BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Harold Shriver against Terra Mar Village Utilities, Inc. in Volusia County.	DOCKET NO. 011125-WS ORDER NO. PSC-01-1888-FOF-WS ISSUED: September 24, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER ACKNOWLEDGING COMPLAINT RESOLUTION AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

On November 6, 2000, our Division of Consumer Affairs (CAF) received a complaint from Mr. Harold Shriver, a customer of Terra Mar Village Utilities, Inc. (Terra Mar or utility), against the utility. In his complaint, the customer stated that his water service had been disconnected pursuant to a cut-off warning notice issued by the utility, effective September 28, 2000. The customer complained that the utility appeared to have deliberately held his regular payment in the amount of $27.85 past the due date of September 22, 2000, causing his payment to post late, and thereby causing his water service to be turned off and causing him to incur a $15 reconnect fee.

CAF forwarded the customer's complaint to the utility on November 13, 2000. CAF received the utility's response on December 4, 2000. In its response, the utility stated that the regular bills are sent by the first of every month, allowing its customers 22 days to pay their bills. The utility also stated that the five-day notice was sent out on Friday, September 22, 2000 to customers with unpaid bills, which included Mr. Shriver's account. The

utility stated that the customer's check was received on September 29, 2000 (Friday p.m.) and deposited on Monday, October 2, 2000.

CAF sent a letter to the customer on December 13, 2000 to explain the results of its investigation. The letter stated that it did not appear that the utility had violated any rules or its tariff by sending the disconnect notice and subsequently disconnecting the customer's water service. The customer was advised that the utility was willing to restore water service once it received the appropriate payment amount which included a $15 reconnect fee. The customer remained dissatisfied with the result, and objected to payment of the $15 reconnect fee. The customer also notified CAF that due to the disconnection of his service, he had continued to withhold his monthly payments of $27.85 for basic service, without usage.

On December 15, 2000, CAF received the customer's request for an informal conference. Pursuant to Rule 25-22.032(8)(b), Florida Administrative Code, Form X was mailed to the customer to complete and return within 15 days. An informal conference was subsequently scheduled for April 19, 2001.

On April 19, 2001, an informal conference was held by telephone with the customer, a utility representative, and a CAF staff member. During the informal conference, the customer and the utility were given the opportunity to state their positions on this matter. During the course of the informal conference, the CAF staff member expressed to the utility representative that although it was the initial finding that the utility had not disconnected the customer's water service incorrectly, a further review of the matter had indicated that the utility was, in fact, in error. This error had resulted from the utility's improperly counting the Saturday that the utility is not open for business as a "working day" as one of the five days included in the termination notice. The utility representative was informed that according to Rule 25-30.320(2)(g), Florida Administrative Code, a "working day" for the purposes of a disconnect notice is specifically defined as "any day on which the utility's office is open and the U.S. Mail is delivered." Therefore, because the utility's office is not open on Saturdays, it appeared that the utility had in fact disconnected the customer's water service improperly.

Because the parties were unable to resolve this dispute, this complaint was forwarded to our Division of Legal Services for further disposition. Upon receipt of this complaint, our legal staff verified the final determination of CAF, and agreed that the utility was in apparent violation of Rule 25-30.320(2)(g), Florida Administrative Code. Our legal staff telephoned the utility's representative to once again attempt a settlement agreement between the parties. During the course of several conversations with the utility's representative and the customer separately by telephone, it was our legal staff's understanding that the parties were able to come to an agreement.

A copy of the final settlement agreement, dated June 14, 2001, and signed by Mr. Joe Uddo of Terra Mar was subsequently received by legal staff and by the customer. In order for the resolution to become final, it was necessary to have both parties, the utility and the customer, sign the agreement. Accordingly, the agreement was sent to the customer for his signature. Legal staff also sent the customer and the utility a letter dated July 11, 2001, in which the terms of the settlement agreement were described, point by point, in an attempt to avoid any further misunderstandings between the parties.

The following is our understanding of the agreement according to the utility, as it appeared in the above mentioned letter that was sent to the utility and the customer:

- Terra Mar has agreed to reconnect Mr. Shriver's water service effective May 22, 2001;
- Terra Mar agrees to waive the $15 reconnect fee;
- Terra Mar agrees to waive the basic water and sewer charges during the entire course of this investigation (September 2000 through May 2001);
- regular billing for the basic water and service charge for Mr. Shriver's property shall commence as of June 1, 2001;
- Terra Mar enters into this agreement in the interest of good relations with their valued customers and this Commission; and
- in entering into this agreement, Terra Mar does not accept the positions, findings, or conclusions of Mr. Shriver, or of this Commission and admits no wrongdoing whatsoever.

It was also noted in the letter, as well as on the settlement agreement form, that in signing the agreement, the parties agreed that a satisfactory resolution of the complaint had been reached, that the settlement is binding on both parties, and that any right to further review of this issue by the Commission would be waived.

After sending the above-referenced letter to the customer and the utility, legal staff again contacted the customer to inquire as to whether he was planning to sign the settlement agreement, and return a copy of the signed agreement to CAF.

Rather than return the signed settlement agreement, the customer sent staff a letter dated August 1, 2001, in which he stated that he had re-read the proposed resolution statement, and had the following response:

> The first four statements seem to adequately summarize the parameters of the resolution. Why add the last two remarks, which simply are not true. The utility should NOT be allowed to self exonerate itself from the responsible facts in the arguments. Therefore, simply have them unreported.
>
> I can not in good conscious [sic] accept his complete escape from reality of the cause, as we know with recorded and photographed facts that he did abuse and discriminate me in his (ie: the utility) cause of the problem. I have exhibited a paid check as proof.
>
> Therefore, I will agree to accept the resolution as amended without the fifth and sixth statements made in your proposed resolution. The utility NO FAULT statements are untrue and can and have been proven so beyond a doubt.

Pursuant to Rule 25-22.032(8)(h), Florida Administrative Code, if a settlement has not been reached within 20 days following the informal conference or the last post-conference filing, whichever is later, our staff shall submit a recommendation to us for consideration at the next available agenda conference. We have jurisdiction pursuant to Section 367.121, Florida Statutes.

The utility representative chose not to participate at the agenda conference during which we addressed this matter. However, the utility verified to our staff that it had received a copy of staff's recommendation, and that the utility agreed with staff's recommendation. The customer participated at the agenda conference telephonically. Prior to the agenda conference and subsequent to the customer's receipt of a copy of staff's recommendation, the customer sent a letter to the Commission via facsimile on August 30, 2001, which was titled "Evaluation of Case Background Errors." The August 30, 2001 letter from the customer was the basis for his statement at the agenda conference.

At the agenda conference, the customer stated that he disagreed with the statement on the settlement offer that in entering into the agreement, the utility does not accept the positions, findings, or conclusions of the customer, or of the Commission, and admits no wrongdoing whatsoever. The customer stated that this statement was an attempt by the utility to exonerate itself by admitting no wrongdoing.

The customer further requested that the settlement offer include a seventh point stating that:

- the customer emphatically disagrees with the utility's statement of exoneration as to its wrongdoing, and further asserts that the utility was completely at fault in this matter.

The customer stated that his concerns about agreeing to the settlement offer would have been alleviated if this statement were included in the settlement offer. With this understanding, the parties agree that the matter has been resolved.

RULE 25-30.320(2)(g), FLORIDA ADMINISTRATIVE CODE

Rule 25-30.320(2)(g), Florida Administrative Code, states that the utility may refuse or disconnect service for nonpayment of bills:

> . . . only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customer. Such notice shall

> be separate and apart from any bill for service. For purposes of this subsection, "working day" means any day on which the utility's office is open and the U.S. Mail is delivered.

In this case, the August bill was past due on Friday, September 22, 2000. The disconnect notice was placed in the mail late Friday, September 22, 2000 and provided a disconnection date of Thursday, September 28, 2000. The disconnect notice was post-marked Saturday, September 23, 2000; thus the U.S. mail was delivered on Saturday, but the utility's office was not open for business. The utility believed that Thursday, September 28, 2000 was the fifth day of the final notice period, and disconnected service at approximately 10 a.m., on Thursday, September 28, 2000. The customer's payment arrived on Friday, September 29, 2000, and it appears that this should have been day five of the final notice period.

Because the utility's office is not open for business on Saturday or Sunday, and because the U.S. mail is not delivered on Sunday, we find that the five working day period should have commenced on Monday, September 25, 2000 and ended at the close of business on Friday, September 29, 2000. Further, Rule 25-30.320(6), Florida Administrative Code, states that no utility shall discontinue service to any customer, between 12:00 noon on a Friday and 8:00 a.m. the following Monday. Thus, the first appropriate day that the utility could have properly disconnected the customer's service was Monday, October 2, 2001. By that point, the customer's check had already been received on Friday, September 29, 2000. Therefore, the utility appears to have violated Rule 25-30.320(2)(g), Florida Administrative Code, by disconnecting the service before the end of the five working day delinquent notice period.

By disconnecting the customer's service before the end of the required five working day notice period, the utility appears to have violated Rule 25-30.320(2)(g), Florida Administrative Code. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's

failure to provide the customer the required five working day notice period prior to disconnection, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. In addition, Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than $5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order or provision of Chapter 367, Florida Statutes.

However, there are mitigating circumstances in this case which lead us to believe that show cause proceedings are not warranted at this time. As stated previously, after the parties were unable to come to an agreement during the informal conference, the customer's complaint was forwarded to our Division of Legal Services, and our legal staff once again, attempted to settle the dispute between the parties. During the course of several conversations, the utility's representative agreed to reconnect the customer's service and to remove the $15 reconnect fee.

Our legal staff contacted the customer, and relayed the fact that the utility was willing to reconnect his service effective May 22, 2001, and not require a $15 reconnect fee. The customer expressed concern about the numerous months since the original disconnection date of September 29, 2000, and whether the utility would require him to pay the basic usage fee for the months that he did not have service.

Upon consideration of this issue, our staff again contacted the utility's representative and opined that because there had been an apparent violation by the utility, and because it appeared that the utility had disconnected the customer's service improperly, the customer should not be required to pay the basic usage fee for the months of September 2000 through May 22, 2001. The customer had stated that he would be willing to pay a pro-rated amount of the

May basic usage fee, since the service to his property had been reinstated on May 22, 2001. The utility's representative stated to staff, and later included in the settlement agreement, that regular billing would commence as of June 1, 2001, and that no pro-rated amount would be billed for the month of May.

In the customer's original complaint, he stated, "My appeal to you at this time is to reconnect my service." The customer's service was reconnected on May 22, 2001, and the customer was not required to pay the $15 reconnect fee. Further, the utility has agreed that the customer is not required to pay the basic usage fee for the months of September 2000 through May 2001, which is the entire period of this dispute. For the foregoing reasons, we do not believe that the apparent violation of Rule 25-30.320(2)(g), Florida Administrative Code, rises in these circumstances to the level of warranting the initiation of a show cause proceeding at this time. However, the utility is hereby put on notice that if this Commission becomes aware of any further violations of this nature by the utility, show cause proceedings shall be initiated at that time. Although this Commission is not initiating show cause proceedings at this time, this in no way takes away from the utility's responsibility to follow the rules of this Commission.

In conclusion, we acknowledge that the complaint has been resolved, with the understanding that Mr. Shriver emphatically disagrees with the utility's statements of exoneration as to its wrongdoings, and further asserts that the utility was completely at fault. Because the customer's service has been restored, and because there is no remaining balance or refund necessary to be paid to either the customer or the utility, there are no outstanding issues to be resolved, and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the resolution of the complaint by Harold Shriver against Terra Mar Utilities, Inc. is hereby acknowledged with the understanding that Mr. Shriver emphatically disagrees with the utility's statements of exoneration as to its wrongdoing, and further asserts that the utility was completely at fault. It is further

ORDERED that Terra Mar Utilities, Inc. is hereby put on notice that should the Commission become aware of any further violations by the utility of the nature discussed within the body of this order, show cause proceedings against the utility shall be initiated at that time. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 24th day of September, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

LAE

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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.