

State of Florida



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-

DATE: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Simmons, Crawford) *KS*
Office of Consumer Assistance and Outreach (Plescow, Hicks) *JSC RH*
Division of Economics (Bethea, Hudson) *TRB SH*
Division of Engineering (Doehling, Graves) *JP* *UM* *JSH*

RE: Docket No. 20190108-WS – Request for initiation of formal proceedings for relief against Utilities, Inc. of Florida regarding over billing and broken meter, by Eugene R. Lopez (Complaint # 1270964W).

AGENDA: 09/05/19 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On February 16, 2018, Eugene Lopez filed informal complaint number 1270964W with the Public Service Commission (Commission) against Utilities, Inc. of Florida (UIF or Utility). In his informal complaint, Mr. Lopez alleged that due to a broken water meter, UIF improperly billed him in January and February of 2018 because his meter was not measuring his water usage. He also alleged he was being backbilled for up to 12 months of usage he may or may not have used.

Staff advised Mr. Lopez on March 20, 2019, that his informal complaint had been reviewed by the Commission's Process Review Team (PRT), in accordance with Rule 25-22.032, Florida

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Administrative Code (F.A.C.), and it appeared that UIF had not violated any applicable statutes, rules, company tariffs, or Commission orders. Staff advised Mr. Lopez that if he disagreed with the complaint conclusion, he could file a petition for initiation of formal proceedings for relief against UIF.

Mr. Lopez filed a formal complaint on April 24, 2019, pursuant to Rule 25-22.036, F.A.C. In the complaint, Mr. Lopez states he has never exceeded 8,000 gallons of water usage in any month; over the past ten or so years, he has never paid more than \$90 for his water usage; over the past several years, he has repeatedly informed UIF that his meter has not been working properly; and UIF claims it has no responsibility for the broken meter. Mr. Lopez claims UIF arbitrarily overcharged him in his January 2018 water bill due to a broken water meter.

On July 11, 2019, staff sent a letter to Mr. Lopez requesting any additional information or documentation that might assist the Commission in addressing his complaint. On July 19, 2019, Mr. Lopez told staff he had already provided all the necessary documentation to address his complaint.

Mr. Lopez seeks for the Commission to find that UIF overbilled him and to require UIF to reimburse him \$188.85, the final disputed amount in the case. This recommendation addresses the appropriate disposition of Mr. Lopez's complaint against UIF. The Commission has jurisdiction over this matter pursuant to Sections 367.011 and 367.081, Florida Statutes.

Discussion of Issues

Issue 1: What is the appropriate disposition of Mr. Lopez's formal complaint?

Recommendation: Staff recommends that Mr. Lopez's formal complaint be denied. Mr. Lopez's account was properly billed in accordance with Florida statutes and rules and UIF's tariffs. UIF did not violate any applicable statute, rule, company tariff, or order of the Commission in the processing of Mr. Lopez's account. (Simmons)

Staff Analysis: Pursuant to Rule 25-22.036(2), F.A.C., a complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order. Mr. Lopez's petition fails to show that UIF's billing of Mr. Lopez violates a statute, rule, or order as required by Rule 25-22.036(2), F.A.C. Therefore, the Commission should deny Mr. Lopez's petition for relief.

On January 9, 2018, UIF sent Mr. Lopez a monthly bill for \$303.79, which represented consumption of 64,480 gallons between December 1, 2017, and January 3, 2018. Because Mr. Lopez was enrolled in Auto Pay, \$250 (the maximum amount) was withdrawn from Mr. Lopez's account. This left a balance of \$53.79. Mr. Lopez contacted UIF stating he did not agree with the January 2018 bill amount and denied the existence of any leaks or additional water consumption at his service address.

On January 29, 2018, at the request of Mr. Lopez, his meter was reread. The meter indicated additional usage of 14,555 gallons since January 3, 2018. On February 1, 2018, a regular meter reading was obtained, which indicated an additional usage of 1,045 gallons since January 29, 2018.¹ Because Mr. Lopez was not satisfied with the meter readings, a field meter test was scheduled for February 8, 2018.

The scheduled field meter test was performed on February 8, 2018. The meter test results reflected zero consumption at flow rates of 15 gallons per minute (GPM), 2GPM, and 0.25GPM. UIF stated that the meter appeared to have stopped working after the February 1, 2018, meter reading.² UIF stated that the non-functioning meter was a benefit to Mr. Lopez because the water consumed between February 1 and February 8 was not billed. UIF also stated Mr. Lopez's meter was a positive displacement meter³ which only slows down over time, it does not speed up (i.e., the meter will not over-record water usage). UIF installed a new meter that same day. UIF sent to Mr. Lopez a monthly bill the same day for \$169.65, including current charges of \$109.46, which represented consumption of 15,600 gallons from January 3, 2018, to February 1, 2018, a \$6.40

¹ On February 6, 2018, Mr. Lopez was sent a final notice to pay the remaining balance of \$53.79 by February 16, 2018, to avoid an interruption in his service. Pursuant to Rule 25-22.032(3), F.A.C., Mr. Lopez became protected from disconnection for nonpayment of the disputed amount when his informal complaint was filed with the Commission on February 16, 2018.

² The meter showed a reading of 1836720, which was the same reading taken on February 1, 2018.

³ A positive displacement meter is a flow meter that directly measures the volume of fluid passing through it. The accuracy of a displacement meter may be impacted by a number of factors, including excessive wear, temperature extremes, corrosion, and suspended solids. These factors may cause the meter to slip or bind, which would result in under-registration.

late payment charge, and a \$53.79 past due balance. Mr. Lopez disagreed that he used 15,600 gallons during the billing period. The \$303.79 from the January bill and \$115 from the February bill (rounding of the \$109.46 and \$6.40) totaled the initial disputed amount of \$418.79.

On February 16, 2018, Mr. Lopez's informal complaint was filed with the Commission. On that same day, staff forwarded the complaint to UIF requesting that the Utility investigate the matter and provide Mr. Lopez and staff with a response to the complaint by March 12, 2018, pursuant to Rule 25-22.032(6)(b), F.A.C.

UIF responded to Mr. Lopez's complaint on March 12, 2018, stating that he was only charged for water usage that registered through the meter and that he was not backbilled for unregistered water. UIF also stated that Mr. Lopez was correctly charged for usage that registered on the meter based on Commission-approved rates. However, UIF provided an adjustment credit of \$79.76 and removed the \$6.40 late fee charge. With the adjustment credit and late fee charge removed, Mr. Lopez had a remaining balance of \$139.51.⁴ UIF offered Mr. Lopez a four-month installment plan to pay the balance.

On April 4, 2018, staff sent a letter to Mr. Lopez stating that staff had reviewed UIF's billing of his account and determined that UIF had not backbilled his account and that the meter readings obtained and bills sent in the past 12 months were based on actual meter readings. The letter also stated that Mr. Lopez should contact staff by April 20, 2018, or the case would be considered resolved. The case was closed on April 27, 2018, due to no further contact from Mr. Lopez. Pursuant to Rule 25-22.032(7), F.A.C., the case was reopened and forwarded to the PRT on May 24, 2018, when Mr. Lopez contacted staff stating he objected to the resolution of his case.

On June 29, 2018, Mr. Lopez provided staff and UIF with a spreadsheet concerning billing from January through June of 2018. In his notes, he stated that the average usage with his new meter was 4,300 gallons per month. He estimated his water usage in January and February of 2018 to be 6,000 gallons each. Based on these amounts, Mr. Lopez stated that the total bill amount from January to June of 2018 should be \$392.91, and the \$250 Auto Pay amount reduced his account balance to \$142.91. UIF received a check from Mr. Lopez for \$142.91 on July 2, 2018.

In response to Mr. Lopez's proposal, UIF offered an additional \$45.97 adjustment credit. When staff contacted Mr. Lopez to discuss the additional adjustment, Mr. Lopez refused to take it, stating he had already paid in full for the past six months of water service. The new amount in dispute was established as \$188.85, which is the June bill, \$331.76, minus the \$142.91 check Mr. Lopez sent UIF. Mr. Lopez has since paid the \$188.85, but seeks reimbursement.

After further investigation, the PRT concluded on March 20, 2019, that it appeared UIF had not violated any applicable statutes, rules, company tariffs, or Commission orders. Mr. Lopez did not agree with staff's finding and filed a formal complaint on April 24, 2019.

⁴ The balance of \$139.51 was determined as follows: \$303.79 (January bill) - \$250 (Auto Pay amount) = \$53.79; \$53.79 + \$109.46 (February bill) + \$6.40 (late fee) = \$169.65; \$169.65 + \$56.02 (March bill) = \$225.67; \$225.67 - \$79.76 (adjustment credit) - \$6.40 = \$139.51.

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Based on the information provided to staff and discussions with both the Utility and Mr. Lopez, there is no evidence that UIF billed Mr. Lopez incorrectly. Mr. Lopez was billed based on actual meter readings and his account was not backbilled. Staff reviewed Mr. Lopez's usage and billing history for the years 2015-2018. While the January 2018 usage is higher than other months, the February 2018 usage is mostly in line with, or lower than, comparable months. As noted by UIF, positive displacement meters tend to under-record, not over-record, usage. Thus, staff recommends that the Commission deny Mr. Lopez's petition as it does not demonstrate that UIF's billing of his account violates any statutes, rules, or orders, or that UIF's calculation of the January and February 2018 bills is unreasonable.

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Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Simmons)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.