

December 15, 2000

Tyler Van Leuven, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Docket No. 000277-WS

Dear Mr. Van Leuven:

While the Commission has already granted our Petitions to Intervene, North Fort Myers Utility (NFMU, Utility or Company) complained that our petitions lacked specificity concerning the issues and ultimate facts alleged by the Intervenor which would warrant the Commission's denial of the requested transfer. By this letter we are providing a more detailed statement of the issues and ultimate material facts alleged by the Intervenor in this docket.

The following are ultimate material facts alleged by the Intervenor which present genuine disputed issues that should be resolved by the Commission after considering sworn evidence, tested by the cross-examination of opposing parties and the Commission's Staff:

1. A review of NFMU's financial condition for the past five years reveals that it does not have in and of itself, the financial ability to provide quality service to the Pine Lakes and Lake Fairways communities. NFMU has been in a loss position since at least 1995. Its net income was negative \$1.2 million in 1995, negative \$.96 million in 1996, negative \$.60 million in 1997, negative \$.91 million in 1998 and negative \$73,000 in 1999. Clearly it is unusual for a utility to operate in a negative earnings position for such an extended period of time. Furthermore, at a recent hearing, NFMU didn't even suggest that it had ample cash flow, it merely stated that it is doing "fairly well." The Office of Public Counsel examined NFMU's cash flow and found it to be negative in 1995, and positive, in each of the years 1996 through 1999. The primary reason for NFMU's positive cash flow stems from large contributions in aid of construction (CIAC). These amounts were \$.46 million in 1995, \$2.0 million in 1996, \$1.2 million in 1997, \$.75 million in 1998, and \$.27 million in 1999. As can be seen from this trend, NFMU's CIAC has generally been declining. Furthermore, unless NFMU is able to acquire more systems and provide service from its wastewater system, these amounts of CIAC will continue to decline in the future. In the past, NFMU was collecting not only CIAC, but the tax gross-up on this CIAC, much of which it retained. This made a positive contribution to its cash flow. However, because the Small Business Job Protection Act changed the tax treatment of CIAC after June 12, 1996, this additional cash flow was no longer available to NFMU, except under certain installment contracts. In summary, there are a number of very disputable material facts relating to the financial ability of this Utility to provide quality service to these two additional communities in the years to come. Although the Commission has in the past determined that NFMU had the financial ability to purchase other wastewater utilities, financial ability is an ever changing condition. The financial performance of this Utility over the past five years warrants the Commission taking sworn testimony on this issue. NFMU should be required to provide sworn evidence proving

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its financial ability to provide quality service to these two communities, and this evidence should be subjected to cross-examination by the Petitioner, Intervenors and the Commission's Staff.

2. NFMU has never owned nor operated a water system, nor has it ever demonstrated to this Commission that it possesses the requisite expertise or experience to operate a water system. NFMU should be required to provide competent and substantial evidence that it has the requisite expertise and experience, and this evidence should be subjected to cross-examination by the Petitioner, Intervenors, and the Commission's Staff.

3. Lee County can be persuaded to purchase MHC-FFEC-SIX's water system. Lee County currently provides all potable water to the subject service territory. The public interest will be better served if Lee County owned and operated the water distribution system in the Pine Lakes and Lake Fairways communities, rather than having NFMU as a middleman reseller of water service.

4. Pursuant to Chapter 723, Florida Statutes, NFMU should have notified the residents of these two communities of its intention to sell the water and wastewater systems, prior to consummating its deal with NFMU. Pursuant to this same Chapter of the Florida Statutes, MHC should have provided the Homeowners' Associations with a first right of refusal to purchase the water and wastewater systems prior to executing its contract for sale with NFMU. The public interest will be better served if the Homeowners' Associations are permitted to purchase the MHC-FFEC-SIX's wastewater treatment plant and collection system and operate the system as an exempt nonprofit corporation providing service solely to members who own and control such nonprofit corporation.

5. The transfer of the MHC-FFEC-SIX's wastewater treatment plant to NFMU will result in the plant being closed within the next several years. This closure will result in the Pine Lakes Golf Course losing its source of reuse water, which is currently being used to help irrigate the golf course. The loss of this source of irrigation water will have an adverse impact upon the golf course and the community generally.

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The residents of Pine Lakes and Lake Fairways would like to exercise their statutory right to present evidence to the Commission at a formal Chapter 120.57 (1), Florida Statutes, hearing to support the above ultimate material facts alleged by the Intervenors, which warrant the Commission's denial of the requested transfer.

Sincerely,



Leon J. Beekman, President
Pine Lakes Estates Homeowner's Association



Jermaine Troiano, President
Pine Lakes Homeowners Association, II

cc: Martin S. Friedman
Kathryn Cowdery
Alexander William Varga
✓ Blanca S. Bayó