

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for ) DOCKET NO. 930724-SU  
amendment of Certificate No. ) ORDER NO. PSC-94-0726-FOF-SU  
247-S and for a limited ) ISSUED: June 13, 1994  
proceeding to impose current )  
wastewater rates, charges, )  
classifications, rules and )  
regulations and service )  
availability policies for )  
customers of LAZY DAYS MOBILE )  
VILLAGE, INC., by NORTH FT. )  
MYERS UTILITY, INC. and for )  
cancellation of Certificate No. )  
174-S issued to Sun-Up South, )  
Inc. in Lee County. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
SUSAN F. CLARK  
JULIA L. JOHNSON  
DIANE K. KIESLING  
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING AMENDMENT OF CERTIFICATE NO. 247-S HELD BY  
NORTH FT. MYERS UTILITY, CANCELLING CERTIFICATE NO. 174-S  
HELD BY SUN-UP SOUTH, INC. AND APPROVING LIMITED PROCEEDING  
REQUEST TO APPLY NORTH FT. MYERS' RATES AND CHARGES  
TO CUSTOMERS OF SUN-UP SOUTH, INC.  
AND  
ORDER PROVIDING FOR TEMPORARY RATES AND CHARGES  
IN THE EVENT OF PROTEST, SUBJECT TO REFUND

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein, except for the granting of temporary rates and charges and security requirements in the event of protest, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

COMM. DATE

05810 JUN 13 1994

FPSC-REG. & REPORTING

BACKGROUND

North Ft. Myers Utility, Inc. (NFMU or applicant) is a Class B utility which provides regional wastewater service to approximately 2,700 customers in northern Lee County. The utility's 1992 annual report indicates an annual operating revenue of \$687,000 and a net operating deficit of (\$204,000). Sun-Up South, Inc. is a Class C utility also in Lee County with an annual operating revenue of \$46,065 and an annual deficit of (\$15,311).

On July 21, 1993, NFMU filed an application for amendment of its Wastewater Certificate No. 247-S to include service to the Lazy Days Village subdivision (Lazy Days) and an application for a limited proceeding to implement its rates and charges to customers within that subdivision. Sun-Up South, Inc. (Sun-Up) currently provides wastewater service to Lazy Days. Approval of NFMU's application for amendment of certificate will result in a cancellation of Sun-Up's certificate (Certificate No. 174-S).

Although Sun-Up is not currently under any enforcement action from the Department of Environmental Protection (DEP), continued operation of the Sun-Up South wastewater system would eventually cause Sun-Up to commit serious environmental violations. DEP has indicated that Sun-Up has had problems in the past and has been close on several occasions to entering into Consent Orders. The most recent concern is that the Sun-Up's flows were exceeding its design capacity. Consequently, Sun-Up applied for a permit for construction to modify the plant to increase its capacity. According to the DEP engineer, Sun-Up was not proposing to increase its capacity by a significant amount and the engineer did not believe that much could be done about the plant's growing problems.

NFMU is in a designated critical use area and utilizes spray irrigation of treated effluent as its primary means of disposal with backup disposal by means of a deep well injection system.

A customer meeting was held in the service territory on November 15, 1993, for the purpose of hearing the customers' comments concerning the proposed interconnection to the North Ft. Myers system. Approximately 350 customers attended the meeting. The customers were primarily concerned with the \$740 service availability charge and the increased rates. They also expressed their dissatisfaction with Sun-Up's owner with respect to the lack of notice of the pending sale and the fact that the owner is not attempting to repair the plant. They believe that the plant can be repaired and the current owner can continue to provide service. Further, the customers believe that the owner is obligated to

continue providing service under the mobile home park's deed restrictions. Several customers have also submitted comments to the Office of Public Information. Those customers expressed the same concerns as those who attended the meeting.

#### APPLICATION FOR AMENDMENT

We find that North Fort Myers Utility, Inc.'s application for amendment of its wastewater certificate to include additional territory in Lee County is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for amendment of certificate. NFMU has paid the filing fee required pursuant to Rule 25-30.020, Florida Administrative Code, and has provided evidence in the form of a recorded warranty deed that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.036(1)(d), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(1)(e), (f) and (i), Florida Administrative Code. A description of the territory requested by the utility is appended to this Order as Attachment A. The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers in the proposed territory.

It was initially believed that no objections had been filed to NFMU's application for amendment. However, our staff recently discovered a letter from an individual which could be construed as an objection. Our staff was unable to contact this individual to discover if his objection was to NFMU's application for amendment, or to the limited proceeding to implement NFMU's rates and charges, or both. Therefore, in an abundance of caution, we find it appropriate to issue the portion of this Order dealing with the amendment and cancellation of certificate as a proposed agency action.

NFMU has operated its wastewater treatment facility in northern Lee County for several years with adequate technical and financial ability and is expected to continue to do so. Although the utility's annual report shows a deficit in net operating income, this deficit is due to a large amount of excess capacity and the necessity for a large used and useful adjustment. It is

operating its system in accordance with a DEP permit which expires May 30, 1995. DEP has indicated that NFMU has no environmental regulation compliance problems. The expansion will be financed by the collection of service availability charges to cover system capacity for Lazy Days. No material impact will occur regarding the applicant's capital structure. This interconnection will not conflict with the local comprehensive plan, as Sun-Up South has provided service in this territory for an extensive period of time.

NFMU will be taking over the collection system, but using its own treatment and disposal service. NFMU was initially certificated with the intention that it become a regional treatment and disposal system and that small systems in the North Fort Myers area would be connected to it as soon as it was feasible to do so. DEP has taken the position that it makes sound environmental sense to take small on-site package plant wastewater systems off-line as soon as it becomes feasible where a regional system is ready, willing and able to take over the service. This is clearly the case in this docket.

Sun-Up South is currently experiencing problems with its wastewater treatment plant. DEP has indicated that a permit was issued to modify the existing plant because the plant was exceeding its design capacity. According to DEP, the utility currently has a permit to expand the plant by an additional 10,000 gallons per day. DEP has expressed concern that a 10,000 gallons per day expansion may not be enough to solve the problem and if Sun-Up did complete this construction, its flows may continue to exceed capacity. In addition, D.E.P. has stated that Sun-Up has a three year history of noncompliance with its requirements and based on that history, if noncompliance conditions continue, enforcement action may be initiated.

Based on the above information, we find that it is in the public interest to grant the application of North Fort Myers Utility, Inc. for amendment of Certificate No. 247-S and cancellation of Certificate No. 174-S, issued to Sun-Up South. NFMU has returned the certificate for entry to include the additional territory and filed revised tariff sheets which reflect the amended territory description.

RATES AND CHARGES

NFMU's approved rates and charges were effective August 2, 1993, pursuant to a price index. A comparison of the rates currently charged to Lazy Days by Sun-Up South and those rates proposed by NFMU is shown below:

Sun-Up South, Inc.:

Flat Rate: \$9.85 per month

North Fort Myers Utility, Inc.

Base Facility Charge: \$10.09 per month  
Gallonge Charge: \$ 3.66 per 1,000 gallons  
(Maximum 10,000 gallons)

The rates and charges of NFMU shall be applied to customers in the new service territory, formerly served by Sun-Up. NFMU will bill each customer in the service area based upon metered water flows provided by Lee County.

NFMU and Sun-Up South executed a wastewater service agreement on July 9, 1993. In that agreement, the parties agreed that the charges for service availability (plant capacity) for each residential customer would be \$740 for system capacity and the income tax gross-up on contributions-in-aid-of-construction (CIAC). The charges are correctly based on the approved tariffs on file with this Commission for NFMU, which call for payment based upon \$635 per equivalent residential connection (ERC) at 275 gallons per day (GPD) per ERC. NFMU took the position that 200 GPD was the appropriate ERC for a mobile home resulting in a basic charge of  $200/275 \times \$635 = \$462$  per ERC. The corporate income tax rate of 37.63% results in a grossed-up charge of \$740 per ERC. In addition, the agreement has a payment schedule which allows each customer to elect to pay the full charge or to amortize the charge over a five year term at a 10% interest rate. The amortized payment amounts to a monthly fee of \$15.72 for each customer electing this method of payment. We find that the service availability charge is correctly based upon the approved tariff.

NFMU has agreed to pay Sun-Up South \$60,000 for the collection system. Sun-Up's lines were contributed. Although customers pay a return on utility investment through rates for service, they do not have any ownership rights to the assets, whether contributed or paid for by utility investment. The customers are not affected by the payment to Sun-Up for the on-site facilities since there is no affect on the rate base of NFMU. We find that no refund to the

customers or off-set of connection fees would be appropriate since customers of utilities do not have any proprietary claim to utility assets.

If no timely protest is filed, the NFMU rates and charges will be effective for charges on or after the stamped approval date of the tariffs applicable to this proceeding. If a timely protest is filed, the NFMU rates and charges should go into effect, subject to refund with interest.

The amount of security required for the approved rates and charges, including service availability charges is \$440,000, which includes the annual excess revenue that would be collected based upon the flat rate charged by Sun-Up South and the approved rate for NFMU, the amount of CIAC to be collected pursuant to the service agreement executed between NFMU and Sun-Up, and the interest thereon based upon the most recent commercial paper rate. NFMU reported a deficit in net operating income, a very high debt to equity ratio, negative net working capital, and interest payments in excess of annual revenues. Therefore, a corporate undertaking is not financially supportable.

Based upon the above, NFMU shall provide a bond or a letter of credit in the amount of \$440,000, or an escrow account as security in the event that a refund becomes necessary. NFMU shall comply with Rule 25-30.360(6), Florida Administrative Code, regarding reporting of funds subject to refund and status of the security being provided. In the event of a protest, the rates and charges will not become effective until an acceptable form of security has been approved by our staff.

#### RATE BASE AND ACQUISITION ADJUSTMENT

In Docket No. 850242-SU, which was a staff-assisted rate case for Sun-Up South, the value of the lines were established as zero because they were contributed. Since that time, all investments in plant relate to plant expansion and connection of the ponds, none of which will be transferred to NFMU. The treatment and disposal system will be completely dismantled if the sale to NFMU is approved. Therefore, we find that the appropriate rate base for Sun-Up South is zero.

NFMU has agreed to pay Sun-Up South \$60,000 for the collection system. Because Sun-Up South's rate base is zero, an acquisition adjustment would be calculated at \$60,000. However, Commission policy has been that, in the absence of extraordinary circumstances, a subsequent purchase of a utility system at a

ORDER NO. PSC-94-0726-FOF-SU  
DOCKET NO. 930724-SU  
PAGE 7

premium or discount shall not affect the rate base calculation. NFMU has neither requested an acquisition adjustment nor demonstrated extraordinary circumstances that would justify an acquisition adjustment. Accordingly, a positive acquisition adjustment shall not be included in the calculation of rate base.

If a protest is not received from a substantially affected person within 21 days of the issuance date of this Order, no further action will be required and the docket shall be closed.

Based on the foregoing it is, therefore,

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

ORDERED that Certificate No. 174-S, held by Sun-Up South, Inc., is hereby cancelled. It is further

ORDERED that the authorized rates and charges of North Fort Myers Utility, Inc. shall be the authorized rates and charges for the customers of the additional territory. It is further

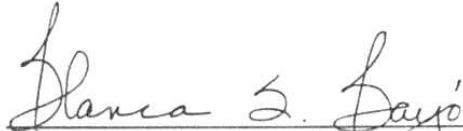
ORDERED that the provisions of this Order, except for the granting of temporary rates and charges in the event of a protest and the security requirements, are issued as proposed agency action and shall become final unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 E. Gaines Street, Tallahassee, Florida, 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that, in the event of a protest, North Fort Myers Utility, Inc., is authorized to collect its rates and charges on a temporary basis, subject to refund. It is further

ORDERED that, in the event of a protest, the rates and charges will not become effective until the appropriate form of security has been approved by our staff. It is further

ORDERED that, unless a timely protest to the proposed agency action order is filed, there will be no further action required in this docket and this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 13th  
day of June, 1994.

  
\_\_\_\_\_  
BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

MEO

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.

As identified in the body of this order, our action, except for the provision of temporary rates and charges and security in the event of a protest, is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on July 5, 1994. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.



If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.

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 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.

ORDER NO. PSC-94-0726-FOF-SU  
DOCKET NO. 930724-SU  
PAGE 10

ATTACHMENT A

NORTH FORT MYERS UTILITY, INC.  
TERRITORY DESCRIPTION

LAZY DAYS MOBILE VILLAGE

The following described lands located in portions of Section 26, Township 43 South, Range 24 East, Lee County, Florida:

The South 1/2 of the North 1/2 of the Southwest 1/4 and the North 1/2 of the South 1/2 of the Southwest 1/4; LESS AND EXCEPT the South 1/2 of the South 1/2 of the North 1/2 of the South 1/2 of the Southwest 1/4 and lying and being East of the Tamiami Trail (U.S. Business Route 41)