



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: OCTOBER 5, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYSON)

FROM: DIVISION OF ECONOMIC REGULATION (FITCH) *REC*
DIVISION OF LEGAL SERVICES (BRUBAKER) *SAC JB*

RE: DOCKET NO. 001292-WS - REQUEST FOR CHANGE IN BILLING PERIOD FROM MONTHLY TO QUARTERLY IN MANATEE COUNTY BY FLORIDANA HOMEOWNERS, INC.
COUNTY: MANATEE

AGENDA: 10/17/00 - REGULAR AGENDA - TARIFF FILING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 60-DAY SUSPENSION DATE: OCTOBER 30, 2000

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\001292.RCM

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 RECORDS AND REPORTING

CASE BACKGROUND

Floridana Homeowners, Inc. (Floridana or utility) is a Class C water and wastewater utility located in Manatee County. The utility has a flat rate structure for both water and wastewater. The following was obtained from Floridana's 1999 Annual Report:

	Number of Customers	Operating Revenues	Operating Income/ (Loss)
Water	300	\$41,553	\$7,183
Wastewater	300	\$59,433	(\$24,845)

On July 10, 2000 the Commission learned by way of a customer complaint that Floridana was not billing its customers pursuant to Rule 25-30.335(1), Florida Administrative Code, which specifies

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that a utility shall render bills to customers at regular intervals, and each bill shall indicate: the billing period covered; the applicable rate schedule; beginning and ending meter reading; the amount of the bill; the delinquent date or the date after which the bill becomes past due; and any authorized late charge. The utility was not sending a bill as defined in Rule 25-30.335(1), Florida Administrative Code, to its customers. The utility made use of a monthly newsletter which included a reminder to its customers that, "the first of every month your maintenance fee is due. Delinquent after the fifteenth". The maintenance fee included both regulated and unregulated services. Staff notified Floridana about the utility's noncompliance with Commission Rules on July 17, 2000. The utility subsequently filed appropriate billing format tariffs on August 14, 2000. The tariffs were approved administratively with an effective date of September 1, 2000 and monthly billing began for Floridana customers.

During the process of bringing the utility in compliance with Commission rules, the utility expressed concerns about the additional cost associated with preparing and sending out monthly bills. The utility also stated on several occasions that customers complained in the past about receiving bills for services for which the customers already paid. According to the utility, a majority of its customers paid their bills up to a year in advance.

On September 1, 2000, the Commission received an application for a requested change of billing period from monthly billing period to a quarterly billing period by Floridana. In its request, the utility cited the same concerns it expressed previously as reasons for the billing period change. The Commission has the authority to consider this tariff filing under Section 367.091, Florida Statutes.

ISSUE 1: Should Floridana's proposed tariff to change billing periods from a monthly billing period to a quarterly billing period be approved?

RECOMMENDATION: Yes, the proposed tariff to change billing periods from a monthly billing period to a quarterly billing period should be approved. The tariff should become effective for service rendered on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice. (FITCH)

STAFF ANALYSIS: On September 1, 2000, the Commission received an application for a requested change of billing period from a monthly to a quarterly billing by Floridana. The utility stated in its application that the monthly postage for billing was too costly, and the time involved in preparing the bills is too time consuming. It also stated that in the past, a majority of the customers complained about monthly billings because they paid their bills in advance. Some customers paid their bills up to a year in advance. In Order No. PSC-95-0326-FOF-WU, issued March 9, 1995, in Docket No. 950062-WU, the Commission approved a change from monthly to quarterly billing for Gem Estates Utilities, Inc., based on the following findings:

- The administrative cost of sending bills on a monthly basis is overly burdensome for this utility.
- A majority of the utility's customers pay their bills months, or in some cases up to a year in advance.
- The customers consider monthly billings a nuisance since many customers have already paid in advance.

The above findings are the same reasons expressed by Floridana for its request to change to a quarterly billing period.

Floridana's tariffed Water and Wastewater charges are monthly flat rates. In Order No. PSC-99-1070-FOF-WS, issued May 25, 1999, in Docket No. 980214-WS, the Commission approved a billing period change from a quarterly cycle to a monthly cycle for United Water Florida, Inc., the findings were that:

- The frequency of monthly billing versus quarterly billing gives customers more current price signals in regard to conservation issues. Customers can then use this information to adjust their consumption levels for the following month.
- By receiving the data monthly, customers are better able to adjust their consumption patterns.

- Monthly meter reading and billing creates a more useful water usage history since there are twelve reading periods instead of four. This history can enable a more accurate estimated monthly bill whenever an actual meter reading cannot be obtained.
- Meter readers will have the ability to find customer leaks, spot high water usage, stopped meters, etc. more readily because they will visit customer sites three times as often. This allows for the potential reduction in the number and severity of these kinds of customer problems.
- Monthly billing provides greater and more frequent customer communication with the utility.

Because this utility is on a flat rate structure and the customer lines are not metered, staff believes that only the last finding applies in this case. Furthermore, the customers of this utility have expressed a preference for a less frequent billing period than monthly. Rule 25-30.335(1), Florida Administrative Code, specifies that a utility shall render bills to customers at regular intervals, therefore use of either billing methodology is consistent with the rule.

In its tariff filing, Floridana proposed new quarterly rates based on three times the current tariffed rates for both water and wastewater. Based on the reasons stated above, staff recommends that the proposed tariff to change billing periods from a monthly billing period to a quarterly billing period should be approved. The tariff should become effective for service rendered on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice.

ISSUE 2: Should Floridana Homeowners, Inc., be ordered to show cause, in writing within 21 days, why it should not be fined for violation of Rule 25-30.335(1), Florida Administrative Code?

RECOMMENDATION: No. A show cause proceeding should not be initiated. However, the utility should be placed on notice that it is expected to know and comply with this Commission's rules and regulations. (BRUBAKER)

STAFF ANALYSIS: As stated in the case background, on July 10, 2000, the Commission learned by way of a customer complaint that Floridana was not billing its customers pursuant to Rule 25-30.335(1), Florida Administrative Code. That rule provides that a utility shall render bills to customers at regular intervals, and each bill shall indicate the billing period covered, the applicable rate schedule, beginning and ending meter reading, the amount of the bill, the delinquent date or the date after which the bill becomes past due, and any authorized late payment charge.

The utility made use of a monthly newsletter which included a reminder to its customers that, "the first of every month your maintenance fee is due. Delinquent after the fifteenth". The maintenance fee included both regulated and unregulated services.

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes, or any lawful rule or order of the Commission.

Utilities are charged with the knowledge of the Commission's rules and statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, entitled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Floridana's billing practices appear to have violated the requirements of Rule 25-30.335(1), Florida Administrative Code. However, there are circumstances which appear to mitigate the

utility's apparent violation. Staff notified the utility about its noncompliance with Rule 25-30.335(1), Florida Administrative Code, on July 17, 2000. The utility cooperated with staff and subsequently filed appropriate billing format tariffs on August 14, 2000. The tariffs were approved administratively with an effective date of September 1, 2000 and the utility began to bill its customers monthly in compliance with Rule 25-30.335(1), Florida Administrative Code.

Floridana's failure to comply with the rule appears to be due to a lack of understanding and knowledge of the Commission's rules and regulations. Although the utility is held to know the Commission's rules and statutes under which it must operate, when this matter was brought to its attention, Floridana was not aware of the rule's requirements. The primary objective for a show cause order is for the utility to achieve compliance with the Commission's statutes, rules and orders. In this instance, upon notification of the utility's apparent violation by staff, the utility cooperated with staff and took the steps necessary to achieve compliance with Rule 25-30.335(1), Florida Administrative Code.

Under these circumstances, staff does not believe that the apparent violation of Rule 25-30.335(1), Florida Administrative Code, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Floridana to show cause for failing to bill in accordance with the requirements of the rule. However, staff recommends that the utility should be placed on notice that it is expected to know and comply with this Commission's rules and regulations.

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ISSUE 3: Should the docket be closed?

RECOMMENDATION: If Issue 1 is approved, the tariffs should become effective on or after the stamped approval date of the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code. If a protest is filed, Florida should continue billing in accordance with its existing tariffs pending resolution of the protest, and the docket should remain open. If no timely protest is filed, this docket should be closed upon the issuance of a Consummating Order. (FITCH, BRUBAKER)

STAFF ANALYSIS: If Issue 1 is approved, the tariffs should become effective on or after the stamped approval date of the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code. If a protest is filed, Florida should continue billing in accordance with its existing tariffs pending resolution of the protest, and the docket should remain open. If no timely protest is filed, this docket should be closed upon the issuance of a Consummating Order.