

STATE OF FLORIDA

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Public Service Commission

February 9, 2000

Mr. Stanley F. Durbin
718 Brigantine Boulevard
North Fort Myers, Florida 3317-2920

Re: Docket No. 981781-SU - Application for amendment of Certificate No. 247-S to extend service area by the transfer of Buccaneer Estates in Lee County to North Fort Myers Utility, Inc.

Dear Mr. Durbin:

I am writing in response to your letter dated January 24, 2000, in which you identified a number of questions relating to the proposal for utility service to the Buccaneer Mobile Home Park (Buccaneer or Park) sponsored by Mr. Ludington, in addition to other questions concerning utility service to the Park.

I have consulted with staff regarding your questions. Staff believes that some of the confusion of the residents with respect to the provision of their wastewater service and the feasibility of Mr. Ludington's proposal lies with the history of how water and wastewater service was provided to the Park. In the body of this letter, I will explain how service is provided to customers in general, how it was provided to the Buccaneer residents, and why there may have been confusion regarding the options for service.

The Provision of Water and Wastewater Service

Water and wastewater utility systems are comprised of two elements. Water systems consist of a treatment plant and distribution lines. Wastewater systems are comprised of a treatment plant and collection lines. The residents of Buccaneer originally received their water and wastewater service from the former owner of the Park, and it was included as a part of each resident's lot rental amount. Since the Park residents lease their lots, this allowed the service to be considered exempt from regulation by the Public Service Commission (PSC or Commission), pursuant to Section 367.022(5), Florida Statutes. That section provides that "landlords providing service to their tenants without specific compensation for the service" are exempt from Commission regulation. At this point, the operation of the Park was under the jurisdiction of Chapter 723, Florida Statutes, which concerns mobile home park regulation. The Department of Business and Professional Regulation is the state agency which is charged with the enforcement of Chapter 723.

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When the Park was sold to the present owners, water operations changed because individual water meters were installed and the company desired to have a cost-based rate established for service. The Park owners were required to establish a separate corporate entity/utility for the purpose of providing water service to the Park, and rates were set in a Commission staff-assisted rate case in 1996. This history and rate information is codified in Commission Order No. PSC-96-1466-FOF-WU, issued December 3, 1996. In order to minimize the impact of this change in utility service and cost, the Park owner made a separate commitment to those residents who had lifetime leases, pursuant to Chapter 723, Florida Statutes, which essentially resulted in those customers being billed by the utility but then receiving a "rebate" from the Park owner, so that the net effect to those residents was that there still appeared to be no charge for water service. Because the owner of the water utility and the Park were the same, this type of arrangement was feasible. This may be the source of some of the confusion with respect to Mr. Ludington's proposal. It promotes a similar end result for residents of the Park with respect to wastewater service, which is that residents would receive no separate or "new" bill for service.

During the time the owners of the Park continued to own the wastewater treatment plant and the collection lines within the Park, residents were not charged separately for service. Evidently, the treatment plant portion of the system became increasingly dysfunctional, and the owners of the Park had a choice of making new and additional improvements to the plant, selling the plant and collection lines to some entity which would take over the provision of service, or shutting down the plant and connecting the Park to another wastewater service provider.

Transfer of Ownership to NFMU

At the time this case came before the Commission, the Park owner had made its choice to shut down the plant and connect with another wastewater service provider. The Park owner also assigned the rights of ownership of its remaining collection lines to North Fort Myers Utility, Inc. (NFMU). This assignment meant that the Park owner no longer owned the collection lines within the Park, which is important because it relates to what options the Park residents had and have with respect to their wastewater service. Since the provision of wastewater service was not yet regulated by the Commission, the Park was still under the regulations of Chapter 723 with respect to noticing residents of any change in the Park's wastewater operations. Disputes concerning the Park owners' assignment privileges and noticing residents of this change are still under the jurisdiction of Chapter 723. Staff understands that those issues are part of the dispute now being litigated in Circuit Court.

The Park owners' assignment of ownership of the collection lines to NFMU had the effect of being a sale of that portion of the utility system to NFMU, which is a PSC-regulated utility. Therefore, the sale of that piece of the utility system located within Buccaneer became subject to the approval and review of the PSC, pursuant to the standards outlined in the Section 367.071, Florida Statutes. That section provides that PSC approval must be obtained prior to the transfer of all or a portion of a utility. Because the assignment of the collection lines occurred prior to the

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Commission's approval of the action, the timing of the assignment was an issue jurisdictional to the PSC, and the appropriateness of this action was preliminarily identified as an issue at the onset of the case.

Florida law requires that notice of any transfer of utility ownership be made to local governments and utilities in the area, and to various governmental agencies, such as the Water Management District. The purpose of this notice is to be sure that any other entity that provides water or wastewater service is aware that a utility desires to buy another utility, and gives all other competitors a chance to protest the transfer and demonstrate why it would be a better service provider to the customers at issue. In this case, this notice was conducted properly by NFMU, and no protests were received from any other local utilities, public or private.

The situation before the Commission was that the Buccaneer wastewater treatment plant was defunct, the internal collection lines of the system were now owned by NFMU rather than the Park owner, and no other utility or organization indicated an interest in providing service to the Park. Even though the lines had been assigned to NFMU, the Commission had the authority to make a decision that they should be sold and transferred to some other entity, had any other organization presented itself as an interested party. That party would have had to negotiate for the purchase of the lines from NFMU. Staff understands that there had been some discussion of the Buccaneer Homeowners' Association organizing to purchase, maintain and operate the collection lines, but that ultimately it chose not to do so.

Mr. Ludington's Proposal

Under Mr. Ludington's proposal, the residents would not receive a bill from the Park owner, which as an end result resembles what many in the Park are experiencing with their water service. This may be why Mr. Ludington's proposal seems like a feasible option to many of the Park residents. However, there are two major problems with this scenario. The first relates to ownership of the internal collection lines of the Park. The second relates to how NFMU is compensated for providing service to the Park. These are addressed in greater detail below.

Ownership of the internal collection lines: As mentioned previously, the Park owner assigned its ownership of the wastewater utility collection lines to NFMU, which had the effect of selling these lines. In fact, a value was given these lines and NFMU paid a specific amount for the lines. Therefore, NFMU had ownership of the wastewater service collection lines from its treatment plant to each residence in the Park. This is the same way service is provided to most residential customers.

Bulk service is generally provided to customers at a centralized point of connection and collection (such as a lift station), usually because the lines behind (or after) that point are owned by some entity other than the utility. In those cases, the customer of the utility is the entity who owns the lines behind (or after) the master meter or point of connection. The utility would bill that entity,

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which would then have some method of recovering that expense from the individuals receiving the service. For example, if the Buccaneer Homeowners' Association had agreed to maintain the internal lines, NFMU could have billed the Association a bulk rate for service. It would then have been the Association's decision as to how or whether to recover that expense from the Park residents.

However, the Association declined to purchase the lines, and the Park's collection lines were sold to NFMU. As a result, the typical way service would be provided would be to bill the individuals receiving the metered service. Typically, when water service is metered, wastewater service is based on the water usage. An allowance is made in the wastewater rate design to account for some percentage of water being used for other things such as lawn irrigation or watering yards. The Commission encourages the use of individual metering so that customers are responsible for only the amount that they use. Individual metering also helps encourage resource conservation. Therefore, it is a highly unusual scenario for a group of customers to be individually metered for water, but receive a flat wastewater bill. This would be the case of the residents receiving service under some type of bulk billing scenario.

Even though a bulk service arrangement to the Park with the internal lines being owned by the utility would be highly unusual, the Commission did initially give some consideration to this option, at least during the pendency of the case, because the sale had occurred prior to obtaining the Commission's approval. The Commission suggested to NFMU that they might try to recover the lost revenues of serving the Park by billing the Park owner for the service during the pendency of the protested case. Staff understands that NFMU did attempt to collect revenues from the Park owner, but the Park owner refused to pay. This makes a certain amount of logical sense, because the Park owner no longer owned the lines in the Park. Also, the owner had clearly expressed its intention to not be in the utility business, which is why it dismantled the plant and sold the collection lines.

Mr. Ludington's proposal contemplated that the Park owner would become a bulk customer of NFMU. We do not believe the Commission would have the jurisdiction over the Park owner to force it to act as a utility, in the form of becoming a bulk service customer of NFMU. NFMU was not successful at attempting to collect anything from the Park owner for the service rendered over the last year.

Pursuant to the proposal submitted by OPC and NFMU, the Commission ultimately approved the transfer of the lines to NFMU and allowed NFMU to directly bill the residents. In staff's opinion, Mr. Ludington's proposal cannot work because it is premised upon a bulk service agreement between the Park owner and NFMU, which does not exist. Furthermore, the Park owner does not own the internal lines, is not the customer of NFMU, does not want to be in the utility business, and it is arguably beyond the Commission's jurisdiction to force the Park owner to be in the wastewater utility business.

How NFMU is compensated for service: The Commission has the statutory responsibility to allow regulated utilities the opportunity to earn a reasonable rate of return on their investment, as well as to insure that customers receive safe and reasonable service. It is not a reasonable requirement for a utility to receive more customers and not receive compensatory revenues to pay for the service provided to those customers. Furthermore, the Commission does not allow utilities to charge discriminatory rates. In other words, utilities are required to charge rates as set in the utility's Commission-approved tariff. A utility does not have discretion to provide free service to one group of customers, and to thereby increase the cost of service to all the other customers of the utility.

As explained above, a utility should receive payment for service rendered. Commission rules authorize utilities to disconnect service to customers for nonpayment. Since the transfer has been approved, and service continues to be provided to the residents of Buccaneer, the only resolution that insures that residents receive continuous service is to have NFMU bill its Commission-approved residential rate directly to each Park resident. Since the Park owner is not actually receiving service from NFMU, it is unlikely that the Park owner would pay if he were billed for service. Nonpayment may result in service disconnection. One concern with regard to Mr. Ludington's proposal is that it may in fact result in the Park's service being discontinued, because the Park owner will not pay for the wastewater service, nor is he obligated to do so, since there is no bulk service agreement with NFMU and since the collection lines have been sold to NFMU.

With respect to the use of a general service rate to the park, general service rates are based on the total water consumption to the Park. The rates have no usage cap on them, which means that the usage would include any water used for the pool, or irrigation, etc. This is another reason why the use of a general service rate structure is not as desirable a rate structure for the Park residents.

As an aside, one of the last questions in your letter was with respect to whether the Commission had voted a bulk rate as proposed by Mr. Ludington to other parks or communities. The answer to that is no. The evidence at the hearing in this case demonstrated that in every park where NFMU's water customers were separately metered, NFMU separately billed the residents for wastewater. NFMU does bill some parks a general service rate, but that is only when there is a master meter to the park, and the residents do not have separate individual meters. In those cases, the park owner is the customer of NFMU and still owns the internal collection lines. In this case, NFMU owns the collection lines and the residents of the Park receive service directly from NFMU. This is also the common practice of billing for utility service by other utilities regulated by the Commission.

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Please be advised that the opinions expressed herein are those of the Commission staff, and in no way bind the Commission. The staff sincerely hopes that this letter will be helpful in providing further explanation of the Commission's decision in this case.

Sincerely,



Jennifer S. Brubaker
Staff Counsel

JSB:lw

cc: Division of Water and Wastewater (Messer)
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