

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application For Transfer ) DOCKET NO. 950695-WS  
of Certificates Nos. 374-W and ) ORDER NO. PSC-96-0581-POF-WS  
323-S, from Terra Mar Village ) ISSUED: May 3, 1996  
(River Park) to Terra Mar )  
Village Utilities, Inc., in )  
Volusia County. )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JULIA L. JOHNSON  
DIANE K. KIESLING  
JOE GARCIA

ORDER APPROVING TRANSFER

AND

NOTICE OF PROPOSED AGENCY ACTION

ORDER ESTABLISHING RATE BASE FOR  
PURPOSES OF THE TRANSFER

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein regarding the establishment of rate base for purposes of the transfer and denial of an acquisition adjustment is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

Terra Mar Village was a Class C water and wastewater utility in Volusia County. The utility's service area is located on the Intercoastal Waterway between Edgewater and Oak Hill approximately seven miles south of New Smyrna Beach. As of December 31, 1994, there were 237 water customers and 247 wastewater customers. The utility's combined revenues for 1994 were \$120,614. The water

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system had a net operating loss of \$15,031 and the wastewater system had a net operating income of \$85.

On June 4, 1965, Volusia County placed the privately-owned water and wastewater utilities in the county under Commission jurisdiction. In Order No. 7014, issued November 19, 1975, the Commission ordered River Park Mobile Home Colony, the Utility's former name, to show cause why it should not be penalized for failure to make application for certificates of authorization. However, before the utility could respond, it was placed in receivership.

During the course of the receivership there was continuing litigation to determine the rightful owner of the Utility. Mr. Frank Uddo of Terra Mar Associates emerged as the owner. Mr. Uddo changed the name of River Park Mobile Home Colony to Terra Mar Village Utilities, Inc. (Terra Mar or Utility) On July 9, 1981, Mr. Uddo filed an application on behalf of the utility for original certificates of authorization which were ultimately granted in 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 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 on the mortgage and foreclosure proceedings were begun by Terra Mar Associates. The utility was once again placed in receivership.

A bottled water notice was issued by the Volusia County Public Health Unit on April 5, 1993, and the Commission issued Order No. PSC-93-1414-FOF-WU on September 29, 1993 ordering the utility to show cause why it should not be fined up to \$5,000 per day for failure to provide adequate water service to its customers. On March 8, 1994, the Commission issued Order No. PSC-94-0265-FOF-WU imposing a \$5,000 fine which was suspended for 12 months pending compliance with Volusia County Public Health Unit's requirements or an interconnection with the City of Edgewater.

On July 15, 1994, Circuit Judge William Johnson appointed Mr. Frank Uddo, the previous owner under Terra Mar Associates, 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 March 10, 1995, as a result of the improvements to utility systems made by Joseph Uddo, the Commission issued Order No. PSC-95-0339-FOF-WU permanently suspending the fine imposed a year earlier by Order No. PSC-94-0265-FOF-WU.

On June 19, 1995, pursuant to a staff-assisted rate case, the Commission granted the utility's current owners rate relief through Order No. PSC-95-0722-FOF-WS. The next day, June 20, 1995, the Commission received this application on behalf of the utility to transfer Certificates Nos. 374-W and 323-S back to Terra Mar Village Utilities, Inc., which is a Florida Corporation formed December 19, 1994, by Frank and Joseph Uddo.

#### Application

On June 26, 1995, Terra Mar/River Park Homeowners Association, Inc., and Evelyn Schlack, individually, filed a joint objection to the utility's application. On July 26, 1995, the utility filed a Motion to Dismiss the objection as untimely. Pursuant to Order No. PSC-95-1386-FOF-WS, issued November 8, 1995, the Commission denied the Motion to Dismiss and set the matter for administrative hearing.

However, on December 5, 1995, Terra Mar Village Homeowners Association, Inc., f/k/a Terra Mar/River Park Homeowners Association, Inc. and Evelyn Schlack, filed a Voluntary Dismissal of the Objection to the Utility's Request to Transfer Certificates with the Commission. Subsequent to the filing, the hearing dates were cancelled by the Chairman. Terra Mar Village Homeowners Association, Inc., and Evelyn Schlack's Voluntary Dismissal of the Objection to the Utility's Request to Transfer Certificates is hereby acknowledged.

The application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules. In particular, the application contains a filing fee in the amount of \$1,500, pursuant to Rule 25-30.020, Florida Administrative Code. Terra Mar provided proof of compliance with the noticing provisions of Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system being transferred.

The application includes a statement from the buyer that the systems being acquired have been restored to satisfactory condition by the buyer as required by Rule 25-30.037(2)(p), Florida Administrative Code.

Our engineer conducted an engineering field investigation of the utility's water and wastewater plants in Docket No. 941084-WS. By Order No. PSC-95-0722-FOF-WS, we concluded that the utility is meeting the standards set forth by the Volusia County Public Health Unit and the DEP for drinking water and wastewater treatment.

Terra Mar provided a copy of the Certificate of Title issued by the Circuit Court, Seventh Judicial Circuit, in and for Volusia County, Florida, as evidence that the utility owns the land upon which its facilities are located, as required by Rule 25-30.037(2)(g), Florida Administrative Code. Rules 25-30.037(2)(g) and (h), Florida Administrative Code, require the application for transfer of certificate to contain a copy of the purchase agreement which includes the sale price and a statement describing how the purchase is to be financed. As more fully discussed in the background section of this order, the buyer acquired title to the utility through foreclosure proceedings. As a consequence, there was no contract of sale or purchase price. The applicant therefore provided a copy of the Certificate of Disbursements issued by the Circuit Court which certifies that no disbursements were made.

A 1994 annual report was filed and regulatory assessment fees appropriately paid from the time the buyer was appointed receiver in July of 1994 through December 1994. There are no outstanding fees, penalties or fines.

From information provided with the application, it appears that Terra Mar has the technical and financial ability to operate the utility. The application contains a statement that the buyer accepts no responsibility for commitments, obligations or representations of the former owner in regard to utility matters. However, the statement indicated the buyer's intent to fulfill all reasonable requirements of regulatory agencies concerning utility matters. The statement suggests that the buyer has demonstrated financial and technical ability to operate the utility systems by restoring the systems to operating standards.

Based on the foregoing, we find that the transfer of Certificate Nos. 374-W and 323-S from Terra Mar Village to Terra Mar Village Utilities, Inc. is in the public interest and it is approved. The territory which Terra Mar is authorized to serve is described on Attachment A of this Order, which by reference is incorporated herein.

#### Rate Base

Rate base was recently established in Docket No. 941084-WS. According to Order No. PSC-95-0722-FOF-WS, issued on June 19, 1995

in that Docket, rate base was found to be \$42,988 for the water system and \$18,089 for the wastewater system at the time of transfer. This is a Commission-approved rate base and, as such, includes all ratemaking adjustments of working capital calculations and used and useful adjustments.

An audit of the books and records of the utility was conducted to establish rate base (net book value) at the time of the transfer. The application contains a statement that the buyer made a good faith, extensive effort to acquire the books, records and income tax statements from the prior owner. All acquired records were supplied to the Commission in the staff-assisted rate case proceeding in Docket No. 941084-WS.

#### Acquisition Adjustment

An acquisition adjustment results when the cost of the utility assets acquired differs from original cost. In this case there was no purchase price as the Utility was acquired through a foreclosure proceeding. The cost acquired should be the debt retired plus any cost associated with the foreclosure proceeding. The Purchaser has been unable to supply the Commission with information as to this cost. However, the buyer provided a statement with the application that no acquisition adjustment is being requested.

For these reasons, no acquisition adjustment has been made to the calculation of rate base in Order No. PSC-95-0722-FOF-WS. The rate base for purposes of transfer should, therefore, remain \$42,988 for the water system and \$18,089 for the wastewater system as established by Order No. PSC-95-0722-FOF-WS.

#### Rates and Charges

Terra Mar's current rates became effective July 31, 1995, pursuant to Order No. PSC-95-0722-FOF-WS. Rule 25-9.044(1), Florida Administrative Code, provides that:

In case of change of ownership or control of a utility which places the operation under a different or new utility, or when its name is changed, the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission) [.]

In the application, the buyer agreed to use the rates and charges established in Order No. PSC-95-0722-FOF-WS. The utility

shall continue to operate under the existing tariffs and apply previously approved rates and charges. The utility has filed water and wastewater tariffs reflecting the transfer of ownership. The tariff shall be effective for services rendered or connections made on or after the stamped approval date.

Upon expiration of the protest period, if there are no timely protests filed by a person whose interests are substantially affected, to the actions proposed herein, this docket shall be closed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Terra Mar Village Homeowners Association, Inc., f/k/a Terra Mar/River Park Homeowners Association, Inc., and Evelyn Schlack's, Voluntary Dismissal of their Joint Objection to the utility's application in this docket is acknowledged. It is further

ORDERED by the Florida Public Service Commission that the transfer of Certificate Nos. 374-W and 323-S from Terra Mar Village, to Terra Mar Village Utilities, Inc., 4383 South U.S. 1, Edgewater, Florida 32141, is hereby approved. It is further

ORDERED that rate base, for purposes of the transfer, which reflects the net book value of the system, is \$42,988 for the water system and \$18,089 for the wastewater system. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that a positive acquisition adjustment shall not be included in the calculation of rate base for transfer purposes. It is further

ORDERED that Terra Mar Village Utilities, Inc. shall charge the rates and charges approved in Terra Mar Village's tariff until authorized to change by this Commission. It is further

ORDERED that the tariff filed by Terra Mar Village Utilities, Inc. shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

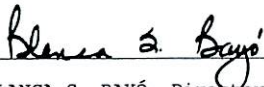
ORDERED that the provisions of this Order regarding the establishment of rate base for purposes of the transfer and denial of a positive acquisition adjustment are issued as proposed agency action and shall become final and effective unless an appropriate

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petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 3rd day of May, 1996.



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 120.59(4), 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.

The action proposed herein regarding the establishment of rate base for purposes of the transfer and denial of a positive acquisition adjustment is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540

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Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 24, 1996.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.



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ATTACHMENT A

TERRA MAR VILLAGE

TERRITORY DESCRIPTION

Township 18 South, Range 35, East, Volusia County

Section 38

The South 1,500 feet of the North 2,300 feet of the West  
2,500 feet of said Section 38.