

Commissioners:
JOE GARCIA, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER



DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

May 31, 2000

RECEIVED-FPSC
00 JUN - 1 PM 2:15
RECORDS AND REPORTING

Mr. Nicholas Giambattista
63 Rainbow Lane
N. Fort Myers, Florida 33903

Re: Docket No. 940963-SU - 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 247-S; and for a limited proceeding to impose current rates, charges, classifications, rules and regulations, and service availability policies.

Dear Mr. Giambattista:

Thank you for your letter dated May 18, 2000, in which you inquire as to whether you will be refunded any part of the \$740 service availability charge which you paid to North Fort Myers Utility, Inc. (NFMU or utility).

Along with your letter, you attached a copy of the notice distributed by NFMU to its customers dated December 15, 1995. In that notice, the utility correctly advised that the Florida Public Service Commission (FPSC or Commission) required each of the former customers of Tamiami Village Utility, Inc. to pay a wastewater service availability charge to NFMU of \$740, and that the Office of Public Counsel had filed an appeal alleging that the appropriate wastewater service availability charge should have been 50% of that amount, or \$370. The notice further correctly advised that while the appeal was pending, the Commission authorized NFMU to collect the full \$740 service availability charge, but required the utility to escrow 50% of the charge pending the final outcome of the appeal, and that "[i]f the appellate court reverses the FPSC Orders, then you will be entitled to a refund, with interest."

Please be advised that on March 18, 1996, the First District Court of Appeal affirmed the Commission's Orders issued in this case. Because the Court did not reverse, but instead agreed with the Commission's decision, by Order No. PSC-96-0675-FOF-SU, issued May 22, 1996, the Commission granted NFMU's request to terminate the escrow account, authorized the release of all funds related to the escrow account to the utility, and closed the docket. Therefore, you will not be

~~97-0740~~
~~0517~~

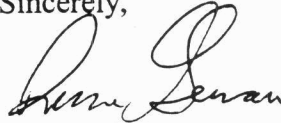
13071-94

Mr. Nicholas Giambattista
May 31, 2000
Page 2

refunded any part of the \$740 service availability charge that you paid to NFMU. A copy of the Commission's Order No. PSC-96-0675-FOF-SU is enclosed for your information.

If you have any further questions regarding this matter, please feel free to contact me.

Sincerely,



Rosanne Gervasi, Chief
Bureau of Water and Wastewater
Division of Legal Services

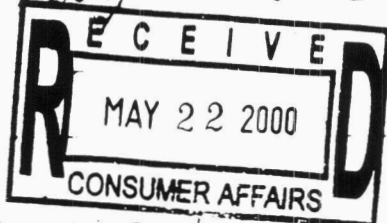
RG/dm

cc: Division of Regulatory Oversight (Messer)
Martin S. Friedman, Esquire
Stephen C. Reilly, Esquire

To Home Ft. May Concern:

May 18-2000

00 MAY 22 AM 8:55



Re Rocket No 971179-SUN

MAIL ROOM

Enclosed is a letter from (NFMUI) North Ft Myers Utility dated Dec 15th 1995 regarding each customer of Tamean Village Inc. to pay (NFMUI) \$740⁰⁰ to hook up to their sewer lines which we advised were hooked up to and I believe that no way does it cost \$740⁰⁰ per each customer to hook up to this line anyway the Florida Public Service Commission (FPSC) gave authority for (NFMUI) to use 50% of this amount \$370⁰⁰ and receive \$370⁰⁰ until this case was resolved. I paid the total \$740⁰⁰ copy of check on 1/10/96 and it has taken the (FPSC) four & one-half (4 1/2) years to decide the case. In the meantime this money has been eaten up by expenses and lawyers with no final agreement or no refund to me as the letter states when the appellate court finally come to a solution on the charge I would get a refund with interest (When

this AM I am reading that (NFMUI) is threatening Buccaness Park in the News Press to pay their hook up fee and monthly bill or they would shut off the sewer, also I believe that Windmill Park and a few of the Tamean Village rentals have received a refund if refunded by (NFMUI) or by the park owners I couldn't get while I am still (4 1/2 years) without a definite solution to this case.

Please advise what has become of this case and when I will get a part of this \$740⁰⁰ back if any. I believe this is highway robbery on the part of all retired people living in these parks and on a set income no help from the local Commissioners nor the Florida Public Service Commission.

APP
CAF
CMP
COM
CTR
ECR
LEG
OPC
RAI
RGO
SEC
SER
OTH



Nicholas Giambattista
63 Rainbow Ln
W. Fort Myers, FL 33903

Yours truly
Nicholas Giambattista
63 Rainbow Lane
Tamean Village
N. Ft Myers FL 33903

NORTH FORT MYERS UTILITY, INC.

5660 Bayshore Rd., Suite 51
North Fort Myers, Florida 33917
Phone: 543-1005

Mailing Address
P.O. Box 2547
Ft. Myers, FL 33902

*Pd
Check # 2075
1/10/96
\$ 740⁰⁰
Pd under protest*

December 15, 1995

Dear Customer:

On May 9, 1995, the Florida Public Service Commission ("FPSC") issued a Final Order requiring each of the customers of Tamiami Village Utility, Inc. to pay a wastewater service availability charge to North Fort Myers Utility, Inc. of \$740.00. A motion for Reconsideration was filed by the Public Counsel, which was granted in part and denied in part by an Order dated August 8, 1995. In that order, the FPSC reaffirmed North Fort Myers Utility, Inc.'s right to collect a service availability charge of \$740.00 from each customer formerly served by Tamiami Village Utility, Inc. The Public Council has appealed those Orders alleging that the appropriate wastewater service availability charge is only 50% of the ordered amount.

While that appeal is pending, the FPSC has authorized North Fort Myers Utility, Inc. to collect the full \$740.00 service availability charge, but it is required to escrow 50% of the charge pending the final outcome on appeal. If the appellate court reverses the FPSC Orders, then you will be entitled to a refund, with interest.

Within the next 30 days, you must either pay North Fort Myers Utility, Inc. the full \$740.00 or make arrangements to pay the charge on an installment basis of \$15.72 per month for 5 years, which includes simple interest at 10% per year. If you choose to pay on an installment basis, you must contact North Fort Myers Utility, Inc. to sign the appropriate papers.

NICHOLAS GIAMBATTISTA PEARL GIAMBATTISTA PH. 941-995-3830 83 RAINBOW LN. NORTH FORT MYERS, FL 33903		TAX DEDUCTIBLE ITEM <input type="checkbox"/> 2075 63-85923 2670 0550000626770
<i>North Ft. Myers Utility, Inc.</i> <i>Seven Hundred forty \$⁰⁰</i>		BAL. FOR'D THIS PAYMENT \$740 ⁰⁰
Society First Federal Savings Bank A KeyCorp Bank Fort Myers, Florida		ACCT # 600THAD-14750 KEY GOLD CLUB MEMBER BAL FOR'D
<i>Sewer Hook up under protest</i>		NOT NEGOTIABLE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for transfer) DOCKET NO. 940963-SU
of territory served by TAMIAMI) ORDER NO. PSC-96-0675-FOF-SU
VILLAGE UTILITY, INC., in Lee) ISSUED: May 22, 1996
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.)
_____)

The following Commissioners participated in the disposition of this matter:

JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER GRANTING PETITION FOR ORDER TERMINATING ESCROW,
AUTHORIZING RELEASE OF ALL FUNDS RELATED TO ESCROW ACCOUNT TO
NORTH FORT MYERS UTILITY, INC., AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

On September 9, 1994, North Fort Myers Utility, Inc., (NFMU or utility) 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 was 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.

Upon notification, numerous customer objections to the application were timely filed. Consequently, a formal hearing was held on February 2, 1995, in Fort Myers, Florida. By Order No.

PSC-95-0576-FOF-SU, issued May 9, 1995, we approved NFMU's application to transfer the territory served by TVU to NFMU, to cancel TVU's Certificate No. 332-S, to amend NFMU's Certificate No. 247-S, and to impose NFMU's current rates, charges, classifications, rules and regulations, and service availability policies upon the customers of TVU. We also approved NFMU's request to allow these customers the option to pay the service availability charge on an installment plan.

On May 24, 1995, the Office of Public Counsel (OPC) filed a Motion for Reconsideration and Motion for Clarification of Order No. PSC-95-0576-FOF-SU. By Order No. PSC-95-0866-FOF-SU, issued July 17, 1995, in Docket No. 950522-SU, we approved a special service availability agreement entered into between NFMU and TVU by which NFMU proposed to collect the same rates and charges as were reflected in TVU's tariff for the provision of bulk service to the customers of TVU pending the outcome of OPC's Motion for Reconsideration in the instant docket. By Order No. PSC-95-0965-FOF-SU, issued August 8, 1995, the Motion for Reconsideration was granted in part and denied in part, and the Motion for Clarification was denied. On September 7, 1995, OPC filed a Notice of Appeal of Orders Nos. PSC-95-0576-FOF-SU and PSC-95-0965-FOF-SU.

On September 8, 1995, NFMU filed a Motion to Vacate Stay Pending Review, pursuant to Rule 9.310, Florida Rules of Appellate Procedure, and Rule 25-22.061(3), Florida Administrative Code. By Order No. PSC-95-1431-FOF-SU, issued November 27, 1995, we granted that motion and required the utility to escrow \$365 of each \$740 service availability charge collected, or 50% of each installment, pending the outcome of the appeal of Orders Nos. PSC-95-0576-FOF-SU and PSC-95-0965-FOF-SU. We also required the utility to escrow the difference between its wastewater rates and TVU's wastewater rates during the pendency of the appeal. On November 27, 1995, NFMU filed a Motion for Partial Reinstatement of Order No. PSC-95-0576-FOF-SU, which motion was dismissed by Order No. PSC-96-0269-FOF-SU, issued February 26, 1996.

On March 18, 1996, in its Case No. 95-3205, the First District Court of Appeal rendered a per curiam affirmance without opinion of Orders Nos. PSC-95-0576-FOF-SU and PSC-95-0965-FOF-SU in this docket. On April 3, 1996, the Court issued its mandate on the matter to the Director, Division of Records and Reporting, commanding that further proceedings be had in accordance with the Court's decision.

PETITION FOR ORDER TERMINATING ESCROW

Pursuant to Order No. PSC-95-1431-FOF-SU, NFMU entered into an escrow agreement with First Union Bank and the Commission. The agreement provides that First Union Bank shall disburse funds only upon order of the Commission issued in this docket. On March 25, 1996, NFMU filed the instant Petition for Order Terminating Escrow. In the Petition, NFMU cites to Lawyers Title Ins. Corp. v. Reitzes, 631 So. 2d 1100 (Fla. 4th DCA 1993), in arguing that because there is no rehearing to a court's per curiam affirmance without opinion, Orders Nos. PSC-95-0576-FOF-SU and PSC-95-0965-FOF-SU are final and NFMU's entitlement to the escrow funds has been established. NFMU requests that we issue an order terminating the escrow agreement and directing that all funds escrowed be released to NFMU. Although served a copy, OPC did not file a response to the Petition.

We disagree with NFMU that the Reitzes opinion stands for the proposition that a rehearing of an appellate court's affirmance without opinion is per se unavailable. In Reitzes, the 4th District Court of Appeal, among other things, denied the appellant's motion for rehearing because the motion reargued the merits of the case, in violation of Rule 9.330(a), Florida Rules of Civil Procedure. Id. at 1101-02. The Court merely notes at the beginning of its opinion that the appellant filed a motion for rehearing "notwithstanding [the] court's per curiam affirmance without opinion." Id. at 1100.

Nevertheless, pursuant to Rule 9.330(a), Florida Rules of Civil Procedure, a motion for rehearing must be filed within fifteen days of rendition of the decision on appeal, and the time for filing a motion for rehearing of the appellate court's decision in this cause has expired. Therefore, Orders Nos. PSC-95-0576-FOF-SU and PSC-95-0965-FOF-SU are the final determinations in this docket.

In consideration of the above, and in compliance with the mandate of the First District Court of Appeal for further proceedings in accordance with the decision on appeal, we find it appropriate to grant the utility's Petition for Order Terminating Escrow. We hereby authorize the release of all funds related to the escrow account to NFMU.

ORDER NO. PSC-96-0675-FOF-SU
DOCKET NO. 940963-SU
PAGE 4

Because we find that Orders Nos. PSC-95-0576-FOF-SU and PSC-95-0965-FOF-SU are the final determinations in this docket and that the escrowed funds may be released, no further action is necessary and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition for Order Terminating Escrow filed by North Fort Myers Utility, Inc., is hereby granted. It is further

ORDERED that all funds related to the escrow account shall be released to North Fort Myers Utility, Inc. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 22nd day of May, 1996.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-904-413-6770.

(S E A L)

RGC

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.

RECEIVED FPSC

Dec 13th / 00

Dear Sir

DEC 18 PH 2: 58

REGULATIONS AND REPORTING

Please ~~don't~~ raise the price of gas. only reason we are using gas appliances is because price is cheaper. We are only 2 people in household. Last month they sent me 10 dollars more, and this month they sent 40 dollars more.

FPD
OAF
OMF
COM
CTR
LGR
LEG
DPO
TAM
LSS
SNC
GFI

I'm very angry, I'm thinking to buy electric appliance. Every body's opinion is that electric is safer cleaner easy to use. If gas bill is going to be higher than electric bill, it's not the way of your business. People aren't that stupid. So please don't raise the price.

Sincerely

Ethan Bauer
13770 S.W. 181st Terr
Miami FL 33177

Ami Bauer
Account # 211-0123831-011

address 13770 S.W. 181st Terr
Miami FL 33177
FL 305 234 4230