

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for)
Certificate No. 247-S to extend)
wastewater service area by)
transfer of Buccaneer Estates in)
Lee County, Florida to)
NORTH FORT MYERS UTILITY, INC.)

Docket No. 981781

RECORDS AND REPORTING

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MOTION FOR RECONSIDERATION

Applicant, NORTH FORT MYERS UTILITY, INC. ("NFMU"), by and through its undersigned attorneys, moves this Commission for reconsideration of Commission Order No. PSC-99-0492-SC-SU entered March 9, 1999, and in support thereof states:

1. In its Emergency Motion to Implement Rates and Charges, NFMU advised the Commission of its mistake in believing that Buccaneer Estates mobile home park was within its certificated service area, and requested authority to implement its rates and charges on an interim basis during the pendency of this proceeding to extend its certificated service area.

2. This Motion only addresses reconsideration of the Commission's decision to deny NFMU the right to collect its monthly rates on an interim basis.

3. After much discussion, the Commission concluded that the mobile home park owner had the obligation to provide wastewater service to the residents of Buccaneer Estates, and that NFMU could negotiate some arrangement with the park owner and file a revised tariff reflecting that arrangement. In making that conclusion, the

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Commission misinterpreted Chapter 723, Florida Statutes, the Florida Mobile Home Act.

4. Pursuant to Section 723.037, Florida Statutes, a mobile home park owner may cease providing wastewater service to its residents upon providing the notices required therein. It is without question that the mobile home park owner gave such notice effective December 1, 1998. The notices given implement the Wastewater Agreement dated August 24, 1998 between NFMU and the mobile home park owner. Since the parties to the Wastewater Agreement believed that Buccaneer Estates was within NFMU's certificated service area, the Wastewater Agreement did not include any regulatory approval contingencies. Thus, there is a valid, binding contract by which NFMU is obligated to provide wastewater service to the residents of Buccaneer Estates. The mobile home park owner has no such obligation and thus NFMU has no lawful mechanism to require the mobile home park owner to pay for the wastewater service being received by the residents of Buccaneer Estates.

5. NFMU has admitted its mistake in believing that Buccaneer Estates was within its certificated service area. That mistake is understandable in light of the fact that all other areas within NFMU's certificated territory which were excluded from its service area in 1988 were PSC certificated utilities.

6. The issue then becomes whether NFMU should "pay" for that mistake by having to give free wastewater service to the residents

of Buccaneer Estates during the pendency of this proceeding. That is the decision made by this Commission which should be revisited. Not only is such action unprecedented, but it is also inequitable.

7. This Commission has considered many cases where a utility was already serving outside of its service area when it filed an application for an extension of its service area. Until this case, the Commission had NEVER required a utility to provide service to those customers without compensation during the pendency of the amendment proceeding. In fact, it does not appear from any of those orders that the Commission required the revenue to be collected subject to refund, with the exception being In re: Application for Amendment of Certificate No. 488-W in Marion County by Venture Associates Utility Corp., Order No. PSC-95-0624-FOF-WU issued May 22, 1995. In that case, Venture Associates was providing water service without compensation to approximately 90 homes in the area which was subject to the amendment proceeding. In that case, this Commission, in a statement equally applicable to this case stated:

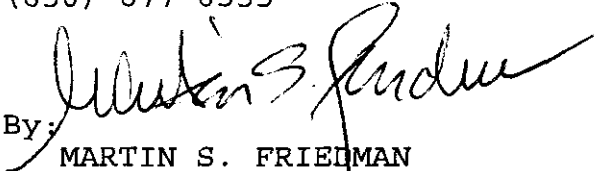
From a practical standpoint, at the outcome of this proceeding, we may find that the utility is rightfully entitled to collect the same rates and charges. To refuse Venture's request to collect the rates now, subject to refund, could result in an unrecoverable loss of revenues to the utility. Since the utility is, in fact, proposing to collect the revenue subject to refund, the utility is protected, as well as the customers, if there were to be a refund.

8. Recent appellate court decisions since the Venture Associates case has added support to the practical solution of allowing a utility to collect rates subject to refund -- that is, mandating surcharges. No one likes surcharges, but they are the only alternative in a case such as this. Why not continue the traditional procedure of allowing NFMU to collect rates subject to refund?

WHEREFORE, NFMU respectfully requests that this Commission follow prior procedure and allow NFMU to collect its monthly rates subject to refund during the pendency of this proceeding.

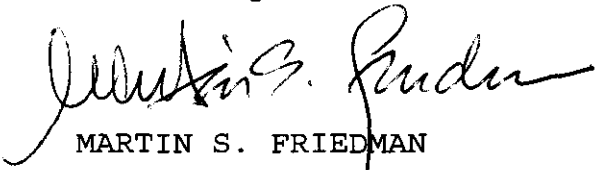
Respectfully submitted on this
10th day of March, 1999, by:

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(850) 877-6555

By: 
MARTIN S. FRIEDMAN
For the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Reconsideration has been forwarded on the 10th day of March, 1999, via U.S. Mail to Steve Reilly, Esquire, Office Of Public Counsel, 111 West Madison Street, Room 812, Tallahassee, FL 32399-1400, Cleveland Ferguson, Esquire, Florida Public Service Commission, Legal Division, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850, Ronald & Gwen Ludington, 509 Avanti Way, North Fort Myers, FL 33917 and Donald Gill, 674 Brigantine Boulevard, North Fort Myers, FL 33917.


MARTIN S. FRIEDMAN

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