State of Florida

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: AUGUST 23, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (ESPINOZA)
DIVISION OF CONSUMER AFFAIRS (RASBERRY)
DIVISION OF ECONOMIC REGULATION (WILLIS)

RE: DOCKET NO. 011125-WS - COMPLAINT BY HAROLD SHRIVER AGAINST TERRA MAR UTILITIES, INC. IN VOLUSIA COUNTY

AGENDA: 09/04/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\011125.RCM

CASE BACKGROUND

On November 6, 2000, the Division of Consumer Affairs (CAF) received Mr. Harold Shriver's (customer) correspondence regarding his complaint against Terra Mar Village Utilities, Inc. (utility). In his complaint, the customer stated that his water service had been disconnected pursuant to a cut-off warning notice issued by the utility, effective September 28, 2000. The customer complained that the utility appeared to have deliberately held his regular payment in the amount of $27.85 past the "pay by" date of September 22, 2000, causing his payment to post late, thereby causing his water service to be turned off and causing him to incur a $15 reconnect fee.

CAF forwarded the customer's complaint to the utility on November 13, 2000. CAF received the utility's response on December 4, 2000. In its response, the utility stated that the regular bills are sent by the first of every month, allowing its customers

22 days to pay their bills. The utility also stated that the five-day notice was sent out on Friday, September 22, 2000 to customers with unpaid bills, which included Mr. Shriver's account. The utility stated that the customer's check was received on September 29, 2000 (Friday p.m.) and deposited on Monday, October 2, 2000.

CAF sent a letter to the customer on December 13, 2000 to explain the results of its investigation. The letter stated that it did not appear that the utility had violated any rules or its tariff by sending the disconnect notice and subsequently disconnecting the customer's water service. The customer was advised that the utility was willing to restore water service once it received the appropriate payment amount which included a $15 reconnect fee. The customer remained dissatisfied with the result, and objected to payment of the $15 reconnect fee. The customer also notified CAF that due to the disconnection of his service, he had continued to withhold his monthly payments of $27.85 for basic service, without usage.

On December 15, 2000, CAF received the customer's request for an informal conference. Pursuant to Rule 25-22.032(8)(b), Florida Administrative Code, Form X was mailed to the customer to complete and return within 15 days. An informal conference was subsequently scheduled for April 19, 2001.

On April 19, 2001, an informal conference was held by telephone with the customer, a utility representative, and a CAF staff member. During the informal conference, each party was given the opportunity to state his position on this matter. During the course of the informal conference, the CAF staff member expressed to the utility representative that although it was the initial finding that the utility had not disconnected the customer's water service incorrectly, a further review of the matter had indicated that the utility was, in fact, in error. This error had resulted from the utility's improperly counting the Saturday that the utility is not open for business as a "working day" as one of the five days included in the termination notice. The utility representative was informed that according to Rule 25-30.320(2)(g), Florida Administrative Code, a "working day" for the purposes of a disconnect notice is specifically defined as "any day on which the utility's office is open and the U.S. Mail is delivered." Therefore, because the utility's office is not open on Saturdays, it appeared that the utility had in fact disconnected the customer's water service improperly.

Because the parties were unable to resolve this dispute, this complaint was forwarded to the Division of Legal Services for further disposition. Upon receipt of this complaint, legal staff verified the final determination of CAF, and agreed that the utility was in apparent violation of Rule 25-30.320(2)(g), Florida Administrative Code. Legal staff telephoned the utility's representative to once again attempt a settlement agreement between the parties. During the course of several conversations with the utility's representative and the customer separately by telephone, it was legal staff's understanding that the parties were able to come to an agreement and forego the necessity of going before the full Commission for disposition of the dispute.

A copy of the final settlement agreement, dated June 14, 2001, and signed by Mr. Uddo of Terra Mar Village Utilities, Inc. was subsequently received by legal staff and by the customer. In order for the resolution to become final, it was necessary to have both parties, the utility and the customer, sign the agreement. Accordingly, the agreement was sent to the customer for his signature. Legal staff also sent the customer and the utility a letter dated July 11, 2001, in which the terms of the settlement agreement were described, point by point, in an attempt to avoid any further misunderstandings between the parties.

The following is staff's understanding of the agreement according to the utility, as it appeared in the above mentioned letter that was sent to the utility and the customer:

- Terra Mar Village Utilities, Inc. has agreed to reconnect Mr. Shriver's water service effective May 22, 2001;
- Terra Mar Village Utilities, Inc. agrees to waive the $15 reconnect fee;
- Terra Mar Village Utilities, Inc. agrees to waive the basic water and sewer charges during the entire course of this investigation (September 2000 through May 2001);
- regular billing for the basic water and service charge for Mr. Shriver's property shall commence as of June 1, 2001;
- Terra Mar Village Utilities, Inc. enters into this agreement in the interest of good relations with their valued customers and the FPSC; and

- in entering into this agreement, Terra Mar Village Utilities, Inc., does not accept the positions, findings, or conclusions of Mr. Shriver, or of the FPSC and admits no wrongdoing whatsoever.

It was also noted in this letter, as well as on the settlement agreement form, that in signing the above-stated agreement, the parties were agreeing that a satisfactory resolution of the complaint had been reached and understood that the settlement is binding on both parties, and that the parties waive any right to further review of this issue by the Commission.

After sending the above-referenced letter to the customer and the utility, legal staff again contacted the customer to inquire as to whether he was planning to sign the settlement agreement, and return a copy of the signed agreement to CAF.

Rather than return the signed settlement agreement, the customer sent staff a letter dated August 1, 2001, in which he stated that he had re-read the proposed resolution statement, and had the following response:

> The first four statements seem to adequately summarize the parameters of the resolution. Why add the last two remarks, which simply are not true. The utility should NOT be allowed to self exonerate itself from the responsible facts in the arguments. Therefore, simply have them unreported.
>
> I can not in good conscious [sic] accept his complete escape from reality of the cause, as we know with recorded and photographed facts that he did abuse and discriminate me in his (ie: the utility) cause of the problem. I have exhibited a paid check as proof.
>
> Therefore, I will agree to accept the resolution as amended without the fifth and sixth statements made in your proposed resolution. The utility NO FAULT statements are untrue and can and have been proven so beyond a doubt.

Pursuant to Rule 25-22.032(8)(h), Florida Administrative Code, if a settlement has not been reached within 20 days following the informal conference or the last post-conference filing, whichever is later, staff shall submit a recommendation to the Commission for consideration at the next available Agenda Conference.

This recommendation addresses whether the customer's complaint has been resolved, the utility's apparent violation of Rule 25-30.320(2)(g), Florida Administrative Code, whether the utility should be ordered to show cause, in writing, within 21 days, why it should not be fined for its apparent violation of Rule 25-30.320(2)(g), Florida Administrative Code, and whether this docket should be closed. The Commission has jurisdiction pursuant to Section 367.121, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Has the complaint by Harold Shriver against Terra Mar Utilities, Inc. been resolved, and should this docket be closed?

RECOMMENDATION: Yes. The complaint by Harold Shriver against Terra Mar Utilities, Inc. has been resolved in that the utility has reconnected the customer's water service as of May 22, 2001, without charging the $15 reconnect fee, the utility has agreed to waive basic water and sewer charges during the entire course of this investigation (September 2000 through May 2001) with regular billing to commence as of June 1, 2001, and because staff believes that there are no outstanding matters that remain in dispute. Moreover, because no further action is necessary, this docket should be closed. (ESPINOZA, RASBERRY, WILLIS)

STAFF ANALYSIS:

Rule 25-30.320(2)(g), Florida Administrative Code

Rule 25-30.320(2)(g), Florida Administrative Code, states that the utility may refuse or disconnect service for nonpayment of bills:

> ...only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customer. Such notice shall be separate and apart from any bill for service. For purposes of this subsection, "working day" means any day on which the utility's office is open and the U.S. Mail is delivered.

In this case, the August bill was past due on Friday, September 22, 2000. The disconnect notice was placed in the mail late Friday, September 22, 2000 and provided a cut-off date of Thursday, September 28, 2000. The cut-off notice was post-marked Saturday, September 23, 2000; thus the U.S. mail was delivered on Saturday, but the utility's office was not open for business. The utility believed that Thursday, September 28, 2000 was the fifth day of the final notice period, and disconnected service at approximately 10 a.m., on Thursday, September 28, 2000. The customer's payment arrived on Friday, September 29, 2000, and it appears that this should have been day five of the final notice period.

Staff believes that because the utility's office is not open for business on Saturday or Sunday, and because the U.S. mail is not delivered on Sunday, the five working day period should have commenced on Monday, September 25, 2000 and ended at the close of business day on Friday, September 29, 2000. Further, Rule 25-30.320(6), Florida Administrative Code, states that no utility shall discontinue service to any customer, between 12:00 noon on a Friday and 8:00 a.m. the following Monday. Thus, the first appropriate day that the utility could have shut off the customer's service was Monday, October 2, 2001. By that point, the customer's check had already been received on Friday, September 29, 2000. The following illustrates the above-stated time frames:

DATE	PER UTILITY	PER STAFF	EVENT
Friday, September 22, 2000	August bill due date; all bills not received by end of day considered late		Disconnect notice mailed at the end of business day to customer providing September 28, 2000 cut-off date
Saturday, September 23, 2000	Day 1 of 5-day period	Utility office not open, not included in 5-day period	Disconnect Notice post-marked
Sunday, September 24, 2000	Day 2 of 5-day period	Utility office not open, U.S. mail not delivered; not included in 5-day period	
Monday, September 25, 2000	Day 3 of 5-day period	Day 1 of 5-day period	
Tuesday, September 26, 2000	Day 4 of 5-day period	Day 2 of 5-day period	

DATE	PER UTILITY	PER STAFF	EVENT
Wednesday, September 27, 2000	Day 5 of 5-day period	Day 3 of 5-day period	Customer receives Disconnect Notice
Thursday, September 28, 2000	A.M. WATER CUT-OFF DAY, per late notice	Day 4 of 5-day period	CUSTOMER'S WATER CUT OFF AT 10 A.M.; $15 RECONNECT FEE INCURRED
Friday, September 29, 2000		Day 5 of 5-day period; Rule 25-30.320(6), Florida Administrative Code, states that no utility shall discontinue service to any customer, between 12:00 noon on a Friday and 8:00 a.m. the following Monday	CUSTOMER'S PAYMENT ARRIVES
Saturday, September 30, 2000		per Rule 25-30.320(6), F.A.C., utility shall not disconnect service	
Sunday, October 1, 2000		per Rule 25-30.320(6), F.A.C., utility shall not disconnect service	
Monday, October 2, 2000	Customer's check deposited at utility's bank	First day utility could have properly disconnected service, had the payment not arrived	

Staff believes that the 5-day period should have ended at the end of the business day on Friday, September 29, 2000, and the first day the utility could have properly disconnected the customer's service would have been Monday, October 2, 2000. As stated previously, by this date, the customer's payment had arrived and had already been deposited at the utility's bank.

Thus, the utility appears to have violated Rule 25-30.320(2)(g), Florida Administrative Code, by disconnecting the service before the end of the five working day delinquent notice period.

SHOW CAUSE

By disconnecting the customer's service before the end of the required five working day notice period, the utility appears to have violated Rule 25-30.320(2)(g), Florida Administrative Code. 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). Thus, any intentional act, such as the utility's failure to provide the customer the required five working day notice period prior to disconnection, would meet the standard for a "willful violation." In 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, Florida Administrative Code, 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. In addition, Section 367.161, 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 Commission rule, order or provision of Chapter 367, Florida Statutes.

However, staff believes that there are mitigating circumstances in this case which lead staff to recommend that show cause proceedings are not warranted at this time. As stated previously, after the parties were unable to come to an agreement during the informal conference, the customer's complaint was forwarded to the Legal Division, and legal staff once again, attempted to settle the dispute between the parties. During the course of several conversations, the utility's representative agreed to reconnect the customer's service and to remove the $15 reconnect fee.

Legal staff contacted the customer, and relayed the fact that the utility was willing to reconnect his service effective May 22, 2001, and not require a $15 reconnect fee. The customer expressed concern about the numerous months since the original cut-off date of September 29, 2000, and whether the utility would require him to pay the basic usage fee for the months that he did not have service.

Upon consideration of this issue, staff again contacted the utility's representative and expressed our opinion that because there had been an apparent violation by the utility, and because it appeared that the utility had disconnected the customer's service improperly, the customer should not be required to pay the basic usage fee for the months of September 2000 through May 22, 2001. The customer had stated that he would be willing to pay a pro-rated amount of the May basic usage fee, since the service to his property had been reinstated on May 22, 2001. The utility's representative stated to staff, and later included in the settlement agreement, that regular billing would commence as of June 1, 2001, rather than require a pro-rated amount for the month of May.

In the customer's original complaint, he stated, "My appeal to you at this time is to reconnect my service." The customer's service was reconnected on May 22, 2001, and the customer was not required to pay the $15 reconnect fee. Further, the utility has agreed that the customer is not required to pay the basic usage fee for the months of September 2000 through May 2001, which is the entire period of this dispute. For the foregoing reasons, staff does not believe that the apparent violation of Rule 25-30.320(2)(g), Florida Administrative Code, rises in these circumstances to the level of warranting the initiation of a show cause proceeding.

Staff further notes that although the utility insisted on stating in the settlement agreement that in entering the agreement, the utility was not accepting the positions, findings, or conclusions of the customer, or of the Commission, and admitted no wrongdoing whatsoever, the utility has been cooperative with legal staff in attempting to resolve the dispute with the customer.

Thus, staff believes that because the customer's service has been restored, and because there is no remaining balance or refund necessary to be paid to either the customer or the utility, there

are no outstanding issues to be resolved, and this docket should be closed.