

State of Florida



Public Service Commission

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DATE: October 14, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Jones-Alexis, Brady, Hillier, Marsh)
Office of the General Counsel (Fleming) *YMEGA J.D. P.B. DATA J.S. CROSBY*

RE: Docket No. 100388-WS – Application for transfer of water and wastewater facilities to Florida Governmental Utility Authority, and cancellation of Certificate Nos. 353-W and 247-S, by North Fort Myers Utility, Inc. in Charlotte and Lee Counties. *ALM*

AGENDA: 10/26/10 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\100388.RCM.DOC

Case Background

North Fort Myers Utility, Inc. (NFMU or Utility) is a Class A Utility providing water service to approximately 1,846 residential customers and wastewater service to approximately 11,771 residential customers in Charlotte and Lee Counties. The Utility is within the South Florida Water Management District in the Southern Water Use Caution Area. NFMU's 2009 annual report indicates that the Utility had combined gross operating revenues of \$4,969,152 and a net operating loss of (\$228,530).

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NFMU was issued wastewater Certificate No. 247-S in 1977 under the name of Old Bridge Corporation.¹ Its name was changed to North Fort Myers Utility, Inc. in 1986.² The Utility was granted water Certificate No. 353-W in the acquisition of MHC Systems, Inc. d/b/a FFEC-Six water and wastewater systems in 2001.³ NFMU has had numerous amendments over the years as it has taken over a few water systems and numerous wastewater systems along U.S. 41 in northern Lee and southern Charlotte Counties. On August 27, 2010, NFMU filed an application for transfer of its water and wastewater facilities to the Florida Governmental Utility Authority (FGUA) and cancellation of its Certificate Nos. 353-W and 247-S.

The purpose of this recommendation is to acknowledge the transfer of NFMU's water and wastewater systems to FGUA as a matter of right and to cancel Certificate Nos. 353-W and 247-S. The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes (F.S.).

¹ Order No. 8025, issued October 25, 1977, in Docket No. 770709-S, In re: Application of OLD BRIDGE CORPORATION for a certificate to operate a sewer utility in Lee County, Florida, pursuant to Section 367.171, Florida Statutes.

² Order No. 15696, issued February 12, 1986, in Docket No. 830362-S, In re: Application of North Fort Myers Utility, Inc. (formerly known as Old Bridge Utilities, Inc.) for Amendment of Sewer certificate to include additional territory in Lee County, Florida.

³ Order No. PSC-01-0995-AS-WS, issued April 23, 2001, in Docket No. 000277-WS, In re: Application for transfer of facilities and Certificates Nos. 353-W and 309-S in Lee County from MHC Systems, Inc. d/b/a/ FFEC-Six to North Fort Myers Utility, Inc. holder of Certificate No. 247-S; amendment of Certificate No. 247-S; and cancellation of Certificate No. 309-S.

Discussion of Issues

Issue 1: Should the transfer of the water and wastewater facilities of North Fort Myers Utility to the Florida Governmental Utility Authority be acknowledged, as a matter of right, and Certificate Nos. 353-W and 247-S be cancelled?

Recommendation: Yes. The transfer of NFMU's water and wastewater facilities and territory to FGUA should be acknowledged, as a matter of right, pursuant to Section 367.071(4)(a), F.S., and Certificate Nos. 353-W and 247-S should be cancelled effective July 29, 2010. (Jones-Alexis, Brady, Hillier, Marsh, Fleming)

Staff Analysis: NFMU applied for a transfer of its water and wastewater facilities and territory to FGUA on August 27, 2010, pursuant to Section 367.071, F.S., and Rule 25-30.037(4), Florida Administrative Code (F.A.C.). However, the application was deficient. Responses to the deficiencies were filed on October 1, 2010. The closing on the sale of the Utility's facilities took place on July 29, 2010. The application includes a copy of the Agreement for Purchase and Sale of Water and Wastewater Assets, as well as a statement that the closing date of July 29, 2010 is also the effective date of the transfer.

FGUA has been determined to be a governmental authority in previous Commission dockets.⁴ Pursuant to Section 367.071(4)(a), F.S., the sale of facilities to a governmental authority shall be approved as a matter of right. As such, no notice of the transfer is required and no filing fees apply. The application is in compliance with Section 367.071(4)(a), F.S., and Rule 25-30.037(4), F.A.C.

The application contains a statement that FGUA has obtained NFMU's most recent available income and expense statements, balance sheet, statement of the existing rate base for regulatory purposes, and the amount of contributions-in-aid-of-construction, pursuant to Rule 25-30.037(4)(e), F.A.C. A statement was provided that the Utility has submitted a final bill to its customers and has credited or refunded excess deposits to them as appropriate. Additionally, in accordance with Rule 25-30.037(4)(d), F.A.C., the application states that, subsequent to closing, NFMU will retain no assets that would constitute a system providing or proposing to provide water or wastewater services to the public for compensation.

NFMU has filed its annual reports through 2009, including all previous years. Pursuant to Rule 25-30.120, F.A.C., regulatory assessment fees (RAFs) have been paid through the

⁴ Order No. PSC-00-2351-FOF-WS, issued December 7, 2000, in Docket No. 990489-WS, In re: Application by Florida Cities Water Company, holder of Certificate Nos. 027-W and 024-S in Lee County and 0007-W and 0003-S in Brevard County, and Poinciana Utilities, Inc., holder of Certificate Nos. 146-W and 103-S in Polk and Osceola Counties, for transfer of facilities to Florida Governmental Utility Authority and Cancellation of Certificate Nos. 027-W, 024-S, 007-W, 003-S, 146-W, and 103-S; Order No. PSC-03-1284-FOF-WS, issued November 10, 2003, in Docket No. 030932-WS, In re: Joint application for acknowledgement of sale of land and facilities of Florida Water Services Corporation in Lee County to Florida Governmental Utility Authority, and for cancellation of Certificate Nos. 306-W and 255-S; and Order No. PSC-09-0334-PAA-WS, issued May 14, 2009, in Docket No. 090120-WS, In re: Joint notice by Aloha Utilities, Inc. and the Florida Governmental Utility Authority of transfer of water and wastewater assets to the Florida Governmental Utility Authority, in Pasco County, and cancellation of Certificate Nos. 136-W and 97-S.

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transfer date of July 29, 2010. Since NFMU will not be jurisdictional as of December 31, 2010, it is not required to file a 2010 annual report, pursuant to Rule 25-30.110(3), F.A.C. Therefore, no further annual reports or RAFs will be due.

Staff recommends that the transfer of NFMU's water and wastewater facilities and territory and facilities to FGUA should be acknowledged, as a matter of right, pursuant to Section 367.071(4)(a), F.S., and Certificate Nos. 353-W and 247-S be cancelled effective July 29, 2010, the closing date of the sale.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed, because no further action is necessary. (Fleming, Brady)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should be closed, because no further action is necessary.