



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: October 12, 1999
TO: Division of Records and Reporting
FROM: Division of Legal Services (Brubaker, Cibula)
RE: 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.

Please file the attached documents, in the docket file for the above-referenced docket.

- 1) Donald Gill and Joseph Devine's Emergency Motion to Remove Jack Shreve and Steve Reilly as Counsel of Record in the Above Captioned Matter; and
2) Donald Gill's Testimony for the October 13, 1999 PSC Hearing at North Fort Myers in Opposition to North Fort Myers Utility, Inc.'s (NFMU) Application for Extension of its Service Area Into Buccaneer Estates and NFMU Request for Rates and Charges.

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JSB/dr

cc: Division of Water and Wastewater (Messer, Redemann)

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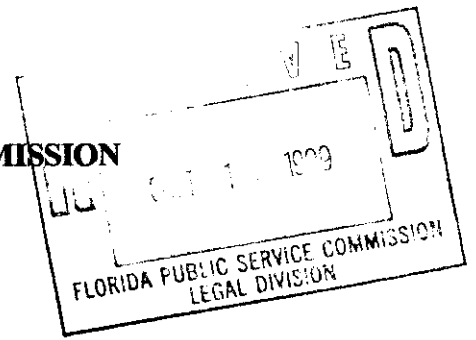
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION



IN RE: Application of North Fort Myers)
Utility, Inc. for extension of wastewater)
service in Lee County, Florida.)
_____)

Docket No. 981781-SU

**DONALD GILL AND JOSEPH DEVINE'S EMERGENCY MOTION
TO REMOVE JACK SHREVE AND STEVE REILLY
AS COUNSEL OF RECORD IN THE ABOVE CAPTIONED MATTER**

Donald Gill (Gill) and Joseph Devine (Devine), parties in the above captioned matter, respectfully request that the Public Service Commission (PSC) remove Mr. Jack Shreve (Shreve) and Mr. Reilly (Reilly), who represent the Office of Public Counsel (OPC), as Counsel of Record in all matters contained within PSC's Docket No. 981781-SU.

In support of their Motion, Gill and Devine, from their best belief and information, state the following:

1. Shreve and Reilly are Counsels of Record allegedly representing the interest of the residents of Buccaneer Estates.
2. Shreve is OPC's Chief Counsel.
3. Reilly is subordinate to Shreve.
4. On or about August 30, 1999 when Gill and Devine called in to the PSC's hearing (being held telephonically) after a break they inadvertently overheard a telephone conversation between Shreve and an official of the Buccaneer Homeowners' Association (BHA). The official is believed to be Stan Durbin, Chairman of the BHA's Rent/Sewer Committee. In the conversation Shreve was instructing this BHA's official on how to call a special meeting of the Association and how to stack the meeting with residents who were sympathetic with the Board's positions. Apparently, the Board's views and positions were also Shreve's views and positions. Gill and Devine consider Shreve's suggested

“stacking” of the proposed Association meeting violated the basic principles of a democracy and also extremely unethical conduct of an officer of the court.

- 5. Shreve’s views and positions in the NFMU matter were shaped from financial pressures (cost to the state) and time considerations, and not from his delegated duty to protect the public’s interest.**
- 6. Reilly has stated to Gill, Devine and Ronald Ludington (Ludington), also a party of record, that his boss wanted to wrap this matter up soon because of the amount of time and money the State had already spent on it. Apparently, Reilly’s opinions and positions in the above captioned matter have been shaped and governed by his superior’s concern for the OPC’s budget.**
- 7. The OPC has stated that it would withhold all of its witnesses and evidence from the September 14-15 (rescheduled for October 13, 1999) PSC Hearing. It is difficult for Gill, Devine, Ludington, or even a person with average intelligence, to understand how the OPC expects the public’s interest to prevail in this matter by withholding its witnesses, their testimony and evidence.**
- 8. The OPC has purposely misled the homeowners of Buccaneer estates through its attempts to get a settlement agreement with NFMU. Although the OPC has no delegated authority to represent corporations and the BHA’s bylaws do not provide for the BHA to represent the homeowners in matters before the PSC, from the beginning of this matter the OPC and the BHA have given the residents of Buccaneer the wrong impression that the OPC is representing the Homeowners of Buccaneer Estates as a class by and through their Association. Article II, Section 4 of the bylaws of the BHA states:**


To enforce the provisions of Chapter 723 of the Florida Statutes, as amended from time to time, to institute litigation on behalf of the corporation and to serve as class representative for any lawsuits filed by the Homeowners’ Association or against the Homeowners’ Association.

- 9. In its alleged capacity of representing the Association, the OPC is a composer and advocate of an illegal¹ “Settlement Agreement” allegedly signed and agreed**

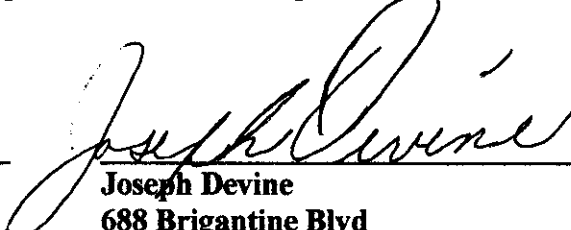
¹ The reference to an “illegal” Settlement Agreement is based on the information OPC used to justify its position that the residents of Buccaneer Estates overwhelmingly supported the Settlement Agreement. There are 971 homes in Buccaneer Estates. By the Board’s count, approximately 307 residents cast a

to by NFMU and the OPC. It has been alleged that Gill, Devine and Ludington participated in the negotiations that lead up to the "Settlement Agreement." This is not true.

WHEREFORE: Jack Shreve and Steve Reilly have misled the residents of Buccaneer Estates and whereas they have not represented the best interest of the residents of Buccaneer Estates; therefore, Donald Gill and Joseph Devine respectfully request the Public Service Commission, forthwith, remove Jack Shreve and Steve Reilly as Attorneys of Record for the general public in the above captioned matter.



Donald Gill
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North Fort Myers FL 33917



Joseph Devine
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded via U.S. Mail to Steve Reilly, Esq., Office of Public Counsel, 111 West Madison Street, Suite 812, Tallahassee FL 32301-1906, Cleveland Ferguson, Esq., Jennifer Brubaker, Esq., Florida Public Service Commission, Legal Division, 2540 Shumard Oak Boulevard, Tallahassee FL32399-0850, Martin Friedman, Esq., 2548 Blairstone Pines Drive, Tallahassee FL 32301, Ronald Ludington, 509 Avanti Way, North Fort Myers FL 99317 on this 7th day of October, 1999.

Donald Gill 

raised hand vote on that night. Only the "no" votes were counted. The record does not reflect the fact that there were or were not 307 residents present at that meeting. Most residents present at the meeting were husbands and wives casting two votes for one home. If two votes were allowed for each home the total vote for 971 houses would be 1942. Three hundred and seven votes constitute a paltry 16% of the eligible vote and far from a majority. At the BHA's meeting the President of the Association stated that the vote was non-binding. The vast number of residents was not informed, or even aware, of the subject matter of the calling of the special meeting. The Board called the meeting using the same "stacking" strategies put forth by Shreve to the BHA's official in their telephone conversation mentioned above. Subsequent to the Association's meeting, a September 29th meeting of the residents was called by Devine. At that meeting the residents present were fully informed as to what was going on. After the meeting many residents stated that they had voted "yes" at the Association's meeting, but had changed their mind after being fully informed.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of North Fort Myers)
Utility, Inc. for extension of wastewater) Docket No. 981781-SU
service in Lee County, Florida.)
_____)

**DONALD GILL'S TESTIMONY FOR THE OCTOBER 13, 1999
PSC HEARING AT NORTH FORT MYERS IN OPPOSITION TO
NORTH FORT MYERS UTILITY, INC.'S (NFMU) APPLICATION FOR
EXTENSION OF ITS SERVICE AREA INTO BUCCANEER ESTATES AND
NFMU REQUEST FOR RATES AND CHARGES**

NFMU's Application is based on fraudulent and deceptive business practices and also its complete disregard of the laws of the state of Florida; therefore, under no circumstances should the Public Service Commission (PSC) grant NFMU's application. Should the PSC grant NFMU's Application the PSC would in essence be rewarding NFMU for its fraudulent and deceptive business practices and its complete disregard of the laws of the state of Florida. If the PSC's grants NFMU's Application in this matter the PSC would be setting the wrong precedent that would be used by NFMU and other private utilities to circumvent the law. Bad precedent those private utilities will use in the future to wrongfully transgress in mobile home parks and their private package wastewater systems.

The PSC's consideration of NFMU's Application should not be about whether if a utility used the right or wrong procedure to extend it territory; but rather if the PSC should force 971 homeowners to finance and enhance the value of NFMU's wastewater business; a wastewater business that NFMU is currently negotiating the sale of to Lee County. If the PSC grants NFMU's Application the PSC will be asking the homeowners, not only, to finance the enhancement of the value of NFMU wastewater business; but also will the PSC will be asking the homeowners, as taxpayers, be asked to help finance Lee County's inflated purchase of NFMU's system. What the PSC should be considering is not, or whether or not, it should grant NFMU's

Application, but if NFMU's Wastewater Charter should be rescinded for its flagrant disregard for the law and the terms of its charter.

The PSC will also consider NFMU's rates and charges as they apply to the residents of Buccaneer Estates. There are good and sufficient reasons to believe that the matter of "rates and charges" is not a matter between the NFMU and the homeowners, but a matter between NFMU and the Park Owner Manufactured Homes Communities, Inc. (MHC). MHC has lease agreements with all the homeowners that provides that MHC will furnish wastewater services to the homeowners at a cost that is included in the homeowners' rent. The leases do not specify that MHC has to provide a wastewater plant. The leases only provide that MHC will furnish wastewater services at a cost included in the homeowners' rent. .

Without a governmental mandate ordering Buccaneer Estates to hookup to NFMU, in 1998 MHC together with NFMU entered into a questionable contract that provided for NFMU to buy MHC's wastewater infrastructure and for NFMU to charge the homeowners of Buccaneer Estates its wastewater services. At the expense of the residents the developer's contract between MHC and NFMU was a scheme designed to be a mutual revenue-enhancing device for both MHC and NFMU. However, for their fraudulent and deceptive business scheme to work MHC and NFMU had their own part to play.


MHC's part in the scheme was to violate the terms of its lease agreements with its residents and also MHC to ignore Lee County Ordinance 91-01 and sections of Chapter 723 of the Florida Statutes. In an effort to leave no alternative for the residents but to hookup NFMU, MHC without any mandate tore down its wastewater treatment plant.

NFMU's part in the scheme was to expand its territory without authorization, and after the fact file, for an application to extend its territory with the PSC. The Utility having a history of dealing with the PSC, MHC and NFMU had little or no reason to doubt that their scheme would work, but what both MHC and NFMU did not count on was the stiff opposition their scheme would generate from three residents of Buccaneer Estates.

Allowing for the fact that NFMU was not authorized to service Buccaneer Estates in violations of Chapter 723 and other sections of the Florida Statutes, MHC's hookup to NFMU was not in itself illegal or improper had MHC not passed the cost of such an agreement on to the residents. MHC's decision to get out on a limb and cut it off behind it¹ and possibly expose itself to be liable to NFMU for the cost of Buccaneer Estates' wastewater service, or to the cost of restoring its wastewater plant to a proper working condition, is not a matter that should enter into the PSC's consideration whether or not to grant NFMU's Application.

The only grounds and considerations for the PSC's decision in regard to NFMU's application for extension of area, and rates and charges must be:

1. Was NFMU's takeover of Buccaneer Estate's wastewater service done in good faith?
2. At all times was NFMU acting in a proper and legal manner?
3. Should NFMU be rewarded for illegal acts?
4. Should the PSC require the residents of Buccaneer Estates to bear the financial burden of MHC and NFMU's fraudulent and deceptive business practices?
5. Should NFMU's Charter be rescinded?



Donald Gill
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North Fort Myers FL 33917

NOTE: This testimony will be read into the record by Joseph Devine at the PSC's October 13, 1999 Hearing to be held at Buccaneer Estates, North Fort Myers Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded via U.S. Mail to Steve Reilly, Esq., Office of Public Counsel, 111 West Madison Street, Suite 812, Tallahassee FL 32301-1906, Cleveland Ferguson, Esq., Jennifer Brubaker, Esq., Florida Public Service Commission, Legal Division, 2540 Shumard Oak Boulevard, Tallahassee FL 32399-0850, Martin Friedman, Esq., 2548 Blairstone Pines Drive, Tallahassee FL 32301, Ronald Ludington, 509 Avanti Way, North Fort Myers FL 99317 on this 7th day of October, 1999.

Donald Gill



¹ MHC questionable motive in its premature and deliberate dismantling of Buccaneer Estates' package wastewater plant before a PSC's decision in this matter was reached.

DIVISION OF
ADMINISTRATION

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FLORIDA
PUBLIC SERVICE COMMISSION