

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint and Petition ) DOCKET NO. 930822-WU  
for relief by the customers of ) ORDER NO. PSC-93-1414-FOF-WU  
Terra Mar Village for the ) ISSUED: September 29, 1993  
utility's failure to provide )  
adequate quality of service. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

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

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 park in Volusia County, Florida. Terra Mar Village mobile home park consists of 319 lots located approximately seven miles south of New Smyrna Beach. Presently, the utility provides water and wastewater service to 259 customers. Two planned phases of development will add an additional 200 modular home sites in the future.

On May 21, 1993, 177 persons served by the utility (representing 104 out of 259 customer connections) petitioned this Commission to require the utility to either supply its customers with potable water, or make monetary reimbursement to each customer for out-of-pocket expenses incurred in purchasing potable water.

The Department of Environmental Protection has delegated all regulatory authority for its water program to the Volusia County Public Health Unit (VCPHU). On June 7, 1993, this Commission's staff engineer and Mr. Edward A. Bettenger from the VCPHU conducted an on-site investigation of the water plant. The investigation revealed a long history of neglect and inaction on the part of the utility which has resulted in numerous violations of both state and local regulatory agencies' requirements. During the past two years, the utility has been issued bottled water notices during the

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utility's peak seasons, one issued February 26, 1992, and another issued on April 5, 1993. Another bottled water notice should have been issued from June 10 through June 15, 1993; however, the utility failed to notify the VCPHU that its total dissolved solids exceeded the allowable levels of the Safe Drinking Water Act during that period.

A Consent Agreement with the VCPHU was signed on December 22, 1992, for several violations, the most prevalent being the need to provide an auxiliary power supply. By this action, the VCPHU accepted an offer of a \$900 settlement from the utility for those violations. In addition, VCPHU assessed the necessary plant upgrades and established a schedule to correct the water plant deficiencies.

On the first critical date, February 2, 1993, the utility was to pay the \$900 fine, provide a visible and operational master flow meter, install by-pass piping on the hydropneumatic tank, and equip the chlorine room with a compressed air pack. By March 23, 1993, the utility was to have submitted a completed application for a construction permit. The utility paid the fine on March 26, 1993. A meter was installed but was found to be inaccurate. None of the scheduled activities was attempted; those requirements are still outstanding.

The issued Bottled Water Notice of April 5th forced the VCPHU into a reassessment of the utility's ability to provide consistent potable water. Consequently, on or about April 8, 1993, a Building Moratorium was imposed by Volusia County for any new residential construction and/or additional water service connections within the subject development. During a meeting between the utility owner (Mr. Bernard Covington) and the VCPHU on May 11, 1993, the Consent Agreement was modified to address the most critical need of the water system - increasing the capacity to accommodate present and future maximum daily flow. The utility was given 170 days from December 22, 1992, to submit an engineer's report that thoroughly evaluates the present water system capacity and its ability to serve existing and future maximum daily demand. Also, the utility was given 180 days from December 22, 1992, to submit a completed application for a construction permit.

The Consent Agreement specifically requires the utility to thoroughly evaluate the present water treatment system capacity and its ability to serve the present and future maximum daily flow demand. Further, the application for a construction permit will be

evaluated on the basis of the proposed upgrades to correct any and all deficiencies in meeting that future maximum daily flow demand. Anything short of that goal will only be temporary, will not eliminate future problems, and will not be sufficient to justify a construction permit. Mr. Covington believes that two additional permeable membranes will supply more water than the mobile home park could ever need. However, historical water use data is not available to support this opinion. The utility continues to remain subject to the moratorium, preventing the utility from connecting additional customers. According to the VCPHU, "the moratorium shall remain in effect until such time as it can be verified that additional treatment capacity is available to handle additional demand on the water treatment system."

On June 17, 1993, the primary holders of a \$2,316,018 mortgage, Frank Uddo, Albert Pica and Joseph Uddo, filed a "Motion to Appoint Receiver" as part of a foreclosure suit against Terra Mar Village Association. Terra Mar Village Association is a non-profit corporation formed as a cooperative after the general partnership of Magna, Ayers and Jaspersen purchased Terra Mar in November 1988. The suit was filed against Terra Mar Village Association because it defaulted on the mortgage terms by failing to pay its April 9, 1993, payment, as well as all subsequent payments, by failing to properly maintain Terra Mar's utility operation, and by failing to pay the 1992 property taxes on the mobile home park. The latter offense resulted in the issuance of a tax certificate for the property. A hearing in the case was set for July 9, 1993, before Circuit Judge William Johnson. That action was stayed when Mr. Covington filed for a Chapter 11 proceeding on July 7, 1993; however, a recent ruling by the Federal Bankruptcy Court lifted the stay and allowed the foreclosure to proceed.

During the process of investigating this complaint, it has also been noted that the utility changed its majority of ownership and control in November of 1989 from the partnership of Magna, Ayers and Jaspersen to Mr. Bernard Covington. Again, the parties failed to apply for a transfer, or otherwise notify this Commission of this change. During the past month, the Bureau of Certification has requested an application for transfer of utility certificates. However, as of September 9, 1993, no application has been filed.

After carefully investigating the issues involving the customers' petition, a letter dated June 18, 1993, from this Commission's Division of Water and Wastewater was sent to Mr.

Covington requesting that he provide by July 2, 1993, a plan for how the utility would provide potable water on a consistent basis. The plan was to include a timetable for the completion of all requirements of the Consent Agreement.

The utility's response to this request was inadequate as it failed to provide a plan and a specific timetable. The response stated that the VCPHU was awaiting receipt of "final details" from the utility's engineers before issuing a construction permit.

We believe that the utility bears full responsibility for failing to comply with the Consent Agreement deadlines. We have learned from the VCPHU that the issuance of the construction permit was delayed because the utility submitted an incomplete application. The VCPHU can not issue a construction permit until a completed application has been submitted for review. The application remains incomplete because Mr. Covington instructed his engineer to "work no further on the Engineering Report or the design of those additional facilities". In a letter to the VCPHU, the utility's former engineer stated that he was told to halt work after Mr. Covington realized he would not be able to pay for the needed improvements. In his response to our letter, Mr. Covington did not disclose that he ordered work to be halted. However, he stated that he was dissatisfied with the performance of his engineer and had retained another engineer to resolve any remaining problems.

We believe that the utility's response to the June 18th letter demonstrates that the utility has not made a good faith effort to complete the needed action and improvements.

In consideration of the foregoing, we find it appropriate to order the utility to show cause, in writing, within 20 days of the issuance of this Order, why it should not be fined up to \$5,000 per day for failure to consistently provide potable water to its customers in Volusia County. In addition, we find it appropriate that the utility shall also submit within 20 days from the date of this Order a detailed plan as earlier requested by our staff, including a timetable for completion of all requirements of the revised Consent Agreement with the VCPHU.

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,

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within 20 days of the issuance of this Order, why it should not be fined up to \$5,000 per day for its failure to provide adequate water service to its customers as required by 367.111(2) 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

ORDERED that Terra Mar Village's opportunity to file a written response shall constitute its opportunity to be heard prior to final determination of noncompliance and assessment of penalty by this Commission. It is further

ORDERED that a failure to file a timely response 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. It is further

ORDERED that Terra Mar Village shall file a detailed plan as described in the body of this Order, demonstrating the improvements necessary to comply with the Consent Agreement with the Volusia County Public Health Unit. The plan shall also contain a timetable for completion of the Consent Agreement's requirements. Terra Mar Village shall file the plan and timetable within 20 days of the issuance of this Order.

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

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )  
LK/JBL

by: Kay Flynn  
Chief, Bureau of Records