, issued November 23, 1992, the Commission approved NFMU's request to charge its approved residential rate on a permanent basis and authorized NFMU to collect a total service availability charge of $1,118.57 ($741 + $377.57) per mobile home lot. However, it appears that a misstatement was made in that Order. As OPC pointed out, that Order states that "[t]he approved tariff of NFMU contains a plant capacity charge of $462 per mobile home lot." This statement is incorrect. The first time that the Commission expressly approved the mobile home service availability charge was by that Order. Therefore, the mobile home service availability charge would not have been inserted into the approved Wastewater Tariff until after the issuance of that Order. The previous order, Order No. PSC-92-0588-FOF-SU, stated the basis for the charge correctly by stating that it was consistent with the approved tariff. The approved tariff provided a specific charge for residential, multi-family dwellings, and a charge to be calculated for all other customers based on estimated daily demand.

On August 17, 1993, our staff notified the utility that its Wastewater Tariff did not reflect the current system capacity charge for mobile homes. The utility responded the very next day by filing the revised tariff sheet, letter, and documentation showing the basis for the rate calculation. Revised Tariff Sheet No. 30.0 was approved effective September 7, 1993. The utility did not have a service availability charge specifically for mobile homes outlined in its Wastewater Tariff prior to that effective date.

Because the change to the tariff charges was made only to reflect a service availability charge for a new class of customers, mobile home residents, which charge was previously approved in Docket No. 920379-SU, we find that our staff was authorized to correct the tariff administratively. The service availability charge of $2.31 per gallon of estimated daily demand was approved in a service availability case in 1982. The 1993 tariff approval, which specifically addresses a service availability charge for mobile home customers, was a clarification which expanded the listed service availability charges by utilizing the pricing concept and charges that the Commission had previously approved in 1982. The Commission has delegated the authority to staff to administratively dispose of certain matters. Section 2.07(18)(e) of the Commission's Administrative Procedures Manual provides that tariff filings may be approved administratively when they propose to offer new services or equipment which are not presently available to existing customers, as long as that proposal does not limit service or affect rates to existing customers.

We believe the charge for mobile home customers did not change pricing concepts. By Order No. 11359, the utility already had an approved gallonage charge of $2.31. NFMU only had to calculate what the charge would be using an estimation of the appropriate flows for mobile homes, which is exactly what the utility did in 1985. Later, in 1992, the Commission had the opportunity to review the service availability charge for mobile homes and found the charge to be consistent with the approved tariff, by Orders Nos. PSC-92-0588-FOF-SU and PSC-92-1357-FOF-SU. These facts contradict OPC's arguments that the mobile home charge was not properly scrutinized or evaluated by the Commission because it was not approved according to Rules 25-22.0408, 25-30.135 and 25-30.565, Florida Administrative Code.

Based on the foregoing, we find that NFMU's service availability charge for mobile home customers was approved by the Commission in Docket No. 920379-SU. Rules 25-22.0408, 25-30.135 and 25-30.565, Florida Administrative Code, concern a full service availability case which was not required for the approval of a mobile home charge.

BASIS OF SERVICE AVAILABILITY CHARGE

Original Basis of Charge

OPC asserts that the utility's service availability charge was initially based on a theoretical average flow for a typical residential customer. NFMU's position on whether the 275 gpd level established in the utility's service availability case as the

foundation for an equivalent residential connection (ERC) was based upon average or peak flow is not relevant to this proceeding. According to NFMU, if a determination of peak versus average flows were appropriate, the seasonal nature of NFMU's customers would require the use of a peak flow number.

OPC asserts that the 275 gpd number reflects average flows. Ms. Dismukes testified that because the 275 gpd is very close to the 280 gpd number which the Commission uses as the average daily flow for a typical residential customer, the 275 gpd number must represent average daily flows. OPC takes the position that it would therefore not be fair, just, or reasonable to set the service availability charge for the mobile home customers by using a peak flow. Ms. Dismukes testified that such a determination would assess mobile home customers a service availability charge which is disproportionately higher than the charges assessed to residential and multi-family customers.

Order No. 11359 set a uniform main extension and sewer service policy for the utility. That Order does not clearly state whether average or peak flows were used, or what assumptions were made, in developing the utility's service availability charges. We find that neither party presented conclusive evidence on the origins and assumptions which were made in the original calculation of the charge. While the theory of designing plant capacity and developing service availability charges may advance one flow methodology over another for this particular utility, nothing in the record conclusively resolves whether the 275 gpd used to establish the utility's service availability charge is based upon peak or average flows. Therefore, we find that we are unable to make a clear determination from the record on whether the 275 gpd used by NFMU to set its service availability charge is based upon average flow or peak flow.

Use of Average or Peak Flow to Set Charge

OPC's position is that either peak or average annual flow can be used to set service availability charges. This position is supported by DEP Rule 17-600.200, Florida Administrative Code, concerning design capacity and the basis or timeframe used to establish design capacity. DEP allows three timeframes: annual average daily flow; maximum monthly average daily flow; and three month average daily flow. In the instant case, the utility advised DEP that its plant had the capacity to serve an average annual daily flow of 2.0 mgd. According to OPC, under the circumstances, the Commission must find that it is only fair to use an average annual daily flow for purposes of determining the service availability charges for mobile home customers.

reevaluate its existing service availability charges is when NFMU has made any major additions of capital for the existing and future customers due to new regulation. Based on the foregoing, we find that a determination of the appropriate methodology to use for calculating peak flows is one that must be made at the time of a full service availability case.

Validity of 200 gpd Assumption Used to Set Mobile Home Charge

OPC's position is that the 200 gpd assumption used by NFMU to set its service availability charge for mobile home customers is not valid. According to OPC, this assumption is based upon an inoperative and outdated HRS rule which does not apply to a utility the size of NFMU, which the Commission is not bound to use, and which has nothing to do with setting service availability charges. OPC argues that the 200 gpd assumption is not based upon any operative rule, authority, or valid documentation. OPC also argues that there was no evidence presented as to whether the 200 gpd is a peak flow or an average flow number. Further, OPC argues that NFMU's tariff does not give this 200 gpd assumption any credibility, nor does the tariff show that it is based upon an operative rule, authority or valid documentation.

In regards to the HRS Rule at issue, Rule 10D-6.48, Florida Administrative Code, OPC points out that the Rule was revised in April, 1992, making the version of the Rule upon which NFMU based its mobile home service availability charge inoperative. If the new estimated flows as defined by the current Rule were utilized, the service availability charge to a mobile home customer would be substantially higher than the charge for NFMU residential customers. OPC points out that even Mr. Reeves agreed that, in his opinion, the higher charge would not be reasonable. Mr. Reeves also agreed that the Commission is not bound to use the inoperative HRS Rule, and that this Rule has nothing to do with calculating or determining system capacity charges.

The utility's position is that the 200 gpd assumption is valid. However, according to the utility, if the mobile home service availability charge is not based upon an operative rule, authority, or valid documentation, then mobile home customers should pay the same service availability charge as other single family residences, which is $1,018 (including gross-up).

NFMU's position is based on the fact that the Commission previously set the standard level to calculate one ERC at 275 gpd in Docket No. 810462-S. Rather than involving itself in a second service availability case shortly after the approval of its original charges, the utility developed a charge for mobile home

customers based on the HRS Rule as it existed at the time, as a guideline for estimating the appropriate gallonage level. Further, as previously noted, the Commission approved the utility's service availability charge for mobile homes based upon 200 gpd in Orders Nos. PSC-94-0450-FOF-SU (Carriage Village), and PSC-94-1553-FOF-SU (Lake Arrowhead).

The HRS Rule at issue required on-site disposal systems serving mobile home parks to be able to treat 200 gpd. In its brief, NFMU contends that there is no reason to conclude that the estimated flow for a mobile home as outlined by the HRS Rule would be different simply because it enters a central wastewater system. NFMU further argues that people do not tend to change their bathroom habits depending on whether their wastewater facility is an on-site facility or a central wastewater facility.

We find that the utility's service availability charge for mobile homes was reviewed in Docket No. 920379-SU. NFMU was not required to file for a full service availability case pursuant to Chapter 367.101, Florida Statutes, and Rules 25-22.0408, 25-30.135, 25-30.565, Florida Administrative Code. The proposed service availability charge for mobile homes was analyzed by the Commission and approved in Order No. PSC-92-1357-FOF-SU. In addition, we find that the Commission approved the utility's service availability charge for mobile homes based upon a 200 gpd assumption in Orders Nos. PSC-94-0450-FOF-SU (Carriage Village), and PSC-94-1553-FOF-SU (Lake Arrowhead).

In addition, we believe that the gallonage level appears to be reasonable as compared to what we may have required pursuant to Rule 25-30.055(1)(a), Florida Administrative Code. That Rule provides that a single family detached dwelling is one ERC, and a multi-family dwelling and a mobile home dwelling is .8 ERC per unit. NFMU's tariff establishes a single family ERC to be 275 gpd. Applying the .8 factor as defined by Rule 25-30.055(1)(a), Florida Administrative Code, yields a 220 gpd level.

Based on the foregoing, we find that the gallonage level and resulting charge were reviewed in Docket No. 920379-SU, and were approved by Order No. PSC-92-1357-FOF-SU. In addition, we find that the existing gallonage level is reasonable as compared to what we may have required based on Rule 25-30.055(1)(a), Florida Administrative Code.

NFMU takes the position that the purpose of this proceeding is not to establish a service availability charge. The utility's service availability charges were set by the Commission in 1982 by Order No. 11359. The ultimate issue in the instant proceeding is whether the utility's $740 service availability charge for a mobile home customer is just and reasonable. Order No. PSC-94-1553-FOF-SU issued in the Lake Arrowhead case affirmed that the charge is correct. However, according to NFMU, peak flow should be used in determining service availability charges because of the seasonal nature of its customers.

The utility's position for the use of peak flow is that in the design and permitting of a wastewater treatment plant, it is necessary to design to meet peak demands that the customers place on the system. If NFMU only has sufficient capacity for annual average flows as OPC suggests, it would not have sufficient capacity to meet the wastewater needs of its customers during the season. Even OPC's witness agreed that a wastewater utility needs sufficient capacity to accommodate peak flows.

OPC believes that the utility's construction permit issued by DEP asserts that its 2.0 mgd plant is permitted on an average annual daily flow. Further review of Exhibit 33 reveals that a 2.0 mgd extended aeration ditch-type facility (Continuous Loop Reactor) is the major component of the system, and a twenty-four hour detention time is required for proper treatment. We believe that this means that the continuous loop reactor cannot treat more than a maximum daily flow of 2,000,000 gpd for an extended period of time. Exhibit 33 shows that the ultimate average daily flow is 2.0 mgd. We believe this indicates that the plant should be able to treat a peak flow of 2.0 mgd for some average timeframe. While it is true that components can take peak hourly flows such as 5.0 million gpd for the boat clarifier, and 3.0 mgd for the chlorine contact tank, we do not believe that the wastewater treatment system is able to treat more than a ultimate flow of 2.0 mgd for an extended period of time.

We agree with OPC and NFMU that in plant design and DEP permitting, it is necessary to meet the peak demands that the customers will place on the system. We also agree with OPC that pursuant to DEP Rule 17-600.400(3)(a), Florida Administrative Code, the design capacity takes into consideration the maximum monthly average daily flows, three-month average daily flows, and annual average daily flows. In addition, seasonal variations in flow are taken into account. In a service availability case, we would take a close look at the system and determine what effect the seasonal variations in flow would have on setting the service availability charges.

Further, we agree with NFMU's witness that the utility is built to meet peak demand, and that the seasonal nature of the mobile home customers of NFMU dictates that the average flow is significantly less than the maximum flow. We note that Exhibit 21, the DEP monthly operating report summary for TVU, shows a peak month in February, 1992, when the total flow treated was 4,073,000 gallons. In May, 1993, the total flow treated was only 2,046,000 gallons. This demonstrates a significant change in flows by months. This is reaffirmed by NFMU witness Reeves, who testified that if the utility only had sufficient capacity for annual average flows, it would not have sufficient capacity during the season.

Based on the foregoing, we find that NFMU's service availability charge should be based upon peak flow. The specific peak (hour, day, month, three-month average) flow to be used is an engineering determination to be made at the time of a full service availability case, and should take into consideration the treatment capacities of the plant and the flow characteristics of the customers.

Correctness of 275 gpd Basis of Charge

OPC takes the position that if NFMU's service availability charge should be based upon a peak flow, the 275 gpd basis of the charge is not correct because the peak flow for a typical residential connection served by NFMU is substantially less than 275 gpd. OPC bases its position on the fact that the utility's last service availability evaluation occurred over twelve years ago. OPC argues that there have been significant changes since that time, and that the 275 gpd basis is not supported by any evidence for a typical residential customer.

NFMU takes the position that it is irrelevant to this proceeding whether its service availability charge, which is based upon 275 gpd for a typical residential connection, is correct if the charge should be based upon a peak flow. According to NFMU, the service availability charge, including its 275 gpd basis, was established by Commission Order No. 11359, issued in 1982, and may not be collaterally attacked in this proceeding. NFMU further argues that it is not appropriate to review the peak flow upon which the 275 gpd is based, as that is a determination which would need to be made only in connection with an entirely new service availability case.

According to OPC, actual flow data appears to indicate that the 275 basis is too high for a typical residential customer. Exhibit 16 contains water consumption and customer data for 1993 and 1994. Based on this exhibit, the maximum month peak flow for

a residential customer in 1993 is 127 gpd. For 1994, the maximum month average daily flow for a residential customer is 110 gpd. These figures are substantially less than the approved 275 gpd for a residential customer. OPC argues that even the utility's witness, Mr. Reeves, agreed the Commission should use actual flow data to evaluate the validity of the standard flow assumption. He also agreed that it would cause him some concern if there were a doubling of the difference between actual flows and standard flows. Mr. Reeves acknowledged that under this scenario, the plant would become overcontributed.

As OPC pointed out, the last evaluation of the utility's service availability charge was completed over twelve years ago. Since that time, changes have occurred in the plant capacity level. In 1987, NFMU expanded its facilities from a capacity of .4 mgd to 2.0 mgd. We believe that any anticipated plant expansions should be included in the calculation of service availability charges. It is possible that the 1987 plant expansions were taken into account when NFMU's service availability charges were initially calculated. However, the record does not indicate whether these plant expansions were contemplated in the utility's original service availability case.

We agree with OPC that the residential data may reflect lower usage compared to the 275 gpd assumption for a residential customer. However, we also agree with NFMU that the data relied upon by OPC to calculate its residential gpd does not eliminate those customers who were connected to the system but did not contribute any flow for the month, which results in zero bills. Therefore, the numbers reflected by OPC could possibly be lower than the actual flow for the typical residential customer. We believe that more accurate data can only be obtained in a full service availability case.

One of the most difficult issues in a service availability case is what constitutes an ERC. Rule 25-30.515(8), Florida Administrative Code, states that an ERC can be based on three assumptions: (1) 350 gpd; (2) the number of gallons a utility demonstrates is the average daily flow for a single residential unit; or (3) the number of gallons which has been approved by DEP for a single residential unit. Once the basis for an ERC is established, it provides the basis for the amount of future possible connections to the system, and it therefore contributes to the number of years until buildout. In the utility's 1981 service availability case, the Commission approved 275 gpd for one ERC as the basis for the service availability charge.

We believe that the appropriate level of gpd was at issue in the utility's 1981 service availability case. As previously noted, based on staff's recommendation in Docket No. 810462-S, the service availability charges were designed to generate a CIAC level of 55.2%, in accordance with the Commission's proposed rules. Rule 25-30.580, Florida Administrative Code, was subsequently enacted in June, 1983, and set out that the maximum amount of CIAC should not exceed 75%. One way to evaluate the appropriateness of the 275 gpd level is to check the current contribution level of the utility. Using the information contained in the utility's 1993 annual report and the current service availability charges, we calculate that the utility is at a 74.65% contribution level.

Based on the foregoing, we find that the 275 gpd was appropriately reviewed and established in the utility's initial service availability case. That case established 275 gpd as one ERC. There is no reliable data in the record which shows that the 275 gpd level is incorrect. If at some point in the future the utility files for a new service availability charge, the evaluation of the appropriate gpd level will again be at issue.

Methodology for Calculating Peak Flows

OPC takes the position that the maximum measurement of peak flow that should be used to establish NFMU's service availability charge for mobile home customers is the peak month. According to OPC's Exhibit 22, which reflects actual historical data for all mobile home customers during 1992 and 1993, the peak month flow for the mobile home customers served by NFMU is 140 gpd. In addition, OPC argues that the Commission has used actual historical peak monthly flows in the calculation of service availability charges for other utilities.

OPC's witness, Ms. Dismukes, testified that she believes that the Commission's used and useful policy suggests that the wastewater treatment plant is typically sized to meet a maximum month flow, not a peak day or peak hour flow. Additionally, DEP defines design capacity using three types of flow: annual average daily flow, maximum monthly average daily flow, and three month average daily flow. DEP's Guidelines for Preparation of Capacity Analysis Reports essentially uses four measures for evaluating the flows of a system relative to the capacity of its facilities. The measures identified are annual average daily flow, maximum monthly average daily flow, three month average daily flow, and maximum three month average daily flow.

OPC points out that the utility suggests that its service availability charge should be based on the peak day flow, potential

customer flow, or standard flows. OPC argues that the relevant portion of Mr. Reeves's testimony was copied almost verbatim from a recent staff recommendation filed in Dockets Nos. 930373-SU and 930379-SU (Lake Arrowhead). Upon cross-examination, Mr. Reeves testified that he adopted the language of that staff recommendation because he believed that it was well written and that it correctly articulated the manner in which utilities should build and determine wastewater capacities.

Upon questioning, Mr. Reeves was unable to cite any orders which use peak day flow or standard flows to set service availability charges. On the other hand, OPC produced evidence that the Commission used average daily flows as the basis for service availability charges by Order No. PSC-94-0961-FOF-WS, issued August 9, 1994, in Docket No. 940106-WS. In addition, Order No. PSC-95-0241-FOF-WS, issued February 21, 1995, in Docket No. 940056-WS, endorses the use of actual historical flows in lieu of standard flows for purposes of determining plant capacity.

NFMU's position is that its service availability charge has been established by the Commission, and whether peak or average flows from the TVU customers differs from that in the tariff is irrelevant. NFMU's position is based on the fact that the purpose of this proceeding is not to establish a new service availability charge for all classes of customers. NFMU argues that the service availability charge for mobile homes has been acknowledged by the Commission in several recent decisions, by Orders Nos. PSC-94-0450-FOF-SU (Carriage Village), and PSC-94-1553-FOF-SU (Lake Arrowhead). In addition, NFMU's witness, Mr. Reeves, testified that the wastewater treatment plant is designed to meet peak hour flows, but flow equalization tanks help to meet peak day demand. According to Mr. Reeves, service availability charges should be based on peak day flows. Therefore, the utility believes that the real issue concerns the demand the customers will place on the wastewater system.

NFMU points out that OPC's data does not consider that single-person households may house more than one person in the future. Mr. Reeves testified that many mobile home households are occupied by a single person, but such occupancy can and probably will change in the future to multi-person households. Upon cross-examination, Mr. Reeves indicated that he bases this testimony on his personal experience. As OPC argues, Mr. Reeves was unable to support this testimony with any available data. Ms. Dismukes contends that it would be unrealistic to assume or believe that a single-person household may hold more than one person in the future.

Further, NFMU disagrees with Ms. Dismukes's calculations which she used in Exhibit 22 to analyze peak flow. Mr. Reeves testified that he believes that Ms. Dismukes used averages of averages, without looking at the potential demand. Moreover, Exhibit 22 does not include 1994 data because it was not available at the time Ms. Dismukes's testimony was filed.

It is clear that determining which type of peak flow to use is an important decision to make in the process of designing a plant and developing a service availability charge. The utility's argument that a peak day should be used is persuasive. The plant must be able to handle flows on a peak day basis. However there are clearly several options for plant capacity analysis, as presented by DEP, including, as previously noted, annual average daily flow, maximum monthly average daily flow, and three month average daily flow.

We believe that a determination of the correct flows to use is not possible outside of a full service availability case because all subsequent charges are based on the initial gpd charge for one ERC. Because this is a limited proceeding, various small portions of the utility's service availability policies and charges have been considered in isolation. The kind of analysis which OPC suggests should occur here would require a full service availability case.

Further, we note that the calculations made by both OPC and by our staff have inherent flaws which would be correctly and fully addressed in a full service availability case. For example, OPC's Exhibit 22 does not consider changes in customers, zero bills, and infiltration and inflow effects, and was based on water billing data, not wastewater treated. As pointed out by OPC, staff's Exhibit 21 does not reflect the RV park and other commercial customers of TVU. It is apparent that accurate data may only be obtained through a full service availability case during which complete, detailed data is compiled and analyzed thoroughly by the Commission.

In a full service availability case, the Commission considers several methods for establishing service availability charges. As OPC points out, there are various methods available upon which to base the utility's service availability charge. The appropriate method is chosen on a case-by-case basis. OPC presented examples of the utilization of historical data in place of industry standards. It is apparent that a determination of the correct methodology to utilize for NFMU should be addressed in a full service availability case, not in a limited proceeding such as this. As Mr. Reeves testified, the appropriate time for NFMU to

Appropriate Service Availability Charge to be Collected from TVU Customers

NFMU's position is that the appropriate (fair, just, and reasonable) amount of service availability charge which it should collect to serve the customers formerly served by TVU is $740 per mobile home (including gross-up). NFMU's position is based on the fact that the original service availability study approved service availability charges in Order No. 11359. As discussed above, the utility later developed service availability charges for mobile homes, which was later approved by the Commission in Order No. 92-1357-FOF-SU. In addition, the utility believes that OPC's calculations are seriously flawed and it questions the credentials of OPC's witness.

As discussed above, Mr. Reeves testified that when NFMU entered into its first developer agreement for mobile homes with Bayshore Mobile Home Park, the utility calculated what it believed to be a fair and reasonable service availability charge for the mobile home customers. Based on 200 gpd and its approved tariff charge of $2.31 per gallon, NFMU calculated a charge of $462 per mobile home. By Order No. 16971, issued December 18, 1986, the Commission authorized water and wastewater utilities to amend their service availability policies to recover the tax impact on CIAC. Pursuant to that Order, the service availability charge for mobile homes was calculated to be $741, including gross-up. In 1992, NFMU rounded that amount to $740 per mobile home. Based on Mr. Reeves's testimony, NFMU has consistently applied this service availability charge to all the mobile home parks that it has connected to its system. NFMU also claims that if it had not set a separate charge for mobile homes, it would have been required to charge its residential rate, as approved in its tariff, to the mobile home customers.

Moreover, as previously noted, NFMU argues that the Commission previously approved its mobile home service availability charge in several dockets. Docket No. 920379-SU involved a limited proceeding to establish NFMU's rates and charges for Forest Park Mobile Home Subdivision, which resulted in the Commission approving the service availability charge for mobile homes in Order No. PSC-92-1357-FOF-SU, issued November 23, 1992. Recently, the Commission upheld that decision by Orders Nos. PSC-94-0450-FOF-SU (Carriage Village) and PSC-94-1558-FOF-SU (Lake Arrowhead).

NFMU argues that Schedules 3 and 4 of OPC's Exhibit 22 are flawed in several ways. NFMU's witness, Mr. Reeves, testified that the schedules show no consumption data for mobile homes which are not located in a mobile home park. In addition, as some of the

customers testified, 30% of the residents of Tamiami Village are single-person households, many residents are on vacation 8-12 weeks per year, and many residents exhibit seasonal characteristics which were not reflected in Ms. Dismukes's calculations on Schedule 3 of Exhibit 22. Ms. Dismukes testified that Schedule 3 of Exhibit 22 assumes that every resident is present every day of the year. Moreover, as previously noted, the schedules do not reflect inflow and infiltration, as Ms. Dismukes's information is based on wastewater usage billed to customers, not on the actual amount of wastewater treated at the wastewater treatment plant. Mr. Reeves also testified that he believes that Schedule 4 of Exhibit 22 does not include consumption amounts for Lake Arrowhead Estates, Laurel Estates and Tara Woods Subdivisions. Additionally, Mr. Reeves believes that service availability charges should be based on the potential demand of customers, not on the actual consumption amounts.

Moreover, NFMU argues that Ms. Dismukes's resume is very specific with regard to the types of work which she has performed in the field of public utility regulation, and that any experience with wastewater service availability charges is noticeably absent. NFMU points out that Ms. Dismukes admitted that she has not calculated and developed service availability charges for a utility. In the instant case, she researched and studied the calculations of service availability charges for several utilities which were currently pending before the Commission. According to NFMU, her naivete on this subject is most apparent by her opinion that if NFMU had not created the current service availability charge for mobile homes, then NFMU would have been allowed to collect nothing from mobile home customers, or, alternatively, should have treated them as commercial customers.

NFMU also points out that Ms. Dismukes's sample survey of service availability charges showed only one other utility which had a mobile home service availability charge specifically outlined in its approved tariff. Therefore, mobile homes do not necessarily constitute a separate class of customer, and it is possible to conclude that mobile homes connected to other utilities are based on their residential rate, and labeled as typical residential units.

Additionally, NFMU points out that it could have charged each customer his or her pro-rata share of the utility's $200,000 interconnection expense. The utility elected to not pass this expense on to the customers of TVU, and alternatively elected to use the service availability charges collected to finance the interconnection.

reevaluate its existing service availability charges is when NFMU has made any major additions of capital for the existing and future customers due to new regulation. Based on the foregoing, we find that a determination of the appropriate methodology to use for calculating peak flows is one that must be made at the time of a full service availability case.

Validity of 200 gpd Assumption Used to Set Mobile Home Charge

OPC's position is that the 200 gpd assumption used by NFMU to set its service availability charge for mobile home customers is not valid. According to OPC, this assumption is based upon an inoperative and outdated HRS rule which does not apply to a utility the size of NFMU, which the Commission is not bound to use, and which has nothing to do with setting service availability charges. OPC argues that the 200 gpd assumption is not based upon any operative rule, authority, or valid documentation. OPC also argues that there was no evidence presented as to whether the 200 gpd is a peak flow or an average flow number. Further, OPC argues that NFMU's tariff does not give this 200 gpd assumption any credibility, nor does the tariff show that it is based upon an operative rule, authority or valid documentation.

In regards to the HRS Rule at issue, Rule 10D-6.48, Florida Administrative Code, OPC points out that the Rule was revised in April, 1992, making the version of the Rule upon which NFMU based its mobile home service availability charge inoperative. If the new estimated flows as defined by the current Rule were utilized, the service availability charge to a mobile home customer would be substantially higher than the charge for NFMU residential customers. OPC points out that even Mr. Reeves agreed that, in his opinion, the higher charge would not be reasonable. Mr. Reeves also agreed that the Commission is not bound to use the inoperative HRS Rule, and that this Rule has nothing to do with calculating or determining system capacity charges.

The utility's position is that the 200 gpd assumption is valid. However, according to the utility, if the mobile home service availability charge is not based upon an operative rule, authority, or valid documentation, then mobile home customers should pay the same service availability charge as other single family residences, which is $1,018 (including gross-up).

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We find that the utility's service availability charge for mobile homes was reviewed in Docket No. 920379-SU. NFMU was not required to file for a full service availability case pursuant to Chapter 367.101, Florida Statutes, and Rules 25-22.0408, 25-30.135, 25-30.565, Florida Administrative Code. The proposed service availability charge for mobile homes was analyzed by the Commission and approved in Order No. PSC-92-1357-FOF-SU. In addition, we find that the Commission approved the utility's service availability charge for mobile homes based upon a 200 gpd assumption in Orders Nos. PSC-94-0450-FOF-SU (Carriage Village), and PSC-94-1553-FOF-SU (Lake Arrowhead).

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reevaluate its existing service availability charges is when NFMU has made any major additions of capital for the existing and future customers due to new regulation. Based on the foregoing, we find that a determination of the appropriate methodology to use for calculating peak flows is one that must be made at the time of a full service availability case.

Validity of 200 gpd Assumption Used to Set Mobile Home Charge

OPC's position is that the 200 gpd assumption used by NFMU to set its service availability charge for mobile home customers is not valid. According to OPC, this assumption is based upon an inoperative and outdated HRS rule which does not apply to a utility the size of NFMU, which the Commission is not bound to use, and which has nothing to do with setting service availability charges. OPC argues that the 200 gpd assumption is not based upon any operative rule, authority, or valid documentation. OPC also argues that there was no evidence presented as to whether the 200 gpd is a peak flow or an average flow number. Further, OPC argues that NFMU's tariff does not give this 200 gpd assumption any credibility, nor does the tariff show that it is based upon an operative rule, authority or valid documentation.

In regards to the HRS Rule at issue, Rule 10D-6.48, Florida Administrative Code, OPC points out that the Rule was revised in April, 1992, making the version of the Rule upon which NFMU based its mobile home service availability charge inoperative. If the new estimated flows as defined by the current Rule were utilized, the service availability charge to a mobile home customer would be substantially higher than the charge for NFMU residential customers. OPC points out that even Mr. Reeves agreed that, in his opinion, the higher charge would not be reasonable. Mr. Reeves also agreed that the Commission is not bound to use the inoperative HRS Rule, and that this Rule has nothing to do with calculating or determining system capacity charges.

The utility's position is that the 200 gpd assumption is valid. However, according to the utility, if the mobile home service availability charge is not based upon an operative rule, authority, or valid documentation, then mobile home customers should pay the same service availability charge as other single family residences, which is $1,018 (including gross-up).

NFMU's position is based on the fact that the Commission previously set the standard level to calculate one ERC at 275 gpd in Docket No. 810462-S. Rather than involving itself in a second service availability case shortly after the approval of its original charges, the utility developed a charge for mobile home

customers based on the HRS Rule as it existed at the time, as a guideline for estimating the appropriate gallonage level. Further, as previously noted, the Commission approved the utility's service availability charge for mobile homes based upon 200 gpd in Orders Nos. PSC-94-0450-FOF-SU (Carriage Village), and PSC-94-1553-FOF-SU (Lake Arrowhead).

The HRS Rule at issue required on-site disposal systems serving mobile home parks to be able to treat 200 gpd. In its brief, NFMU contends that there is no reason to conclude that the estimated flow for a mobile home as outlined by the HRS Rule would be different simply because it enters a central wastewater system. NFMU further argues that people do not tend to change their bathroom habits depending on whether their wastewater facility is an on-site facility or a central wastewater facility.

We find that the utility's service availability charge for mobile homes was reviewed in Docket No. 920379-SU. NFMU was not required to file for a full service availability case pursuant to Chapter 367.101, Florida Statutes, and Rules 25-22.0408, 25-30.135, 25-30.565, Florida Administrative Code. The proposed service availability charge for mobile homes was analyzed by the Commission and approved in Order No. PSC-92-1357-FOF-SU. In addition, we find that the Commission approved the utility's service availability charge for mobile homes based upon a 200 gpd assumption in Orders Nos. PSC-94-0450-FOF-SU (Carriage Village), and PSC-94-1553-FOF-SU (Lake Arrowhead).

In addition, we believe that the gallonage level appears to be reasonable as compared to what we may have required pursuant to Rule 25-30.055(1)(a), Florida Administrative Code. That Rule provides that a single family detached dwelling is one ERC, and a multi-family dwelling and a mobile home dwelling is .8 ERC per unit. NFMU's tariff establishes a single family ERC to be 275 gpd. Applying the .8 factor as defined by Rule 25-30.055(1)(a), Florida Administrative Code, yields a 220 gpd level.

Based on the foregoing, we find that the gallonage level and resulting charge were reviewed in Docket No. 920379-SU, and were approved by Order No. PSC-92-1357-FOF-SU. In addition, we find that the existing gallonage level is reasonable as compared to what we may have required based on Rule 25-30.055(1)(a), Florida Administrative Code.

Appropriate Service Availability Charge to be Collected from TVU Customers

NFMU's position is that the appropriate (fair, just, and reasonable) amount of service availability charge which it should collect to serve the customers formerly served by TVU is $740 per mobile home (including gross-up). NFMU's position is based on the fact that the original service availability study approved service availability charges in Order No. 11359. As discussed above, the utility later developed service availability charges for mobile homes, which was later approved by the Commission in Order No. 92-1357-FOF-SU. In addition, the utility believes that OPC's calculations are seriously flawed and it questions the credentials of OPC's witness.

As discussed above, Mr. Reeves testified that when NFMU entered into its first developer agreement for mobile homes with Bayshore Mobile Home Park, the utility calculated what it believed to be a fair and reasonable service availability charge for the mobile home customers. Based on 200 gpd and its approved tariff charge of $2.31 per gallon, NFMU calculated a charge of $462 per mobile home. By Order No. 16971, issued December 18, 1986, the Commission authorized water and wastewater utilities to amend their service availability policies to recover the tax impact on CIAC. Pursuant to that Order, the service availability charge for mobile homes was calculated to be $741, including gross-up. In 1992, NFMU rounded that amount to $740 per mobile home. Based on Mr. Reeves's testimony, NFMU has consistently applied this service availability charge to all the mobile home parks that it has connected to its system. NFMU also claims that if it had not set a separate charge for mobile homes, it would have been required to charge its residential rate, as approved in its tariff, to the mobile home customers.

Moreover, as previously noted, NFMU argues that the Commission previously approved its mobile home service availability charge in several dockets. Docket No. 920379-SU involved a limited proceeding to establish NFMU's rates and charges for Forest Park Mobile Home Subdivision, which resulted in the Commission approving the service availability charge for mobile homes in Order No. PSC-92-1357-FOF-SU, issued November 23, 1992. Recently, the Commission upheld that decision by Orders Nos. PSC-94-0450-FOF-SU (Carriage Village) and PSC-94-1558-FOF-SU (Lake Arrowhead).

NFMU argues that Schedules 3 and 4 of OPC's Exhibit 22 are flawed in several ways. NFMU's witness, Mr. Reeves, testified that the schedules show no consumption data for mobile homes which are not located in a mobile home park. In addition, as some of the

customers testified, 30% of the residents of Tamiami Village are single-person households, many residents are on vacation 8-12 weeks per year, and many residents exhibit seasonal characteristics which were not reflected in Ms. Dismukes's calculations on Schedule 3 of Exhibit 22. Ms. Dismukes testified that Schedule 3 of Exhibit 22 assumes that every resident is present every day of the year. Moreover, as previously noted, the schedules do not reflect inflow and infiltration, as Ms. Dismukes's information is based on wastewater usage billed to customers, not on the actual amount of wastewater treated at the wastewater treatment plant. Mr. Reeves also testified that he believes that Schedule 4 of Exhibit 22 does not include consumption amounts for Lake Arrowhead Estates, Laurel Estates and Tara Woods Subdivisions. Additionally, Mr. Reeves believes that service availability charges should be based on the potential demand of customers, not on the actual consumption amounts.

Moreover, NFMU argues that Ms. Dismukes's resume is very specific with regard to the types of work which she has performed in the field of public utility regulation, and that any experience with wastewater service availability charges is noticeably absent. NFMU points out that Ms. Dismukes admitted that she has not calculated and developed service availability charges for a utility. In the instant case, she researched and studied the calculations of service availability charges for several utilities which were currently pending before the Commission. According to NFMU, her naivete on this subject is most apparent by her opinion that if NFMU had not created the current service availability charge for mobile homes, then NFMU would have been allowed to collect nothing from mobile home customers, or, alternatively, should have treated them as commercial customers.

NFMU also points out that Ms. Dismukes's sample survey of service availability charges showed only one other utility which had a mobile home service availability charge specifically outlined in its approved tariff. Therefore, mobile homes do not necessarily constitute a separate class of customer, and it is possible to conclude that mobile homes connected to other utilities are based on their residential rate, and labeled as typical residential units.

Additionally, NFMU points out that it could have charged each customer his or her pro-rata share of the utility's $200,000 interconnection expense. The utility elected to not pass this expense on to the customers of TVU, and alternatively elected to use the service availability charges collected to finance the interconnection.

OPC's position is that we must find that the appropriate amount to be collected by NFMU to serve the customers of TVU is $375 per residential connection, if average demand is used. OPC further contends that if we decide that peak flow is the more appropriate flow to use for calculation of service availability charges, then we must set the charge at $518.

We have already found that the Commission approved NFMU's service availability charges for single-family, multi-family and commercial units by Order No. 11359. The Commission evaluated and approved the utility's service availability charge for mobile homes in a subsequent limited proceeding, by Order No. PSC-92-1357-FOF-SU (Forest Park). Our staff later notified the utility that the mobile home service availability charge was not reflected in its tariff, and the correction was quickly made.

We have also found that the 200 gpd gallonage level used by the utility compares favorably to what we may have required pursuant to Rule 25-30.055(1)(a), Florida Administrative Code, and that the service availability charge places the utility's CIAC level within the range provided by Rule 25-30.580, Florida Administrative Code. Had the utility reflected a CIAC level beyond that range, we may have required the utility to file for a full service availability case. Although the Commission has in various circumstances allowed a utility to base its service availability charge on actual consumption data, the Commission found it appropriate to base NFMU's service availability charge on 275 gpd by Order No. 11359. Because we find that the utility's current CIAC level is within the range approved by Rule 25-30.580, Florida Administrative Code, we believe that it is inappropriate to order the utility to file a complete service availability case at this time. If, in the future, we decide that it is appropriate to reevaluate the utility's service availability charge policy, we will decide on the appropriate methodology upon which to base the charge at that time.

Based on the foregoing, as stated earlier, we find that the mobile home service availability charge was properly evaluated in Docket No. 920379-SU, which resulted in Order No. PSC-92-1357-FOF-SU, and that the mobile home service availability charge is based on a gpd level which is less than that which would be allowed by Commission Rule.

Appropriate Charge for Mobile Homes in Absence of Tariffed Charge

We now address whether, in the absence of a tariffed service availability charge for mobile homes, it would be appropriate for new customers to negotiate a service availability charge based upon

actual consumption, and if not, what the appropriate service availability charge is for mobile homes.

The utility's position is that if its service availability charge for mobile homes is determined not to be properly approved, then the mobile home customers should be required to pay the same amount as other single family residences, which is $1,018 (including gross-up). NFMU's position is based on the fact that the Commission approved the original service availability charges in Order No. 11359. Also, NFMU argues that customers should be charged based upon the appropriate class in which they fall, and that service availability charges should not be uniquely established for each group of customers as they request connection. According to NFMU, to allow customers to connect to the system without imposing a charge would constitute illegal discrimination.

OPC's position is that in the absence of a tariffed service availability charge for mobile home customers, mobile home customers should be charged nothing until a proper charge is established. According to OPC, the customers of TVU are not attempting to negotiate a service availability charge based upon actual consumption. The customers of TVU are requesting that the Commission establish a fair, just, and reasonable service availability charge for all mobile home customers served by TVU. OPC's position is based on the fact that it is established in the industry that if a utility does not have a tariff, it cannot charge customers. Therefore, if NFMU did not have a tariffed service availability charge for mobile home customers, it would not be able to charge its customers. OPC argues that this could easily be remedied by petitioning the Commission to establish such a rate. Further, OPC does not suggest, nor has OPC ever suggested, that it is appropriate for new customers to negotiate a service availability charge. According to OPC, because this point was conceded by Mr. Reeves at the hearing, it is moot.

We agree with OPC that a utility may not impose a charge on customers which has not been previously approved by the Commission. However we find that in NFMU's case, the Commission had previously approved service availability charges for residential, multi-family, and commercial customers. We agree with NFMU that customers should be charged based upon the appropriate class in which they fall. Therefore, the real issue, as we see it, is whether mobile home customers are seen by the Commission as a separate class of service, or whether they are currently considered under one of the existing standard classes of service (those being residential, multi-family, or commercial).

We believe that there are several approaches that the Commission finds acceptable with respect to establishing a service availability charge for mobile home customers. As previously noted, Ms. Dismukes compiled a sample survey of service availability charges which shows that only one other utility has a mobile home service availability charge specifically outlined in its approved tariff. It is indeed possible to conclude that mobile homes connected to other utilities throughout the State of Florida are being charged a service availability charge based on the residential rate, as mobile homes do not necessarily constitute a separate class of customer, and they could be labeled as a typical residential unit.

In addition, we believe that it is reasonable to assume that a separate class of customer was designated for a multi-family unit because essentially all water used by a multi-family unit is returned through the wastewater system. As Ms. Dismukes testified, it is assumed that approximately 80% of a residential unit's water consumption is returned back to the wastewater facility. Therefore, the ratio of a multi-family unit to a residential unit has been identified as .8 ERCs.

We have noted that Rule 25-30.055(1)(a), Florida Administrative Code, provides that a single-family detached dwelling is one ERC, and multi-family dwellings and mobile home dwellings are .8 ERC per unit. Therefore, it is reasonable to conclude that the mobile home customers could be charged a rate equal to the existing multi-family service availability charge, as it appears that we treat them the same pursuant to this Rule. In addition, we have noted that one could calculate the mobile home service availability charge based on the .8 relationship alone.

Based on the foregoing, we hold that the application for transfer of the territory served by TVU to NFMU shall be approved. TVU's Certificate No. 332-S shall be cancelled, and NFMU's Certificate No. 247-S shall be amended to incorporate the territory currently described in Certificate No. 332-S. Finally, because we find that NFMU's service availability charge was appropriately calculated, we further hold that NFMU shall impose its current rates, charges, classifications, rules and regulations, and service availability policies upon the customers of TVU.

CONCLUSIONS OF LAW

1. The Commission has exclusive jurisdiction over North Fort Myers Utility, Inc., with respect to its authority, service, and rates, pursuant to Section 367.011, Florida Statutes.

2. The Commission has jurisdiction to determine and approve that the proposed transfer of Tamiami Village Utility, Inc., to North Fort Myers Utility, Inc., is in the public interest, pursuant to Section 367.071, Florida Statutes.

3. The Commission has jurisdiction to determine the wastewater rates and charges of North Fort Myers Utility, Inc., pursuant to Sections 367.081 and 367.101, Florida Statutes.

4. As the applicant in this case, the burden of proof rests upon North Fort Myers Utility, Inc., to prove that the proposed transfer is in the public interest, and to prove the reasonableness of imposing its approved rates and charges upon the customers of Tamiami Village Utility, Inc.

5. As the party seeking to change an approved rate, the burden of proof rests upon the Citizens to justify that North Fort Myers Utility, Inc.'s, established service availability charges should be changed.

6. HRS Rule 10D-6.48, Florida Administrative Code, does not apply to systems the size of NFMU, but applies to wastewater systems of 10,000 gallons per day or less.

7. The Commission is not bound by HRS Rule 10D-6.48, Florida Administrative Code, even if it were an operative rule.

8. The approved rates and charges of North Fort Myers Utility, Inc., are just, reasonable, compensatory, not unfairly discriminatory, and in accordance with the requirements of Section 367.101, Florida Statutes, and other governing law.

This order resolves all issues in this docket. Therefore, this docket shall be closed.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the transfer of territory served by Tamiami Village Utility, Inc., to North Fort Myers Utility, Inc., is hereby approved. It is further

ORDERED that Tamiami Village Utility, Inc.'s, Certificate No. 332-S is hereby cancelled. It is further

ORDERED that North Fort Myers Utility, Inc.'s, Certificate No. 247-S is hereby amended to include the territory previously served by Tamiami Village Utility, Inc., under Certificate No. 332-S. It is further

ORDERED that North Fort Myers Utility, Inc., shall impose its approved rates, charges, classifications, rules and regulations, and service availability policies, upon the customers formerly served by Tamiami Village Utility, Inc., until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 9th day of May, 1995.

Blanca S. Bayó

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: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

ATTACHMENT A

North Fort Myers Utility, Inc.

TERRITORY DESCRIPTION

Order No. 19059 in Docket No. 871306-SU, extended territory and included a complete rewrite of the territory description. In the rewrite, this order included the territory in Order Nos. 8025, 11300, 12572, and 1569. Order No. 19059 excluded territory served by Tamiami Village Utility, Inc. and other utilities in that area. Tamiami Village Utility, Inc.'s service territory was granted pursuant to Order Nos. 11734, 21421 and 22449. This transfer will grant NFMU the authority to serve the Tamiami Village Utility, Inc.'s service territory.