

CASE STUDIES IN HANDLING OF CUSTOMER DISPUTES

Tuesday, 24 May 2011

(Parrish Consumer Session Two)

Meetings with Kosovo ERO

Denise Parrish
Deputy Administrator
Wyoming Office of Consumer Advocate
denise.parrish@wyo.gov

PURPOSE OF CASE STUDIES

To Exercise Critical Thinking

Get used to sorting through different versions of the same facts

Get used to different facts when viewed from different parties

To understand that there is No Right or Wrong

Just need to be able to support whatever decision is made with the evidence provided

CASE STUDIES

Three Cases involving customers of various sizes with differing complaints

Facts are taken from the Commission Orders and summarized

You decide the case based on the facts provided

CASE NUMBER ONE:
FROM STATE OF MARYLAND; COMPLAINT OF RESIDENTIAL CUSTOMER

FOCUS OF THE COMPLAINT:

Utility pole on the family's summer home property was replaced by BGE (utility) without providing the homeowner prior notice of the replacement activity

RELIEF SOUGHT:

Customer wanted the replacement pole moved to the side of the house, along the property line, similar to the placement of other poles in the area

Facts from the Customer's View

1. Family has owned a house on the water for over 50 years; house originally purchased by the grandparents.
2. In the front yard, about 20 feet from the front door of the house, is a utility pole that has been at the location since the time that the house was purchased.
3. First weekend (in April 2007), she found a notice posted to a tree announcing that BGE would be conducting tree trimming in the neighborhood. The next weekend she found that a second utility pole had been placed in the front yard next to the existing utility pole.
4. No notice had been given that BGE was going to install a second utility pole on the property and no permission was given to install the second pole.
5. Damage was done to the yard as a result of equipment used to install the second pole. The damage was a broken railroad tie used to border a parking area and a hill that was crushed by heavy equipment used to place the pole.

6. Poles were side by side, but the electrical wires, transformers and other equipment had not been transferred from the existing pole to the new pole.
7. Customer contacted BGE and over time spoke to several people. She was told that the pole placement was the result of an emergency and for that reason, it was not necessary to contact homeowners in advance of the pole placements.
8. Customer was not aware of any interruptions of electricity service to the home that would indicate an emergency.
9. Customer provided pictures of nine other poles that were placed along her street. They were generally situated to the right or left side of the property line of the house or property. Unlike others in the area, the customer's pole was located in the yard directly in front of the house.
10. Customer wanted replacement pole moved to the side of the house and placed along the property line.
11. Customer asked BGE representative to move the replacement pole about 25 feet to the side of the house on the property line – asked that this be done before the electric lines were transferred to the new pole.
12. BGE told customer that the cost to move the pole would be expensive: about \$100,000. As she spoke with different BGE representatives, the estimated cost of moving the pole varied from \$3,000 to \$10,000.
13. Rather than move the pole, the BGE representative told the customer that the utility would be willing to spend \$3,000-\$4,000 to repair the damage to her yard.
14. Customer says her efforts to refuse to allow BGE on her property to complete the transfer of wires and equipment to the replacement pole was responded to by BGE with a threat that she would be arrested.

BEFORE HEARING THE OTHER SIDE OF THE STORY –

What is your initial reaction?

What questions do you have?

Go back and look at the facts. Which do you find the most important so far?

Facts from the Utility's View

1. BGE replaced the poles in the customer's area starting in March 2007 as a result of concerns about service reliability in the area.
2. Pole replacements were an upgrade made necessary by a number of load issues that resulted in burning electricity wires that caused power outages. BGE characterized this as an emergency that resulted in the pole replacements started in March 2007 and completed in April 2007.
3. The replacement poles were larger in size to carry larger wires replacing lower capacity wires needed to accommodate increased service demands in the area.
4. Safest and most efficient way to perform these upgrades was to place new, larger poles next to the existing poles and move the facilities onto the new pole. In customer's case, the pole was placed about two feet from the existing pole.
5. The work had to be performed quickly due to concerns regarding safety and reliability to the area.
6. Replacements involved about 900 homes and it would have been extremely time consuming and dangerous to negotiate pole placement with each homeowner resulting in delays in completing the upgrade.
7. Moving the complainant's pole to nearer the property line could have changed the engineering characteristics of the line of poles.
8. BGE was not required to provide prior notice to customers of its maintenance activities.
9. Tariff grants BGE a right of entry onto a customer's property for the purpose of operating, modifying, and repairing facilities used in the connection of the supply of electricity.
10. If had to obtain permission each time entered onto customer property, its ability to respond quickly to make repairs would be impaired and safety and reliability endangered.
11. BGE did damage to the customer's property but customer has prohibited BGE from making repairs to the damage it caused.

NOW WHAT DO YOU THINK – HAS YOUR EARLIER THINKING CHANGED?

What questions do you have now?

What are the most important facts now?

What would your decision be?

**PROVIDE SEPARATE SHEET ON HOW THE CASE WAS DECIDED AND
THE THINKING BEHIND THAT DECISION.**

CASE NUMBER TWO:
FROM STATE OF FLORIDA; COMPLAINT OF VERY LARGE CUSTOMER

FOCUS OF THE COMPLAINT:

Review of (existing customer) Kmart's accounts showed that there was a deposit requirement of \$1,399,320 but the deposit on hand was only \$1,100,000. Demand for an additional deposit was based on the review of the customer's parent's financial condition and credit ratings. Customer complained about the demand for an additional deposit amount

RELIEF SOUGHT:

Customer asked FPL (utility) to stop demanding the extra deposit and to continue the provision of electric service
Customer also seeks return of its \$1,100,000 deposit
Customer asks for an order establishing standards for determining the satisfactory credit rating of existing customers

RELEVANT FLORIDA RULE

New or additional deposits. A utility may require, upon reasonable written notice of not less than thirty (30) days, a new deposit, where previously waived or returned, or additional deposit, in order to secure payment of current bills. Such request shall be separate and apart from any bill for service and shall explain the reason for such new or additional deposit, provided, however, that the total amount of the required deposit shall not exceed an amount equal to twice the average charges for actual usage of electric service for the twelve month period immediately prior to the date of notice. In the event the customer has had service less than twelve months, then the utility shall base its new or additional deposit upon the average actual monthly usage available.

Facts

1. Kmart claims that it had been informed that FPL would discontinue all electric service to Kmart locations unless Kmart provided FPL with an additional deposit of \$299,320. The total deposit would be equal to two month's average billings as allowed by the Florida Commission.
2. FPL believes that the additional deposit is appropriate in light of Kmart Corporation's parent company's current credit ratings. The request for an additional deposit arose after an annual review of Kmart and its parent company, indicated that FPL should be concerned about the creditworthiness of Kmart, a very large customer.
3. FPL asks that Kmart contact FPL if it requires a payment extension, or the proper forms for an Irrevocable Letter of Credit or a Surety Bond.
4. FPL wishes to protect the entire body of customers from potential default or bankruptcy by Kmart.
5. Kmart contends that "suddenly and without any reasonable basis" FPL demanded the additional deposit. FPL has failed to allege that Kmart is a new customer or that Kmart failed to maintain a prompt payment record.
6. Kmart states that it is an illegal delegation of authority for the State of Florida to allow a utility to blindly rely upon the unsupported opinions of third-parties (such as Dun & Bradstreet or Standard and Poor's) who are not politically or legally accountable for their actions. Reliance on such information as a basis for demanding a deposit despite the customer's prompt payment record and other objective evidence of the customer's ability to pay as bills come due, denies due process.
7. Kmart argues that FPL must treat each customer equally and that FPL cannot arbitrarily demand an additional deposit from select customers.
8. Kmart contends that new deposits from existing customers is only allowed in very limited circumstances, and that the rule cannot be used to require an additional deposit from an existing customer with a prompt payment record.
9. Kmart contends FPL's tariff contains no specific guidelines regarding the criteria the utility may use as a basis for determining whether to request an additional deposit from an existing customer.

10. Kmart contends that its parent's credit rating is completely irrelevant to any appropriate determination of Kmart's creditworthiness and its right to continue receiving electric service.
11. FPL argues that Kmart seeks a new interpretation of an existing rule and that the rule's language is plain and unambiguous. Kmart disputes this and argues that it is seeking relief on a *reasonable and necessary* interpretation of the deposit rule.
12. FPL claims that the Florida Commission lacks authority to add new requirements to an existing rule without following certain administrative (rulemaking) procedures.
13. FLP states that prior case precedent makes it clear that it is responsible for managing its own debt and seeking additional deposits from customers as needed.
14. In seeking an additional deposit, FPL is trying to limit its risk exposure that it would have if Kmart filed for bankruptcy.
15. FPL argues that Kmart is unharmed since FPL is required to pay interest on the deposit.
16. FPL argues that the deposit rule does not prohibit consideration of a customer's parent's financial status in assessing the customer's financial viability.

WHAT ARE YOUR QUESTIONS?

WHAT ARE YOUR THOUGHTS?

HOW WOULD YOU DECIDE THE CASE?

CASE NUMBER THREE:
FROM STATE OF WYOMING; COMPLAINT OF COMMERICAL CUSTOMER

FOCUS OF THE COMPLAINT:

Customer alleged that utility had not properly placed it on the right rate schedule for electric utility service, resulting in overcharges for more than 40 years

RELIEF SOUGHT:

A refund of overcharges of more than \$900,000 plus damages plus interest plus hearing costs
A plan to assure that the overcharging situation would not occur in the future

RULE ON INFORMATION TO BE PROVIDED CUSTOMERS.

Section 239. Information for Customers. Each utility shall, upon request, give its customers such information and assistance as is reasonably possible and necessary in order that customers may secure safe and efficient service, and, where applicable, may secure appliances properly adapted to the service furnished...

(d) At the beginning of service, where more than one rate schedule is available, it shall be the duty of the utility to assist an applicant for service in the selection of the schedule that is most suitable and advantageous for his requirements. If at any time subsequent to the beginning of service the customer shall request the utility to do so, it shall be the duty of the utility to advise the customer what rates are available for the class of service being supplied such customer and the effect thereof on such customer.

Facts of the Complainant's Case

1. Customer is a small, family-owned, specialty grocery store and has been a customer of the utility since 1961. (Complaint was filed in 2002.)
2. The customer has always been on rate schedule 45. From 1961 to 1976, the rate schedule did not impose on customers any minimum electric demand requirement. In 1976, schedule 45 was amended to apply only to customers whose demand exceeded 100 kW. Beginning in 1976, customers with a demand less than 100 kW were to be placed on rate schedule 25.
3. Rate schedule 45 typically charged less for energy but more for the basic service charge and the demand charge. A smaller user would typically pay less under Schedule 25 but more for the same usage under Schedule 45 because of higher basic service charges and demand charges.
4. From 1976 to 1996, Rate Schedule 45 was revised more than 20 times, but it was always to be applied to customers with a demand more than 100 kW.
5. Since 1980 to present, every version of Rate Schedule 45 defined kW load size as “the average of the two greatest non-zero monthly demands” during the previous twelve-month period. \
6. The customer has never had an electric load of 100 kW or greater. The demand history shows the highest demand to be 87kW (based on the utility witness) or 88 kW (based on customer's bills for 1994 through 2001). The customer's demand declined over time due to the changing nature of the business into a specialty shop.
7. As of 1996, the language of Rate Schedule 45 was changed with the load size of 100 kW or greater removed from the language. The customer was on the rate schedule at the time of the change and remained on the rate schedule through 2001.
8. As the customer's load declined, Rate Schedule 45 became increasingly less favorable to the customer. The overcharges were several hundred dollars per month every month since at least January 2005. For January 2005 through June 2001, the overcharge was more than \$10,000.

9. During summer of 2001, customer accidentally discovered a problem with its electric bill. Due to a change in equipment, customer was charged its usual amount for the month. When customer inquired about this, it was informed that it had been on the wrong rate schedule for 25 years.
10. Customer was placed on the correct rate schedule (Schedule 25) and the utility issued it a corrected bill for the prior three month period.
11. The complainant customer was not the only customer on the wrong rate schedule. The evidence showed that there were, over the years, as many as 95 customers on schedule 45 even though their demand was less than 100 kW.
12. Different levels of refunds were given to different customers who were on the wrong rate schedule. One customer received a refund for 22 months of incorrectness while another received a refund for only 3 months. The utility has been arbitrary in its “look back” period.
13. As rates and tariffs are changed, the utility does not assess its customers and does not determine which tariff is the most cost effective tariff under which a customer should take service.
14. The utility claims to have notified the customer in 1996 that Rate Schedule 45 had changed and no longer had a 100 kW load minimum but no evidence was produced of this notice. A 1998 bill insert showing the formulas for Schedules 25 and 45 was provided but the document did not show at what usage level Schedule 25 becomes more favorable to the customer.
15. The customer claimed that being served under Schedule 45 was illegal since the customer did not qualify for that rate under the terms of the approved tariff.
16. Claiming that the utility was negligent and received *unjust enrichment*, the customer sought an award of damages and restitution with interest. It also sought a plan for quality assurance to make sure that the situation did not recur.

Facts of the Utility's Case

1. When the customer first began to take service, there were only two rate schedules – residential or general service (non-residential).
2. There is no evidence to conclusively demonstrate whether the customer was placed on Schedule 25 or 45 in 1976. However, the customer presented bills for most of the period of 1994 through 2001 that shows the customer was being served under Schedule 45.
3. In July 2001, the utility's meter reader reported the customer's meter was stopped or dead. The meter was changed.
4. Based on the customer's August 2001 bill that appeared to be unusually large, the customer brought his concerns to the utility.
5. The customer service agent determined that the discrepancy in the bill was due to the failure of the customer's old meter. During the discussions, the customer asked if there was "a better rate for their business." The utility reviewed the records and determined that Schedule 25 would be cheaper than Schedule 45.
6. In an effort to promote good customer relations, the utility's customer service representative recalculated the bills based on Schedule 25 for the time period since the meter replacement, resulting in a \$1,177 credit to the customer's account.
7. Subsequently, the customer approached the utility and claimed it had been overcharged since 1961. The customer demanded a refund of \$921,362.
8. The utility reviewed its billing records, which went back to 1995, and determined that if the customer had been on Schedule 25 all that time, its bills would have been \$10,460 less. The utility claimed that for the period prior to 1996, the customer actually enjoyed the benefit of the lowest rate by being on Schedule 45.
9. In an effort to promote positive customer relations and settle the dispute, the customer was offered by the utility a settlement of \$10,000. The customer refused the offer.

10. The tariff never stated that the customer must have a load of 100 kW or more to be on Schedule 45.
11. Other general rules in the tariff make it the customer's responsibility to request a change in rate schedules.

What are your initial thoughts?

How far back should the rate schedule correction go, if at all?

What other remedies should be granted?