BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DCA No. 1D00-951

In the Matter of	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.	

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VOLUME 2

Pages 208 through 258

PROCEEDINGS:	**CONTINUATION OF HEARING**
BEFORE:	COMMISSIONER J. TERRY DEASON COMMISSIONER SUSAN F. CLARK COMMISSIONER E. LEON JACOBS, JR.
DATE:	**Tuesday, November 16, 1999**
TIME:	Commenced at 9:00 a.m. Concluded at 4:10 p.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JOY KELLY, CSR, RPR Chief, Bureau of Reporting FPSC Commission Reporter

APPEARANCES:

MARTIN S. FRIEDMAN, Rose, Sundstrom & Bentley, 2548 Blairstone Pines Drive Tallahassee, Florida 32301, appearing on behalf of **North Fort Myers Utility, Inc.**

JACK SHREVE, Public Counsel, and **STEVE REILLY**, Assistant Public Counsel, c/o, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400, appearing on behalf of the **Citizens of the State of Florida.**

JENNIFER BRUBAKER and SAMANTHA CIBULA, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, appearing on behalf of the **Commission Staff.**

ALSO PRESENT:

BILLIE MESSER, FPSC Division of Water and Wastewater

RONALD LUDINGTON

JOE DEVINE

DONALD GILL

P R O C E E D I N G S

(Hearing convened at 9:00 a.m.)

COMMISSIONER DEASON: Call the hearing to order. Could I have the notice read, please?

MS. BRUBAKER: Pursuant to notice, this time and place has been designated for the continuation of the hearing in 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.

COMMISSIONER DEASON: Thank you. Take appearances.

MR. FRIEDMAN: Yes. This is Marty Friedman with the law firm of Rose, Sundstrom and Bentley on behalf of North Fort Myers Utility.

MR. SHREVE: Jack Shreve and Steve Reilly with the Office of Public Counsel on behalf of the Citizens of the state of Florida.

MR. GILL: Donald Gill, party of record.

MR. DEVINE: Mr. Devine, party of record.

MR. LUDINGTON: Ronald Ludington on behalf the homeowners of Buccaneer Estates.

MS. BRUBAKER: Samantha Cibula and Jennifer Brubaker appearing on behalf of Commission Staff.

MR. FRIEDMAN: Commissioners, I hate to

start off on an adversarial tone, but this gentleman said he represented the homeowners, and I don't think he has any authority to represent anybody other than himself, and don't think that up until this point he's purported to represent anybody but himself. And I thought that should be clear in the record.

COMMISSIONER DEASON: Mr. Ludington.

MR. LUDINGTON: I said I was on behalf of the homeowners of Buccaneer Estates. I did not say I represented them.

COMMISSIONER DEASON: Well, I think the basis upon which your intervention was granted is clear in the record, and I think the record will stand and that will be clarified. Thank you, Mr. Friedman

Ms. Brubaker, can you just kind of take a moment to review where we are procedurally and then we'll proceed.

MS. BRUBAKER: Certainly. The hearing that took place on North Fort Myers on October 13th, 1999, was continued in order to allow the parties to give a brief closing argument on the evidence adduced at hearing. This was to serve in lieu of filing briefs.

It was contemplated that each party would be permitted five minutes to give these closing arguments, with possibly more time being allotted to

the utility in order to give its closing arguments.

COMMISSIONER DEASON: Okay.

MS. BRUBAKER: At that time the hearing will be -- should be concluded and the regular agenda conference will take place at 9:30. Staff is to prepare an oral recommendation based upon the evidence adduced at hearing and the arguments of parties heard here. And the matter will be reopened at the conclusion of the agenda conference to allow Staff to get its recommendation.

COMMISSIONER DEASON: One question. Is it a foregone conclusion that there will be an oral recommendation and we'll take it up, or is it possible for a written recommendation?

MS. BRUBAKER: That's strictly at the Commission's preference. We had talked about giving an oral recommendation. Staff is willing to following whatever procedure the panel deems appropriate.

COMMISSIONER DEASON: Okay. We can address that then at the end of the closing arguments as to how we will proceed.

Do you have a suggested order?

MS. BRUBAKER: I would suggest that the pro se parties be permitted to give their closing argument first followed by Public Counsel, followed by the

utility.

COMMISSIONER DEASON: Mr. Gill, are you prepared to -- I'm sorry, Mr. Ludington.

MR. LUDINGTON: Yes. I am prepared to go first.

COMMISSIONER DEASON: Very well.

MR. LUDINGTON: I will read this. It's a prepared statement.

I have had many people tell me that the Public Service Commission does not have the authority under law to have North Fort Myers Utility, Incorporated, send the monthly bill for the wastewater service in Buccaneer Estates to the park owners as I have suggested in my proposal.

The Supreme Court of the state of Florida has said the Public Service Commission had such powers in a decision handed down in 1979 in the case known as Miller & Sons versus Hawkins, in which the Court stated that the power of the PSC was a law unto itself when it came to public welfare. I'm sure you have all heard of this case before, so I'll not go into further details except to remind you of the Court's decision at that time.

Instead, let me now state as to why I know the PSC can direct North Fort Myers Utility to bill

the park owner for this service, and what rate should be used for this billing.

If the Public Service Commission believes in its own rules and regulations, and that the tariffs the Public Service Commission has assigned to North Fort Myers Utility for use in the conduct of NFMU's day-to-day operations, if you believe those are correct and meaningful, then the Public Service Commission has no other choice but to live by them too. You made the rules, you stick by them.

In support of this argument I state whereas, the Public Service Commission grants the application of North Fort Myers Utility to add Buccaneer to its territory, the Public Service Commission approved rate water tariffs under which NFMU operates shall also come into effect in Buccaneer at exactly the same time. And since North Fort Myers Utility made its original application on December 1st, 1998, I am now suggesting that that date be considered the date of acceptance of the approval of North Fort Myers Utilties' application.

This, in turn, will cause rate schedule GS, general service, to become the active rate for billing in this matter for the following reasons: Whereas, under North Fort. Myers Utilities' Tariff Sheet 15.0,

Applicability, it is therein stated that rate schedule GS is to be used, quote, 'for wastewater services to all customers for which no other schedule applies.' End of quote. And whereas, the only other rate schedule available to North Fort Myers Utility is rate schedule RS, and whereas, it is not applicable in this case because of the following factors, therefore, rate schedule GS must be used in this matter before you. What are these factors?

Whereas, rate schedule RS applies to, quote, "wastewater services for all purposes in private residences in individually metered apartments," end of quote, and whereas, the homeowners in Buccaneer do live in private residence, which happen to be metered, these same homeowners are not now seeking this wastewater service from North Fort Myers Utility, and indeed have never sought this wastewater service from North Fort Myers Utility. Therefore, they cannot ever be assumed to be the "persons" or, quote, "applicants" who are mentioned in this tariff, and who would, therefore, fall under any of the terms or regulations or rate schedules found in the same tariff.

In support of that I offer this from the tariff itself: Tariff Sheet 26.0, Application for Wastewater Service, Section I, Service Area. It

states "North Fort Myers Utility agrees to supply service to," quote, "those persons seeking the same." end of quote. And later, under the same applicability section, it again refers to, quote, "those applicants who shall seek wastewater service." Once again, I state that the homeowners of Buccaneer have not now or ever sought this wastewater service from North Fort Myers Utility. So they cannot be considered as the persons seeking this service or the applicants seeking this service, and, therefore, they do not fall under these tariff regulations.

Now, therefore, just where did North Fort Myers Utility find these applicants or persons seeking their services? We know it was not the Buccaneer homeowners for none have ever applied. Further on in the tariff, but still on Sheet 26.0 we find the answer to that question in the section of on-site facilities. Here we come across the words, quote, "a developer shall be that person seeking wastewater service from the Utility." End of quote.

It is the -- the answer is right there. It is the developer. It, therefore, follows that the person seeking this wastewater service from North Fort Myers Utility, the developer, in this case the park owner, must be responsible for payment for this

service as they were the ones who sought it out, and even signed for it. And in this case they must pay for it under the terms of the only applicable schedule, which is schedule GS. There's no provision in the tariff for anyone else to pay. So it has to be the, quote, "person" who seeks the service; quote, "the applicant." In this case, the park owner.

COMMISSIONER DEASON: Mr. Ludington, you have thirty seconds to conclude.

MR. LUDINGTON: Pardon me?

COMMISSIONER DEASON: You have thirty seconds to conclude.

MR. LUDINGTON: Are we sticking by the definite five-minute rule?

COMMISSIONER DEASON: Yes, sir. We have an agenda conference that starts promptly at 9:30 this morning.

MR. LUDINGTON: Can I have yielded time from my cohorts.

COMMISSIONER DEASON: Sure. They are going to be allowed their own five minutes.

MR. LUDINGTON: Okay. If the homeowners of Buccaneer who lived in a metered residence had sought this service, they could be billed for it under rate schedule RS. But they did not seek it. Not even one

of them. Therefore, the developer's liable for the cost. If the developer wishes to pass these costs on to the homeowners at a later date, under some other statute or law, then let him try. But that's not a matter of concern to you. And besides the exact matter also happens to be under dispute in civil court at this very moment.

I suggest that the Public Service Commission has no choice in the matter. You must adopt my proposal, or at least the better portions of it. It contains the proper rate schedule and the proper applicant.

You may want to alter the starting date from that which I originally suggested, or you may wish to reword some paragraphs, but you can find very little else to change in it. And you cannot alter the rate schedule to be used for the payer involved as these both follow your tariff's wording exactly.

COMMISSIONER DEASON: Mr. Ludington, you're going to have to yield to others or else they are going to have to yield time to you.

MR. DEVINE: I'd like to yield some of my time, Mr. Chairman, to Mr. Ludington. Two minutes, please.

COMMISSIONER DEASON: Very well.

Mr. Ludington, you may continue.

MR. LUDINGTON: Furthermore, to confirm that both North Fort Myers Utility and the park owner agree that you are authorized to accept my proposal, we have to look no further than the wastewater agreement of August 1998, which, as you know, was produced after months of discussion and conniving, and was then signed by both the park owner and North Fort Myers Utility. They both knew then, and agreed to the fact that you had this authority and could use it whenever you wanted. If you need proof, when looking through the wastewater agreement we can ask ourselves just what the fourth sentence in 6.0, the agreement to serve, really says when it states, quote, "Such connection shall at all times be in accordance with the rules, regulations and orders of the applicable governmental authority." End of quote. Does this not mean your tariffs? Your rules? Does this not say that the Public Service Commission, which is the applicable government authority in cases, has the last word in all of these matters, and that both parties agreed to that and acknowledged that very fact in 1998?

Even the first sentence of 9.0, rates, in this same agreement, backs you up in your decision to

accept my proposal when it states that the rates to be charged "are those set forth in the tariff of service company." End of quote.

Other sections of the Wastewater Agreement including 9.2 also clearly lend credence to the notion that the PSC has total control of that outcome of that agreement, now and in the future.

Notwithstanding the fact that the wastewater agreement calls for North Fort Myers Utility to bill the homeowners under some contrived uses of section -- Florida Statute 723, you have the obligation to ignore that portion of the agreement and follow the dictates of the tariff which you set for NFU to follow. It is not for North Fort Myers Utility to argue the merits of 723 in front of you, but for the park owner to do that in the civil court.

He has chosen not to show you his face in this matter before you. Instead, he lets North Fort Myers Utility try to get his points across. You are not required to understand Florida Section 723 or to rule on the applicability of this matter. Therefore, North Fort Myers Utility argument should be taken on that subject with a grain of salt.

COMMISSIONER DEASON: Mr. Ludington, your time has expired. Mr. Devine, you may begin your

argument.

MR. DEVINE: I'd like to award Mr. Ludington one more moment, please.

MR. GILL: I'll yield two minutes of my time.

COMMISSIONER DEASON: Okay, Mr. Ludington. But you do need to hurry because we are short on time.

MR. LUDINGTON: Thank you.

The park owner's very absence in this case should help to convince you that something is very wrong with the Wastewater Agreement when one of the parties responsible for its very existence avoid showing up to argue for its accuracy, and, instead, lets the other party involved try to justify its meaningfulness. Just why would North Fort Myers Utility want to try to justify it?

Counsel for North Fort Myers Utility made the reason for their justification very clear at the Public Service Commission hearing at February 14th, '99, when he said, quote, "and its bottom dollar is because it's money," quote, when he refers to the reason the homeowners do not want to pay. For once we do agree on something, counselor. It is money. It is the near $11,000 North Fort Myers Utility wants to take from the Buccaneer homeowners each month under

rate schedule RS, versus the flat fee of a few hundred dollars they will get for the park owner under rate schedule GS. You're damn right. It's money.

Further to this argument I also state that the park owners have illegally used FS 723 in support of their position with respect to the "pass-through charges," in which they claim they are required to be passed on to the homeowners of Buccaneer, and that they use 723.046 in supporting the position of North Fort Myers Utility in its collection and amortization of these charges when corresponding with the residents of Buccaneer, when that statute clearly only gives that privilege only to, quote "any municipality, county or special district serving the mobile home park." End of quote.

Clearly North Fort Myers Utility does not qualify as any of these entities and clearly this is another misuse of 723 by the park owners which confirmed just what we have said all along; that they have conspired with North Fort Myers Utility to pull off this illegal wastewater deal using 723 underhandedly.

You should also be aware of the fact that North Fort Myers Utility tariffs also state that North Fort Myers Utility is to make its services available

on a nondiscriminatory basis. By not charging the park owners a pass-through charge for the park owners' own sewer connections, as North Fort Myers Utility has admitted doing in many cases, they have therefore discriminated against the homeowners in these same parks and should be charged with discrimination against seniors. Each age-restricted park that has had this kind of wastewater settlement thrust upon the homeowners should be made aware of this fact so that the homeowners in these parks can take some legal action.

The Public Service Staff also should make sure that this type of illegal discrimination does not continue by examining each new wastewater agreement that comes before them.

With these words in mind, we ask the Public Service Commission to follow through about the Ludington proposal, or something very similar to it, and then bring this matter to a quick but just conclusion. Thank you.

COMMISSIONER DEASON: Thank you, Mr. Ludington.

Mr. Devine and Mr. Gill, you have a total of two minutes between you for the both of you, so you can use that however you see fit.

MR. DEVINE: Yes, Mr. Chairman, thank you.

Since we last met down at Buccaneer, we received hundreds and hundreds of letters from the homeowners and I couldn't have presented a better closing than a letter that was given to us from a gentlemen that lives in the park by the name of Mr. Warren Prescott, an elderly gentlemen who seems to have grasped this situation far better than most of the legal minds in this room. And I'd like to read into the record what he has said. "The wastewater facility of the Buccaneer Estates Manufactured Home Community was sold to North Fort Myers Utility, Inc. while the wastewater facility was part of property under Buccaneer lease agreement with the Buccaneer residents.

"This, I believe, was completely improper. The sale was made under the premise that the wastewater facility had been condemned, which was not true. Buccaneer owners did this without consulting or advising Buccaneer residents.

"North Fort Myers Utility, Inc. entered into this questionable purchase agreement with the Buccaneer Estates Manufactured Home Community owners. They also made a wastewater hook up with Buccaneer illegally where they had no jurisdiction. This, too,

was done without notice or consulting or advising Buccaneer residents.

In my opinion, Buccaneer owners in North Fort Myers Utility, Inc. made these improper arrangements solely to further their own economic advantage without consideration of the proper regard for, or the legal rights of, Buccaneer residents.

My own comment, Mr. Chairman, is it's about time that the greatest generation that's come through this country which came out of the Depression, fought World War II, Korea and Vietnam stop being victimized by big companies looking to extract the last dollar they can from the people who now should be enjoying their sunshine years.

I thank you, Mr. Chairman.

COMMISSIONER DEASON: Thank you. Mr. Gill, I apologize, but all of the time has been utilized. Mr. Reilly, you may proceed.

MR. GILL: I only yielded two minutes. I was very clear. I said I yield two minutes and two from five should leave me three. I should have three minutes. I just have a brief thing here to say. I'm entitled to my three minutes because I only yielded two.

COMMISSIONER DEASON: Mr. Reilly is going to

yield his time, I suppose. You may proceed. You have three minutes.

MR. GILL: I incorporate everything Mr. Ludington said as though it was my own, except for these minor differences.

North Fort Myers' application for extension of territory, that would include all the homes of Buccaneer Estates as customers, must be dismissed and denied. North Fort Myers, Incorporated's emergency motion for rates and charges also must be dismissed and denied.

North Fort Myers should be required or allowed to refile an application that would allow North Fort Myers Utility to provide wastewater service to Manufactured Homes Community, Incorporated as the customer of North Fort Myers Utility. North Fort Myers Utility, Incorporation's new application must clearly state that the North Fort Myers Utility, Incorporated -- new application would also be an application to provide wastewater service to the commercial entity, Manufactured Homes Communities, Incorporated, as a bulk customer, and would not be an application that would not make Buccaneer Estates -- the residents of the Buccaneer Estates a part of North Fort Myers Utility territory.

North Fort Myers Utility, Incorporated's new application also should include its rates and charges for its wastewater service to Manufactured Homes Community, Incorporated.

COMMISSIONER DEASON: Thank you, Mr. Gill. You only used two minutes, by the way. Mr. Shreve.

MR. SHREVE: Thank you, Mr. Chairman. I'll be very brief.

Early on, working with the homeowners association, signed an agreement. This was taken up at the last hearing. We have signed the agreement. We still are on the agreement, and at this point we fully support the agreement.

COMMISSIONER DEASON: Thank you, Mr. Shreve. Mr. Friedman.

MR. FRIEDMAN: Yes, Commissioners. I'm Marty Friedman on behalf of North Fort Myers Utility.

And it was after much negotiation and give-and-take that the Office of Public Counsel and North Fort Myers entered into a Settlement Agreement that was accepted by the homeowners association and its utility committee and those -- that person and those entities signed on that agreement.

As we stand here today, as Mr. Shreve stated, Public Counsel still stands behind the

Settlement Agreement, and, in fact, there is no legitimate basis for either the homeowners association or office of Public Counsel to withdraw from the Settlement Agreement. I've cited some case law in my posthearing statement for that fact.

In fact, if you read and hear the testimony, Mr. Burandt, attorney Burandt, who represents the homeowners association in a civil case down there, testified that, as you will recall, he liked Mr. Ludington's proposal better. But if they couldn't get Mr. Ludington, or couldn't get you all to accept Mr. Ludington's proposal, that they would accept the Settlement Agreement that Office of Public Counsel entered into.

And the question becomes whether the intervenors have presented any competent and substantial evidence in opposition to this Settlement Agreement. Because the law obviously favors settlement agreements. And I would suggest to you that they have not presented any evidence that is contrary to the fact that that Settlement Agreement is in the public interest. Generally what they have done is supported the proposed settlement offer by Mr. Ludington. And I have, in my brief, discussed in detail the reasons why that settlement proposal won't

work. And I'm just going to hit the highlights today.

First of all, MHC isn't a party. The mobile home park owner, under Mr. Ludington's proposal, would have certain obligations, and MHC isn't a party to this and I don't think that the Commission can adjudicate its rights without it being here. Also Mr. Ludington's proposal would require the Commission to ajudicate issues under Chapter 723.

The principal issue is was it proper for MHC to transfer the -- providing wastewater service to outside provider? That's an issue that's decided under Chapter 723, with the two issues being number one, did they -- "they" being the mobile home park -- reduce the rent sufficiently? And that's an issue that this Commission has specifically entered an order saying "That's not our jurisdiction."

The second issue is the pass-through was the taking off line of the plant governmentally mandated. That's not an issue you determined either. That is an issue that is for the courts to determine.

And this Commission doesn't have the authority to say whether or not that assignment of the pass-through charge by MHC to North Fort Myers is appropriate or whether we can collect it. That's an issue under Chapter 723, and I don't believe that this

Commission can tell North Fort Myers you cannot collect that charge that was assigned to you under Chapter 723. The authorities that Mr. Ludington's proposal has, the Part B, a bulk customer, while North Fort Myers continues to own, operate and maintain at its expense the on-site system. And that obviously would result in North Fort Myers and all of its other customers paying for the operation of the system but the residents of Buccaneer Estates not paying for anything for the maintenance of that system.

As Mr. Reeves testified, the only times North Fort Myers has a bulk customer is if, number one, there are no individual meters on the mobile homes, and number two, if the park continues to maintain and operate the on-site system. Neither of those elements are present here. And I think it's obvious as to why that policy is in place. I mean, if there were individual meters, then we should encourage conservation by billing those people on their individual meters.

The Commission has approved in the past -- and I don't recall whether this panel was on those cases or not -- but a number of cases that the Public Counsel has intervened in opposition to, which are, in effect, no different than these. And in each of those

cases the Commission said it's in the public interest to go with a large centralized regional system rather than have a proliferation of smaller systems.

I don't know -- this case has had a lot of antagonism, as I'm sure you all could glean from the hearing, and we need to put that behind us.

I would conclude with Mr. Burandt's testimony on Page 80 of the transcript, the attorney, where he said "Obviously we would all rather see you agree with us and go with Mr. Ludington's proposal instructing North Fort Myers Utility to bill MHC, or its affiliates, directly." That's our first choice. And I suggest to you that option is not available for the reasons that I've stated.

"If we can't have that," Mr. Burandt stated, "then we'll go back to our second choice which was the agreement that the Office of Public Counsel signed with North Fort Myers."

I would suggest to you that at the last minute Mr. Burandt was trying to get a better deal for his client by suggesting what have we got to lose by going about Mr. Ludington's proposal. Even if the Commission doesn't accept it, we still have this one that the Public Counsel negotiated in the back pocket.

The OPC-North Fort Myers Settlement

Agreement that was signed off by the homeowners association provides a fair and equitable conclusion in this matter. It resolves this matter with finality so that those residents can get on with their lives. This issue has caused a lot of infighting among the park as --

COMMISSIONER DEASON: Mr. Friedman, you have thirty seconds.

MR. FRIEDMAN: And that's all I need, thank you.

North Ft. Myers has been more than adequately penalized for its mistake. The residents under the Settlement Agreement would not have to pay the pass-through charge for the service availability charge, and nor would this Settlement Agreement affect their contract rights if Mr. Ludington and these intervenors believe that they have contract rights against MHC, we specifically made sure that this agreement didn't impair that. And, finally, it resolves the never popular issue of surcharges.

Thank you very much.

COMMISSIONER DEASON: Thank you.

Ms. Brubaker, do you have any concluding thoughts of how we're going to proceed from this point?

MS. BRUBAKER: I suppose it's at your discretion, Commissioner.

Staff has intensively examined the hearing transcripts and exhibits and has some preliminary notes drafted. If as a matter of comfort an outline would be of help to the Commissioners, Staff is certainly willing and, I think, able to proceed to giving an oral recommendation at the conclusion of today's agenda conference. If it's the panel's preference, however, a written recommendation can certainly be made also.

COMMISSIONER DEASON: Commissioners, I'm certainly open to suggestions as to how we proceed from this point.

COMMISSIONER CLARK: Ms. Brubaker, I guess I would like to see an outline, if you can put one together, that you give to us at the conclusion while you're giving your oral recommendation.

MS. BRUBAKER: Certainly.

COMMISSIONER JACOBS: And I'd like to see included in that some of the arguments on the merit for transferring this territory.

MS. BRUBAKER: Absolutely. And, of course, we haven't produced anything given that we would hear closing arguments today, that might influence what our

recommendation would be.

COMMISSIONER DEASON: Very well. So I think it would be necessary then to continue this hearing until, say, 15 minutes after the conclusion of today's agenda conference. Is that acceptable? Okay.

MS. BRUBAKER: Commissioner, I just would like to clarify, since we're in the recommendation phase of this proceeding, that participation would be limited to Staff and the Commissioners only at that point.

COMMISSIONER DEASON: Yes, that would be correct. Mr. Ludington, you have a question?

MR. LUDINGTON: Would you have any idea what time of the day this might occur?

COMMISSIONER DEASON: (Chuckling) There's a large room full of people -- and there was a little bit of a chuckle. Our agenda conferences can last one hour or ten hours, and they have been known to be anywhere in that range. I wish I could give you a time certain.

MR. LUDINGTON: You've got a pretty big plate today, have you?

CHAIRMAN GARCIA: 58 items.

COMMISSIONER DEASON: Yes, sir. This is it here (Indicating).

MR. LUDINGTON: We'll hit the road. Thanks.

COMMISSIONER DEASON: I wish I could be more helpful but I can't be.

Okay. With that, then, this hearing will be continued until 15 minutes after the conclusion of today's agenda conference.

(Recess taken at 3:35 and recovened.)

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COMMISSIONER DEASON: Call the hearing back to order. Okay. Ms. Brubaker, where are we at this point?

MS. BRUBAKER: Commissioners, at this point Staff is prepared to give its recommendation with respect to this docket. We can proceed orally. As we discussed, we provided, for your reference, a brief outline of the points Staff intends to recommend.

COMMISSIONER DEASON: Okay. Please proceed.

MS. MESSER: Commissioners, we did issue an order based on the Prehearing Order. The first issue being should the stipulation between the Office of Public Counsel and North Fort Myers be approved.

Our recommendation is that the proposed settlement of the Office of Public Counsel in North Fort Myers should be approved. And the merits of the Settlement Agreement with respect to public interest

considerations will be discussed with respect to Issue 5. We didn't get into that right here at this issue.

But essentially as you know what happened is that OPC originally was asked to represent the homeowners association and enter into the proposed Settlement Agreement. At the hearing OPC as informed that the association no longer supported the proposed settlement and asked OPC to withdraw its support of the agreement. The hearing did continue and elements of the proposed settlement, as well as the settlement of proposal of Customer Ludington, were discussed. And, finally, in their briefs and oral argument today, OPC clarified its support of the original proposed settlement, and North Fort Myers also reaffirmed its support of that settlement. And Staff believes that this agreement is the most appropriate and reasonable solution to the present situation, but --

COMMISSIONER CLARK: I assume that Public Counsel has conferred with his clients and that he is making this representation based on the advice and desires of his clients.

MS. BRUBAKER: Yes, that's correct.

MS. MESSER: You may -- since 1 and 5 are related --

COMMISSIONER CLARK: You're recommending that we adopt 1 because of your recommendation in 5. You believe it is in the public interest and, therefore, we should accept the stipulation.

MS. MESSER: That's correct. You may want to defer your decision until after we go over some of the points in 5.

COMMISSIONER DEASON: Why don't we just go right into Issue 5.

MS. MESSER: Okay. Issue 5 is, of course -- is the transfer of the wastewater operations of Buccaneer Estates to North Fort Myers in the public interest. And the Staff does believe that it is in the public interest under the criteria of the proposed stipulation between the Office of Public Counsel and North Fort Myers Utility, with the clarification that the Commission has the authority to impute CIAC for ratemaking purposes in the future. No language in the stipulation agrees to the prohibition of imputation of CIAC by the Commission in the future.

Now, what we did -- well, we laid out for you is, of course, essentially there were two proposals in front of the Commission. There was the proposed settlement between OPC and North Fort Myers, and that included, briefly, that North Fort Myers

would bill the customers within the park for service rendered from September 1, 1999, based upon their residential rate schedule. And that water would be -- water information would be received from Buccaneer Water Company. That they waived -- North Fort Myers waived its right to collect service availability charges from the customers in Buccaneer Estates, and also to collect any pass-through charges from the residents, holding the residents forever harmless from the payment of any pass-through charges potentially collectible under Chapter 723. The residents would not pay for wastewater service through August 31, 1999, and the agreement does not affect the rights of the residents to pursue their contract rights against the park owner under Chapter 723.

And lastly it stated that the Order to Show Cause against North Fort Myers should be dismissed without penalty.

The other proposal before the Commission that was discussed at the hearing was offered by Customer Ludington. And his proposal basically suggested that North Fort Myers collect from the park owner any monies for monthly service charges, and that the park owner enter into a general service arrangement with North Fort Myers to accomplish that.

That North Fort Myers would agree to forgo the collection of any service availability charges or monthly service charges that it thought were to be collected through clauses in the developer's agreement signed in 1998 with the park owner. That North Fort Myers agreed that it had the right to obtain water readings from Buccaneer. That Mr. Ludington would abide by these conditions as long as the Commission rendered them in the public interest. That North Fort Myers agreed now, and in the future, not no affect the rights of the residents in pursuit of contract rights granted them under 723. That the Show Cause Order should be dismissed without penalty. And North Fort Myers Fort Myers was the sole owner of the wastewater collection. And it's important to go through -- or to identify each of those items for future discussion.

There were some other issues that were brought up as a result of Mr. Ludington's proposal, and that was discussed at hearing, that we thought was important to be addressed in the recommendation. And those are what is the Commission's authority to review and approve utility rates to the park customers who previously have been operating under the umbrella of Chapter 723, and a question about who would be

identified as the customer in this dispute since the park owner originally assigned its utility service rights to North Fort Myers, and arguably was a customer who should then have to pay for service.

Can the customer order the park owner to continue to be responsible for utility service? And did the park owner improperly or prematurely dismantle the plant?

What we've attempted to do is to try and address each one of those points first. Because, as I said, we just felt that those were outstanding issues from the hearing that needed some kind of closure if we could come to a public interest affirmative decision.

So with respect to the first point, which was what the Commission's authority to review and approve the rates to the park's customers who previously had been operating under the umbrella of Chapter 723. The Commission's regulatory responsibility supersedes any contractual arrangements previously regulated under Chapter 723 when it relates to the provision of utility service. And this has been previously upheld in many cases before the Commission. And you may note, as you go through this, that there are some -- there are transcript cites for

your information. But that was a spot where we entered the previously -- the previous orders of the Commission with respect to this issue.

Mr. Ludington, Customer Ludington this morning referenced the case of H. Miller & Sons as a source of authority for the Commission to use with respect to asserting its jurisdiction over the park owner. And I believe he was talking about in all manners with respect to their case in the Circuit Court. And H. Miller & Sons is not on point with respect to the authority of the Commission in regulating utility service that had been previously provided under contract by a mobile home park. H. Miller refers to the timing and application of service availability charges when the utility's charge is changed between the time a developer initially contracts with the utility for service and the time when the developer connects to the utility. We just wanted to address that point.

The second point that was the subject of much discussion at the hearing from the customers was who should be identified as the customer in this dispute since the park owner had the assignment agreement with North -- with North Fort Myers Utilities. And that was a very interesting issue. I

think it's an important point. And there isn't really a specific record on that question. The question was just brought up at the hearing. But the Staff believes that the answer lies in the combination of looking at our definitions from the rules and what they imply. And also some decisions that the Commission has made with respect to interpreting those rules and those were the BSU orders that are referenced and you were given copies of.

Rule 25-30.210(1) from the Florida Administrative Code defines "customer" as "any person, firm, association, corporation, governmental agency or similar organization who has an agreement to receive service from the utility. And with just that reading of it, I think that it does leave a question as to whether or not, perhaps, the Witness Burandt's argument was a valid argument; that North Fort Myers had entered into a contract with the park owner and, therefore, the park owner was the customer. But we have other rules that work in combination with that rule.

"Meter" is defined as "any device that's used to measure service rendered to a customer by a utility." A "service connection" means "the point of connection of the customer's piping with the meter or

service pipe owned by the utility." And both of those definitions are definitely focussing on that point of connection of the meter and the customer. And in that case that would be the residents of the mobile home park and not the park owner.

But the Commission has had an opportunity to evaluate this concept of who is the customer in the case where you have a park owner who owns the land, but the residents own their mobile homes, and whether or not, you know -- from the utility's perspective, who is considered the customer? Is it the park owner who owns the land, or is it the customer who has the meter at their house even though they don't own the land?

And the Commission did this in two dockets, or one docket resulting in two orders. It was a different case. Bonita Springs is a nonprofit utility that operates in Lee County and they were found exempt for water service in 1971 and wastewater service in 1991 based on the fact that they qualify as a nonprofit entity.

A customer mobile home park was protesting the fact that although they were individually metered -- customers within the mobile home park, not the mobile home park owner -- was raising a flag to

the Commission because they said they are individually metered and yet they weren't being given the right to vote as a member in the Bonita Springs co-op. And so the Commission investigated and looked into that.

And the result was because the utility was directly billing the customers, because the customer of record with the utility was the entity being billed, not the park owner, the Commission found that unless BSU changed their bylaws to allow those individuals to vote, that they would be considered -- they would be operating outside of their nonprofit exemption and they would have to come in and be regulated.

The Staff believes that those principles are essentially what we have in this case. And that is the argument that Witness Burandt was attempting to make in this case.

And we believe that the customer at issue in this hearing are the tenants of Buccaneer who are each individually metered and receive service directly from North Fort Myers Utility. Also, that the relationship between the utility and its customer in this case should be between North Fort Myers and the residents of Buccaneer Estates, not the park owner.

The third point that was brought out by

customers at the hearing was whether the Commission can order the park owner to continue to be responsible for utility service. And the Staff notes that this morning one of the closing arguments of Mr. Ludington was with respect to what the utility's tariff stated, and which rates it thought were the most appropriate rates to be applied. And Staff believes that the residential rate structure is the most appropriate rate to be applied.

North Fort Myers Utility's tariff has three different rate schedules: A general service residential -- a general service schedule, a residential service and multi-residential service.

Multi-residential service is for service to all master metered residential customers including mobile home parks, and it has some other folks listed there. I'm just focussing in on mobile home parks. It identifies a rate to be applied to the number of units behind the master meter.

Residential service is for service for all purposes in private residences and individually metered apartment units. This rate is identified by meter size and includes a wastewater cap, which is the norm for residential service.

The general service rate is for service to

all customers for which no other schedule applies and is a rate based on meter size but with no wastewater cap. This is to recognize that most commercial customers return almost all of the water used back into the wastewater collection system rather than use it for irrigation or other nonreturnable uses.

The Staff believes that in reviewing that information it's clear that the residential -- the residential service schedule is the appropriate schedule to be applied in this case. The homes are individually metered, and the cap will apply, which will reduce the total potential bill to customers. And there was one customer, in particular, who expressed a concern about having to pay for wastewater -- or actually -- what the impact of having a wastewater charge would be because of water usage. And that's the intent of having the cap is to help recognize that there is an distinction between the two kinds of service.

Another point about whether or not --

COMMISSIONER JACOBS: Excuse me. There was another point. I don't know whether it's intended to relate to that one.

Many of the customers said that because of the requirements of the park upkeep, that they were

required to use a lot of water for lawns and so forth, and wanted to be able to -- and wondered if that had been taken into consideration in these charges. Do you know -- first of all, do you know if that was taken into consideration? Second of all, it wasn't related to the wastewater deal, was it?

MS. MESSER: I know that the utilities -- that the rate structure for residential wastewater service is always designed to help mitigate the fact that some water is not returned to the collection system and help sort of diffuse that impact. And in this case, the utility does have a cap at 10,000 gallons. So those customers -- in other words, those customers wouldn't be billed any more than what their wastewater bill would be at 10,000 gallons.

COMMISSIONER JACOBS: Okay.

MS. MESSER: Another point on -- with respect to whether the Commission can order the park owner to provide the service was whether or not -- excuse me, was the point that neither the residents or the park owner owned the collection system within the park, which is commonly the case when a master meter is used. North Fort Myers already purchased the collection system which is the topic of Issue 4.

Further, in all cases where North Fort Myers

provides bulk service, there is a master meter and no individual billing of customers that have separate meters. And further, the Staff has legal concerns about whether the Commission could require ordering such an action with a system that had not been regulated by the Commission receiving a certificate since the system had been exempt nor represented by counsel in the proceeding.

The fourth point that was brought up at the hearing by many of the customers was whether or not the park owner improperly or prematurely dismantled the plant.

Some customers recognize that the plant was 20-some years old and did not find the fact that there were problems with the plant extremely surprising. But other that that, the record doesn't specifically address this issue.

The Commission does not regulate the decisions of whether a treatment plant should be decommissioned, the DEP does. And we noted that the customers of the park do still have recourse under Chapter 723 to argue that their rights were violated under their prior contract with the park owner.

COMMISSIONER JACOBS: If I recall, an argument that was raised in conjunction with that is

that if it had not been dismantled, there may have been other options available to deal with the requirement from the county., i.e. they could have done a bulk water agreement. If we conclude that we don't have any jurisdiction over them when the plant was dismantled, does that give us any ability to review -- here's my thought, to be honest with you.

I thought that the customer who gave that testimony was very instructive. And it touched right on the merits of whether or not this was within the best interest of these customers, because it went right to the heart of the issue of had there been adequate notice, had they been given an opportunity at the time these decisions were being made, they could have explored those kind of options and maybe looked at whether or not a bulk water agreement would have been acceptable to the County. And now that's obviously not an option to them.

Do we have the ability to look at that now and assess whether or not there should be some impact? We can give some import to that now.

MS. MESSER: My technical -- maybe we'll do this response in two pieces here. My technical response to that is it's --

COMMISSIONER JACOBS: Water under the

bridge, literally and figuratively.

MS. MESSER: It's water under the bridge. And we have to deal with what the situation is now.

COMMISSIONER CLARK: Yeah. But my concern with that is you encourage parties to take steps to make these issues of water under the bridge. And the fact of the matter is we should have been consulted ahead of time.

MS. MESSER: I don't disagree with that at all. I think that what we have to deal with is the penalty phase at this point.

COMMISSIONER CLARK: Well, I'm not sure I agree with that. And I'm not sure that I agree with all of the rationale you have provided for finding it in the public interest. What I am persuaded by is you have a utility and the representative of the citizens agreeing to the stipulation. Had there not been a stipulation, I think it would be appropriate to further explore whether the transfer is appropriate in the public interest to do that, but it's fraught -- I would acknowledge it's fraught with uncertainty as to whether or not we could reach a conclusion to the effect of forcing the park owner to be in the utility business. And then we'd be in the position of finding someone to provide service.

As I understood it, the park owner clearly did have the ability to assign the right to provide water and wastewater service.

MS. MESSER: Yes. That's my understanding as well.

COMMISSIONER CLARK: And they chose to exercise that. Now, if they did it appropriately, and what damages and remedy might be available to the customers, I think that is a matter for the court to decide.

I'm not willing to concede that if absent a stipulation we would be precluded from saying that this park owner would be a bulk customer, and that we would not allow the transfer to go forward. But we do have a stipulation reached between the parties that reaches a reasonable compromise and it does satisfy the public interest in the sense that we have a company that is in the utility business, wants to be in the utility business and does provide satisfactory financial and technical ability to provide that service. And given the fact that we have a stipulation, I'm willing to move Staff on Issue 1. But I don't want the order to indicate that we -- I don't think it's necessary to reach the issue as to whether we would have the authority, absent a

stipulation, to not grant the certificate because these steps have been taken and it's water under the bridge. I'm not at all sure we couldn't say that's fine, but we still find that they are a bulk customer and the transfer was not in the public interest.

COMMISSIONER JACOBS: First of all, I concur in the sentiments of Commissioner Clark.

If there were any -- absent the complexities that are posed by the interaction here with Chapter 723, and absent the county requirement issue, I would be -- I would really be hesitant -- I have very, very serious concerns about the manner -- I think we probably are arriving at a proper result, but I'm very concerned about the manner by which we get here. And I can't state that too strongly. If I saw any other option here, I don't think I would be looking at this as in the public interest. And probably more poinient than anything I could say was the level of discourse and the honesty of discourse that these customers gave at that hearing.

I saw them struggle to come together in spite of what they clearly understood to be an adverse circumstance. And the thing that impressed me more than anything else about them is that they understood. They understood what happened. They understood why it

was a problem for them and they understood the consequences of this going forward. It was not just people coming and blowing off steam. There were some that did that, but by and large they understood this.

It would be an extremely onerous -- let me just put it this way: If I would have seen this circumstance at the time that this owner was faced with that original letter from the county and we were here, and having seen all the other history of this case, there's no question in my mind what would be my decision. But being here, in present day, I think we do have to take the case as we find it and there are serious complexities.

The customers have options available to them in Circuit Court to address some of the issues that I'm concerned about. And the Courts will have to work those issues out in due course. Having expressed that, I'll go and second the motion.

COMMISSIONER DEASON: The motion then is to approve the stipulation. That is Issue 1. And Issue 5 -- you just want to take up Issue 1 at this time or do you want someone to address Issue 5?

COMMISSIONER CLARK: Yes. Let's do Issue 1. I move Staff on Issue 1.

COMMISSIONER DEASON: There's a second to

that motion.

COMMISSIONER JACOBS: Yes.

COMMISSIONER DEASON: All right. All in favor say "aye." Aye.

COMMISSIONER CLARK: Aye.

COMMISSIONER JACOBS: Aye.

COMMISSIONER DEASON: Show then the motion carries unanimously. Issue 1 is approved.

MS. BRUBAKER: Commissioners, I was just going to ask as a point of clarification whether approval of Issue 1 would render the other issues essentially moot since the stipulation provides for a suggestion of how to settle the case?

COMMISSIONER DEASON: Well, it does, but there are some issues here -- particularly as it relates to Issue 4, which I think we need to address. I'll leave that up to my fellow Commissioners. Do you wish to address the other issues or not? Do you think the Issue 1 is dispositive --

COMMISSIONER CLARK: No. Certainly -- I don't know that it's material to do this, but certainly I would not have approved the stipulation if I didn't believe 2 and 3 were also present. So I'm willing to move Staff on Issue 2 and 3.

COMMISSIONER DEASON: Is there a second?

COMMISSIONER JACOBS: Second.

COMMISSIONER DEASON: All in favor said "aye." Aye.

COMMISSIONER CLARK: Aye.

COMMISSIONER JACOBS: Aye.

COMMISSIONER DEASON: Show then that Issues 2 and 3 are approved unanimously. Issue 4.

MS. MESSER: Commissioners, Issue 4 was necessary because it is a standard issue in transfer cases and we do need to establish some level of rate base for the purposes of transfer.

COMMISSIONER DEASON: And we're just establishing the net book value at this point and any concerns about imputations of CIAC or acquisition adjustments or any of those other things will be preserved for future determination.

COMMISSIONER CLARK: I move Staff.

COMMISSIONER JACOBS: Second.

COMMISSIONER DEASON: It's been moved and seconded. All in favor say "aye." Aye.

COMMISSIONER CLARK: Aye.

COMMISSIONER JACOBS: Aye.

COMMISSIONER DEASON: Show then Issue 4 is approved unanimously. Issue 5.

COMMISSIONER CLARK: I can move Staff on

issue 5 too.

COMMISSIONER JACOBS: I'm choking on this but I'll second it.

COMMISSIONER DEASON: Okay. Issue 5 has been moved and seconded. All in favor say "aye." Aye.

COMMISSIONER CLARK: Aye.

COMMISSIONER JACOBS: Aye.

COMMISSIONER DEASON: Show then Issue 5 is approved unanimously. Issue 6.

MS. MESSER: Issue 6 concerns whether or not North Fort Myers should be fined for their violation of the statute. And the Staff recommendation is that no, North Fort Myers should not be fined because of the combination of foregoing the service availability charges and the past monthly service rates that they would have collected.

MS. BRUBAKER: In addition, it's contemplated under the proposed Settlement Agreement that no show cause should be found.

COMMISSIONER CLARK: Move Staff.

COMMISSIONER JACOBS: Second.

COMMISSIONER DEASON: It's been moved and seconded. All in favor say "aye." Aye.

COMMISSIONER CLARK: Aye.

COMMISSIONER JACOBS: Aye. Show then

Issue 6 is approved unanimously.

And that's all of the issues before the Commission at this time.

There will be an order issued setting forth the Commission's decision; is that correct?

MS. BRUBAKER: That's correct.

COMMISSIONER DEASON: Okay. That will be a final order?

MS. BRUBAKER: Yes. It will issue as final action.

COMMISSIONER DEASON: It would be subject to reconsideration and appeal?

MS. BRUBAKER: Yes.

Just for a matter of the record there was an outstanding motion to implement rates and charges. I believe that motion would have been appropriate if a final decision were not made, but in light of the circumstances, I believe that motion would be moot.

COMMISSIONER DEASON: Yes, that motion would be moot.

MS. BRUBAKER: Thank you.

COMMISSIONER DEASON: Okay. All right. That concludes the hearing for Buccaneer Estates.

(Whereupon, the hearing concluded at 4:10 p.m.)

STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JOY KELLY, CSR, RPR, Chief, Bureau of Reporting, Official Commission Reporter,

DO HEREBY CERTIFY that the Hearing in Docket No. 981781-SU was heard by the Florida Public Service Commission at the time and place herein stated; it is further

CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed by me; and that this transcript, consisting of Pages 208 through 258, constitutes a true transcription of my notes of said proceedings.

DATED this November 29, 1999.

JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
Official Commission Reporter
(850) 413-6732

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State of Florida

Public Service Commission

DCA NO. 1D00-951

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

DATE: October 11, 1999

TO: To All Parties of Record and Interested Persons

FROM: Jennifer S. Brubaker, Senior Attorney, Division of Legal Services JSB

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 take notice, that pursuant to Sections 90.201 and 90.202, Florida Statutes, the Commission Staff requests that the Commission take official recognition of the following documents:

1. Order No. PSC-99-0492-SC-SU, issued March 9, 1999, in Docket No. 981781-SU

2. Order No. PSC-96-1466-FOF-WU, issued December 3, 1996, in Docket No. 960133-WU

3. Order No. 19059, issued March 29, 1988, in Docket No. 871306-SU

4. Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL

5. Order No. PSC-94-0171-FOF-WS, issued February 10, 1994 in Docket No. 930133-WS

6. Order No. 21680, issued August 4, 1989, in Docket No. 88178-WS

7. Public Service Commission v. Lindahl, 613 So. 2d 63 (Fla. 2nd DCA 1993).

8. Cohee v. Crestridge Utilities Corp., 324 So. 2d 155 (Fla. 2nd DCA 1975)

JSB/lw

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

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 981781-SU EXHIBIT NO. 1
COMPANY/ WITNESS: FPSC Staff
DATE 10-13-99

By ORDER of the Florida Public Service Commission this 9th day of March, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment of Certificate No. 247-S to extend wastewater service area by the transfer of Buccaneer Estates in Lee County to North Fort Myers Utility, Inc.

DOCKET NO. 981781-SU
ORDER NO. PSC-99-0492-SC-SU
ISSUED: March 9, 1999

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE AND ORDER DENYING EMERGENCY MOTION TO IMPLEMENT RATES AND CHARGES

BY THE COMMISSION:

BACKGROUND

North Fort Myers Utility, Inc. (NFMU or utility) is a Class A utility located in Lee County which provides only wastewater service. According to the 1997 annual report, the utility has 5,753 wastewater customers and reported operating revenues of $1,958,553 and a net loss of $598,220.

On or about August 24, 1998, NFMU executed a Developer Agreement with the owners of Buccaneer Mobile Estates, MHC-DeANZA Financial Limited Partnership (Park Owner) and Buccaneer Utility (Buccaneer). This Developer Agreement was filed with the Commission on September 4, 1998, and deemed approved by the utility on October 4, 1998 pursuant to Rule 25-30.550, Florida Administrative Code.

Buccaneer consists of 971 manufactured home sites which had previously received wastewater service from the Park Owner as part of the lot rental amount. Pursuant to a letter dated May 14, 1976 from the Florida Public Service Commission, the provision of service in this manner rendered the wastewater utility system exempt from regulation pursuant to Section 367.022(5), Florida Statutes.

Water service to Buccaneer is provided by Buccaneer Water Service, a PSC regulated utility. The water utility purchases its water from Lee County Utilities, and

therefore, does not have a water treatment plant. All tenants are charged metered rates for water, pursuant to Order No. PSC-96-1466-FOF-WU, issued December 3, 1996.

On November 23, 1998, Buccaneer's existing wastewater permit expired. NFMU connected to Buccaneer on November 24, 1998. On December 1, 1998, NFMU filed an Application for Amendment to Certificate of Authorization to include the wastewater service area of Buccaneer. On December 7, 1998, NFMU filed an Emergency Motion to Implement Rates and Charges with respect to the interconnection of existing wastewater customers within the Buccaneer Estates mobile home community to NFMU. On December 9, 1998, NFMU responded to a staff request for additional information on the mandatory connection of Buccaneer, with a letter referencing various parts of Chapter 723, Florida Statutes.

On December 10, 1998, NFMU mailed the notice to customers which stated that utility service had been assigned to NFMU, that connection fees would be collected, and that effective December 1, 1998, the utility would begin billing for monthly service and the lot rent would decrease by a specific amount.

On December 18, 1998, numerous customer protests concerning the application of NFMU's monthly rates and connection fees were received by the Commission. On December 21, 1998, the Office of Public Counsel (OPC) filed a Response to the Emergency Motion to Implement Rates and Charges.

This matter is set for hearing September 14 and 15, 1999. This order addresses whether a show cause proceeding should be initiated with respect to the utility's interconnection of Buccaneer without prior Commission approval and the utility's emergency motion to implement rates and charges.

SHOW CAUSE

Section 367.045(2), Florida Statutes, requires that no utility delete or extend its service outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the Commission. As stated earlier, NFMU extended its service to Buccaneer customers without Commission approval on or about November 24, 1998. This is an apparent violation of 367.045(2), Florida Statutes.

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than $5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, Florida Statutes.

Earlier, we state the recent series of events surrounding this interconnection. There is, however, a long history between the two utilities with respect to interconnection, dating back to as early as 1987. The earlier events are relevant to our decision to issue an order to show cause.

On November 10, 1987, NFMU filed a notice of intent to extend sewer service in Lee County with the Commission. Order No. 19059, issued March 29, 1988, noted that because NFMU withdrew the territory description which included Buccaneer from its application, the objections were withdrawn, and the territory was excluded.

On January 14, 1991, the Board of County Commissioners of Lee County enacted Ordinance No. 91-01, requiring mandatory interconnections to central sewer systems within 365 days after notification that collection lines have been installed abutting the territory. By

letter dated November 18, 1996, the utility contacted the Park Owner, indicating that the utility had contacted them on numerous occasions regarding the Ordinance. The letter again informed the Park Owner of the ordinance and stated that the utility was ready, willing, and able to serve the park. By letter dated November 19, 1997, the utility strongly encouraged the Park Owner to allow Buccaneer to interconnect with the system, citing numerous environmental problems that Buccaneer's sewer system was experiencing.

The Department of Environmental Protection (DEP) issued a proposed consent order on June 10, 1998, which was not signed by the Park Owner or the residents of Buccaneer. DEP's consent order gave the Park Owner the option to fix all of the problems with Buccaneer wastewater system within 90 days of the date of the proposed consent order, be in full compliance with respect to the wastewater treatment plant and disposal system pursuant to Chapter 403, Florida Statutes, or connect to a regional sewer system. The Consent Order also indicated that Buccaneer would be required to pay $10,500 in penalties.

Since both the Park Owner and Buccaneer declined to sign the consent order, the order had no force or effect against the wastewater plant. Buccaneer's five-year operating permit was up for renewal in 1998, and it appeared it would take a fair amount of investment to correct the problems at the plant.

NFMU continued to encourage Buccaneer's interconnection with the system, which resulted in a contract entered into by the parties on or about August 24, 1998, and filed (inappropriately) as a Developer Agreement on September 4, 1998. The Agreement included a copy of a notice to customers, stating that because the Park Owner assigned the right to serve the Park via developer agreement, it would be billing the customers directly. Therefore, some customers of Buccaneer Estates began signing up for wastewater service by NFMU.

The utility's motion suggests that both the utility and our staff believed that the developer agreement filed on September 4, 1998, met our requirements of Section 367.045(2), Florida Statutes. OPC suggests in its Response to the utility's motion, that the utility's position is disingenuous owing to the amount and length of communication between the utility and the Park, as well as its apparent knowledge of our Statutes and Rules. We agree. Our staff's review of the agreement focused on the contractual language, and not on whether the "developer" (in this case, Buccaneer) was within the NFMU service area. The very nature of a developer agreement assumes the party contracting for service is within the utility's current territory. The purpose of filing a developer agreement with us pursuant to Rule 25-30.550, Florida Administrative Code, shall not be used to obfuscate the Commission's process by, in effect, having an amendment, transfer, sale, or assignment approved administratively, without a public interest determination as mandated by 367.045 and 367.071(1), Florida Statutes.

NFMU has been communicating with Buccaneer since 1987. According to document filings, the utility has encouraged Buccaneer to interconnect pursuant to Lee County Ordinance 91-01, since the Ordinance's enactment. The utility increased its communication in 1997 when Buccaneer's wastewater treatment plant began experiencing operational problems.

In a letter dated December 9, 1998, the utility informed our staff that its law firm informed the members of Buccaneer that it was invoking the provision of a Lee County Ordinance 91-01 "requiring mandatory hook-ups to central sewer systems when they are

available to property previously served by an on-site disposal system." This "hook-up" has resulted in two dozen protests and OPC's intervention.

We considered whether circumstances existed to mitigate the utility's actions. We find that there are no mitigating circumstances. The utility actively encouraged the interconnection over many years. The interconnection was not actually an emergency event. The utility could have filed an application for amendment of its service territory pursuant to 367.045(2), Florida Statutes, prior to interconnecting the mobile home park. In fact, as OPC stated, the only emergency that exists, is one created by the utility from the illegal connection of Buccaneer to its system.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's extension of territory without Commission approval, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TI, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Failure to obtain approval of the Commission prior to serving territory outside of its certificate is an apparent violation of Section 367.045(2), Florida Statutes. Therefore, NFMU is ordered to show cause, in writing, within 21 days, why it should not be fined $5,000 for an apparent violation of Section 367.045(2), Florida Statutes.

NFMU's response to the show cause order must contain specific allegations of fact and law. Should NFMU file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to Section 120.57(1), Florida Statutes, a further proceeding will be scheduled before a final determination of this matter is made. Alternatively, if the utility files a response that raises questions of fact and law, the issues could be addressed in the hearing already scheduled in this docket. A failure to file a timely written response to the show cause order shall constitute an admission of the facts herein alleged and a waiver of the right to a hearing. In the event that NFMU fails to file a timely response to the show cause order, the fine is deemed assessed with no further action required by the Commission. If the utility responds timely but does not request a hearing, our staff shall prepare a recommendation for our consideration regarding the disposition of the show cause order. If the utility responds to the show cause by remitting the penalties, the show cause matter shall be considered resolved.

EMERGENCY MOTION TO IMPLEMENT RATES AND CHARGES

Prior to November 24, 1998, Buccaneer provided wastewater service as a part of its lot rental amount and as such, was an exempt entity, pursuant to Section 367.022(5), Florida Statutes.

On December 7, 1998, NFMU filed an Emergency Motion to Implement Rates and Charges, wherein it seeks to implement its rates and charges, subject to refund, during the pendency of this proceeding. On December 21, 1998, the OPC filed a Response to the Emergency Motion to Implement Rates and Charges.

In support of its December 7, 1998 Emergency Motion to Implement Rates and Charges, NFMU states that if the amendment application is protested, it could take twelve to eighteen months before a final resolution, during which time a significant amount of revenue will accrue. As a result, residents might have to make a substantial payment at the conclusion of the proceeding and NFMU is in the position of providing service for zero compensation until we make a decision. As further explanation, NFMU states that Buccaneer was not in compliance with environmental regulations and had been ordered to interconnect with NFMU. Subsequently, pursuant to Chapter 723, Florida Statutes, Buccaneer passed through to the residents the service availability charges it was obligated to pay to NFMU and NFMU and Buccaneer initially codified this arrangement in a Developer Agreement entered into on August 25, 1998. According to NFMU, the developer agreement authorized NFMU to be the agent for Buccaneer in the collection of these charges from the residents. Buccaneer residents were notified as of December 1, 1998, that they were to pay NFMU the service availability charges and monthly rates pursuant to NFMU'S tariff.

In its December 21, 1998 Response, OPC basically states that NFMU was not ordered to interconnect the Buccaneer wastewater facility and is inappropriately seeking relief from us (via the emergency motion) concerning the imposition of capital costs or utility charges upon the lessees of mobile home lots (and not property owners). OPC states that those matters should be resolved in Circuit Court, pursuant to the requirements of Chapter 723, Florida Statutes. In support of its allegations, OPC states that:

1. The park residents of Buccaneer should continue to pay the flat rates under the terms of its landlord/tenant contract pursuant to Chapter 723, Florida Statutes, and should not be expected to pay any money to NFMU, since Buccaneer is not located within NFMU's service territory; and

2. the various lease agreements include the lifetimer lease agreements which have special obligations placed on Buccaneer and all of these disputes should be resolved in the Lee County Circuit Court since it is not within the jurisdiction of this Commission to determine if, under the facts of this case, the Park Owner can impose a pass-through charge to his lessees under Chapter 723, Florida Statutes, or if under Chapter 723, the Park Owner has properly abrogated his responsibilities to his lessees to provide wastewater service.

Jurisdiction to Rule on Emergency Motion to Implement Rates and Charges

We have the jurisdiction to entertain the utility's emergency motion to implement rates and charges. Whether we should, as a matter of policy, grant the petition, is discussed in greater detail below. Section 367.011(2), Florida Statutes, provides that the Commission "shall have exclusive jurisdiction over each utility with respect to its authority, service, and

rates." Additionally, Section 367.011(4) Florida Statutes, states that Chapter 367, Florida Statutes "shall supersede all other laws on the same subject." NFMU is a utility within the jurisdiction of the Commission. As such, we are statutorily obligated to set fair, just, and reasonable rates and charges for NFMU. For Chapter 723, Florida Statutes, to have any effect on our determination of appropriate rates and charges, the Legislature would have to have enacted it after Chapter 367, Florida Statutes with "express reference" to supersede Chapter 367 Florida Statutes. No express reference exists in Chapter 723, Florida Statutes.

Coincidentally, we previously considered this issue in Docket No. 960133-WU, Order No. PSC-96-1466-FOF-WU, issued December 3, 1996, Application for Staff-Assisted Rate Case in Lee County by MHC-DeANZA Financing Limited Partnership d/b/a Buccaneer Water Service, for the Buccaneer water system. There, the customers objected to a change in rates by the utility, because there were various lease agreements between the lessees and the Park Owners (lifetimers and non-lifetimers) which provided for either no charge, or a charge lower than the tariffed utility rate. The customers believed that requiring the utility to charge the approved tariffed rates to all customers would exceed the lease agreement contractual rates and force a breach of contract

We found that we have the authority to allow the implementation of nondiscriminatory rates, which superseded the existing contractual arrangements authorized under Chapter 723, Florida Statutes. Further, we found that this action placed all customers of Buccaneer Water on equal footing.

Order No. PSC-96-1466-FOF-WU contained a thorough discussion of our authority to approve nondiscriminatory utility rates, which supersede existing contractual arrangements authorized under Chapter 723, Florida Statutes. The issue of whether the contract takes precedence over our statutes has also been considered by the Courts. In Cohee v. Crestridge Utilities Corp., 324 So.2d 155 (Fla. 2nd DCA 1975), the Court stated that:

> [D]espite the fact that Crestridge had a pre-existing contract concerning its rates, now that Crestridge is under the jurisdiction of the Public Service Commission, these rates may be ordered changed by that body. The Public Service Commission has authority to raise as well as lower rates established by a pre-existing contract when deemed necessary in the public interest. State v. Burr, 1920, 79 Fla. 290, 84 So. 61.

The Court also stated, after setting out the full text of Section 367.081(2), Florida Statutes, that ". . . it would appear that the Commission would not even be authorized to take into consideration the pre-existing contract in its determination of reasonable rates."

We have determined in similar situations that a pre-existing contract is not determinative in setting rates for a utility under our jurisdiction. It has the authority to set rates which we find to be in the public interest, even if they are contrary to a contractual agreement. See Order No. PSC-94-0171-FOF-WS, issued February 10, 1994 in Docket No. 930133-WS (In re: application for water and wastewater Certificates in Lake County by Lake Yale Corporation d/b/a Lake Yale Utility Company). See also Order No. 21680, issued August 4, 1989 (In re: application of Continental Country Club, Inc., for an increase in water and wastewater rates in Sumter County) In a case involving Shady Oaks Mobile-Modular

Estates, the Second District Court of Appeal, citing past precedent, held that the Commission's authority to set rates preempted contractual agreements which had set rates based upon a yearly fee. Public Service Commission v. Lindahl, 613 So.2d 63 (Fla. 2nd DCA 1993).

In consideration of the foregoing, we have the jurisdiction to act on the utility's emergency motion. Our determination, however, does not stop there. NFMU connected the Buccaneer facility without prior approval and as such, has no approved rates. It is, however, providing service. Therefore, we find it appropriate for us to consider whether it is appropriate to grant, as a matter of policy, some or all of the utility's motion.

Connection Charges or Pass-through Charges

The initial developer agreement included the contract provisions detailed in the Assignment and Assumption Agreement between NFMU and the Park Owner with respect to the collection of pass-through or connection charges. In this Assignment agreement, the Owner of Buccaneer Estates mobile home park assigned to NFMU, all of the Owner's right, title and interest in and to the pass-through charges. The result of this assignment was that the Owner would pay to NFMU the total amount of pass-through charges to connect to NFMU. The pass-through charges identified under Chapter 723, Florida Statutes, equate to the connection fees or service availability charges identified in a utility's tariff, pursuant to Chapter 367, Florida Statutes.

Concurrent with this payment, the Owner was to deliver written notice of the pass-through charge to the residents of Buccaneer, and also assign to NFMU the right to collect those charges from the residents. In consideration of this assignment, NFMU agreed to pay to the Owner, the total the total connection cost for all 971 lots of $448,602 at the time the developer agreement was executed (about August 24, 1998), and the estimated value of the collection lines ($139,987) ninety days after delivery to the residents of the Pass-Through Notice by the Owner (December 10, 1998).

The Pass-Through Notice stated that the Owner had agreed to pay the Total Connection cost to NFMU in advance on behalf of the residents of Buccaneer, subject to the obligation of the Residents to repay that amount. Each Resident will have the option to pay the per site connection cost either (i) in a single lump sum payment of $462 on or before December 1, 1998, or (ii) in monthly installments of $7.01 each (which includes interest on the unpaid balance of the per site connection cost at the rate of 10% per annum) on the first day of each calendar month over the eight-year period commencing December 1, 1998 and continuing through November 30, 2006. Further, the utility was to begin charging its monthly service rates to the customers as of December 1, 1998.

Also effective December 1, 1998, the monthly base rent payable under each resident's lot rental agreement was reduced by $6.07. This average monthly cost was determined by averaging, on a per month basis, the cost to the Owner of providing wastewater service to Buccaneer over the last twelve months.

In its Emergency Motion, the utility alleges its right to collect the pass-through via the Assignment Agreement, and further stated that it was authorized to do so when required by a governmental body to connect, pursuant to Chapter 723, Florida Statutes. OPC alleges

that NFMU was never "ordered" to interconnect. In addition, OPC states that NFMU's request to us for relief is inappropriate and should be resolved in circuit court, because it relates to circumstances and actions outlined in Chapter 723, Florida Statutes. These circumstances include the idea that the customers of Buccaneer are lessees and not lot owners, and that we cannot determine whether the Park Owner can impose a pass-through charge to his lessees.

Our staff informally requested a copy of any such order to connect from a governmental entity, but was instead provided references to various sections in Chapter 723, Florida Statutes in a letter dated December 9, 1998. The staff also spoke informally to the local Department of Environmental Protection (DEP) engineer, and was told that the DEP did have a proposed consent order. While DEP had not forced the system to connect, the disposal system was failing and Buccaneer was out of compliance with its permit. The DEP engineer further explained that the usual process was for the utility to obtain the letter or proposed consent order from the DEP, then present it to the city or county. Then, the city or county "activates" the local ordinance requiring interconnection to a regional system.

At this time, it does not appear that an order from the local government has been issued to require interconnection of Buccaneer to any other system. Although both parties have stated that the provision for a pass-through of connection fees is outlined in Chapter 723, Florida Statutes, the staff believes that this is not clear and would be a subject for the hearing. We note that OPC attempts to make a distinction between the customers of Buccaneer Utility and the lessees with the Park Owner, however we have made no such distinction in evaluating the appropriate water rates for the utility. Further, the staff believes that the Commission does have the jurisdiction to evaluate the appropriateness of collecting the charge, contrary to OPC's arguments.

Since the origin of the language requiring an interconnection of mobile home parks and collection of pass-through charges is not clear at this time, and OPC has alleged that we cannot impose a connection fee on lessees (as opposed to lot owners), we find it inappropriate to approve a connection fee at this time. The customers have requested a hearing in this docket. As such, all of these issues shall be fully explored at the September 14-15, 1999 hearing. In addition, NFMU has illegally connected the customers to its service, thus reserving the issue of collecting connection fees until the hearing sends an appropriate signal to the utility.

Monthly Service Rates

NFMU stated in its Motion that the customers of Buccaneer were now receiving service from NFMU, and had been notified to remit payment to NFMU for monthly service, starting December 1, 1998. If its Application to Amend Territory was protested, twelve to eighteen months could pass without the it receiving any revenues. Each resident could end up being required to make a substantial payment at the conclusion of the proceeding.

OPC's Response seems to suggest that, if we act on this request, during the pendency of the docket, NFMU should collect bulk service charges from the Park Owner for service to the Park, until the Commission determines whether it is in the public interest to serve the

Park. Further, the residents of the Park should pay the old flat rate for monthly wastewater service.

The foregoing notwithstanding, NFMU interconnected the park without our approval and we believe the legal obligation to serve the residents of Buccaneer remains with the owner. NFMU has not followed our process to establish itself as the legal entity to provide service to Buccaneer. NFMU should look to the Park Owner to pay the bulk rate or whatever is fair an reasonable to make sure that service is provided. Until we determine that it is in the public interest that this transfer takes place, that is when we will determine what a fair, just, and reasonable rate is. To do otherwise would send a mixed signal on how we are going to handle situations wherein a transfer has occurred without our prior approval. Accordingly, the utility's Emergency Motion to Implement Rates and Charges is denied in its entirety.

The customers of Buccaneer Estates have protested and requested a hearing. This matter is set for hearing on September 14-15, 1999. Therefore, this docket shall remain open.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that North Fort Myers Utility, Inc., show cause, in writing, within 21 days, why it should not be fined $5,000 for an apparent violation of Section 367.048(2), Florida Statutes. It is further

ORDERED that the North Fort Myers Utility, Inc.'s Emergency Motion to Implement Rates and Charges is denied. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 9th day of March, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Establishment of intrastate implementation requirements governing federally mandated deregulation of local exchange company payphones.

DOCKET NO. 970281-TL
ORDER NO. PSC-99-0493-FOF-TL
ISSUED: March 9, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDERED by Prehearing Officer, Diane K. Kiesling, that the Motion to Extend the Discovery Deadline from December 2, 1996 to December 4, 1996 is hereby granted.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 3rd day of December, 1996.

DIANE K. KIESLING, Commissioner
and Prehearing Officer

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for staff-assisted rate case in Lee County by MHC-DeAnza Financing Limited Partnership d/b/a Buccaneer Water Service.

DOCKET NO. 960133-WU
ORDER NO. PSC-96-1466-FOF-WU
ISSUED: DECEMBER 3, 1996

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA JOHNSON
DIANE K. KIESLING

ORDER GRANTING TEMPORARY RATES IN THE EVENT OF PROTEST
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING RATES AND CHARGES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein, except for the granting of temporary rates in the event of a protest and not requiring MHC-DeAnza Financing Limited Partnership d/b/a Buccaneer Water Service to show cause, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

CASE BACKGROUND

Buccaneer Water Service (Buccaneer or utility) is a Class C utility which provides water service to Buccaneer Mobile Home Park, in Lee County, Florida. The utility

currently serves 967 residential and 12 general service customers. The utility recorded 1995 operating revenues of $108,736 and operating expenses of $183,100, which resulted in an operating loss of $74,364.

Buccaneer purchases its water from Lee County Utilities, and therefore does not have a water treatment plant. The facilities of the utility consist of one water transmission and distribution system.

The utility was established in 1974 by Buccaneer Mobile Estates, Inc. On August 28, 1980, the utility and the related mobile home park were sold to DeAnza Properties-XI, Ltd. d/b/a Buccaneer Water Service (DeAnza). After purchasing the utility DeAnza instituted a policy of charging metered rates for water used by the tenants; however, in order to honor the original life-long lease agreements signed prior to its takeover, only new tenants were subject to the metered water bills. Tenants holding life-long leases were referred to as "lifetime lessees" (lifetimers) while new tenants were referred to as "non-lifetime lessees" (non-lifetimers). On March 17, 1982, DeAnza, filed an original application for authority to provide water service to Buccaneer Mobile Estates in Lee County. By Order No. 11263, issued October 25, 1982, we granted Water Certificate No. 366-W to the utility and set initial water rates. Wastewater service continues to be provided without charge for both lifetimers and non-lifetimers.

The utility filed for a staff-assisted rate case in Docket No. 850650-WU. At that time the utility provided service to 314 non-lifetimers who were charged for water and to 605 lifetimers who were not charged. In order to set fair rates the Commission imputed revenues for the 605 connections receiving service without charge. Final rates were set by Order No. 16354, issued on July 15, 1986.

Order No. PSC-95-0623-FOF-WU, issued May 22, 1995, granted the transfer of Certificate No. 366-W from DeAnza to MHC-DeAnza Financing Limited Partnership d/b/a Buccaneer Water Service (MHC).

On February 6, 1996, the utility applied for this staff assisted rate case and paid the appropriate filing fee. We have reviewed the utility's books and records and conducted an engineering field investigation. A review of the utility's operating expenses, maps, files, and rate application was also performed to obtain information about the physical plant and operating costs. The test year for this case is the historical year ending December 31, 1995.

As stated above, DeAnza instituted a policy of charging new tenants for water service. However, tenants holding lifetime leases continued receiving water service for no charge until October 1993, at which time the utility invoked a provision of the lease agreements and began billing these customers. According to the utility, this change was necessary because it could no longer absorb the increases in purchased water rates from Lee County. The rates charged to lifetimers were less than the approved tariffed rates, as the utility based them on the increases in Lee County rates that had occurred since 1988. Thus, the utility has been charging non-lifetimers the tariffed rates and lifetimers a lower rate since October 1993. However, the utility did not record the revenues received from lifetimers until 1995, when the staff audit for this case discovered the discrepancy. Moreover, the staff audit also discovered that the utility has not been billing affiliated general service connections.

Our staff held a customer meeting on July 17, 1996, in the utility's service area to discuss quality of service and other issues related to the case. Several customers expressed concerns about the utility's failure to record correct revenue amounts on the utility's books. Customers also erroneously believed that staff failed to include revenues from lifetimers and general service connections in setting the preliminary rates presented at the customer meeting. Customers provided staff with invoices from the Lee County Utilities for water usage in the entire service area. We compared the invoices with the figures used in setting final rates to make any adjustments that are appropriate.

The customers are concerned over requiring the utility to bill lifetimers the approved tariffed rates, which exceed the lease agreement contractual rates and, according to the customers, forcing a breach of contract. Our intent is not to force a breach of contract, but to rectify discriminatory application of rates and to properly recognize jurisdictional revenues for earnings reviews and regulatory assessment fees.

We do not find that requiring all customers to be billed the tariff rate prevents the related development entity from honoring its contractual agreements. In fact, in an October 2, 1996 letter, the utility's attorney stated that the utility and the related development entity never proposed to breach the contract. The utility proposes to honor the lifetimer contracts and also to properly recognize regulatory revenues. The letter further states that this will be accomplished by continuing to bill lifetimers the lower rate in accordance with their contracts, while also booking the total amount of revenue due based upon application of the rates approved by the Commission to all customers in a non-discriminatory manner. The utility proposes to book the difference between the amounts billed to lifetimers and the tariff rates as a receivable from the developer. The utility initially proposed this method because of the expense required to reprogram the billing system to reflect the credit due to the lifetimers on the bill itself. However, the utility subsequently discovered that the reprogramming costs will be minimal and can be accomplished by the first quarter of 1997.

STAFF ASSISTANCE QUALIFICATION

In accordance with Section 367.0814, Florida Statutes, and Rule 25-30.455, Florida Administrative Code, utilities whose gross annual revenues total $150,000 or less for water or wastewater services, or $300,000 or less on a combined basis, may petition the Commission for staff assistance in rate applications. On February 6, 1996, Buccaneer submitted an application for a staff assisted rate case in which it reported 1994 annual revenues of $88,279. The utility's 1995 annual report listed $108,736 in revenues. We granted preliminary approval of the utility's application, based upon this information.

During the subsequent audit of the utility we discovered that the utility was neither billing nor recording affiliated general service customers. Additionally, as mentioned in the case background, the utility was billing a group of residential customers known as "lifetimers" at lower than tariffed rates. When we imputed revenues for the above customers at the tariffed rates, the utility's 1995 annual revenues totaled $174,223. Although the utility exceeds the $150,000 revenue limit for qualification as a result of the revenue imputation, we grant the utility's petition for staff assistance for the following reasons.

From 1982 to 1993, the utility provided water to lifetimers free of charge due to its desire to honor previously signed life-long lease agreements. During this period non-lifetimers were metered and billed the approved metered rates. Lifetimers were not metered until 1993. We set rates in two docketed proceedings during that period and in both cases we acknowledged the rate treatment, but did not direct the utility to bill and book revenues for all connections at the approved tariffed rates. The utility, therefore, had no basis on which to bill or book revenues for regulatory purposes.

As stated in the case background, in 1993 the utility invoked a provision of the life-long lease agreements and began billing lifetimers at a rate less than the approved tariffed rates for non-lifetimers. The utility erroneously considered these revenues to be non-jurisdictional and did not record them on its books until 1995, after we discovered the discrepancy in the staff assisted rate case audit. Moreover, the utility recorded the revenues at the billed rather than the tariffed rates, resulting in reported annual revenues of $108,736. We do not believe the utility's intent was to misstate revenues. The utility could reasonably interpret our previous inaction to mean that it could continue to abide by the provisions of the lifelong lease agreements with regard to rates.

Section 367.0814(1) refers to "gross annual revenues," which implies revenues actually billed, not those to be imputed. We also find it impractical from a regulatory standpoint and detrimental to the ratepayers to deny the utility staff assistance. After completion of the audit and preliminary accounting report, when it was apparent that imputation will cause the utility to exceed the $150,000 threshold, a significant amount of our resources had already been expended in processing the case. In fact, the majority of work in the case had already been done. If we denied eligibility for staff assistance, which will necessitate the utility filing its own case, the amount of our resources needed to process that filing will likely exceed that already expended processing the instant case. Moreover, the increased costs associated with that filing will very likely result in rates higher than proposed in this staff assisted rate case. We find that this will result in an unnecessary waste of taxpayer money and will be financially detrimental to the utility's ratepayers. In consideration of the above, we find that the utility meets the revenue requirement for staff assistance and the utility's request for a staff assisted rate case is approved.

QUALITY OF SERVICE

On July 17, 1996, approximately 400 customers attended a customer meeting that was held in the Utility's service area to determine the quality of service provided by Buccaneer. No significant comments were made concerning quality of service at the customer meeting. At the September 3, 1996, agenda conference, concerns were stated by customers over a recent water line break.

Unaccounted for water during the test year is determined to be at six percent of the total volume purchased from Lee County. Six percent of unaccounted for water is within acceptable parameters. In response to our data request, the utility estimated that approximately 5,000 gallons were lost over the 36 hour period before the break was repaired. We do not consider this amount to be significant in light of the total amount purchased during the test year.

In reference to the extended timeframe for completion of the repair, the utility indicated that it was of a nature that was determined to be cost effective for a subcontractor to perform the work. Since water loss was not considered to be significant, the utility waited to perform the work during normal working hours on the following Monday. We find that the utility acted appropriately in this situation.

In addition to the above, the utility is in compliance with all applicable health standards. Therefore, we find that the quality of service provided by the utility is satisfactory.

RATE BASE

Our calculation of the appropriate rate base for the water system is depicted on Schedule No. 1. Our adjustments are itemized on Schedule No. 1-A. Those adjustments which are self-explanatory or which are essentially mechanical in nature are reflected on those schedules without further discussion in the body of this Order. The major adjustments are discussed below.

We previously established rate base in Docket No. 850650-WU, which was a staff-assisted rate case. According to Order No. 16354 issued on July 15, 1986, rate base was $69,062 as of September 30, 1985. Order No. PSC-96-0509-FOF-WS, issued April 5, 1993, established rate base component balances at August 27, 1992. We have selected a historical test year ending December 31, 1995 for this rate case. All rate base components have been updated through December 31, 1995, to include additions and reclassification. A discussion of each component of rate base follows:

Used and Useful

The utility currently services approximately 967 residential and 12 general service connections. There are less than five available connections left to buildout of the service area. Based upon the used and useful formula set forth in Attachment "B", we also find that the water distribution system is 100% used and useful.

Utility Plant-in-Service

The utility recorded a plant-in-service balance of $280,276. We increased utility plant-in-service by $3,248 to reflect the correct balance as established by the staff auditor. We also made averaging adjustments reducing water utility plant-in-service by $1,624, resulting in a total adjusted increase of $1,624. We find that the appropriate utility plant-in-service balance is $281,900.

Accumulated Depreciation

The utility recorded accumulated depreciation of $122,993 on its books for the test year. We calculated accumulated depreciation starting with Order No. PSC-93-0509-FOF-WS, using the prescribed rates in Rule 25-30.140, Florida Administrative Code. We made

an adjustment to increase the utility's recorded balance by $14,062 to reflect accumulated depreciation. We also made averaging adjustments of $4,696 for the water system. We find that the appropriate average accumulated depreciation is $132,359.

Contributions-in-Aid-of-Construction (CIAC)

The utility had recorded CIAC of $172,269. We increased CIAC by $990 to bring CIAC to the correct amount approved by Order No. PSC-95-0623-FOF-WS. CIAC has been decreased by $495 to reflect averaging adjustments. Therefore, we find the total average CIAC balance to be $172,764.

Amortization of CIAC

Amortization of CIAC has been calculated consistent with our calculation of accumulated depreciation. The utility recorded amortization of CIAC of $91,514. We increased CIAC amortization by $2,859. We then reduced amortization of CIAC by $8,589 to reflect averaging adjustments. The resulting balance is $97,244 for the system.

Working Capital Allowance

Consistent with Rule 25-30.443, Florida Administrative Code, we find that the one-eighth of operation and maintenance expense formula approach shall be used for calculating working capital allowance. Applying that formula, we find that a working capital allowance of $22,345 (based on O&M of $178,756) is appropriate.

Test Year Rate Base

Based on the foregoing, we find that the test year rate base amount is $96,366.

CAPITAL STRUCTURE

Our calculation of the appropriate cost of capital, including our adjustments, is depicted on Schedule No. 2 attached to this Order. Those adjustments which are self-explanatory or which are essentially mechanical in nature are reflected on that schedule without further discussion in the body of this Order.

The utility's business operation is a partnership. The partners are MHC-QRS DeAnza Inc. and MHC operating limited partnership. MHC operating limited partnership owns 99% of MHC-DeAnza financing limited partnership and MHC-QRS, Inc. owns 1% of MHC-DeAnza financing limited partnership. Utility operations, when needed are financed by Manufactured Home Communities, Inc. Therefore, we used the capital for MHC to determine the utility's cost of capital.

The utility's capital structure consists of a common equity balance of $263,065, and a long-term debt balance of $211,966 with an interest rate of 7.45%. Using the leverage formula approved in Order No. PSC-96-0729-FOF-WS, effective on June 22, 1996, the rate

of return on common equity is 11.10% with a range of 10.18% to 11.88%. Therefore, the resulting weighted costs of debt and equity are 3.32% and 6.15%, respectively.

In instances when our calculated rate base balances are less than the balances in the utility's capital structure, it has been our practice to reduce each component in the capital structure by its weighted share of the excess capital. As a result, we have reduced the long-term debt balance by $168,966 and reduced the common equity balance by $209,699 to reconcile the utility's capital structure components to our calculated rate base balances.

The weighted costs of 3.32% for debt and 6.15% for equity result in the appropriate overall rate of return of 9.47%. Applying the weighted average method to the total capital structure yields an overall rate of return of 9.47% with a range of 8.92% to 10.03%.

NET OPERATING INCOME

Our calculation of net operating income for the water system is depicted on Schedule No. 3. Our adjustments are itemized on Schedule No. 3-A. Those adjustments which are self-explanatory or which are essentially mechanical in nature are reflected on those schedules without further discussion in the body of this Order. The major adjustments are discussed below:

Test Year Operating Revenue

As discussed in the case background, when the utility was established in 1974, it provided free water and wastewater service to residents as a condition of the lease agreement. After purchasing the mobile home park and utility in 1980 and receiving Commission certification in 1982, DeAnza began charging new tenants for water. Wastewater service continues to be provided without charge.

Tenants known as lifetimers continued to receive water without charge until October 1993, when the utility began billing these customers at rates that were less than the tariffed rates charged to non-lifetimers. During the test year, 612 non-lifetimers were charged the our approved base facility charge of $3.77, plus $3.96 per thousand gallons while 355 lifetimers were charged a $4 base facility charge and $.12 per thousand gallons. The utility based its lifetimer rates on the $4.00 per unit flat rate charged by Lee County in addition to the $.12 increase in the gallonage charge implemented by Lee County in February 1993.

After the utility began billing lifetimers it failed to record the associated revenues until 1995, after staff discovered the discrepancy during the audit for this case. When the utility began recording lifetimer revenues in 1995, the test year, it did so at the billed rather than tariffed rates, thus understating revenue for regulatory purposes. Total consumption during the test year was approximately 12,237,000 gallons for the lifetimers and 18,366,000 gallons for the non-lifetimers. We have increased revenue to account for lifetimer billings at the appropriate tariffed rates.

In addition to the understated lifetimer revenue, there were also unbilled general service connections during the test year. These general service connections are affiliated with the utility and include six irrigation connections (all 5/8 inches x 3/4 inches meters); two model homes that have since been sold (5/8 inches x 3/4 inches meters); the manager's

residence and utility office (5/8 inches x 3/4 inches meters); a hospitality house, pool, and sewer plant (1 inch meters); and a club house (3 inch meter). We have also made an appropriate adjustment to account for the general service revenue.

The utility recorded test year water system revenue of $108,736 during the test year. We recalculated test year revenue based on the appropriate number of test year bills and consumption. Based on our analysis, the appropriate test year operating revenue is $174,223. We made an adjustment of $65,487 to reflect the appropriate test year revenue.

Outstanding Regulatory Assessment Fee Expense

Our audit revealed that the customer group known as lifetimers were billed at a non-tariffed rate. Our audit also discovered that twelve general service connections affiliated with the utility were not being billed. Hence, the utility failed to record the correct revenues for regulatory purposes in the 1995 test year and on its 1995 annual report. After completing a billing analysis to determine the appropriate test year revenue, we increased revenue by $65,487 to reflect the appropriate amount for rate setting and regulatory assessment fee purposes.

Pursuant to Section 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, each water and wastewater utility must pay a yearly regulatory assessment fee based upon a percentage of the utility's gross revenues. Because we have adjusted the utility's revenue due to the discrepancy in revenues, we find that the utility shall pay an additional $2,946 in regulatory assessment fees to correspond to that adjustment within 30 days of the effective date of this Order.

It appears that the utility may have underpaid regulatory assessment fees in years prior to the test year. We will consider whether another docket will be opened to address regulatory assessment fees from previous years.

Operation and Maintenance (O & M) Expenses

Operation and maintenance expenses reflected in the utility's records were traced to invoices and test year canceled checks for verification of the appropriate account, amount, and for reasonableness. Our adjustments are itemized on Schedule No. 3-B. A summary of the adjustments are discussed below:

1) Salaries & Wages - The utility provided budgeted figures for its clerical person based on a current salary level of $14,830 ($7.13 per hour x 40 x 52). The utility recorded a total of $9,565 for salaries and expense for the bookkeeper during the test period. We recalculated the salaries and expense for the bookkeeper at 10 hours a week of her time conducting utility business at $7.13 per hour ($7.13 per hour x 10 x 52). This expense was decreased by $5,857 to reflect the appropriate salaries expense of $3,708 based on the duties performed by the bookkeeper. We find that an annual salary of $3,708 for the bookkeeper is appropriate.

The utility recorded $19,083 in maintenance salaries. As a result of a customer concern expressed at the September 3, 1996, agenda conference, we requested additional

information from the utility to justify the maintenance salary. Based upon the analysis the utility provided, an adjustment of $3,851 was made to reduce the expense. We find that the expense for maintenance personnel including taxes, benefits and insurance of $15,232 is appropriate.

2) Contractual Services - The utility recorded $7,480 for the system during the test period. This total includes water testing expense of $60, management fees of $5,437, professional fees of $1,139, and legal fees of $844. We made several adjustments to these balances. But, we did not adjust the amount recorded for water testing as that amount is reasonable.

Manufactured Home Communities, Inc., provides management services for the utility. The services provided by this company include organization of accounting records in accordance with National Association of Regulatory Utility Commissioners, verification of budget adherence, approval of capital expenditures, review of all legal documents and correspondence, entering daily activity for the utility journal entries, invoices and checks. Manufactured Home Communities, Inc., also oversees the compilation of the annual report, rate case audits, daily operations and the overall financial operation of the utility. Manufactured Home Communities, Inc., charges the utility $9,495 annually for this service, $7,655 for salaries and $1,840 for overhead. We find this annual amount reasonable. The utility recorded $5,437 for management fees during the test year. We increased this expense by $4,058 to reflect the appropriate test year balance of $9,495.

The utility recorded $1,139 for professional fees for the test year, including $369 of regulatory commission expense. We reduced the professional fees (accounting expenses) by $369 for the test year and reclassified it to regulatory commission expense. We find that legal fees of $844 for the test year are reasonable.

The utility utilizes the service of MRI Software for stuffing envelopes, postage and preparing the utility bills. The bills provide monthly billings for both lot rental and utility services. The utility has requested $5,306 annually for billing cost. We made an adjustment to record test year billing cost of $2,653 (5,306/2) relating to utility expense.

Total adjustments to this account amounted to $6,342. We find that a contractual service expense of $13,822 for the test year is reasonable.

3) Regulatory Commission Expense - This expense has been adjusted by $2,494 ($9,977/4) to record the utility's rate case expense amortized over four years. This expense includes $1,000 for rate case filing fees, $369 accounting fees that were reclassified from professional fees and $8,608 for legal fees for a total of $9,977.

4) Miscellaneous Expense - The utility recorded $1,161 for the test year miscellaneous expense. This expense has been increased by $14,000 to reflect an appropriate annual water line repair cost based on a historical average. These costs are not unusual, nor are they one time expenses. Therefore, we allowed water line repair expenses for the test year of $14,000. We find that $15,161 for test year miscellaneous expense is reasonable.

We made total operation and maintenance adjustments of $13,128. We find that test year operation and maintenance expenses of $184,389 are appropriate.

Depreciation Expense

The utility recorded depreciation expense of $12,063 for the test year. We applied the prescribed depreciation rates described in Rule 25-30.140, Florida Administrative Code, which result in a reduction of $2,672 for depreciation expense. We find $9,391 to be the appropriate depreciation expense for the test year.

Amortization of CIAC

Amortization of CIAC reduces depreciation expense. Amortization of CIAC has been calculated using the rate prescribed by Rule 25-30.140, Florida Administrative Code. The utility recorded $5,118 for amortization expense for the test year. This expense was increased by $600 to reflect our calculated test year amortization expense.

Taxes Other than Income

The utility recorded $4,894 in this account during the test year. We adjusted taxes on salaries by $384. We also made an adjustment of $2,946 to reflect regulatory assessment fees for the test year resulting in a total increase of $3,330.

Increases in Operating Expenses for Ratesetting Purposes

Operating Revenues

Revenue has been increased by $27,761 to reflect the increase in revenue required to cover expenses and allow the utility the opportunity to earn a reasonable return on its investment.

Purchased Water Expense

The utility recorded $133,972 for purchased water for the test year. During the test year, consumption demands were dramatically reduced due to the modifications in the treatment process used at the wastewater treatment facility, one of the utility's general service water connections. The facility consumed approximately 2,764,000 gallons, for an average of 230,000 per month. The wastewater plant now uses treated effluent for the chlorination process rather than potable water; therefore, consumption has been reduced from the previous 230,000 gallons per month to an estimated 15,000 gallons per month or 180,000 gallons per year. We made a 2,584,000 gallon adjustment to reflect the reduction (2,764,000 minus 180,000). As a result, we adjusted the purchased water amount by $5,633 (2,584 gallons multiplied by $2.18 Lee County rates for gallonage to the utility) to reflect purchased water amount of $128,339 for the test year.

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BUCCANEER WATER SERVICE
TEST YEAR ENDING DECEMBER 31, 1995
ANALYSIS OF WATER OPERATION AND MAINTENANCE EXPENSE

SCHEDULE NO. 3B
DOCKET NO. 960133-WU

	TOTAL PER UTIL.	COMM. ADJUST.	COMM. APPROVED BALANCE
(601) SALARIES AND WAGES - EMPLOYEES	$ 28,648	$ (9,708) [1]	$ 18,940
(603) SALARIES AND WAGES - OFFICERS	0	0	0
(604) EMPLOYEE PENSIONS AND BENEFITS	0	0	0
(610) PURCHASED WATER	133,972	(5,633) [G]	128,339
(615) PURCHASED POWER	0	0	0
(616) FUEL FOR POWER PRODUCTION	0	0	0
(618) CHEMICALS	0	0	0
(620) MATERIALS AND SUPPLIES	0	0	0
(630) CONTRACTUAL SERVICES	7,480	6,342 [2]	13,822
(640) RENTS	0	0	0
(650) TRANSPORTATION EXPENSE	0	0	0
(655) INSURANCE EXPENSE	0	0	0
(665) REGULATORY COMMISSION EXPENSE	0	2,494 [3]	2,494
(670) BAD DEBT EXPENSE	0	0	0
(675) MISCELLANEOUS EXPENSES	1,161	14,000	15,161
	$ 171,261	$ 7,495	$ 178,756

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COMMISSION APPROVED RATE REDUCTION SCHEDULE

BUCCANEER WATER SERVICE
TEST YEAR ENDING DECEMBER 31, 1995

SCHEDULE NO. 4
DOCKET NO. 960133-WU

CALCULATION OF RATE REDUCTION AMOUNT
AFTER RECOVERY OF RATE CASE EXPENSE AMORTIZATION PERIOD OF FOUR YEARS

MONTHLY WATER RATES

RESIDENTIAL AND GENERAL SERVICE		MONTHLY APPROVED RATES	MONTHLY APPROVED REDUCTION
BASE FACILITY CHARGE:			
Meter Size:			
5/8"X3/4"	$	8.05	0.10
3/4"		12.07	0.16
1"		20.12	0.26
1-1/2"		40.24	0.52
2"		64.38	0.84
3"		128.76	1.67
4"		201.18	2.61
6"		402.37	5.23
GALLONAGE CHARGE			
PER 1,000 GALLONS	$	3.46	0.04

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Objection by BUCCANEER MOBILE ESTATES to NORTH FORT MYERS UTILITIES, INC.'s notice of extension of sewer service in Lee County	)	DOCKET NO. 871306-SU
	)	ORDER NO. 19059
	)	ISSUED: 3-29-88

ORDER AMENDING CERTIFICATE TO INCLUDE ADDITIONAL TERRITORY

BY THE COMMISSION:

On February 12, 1988, North Fort Myers Utility, Inc., ("utility") applied for amendment to Sewer Certificate No. 247-S in Lee County, Florida, pursuant to the provisions of Sections 367.041 and 367.061, Florida Statutes.

On November 9, 1987, the utility notified certificated utilities and appropriate governmental agencies in Lee County of its intention to amend its Certificate to include additional territory. Notice of the utility's intention to extend its service area was also published in The Fort Myers News Press, a newspaper of general circulation in Lee County, Florida, on November 14, 21, and 28, 1988.

Objections to the proposed extension as noticed were filed by North Trail Utilities and Buccaneer Mobile Estates. North Fort Myers Utility, Inc. excluded certain property from its application and the objections were withdrawn.

The appropriate filing fee has been paid. The utility has constructed lines and is ready, willing, and able to provide service in the territory for which it has applied. The application has been reviewed and found to be in conformance with the statutory requirements. Accordingly, we find it is in the public interest to amend Certificate No. 247-S to include the territory described in Appendix A to this Order, which by reference is incorporated herein.

It is therefore,

ORDERED by the Florida Public Service Commission that Certificate No. 247-S, held by North Fort Myers Utility, Inc., Post Office Box 2547, Fort Myers, Florida 33902, is hereby amended to include the territory described in Appendix A of this Order. It is further

ORDERED that the customers in the territory added herein shall be charged the rates approved in the tariff of North Fort Myers Utility, Inc. It is further

ORDERED that Docket 871306-SU be and is hereby closed.

By ORDER of the Florida Public Service Commission, this 29th day of MARCH, 1988.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DAS

APPENDIX "A"
LEGAL DESCRIPTION OF PROPOSED SERVICE AREA

That part of Lee County, Florida lying north of the Caloosahatchee River, west of I-75 and east and north of a line running from the Caloosahatchee River along River Road to its intersection with Pondella Road, thence west along Pondella Road to U.S. 41, then north along U.S. 41 to Pine Island Road (SR 78), then west along Pine Island Road to the city limits of Cape Coral in Section 4, T44S, R24E, then following the municipal boundary of Cape Coral north until reaching the Southwest corner of Section 21, T43S, R24E, then east to the Southeast corner of the said Section 21, T43S, R24E, then north to the Northeast corner of the said Section 21, T43S, R24E, then east to U.S. 41, then north along U.S. 41 to the northern Section line of Section 16, T43E, R24E, then west along said section line to the northwest corner of Section 17, then north along the line separating Sections 7 and 8 to the northwest corner of Section 8, then east along the northern section line of Sections 8 and 9 to U.S. 41, then north along U.S. 41 to the Charlotte County line, less that area west of I-75 designated as "general interchange" at Bayshore Road and I-75 in the Lee County Land Use Map, the service areas certificated by the Florida Public Service Commission to Tamiami Utility Company, Vista Villages, Inc., Mobile Land and Title Company, Laurel Estate Mobile Village, Inc., Lazy Days Mobile Village, Florida Cities Water Company, Buccaneer Mobile Estates and less and except the following described property:

A PARCEL OF LAND IN SECTIONS 15 AND 16, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORD BOOK 1320 AT PAGE 63 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SECTION 15, TOWNSHIP 43 SOUTH, RANGE 24 EAST; THENCE N.89°43'02"E. ALONG THE NORTH LINE OF THE NORTHWEST ONE QUARTER OF SAID SECTION 15 FOR 169.20 FEET; THENCE S.0°16'58"E. FOR 300.00 FEET TO AN INTERSECTION WITH THE CENTERLINE OF A ROADWAY EASEMENT 60.00 IN WIDTH; THENCE ALONG THE CENTERLINE OF SAID ROADWAY EASEMENT FOR THE FOLLOWING DESCRIBED FOUR (4) COURSES: (1) S.89°43'02"W. FOR 660.32 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST; (2) THENCE WESTERLY, SOUTHWESTERLY AND SOUTHEASTERLY ALONG THE ARC OF SAID CURVE HAVING FOR ITS ELEMENTS A RADIUS OF 100.00 FEET AND A CENTRAL ANGLE OF 119°50'12" FOR 209.17 FEET TO THE POINT OF TANGENCY; (3) THENCE S.29°07'10"E. FOR 343.55 FEET; (4) THENCE S.89°33'51"W. FOR 562.87 FEET; THENCE N.0°26'10"W. FOR 356.84 FEET; THENCE S.89°33'51"W. FOR 350.97 FEET; THENCE N.0°26'10"W. FOR 594.79 FEET TO AN INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED SECTION 16; THENCE N.89°33'51"E. ALONG SAID NORTH LINE FOR 1347.78 FEET TO THE POINT OF BEGINNING. SAID PARCEL OF LAND SITUATE LYING AND BEING IN LEE COUNTY, FLORIDA, CONTAINING 23.00 ACRES MORE OR LESS.

and

The parcel hereon described is situated in the North half (N. 1/2) of the North half (N. 1/2), lying East of U.S. Highway 41, in Section 16, Township 43 South, Range 24 East, Lee County, Florida being more particularly described as follows:

Commencing at the North quarter (N. 1/4) corner of said Section 16 being a round concrete monument; Thence North 89° 33' 50" East (basis for bearing is U.S. 41 Right-of-Way Map, Section 12010-2511, dated September 8, 1971) along the North line of said Section 16, a distance of 555.72 feet, to a Point on the Eastern Right-of-Way of said Highway 41, said Point being the Point of Beginning of the herein described parcel; Thence continue North 89° 33' 50" East along said North Line of said Section 16, a distance of 875.38 feet Thence South 00° 26' 10" East, leaving the North line of said Section 16, a distance of 594.79 feet; Thence South 89° 33' 50" West, parallel to the North line of said Section 16, a distance of 589.34 feet to a Point on the Easterly Right-of-way of U.S. 41; Thence North 26° 07' 10" West, along said Easterly Right-of-Way of U.S. 41, a distance of 660.00 feet to the Point of Beginning.

and

A PARCEL OF LAND IN SECTION 16, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORD BOOK 1320 AT PAGE 63 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 16, TOWNSHIP 43 SOUTH, RANGE 24 EAST; THENCE N.89°43'02"E. ALONG THE NORTH LINE OF THE NORTHWEST ONE QUARTER OF SAID SECTION 16 FOR 169.20 FEET; THENCE S.0°16'58"E. FOR 500.00 FEET TO AN INTERSECTION WITH THE CENTERLINE OF A ROADWAY EASEMENT 60.00 IN WIDTH; THENCE ALONG THE CENTERLINE OF SAID ROADWAY EASEMENT FOR THE FOLLOWING DESCRIBED FOUR (4) COURSES: (1) S.89°43'02"W. FOR 660.32 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST; (2) THENCE WESTERLY, SOUTHWESTERLY AND SOUTHEASTERLY ALONG THE ARC OF SAID CURVE HAVING FOR ITS ELEMENTS A RADIUS OF 100.00 FEET AND A CENTRAL ANGLE OF 115°30'12" FOR 202.17 FEET TO THE POINT OF TANGENCY; (3) THENCE S.26°07'10"E. FOR 343.53 FEET; (4) THENCE S.89°33'51"W. FOR 362.87 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE CONTINUE S.89°33'51"W. ALONG SAID CENTERLINE FOR 768.70 FEET TO AN INTERSECTION WITH THE EASTERLY RIGHT OF WAY LINE OF U.S. 41 (S.R. 45); THENCE N.26°07'10"W. ALONG SAID EASTERLY RIGHT OF WAY LINE FOR 395.96 FEET; THENCE N.89°33'51"E. FOR 940.31 FEET; THENCE S.0°26'10"E. FOR 356.84 FEET TO THE POINT OF BEGINNING. SAID PARCEL OF LAND SITUATE LYING AND BEING IN LEE COUNTY, FLORIDA. CONTAINING 7.00 ACRES MORE OR LESS.

and

A PARCEL OF LAND IN SECTIONS 2, 3, 4, 5, & 10, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 3, TOWNSHIP 43 SOUTH, RANGE 24 EAST; THENCE N.89°57'30"W. ALONG THE NORTH LINE OF THE NORTHEAST ONE QUARTER OF SAID SECTION 3 FOR 355.01 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF THE FORMER S.A.L. RAILROAD AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE CONTINUE N.89°57'30"W. ALONG SAID NORTH LINE FOR 2313.55 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST ONE QUARTER OF SAID SECTION 3; THENCE S.89°48'38"W. ALONG THE NORTH LINE OF SAID NORTHWEST ONE QUARTER FOR 2667.53 FEET TO THE NORTHWEST CORNER OF SAID SECTION 3; THENCE N.89°42'40"W. ALONG THE NORTH LINE OF SECTION 4, TOWNSHIP 43 SOUTH, RANGE 24 EAST FOR 5335.96 FEET TO THE NORTHWEST CORNER OF SAID SECTION 4; THENCE S.89°33'20"W. ALONG THE NORTH LINE OF THE NORTHEAST ONE QUARTER OF SECTION 5, TOWNSHIP 43 SOUTH, RANGE 24 EAST FOR 1871.76 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF NORTH FORT MYERS PARK ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 9, PAGE 113 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S.26°03'40"E. ALONG SAID NORTHEASTERLY LINE FOR 318.64 FEET TO AN INTERSECTION WITH THE SOUTHEASTERLY LINE OF LOT 3 OF SAID PLAT OF NORTH FORT MYERS PARK; THENCE S.63°56'20"W. ALONG SAID SOUTHEASTERLY LINE FOR 300.77 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF TAMIAMI TRAIL (S.R. 45, U.S. 41) BEING A POINT ON THE ARC OF A CIRCULAR CURVE CONCAVE TO THE SOUTHWEST, SAID POINT BEARING N.63°13'24"E. FROM THE RADIUS POINT OF SAID CURVE; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE HAVING FOR ITS ELEMENTS A RADIUS OF 7739.44 FEET AND A CENTRAL ANGLE OF 0°42'56" FOR 96.66 FEET TO THE POINT OF TANGENCY; THENCE S.26°03'40"E. ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE FOR 1943.40 FEET TO AN INTERSECTION WITH THE SOUTHEASTERLY LINE OF THE NORTHWESTERLY ONE HALF OF LOT 24 OF THE AFOREMENTIONED PLAT OF NORTH FORT MYERS PARK; THENCE N.63°56'20"E. ALONG SAID SOUTHEASTERLY LINE FOR 300.17 FEET TO AN INTERSECTION WITH THE AFOREMENTIONED NORTHEASTERLY LINE OF NORTH FORT MYERS PARK; THENCE N.26°03'40"W. ALONG SAID NORTHEASTERLY LINE FOR 4.46 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORD BOOK 1032 AT PAGE 707 OF THE AFOREMENTIONED PUBLIC RECORDS; THENCE N.89°48'47"E. ALONG SAID SOUTHERLY LINE FOR 3357.09 FEET TO AN INTERSECTION WITH THE EAST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORD BOOK 410 AT PAGE 690 OF THE AFOREMENTIONED PUBLIC RECORDS; THENCE S.0°06'41"E. ALONG SAID EAST LINE FOR 2040.37 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED BOOK 224 AT PAGE 437 OF THE AFOREMENTIONED PUBLIC RECORDS; THENCE S.89°48'47"W. ALONG SAID SOUTH LINE FOR 2698.40 FEET TO AN INTERSECTION WITH THE AFOREMENTIONED NORTHEASTERLY RIGHT OF WAY LINE OF TAMIAMI

TRAIL; THENCE S.26°03'40"E. ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE FOR 370.00 FEET; THENCE N.89°48'47"E. FOR 3845.26 FEET; THENCE N.0°11'13"W. FOR 332.91 FEET TO AN INTERSECTION WITH THE AFOREMENTIONED SOUTH LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED BOOK 224 AT PAGE 437 OF THE AFOREMENTIONED PUBLIC RECORDS; THENCE N.89°48'47"E. ALONG SAID SOUTH LINE FOR 4368.87 FEET TO AN INTERSECTION WITH THE NORTHERLY EXTENSION OF THE WEST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORD BOOK 288 AT PAGE 80 OF THE AFOREMENTIONED PUBLIC RECORDS; THENCE S.0°02'36"W. ALONG SAID NORTHERLY EXTENSION AND ALONG THE WEST LINE OF SAID PARCEL FOR 2553.91 FEET; THENCE S.89°56'45"E. ALONG THE SOUTH LINE OF SAID PARCEL FOR 1711.71 FEET; THENCE N.0°02'36"E. ALONG THE EAST LINE OF SAID PARCEL FOR 16.72 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORD BOOK 1516 AT PAGE 1802 OF THE AFOREMENTIONED PUBLIC RECORDS; THENCE S.89°56'45"E. ALONG SAID SOUTH LINE FOR 441.17 FEET; THENCE N.0°02'36"E. ALONG THE EAST LINE OF SAID PARCEL FOR 2546.26 FEET TO AN INTERSECTION WITH THE AFOREMENTIONED SOUTH LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED BOOK 224 AT PAGE 437 OF THE AFOREMENTIONED PUBLIC RECORDS; THENCE N.89°48'47"E. ALONG SAID SOUTH LINE FOR 775.85 FEET TO AN INTERSECTION WITH THE AFOREMENTIONED WESTERLY RIGHT OF WAY LINE OF THE FORMER S.A.L. RAILROAD; THENCE N.11°11'01"W. ALONG SAID WESTERLY RIGHT OF WAY LINE FOR 4190.91 FEET TO THE POINT OF BEGINNING.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the proper application of Rule 25-14,003, F.A.C., relating to tax savings refund for 1988 and 1989 for GTE FLORIDA, INC.	DOCKET NO. 890216-TL ORDER NO. 24306 ISSUED: 4/1/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
J. TERRY DEASON
BETTY EASLEY
GERALD R. GUNTER
MICHAEL McK. WILSON

ORDER TO SHOW CAUSE

BY THE COMMISSION:

I. BACKGROUND

By Order No. 22352, issued December 29, 1989, GTE Florida Incorporated (GTEFL or the Company) and the Office of the Public Counsel (OPC) were directed to submit briefs on the legal question of whether the Commission is now precluded from making an adjustment based on GTEFL's sale of the Quad Block property by any legal impediment arising from the Company's accounting practices or the property's treatment in prior proceedings.

In Order No. 22352 we directed our Staff to prepare a recommendation as to the appropriate action, if any, regarding the gain on the sale of the land. The Order also stated judgement would be reserved on the adjustments proposed by OPC in its brief. By Order No. 23143, we determined that no further adjustment should be made for the sale of the land.

In the course of Staff's investigation an audit was performed on GTEFL's records. As part of the Staff's audit of the sale of the Quad Block property, it became apparent that certain records of GTEFL no longer exist. These records were destroyed by GTEFL in conjunction with the Company's records retention and disposal procedures. These procedures were premised on the FCC's Part 42 of the Code of Federal Regulations governing record retention, as amended in 1986.

The Commission's rule on record retention, 25-4.020(3), Florida Administrative Code, was adopted in 1976; it incorporated by reference the then current version of the FCC's Part 42. Prior

of accounts had to be retained permanently. In addition, cash vouchers had to be retained for a period of time ranging from three to forty years, depending upon which accounts the cash vouchers supported. On August 22, 1986, the FCC changed Part 42 to leave the retention period for any particular record (with the exception of toll records) to the discretion of the individual carriers. Despite the restrictive provisions of Section 120.54(8), Florida Statutes, that a..."rule may incorporate material by reference but only as such material exists on the date the rule is adopted..." and the fact that the relevant FPSC rule was last adopted March 31, 1976, GTEFL updated its record retention procedures to comply with the 1986 version of Part 42 and to reduce the amount of material being maintained.

At the June 19, 1990, Agenda Conference, during our initial consideration of the appropriate action to pursue regarding GTEFL's destruction of records, GTEFL questioned the validity of Rule 25-4.020(3). According to GTEFL, a copy of the FCC Part 42 Rule that was incorporated by reference into Rule 25-4.020(3) was not on file with the Secretary of State as required by Rule 1S-1, Florida Administrative Code. GTEFL further argued that its destruction of records was not a violation of Rule 25-4.020(3) since that Rule incorporates the "current" Part 42 of the FCC's Rules. This argument is premised on the FCC's revision to Part 42 in 1986 that shortened the duration for retention of interstate records.

We deferred consideration of the destruction of records issue in order to investigate GTEFL's allegations regarding Rule 25-4.020(3).

II. VALIDITY OF RULE 25-4.020(3)

Rule 25-4.020(3), Florida Administrative Code, states that:

> All records shall be preserved for the period of time specified in the current edition of Part 42 of the Rules and Regulations of the Federal Communications Commission entitled "Preservation of Records of Communication Common Carriers."

The Rule was last amended on March, 31, 1976. The Rule must be read in conjunction with Section 120.54, Florida Statutes, entitled "Rulemaking: adoption procedures." This statute states, in pertinent part:

> Pursuant to rule of the Department of State, a rule may incorporate material by reference but only as such material exists on the date the rule is adopted. For purposes of such rule, changes in such material shall have no effect with respect to the rule unless the rule is amended to incorporate such material as changed. No rule shall be amended by reference only.

Section 120.54(8). Under the Secretary of State's Rules, Rule 1S-1, Florida Administrative Code, a document that is incorporated by reference must be filed along with the Rule which incorporates the document. This provision has been substantially the same since 1976.

From our review of the Rule and its history, two things appear to be reasonably certain. First, a copy of the FCC Part 42 Rule that is incorporated by reference in Rule 25-4.020(3) is not currently in the Secretary of State's files. It should be noted, however, that the Secretary of State's Office does not appear to have had a document tracking system in place at the time the Rule was filed that fully recorded what was actually filed. Second, Rule 25-4.020(3) was properly filed with the Secretary of State and published in the Florida Administrative Code.

It is clear that the text of Rule 25-4.020(3) was properly adopted, filed and published. While a copy of the FCC's Rule is not currently on file with the Secretary of State, it is certainly not clear that it was not filed with Rule 25-4.020(3). Moreover, if it was not filed with Rule 25-4.020(3), it can reasonably be presumed that the Secretary of State would have rejected the Rule at that time as improperly filed. Conversely, since the Rule was accepted as filed and published in the Florida Administrative Code it can be presumed that FCC Part 42 was filed when the Rule was adopted. The document's subsequent disappearance cannot be attributed as a failure to comply with the Secretary of State's rules. Such disappearance cannot invalidate a properly adopted Rule. Accordingly, we believe that Rule 25-4.020(3) is valid.

III. COMPLIANCE WITH RULE 25-4.020(3)

In conjunction with a Commission audit of Quad Block property transactions directed by order of the Commission, Staff auditors requested in part "all accounting entries, original source documents that support entries, tax returns and supporting

workpapers for the period of acquisition and sale of the property by GTEFL, General and Subsidiary Financial Ledgers, deeds and Property Appraisals." The Company responded, in part, "All other documentation and supporting transaction, correspondence, original accounting entries retained by the company are available on microfilm at the company retention center for inspection today, October 9." When the field auditor visited the Company's record retention center on October 12, 1989, he found that the Company had failed to retain various records and documents which include, but are not limited to, cash vouchers for the years 1952 through 1979 and certain cash receipt vouchers and general ledgers. Retention personnel reviewed the status of the vouchers requested by the auditor and determined that they had been destroyed on October 11, 1989.

The Company argues that it is in compliance with our Rule because its record retention policy is in compliance with the current edition of the FCC Part 42 as revised on August 22, 1986. The Company further argues that:

> Prior to this date, FCC Part 42 required carriers to retain cash vouchers for forty (40) years. A driving factor behind the Commission's revision of Part 42 was to reduce the existing record retention and reporting burdens being experienced by the carriers. Basically, the FCC, with the exception of toll records, left the retention period of any particular record to the business practices of the individual carrier.

The Company has not denied that under the previous FCC Part 42 the records should have been maintained. The thrust of the Company's argument is that the Company is in compliance with the new FCC Part 42.

In investigating the destruction-of-records matter, our Staff pursued two issues: (1) whether the destruction of some documents as a result of a change in the corporate policy governing record retention violated the Commission's Rule; and (2) whether the destruction on October 11, 1989, of particular records that had been requested by our Staff auditor on October 2, 1989, was an attempt to circumvent the Commission's audit of the Quad Block property transactions. On November 9 and 17, 1989, depositions were taken of five GTEFL officials and employees; those transcripts consist of nearly 600 pages and are supported by a volume of

exhibits. On March 2, 1990, we inspected GTEFL's record center and conducted interviews with three employees.

A. DESTRUCTION OF RECORDS

In investigating the Destruction Issue, depositions were taken of four Company employees. These employees either had direct knowledge of the events surrounding the October 11, 1989, destruction of records or responsibility for either implementing the newly-adopted records retention policy or gaining access to the records for our auditor. A deposition was taken of the supervisor of GTEFL's records retention center. This person has had this responsibility since 1982 and has first-hand knowledge of the former and current retention policies, as well as the destruction of the particular records in question. Depositions were also taken of the manager responsible for administering the records retention function and the two individuals responsible for obtaining access to records for our auditor in connection with this audit.

Additionally, our Staff inspected the records center and interviewed the person responsible for both locating the records sought by Staff auditors, as well as for implementing the Company's records destruction policy. This individual participated in the October 11th destruction of records that included some of those being sought by our auditor.

After reviewing the evidence gathered on the Destruction Issue, it does not appear that the October 11th destruction of records was devised to circumvent the Commission's audit of the Quad Block property transactions. Our auditor's request for records was specific and comprehensive and, as such, was adequate to inform Company personnel of the particular records he was seeking. It appears that a breakdown in GTEFL's interdepartmental communications caused this failure to stop the destruction of the particular records sought by our auditor.

B. CHANGE IN RECORDS RETENTION POLICY

In investigating the Policy Issue, GTEFL's General Counsel was deposed because he was the official who had responsibility for records retention at the time the Company's policy governing this matter was changed following the FCC's relaxation of its requirements. In addition, the attorney in the General Counsel's office who determined that the proposed records retention policy

change would be in compliance with our requirements was also interviewed.

Based on our review of this information, it appears that the Company violated the Commission's record retention rule by implementing a policy of destroying records which were required to be retained. While none of the evidence tends to show that GTEFL intended to violate the Rule through implementing such a policy, we find that the Company's action was "willful" in the sense intended by Section 364.285, Florida Statutes. We believe that in authorizing the Commission to fine regulated utilities for "willful" acts, the Legislature was not limiting this authority only to circumstances in which the Commission finds that the utility set out on a course of action with the intended purpose of violating one of its rules.

Utilities are charged with knowledge of our rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the scheduled destruction of documents, would meet the standard for a "willful violation."

In our view, "willful" implies intent to do an act, and this is distinct from intent to violate a rule. In order to measure the intent of GTEFL, it is appropriate to examine its actions regarding: (1) the safeguards established to insure compliance with Commission rules; (2) the steps taken, or not taken, to halt destruction of documents sought by the Commission; (3) the systematic destruction of documents in violation of our Rule; and (4) the failure to seek an interpretation of the Rule in question prior to destroying documents. It is uncontroverted that GTEFL adopted a policy of destroying records and willfully implemented it. GTEFL's behavior in this instance appears to rise to the level of a "willful violation" of the Commission's Rule. Accordingly, such conduct warrants the imposition of a penalty.

Procedures are in place for a utility to use in seeking clarification of our requirements. If GTEFL was uncertain of its record retention obligations, there was adequate opportunity for the Company to seek clarification under these procedures. Such clarification should have been obtained prior to the permanent destruction of documents.

C. THE APPROPRIATE PENALTY

In quantifying the appropriate fine for this violation, we are guided by two principal concerns: (1) the harm to the ratepayers from the potential damage to the Commission's ability to audit the Company's records; and (2) the duration of this destruction's effect on future audit procedures.

By Order No. 23143, we determined that no adjustment should be made for the Quad Block property because the costs associated were never recovered from GTEFL's ratepayers. Therefore, it does not appear that the ratepayers have been directly harmed by the violation. In addition, as discussed above, there does not appear to be any attempt to destroy the specific documents requested. However, the apparent general violation of the Commission's record retention rules cannot be ignored. In view of this apparent violation, pursuant to Section 364.285, Florida Statutes, we find it appropriate to require GTEFL to show cause why it should not be fined $5,000 for violation of Rule 25-4.020(3), Florida Administrative Code.

IV. AUDIT PROCEDURES REPORT

Notwithstanding any of the above, it also appears from the investigation that the GTEFL employees responsible for locating the records requested by our auditor and delivering them to him failed to act with due diligence in satisfying our auditor's request for inspection of records. The individual in charge of locating the accounting records being sought called an employee of the records center and discussed the records being sought. She did not read the request to the records center employee. Instead she asked him to search for records referring to "Quad Block" and "Tampa City Center." In addition, the records center employee was asked to look for general ledger "level run" records for 1972 through 1980. Rather than securing all the documents requested by our auditor, the individual responsible for locating records further concluded that our auditor could request the specific portions of the records when he arrived at the records retention center and thereby locate the particular documents sought. These actions cause two concerns. First, perhaps too much interpretation of audit record requests is required because communication between employees appears to be inadequate. Additionally, in order to minimize the amount of records being inspected, the Company may be forcing auditors to narrow their record requests.

Accordingly, we find it appropriate to require GTEFL to implement new policies to govern its employees' response to audit record requests. GTEFL employees should furnish all possible records that an auditor seeks to inspect. Moreover, the Company's current procedures should be changed in order to rely less on interpretation and communication between various employees and less on forcing the auditor to seek fewer records. Therefore, GTEFL shall submit a report detailing the procedures that the Company intends to implement in order to accomplish these objectives. This report shall be filed within 60 days of the issuance of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that GTE Florida Incorporated shall show cause in writing why it should not be fined $5,000 for violation of Rule 25-4.020(3), Florida Administrative Code. It is further

ORDERED that any response filed by GTE Florida Incorporated shall contain specific statements of fact and law. It is further

ORDERED that any response to this Order shall be filed within 20 days of the date of this Order. It is further

ORDERED that upon receipt of a response as outlined above, and upon GTE Florida Incorporated's request for a hearing, further proceedings will be scheduled by the Commission, at which time the Company will have an opportunity to contest the violations alleged above. It is further

ORDERED that GTE Florida Incorporated's failure to respond in the form and within the prescribed time frame will constitute admission of the violations alleged above and a waiver of the right to a hearing.

By ORDER of the Florida Public Service Commission, this 1st day of APRIL, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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Commissioner Gerald R. Gunter dissented from the Commission's decision in Section III of this Order.

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.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 21, 1991.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to

ublication of FALR, Inc. P.O. Box 385,
nesville, FL 32602 (904) 375-8036

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Water and Wastewater Certificates in Lake County by LAKE YALE CORPORATION d/b/a LAKE YALE UTILITY COMPANY.	) DOCKET NO. 930133-WS) ORDER NO. PSC-94-0171-FOF-WS) ISSUED: 02/10/94

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON
DIANE K. KIESLING

ORDER GRANTING MOTION TO DISMISS AND GRANTING CERTIFICATES

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER SETTING RATES AND CHARGES AND RETURN ON EQUITY

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that, except for the granting of the motion to dismiss and granting certificates, the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

On February 3, 1993, Lake Yale Corporation d/b/a Lake Yale Utility Company (Lake Yale or utility) filed an application for certificates to provide water and wastewater service in Lake County. The utility has been in existence since 1967 and is currently serving 199 mobile homes located in Sandpiper Mobile Home Manor, Sandpiper Lake Yale Estates, and Kings Peninsula. Lake Yale is also the developer of the mobile home parks. The utility will serve 360 equivalent residential connections (ERCs) in its final phase of development.

The cost for utility service to the residents of the mobile home parks is currently included in the lot rents. However, to

promote water conservation, the St. Johns River Water Management District (SJRWMD) is requiring Lake Yale to individually meter each lot and implement a rate structure whereby the greater the amount of water used, the more the customer will pay.

Since the cost for utility service will no longer be recovered through the tenant's rent and because Lake Yale will be receiving compensation for utility service, it was advised of the necessity of filing an application for certificates. As stated previously, Lake Yale filed its application on February 3, 1993.

On May 28, 1993, the Sandpiper Mobile Homeowners Association (Sandpiper) filed an objection to the application. Sandpiper objected to the formation of the utility because of an agreement with Lake Yale under a Prospectus which provides for provision of water and wastewater service as part of the monthly rental fee and that its formation would greatly increase costs to the homeowners.

In an attempt to resolve the objection, a customer meeting was held on August 25, 1993. Approximately 75 people attended the meeting, including utility owners, residents of the mobile home parks, and representatives of SJRWMD. We understand the objections the residents have against formation of the utility. However, we believe the overall interests of the citizens of the State are better served if all water customers are metered and are required to pay for all water used.

In a Memorandum of Understanding which exists between the Florida Water Management Districts and the Commission, the two agencies have agreed to a joint goal to ensure the efficient and conservative utilization of water resources in Florida. Also, according to the Memorandum of Understanding, a cooperative effort will be made to implement an effective, state-wide water conservation policy. Further, the Memorandum of Understanding states that the Florida Water Management Districts shall be responsible for evaluating and monitoring water withdrawal rates and for identifying and requiring various potential improvements necessary to provide proper resource management. The Commission is responsible for making recommendations relative to the economic, financial and ratemaking aspects associated with implementing the necessary improvements identified by the Florida Water Management Districts in order to provide efficient use of water resources.

Motion to Dismiss Objection

As stated previously, on May 28, 1993, Sandpiper filed an objection to the notice of application. Lake Yale filed a Motion

to Dismiss Objections dated October 19, 1993. Sandpiper did not file a response to the utility's motion.

In the motion to dismiss, Lake Yale states that: 1) the Commission must disregard the homeowner contracts, and as precedent therefore cites Order No. 21680, issued August 4, 1989, In Re: Continental Country Club, Inc., Cohee v. Crestridge, 324 So.2d 155 (Fla. 1975), and Miami Bridge v. Railroad Commission, 20 So.2d 356 (Fla. 1944); 2) the objection is frivolous in view of the mandate to Lake Yale by the St. Johns River Water Management District; 3) the Commission Staff met with the customers on August 25, 1993, and explained in detail that all water must now be sold on a metered basis, which would require elimination of the flat rate and installation of meters on each unit; and 4) the customers' rent, if the application is approved, will be reduced accordingly.

We find that the utility's Motion to Dismiss has merit. Sandpiper's basis for its objection appears to be the existence of the prospectus. With respect to agreements between utilities and customers or other parties, contract disputes are matters which must be settled by the circuit court. The Commission has exclusive jurisdiction over utilities with regard to service, authority, and rates pursuant to Section 367.011, Florida Statutes. The Commission must set rates which are just, reasonable, compensatory, and not unfairly discriminatory, pursuant to Section 367.081, Florida Statutes.

In Order No. 21680, issued August 4, 1989 (Application of Continental Country Club, Inc., for an increase in water and wastewater rates in Sumter County, Florida), the Commission found that a pre-existing contract is not determinative in setting rates for a utility in accordance with Chapter 367, Florida Statutes. The Commission's finding is supported by case law, which basically provides that, despite the fact that utilities may have pre-existing contracts concerning rates, when the utility comes under the jurisdiction of the Commission, the Commission has the authority to change the rates when deemed necessary in the public interest. In fact, the Courts have also stated that contracts with public utilities are made subject to the reserved authority of the state. State v. Burr, 84 So. 61 (Fla. 1920), and H. Miller & Sons, Inc. v. Hawkins, 373 So. 2d 913 (Fla. 1979).

Even further and more recent, in Public Service Com'n v. Lindahl, 613 So. 2d 63 (Fla. 2d DCA 1993), the Court found that the Commission's authority to raise or lower rates, even those established by a contract, is preemptive. Id. at 64. In Lindahl, the utility customers residing in Shady Oaks Mobile-Modular Estates moved to enjoin the utility from billing and collecting the newly

approved rates on the basis of a 1972 deed restriction which limited the charge for water and wastewater service. The Court specifically stated that the deed restriction did not supersede the Commission order approving the rate increase, and when the Commission issued certificates to Shady Oaks, its jurisdiction over the charges for such services was comprehensive. Id. at 64.

In consideration of the foregoing, we find that Sandpiper's basis for objection is not sufficient to deny the Lake Yale's Motion to Dismiss. Therefore, Lake Yale's Motion to Dismiss is granted. It should be noted, however, that upon receipt of the objection, an administrative hearing was scheduled to be held on July 22, 1994. That hearing date shall remain in the event a protest is received to the portion of this Order issued as Proposed Agency Action.

Application

The application is in compliance with Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules. In particular, the application contains a filing fee in the amount of $300, pursuant to Rule 25-30.020, Florida Administrative Code. Lake Yale also provided evidence in the form of a warranty deed that the utility owns the land upon its facilities are located, as required by Rule 25-30.033(1)(j), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided, as prescribed by Rule 25-30.033(1)(l),(m) and (n), Florida Administrative Code. The territory which Lake Yale has requested to serve is described on Attachment A of this Order and incorporated herein by reference.

Lake Yale provided proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers in the proposed territory. As discussed previously, an objection to the notice of application was filed on May 28, 1993, by Sandpiper.

Although Lake Yale has been satisfactorily operating the system since 1967, it has hired Mr. Robert Stewart of Plant Technicians, Inc. to operate and maintain the water and wastewater plants. Mr. Stewart is a certified plant operator with over eight years of experience in water and wastewater utility operations. Therefore, we believe that Lake Yale has the technical ability to provide service to the requested territory. In addition, from information filed with the application, it appears that Lake Yale has the financial ability to provide service to the area.

As discussed previously, Lake Yale is currently serving three mobile home parks in the requested territory. According to Lake Yale, there are no other utilities within the surrounding area which could provide service to the mobile home parks.

Therefore, we find that it is in the public interest to grant Lake Yale Certificates Nos. 560-W and 488-S to serve the territory described in Attachment A of this Order.

Rates and Return on Equity

Lake Yale is currently serving 199 mobile homes located within Sandpiper Mobile Home Manor, Sandpiper Lake Yale Estates, and Kings Peninsula and anticipates serving 360 ERCs at buildout. The utility was constructed in 1967 and upgraded in 1986 and 1990. The water and wastewater treatment plants, transmission/distribution and collection systems are designed to serve 378 ERCs. Lake Yale is disposing of its effluent by means of percolation ponds since its wastewater system is too small to dispose of the effluent by means of spray irrigation.

Normally, in original certificate applications, rates are calculated which will allow the utility to earn a fair rate of return on investment when the treatment plants reach 80 percent of capacity. It is anticipated that Lake Yale will reach 80 percent of capacity in 1997. From the information provided by Lake Yale, we were able to calculate proforma schedules of rate base, operating income and capital structure to be used in determining initial rates.

Lake Yale provided the actual construction costs of the water and wastewater systems. These costs have been found to be reasonable. Utility plant-in-service for water has been adjusted to include the cost for meters and meter installations.

Since the utility did not include an amount for contributions-in-aid-of-construction (CIAC) in its filing, we have adjusted CIAC for water and wastewater to reflect the service availability charges discussed later in this Order. Accumulated depreciation and CIAC amortization have been adjusted to reflect the changes made to utility plant-in-service and CIAC.

Our approved working capital allowance reflects 1/8 of operation and maintenance expenses, which is consistent with current Commission practice. Calculation of rate base is shown on Schedules Nos. 1 and 2, with adjustments shown on Schedule No. 3.

Lake Yale provided operation and maintenance expenses for water and wastewater based on the existing 199 ERCs. These expenses have been adjusted to be consistent with the number of ERCs that can be served when the treatment plants reach 80 percent of design capacity. Depreciation expense for the water and wastewater systems has been adjusted to reflect the adjustments made to utility plant-in-service.

Operating revenues and the corresponding regulatory assessment fees have been adjusted to a level which allows the utility the opportunity to earn a 8.59 percent overall rate of return. The Schedule of Operations is reflected on Schedules Nos. 4 and 5, with adjustments shown on Schedule No. 6.

The utility's capital structure has been adjusted to reconcile with rate base. We find the appropriate return on common equity for this utility to be 10.97 percent using the current Commission leverage formula authorized by Order No. PSC-93-1107-FOF-WS, issued June 29, 1993. The return on equity of 10.97 percent shall be used in future proceedings involving such things as calculation of allowance for funds used during construction (AFUDC) and interim rates. The capital structure for Lake Yale is shown on Schedule No. 7. The schedules are being presented only as tools to aid in establishment of initial rates and are not intended to establish rate base.

Lake Yale did not propose specific water or wastewater rates. The rates set forth herein have been calculated using the base facility charge rate structure and are based on a revenue requirement of $57,743 and $88,616 for the water and wastewater systems, respectively. Lake Yale shall charge its customers the following rates and charges until authorized to change by this Commission in a subsequent proceeding.

WATER
Residential and General Service
Monthly Service

Meter Size	Base Facility Charge
5/8" x 3/4"	$ 9.21
3/4"	13.82
1"	23.03
1-1/2"	46.05
2"	73.68
3"	147.36
4"	230.25
6"	460.50
8"	736.80
Gallonage Charge per 1,000 gallons	$ 1.69

WASTEWATER
Residential
Monthly Service

All Meter Sizes	$ 9.52
Gallonage Charge Per 1,000 gallons	$ 2.42

WASTEWATER
General Service
Monthly Service

Meter Size	Base Facility Charge
5/8" x 3/4"	$ 9.52
3/4"	14.28
1"	23.80
1-1/2"	47.60
2"	76.16
3"	152.32
4"	238.00
6"	476.00
8"	761.60
Gallonage Charge Per 1,000 gallons	$ 2.90

Lake Yale has not requested to collect customer deposits and none are approved herein. The miscellaneous service charges requested by the utility are consistent with Staff Advisory Bulletin No. 13, Second Revised. Pursuant to Section 2.08(C)(17)(k) of the Administrative Procedures Manual, these charges will be approved administratively when the tariff is approved.

Since Lake Yale did not request specific rates, the tariff filed with its application is incomplete. Lake Yale shall file tariff sheets reflecting the rates and charges approved herein within 30 days of the effective date of this Order. In addition, Lake Yale shall file a proposed customer notice for the Commission staff's approval within 30 days of the effective date of the order. The tariff sheets will be approved upon verification that the tariff sheets are consistent with the Commission's decision, upon expiration of the protest period, and upon verification that the proposed customer notice is adequate. The rates shall be effective for meter readings on or after 30 days from the stamped approval date on the tariff sheets.

Service Availability Charges

Lake Yale requested meter and installation fees to be collected from future customers connecting to the water plant. The utility did not, however, specify what the charges should be. We find a charge of $125 to be appropriate for a 5/8" x 3/4" meter and it is approved.

Although this utility did not request plant capacity charges, we find it appropriate to establish plant capacity charges for future connections. We find that plant capacity charges of $250 per ERC for the water system and $425 per ERC for the wastewater system are appropriate and these charges are hereby approved.

According to our analysis, these charges will result in a contribution level of approximately 75 percent when the systems reach buildout, which is consistent with Rule 25-30.580, Florida Administrative Code. Our analysis of the service availability charges approved herein are shown on Schedule No. 8.

AFUDC

The utility's capital structure has been utilized to calculate its AFUDC rate. Using a return on equity of 10.97 percent results in an annual AFUDC rate of 8.59 percent and a monthly discounted rate of 0.689106 percent.

Pursuant to Rule 25-30.033(4)(c), Florida Administrative Code, the effective date for the AFUDC rate shall be the date the certificate of authorization is issued to the utility. Schedule No. 9 reflects our calculation of the appropriate AFUDC rate.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Motion to Dismiss Objections filed by Lake Yale Corporation d/b/a Lake Yale Utility Company, 37802-32 County Road 452, Leesburg, Florida 34788 is hereby granted. It is further

ORDERED that Lake Yale Corporation d/b/a Lake Yale Utility Company is hereby granted Certificates Nos. 560-W and 488-S. It is further

ORDERED that the return on equity for Lake Yale Corporation d/b/a Lake Yale Utility is 10.97 percent, which shall be used for future proceedings involving such things as calculation of AFUDC and interim rates. It is further

ORDERED that Lake Yale Corporation d/b/a Lake Yale Utility Company shall charge its customers the rates and charges approved in the body of this Order until authorized to change by this Commission. It is further

ORDERED that Lake Yale Corporation d/b/a Lake Yale Utility Company shall submit a tariff reflecting the rates and charges approved herein within 30 days of the date of this Order. It is further

ORDERED that the rates shall be effective for meter readings on or after 30 days from the stamped approval date on the tariff sheets. It is further

ORDERED that the service availability charges approved in the body of this Order shall be effective for connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that the annual AFUDC rate for the water and wastewater system is 8.59 percent, with a monthly discounted rate of 0.689106 percent. This rate shall be effective as of the date of this Order. It is further

ORDERED that the provisions of this Order setting rates and charges and a return on equity for Lake Yale Utility Company, issued as proposed agency action, shall become final and effective

unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 10th day of February, 1994.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LAJ

by: Kay Flynn
Chief, Bureau of Records

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.

As identified in the body of this order, our action setting rates and charges and a return on equity is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March

3, 1994. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.

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 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 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.

ATTACHMENT A

Lake Yale Corporation d/b/a Lake Yale Utility Company

Territory Description

The following described lands located in portions of Sections 24,25, Township 18 South, Range 25 East, Lake County, Florida:

Section 24, Township 18 South, Range 25 East, Lake County, Florida.
Section 25, Township 18 South, Range 25 East, less right-of-way for County Road 452.
Begin 1802.38 feet North of the Southeast corner of the Northeast 1/4, Section 25, Township 18 South, Range 25 East, Lake County, Florida, from said point of beginning run North along the East line of the Northeast 1/4 of Section 25 to the Southeast corner of Section 24, Township 18 South, Range 25 East: Thence continue North along the East line of the Southeast 1/4 of Section 24 to the waters of Lake Yale; thence run Westerly along and with said waters to the West line of the East 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 24; thence run South along said West line to the South line of Section 24; thence along said Section line run West to the East line of the West 1/2 of the Southeast 1/4 of Section 24; thence along said East line run North to the waters of Lake Yale; thence run Northwesterly along and with said waters to a line that is 25.00 feet South of the North line of the Southeast 1/4 of Section 24; thence run West to the West line of the Southeast 1/4; thence continue 125.00 feet; thence South to a point that is 138.44 feet north of the North line of the Southeast 1/2 of the Southeast 1/4 of Section 24; thence South 86°47'40" East 316.98 feet; thence South 00°14'40" East 261.54 feet; thence South 89°58'06" West 191.41 feet to the West line of the Southeast 1/4 of Section 24; thence along said West line run South 00°14'40" East 1176.80 feet to the North 1/4 corner of aforesaid Section 25; thence run South along the Mid Section line to the Northeasterly right-of-way line of County Road C-452; thence Southeasterly along said right-of-way line to the East line of the Northwest 1/4 of the Northeast 1/4 of Section 25; thence run North along said East line to a point that is West of the point of beginning; thence run East to the point of beginning.

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Lake Yale Utility Company
Schedule of Water Rate Base
At 80% of Design Capacity

DOCKET NO. 930133-WS
Schedule No. 1

Description	Balance Per Filing	Commission Adjust.	Commission Vote
Utility Plant in Service	224,451	25,713	250,164
Land	0	0	0
Accumulated Depreciation	(68,035)	(25,748)	(93,783)
Contributions-in-aid-of-Construction	0	(34,500)	(34,500)
Accumulated Amortization of C.I.A.C.	0	2,561	2,561
Plant Held for Future Use	0	0	0
Working Capital Allowance	3,633	613	4,246
TOTAL	160,049	(31,362)	128,687

Lake Yale Utility Company
Schedule of Wastewater Rate Base
At 80% of Design Capacity

DOCKET NO. 930133-WS
Schedule No. 2

Description	Balance Per Filing	Commission Adjust.	Commission Vote
Utility Plant in Service	350,410	0	350,410
Land	0	0	0
Accumulated Depreciation	(113,999)	(32,291)	(146,290)
Contributions-in-aid-of-Construction	0	(39,100)	(39,100)
Accumulated Amortization of C.I.A.C.	0	2,402	2,402
Working Capital Allowance	7,805	(788)	7,017
TOTAL	244,216	(69,777)	174,439

Schedule No. 3

Lake Yale Utility Company
Schedule of Adjustments to Rate Base

Description	Water	Wastewater
Utility Plant-In-Service		
To include cost for meters and meter installations.	$25,713	$ 0
Accumulated Depreciation		
To reflect adjustment made to UPIS.	($25,748)	($32,291)
Contributions-in-Aid-of-Construction		
To reflect Commission approved service availability charges.	($34,500)	($39,100)
CIAC Amortization		
To reflect adjustment made to CIAC.	$ 2,561	$ 2,402
Working Capital Allowance		
To adjust working capital to reflect the adjustment made to operating and maintenance expenses.	$ 613	$(788)

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Lake Yale Utility Company
Schedule of Water Operations
At 80% of Design Capacity

DOCKET NO. 930133-WS
Schedule No. 4

Description	Balance Per Utility	Commission Adjust.	Commission Vote
Operating Revenues	0	57,743	57,743
Operating and Maintenance	29,063	4,901	33,964
Depreciation Expense	12,227	(4,473)	7,754
Taxes Other Than Income	2,375	2,598	4,973
Income Taxes	0	0	0
Total Operating Expenses	43,665	3,026	46,691
Net Operating Income	(43,665)	54,717	11,052
Rate Base	160,049		128,687
Rate of Return	-27.28%		8.59%

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Lake Yale Utility Company
Schedule of Wastewater Operations
At 80% of Design Capacity

DOCKET NO. 930133-WS
Schedule No. 5

Description	Balance Per Utility	Commission Adjust.	Commission Vote
Operating Revenues	0	88,616	88,616
Operating and Maintenance	62,438	(6,303)	56,135
Depreciation Expense	16,980	(7,267)	9,713
Taxes Other Than Income	3,799	3,988	7,787
Income Taxes	0	0	0
Total Operating Expenses	83,217	(9,582)	73,635
Net Operating Income	(83,217)	98,198	14,981
Rate Base	244,216		174,439
Rate of Return	-34.08%		8.59%

Schedule No. 6

Lake Yale Utility Company
Adjustments to Schedule of Operations

Description	Water	Wastewater
Operation and Maintenance		
To adjust operational and maintenance expenses to reflect the number of ERCs the utility will be serving at 80% of capacity	$4,901	($6,303)
Depreciation Expenses		
To reflect adjustments made to UPIS	($4,473)	($7,267)
Taxes Other Than Income		
To reflect regulatory assessment fees associated with operating revenue	$2,598	$3,988

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Lake Yale Utility Company
Schedule of Capital Structure
At 80% of Design Capacity

DOCKET NO. 930133-WS
Schedule No. 7

Description	Balance Per Filing	Commission Adjust.	Commission Bala	Recon. Adjust.	Recon. Balance	Weight	Cost Rate	Weighted Cost
Common Equity	56,943	0	56,943	64,307	121,250	40.00%	10.97%	4.39%
Long and Short-Term Debt	185,000	0	185,000	(3,133)	181,870	60.00%	7.00%	4.20%
Customer Deposits	0	0	0	0	0	0.00%	0.00%	0.00%
Advances from Associated Companies	0	0	0	0	0	0.00%	0.00%	0.00%
Other	0	0	0	0	0	0.00%	0.00%	0.00%
	241,943	0	241,943	61,174	303,120	100.00%		8.59%

Range of Reasonableness	High	Low
Common Equity	11.97%	9.97%
Overall Rate of Return	8.99%	8.19%

Lake Yale Utility Company
Schedule of Net Plant to Net C.I.A.C.
At 100% of Design Capacity
DOCKET NO. 930133-WS

Schedule No. 8

Account Number	Account Description	Water	Wastewater	Total
101.00	Utility Plant in Service	269,451	350,410	619,861
104.00	Accumulated Depreciation	(122,336)	(178,580)	(300,916)
	Net Plant	147,115	171,830	318,945
271.00	C.I.A.C.	135,000	153,425	288,425
272.00	Accum. Amortization of C.I.A.C.	(25,523)	(24,014)	(49,537)
	Net C.I.A.C.	109,477	129,411	238,888
	Net C.I.A.C. / Net Plant	74.42%	75.31%	74.90%
	Gross to Gross Minimum Contribution Level	42.57%	59.10%	51.92%
	Commission Vote	* 375	425	800

* Includes $125 Meter and Meter Installation Fee and a $250 Plant Capacity Charge.

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Lake Yale Utility Company
Commission Approved AFUDC Rate

Schedule No. 9
Docket No. 930133-WS

Class of Capital	Capitalization Per Utility	Utility Adjustments	Adjusted Capital Structure	Percent of Capital	Cost Rates	Weighted Cost	Discounted Monthly Rate
Common Equity	56,943	64,307	121,250	40.00%	10.97%	4.39%	
Long Term Debt	185,009	(3,133)	181,876	60.00%	7.00%	4.20%	
Short-Term Debt	0	0	0	0.00%	0.00%	0.00%	
Customer Deposits	0	0	0	0.00%	0.00%	0.00%	
Customer Deposits	0	0	0	0.00%	0.00%	0.00%	
Tax Credits - Zero Cost	0	0	0	0.00%	0.00%	0.00%	
Tax Credits - Weighted Cost	0	0	0	0.00%	0.00%	0.00%	
Deferred Income Taxes	0	0	0	0.00%	0.00%	0.00%	
Total	241,952	61,174	303,126	100.00%		8.59%	0.689106%

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of CONTINENTAL COUNTRY CLUB, INC. for an increase in water and wastewater rates in Sumter County, Florida.	)	DOCKET NO. 881178-WS ORDER NO. 21680 ISSUED: 8-4-89

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
GERALD L. GUNTER

APPEARANCES:

B. KENNETH GATLIN, Esquire, and KATHRYN COWDERY, Esquire, of Gatlin, Woods, Carlson and Cowdery, The Mahan Station, 1709-D Mahan Drive, Tallahassee, Florida 32308
On behalf of Continental Country Club, Inc.

CHRISTOPHER P. JAYSON, Esquire, of the firm John T. Allen, Jr., P.A., 4508 Central Avenue, St. Petersburg, Florida 33711
On behalf of the Continental Community Resident Homeowners' Association, Inc.

JOSEPH GAYNOR, Esquire, of the firm Robbins, Gaynor and Bronstein, 150 2nd Avenue North, St. Petersburg, Florida
On behalf of Continental Country Club RO, Inc.

PETER SCHWARZ, Esquire, and STEPHEN BURGESS, Esquire, Office of Public Counsel, c/o Florida House of Representatives, The Capitol, Tallahassee, Florida 32399-1300
On behalf of the Citizens of the State of Florida

SUZANNE F. SUMMERLIN, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399
On behalf of the Commission Staff

WILLIAM BAKSTRAN, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399
Counsel to the Commissioners

FINAL ORDER SETTING RATES AND CHARGES, ESTABLISHING SERVICE AVAILABILITY POLICY AND CHARGES, MISCELLANEOUS SERVICE CHARGES, AND METER INSTALLATION CHARGES, AND RELEASING ESCROW ACCOUNT CONTAINING INTERIM SERVICE AVAILABILITY CHARGES

BY THE COMMISSION:

BACKGROUND

On January 13, 1987, the Sumter County Board of Commissioners adopted a resolution pursuant to Section 367.171, Florida Statutes, transferring jurisdiction over the privately-owned water and wastewater utilities to this Commission. By Order No. 19854, issued on August 22, 1988, we granted Continental Country Club, Inc., (Continental or the utility) water and wastewater certificates under the grandfathering provisions of Section 367.171, Florida Statutes.

Continental serves approximately 780 mobile home lots, a 104-unit master-metered condominium complex called Sandalwood Condominium, a clubhouse, sales and maintenance offices, and a pool. The cost of water and wastewater service is presently included in the monthly maintenance fee for the mobile home lots. These maintenance fees were previously established by court order for most lot owners. The maintenance fee is an aggregate charge for various community services including garbage collection, lawn care, pool maintenance, street lighting, and recreational and boat storage facilities. The customers in the condominium complex are charged a per unit amount for water and wastewater services. The general service customers are not billed for water and wastewater service.

In its grandfather application, Continental asked this Commission to set separate utility rates for the mobile home lot owners, but new utility rates were not requested for general service customers or for the Sandalwood Condominium. In Order No. 19854, we agreed that revision of utility rates was probably needed. We observed, however, that previously existing rates were generally retained in a grandfather proceeding and, accordingly, denied the requested revision of utility rates. Instead, we ordered Continental to file a rate case.

The utility filed its completed minimum filing requirements (MFRs) on November 23, 1988, and that date was established as the official date of filing. The utility's filing is based on the projected test year ending March 31, 1990, using actual data for the base period ended June 30, 1988, and expected expansion costs for the water system.

By Order No. 20639, issued on January 20, 1989, we suspended the utility's proposed rates. We did not authorize an interim rate increase. However, we did approve interim service availability charges, subject to refund.

Upon our own motion, a hearing was held on this matter on May 31 and June 1, 1989, in Leesburg, Florida. At the outset of the hearing, oral argument was heard on the Office of Public Counsel's Motion to Limit Issues of Fact or in the Alternative Motion for Summary Judgment and Request for Hearing (OPC's Motion). The panel took OPC's Motion under advisement.

Continental, the Office of Public Counsel (OPC), the Continental Community Resident Homeowners Association, Inc. (CCRHA or the Homeowners), the Continental Community Resident Homeowners Organization, Inc. (CCRHO), and our Staff participated in the hearing. Testimony and exhibits were received from various expert and customer witnesses on the issues identified in Prehearing Order No. 21287, issued May 25, 1989, in this proceeding. CCRHA, or the Homeowners, were represented by legal counsel for the group of mobile home park customers who had filed a lawsuit against Continental, Continental Country Club, Inc. vs. James A. Savoie, et al., in the Sumter County Circuit Court (the circuit court case). CCRHO intervened with legal counsel at a very late point in the proceeding to represent the mobile home park customers who have recently contracted to purchase the entire Continental development. The utility, OPC and the Homeowners filed post hearing statements or briefs subsequent to the hearing.

FINDINGS OF FACT

Having heard the evidence presented at the public hearing held on May 31 and June 1, 1989, and having reviewed the briefs of the parties and the recommendations of our Staff, we now enter our findings and conclusions.

WHAT CONSIDERATION SHOULD THIS COMMISSION GIVE TO THE HOMEOWNERS' CONTRACTS AND THE TWO COURT DECISIONS CONSTRUING THEM?

The parties in this matter have fundamentally conflicting views on the appropriate legal interpretation to be given to Continental Country Club, Inc. vs. James A. Savoie, et al., the decision rendered by the Circuit Court in and for Sumter County, Florida, and Continental Country Club v. Savoie, 538 So.2d 464 (5th D.C.A. 1988), the appellate decision rendered by the Fifth District Court of Appeal. Those court decisions were generated by a dispute between the Homeowners and an earlier owner of Continental over the appropriate maintenance fee to be charged the homeowners for various community services, including garbage collection, lawn care, pool maintenance, street lighting, recreational and boat storage facilities, and water and sewer services (the package of services).

When the Homeowners purchased their lots from earlier owners of Continental, they received varying contracts and deeds including varying provisions setting out either a specific maintenance fee amount or a formula to be utilized for calculating the appropriate maintenance fee amount to be paid for the package of services. Because the earlier owner of Continental charged in excess of what the Homeowners considered to be the appropriate maintenance charges, they filed suit in Sumter County Circuit Court. For the Homeowners whose contracts and deeds provided for the calculation of the fee based on Continental's "out of pocket" expenses incurred in providing the services, that Court determined that the appropriate maintenance fee charges should not include elements for depreciation, interest or any return on investment.

Continental appealed the Circuit Court's decision to the Fifth District Court of Appeal (the 5th DCA). The 5th DCA affirmed in most respects the Circuit Court's decision regarding the Homeowners' contracts, except that part stating the Homeowners had the right to require Continental to charge the Sandalwood Condominium the same maintenance fee per condominium unit charged each resident of the mobile home park.

Throughout this proceeding, therefore, it has been the position of the Homeowners, both the CCRHA and the CCRHO, and the OPC that these court decisions require this Commission to set rates that reflect the terms of the Homeowners' covenants

and restrictions as interpreted by the two court decisions. The OPC's Motion requested that we grant the Homeowners summary judgment or, at least, limit this proceeding to only those issues left open after full acceptance of the terms of the Homeowners' contracts. The OPC has repeatedly stated that we should set the rate base of this utility at zero because the Homeowners have contributed all of the assets of the utility by the purchases of their lots. They assert that any rates we set should reflect the specific terms and provisions of the Homeowners' varying contracts.

The OPC has argued throughout this proceeding, as well as in its Post-Hearing Brief, that this Commission will "impair" the vested rights of the Homeowners, in violation of Section 367.011(4), Florida Statutes, if it does not set rates which honor their contracts. OPC points out that Section 367.011(4), Florida Statutes, states in part:

> This chapter shall not impair or take away vested rights other than procedural rights or benefits.

The OPC also argues that this Commission will violate the legal doctrines of res judicata, collateral estoppel, and equitable estoppel if it does not presume that the utility has ". . .received contributions which eliminate that portion of rate base which requires recovery of depreciation, interest and a return on equity." (OPC's Brief, Page 1) The doctrine of res judicata is the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties in all later suits on points and matters determined in that former suit. In order to apply, the parties, the cause of action, and the relief sought must be identical to that involved in the former suit. Collateral estoppel is the principle that a judgment in a prior action may be conclusive where a subsequent suit is based on a different cause of action. The doctrine of equitable estoppel means that when one has induced another to change his position to his detriment by some action or omission, one cannot then raise legal or statutory defenses to avoid the consequences of that action or omission. All of these doctrines are cited by OPC to support the proposition that it is inappropriate for this Commission to set rates in any fashion that does not follow the conclusive determinations of the two court decisions regarding the terms of the contracts between Continental and the Homeowners.

Continental filed a Response to OPC's Motion and argued at the hearing that it should not be granted because Chapter 367, Florida Statutes, sets out the appropriate elements of rate-making for this Commission to consider. The utility also argued that the doctrines of res judicata, collateral estoppel and equitable estoppel do not apply in this proceeding because the court decisions involved different issues.

We find that this Commission must set rates for this utility pursuant to Section 367.081(2), Florida Statutes, which requires that we:

> . . . fix rates which are just, reasonable, compensatory and not unfairly discriminatory. In every such proceeding, the commission shall consider the value and the quality of the service and the cost of providing the service, which shall include, but not be limited to, debt interest, the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service.

Section 367.081(2), Florida Statutes, clearly dictates how this Commission shall set rates. We must consider the cost of providing the service and this consideration shall include debt interest, depreciation and a fair return on the investment of the utility in property used and useful in the public service. The current owner of Continental, Redman Industries, Inc., acquired this utility in a Chapter 11 reorganization bankruptcy proceeding in August, 1986. Therefore, it is clear that the current capitalization of the utility has been provided by the current owner. We cannot ignore the requirement set forth in Section 367.081(2), Florida Statutes, to provide a fair return on that investment because such would be an unconstitutional "taking" of private property for the public use. Nor can this Commission ignore all of the other elements so clearly set forth in the statute as those that must be considered in setting rates that are "just, reasonable, compensatory, and not unfairly discriminatory."

It is evident that the provisions of the Homeowners' contracts and the decisions of the courts construing them squarely collide with our mandate set forth in Section 367.081(4), Florida Statutes. To set rates that address all of the peculiarities of each of the several classes of contracts (created by the different maintenance fees in existence at the different time periods in which the individual Homeowners purchased lots), not to mention the separate arrangement under which the Sandalwood Condominium was served, would be to discriminate amongst all the customers, both present and future. Such a permanent type of discrimination could not be considered to fall within the realm of not "unfairly discriminatory".

We are not without guidance on this issue from the courts. In Cohee v. Crestridge Utilities Corp., 324 So.2d 155 (2nd D.C.A. 1975), a case very similar to the instant case in that a group of homeowners had sued a utility for increasing its rates prior to the Commission receiving jurisdiction over the utility, the Second District Court of Appeal stated that:

> As a result of the Pasco County Commission resolution and the Public Service Commission order granting the water certificate, the operation of Crestridge's water service is now clearly under the jurisdiction of the Public Service Commission. Fla.Stat. Section 367.171 (1973) Thus, Crestridge argues that the issuance of the water certificate was tantamount to the approval of the water rates which were being charged when the certificate was issued. On the other hand, the plaintiffs contend that the courts rather than the Public Service Commission have jurisdiction since the plaintiffs' claims are for breach of contract. In support of their position they point to Fla.Stat. Section 367.011(4) (1973) which provides that Chapter 367 (the Water and Sewer Regulatory Law) "shall not impair or take away vested rights other than procedural rights or benefits."
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> The Supreme Court in Miami Bridge Co. v. Railroad Commission, 1944, 155 Fla. 366, 20 So.2d 356, stated:

> The State as an attribute of sovereignty is endowed with inherent power to regulate the rates to be charged by a public utility for its products or service. Contracts by public service corporations for their services or products, because of the interest of the public therein, are not to be classed with personal and private contracts, the impairment of which is forbidden by constitutional provisions. 16 C.J.S. Constitutional Law, pp. 766-773, Section 327.

> Therefore, despite the fact that Crestridge had a pre-existing contract concerning its rates, now that Crestridge is under the jurisdiction of the Public Service Commission, these rates may be ordered changed by that body. The Public Service Commission has authority to raise as well as lower rates established by a pre-existing contract when deemed necessary in the public interest. State v. Burr, 1920, 79 Fla. 290, 84 So. 61.

The Court went on to reverse the lower court's summary judgment for the utility, stating that the plaintiffs were entitled to an adjudication of whether the utility had breached its contract by going to the higher rates prior to the Commission's jurisdiction and that this could only be done in a court of law. Nevertheless, the Court also said, after setting out the full text of Section 367.081(2), Florida Statutes, that ". . .it would appear that the Commission would not even be authorized to take into consideration the pre-existing contract in its determination of reasonable rates." Although this was not the question before the Court, it does throw some light on the instant factual situation.

In H. Miller & Sons, Inc. v. Hawkins, 373 So.2d 913 (Fla. 1979), the Florida Supreme Court held that this Commission could modify a private contract between a developer and a

utility as a valid exercise of the police power. The Court stated:

> The Commission's decision was based upon the well-settled principle that contracts with public utilities are made subject to the reserved authority of the state, under the police power of express statutory or constitutional authority, to modify the contract in the interest of the public welfare without unconstitutional impairment of contracts. Midland Realty Co. v. Kansas City Power & Light Co., 300 U.S. 109, . . . Miami Bridge Co. v. Railroad Commission, 155 Fla. 366. . . .The Commission felt, and the Utility naturally agreed, that excluding Miller from the authorized increase would be unjustly discriminatory. Furthermore, the effect of ruling in favor of Miller would have been to allow a private party to circumvent by contract the police power of the state, which is impermissible. Union Dry Goods Co. v. Georgia Public Service Commission, 248 U.S. 372, ...
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> * * * * *
>
> Miller does not dispute the validity of the general rule but argues it is inapplicable where there has been no express finding that the contract is unreasonable and adversely affects the public interest. Central Kansas Power Co. v. State Corporation Commission, 181 Kan. 817, 316 P.2d 277, 286 (1957) ("contracts cannot be waived aside by mere lip service invocation of the police power"). While it is undoubtedly true that contractual agreements under constitutional protection may not be easily disregarded, such was not the case in the instant Orders. The test for specificity in Commission orders is that they contain "a succinct and sufficient statement of the ultimate facts upon which the Commission relied . . . ." Occidental Chemical Co. v.

Mayo, 351 So.2d 336, 341 (Fla.1977); Deel Motors, Inc. v. Dept. of Commerce, 252 So.2d 389 (Fla. 1st DCA 1971). The Commission directly addressed this issue in Order 7851. We agree with the following excerpt from that order:

> We believe the plain and unequivocal mandates of Section 367.101, Florida Statutes, that service availability charges and conditions be just and reasonable, a fact too well known to require further discourse, coupled with references to "public welfare" and application of legal rates without discrimination, spell out adequately the "public interest or welfare". We do not believe there is any magic attached to the words, but such may be enunciated, without their use. Such was done in Order No. 7650.
>
> PSC Order 7851 at 2.

Both of the above cases give us guidance as to our authority to modify contracts. In the instant case, we find that we must disregard the contracts in order to set rates for this utility in accordance with Chapter 367, Florida Statutes. We do not come to this decision without great concern for the Homeowners, but we see this as our only legal choice.

THE PUBLIC SERVICE COMMISSION'S PRIMARY JURISDICTION

Hill Top Developers v. Holiday Pines Service, 478 So.2d 368 (Fla.2nd DCA 1985), gives some direction as to the appropriate relationship between this Commission and the courts of the State of Florida when it comes to matters over which we have been given exclusive jurisdiction pursuant to Section 367.011, Florida Statutes. In the Hill Top case, the central issue was whether a trial court had subject matter jurisdiction to enforce a charge imposed by a regulated utility without such charge first receiving the approval of this Commission. The utility had filed suit in circuit court to enforce a charge

against a developer for which it had not received prior Commission approval. The circuit court awarded the utility the balance of the unapproved service availability charges it had attempted to collect from the developer. When the developer appealed the decision, the Second District Court of Appeal overturned the trial court's decision citing the primary jurisdiction of the Public Service Commission over the water and sewer rates of the utility and the preemption doctrine. The Court stated:

> This matter should have been determined by the trial court through application of the judge-made "primary jurisdiction" doctrine, recognized in Florida, State ex rel. Shevin v. Tampa Electric Company, 291 So.2d 45, 46 (Fla. 2d DCA 1974), which is designed and intended to achieve a "proper relationship between the courts and administrative agencies charged with particular regulatory duties." United States v. Western P.R. Co., 352 U.S. 59,63, 77 S.Ct. 161, 1 L.Ed.2d 126 (1956). In Mercury Motor Express, Inc. v. Brinke, 475 F.2d 1086 (5th Cir.1973), the United States Court of Appeals for the Fifth Circuit explicated the doctrine in terms distinctly pertinent to this matter when it was before the trial court:
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> * * * * *
>
> . . . primary jurisdiction comes into play when a court and an administrative agency have concurrent jurisdiction over the same matter, and no statutory provision coordinates the work of the court and of the agency. The doctrine operates, when applicable, to postpone judicial consideration of a case to administrative determination of important questions involved by an agency with special competence in the area. It does not defeat the court's jurisdiction over the

> case, but coordinates the work of the court and the agency by permitting the agency to rule first and giving the court the benefit of the agency's views. . . 475 F.2d at 1091-1092.

* * * * *

As logical as application of the primary jurisdiction doctrine to the matter at hand would have been, it was not followed. The trial court's entry of a judgment in favor of HPSC thus requires us to consider still another principle commonly known as the "preemption doctrine." That doctrine, also recognized in Florida, Maxwell v. School Board of Broward County, 330 So.2d 177 (Fla. 4th DCA 1976), insures that a legislatively intended allocation of jurisdiction between administrative agencies and the judiciary is maintained without the disruption which would flow from judicial incursion into the province of the agency. See Laborers International Union of North America, Local 517 v. The Greater Orlando Aviation Authority, 385 So.2d 716 (Fla. 5th DCA 1980). We conclude upon the present record that the power and authority of the PSC are preemptive. It is plain beyond any doubt that in formulating Chapter 367, the Legislature desired exclusive jurisdiction to rest with the PSC to regulate utilities such as the HPSC and to fix charges for service availability. Section 367.011(2) and 367.101, Fla.Stat.; see Richter v. Florida Power Corp., 366 So.2d 798 (Fla.2d DCA 1979). The trial court, by asserting its jurisdiction and awarding HPSC a judgment, literally cast itself in the role of the PSC. It is by honoring the jurisdictional exclusivity of the PSC that the very collision which has occurred here between an administrative agency and the judiciary would have been avoided. Stated

> differently, in entering a judgment in favor of HPSC, the trial court placed its imprimatur upon the service availability charge assessed against HTD and denied to the PSC its statutorily delegated responsibility to determine the validity of that charge.
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> * * * * *
>
> Finally, our disposition of this matter in no measure offends Article I, Section 21 of the Florida Constitution. Access to the judiciary is not foreclosed by our decision; resort to the judiciary is available following utilization of the administrative process. Section 350.128(1), Fla.Stat.; Scholastic Systems, Inc. v. LeLoup, 307 So.2d 166 (Fla. 1974). Once a charge of this kind becomes finally determined in accordance with the statutory scheme, a juridically cognizable debt would exist if the charge were not satisfied.

We do not find that the courts that rendered the two decisions regarding the Homeowners' contracts acted improperly by disregarding our primary jurisdiction over the subject matter. To the contrary, it has been established that neither court was made aware of this Commission's jurisdiction. Although OPC has argued that this lack of knowledge was the failure of the utility and that it should not, therefore, work to the utility's benefit, we believe that the significant fact is that these courts did not have any opportunity to recognize our primary jurisdiction in the matter of water and sewer rates.

WHAT IS THE IMPACT OF THE BANKRUPTCY OF CONTINENTAL ON THIS COMMISSION'S RATE-SETTING IN THIS PROCEEDING?

On our request, the parties discussed in their briefs the question of what impact Continental's bankruptcy had on the obligation of the utility to honor the Homeowners' and Sandalwood contracts. OPC counsel stated that his conferences with attorneys possessing such expertise made him confident that the validity of these contracts has not been impaired and that the utility must honor them.

The utility, on the other hand, stated that Continental's reorganization extinguished any obligation on its part to honor these contracts. In their brief, the Homeowners argued that Redman Industries, Inc., had the legal opportunity to abandon these contracts in that proceeding, and since it did not do so, the utility must be held to honor them.

We find that our concern with these contracts does not turn on the determination of whether they were extinguished in the bankruptcy proceeding. As has been set out above, the contracts must be disregarded if we are to set rates for this utility pursuant to Section 367.081(2), Florida Statutes. For this reason, we hereby deny OPC's Motion.

WHAT CONSIDERATION SHOULD THIS COMMISSION GIVE THE SANDALWOOD CONDOMINIUM MASTER AGREEMENT? WHAT ADJUSTMENTS, IF ANY, ARE APPROPRIATE TO REFLECT THAT AGREEMENT?

Both the OPC and the Homeowners have proposed that we should set rates that honor the Sandalwood Master Agreement. Pursuant to that Agreement and an Addendum thereto, the Sandalwood Condominium paid a $10,000 tap on fee and agreed to pay the rates set out therein. However, it was established at the hearing that these rates were not actually charged by the utility nor paid by the Sandalwood Condominium owners. What appears to have been happening is that, for the three years prior to our receiving jurisdiction, the utility was accepting and Sandalwood Condominium was paying $1872 as a flat rate for both water and sewer service, although this arrangement was not contained in any contract. Conflicting evidence was presented as to why the utility was not charging a gallonage charge and whether it had the authority under the Agreement to charge for sewer at all.

OPC and the Homeowners argue that the rates we grandfathered in for Sandalwood Condominium in our certification proceeding prior to this rate case were incorrect. It is unclear from the evidence presented that the rates we grandfathered in are incorrect. The utility explained that it had not been charging a gallonage charge, although it was authorized to charge one by its Agreement and the Addendum, because the Sandalwood Condominium master meter was in need of repair. Therefore, we do not find it appropriate to order any refund of the rates we put into effect in the grandfather proceeding.

The OPC and the Homeowners have also argued that, if we decide to disregard the Master Agreement, we should require the utility to refund the $10,000 tap on fee paid by Sandalwood Condominium as consideration for its contract. Even though we find that we must disregard the Agreement as to the appropriate rates for this utility, the appropriate rate-making treatment must be given to the payment of the $10,000 tap on fee. The utility has treated the $10,000 tap on fee as a contribution-in-aid-of-construction (CIAC), which in our view is the appropriate rate-making treatment for the tap on fee.

In addition, OPC and the Homeowners have asserted that the utility should refund the $9,646.51 paid by the Sandalwood Condominium for the repair of a lift station. We find such a refund inappropriate because we cannot discern from the record in this proceeding whose responsibility it was to do such repairs. It is as likely that it was the Sandalwood Condominium's responsibility to do such repairs as it is that it was the utility's. We have made no adjustment in reference to this amount because the record is so unclear as to its nature. If it were to be considered an addition to plant, we would offset such an addition with a matching adjustment to CIAC. Therefore, because these adjustments would result in no impact on the utility's rate base, we find no adjustment is needed. Therefore, the utility will not be earning any return on this $9,646.51 repair cost.

ARE ANY ADJUSTMENTS REFLECTING THE HOMEOWNERS' CONTRACTS APPROPRIATE?

As we have already discussed, we find that we must disregard the Homeowners' contracts in setting rates for this utility. Therefore, we must likewise deny the fundamental adjustment proposed by OPC and the Homeowners--that this utility's rate base be considered to be zero since, pursuant to the Homeowners' contracts, all of the utility's investment has been contributed.

In the event we do not set rates pursuant to the Homeowners' contracts, OPC and the Homeowners have proposed that the utility should be required to impute CIAC subsequent to 1982. The utility has calculated CIAC by imputing contributions for the years 1973-1982. However, it did not impute contributions for the years after 1982. To the OPC's

and the Homeowners' argument that the utility should impute contributions for the years since 1982, the utility's response is that the costs incurred for water and wastewater system improvements during the prior ownership were capitalized as fixed assets for both book and tax purposes. Therefore, the utility believes it would not be appropriate to impute contributions since 1982.

OPC states in its brief, however, that the utility's Witness MacFarlane failed to carry the burden of proof when cross-examined regarding Continental's federal tax return for 1983. Witness MacFarlane agreed that no depreciation expense was claimed in 1983 under the category described as 15-year public utility property. Therefore, OPC states that the record does not support the utility's position that post-1982 improvements were capitalized. However, Witness MacFarlane did attempt to reference another entry on the 1983 tax return whereby depreciation of utility assets might be claimed under a different category. He did not expound on that point. Since the subject tax returns were in OPC's possession prior to the hearing, OPC had adequate opportunity to discover whether depreciation of utility plant might be elsewhere on the tax schedule. OPC's line of questioning was restrictive. We do not find that the suggestion that, because no entry appears on a particular line of the tax return schedule that OPC referenced, demonstrates that the utility's position that the former owner capitalized the improvements to the water and wastewater systems occurring after 1982 is not accurate. Therefore, we find the adjustment proposed by OPC and the Homeowners is not appropriate.

QUALITY OF SERVICE

The quality of service determination is based on testimony regarding compliance with state regulations and customer testimony from the public hearing. Witness Noblitt provided testimony regarding compliance with the Department of Environmental Regulation's (DER) requirements. She indicated that the capacity of the water plant was marginal prior to the improvements. The improvements include two new larger pumps at existing wells in combination with elevated storage. Also, an auxiliary power generator was required as an emergency power source. These improvements should be completed by the end of June and will provide sufficient capacity to meet current demands without service interruptions, thereby, maintaining DER requirements.

The water quality meets all state and federal maximum contaminant levels. Witness Noblitt further indicated that there was no need for additional treatment based on a review of the chemical analyses. Witness Ebbitt testified that the wastewater plant was in compliance with all DER requirements. The facilities were maintained properly and had sufficient capacity to meet current demands.

Approximately 15 customers provided testimony at the hearing on May 31, 1989. The majority of those customers indicated that the quality of service was satisfactory, some even said very good. There were two customers that complained about rust in the water. Both customers indicated that the problems occurred at the Sandalwood Condominium near Buildings 23 and 24. This appears to be an isolated occurrence and may be due to Sandalwood's service connections. Another possible explanation is the high iron content at Well #1. However, any problems that may have resulted from this well have been eliminated since the well was retired in the design of the new water plant modifications.

The intervenors in this case did not provide positions on the quality of service in their prehearing statements or in their briefs. Based on the utility's compliance with state regulations and the customer testimony, we find that the quality of service provided by this utility is satisfactory.

RATE BASE

To establish the utility's overall revenue requirements, this Commission must determine the value of the utility's rate base, which represents the investment on which the utility is given an opportunity to earn a reasonable return. A utility's rate base consists of various components, including net utility plant-in-service, working capital, et cetera. Attached to this Order as Schedules Nos. 1-A and 1-B are our calculation of the utility's water and sewer rate bases. Our adjustments to rate base are itemized on Schedule No. 1-C.

Plant-in-Service

1) Pre-August, 1986, Construction Costs - Continental's application included schedules depicting the actual and, in some respects, the best estimates of the cost of constructing the water and wastewater systems. The expenditure for plant

construction affects the rate base calculation in two respects: first, as a measurement of the investment in plant and second, as a basis for evaluating the requested acquisition adjustment. Continental was reorganized in August, 1986, pursuant to a plan of reorganization submitted by Redman Industries, Inc., a principal creditor of the former owner. Redman contends that its investment in the utility system in 1986 was $1,813,600. This amount exceeds the reported cost of plant facilities added before 1986, when accumulated depreciation and CIAC are also considered. Because the reported acquisition price exceeded the original cost amount (net plant less CIAC), a "positive" acquisition adjustment was recorded, which amount the utility contends should also be included in the rate base determination.

Utility Witness MacFarlane agreed that some of the reported construction costs before August of 1986 should be excluded because of incomplete documentation. This removal of undocumented plant reduces the net plant investment amount in the projected test year. Before considering related depreciation, the reduction is $45,389 for the water division and $36,047 for the wastewater division. Subsequent to the hearing, the utility prepared accounting schedules to show how this correction and other adjustments discussed during the hearing ultimately affect the rate base calculation. Those schedules indicate that the net reduction to plant for the projected test year would be $30,149 for the water division and $30,061 for the wastewater division. We find it appropriate to remove these undocumented charges from the rate base calculation.

2) Original Investment in Plant - As already discussed, certain plant construction costs before 1986 were inadequately documented and the utility agreed that reducing the plant balance was appropriate. Witness MacFarlane also agreed that certain distribution and collection facilities serving the Sandalwood project should be considered contributed properties. Further, retirement of certain water transmission mains in 1984 and 1985 also affects the original cost amount as of August, 1986. When these plant reductions, plant retirements, and increased CIAC provisions are considered, the original cost of construction is accordingly reduced. Removal of undocumented plant charges and plant retirements affects the CIAC imputation proposed by Witness MacFarlane. When the plant and CIAC accounts are adjusted based upon evidence in the

record, and their related accumulated depreciation and amortization accounts are likewise adjusted, the resulting net original cost balance is $1,220,280. This amount represents a $187,612 reduction relative to the $1,407,892 amount reported in the MFRs. The original cost balance at August 31, 1986, is used to measure the acquisition adjustment, without regard to whether that provision should be included in the rate base amount. Therefore, based upon evidence in the record, we find the original cost of construction to be $1,220,280 at August 31, 1986.

3) Reclassification of Well #1 - The utility's water supply system previously included four wells. Pursuant to a plan submitted to DER, Well #1 will be removed from service. That facility will be used as a source of irrigation. Well #1 was installed in 1973 at an approximate cost of $10,000. Since that well will be removed from utility service, but not abandoned, Witness MacFarlane agreed that facility should be classified as non-utility property. This reclassification results in a $10,000 reduction to plant with a concurrent $4,355 offsetting adjustment to accumulated depreciation. Depreciation expense is also reduced $333. We find it appropriate to reduce net plant investment by $5,645 to reflect the removal of Well #1 from utility service. Well #3 will remain in use as a backup source for emergency service.

4) 1983-1985 Plant Additions - In its brief, OPC contends that there were plant additions in 1983 through 1985 that were installed to replace or refurbish plant as a result of neglect or bad installation. OPC recommends that all costs associated with the repairs/replacements of distribution lines and collection lines should be removed from rate base. The costs were identified as all post-1974 water mains and services amounting to $206,407 and post-1974 sewer lines amounting to $34,130.

In 1981, Utility Witness Springstead's engineering firm prepared a feasibility report on Continental. The report recommended that new 6 inch and 8 inch mains should be installed where needed to provide adequate fire flow capacity. Witness Springstead explained that the utility system was designed at the time that it was built as a RV park. Later, the concept was changed to a mobile home park. A study on the water use revealed a high consumption of 533 gallons per day

per capita. It was determined that the Phase 1 and 2 water mains were not adequately sized for present demands and fire protection, and would have to be replaced with larger mains.

Replacement of the water mains in Phase 1, the original Continental service area, occurred in June, 1984. The Phase 1 area is described in Witness Springstead's testimony as the Continental area, which is separate from the Timberwoods area where the water mains were to be refurbished or replaced due to bad installation. The cost for the Phase 1 replacements was $102,990. This cost is half of the $206,407 OPC erroneously excluded from water mains due to neglect or bad installation. This work was necessary to correct the underdesigned distribution system, caused by the obvious unforeseen change in the character of the service area.

The remaining costs that OPC contends should be excluded from rate base were incurred for either the Timberwoods area or then undeveloped areas. The feasibility report indicated that new 6 inch and 8 inch mains should also be installed in the Timberwoods area where needed to provide adequate flow capacity. Also, the water mains in the north portion of the Timberwoods area needed to be refurbished except where they were to be replaced, and service connections needed rebuilding. The areas needing refurbishing were areas that had leaking joints and leaking connections at the mechanical fittings. Witness Springstead indicated that there were some problems with the initial installation. There were also undeveloped areas that needed new water mains.

The record does not provide a distinct breakdown of costs for replacement or refurbishment of water transmission mains in the Timberwoods area. It does appear, however, that at least a portion of the 1985 plant additions resulted from problems with the initial installation. The need for the post-1974 improvements to the distribution and collection lines is undisputed. We believe that it is inappropriate to disallow costs for correcting the deficiencies of the system since such a regulatory response would give a new owner of a utility no incentive to make necessary improvements.

Based on the evidence that certain costs were necessary to correct the underdesigned system and were not due to neglect or bad installation, and that the remaining costs were due either to new construction or to correct deficiencies to improve the

quality of service provided to the customers, we find no adjustments to the post-1974 distribution and collection lines are appropriate.

5) Retirement of Water Transmission Mains in 1984 and 1985
According to Witness MacFarlane, water transmission mains that were installed in 1973 (Phase 1) were retired in 1984 upon installation of lines with greater capacity for fire fighting capability. Trending replacement costs back to the date of original installation, a $24,400 estimate of the original construction cost was reported. If the retirement of the initial construction cost was treated as an extraordinary retirement, Witness MacFarlane agreed that the amortization treatment afforded extraordinary retirement losses (5 years) would have been completed before the projected test year.

Witness MacFarlane testified that it was his understanding that replacement only occurred in the initial area of development (Phase 1), and that the mains installed in 1974 in the newer section (Timberwoods) were later refurbished, but not replaced. Utility Witness Springstead, however, testified that some mains in the Timberwoods section were replaced because of faulty installation. The record does not reveal the extent of mains replaced in Timberwoods. It is, however, evident that transmission mains in the Timberwoods area were retired and some concurrent reduction to the original cost of construction is, therefore, appropriate. Based upon the evidence in the record, we find it appropriate to reduce plant by $24,400 to reflect the retirement of mains in Phase 1. Absent any showing by the utility to the contrary, we find $24,400 to be a reasonable estimate of the original cost of the mains retired in the Timberwoods area in 1985. Therefore, we find it appropriate to reduce plant-in-service by $48,800 to reflect the approximate cost of transmission mains retired in 1984 and 1985. A concurrent adjustment of $20,109 to remove the accumulated depreciation related to this combined $48,800 reduction to plant is also appropriate. Because the utility agreed that an extraordinary retirement entry was in order, the accumulated depreciation account is charged with less than the $48,800 plant construction cost.

Although the test year plant accounts were increased to show the estimated cost of new pumping and chlorination equipment, pro forma adjustments to show retirement of the replaced equipment were not presented. Witness MacFarlane

prepared an exhibit to show the approximate cost of the retired pumping and chlorination equipment. That exhibit shows an ordinary retirement entry, whereby the $6,789 estimated original cost of the replaced equipment is removed from the plant account and equally removed from accumulated depreciation. Based the record, we hereby approve this $6,789 pro forma adjustment to the plant and accumulated depreciation accounts.

6) Acquisition Adjustment of $1,813,600 Inappropriate - The $1,813,600 acquisition price that was assigned to the utility assets for bookkeeping purposes, which is also the basis used for the utility's requested acquisition adjustment in this case, was derived from an appraisal report prepared by Mr. Walter Lampe. That report indicates that Mr. Lampe, a real estate appraiser, was rendering his "Opinion of Value" with regard to four separate parcels: vacant acreage, mobile home lots, an amenity package, and the utility plant.

According to testimony by Witness MacFarlane, Mr. Lampe evaluated each parcel independent of the others. Mr. Lampe did not base his appraisal upon an allocation of the actual cost related to the reorganization of Continental. When the full measure of cash paid and obligations assumed under new ownership by Redman Industries, Inc., was determined, some of Mr. Lampe's appraisal values, including the amount assigned to the utility properties, were adopted. However, the actual obligations exceeded the $6,479,000 appraisal amount reported by Mr. Lampe. It appears that the actual acquisition price relating to this reorganization was at least $7,970,000. Witness MacFarlane testified that a revaluation of the acquired properties was necessary so that the asset values would correspond to the added cash investments and assumed obligations. Witness MacFarlane testified that he believed the revaluation was performed pursuant to generally accepted accounting principles.

Therefore, we find that the $1,813,600 amount that was assigned, rightly or wrongly, to the utility system was not the result of an allocation procedure.

The utility has asked this Commission to include an acquisition adjustment in the rate base calculation. Our policy has been that rate base inclusion of an acquisition adjustment is permitted only to the extent extraordinary

measures attend a transfer of utility ownership. On August 6, 1986, a bankruptcy court approved a plan for reorganization for Continental whereby the former owner, Donald W. Freeman, relinquished his ownership of the company's stock, conditions were set forth to govern payment of creditors, and the proponent of the plan of reorganization, Redman Industries, Inc., provided $100,000 in new equity capital. Redman Industries, Inc., was previously the single largest creditor of Continental. Following reorganization of Continental, an overall revaluation of the company's assets was deemed necessary since the total obligations that survived the bankruptcy case and the new capital investments exceeded the recorded book value of the company's assets. That revaluation included an assignment of $1,813,600 to the company's utility assets. That sum corresponds to the "Opinion of Value" prepared by Mr. Walter Lampe, in his capacity as appraiser evaluating the worth of four asset categories: vacant acreage, mobile home lots, an amenity package, and utility properties. The record indicates that Mr. Lampe used a discounted cash flow approach to evaluate the utility system based upon a stream of projected income.

The utility contends that the acquisition price of this utility system should be the $1,813,600 appraisal amount in August, 1986, and that this amount should be considered the beginning point for measuring its investment in utility properties. Because this acquisition price exceeds the previously recorded cost of plant facilities (less CIAC and related reserve accounts), a "positive" acquisition adjustment is recorded. The original cost of the acquired plant facilities, as adjusted to reflect removal of undocumented charges, retirements, and adjustments to CIAC, was $1,220,280 as of August, 1986. Thus the positive acquisition adjustment to be considered in this case is $593,320. This balance is reduced by subsequent amortization and used and useful corrections to yield the utility's proposed provision for an acquisition adjustment in its rate base calculation.

OPC Witness Effron testified that the utility's proposed acquisition adjustment should not be included in the rate base calculation. He testified that the original cost amount should not be disturbed simply due to a change in ownership. He also testified that an objective basis for concluding that the acquisition price exceeded original cost was missing. Since Continental's assets were acquired in the aggregate, there

being no separate cash expenditure for each parcel independent of the others, Witness Effron argued that the reported acquisition price merely represented the subjective judgment of the appraiser, which should not be relied upon as the real purchase price of the utility system.

Mr. Lampe was not present at the hearing to explain his basis for appraisal of the utility system. Nor were the work schedules prepared in support of his $1,813,600 appraisal amount available for inspection. Witness MacFarlane reported that Mr. Lampe testified on July 25, 1986, before the bankruptcy court as to the "liquidation" value of Continental's property. Recalling Mr. Lampe's testimony, Witness MacFarlane reported that Mr. Lampe testified that the utility assets had an average liquidation value of $1,250,000. Since the liquidation value would apparently represent 80% of the non-liquidated value, Witness MacFarlane concluded that the range of values would be from $1,300,000 to $1,813,600. Since Mr. Lampe did not attend the rate case hearing, it is impossible to determine why the uppermost value was reported in his appraisal letter of August 12, 1986.

Witness MacFarlane produced preliminary schedules prepared by Mr. Lampe that indicated that the possible range of values for the utility would be between $1,165,000 and $1,750,000. Both values represent the present value of a stream of future revenues reduced by exactly 50% to represent income after expenses. The lower and upper valuation amounts correspond to average monthly bills of $30 and $45 per resident, respectively, with lesser per unit charges for the Sandalwood project. Witness MacFarlane did not know how Mr. Lampe established those projected bills. Witness MarFarlane did not know how the 50% provision for expenses was determined. He agreed that rates would be higher if projected rates were designed to yield recovery of an acquisition adjustment.

Witness MacFarlane acknowledged that our policy regarding rate base inclusion of an acquisition adjustment requires some showing of extraordinary measures. He testified that, in his view, the bankruptcy of Continental was an extraordinary event.

We agree with OPC Witness Effron that the reported acquisition price is not a proper indicator of the actual purchase price for the utility assets. The $1,813,600 reported amount is not the bottom nor even the midpoint of the possible

values, but instead the "highest" possible amount. The valuation is based upon a stream of future income, but the derivation of the monthly billings is totally unexplained. Also unexplained was the assumption that expenses would exactly equal 50% of revenues. The utility's own application shows that expenses exceed 50% of revenues, and those revenues are designed to yield a return on the requested acquisition adjustment. Since an objective "purchase price" cannot be determined from the record, a comparison with the original cost amount cannot be made, which cancels any consideration of an acquisition adjustment.

Also disturbing is the premise that a company emerging from bankruptcy, where some debts are generally discarded, would arrive at a larger investment in utility plant equipment than before. We reject the proposition that the Company's former bankrupt condition is cause for increasing the investment in plant facilities. Even given the lack of adequate support for Mr. Lampe's appraisals, the lower scales of his proposed ranges are not much different from the original cost amount.

The utility contends that its bankruptcy is an extraordinary or unusual event that would justify including its reported acquisition price in the rate base equation. Bankruptcy proceedings may be unusually unpleasant for creditors, and a creditor's assumption of equity ownership and responsibility an unusual result. The record reveals that some market value assessment of Continental's assets was needed. The record does not demonstrate that these conditions justify allowing a rate base balance in excess of original cost.

If the original cost amount understated the worth of the utility assets upon reorganization, a sound basis for concluding so is needed. Mr. Lampe's appraisal under present value income assumptions, with unexplained premises concerning revenues and expenses, provides no assurance that this method yielded the more correct estimate of their worth. We find it appropriate to deny the utility's request for an acquisition adjustment.

7) Pro Forma Adjustment for Meter Installation and Sundry Water Plant Improvements - In its MFRs, the utility requested water plant improvements and meter installation costs to be included in the projected test year ending March 31, 1990. The

estimated costs of the water plant improvements and meter installations were $208,154 and $87,192, respectively. The utility supported the meter installation cost by including the invoices and general ledger reports in Exhibit 15. The actual cost was only slightly higher than the estimate. The majority of the work was completed prior to the projected test year. There was $11,763 spent during the first month of the projected test year to complete the work. OPC did not mention the meter installations in its brief. Therefore, we find it appropriate to allow $87,192 as an addition to rate base.

The water plant improvements were substantiated by utility Witness Springstead. The improvements include new pumps, pumphouses, chlorinators, plant piping, a standby generator, a telemetering system, and activation of the elevated storage tank. The need for the improvements is undisputed. DER Witness Noblitt stated that the modifications to the system would greatly improve the utility's ability to meet current demands. Utility Witness Springstead testified that the water plant improvements were for the existing customers, and if additional lots are constructed, additional capacity would very likely be needed.

The water plant improvements were contracted by Merideth Environmental Services for an initial cost of $206,775. The contract was revised on April 14, 1989, to include a detention tank and temporary electrical controls to wells 2 and 4, which resulted in a revised cost of $219,039. The utility also provided invoices totalling $18,414 for the engineering work on the project. The total cost for the water plant improvements is $237,453.

The improvements had not been completed at the time of the June 1, 1989 hearing. The pumps were placed in service in May and connected to the elevated storage tank, but the pumphouses, telemetry and chlorination systems were not completed by the hearing. The standby generator had been delivered but not placed into service. The completion date for all the work was scheduled for June 10, 1989.

In its brief, OPC argued that since only one-third of the cost of the improvements were on-line by the hearing date, all costs associated with current plant improvements, which have not been placed in service, should be removed from plant in service. An alternate position as stated in its brief was that

the improvements should be removed for that portion of the test year when they are not going to be in service. Also, expenses should be adjusted to eliminate direct costs known not to have occurred.

Utility Witness MacFarlane testified that the projected test year ending March 31, 1990, was chosen because the plant improvements were scheduled to be completed before Marcn 31, 1989. Continental asked for a projected test year in order to include the improvements 100%, not 75% because they may not be in service for three months of the projected test year. Witness MacFarlane indicated that had he known that they would not be in service until June, he would have probably asked for a projected test year ended June of 1990 rather than March of 1990. He further stated that the improvements are recognizable and because they will be in service by the time these rates are established, they should be included 100%.

We are persuaded by the utility for several reasons. The need for the improvements is undisputed. The improvements are basically for the existing customers and improve the quality of service provided by the utility. The improvements will be completed by the end of June, 1989, which places them in service for 9 months of the projected test year. The plant will be in service by the time the approved rates go into effect. We find it reasonable to conclude that the projected test year was chosen to include the extraordinary amount of plant additions in their entirety, and an unforeseen three month delay should not cause a reduction to the costs. Furthermore, we note that the projected test year expense for purchased power was reduced by $7,029, mainly due to the efficiency of the two new pumps in combination with the elevated storage. We find that it is inappropriate for the customers to benefit from the full amount of reduced purchased power costs due to the plant improvements while the utility is allowed only a portion of those improvements in rate base.

Therefore, we find it appropriate to allow $237,453 for the water plant improvements and $87,192 for the meter installations, or a total pro forma plant addition of $324,645.

8) Used and Useful Adjustments - The utility performed used and useful analyses in the MFRs for the historical test year ended June 30, 1988, and for the projected test year ending March 31, 1990. The projected test year calculations

utilize the historical data and incorporate the pro forma water plant modifications. The modifications include new 500 gallon per minute (gpm) pumps at Wells #2 and #4, in combination with a 100,000 gallon elevated storage tank. Well #1 will be retired because of high iron content. Well #3 will continue as backup to the potable water system and used as a primary source for golf course irrigation.

In the water source of supply, both OPC and the utility used a capacity of 960,000 gallons per day (gpd), which is the 16 hour equivalent of the capacity of the two new wells (1000 gpm x 1440 gpm/day x 16/24). The fire flow demand used by both was also the same at 1500 gpm for three hours. The nominal difference in the calculations is due to the maximum daily demand. The utility used a historical maximum demand of 708,000 gpd, while OPC used the average day times a theoretical peaking factor of two to arrive at a demand of 681,246 gpd. It is unknown why OPC Witness Demeza attempted to use a theoretical number when historical data was available. One possible explanation might be that the meter installation program could have an effect on historical data. However, Witness Demeza added that when a customer is metered, there is a reduction in the water that is used but only for a short period of time. Therefore, historical data still appears appropriate in the maximum day demand calculation. The resulting used and useful calculations are 100% by the utility and 99% by OPC. The difference is immaterial for rate-setting purposes. Therefore, we find the source of supply based on historical data to be 100% used and useful .

The utility requested 50% of the cost of Well #3, which provides the backup capacity should one of the remaining two wells break down. The primary use for Well #3 is golf course irrigation. The utility argued that if Well #3 did not exist, it would be required to drill a third well for the required redundancy capacity. At the hearing, Witness Demeza explained that the capacity of Well #3 was recently reduced from 825 gpm to 180 gpm for the potable water system, due to DER's requirement of a 30 minute chlorine contact time. In its brief, OPC argued that if Well #3 can only produce 180 gpm, despite its 825 gpm capacity, rate base should be reduced proportionately. We agree and find well #3 (180 gpm/825 gpm) to be 22% used and useful. This results in a $3,982 reduction to rate base.

The elevated storage tank went into service in May 1989. Utility Witness MacFarlane explained the reasons why it should be considered 100% used and useful at his deposition, the relevant portions of which were submitted into the record. The 100,000 gallon tank can just barely meet the peak hour demands plus fire flow requirements. OPC made no adjustment to storage in its brief. Therefore, we find the elevated storage tank to be 100% used and useful.

The water transmission and distribution and wastewater collection and pumping systems all have the same used and useful calculation. Both the utility and OPC divide the units served by the developable lots with service to reach a 91.5% used and useful. The utility uses margin reserve to reach a 97% used and useful and then rounds off to 100%. At 97%, it is obvious that the existing systems are not overdesigned for future growth.

OPC's disagreement is with the allowance of margin reserve. OPC Witness Demeza testified that margin reserve should be the responsibility of the owner, not the user of the utility. Witness Demeza contends that it is a challenge for the engineer and owner to find the most cost effective system that will accept additions when required by additional development. The fallacy in this testimony is that a utility must have sufficient plant to accept additional connections today, but not be compensated until some future date. Under this theoretical scenario, a utility could never be compensated in a rate case for the required additional capacity until its service area is completely built-out and its plant completely utilized.

Utility Witness MacFarlane testified that this Commission has recognized in its regulation of all types of utilities that protecting service quality while maintaining an ability to serve new customers is an obligation of a utility. He stated that if supply and treatment facilities are exactly matched to existing customer needs, then the addition of just a few more customers can cause a deterioration of the current customers' service quality. We agree that a margin reserve is appropriate in used and useful calculations. Therefore, we find the water transmission and distribution and wastewater collection and pumping systems to be 100% used and useful.

The wastewater treatment plant has a capacity of 400,000

gpd. Both the utility and OPC use the average day of the maximum month (171,000 gpd) and divide by the capacity to reach a 43% used and useful. The only difference in the final calculations is that the utility adds a margin reserve to reach a used and useful of 45%. Since we have found a margin reserve is appropriate for the previously mentioned reasons, we find the wastewater treatment plant to be 45% used and useful.

The final used and useful calculation is for the wastewater general plant-equipment account. The utility requested 100% used and useful and OPC recommended a used and useful of 43%. Neither the utility nor OPC provided adequate support for their calculations. It appears OPC arbitrarily assigned the 43% used and useful from its wastewater plant calculations. Because the general plant account contains equipment that is used for existing customers, we find it to be 100% used and useful.

9) Contributions-in-Aid-of-Construction - When our used and useful calculation includes an allowance for additional customer growth, also described as a margin of reserve, it has been our policy to offset that growth consideration by the additional CIAC that will be collected when those customers are connected. That this treatment is a matter of Commission policy was acknowledged by Utility Witness MacFarlane and OPC Witness Effron. Witness MacFarlane testified that he disagreed with this practice of imputing CIAC to correspond with projected customer growth. Witness Effron testified that this offsetting treatment was appropriate.

Witness MarFarlane argued that the imputation of future CIAC diminishes the utility's ability to earn a fair rate of return on its continuing investment in plant needed to serve incremental customer growth. Since some investment in margin of reserve will also be needed in future periods, reducing the present margin of reserve by future CIAC is improper in Witness MarFarlane's opinion.

Witness Effron testified that he did not prepare margin of reserve calculations since he was not an engineer, but if the margin of reserve was intended as an allowance for future customer growth, ". . .it would only be fair and consistent to recognize any CIAC that might be commensurate with that growth taking place."

The record includes testimony both supporting and opposing the imputation of CIAC as an offsetting adjustment to the margin of reserve provision. If the margin reserve is considered a continuing investment in additional capacity, which capacity must be replenished as future customers connect so that adequate capacity will exist for even later customer growth, the practice of imputing future CIAC does diminish the allowance afforded this continuing investment. If the margin reserve is intended as a matching provision particular to that specific customer growth occuring 18 months after the approved test year, then the offsetting of future plant and future CIAC, both being post test year conditions, has merit. Therefore, in accordance with our policy, our calculation of rate base includes additional CIAC to represent meter connection fees and service availability charges for the 54 customers counted in the margin of service provision. The corresponding adjustments are $50,760 (54 x $940) for the water division and $59,400 (54 x $1,100) for the wastewater division.

The utility's MFRs included a schedule to depict the CIAC amounts for the projected test year. The reported balances were $114,420 for the water division and $239,080 for the wastewater division. The reported amounts included a $10,000 cash contribution received from Sandalwood Condominiums and $2,636 for meter installation costs in 1983 and 1984. The remaining balances, or $106,784 for the water division and $234,080 for the wastewater division, would reportedly correspond with the imputation procedure described in Rule 25-30.570, Florida Administrative Code. Pursuant to this Rule, if competent substantial evidence as to the amount of CIAC is not submitted, CIAC shall be imputed to the extent plant costs have been recorded for tax purposes as expenses relating to land sales, assuming tax information is available. If tax information is unavailable, the imputed CIAC shall be in proportion to the cost of water distribution and transmission facilities and sewage collection facilities.

Utility Witness MacFarlane testified that his inquiries disclosed that plant construction costs after reorganization of Continental have been capitalized both for book and tax purposes. He also testified that construction costs were likewise capitalized during ownership by the immediate former owner. Because he was unsure about the accounting treatment employed by earlier owners, Witness MacFarlane imputed CIAC to the extent that previously constructed transmission,

distribution, and collection facilities "could have been charged to cost of sales for tax purposes as the lots were sold". To compute his imputed CIAC amount, Witness MacFarlane added 1982 and earlier construction costs for mains, services, meters, and hydrants (totalling $346,937) for the water division and mains, manholes, and lift stations (totalling $710,235) for the wastewater division, and dividing these construction totals by 922 developable lots, per unit charges of $376 and $770 were calculated. Since 284 lots were sold before April of 1982, the total CIAC amounts would be $106,784 and $218,680 pursuant to this calculation.

The reported CIAC in the MFRs for the wastewater division was incorrectly added, which error in summation resulted in a $15,400 overstatement of CIAC. Since errors in calculation are properly corrected when noted, we find an immediate $15,400 reduction to the reported CIAC for the wastewater division to be appropriate.

Witness MacFarlane testified that the distribution and collection facilities serving the Sandalwood project should properly be considered contributed properties. This adjustment increases CIAC by $28,000 and $59,400 for the respective water and wastewater systems. Witness MacFarlane also agreed that certain construction costs should be omitted because of incomplete documentation. However, because the previously discussed imputation amount included $31,325 for meters that were undocumented, a corresponding $9,656 ($31,325/922 x 284) reduction to CIAC also results. The imputed CIAC also includes a proportionate share of $48,800 in transmission mains that were retired in 1984 and 1985. When that amount is removed from the plant investment column, the portion which is considered contributed property must be excluded for consistency. The corresponding adjustment is $14,768 ($48,800/922 x 284). Therefore, we find it appropriate to reduce CIAC for the water division by the combined $24,424 amount relating to retirement of mains and removal of undocumented plant.

Pursuant to our Order No. 20639, issued on January 20, 1989, we authorized collection of interim service availability charges. Witness MacFarlane agreed that collection of these payments would increase CIAC and correspondingly reduce rate base. Assuming that, on average, three customers would be added each month, pre-test year new CIAC would be $5,040 and $6,600 for the water and wastewater systems. For the projected

test year, on an average basis, the additional CIAC would be $15,120 and $19,800 for the water and wastewater systems. We have included these adjustments to the CIAC account in our determination of rate base.

As has been our policy, we find it appropriate that additional CIAC be recognized as an offset to the margin of reserve allowance. Those adjustments add $50,760 and $59,400 to the respective water and wastewater CIAC balances

Based on all our adjustments above, the corrected CIAC amounts are $191,316 for the water division and $368,880 for the wastewater division. These are also the appropriate CIAC totals for our rate base calculation.

OPC Witness Effron testified that additional CIAC should be imputed for years subsequent to 1982, based upon additional customer connections multiplied by the $376 unit water cost and the $770 unit wastewater cost provided by Witness MacFarlane. Witness Effron noted that his proposed adjustment was based on pre-1982 construction costs. His adjustment is apparently based upon the assumption that the price for each lot sold after 1982 included some measure of pre-1982 construction costs. No evidence to support that position was presented by Witness Effron.

Utility Witness MacFarlane testified that, before and following reorganization, Continental had capitalized construction costs both for tax and bookkeeping purposes. If those costs were not deducted for bookkeeping purposes or tax purposes, there is no obvious correlation between the price of a lot and the cost of building utility systems.

During cross-examination, Witness MacFarlane was asked whether depreciation relative to the claimed investment in utility assets was reported on a particular line in the tax return of Continental, which category refers to use of accelerated cost recovery (ACRS) for 15-year public utility property. Witness MacFarlane agreed that water and sewer assets would be included in the category of 15-year public utility property if the filing party claimed ACRS rates. He also agreed that no depreciation expense was reported by Continental on this particular line from 1982 to 1985.

Witness MacFarlane indicated that depreciation relative to

the utility assets for Continental may have been reported elsewhere on the tax depreciation schedule. Since the subject tax returns were in OPC's possession before the hearing, the opportunity to discovery whether depreciation of utility plant was reported on another line or whether accelerated depreciation was actually claimed was readily available. OPC's questions regarding a particular line on the tax return were restrictive and Witness MacFarlane's testimony that utility assets were capitalized was not disproved. Since Continental was not operating as a regulated public utility before this Commission's regulation, and, except with regard to Sandalwood, customers were charged maintenance fees rather than separate water and sewer charges, it is unclear whether 15-year ACRS rates would apply in Continental's specific case.

10) Accumulated Depreciation - The balances reported for accumulated depreciation in the MFRs, or $243,155 for the water division and $321,029 for the wastewater division, included sums which relate to undocumented plant. The reported balance for the water division did not include adjustments to reflect retirement of replaced water mains, a pro forma adjustment to reflect replacement of pumping and chlorination equipment, or a reclassification of Well #1 to a non-utility account. An addition to water plant in 1988, which was incorrectly classified to a maintenance account, necessitates a further adjustment. The reported balance for the wastewater division included depreciation that was accrued subsequent to retirement of a package treatment plant, which resulted in an overstatement of that account. We find an adjustment to reflect the actual cost of certain water plant improvements to be appropriate, which adjustment necessitates a further correction to the reserve account. When these various adjustments are considered, the corrected accumulated depreciation, after used and useful adjustments, is $192,784 and $314,127 for the respective water and wastewater divisions.

11) Working Capital - The utility's requested allowance for working capital is based upon the formula approach, whereby one-eighth of the utility's operating expenses is used as an estimate of working capital needs. OPC Witness Effron testified that the formula approach was an arbitrary method of computing working capital which does not accurately address the utility's actual cash working capital requirements. Witness Effron testified that the formula approach was based upon the assumption that a utility incurs expenses about 45 days before

recovery of those costs from customers. Witness Effron argued that while the formula approach might approximate the lag in collection of revenues, it did not consider the offsetting consideration that a lag in payment in expenses would also be expected. He suggested that the lag in payment might surpass the lag in collection of revenues. He recommended a zero provision for working capital because a "positive" working capital amount had not been established.

Utility Witness MacFarlane testified that the formula approach was widely recognized as a reasonable means of estimating working capital. He reported that Continental pays its creditors in a timely manner and because it renders service before collecting receipts, it was entitled to an allowance for working capital. Witness MacFarlane argued that ". . .the formula approach is justified when compared to a costly but detailed lead/lag study or a balance sheet approach which is virtually impossible due to the number of nonregulated operations conducted by Continental Country Club, Inc.". During cross-examination, Witness MacFarlane admitted that some expenses, such as electricity and interest, are typically paid after the benefits are received by a utility. In its brief, OPC argues that the utility has failed to establish its need of a working capital allowance.

This Commission has adopted the balance sheet approach to measure a utility's working capital requirement because it yields a more exact calculation of the utility's actual working capital condition during the test year. Absent evidence that the balance sheet approach would yield greater current and deferred assets than matching liabilities, it has been our practice to exclude working capital from the rate base equation.

Recently, in Docket No. 880883-WS, we initiated proceedings to streamline procedures relating to water and sewer rate cases. By Order No. 21202, we directed our Staff to initiate rulemaking regarding the use of the formula approach to calculate working capital with the added condition that a separate provision for deferred charges would not be permitted. This simplification of the working capital equation is expected to result in reduced rate case expenses. However, our decision was to initiate rulemaking, not to change our policy by that Order.

Obviously, the formula approach is but an estimate of a

utility's need for working capital. Witness MacFarlane testified that a balance sheet approach was "virtually impossible" because of the unregulated activities of Continental. The utility's application includes a balance sheet for the total company, which schedule does show an excess of current assets over current liabilities, but because of the magnitude of the amounts listed therein and the descriptions of the accounts, it appears likely that the portion related to the utility operation would be small. The cost of preparing a detailed lead/lag study of a complicated, month by month analysis of balance sheet accounts, where many nonregulated activities must be identified and excluded, would have contributed to increased rate case charges and a corresponding request for greater revenues. It is not improbable that revenues for recovery of those added rate case charges would approach, if not surpass, the revenues associated with the currently requested working capital provision. In addition, it may be appropriate to consider that the utility did not request a separate allowance for its deferred rate case charges, which amount alone would exceed the requested working capital amount.

We find it appropriate to approve the use of the formula approach to compute working capital. Because the utility operation was inextricably intermingled with other community service operations and because development activities by Continental add a further separation complication, the balance sheet approach for measurement of working capital is difficult, if not impossible, to apply in this somewhat unique case. Other than speculation about what a lead/lag study might reveal, the only evidence in the record concerning the utility's true working capital needs is Witness MacFarlane's testimony that Continental pays its creditors in a timely fashion and bills its customers in arrears. The working capital allowance using the formula approach amounts are $11,021 for the water division and $13,798 for the wastewater division.

12) Test Year Rate Base - Using the beginning balance and the month-ending account balances for the test year, we find $726,895 and $381,415 to be the respective rate base totals for the water and wastewater divisions. The utility's water and wastewater rate base amounts are shown on Schedules Nos. 1-A and 1-B attached hereto. Our adjustments to the rate base calculations are shown on the attached Schedule No. 1-C.

COST OF CAPITAL

1) Capital Structure - For the historical year ended June 30, 1988, Continental's capital structure was all debt related. On the average, about 11% was payable to the Internal Revenue Service and an unsecured creditor fund, with the remaining 89% owed to Continental's parent company, Redman Industries, Inc. That intercompany obligation was shown as being equivalent to equity investment since Redman's capital did not include any outstanding debt. Based upon those sources of funding, an overall cost of capital of 11.87% was reported by the utility.

For the projected test year ending March 31, 1990, the liabilities to outside parties were reduced based upon scheduled payments of principal, and a further obligation to the parent company was added to represent the expected cost of water plant improvements. However, because Redman itself was acquired by a highly leveraged company, the intercompany obligation was adjusted to approximate the capital structure of the new owner. As adjusted, the utility's capital structure consists of 9.5% equity investment and 90.5% debt. The requested return on equity is 14.35% and the weighted cost of debt is about 10.52%. The requested overall cost of capital is 10.88%.

There is no evidence in the record to indicate that Continental's proposed capital structure should not be accepted in this proceeding. OPC Witness Effron used the 10.88% weighted cost of capital derived from this capital structure to portray the utility's return on investment in the event a rate of return was granted in this case. In its brief, OPC contends that all capital must be deemed contributed since recovery of interest was not permitted in court decisions concerning the maintenance fee.

We find it appropriate to accept the utility's proposed capital structure to compute the cost of capital for this proceeding. The utility's cost of capital is shown on attached Schedule No. 2, which also shows a reconciliation of sources of funding with the combined water and wastewater rate base amounts.

2) Return on Equity - The utility's requested return on its equity investment is based upon the leverage formula

pursuant to our Order No. 19718, issued in Docket No. 880006-WS. That Order indicates that the appropriate return on equity should be 14.35% when the equity portion of the capital structure is less than 40%. The equity portion of the utility's capital structure is 9.46%.

All parties agreed, in their prehearing statements, that the leverage formula should be used to establish the appropriate return on equity investment if earnings were included in the approved rates. Our policy has been that an authorized range is established for the allowed equity return for subsequent surveillance and interim rate considerations. Using that range of 100 basis points around the allowed return, the authorized range of reasonbleness would be 13.35% to 15.35%. Based upon evidence of record, and prior agreement concerning use of the current leverage formula, and the utility's capital structure, we find it appropriate to establish a 14.35% return on equity investment.

3) Overall Rate of Return - The utility's requested return on investment is 10.88%, which is also equal to the requested cost of capital for this proceeding. The cost of capital is determined by weighing the equity and debt portions in the capital structure and their respective cost rates. There is no evidence in the record to indicate that the utility's proposed cost of capital is unreasonable. OPC Witness Effron used this 10.88% weighted cost to portray the utility's return on investment in the event a rate of return was granted in this case. Accordingly, based upon evidence in the record, we hereby approve a 10.88% overall cost of capital, with a range of reasonableness of 10.78% to 10.97%. Attached as Schedules Nos. 3-A and 3-B are the operating income statements for the respective water and wastewater systems. Our adjustments are itemized on Schedule No. 3-C, with further discussion provided below.

OPERATING INCOME

1) Professional Fees - Our audit report reviewed certain errors in classifying consulting fees which relate to a non-utility court case ($554) and the utility's application ($553) for a certificate from this Commission. Our auditor proposed removal of the $554 non-utility expense and capitalization of the $553 fee related to obtaining a

certificate. OPC Witness Effron adopted these proposed adjustments in his prefiled testimony. Utility Witness MacFarlane also agreed that these adjustments were appropriate. Since there is no dispute regarding these corrections, we find it appropriate to reduce test year expenses by $1,107 while adding $553 to the intangible plant account.

2) Engineering Study - The utility requested a pro forma adjustment of $1,860 to record an amortization of a $9300 engineering study on the existing system to be written off over 5 years. The cost would then be split between the water and wastewater accounts. In its brief, OPC argues that the need for this study has not been substantiated and the ratepayers should not have to cover costs associated with identifying engineering problems. However, Utility Witness MacFarlane stated that the study identified certain areas which Continental must recognize as needing improvement. The study caused most of the improvements under construction in the water system. Witness MacFarlane further stated that, in his opinion, this type of review should be done periodically by any small utility in order to furnish safe and efficient service. We agree and, therefore, find that the need for this study was adequately explained. The utility provided copies of invoices at the hearing supporting the $9300 cost. OPC argued in its brief that while Exhibit #16 was identified for the record, it was never admitted into evidence. Exhibit #16 was not admitted immediately into evidence in the afternoon session of the hearing, however, it was admitted into evidence in the evening session. Therefore, we will allow the pro forma expense of $1,860.

3) Other Pro Forma Adjustments - Pursuant to a request by a panel member, Witness MacFarlane prepared a late-filed exhibit to explain why operating expenses for the projected test year were greater than those reported for the base year ended June 30, 1988. This information allows us to perform a benchmark test. That exhibit shows inclusion of the following pro forma adjustments to convert the June, 1988, base year to the March, 1990, projected year:

$10,800	Employee hired to assist in maintaining water and wastewater systems and to handle new meter reading responsibility.

$ 4,720	Additional wages to reflect field superintendent devoting 100% rather than 80% of his time to utility matters.
$ 1,277	Employee benefits and insurance relating to above wages.
$ 4,276	Increased annual expense of contract operator at treatment plants.
$ 5,762	Estimated cost of separate billing for utility service.
$ 7,200	Estimated expense for accounting and reporting requirements, and office personnel and management time to operate the utility system as a distinct entity.

We find that each of the above pro forma adjustments should be allowed as reasonable amounts in the projection of test year expenses.

4) Rate Case Expense

The utility's revenue request at the hearing date included a provision for recovery of projected rate case costs of $60,000, which amount would be amortized over four years and equally divided between the water and wastewater divisions. In prefiled testimony, Witness MacFarlane reported that the utility would submit an exhibit to show actual costs as of the hearing date and estimated completion costs. That exhibit showing projected total rate case costs of $69,266 was admitted into evidence during the hearing. The projected rate case cost includes $11,900 for expenses during and subsequent to the hearing. Our review of this exhibit did not reveal any material misstatement of actual costs. It is our policy, generally, to permit admission of actual cost data to replace obviously inexact estimates. Amortization of this amount over four years will yield an $8,658 test year expense for the water division and a similar amount for the wastewater division. The record does not indicate that the revised rate case cost is an unreasonable amount, and therefore its recovery is not unreasonable.

5) Increased Labor Costs - The utility's reported expenses for the projected test year did not include a $7,760 amount to represent increased labor costs for the wastewater division. Utility Witness MacFarlane proposed an adjustment in his prefiled testimony to correct this error. OPC Witness Effron agreed that this error should be corrected. We, therefore, find it appropriate to approve the $7,760 adjustment proposed by the utility and OPC.

6) Car Insurance - After reviewing the components included in a "management fee" charged to the utility operation, OPC Witness Effron proposed an adjustment to reduce a $3,432 annual expense for car insurance to $1,200 unless the utility could substantiate the reasonableness of the reported expense. In his rebuttal testimony, Witness MacFarlane disagreed with the proposed reduction for insurance, noting that the expense related to use of a truck rather an automobile. He further reported that Continental was charged the same insurance amount per truck as all other subsidiaries of Redman Industries, Inc., which amount was $3,432.74 for the fiscal year ended March 31, 1988, and $3,729.32 for the fiscal year ended March 31, 1989. For car insurance, the corresponding annual amounts were $1,373.10 and $1,491.73. Witness MacFarlane argued that the expense might be larger than expected because of the number of potential drivers and the greater protection that corporations generally require.

During cross-examination, Witness MacFarlane admitted that no documentation had been submitted to prove that the cost to Redman equalled the allocated amount. Simply reporting that the "truck" insurance is equally charged to each subsidiary does not demonstrate that the amount is a reasonable sum. It is reasonable to assume that the insured vehicle is a maintenance truck used within the service community in Wildwood, that under these circumstances the large difference between auto and truck insurance would seem to be diminished at least within this community, and that this greater expense may be due to greater insurance rates in other areas or totally different transportation equipment. The record does not support the reported $3,432 insurance amount, and we therefore approve OPC Witness Effron's proposed $1,200 insurance provision.

7) Misclassified Addition to Plant - During the hearing, Witness MacFarlane agreed that a $1,900 test year maintenance

expense was actually a misclassified addition to plant and that the expense should be reduced accordingly. Since that plant item was subsequently retired, the correcting entry is charged to accumulated depreciation. Therefore, we find it appropriate to reduce test year expenses for the water division by $1,900.

8) Amortization of Replacement Wastewater Pump - During the hearing, Witness MacFarlane also agreed that maintenance expense for the wastewater division should be reduced by $616 to amortize the replacement of a wastewater pump over two years. We find it appropriate, therefore, to reduce test year expense by this $616 amount.

9) Purchased Power - The utility incurred $14,102 in purchased power water expense for the historical test year, and requested no changes to this account for the projected test year expense. The utility performed an engineering estimate of projected test year electrical usage for the proposed motors at Wells #2 and #4, which was requested by our Staff since it appeared some efficiency might be gained by using the proposed larger more efficient pumps in combination with elevated storage. Based on its engineering estimate, the utility agreed to an $8,202 reduction to the projected test year purchased power account. However, the utility used 91,004,000 projected test year gallons in its calculation, which included an assumed consumption of 7500 gallons per month per equivalent residential connection (ERC) and an allowable water loss of 10%. We find 9,000 gallons per month per ERC to be more appropriate. This increases the projected test year consumption to 98,166,000 gallons. After adding the 10% allowance for water losses, the revised projected test year gallonage is 109,070,000 gallons. Using this gallonage in the estimated provided by the utility, the revised projected purchased power expense is $7,073, which is a $7,029 reduction to expenses. We find this adjustment appropriate to match the projections for both purchased power and test year gallonage.

REVENUE REQUIREMENT

The appropriate revenue requirement for a utility results from our independent consideration of its rate base, its cost of capital, and its operating expenses. Based upon the adjustments discussed above, we find the utility's annual revenue requirements to be $209,521 for the water division and

$175,523 for the wastewater division. These revenues are designed to give the utility an opportunity to earn the approved overall rate of return of 10.88%

RATES AND CHARGES

1) Meter Installation Charges - In its application, the utility requested meter installation charges for the 1 1/2 inch, 2 inch and larger meter sizes. Witness MacFarlane testified that the utility planned to install the meters to serve the remaining 100 lots in CCC at no charge to the customers. However, any new development seeking service would be master-metered and charged a meter installation charge.

We find that the utility's proposal to charge some future customers, but not all, for meter installation is discriminatory. Therefore, we find it appropriate to establish meter installation charges for all meter sizes for all future customers.

2) Interim Service Availability Charges Made Final - Because Continental had no service availability policy or charges when it came under this Commission's jurisdiction, over 800 customers in the mobile home park have connected with no service availability charge. The utility's only CIAC consists of a $10,000 contribution from Sandalwood and imputed CIAC. The utility's application proposes only meter installation charges for meters 1 1/2 inch and larger. No plant capacity charges were requested.

By Order No. 20639, issued on January 20, 1989, we approved interim service availability charges based on our analysis of information in the utility's filing regarding its investment, capacity, and growth projections. Interim main extension charges were approved for those areas in which water and wastewater lines have already been installed by the utility. The requirement of donated on-site and off-site lines was approved for those areas where the utility has not installed lines. Interim plant capacity charges for water and wastewater were approved which we projected would achieve a 75% contribution level at design capacity. The utility was required to deposit all interim contributions into an escrow account.

Witness MacFarlane indicated that if service availability charges are assessed, the utility would like to be on the low end of the range, meaning the minimum level allowed by Rule 25-30.580, Florida Administrative Code. However, he also acknowledged that the interim charges fall within the range set by this Commission, of up to 75% of the net invested cost of the plant.

Witness MacFarlane testified that the interim charge for water would produce about a 38% CIAC level at design capacity because of the number of existing connections (800 customers connected with no service availability charge) versus the total number of connections when the plant will be 100% used and useful (the water plant is projected to be 100% used and useful at the end of the projected test year). Because the utility did not collect service availability charges from the first 800 customers, the small number of future customers who will pay a service availability charge will not be sufficient to generate enough CIAC to achieve our 75% target CIAC level at design capacity.

Our analysis of the interim water plant capacity charge indicates that $340 per ERC represents about 85% of the total cost of the water treatment plant cost per ERC. To generate a plant capacity charge which would result in the utility's having a 75% contribution level at design capacity would cause the few remaining customers who connect to pay far more per ERC than their fair share of the cost of the water system.

Witness MacFarlane also testified that, although the wastewater system has a great deal of excess capacity, the utility's CIAC level will meet Commission guidelines. The utility currently has a 24% contribution level. Because the utility has so much excess capacity, and its projected growth is so slow, 3 ERCs per month, the analysis required looking out 30 years into the future. However, within the next 10 to 20 years it appears that the interim wastewater plant capacity charge will result in a contribution level which is within the guidelines of Rule 25-30.580, Florida Administrative Code. We will not base our decision on a projection beyond 10 to 20 years because of the inherent uncertainties regarding growth and the changing regulatory standards for wastewater treatment plants.

Witness MacFarlane also testified as to the utility's

costs involved in installing meters. The contractor's bid to install water meters and reset the meter box was $47 each. The bid to locate the water service and install the meter was $142 each. Continental was to provide the meter. Locating the service will only be necessary for the lots where a service was previously installed. The cost of the meter, $50, should be added to the contractor's bid for the labor to install the meters. Therefore, it appears that the interim meter installation charges are in line with the actual cost to install a new meter.

We find it appropriate to make the interim service availability charges final. The utility shall notify customers and developers, in writing, of the actual cost to install 2" and larger meters prior to the installation. The funds in the escrow account shall be released to the utility upon the effective date of this Order. The following are the utility's proposed and the Commission-approved final service availability charges:

	Utility Proposed	Commission-Approved Final
Meter Installation		
5/8" X 3/4"	N/A	$100
3/4"	N/A	100
1"	N/A	125
1 1/2"	$374	150
2"	464	Actual Cost
Over 2"	Actual Cost	Actual Cost
Water Plant Capacity	N/A	$340.00 per ERC
Water Main Extension (1)	N/A	$500.00 per ERC or
Donated On-site and Off-site lines (2)		
Wastewater Plant Capacity	N/A	$350.00 per ERC
Wastewater Main Extension (1)	N/A	$750.00 per ERC or
Donated On-site and Off-site lines (2)		

(1) In those areas where the utility has installed lines
(2) In those areas where the utility has not installed lines

3) Miscellaneous Service Charges - Rule 25-30.345, Florida

Administrative Code, provides that a utility may have miscellaneous service charges. Staff Advisory Bulletin (SAB) No. 13, Second Revised, defines four categories of miscellaneous service charges and provides the typical charge for each category. The utility's original request to collect miscellaneous service charges did not include the specific charges set out in SAB 13, Second Revised. However, Witness MacFarlane acknowledged that it was the utility's intent to request the charges contained in SAB 13.

The utility's existing tariff does not contain miscellaneous service charges and the utility has never collected those types of charges. Witness MacFarlane testified that the utility's collection of the charges might generate $600 to $1000 per year.

Upon consideration, we find it appropriate to authorize the utility to collect miscellaneous service charges, as follows:

Type of Service	Water	Wastewater
Initial Connection	$ 15	$ 15
Normal Reconnection	15	15
Violation Reconnection	15	Actual Cost
Premises Visit	10	10

When both water and wastewater services are provided, only a single charge is appropriate unless circumstances beyond the control of the utility require multiple actions.

4) Customer Deposits - Rule 25-30.311, Florida Administrative Code, provides the guidelines for collection of customer deposits. Witness MacFarlane testified at the hearing that the reason the utility wanted authority to collect customer deposits was only to guard against the situations of bad-paying customers or rental type customers. It was not anticipated that Continental would go out and secure deposits from all of its existing ratepayers. That philosophy is consistent with the Rule. We find it appropriate to authorize the utility to collect customer deposits pursuant to Rule 25-30.311, Florida Administrative Code.

5) Gallonage Cap for Wastewater - Witness MacFarlane testified at the deposition that the utility's failure to

request a cap on the gallons on which residential wastewater customer bills will be calculated was an oversight. He indicated that the utility proposed a 6,000 gallon per month cap. The cap recognizes that some water is used for irrigation and other purposes which is not returned to the wastewater system. Those gallons should not be included in the customer's bill for wastewater service.

It is our policy to have a cap on the gallons used to calculate residential wastewater bills. The cap represents the maximum water usage that should be included to calculate the residential wastewater bill. The utility's proposed cap of 6,000 gallons per month appears to be a reasonable estimate of the maximum water usage for which residential customers should be billed for wastewater service. We are persuaded by Witness MacFarlane's testimony that even if the water usage is greater than that anticipated by the utility, the additional usage will probably be for irrigation and should not be used to calculate the residential wastewater bills. Therefore, we find it appropriate to approve a 6,000 gallons per month cap for residential wastewater customers.

6) Appropriate Bills and Gallons to Determine Base Facility Charge - The utility's proposed bills for water and wastewater are based on the number of customers in the historical test year plus an estimated three additional residential connections per month through the projected test year. OPC Witness Effron proposed that the utility is legally required to charge all lots for service, whether or not those lots are individually owned and occupied. He stated that the number of bills should be increased by 1,050 to recognize revenue from base charges to unoccupied lots. However, when cross-examined at the hearing, Witness Effron repeatedly stated that he did not intend to address issues of rate design. In OPC's brief, no mention was made of the additional bills.

Witness MacFarlane refuted Witness Effron's testimony by stating in his rebuttal testimony that those who use service should pay for it. A utility cannot bill an empty lot which does not have service. He also pointed out the inconsistency between Witness Effron's proposal and the concept of used and useful adjustments. We find, therefore, that the number of bills proposed by the utility for water and wastewater are appropriate. We do not find it appropriate to add 1050 bills for undeveloped lots, as OPC suggested. The utility's

arguments that it cannot bill for service which is not rendered and the proposal's inconsistency with the concept of used and useful adjustments are persuasive.

There was a substantial amount of conflicting testimony regarding the number of gallons of water per bill which should be used for the projected billing analysis. The utility proposes using an estimated 7,500 gallons per residential bill (250 GPD) and OPC proposes using an estimated 10,500 gallons (350 GPD). The projected usage for Sandalwood Condominiums (6 inch meter) is based on the actual usage in the historic test year.

Both Witnesses MacFarlane and Effron testified that, currently, the residents of Continental are using in excess of 12,000 gallons of water per month. Witness MacFarlane testified that his experience indicated that 12,000 gallons per month is unusually high for a mobile home park. OPC Witness DeMeza testified that the lawns are beautiful and most of the water is for the lawns. Witnesses MacFarlane and Effron also testified that they expected the usage to decrease with metered rates. The discrepancy of opinion is how much the usage will decrease when metered rates are implemented.

Witness MacFarlane testified that Rule 25-30.055, Florida Administrative Code, regarding systems with a capacity or proposed capacity to serve 100 or fewer persons, specifically mentions that an ERC is equal to 250 GPD for the purposes of that Rule only. Also, the customer demographics of Continental would establish that the population is mostly retired people with two persons per household. Therefore, 250 GPD is a better estimate of the projected average consumption of the customers of Continental than 350 GPD would be. The 350 GPD standard is an assumption of 3.5 persons per household using 100 GPD. He also testified that an estimate might be derived from a review of other mobile home parks in the central Florida area with similar demographics and circumstances. The utility submitted a series of billing analysis of other water utilities serving mobile home parks, one of which had recently converted from a master meter to individual meters. Those standards reflect even less usage per month than the utility is proposing.

Witness DeMeza testified that even 350 GPD is a conservative figure. However, that number was used as a minimum because the Commission has adopted it from DER. He

testified that it will certainly not be anywhere near the 250 GPD and perhaps much higher than 350 GPD.

Witness Effron testified that although Continental consists of mobile homes, the nature of the homes more closely resembles a development of single family residences than other mobile home development. Therefore, he believes that it would be reasonable to assume a usage pattern consistent with that of single family residences will be established when the customers begin to be charged for water consumption, that being 10,500 gallons per month or 350 GPD. Both parties agree that the water usage for the residents of Continental is unusually high for a mobile home park, probably because of the generous irrigation being done with free water. We are in a position of predicting how much water the residents will continue to use with metered rates for water service. We find that both parties presented logical assumptions. The utility's projection using 250 GPD based on two persons per household is persuasive, as is OPC's position that there will be some conservation, but not as much as that proposed by the utility.

We find it appropriate, therefore, to use an average of the two proposals, or 9,000 gallons per residential bill. The projected usage for Sandalwood must be based on the historical usage.

The utility's projected gallons for the wastewater billing analysis are based on 3,500 gallons per residential bill. OPC offered no position on this particular assumption. Witness MacFarlane testified that customers are billed for wastewater service based on water usage, with a cap (for residential customers). Therefore, that testimony contradicts the utility's proposal to use 3,500 gallons per bill for general service customers' wastewater usage. The general service customers will be billed for wastewater service based on water usage, with no cap. Therefore, we find that the gallons for general service customers' wastewater bills must be the same as the gallons projected for water usage.

An estimate of the appropriate gallons to be used for residential wastewater bills is complicated by the lack of a billing analysis in this case. We normally use a consolidated factor from a historical billing analysis which reflects the water usage for all bills at the various usage levels up to the proposed cap. The water usage in excess of the cap is excluded from the consolidated factor. Without a billing analysis, we

can only guess as to the appropriate gallons to use for residential wastewater. The utility proposed 3,500 gallons per bill. We are persuaded that that is a reasonable projection of the residential gallons which should be included, given the proposed cap of 6,000 gallons. We, therefore, approve the total gallons proposed by the utility for residential wastewater bills.

In summary, we find that the projected number of bills proposed by the utility are appropriate. The gallons for water should be based on an average of 9,000 gallons per residential bill. The gallons for Sandalwood (6 inch meter) should be based on the historical usage. The residential wastewater gallons should be based on 3500 gallons per residential bill. The general service wastewater gallons should be the same as the water gallons. The following schedule represents the bills and gallons we find appropriate to determine the base facility and gallonage charges for water and wastewater.

	Water		Wastewater	
	Bills	Gallons (000)	Bills	Gallons (000)
Residential	10,014	90,126	10,014	35,049
General Service				
5/8" x 3/4"	84	756	84	756
3"	12	1,728	12	1,728
6"	12	5,556	12	5,556

The final rates are based on the utility's approved revenue requirements, the appropriate numbers of bills and gallons, and the approved cap for residential wastewater bills. The approved rates are designed using the base facility charge rate structure. It is this Commission's policy to use the base facility charge design because of its ability to track costs and to give the customers some control over their water and wastewater bills. Each customer pays his pro rata share of the related costs necessary to provide service through the base facility charge and only the actual usage is paid for through the gallonage charge.

The approved rates for water service are uniform for residential and general service customers. The approved rates for wastewater service include a base charge for all residential customers regardless of meter size with a cap of 6,000 gallons of usage per month on which the gallonage charge

may be billed. There is no cap on usage for general service wastewater bills. The utility's proposed rates were designed using the base facility charge rate structure and no contrary positions were taken.

The utility's proposed wastewater gallonage charge is uniform for residential and general service customers. The utility stated that the rate structure already provides a differential charge because, unlike a residential customer with a gallonage cap, a general service customer will be charged a wastewater gallonage charge based on 100% of its water usage whether or not all that water consumption was returned to the wastewater plant. Finally, considering the consumption charge includes 100% of the return on the wastewater rate base there seems to be a sufficient differential charge for the cost of wastewater service without creating a further differential in the wastewater gallonage charge.

However, Witness MacFarlane testified that it is Commission policy to set a differential between the residential and general service wastewater gallonage charges. The differential is designed to recognize that a greater portion of the residential customer's water will return to the wastewater system than the water usage of residential customers. Therefore, we include the standard differential in the approved final wastewater gallonage charges

Customer testimony was offered at the hearing that Sandalwood Condominium has been deducting the cost of the electricity for a lift station from its monthly bill. The continuation of that practice was not offered as an issue in this case and no provision has been made for it. Therefore, the final rates set by this Commission are the only rates which the utility will be authorized to charge and collect.

The approved final rates for water and wastewater are shown on Schedules Nos. 4-A and 4-B. The approved rates will be effective for meter readings on or after thirty days from the stamped approval date on the revised tariff sheets. The revised tariff sheets will be approved upon our Staff's verification that the tariffs are consistent with our decision and that the proposed customer notice is adequate.

There are no outstanding matters pending in this case and, therefore, upon the submission and our approval of revised tariff sheets reflecting our decisions herein, this docket may be closed.

CONCLUSIONS OF LAW

1) This Commission has primary jurisdiction to determine the rates and charges of Continental Country Club, Inc., pursuant to Sections 367.011, 367.081, 367.082, and 367.101, Florida Statutes.

2) As the applicant in this case, the utility has the burden of proof that its proposed rates and charges are justified.

3) The Homeowners' contracts and the Sandalwood Condominium Master Agreement conflict with the Commission's mandate to set rates pursuant to Section 367.081(2), Florida Statutes, and therefore, they must not be considered in setting rates for this utility.

4) The two court decisions construing the Homeowners' contracts and the Sandalwood Condominium Master Agreement must be disregarded because they conflict with this Commission's requirement to set rates pursuant to Section 367.081(2), Florida Statutes, regarding the components to be considered in rate-setting and because they were rendered when this Commission had primary jurisdiction over the setting of water and sewer utility rates in Sumter County, Florida.

5) The rates and charges approved herein have been determined pursuant to Section 367.081(2), Florida Statutes, and are, therefore, just, reasonable, compensatory, and not unfairly discriminatory, as required by that statute and applicable case law.

6) We have considered known and imminent changes for this utility, pursuant to Section 367.081, Florida Statutes.

Based upon the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the application of Continental Country Club, Inc., for an increase in its water and wastewater rates to its customers in Sumter County, Florida, is granted to the extent set forth in the body of this Order. It is further

ORDERED that the utility shall charge the approved final water and wastewater rates, the service availability charges,

and the miscellaneous service charges set forth in the body of this Order. It is further

ORDERED that the final rates approved herein shall be effective for meter readings on or after thirty days from the stamped approval date on the revised tariff sheets. It is further

ORDERED that the service availability and miscellaneous service charges approved herein shall be effective for service rendered after the stamped approval date on the revised tariff sheets. It is further

ORDERED that the utility shall notify each customer of the new rates and charges approved herein and explain the reasons therefor. The form of such notice and explanation shall be submitted to the Commission for its prior approval. It is further

ORDERED that each of the specific findings of fact and conclusions of law contained in the body of this Order are approved and ratified in every respect. It is further

ORDERED that all matters contained herein and attached hereto, whether in the form of discourse or schedules, are, by this reference, specifically made integral parts of this Order. It is further

ORDERED that the escrow account containing the interim service availability charges collected by the utility is hereby released. It is further

ORDERED that upon the submission, and our approval, of revised tariff sheets reflecting our decisions herein, this docket may be closed.

By ORDER of the Florida Public Service Commission this 4th day of AUGUST, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

SFS

by: Chief, Bureau of Records

CONTINENTAL COUNTRY CLUB, INC.
RATE BASE SCHEDULE
TEST YEAR ENDING 3/31/90

DOCKET NO. 881178-WS
SCHEDULE NO. 1-A

WATER DIVISION ACCOUNT DESCRIPTION	AVERAGE TEST YEAR PER MFRS	UTILITY ADJUSTMENTS	UTILITY BALANCE	COMMISSION ADJUSTMENTS	TEST YEAR PER COMMISSION
Plant in Service	$ 1,147,700	$	$ 1,147,700	$ (88,404)	$ 1,059,296
Land	2,000		2,000		2,000
Accum Depreciation	(243,155)		(243,155)	50,371	(192,784)
Acquisition Adjustment	185,379		185,379	(185,379)	0
Accum Amortization	(10,378)		(10,378)	10,378	0
CIAC	(114,420)		(114,420)	(76,896)	(191,316)
Accum Amortization	31,461		31,461	7,217	38,678
Working Capital	0	12,202	12,202	(1,181)	11,021
	$ 998,587	$ 12,202	$ 1,010,789	$ (283,894)	$ 726,895

CONTINENTAL COUNTRY CLUB, INC.
RATE BASE SCHEDULE
TEST YEAR ENDING 3/31/90

DOCKET NO. 881178-WS
SCHEDULE NO. 1-B

WASTEWATER DIVISION ACCOUNT DESCRIPTION	AVERAGE TEST YEAR PER MFRS	UTILITY ADJUSTMENTS	UTILITY BALANCE	COMMISSION ADJUSTMENTS	TEST YEAR PER COMMISSION
Plant in Service	$ 990,864	$	$ 990,864	$ (34,992)	$ 955,872
Land	5,000		5,000		5,000
Accum Depreciation	(321,029)		(321,029)	6,902	(314,127)
Acquisition Adjustment	200,564		200,564	(200,564)	0
Accum Amortization	(11,799)		(11,799)	11,799	0
CIAC	(239,080)		(239,080)	(129,800)	(368,880)
Accum Amortization	62,093		62,093	27,659	89,752
Working Capital		12,969	12,969	829	13,798
	$ 686,613	$ 12,969	$ 699,582	$ (318,167)	$ 381,415

CONTINENTAL COUNTRY CLUB, INC.
RATE BASE SCHEDULE
REVIEW OF ADJUSTMENTS

DOCKET NO. 881178-WS
SCHEDULE NO. 1-C
PAGE 1 OF 2

	WATER	SEWER
PLANT IN SERVICE		
1. Reclassify fees related to PSC operating certificate	277	276
2. Adjustment to remove undocumented plant charges	(45,389)	(35,509)
3. Adjustment to reflect revised cost of plant improvements	29,298	
4. Adjustment to assign Well #1 to non-utility account	(10,000)	
5. Used and useful adjustment for Well #3	(7,000)	
6. Retirement of transmission mains in 1984 and 1985	(48,800)	
7. Retirement of pumping and chlorination equipment	(6,789)	
8. Adjusted used and useful amount for wastewater plant		241
9. Rounding adjustment	(1)	
	(88,404)	(34,992)
ACCUMULATED DEPRECIATION		
1. Added reserve for certificate cost	(18)	(18)
2. Reserve related to undocumented plant	15,240	5,448
3. Added reserve related to revised cost of water plant	(963)	
4. Assignment of Well #1 to non-utility account	4,355	
5. Used and useful adjustment for Well #3	3,018	
6. Retirement of transmission mains	20,109	
7. Retirement of pumping and chlorination equipment	6,789	
8. Adjustment to reflect retirement of a 1988 plant addition that was initially classified as an expense	1,841	
9. Adjustment to remove improper accrual of depreciation on retired 100,000 gpd package plant		1,472
	50,371	6,902
ACQUISITION ADJUSTMENT		
Adjustment to remove acquisition adjustment reported in MFRS. This elimination would include any revision due to a lesser original cost balance	(185,379)	(200,564)
ACCUMULATED DEPRECIATION (ACQ ADJ)		
Adjustment to remove reserve relating to acquisition adjustment	10,378	11,799

CONTINENTAL COUNTRY CLUB, INC.
RATE BASE SCHEDULE
REVIEW OF ADJUSTMENTS

DOCKET NO. 881178-WS
SCHEDULE NO. 1-C
PAGE 2 OF 2

	WATER	SEWER
CONTRIBUTIONS IN AID OF CONSTRUCTION		
1. Property CIAC for Sandalwood project	(28,000)	(59,400)
2. Adjustment due to removal of undocumented plant and plant retirements	24,424	
3. Correction of summation error in MFRS		15,400
4. Adjustment to reflect collection of interim service availibility charges and meter fees	(22,560)	(26,400)
5. Imputation of CIAC as offsetting adjustment to margin of reserve provision	(50,760)	(59,400)
	(76,896)	(129,800)
ACCUMULATED AMORTIZATION (CIAC)		
1. Reserve related to Sandalwood Property CIAC	11,483	24,532
2. Adjustment to reserve to reflect reduced CIAC due removal of undocumented plant and retirements	(6,648)	
3. Reserve related to collection of interim service availibility charges and meter fees	717	840
4. Pro forma reserve related to imputed CIAC for margin of reserve	1,665	2,287
	7,217	27,659
WORKING CAPITAL		
Revision due to adjustments to operating and maintentance expenses using formula approach	-1181	829

CONTINENTAL COUNTRY CLUB, INC.
COST OF CAPITAL SCHEDULE
TEST YEAR ENDING 3/31/90

DOCKET NO. 881178-WS
SCHEDULE NO. 2

COMPONENT	BALANCE PER MFRS	PRO RATA ADJUSTMENTS	ADJUSTED BALANCE	WEIGHT	COST	WEIGHTED COST
Long Term Debt	7,771,458	(6,827,781)	943,677	85.15%	10.65%	9.07%
Notes Payable	380,769	(334,533)	46,236	4.17%	9.26%	0.39%
Notes Payable - IRS	111,538	(97,994)	13,544	1.22%	5.94%	0.07%
Customer Deposits	0	0	0	0.00%		0.00%
Common Equity	863,495	(758,642)	104,853	9.46%	14.35%	1.36%
Deferred Income Taxes	0	0	0	0.00%		0.00%
Investment Tax Credits	0	0	0	0.00%		0.00%
	9,127,260	(8,018,950)	1,108,310	100.00%		10.88%

Range of Reasonableness	High	Low
Equity	15.35%	13.35%
Overall Rate of Return	10.98%	10.79%

CONTINENTAL COUNTRY CLUB, INC.
OPERATING SCHEDULE
TEST YEAR ENDING 3/31/90

DOCKET NO. 881178-WS
SCHEDULE NO. 3-A

WATER DIVISION ACCOUNT DESCRIPTION	BASE YEAR PER UTILITY	UTILITY ADJUSTMENTS	ADJUSTED TEST YEAR (MFRS)	COMMISSION ADJUSTMENTS	ADJUSTED TEST YEAR	REVENUE INCREASE (DECREASE)	COMMISSION ADJUSTED TEST YEAR
Operating Revenues	$ 8,112	$ 255,311	$ 263,423	$ (251,003)	$ 12,420	$ 197,101	$ 209,521
Operating Expenses							
Operations & Mtce	$ 72,845	$ 25,570	$ 97,615	$ (9,441)	$ 88,174	$	$ 88,174
Depreciation	18,995	15,686	34,681	(5,181)	29,500		29,500
Amortization - Acq Adj	4,684	1,396	6,080	(6,080)	0		0
Amortization - Other	0	930	930		930		930
Taxes Other Than Income	3,706	7,242	10,948	(4,275)	4,673	4,928	9,600
Income Taxes	0	3,195	3,195	(3,195)	0	2,230	2,230
Operating Expenses	$ 99,430	$ 54,019	$ 153,449	$ (30,172)	$ 123,277	$ 7,158	$ 130,434
Operating Income	$ (91,318)	$ 201,292	$ 109,974	$ (220,831)	$ (110,857)	$ 189,943	$ 79,087
Rate Base		$	1,010,709	$	726,895	$	726,895
Rate of Return			10.88%		-15.25%		10.88%

CONTINENTAL COUNTRY CLUB, INC.
OPERATING SCHEDULE
TEST YEAR ENDING 3/31/90

DOCKET NO. 881178-WS
SCHEDULE NO. 3-B

WASTEWATER DIVISION ACCOUNT DESCRIPTION	BASE YEAR PER UTILITY	UTILITY ADJUSTMENTS	ADJUSTED TEST YEAR (MFRS)	COMMISSION ADJUSTMENTS	ADJUSTED TEST YEAR	REVENUE INCREASE (DECREASE)	COMMISSION ADJUSTED TEST YEAR
Operating Revenues	$ 14,352	$ 209,038	$ 223,390	$ (207,924)	$ 15,466	$ 160,057	$ 175,523
Operating Expenses							
Operations & Mtce	$ 84,750	$ 19,002	$ 103,752	$ 6,633	$ 110,385	$	$ 110,385
Depreciation	26,232	(3,276)	22,956	(9,925)	13,031		13,031
Amortization - Acq Adj	5,071	1,650	7,721	(7,721)	0		0
Amortization - Other	0	930	930		930		930
Taxes Other Than Income	3,707	5,998	9,705	(5,198)	4,507	4,001	8,508
Income Taxes	0	2,211	2,211	(2,211)	0	1,171	1,171
Operating Expenses	$ 120,560	$ 26,715	$ 147,275	$ (18,422)	$ 128,853	$ 5,172	$ 134,025
Operating Income	$ (106,208)	$ 182,323	$ 76,115	$ (189,502)	$ (113,387)	$ 154,885	$ 41,498
Rate Base			$ 699,582		$ 381,415		$ 381,415
Rate of Return			10.88%		-29.73%		10.88%

CONTINENTAL COUNTRY CLUB, INC.
OPERATING SCHEDULE
REVIEW OF ADJUSTMENTS

DOCKET NO. 881178-WS
SCHEDULE NO. 3-C
PAGE 1 OF 2

	WATER	SEWER
OPERATING REVENUES		
Adjustment to remove revenue increase per MFRS. Adjusted test year revenues correspond to billing of Sandalwood project only.	(251,003)	(207,924)
OPERATING EXPENSES		
1. Reclassify fees related to PSC operating certificate	(554)	(553)
2. Proposed reduction to vehicle insurance per OPC Witness	(1,116)	(1,116)
3. Adjustment to reflect reduced electricity cost related installation of new plant equipment	(7,029)	
4. Adjustment to reflect increased employee wages that were omitted in MFRS		7,760
5. Adjustment to reflect increased rate case expense	1,158	1,158
6. Adjustment to remove misclassified plant cost	(1,900)	
7. Adjustment to amortize repair cost over two years		(616)
	(9,441)	6,633
DEPRECIATION EXPENSE		
1. Reduction due to removal of undocumented plant costs, various retirements, and increased CIAC	(5,209)	(10,581)
2. Increase due to use of actual cost of plant improvements	1,727	
3. Used and useful adjustment for Well #3	(254)	
4. Revised used and useful expense for wastewater plant upon removal of old WWTP from depreciable base		2,342
5. Effect of reuting CIAC as offset to margin of reserve	(1,665)	(2,287)
	(5,181)	(9,925)
AMORTIZATION EXPENSE - ACQ ADJ		
Adjustment to remove acquisition adjustment reported in MFRS. This elimination would include any revision due to a lesser original cost balance	(6,090)	(7,721)
TAXES OTHER THAN INCOME TAXES		
Reduce provision for gross receipts tax consistent with revenue reduction	(6,275)	(5,198)

CONTINENTAL COUNTRY CLUB, INC.
OPERATING SCHEDULE
REVIEW OF ADJUSTMENTS

DOCKET NO. 881178-WS
SCHEDULE NO. 3-C
PAGE 2 OF 2

	WATER	SEWER
INCOME TAXES		
Remove proposed provision for income tax expense	(3,195)	(2,211)
OPERATING REVENUES		
Provision for additional revenues to permit recovery of operating expenses, depreciation, and taxes and to yield a 10.88% return on investment	197,101	160,057
TAXES OTHER THANT INCOME TAXES		
Increased provision for gross receipts tax due to greater revenue amount	4,928	4,001
INCOME TAXES		
Income taxes related to adjusted revenue requirement	2,230	1,171

Schedule No. 4A

Continental Country Club, Inc.

Schedule of Current, Requested, and Approved Rates

	Monthly Water Rates		
	Current	Utility Requested	Commission Approved
Residential			
Base Facility Charge:			
Meter Size:			
5/8"x3/4"	$0.00	$11.97	$8.19
1"	$0.00	$29.93	$20.47
1-1/2"	$0.00	$59.85	$40.94
2"	$0.00	$95.76	$65.50
3"	$0.00	$191.52	$131.00
4"	$0.00	$299.52	$204.69
6"	$0.00	$598.50	$409.38
Gallonage Charge per 1,000 G.	$0.00	$1.61	$1.22
General Service			
Base Facility Charge:			
Meter Size:			
5/8"x3/4"	$0.00	$11.97	$8.19
1"	$0.00	$29.93	$20.47
1-1/2"	$0.00	$59.85	$40.94
2"	$0.00	$95.76	$65.50
3"	$0.00	$191.52	$131.00
4"	$0.00	$299.52	$204.69
6"	$0.00	$598.50	$409.38
Gallonage Charge per 1,000 G.	$0.00	$1.61	$1.22
Sandalwood Condominium			
Base Facility Charge:			
Per Unit	$6.50	N/A	N/A
Gallonage Charge per 1,000 G.	$0.77	N/A	N/A

Continental Country Club, Inc.

Schedule of Current, Requested, and Approved Rates

	Monthly Sewer Rates		
	Current	Utility Requested	Commission Approved
Residential			
Base Facility Charge:			
Meter Size:			
All Meter Sizes	$0.00	$10.54	$6.80
Gallonage Charge per 1,000 G. (Maximum 6,000 G.)	$0.00	$2.61	$2.26
General Service			
Base Facility Charge:			
Meter Size:			
5/8"x3/4"	$0.00	$10.54	$6.80
1"	$0.00	$26.35	$17.00
1-1/2"	$0.00	$52.70	$34.00
2"	$0.00	$84.32	$54.41
3"	$0.00	$168.64	$108.81
4"	$0.00	$263.50	$170.02
6"	$0.00	$527.00	$340.03
Gallonage Charge per 1,000 G.	$0.00	$2.61	$2.71
Sandalwood Condominium			
Base Facility Charge:			
Per Unit	$11.50	N/A	N/A
Gallonage Charge per 1,000 G.	$0.20	N/A	N/A

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 981781-SU EXHIBIT NO. 2
COMPANY/ WITNESS: Reeves
DATE 10-13-99

930379-SU

A. A. REEVES III
6730 Ashley Court
Sarasota, Florida 34241

(813) 925-4514

My experience in the utility field includes water, wastewater, gas, electric and cable television.

I began my career in 1958 at Georgia Power Company in the Central Billing Office located in Atlanta, Georgia. Over the next ten years, I worked in every position in the Department in regard to the overall customer billing and accounting system for approximately 1 million customers.

In 1968, I moved to Ft. Myers, Florida and worked at Port Myers Construction (FMC), a unit of Gulf American Corporation. FMC was the land development company for the Florida communities of Cape Coral, Golden Gate, Barefoot Bay and Rio Rico in Arizona which included land clearing, canal dredging, drainage, road construction, water mains and wastewater collection systems.

In January of 1969, General Acceptance Corporation (GAC) purchased Gulf American Corporation. In July of 1969, the decision was made to set up a separate corporation for the utilities for regulation purposes and to build a professional utility team. Because of my prior utility experience, I was transferred from FMC to the new GAC Utilities Inc. (GUI) as controller. My first assignment was to set up the books and records of all of the utilities which GAC owned which included Cape Coral in Lee County, Golden Gate and Remuda Ranch in Collier County, Barefoot Bay in Brevard County, Poinciana Utilities Inc. and River Ranch in Polk and Osceola Counties and North Orlando Utilities located in Orange County.

In 1971, GUI purchased Consolidated Water Company (CWC). CWC is a utility holding company which owned Northern Michigan Water Company, Indiana Cities Water Corporation, Missouri Cities Water Company, Ohio Suburban Water Company, California Cities Water Company, and Florida Cities Water Company (FCWC). FCWC had four operating division, South and North Lee County, Sarasota County, Hillsborough County and Polk County. In addition, FCWC also had a subsidiary company, North Florida Water Company, which owned the water system in the City of Marianna. Because of the number of corporations and divisions in Florida, we combined and centralized the management and accounting offices of the Florida companies in Sarasota County. I functioned as Controller and Chief Financial Officer of all Florida Divisions. In addition to the water and wastewater companies, I was responsible for the control of Barefoot Bay Propane Gas Company, a propane gas distribution system located in the Barefoot Bay Project. I also had charge of the accounting for American Cablevision Company, a cable television company with five divisions.

As Controller of the Florida Operations, I reported to the General Manager and was responsible for the books and records of the six (6) corporations which had a total of 16 divisions in 10 counties in Florida and one in Arizona.

My responsibilities included monthly financial reports, budgets, accounting, customer billing, reports to the Florida Public Service Commission (PSC), financing, banking, rate case administration, purchasing, accounts payable, quarterly and annual reports to bondholders, intangible tax preparation, gross receipts tax reporting, etc.

In 1977, I was promoted to Vice President and Assistant General Manager. During that time, I set up a computer service company, Aqua Utility Consultants, Inc. (AUCI). AUCI was set up to provide computerized utility accounting customer billing for this corporation as well as outside clients.

In 1979, I was promoted to Executive Vice President and Chief Operating Officer. I held this position for twelve years.

As the Executive Vice President and Chief Operating Officer, I was responsible for the complete control of the Florida companies. In this capacity, I was heavily involved with engineering companies, rate consultants, developers, regulatory agencies (Environmental Protection Agency (EPA), Department of Environmental Regulation (DER), Water Management Districts, County Commissions, Public Service Commission, Department of Natural Resources, etc.).

FCWC was the fourth largest private utility in the State of Florida. FCWC was the most profitable of the CWC subsidiaries. Because of their superior operating performance, two FCWC plants were awarded the E.L. Phelps Award for the Best Operated Advanced Wastewater Treatment Plants in the State 13 out of the last 15 years. FCWC was featured as a profile company in the Water Magazine in 1991.

In October of 1991, I resigned from FCWC to pursue activity in the utility consulting area.

Over the last 34 years in the utility management business, I have been involved in many rate cases and sales of water, wastewater and cable television systems.

I have been involved in the investigation of the purchase of several water/wastewater utilities. My involvement included analyzing the books and records, employee complement, rate orders, financial statements, annual reports, PSC reports, operating reports, on-site visits, preparation of Purchase Agreements, etc.

While I was with FCWC, I negotiated the sale of several companies and divisions. My first was when Florida Gas Corp. purchased the assets of North Orlando Water Company. Then, I was involved with the sale of our water and wastewater operations in Cape Coral to the City of Cape Coral. FCWC then sold three small water divisions in Polk County to a developer by the name of John Wood. FCWC then sold the subsidiary, North Florida Water Company, to the City of Marianna. In each of these sales, I put together the entire sales package which included the Purchase Agreement, receivables, invoices....

Since resigning from FCWC, I have been managing a wastewater utility, North Fort Myers Utility Inc., located in North Lee County and serving as a rate consultant to Hartman & Associates (HAI), expert witness in court proceedings, and other related projects. My involvement with HAI was the investigation of the rate increase filing by General Development Utility (GDU) in the City of Palm Bay and North Port. In this capacity, I reviewed GDU's application for a test year, minimum filing requirements (MFR) and exhibits filed with the MFR, such as workpapers, offering statements, DER Construction and Operating Reports, PSC orders, EPA reports, water management reports, legal pleadings, etc. I prepared interrogatories, Production of Documents requests, witnesses testimony and accounting adjustments for the attorneys in both the North Port and Palm Bay rate proceedings.

DOCKET NO. 981781-SU
A.A. Reeves, III Exhibit No. ____
Application and Amendments

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of)
NORTH FORT MYERS UTILITY, INC.)
for extension of wastewater) Docket No.
service in Lee County, Florida.)
)

APPLICATION FOR AMENDMENT TO CERTIFICATE OF AUTHORIZATION

NORTH FORT MYERS UTILITY, INC. ("NFMU"), by and through its undersigned attorneys, and pursuant to Sections 367.045(2), Florida Statutes, and Rule 25-30.036, Florida Administrative Code, files this Application for Amendment of Certificate 247-S to extend its service area, and in support thereof states:

1. The exact name of the Company and the address of its principal business office is:

NORTH FORT MYERS UTILITY, INC.
Post Office Box 2547
Fort Myers, Florida 33902

2. The name and address of the person authorized to receive notices and communications in respect to this application is:

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

3. It was originally believed that a certificate amendment was not necessary to serve Buccaneer Estates since the exclusion language on Fourth Revised Sheet No. 3.2 of the NFMU Tariff references the PSC certificated area of Buccaneer Mobile Estates,

and Buccaneer Mobile Estates does not have a PSC certificated area for wastewater service. However, Office of Public Counsel recently brought to NFMU's attention a pleading filed in 1988 in Docket No. 871306-SU which could be interpreted to the contrary. Thus, out of an abundance of caution, this Application is being filed. The property proposed to be served was possibly excepted from the legal description of NFMU's Certificate Amendment in Docket No. 871306-SU, Order No. 19059, issued March 29, 1988, which extended NFMU's territory to include virtually all of unincorporated Lee County North of the Caloosahatchee River, West of I-75, and East of the City of Cape Coral. This property consists of the Buccaneer Estates mobile home community presently being served by the park owner with the cost of such services included as a part of the lot rents and has thus been exempt from obtaining a wastewater certificate. A copy of the Wastewater Agreement for the provision of wastewater service to Buccaneer Estates was provided to the Commission in accordance with Rule 25-30.550, Florida Administrative Code on September 4, 1998, and was subsequently approved pursuant to the referenced Rule. A copy of the Wastewater Agreement is also attached hereto as Exhibit "A". The service availability charges paid by the park owner are sufficient for NFMU to construct the off-site facilities to serve the property. NFMU has constructed the force main which is necessary to serve the property and is, in fact, currently serving the property. There

are no other utilities which could possibly serve the mobile home community.

4. The provision of wastewater service to this property by NFMU is consistent with the Lee County Comprehensive Plan.

5. A copy of the deed to the wastewater plant site is attached hereto as Exhibit "B".

6. A description of the territory proposed to be served, using township, range and section references is as follows:

> Township 43 South, Range 24 East, Lee County. That part of the North ½ of Section 35 lying East of State Road 45-A (also known as U.S. Highway 41 Business) except the South ¼ of the Southwest ¼ of the Northeast ¼ of said Section 35.

7. NFMU will serve this property with its existing wastewater treatment plant.

8. NFMU uses spray irrigation as it primary method of effluent disposal with deepwell injection as a backup.

9. A detailed map showing township, range and section with the proposed territory plotted thereon are attached as Exhibit "C".

10. Service to this property required the construction of a main. The main connects to NFMU's force main along U.S. 41 Business and costs approximately of $90,000.

11. NFMU operates its wastewater system pursuant to DER Permit No. FLA014548-268241 which expires October 3, 2000, and authorizes the operation of a 2.0 MGD extended aeration wastewater treatment facility with tertiary filtration and reclaimed water to a 1.7 MGD golf course irrigation system, with a back-up system for disposal by a Class I injection well of 2.0 MGD. The collection

system to connect Buccaneer Estates was constructed pursuant to a general permit.

12. The construction of the collection system will be financed by service availability charges collected from the Mobile Home Park. There will be no material impact in NFMU's capital structure.

13. The territory to be served consists of 971 mobile homes.

14. There will be no material impact as NFMU's monthly rates or service availability charges due to the small relative size of the project.

15. Attached as Exhibit "D" to the original Application are the original and two copies of the revised tariff sheets reflecting the additional service area. A copy of the revised tariff sheets is attached to each copy of the Application. The original Certificate is attached hereto.

16. Attached as Exhibit "E" is the Affidavit that notices were provided to the entities on the list of entities provided by the Commission.

17. Late Filed Exhibit "F" is the Affidavit that notices were given to the customers in the property to be served.

18. NFMU will file the Affidavit that the notice was published in accordance with Commission Rules as Late Filed Exhibit "G".

19. In accordance with Section 367.045(2)(c), Florida Statutes, attached hereto as Exhibit "H" is an Affidavit that NFMU has on file with the PSC a tariff and annual reports.

20. NFMU's rates were last established based upon the application of the 1997 price index on August 19, 1997, pursuant to file WS-97-0113. NFMU's last general rate case was in Docket No. 790677-S resulting in Order No. 10152. NFMU's current service availability charges were established by Order No. 16971 in Docket No. 860184-SU.

21. The extension will serve less than 2,000 ERCs, so the appropriate filing fee is $1,000, which is attached.

Respectfully submitted on this 19 day of December, 1998, by:

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

By: _____
MARTIN S. FRIEDMAN

nfmu\buccaneer.ext

LAW OFFICES
ROSE, SUNDSTROM & BENTLEY, LLP
2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301
(850) 877-6555

CHRIS H. BENTLEY, P.A.
F. MARSHALL DETERDING
MARTIN S. FRIEDMAN, P.A.
JOHN R. JENKINS, P.A.
STEVEN T. MINDLIN, P.A.
DAREN L. SHIPPY
WILLIAM E. SUNDSTROM, P.A.
DIANE D. TREMOR, P.A.
JOHN L. WHARTON

MAILING ADDRESS
POST OFFICE BOX 1567
TALLAHASSEE, FLORIDA 32302-1567

TELECOPIER (850) 656-4029

ROBERT M. C. ROSE
OF COUNSEL

September 4, 1998

VIA HAND DELIVERY

Ms. Blanca S. Bayo, Director
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: North Fort Myers Utilities, Inc.
Wastewater Agreement with SnowBirdLand Vistas, Inc. and MHC-DeANZA Financing Limited Partnership
Our File No. 16319.29

Dear Ms. Bayo:

Pursuant to Commission Rule 25-30.550, Florida Administrative Code, enclosed is a copy of a Wastewater Agreement entered into between North Fort Myers Utilities, Inc. and SnowBirdLand Vistas, Inc. and MHC-DeANZA Financing Limited Partnership for wastewater service to the Buccaneer Estates. North Fort Myers Utility Inc.'s wastewater treatment plant has a permitted capacity of 2.0 mgd. The current treatment plant connected load is approximately 1.1 million gallons a day and this Wastewater Agreement is for 194,200 gallons a day. There is sufficient capacity in NFMU's existing plant to provide wastewater service pursuant to this Wastewater Agreement.

This Wastewater Agreement will have no noticeable impact on the Utility's rates due to the amount of demand being placed on the NFMU wastewater system, and resultant revenues.

In accordance with the aforementioned Rule, we will deem this Agreement approved if we do not receive notice from the Commission of its intent to disapprove within thirty days. Should you have any questions regarding this Agreement, please do not hesitate to contact me.

Very truly yours,

MARTIN S. FRIEDMAN
For the Firm

MSF/brm
Enclosure

EXHIBIT
"A"

Buccaneer Estates
NAME OF PROJECT

WASTEWATER AGREEMENT

THIS AGREEMENT made and entered into this 24th day of August, 1998, by and between SNOWBIRDLAND VISTAS, INC., an Illinois corporation and MHC-DeANZA FINANCING LIMITED PARTNERSHIP, an Illinois Limited Partnership, hereinafter jointly referred to as "Owner," and NORTH FORT MYERS UTILITY, INC., a Florida corporation, hereinafter referred to as "Service Company."

WHEREAS, Owner owns or controls a wastewater collection, treatment and disposal system serving lands located in Lee County, Florida, and described in Exhibit "A," attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as the "Property," and the Property has been developed as Buccaneer Estates, which is a manufactured home community consisting of 971 manufactured home lots; and

WHEREAS, Service Company desires to provide, in accordance with the provisions of this Agreement and Service Company's Service Availability Policy described in Exhibit "B," attached hereto and made a part hereof as if fully set out in this paragraph, central wastewater collection, treatment and disposal services to the Property and thereafter operate applicable facilities so that the occupants of the manufactured homes and other improvements on the Property will receive an adequate wastewater collection, treatment and disposal service from Service Company;

NOW, THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, Owner and Service Company hereby covenant and agree as follows:

1.0 The foregoing recitations are true and correct and incorporated herein.

2.0 The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

(a) "Contribution-in-aid-of-Construction (CIAC)" - The sum of money and/or (if applicable) the value of property represented by the cost of the wastewater collection systems including lift stations and treatment plants owned by Owner, which Owner transfers, or agrees to transfer, to Service Company at no cost to Service Company to provide utility service to the Property.

(b) "Equivalent Residential Connection (ERC)" - A factor used to convert a given average daily flow (ADF) to the equivalent number of residential connections. For this purpose the ADF of one equivalent residential connection (ERC) is 275 gallons per day (gpd). The number of ERC's contained in a given ADF is

determined by dividing that ADF by 275 gpd. The determination of the number of ERC's for the Property shall be subject to factoring as outlined in Service Company's Service Availability Policy.

(c) **"Point of Delivery"** - The point where the pipes of Service Company are connected with the lines of the Owner.

(d) **"Service"** - The readiness and ability on the part of Service Company to furnish and maintain wastewater collection, treatment and disposal service to the Point of Delivery (pursuant to applicable rules and regulations of applicable regulatory agencies).

3.0 **Connection Charges**. Owner hereby agrees to pay to Service Company the following connection charges:

Contributions In Aid Of Construction: System Capacity Charges - The contribution of a portion of the cost of construction of treatment plants, and collection and disposal systems, described in Exhibit "C."

Said connection charges shall be payable upon the execution and delivery of this Agreement.

3.1 Payment of the connection charges does not and will not result in Service Company waiving any of its rates or rules and regulations, and their enforcement shall not be affected in any manner whatsoever by Owner making payment of the connection charges. Service Company shall not be obligated to refund to Owner any portion of the value of the connection charges for any reason whatsoever, provided that Service Company performs its obligations under this Agreement, nor shall Service Company pay any interest or rate of interest upon the connection charges paid.

3.2 Neither Owner nor any person or other entity holding any of the Property by, through or under Owner, or otherwise, shall have any present or future right, title, claim or interest in and to the connection charges paid, provided that Service Company performs its obligations under this Agreement, or to any of the wastewater facilities and properties of Service Company, and all prohibitions applicable to Owner with respect to no refund of connection charges, no interest payment on said connection charges and otherwise set forth in Sections 3.1 and 3.2 hereof, are applicable to all such persons or entities.

3.3 Owner shall not be entitled to offset any bill or bills rendered by Service Company for wastewater service against the connection charges paid. Owner shall not be entitled to offset the connection charges against any claim or claims of Service Company, except for any claim alleging non-payment of the same.

4.0 **On-Site Installations**. As used herein, the term "on-site installations" shall include all wastewater collection lines, facilities and equipment at the Property, including the three lift stations (but excluding the force main being constructed by Service Company to connect to Service Company's existing force main located within the boundaries of the Property [collectively, the "force main"]), and constructed for the purpose of providing wastewater

collection, treatment and disposal service to the existing and proposed dwelling units on the Property. However, the term "on-site installations" shall not include, and Owner shall retain ownership of, the existing wastewater treatment plant at the Property (and Owner shall be responsible for decomissioning the same following the connection of the Property to the facilities of Service Company).

4.1 Owner has constructed, at its cost, all existing on-site installations at the Property. Owner shall convey the on-site installations to Service Company by quitclaim bill of sale in the form of Exhibit "E," attached hereto and made a part hereof as if fully set out in this paragraph, without warranties, for the consideration described in Section 30.0 hereof, after which time Service Company shall maintain the on-site installations and the force main in good condition and repair and in compliance with all applicable laws at all times, at its own cost and expense. Owner shall also provide Service Company with non-exclusive easements necessary for access, repair and maintenance of the on-site installations and the force main, which easements shall be in the form of Exhibit "D," attached hereto and made a part hereof as if fully set out in this paragraph. Service Company, at its own expense, shall maintain the on-site installations so that infiltration is within limits reasonably acceptable within the wastewater industry.

5.0 Off-Site Installations. Service Company hereby agrees to pay for and cause to be promptly performed the construction of the off-site wastewater collection system. The term "off-site wastewater collection system" means equipment, including pumping stations, located outside the boundaries of the Property and constructed for the purpose of connecting on-site installations to Service Company's mains. Service Company shall be responsible for operation and maintenance of any off-site installations in good condition and repair and in compliance with all applicable laws at all times, at its own cost and expense.

6.0 Agreement to Serve. Upon the completion of construction of the off-site wastewater collection system and the other terms of this Agreement and Service Company's Service Availability Policy, Service Company covenants and agrees that it will promptly connect or oversee the connection of the on-site installations to the central facilities of Service Company in accordance with the terms and intent of this Agreement. Service Company shall use its best efforts to complete such connection by October 1, 1998. Such connection shall at all times be in accordance with rules, regulations and orders of the applicable governmental authorities. Service Company agrees that once it provides wastewater collection, treatment and disposal service to the Property and Owner or others have connected to its system, that thereafter Service Company will continuously provide, at its cost and expense, but in accordance with the other provisions of this Agreement, including rules and regulations and rate schedules, wastewater collection, treatment and disposal service to the Property in a manner to conform with all requirements of the applicable governmental authority having jurisdiction over the operations of Service Company.

7.0 Application for Service. Owner shall not have the right to and shall not connect to the facilities of Service Company until formal written application has been made to Service Company in accordance with the then effective reasonable written rules and regulations of Service Company, which shall be provided to Owner in advance, and approval for such connection has been granted.

7.1 If a commercial kitchen, cafeteria, restaurant or other commercial food preparation or dining facility is constructed within the Property, Service Company shall have the right to require that a grease trap be constructed, installed and connected so that all wastewaters from any grease producing equipment within such facility, including floor drains in food preparation areas, shall first enter the grease trap for pretreatment before the wastewater is delivered to the lines of Service Company. Size, materials and construction of such grease trap to be approved by Service Company.

7.2 No substance other than domestic wastewater will be placed into the wastewater system and delivered to the lines of Service Company. Should any non-domestic wastes, grease or oils, including, but not limited to, floor wax or paint, be delivered to the lines, the resident of the Property making such delivery shall be responsible for payment of the cost and expense required in correcting or repairing any resulting damage.

8.0 **Exclusive Right to Provide Service**. Owner, as a further and essential consideration of this Agreement, agrees that Owner, or the successors and assigns of Owner, shall not (the words "shall not" being used in a mandatory definition) engage in the business or businesses of providing wastewater collection, treatment and disposal services to the Property during the period of time Service Company, its successors and assigns provide wastewater collection, treatment and disposal services to the Property, it being the intention of the parties hereto that under the foregoing provision and also other provisions of this Agreement, to the extent permitted by applicable laws, Service Company shall have the sole and exclusive right and privilege to provide wastewater collection, treatment and disposal services to the Property and to the occupants of such residences, buildings or units constructed thereon, provided that Service Company performs its obligations under this Agreement. Service Company represents and warrants that it is duly licensed to provide wastewater collection, treatment and disposal service to the Property and that it will take all necessary steps in order to keep in good standing all permits necessary to carry out this Agreement.

9.0 **Rates**. Service Company agrees that the rates to be charged to Owner and to the occupants of the manufactured homes and other improvements on the Property shall be those set forth in the tariff of Service Company approved by the applicable governmental agency. However, notwithstanding any provision of this Agreement, Service Company, its successors and assigns may establish, amend or revise, from time to time in the future, and enforce rates or rate schedules so established and approved, which rates and rate schedules shall at all times be reasonable and subject to regulation by the applicable governmental agency, or as may be provided by law. Rates charged to Owner and to the occupants of the manufactured homes and other improvements on the Property shall at all times be identical to rates charged for the same classification of service, as are or may be in effect throughout the service area of Service Company.

9.1 Notwithstanding any provision in this Agreement to the contrary, Service Company may establish, amend or revise, from time to time, in the future, and enforce reasonable written rules and regulations covering wastewater collection, treatment and disposal services to the Property. However, all such rules and regulations so established by Service Company shall be provided to Owner, in advance, and shall at all times be subject to such regulations as may be provided by law.

9.2 Any such initial or future lower or increased rates, rate schedules, and rules and regulations established, amended or revised and enforced by Service Company from time to time in the future, as provided by law, shall be binding upon Owner; upon any person or other entity holding any interest in the Property by, through or under Owner; and upon any user or consumer of the wastewater collection, treatment and disposal service provided to the Property by Service Company.

10.0 Binding Effect of Agreement. This Agreement shall be binding upon and shall inure to the benefit of Owner, Service Company and their respective assigns and successors by merger, consolidation, conveyance or otherwise. Any assignment or transfer of this Agreement by either party shall be approved in writing by the other party, which approval shall not be unreasonably withheld.

11.0 Notice. Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, by certified mail, return receipt requested or by overnight delivery service, and if to Owner, shall be mailed or delivered to Owner at:

MHC-DeAnza Financing Limited Partnership
c/o Manufactured Home Communities, Inc.
Two North Riverside Plaza, Suite 800
Chicago, Illinois 60606
Attn: President

with a copy to:

Manufactured Home Communities, Inc.
Two North Riverside Plaza, Suite 800
Chicago, Illinois 60606
Attn: General Counsel

and if to Service Company, at:

North Fort Myers Utility, Inc.
Post Office Box 2547
Ft. Myers, Florida 33902

with a copy to:

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

12.0 Laws of Florida. This Agreement shall be governed by the laws of the State of Florida and it shall be and become effective immediately upon execution by both parties hereto, subject to any approvals which must be obtained from governmental authorities.

13.0 Costs and Attorney's Fees. In the event Service Company or Owner is required to enforce this Agreement by Court proceedings or otherwise, by instituting suit or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorney's fees for administrative proceedings, trials and appeals.

14.0 Force Majeure. In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of such party, including but not limited to Act of God or of the public enemy, war, national emergency, allocation or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, sinkhole or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping transmission or other facilities, governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling or order, order or decree or judgment or restraining order or injunction of any court, said party shall not be liable for such non-performance, so long as said party uses its best efforts to perform in the event of said disaster.

15.0 Indemnification. Each party agrees to indemnify and hold the other party harmless from and against any and all liabilities, claims, damages, costs and expenses (including reasonable attorney's fees) to which the other party may become subject by reason of or arising out of the indemnifying party's performance of this Agreement. This indemnification provision shall survive the actual connection of the Property to the wastewater collection system at the Property to Service Company's wastewater system.

MISCELLANEOUS PROVISIONS

16.0 This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between Owner and Service Company, made with respect to the matters herein contained, and when duly executed, constitutes the entire agreement between Owner and Service Company with respect to the matters herein contained. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party unless such additions, alterations, variations or waivers are expressed in writing and duly signed.

17.0 Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others.

18.0 Whenever approvals or consents of any kind are required by either party to this Agreement, it is agreed that same shall not be unreasonably withheld, conditioned or delayed.

19.0 The submission of this Agreement for execution by Owner does not constitute an offer, but this Agreement becomes effective only upon execution thereof by Service Company and Owner.

20.0 Failure to insist upon strict compliance with any of the terms, covenants or conditions herein shall not be deemed a waiver of such terms, covenants or conditions nor shall any waiver or relinquishment of any right or power hereunder at any one time or times be deemed a waiver or relinquishment of such right or power at any other time or times.

21.0 Because of inducements offered by Owner to Service Company (i.e., the CIAC), Service Company has agreed to provide wastewater collection, treatment and disposal services to the Property. Owner understands and agrees that capacity reserved hereunder cannot and shall not be assigned by Owner to third parties without the written consent of Service Company, except in the case of a bona-fide sale, transfer or other conveyance of the Property. Such consent shall not be unreasonably withheld. Moreover, Owner agrees that this Agreement is a superior instrument to any other documents, representations, and promises made by and between Owner and third parties, both public and private, as regards the provision of wastewater collection, treatment and disposal service to the Property.

22.0 It is agreed by and between the parties hereto that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be considered to be equally applicable under another in the interpretation of this Agreement.

23.0 This Agreement is binding on the successors and assigns of the parties hereto, including any municipal or governmental purchaser of Service Company. This Agreement shall survive the actual connection of the on-site wastewater collection system at the Property to Service Company's wastewater system, and the sale of Service Company or Owner to any party.

24.0 Service Company, its affiliates and subsidiaries, and their respective principals, employees, agents and contractors (collectively, the "Service Company Related Parties") shall comply with all applicable laws, codes, ordinances, rules and regulations in the performance of any work on or about the Property pursuant to this Agreement. All such work shall be completed by the Service Company Related Parties in a workmanlike and timely manner in accordance with sound and generally accepted engineering and construction practices and procedures. All such work shall be conducted by the Service Company Related Parties only during regular business hours (except in an emergency), and in accordance with such reasonable guidelines as Owner may set forth regarding use of streets, storage of materials, parking of vehicles and the like, so as to cause minimal interference with the rights and convenience of Owner and the occupants of the manufactured homes and other improvements located on the Property. Following completion of any such work, Service Company shall restore the surrounding portion of the Property affected by the work to substantially its condition prior to commencement of the work.

25.0 Service Company shall (i) promptly pay for all labor employed, materials purchased and equipment hired by the Service Company Related Parties in connection with any work on or about the Property pursuant to this Agreement; (ii) keep the Property free from any laborer's, materialmen's or mechanic's liens and claims or notices in respect thereto arising by reason of any such work; and (iii) discharge any such lien, claim or notice within thirty (30) days after any such lien, claim or notice is filed.

26.0 Service Company shall secure and maintain in effect during the initial connection of the on-site wastewater collection system at the Property to the central facilities of Service

Company, at Service Company's expense, the following insurance, with the entities comprising Owner and MHC-DAG Management Limited Partnership, an Illinois limited partnership (as the manager of the Property) named as additional insureds: (i) Workers' Compensation and Employer's Liability insurance as required by applicable law; (ii) Commercial General Liability insurance (occurrence form), including personal injury, with limits of not less than One Million Dollars ($1,000,000) per occurrence and One Million Dollars ($1,000,000) general aggregate; and (iii) Business Automobile Liability insurance, including bodily injury and property damage coverage, with a combined single limit of not less than One Million Dollars ($1,000,000) per accident. All such policies of insurance shall require the insurer to give Owner at least thirty (30) days prior written notice of modification or cancellation. Upon execution of this Agreement, Service Company shall provide Owner with certificates evidencing such insurance. At all other times during the term of this Agreement, Service Company shall secure and maintain in effect, at Service Company's expense, insurance of such types and in such amounts as Service Company shall deem appropriate in its prudent business judgment.

27.0 Service Company, for itself and the other Service Company Related Parties, hereby waives any and all claims against Owner, its affiliates and subsidiaries, and their respective principals, employees, agents and contractors (collectively, the "Owner Related Parties") and the Property for liabilities, losses, actions, damages, judgments, costs or expenses of whatever nature, including without limitation attorneys' fees and legal expenses incurred in connection therewith, incurred by reason of or arising out of any injury to or death of any person(s), damage to property, or otherwise in connection with (i) the condition of the Property or any facilities thereon, (ii) any event or occurrence on or about the Property, or (iii) the acts, omissions or negligence of any person, except with respect to the negligence or willful misconduct of the Owner Related Parties. All personal property belonging to the Service Company Related Parties shall be brought onto the Property at the risk of the Service Company Related Parties, and the Owner Related Parties shall not be liable for damage or destruction to or theft of any such personal property, except with respect to the negligence or willful misconduct of the Owner Related Parties.

28.0 Owner has made no representations or warranties to Service Company regarding the physical or operating condition of the Property or the on-site installations or any components thereof or the suitability thereof for Service Company's intended purposes. Service Company has physically inspected the Property and the on-site installations and accepts the on-site installations "as is, where is", with full knowledge of the condition thereof.

SPECIAL PROVISIONS

29.0 Concurrently with the payment of the connection charges to be paid by Owner pursuant to Section 3.0 hereof, (i) Owner shall deliver to the occupants of the manufactured homes on the Property (hereinafter referred to as "residents") written notice of the pass-through of the connection charges to the residents pursuant to Chapter 723, Florida Statutes, in the form of Exhibit "F," attached hereto and made a part hereof as if fully set out in this paragraph (the "Pass-Through Notice"), and (ii) Owner shall assign to Service Company Owner's right to collect said pass-through charges from the residents, pursuant to an assignment and assumption agreement in the form of Exhibit "G," attached hereto and made a part hereof as if fully set out in this paragraph.

30.0 In consideration of the agreement by Owner (i) to convey to Service Company the on-site installations, and (ii) to assign to Service Company Owner's right to collect the pass-

through charges from the residents as described in Section 29.0 hereof, Service Company hereby agrees to pay to Owner the sum of Five Hundred Eighty-Five Thousand Five Hundred Eighty-Nine Dollars ($585,589). Said sum shall be payable in two (2) installments. The first such installment, in the amount of Four Hundred Forty-Eight Thousand Six Hundred Two Dollars ($448,602) shall be payable upon the execution and delivery of this Agreement. The second such installment, in the amount of One Hundred Thirty-Nine Thousand Nine Hundred Eighty-Seven Dollars ($139,987), shall be payable upon the date ninety (90) days after the delivery to the residents of the Pass-Through Notice.

31.0 From and after the connection of the Property to the facilities of Service Company, Service Company shall bill each resident individually for the wastewater service provided by Service Company to such resident. Service Company shall be solely responsible for collecting the charges set forth on such billings, and Owner shall have no responsibility for payment or collection of any such charges. To facilitate Service Company's billing of the residents as aforesaid, Owner shall make available to Service Company copies of the readings of the residents' water meters performed by or on behalf of Owner.

IN WITNESS WHEREOF, Owner and Service Company have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterparts shall be considered an original executed copy of this Agreement.

WITNESSES:

Print Name

Print Name

NORTH FORT MYERS UTILITY, INC.

By:

Print Name A.A. REEVES III

Its V.P.

WITNESSES:

David W. Fell

Print Name: David W. Fell

Print Name: Josephine Rucinski

SNOWBIRDLAND VISTAS, INC.

By:

Arthur A. Greenberg

Vice President

WITNESSES:

David W. Fell

Print Name: David W. Fell

Print Name: Josephine Rucinski

MHC-DeANZA FINANCING LIMITED PARTNERSHIP

By: MHC-QRS DeAnza, Inc., its General Partner

By:

Ellen Kelleher

Exec. Vice President/General Counsel

STATE OF FLORIDA)
) SS.
COUNTY OF Lee)

The foregoing instrument was acknowledged before me this 25th day of August, 1998, by A A Greenberg III, as Vice President of North Fort Myers Utility, Inc., a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced Personally Known as identification.

Kathleen L. Shields
Notary Public
State of Florida at Large
My Commission Expires:

OFFICIAL NOTARY SEAL
KATHLEEN R SHIELDS
COMMISSION NUMBER
CC736604
MY COMMISSION EXPIRES
MAY 19,2002

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 21st day of August, 1998, by Arthur A. Greenberg, as Vice President of Snowbirdland Vistas, Inc., an Illinois corporation, on behalf of the corporation. He is personally known to me or has produced a State of Illinois driver's license as identification.

OFFICIAL SEAL
CHERYL DEPAULA
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/06/00

Cheryl DePaula
Notary Public
State of Illinois
My Commission Expires: February 6, 2000

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 21st day of August, 1998, by Ellen Kelleher, as Executive Vice President/General Counsel of MHC-QRS DeAnza, Inc., a Delaware corporation, as General Partner of MHC-DeAnza Financing Limited Partnership, an Illinois limited partnership, on behalf of the partnership. She is personally known to me or has produced a State of Illinois driver's license as identification.

OFFICIAL SEAL
CHERYL DEPAULA
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/06/00

Cheryl DePaula
Notary Public
State of Illinois
My Commission Expires: February 6, 2000

This Instrument Prepared By: Martin S. Friedman, Esquire, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301.

EXHIBIT "A"

Legal Description of Property

All that part of the Northwest quarter (NW 1/4) and that part of the Northeast quarter (NE 1/4) of the Southwest quarter (SW 1/4) of Section 35, Township 43 South, Range 24 East, lying Easterly of the Tamiami Trail (State Road No. 45) and lying Northerly of a line being the Northerly line of Dormier Heights according to plat recorded in Plat Book 22 at Page 28 of the Public Records of Lee County, Florida, and a Westerly prolongation of said Northerly line to the Easterly line of said Tamiami Trail.

Subject to the maintained right-of-way of Queens Road.

The Northeast quarter (NE 1/4) of said Section 35, EXCEPTING THEREFROM the Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4), the South half (S 1/2) of the Southeast quarter (SE 1/4) of the Southeast quarter (SE 1/4) of the Northeast quarter (NE 1/4) and the following described parcel:

A tract or parcel of land lying in the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of Section 35, Township 43 South, Range 24 East, Lee County, Florida, which tract or parcel is described as follows:

From the northwest corner of the Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of said section run South 89 Degrees 48 Minutes 43 Seconds East along the North line of said fraction of a section along the southerly line of a roadway easement 25 feet wide for 395 feet to the Point of Beginning of the herein described parcel.

From said point of beginning run North 00 Degrees 09 Minutes 33 Seconds West parallel with the west line of said fraction of a section for 495 feet; thence run South 89 Degrees 48 Minutes 43 Seconds East parallel with the north line of said Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) for 610 feet; thence run South 00 Degrees 09 Minutes 33 Seconds East parallel with the West line of said fraction of a section for 700 feet; thence run North 89 Degrees 48 Minutes 43 Seconds West for 340.87 feet to an intersection with the east line of said Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4); thence run North 00 Degrees 11 Minutes 58 Seconds West along said east line for 205 feet to the Northeast corner of said fraction of a section; thence run North 89 Degrees 48 Minutes 43 Seconds West along the North line thereof for 268.98 feet to the Point of Beginning.

TOGETHER WITH the hereinabove described roadway easement 25 feet wide. Bearings hereinabove mentioned are from the centerline survey of State Road No. 45.

Save and except that portion of the foregoing land described in that certain Order of Taking recorded in O.R. Book 1848, Page 1858, Public Records of Lee County, Florida.

The above includes all of Buccaneer Mobile Home Estates, Unit 1, a Subdivision, according to the plat thereof recorded in Plat Book 29, Pages 117 through 119, inclusive, in the Public Records of Lee County, Florida.

This instrument prepared by:
David W. Fell, Esquire
c/o Manufactured Home Communities, Inc.
Two North Riverside Plaza, Suite 800
Chicago, Illinois 60606

This Space for Recording Information

GRANT OF NON-EXCLUSIVE EASEMENT

THIS GRANT OF NON-EXCLUSIVE EASEMENT ("Agreement") made and entered into this 24th day of August, 1998, by and between **SNOWBIRDLAND VISTAS, INC.**, an Illinois corporation and **MHC-DeANZA FINANCING LIMITED PARTNERSHIP**, an Illinois Limited Partnership, hereinafter jointly referred to as "Grantor", and **NORTH FORT MYERS UTILITY, INC.**, a Florida corporation, hereinafter referred to as "Grantee".

WITNESSETH:

1. Grantor and Grantee have entered into that certain Wastewater Agreement of even date herewith (the "Wastewater Agreement"), pursuant to which Grantee has agreed to provide wastewater collection, treatment and disposal services to the Easement Parcel (as hereinafter defined), as more fully provided in the Wastewater Agreement. Grantor and Grantee desire to enter into this Agreement pursuant to the terms and provisions of the Wastewater Agreement, which is incorporated herein and made a part of this Agreement by reference.

2. Therefore, for and in consideration of the sum of Ten and 00/100 Dollars ($10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor hereby grants to Grantee, solely during the term of the Wastewater Agreement and subject to the terms and conditions of this Agreement, a non-exclusive easement with respect to that certain parcel of land situated in Lee County, Florida and legally described on Schedule 1 attached hereto and made a part hereof (the "Easement Parcel") together with the right of ingress thereto and egress therefrom over designated roadways within the Easement Parcel, solely for the purpose of constructing, repairing and maintaining (as applicable) the "on-site installations" and the "force main" (as each such term is defined in the Wastewater Agreement) located or to be located within the Easement Parcel (collectively, the "Improvements"), all at Grantee's sole cost and expense.

3. Any activities conducted by Grantee pursuant to the provisions of this Agreement are hereinafter collectively referred to as "Activities". Any such Activities shall be conducted only in accordance with the terms and conditions of this Agreement. Grantee shall provide reasonable prior notice to Grantor (except in an emergency) with respect to any Activities that may be disruptive to traffic within the Easement Parcel.

4. Grantee shall be solely responsible, at Grantee's sole cost and expense, for the repair and maintenance of the Improvements, and Grantee shall keep the same in good condition and repair and in compliance with all applicable laws at all times.

5. Title to the Easement Parcel shall remain with Grantor. Grantor reserves the right to use the Easement Parcel and to grant rights to others therein for such purposes as Grantor may deem appropriate; provided, however, that any such use or rights will be consistent with the purposes of this Agreement and shall not unreasonably interfere with Grantee's rights under this Agreement.

6. Grantee shall conduct all Activities as expeditiously as reasonably possible, and in such a manner that will not unreasonably interfere with ingress or egress of persons or vehicles to, from or within the Easement Parcel, or with the ordinary flow of pedestrian and vehicular traffic, or with the normal conduct of business on the Easement Parcel.

7. Grantee hereby acknowledges that the easement herein granted may cross, at one or more points, other utility facilities or systems or easement rights now or hereafter in existence. Grantee hereby agrees to exercise the highest degree of care in order to avoid any damage to or interference with any such other utility facilities or systems or easement rights and agrees that in the event of any damage to or interference with any such other utility facilities or systems or easement rights attributable to any Activities, Grantee shall promptly remedy such damage or interference at Grantee's sole cost and expense. Grantee further agrees to cooperate with all other grantees having or acquiring similar rights within or serving the Easement Parcel.

8. Grantor reserves the further right to require Grantee to move or relocate any or all of the Improvements, provided, however, that Grantor will reimburse Grantee for any actual expense incurred in such relocation, and provided further that Grantor will provide a suitable alternate location for any such Improvements and will grant or cause to be granted necessary easement rights for such Improvements at the new location upon substantially the same terms and conditions as herein provided, and in such event this Agreement shall automatically terminate.

9. In the event that Grantee abandons or ceases to use the Easement Parcel for the purposes herein set forth for a period of six (6) months, or upon the termination of the Wastewater Agreement, this Agreement shall automatically terminate and be of no further force or effect; provided, however, that upon termination of this Agreement Grantee shall have thirty (30) days after the date of termination to remove any or all of the Improvements, at Grantee's sole cost and expense, in which event Grantee shall restore the condition of the Easement Parcel to substantially that which existed immediately prior to such removal. After said thirty (30) days, at Grantor's option, either (i) the Improvements remaining on the Easement Parcel shall become the property of Grantor, or (ii) Grantor shall remove such Improvements and so restore the Easement Parcel, all at the sole cost and expense of Grantee, in which event Grantee shall reimburse Grantor for the cost thereof upon demand.

10. This Agreement shall run with the land during the term hereof, and shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF, Grantor and Grantee have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterparts shall be considered an original executed copy of this Agreement.

WITNESSES:

Print Name

Print Name

NORTH FORT MYERS UTILITY, INC.

By:

Print Name

Its

WITNESSES:

Print Name: David W. Fell

Print Name: Josephine Rucinski

SNOWBIRLAND VISTAS, INC.

By:
Arthur A. Greenberg
Vice President

WITNESSES:

Print Name: David W. Fell

Print Name: Josephine Rucinski

MHC-DeANZA FINANCING LIMITED PARTNERSHIP

By: MHC-QRS DeAnza, Inc., its General Partner

By:
Ellen Kelleher
Exec. Vice President/General Counsel

STATE OF FLORIDA)
) SS.
COUNTY OF Lee)

The foregoing instrument was acknowledged before me this 25th day of August, 1998, by A A Kuna III, as Vice President of North Fort Myers Utility, Inc., a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced Personally as identification.

Kathleen R Shields
Notary Public
State of Florida at Large
My Commission Expires:

OFFICIAL NOTARY SEAL
KATHLEEN R SHIELDS
COMMISSION NUMBER
CC736604
MY COMMISSION EXPIRES
MAY 19,2002

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 21st day of August, 1998, by Arthur A. Greenberg as Vice President of Snowbirdland Vistas, Inc., an Illinois corporation, on behalf of the corporation. He is personally known to me or has produced a State of Illinois driver's license as identification.

OFFICIAL SEAL
CHERYL DEPAULA
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/06/00

Cheryl DePaula
Notary Public
State of Illinois
My Commission Expires: February 6, 2000

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 21st day of August, 1998, by Ellen Kelleher, as Executive Vice President/General Counsel of MHC-QRS DeAnza, Inc., a Delaware corporation, as General Partner of MHC-DeAnza Financing Limited Partnership, an Illinois limited partnership, on behalf of the partnership. She is personally known to me or has produced a State of Illinois driver's license as identification.

OFFICIAL SEAL
CHERYL DEPAULA
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/06/00

Cheryl DePaula
Notary Public
State of Illinois
My Commission Expires: February 6, 2000

This Instrument Prepared By: David W. Fell, Esquire, c/o Manufactured Home Communities, Inc., Two North Riverside Plaza, Suite 800, Chicago, Illinois 60606.

Schedule 1

Legal Description of Easement Parcel

All that part of the Northwest quarter (NW 1/4) and that part of the Northeast quarter (NE 1/4) of the Southwest quarter (SW 1/4) of Section 35, Township 43 South, Range 24 East, lying Easterly of the Tamiami Trail (State Road No. 45) and lying Northerly of a line being the Northerly line of Dormier Heights according to plat recorded in Plat Book 22 at Page 28 of the Public Records of Lee County, Florida, and a Westerly prolongation of said Northerly line to the Easterly line of said Tamiami Trail.

Subject to the maintained right-of-way of Queens Road.

The Northeast quarter (NE 1/4) of said Section 35, EXCEPTING THEREFROM the Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4), the South half (S 1/2) of the Southeast quarter (SE 1/4) of the Southeast quarter (SE 1/4) of the Northeast quarter (NE 1/4) and the following described parcel:

A tract or parcel of land lying in the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of Section 35, Township 43 South, Range 24 East, Lee County, Florida, which tract or parcel is described as follows:

From the northwest corner of the Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of said section run South 89 Degrees 48 Minutes 43 Seconds East along the North line of said fraction of a section along the southerly line of a roadway easement 25 feet wide for 395 feet to the Point of Beginning of the herein described parcel.

From said point of beginning run North 00 Degrees 09 Minutes 33 Seconds West parallel with the west line of said fraction of a section for 495 feet; thence run South 89 Degrees 48 Minutes 43 Seconds East parallel with the north line of said Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) for 610 feet; thence run South 00 Degrees 09 Minutes 33 Seconds East parallel with the West line of said fraction of a section for 700 feet; thence run North 89 Degrees 48 Minutes 43 Seconds West for 340.87 feet to an intersection with the east line of said Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4); thence run North 00 Degrees 11 Minutes 58 Seconds West along said east line for 205 feet to the Northeast corner of said fraction of a section; thence run North 89 Degrees 48 Minutes 43 Seconds West along the North line thereof for 268.98 feet to the Point of Beginning.

TOGETHER WITH the hereinabove described roadway easement 25 feet wide. Bearings hereinabove mentioned are from the centerline survey of State Road No. 45.

Save and except that portion of the foregoing land described in that certain Order of Taking recorded in O.R. Book 1848, Page 1858, Public Records of Lee County, Florida.

The above includes all of Buccaneer Mobile Home Estates, Unit 1, a Subdivision, according to the plat thereof recorded in Plat Book 29, Pages 117 through 119, inclusive, in the Public Records of Lee County, Florida.

EXHIBIT "F"
NOTICE OF PASS-THROUGH CHARGES

TO: Homeowners of Buccaneer Estates Manufactured Home Community

FROM: Snowbirdland Vistas, Inc.
MHC-DeAnza Financing Limited Partnership
Manufactured Home Communities, Inc.

DATE: August 24, 1998

RE: Pass-Through of System Capacity Charges
for Connection to North Fort Myers Utility, Inc. Central Wastewater System

---

This serves as notice pursuant to Sections 723.037 and 723.046, Florida Statutes, of a charge to be assessed by North Fort Myers Utility, Inc. (the "Utility") for "System Capacity Charges" in the total amount of $448,602 (the "Total Connection Cost"), which is the total cost for connection of Buccaneer Estates Manufactured Home Community (the "Community") to the Utility's central wastewater collection, treatment and disposal system. The Total Connection Cost was computed at the Utility's standard rate of $462 (the "Per Site Connection Cost") for each of the 971 manufactured home sites within the Community. Snowbirdland Vistas, Inc., MHC-DeAnza Financing Limited Partnership and Manufactured Home Communities, Inc., as the owners and managers of the Community (collectively, the "Community Owner"), have agreed to pay the Total Connection Cost to the Utility in advance on behalf of the residents of the Community (the "Residents"), subject to the obligation of the Residents to repay such amount as set forth herein.

Each Resident will have the option to pay the Per Site Connection Cost for such Resident's site either (i) in a single lump sum payment of $462 on or before December 1, 1998, or (ii) in monthly installments of $7.01 each (which amount includes interest on the unpaid balance of the Per Site Connection Cost from time to time at the rate of 10% per annum) on the first day of each calendar month over the eight-year period commencing December 1, 1998 and continuing through November 30, 2006 (the "Payment Period"). The payment schedule set forth herein is in accordance with Section 723.046, Florida Statutes.

Effective December 1, 1998, the Utility will begin billing the Residents directly on a monthly basis for the wastewater collection, treatment and disposal service provided by the Utility. Concurrently with the delivery of this notice, the Community Owner is assigning to the Utility the Community Owner's right to collect the Per Site Connection Cost for each site as described above. For the Residents electing to pay the Per Site Connection Cost in monthly installments as provided for above, the Utility will invoice these installments on separate monthly bills to be delivered to the Residents.

Effective December 1, 1998, the monthly base rent payable under each Resident's lot rental agreement will be reduced by $6.07. This is the average monthly cost to the Community Owner of providing wastewater service to each site in the Community, the cost of which service has previously been included in the base rent. This average monthly cost was determined by averaging, on a per month basis, the cost to the Community Owner of providing wastewater

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") made and entered into this 24th day of August, 1998, by and between **SNOWBIRDLAND VISTAS, INC.**, an Illinois corporation and **MHC-DeANZA FINANCING LIMITED PARTNERSHIP**, an Illinois Limited Partnership, hereinafter jointly referred to as "Owner", and **NORTH FORT MYERS UTILITY, INC.**, a Florida corporation, hereinafter referred to as "Service Company".

WHEREAS, Owner owns or controls a wastewater collection, treatment and disposal system serving lands located in Lee County, Florida, and described in Schedule 1, attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as the "Property", and the Property has been developed as Buccaneer Estates, which is a manufactured home community consisting of 971 manufactured home lots; and

WHEREAS, pursuant to that certain Wastewater Agreement of even date herewith by and between Owner and Service Company, which is by this reference incorporated herein and made a part hereof as if fully set out in this paragraph and hereinafter referred to as the "Wastewater Agreement", Service Company has agreed to provide, in accordance with the provisions of the Wastewater Agreement and Service Company's Service Availability Policy, central wastewater collection, treatment and disposal services to the Property and thereafter operate applicable facilities so that the occupants of the manufactured homes and other improvements on the Property will receive an adequate wastewater collection, treatment and disposal service from Service Company; and

WHEREAS, among other provisions, the Wastewater Agreement provides for the assignment by Owner to Service Company of Owner's right to collect from the "residents" (as such term is defined in the Wastewater Agreement) of the Property the "pass-through charges" relating to Owner's payment of the "connection charges" provided for in the Wastewater Agreement, and for the execution and delivery of this Agreement in connection with such assignment;

NOW THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, Owner and Service Company hereby covenant and agree as follows:

1.0 The foregoing recitations are true and correct and incorporated herein.

2.0 For the consideration set forth in the Wastewater Agreement, Owner hereby quitclaims, sells, assigns and conveys to Service Company (without recourse), and Service Company hereby accepts, purchases, assumes and acquires from Owner, all of Owner's right, title and interest in and to the pass-through charges. Without limiting the generality of the foregoing, the parties agree that Service Company shall have the sole right to collect the pass-through charges, and that Owner shall no responsibility for payment or collection of the same. Notwithstanding the foregoing, however, in the event that the residents file a lawsuit challenging Owner's right to assess the pass-through charges, Owner shall be responsible, at its expense, for defending such lawsuit.

IN WITNESS WHEREOF, Owner and Service Company have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterparts shall be considered an original executed copy of this Agreement.

WITNESSES:

Print Name CLAIRE A. GOSSELIN

Print Name SANDRA J. SANTINI

NORTH FORT MYERS UTILITY, INC.

By: _____
Print Name J. A. H. REEVES III
Its V.P.

WITNESSES:

Print Name: David W. Fell

Print Name: Josephine Rucinski

SNOWBIRLAND VISTAS, INC.

By: _____
Arthur A. Greenberg
Vice President

WITNESSES:

Print Name: David W. Fell

Print Name: Josephine Rucinski

MHC-DeANZA FINANCING LIMITED PARTNERSHIP

By: MHC-QRS DeAnza, Inc., its General Partner

By: _____
Ellen Kelleher
Exec. Vice President/General Counsel

STATE OF FLORIDA)
) SS.
COUNTY OF Lee)

The foregoing instrument was acknowledged before me this 25th day of August, 1998, by A A Reeves III, as Vice President of North Fort Myers Utility, Inc., a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced Personally Known as identification.

Kathleen L. Shields
Notary Public
State of Florida at Large
My Commission Expires:

OFFICIAL NOTARY SEAL
KATHLEEN R SHIELDS
COMMISSION NUMBER
CC736604
MY COMMISSION EXPIRES
MAY 19,2002
NOTARY PUBLIC STATE OF FLORIDA

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 21st day of August, 1998, by Arthur A. Greenberg as Vice President of Snowbirdland Vistas, Inc., an Illinois corporation, on behalf of the corporation. He is personally known to me or has produced a State of Illinois driver's license as identification.

OFFICIAL SEAL
CHERYL DEPAULA
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/06/00

Cheryl DePaula
Notary Public
State of Illinois
My Commission Expires: February 6, 2000

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 21st day of August, 1998, by Ellen Kelleher, as Executive Vice President/General Counsel of MHC-QRS DeAnza, Inc., a Delaware corporation, as General Partner of MHC-DeAnza Financing Limited Partnership, an Illinois limited partnership, on behalf of the partnership. She is personally known to me or has produced a State of Illinois driver's license as identification.

OFFICIAL SEAL
CHERYL DEPAULA
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/06/00

Cheryl DePaula
Notary Public
State of Illinois
My Commission Expires: February 6, 2000

This Instrument Prepared By: David W. Fell, Esquire, c/o Manufactured Home Communities, Inc., Two North Riverside Plaza, Suite 800, Chicago, Illinois 60606.

Schedule 1

Legal Description of Property

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Subject to the maintained right-of-way of Queens Road.

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A tract or parcel of land lying in the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of Section 35, Township 43 South, Range 24 East, Lee County, Florida, which tract or parcel is described as follows:

From the northwest corner of the Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of said section run South 89 Degrees 48 Minutes 43 Seconds East along the North line of said fraction of a section along the southerly line of a roadway easement 25 feet wide for 395 feet to the Point of Beginning of the herein described parcel.

From said point of beginning run North 00 Degrees 09 Minutes 33 Seconds West parallel with the west line of said fraction of a section for 495 feet; thence run South 89 Degrees 48 Minutes 43 Seconds East parallel with the north line of said Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) for 610 feet; thence run South 00 Degrees 09 Minutes 33 Seconds East parallel with the West line of said fraction of a section for 700 feet; thence run North 89 Degrees 48 Minutes 43 Seconds West for 340.87 feet to an intersection with the east line of said Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4); thence run North 00 Degrees 11 Minutes 58 Seconds West along said east line for 205 feet to the Northeast corner of said fraction of a section; thence run North 89 Degrees 48 Minutes 43 Seconds West along the North line thereof for 268.98 feet to the Point of Beginning.

TOGETHER WITH the hereinabove described roadway easement 25 feet wide. Bearings hereinabove mentioned are from the centerline survey of State Road No. 45.

Save and except that portion of the foregoing land described in that certain Order of Taking recorded in O.R. Book 1848, Page 1858, Public Records of Lee County, Florida.

The above includes all of Buccaneer Mobile Home Estates, Unit 1, a Subdivision, according to the plat thereof recorded in Plat Book 29, Pages 117 through 119, inclusive, in the Public Records of Lee County, Florida.

2032489 OFF 1820 PG 3899

WARRANTY DEED
WOOD CORPORATION

This Warranty Deed Made and executed the 27th day of December A.D. 19 85 by

WILDER CORPORATION OF DELAWARE

a corporation existing under the laws of DELAWARE, and having its principal place of business at 3040 Gulf to Bay Blvd. Suite 101 Clearwater, Florida 33519 hereinafter called the grantor, to

NORTH FORT MYERS UTILITY, INC.

whose postoffice address is P.O. Box 2547 Fort Myers, Fla [illegible]

hereinafter called the grantee:

Witnesseth: That the grantor, for and in consideration of the sum of $ 10.00 and other valuable considerations, receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the grantee, all that certain land situate in Lee County, Florida, viz:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Documentary Tax Pd. $ 800.00
$ — Intangible Tax Pd.
CHARLIE GREEN, CLERK, LEE COUNTY
by [signature] Deputy Clerk

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that it is lawfully seized of said land in fee simple; that it has good right and lawful authority to sell and convey said land; that it hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes for the year 1986 and subsequent years, easements, reservations, and restrictions of record, if any.

(CORPORATE SEAL)

In Witness Whereof the grantor has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officers thereunto duly authorized, the day and year first above written.

ATTEST: [signature] Secretary

WILDER CORPORATION OF DELAWARE

Signed, sealed and delivered in the presence of:

[signature]

[signature]

By [signature] MAURICE WILDER President

STATE OF FLORIDA
COUNTY OF

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Maurice Wilder

well known to me to be the President XX respectively of the corporation named as grantor in the foregoing deed, and that they severally acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in them by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 27th day of December, A.D. 19 85

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. OCT 29, 1989
BONDED THRU GENERAL INS. UND.

[signature]

This Instrument prepared by: M. Page Alday/Donalson Title Co., Inc.
Address 2815 W. Waters Avenue Tampa, Florida 33614
25-1031
RETURN TO GRANTEE

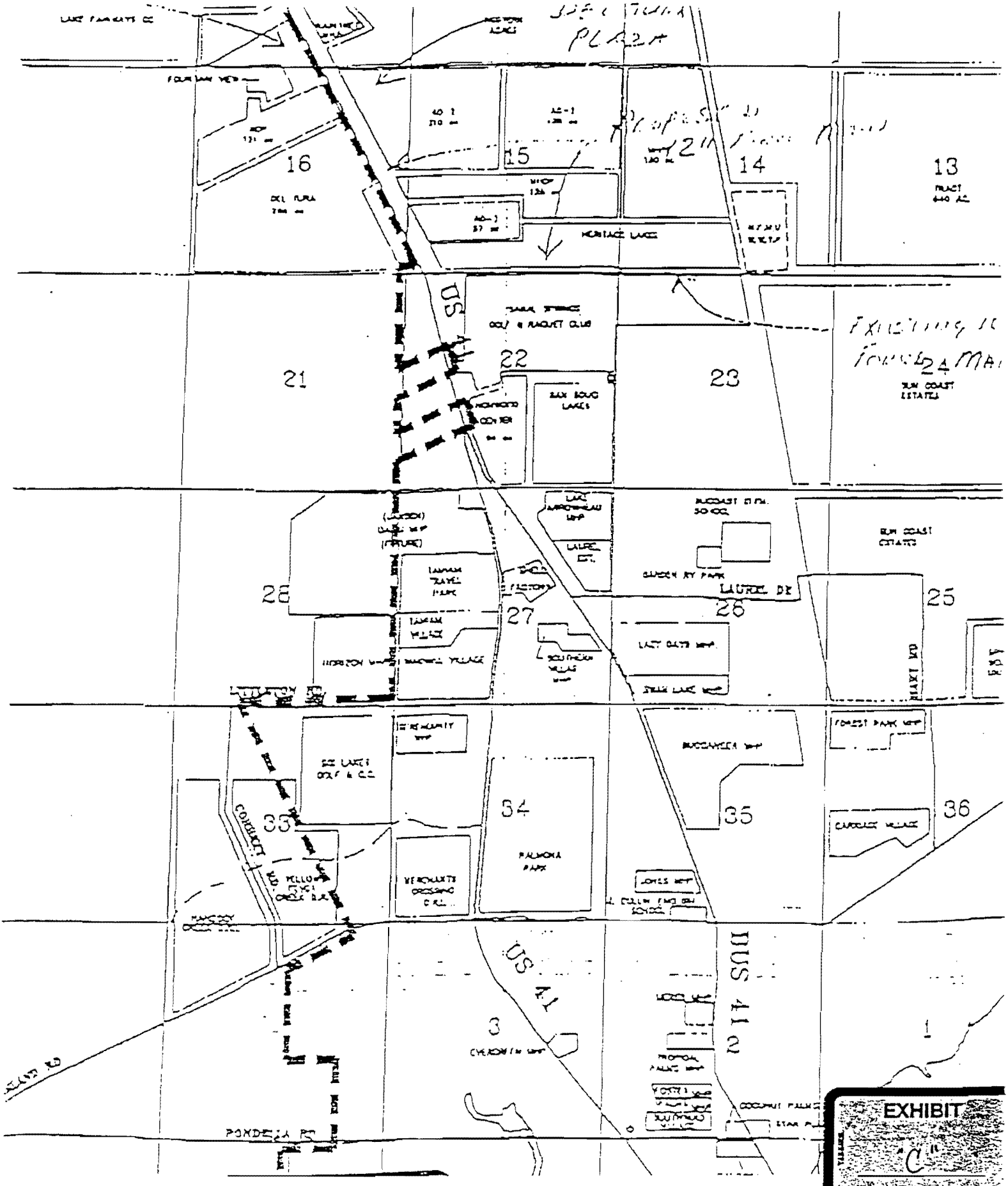
RECORD VERIFIED - CHARLIE GREEN, CLERK
BY: K. [illegible], D.C.

EXHIBIT "B"

EXHIBIT "A"

A Parcel or tract of land situated in the South Half (S 1/2) of Section 14, Township 43, South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commence at the Southwest (SW) corner of said Section 14; thence run S89°58'37" E, along the South line of said Section for 2940.15 feet to a concrete monument marking the East line of the former Seaboard Coast Line (SCL) Railroad right of way and the Point of Beginning; thence run N 11°21'24" W, along said East line of right of way for 1632.06 feet; thence run S 89°58'37" E, parallel with the South line of said Section 14 for 1247.76 feet; thence run S 00°08'53" E, along a line parallel with the West line of said Section 14 for 1600.00 feet to the South line of said Section; thence run N 89°58'37" W, along said South line for 930.51 feet to the Point of Beginning.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US 41
US 41
LAUREL DR
PONDELLA RD
EXHIBIT
C

COMPOSITE EXHIBIT "D"

TERRITORY SERVED

CERTIFICATE NUMBER - 247-S

COUNTY - Lee

COMMISSION ORDERS APPROVING TERRITORY SERVED -

Order Number	Date Issued	Docket Number	Filing Type
8025	10/25/77	770709-S	Grandfather
11300	11/02/82	820278-S	Extension
12572	10/04/83	830316-S	Extension
15659	02/12/86	830362-S	Extension/Name Change
19059	03/29/88	871306-SU	Extension
PSC-92-0537-FOF-SU	06/22/92	920037-SU	Extension
PSC-92-0588-FOF-SU	06/30/92	920273-SU	Extension
PSC-93-0971-FOF-SU	06/29/93	930289-SU	Extension
PSC-93-1851-FOF-SU	12/30/93	931040-SU	Extension
PSC-93-1821-FOF-SU	12/22/93	930379-SU	Extension
PSC-94-0450-FOF-SU	04/14/94	931164-SU	Extension
PSC-94-0726-FOF-SU	06/13/94	930724-SU	Extension
			Extension

(Continued to Sheet No. 3.1)

Jack Schenkman
ISSUING OFFICER

President
TITLE

(Continued from Sheet No. 3.0)

DESCRIPTION OF TERRITORY SERVED

Order No. 19059 in Docket No. 871306-SU extended territory, and included a complete rewrite of the territory description. In the rewrite, this order included the territory in Orders Nos. 8025, 11300, 12572, and 15659. On June 16, 1992, the Commission approved the amendment of territory in Docket No. 910273-SU, commonly known as the Forest Park Mobile Home Park (a/k/a Vista Villages, Inc.). The Forest Park Mobile Home Park, Lake Arrowhead, Laurel Estates, Tamiami Village and Buccaneer Estates had been excluded from Order No. 19059, because the utilities had their own wastewater treatment plant, and collection system. Also, Order No. 19059 excluded the territory commonly known as the Del Tura Shopping Center. The Del Tura territory was granted to the utility in Docket No. 920037-SU. Certain property West of U.S. Highway 41, North of County Road 78A, and South of State Road 78 was included in Docket No. 931040-SU. The territory on the following pages includes that granted by Order No. 19059, the Forest Park Mobile Home Park, the Del Tura Shopping Center, and the Fountain View RV Resort, Lake Arrowhead and Laurel Estates, Carriage Village, Lazy Days Mobile Village, Tamiami Village and Buccaneer Estates.

(Continued on Sheet No. 3.2)

Jack Schenkman
ISSUING OFFICER

President
TITLE

(Continued from Sheet No. 3.1)

DESCRIPTION OF TERRITORY SERVED

That part of Lee County, Florida lying north of the Caloosahatchee River, west of I-75 and east and north of a line running from the Caloosahatchee River along River Road to its intersection with Pondella Road, thence west along Pondella Road to Yellow Fever Creek, then north along Yellow Fever Creek to Pine Island Road (SR 78), then west along Pine Island Road to the city limits of Cape Coral in Section 4, T44S, R24E, then following the municipal boundary of Cape Coral north until reaching the Southwest corner of Section 21, T43S, R24E, then east to the Southeast corner of the said Section 21, T43S, R24E, then north to the Northeast corner of the said Section 21, T43S, R24E, then east to U.S. 41, then north along U.S. 41 to the northern Section line of Section 16, T43E, R24E, then west along said section line to the northwest corner of Section 17, then north along the line separating Sections 7 and 8 to the northwest corner of Section 8, then east along the northern section of Sections 8 and 9 to U.S. 41, then north along U.S. 41 to the Charlotte County line, less that area west of I-75 designated as "general interchange" at Bayshore Road and I-75 in the Lee County Land Use Map, the service areas certificated by the Florida Public Service Commission to Florida Cities Water Company, and less and except the following described property:

A parcel of land in Sections 2, 3, 4, 5, & 10, Township 43 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commence at the Northeast corner of Section 3, Township 43 South, Range 24 East; thence N.89°57'30"W. along the north line of the northeast one quarter of said Section 3 for 355.01 feet to an intersection with the westerly right of way line of the former S.A.L. Railroad and the Point of Beginning of the herein described parcel of land; thence continue N.89°57'30"W. along said north line for 2313.55 feet to the northeast corner of the northwest one quarter of said Section 3; thence S.89°48'38"W. along the north line of said northwest one quarter for 2667.53 feet to the northwest corner of said Section 3; thence N.89°42'40"W. along the north line of Section 4, Township 43 South, Range 24 East for 5335.96 feet to the northwest corner of said section 4; thence S.89°33'20"W. along the north line of the northeast one quarter of Section 5, Township 43 South, Range 24 East for 1871.76 feet to an intersection with the northeasterly line of North Fort Myers Park according to the plat thereof as recorded in Plat Book 9, Page 113 of the Public Records of Lee County, Florida; thence S.26°03'40"E. along said northeasterly line for 318.64 feet to an intersection with the southeasterly line of Lot 3 of said plat of North Fort Myers Park; thence S.63°56'20"W. along said southeasterly line for 300.77 feet to an intersection with the northeasterly right of way line of Tamiami Trail (S.R. 45, U.S. 41) being a point on the arc of a

(Continued on Sheet No. 3.3)

Jack Schenkman
ISSUING OFFICER

President
TITLE

EXHIBIT "E"

WILL BE LATE FILED

(Affidavit of Mailing to Entities)

EXHIBIT "F"

WILL BE LATE FILED

(Affidavit of Mailing to Customers)

EXHIBIT "G"

WILL BE LATE FILED

(Affidavit of Newspaper Publication)

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF LEON

Before me, the undersigned authority, authorized to administer oaths and take acknowledgements, personally appeared BRONWYN S. REVELL MODERAU, who, after being duly sworn on oath, did depose on oath and say that she is the secretary of Martin S. Friedman, attorney for North Fort Myers Utility, Inc. and that on December 30, 1998, she did call the Public Service Commission and spoke with Jovon Snipes in the Water and Wastewater Department and Ms. Snipes confirmed to Bronwyn that North Fort Myers Utility, Inc. had a tariff on file with the Public Service Commission and a current Annual Report.

FURTHER AFFIANT SAYETH NAUGHT.

Bronwyn S. Revell Moderau

Bronwyn S. Revell Moderau

Sworn to and subscribed before me this 1st day of December, 1998, by Bronwyn S. Revell Moderau, who is personally known to me.

Tonya M. Simpson

Print Name
NOTARY PUBLIC
My Commission Expires:

Tonya M. Simpson
MY COMMISSION # CC733509 EXPIRES
April 13, 2002
BONDED THRU TROY FAIN INSURANCE, INC.

EXHIBIT "H"

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.

NOTICE OF FILING

Applicant hereby notices the filing of the Late Filed Exhibit "E" in the above-referenced docket.

Respectfully submitted on this 2nd day of December, 1998, by:

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

By: MARTIN S. FRIEDMAN

nfmu\buccaneer\filing.not

AFFIDAVIT OF MAILING

STATE OF FLORIDA

COUNTY OF LEON

Before me, the undersigned authority, authorized to administer oaths and take acknowledgements, personally appeared BRONWYN S. REVELL MODERAU, who, after being duly sworn on oath, did depose on oath and say that she is the secretary of Martin S. Friedman, attorney for North Fort Myers Utility, Inc. and that on December 2, 1998, she did send by certified mail, return receipt requested, a copy of the notice attached hereto to each of the utilities, governmental bodies, agencies, or municipalities, in accordance with the list provided by the Florida Public Service Commission, which is also attached hereto.

FURTHER AFFIANT SAYETH NAUGHT.

Bronwyn S. Revell Moderau

Bronwyn S. Revell Moderau

Sworn to and subscribed before me this 2nd day of December, 1998, by Bronwyn S. Revell Moderau, who is personally known to me.

Leah Massa

Print Name
NOTARY PUBLIC
My Commission Expires:

EXHIBIT "E"

LEAH MASSA
MY COMMISSION # CC470985 EXPIRES
August 19, 1999
BONDED THRU TROY FAIN INSURANCE, INC.

NOTICE OF APPLICATION FOR AN
EXTENSION OF WASTEWATER SERVICE AREA

North Fort Myers Utility, Inc., Post Office Box 2547, Fort Myers, Florida 33902, pursuant to Section 367.045(2), Florida Statutes, hereby notices its intent to apply to the Florida Public Service Commission for an extension of its service area to provide wastewater service to the Buccaneer Estates mobile home community in Section 35, Township 43 South, Range 24 East in Lee County, Florida, more particularly described as follows:

> Township 43 South, Range 24 East, Lee County. That part of the North ½ of Section 35 lying East of State Road 45-A (also known as U.S. Highway 41 Business) except the South ¼ of the Southwest ¼ of the Northeast ¼ of said Section 35.

Any objections to the Application must be filed with the Director, Division of Records & Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, with a copy to Martin S. Friedman, Esquire, Rose, Sundstrom & Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301, no later than 30 days after the last date that the Notice was mailed or published, whichever is later.

nfmu\buccaneer\extension.not

LIST OF WATER AND WASTEWATER UTILITIES IN LEE COUNTY

(VALID FOR 60 DAYS)
11/30/1998-01/28/1999

UTILITY NAME	MANAGER
LEE COUNTY	
BAYSHORE UTILITIES, INC. (WU013) 2259 CLUBHOUSE ROAD NORTH FT. MYERS, FL 33917-2523	WAYNE CARSON WAMPLER (941) 482-4024
BONITA COUNTRY CLUB UTILITIES, INC. (SU285) 10200 MADDOX LANE BONITA SPRINGS, FL 34135-7639	MICHAEL J. MICELI (941) 992-2800
BUCCANEER WATER SERVICE (MHC-DEANZA FINANCING LIMITED PART (WU730) 2 NORTH RIVERSIDE PLAZA, SUITE 1515 CHICAGO, IL 60606	DONALD BARTON (813) 995-3337
CHATEAU COMMUNITIES, INC. (SU315) 14205 EAST COLONIAL DRIVE ORLANDO, FL 32826-5111	W. LEON PILGRIM (407) 823-7266
DEL VERA LIMITED PARTNERSHIP (SU612) 2250 AVENIDA DEL VERA NORTH FT. MYERS, FL 33917-6700	ROBERT G. PETERS (941) 543-6200 EXT 528
ENVIRONMENTAL PROTECTION SYSTEMS OF PINE ISLAND, INC. (SU287) 3039 YORK ROAD ST. JAMES CITY, FL 33956-2303	KEVIN J. CHERRY (941) 283-1144
FLORIDA CITIES WATER COMPANY - LEE COUNTY DIVISION (WS076) 4837 SWIFT ROAD, SUITE 100 SARASOTA, FL 34231-5157	ROGER YTTERBERG (941) 936-3931
FLORIDA WATER SERVICES CORPORATION (WS565) P. O. BOX 609520 ORLANDO, FL 32960-9520	BRIAN P. ARMSTRONG (407) 880-0058
FOREST PARK PROPERTY OWNER'S ASSOCIATION (SU645) 5200 FOREST PARK DRIVE NORTH FT. MYERS, FL 33917-5404	JOSEPH B. SYMONS
FOREST UTILITIES, INC. (SU293) 6385 PRESIDENTIAL COURT, SUITE 104 FT. MYERS, FL 33919-3576	DAVID SWOR (941) 481-0111
FOUNTAIN LAKES SEWER CORPORATION (SU572) 523 SOUTH EIGHTH STREET MINNEAPOLIS, MN 55404-1078	JERRY A. [illegible] (612) 305-2927

LIST OF WATER AND WASTEWATER UTILITIES IN LEE COUNTY

(VALID FOR 60 DAYS)
11/30/1998-01/28/1999

UTILITY NAME	MANAGER
LEE COUNTY (continued)	
GULF UTILITY COMPANY (WS096) P. O. BOX 350 ESTERO, FL 33928-0350	CAROLYN B. ANDREWS (941) 498-1000
HACIENDA TREATMENT PLANT, INC. (SU431) % BONITA SPRINGS UTILITIES, INC. P. O. BOX 2368 BONITA SPRINGS, FL 34133-2368	FRED PARTIN (941) 992-0711
HUNTER'S RIDGE UTILITY CO. OF LEE COUNTY (SU674) 12500 HUNTERS RIDGE DRIVE BONITA SPRINGS, FL 34135-3401	DON HUPRICH (941) 992-4900
MHC SYSTEMS, INC. (WS743) % MANUFACTURED HOME COMMUNITIES, INC. 28050 U.S. HIGHWAY 19, N., SUITE 406 CLEARWATER, FL 33761-2629	UTILITY (941) 474-1122
MOBILE MANOR, INC. (WU167) 150 LANTERN LANE NORTH FORT MYERS, FL 33917-6515	CAROL JULIUS (941) 543-1414
NORTH FORT MYERS UTILITY, INC. (SU317) P. O. BOX 2547 FORT MYERS, FL 33902-2547	JACK SCHENKMAN (941) 543-4000 OR -1808
PINE ISLAND COVE HOMEOWNERS ASSOCIATION, INC. (SU724) 7290 LADYFISH DRIVE ST. JAMES CITY, FL 33956-2723	WALTER STACKS (941) 283-3100
SANIBEL BAYOU UTILITY CORPORATION (SU331) 15560 MCGREGOR BLVD., #8 FT. MYERS, FL 33908-2547	FIELD SUPERVISORS (941) 936-6609
SOUTH SEAS UTILITY COMPANY (SU408) 8270-105 COLLETE PARKWAY FT. MYERS, FL 33919-5107	JOE K. BLACKETER (941) 454-8500
SPRING CREEK VILLAGE, LTD. (WS234) 24681 SPRING CREEK VILLAGE BONITA SPRINGS, FL 33134	DENNIS M. WALTCHACK (941) 992-3800/936-8888

LIST OF WATER AND WASTEWATER UTILITIES IN LEE COUNTY

(VALID FOR 60 DAYS)
11/30/1998-01/28/1999

UTILITY NAME	MANAGER
LEE COUNTY (continued)	
TAMIAMI VILLAGE WATER COMPANY, INC. (WU740) 9280-5 COLLEGE PARKWAY FT. MYERS, FL 33919-4848	JOHN J. USTICA (941) 482-0717
USEPPA ISLAND UTILITY, INC. (WS249) P. O. BOX 640 BOKEELIA, FL 33922-0640	VINCENT FORMOSA (941) 283-1061
UTILITIES, INC. OF EAGLE RIDGE (SU749) 200 WEATHERSFIELD AVENUE ALTAMONTE SPRINGS, FL 32714-4099	CARL J. WENZ (708) 498-6440

LIST OF WATER AND WASTEWATER UTILITIES IN LEE COUNTY

(VALID FOR 60 DAYS)
11/30/1998-01/28/1999

UTILITY NAME — MANAGER

GOVERNMENTAL AGENCIES

CHAIRMAN, BOARD OF COUNTY COMMISSIONERS, LEE COUNTY
P. O. BOX 398
FT. MYERS, FL 33902-0398

CLERK OF CIRCUIT COURT, LEE COUNTY
P. O. BOX 2469
FORT MYERS, FL 33902-2469

DEP SOUTH DISTRICT
2295 VICTORIA AVE., SUITE 364
FORT MYERS, FL 33901

MAYOR, CITY OF CAPE CORAL
P. O. BOX 150027
CAPE CORAL, FL 33915-0027

MAYOR, CITY OF FT. MYERS
P. O. BOX 2217
FORT MYERS, FL 33902-2217

MAYOR, CITY OF SANIBEL
800 DUNLOP ROAD
SANIBEL, FL 33957-4096

S.W. FLORIDA REGIONAL PLANNING COUNCIL
P.O. BOX 3455
NORTH FT. MYERS, FL 33918-3455

SO. FLORIDA WATER MANAGEMENT DISTRICT
P.O. BOX 24680
WEST PALM BEACH, FL 33416-4680

LIST OF WATER AND WASTEWATER UTILITIES IN LEE COUNTY

(VALID FOR 60 DAYS)
11/30/1998-01/28/1999

UTILITY NAME	MANAGER

STATE OFFICIALS

STATE OF FLORIDA PUBLIC COUNSEL
C/O THE HOUSE OF REPRESENTATIVES
THE CAPITOL
TALLAHASSEE, FL 32399-1300

DIVISION OF RECORDS AND REPORTING
FLORIDA PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0850

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

NOTICE OF FILING

Applicant hereby notices the filing of the revised Exhibit "C" in the above-referenced docket.

Respectfully submitted on this 8th day of December, 1998, by:

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

By: MARTIN S. FRIEDMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded via U.S. Mail to Steve Reilly, Esquire, Office Of Public Counsel, 111 West Madison Street, Suite 812, Tallahassee, FL 32301-1906 on this 8th day of December, 1998.

MARTIN S. FRIEDMAN

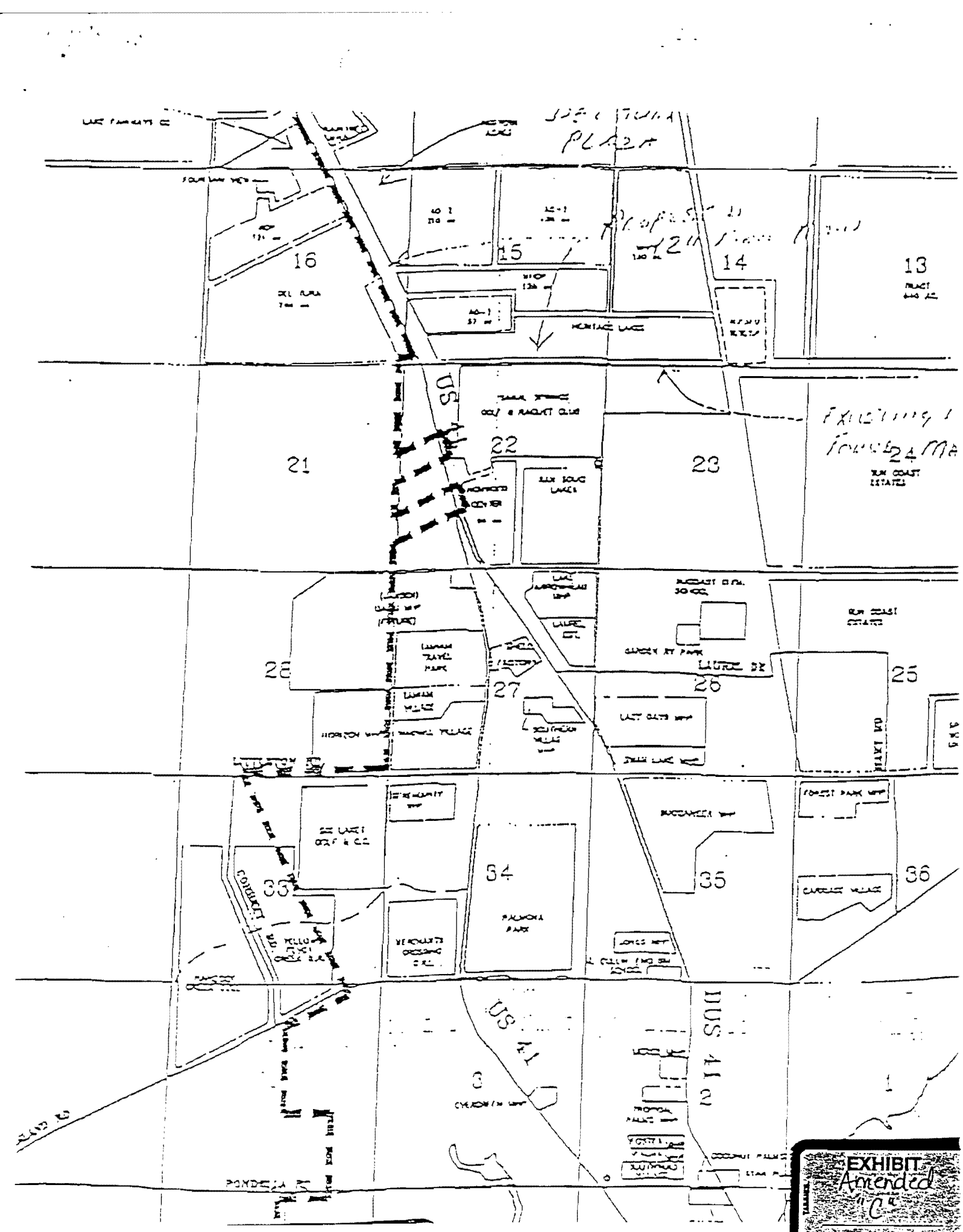
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EXHIBIT
Amended

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

NOTICE OF FILING

Applicant hereby notices the filing of the Late Filed Exhibit "F" in the above-referenced docket.

Respectfully submitted on this 11th day of December, 1998, by:

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

By: _____
MARTIN S. FRIEDMAN

nfmu\buccaneer\filing.not

AFFIDAVIT OF MAILING

STATE OF FLORIDA
COUNTY OF LEE

Before me, the undersigned authority, authorized to administer oaths and take acknowledgments, personally appeared A. A. Reeves III, who, after being duly sworn on oath, did depose on oath and say that he/she is the V.P. of North Fort Myers Utility, Inc. and that on December 10, 1998, he/she did send by First Class mail, a copy of the notice attached hereto to each property owner within the territory described in the Notice, a list of whom is also attached hereto.

FURTHER AFFIANT SAYETH NAUGHT.

A. A. Reeves III

Sworn to and subscribed before me this 16th day of December, 1998, by A A Reeves III, who is personally known to me or who provided Personally Known as identification.

Kathleen R. Shields

Print Name KATHLEEN R SHIELDS
NOTARY PUBLIC
My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
OFFICIAL NOTARY SEAL
KATHLEEN R SHIELDS
COMMISSION NUMBER
CC736604
MY COMMISSION EXPIRES
MAY 19,2002

NOTICE OF APPLICATION FOR AN
EXTENSION OF WASTEWATER SERVICE AREA

North Fort Myers Utility, Inc., Post Office Box 2547, Fort Myers, Florida 33902, pursuant to Section 367.045(2), Florida Statutes, hereby notices its intent to apply to the Florida Public Service Commission for an extension of its service area to provide wastewater service to the Buccaneer Estates mobile home community in Section 35, Township 43 South, Range 24 East in Lee County, Florida, more particularly described as follows:

> Township 43 South, Range 24 East, Lee County. That part of the North ½ of Section 35 lying East of State Road 45-A (also known as U.S. Highway 41 Business) except the South ¼ of the Southwest ¼ of the Northeast ¼ of said Section 35.

Any objections to the Application must be filed with the Director, Division of Records & Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, with a copy to Martin S. Friedman, Esquire, Rose, Sundstrom & Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301, no later than 30 days after the last date that the Notice was mailed or published, whichever is later.

nfmu\buccaneer\extension.not

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

NOTICE OF FILING

Applicant hereby notices the filing of the original Water and Wastewater Certificates in the above-referenced docket which were inadvertently omitted.

Respectfully submitted on this 11th day of December, 1998, by:

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

By: _____
MARTIN S. FRIEDMAN

nfmu\buccaneer\filing.not

FLORIDA

Public Service Commission

CERTIFICATE NUMBER

247-S

Upon consideration of the record it is hereby ORDERED that authority be and is hereby granted to

North Fort Myers Utility, Inc.

Whose principal address is

P. O. Box 2547

Fort Myers, FL 33902-2547 (Lee County)

to provide Wastewater service in accordance with the provisions of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission.

This Certificate shall remain in force and effect until suspended, cancelled or revoked by Orders of this Commission.

ORDER 8025	DOCKET 770709-S
ORDER 11300	DOCKET 820278-S
ORDER 12572	DOCKET 830316-S
ORDER 15659	DOCKET 830362-S

BY ORDER OF THE
FLORIDA PUBLIC SERVICE COMMISSION

Director
Division of Records & Reporting

FLORIDA

Public Service Commission

CERTIFICATE NUMBER

247-S

ORDER	19059	DOCKET	871306-SU
ORDER	PSC-92-0537-FOF-SU	DOCKET	920037-SU
ORDER	PSC-92-0588-FOF-SU	DOCKET	920273-SU
ORDER	PSC-93-0971-FOF-SU	DOCKET	930289-SU
ORDER	PSC-93-1851-FOF-SU	DOCKET	931040-SU
ORDER	PSC-93-1821-FOF-SU	DOCKET	930379-SU
ORDER	PSC-94-0450-FOF-SU	DOCKET	931164-SU
ORDER	PSC-95-0576-FOF-SU	DOCKET	940963-SU
ORDER		DOCKET	
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ORDER		DOCKET	

BY ORDER OF THE
FLORIDA PUBLIC SERVICE COMMISSION

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

NOTICE OF FILING

Applicant hereby notices the filing of the Late Filed Exhibit "G", which is the Affidavit of Publication in the above-referenced docket.

Respectfully submitted on this 18th day of December, 1998, by:

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

By: _____
MARTIN S. FRIEDMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded via U.S. Mail to Steve Reilly, Esquire, Office Of Public Counsel, 111 West Madison Street, Suite 812, Tallahassee, FL 32301-1906 on this 18th day of December, 1998.

_____
MARTIN S. FRIEDMAN

nfmu\buccaneer\filing.not

NEWS-PRESS

Published every morning — Daily and Sunday
Fort Myers, Florida

Affidavit of Publication

STATE OF FLORIDA
COUNTY OF LEE

Before the undersigned authority, personally appeared

Suzanne Crawford

who on oath says that he/she is the Assistant

Legal Coordinator of the News-Press, a

daily newspaper, published at Fort Myers, in Lee County, Florida; that the

attached copy of advertisement, being a

Amended Notice of Application

in the matter of

Extension of Wastewater Svc. area

in the Court

was published in said newspaper in the issues of

December 9, 1998

Affiant further says that the said News-Press is a paper of general circulation daily in Lee, Charlotte, Collier, Glades and Hendry Counties and published at Fort Myers, in said Lee County, Florida and that said newspaper has heretofore been continuously published in said Lee County, Florida, each day, and has been entered as a second class mail matter at the post office in Fort Myers in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of the advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Suzanne Crawford

Sworn to and subscribed before me this

11th day of

December, 19 98 by

Suzanne Crawford

who is personally known to me or who has produced

as identification, and who did or did not take an oath.

Notary Public Janet E. Cobb

Print Name

My Commission Expires:

CLASS-16

Janet E. Cobb
MY COMMISSION # CC602535 EXPIRES
November 19, 2000
BONDED THRU TROY FAIN INSURANCE INC

Miscellaneous Notices 1095

AMENDED NOTICE OF APPLICATION FOR AN EXTENSION OF WASTEWATER SERVICE AREA

North Fort Myers Utility, Inc., Post Office Box 2547, Fort Myers, Florida 33902, pursuant to Section 367.045(2), Florida Statutes, hereby notices its intent to apply to the Florida Public Service Commission for an extension of its service area to provide wastewater service to the Buccaneer Estates mobile home community in Section 35, Township 43 South, Range 24 East in Lee County, Florida, more particularly described as follows:

Township 43 South, Range 24 East, Lee County. That part of the North ½ of Section 35 lying East of State Road 45-A (also known as U.S. Highway 41 Business) except the South ½ of the Southwest ¼ of the Northeast ¼ of said Section 35.

Any objections to the Application must be filed with the Director, Division of Records & Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, with a copy to Martin S. Friedman, Esquire, Rose, Sundstrom & Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301; no later than 30 days after the last date that the Notice was mailed or published, whichever is later.

Dec 9 No. 66001

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 981781-SU EXHIBIT NO. 3
COMPANY/
WITNESS: Reeves
DATE 10-18-99

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into by and among the Office of Public Counsel ("OPC"), Ronald Ludington, Donald Gill, Joseph Devine, and North Fort Myers Utility, Inc. ("NFMU").

WHEREAS, NFMU has filed an application ("Application") with the Florida Public Service Commission to extend its wastewater service area to serve Buccaneer Estates Manufactured Home Community ("Buccaneer Estates"); and

WHEREAS, OPC, Ludington, Gill and Devine have filed objections to NFMU's Application; and;

WHEREAS, recognizing the expense and uncertainty of continuing this proceeding, the parties desire to effectuate a settlement.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. The foregoing recitations are true and correct and incorporated herein by this reference.

2. OPC, Ludington, Gill and Devine shall voluntarily dismiss their objections to NFMU's Application, and shall support the granting of the Application.

3. Commencing with service rendered on and after September 1, 1999, NFMU will bill each resident of Buccaneer Estates based upon NFMU's approved Residential Service rate schedule, i.e., a base facility charge (currently $10.98 per month) plus a charge per thousand gallons of water registered on the meter (currently $3.98 per 1,000 gallons). The parties acknowledge that NFMU obtains water meter reading information from Buccaneer Water Company.

4. NFMU waives any right to collect its service availability charges from the residents of Buccaneer Estates. NFMU warrants that it alone owns all of Snowbirdland Vistas, Inc. and MHC-

DeAnza Financing Limited Partnership's (collectively, "Park Owner") right, title and interest to any pass-through charges that could ever be collected from the residents of Buccaneer Estates, under Chapter 723, Florida Statutes, concerning Buccaneer Estates' interconnection with NFMU wastewater collection and treatment system. As the sole owner of this right to collect any pass-through charges collectible from the residents, pursuant to this change of wastewater provider, NFMU does hereby waive the collection of any such pass-through charges from the residents. NFMU also expressly cancels, as if paid, any such pass-through charges that could be collected from the residents, pursuant to this interconnection, forever holding the residents harmless from the payment of any pass-through charges, potentially collectible under Chapter 723, Florida Statutes, relating to Buccaneer Estates' interconnection with NFMU's system.

5. The residents shall not pay for wastewater service through August 31, 1999.

6. This agreement does not affect the rights of the residents of Buccaneer Estates to pursue their contract rights against the Park Owner under Chapter 723, Florida Statutes.

7. The parties agree that this Settlement Agreement is entered into to resolve a unique situation and shall not be relied upon as precedence in any future proceeding.

8. The parties agree to recommend that the Order to Show Cause proceeding against NFMU should be dismissed without penalty to NFMU.

9. The signatories warrant and represent that they have the authority to execute this Agreement and to bind their respective parties.

10. This Settlement Agreement shall be submitted to the Commission panel at the September 7, 1999 agenda.

NORTH FORT MYERS UTILITY, INC.

By: A.A. Reeves, IIII, Vice President

Ronald Ludington

Joseph Devine

OFFICE OF PUBLIC COUNSEL

By: Jack Shreve

Donald Gill

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NORTH FORT MYERS UTILITY, INC.

By: A.A. Reeves, III, Vice President

OFFICE OF PUBLIC COUNSEL

By: Jack Shreve

Ronald Ludington

Donald Gill

Joseph Devine

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10. This Settlement Agreement shall be submitted to the Commission panel at the August 31, 1999 agenda.

NORTH FORT MYERS UTILITY, INC.

By: A.A. Reeves, III, Vice President

OFFICE OF PUBLIC COUNSEL

By: Jack Shreve

Richard Ludington

Donald Gill

Joseph Devine

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Citation/Title
613 So.2d 63, 18 Fla. L. Weekly D238, State, Public Service Com'n v. Lindahl, (Fla.App. 2 Dist. 1993)

18 Fla. L. Week. D238

STATE of Florida, PUBLIC SERVICE COMMISSION, Appellant,
v.
Robert W. LINDAHL, Dorothy K. Bird, and Herbert J. McClain, individually and on behalf of the class of all others similarly situated, and Shady Oaks Owners' Association, Inc., Appellees.

No. 92-01776.
District Court of Appeal of Florida,
Second District.

Jan. 6, 1993.
Rehearing Denied Feb. 12, 1993.

Utility customers who resided in mobile home park brought action against utility provider who was developer of park. Customers moved to enjoin provider from billing and collecting newly approved rates for water and wastewater services and to enjoin it from unilaterally terminating services if customers failed to pay. The Circuit Court, Pasco County, Lynn Tepper, J., entered emergency temporary injunction, and the Public Service Commission (PSC) moved for reconsideration. Wayne L. Cobb, J., denied reconsideration, and PSC appealed. The District Court of Appeal, Frank, J., held that PSC's authority to raise or lower utility rates preempts deed restrictions.

Injunctive orders reversed and vacated.

WATERS AND WATER COURSES ⚷203(11)
405 ----
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k203 Water Rents and Other Charges
405k203(11) Revision, increase, or reduction of charges.
Fla.App. 2 Dist. 1993.

Public Service Commission's (PSC) authority to raise or lower utility rates preempts deed restrictions and, therefore, PSC's approval of rate increase requested by utility provider controlled, even though provider was also developer of residential mobile home park and residents claimed that restrictive

covenants limited rates for water and sewage. West's F.S.A. Secs. 367.011(2), 367.101.

Robert D. Vandiver, General Counsel, David E. Smith, Director of Appeals, and Matthew J. Feil, Sr. Staff Atty., of the Public Service Com'n, Tallahassee, for appellant.

Gerald A. Figurski of Martin, Figurski & Harrill, New Port Richey, for appellees.

FRANK, Judge.

The Public Service Commission (PSC) has sought our review of an order of the trial court denying reconsideration of an amended preliminary injunction prohibiting Shady Oaks Mobile-Modular Estates (Shady Oaks), a developer and utility provider for a residential mobile home park, from collecting, through threats to terminate services, increased utility rates charged to its residents for water and wastewater services in the period June 24, 1991 to August 1, 1991. The PSC maintains that the trial court should have vacated the initial temporary injunction to permit the collection of the PSC approved rates from June 24, 1991. We agree.

In an order issued February 8, 1991, the PSC approved a requested increase to the rate Shady Oaks charged its residents for water and sewer service. The new rates were to take effect in March, 1991. On June 21, 1991, certain residents filed a class action against Shady Oaks, alleging that Shady Oaks had breached "certain restrictions, covenants, and limitations [that] ... were intended to be, and would be taken as a consideration for ... any deed of conveyance ***64.** made and as covenants running with the land." Incident to the filing of the complaint, the residents moved to enjoin Shady Oaks from billing and collecting the newly approved rates and from unilaterally terminating services if the residents failed to pay. The motion relied substantially upon certain restrictive covenants that were recorded in Pasco County in 1972, and particularly upon paragraph 10 of those restrictions, which provides as follows:

> A yearly charge of $300.00, payable in advance, will be made for water, sewage, cable TV and Recreational Center including shuffleboard court.

By the terms of the instrument, the deed restrictions were to run until January 1, 2000.

Judge Lynn Tepper entered an emergency temporary injunction, to "take effect

immediately," on June 24, 1991. Pursuant to the injunction, Shady Oaks could not charge or attempt to collect the PSC determined rate, or terminate the water and sewer services of any member of the subject class. In a separate order filed the same date, Judge Tepper required each member of the represented class to tender a $25.00 monthly maintenance assessment into the court registry pending the outcome of the principal litigation.

The core question arising from this dispute is whether the trial court was invested with subject matter jurisdiction to issue the injunction. The "Water and Sewer System Regulatory Law," Chapter 367, Florida Statutes, confers upon the PSC exclusive jurisdiction to fix the rate that regulated utilities, such as Shady Oaks, charge their customers.

We determined in Hill Top Developers v. Holiday Pines Service Corporation, 478 So.2d 368 (Fla. 2d DCA 1985), that the legislature intended the PSC to have plenary jurisdiction to establish the rates charged by regulated utilities. See Secs. 367.011(2) and 367.101, Fla.Stat. (1989). To preserve the legislature's allocation of jurisdictional authority between the administrative agency and the general equitable power of the circuit courts, we cautioned the bench against "judicial incursion into the province of the agency." Hill Top Developers, 478 So.2d at 371. We again face judicial interference with the regulatory function, and, as we did in Hill Top Developers, condemn the trial court's intrusion into the PSC's statutorily delegated responsibility to fix a "just, reasonable, and compensatory" rate for service availability. See Sec. 367.081(2)(a), Fla.Stat. (1989).

We, of course, reject the view urged by the residents that the 1972 deed restrictions supersede the order of the PSC approving the rate increase. When the PSC issued water and sewer certificates to Shady Oaks in February, 1986, its jurisdiction over the charges for such services was comprehensive. The preexisting deed restrictions were of no moment then and are not now. The PSC's authority to raise or lower utility rates, even those established by a contract, is preemptive. See Cohee v. Crestridge Utilities Corp., 324 So.2d 155 (Fla. 2d DCA 1975).

We recognize that our decision may affect the collection of the $300.00 annual maintenance fee prescribed in the deed restrictions. That concern, however, has no relevance to the narrow question we have answered in this opinion. On the other hand, we do not mean by our silence to sanction an assessment indistinguishable from the charges imposed for the services contemplated in the PSC approved rates.

Accordingly, the injunctive orders are reversed and vacated.

DANAHY, A.C.J., and HALL, J., concur.

Citation/Title
324 So.2d 155, Cohee v. Crestridge Utilities Corp., (Fla.App. 2 Dist. 1975)

Leonard COHEE and Glenn Cohee, on behalf of themselves and all other persons similarly situated, Appellants,

v.

CRESTRIDGE UTILITIES CORP., Appellee.

No. 75--212.

District Court of Appeal of Florida, Second District.

Dec. 23, 1975.

Homeowners brought class action against utilities corporation seeking damages for breach of contract on ground corporation charged rates in excess of those provided in contract with subdivision developer. The Circuit Court, Pasco County, Lawrence E. Keough, J., entered summary judgment for utilities corporation on ground that Public Service Commission had exclusive jurisdiction, and plaintiff appealed. The District Court of Appeal, Grimes, J., held that Commission had authority to raise as well as lower rates established by preexisting contract when deemed necessary in public interest, that no rate hearing had taken place, that plaintiffs were entitled to adjudication of whether utilities corporation breached its contract, and that this determination could only be accomplished in court of law.

Reversed and remanded.

1. **WATERS AND WATER COURSES⊗ 202**
405 ----
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k202 Regulations of supply and use.

[See headnote text below]

1. **WATERS AND WATER COURSES⊗ 203(11)**
405 ----
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k203 Water Rents and Other Charges
405k203(11) Revision, increase, or reduction of charges.

Fla.App. 1975.
As result of county commission resolution adopting provisions of Water and Sewer Regulatory Law granting Public Service Commission authority to regulate water service, including rates, and Public Service Commission order granting water certificate to utilities corporation, operation of utility corporation's water service to subdivision was under jurisdiction of Public Service Commission; thus, despite fact that public utilities corporation had preexisting contract concerning rates to be charged home owners for water service provided them, those rates could be ordered changed by Public Service Commission. West's F.S.A. §§ 367.011(4), 367.081(2), 367.171.

2. PUBLIC UTILITIES⇐ 121
317A ----
317AII Regulation
317Ak119 Regulation of Charges
317Ak121 Service within municipalities; charges fixed by contract or ordinance.

Formerly 317Ak7.2

Fla.App. 1975.
Public Service Commission has authority to raise as well as lower rates established by preexisting contract when deemed necessary in public interest; under statute setting criterion for setting rates, Commission is not even authorized to take into consideration preexisting contract in its determination of reasonable rates. West's F.S.A. §§ 367.011(4), 367.081(2), 367.171.

3. WATERS AND WATER COURSES⇐ 203(6)
405 ----
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k203 Water Rents and Other Charges
405k203(6) Establishment and regulation by public authority in general.

Fla.App. 1975.
Mere approval of rates charged by utilities corporation for water service provided subdivision home owners upon issuance of water certificate by Public Service Commission did not constitute rate hearing within contemplation of statute governing establishment of those rates. West's F.S.A. §§ 367.081, 367.081(2), 367.171.

4. PUBLIC UTILITIES⇐ 121

317A ----
317AII Regulation
317Ak119 Regulation of Charges
317Ak121 Service within municipalities; charges fixed by contract or ordinance.

Formerly 317Ak7.2

Fla.App. 1975.
In class action seeking damages for breach of contract by utilities corporation on ground that it charged homeowners rates in excess of those provided in contract with subdivision developer, plaintiffs were entitled to adjudication of whether utilities corporation breached its contract by going to higher rates, despite fact that Public Service Commission subsequently approved rates charged; furthermore, since Public Service Commission conceded that it did not have jurisdiction to determine legality of increase which took place prior to its jurisdictional date, this could only be accomplished in court of law. West's F.S.A. §§ 367.011(4), 367.081, 367.081(2), 367.171.

D. Russell Stahl, Tampa, for appellants.

H. James Parker, Delzer, Edwards & Martin, Port Richey, for appellee.

***156** Raymond E. Vesterby, Tallahassee, for Florida Public Service Commission, amicus curiae.

GRIMES, Judge.

This case involves the question of whether jurisdiction to pass upon the subject matter of the suit rests in the circuit court or in the Public Service Commission.

In 1965, Dixie Gardens, Incorporated, as the developer, entered into a contract with Crestridge Utilities Corporation whereby Crestridge was granted the exclusive right to provide water service to the property in Crestridge Gardens Subdivision for a period of thirty years. The two corporations were related at least to the extent that the same persons signed the contract as corporate officers of both parties. After specifying that Crestridge should lay and maintain water lines within the described property, the contract stated in part:

'. . . The Contractor shall have the exclusive right to supply the water to all lots and it shall be entitled to receive a minimum of Five and No/100

($5.00) Dollars per month for such service, which will entitle each lot owner the right to a reasonable use of water, it being understood that if any lot owner or an occupant shall consistently insist on using an excess amount of water and cause waste that the Contractor shall have the right to shut-off the water until definite agreement is obtained that the use of said water will be limited to reasonable use. This provision is in the interest of the public health and safety. Said monthly charge of Five and No/100 ($5.00) Dollars shall remain in effect on all lots which once is occupied by a home. If any lot owner or occupant wastes or uses water in excess the Contractor shall have the right to install a meter on said lot and charge on a metered basis with charges commensurate with other charges in the same general vicinity.'

The provision quoted above was restated as a part of the Crestridge Gardens restrictions which were recorded as covenants running with the land. In early 1970, Crestridge installed meters on all of the houses of homeowners in Crestridge Gardens Subdivision and began imposing charges for water service on a metered basis in excess of $5.00 per month.

The plaintiffs/appellants brought a class action seeking damages for breach of contract on behalf of themselves and all other homeowners in Crestridge Gardens Subdivision alleging that since none of the homeowners were wasting water, Crestridge was in violation of its contract by making monthly charges for water which averaged $12.00 per homeowner. As one of its defenses, Crestridge asserted that jurisdiction of this matter rested solely with the Public Service Commission, because on March 8, 1973, it had received a water certificate from that body after the Board of County Commissioners of Pasco County had adopted a resolution which made the provisions of the Water and Sewer Regulatory Law effective in Pasco County. The court entered a summary judgment for Crestridge on the basis that the Public Service Commission had exclusive jurisdiction of the issues raised in the pending litigation. (FN1)

At the outset it should be noted that this is not the first dispute Crestridge has had with a property owner over rates for utility services. In Sloane v. Dixie Gardens, Inc., Fla.App.2d, 1973, 278 So.2d 309, this court considered the effect of the action of Crestridge in charging $2.25 per month for garbage collection when the contract between ***157** Crestridge and Dixie Gardens, Inc. provided for a fee of $1.75 per month. This court directed the trial judge to determine upon what authority Crestridge sought to make a charge in excess of the contract price. While the posture of that case was somewhat different, the following portion of this court's opinion may bear on the instant case:

'The basic question is whether developers of property can provide for the furnishing of essential services and bind the owners of lots to pay for them. We think they can. We find no contravention of public policy in the agreement. Sloane's argument that it constitutes a monopoly void as against public policy is without merit. Garbage collection is essential to a well-run community, and may be treated as an exclusive franchise just as the furnishing of telephone service and electric power are.

'We point out that the present litigation involves relationships between private persons and a local utility corporation associated with the developer of the land. We are not called upon to determine the right of public authority to regulate or supersede the service . . ..'

[1] As a result of the Pasco County Commission resolution and the Public Service Commission order granting the water certificate, the operation of Crestridge's water service is now clearly under the jurisdiction of the Public Service Commission. Fla.Stat. s 367.171 (1973). (FN2) Thus, Crestridge argues that the issuance of the water certificate was tantamount to the approval of the water rates which were being charged when the certificate was issued. On the other hand, the plaintiffs contend that the courts rather than the Public Service Commission have jurisdiction since the plaintiffs' claims are for breach of contract. In support of their position they point to Fla.Stat. s 367.011(4) (1973) which provides that Chapter 367 (the Water and Sewer Regulatory Law) 'Shall not impair or take away vested rights other than procedural rights or benefits.'

[2] The Supreme Court in IMiami Bridge Co. v. Railroad Commission, 1944, 155 Fla. 366, 20 So.2d 356, stated:

'The State as an attribute of sovereignty is endowed with inherent power to regulate the rates to be charged by a public utility for its products or service. Contracts by public service corporations for their services or products, becaue of the interest of the public therein, are not to be classed with personal and private contracts, the impairment of which is forbidden by constitutional provisions. 16 C.J.S. Constitutional Law, pp. 766-773, s 327.'

Therefore, despite the fact that Crestridge had a pre-existing contract concerning its rates, now that Crestridge is under the jurisdiction of the Public Service Commission, these rates may be ordered changed by that body. The Public Service Commission has authority to raise as well as lower rates established by a pre-existing contract when deemed necessary in the public interest. State v. Burr, 1920, 79 Fla. 290, 84 So. 61.

As the criterion for setting the rates, Fla.Stat. s 367.081(2) (1973) provides:

'(2) The commission shall, after notice and hearing, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unjustly discriminatory. In all such proceedings, the commission shall consider the value and quality of the service and the cost of providing the service, which shall include, but not be limited to, debt interest, the utility's requirements for ***158.** working capital, maintenance, depreciation, tax and operating expenses incurred in the operation of all property used and useful in the public service, and a fair return on the utility's intestment in property used and useful in the public service. The commission shall also consider the utility's investment in property required by duly authorized governmental authority to be constructed in the public interest within a reasonable time in the future, not to exceed twenty-four months.'

Therefore, it would appear that the Commission would not even be authorized to take into consideration the pre-existing contract in its determination of reasonable rates. However, the question we must decide is whether the trial court had jurisdiction to determine whether Crestridge breached its contract when it raised the rates.

[3] Because of this court's concern that our opinion might affect the jurisdiction of the Florida Public Service Commission, an order was entered affording the Commission an opportunity to express its views through the filing of an amicus curiae brief. The Commission chose to file such a brief in which it stated that its issuance of the water certificate to Crestridge did not constitute the setting of rates. The Commission asserts that it merely approved what it believed to be the rates which were being charged and collected on the jurisdictional date. Fla.Stat. s 367.171 (1973) lends support to this view because it indicates that once a county commission has resolved to come within the provisions of the chapter, any utility then engaged in the operation of a water system can receive a certificate by filing an pplication together with a map of its existing system, a description of the area served and the appropriate fee. Thus, it appears that there has been no rate hearing as contemplated by Fla.Stat. s 367.081 (1973).

[4] In its brief, the Commission also states that it does not have jurisdiction to determine the legality of an increase which took place prior to its jurisdictional date but concludes with this statement:

'If, however, a court of competent jurisdiction were to find that the rates being charged and collected on the jurisdictional date were unlawful because

they were in violation of a presidential freeze, contract, deed restriction, municipal ordinance, or county regulatory law, we do not believe such rate can lawfully be grandfathered in.'

The plaintiffs are entitled to an adjudication of whether Crestridge breached its contract by going to the higher rates. This can only be accomplished in a court of law. Cf. State ex rel. McKenzie v. Willis, Fla.1975, 310 So.2d 1. Accordingly, the summary judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

BOARDMAN, Acting C.J., and SCHEB, J., concur.

FN1. Since it was not raised below, this court expresses no opinion at this time on whether the case should have been transferred to the county court pursuant to RCP 1.060 on the premise that no claim of any single homeowner exceeded the minimum amount necessary for circuit court jurisdiction. See Curtis Publishing Company v. Bader, Fla.App.3d, 1972, 266 So.2d 78.

FN2. All statutory citations in this opinion shall refer to the latest edition of Florida Statutes since the relevant portions of the statutes in question have remained unchanged at all times pertinent to the decision.