BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of William P. Recklaw Regarding Back Billing Against GULF UTILITY COMPANY in Lee County.	) DOCKET NO. 930168-WU) ORDER NO. PSC-93-1173-FOF-WU) ISSUED: August 10, 1993

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION ORDER
RESOLVING CUSTOMER 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 adversely affected files a petition for a formal proceeding, pursuant to rule 25-22.029, Florida Administrative Code.

On February 16, 1993, William P. Recklaw (customer) filed a formal complaint against Gulf Utility Company (Gulf or utility) for improper billing practices related to special service availability charges. Gulf is a Class A water utility providing service in Lee County.

The customer alleged that, on September 1, 1992, his wife, Jill Recklaw, executed two Utility Service Agreements (Agreements), in the belief that they represented all charges and service availability fees. Mr. Recklaw asserts that prior to executing these service agreements his wife contacted the utility three times to verify the charges for connecting water service and installing meters to his duplex and was quoted the same connection charges each time she called. The duplex is located at 17395 and 17397 West Carnegie Circle in Fort Myers and, prior to connection to Gulf's water service, it had its own well and purifier systems for water.

Each of the Agreements listed separate installation charges totaling $1692.67, for a combined amount of $3,385.34 which she paid at the time the agreements were executed. By telephone, on September 25, 1992, one day after the meters were installed, a utility representative notified Mr. Recklaw that the utility had failed to include a charge of $1,267.31. He was told that this charge represented his pro-rata share of the main extension line in accordance with a developer agreement between the utility and Ramco Construction and Development, Inc.(developer). The utility later confirmed this by letter dated September 28, 1992, and included an invoice for $1,267.31 and a copy of its Refundable Advance Agreement with the developer.

On March 8, 1993, Gulf Utility Company responded to the complaint and advised that it had in fact neglected to include in the Agreements an associated pro-rata charge for water line construction in the amount of $1,267.31. This amount is related to a Refundable Advance Agreement which the utility and the developer, Ramco Construction & Development, Inc. represented by Roy Menard (Developer), entered into July 20, 1987. Said Refundable Advance Agreement has a termination period of seven years ending June 1994.

In this instance the Refundable Advance Agreement provided for a main extension line which could service 9 lots, 5 owned by the developer and 4 privately owned. The total cost of the facilities was $11,405.83; the pro-rata share was $1,267.31 per lot. The utility maintained if Mr. Recklaw did not pay this charge it would be discriminatory to another private lot owner who had connected, was charged the pro-rata share and had paid the charges. Also, the utility states, although it failed to include these charges in the Utility Service Agreements signed by Mrs. Recklaw, it maintains a separate book in which it registers these Refundable Advance Agreements and the pro-rata charges relative to each one. Moreover, the utility submits that, relying upon advice of our staff that its tariff and that Rule 25-30.320 provided for discontinuance of service for non-payment of charges by the customer, it paid the Developer the pro-rata share of $1,267.31.

We first became apprised of a problem when the Developer filed a complaint in December 1992, stating that he had not received the rebate for Mr. Recklaw's service connection in accordance with his Refundable Advance Agreement. Based on the information then available, we advised the utility, on January 5, 1993, to pay the Developer and collect the charges from the customer. Consequently,

the utility settled the Ramco Construction & Development, Inc., complaint on January 8, 1993.

The utility asserted that it made repeated unsuccessful attempts to collect the $1,267.31 from Mr. Recklaw both prior to and after paying the Developer. In fact, it contends that he at first agreed to pay the charges by January 1993. Finally, after being notified that Gulf intended to disconnect service on February 1, 1993, the customer faxed the utility a letter, on January 28, 1993, stating that he would not pay the charges. In this letter Mr. Recklaw argued that because he had not been apprised of the Refundable Advance Agreement he did not have the opportunity to see that it terminated June 1994, and, therefore, could not avail himself of the opportunity to wait until there would be no additional costs to him to connect to the utility's service. He maintained also that since he was not initially quoted or charged the special availability charges on the original contracts, once they were completed the utility should not be able to backbill additional fees. Further, he claimed that as a result of the connection, he had abandoned a well and water purifiers which had been in existence since the duplex was built. These were now no longer functional because he had installed a driveway over the area. Mr. Recklaw contended that if the utility discontinued his water service, and he was without water service through no fault of his own, that the utility would be obliged to drill him a new well at the utility's expense.

Later, however, Mr. Recklaw contacted the utility on February 1, 1993, and offered to pay half of the disputed amount if Gulf would waive the remainder of the charge. Gulf rejected this offer but informed the customer that it would be willing to allow the customer to pay the disputed amount in installment payments beginning February 15, 1993.

Section 367.091(2), Florida Statutes, requires that a utility's rates, charges and customer service policies be contained in a tariff approved by and on file with the Commission. We recognize, however, that developer agreements are not customarily listed in the tariff due to the extraordinary number and variety of special service availability charges that may be in place. This makes the customer totally reliant upon the utility for information and the utility has a responsibility to fully disclose such charges. By not providing Mr. Recklaw the necessary information, the utility undermined his ability to make a considered decision, particularly since he was not dependent upon the connection for

water (having his own well and water purifiers). It is reasonable to assume that any additional costs would have factored into his decision to connect to the utility service. This is especially pertinent when we consider that in another year the developer agreement terminated and Mr. Recklaw would then not be assessed any special service availability charges.

Gulf's tariff addresses requirements of Signed Applications. Paragraph 3.0 states that "[t]he conditions of such application or agreement is binding upon the customer as well as upon the Company." We acknowledge that the utility has stated that it acted upon our Staff's advice when it backbilled the customer, however, upon review of the facts, we recognize that at the time the mistake was discovered fully executed contracts were in place. Only after all parties had completed performance did the utility notify the customer of its error. Since no additional services were requested by the customer nor were any performed by the utility, we find that these contracts were not subject to modification after installation and connection of the meters.

It is appropriate for a utility to rectify mistakes made in the ordinary course of business whether the advantage is to the utility or the customer. Our rules provide for a utility to backbill and collect for simple errors made in billing for service. However, this complaint presents several complicating factors, such as: 1) the utility had multiple opportunities to find its error prior to the signing of the Utility Agreements; 2) the utility failed to disclose charges not available for review in its tariff; 3) the customer relied upon the charges quoted to him in making his decision to give up his own operational well and water purifier systems; 4) the customer paid substantial sums in other service availability charges and connection fees; 5) the error was not discovered until both parties had performed under the agreements; and 6) the utility had paid the Developer the pro-rata charges. Therefore, this was not simply a billing error.

In fairness, we recognize that this is a responsible utility who attempted to correct a mistake with our Staff's advice. This mistake in billing initial charges has cost the utility the sum of $1,267.31 paid to the Developer. However, the error was made by the utility.

For all of the reasons discussed above we find that Mr. Recklaw is not required to pay the special service availability charge of $1,267.31 to the utility. Moreover, we find that a

decision in favor of Mr. Recklaw is not discriminatory to the customer who previously connected to this extension line. That customer had connected at an earlier date, and at the time was fully apprised of all the charges. Furnished with that information, the customer chose to connect. Such is not the case with Mr. Recklaw. A decision in favor of Mr. Recklaw is also not discriminatory to any future customer who chooses to connect before June 1994, if he or she is apprised of the special service availability charges.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Mr. Recklaw need not pay the backbilled special service availability charge in the sum of $1,267.41 to Gulf Utility, Inc. 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 filed, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 10th day of August, 1993.

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 August 31, 1993.

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.