

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Petition of St. John's Service) | DOCKET NO. 881430-WS |
| Company for Declaratory Statement) | |
| Regarding Disposition of CIAC Refunds) | ORDER NO. 20737 |
| to its "Customer", Pursuant to Order) | |
| No. 19722.) | ISSUED: 2-14-89 |

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman
 THOMAS M. BEARD
 GERALD L. GUNTER
 JOHN T. HERNDON

DECLARATORY STATEMENT

BY THE COMMISSION:

By petition filed November 3, 1988, St. Johns Service Company (St. Johns), a water and sewer company over which this Commission has jurisdiction, pursuant to Chapter 367, Florida Statutes, requested a declaratory statement clarifying paragraph 2, page 3 of Commission Order No. 19722, regarding refunds of excess prepaid CIAC charges.

Interested parties should take note that Rule 25-22.021 states . . . "[a] declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of any statutory provision, rule, or order as it does, or may, apply to petitioner in his or her circumstances only."

We issue this statement to clarify the issues presented by paragraph 2, page 3 of Order No. 19722 as it applies to St. Johns only.

On February 1, 1988, St. Johns filed a petition to modify its service availability charges. Order No. 19722 was issued by the Commission on July 26, 1988, in response to that petition. In that order, the Commission found that St. Johns' level of CIAC exceeded the maximum level allowable under Rule 25-30.580, Florida Administrative Code. The Commission approved service availability policies and charges designed to reduce CIAC to a level which would establish a rate base sufficient to justify a fair level of earnings for St. Johns. It also informed St. Johns, in paragraph 2, page 3 of the order, that:

. . . [w]here a developer has prepaid CIAC, a refund will be due the customer at the time of connection to the utility system. The date of connection is the critical date for determining the appropriate service availability charge H. Miller & Sons, Inc. v. Hawkins, 373 So.2d 913 (Fla. 1979). Since the refund process could take a number of years, as it is tied to the date of connection, we will review the refund process in the utility's next rate case.

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In its petition for Declaratory Statement, St. Johns asked the Commission to clarify paragraph 2 page 3 of Order 19722, so that St. Johns could determine who among a group of several possible people would be entitled to the refund mentioned in that paragraph. St. Johns requested further clarification of the term "customer" as it was used in the order, to avoid being called upon to pay a refund several times over for the same prepaid CIAC.

We have carefully reviewed the order in question, and we find that the "customer" due a refund of excess prepaid service availability charges from St. Johns is the owner of record of the property at the date of connection to the utility system.

As the Florida Supreme Court stated in Miller v. Hawkins, supra, at page 916:

The critical time in regard to service availability charges must be the date of connection since there can be no ascertainment of the actual cost of maintaining sufficient capacity until that date. Just as rates offset the cost of service and are determined by past costs, so do service availability charges offset the cost of preserving plant capacity and are determined by past costs. The Commission must have the ability to alter service availability charges to defray the expenses of preserving plant capacity with changing economic factors; otherwise the whole point of having service availability charges would be lost and existing customers would subsidize future connections.

The date of connection must also be the critical time to determine how much of a refund will be due, and to whom the refund will be made. It is critical to the determination of the amount of a refund, because that is the date when the actual cost of service, and, consequently, the actual amount of excess CIAC paid can be ascertained. The date of connection is also the critical time to determine to whom the refund is due, because that is the time that the Commission can insure that the refund will go, in most cases, to the one who is bearing the cost of the excess charges.

Commission Rule 25-30.210 defines "customer" this way: "Customers shall mean any person, firm, association, corporation, governmental agency, or similar organization who has an agreement to receive service from the utility."

St. Johns stated in its petition that it needed further clarification of the word "service," in order to determine who should receive the refunds of excess service availability fees. When "service" is used in rules, orders, statutes, and cases which deal with public utilities, it ". . . is commonly used to denote the furnishing of water, heat, light, and power . . ." Claxton v. Johnson County, 20 S.E. 2d 606 (GA 1942), p. 610. See also, Louisiana Cablevision v. Louisiana PSC, 482 So.2d 715 (CA LA 1986). While utilities provide a variety of incidental "services" to their "customers," they are tangential to the primary task of utilities, which is to "serve" the public by the day to day provision of electricity, gas, water, sewage disposal, communications transmission, etc. That is the meaning of the term as it is used in Rule 25-30.210(1), Florida Administrative Code, and in Commission Order No. 19722.

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The date of connection is the time that regular service from St. Johns may begin. The owner of the property at that time is most often the one who has requested connection, and the one who has prepaid the service availability charge in the purchase price of the property.

When a developer, or any individual, sells a property, he attempts to recover all costs associated with that property in the sales price. A property could be sold several times before someone builds on it and obtains water and sewer service from a utility. Up to the point that connection to the utility's system is made, the cost of prepaid service availability charges has, in effect, run with the land, and will be reflected in the sales price. Therefore, the owner of property at the date of connection has actually paid the cost of service availability charges.

Depending on the particular circumstances of each individual refund, the owner of record of the property at the time connection is made may or may not be the same person who first paid the CIAC. For instance, if a developer prepaid CIAC for a particular lot in his development and then sold that lot to a builder who requested and received connection to the utility's water and sewer system, then the builder, the owner of property of record, would receive the refund.

While the refunds of excess prepaid CIAC mentioned in Order No. 19722 are not specifically contemplated by Commission Rule 25-30.360, Florida Administrative Code, the refund process is consistent with Subsection 3, which states, ". . . [w]here the refund is not related to specific rate changes, such as a refund for overearnings, the refund shall be made to customers of record as of a date specified by the Commission."

Order No. 19722 considers the "customers of record," for purposes of receipt of the refund for excess CIAC charges due from St. Johns at the date of connection to the utility system, to be the owners of record of the property at that date.

Now, therefore, it is

ORDERED by the Florida Public Service Commission that the Petition for a Declaratory Statement filed by St. Johns Service Company is granted. It is further

ORDERED that the substance of the Declaratory Statement is as set forth in the body of this order. It is further

ORDERED that this docket should be closed.

By ORDER of the Florida Public Service Commission, this 14th day of FEBRUARY, 1989.

STEVE TRIBBLE, Director
Records and Reporting

(S E A L)

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by: Kay Kelson
Chief, Bureau of Records