

ORIGINAL

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.

WITNESS: Direct testimony Of John Williams, Appearing on Behalf of Staff

DATE FILED: July 21, 1999

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EPSC-RECORDS/REPORTING

DIRECT TESTIMONY OF JOHN WILLIAMS

1 |
2 | Q. Would you please state your name and business address?

3 | A. My name is John Williams, and my business address is 2540 Shumard Oak
4 | Boulevard, Tallahassee, FL 32399-0873.

5 | Q. By whom are you employed and in what capacity?

6 | A. I am employed by the Florida Public Service Commission (PSC) as Chief
7 | of the Bureau of Policy Development and Industry Structure.

8 | Q. How long have you been employed with the Commission?

9 | A. For approximately 25 years.

10 | Q. Would you state your educational background and give a summary of your
11 | experience?

12 | A. I received a Bachelor of Science degree from the University of Florida
13 | with a major in Business Administration. During the course of my employment
14 | with the Florida Public Service Commission, I have spent approximately 15
15 | years as a rate analyst, rate supervisor and bureau chief of rates. I have
16 | testified in many cases and have participated in making recommendations
17 | regarding rate structure, rate design and service availability policies and
18 | charges in hundreds of cases over the course of my employment. For the last
19 | 10 years, I have been the Bureau Chief of the Policy Development and Industry
20 | Structure Bureau, which oversees all certification matters. I have attended
21 | many training courses and seminars on utility regulation and ratemaking
22 | sponsored by the NARUC and the American Waterworks Association (AWWA). I am
23 | chairman of the staff subcommittee of the NARUC Water Committee, and for the
24 | last 9 years have been on the faculty of the Eastern Rate Seminar sponsored
25 | by the NARUC Water Committee. I am also a member of the American Waterworks

DOCUMENT NUMBER-DATE

08665 JUL 21 82

1 | Association's Rates and Charges Committee which is responsible for writing the
2 | AWWA's rate manuals.

3 | I am currently responsible for the PSC's Water Legislative program and
4 | am the PSC's liaison with the Florida Water Management Districts and the
5 | Department of Environmental Protection.

6 | Q. Have you ever testified as an expert witness?

7 | A. Yes, I have testified as an expert witness before the Commission in a
8 | number of cases involving rate structure and design and service availability
9 | policies. I testified in Docket No. 800161 (Investigation of CIAC), Docket
10 | No. 800634 (Dyna-Flo Rate Case), Docket No. 810433 (Seagull Utility Rate
11 | Case), Docket No. 810485 (Palm Coast Utility Company Rate Case), Docket No.
12 | 870743 (Marco Island Utilities New Class of Service), and the 1992 Southern
13 | States rate case (Docket No. 920199), the SSU Rate Structure Investigation
14 | (Docket No. 930880), and the 1995 Florida Water Services Rate Case (Docket No.
15 | 950495-WS). I have been qualified as an expert witness in the area of rates
16 | and service availability in several proceedings before hearing officers of the
17 | Division of Administrative Hearings. I also make frequent presentations
18 | before the Florida legislature.

19 | Q. What is the purpose of your testimony?

20 | A. The purpose of my testimony is to discuss the background of the
21 | interconnection of Buccaneer Estates wastewater facilities (Buccaneer or
22 | utility) to North Fort Myers Utility (NFMU) in terms of how it could have been
23 | accomplished pursuant to Commission rules and procedures, and the effect of
24 | the actual interconnection with respect to options available to the utility
25 | owner and the Commission. I will also identify past decisions the Commission

1 | made with respect to similar situations concerning the application of rates
2 | and charges, and to discuss other factors that may be applicable in the
3 | overall consideration of public interest.

4 | Q. Did the interconnection process comport with Commission Rules and
5 | Procedures?

6 | A. No. By Order No. PSC-99-0492-SC-SU, issued on March 9, 1999, the
7 | Commission ordered NFMU to show cause, in writing, within 21 days, why it
8 | should not be fined \$5,000 for an apparent violation of Section 367.045(2),
9 | Florida Statutes, for the failure to obtain approval of the Commission prior
10 | to serving territory outside of its certificate.

11 | Q. Please explain how the interconnection process might have been
12 | accomplished such that it would have comported with Commission rules and
13 | procedures.

14 | A. Water utility service to Buccaneer Estates has been provided by
15 | Buccaneer Water Service, which is a utility regulated by the PSC. Wastewater
16 | service was provided by the owner of the Park with a treatment package plant
17 | located within the park. The charge for wastewater service was included as
18 | a part of the lot rental amount, and therefore wastewater operations were
19 | exempt from regulation, pursuant to Section 367.022(5), Florida Statutes. One
20 | of the areas of confusion in this docket is that the wastewater system at
21 | issue was acknowledged as an exempt utility, which precludes the necessity of
22 | having a formal utility service area established by the Commission. However,
23 | exempt status does not negate the Commission's jurisdiction over a utility.

24 | In a letter dated May 14, 1976 (attached hereto as Exhibit JDW-1), the
25 | Commission informed Buccaneer to "keep this Commission informed of any

1 | developments that affect your status. Specifically, please inform this
2 | Commission of any contemplated changes in utility operations (i.e. any rate
3 | changes, or intent to begin charging customers a fee for service) or a pending
4 | sale of the system." Therefore, it is staff's position that although the
5 | wastewater operations of Buccaneer were not subject to rate regulation, it was
6 | jurisdictional, and it was the responsibility of the owners of the Buccaneer
7 | wastewater system to alert the Commission to any changes in operation that
8 | might have changed its status from an exempt to a regulated utility. The
9 | change from conducting exempt utility operations to interconnecting with a
10 | regulated utility clearly qualifies as a "contemplated change in utility
11 | operations."

12 | Since the interconnection also included the purchase of the lines within
13 | the mobile home park by NFMU for \$139,987, the appropriate vehicle would have
14 | been the filing of either an Amendment Application an Application or for
15 | Transfer of facilities in conjunction with a Limited Proceeding, since NFMU
16 | intended to charge its monthly service rates to the individual tenants within
17 | the mobile home park. Assuming that the customers would have had the same
18 | response to such an amendment or transfer application, the case would still
19 | have been protested and set for hearing. However, the transition of receiving
20 | service from Buccaneer to receiving service from NFMU would have been noticed
21 | to customers as required by Section 367.045 or 367.071, Florida Statutes, in
22 | advance of the dismantling of the plant and subsequent interconnection with
23 | NFMU. Instead, it appears the owners of the utility attempted to use various
24 | provisions under Chapter 723, Florida Statutes, to authorize the
25 | interconnection in advance of the Commission's approval pursuant to Chapter

1 | 367, Florida Statutes.

2 | Q. Isn't it true that NFMU filed a Developer Agreement with the Commission
3 | in an effort to acquire the system and additional territory through the
4 | Developer Agreement?

5 | A. It is correct that a Developer Agreement was filed with the Commission
6 | on September 4, 1998, reflecting an agreement that was executed on August 24,
7 | 1998 between the park owner and NFMU. Developer Agreements are documents
8 | filed with the Commission for the purpose of rate review and tariff
9 | consistency. In this case, the unique feature of the Agreement was the
10 | assignment by the park owner (developer) to NFMU of the rights to collect
11 | future service availability charges. Assuming the collection of such charges
12 | was appropriate, the agreement itself followed the charges authorized by the
13 | tariff. Therefore, the agreement was deemed approved pursuant to Rule 25-
14 | 30.550, Florida Administrative Code, on October 4, 1998.

15 | However, an inherent assumption in all developer agreements is that the
16 | area at issue is within the existing territory of the utility. The review of
17 | the Agreement by staff did not include an analysis of whether the area at
18 | issue was within the utility's existing service area. In this case, the area
19 | had been actually excluded, therefore, the Agreement represented a contract
20 | for sale of the previously exempt wastewater system from the owners of the
21 | Buccaneer to NFMU, and would require Commission approval since the territory
22 | was not in NFMU's certificated territory. Pursuant to Section 367.071,
23 | Florida Statutes (1999), transfers that occurred prior to March 11, 1999, were
24 | to receive prior approval by the Commission. Here, the contract was executed
25 | on August 25, 1998, interconnection occurred on November 24, 1998, and the

1 application was filed on December 1, 1998.

2 Q. Is there any scenario in which a system regulated by Chapter 723,
3 Florida Statutes, could interconnect with a PSC regulated utility in advance
4 of Commission approval, as required by Chapter 367, Florida Statutes?

5 A. As Department of Business and Professional Regulation (DBPR) witness
6 Floyd explains in his testimony, Chapter 723 allows for the cost of
7 interconnection to a central utility system to be passed through to the park
8 residents, when the system is required to interconnect via a governmental
9 mandate. What is included as a governmental mandate is also discussed in his
10 testimony. If the interconnection had been truly the result of a governmental
11 mandate as specified by Chapter 723, the Commission may find that the
12 interconnection was in the public interest, pursuant to Chapter 367, Florida
13 Statutes.

14 Q. Did such a governmental mandate exist at the time NFMU interconnected
15 with the Buccaneer wastewater system?

16 A. It is unclear from the evidence currently in the record whether the
17 interconnection was the result of a governmental mandate. However, the staff
18 Department of Environmental Protection (DEP) witness Barienbrock has indicated
19 in his testimony that the system had some severe problems which would have
20 required substantial investment by the park owners. It appears that a mandate
21 might have been issued by DEP had the situation continued; however, it also
22 appears that the park owner pre-empted that action by negotiating with NFMU
23 for the system's transfer.

24 Q. The Commission has a pending show cause action against NFMU, which is
25 to be addressed at the hearing. Has the Commission taken any action against

1 | the owners of Buccaneer?

2 | A. No, not at this time. However, as noted earlier, the owners of the park
3 | own the park's regulated water system. They also own other utilities (and
4 | parks) regulated by the PSC, making them aware of Commission rules and
5 | procedures. It may also be appropriate to consider a show cause action
6 | against the utility/park owners for an apparent violation of Section 367.071,
7 | Florida Statutes.

8 | Q. Could you comment on the service options to Buccaneer that might result
9 | based on various outcomes of this case?

10 | A. Yes. With respect to monthly service rates, it appears that there are
11 | two basic options. One is for the park residents to become direct customers
12 | of NFMU, and the other is for the park owner to become the bulk service
13 | customer of NFMU and remain a utility customer reselling wastewater service
14 | to the residents of the park. A third option might have been for the owners
15 | of Buccaneer to sell the collection system to the residents, organized as an
16 | association. However, this does not seem to be an option at this time,
17 | because the residents have not shown an interest in organizing for this
18 | purpose.

19 | In the case of the first option, the Commission would be allowing NFMU
20 | to retain ownership of the lines it has purchased from Buccaneer, and directly
21 | bill the park tenants. Each of the lots has already been individually metered
22 | for water service. Here, the staff believes the appropriate rate would be the
23 | residential wastewater rate identified in NFMU's tariff. While Chapter 723,
24 | Florida Statutes, allows for a reduction in rental amount, as Mr. Floyd
25 | testifies, it does not require the amount to be commensurate with the new

1 rates. A dispute over the difference in charges may be resolved through
2 mediation procedures as provided under Chapter 723, Florida Statutes. The
3 second option would be for the Commission to order NFMU to refund its purchase
4 of the collection lines of Buccaneer to the owners of Buccaneer. Service
5 could be provided to the park owner by NFMU under a bulk service agreement,
6 or as a master-metered customer. The utility could implement general service
7 rates based on a master meter placed at the water treatment plant.
8 Alternatively, a sewage flow master meter could be installed, since the park
9 receives water service from a different utility. The correct rate under this
10 scenario would be the general service rate for the meter size required by the
11 park. The park owners could then either bill each resident for service as a
12 reseller, or recover the cost of service from NFMU in another fashion from the
13 park residents (such as a part of the lot rent) that would allow it to be
14 exempt from Commission regulation.

15 Q. How do these options compare with previous cases where mobile home parks
16 have interconnected to NFMU?

17 A. I have attached to my testimony, as Exhibit JDW-2, a chart which
18 summarizes the various elements of those parks that have connected to NFMU for
19 service. Basically, it indicates that customers were billed the monthly
20 service rates of NFMU, when individual metering was possible. The individual
21 customers were also billed the tariffed service availability charge.

22 However, one major difference between all of these cases as reflected
23 on Exhibit JDW-2 and the residents of Buccaneer mobile home park is that the
24 residents in the other parks owned the lot upon which the mobile home was
25 sited. Residents of Buccaneer lease their lots from the park owner. One case

1 (Docket No. 940963-SU, Tamiami Village Utility, Inc.) involved the combination
2 of owned lots and rental lots, through the inclusion of an RV park served by
3 the utility being transferred, Tamiami Village Utility, Inc. The Commission
4 approved the charging of monthly service rates to all lots in Order No. PSC-
5 95-0576-FOF-SU, issued May 9, 1995, stating that "the utility (NFMU) should
6 not charge different rates to customers who receive substantially the same
7 service." However, the discussion on connection fees focused on the mobile
8 home lots.

9 Q. Why would owning the land under the home versus leasing the land make
10 a difference in how rates and charges are applied by a utility?

11 A. The leasing activity by Buccaneer residents is analogous to individuals
12 renting or leasing an apartment, from the standpoint of who would be
13 responsible for paying service availability charges. In other words, if an
14 apartment building had provided its own utility service, and was later either
15 required or chose to interconnect to a central service provider, the customer
16 of record, as defined in Rule 25-30.210, Florida Administrative Code, would
17 be the owner of the apartment complex. This individual would be responsible
18 for payment of the connection fee to the utility and not the individual
19 tenants. The owners of the mobile home park and utility chose to terminate
20 providing service for various reasons and negotiated with NFMU to interconnect
21 the facilities. I believe this action placed the park/utility owners
22 responsible for the ultimate payment of connection fees to NFMU. However,
23 since each customer can be separately billed by NFMU, I believe that it is
24 appropriate to bill the monthly service rates based on meter size for the
25 tenants of the park, should the Commission find the transfer to be in the

1 | public interest. Other billing arrangements may be appropriate if the
2 | Commission makes an alternative finding.

3 | Q. What other factors might the Commission use in evaluating whether the
4 | transfer was in the public interest?

5 | A. Had the transfer proceeded along Commission guidelines, the staff might
6 | have had an opportunity to evaluate various options available to the customers
7 | of Buccaneer wastewater service. As discussed earlier, the change in
8 | operations of Buccaneer's wastewater system should have been made known to the
9 | Commission, at which time alternatives could have been explored as to which
10 | might be in the best interests of all parties. For example, DEP witness
11 | Barienbrock provided estimates based on his professional opinion and other
12 | engineers' professional opinions on the amount of investment and repairs that
13 | the owners of the utility would have had to make to continue operating the
14 | wastewater system. The Commission might have been able to consider a type of
15 | least cost benefit analysis between what the rates for service might have been
16 | with that level of investment from the utility versus the rates for service
17 | from NFMU. This analysis would have required certain assumptions to be made
18 | with respect to recovery of the investment by Buccaneer, since the system had
19 | not been previously regulated by the Commission. However, this exact
20 | determination would be very difficult to develop at this point in time. The
21 | Commission could still also consider the long term benefit to NFMU and the
22 | customers of Buccaneer of the effect of adding approximately 1,000 customers
23 | to a system that was built as a regional system and currently has excess
24 | capacity. The Commission might also consider the potential for rate
25 | stabilization on a going-forward basis, the benefit of compliance with

1 | regulatory mandates and the provision of improved service to former customers
2 | of Buccaneer.

3 | Q. Does that conclude your testimony?

4 | A. Yes, it does.

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Docket No. 981781-SU
Exhibit JDW - 1 (Page 1 of 1)
Jurisdictional Letter

COMMISSIONERS:

WILLIAM T. MAYO, CHAIRMAN
BILL BEVIS
MRS. PAULA F. HAWKINS

May 14, 1976

George A. Sanders
Buccaneer Mobile Estates
Post Office Box 1689
Fort Myers, Florida 33902

Re: UNDOCKETED -- Jurisdictional status of Buccaneer
Mobile Estates in Lee County, Florida.

Dear Mr. Sanders:

After reviewing your Jurisdictional Information Form and the information contained therein with our staff, we are not recommending at this time that you be required to obtain a Certificate for the above system.

The reason for our finding your system not subject to regulation at this time is based upon Section 367.022(5), Florida Statutes, which states that your system is not subject to regulation by the Commission because service is provided without specific compensation for the service.

Please keep this Commission informed of any developments that affect your status. Specifically, please inform this Commission of any contemplated changes in utility operations (i.e. any rate changes, or intent to begin charging customers a fee for service) or a pending sale of the system. Also, please note that we will continue to consider any customer complaints we receive on the above noted system.

Your cooperation is appreciated.

Sincerely,

John L. Boyles
Director
Water and Sewer Department

JLB/TJW/kp

TRANSFERS OF MOBILE HOME PARK UTILITIES TO
 NORTH FORT MYERS UTILITY IN LEE COUNTY

Docket No. (Case)	PSC Certificated Utility	Customers own lot	NFMU Monthly Rates Approved	NFMU Service Availability Approved
920273-SU 920379-SU (Forest Park Property Owners Association, Inc.)	Yes	Yes	Yes (1)	Yes (2)
930289-SU Fountain View RV Resort	No	Yes	Yes (3)	Yes (2)
930373-SU 930379-SU LAKE ARROWHEAD VILLAGE, INC.	Yes	Yes	Yes (4)	Yes (2)
930724-SU; Lazy Days Mobile Village, Inc. Sun-up South, Inc.	Yes	Yes	Yes (4)	Yes (5)
931164-SU; Carriage Village Landowner's Assoc. Inc. (Carriage Village & Royal Coach Subdivisions)	Yes	Yes	Yes (4)	Yes (2)
940963-SU; TAMIAMI VILLAGE UTILITY, INC.	Yes	Yes - 723 lots No - 243 RV sites	Yes (6)	Yes (2)

Footnotes

- 1- \$9.21 bfc, \$3.34 per 1,000 gallons/10,000 gallon maximum per month.
- 2- \$741 plant capacity charge, including gross-up.
- 3- monthly charge based on master meter on water plant. Individual customers are not billed by NFMU.
- 4- \$10.09 bfc, \$3.66 per 1,000 gallons/10,000 gallon maximum per month.
- 5- Stipulated to charges approved in Docket Nos. 930373-SU and 930379-SU.
- 6- \$9.35 bfc, \$3.76 per 1,000 gallons/10,000 gallon maximum per month.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for amendment) DOCKET NO. 981781-SU
of Certificates No. 247-S to)
extend service area by the)
transfer of Buccaneer Estates) Filed: July 21, 1999
in Lee County to North Fort)
Myers Utility, Inc.)
_____)

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the Direct Testimonies and Exhibits of John Floyd, Andrew Barienbrock and John Williams have been furnished by U.S. Mail this 21st day of July, 1999 to:

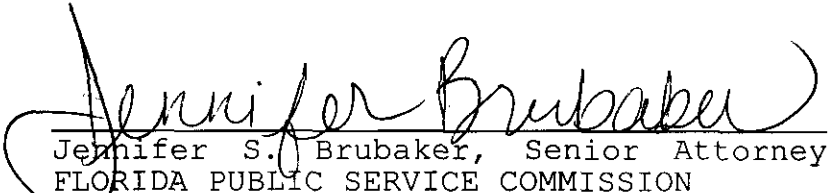
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