



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison St.
Room 812
Tallahassee, Florida 32399-1400
850-488-9330

ORIGINAL

RECORDS AND
REPORTING

99 DEC 29 PM 4: 54

RECEIVED-FPSC

December 29, 1999

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 981781-SU

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Response to Ronald Ludington's Motion for Reconsideration. A diskette in WordPerfect 6.1 is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Stephen C. Reilly
Associate Public Counsel

- ___ AFA
- ___ APP
- ___ CAF
- ___ CMU
- ___ CTR
- ___ EAG
- ___ LEG 2 Enclosures
- ___ MAS 3
- ___ OPC
- ___ RFR
- ___ SEC 1
- ___ WAW
- ___ OTR

SCR:bsr

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

15850 DEC 29 99

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

IN RE: Application for amendment)
of Certificate No. 247-S to extend)
wastewater service area by)
transfer of Buccaneer Estates in)
Lee County, Florida to)
North Fort Myers Utility, Inc.)
_____)

Docket No.: 981781-SU
Filed: December 29, 1999

**CITIZENS' RESPONSE TO
MOTION FOR RECONSIDERATION**

The Citizens of the State of Florida ("Citizens"), by and through their undersigned attorney, pursuant to Rule 25-22.060, Florida Administrative Code, file this response to correct many of the inaccurate statements made by Ronald Ludington in his Motion for Reconsideration, and state:

1. Commission Order No. PSC-99-1786-PHO-SU, issued on September 13, 1999, clearly states that a ruling on Intervenor's Ludington and Gill's Motion to Dismiss and Strike the proposed Settlement Agreement, respectively, would be deferred to the evidentiary hearing, which was rescheduled to October 13, 1999. The Commission desired to receive evidence, under oath, for and against the proposed Settlement Agreement before ruling on the Intervenor's motions. At the conclusion of the evidentiary hearing in Fort Myers the Commission adjourned the hearing to permit the parties to present their final arguments in Tallahassee. After considering the evidence, the final arguments and the Staff's recommendation, the Commission decided to issue a Final Order approving the Office of Public Counsel's ("OPC") and North Fort Myers Utility's ("NFMU",

DOCUMENT NUMBER-DATE

15850 DEC 29 1999

FPSC-RECORDS/REPORTING

"Utility" or "Company") Settlement Proposal, thereby rejecting the Intervenor's motion to dismiss and strike the Settlement Proposal offered by OPC and NFMU.

2. Mr. Ludington suggests that Attorney Brubaker incorrectly stated to the Commission that OPC had conferred with its clients before reaffirming its support of the Settlement Agreement. Mr. Ludington also states that he can show conclusively that there was no great level of support for the proposed Settlement Agreement at the time of the recommendation and that he has in his possession clear proof that a "great many" of the homeowners supported the alternative Ludington proposal. However, none of this evidence has ever been furnished to the Commission or subjected to critical review or cross examination.
3. Mr. Ludington's characterization of Buccaneer Homeowners' Association ("BHA") President's letter dated November 10, 1999, differs from OPC's characterization of that letter in its November 24, 1999 response to Mr. Gill's November 20, 1999 letter. While none of these letters are part of the record, nor can be the basis of a motion for reconsideration, the Association did write a letter to Staff Attorney Brubaker, dated November 20, 1999 further clarifying the Board's position. (Copy of letter is attached as Exhibit "A"). However, OPC executed the Settlement Agreement, was bound by that Agreement, and would have supported the Agreement regardless of the position taken by the Homeowners' Association. This is true because OPC continues to believe that the Settlement Agreement offers the best legally permissible resolution of this

docket that is currently available (given the refusal of the residents to assume ownership and control of the Buccaneer wastewater collection system).

4. Intervenor Ludington in his motion offers an extensive discussion about who signed, who did not sign, who had authority to sign, who did not have authority to sign, who approved, who did not approve, who had the authority to bind others when signing the proposed Settlement Agreement and the resulting legal binding effect of the Settlement Agreement in light of the above. This entire discussion of the binding effects of the proposed Settlement Agreement is irrelevant, because three parties to this proceeding refused to sign, which rendered it a Settlement Proposal to be considered by the Commission after a formal evidentiary hearing. Its legal status as a proposal from two of the parties to this proceeding to the Commission is in no way affected by anything presented by Mr. Ludington's extensive discussion. The subject Settlement Agreement is a bonafide proposal by two parties to resolve the issues in this docket, period. The two parties offering the proposal properly agreed to remove the reference to the three Intervenors supporting the Agreement, to acknowledge their opposition to the proposal. This is the modified Settlement Proposal that the Commission took evidence, in support of and opposition to, at the October 13, 1999 hearing. While the Final Order makes reference to approval of the September 2, 1999 Settlement Agreement between OPC and NFMU, it is the modified Agreement with no mention of the three Intervenors' support which is discussed in the body of the order on page 7.

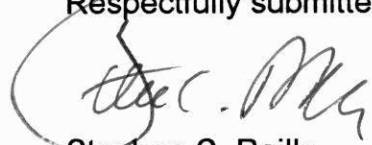
5. In paragraph 8 Intervenor Ludington alleges that OPC did not tell the truth when it stated in its letter to Mr. Gill, dated November 24, 1999, that OPC did not execute the Agreement until after approximately 95% of the present and voting residents voted in favor of it. Mr. Ludington's basis for his assertion is that a fax date stamp on the OPC signature sheet (attached as Exhibit L-3 to Ludington's motion) clearly shows that Jack Shreve signed the sheet two full days before the homeowners' vote was called. Intervenor Ludington even goes so far as to suggest that "OPC has supplied falsified evidence to Ludington to aid in gaining Ludington's favor toward the Settlement Agreement," if this is not Shreve's signature. Mr. Ludington's understanding and characterization of the above evidence is seriously flawed. Jack Shreve did not sign the Settlement Agreement until after the August 26, 1999 vote. The reason why there is a fax date stamp of August 24, 1999 on his signature sheet is because he did not sign an original sheet, but the signature page of the fifth and final version of the Settlement Agreement which was faxed to OPC's office on August 24, 1999. Jack Shreve signed a faxed copy of the Agreement, which had the August 24, 1999 fax date stamp on it. However, he did not execute it until after the vote was taken on August 26, 1999, as communicated to Mr. Gill in OPC's November 24, 1999 letter. OPC is baffled how supplying Mr. Ludington with a signature page which does not have an authentic Jack Shreve signature on it could have been fabricated and supplied to him in order to gain his favor to support a Settlement Agreement that he has vigorously opposed prior to hearing, at hearing and

posthearing. OPC presumes it is a motive invented by the Intervenor to enable him to suggest fraudulent conduct by our office. A suggestion which is patently false. While the Agreement was executed after the August 26, 1999 vote, it really doesn't matter. The fact remains that Public Counsel executed and supplied this Agreement to the Commission (after the August 26, 1999 vote) and continues to endorse the Agreement, regardless of any vote by any group of customers. There remains a bonafide offer of Settlement by two parties, which was deemed reasonable and approved by the Commission in its Final Order.

6. In paragraph 9(b) of his motion, Intervenor Ludington complains that he understands that the PSC is saying that NFMU can come back in the future and ask the PSC for a change in rates to cover the CIAC shortfall. This is another example of Mr. Ludington misunderstanding what he reads. A Company's collection of CIAC is an offset to ratebase, which reduces the amount of investment the Company is permitted to earn a return on, which reduces revenue requirement, which reduces rates and charges. In the second to last paragraph of page 9 of the Order, it states that if the utility attempts to argue in some future rate case that it failed to actually receive the CIAC otherwise collectible from the Buccaneer customers, the Commission reserves the right and has the authority to impute the CIAC if it believes it is appropriate to do so. This language in the order is an unwelcome warning to NFMU, not to the ratepayers.

WHEREFORE, for the reasons stated above Mr. Ludington's Motion for Reconsideration is without merit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen C. Reilly", is written over a circular stamp or mark.

Stephen C. Reilly
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

Attorney for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
DOCKET NO. 981781-SU

I HEREBY CERTIFY that a correct copy of the foregoing Citizens' Response to Motion for Reconsideration has been furnished by U.S. Mail or *hand-delivery to the following parties on this 29th day of December, 1999.

Martin S. Friedman, Esquire
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

Jennifer Brubaker, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. Stan Durbin
718 Brigantine Blvd.
North Fort Myers, FL 33917-2920

Mr. Ronald Ludington
509 Avanti Way Blvd.
North Fort Myers, FL 33917

Mr. Donald Gill
647 Brigantine Blvd.
North Fort Myers, FL 33919-2918

Mr. Joseph Devine
688 Brigantine Blvd.
North Fort Myers, FL 33917



Stephen C. Reilly
Associate Public Counsel

C:981781.r2



BUCCANEER HOMEOWNERS' ASSOCIATION
2210 North Tamiami Trail
North Fort Myers, Florida 33917

RECEIVED
PUBLIC SERVICE COMMISSION
99 NOV 23 PM 1:04
MAIL ROOM

November 20, 1999

Public Service Commission
Attn: Jennifer Brubaker
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0823



Dear Ms. Brubaker:

Please be advised that the Buccaneer Homeowners' Association Board of Directors are in complete support of the findings handed down by the Public Service Commission.

We also fully endorse the Office of Public Council support of the settlement proposal that was ultimately approved by the Commission.

Very Truly,

Thomas G. Gaylord, President
Buccaneer Homeowners' Association