

Appendix B - October 27, 1989 Memorandum from Paul White, City Manager

shall be subject to all terms and conditions of the original contract...
disposition of utilities system...
the date of this agreement...
rights relating to the disposition of utilities system...
holders of interests in the City...
utilities system...
the City...
system...
the City...
year...
year...

ATTEST:
ALACHUA COUNTY, FLORIDA
A. Curtis Powers, Clerk
Kace Barnes, Chairman
Board of County Commissioners

APPROVED AS TO FORM
Cynthia Moore, Chairman
City of Gainesville, Florida

ATTEST:
Mary Ann B. Frazer
Clerk of the Commission

11 -
City of Gainesville, Florida
October 27, 1989

**Gainesville
Regional
Utilities**

Inter-Office Communication

TO: Honorable Mayor and
Members of the City Commission **DATE:** October 27, 1989

FROM: Paul D. White, City Manager

SUBJECT: Report on City surcharge and payment for fire hydrant and
street light services

At the City Commission meeting on October 23, 1989, the City Commission requested the City Manager to prepare certain information relating to the surcharge. The following analysis is offered in response to this referral and to aid in the development of the City's perspective on the surcharge and payment for street lighting and fire hydrant services provided in the unincorporated areas of the county. The analysis consists of a historical overview of the city's surcharge policy, a preliminary assessment of direct billing for street light and fire hydrant services and a review of surcharge policies of other municipal utilities in Florida.

HISTORY OF THE SURCHARGE

Electric Surcharge - The City of Gainesville first set rates for its electric system by Ordinance No. 259, which rates were effective March 31, 1941. This ordinance also provided for a surcharge of 10% on residential and commercial customers' outside the corporate limits of the city. The amount of the surcharge on residential and commercial customers subsequently rose to 15% in 1947 and this percentage continued until 1967. In 1967, the city lowered the surcharge to equal the 10% utility tax imposed on residential and commercial customers inside the city. Ordinance No. 1503, adopted August 31, 1967, applied taxes to the General Power, Large Power, and Large Hospital classifications¹, but did not apply a surcharge to such classes of customers in the unincorporated area of Alachua County. The surcharge was first applied to customers other than residential and commercial in 1974 by Ordinance No. 1972. Since August 9, 1974 the city has assessed a 10% utility tax on all electric service rendered to taxable customers located inside the city and a 10% surcharge on all electric service rendered to taxable customers outside the city.

¹ Currently called General Service Non-Demand Customers

² Large Power and Large Hospitals are now under GRU's Large Power Rate. General Power is now under GRU's General Service Demand Rate.

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Water Surcharge - A water surcharge of 25% was first adopted by Ordinance #479 on April 4, 1949. This rate remained in effect until 1967 when the surcharge was lowered to equal the 10% utility tax imposed on residential and commercial customers inside the city. By adoption of Ordinance No. 3468 on September 26, 1988, the city raised the water surcharge to 25% while the utility tax remained at 10%.

Wastewater Surcharge - On September 26, 1988, by adoption of Ordinance 3467, the city established a wastewater surcharge for the first time of 25%. There is no utility tax on wastewater services.

The 1988 increases in water and wastewater surcharges were adopted under the authority of Section 180.191, Florida Statutes. Neither increase was related to the cost of street lights or fire hydrants in the urban fringe.

The surcharges collected by the city are not taxes, but rather user charges for electric, water and wastewater service. There is a substantial body of case law which holds that utility charges are user charges if they are rationally related to the cost of the service provided and, furthermore, that transfer of the profits earned from such charges to a city's general fund does not convert such charges into taxes.

The Florida Public Service Commission (FPSC) currently has no jurisdiction over the city's water and wastewater rates. However, it does have rate structure jurisdiction over the city's electric rates. Thus, the FPSC has the jurisdiction to determine whether the city's electric surcharge meets the requirements of its surcharge rule. The electric rate structures of the city, including the surcharge, have been reviewed by the FPSC numerous times since the FPSC adopted its current surcharge rule. The city has received no adverse comment in respect to its surcharge. City staff does not expect the FPSC to change its rule authorizing cities to charge an electric surcharge on customers outside their corporate limits when such surcharge equals the utility tax charged within the city. Further, city staff does not expect the FPSC to change its surcharge rule if Alachua County imposes a utility tax on customers within the unincorporated area.

It is unclear how payment was made for street lights and fire hydrants prior to 1979. However, staff believes that during the existence of the Gainesville-Alachua County Regional

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Electric, Water, and Sewer Utilities Board (RUB) the street lights and fire hydrant charges were "booked" as having been paid out of funds generated from the electric and water surcharges. To the extent that water surcharge revenues were inadequate to cover fire hydrant costs, funds were transferred from electric surcharge revenues for this purpose. Consequently, any surcharge revenues which were transferred to the city's general fund during the RUB period were made after the costs of street lights and fire hydrants were deducted.

On August 18, 1975, the city adopted Ordinance No. 2065 which provided that the cost of the public street light system outside the corporate limits of the city were to be paid by surcharge funds. Staff believes that this provision in Ordinance No. 2065 was adopted to reflect the billing practices at the time the ordinance was adopted. There was no corresponding ordinance provision relating to fire hydrant charges. Ordinance No. 2065 did not create the surcharge, but rather designated it as a funding source. In the city's view, this provision was effectively repealed on December 5, 1979, upon adoption of Chapter 28, Article IV which codified the agreement to dissolve the RUB.

The agreement to dissolve RUB ("RUB-out") provided for the city to make payments to the county equal to the charges assessed against the county for fire hydrant and street lighting services. The RUB-out agreement designated the amount of the surcharge as a cap on the amount which the city could be required to pay the county, but did not designate the surcharge as the source of the payment. When the agreement ended, the city had no further obligation to reimburse the county for street lighting and fire hydrant costs.

Throughout the periods that either the RUB agreement or the RUB-out agreement were in effect, the surcharge provisions in the city's electric and water rate ordinances continued to track the city's utility tax provisions. No changes were necessary and no changes were made to the surcharge provisions to reflect interlocal agreement changes.

DIRECT BILLING FOR STREET LIGHTS AND FIRE HYDRANTS

A letter from Bob Fernandez, County Manager, to Paul White, City Manager indicates that on August 29, 1989, the Board of County Commissioners requested that a method be determined for billing GRU customers in the unincorporated area who receive

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street light and fire hydrant service. There are legal and billing system constraints on GRU's ability to bill customers directly.

Normally, GRU's relationship with its customers is a contractual one and GRU would not be able to bill customers for a service absent the customer's application for such service. Consequently, absent customer request, the only way GRU could do direct billing would be for the county to establish user fees for such services by county ordinance and contract with GRU to collect such user fees. There are various legal constraints relating to the adoption of a valid user fee. Consequently, any contract entered into between the city and the county to provide for direct billing of the county's user charges should contain an indemnification clause which would protect the city from risk in this regard.

Another factor to be considered in respect to direct billing is that the city would be without power to enforce the collection of the county's user fees by discontinuation of electric or water service for non-payment of the street light or fire hydrant fee. Non-payment of the user fees would be a collateral matter not related to the terms of the utility's contract with the customer for electric or water services.

GRU's billing system is capable of distinguishing between customers inside and outside the City limits. The system can distinguish between different customer classes, but only for electric customers. Finally, the system can distinguish what services each customer is taking, e.g. water only. However, the system has no way of reflecting whether the customer is in an area being provided street light service, fire hydrant service, or both. Because of these billing constraints, a street light charge could be made against all customers in a customer class, but it would not be possible to differentiate, for example, between customers who had street lights near their houses and those who did not. Absent a difference in street light fee based on such differentiation, the street light charge might be susceptible to legal challenge. It would be the county attorney's responsibility to advise the county in this regard.

SURCHARGES IN OTHER FLORIDA UTILITIES' UTILITY SERVICE AREAS

Many other Florida cities have electric surcharges which meet the requirements of the FPSC rule. City staff reviewed the city tax/surcharge policies of all the large municipal utilities in Florida as well as some of the policies of

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the smaller ones which GRU often compares its rates against (the results are summarized in Tables 1-3). Staff found that a vast majority of these electric utilities (11 of 15) have surcharges that meet the requirements of the FPSC rule. All eleven have surcharges equal to their respective municipal utility tax rates.

Many other municipalities providing water and wastewater services outside the municipal boundaries have water and wastewater surcharges adopted under the authority of Section 180.191, Florida Statutes. Of the 13 water utilities providing service outside their corporate boundaries, seven have surcharges ranging from 10 per cent to 50 per cent. Six do not have provisions for a surcharge on customers in the unincorporated area. However, four of those six charge customers in the unincorporated area higher base rates than customers within city limits. Therefore, in seven of the thirteen utilities, customers in the unincorporated service areas pay more for water service than do customers within city limits.

Of the 11 wastewater utilities providing service outside their corporate boundaries, three have surcharges ranging from 10 percent to 25 percent. Nine utilities do not have provisions for a surcharge on customers in the unincorporated areas. However, two of those nine charge customers in the unincorporated areas higher base rates than customers within city limits. Therefore, customers in the unincorporated areas of four of the utilities surveyed pay more for wastewater service than do customers within city limits.