ORIGINAL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
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JACK SHREVE
PUBLIC COUNSEL

March 22, 1999

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 981781-SU

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens' Response to Motion for Reconsideration for filing in the above-referenced docket.

Also enclosed is a 3.5 inch diskette containing the Citizens' Response to Motion for Reconsideration in WordPerfect for Windows 6.1. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Reilly
Associate Public Counsel

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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-SU Filed: March 22, 1999

CITIZENS' RESPONSE TO MOTION FOR RECONSIDERATION

The Citizens of the State of Florida ("Citizens"), by and through their undersigned attorney, file this response in opposition to North Fort Myers Utility's ("NFMU" or "Utility") Motion for Reconsideration, and state:

1. The purpose of a motion for reconsideration is to merely bring to the attention of the trial court or, in this instance, the administrative agency panel, a point of fact or law which was overlooked or which the agency failed to consider when it rendered its order in the first instance. Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962). A motion for reconsideration is not intended to be an opportunity to reargue the case merely because the losing party disagrees with the judgment. Id. at 891. In Stewart Bonded Warehouse v. Bevis, 294 So.2d 315 (Fla. 1974), the Court held that a petition for reconsideration should be based upon specific factual matters set forth in the record and susceptible to review. Applying the standards of the Diamond and Stewart cases NFMU's motion for reconsideration should be rejected.

2. In paragraph 3 of its motion NFMU suggests that the Commission misunderstood Chapter 723, Florida Statutes, when it concluded that the Park Owner continued to have the legal obligation to provide wastewater service to the residents of Buccaneer Estates. Because of

this misunderstanding the Commission wrongly concluded that during the pendency of this case, NFMU should make arrangements with the Park Owner to collect its costs of providing treatment and leaving it to the Park Owner to collect what it can legally collect from its leasees. More specifically, in paragraph 4 of its motion NFMU suggests that the Commission failed to consider the requirements of §723.037, Florida Statutes, which provides that a mobile home Park Owner may cease providing wastewater service to its residents upon providing the notices required therein, and that "without question the mobile home Park Owner gave such notice effective December 1, 1998."

3. First, the Commission's Order No. PSC-99-0492-SC-SU does state that the Commission concluded that it was the Park Owner who had the current legal obligation to provide wastewater service to the residents. However, the order does not expressly state the reason for that conclusion. Certainly the Citizens in its written response and at oral argument advocated that position, based upon the requirements of the Park Owner's lease agreements with the residents and the requirements of Chapter 723, Florida Statutes. In its motion for reconsideration NFMU makes no mention of the Park Owner's obligations under the lease agreements, while suggesting that the Commission may have misunderstood the requirements of §723.037, Florida Statutes.

4. It is true that §723.037, Florida Statutes, provides that the Park Owner may give written notice to each affected mobile home owner and the board of directors of the homeowner's association, at least 90 days prior to any increase in lot rental amount or reduction in services or utilities provided by the Park Owner. However, any suggestion that this provision means

that the Park Owner is no longer obligated to provide wastewater service to the residents of Buccaneer Estates is simple wrong.

5. A right to reduce utility services is not necessarily a right to cease providing the service. But regardless of what is meant by reduction in utility services, any attempt by the Park Owner to alter its obligations or increase the lot rental amount or collect a pass-through requires the 90 day notice. While it is true the Park Owner provided a notice to the residents, it is also true that the residents objected to the notice and formally petitioned the Division of Florida Land Sales, Condominiums and Mobile Homes (Division) to initiate mediation to resolve the dispute, pursuant to §723.037(5)(a), Florida Statutes. Pursuant to §723.038, Florida Statutes, mediation was unsuccessfully pursued. After two meetings on the utility issue the mediator, on February 26, 1999, certified to the Division that the parties were at an impasse, freeing either party to file an action in Circuit Court to resolve the dispute.

6. Pursuant to §723.0381, Florida Statutes, the Buccaneer Homeowners' Association, Inc., on March 5, 1999, filed suit in Circuit Court serving Lee County for declaratory relief and damages, alleging among other things unreasonable rent increase, unreasonable system capacity pass-through charge, unreasonable pass-through of monthly increase in wastewater service charge and reduction in utility services. Until this suit is resolved in Circuit Court the Park Owner has no authority, under §723.037, Florida Statutes, to abrogate its legal obligation to continue to provide wastewater service to the residents of Buccaneer Mobile Estates. Contrary to the allegations of NFMU, the Park Owner can not unilaterally excuse itself of its obligations to provide wastewater service by merely providing a ninety (90) days notice of its intention to do so. Section 723.037, Florida Statutes, does not permit this if the

residents protest the notice as provided in §723.037, §723.038 and §723.0381, Florida Statutes. This interpretation of §723.037, Florida Statutes, is further undermined by the expressed obligation imposed by §723.022, Florida Statutes. This section of Chapter 723, Florida Statutes, prescribes the Park Owner's general obligations under the Chapter. Section 723.022(4), Florida Statutes, expressly provides that the Park Owner has a general obligation to "maintain utility connections and systems for which the Park Owner is responsible in proper operating conditions." Contrary to the allegations of NFMU the Park Owner is still currently obligated to provide wastewater service to the residents of Buccaneer Mobile Estates, under §723, Florida Statutes, and the expressed requirements of the Park Owner's leases with the residents.

7. The Utility, in its oral argument, made the same argument advanced in its motion for reconsideration. It argued that:

> "The issue is that under Chapter 723, a mobile home Park Owner can cease providing a service to their residents, such as sewer service, upon giving of 90 days' notice, and then the mobile home Park Owner is required to reduce the lot rent by some amount, the pro rata share of what it cost that park to provide that service. Now, that's an issue that can be argued about, and that's a Chapter 723 issue that's not relevant here." (See Page 8 of the transcript)

In its motion NFMU is merely rearguing a position rejected by the Commission. Applying the standard of the Diamond and Stewart cases the motion for reconsideration should be rejected.

8. In paragraph 5 of its motion NFMU reargues again that its mistake in believing Buccaneer Estates was in its service area was understandable in light of the fact that all other excluded areas in the vicinity were PSC certificated utilities. (See page 5 of the transcript) However,

the Commission correctly rejected that argument after it considered the extensive history and paper trail that documented NFMU's full understanding that this area was not in its service area.

9. In paragraph 6 NFMU reargues that NFMU should not have to pay for its mistake by having to give "free" wastewater service to the residents of Buccaneer Estates during the pendency of this proceeding. In its original motion to implement rates and charges NFMU argued that the residents expected to receive free wastewater service during the pendency of the case. In its written response and at oral argument the Citizens refuted that argument by clearly stating the residents expected to continue to pay for their wastewater service, as they have always paid in the past, pursuant to the requirements of Chapter 723, Florida Statutes, and their lease agreements. This is exactly what they would normally do in a protested territorial expansion case, during the pendency of the proceeding until a decision was rendered. It is only the unlawful interconnection imposed upon the residents by NFMU and the Park Owner that has precipitated the need for the emergency relief being sought by NFMU. This argument was considered and rejected by the Commission. The Commission reasoned that NFMU executed an agreement with the Park Owner to provide service to Buccaneer Estates and it is to the Park Owner that NFMU should look to pay fair and reasonable compensation to assist it in meeting its responsibility to provide service until this docket can be resolved.

10. In paragraph 7 of its motion NFMU again reargues its position that in the past the Commission has never required a utility to provide services to customers without compensation during the pendency of an amendment proceeding. (See pages 9, 11-13 of the transcript). The Commission Order No. PSC-99-0492-SC-SU issued in this docket, which

NFMU seeks the Commission to reconsider, also does not require the utility to provide service without compensation. The Order suggests that NFMU look to the Park Owner to pay its bulk rate or whatever is fair and reasonable to provide the service. In paragraph 7 NFMU mentions the Ventura Associate case. In fact, the Commission's Order No. PSC-95-0624-FOF-WU, concerning Ventura Associates, was expressly brought to the attention of the Commission by its Staff. (Page 38 of the transcript) The Commission correctly concluded that the facts of this case were different and that the utility should seek compensation from the party it contracted with to provide service, during the pendency of this case.

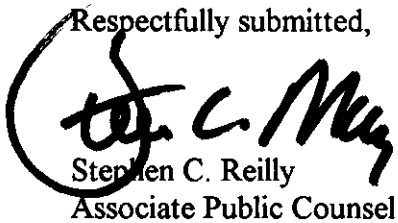
11. In the last paragraph of its motion for reconsideration NFMU repeats the threat that failure to authorize the utility to collect its rates, subject to refund during the pendency of the case, could result in the utility successfully seeking a surcharge to be paid by the residents. This threat is found in paragraph 7 of the utility's emergency motion. Without naming any cases, NFMU states that recent Appellate Court decisions have mandated surcharges to be paid by customers. However, the Citizens trust that NFMU can not name a case where an Appellate Court mandated customers to pay a surcharge to a utility under facts similar to this case. Namely, when a utility unlawfully initiates service, without legal authority and refuses to bill the party it contracted with, who actually has the legal obligation to serve. The utility is merely rearguing a position that has been considered by the Commission when it issued its order. The utility has offered nothing new on this point.

12. On March 10, 1999, NFMU filed its motion for reconsideration. Seven (7) days later on March 17, 1999, NFMU filed its request for oral argument on its motion. Commission Rule No. 25-22.058 (1) provides that: "a request for oral argument shall be contained on a separate

document and **must accompany the pleading upon which argument is requested.**" The rule also states that failure to file a timely request for oral argument shall constitute waiver thereof. NFMU waived its opportunity to even ask for oral argument when it failed to make the request when filing its motion. Aside from NFMU's waiver, the Commission in its discretion should not grant oral argument because all of the arguments raised in the motion for reconsideration have already been argued before the Commission and considered before Order No. PSC-99-0492-SC-SU was issued.

WHEREFORE, for the reasons stated above, the Citizens respectfully request the Commission to deny NFMU's motion for reconsideration and motion for oral argument and reaffirm its Order No. PSC-99-0492-SC-SU.

Respectfully submitted,



Stephen C. Reilly
Associate Public Counsel

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111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

Attorney for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
DOCKET NO 981781-SU

I HEREBY CERTIFY that a correct copy of the foregoing Citizens' Response to North Fort Myers Utility's Motion for Reconsideration has been furnished by U.S. Mail or *hand-delivery to the following parties on this 22nd day of March, 1999.

Martin S. Friedman, Esquire
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

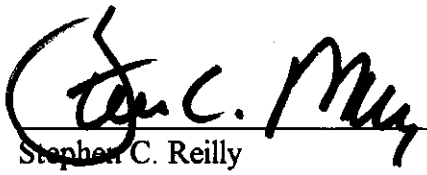
Cleveland Ferguson, Esquire*
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. Stan Durbin
718 Brigentine Blvd.
North Fort Myers, FL 33917-2920

Mr. Ronald Ludington
509 Avanti Way Blvd.
North Fort Myers, FL 33917

Mr. Donald Gill
647 Brigantine Blvd.
North Fort Myers, FL 33919-2918

Mr. Joseph Devine
688 Brigantine Blvd.
North Fort Myers, FL 33917



Stephen C. Reilly
Associate Public Counsel

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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 Co., Florida, to North Fort Myers Utility, Inc., as per PSC docket 981781-SU

OBJECTION TO MOTION FOR RECONSIDERATION

We, the undersigned homeowners of Buccaneer Estates, North Fort Myers, Florida, do object to the Motion For Reconsideration of PSC Order No 99-0492-SC-SU, as forwarded to the Public Service Commission by the above mentioned Utility, through its attorneys, on, or about, March 10th, 1999, and in support thereof state:

1. In its Emergency Motion to Implement Rates and Charges which preceded this action, North Fort Myers Utility, Inc, ("NFMU") advised the Commission that it had indeed, made a "mistake" in believing that Buccaneer Estates mobile home park was within its certificated service area.

This "mistake" has now come back to rest with the party that committed it in the first place! This same party should bear the burden of its "mistake" and not try to put the cost of it on the shoulders of others; in this case, the Buccaneer Homeowners, ("homeowners") who were not party, to even the slightest part of the original developer

agreement which was mistakenly concluded between NFMU and the park owners on , or about, August 25, 1998.

Indeed; the homeowners were excluded from obtaining even the slightest clue as to the negotiations that were taking place between NFMU and the park owners in the pursuit of this developers' agreement. All negotiations were held well out of the sight of the homeowners, with the intent, we believe, to coerce the homeowners into a position of believing that all parts of the agreement were above reproach and that the homeowners would not see fit to question its validity and or its authenticity.

The homeowners were never invited or allowed to participate in any part of the developers' agreement and they should not be made to bear any of its costs or repercussions unless a court of law decides otherwise.

2. In the NFMU's Motion for Reconsideration, (para 4, line 10) NFMU states that there is a binding contract for NFMU to supply wastewater service to Buccaneer, but that the park owner has no such obligation.

The park owners were never mandated by any authority to shut down their wastewater plant; or to connect to the NFMU system; or to dismantle any part of their plant; or to discontinue their service

without a proper rental rate adjustment. They have continued to ignore many sections of fs 723 which place certain obligations on them. (These obligations may be fully explored, in a court of law, at a later date.) Rental contracts still call for the park owner to supply wastewater services and no action taken by the park owners has so far disproved that fact.

The developer's agreement has been so corrupted by both parties actions, both before, as well as after its signing, that it is no longer meaningful, and indeed may now be worthless, and therefore NFMU should seek redress for any wastewater compensation directly through negotiations with the park owners. Both of these parties have much experience in dealing with each other, as we well know!

We humbly request that the Commission disregard this Motion for Reconsideration

Respectfully submitted on this 18th day of March, 1999 by

Ronald Ludington,
509 Avanti Way ,
North Fort Myers FL 33917

Certificate of Service

I hereby certify that true and correct copy of the foregoing Objection to Motion for Reconsideration has been forwarded on the 18th day of March 1999, via US Postal Service to:

M. Friedman; Rose, Sundstrom and Bentley, LLP, 2548 Blairstone Pines Dr., Tallahassee, FL, 32301
Stephen Reilly, Office of Public Counsel, 111 West Madison St., Room 812, Tallahassee FL 32399-1400.
Cleveland Ferguson, Legal Division, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee FL 32399-0850;

and that copies were hand delivered to:

Donald Gill, 674 Brigantine Blvd., North Ft. Myers FL 33917
Joseph Devine, 688 Brigantine Blvd., North Ft. Myers FL 33917

Ronald Ludington