

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Corkscrew )	DOCKET NO. 900380-WU
Woodlands, Ltd. against GULF UTILITY )	
COMPANY regarding calculation of )	ORDER NO. 25393
equivalent residential connections )	
(ERCs) for an RV park in Lee County )	ISSUED: 11/25/91
_____ )	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 SUSAN F. CLARK  
 J. TERRY DEASON  
 BETTY EASLEY  
 MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTIONORDER DENYING REFUND OF SERVICE AVAILABILITY CHARGES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are 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.

Background

On April 24, 1990, Corkscrew Woodlands, Ltd., (Corkscrew or complainant) filed a pro se complaint against Gulf Utility Co. (Gulf or utility). On January 23, 1991, Corkscrew sought leave to amend the complaint. We granted leave to amend in Order No. 24229, issued March 27, 1991. Through counsel, Corkscrew filed an amended complaint on January 23, 1991. Gulf filed a timely response to Corkscrew's amended complaint.

Corkscrew sells lots for the parking of recreational vehicles (RVs). A total of 960 lots are available, but not all of the lots have been sold. Corkscrew maintains that Gulf has over-charged it for water service availability.

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### Complaint

On May 18, 1982, Corkscrew entered into a developer agreement with San Carlos Utilities, Inc., (San Carlos). At that time, Corkscrew paid \$28,400 for the connection of 320 RV sites. Corkscrew does not dispute the correctness of that payment. Neither the original agreement nor the amended developer agreement, under which the parties now operate, specified a time frame for paying the remaining charges. It appears that Corkscrew has been allowed to pay for and connect the remaining RV sites at any time.

Corkscrew has made the following four payments to Gulf under protest: in October, 1986, Corkscrew paid \$22,848.00 for 80 connections; on April 21, 1987, Corkscrew paid \$7,996.80 for 28 connections; on May 16, 1988, Corkscrew paid \$36,271.20 for 127 connections; and, on October 13, 1989, Corkscrew paid \$24,276.00 for 85 connections. Corkscrew has paid a total of \$91,392 under protest. Three hundred and twenty RV sites remain to be connected.

Corkscrew seeks a refund of a portion of the fees it paid to Gulf under protest from 1986 to 1989. At the time of the 1982 developer agreement, San Carlos' tariff provided that one equivalent residential connection (ERC) was equal to 300 gallons per day (GPD). According to the agreement, the number of RVs per ERC was to be calculated by taking the "estimated daily usage [of an RV] divided by 300." At the time, San Carlos' tariff provided that one ERC equaled 300 GPD. Initially, the parties agreed upon an allocation of 107 GPD of estimated use per RV site, a figure agreed upon before any historical flow data for Corkscrew existed. Thus, one RV equaled 35.7% of an ERC or, stated differently, 2.8 RVs equaled one ERC. On this basis, Corkscrew agreed to pay \$88.75 per RV site or \$248.50 per ERC, which was consistent with San Carlos' tariff.

The parties amended the developer agreement on December 3, 1982, to recognize Gulf as the successor to San Carlos Utilities. The amended developer agreement did not alter the basic formula for calculating ERCs. The crux of Corkscrew's amended complaint is that Gulf continued to apply the 2.8 RV per ERC ratio in assessing connection fees after more accurate flow data became available showing that the 107 GPD estimate was unreliable. Corkscrew maintains that "[t]here is no provision in the Amended Developer's Agreement, nor in Gulf's then existing tariff, nor in its current

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tariff, for simply using the initial computation of the ERCs per RV site." Corkscrew asserts, "Rather, Gulf was obligated under the Amended Developer's Agreement to divide the estimated daily usage by 300. Moreover, assuming the tariff implicitly nullified the Amended Developer's Agreement, Gulf was obligated to multiply the anticipated daily demand by \$2.02."

We conclude that the utility's Commission-approved tariff supersedes any formula contained in the developer agreement. Thus, the central issue in this case is the determination of the appropriate amount of GPD to which to apply the charges set forth in Gulf's tariff.

By Order No. 14219, issued March 22, 1985, we approved Gulf's current connection fee of \$800.00 per ERC or \$2.02 per gallon of anticipated daily demand. Also in that order, we raised the number of GPD per ERC to appear in Gulf's tariff from 350 to 396. We calculated this amount as we always do, using a system-wide five-day peak flow average for the peak month (in this case May, 1983) less fireflow reserves. In assessing connection fees after the effective date of the current tariff, Gulf admittedly applied the same RV to ERC ratio it had used all along; thus, Gulf charged Corkscrew using an allocation of 141 GPD per RV site, the quotient of 396 GPD per ERC divided by 2.8 RVs per ERC.

The amount of GPD per ERC in Gulf's tariff does not vary between the different classes of customers. There is no dispute in this case that the allocation of 396 GPD per ERC for a charge of \$800.00 per ERC is just and reasonable for Gulf's other customers.

Corkscrew maintains that on average, an RV site uses 70 GPD. However, many of the RVs at Corkscrew follow a seasonal pattern and are only present a few months out of the year. The park is master-metered; therefore, it is virtually impossible to determine how many recreational vehicles are present and consuming water on any given day or in any given month. The data Corkscrew presented to this Commission shows water usage based on the number of lots sold, not on the number of RVs actually present. Upon examining this information, we do not believe there is sufficient evidence to substantiate Corkscrew's assertion that one RV unit uses 70 GPD.

Engineering standards require calculating ERC gallonage for service availability based on peak flows. Water treatment plants are generally designed to meet flow demands on days, or even hours,

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when flows peak. Using the information provided by Corkscrew, we have attempted to calculate Corkscrew's flows. First we divided total consumption for the period by the number of days in the period to arrive at the average GPD for the entire park. We then divided the park's average GPD by the number of sites sold during the period. By our calculations, use at Corkscrew during peaks has exceeded 141 GPD per RV site on several occasions, with a maximum of 155 GPD per RV site occurring between January 16, 1985, and February 20, 1985. However, there is no way to determine whether or not any given site was occupied during the period. As a result, it is likely that the maximum peak per RV site is even higher than we have calculated.

We also find no merit in Corkscrew's argument that Gulf has not followed its tariff or the developer agreement because under the terms thereof "a computation of ERCs, based on the estimated gallonage, must be made for each set of connection fees." It is unusual for a utility to allow a developer to pay for and hook on customers at any time, rather than requiring full payment at the time of the developer agreement. Had Corkscrew purchased all 960 RV units in 1982, the total payment would have been \$85,200. Due to the increase in cost of an ERC, as of October 13, 1989, Corkscrew paid \$119,792 for 640 RV sites. By paying for the connection piecemeal, Corkscrew ran the risk that the cost of an ERC would increase before it completed payment. In addition, until all of the 960 sites have been paid for, Corkscrew still runs the risk of the cost of an ERC increasing.

In summary, we believe that an allocation of 141 GPD per RV site is just and reasonable. The charges were properly calculated based on standard engineering principles and standard Commission service availability practice. We also believe that the charges were made in conformance with Gulf's tariff. Therefore, we find that no refund is due Corkscrew from Gulf.

Corkscrew contends Gulf knowingly, willfully, and repeatedly violated the amended developer agreement, its tariff, or both, and should be fined not less than \$15,000.00. We have determined that Gulf did not err in assessing the connection fees. Therefore, we will not assess a penalty.

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that no refund is due to Corkscrew Woodlands, Ltd. from Gulf Utility Company for service availability charges. It is further

ORDERED that no penalty will be assessed in this matter. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final unless an appropriate petition in the form provided by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida, 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that in the event no timely protest is received, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 25th  
day of NOVEMBER, 1991.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

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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 12/16/91.

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 sewer 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.