

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

DATE: April 22, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Walden)
Office of the General Counsel (Jaeger)

RE: Docket No. 090521-WS – Application for amendment of Certificates 247-S and 353-W to extend water and wastewater service areas to include certain land in Charlotte County by North Fort Myers Utility, Inc.

AGENDA: 05/04/10 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\090521.RCM.DOC

Case Background

North Fort Myers Utility, Inc. (NFMU or Utility) is a Class A utility providing water and wastewater service in Lee County, serving 1,893 water and 12,686 wastewater ERCs as listed in the Utility's 2008 annual report. Rates were last considered in an index application effective on July 4, 2009, and the Utility's last general rate case increase was in Docket No. 810477-S and approved in Order No. 11360.¹

On December 2, 2009, NFMU filed an amendment application to serve 1,550 acres in Charlotte County, adjacent to its service area in Lee County. The land area involved is located in

¹ See Order No. 11360, issued November 24, 1982, in Docket No. 810477-S, In re: Application of Old Bridge Corporation for an increase in sewer rates in Lee County, Florida.

DOCUMENT NUMBER DATE

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the South Florida Water Management District. The Commission has jurisdiction pursuant to Sections 367.045 and 367.171, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve North Fort Myers Utility, Inc.'s application for amendment of Certificates 247-S and 353-W to extend water and wastewater service areas to include certain land in Charlotte County?

Recommendation: Yes, the Commission should approve North Fort Myers Utility, Inc.'s application to expand its territory into Charlotte County and amend Certificates 247-S and 353-W. The proposed territory is described in Attachment A. The resultant order should serve as NFMU's certificates and the order should be retained by the Utility. NFMU should charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding. (Walden)

Staff Analysis: On December 2, 2009, NFMU applied for an amendment of its service territory to include 1,550 acres of additional territory in Charlotte County, adjacent to and north of its Lee County operations. Charlotte County regulates the privately owned water and wastewater utilities in that county. However, pursuant to Section 367.171(7), F.S., the Commission has exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether or not the counties are jurisdictional. NFMU plans to extend its existing wastewater lines in Lee County to serve the proposed development in Charlotte County, which is contiguous to the Utility's existing service territory. In addition, the Utility intends to use its existing service personnel to operate and maintain the proposed facilities in Charlotte County and charge its existing rates and charges to new customers in the area.

The property owners, McNew Property Holdings, LLC, and Harper Property Holdings, LLC, requested NFMU provide water and wastewater service to approximately 1,200 single family and 800 multi-family units, as well as commercial and industrial customers in a planned development to be known as McNew Ranch. The property will be developed as mixed use and build-out of the development is anticipated by 2030. Water service to this new territory will be purchased from Lee County Utilities and resold by NFMU. Wastewater service will be provided by NFMU's existing wastewater treatment plant in Lee County. Costs for transmission mains and plant expansion will be paid from long-term debt financing, to be offset by service availability charges. It is expected that the distribution and collection system installed by the developer in this amendment area will be deeded to the Utility as contributions-in-aid-of-construction.

The application is in compliance with the governing statutes, Sections 367.045 and 367.171, F.S., and other pertinent statutes and administrative rules concerning an application for amendment of certificate for a utility that transverses county boundaries. An adequate service territory map and a territory description have been provided as prescribed by Rule 25-30.036(3)(e) and (i), Florida Administrative Code (F.A.C.). A description of the territory requested by the Utility is appended to this recommendation as Attachment A. The Utility has submitted an affidavit consistent with Section 367.045(2)(d), F.S., that it has tariffs and annual reports on file with the Commission. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C. An objection was filed by Charlotte County and subsequently withdrawn without comment. The local planning agency was also provided notice of the application and did not file a protest to the amendment.

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The Department of Community Affairs (DCA) has reviewed the filing and commented on the proposed amendment. Comments from the DCA indicate that this expansion is inconsistent with the Charlotte County Comprehensive Plan (comp plan), noting that the area is designated agriculture within a rural service area. Further, the DCA indicated that the comp plan approach is to direct growth in an urban service area. To include the McNew Ranch parcel in the urban service area, an amendment to the comp plan would be required to allow for land uses, intensities, and densities necessary to support the development proposed. Current land use for the parcel allows development of one dwelling unit per ten acres.

Staff conducted a conference call with representatives from Charlotte County and NFMU on April 8, 2010, to gain insight into the reason for the County's objection to the proposed amendment and subsequent withdrawal, as well to discuss DCA's concerns. The County initially objected to the amendment application in order to allow its staff and the County Commissioners an opportunity to fully consider the proposal. Upon consideration, the County voted to withdraw its objection.

Staff learned in the conference call that Charlotte County is currently working on revisions to its comp plan now pending at the DCA. The proposed revisions or amendments would allow mixed use development in a rural urban service area and centralized water and wastewater, when available. The DCA has reviewed the County's proposals, pointed out concerns, and sent the amended plan back to the County for objections, recommendations, and comments. A revised plan from the County's planning department is expected to be presented to the County Commission on May 18, 2010. If the County votes favorably, the comp plan will be resubmitted to the DCA for approval.

Simultaneously, the County planners are processing an amendment proposed in January this year by the owners of the McNew Ranch property. The property owners are working hand in hand with the County to obtain approval by the County, and ultimately the DCA, to allow a rural mixed use community at this property. This land use amendment change is anticipated to go before the Board of County Commissioners on June 15, 2010, and if voted upon favorably, then forwarded to the DCA for processing and approval. Therefore, it appears that the concerns raised by the DCA regarding the comp plan land use designation are being addressed in the comp plan amendments pending before Charlotte County.

Based upon the above information, staff recommends that the Commission approve NFMU's application for amendment of Certificates 247-S and 353-W to expand its territory into Charlotte County. The proposed territory amendment is described in Attachment A. The resultant order should serve as NFMU's certificates in Charlotte County and the order should be retained by the Utility. NFMU should charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves Staff's recommendation in Issue 1, no further action is required and the docket should be closed. (Jaeger)

Staff Analysis: If the Commission approves Staff's recommendation in Issue 1, no further action is required and the docket should be closed.

North Fort Myers Utility, Inc.
Description of Water and Wastewater Service Territory to be Added
Charlotte County

McNEW RANCH

In Township 42 South, Range 24 East, Charlotte County, Florida:

LEGAL DESCRIPTION:

PARCEL 1: All that part of the South Half of the South Half of Section 32 lying east of Tamiami Trail; All of the South Half of the South Half of Section 33; and all that part of the South Half of the South Half of Section 34 lying west of the old Seaboard Air Line Railroad Right-of-Way; All in Township 42 South, Range 24 East;

EXCEPTING THEREFROM:

From the point of intersection of the South line of said Section 32 with the Easterly right-of-way line of the Tamiami Trail (State Road No. 45) run northwesterly along said right-of-way line 100 feet from the centerline for 57.5 feet to the point of beginning. From said point of beginning, continue Northwesterly along said right-of-way line for 234.5 feet; thence run Northeasterly, perpendicular to said right-of-way line for 710 feet; thence southeasterly parallel to said right-of way line for 637.8 feet to a point 50 feet, measured on a perpendicular, North of said South line of Section 32; thence run west parallel to said South Line for 816.6 feet to the point of beginning.

PARCEL 2: All that part of the North Half of the South Half of Section 32, lying East of Tamiami Trail; all of the North Half of the South Half of Section 33; and all that part of the North Half of the South Half of Section 34, lying West of the old Seaboard Air Line Railroad right-of-way and West of the Atlantic Coast Line Railroad right-of-way; all in Township 42 South, Range 24 East.

PARCEL 3: All that part of the North Half of the North Half and the North Half of the South Half of the North Half of Section 32 lying east of Tamiami Trail; all of the North Half of the North Half and the North Half of the South Half of the North Half of Section 33; and all that part of the North Half of the North Half and the North Half of the South Half of the North Half of Section 34 lying West of the Atlantic Coastline Railroad right-of-way; all in Township 42 South, Range 24 East.

PARCEL 4: All that part of the South Half of the South Half of the North Half of Section 32, lying East of Tamiami Trail; all of the South Half of the South Half of the North Half of Section 33; and all that part of the South Half of the South Half of the North Half of Section 34 lying

West of the Atlantic Coastline Railroad right-of-way; all in Township 42 South, Range 24 East, EXCEPT:

From a point of reference commence at the SE corner of the NW 1/4 of Section 32, Township 42, Range 24 East; from said point of reference run thence N 89°59'28" West, along the South boundary of said NW 1/4, 1425.41 feet to an intersection with the Easterly right-of-way line of U.S. Highway No. 41 (State Road 45), said point of intersection also being the point of beginning; From said point of beginning run thence N 30° 10' 36" W along the Easterly right-of-way line of U.S. Highway No. 41, 514.89 feet to a point; thence S 89°59'28" E 516.93 to a point; thence S 0°0'32" W 445.07 feet to an intersection with the South boundary of said NW 1/4; thence N 89°59'28" W, along the South boundary of said NW 1/4, 258.04 feet to the point of beginning.

PARCEL 5: That part of the S 1/2 of the NW 1/4 of Section 32, Township 42 South, Range 24 East, Charlotte County, Florida, more particularly described as follows: For a point of reference commence at the Southeast Corner of the NW 1/4 of said Section 32; from said point of reference run thence N 89°59'28" W along the South boundary of said NW 1/4, 1425.41 feet to an intersection with the easterly right-of-way line of U.S. Highway No. 41 (State Road No. 45), said point of intersection also being the point of beginning of the lands hereby conveyed; from said point of beginning run thence N 30° 10' 36" W, along the easterly right-of-way of U.S. Highway No. 41, 514.89 feet to a point; thence S 89°59'28" E, 516.93 feet to a point; thence S 00°00'32" W 445.07 feet to an intersection with the South boundary of said NW 1/4; thence N 89°59'28" W, along the South boundary of said NW 1/4, 258.04 feet to the point of beginning.

LESS AND EXCEPT:

Begin at SE corner of Section 32, Township 42 South, Range 24 East, Charlotte County, Florida, thence Northerly along the East line of said Section 32 for 992.07 feet; thence Westerly parallel to the South line of Said Section 32 for 2816.35 feet to the North-easterly right-of-way, 100 feet from center line of State Road 45 (US 41), thence Southeasterly along said right-of-way for 852.86 feet to the most Westerly corner of a parcel previously deeded; then Northeasterly, perpendicular to said right-of-way for 710.00 feet; then Southeasterly, parallel to said right-of-way for 637.8 feet to a point 50 feet, measured on a perpendicular north of south line of said Section 32, thence west parallel to said south line for 816.6 feet to said Northeasterly right of way, thence southerly along said right-of-way for 57.5 feet to the south line of said Section 32; thence easterly along said south line for 2222.62 feet to the point of beginning.

PARCEL 6: All that part of Section 31, Township 42 South, Range 24 East lying East of State Road 45 right-of-way.

PARCEL 7: All that part of the E 1/2 of the Southeast 1/4 of Section 34, Township 42 South, Range 24 East, Charlotte County, Florida, lying southwest of the Seaboard Coast Line Railroad

right-of-way, and east of the former Seaboard Air Line Railroad (Old Atlantic Coast Line Railroad) right-of-way.

PARCEL 8: That portion of the Southwest 1/4 of the Southwest 1/4 of Section 35, Township 42 South, Range 24 East, lying Southwesterly of the Seaboard Coastline Railroad right-of-way, Charlotte County, Florida.

PARCEL 9: A parcel of land lying in Section 34, Township 42 South, Range 24 East, Charlotte County, Florida, being more particularly described as follows:

Commence at the Northeast corner of the South 1/2 of Section 22, Township 42 South, Range 24 East; thence N 89°56'59" W, along the North line of the South 1/2 of Section 22, Township 42 South, Range 24 East, a distance of 3045.31 feet to a point lying on the Northeasterly line of a 100' wide strip of land, formerly known as the Seaboard Air Line Railroad right-of-way and the Point of Beginning; thence S 11°08'05" E, along said Northeasterly line, a distance of 13,655.13 feet to the South line of Section 34, Township 42 South, Range 24 East; thence N 89°54'04" W along the South line a distance of 101.83 feet; thence N 11°08'05" W a distance of 15,086.56 feet to the North right-of-way line of Oil Well Road; thence S 89°49'01" E, along said North right-of-way line, a distance of 101.98 feet to said Northeasterly line of a 100' wide strip of land, formerly known as the Seaboard Airline Railroad right-of-way; thence S 11°08'05" E, along said line a distance of 1431.63 feet to the Point of Beginning.

LESS AND EXCEPT that portion of the above-described parcel lying North of the Southerly right-of-way line of Interstate Highway 75.

LESS AND EXCEPT that portion of the above described parcel lying in the Seaboard Coast Line Railroad right-of-way.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
North Fort Myers Utility, Inc.
pursuant to
Certificate Number 353-W

to provide water service in Lee and Charlotte Counties in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, canceled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
12225	07/12/83	800733-WS	Original Certificate
17020	12/24/86	861440-WS	Amendment
PSC-01-0995-AS-WS	04/23/01	000277-WS	Transfer/FFEC-Six
*	*	090521-WS	Amendment (Charlotte Co.)

* Order Number and date to be provided at time of issuance

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
North Ft. Myers Utility, Inc.
pursuant to
Certificate Number 247-S

to provide wastewater service in Lee and Charlotte Counties in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission.

This authorization shall remain in force and effect until suspended, suspended, canceled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
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
19059	03/29/88	871306-SU	Extension
PSC-92-0537-FOF-SU	06/22/92	920037-SU	Amendment/Del Tura Plaza
PSC-92-0588-FOF-SU	06/30/92	920273-SU	Amendment/Forest Park
PSC-93-0971-FOF-SU	06/29/93	930289-SU	Amendment/Fountain View
PSC-93-1821-FOF-WS	12/22/93	930373-SU	Amendment/Laurel Estates/ Lake Arrowhead
PSC-93-1851-FOF-SU	12/30/93	931040-SU	Amendment/Northside Pavilion
PSC-94-0450-FOF-SU	04/14/94	931164-SU	Amendment/Carriage Village
PSC-94-0726-FOF-SU	06/13/94	930724-SU	Amendment/Lazy Days
PSC-95-0576-FOF-SU	05/09/95	940963-SU	Amendment/Tamiami Village
PSC-99-2444- AS-SU	12/14/99	981781-SU	Amendment/Buccaneer Estates
PSC-00-1892-PAA-SU	02/09/01	991494-SU	Transfer/Pine Lakes/Lake Fairways
PSC-01-0995-AS -WS	04/23/01	000277-WS	Transfer/FFEC-Six
PSC-02-0481-FOF-SU	04/08/02	011006-SU	Amendment Addition
PSC-04-1218-FOF-SU	12/09/04	040818-SU	Amendment deletion/Judd
PSC-06-0055-PAA-SU	01/23/06	050323-SU	Transfer/Heron's Glen
PSC-07-0419-PAA-SU	05/14/07	060698-WU	Transfer Del Tura
PSC-08-0539-FOF-SU	08/18/08	080179-SU	Amendment
PSC-09-0174-FOF-SU	03/25/09	080574-SU	Amendment
*	*	090521-WS	Amendment (Charlotte Co.)

* Order Number and date to be provided at time of issuance