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State of Florida



Public Service Commission

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COMMISSION
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DATE: December 21, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Jaeger) *RJL ROR CW*
 Division of the Commission Clerk & Administrative Services (Pléscow) *Scrp*
 Division of Economic Regulation (Hudson) *PH*

RE: Docket No. 050898-WS – Complaint No. 649594 by Carla and William Bullock against Sebring Ridge Utilities, Inc. for improper billing practices.

AGENDA: 01/05/06 – Regular Agenda – Proposed Agency Action for Issue 1-- Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050898.RCM.DOC

Case Background

On April 20, 2004, Mrs. Carla Bullock opened complaint #649594W, on behalf of herself and her husband, William Bullock (customers), against Sebring Ridge Utilities, Inc. (Sebring or utility). Mrs. Bullock alleged that she had been improperly billed, and she wanted an explanation of how her bills were calculated and why the base facility charges increased to \$11.88 for water service and \$15.48 for wastewater service on the Monday, January 31, 2005 statement. She also alleged that the base facility charges for her February and March/April statement were higher than the tariffed rates. In her complaint, Mrs. Bullock did not provide an amount to be held in dispute.

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A review of the utility's tariffs shows that the monthly base facility charge is \$9.76 for water and \$13.06 for wastewater service. This monthly charge is based on a billing cycle that begins on the 21st of each month.

The water system was sold to the City of Avon Park (City) on January 26, 2005, and the utility continues to operate the wastewater system. Because the water system was sold to the City, the utility states that the water meter readings were postponed five days and read on the last day that the utility owned the water system. Based on this extension, the utility states that the January 31, 2005 statement was prorated to take into account that it only rendered one bill for water and wastewater service for the period December 21, 2004 through January 26, 2005, a 37-day billing cycle.

Also, the City uses a monthly billing cycle beginning on the second day of each month, and the next water meter readings were not until March 2, 2005. Therefore, the utility states that in order to synchronize its billing period with the period used by the City, it had to again prorate the base facility charges for the February and March/April billing periods. Prior to the sale, the utility read meters on the 21st of each month, with bills being issued approximately nine days later. After the sale, meters are now read on the second with a similar delay in the issuance of the bills and due dates for the bills.

Upon review of the complaint, staff initially determined that the utility had on three occasions apparently charged more than what was allowed for the wastewater base facility charge. The first apparent overcharge occurred on the January 31, 2005 billing because the utility charged \$15.48 when the approved base facility charge was \$13.06, for an apparent overcharge of \$2.42. The next apparent overcharge occurred on the February 28, 2005 billing (utility charged \$14.96 for an apparent overcharge of \$1.90). The third apparent overcharge occurred on the April 7, 2005 billing (utility charged \$14.08, for an apparent overcharge of \$1.02). The three apparent overcharges for wastewater totaled \$5.34. Also, for the January 31, 2005 billing, the utility charged a water base facility charge of \$11.88, when the approved base facility charge was \$9.76, for an apparent overcharge of \$2.12. By letter dated June 28, 2005, staff determined that the utility should refund (or credit) \$5.34 to the Bullock's and any other similarly situated customers. In that letter, the utility was advised that if it disagreed with staff's proposed resolution, it could seek further review by the Commission's Process Review Team.

The utility disagreed with this proposed resolution, and an informal conference was scheduled for September 7, 2005. Prior to the informal conference, records indicate that as of August 4, 2005, the Bullock's had an unpaid past due bill, which was being carried by the utility, and the customer service was scheduled for interruption on August 10, 2005. An agreement between the City and the utility allows the customer's water and wastewater service to be interrupted, if a customer fails to pay either his water or wastewater bill. Besides the \$5.34 in dispute, the utility's records show that as of the payment of \$41.57 received on August 31, 2005, the customer had a past-due amount of \$41.36 (See Appendix A for record of bills and payments from December 2004 through August 31, 2005). However, because of the ongoing dispute, the utility has not moved to have the City discontinue service.

On August 4, 2005, the customer told staff that an entire month's bill was in dispute, not just the overcharges related to the base facilities charge. When the complaint was originally taken on April 20, 2005, staff had understood that the complaint only related to the three instances in which the utility had apparently charged higher than the authorized base facility charge. Now, however, it appears that the customer is alleging that she has paid all bills, and owes nothing more to the utility.

On September 7, 2005, the informal conference was held with the customer, utility staff, and Commission staff in attendance. At the informal conference, staff noted that the utility's bills did not indicate the billing period covered, which is an apparent violation of Rule 25-30.335(1), Florida Administrative Code.

This recommendation addresses the complaint of William and Carla Bullock, whether the utility has improperly billed for its services, whether there was a past-due amount through August 31, 2005, and whether the utility should be made to show cause for its apparent violation of Rule 25-30.335(1), Florida Administrative Code. The Commission has jurisdiction pursuant to Sections 367.011, 367.081, 367.121, and 367.161, Florida Statutes.

Discussion of Issues

Issue 1: What disposition should be taken to resolve the complaint of William and Carla Bullock against Sebring Ridge Utilities, Inc.?

Recommendation: Sebring Ridge Utilities, Inc. should credit the account of William and Carla Bullock, and all similarly situated customer accounts, for \$0.12. The utility may proceed to bill the Bullock's again for the delinquent amount. If that amount is not paid within 20 days of the date of the bill, Sebring Ridge Utilities, Inc., may proceed with the normal cut-off procedures as outlined in Rule 25-30.320, Florida Administrative Code. (Hudson, Jaeger)

Staff Analysis: As stated in the background, the customer complained that the utility improperly billed its base facility charge. The utility's base facility charge for wastewater is \$13.06. The customer was billed \$15.48, \$14.96, and \$14.08 for January 2005, February 2005, and March/April 2005, consecutively. This resulted in an apparent overcharge of \$5.34 (\$2.42+\$1.90+\$1.02). The utility indicated that it prorated its base facility charge in order to coincide with the water billing cycle of the City of Avon Park. Rule 25-30.335(3), Florida Administrative Code, provides that:

[w]hen service is rendered for less than 50 percent of the normal billing cycle, the utility shall prorate the base facility charges as though the normal billing cycle were 30 days, except the utility may elect to not issue an initial bill for service if the service rendered during a time period which is less than 50 percent of the normal billing cycle. Instead, the utility may elect to combine the amount owed for the service rendered during the initial time period with the amount owed for the next billing cycle and issue a single bill for the combined time period.

Staff believes the utility was correct in prorating its base facility charge. However, the amount of the prorated base facility charge was incorrect.

Pursuant to Order No. PSC-05-0953-FOF-WU, issued October 6, 2005, in Docket No. 050314-WU, In Re: Application for transfer of facilities operated under Certificate 434-W in Highlands County from Sebring Ridge Utilities, Inc. to City of Avon Park Utilities, the Commission approved the transfer of the utility's water system to the City of Avon Park. The effective date of the transfer was January 26, 2005. When Sebring read the meters on January 26, 2005, it was in essence issuing its final bill as a combined water and wastewater utility. The utility's final billing cycle was from December 21, 2004 – January 26, 2005. This was a 37-day billing cycle. The utility should have prorated the base facility charge for 7 days. The City of Avon Park reads its meters on the second of the month. After the transfer, the City of Avon Park did not read its meters until March 2, 2005. The next billing period for Sebring, the wastewater only utility, covered the period of January 27, 2005 – March 2, 2005. This was a 35 day-billing cycle. The utility should have prorated the base facility charge for five days. Therefore, staff believes the utility should be entitled to a prorated base facility charge of 12 days or \$5.22 (12/30 x \$13.06) and not \$5.34.

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By letter dated July 18th, the utility acknowledged that the \$5.34 charge was incorrect, and that the correct amount should be \$5.22. The utility indicated that it would credit the customer's account by \$.12. Staff believes that the \$.12 credit to the customer's account is appropriate.

The customer also complained about the utility's assertion that the account was delinquent for one month's bill, and claims that all bills have been paid. However, based on a payment history provided by the utility, it appears the customer did not timely pay the February 2005 bill of \$82.26 which was due on February 20, 2005. As of all payments made through August 31, 2005, the utility's records show that the customers did make up the \$82.26 difference, but did not pay the \$41.36 billed for usage from July 2, 2005 through August 2, 2005, and due on August 31, 2005. At the September 7, 2005 Informal Conference, the customer indicated that the February bill for \$82.26 had been paid, and that the customer no longer owed the utility any money. The customer indicated that she would provide proof that all payments had been made. However, the customer did not provide any additional proof, and the utility's records show that the delinquent amount as of September 7, 2005 was \$41.36, and that amount continues to be owed.

Staff is recommending that Sebring Ridge credit the account of William and Carla Bullock, and all similarly situated customers, for \$0.12. The utility may proceed to bill the Bullocks again for the delinquent amount. If that amount is not paid within 20 days of the date of the bill, Sebring Ridge Utilities, Inc., may proceed with the normal cut-off procedures as outlined in Rule 25-30.320, Florida Administrative Code.

Issue 2: Should Sebring Ridge Utilities, Inc., be ordered to show cause in writing, within 21 days, why it should not be fined for the failure of its bills to reflect the billing period covered and for failing to render bills at regular intervals in apparent violation of Rule 25-30.335(1), Florida Administrative Code (F.A.C.)?

Recommendation: No. Staff recommends that Sebring Ridge Utilities, Inc., not be ordered to show cause for the apparent violations. However, the utility should be advised that it should render bills at regular intervals and that, in accordance with Rule 25-30.335(1) and (2), F.A.C., its bills should 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; any authorized late payment charge; and if the bill is estimated that the amount owed is estimated. The utility should be given 30 days from the date of the Order concerning this recommendation to modify its bills to conform with Rule 25-30.335(1), F.A.C., and should be advised of the importance of complying with all Commission rules. (Jaeger, Hudson)

Staff Analysis: Based on a review of the bills submitted by Sebring Ridge Utilities, Inc., to William and Carla Bullock, in the transfer of the water facilities to Avon Park, the utility twice adjusted its billing periods. In the first adjustment, the utility extended the billing period by approximately six days to coincide with the closing on the transfer which occurred on January 26, 2005. In the second adjustment, the utility extended the billing period again by approximately six days to allow for the meter reading period used by Avon Park. Staff believes that these extensions were reasonable to account for the sale of the water facilities to Avon Park and to adjust to Avon Park's new meter reading cycles. Therefore, staff recommends that no show cause proceeding be initiated for the bills having been presented at a slightly irregular interval.

Also, Sebring's bills did not indicate the billing period covered, and staff has advised the utility of the requirements of Rule 25-30.335(1), F.A.C. The utility has indicated that it will make changes to its bills to comply with the rule. However, at this time, the utility's bills are in apparent violation of Rule 25-30.335(1), F.A.C.

Utilities are charged with the knowledge of the Commission's rules and statutes. 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). 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. By failing to comply with the above-noted requirements of Rules 25-30.335(1), F.A.C., in a timely manner, the utility's acts were "willful" in the sense intended by Section 367.161, Florida Statutes. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled 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

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“willful” implies an intent to do an act, and this is distinct from an intent to violate a statute or rule.” Id. at 6.

As stated above, staff believes that the circumstances in this case are such that show cause proceedings should not be initiated for the utility’s apparent failure to bill at regular intervals. Also, the utility has been cooperative and has responded favorably to staff’s determination that its bills were not in compliance with the above-noted rule concerning the listing of the billing period. However, the utility should be advised that it should render bills at regular intervals, and that, in accordance with Rule 25-30.335(1) and (2), F.A.C., its bills should 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; any authorized late payment charge; and if the bill is estimated that the amount owed is estimated. The utility should be given 30 days from the date of the Order concerning this recommendation to modify its bills to conform with Rule 25-30.335(1), F.A.C., and should be advised of the importance of complying with all Commission rules.

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Issue 3: Should this docket be closed?

Recommendation: Yes. If no timely protest is filed by a substantially affected person within 21 days of the Proposed Agency Action Order, a Consummating Order should be issued and the docket closed. (Jaeger, Hudson)

Staff Analysis: If no timely protest is filed by a substantially affected person within 21 days of the Proposed Agency Action Order, a Consummating Order should be issued and the docket closed.

Appendix A

Record of the Bullock's Bills and Payments from December 2004 through August 31, 2005

- (1) The December 31, 2004 billing statement for \$79.05 (next to last bill for both water and wastewater), and due for payment on approximately January 20, 2005, was not paid until February 21, 2005;
- (2) The January 31, 2005 billing statement for \$82.26 (last bill for both water and wastewater), and due on approximately February 20, 2005, was not initially paid at all, and the amount of \$82.26 was carried over;
- (3) The February 28, 2005 billing statement for \$43.26 (wastewater only), and due on approximately March 20, 2005, was paid on March 30, 2005;
- (4) Because meter readings were now being received on approximately the 2nd of each month, the next billing statement for \$42.38 was not issued until April 7, 2005, and the due date was the end of April, 2005; with a payment for that amount being submitted on May 2, 2005;
- (5) A payment for \$39.05 was received on April 19, 2005, and that amount was used to reduce the past due amount of \$82.26 to \$43.21 (\$82.26 less \$39.05 equals \$43.21);
- (6) The May 3, 2005 billing statement for \$41.36, and due at the end of May, was paid on June 6, 2005;
- (7) The June 1, 2005 billing statement for \$41.36 also, and due at the end of June, was not paid until July 18, 2005;
- (8) The July 7, 2005 billing statement was also for \$41.36, and due at the end of July, and the customer actually paid \$43.00 on August 1, 2005 (a payment \$1.64 higher than the July 7, 2005 bill). The past due amount of \$43.21 that was being carried was therefore reduced by the amount of the overpayment to \$41.57 (\$43.00 less \$1.64 equals \$41.57);
- (9) The August billing statement was also for \$41.36, and due at the end of August. On August 31, 2005, the customer paid \$41.57, which was the past due amount that was being carried over from February. However, as of the informal conference, there was no indication that the customer had paid the \$41.36 from the August billing statement;
- (10) Therefore, as of the informal conference, it appeared that the customer was still behind in payments by the amount of the August bill for \$41.36, which was due on August 30, 2005.

(11) The customer insists that she has paid all bills and indicated that she would provide proof of payment for the February 2005 bill; and

(12) As shown above, it appears that the customer has made up for the February 2005 bill of \$82.26, but has yet to pay the bill for \$41.36 in the August billing statement. As of December 20, 2005, the customer had not provided any additional proofs of payment.