

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint by Dr. Wil ) DOCKET NO. 960537-WU  
Gross against Southern States ) ORDER NO. PSC-96-1467-FOF-WU  
Utilities, Inc. in Collier ) ISSUED: December 3, 1996  
County regarding high water )  
usage registered at meter )  

---

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 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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Dr. Wil Gross (Dr. Gross or customer), receives water service from Southern States Utilities, Inc., (SSU or utility) at its Marco Island facility. This docket was initiated following Dr. Gross's testimony at a service hearing held during SSU's recent rate proceeding in Docket No. 950495-WS. Dr. Gross was billed \$941.81 for consumption of 311,000 gallons for the November 3 through December 4, 1995 billing period. Dr. Gross asserted that the bill was excessive when compared to historical consumption at his residence.

By letter dated June 26, 1996, our staff proposed an informal settlement of the disputed bill by splitting the bill in half between the utility and the customer. The utility responded by letter dated July 12, 1996, that it disagreed with the proposed resolution and requested an informal conference. Our staff conducted an informal telephone conference on September 26, 1996. Staff and the parties discussed the issues relating to the dispute, but were unable to reach a satisfactory settlement. The customer and the utility submitted supplemental information after the conference, the latest of which was received on October 10, 1996.

DOCUMENT NUMBER-DATE

12863 DEC-3

FPSC-RECORDS/REPORTING

Monthly water consumption for Dr. Gross' residence is relatively stable, ranging from the mid-20s to the low 30s (in thousand gallons). Average consumption since January, 1994, through September, 1996 has been 27,400 gallons per month, when the 311,000 gallon bill is removed. For the two months immediately prior to the large bill, consumption was 3,200 and 4,400 gallons respectively. Both months were abnormally low consumption, and these months were included in the average. These low consumption months were not investigated by the utility after the readings were taken.

The meter at Dr. Gross's residence was tested pursuant to Rule 25-30.266, Florida Administrative Code. The meter test conducted by the City of Naples on January 24, 1996, showed the meter to be registering 103 percent at medium flows, slightly above the test standard of 101.5 to 102 percent, depending upon the type of meter. However, this small registration error would not provide sufficient explanation for the 311,500 gallon consumption.

The meter was next examined by the manufacturer, Precision Meters (Precision), resulting in a report prepared by the firm on February 28, 1996. Testing by Precision showed no registration at any rate of flow, indicating a bind in the register. Disassembly of the register showed that magnet shield had become dislodged, and binding the register gears. It was the opinion of Precision that depending upon the position that the loose magnet shield assumed during the test by the City of Naples, the meter could have operated properly and accurately. After examining the meter thoroughly, Precision concluded that the roller counter in the register did not prematurely increment by skipping or jumping. The meter could not have created this large amount of consumption without water or air passing through the meter.

The findings of the test performed by the City of Naples and the examination of the meter by Precision appear conclusive that the meter was not defective. There is still no plausible explanation for such a large bill. During the informal conference the customer stated that there was no plumbing malfunction in the house, and that the house was vacant for two weeks during the billing period in question. No plumbing problems were observed. Furthermore, the pool was maintained weekly by a pool serviceman. During the weekly pool visits, no water was added to the pool due to above average rainfall, and no sprinkler or other leak was observed. Dr. Gross further explained that if the irrigation system had used that amount of water, there would be evidence of erosion, and none was found. Dr. Gross provided written statements from the pet sitter and pool serviceman after the conference.

Dr. Gross has an ozonator which treats all water entering the household plumbing, including the water used to fill the pool. The ozonator operates electrically and is activated when a water tap is opened inside the home. Staff reviewed Dr. Gross' kilowatt hour (KWH) consumption from October, 1994 through September, 1996 and found the average usage to be 2,546 KWH. For the month of November, 1995, the usage was 2,443 KWH. It does not appear that the ozonator was running excessively, because, when correlated to the water meter reading, the electric consumption would have been higher. The disputed bill is about 280,000 gallons higher than average. At 50 gpm maximum flow rate for a 1 inch meter, it would take 93 hours of continuous flow to equal 280,000 gallons. The ozonator would be operating for this period.

SSU contended that it is the customer's burden to prove the meter did not measure accurately, and it is not the utility's burden to prove the disputed level of consumption occurred. SSU asserted that no metering problem occurred. During the informal conference, SSU stated it was willing to discuss a settlement with Dr. Gross, although a 50 percent split of the bill was not acceptable. Our staff requested that the utility make a counter proposal to settle the dispute, however, none was made during the conference, nor was one proposed in the documentation filed by the utility after the conference. Nevertheless, the utility stated in its post-conference filing that it was willing to compromise.

According to subsections (1) and (2) of Rule 25-30.340, Florida Administrative Code, any adjustments to a customer's bill must be based on the average error discovered by bench testing. A refund shall be made to a customer if a meter has tested fast. As noted above, a bench test of the meter was performed pursuant to Rule 25-30.266, Florida Administrative Code with the meter meeting flow requirements at low and high flows, and registering 0.5 percent fast at intermediate flows. The findings of the test performed by the City of Naples and the examination of the meter by Precision appear conclusive that the meter was not defective.

After reviewing all of the information related to this matter, we conclude that there is no plausible explanation for the amount of consumption and resulting bill. SSU contended that it is not the utility's burden to prove that the water was used, and that the meter has tested as accurate. Dr. Gross contended that his residence could not have consumed the gallonage for that month. This situation differs from other instances where a utility customer has disputed his or her billed consumption, both in terms of the amount of consumption in dispute, and the fact that despite extensive investigation, the excessive consumption has not been explained.

Relying upon the results of the meter test, we could conclude that Dr. Gross should be liable for the entire bill, less a 0.5 percent adjustment for intermediate flow measurement. However, there are several factors which lead us to a different conclusion. The bench test by the City of Naples showed the meter ran on average within accuracy limits, although it did run fast for intermediate flows. Precision reported a bind in the register. It was not believed this would cause the meter to prematurely increment. However, there were two months of abnormally low usage immediately preceding the high usage month. These months were not flagged nor investigated by the utility. Moreover, since the installation of a new meter, Dr. Gross's usage matches his historical patterns.

Given these considerations, and the singular circumstances of this case, we conclude that as an appropriate resolution, Dr. Gross shall pay half of the disputed bill. By dividing the disputed consumption in half, and adding the monthly base facility charge of \$19.71, Dr. Gross shall remit \$480.76 to SSU to resolve the disputed charges from November 3, 1995 to December 4, 1995. The customer shall render payment within SSU's standard time period for payment of bills. The utility shall note on its records that during November, 1995, there was an additional 155,000 gallons of unaccounted for water.

We conclude that, upon review of the information provided and arguments advanced by the customer and utility, that this is a fair resolution to the dispute. Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the complaint of Dr. Wil Gross regarding a high meter reading relating to service provided by Southern States Utilities, Inc., is hereby resolved as set forth in the body of this order. It is further

ORDERED that Dr. Gross shall pay the amount of \$480.76, in order to resolve the disputed charges from November 3, 1995 to December 4, 1995. It is further

ORDERED that Southern States Utilities, Inc., shall indicate in the appropriate records that during November, 1995, there was an additional 155,000 gallons of unaccounted for water. It is further

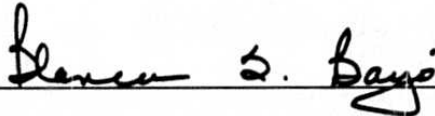
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an

ORDER NO. PSC-96-1467-FOF-WU  
DOCKET NO. 960537-WU  
PAGE 5

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 date set forth in the Notice of Further Proceedings below. It is further

ORDERED that this docket shall be closed if no timely protest is received from a substantially affected person.

By ORDER of the Florida Public Service Commission, this 3rd day of December, 1996.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

MEO

Dissents

Commissioners Johnson and Garcia dissented from the Commission's decision, in that the utility and customer should have been given one more opportunity to reach a settlement before this Commission made a final determination.

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 December 24, 1996.

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.