

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of MR. CESARE JOGAN)	DOCKET NO. 890525-WU
against ALOHA UTILITIES, INC. regarding)	ORDER NO. 21318
water bill.)	ISSUED: 6-2-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, CHAIRMAN
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTIONORDER REGARDING CUSTOMER COMPLAINT

BY THE COMMISSION:

Mr. Cesare Jogan filed a complaint on October 11, 1988, against Aloha Utilities, Inc. (Aloha) pursuant to Rule 25-22.032, Florida Administrative Code. In accordance with the rule, an informal conference was held on April 7, 1989, in the City of New Port Richey. Mr. Jogan, Aloha, and appointed Commission staff members were present. As no agreement between the parties was reached, the matter was set for the May 16, 1989, Agenda Conference. This order reflects the resolution of the customer complaint, which was presented to the Commission at agenda.

Mr. Jogan alleged that his June 1987 water bill of \$273.85 for 125,200 gallons was too high. Aloha conducted a field test of the meter and the City of New Port Richey conducted a bench test of the meter. Both tests indicated that the meter was 100% accurate. Commission staff reviewed the bill based on 125,200 gallons and concluded that the bill amount was correct. Mr. Jogan states that he could not possibly have consumed the quantity of water that registered on the meter. Aloha alleges that a tenant of Mr. Jogan informed it of a large water leak in the house. Based upon our review of the information, we do not believe that the meter has been shown to be inaccurate. Accordingly, Mr. Jogan is not relieved of paying his bill of \$273.85.

Aloha disconnected Mr. Jogan's service on September 2, 1987, for failure to pay his June bill. Aloha seeks to require Mr. Jogan to pay base facility charges that have accrued from the date of disconnection, as a condition precedent to the restoration of his service. A utility can only charge those rates and charges set forth in its tariff. Aloha's tariff does not contain language which clearly provides for the payment of base facility charges that have accrued from the time a customer's service is disconnected as a condition precedent to the restoration of service. Thus, we find that Mr. Jogan cannot be required to pay such charges.

DOCUMENT NUMBER-DATE:
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 FILE-RECORDS/REPORTING:

ORDER NO. 21318
DOCKET NO. 890525-WU
PAGE 2

Aside from the absence of clear language in this utility's tariff providing for a base facility charge when service is temporarily disconnected, we are hesitant to make a customer whose service was cut off involuntarily, pay charges during a period that services were not received.

Aloha seeks to bill Mr. Jogan for amounts dating back to July of 1987. Aloha removed Mr. Jogan's meter, which was located on the side of his house, on July 29, 1987, to have a bench test performed by the City of New Port Richey. At this time, 45,055 gallons had registered on the meter, in addition to the 125,200 gallon reading that precipitated this customer complaint. After the meter was removed to be bench tested, Mr. Jogan constructed an addition to the house that enclosed the meter. Aloha claims that it would normally have billed Mr. Jogan for the 45,055 gallons when the meter was restored, but it was denied access to the meter. Our review indicates that Aloha had all the information it needed to bill for the 45,055 gallons, since it had possession of the meter, but apparently failed to bill Mr. Jogan. Rule 25-30.350(1), Florida Administrative Code, prohibits a utility from backbilling customers for any charges accrued more than twelve months prior to being billed, where such undercharge in billing is the result of the utility. Since the consumption of the 45,055 gallons occurred in July of 1987, more than twelve months prior to this complaint proceeding, and Aloha neglected to bill Mr. Jogan, we find that Aloha cannot backbill Mr. Jogan for such consumption.

Aloha also seeks to charge Mr. Jogan for the cost of relocating the meter to an accessible location. The water distribution lines servicing Mr. Jogan was placed behind his house. The meter was located on Mr. Jogan's house. The lines were deeded by the developer to Aloha in 1970, before Pasco County granted this Commission jurisdiction. Rule 25-30.260(1), Florida Administrative Code, states that "Generally, each utility shall locate meters at or near the customer's curb or property line. When it is impractical . . . the utility may locate a meter in any other reasonably convenient or accessible place . . .". Given that the distribution line was not improperly located, it would certainly have been impractical to locate the meter at Mr. Jogan's curb. The house was a reasonably accessible place, until Mr. Jogan enclosed the meter within his house by way of a home improvement. Therefore, we find it appropriate for the cost of relocating the meter to be borne by Mr. Jogan.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Mr. Cesare Jogan is denied relief from paying Aloha Utilities, Inc. \$273.85 for his June 1987 water bill. It is further

ORDERED that Aloha Utilities, Inc. shall not charge Mr. Cesare Jogan base facility charges that have accrued since his service was disconnected, as a condition precedent to the restoration of his service. It is further

ORDERED that Aloha Utilities, Inc. shall not backbill Mr. Cesare Jogan for the consumption of 45,055 gallons of water, as discussed in the body of this Order. It is further

ORDER NO. 21318
DOCKET NO. 890525-WU
PAGE 3

ORDERED that Aloha Utilities, Inc. be permitted to charge Mr. Cesare Jogan for the cost of relocating his meter to an accessible location. 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 25-22.36, 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 the close of business on June 26, 1989.

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 2nd day of June, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

by Kay Flynn
Chief, Bureau of Records

(S E A L)

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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 June 26, 1989. In the absence of such a petition, this order shall become effective June 27, 1989 as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent 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.

ORDER NO. 21318
DOCKET NO. 890525-WU
PAGE 4

If this order becomes final and effective on June 27, 1989, 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 sewer 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.