

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Benson's) DOCKET NO. 940950-SU
Inc. against FOREST UTILITIES,) ORDER NO. PSC-94-1461-FOF-SU
INC. in Lee County regarding) ISSUED: November 29, 1994
billing practices)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING REQUEST FOR CHANGE IN BILLING CLASSIFICATION AND
REQUIRING FILING OF REVENUE-NEUTRAL RATE RESTRUCTURING
APPLICATION

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.

BACKGROUND

On January 10, 1994, the Division of Consumer Affairs received a letter from Benson's, Inc. (Benson's), a management company acting on behalf of Terraverde 1, 2 and 3 Condominium Associations in Fort Myers (associations), requesting the Commission's assistance with the associations' complaint against the billing practice of Forest Utilities, Inc. (Forest or the Utility). Benson's had initially filed a complaint with the Utility on November 23, 1993. Benson's enclosed letters previously written to Forest, and unanswered, in which it had challenged the application of the Residential Service rate schedule to individual units in the condominiums, and suggested that the General Service rate schedule would be more appropriate for the master-metered condominiums. The Residential Service rate schedule provides a flat rate, applicable to wastewater service for all purposes in private residences and individually metered apartment units. The General Service rate

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schedule provides a base facility and gallonage rate structure, applicable to any customer for which the Residential Service rate schedule does not apply. Benson's requested the Commission to specifically assist by "providing an order requiring [the Utility] to refund all of the overcharges for each of our associations."

The Utility responded to Benson's by letter dated January 28, 1994, stating that the Residential Service rate was appropriate for these units and that any changes would require a total restructuring of rates and a rate increase. Benson's wrote Consumer Affairs on February 8, 1994, requesting continued analysis of the situation.

Our Consumer Affairs Division, pursuant to Rule 25-22.032 (2), Florida Administrative Code, discussed the complaint with the Division of Water and Wastewater, Benson's, and the Utility. The Utility submitted reports dated April 1, April 15 and April 20, 1994, presenting its argument supporting the application of the Residential Service rate to the individual master-metered units. The Utility based its argument, in part, on Order No. 10430, In Re: Application for original sewer certification by FOREST UTILITIES, INC., issued December 2, 1981, in Docket No. 810006-S, and Order No. 14557, In Re: Application of FOREST UTILITIES, INC. for staff assistance on a rate increase to its customers in Lee County, Florida, issued July 10, 1985, in Docket No. 840196-SU, which Orders it believed established this Commission's intent that certain of the multi-family customers be billed on the per unit flat rate basis, and that certain other ones, on the base facility and gallonage basis.

In a letter dated May 19, 1994, the Director of the Division of Water and Wastewater, responded to the Utility with his initial determination regarding the complaint, pursuant to Rule 25-22.032 (3), Florida Administrative Code. The Director stated that he believed the General Service tariff to be appropriate, and recommended that:

This customer and other customers with meters serving more than one multi-residential unit that have been billed at residential rates be reclassified and billed at the General Service rates. Additionally, the bills for these customers should be recalculated dating back to the twelve months prior to the date that this complaint was originally filed, November 23, 1993. If any customers have overpaid the utility, the customers should receive refunds with interest.

On June 17, 1994, Forest objected to the Director's proposed resolution and requested an informal conference on the complaint, pursuant to Rule 25-22.032 (4), Florida Administrative Code. The conference was held in Fort Myers, Florida on August 26, 1994 with Commission staff, the Utility, and Benson's in attendance. No settlement was reached.

BILLING RECLASSIFICATION

Benson's position is that its billing classification should be corrected, permitting the application of the General Service rate schedule to the individual association members, rather than the Residential Service rate schedule. Benson's further argues that the association members are entitled to retroactive application of the General Service rate schedule, requiring the Utility to refund alleged overcharges.

In Forest's staff-assisted rate case, Docket No. 840196-SU, this Commission set flat rates for the Utility's residential customers. In Order No. 14557, we stated that:

The utility presently utilizes a base facility charge rate structure for its general and multi-residential customers, and a flat rate structure for its residential customers. Those rate structures will continue to be utilized. Order No. 14557 at 4.

This rate structure was continued, in large part, due to the fact that the residential customers were being provided water service from two water companies, Florida-Cities Water Company (Florida Cities) and Gulf Utility Company (Gulf), whose billing cycles were inconsistent. Gulf was not able at that time to modify its procedures in order to provide Forest with meter readings.

In the Utility's original certification case, Docket No. 810006-S, we stated, in Order No. 10430, supra:

A flat rate for residential customers is appropriate in this case because the service area is provided water service by two different companies utilizing different billing cycles. This creates an almost impossible situation for this utility to obtain the necessary water meter readings at the appropriate time. This is not, however, the case for the general service customers, all of whom reside within the service area of one water utility. . . . (emphasis added) Order No. 10430 at 2.

The Utility has consistently applied the Residential Service rate schedule to its master-metered customers in Gulf's water service territory, and it explains that it believes this practice is consistent with the Commission's intent, expressed in Orders Nos. 14557 and 10430.

We concur that the tariffs are, at best, confusing, and we understand why Benson's takes the position that it does. The Residential Service tariff sheet declares that it applies to private residences and individually metered apartment units. The General Service tariff sheet declares that it applies to any customer for which no other schedule applies. However, we twice have found that the customers in the service territory being provided water service by Gulf should be billed according to the Residential Service tariff. Furthermore, we find that the Utility has acted in good faith throughout. Therefore, we find it appropriate to deny Benson's request for reclassification from Residential Service to General Service.

REVENUE-NEUTRAL RATE RESTRUCTURING

Our practice is to use the base facility charge structure for setting rates because it enables costs to be tracked and gives customers some control over their wastewater bills. The main reason the base facility charge billing structure is desirable is that each customer pays his pro rata share of the related costs necessary to provide service through the base facility charge, and only the actual usage is paid for through the usage or gallonage charge. Also, this rate structure allows customers the opportunity to control their bills to whatever extent they wish to practice conservation.

The concept of this structure, is to first determine a base charge whose foundation recognizes the associated costs of providing service to each type customer. The charge would cover related costs such as transmission and distribution facility expenses, depreciation, property taxes, property insurance and an allocated portion of billing and collection costs along with other such costs. The amount of the charge is determined by an equivalent residential connection (ERC) formula, using the standard 5/8 inch x 3/4 inch meter as the base. There is no gallonage included within the framework of the base charge.

The second component of the structure is to determine a charge for the wastewater treated for the customer. This charge would cover related costs such as pumping expenses, treatment expenses,

and an allocated portion of billing and collection costs, income taxes and operating earnings (rate of return).

We find that the rate structure of this Utility must be corrected for prospective application. Forest agrees to comply. Gulf has stated it will do whatever it can to cooperate with Forest. Therefore, we find that the Utility shall file a revenue-neutral rate restructuring application within 12 months of the issuance of this order. This restructuring shall provide rates based on a base facility and usage charge (gallorage) rate structure, pursuant to Rule 25-30.437 (6), Florida Administrative Code.

REFUNDS

With respect to the refund issue, we find that it is not fair or equitable to the other customers in the same situation for us to require any such refunds for Benson's clients, and not the Utility's other master-metered customers. On the other hand, it would not be fair and equitable for the Utility to have to make refunds to all such customers without allowing it to recover revenues lost as a consequence in some way.

Therefore, the Utility shall not be required to make refunds of payments remitted by the association members, or others of its customers who may be similarly situated, under the Residential Service rate schedule.

Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that the request of Benson's, Inc. that the Commission require Forest Utilities, Inc. to reclassify the Terraverde 1, 2, and 3 Condominium Associations from the present Residential Service tariff to the present General Service tariff is denied. It is further

ORDERED that Forest Utilities, Inc. shall file an application with this Commission within 12 months of this order for a revenue-neutral rate restructuring based upon a base facility and usage charge rate structure. It is further

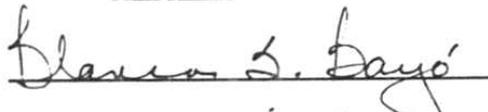
ORDERED that Forest Utilities, Inc. shall not be required to make refunds to the clients of Benson's, Inc., or others of its customers similarly situated, for payments remitted under the Residential Service tariff. It is further

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the "Noticed of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket should be closed.

BY ORDER of the Florida Public Service Commission, this 29th day of November, 1994.



BLANCA. S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

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.

As identified in the body of this order, our action regarding the rates and charges 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 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 20, 1994.

In the absence of such a petition, this order shall become effective on the date 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 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.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of

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Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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 after the issuance 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.