

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Frank J. Carofano)	DOCKET NO. 911153-WU
against HYDRATECH UTILITIES in Martin)	
County regarding billing for broken)	ORDER NO. 25577
water line)	
_____)	ISSUED: 1/7/92

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER DISALLOWING OFFSET OF REPAIR BILL
AND DISALLOWING DISCONNECTION OF SERVICE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

Background

In accordance with Rule 25-22.032, Florida Administrative Code, any customer of a utility regulated by this Commission may file a complaint with the Commission's Division of Consumer Affairs whenever the customer has an unresolved dispute with the utility regarding his electric, gas, telephone, water or wastewater service. On October 1, 1991, Mr. Frank Carofano telephoned this Commission with a complaint against Hydratech Utilities (Hydratech or utility) regarding the utility's billing him for damage to one of its water lines.

We investigated the complaint and attempted to resolve the dispute informally. Pursuant to the aforementioned rule, an informal conference was scheduled with the utility for November 15, 1991. Mr. Carofano chose not to attend. The dispute was not resolved at the informal conference. Therefore, we now enter our resolution of Mr. Carofano's complaint.

The Complaint

Mr. Carofano complained of the utility's offsetting prepayments in his service account by a repair bill which the utility claims he is responsible for and of the utility's

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threatened disconnection of service for his failure to pay the debit balance his account now shows.

Mr. Carofano stated that because he spends considerable time away from his residence, he prepays Hydratech for service several months in advance. With the prepayments, Mr. Carofano had a credit balance in his water account of \$93.92 in August. According to Mr. Carofano, the utility repaired a water line on his property after he broke it while installing a mailbox. The utility then billed him \$103.75 for the repairs. Mr. Carofano argues that he does not owe the utility for any repairs because prior to installing the mailbox, he called the utility to ask where the water line was located and was told by the utility to just stay away from the water meter. In addition, Mr. Carofano stated that after receiving the repair invoice he called the utility and was informed by a representative that the utility would take care of it.

On October 9, 1991, Hydratech responded in writing to Mr. Carofano's complaint. The utility stated that it had no record of receiving a phone call from Mr. Carofano either prior to his installation of the mailbox or after he received the repair invoice. The utility stated that the repair invoice was sent March 27, 1991, and when payment was not received by August 5, 1991, it applied the invoice amount to Mr. Carofano's credit balance in his water account. The offset cancelled the credit balance on Mr. Carofano's account, but the utility did not debit the account the remaining \$9.83 difference between the repair invoice and the \$93.92 credit available. As a result of the offset, Mr. Carofano received a \$62.36 water bill in August, which was shown as delinquent. The utility then sent Mr. Carofano a disconnection notice on September 25th.

The utility argues that language in its tariff permits it to offset Mr. Carofano's prepayments by the repair bill. Specifically, the utility cites section 12.0 which states, "In the event of any loss, or damage to property of the Company caused by or arising out of carelessness, neglect or misuse by the customer, the cost of making good such loss or repairing such damage shall be paid by the customer." Because payment of the \$103.75 repair bill was four months overdue, the utility asserts that it was justified in offsetting the credit balance in Mr. Carofano's account. The utility further argues that Rule 25-30.320(2)(g), Florida Administrative Code, allows it to disconnect "for nonpayment of bills or noncompliance with the Utility's rules and regulations..." Hydratech argues that since it has a tariff which requires any customer who causes damage to its property to pay for the damage,

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it can terminate service for Mr. Carofano's failure to pay the repair invoice.

We find that Hydratech acted improperly by offsetting Mr. Carofano's prepayments by the repair bill and do not agree with Hydratech's interpretation of its tariff. Mr. Carofano made prepayments in the good faith belief that such prepayments were designated as payment for service. The utility made improper use of Mr. Carofano's credit. The utility, it seems, initially agreed with our interpretation because the repair invoice was sent separately and was never applied as a debit to Mr. Carofano's account until it became evident four months later that Mr. Carofano would not pay.

We make this judgment notwithstanding the doubt as to whether or not the tariff provision which Hydratech cites applies. Mr. Carofano asserts that he called the utility prior to installing the mailbox and after receiving the repair invoice and was told by the utility the matter would be taken care of. The utility maintains that it has no records of a call from Mr. Carofano. If Mr. Carofano called, it would not appear the utility's tariff would apply since it could not be argued that the damage arose out of "carelessness, neglect, or misuse" by the customer.

However, we do not pass judgment on whether Mr. Carofano owes the repair bill. The repair charges are not established by the Commission, and we cannot determine with certainty whether the customer called the utility. If Hydratech wants to collect on this repair bill they should pursue payment from Mr. Carofano in court or through a collection agency.

Furthermore, we find that Hydratech is prohibited from disconnecting Mr. Carofano's water and wastewater service for his nonpayment of the repair invoice. The repair invoice represents a claim for loss or damage resulting from action by the customer. Repair charges are not set by or regulated by this Commission. For this reason primarily, we think that in this case, regulated utility service cannot be disconnected for nonpayment of the repair invoice.

Utilities billing customers for damage or repair is not unique to the water and wastewater industry. All utilities bill parties who damage their facilities. Even though other utilities have tariffs and rules similar to those cited by Hydratech, we know of no instance where a regulated company disconnected utility service for failure to pay a repair bill. Repair charges are invariably billed by separate invoice, as in this case, and not on the monthly

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bill for service. If the City of Tallahassee cut a Centel cable and did not pay the repair bill, we do not believe Centel would attempt to disconnect the City's phone service for nonpayment of the repair bill. If an electric utility customer ran into one of the utility's power poles with his car and destroyed the pole, we do not think that the electric utility should be able to disconnect the customer's electric service for the customer's failure to pay repairs. The principle with Mr. Carofano's complaint is the same.

It is, therefore

ORDERED by the Florida Public Service Commission that Hydratech Utilities, Inc., is prohibited from applying the service prepayments of the complainant, Mr. Frank Carofano, to the repair bill it claims he owes. It is further

ORDERED that Hydratech Utilities, Inc., is prohibited from disconnecting the utility service of the complainant, Mr. Frank Carofano, for his non-payment of the repair bill it claims he owes. It is further

ORDERED that the provisions of this Order are issued as proposed agency action and shall become final unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that, in the event that no protest is timely received, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 7th
 day of JANUARY, 1992.



STEVE TRIBBLE, Director
 Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 1/28/92.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.