

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a staff-
assisted rate case in Volusia
County by TERRA MAR VILLAGE
(River Park).

DOCKET NO. 941084-WS
ORDER NO. PSC-98-0266-FOF-WS
ISSUED: February 9, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER DISMISSING UNTIMELY PROTEST
AND INITIATING DOCKET TO ADDRESS COMPLAINT

BY THE COMMISSION:

Background

Terra Mar Village (Terra Mar or utility) is a Class C water and wastewater utility located in Volusia County, Florida. The utility's service area is located on the Intercoastal Waterway between Edgewater and Oak Hill approximately seven miles south of New Smyrna Beach along the east boundary of U.S. Highway 1 in Volusia County. Presently, there are 247 water and wastewater customers.

On October 11, 1994, Terra Mar filed an application for a staff assisted rate case. This docket was opened to process the application. On March 16, 1995, Commission staff held a customer meeting at the Terra Mar Village Clubhouse in Edgewater, Florida. By Proposed Agency Action Order No. PSC-95-0722-FOF-WS, issued June 19, 1995, the Commission granted Terra Mar's application for increased water and wastewater rates. Order No. PSC-95-0722-FOF-WS became final on July 10, 1995.

On March 6, 1997, the Commission received a written protest of Order No. PSC-95-0722-FOF-WS from Mr. Robert Lawrence, a customer of the utility. On November 24, 1997, the Office of Public Counsel

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(OPC) submitted additional information from Mr. Lawrence regarding his complaints on actions taken by Terra Mar. OPC, on behalf of Mr. Lawrence, has requested that a docket addressing the complaints be opened so that Mr. Lawrence can have his opportunity for a hearing. This Order addresses the timeliness of Mr. Lawrence's written protest and his request that the Commission open a separate docket to address his complaint.

Timeliness of Protest

As stated earlier, Order No. PSC-95-0722-FOF-WS, along with a Notice of Further Proceedings or Judicial Review, was issued on June 19, 1995 as proposed agency action. Rule 25-22.029(6), Florida Administrative Code, provides, "In the absence of a timely request for a [Section] 120.57 hearing, and unless otherwise provided by a Commission order, the proposed agency action shall become effective upon the expiration of the time within which to request a hearing." Rule 25-22.029(2), Florida Administrative Code, provides, "After agenda conference, the Division of Records and Reporting shall issue written notice of the proposed agency action, advising all parties of record that they have 21 days after issuance of the notice in which to file a request for a [Section] 120.57 hearing." Therefore, in order for a protest to have been considered timely, it would have had to be filed on or before July 10, 1995.

On March 6, 1997, the Commission received a written protest of Order No. PSC-95-0722-FOF-WS filed by Mr. Lawrence, a customer of Terra Mar. In the protest, Mr. Lawrence states that he is protesting the Order insofar as the Order contains findings related to the cut-off of his water service by Terra Mar. He further alleges that the Commission's findings are not supported by the facts and will substantially affect his claim for damages from Terra Mar. Therefore, he requests a hearing to determine whether the disconnection of his water service by Terra Mar on September 27, 1994 was proper.

In addressing the timeliness of his protest, Mr. Lawrence alleges that at the customer meeting held on March 16, 1995, he spoke with the staff engineer and requested a copy of the Order which would subsequently be issued. Mr. Lawrence alleges that he also signed a list which included those people who wanted copies of the Order. Mr. Lawrence further alleges that notwithstanding his request, the Commission failed to provide him with a copy of the

Order. As a result of that failure, Mr. Lawrence contends that through no fault of his own, he was prevented from filing a petition for a hearing within the twenty-one day protest period.

As stated earlier, in order to have been considered timely, any protest to Order No. PSC-95-0722-FOF-WS would have had to be filed on or before July 10, 1995. Mr. Lawrence's protest was filed on March 6, 1997, more than twenty months after the issuance of Order No. PSC-95-0722-FOF-WS. During customer meetings, our staff counsel explains the entire proposed agency action process to the customers. A review of the transcript indicates that this was done. As we know that Mr. Lawrence attended the customer meeting, we know that he should have been apprised of the proposed agency action process and the time within which to protest an order.

The list Mr. Lawrence references is the customer attendance sheet used by our staff at the beginning of a customer meeting in staff assisted rate cases. The purpose of the list is to first identify those customers who attend the meeting and also to allow customers to indicate whether they intend to speak during the meeting. In addition, our staff instructs the customers to circle their name on the list if they would like to receive a copy of both the staff recommendation and Order which will subsequently be issued in the case. We have reviewed the list used at this particular customer meeting in light of Mr. Lawrence's allegations. Upon reviewing the list, staff has determined that while Mr. Lawrence signed the attendance list, he did not circle his name indicating his desire to receive a copy of the staff's recommendation and Order. Furthermore, we have reviewed the transcript of the customer meeting and have verified that there is no request for copies by Mr. Lawrence on record. As a result, Mr. Lawrence did not receive copies of the recommendation and order. Mr. Lawrence did not speak at the customer meeting but did discuss his concerns with our staff afterwards. Therefore, our staff addressed his concerns in the recommendation as did we in our Order. At pages 8 through 9 of Order No. PSC-95-0722-FOF-WS, this Commission states:

One specific customer claimed that the utility cut off his water service without notification for failing to pay amenities which was not related to utility service. The utility sent this customer a five day notice on September 20, 1994, before terminating service on September 26, 1994. The customer was in arrears from July, 1994. The utility sent us a copy of a letter they received from the

customer that was his response to their billing notices. Upon our review of the letter and other documentation, we find that the customer's complaint is unfounded.

Our staff has been communicating with Mr. Lawrence for the last two years but they have been unsuccessful in their attempts to resolve Mr. Lawrence's complaint to his satisfaction. Different staff members have contacted Mr. Lawrence about initiating a separate complaint against Terra Mar. It has been difficult to ascertain what Mr. Lawrence's exact concerns are. In any case, we have reviewed this matter thoroughly and believe that Mr. Lawrence's March 6, 1997 written protest of Order No. PSC-95-0722-FOF-WS is untimely as filed. Accordingly, it shall be dismissed.

Initiation of Complaint Docket

On April 30, 1997, Staff counsel contacted OPC for its assistance in attempting to resolve this matter. On November 27, 1997, our Division of Consumer Affairs received a letter from OPC, on behalf of Mr. Lawrence, requesting that a formal complaint docket be opened to address Mr. Lawrence's complaints regarding Terra Mar. In the request, OPC states that Mr. Lawrence has attempted on numerous occasions to have his claim actually heard by the Commission and initiating a docket to address Mr. Lawrence's concerns will provide him with an opportunity for an evidentiary hearing.

While we believe that a formal complaint docket may provide Mr. Lawrence an opportunity to present his allegations directly to us, we are concerned that the allegations contained in the attachment to OPC's request are raising issues previously dealt with in the aforementioned staff assisted rate case. Specifically, Mr. Lawrence's allegations of improper disconnect in 1994 and potential double billing for that same period were addressed at pages 8 and 9 of Order No. PSC-95-0722-FOF-WS. We are concerned that additional time and resources will be spent readdressing matters that were already resolved by Commission order.

However, in deference to OPC's request, whose involvement originated at our urging, we will open a formal complaint docket to attempt to resolve this matter.

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Closing Docket

No further action is necessary in Docket No. 941084-WS. Accordingly, the docket shall be closed.

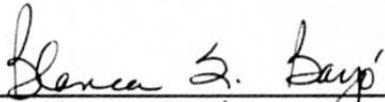
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the March 6, 1997 protest filed by Mr. Robert Lawrence is dismissed as untimely. It is further

ORDERED that Mr. Lawrence's request to initiate a docket to address his complaint is granted. It is further

ORDERED that Docket No. 941084-WS is closed.

By ORDER of the Florida Public Service Commission this 9th day of February, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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.