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May 22, 2000

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

981781-SU

IN RE: North Fort Myers Utility, Inc.'s discontinuation of wastewater service
in Buccaneer Estates

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of Petition for Emergency Variance or Waiver for filing in the above referenced file.

Also enclosed is a 3.5 inch diskette containing the Petition for Emergency Variance or Waiver in WordPerfect for Windows 6.1. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Reilly
Associate Public Counsel

SCR/dsb
Enclosures

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FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: North Fort Myers)
Utility, Inc.'s discontinuation)
of wastewater service in)
Buccaneer Estates.)
_____)

DOCKET NO. 981781-5U
FILED: May 22, 2000

PETITION FOR EMERGENCY VARIANCE OR WAIVER

The Citizens of the State of Florida, ("Citizens"), by and through the Public Counsel, pursuant to Chapter 28-104.004, Florida Administrative Code, file this Petition for Emergency Variance or Waiver of Commission Rules 25-30.135 and 25-30.320, Florida Administrative Code, and the tariff of North Fort Myers Utility ("NFMU," "Utility" or "Company"), approved by the Commission in accordance with those rules, in order to avert a clear and present danger to the public health, safety and welfare that would be caused by NFMU's discontinuing wastewater service in Buccaneer Estates, and state:

1. Chapter 367.091, Florida Statutes, requires that all utilities, regulated by the Commission, must act in accordance with the rates, charges and service policies which are contained in its tariff, approved by and on file with the Commission.
2. Commission Rule 25-30.135, Florida Administrative Code, also requires each utility to receive approval from the Commission for all rates, charges and service policies, with all such rates, charges and service policies being codified in the utility's tariff on file with the Commission.

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3. Commission Rule 25-30.320, Florida Administrative Code, provides that a utility may discontinue service to a customer under certain circumstances, including the customer's failure to pay the bill. (See 25-30.320(2)(g), F.A.C.)

4. Specifically, NFMU's Rules and Regulations No. 16 titled "Delinquent Bills" provides in part that:

16.0 DELINQUENT BILLS - Bills are due when rendered. However, the Company shall not consider the customer delinquent in paying any bill until the twenty-first (21) day after the Company has mailed or presented the bill to the customer for payment. Wastewater service may then be discontinued only after the Company has mailed or presented a five (5) day written notice to the customer in accordance with Rule 25-30.320, Florida Administrative Code. Wastewater service shall be restored only after the Company has received payment for all past-due bills and reconnect charges from the customer. (Emphasis supplied).

5. Also, NFMU Residential Service Rate Schedule RS, Twenty-First Revised Sheet No.

16, Tariff provides in part:

TERMS OF PAYMENT - Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. After five (5) working days written notice is mailed to the customer separate and apart from any other bill, service may then be discontinued. (Emphasis supplied).

6. As the Commission is aware, there has been a prolonged dispute between NFMU and the residents of Buccaneer Estates concerning NFMU becoming the new wastewater provider for the Park. As a result of this continuing dispute many residents (perhaps as many as 500 - 600 ± of the approximately 970 ± residential connections) have refused to pay NFMU for current and past service provided.

7. As a result of the Commission's Final Order No. PSC-99-2444-AS-SU, issued December 14, 1999 and Order No. PSC-00-0370-FOF-SU, issued February 21, 2000, disposing of the Motions for Reconsideration, NFMU's Certificate No. 247-S, was amended to include Buccaneer Estates in its territory and NFMU was authorized to charge the customers in the added territory the same rates and charges with the same service policies approved in its existing tariff until authorized to change by this Commission.

8. A timely Notice of Appeal of the above two orders was filed with the First District Court of Appeal. However, no stay of the orders pending the outcome of the Appeal was granted by the lower tribunal (the Commission) as required by Rule 9.310, Florida Rules of Appellate Procedure.

9. NFMU apparently intends to begin discontinuing wastewater service to customers who have not paid their bills in protest pending the outcome of the Intervenors' appeal.

10. There are specific facts in this case which justify an emergency variance or waiver of the Commission's Rules 25-30.135 and 25-30.320, Florida Administrative Code, and NFMU's tariff which was duly adopted pursuant to those rules. There are separate water and wastewater providers in Buccaneer Estates. All of the customers in Buccaneer Estates have continued to pay for their water service and continue to deserve uninterrupted water service. If NFMU physically digs up the yards and caps the wastewater lines serving 500 - 600 homes in Buccaneer Estates a serious public health emergency will be created. The specter of untreated wastewater flowing into the homes, yards and streets of a community occupied by senior citizens, many with compromised health and immune systems, must be avoided at all costs. The health hazard and extensive potential liability created by

capping the wastewater lines to homes with active water service represents a clear and present danger to the public's health, safety and welfare.

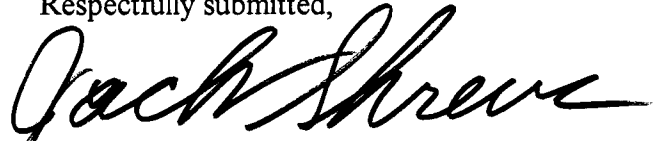
11. The elderly people living in these homes (with water service and capped wastewater service) will suffer immediate adverse effects unless a variance or waiver to the above rules and NFMU's implementing tariff is granted on an expedited emergency basis. Further, if the wastewater lines are capped, a \$50.00 ± problem would become a \$600.00 to \$800.00 problem because of the considerable cost to dig up and cap and ultimately uncapped a 6 foot deep wastewater line.

12. The underlying purpose of Chapter 367.091, Florida Statutes, and the rules and tariffs implementing the statute, is to protect the public interest by assuring that utilities act in accordance with the dictates of the Commission. In the instant case the public interest will be best served and a public health emergency will be averted if the Commission grants a variance or waiver of the authority granted to NFMU under Commission Rules 25-30.135 and 25-30.320, Florida Administrative Code, and the Utility's tariff, adopted pursuant to those rules, to discontinue wastewater service in Buccaneer Estates until after the Appeal has been finally resolved. The Commission's temporary withdrawal of authority for NFMU to discontinue wastewater service will protect the public from irreparable health hazards, liability and financial costs associated with digging up, capping, redigging up and uncapping wastewater lines.

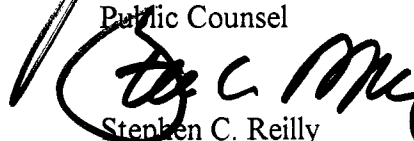
WHEREFORE the Citizens petition the Commission to temporarily waive and remove the authority granted to NFMU under Commission Rules 25-30.135 and 25-30.320, Florida

Administrative Code, and the utility's tariff adopted pursuant to those rules, to dig up and cap the wastewater lines in Buccaneer Estates until after the Appeal to the District Court has been finally resolved.

Respectfully submitted,



JACK SHREVE
Public Counsel



Stephen C. Reilly
Associate Public Counsel

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

Attorney for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a correct copy of the foregoing Petition for Emergency Variance or Waiver has been furnished by U.S. Mail or *hand-delivery to the following parties on this 22nd day of May, 2000:

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120 Holland Building
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Stephen C. Reilly
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