

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint by Mr. Carl) DOCKET NO. 950467-WU
Carpenter Against Ocean City) ORDER NO. PSC-95-1032-FOF-WU
Utilities, Inc., in Flagler) ISSUED: August 21, 1995
County Regarding Service)
Availability Charges)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER ON COMPLAINT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is 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

We granted Beverly Beach Enterprises, Inc., d/b/a Beverly Beach Surfside Utilities (Beverly Beach Surfside), an original certificate to provide water and wastewater service on December 26, 1985, by Order No. 15504 in Docket No. 840393-WS. Beverly Beach Surfside began providing service in 1985 as a certificated utility to a mobile home park with over 100 mobile homes and a recreational vehicle park with approximately 125 sites.

We granted Ocean City Utilities, Inc. (utility or Ocean City) Certificate No. 509-W on December 9, 1988, in Docket No. 880390-WS by Order No. 20440. On February 1, 1991, we approved the transfer of Beverly Beach Surfside to Ocean City in Order No. 24050 in Docket No. 900665-WS. On March 1, 1991, we amended Ocean City's service territory by Order No. 24182 in Docket No. 900215-WU. In Order No. PSC-94-0244-FOF-WS, issued March 4, 1994, in Docket No. 920736-WS, we established Ocean City's existing service availability charges, using the test period ended May 31, 1993.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

The water treatment plant and distribution system had capacity for 73 additional connections as of May 31, 1993.

On March 23, 1995, the Division of Consumer Affairs received a telephone complaint from Mr. Carl Carpenter (complainant) regarding the proper service availability charges for his recently purchased property at 2481 North Oceanshore Boulevard in Beverly Beach. Mr. Carpenter's property was formerly called the Blue Atlantic Motel and is currently located in the water service area of Ocean City in the southern part of Beverly Beach. In this order we refer to the 2481 North Oceanshore Boulevard property as the Blue Atlantic Motel. Mr. Carpenter complained that to require a service availability charge for water service to the Blue Atlantic Motel would be unjust since there is a meter installed on the property. He contended that the meter installation proves that some utility had provided prior water service and therefore that the motel had paid its fair share of service availability charges at sometime in the past.

A Division of Consumer Affairs complaint analyst explained to Mr. Carpenter the Commission's complaint handling process pursuant to Rule 25-22.032, Florida Administrative Code, and referred Mr. Carpenter to the Division of Water and Wastewater for additional technical assistance. The complaint analyst immediately contacted the utility and requested a detailed report addressing Mr. Carpenter's concerns. On March 28, 1995, the utility properly responded to Consumer Affairs' request and, in sufficient detail, explained that the service availability charges to the Blue Atlantic Motel had been determined on the basis of the utility's tariff.

In accordance with Rule 25-22.032(2), Florida Administrative Code, a staff engineer with the Division of Water and Wastewater investigated the complaint. The staff engineer determined that Ocean City appeared never to have served the Blue Atlantic Motel. He also concluded that the utility acquired by Ocean City, Beverly Beach Surfside, appeared never to have provided water service to the Blue Atlantic Motel. In accordance with Rule 25-22.032(3), Florida Administrative Code, the staff engineer then advised Mr. Carpenter of staff's proposed resolution to the complaint based on his findings and that the approved service availability charges must be paid to the utility for water service to be rendered. He further advised Mr. Carpenter that if the utility or any utility purchased by Ocean City were proven to have served the Blue Atlantic Motel at any time, then a full refund, with interest, would be recommended. The staff engineer informed Mr. Carpenter of his option to object to the proposed resolution, pursuant to Rule 25-22.032(4), Florida Administrative Code.

On March 31, 1995, a regulatory analyst with the Division of Water and Wastewater informed Mr. Carpenter of the approved service availability charges stated in the utility's tariff for water service to the Blue Atlantic Motel. The analyst reiterated the staff engineer's advice that if the utility or any utility purchased by Ocean City were proven to have served Mr. Carpenter's property at any time, then a full refund, with interest, would be recommended.

On April 18, 1995, the staff engineer contacted Mr. Carpenter, at the complainant's request, and after further discussing the proposed resolution without reaching agreement, once again informed him of his option to protest the proposed resolution, pursuant to Rule 25-22.032(4), Florida Administrative Code. On that date, the Division of Consumer Affairs closed Mr. Carpenter's complaint, upon the staff engineer's advice that no further action would be required unless the Commission received from Mr. Carpenter a written objection to the proposed resolution.

On April 20, 1995, the Division of Water and Wastewater, after further, extensive telephone conversations with Mr. Carpenter, elected to open this docket, Docket No. 950467-WS, to continue to investigate Mr. Carpenter's complaint. Only the appropriate service availability charge for water service was to be addressed, since there was no question that wastewater service had ever been provided to the Blue Atlantic Motel.

On May 22, 1995, two other staff engineers with the Division of Water and Wastewater conducted a field audit concerning Mr. Carpenter's complaint. They interviewed Mr. John Van Bruen, owner of Picnicker's Campground, which was located in the extreme southern area of the town of Beverly Beach, very near the Blue Atlantic Motel, during the 1970's. In addition, they interviewed the utility and Mr. Carpenter, and inspected the records of the town of Beverly Beach.

On June 29, 1995, our staff received from Mr. Carpenter a copy of a letter, dated June 25, 1995, in which he requested water service for the Blue Atlantic Motel from Ocean City. In the letter, Mr. Carpenter stated that he was willing to pay a \$1,000 deposit for water to be hooked up immediately.

On July 14, 1995, Ocean City began providing water service to the Blue Atlantic Motel property in accordance with the utility's tariff. Mr. Carpenter requested initiation of service in accordance with Rule 25-30.310(1), Florida Administrative Code, and on July 6, 1995, paid in full a service availability charge of \$2,009 for water service to that property. Mr. Carpenter appeared

at our Agenda Conference on August 1, 1995, to present his complaint. In this order, we address the appropriate service availability charges for water service to Mr. Carpenter's properties at 2481 (the Blue Atlantic Motel) and 2489 North Oceanshore Boulevard in Beverly Beach.

THE BLUE ATLANTIC MOTEL

As discussed in the background, on March 23, 1995, the Division of Consumer Affairs received a telephone complaint from Mr. Carl Carpenter regarding the proper service availability charges for his property at 2481 North Oceanshore Boulevard, Beverly Beach, the Blue Atlantic Motel, which is in the water service area of Ocean City. Mr. Carpenter complained that to impose a service availability charge for water service to the Blue Atlantic Motel would be unjust since there was a meter installed on the property at the time of his recent purchase. He contended that the meter installation sufficiently proved that some utility had provided prior water service to the property and therefore that the motel paid its fair share of service availability charges at sometime in the past.

The investigation shows that the Blue Atlantic Motel was provided water service at some prior time. On review of the records of the clerk's office in the town of Beverly Beach, our staff learned that a water distribution system was installed by the town of Beverly Beach, which purchased its water from Mr. Bruce Bossie, d/b/a 1414 Corporation. The meters were purchased by the town, read by the town, and the town received the revenue. The town began providing water service to its customers sometime between August 13, 1974 and October 8, 1974. The minutes of the October 8, 1974, town meeting state:

[T]he town's meters were read by Mayor Leatherwood October 4, 1974 ... Check given to Mr. Bruce Bossie for Corp. 1414 ... Paying for water that has been used up until October 4, 1974, also sending two small meters back and one large one to Kent Meter Company ... All meters have been paid for....

In the interview with Mr. Van Bruen on May 22, 1995, Mr. Van Bruen confirmed that the town of Beverly Beach owned the water lines, read his meter, charged for the water, and that he paid the town for service. Mr. Van Bruen recalled with certainty that the source of the water to the town was Mr. Bossie's treatment plant. Mr. Bossie, to aid the development of the area, sold water service to the town of Beverly Beach to be in turn sold to town residents.

Mr. Van Bruen stated that his parents (Picnicker's Campground) and several other businesses in the area were provided water from the town of Beverly Beach in the middle to late 1970's. Mr. Van Bruen believed Mr. Bossie stopped selling water to the town in the late 1970's when the town began selling water to a competitor of his campground. After this, the town of Beverly Beach abandoned the distribution system completely.

Ocean City advised our staff that when it extended its main to serve this new southern area of Beverly Beach, one of the new customers was Picnicker's Campground, in the same service area as Mr. Carpenter's property. At the campground's suggestion, the utility tied into a still serviceable section of three inch main that had been laid by the town of Beverly Beach. This avoided the need to make two street crossings. The two meters that had once served the Blue Atlantic Motel were then disconnected from the main and capped. The utility pointed out that, while this tie-in saved only a few hundred feet of four-inch main, the savings on the street crossings were passed on to its customers, and would be passed on to Mr. Carpenter, as well.

On the basis of our investigation, we find that the Blue Atlantic Motel received water from the town of Beverly Beach, that the town of Beverly Beach bought water from Mr. Bossie, and that the town charged a fee, frequently referred to in the town council transcripts as "buying a meter," but amounting to a total connection charge, of approximately \$330. The town of Beverly Beach received this charge. Further, we find that at the time we certificated Beverly Beach Surfside, the Blue Atlantic Motel had several years earlier ceased business and the connection was then inactive, and that this was still the situation in 1991, when Ocean City acquired Beverly Beach Surfside. Thus, we find that Mr. Carpenter is an applicant for extension of service and obligated to pay to the utility an appropriate service availability charge. Finally, we find that the town of Beverly Beach, upon abandoning the mains and distribution lines, did not abridge any service obligations, current or future. The town of Beverly Beach completely abandoned the lines, giving full responsibility for them to those individuals who would use them.

We find that the total of the correct service availability charges and customer deposit for the Blue Atlantic Motel is \$1,468.31. This amount is based on an estimated usage of 465 gallons per day (GPD), or 1.33 equivalent residential connections (ERCs). If at some time in the future, the actual usage increases, as with additional facilities or structures being placed on the property, the utility may require additional service availability

charges in accordance with its tariff. The total charge consists of the following charges:

Plant Capacity Charge:	\$ 266.00
Main Extension Charge:	\$ 807.31
Meter Installation Fee (1" meter):	\$ 240.00
Initial Connection Fee:	\$ 15.00
Deposit (Two times average monthly billing):	\$ 140.00
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Total Charge:	\$1,468.31

On July 14, 1995, Ocean City began providing water service to the Blue Atlantic Motel in accordance with its tariff. Mr. Carpenter paid \$2,009 for that service on July 6, 1995. Therefore, we find it appropriate to order Ocean City to refund to Mr. Carpenter the amount of \$540.69 within 30 days of the effective date of this order. The total charges of \$2,009 were determined on the basis of 815 GPD, a usage consistent with our understanding of Mr. Carpenter's use of the property at the time of his request for water service. We find further that, pursuant to Rule 25-30.310(2), Florida Administrative Code, the utility initiated the service without unreasonable delay.

2489 NORTH OCEANSHORE BOULEVARD

As with the Blue Atlantic Motel property at 2481 North Oceanshore Boulevard, Mr. Carpenter similarly complained that to impose a service availability charge for water service to his property at 2489 North Oceanshore Boulevard would be unjust since there was a meter previously installed on that property as well. Again, he contended that that sufficiently proved some utility provided prior water service and therefore that an earlier owner paid his fair share of service availability charges.

On the same basis as above, we find that the property at 2489 North Oceanshore Boulevard also received water at one time from the town of Beverly Beach. Further, we find that at the time we certificated Beverly Beach Surfside, water service to this property had been discontinued upon the town's abandonment of the distribution system, and had not been reactivated. This, too, was still the situation in 1991, when Ocean City acquired Beverly Beach Surfside. Mr. Carpenter informed our staff that this property was receiving water service seven months ago, when he purchased it, but that the utility terminated the service upon discovering that situation. We find that the utility appropriately terminated the water service and removed the meter, pursuant to Rule 25-30.320(j), Florida Administrative Code, having determined the use to be unauthorized. Thus, we find that Mr. Carpenter is also an

applicant for extension of service to the property at 2489 North Oceanshore Boulevard and obligated to pay to the utility an appropriate service availability charge.

We find that the total of service availability charges and customer deposit for Mr. Carpenter's property at 2489 North Oceanshore Boulevard is \$1,007. This amount is based on an estimated usage of 350 gpd or 1 ERC, and consists of the following charges:

Plant Capacity Charge:	\$ 200.00
Main Extension Charge:	\$ 607.00
Meter Installation Fee (5/8" meter):	\$ 110.00
Initial Connection Fee:	\$ 15.00
Deposit (Two times average monthly billing):	\$ 75.00
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Total Charge:	\$1,007.00

On July 12, 1995, at the request of Mr. Carpenter, the utility returned the meter that had been removed from the property at 2489 North Oceanshore Boulevard. However, Mr. Carpenter refused to accept the meter, claiming it was not the meter removed from that property. The utility explained that the meter offered to Mr. Carpenter was a Kent meter and the only one of the kind it had in storage. Based on the utility's representations, and our understanding that the utility currently does not use Kent meters, we believe that the meter offered to Mr. Carpenter was very likely the one the utility removed from the property at 2489 North Oceanshore Boulevard. Although we note this incident, we find that it is unrelated to the disposition of Mr. Carpenter's complaint concerning the appropriateness of imposing service availability charges for water service to this property.

Therefore, we find it appropriate that, upon application for initiation of service in accordance with Rule 25-30.310(1), Florida Administrative Code, and payment in full of the charges enumerated above, Ocean City shall provide water service without unreasonable delay and in accordance with its tariffs to Mr. Carpenter's property at 2489 North Oceanshore Boulevard in Beverly Beach.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the complaint of Mr. Carl Carpenter is denied as discussed in the body of this Order. It is further

ORDERED that the correct service availability charges and customer deposit for water service being provided by Ocean City

ORDER NO. PSC-95-1032-FOF-WU
DOCKET NO. 950467-WU
PAGE 8

Utilities, Inc., to the property at 2481 North Oceanshore Boulevard, Beverly Beach, owned by Mr. Carl Carpenter, are as set forth in the body of this Order on the basis of the utility's tariffs. It is further

ORDERED that Ocean City Utilities, Inc., shall refund to Mr. Carl Carpenter within 30 days of this Order's becoming effective that portion of the service availability charges for water service to the property at 2481 North Oceanshore Boulevard, Beverly Beach, that has been paid and that has been set forth in the body of this order as refundable. It is further

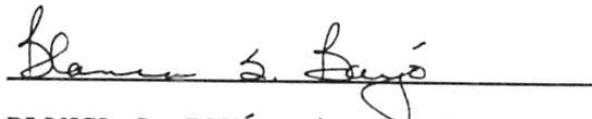
ORDERED that upon proper application and payment of the service availability charges and customer deposit as set forth in the body of this Order, Ocean City Utilities, Inc., shall provide water service according to its approved tariffs without unreasonable delay to the property at 2489 North Oceanshore Boulevard, Beverly Beach, owned by Mr. Carl Carpenter. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the 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 this Order becomes final, this Docket should be closed.

By ORDER of the Florida Public Service Commission, this 21st day of August, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)
CJP

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 11, 1995.

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 substantially 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.