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STATE OF FLORIDA



TIMOTHY DEVLIN, DIRECTOR
DIVISION OF ECONOMIC REGULATION
(850) 413-6900

ORIGINAL

Public Service Commission

July 23, 2001

Gerry Boyce
602 Executive 10th Avenue
Sebring, FL 33875

010828-54

Dear Mr. Boyce:

This letter is in regards to wastewater service provided by Harder Hall-Howard, Inc. (HHH or utility). This case came to the Commission's attention from HHH. The utility communicated to staff that there were several customers connected to HHH's wastewater system without the utility's knowledge. The utility wanted to backbill these customers for the service they received and did not pay for. In some cases this would include connections as early as 1996.

It is our understanding that the home builder originally made the unauthorized connection to the wastewater system. The builder then sold the home to you in 1996. The utility has attempted to bill you for service since 1996 in the amount of \$1,770.23. Of this amount, \$300 is related to service availability charges.

This letter is to make you aware of the Commission's jurisdiction in this matter and of the statutes and rules that apply in this case. The Florida Public Service Commission has exclusive jurisdiction over water and wastewater utilities in the state of Florida pursuant to Section 367.011, Florida Statutes. Specifically, Section 367.011(2), Florida Statutes, states that;

The Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates.

It is our understanding that you are connected to HHH's wastewater system and that HHH was unaware of the connection. HHH has subsequently billed you for the previously unbilled wastewater service. Rule 25-30.335(8), Florida Administrative Code, specifies that;

In the event of unauthorized use of service by a customer, a utility may bill the customer on a reasonable estimate of the service taken. In addition, the utility may assess a fee to defray the cost of restoring service to such a customer provided that the fee is specified in the utility's tariff.

Because it was the builder who initiated the unauthorized connection, the issue is: who bears primary responsibility for paying for the unauthorized service? In other words, should the customer

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have known that they were receiving wastewater service from HHH and at what point in time should they have known? Or should the utility have discovered the unauthorized connections and at what point in time should they have made these discoveries?

Even if the Commission determined that the utility should have been aware of the unauthorized connections, the utility has the authority to bill you for a one year period prior to the discovery. Rule 25-30.350, Florida Administrative Code, specifies that;

A utility may not backbill customers for any period greater than 12 months for any undercharge in billing which is the result of the utility's mistake. The utility shall allow the customer to pay for the unbilled service over the same time period as the time period during which the under billing occurred or some other mutually agreeable time period. The utility shall not recover in a rate making proceeding, any lost revenue which inure to the utility's detriment on account of this provision.

It is clear from our readings of the rules and statutes, that at a minimum, you are responsible for a one year period prior to your notification of service.

Staff has contacted the utility regarding the period not addressed by Rule 25-30.350, Florida Administrative Code. Although Rule 25-30.335(8), Florida Administrative Code, gives the utility the right to pursue the cost of service from unauthorized customers, the utility has decided not to pursue the amounts beyond the one year period outlined in Rule 25-30.350, Florida Administrative Code. The utility believes that it would be too costly to pursue these amounts and staff believes that, unlike the one year period described in Rule 25-30.350, Florida Administrative Code, it is not clear that the utility would prevail in recovering the entire three years of service. However, the utility may still pursue the collection of the \$300 service availability charge. Service availability charges should have been collected for initiation of service. It is unclear at this time who should pay for this charge, the builder or the original home buyer.

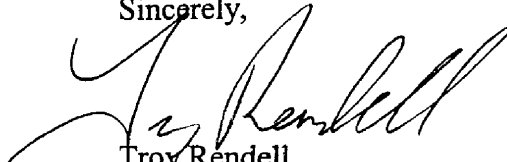
Therefore, pursuant to Rule 25-30.350, Florida Administrative Code, you are responsible for paying for the unbilled service for a one year period prior to notification of such service. The utility shall allow you to pay for the unbilled service over the same time period as the time period during which the under billing occurred or some other mutually agreeable time period.

We have enclosed a copy of an application for wastewater service and a copy of the utility's rate tariffs. Please fill out the application and submit it directly to the utility. You will be responsible for all current and future charges as outlined in the utility's tariffs. The utility has also applied for a Staff Assisted Rate Case (SARC), Docket No. 010828-SU, and the Commission staff will hold a customer meeting on January 10, 2002 in the service area to discuss the proposed rate increase/ decrease. All customers will be notified of the customer meeting as the meeting date approaches.

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Please be aware that the opinions contained in this letter are those of Commission staff and are in no way binding on the Commission. If you have any questions regarding this letter please contact Mr. Ryan Fitch at (850) 413-6928.

Sincerely,



Troy Rendell
Public Utilities Supervisor

TR:rf
Enclosures (3)

cc: Division of Economic Regulation (Fitch)
Division of Legal Services (Gervasi, Harris)
Division of Commission Clerk and Administrative Services (010828-SU)
Division of Consumer Affairs (McKay)