

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 930778-WS
proceedings against Terra Mar) ORDER NO. PSC-93-1412-FOF-WS
Village (River Park) for failure) ISSUED: September 29, 1993
to pay regulatory assessment)
fees.)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON

ORDER TO SHOW CAUSE

BY THE COMMISSION:

BACKGROUND

Terra Mar Village (Terra Mar or utility) is a class C water and wastewater utility serving 222 water and 231 wastewater customers in a mobile home park in Volusia County, Florida. Currently, the utility provides water and wastewater service to 259 residential customers. Two planned phases of development will add an additional 200 modular homes to its service area.

Pursuant to Section 367.145(1), Florida Statutes, this Commission shall set by rule a regulatory assessment fee (RAF) that each utility must pay once a year in conjunction with filing its annual financial report required by Commission rule. Rule 25-30.120(1), Florida Administrative Code, requires each utility to pay a RAF based upon its gross operating revenue. Beginning January 1, 1991, each utility is required to pay a fee in the amount of four and one-half percent for the entire year.

Pursuant to Section 350.113(4), Florida Statutes, a penalty shall be assessed against any utility that fails to pay its RAF by March 31, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which the

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failure continues, not to exceed a total penalty of 25 percent.

2. The amount of interest to be charged is 1% for each thirty days or fraction thereof, not to exceed a total of 12% per annum.

In addition, pursuant to Rule 25-30.120(5)(b), Florida Administrative Code, this Commission may impose an additional penalty upon a utility for failure to pay its RAF in a timely manner in accordance with Section 367.161, Florida Statutes.

In the establishment of rates, this Commission includes in its determination of the revenue requirements the utility's obligation to pay RAFs. In that way, the utility is authorized to collect the amount of RAF it must pay. Terra Mar has a history of delinquency in payment of its RAFs. The utility has never filed its 1989 RAF report. According to the 1989 annual report, RAF in the amount of \$2,765.60 is due. Our records indicate that the utility has never paid its 1989 RAF.

Payment of 1990 RAFs was due by March 31, 1991. On May 8, 1991, a delinquency notice was sent to the utility which indicated we had not received its 1990 RAFs for the period ended December 31, 1990. Subsequently, on September 24, 1991, a Notice of RAF Adjustment was sent to the utility which indicated basic RAF of \$3,933.48 was due for 1990. In addition, penalties and interest through October 9, 1991, amounting to \$1,213.37 were added. To date no payment has been received.

On May 29, 1992, the utility filed its 1991 RAF return which indicated RAF in the amount of \$3,218.83 was due; however, no check or payment was included. The utility included a letter with its RAF return which indicated the utility was having financial difficulties and was not in a position to pay the fees at that time. No payment has been received to date, nor has the utility proposed to make monthly payments in an attempt to pay its RAF obligation.

Payments for 1992 RAFs were due by March 31, 1993. On April 28, 1993, a delinquency notice was sent to the utility which indicated we had not received its 1992 RAFs for the period ended December 31, 1992. On May 10, 1993, the utility filed its RAF report which indicates RAFs in the amount of \$3,204.58 are due. No check was sent with the RAF report. An annual report has not been

filed for 1992; therefore, we are unable to verify the appropriate amount of RAFs due for 1992.

A summary of the total amount of RAFs due, excluding penalty and interest is reflected below.

Year	RAF DUE
1989	\$ 2,765.60
1990	3,933.48
1991	3,218.83
1992	<u>3,204.58</u>
Total	<u>\$13,122.49</u>

This utility has historically collected the regulatory assessment fees and has not paid them to the Commission, as it is required to do by statute. Regulatory assessment fees are intended to defray the costs incurred in Public Service Commission regulation of utilities.

Apparently, the utility has no inclination to pay the fees voluntarily, nor does it appear that the utility is making a good faith effort toward making payment. As a result, we find it appropriate to order the utility to show cause why it should not be fined \$5,000 per day for its failure to pay its RAF obligation for the years 1989 through 1992.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Terra Mar Village, in Volusia County, shall show cause, in writing, within 20 days why it should not be fined up to the \$5,000 per day maximum allowed pursuant to Sections 350.113(4) and 367.161, Florida Statutes. It is further

ORDERED that Terra Mar Village's written response must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 19, 1993. It is further

ORDERED that Terra Mar Village's response must contain specific allegations of fact and law. It is further

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ORDERED that Terra Mar Village's opportunity to file a written response shall constitute its opportunity to be heard prior to final determination of this matter. It is further

ORDERED that a failure to respond to this show cause order shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing.

By ORDER of the Florida Public Service Commission this 29th day of September, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LK/JBL

by: Kay Helton
Chief, Bureau of Records