

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for change in
billing period from monthly to
quarterly in Manatee County by
Floridana Homeowners, Inc.

DOCKET NO. 001292-WS
ORDER NO. PSC-00-2099-TRF-WS
ISSUED: November 6, 2000

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ

ORDER APPROVING PROPOSED TARIFF TO CHANGE BILLING

BY THE COMMISSION:

BACKGROUND

Floridana Homeowners, Inc. (Floridana or utility) is a Class C water and wastewater utility located in Manatee County. The utility has a flat rate structure for both water and wastewater. Floridana's 1999 Annual Report provides that the utility's water system consists of 300 customers, and produced operating revenues of \$41,553 and operating income of \$7,183. The utility's wastewater system consists of 300 customers, and produced operating revenues of \$59,433 and an operating loss of (\$24,845).

On July 10, 2000, we learned by way of a customer complaint that Floridana was not billing its customers pursuant to Rule 25-30.335(1), Florida Administrative Code, which specifies that a utility shall render bills to customers at regular intervals, and that each bill shall indicate: the billing period covered, the applicable rate schedule, beginning and ending meter reading, the amount of the bill, the delinquent date or the date after which the bill becomes past due, and any authorized late charge. The utility was not sending a bill as defined in Rule 25-30.335(1), Florida Administrative Code, to its customers. The utility made use of a monthly newsletter which included a reminder to its customers that, "the first of every month your maintenance fee is due. Delinquent

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after the fifteenth". The maintenance fee included both regulated and unregulated services. We notified Floridana about the utility's noncompliance with our rules on July 17, 2000. The utility subsequently filed appropriate billing format tariffs on August 14, 2000. The tariffs were approved administratively with an effective date of September 1, 2000 and monthly billing began for Floridana customers.

During the process of bringing the utility in compliance with our rules, the utility expressed concerns about the additional cost associated with preparing and sending out monthly bills. The utility also stated on several occasions that customers complained in the past about receiving bills for services for which the customers already paid. According to the utility, a majority of its customers paid their bills up to a year in advance.

On September 1, 2000, we received an application for a requested change of billing period from monthly billing period to a quarterly billing period by Floridana. In its request, the utility cited the same concerns it expressed previously as reasons for the billing period change. We have the authority to consider this tariff filing under Section 367.091, Florida Statutes.

CHANGE IN BILLING PERIOD

The utility stated in its application that the monthly postage for billing is too costly, and the time involved in preparing the bills is too time consuming. It also stated that in the past, a majority of the customers complained about monthly billings because they paid their bills in advance. Some customers paid their bills up to a year in advance. In Order No. PSC-95-0326-FOF-WU, issued March 9, 1995, in Docket No. 950062-WU, we approved a change from monthly to quarterly billing for Gem Estates Utilities, Inc., based on the following findings:

- The administrative cost of sending bills on a monthly basis is overly burdensome for this utility.
- A majority of the utility's customers pay their bills months, or in some cases up to a year in advance.

- The customers consider monthly billings a nuisance since many customers have already paid in advance.

The above findings are the same reasons expressed by Floridana for its request to change to a quarterly billing period.

Floridana's current approved water and wastewater charges are monthly flat rates. In Order No. PSC-99-1070-FOF-WS, issued May 25, 1999, in Docket No. 980214-WS, we approved a billing period change from a quarterly cycle to a monthly cycle for United Water Florida, Inc., having found that:

- The frequency of monthly billing versus quarterly billing gives customers more current price signals in regard to conservation issues. Customers can then use this information to adjust their consumption levels for the following month.
- By receiving the data monthly, customers are better able to adjust their consumption patterns.
- Monthly meter reading and billing creates a more useful water usage history since there are twelve reading periods instead of four. This history can enable a more accurate estimated monthly bill whenever an actual meter reading cannot be obtained.
- Meter readers will have the ability to find customer leaks, spot high water usage, stopped meters, etc. more readily because they will visit customer sites three times as often. This allows for the potential reduction in the number and severity of these kinds of customer problems.
- Monthly billing provides greater and more frequent customer communication with the utility.

Because Floridana is on a flat rate structure and the customer lines are not metered, only the last of these findings applies in this case. Furthermore, the customers of this utility have expressed a preference for a billing period less frequent than once a month. Rule 25-30.335(1), Florida Administrative Code, specifies that a utility shall render bills to customers at regular

intervals. Therefore, use of either billing methodology is consistent with the rule.

In its tariff filing, Floridana proposed new quarterly rates based on three times the current tariffed rates for both water and wastewater. Based on the reasons stated above, we find it appropriate to approve the proposed tariff to change billing periods from a monthly billing period to a quarterly billing period. The tariff shall become effective for service rendered on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice.

SHOW CAUSE

As stated previously, on July 10, 2000, we learned by way of a customer complaint that Floridana was not billing its customers pursuant to Rule 25-30.335(1), Florida Administrative Code. That rule provides that a utility shall render bills to customers at regular intervals, and that each bill shall indicate the billing period covered, the applicable rate schedule, beginning and ending meter reading, the amount of the bill, the delinquent date or the date after which the bill becomes past due, and any authorized late payment charge.

The utility made use of a monthly newsletter which included a reminder to its customers that, "the first of every month your maintenance fee is due. Delinquent after the fifteenth". The maintenance fee included both regulated and unregulated services.

Section 367.161(1), Florida Statutes, authorizes this Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes, or any lawful rule or order of this Commission.

Utilities are charged with the knowledge of our rules and statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, entitled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the utility had not intended to violate the rule, we nevertheless

found it appropriate to order the utility to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Floridana's billing practices appear to have violated the requirements of Rule 25-30.335(1), Florida Administrative Code. However, there are circumstances which appear to mitigate the utility's apparent violation. We notified the utility about its noncompliance with Rule 25-30.335(1), Florida Administrative Code, on July 17, 2000. The utility was cooperative and subsequently filed appropriate billing format tariffs on August 14, 2000. The tariffs were approved administratively with an effective date of September 1, 2000, and the utility began to bill its customers monthly in compliance with Rule 25-30.335(1), Florida Administrative Code.

Floridana's failure to comply with the rule appears to be due to a lack of understanding and knowledge of our rules and regulations. Although the utility is held to know the rules and statutes under which it must operate, when this matter was brought to its attention, Floridana was apparently not aware of the rule's requirements. The primary objective for a show cause order is for the utility to achieve compliance with our statutes, rules and orders. In this instance, upon notification of the utility's apparent violation, the utility took the steps necessary to achieve compliance with Rule 25-30.335(1), Florida Administrative Code.

Under these circumstances, we do not find that the apparent violation of Rule 25-30.335(1), Florida Administrative Code, rises to the level which warrants the initiation of a show cause proceeding. Therefore, we decline to order Floridana to show cause for failing to bill in accordance with the requirements of the rule. However, the utility is hereby placed on notice that it is expected to know and comply with this Commission's rules and regulations.

As discussed above, the tariffs shall become effective on or after the stamped approval date of the tariff sheets, pursuant to

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Rule 25-30.475, Florida Administrative Code. If a protest is filed, Florida shall continue billing in accordance with its existing tariffs pending resolution of the protest, and the docket shall remain open. If no timely protest is filed, this docket shall be closed upon the issuance of a Consummating Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the proposed tariff filed by Florida Homeowners, Inc. to change billing periods from a monthly billing period to a quarterly billing period is hereby approved. It is further

ORDERED that the tariff shall become effective for service rendered on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice. It is further

ORDERED that if a protest is filed, Florida Homeowners, Inc. shall continue billing in accordance with its existing tariffs pending resolution of the protest, and the docket shall remain open. If no timely protest is filed, this docket shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 6th day of November, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: _____

Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

JSB

NOTICE OF FURTHER PROCEEDINGS

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 27, 2000.

In the absence of such a petition, this Order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.