

State of Florida



Public Service Commission

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COMMISSION
CLERK

DATE: JANUARY 8, 2004

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (JAEGER)
DIVISION OF CONSUMER AFFAIRS (PLESCOW) *RRR J. West*

RE: DOCKET NO. 030828-WS - COMPLAINT NOS. 512346W AND 533120W CONTESTING HIGH WATER AND WASTEWATER BILLS FOR DECEMBER 2002 AND APRIL 2003, RESPECTIVELY, FILED BY MR. HAROLD SHRIVER AGAINST TERRA MAR VILLAGE UTILITIES, INC., IN VOLUSIA COUNTY.

AGENDA: 01/20/04 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030828.RCM

CASE BACKGROUND

On January 14, 2003, Mr. Shriver (customer) contacted the Commission and complained that his water bill from Terra Mar Village Utilities, Inc. (Terra Mar or utility) for the month of December 2002 increased from an average daily usage of approximately 25 gallons (approximately 750 gallons per month) to more than 365 gallons per day, or 10,953 gallons per month, for a total water and wastewater bill of \$196.91. This complaint was assigned Complaint No. 512346W.

Approximately five months later, Mr. Shriver was billed for 4,602 gallons of water use in April 2003. He again filed a complaint which was assigned Complaint No. 533120W.

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Staff filed its initial recommendation on these complaints for the Commission's consideration at the September 16, 2003, Agenda Conference. However, this recommendation was deferred at Mr. Shriver's request.

The Commission considered the recommendation of staff on the two complaints at the October 21, 2003 Agenda Conference. Mr. Shriver attended this conference by telephone. Having allowed Mr. Shriver to address the Commission, the Commission then voted to deny both complaints, and, on November 5, 2003, issued Proposed Agency Action Order No. PSC-03-1248-PAA-WS (PAA Order) accordingly.

However, on November 20, 2003, Mr. Shriver filed his timely "Petition for Initiation of Proceedings (28-106.201)" (Petition). This recommendation addresses the proper disposition of Mr. Shriver's Petition. The Commission has jurisdiction pursuant to Sections 367.011, 367.081, and 367.121, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: What is the proper disposition of Mr. Harold Shriver's Petition for Initiation of Proceedings?

RECOMMENDATION: In accordance with Rule 28-106.201(4), Florida Administrative Code, the Commission should dismiss the Petition, without prejudice, for Mr. Shriver's failure to comply with the requirements of Rule 28-106.201(2)(b), (d), and (e), Florida Administrative Code. Mr. Shriver should be given 21 days to amend his Petition to comply with Rule 28-106.201, Florida Administrative Code. (JAEGER, PLESCOW)

STAFF ANALYSIS: As noted in the Case Background, the Commission issued its PAA Order dismissing both complaints of Mr. Shriver on November 5, 2003. In that PAA Order, the Commission specifically stated:

The results of our staff's investigation show that the meter appears to have started at zero and is accurate, and the rates charged appear to be correct. Moreover, there is evidence that Mr. Shriver was having problems with his piping, his commode, and his washing machine which might account for excessive usage.

Purportedly in compliance with Rule 28-106.201, Florida Administrative Code, Mr. Shriver timely filed his Petition on November 20, 2003.

Rule 28-106.201(2), Florida Administrative Code, governs hearings involving disputed issues of material fact, and states in pertinent part:

- (2) All petitions filed under these rules shall contain:
* * *
- (b) The . . . telephone number of the petitioner . . . ;
* * *
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged as well as the rules and statutes which entitle the petitioner to relief; and
* * *

In his Petition, Mr. Shriver states:

- Complainant Harold Shriver having read the July 30, 2003 Informal Conference report and finding therein numerous material facts changed, omitted from the voice tapes and misinformation in the PSC docket reports, and material facts omitted sufficient to change the whole truth and nothing but the truth, and without both the customer and the utility represented in the informal hearing conference (only the customer participated).

- Complainant Harold Shriver contends with the voice tapes reported with accurate tape transcriptions (exactly what was uttered was not (NOT) accurately reported) that these material facts were changed impressing the hearing committee to fault in the findings and this was extremely unfair and deserves to be heard correctly.
Complainant Harold Shriver charges the Commission hearing early [sic] into the Informal Conference abruptly ended by a motion by Mr. Bradley and a vote that ended immediately without reason given and NO complete hearing resulted. Again the utility chose NOT to participate

Mr. Shriver then concluded his Petition by stating:

Complainant Harold Shriver makes a demand plea to have an administrative law judge hear the above docketed case objectively to correct numerous material facts allowing an unbiased show cause for the two excessive water bills none of which was ever a benefit to the claimant. Only then can correct adjudication be fulfilled, which is the constitutional right of Harold Shriver.

Staff does not believe that the petitioner has complied with any of the above-noted provisions of Rule 28-106.201. In regards to paragraph (2)(d), Mr. Shriver merely alleges that there are issues of material fact but does not state what they are. Moreover, nowhere does Mr. Shriver make "a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief."

Staff is aware that, in the past, the Commission has given customers great leeway in filing petitions protesting PAA orders. Also, staff notes that in his demand for relief, Mr. Shriver does state that there were "two excessive water bills none of which was ever a benefit to the claimant." However, staff believes that this allegation is not enough to be in substantial compliance with the requirements of Rule 28-106.201(2)(d) and (e), Florida Administrative Code, which are set out above. In the case of Brookwood Extended Care Center of Homestead, LLP v. Agency for Health Care Administration, 28 Fla. Law Weekly D 1869 (Fla. 3d DCA August 13, 2003), the Third District Court of Appeal noted that general denials and nonspecific allegations were no longer sufficient, and further noted "that agencies are to review petitions for completeness before forwarding them on to DOAH." Staff does not believe that this Petition is complete or in substantial compliance with Rule 28-106.201(2), Florida Administrative Code.

Rule 28-106.201(4), Florida Administrative Code, states:

A petition may be dismissed if it is not in substantial compliance with subsection (2) of this rule or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.

Therefore, because staff does not believe that the Petition is in substantial compliance with the aforementioned subparagraphs, and noting that the defects could be corrected, staff recommends that the Petition of the complainant be dismissed without prejudice.

Rule 28-106.201(5), Florida Administrative Code, states:

The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.

The reasons for denial are for the Petitioner's failure to substantially comply with subparagraphs 28-106.201(2)(b), (d), and (e), Florida Administrative Code, in that there is no telephone number of the petitioner, no statement of all disputed issues of

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material fact, and no concise statement of the ultimate facts alleged as well as the rules and statutes which entitle the petitioner to relief. The complainant should be given 21 days to amend his Petition to comply with Rule 28-106.202(2)(b), (d), and (e), Florida Administrative Code.

However, if the Commission disagrees with staff and finds that the Petition is in substantial compliance with Rule 28-106.201(2), Florida Administrative Code, then staff recommends that the Commission grant the Petition and, pursuant to Rule 28-106.201(3), Florida Administrative Code, "refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing."

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ISSUE 2: Should the docket be closed?

RECOMMENDATION: If no amended petition complying with the requirements of Rule 28-106.201(2), Florida Administrative Code, is filed within 21 days of the date of this Order, this docket should be administratively closed. (JAEGER, PLESCOW)

STAFF ANALYSIS: If no amended petition complying with the requirements of Rule 28-106.201(2), Florida Administrative Code, is filed within 21 days of the date of this Order, this docket should be administratively closed.