



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

RECEIVED-PSC  
JUL 28 AM 9:46  
RECORDS AND REPORTING

**DATE:** JULY 28, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (BRUBAKER) *JB PJ*  
DIVISION OF REGULATORY OVERSIGHT (MESSER) *PD and*

**RE:** DOCKET NO. 981781-SU - APPLICATION FOR AMENDMENT OF CERTIFICATE NO. 247-S TO EXTEND SERVICE AREA BY THE TRANSFER OF BUCCANEER ESTATES IN LEE COUNTY TO NORTH FORT MYERS UTILITY, INC.

**AGENDA:** 08/01/2000 - REGULAR AGENDA - DECISION ON POST-HEARING STIPULATION AND RULE VARIANCE - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** CRITICAL DATE REQUIRING THAT COMMISSION MUST GRANT OR DENY EMERGENCY REQUEST FOR RULE VARIANCE WITHIN 30 DAYS OF RECEIPT OF PETITION HAS BEEN WAIVED

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\981781.RCM

### CASE BACKGROUND

On December 1, 1998, North Fort Myers Utility, Inc. (NFMU or utility) filed an Application for Amendment to Certificate of Authorization to include the wastewater service area of Buccaneer Utility. Water service is provided to the park by the park owner, MHC-DeANZA Financial Limited Partnership, d/b/a Buccaneer Water Service (MHC), a Commission-regulated utility. On December 7, 1998, NFMU filed an Emergency Motion to Implement Rates and Charges with respect to the interconnection of existing wastewater customers within the Buccaneer Estates mobile home community (Buccaneer) to NFMU. On December 9, 1998, NFMU responded to staff's request for additional information on the connection of

DOCUMENT NUMBER-DATE

09105 JUL 28 8

PSC-RECORDS/REPORTING

DOCKET NO. 981781-SU  
DATE: JULY 28, 2000

Buccaneer with a letter referencing various parts of Chapter 723, Florida Statutes.

On December 10, 1998, NFMU mailed a notice to the Buccaneer customers which stated that utility service had been assigned to NFMU, that connection fees would be collected, and that effective December 1, 1998, the utility would begin billing for monthly service and the lot rent would decrease by a specific amount.

On December 18, 1998, the Commission received numerous customer protests concerning the application of NFMU's monthly rates and connection fees. Among the protesting customers were Mr. Donald Gill, Mr. Joseph Devine and Mr. Ronald Ludington, whose protest letters were filed on December 18, 1998, December 21, 1998, and December 21, 1998, respectively. On January 14, 1999, several customers filed letters requesting that the Office of Public Counsel (OPC) represent the Buccaneer residents in this matter. However, the Commission's records indicate that neither Messrs. Gill, Devine nor Ludington agreed to be represented by OPC or other counsel, nor did they file requests to be considered qualified representatives pursuant to Rule 28-106.106, Florida Administrative Code. Therefore, these three individuals were considered pro se litigants.

On December 21, 1998, OPC filed a Response to the Emergency Motion to Implement Rates and Charges. On January 14, 1999, OPC filed a Notice of Intervention pursuant to Section 350.0611, Florida Statutes, which was acknowledged by Order No. PSC-99-0180-PCO-SU, issued January 29, 1999.

On September 2, 1999, OPC and the utility filed an executed proposal for the settlement of the case. Messrs. Gill, Devine and Ludington opposed the proposed settlement agreement and refused to sign it. At the September 7, 1999, agenda conference, the Commission deferred ruling on the OPC/NFMU proposal and instructed that the matter proceed to hearing and that the Settlement Agreement could be presented for consideration at that time.

On September 7, 1999, a Motion for Dismissal of Settlement Agreement was filed by Mr. Ludington. On September 9, 1999, a Motion to Strike Settlement Agreement was filed by Mr. Gill.

A hearing was held on October 13, 1999, in North Fort Myers, Florida, and continued to November 16, 1999, in Tallahassee, Florida. By Order No. PSC-99-2444-AS-SU, issued December 14, 1999, the Commission accepted the proposed settlement offered by OPC and

DOCKET NO. 981781-SU  
DATE: JULY 28, 2000

NFMU, approved the transfer of Buccaneer to NFMU, and amended NFMU's certificate of authorization to include Buccaneer Estates.

On December 22, 1999, Mr. Gill and Mr. Devine timely filed a joint Motion to Reconsider and Rehear Order No. PSC-99-2444-AS-SU. On December 27, 1999, Mr. Ludington's Motion For Reconsideration of Order No. PSC-99-2444-AS-SU was timely filed. On December 28, 1999, NFMU timely filed its responses to Mr. Gill and Mr. Devine's motion and Mr. Ludington's motion. On December 29, 1999, OPC timely filed its responses to these motions.

By Order No. PSC-00-0370-FOF-SU, issued February 21, 2000, the Commission granted the motions for reconsideration in part, but for the limited purpose of clarifying that Mr. Ludington and Mr. Gill's respective motions to dismiss the OPC/NFMU offer of settlement were denied by virtue of the fact that the Commission approved the agreement by Order No. PSC-99-2444-AS-SU. The motions for reconsideration were denied in all other respects by Order No. PSC-99-2444-AS-SU. On March 13, 2000, a notice of administrative appeal of Order No. PSC-99-2444-AS-SU was filed by Mr. Devine.

There has been an ongoing dispute between NFMU and a number of the Buccaneer customers regarding NFMU becoming the new wastewater provider for the mobile home park. Staff has become aware of a recent manifestation of this controversy with respect to the payment of bills for wastewater service provided by NFMU pursuant to Order No. PSC-99-2444-AS-SU.

NFMU began billing the Buccaneer customers for service in April, once Order No. PSC-99-2444-AS-SU became final. Pursuant to Order No. PSC-99-2444-AS-SU, NFMU was required to bill the Buccaneer customers within the park for service rendered from September 1, 1999, forward, based upon NFMU's residential rate schedule. NFMU notified the Buccaneer customers that rather than collect this amount in a lump sum, the utility would bill in two-month increments each month, beginning with September/October 1999, until all past indebtedness was paid and the customer accounts brought to the current month.

According to utility estimates, between 500 and 600 of the park's 971 homeowners have not paid the billed amounts and owe about \$50 or \$60 each. It is staff's understanding that the majority of these customers are refusing to pay until the appellate court renders its decision.

In order to discontinue wastewater service for nonpayment of bills pursuant to Rule 25-30.320, Florida Administrative Code, NFMU

would be required to bring a backhoe onto each nonpaying customer's property, dig up the wastewater line, and install a shut-off valve. The utility estimates that the cost of discontinuing wastewater service would be several hundred dollars per customer, depending where the line is buried on each respective lot. NFMU's tariff provides that wastewater service shall be restored only after the utility has received payment for all past-due bills and reconnect charges from the customer, in accordance with Rule 25-30.320, Florida Administrative Code. In this instance, the customer would be required to pay the tariffed reconnection fee and the actual cost of disconnection and reconnection, in addition to his or her outstanding bill from September 1999 forward.

On May 10, 2000, NFMU provided notice to each of the nonpaying customers that pursuant to NFMU's tariff and Rule 25-30.320, Florida Administrative Code, wastewater service would be subject to disconnection if the customer did not pay his or her outstanding bill within five days. The time noticed in which to cure the customers' nonpayment expired on May 16, 2000. Upon Commission staff's request, the utility verbally agreed to an extension until May 30, 2000, before pursuing customer disconnections, in order to determine whether settlement of the matter could be reached without the necessity of customer disconnections.

In the interest of resolving the matter without the resort of disconnection, Commission staff proposed mediation of the dispute over nonpayment of bills, which was agreed to by NFMU, Mr. Gill, the Buccaneer Estates Homeowner's Association (BHA), with Mr. Devine as the current BHA President, and OPC. Mr. Ludington was invited to attend the mediation, but as he was residing in Canada at the time, asked that Mr. Devine represent his interests at the mediation. Four separate mediation sessions ultimately took place in Fort Myers, Florida on May 24, June 2, June 6 and June 12, 2000, the last of which was also attended by a representative of MHC. At the June 12, 2000, a "Final Wastewater Settlement Agreement" (Agreement) was signed by representatives for NFMU, MHC, and BHA, which proposes a resolution not only of the disconnection issue, but also of the continuing dispute over the transfer of Buccaneer Estates to NFMU.

On May 22, 2000, pursuant to Rule 28-104.004, Florida Administrative Code, OPC filed a Petition for Emergency Variance or Waiver from Rules 25-30.135 and 25-30.320, Florida Administrative Code, and from the tariff of NFMU approved by the Commission in accordance with those rules (Petition). On May 23, 2000, NFMU filed an Answer to OPC's Petition for Emergency Variance or Waiver (Answer). Pursuant to Rule 28-104.005, Florida Administrative

REVISED

Code, the Commission shall grant or deny a petition for emergency variance or waiver within 30 days of receipt by the Commission, unless the time limit is waived by the petitioner. In this instance, in recognition of the parties' efforts to mediate the matter and NFMU's agreement to suspend disconnections until mediation was attempted, counsel for OPC agreed to waive the 30-day limit.

Staff had initially filed its recommendation in this matter for the Commission's consideration at the July 11, 2000 Agenda Conference. The mediated Agreement specifies that, as a condition precedent to the Commission's consideration of that Agreement, a separate agreement shall be executed between MHC and the Buccaneer Estates residents to dispose of the existing circuit court dispute under Chapter 723, Florida Statutes (Mobile Home Act). Staff subsequently learned in a telephone conference with counsel for MHC that this separate agreement had in fact not yet been executed, nor would it be finalized in time for the July 11, 2000 Agenda Conference. Upon request to the Chairman's Office, the item was deferred.

For informational purposes, staff also notes with respect to the appeal of Order No. PSC-99-2444-AS-SU, that by Order dated July 12, 2000, the First District Court of Appeal dismissed the appeal for "failure to comply with the orders of the court and the rules of appellate procedure."

On July 27, 2000, staff received confirmation from the office of Bob Burandt, Esquire, who represents BHA for the purposes of the Chapter 723 dispute, that the Buccaneer Estates residents have executed a settlement agreement which disposes of their dispute with the mobile home park owner. Staff was subsequently granted approval to late-file this recommendation for the Commission's consideration at the August 1, 2000 Agenda Conference.

This recommendation addresses the June 12, 2000 mediated Agreement and OPC's Petition for emergency waiver or variance.

REVISED

DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission approve the proposed Agreement between North Fort Myers Utility, Inc., the Buccaneer Estates Homeowners Association, and Snowbirdland Vista, Inc., MHC-DeAnza Financing Limited Partnership, Manufactured Home Communities, Inc.?

**RECOMMENDATION:** Yes. The proposed Agreement should be approved, with the clarifications that the Commission shall not be bound by contracts between parties which might impact rate determinations in future rate cases of regulated entities, and that the utility should be entitled to bill for the additional months of arrearage incurred during the pendency of this matter. (BRUBAKER, MESSER)

**STAFF ANALYSIS:** The offer of settlement approved by Order No. PSC-99-2444-AS-SU provided the following:

1. NFMU will bill customers within the park for service rendered from September 1, 1999, based upon NFMU residential rate schedule of \$10.98 base facility charge and \$3.98 per 1,000 gallons, with a cap of 10,000 gallons. Water meter reading information will be obtained from Buccaneer Water Company.
2. NFMU waives the right to collect service availability charges from the customers in Buccaneer estates. Further, NFMU waives the right to collect any pass-through charges from the residents, holding the residents forever harmless from the payment of any pass-through charges potentially collectible under Chapter 723, Florida Statutes, relating to Buccaneer Estates' interconnection with NFMU's system.
3. The residents shall not pay for wastewater service through August 31, 1999.
4. The agreement does not affect the rights of the residents of Buccaneer estates to pursue their contract rights against the Park Owner under Chapter 723, Florida Statutes.
5. The show cause proceeding pending against NFMU in this docket should be dismissed without penalty to NFMU.

The June 12, 2000 mediated Agreement provides as follows (several imprecise terms and typographical errors appear in the mediated Agreement; staff's clarification of those terms is

provided in brackets and are not a part of the mediated Agreement itself):

1. The foregoing recitations are true, correct, and incorporated herein as though fully set forth;
2. For and in consideration of the agreement set forth below, each party hereto releases the other from any and all claims it has against the other relative to the provision of wastewater services set forth herein;
3. In compromise and settlement of the issues between the parties, Owner [MHC] will pay at closing to NFMU a portion of the appropriate connection charge for the 971 units within Buccaneer Estates in the amount of \$180,000;
4. Subject to the provisions of paragraph (6) hereinbelow, NFMU will bill Owner [MHC] monthly according to its approved Florida Public Service Commission approved bulk rate [general service rate], plus an agreed upon amount of \$1.93 per unit within Buccaneer Village [Buccaneer Estates] per month for services rendered on and after July 1, 2000, and owner [MHC] will pay NFMU for such services in the ordinary course of business;
5. Owner [MHC] will bill [Buccaneer Estates] Homeowners on a pro rata flat rate of one nine hundred and seventy first (1/971st) per residential lot for the total of such wastewater services monthly;
6. NFMU will re-compute its billing for service rendered to the homeowners for wastewater treatment subsequent to September 1, 1999, through June 30, 2000, and will collect for said ten months in arrears by rendering its normal bill for the months of July, 2000 through the end of March 2001, plus re-computed bills for each month commencing in September 1999 and concluding for services rendered May, 2000 in order that NFMU will be made whole on its arrears. Essentially, this means that NFMU's invoices will be approximately double that which it would otherwise normally be entitled to through the month of April, 2000 [2001]. For bills rendered on and after April 1, 2001, therefore, billing would be at the normal NFMU tariff rate plus an agreed-upon fee for maintenance of the onsite system as described herein above, or at an expected approximate amount of \$12.15 per dwelling unit per month thereafter;

7. Concurrently with the closing hereon, NFMU will issue refund checks to all of those homeowners within Buccaneer Estates who have paid NFMU directly for service rendered subsequent to September, 1999;
8. This Agreement is executed in connection with a complete settlement of all outstanding claims of the Homeowners against the Owner [MHC], pursuant to Chapter 723, F.S., and otherwise which will be stated further and in greater detail in a separate definitive agreement between homeowners and owner [MHC], the approval thereof being a condition precedent to the lawful effectiveness hereof; and
9. Each party hereto, for itself, its successors and assigns hereby releases and discharges the other from and against any claim that it may have against the other save and except for the matters contained herein and the separate writing between the homeowners and the owner [MHC] as described in Paragraph 8 above and each party shall dismiss any pending actions that it now has against the other, including the pending appeal of the Final Order of the Florida Public Service Commission now pending before the First District Court of Appeal and filed by Messers Devine, Gill, and Ludington, with prejudice and without cost.
10. Closing shall occur within one week of approval of this agreement by the Florida Public Service Commission, if necessary and approval by the Homeowners and Owner [MHC] of the definitive agreement referenced herein.
11. Any subsequent Owner of NFMU shall bill in a basis of its tariff for similar wastewater services.

There are four areas of the Agreement which staff believes merit some additional comment and analysis. These are the authority of Mr. Devine as President of the Home Owners Association to execute the Agreement on behalf of the residents of the park, the necessity for signatures of Mr. Donald Gill and Ronald Ludington on the Agreement, the impact of the proposed billing methodology to customers within the park, and the last provision in Agreement which states that "any subsequent owner of NFMU shall bill in a basis of its tariff for similar wastewater services."



Authority of the BHA President to Enter into a Stipulation on  
Behalf of the Buccaneer Estates Residents

The signatories to the stipulation include Mr. Joseph Devine, as President of BHA; Mr. Howard Walker, Chief Executive Officer of MHC; Mr A. A. Reeves, Vice President of NFMU; Mr. Donald Gill, and Mr. Ronald Ludington. Staff had an initial concern as to whether Mr. Devine, as President of BHA, had sufficient authority to represent the Buccaneer homeowners, or whether the stipulation would need to be approved by a majority vote of the residents themselves.

However, on June 19, 2000, the BHA conducted a vote of its membership to determine whether a majority of the residents were in support of the mediated Agreement. Votes were distributed to all customers currently in residence at the park, as well as to all of those not in residence but whom had provided an e-mail or mailing address by which they might be reached. Of the 668 total votes which were distributed, 562 votes were returned. The BHA reported of those votes returned, 549 voted in favor of the mediated Agreement.

Therefore, staff believes that Mr. Devine, as the elected president of BHA, has the authority to enter into the mediated Agreement on behalf of the Buccaneer residents.

Mr. Gill and Mr. Ludington's Execution of the Agreement

The second concern staff has regarding the Agreement is with regard to Mr. Gill and Mr. Ludington's approval of that document. Neither Mr. Gill nor Mr. Ludington were present during the June 12, 2000 mediation session which ultimately concluded with the drafting and execution of the mediated Agreement. Staff has contacted Mr. Gill and Mr. Ludington and has confirmed that both gentlemen have been made aware and approve of the Agreement's contents.

Impact of Proposed Billing to Customers

The proposed stipulation states that NFMU will bill MHC for the total wastewater service to the park. MHC will then divide that amount by the number of lots, 971 units, and bill the homeowners the flat amount. The general service rate schedule, rather than the residential rate schedule, shall be used for the calculation of this amount.

Staff understands that throughout the various proceedings of this case, many of the homeowners have expressed a desire to have

utility service be provided the same way it had been done before, which was as a flat amount included in the monthly lot rental fee. The billing in the stipulation would be more consistent with this billing preference rather than the individually metered service, residential rate provided for by Order No. PSC-99-2444-AS-SU.

The billing scenario proposed in the Agreement raises some concerns regarding the Commission's policy of promoting conservation through rate structures, and the impact on customers through flat billing versus the use of metered billing.

Order No. PSC-99-2444-AS-SU authorized NFMU to bill the individually-metered residents under NFMU's approved residential wastewater rates. Because these wastewater rates are based on water consumption, NFMU would obtain each resident's individual meter information from Buccaneer Water Service, and then bill for wastewater service. The residents all have 5/8" x 3/4" meters. Therefore, the rate would have been a base facility charge of \$10.98 and a gallonage charge of \$3.98, capped at 10,000 gallons per month. Residential wastewater gallonage charges are capped at a level which represents the average water usage of the park residents, taking into consideration that all water used does not flow back into the wastewater collection system, but is used for other purposes such as washing cars or watering plants or lawns.

The proposed Agreement will apply the general service rates to the water consumption of all park residents. Buccaneer Water Service purchases its water from Lee County, and the staff has been informed that this connection occurs with a 4 inch meter. The general service rate of NFMU for a 4 inch meter is \$269.83 per month, with a \$3.98 gallonage charge. No cap is placed on general service gallonage rates, because the assumption is that all gallons used in a business-type setting (to which the general service rate typically applies) will be returned to the wastewater collection system.

Staff concurs in the application of general service rates to the master metered water gallons. However, the result of this rate application will be that individuals who conserve water or are away from the park will not be able to obtain the full benefit of those actions. Under the prior scenario, the wastewater bill could be minimized if lower gallons were used by the resident. The maximum wastewater bill would be \$3.98 x 10, plus the base charge of \$10.98, or \$50.78. Under the proposed stipulation, customer's bills will be an amount based on all water usage to the park, divided by 971 units. Essentially, those residents that use less water will be subsidizing the residents that use more water.

In order to estimate what the monthly wastewater bills might be under the proposed stipulation, staff used information from the water utility's 1998 Annual Report, which identified the number of purchased gallons of water. The Annual Report states a total annual amount of 32,020,000 gallons or an average of 2,668,000 gallons per month purchased from Lee County. Applying the \$3.98 gallonage charge, the bill to the park by NFMU would be \$10,619 for water, plus the base facility charge of \$269.83, for a total of \$10,888. This amount would be divided by 971, for a monthly amount of \$11.21 per resident. The minimum amount a customer could be billed under the previously approved arrangement would be the base charge of \$10.98.

Although cross-subsidization will occur and customers will not have the ability to control their individual bill, it appears that the proposed stipulation will have the effect of leveling the residents' bill to an amount which the customers find more reasonable. Therefore, staff believes that the Agreement may provide a viable option for this specific situation.

Billing of Buccaneer Estates for Service by Any Future Owner of the Utility

The final provision of the mediated Agreement provides that "any subsequent owner of NFMU shall bill in a basis of its tariff for similar wastewater services." The intent of this language is not clear to the staff. However, in the event that its purpose is to bind any future owner of NFMU to the Agreement with respect to rates, staff believes that there should be further clarification of this language by the Commission. If the utility were to be sold to an entity exempt from Commission regulation, the proviso would essentially be moot because the Commission would have no authority over that utility's rates and charges. However, if NFMU were sold to an entity regulated by the Commission, the language could be construed as an attempt to limit the Commission's authority to change the utility's rates in a future rate proceeding.

To the extent that provision eleven of the Agreement purports to bind the Commission's authority to act in a future rate proceeding of a regulated utility, staff notes that it is unenforceable against the Commission. The Commission has approved similar agreements in the past where it has determined that the parties could not bind the Commission's authority. By Order No. PSC-99-0635-FOF-WU, issued on April 5, 1999 in Docket No. 960444-WU, In Re: Application for Rate Increase and Increase in Service Availability Charges in Lake County by Lake Utility Services, Inc., the Commission approved a settlement agreement between the utility

REVISED

and the Office of Public Counsel which purported to bind the Commission from instituting future proceedings to change the utility's rates and charges set forth in the settlement. In approving the parties' settlement, the Commission noted at page six that "the specific provisions were . . . 'not fatal flaws; they are simply unenforceable against the Commission and are void ab initio. The parties cannot give away or obtain that for which they have no authority.' Order No. PSC-94-0172-FOF-TL at page six." Likewise, staff believes that, to the extent that the Agreement may contain unenforceable language, it is still appropriate to approve the Agreement.

Therefore, the staff believes that a clarification should be made that the Commission is not bound by the mediated Agreement to the extent it purports to limit the Commission's authority to make rate determinations in future proceedings of regulated entities.

The mediated Agreement provides that NFMU will collect for ten months in arrears by rendering its normal bill for the months of July, 2000 through the end of March 2001, plus re-computed bills for each month commencing in September 1999 and concluding for services rendered May, 2000 in order that NFMU will be made whole on its arrears. It has taken a greater amount of time to bring the mediated Agreement before the Commission for its consideration than was anticipated in the Agreement. Staff believes a further clarification should be made that NFMU should be entitled to bill for the additional months of arrearage incurred during the pendency of this matter.

The parties have filed this mediated Agreement to avoid the time and expense of further litigation, to avoid the specter of a mass disconnection of the residents' wastewater service, and to resolve the ongoing dispute regarding NFMU's provision of wastewater service. This Agreement appears to resolve all outstanding issues in this docket to the satisfaction of all of the parties. Although staff has some concerns about the impact of the proposed billing schedule, as addressed above, staff believes that this is a reasonable compromise and that the Agreement fairly resolves all of the issues remaining in this docket and the ongoing controversy between the parties. As a negotiated settlement, the terms of the Agreement, if approved, should not carry precedential value with respect to any matters outside of this docket. Staff also notes that negotiated settlements are highly favored under the law. Staff therefore believes that the Commission should accept

DOCKET NO. 981781-SU  
DATE: JULY 28, 2000

**REVISED**

the parties' mediated Agreement, as clarified herein, as a reasonable resolution of this matter.

**ISSUE 2:** Should the Office of Public Counsel's request for an emergency variance or waiver of Rules 25-30.135 and 25-30.320, Florida Administrative Code, be granted?

**RECOMMENDATION:** If the Commission approves staff's recommendation in Issue 1, there is no need to rule on OPC's request for emergency variance or waiver of Rules 25-30.135 and 25-30.320, Florida Administrative Code, because it is moot. (BRUBAKER)

**STAFF ANALYSIS:** Rule 28-104.004, Florida Administrative Code, provides that a petition for an emergency waiver shall specify, in addition to the other requirements of Section 120.542, Florida Statutes, the following:

- (a) The specific facts that make the situation an emergency; and
- (b) The specific facts to show that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided in Section 120.542, Florida Statutes.

Section 120.542(8), Florida Statutes, requires the Commission to grant or deny a petition for variance or waiver within 90 days. In addition, Section 120.542(6), Florida Statutes, requires that the Commission provide notice of the petition to the Department of State, which shall publish notice of the petition in the first available issue of the Florida Administrative Weekly. This subsection also requires that the Uniform Rules provide a means for interested persons to provide comments on the petition. These requirements apply generally to petitions for rule waivers or variances.

Nevertheless, Section 120.542(3), Florida Statutes, also requires that the Uniform Rules provide for procedures for the processing of emergency variances and waivers, and allows for public notice of, and comments on, such emergency waiver requests, to be waived or limited. Rule 28-104.005(1), Florida Administrative Code, provides that petitions for emergency rule waivers or variances shall be acted upon within thirty days. Moreover, because Section 120.542(6), Florida Statutes, is not applicable to requests for emergency waivers or variances, the publication of notice of such petitions and the comment period afforded to rule waiver requests generally are not required when processing such emergency requests. See Rule 28-104.004(2), Florida Administrative Code.

Although a comment period generally is not required when processing such emergency requests, NFMU filed its Answer on an expedited basis, only one day after OPC filed its Petition. Under these circumstances, and because NFMU is the regulated entity to whom OPC has directed its Petition, staff believes it is appropriate to acknowledge and incorporate NFMU's Answer.

In its Petition, OPC requests a waiver or variance of Rules 25-30.135 and 25-30.320, Florida Administrative Code, and that portion of NFMU's tariff which implements those rules.

Rule 25-30.135, Florida Administrative Code, provides that each utility shall adopt and file tariffs in accordance with Commission rule, and that no utility may modify or revise its rules or regulations or its schedules of rates and charges until the utility files and receives approval from the Commission for any such modification or revision.

Rule 25-30.320, Florida Administrative Code, provides that a utility may refuse or discontinue service for nonpayment of bills, provided that the customer has been given written notice and allowed a reasonable time to cure his or her noncompliance.

NFMU's tariff further provides that service may be withheld until the utility has received payment for all past-due bills and reconnection charges from the customer, consistent with Rule 25-30.320, Florida Administrative Code.

#### OPC's Petition for Waiver or Variance

In its Petition for Emergency Variance or Waiver (Petition), OPC notes that there are separate providers of water and wastewater service to Buccaneer, and that the Buccaneer customers have continued to pay their water bills. OPC alleges that if NFMU caps the wastewater lines of the nonpaying wastewater customers with active water service, a serious public health emergency will be created which represents a clear and present danger to the public's health, safety and welfare. OPC further alleges that the customers with active water service and capped wastewater service will suffer immediate adverse effects unless a variance or waiver to Rules 25-30.135 and 25-30.320, Florida Administrative Code, and NFMU's implementing tariff is granted on an expedited, emergency and temporary basis, until the appeal of Order No. PSC-99-2444-AS-SU is finally resolved. OPC maintains that the underlying purpose of Section 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

DOCKET NO. 981781-SU  
DATE: JULY 28, 2000

Commission. OPC states that the public interest will be best served and a public health emergency averted if the Commission temporarily withdraws authority for NFMU to discontinue wastewater service, thereby protecting the public from irreparable health hazards, liability and financial costs associated with discontinuation of service for nonpayment.

NFMU's Answer to OPC's Petition

In its Answer, NFMU alleges that OPC, through its Petition, effectively seeks a stay of Commission Orders Nos. PSC-99-2444-AS-SU and PSC-00-0370-FOF-SU without providing the safeguards to NFMU as set forth in Rule 25-22.061, Florida Administrative Code. NFMU states that prohibiting the utility from disconnecting nonpaying customers, without any protection to NFMU is unprecedented, and would result in irreparable injury to the utility. On the other hand, NFMU notes that the PSC has jurisdiction over NFMU to require it to make refunds to the customers should Order No. PSC-99-2444-AS-SU be reversed on appeal.

NFMU also states that the same public health issues raised by OPC's petition were recently raised in a injunctive lawsuit filed in the Florida Twentieth Circuit Court against NFMU by the owner of Buccaneer Estates mobile home park. After the May 17, 2000 hearing on the motion for temporary injunction to enjoin NFMU from disconnecting water service to Buccaneer's nonpaying customers, the motion was denied, with the judge noting that the customers could avoid the adverse consequences of disconnection by paying the bills owed to NFMU.

Finally, NFMU notes that subsequent to the May 17, 2000 injunction hearing, MHC sent a letter to each resident advising that in order to avoid any health hazard, MHC would disconnect water service to any house to which NFMU has disconnected wastewater service. NFMU reasons that since water service would be disconnected to customers who are disconnected for nonpayment of wastewater service, the customers of NFMU should be spared the enormous expense of digging up wastewater lines in order to disconnect wastewater service. NFMU argues that this could be accomplished with minimal expense to the Buccaneer customers by MHC agreeing to disconnect water in lieu of, and not in addition to, NFMU digging up and disconnecting the sewer line. NFMU therefore requests that the Commission deny OPC's Petition, and as an alternative, require MHC to disconnect water service to those Buccaneer customers who are delinquent with payment of their wastewater bills.



Staff Analysis

OPC alleges that if NFMU caps the wastewater lines of approximately six hundred nonpaying wastewater customers with active water service, a serious public health emergency will be created which represents a clear and present danger to the public's health, safety and welfare.

However, NFMU agreed to suspend disconnection until the parties could attempt mediation of the matter. As discussed previously, the mediation successfully concluded with the parties reaching settlement not only of the disconnection issue, but also of the overall controversy which has continued with respect to NFMU's provision of wastewater service to Buccaneer. The terms of the mediated Agreement, if adopted by the Commission, would resolve to the parties' satisfaction all outstanding issues in this docket, and should remedy the issue of pending nonpayment disconnections.

Because the public health emergency of which OPC bases its petition is no longer a pending risk to the public health, safety and welfare, staff believes OPC's request is moot and need not be ruled upon.

DOCKET NO. 981781-SU  
DATE: JULY 28, 2000

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes. If the Commission approves staff's recommendation in Issues 1 and 2, no further action will be necessary and this docket should be closed. (BRUBAKER)

**STAFF ANALYSIS:** If the Commission approves staff's recommendation in Issues 1 and 2, no further action will be necessary and this docket should be closed.