

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Robert and Ruth Lawrence against Terra Mar Village Utilities, Inc., regarding termination of water service in Volusia County.

DOCKET NO. 980163-WS
ORDER NO. PSC-98-1578-PCO-WS
ISSUED: November 24, 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 FINDING THAT UTILITY PROPERLY DISCONNECTED SERVICE AND
GAVE PROPER NOTICE OF DISCONNECTION, AND
ORDER SETTING MATTER FOR HEARING

BY THE COMMISSION:

BACKGROUND

Terra Mar Village Utilities, Inc. (Terra Mar or utility) is a Class C water and wastewater utility in Volusia County, which currently provides service to approximately 250 water and 253 wastewater customers. On July 9, 1981, Mr. Frank Uddo of Terra Mar Associates, filed an application on behalf of the utility, for original certificates of authorization. Mr. Uddo's application was granted by Order No. 11267, issued October 26, 1982.

By agreement dated August 9, 1983, Terra Mar Associates leased the utility facilities to Terra Mar Village Association, Inc. (Terra Mar Village) for a term of five years after which Terra Mar Village had the option to purchase the facilities. On June 24, 1986, midway through the lease period, Terra Mar Associates filed an application to transfer the utility's certificates to Terra Mar Village. The transfer was approved in Order No. 16815, issued November 6, 1986. Terra Mar Village exercised its option to purchase the utility in November of 1988 with the purchase mortgage held by Terra Mar Associates. In 1993, Terra Mar Village defaulted

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on the mortgage, and foreclosure proceedings were begun by Terra Mar Associates. The utility was placed in receivership.

On July 15, 1994, Circuit Judge William Johnson appointed Mr. Frank Uddo as the Successor Receiver. On November 7, 1994, foreclosure proceedings against Terra Mar Village were completed and a Certificate of Title issued back to Frank J. Uddo, Albert Pica and Joseph Uddo.

On June 19, 1995, pursuant to a staff-assisted rate case, we granted the utility's current owners rate relief through Proposed Agency Action Order No. PSC-95-0722-FOF-WS, in Docket No. 941084-WS. On June 20, 1995, we received an application on behalf of the utility to transfer Certificates Nos. 374-W and 323-S back to Terra Mar Village Utilities, Inc. by Frank and Joseph Uddo. By Order No. PSC-96-0581-FOF-WS, issued May 3, 1996 in Docket No. 950695-WS, we approved the transfer.

On March 6, 1997, we 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 (OPC) submitted additional information from Mr. Lawrence regarding his complaints on actions taken by Terra Mar. OPC, on behalf of Mr. Lawrence, requested that a docket addressing the complaints be opened so that Mr. Lawrence could have an opportunity for a hearing.

Mr. Lawrence protested the Order with regard to findings related to the disconnection of his water and wastewater service by Terra Mar. Mr. Lawrence alleged that our findings were not supported by the facts and substantially affected his claim for damages from Terra Mar. Therefore, he requested a hearing to determine whether the disconnection of his water service by Terra Mar on September 27, 1994 was proper.

Our findings regarding Mr. Lawrence's concerns are addressed on pages 8 through 9 of Order No. PSC-95-0722-FOF-WS, as follows:

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.

By Order No. PSC-98-0266-FOF-WS, we dismissed Mr. Lawrence's protest of Order No. PSC-95-0722-FOF-WS finding that it was untimely as filed. Nevertheless, we ordered that a formal complaint docket be opened to address Mr. Lawrence's concerns. Therefore, this docket was opened for that purpose, listing Mr. Lawrence and his wife, Ruth, as the complainants.

On April 14, 1998, our staff held an informal meeting with the parties at the Volusia County Public Library, in Edgewater, Florida. The purpose of this was to gather information from the parties and attempt to resolve this matter without further action. In addition to the parties and staff, a representative from OPC and numerous Terra Mar customers were also in attendance.

COMPLAINT

At the April 14 meeting, each party was given an opportunity to speak and provide documentation to support his claims. During this meeting, Mr. Lawrence indicated two basic concerns: 1) that the utility had no right to discontinue his service, because he paid his water and wastewater bills; and 2) that the utility failed to give proper notice prior to disconnection.

With regard to his first concern, Mr. Lawrence stated that Terra Mar had historically charged a \$35.00 fee for basic water and wastewater service, as well as for amenities to the mobile home park. Mr. Lawrence stated that the utility did not provide a breakdown indicating what percentage of payment was applied to utility service. Mr. Lawrence also stated that his bills did not indicate that overdue amounts were owed for water and wastewater service. Mr. Lawrence stated that in September of 1994 he deducted \$10 from his \$35.00 bill, due to a dispute regarding Terra Mar's failure to provide mobile home park amenities, including a pool and clubhouse. Subsequently, his water and wastewater service was disconnected.

With regard to his second concern, Mr. Lawrence stated that he received a telephone call from a neighbor on September 27, 1994, indicating that the utility was disconnecting Mr. Lawrence's service. According to Mr. Lawrence, his service should not have

been disconnected until October 4, 1994. Mr. Lawrence stated that the utility needed a court order to disconnect service.

Mr. Lawrence also provided information regarding the dispute over provision of amenities, which was an issue in the foreclosure action discussed earlier. Mr. Lawrence was reminded by our staff that the focus of the April 14 meeting was limited to utility issues.

During the April 14 meeting, the OPC representative asked Mr. Lawrence what he wanted to accomplish in this docket. Mr. Lawrence stated that he wanted Order No. PSC-97-0722-FOF-WS rescinded and he wanted a Commission document stating that Terra Mar had no right to disconnect his service. Mr. Lawrence indicated that upon receiving such document, he intended on suing Joe and Frank Uddo in civil court. In response to Mr. Lawrence's comments, Mr. Joe Uddo, on behalf of the utility, indicated that Terra Mar complied with Commission regulations with regard to its billing and disconnect procedures.

Payment of Water and Wastewater Service

A review of the utility's tariff indicates that Terra Mar had an approved base facility charge of \$25.68 for water and wastewater service. Mr. and Mrs. Lawrence were in New York from July through September of 1994 and, as such, were only responsible for the base facility charge. Mr. Uddo did not take over utility operations until July 15, 1994. Prior to that time, the former receiver was not charging the approved base facility charge. Mr. Lawrence's June 27, 1994, billing statement indicates that the former owner charged the basic \$35 fee, plus a \$3.82 gallonage charge. Mr. Lawrence paid \$40.00 for June. However, the bills from July onward indicate that the utility, under Mr. Uddo, began billing Mr. Lawrence the Commission approved base facility charge of \$25.68. This amount was indicated on a bill from "Terra Mar Village - utility services" clearly marked "basic water and sewer." In addition, Mr. Lawrence received a separate "monthly fees and collection invoice" of \$35 from Terra Mar Village, which appears to be a co-op fee for the amenities.

For July and August, Mr. Lawrence only paid the \$35 fee. In September, he paid \$25, due to the amenities dispute discussed earlier. The September utility bill clearly indicated the base facility charge, plus arrears in the amount of \$25.68 for the preceding month. On September 20, 1994, the utility sent Mr.

Lawrence a notice indicating that it would disconnect service on September 27, 1994, if Mr. Lawrence did not bring his utility account up to date within five working days of the notice. When Mr. Lawrence did not comply, service was disconnected. Therefore, we find that the utility properly disconnected service to Mr. and Mrs. Lawrence for failure to pay utility bills.

We do note, however, that a letter from Terra Mar's attorney, dated October 18, 1994 to Mr. Lawrence's attorney acknowledged the \$35 fee collected by the former receiver. The letter indicated that Terra Mar had not raised the issue of the base facility charge, pending resolution of Mr. Lawrence's disconnection. However, the letter suggested that Mr. Lawrence's service was disconnected for failure to pay the \$35 "utility and amenity fee" in September. The letter indicated that Mr. Lawrence would be reconnected if he paid a \$10 disconnect fee, a \$15 reconnect fee; and pro-rata utility and co-op fees for October of \$11.62 and \$19.21, respectively.

Our staff contacted the utility, its attorney and the Lawrences' attorney by telephone regarding this matter. The utility indicated that it did not authorize its attorney to request co-op fees for reconnection of utility service. The utility's attorney provided accounting sheets and indicated that utility service was disconnected for failure to pay utility services only. The Lawrences' attorney indicated that the letter was sent in an attempt to settle the foreclosure action, which required a determination of what an acceptable amenities fee would be on a going forward basis. Admittedly, we had some concern regarding the aforementioned letter. However, Terra Mar's billing records are very detailed. Based on those records and the previously discussed telephone conversations, it is clear that the Lawrences' utility service was disconnected for nonpayment of utility service. Furthermore, the utility's September 20, 1994 notice clearly stated that utility service would be disconnected for failure to pay past due utility service. We also note that a settlement document provided by Mr. Lawrence indicates that utility service was restored in exchange for payment of \$25 for the utility disconnect and reconnect fees only. The Lawrences' attorney verified that service was restored for the \$25 payment.

We believe that the real dispute between the parties involves the mobile home park amenities, over which we have no jurisdiction. Much of the documentation which Mr. Lawrence provided relates to the amenities dispute in the Uddos' foreclosure action. As

discussed earlier, there was discussion during the April 14 meeting dedicated to that topic. When focus is limited to utility matters, it is clear that the utility did, in fact, follow proper billing procedure.

Notice of Disconnection

Rule 25-30.320(2)(g), Florida Administrative Code, provides, in part, that a utility may disconnect service for nonpayment of bills, provided that the customer receives at least five working days' written notice. The utility complied with this rule. Notice was mailed on September 20, 1994, giving the Lawrences until September 27, 1994 to bring their account up to date. This was, in fact, five working days' notice. Although Mr. and Mrs. Lawrence were out of town, the rule does not require additional time for notice during a customer's leave of absence. Based on the foregoing, we find that the utility gave Mr. and Mrs. Lawrence proper notice regarding disconnection of utility service.

REQUEST FOR HEARING

On November 2, 1998, we received a letter from Mr. and Mrs. Lawrence requesting an administrative hearing. Normally this Order would be issued as Proposed Agency Action. However, based upon the Lawrences' November 2, 1998 letter and protest, it is apparent that our decision in this matter will only result in the Lawrences filing a subsequent protest of this Order. Accordingly, we find it appropriate to set this matter for hearing.

Based on the foregoing, it is

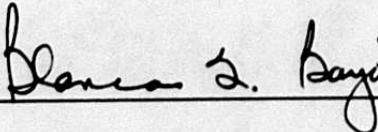
ORDERED by the Florida Public Service Commission that Terra Mar Village Utilities, Inc. properly disconnected Mr. and Mrs. Lawrence's water service for failure to pay for utility service, and gave Mr. and Mrs. Lawrence proper notice prior to disconnection of service. It is further

ORDERED that this matter shall be set for hearing. It is further

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ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 24th
day of November, 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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

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the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.