

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause)	DOCKET NO. 900909-WS
proceedings against TERRA MAR)	
VILLAGE (River Park) in Volusia)	ORDER NO. 24243
County for failure to file 1988)	
annual report in compliance with)	ISSUED: 3-18-91
Rule 25-30.110, F.A.C.)	
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 GERALD L. GUNTER
 J. TERRY DEASON
 MICHAEL MCK. WILSON

ORDER ASSESSING FINE AND
CONDITIONALLY SUSPENDING A PORTION THEREOF

BY THE COMMISSION:

By Order No. 23849, issued December 10, 1990, this Commission ordered Terra Mar Village (Terra Mar or utility) to show cause why it should not be fined for failing to file its 1988 Annual Report. Terra Mar filed a timely response to the Show Cause Order on December 31, 1990. Attached to the response was the 1988 Annual Report. The response did not request a hearing, so we need only consider disposition of a fine.

Terra Mar has an established history of not filing its annual reports. This Commission has issued show cause orders against Terra Mar for violating the annual report requirement for 1986 and 1987. The fine and interest assessed against Terra Mar for failing to file its 1986 Annual Report was \$2,674.93. After collection efforts failed, this amount was referred to the Comptroller's Office for further disposition, and the Comptroller's Office gave us permission to write off the debt. The fine and interest assessed against Terra Mar for failing to file its 1987 Annual Report was \$2,550.41. After collection efforts failed, the amount was referred to the Comptroller's Office. There is no record of the Comptroller's Office giving us permission to write off the debt, and there is no evidence that that fine was paid.

In its response to the instant Show Cause Order, Terra Mar did not make any allegations of law which could potentially excuse it from the reporting requirement. It even acknowledged its history of noncompliance with Commission rules, which it attributed to its lack of resources, but it now stresses the positive. The utility

DOCUMENT NUMBER-DATE

02613 MAR 18 1991

FPSC-RECORDS/REPORTING

ORDER NO. 24243
DOCKET NO. 900909-WS
PAGE 2

emphasized that it has filed the delinquent 1987, 1988, and 1989 Annual Reports and pledged to submit the 1990 Annual Report on a timely basis. It argued that punishing it to the full extent of the law would be counter-productive in light of its recent efforts.

We find that while the utility's past actions should factor in the determination of whether or not we should be lenient, a balance needs to be achieved. On one side of the scale, the utility has come forth with tangible proof that it will put its regulatory house in order. On the other side of the scale, the utility has shown no penitence in the past. We do not know if the utility will follow through on its assurances; but we do not want to refuse the hand which is being offered.

With the goal of striking a balance in mind, we hereby fine Terra Mar for failing to file the 1988 Annual Report required by Rule 25-30.110, Florida Administrative Code, \$3 a day for each day that the report was late, for a total of \$1,920. However, we suspend \$1,280, or two-thirds, of the fine provided Terra Mar submits a timely 1990 Annual Report and pays the applicable portion of the fine, \$640, on or before the date the 1990 report is due, March 31, 1991. If Terra Mar does not meet both of these conditions, the portion of the fine which is suspended is reinstated, and we will seriously consider ordering Terra Mar to show cause why its certificate should not be revoked.

Since the utility requested a reduction in amount of the fine, we assume it will promptly pay the reduced amount. If the suspended portion of the fine is reinstated and Terra Mar fails to respond to reasonable collection efforts by this Commission, we deem the fine to be uncollectible and hereby authorize referral of this matter to the Comptroller's Office for further collection efforts based on our finding that, under the aforesaid circumstances, further collection efforts by this Commission would not be cost effective. Two certified letters requesting payment shall constitute reasonable collection efforts. Upon confirmation that the fine has been paid or upon referral to the Comptroller's Office, whichever occurs first, this docket shall be closed.

Wherefore, in consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that a fine of \$1,920 is assessed against Terra Mar Village for its failure to

ORDER NO. 24243
DOCKET NO. 900909-WS
PAGE 3

file a timely 1988 report in accordance with Rule 25-30.110, Florida Administrative Code. It is further

ORDERED that two-thirds of the above fine is suspended provided Terra mar Village meets the conditions set forth in the body of this Order. It is further

ORDERED that if Terra Mar Village does not remit the fine assessed after reasonable collection efforts, we deem the fine to be uncollectible and authorize referral of collection to the Comptroller's Office for further disposition. It is further

ORDERED that the docket shall be closed upon confirmation that the fine has been paid or upon referral to the Comptroller's Office, whichever occurs first.

By ORDER of the Florida Public Service Commission this 18th day of MARCH, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MF

ORDER NO. 24243
DOCKET NO. 900909-WS
PAGE 4

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.

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 Records and Reporting 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 or sewer 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 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.