

BEFORE THE PUBLIC SERVICE COMMISSION

In re: 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.	DOCKET NO. 030828-WS ORDER NO. PSC-04-0611-PCO-WS ISSUED: June 21, 2004
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The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY

ORDER DISMISSING PETITION WITHOUT PREJUDICE

BY THE COMMISSION:

BACKGROUND

On January 14, 2003, Mr. Shriver (complainant) contacted this Commission and complained that his water bill from Terra Mar Village Utilities, Inc. (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.

We considered these complaints at our October 21, 2003 Agenda Conference, in which Mr. Shriver participated by telephone. After hearing Mr. Shriver's arguments, we voted to deny both complaints, and, on November 5, 2003, issued Proposed Agency Action Order No. PSC-03-1248-PAA-WS (PAA Order) accordingly.

On November 20, 2003, Mr. Shriver filed his timely "Petition for Initiation of Proceedings (28-106.201)" (Petition). By recommendation dated January 8, 2004, our staff recommended that Mr. Shriver's Petition be dismissed without prejudice for its failure to comply with Rule 28-106.201(2)(b), (d), and (e), Florida Administrative Code. However, instead of dismissing the petition, we directed our staff to contact Mr. Shriver and advise him of the

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deficiencies and give him until March 1, 2004, to amend or modify his Petition to bring it into compliance.

Our staff attempted to call Mr. Shriver on numerous occasions, but was only able to reach his son, Mr. Rod Shriver, who said he would relay any communications. The son indicated that Mr. Shriver had been in an automobile accident. Also, Mr. Shriver's son indicated that all mailings should continue to be mailed to his father's address at 11130 Baker Road, Keymar, Md. In addition to the telephone calls, by letter dated January 23, 2004, our staff advised Mr. Shriver of the perceived deficiencies to his complaint and advised him that he had until March 1, 2004, to file any modifications to his Petition. Attached to that letter were samples of petitions that had been accepted by this Commission.

Having been unsuccessful in reaching Mr. Shriver by telephone and receiving no response to the first letter, our staff wrote a second letter dated March 29, 2004, again asking Mr. Shriver to either modify his protest or advise staff of his intentions. This letter was sent by certified mail to both Mr. Shriver's address in Keymar, Md., and Edgewater, Fl. However, both letters were returned to this Commission as unclaimed on April 26, 2004.

We have jurisdiction pursuant to Sections 367.011, 367.081, and 367.121, Florida Statutes.

DISMISSAL OF PETITION WITHOUT PREJUDICE

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; . . .

We find that the petitioner has not 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, Mr. Shriver does not make "a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief."

We find that that the allegations in the complainant's Petition are not in substantial compliance with the requirements of subparagraphs 28-106.201(2)(b), (d), and (e), Florida Administrative Code. In Brookwood Extended Care Center of Homestead, LLP v. Agency for Health Care Administration, 870 So. 2d 834 (Fla. 3d DCA 2003), the Third District Court of Appeal noted that general denials and nonspecific allegations were no longer sufficient, and "that agencies are to review petitions for completeness before forwarding them on to DOAH."

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.

Because the Petition is not in substantial compliance with the aforementioned subparagraphs, but the defects could be corrected, the Petition of the complainant shall 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 Petition's failure to substantially comply with Rule 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 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 shall be given 21 days from the date of this Order to amend his Petition to comply with Rule 28-106.201(2)(b), (d), and (e), Florida Administrative Code.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition for Initiation of Proceedings ((28-106.201), filed by complainant Harold Shriver shall be dismissed without prejudice for its failure to comply with subparagraphs 28-106.201(2)(b), (d), and (e), Florida Administrative Code. It is further

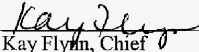
ORDERED that the complainant shall be given 21 days from the date of this Order to amend **his Petition to comply with Rule 28-106.201(2), Florida Administrative Code**. It is further

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ORDERED that 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 shall be administratively closed.

By ORDER of the Florida Public Service Commission this 21st day of June, 2004.

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

By: 
Kay Flynn, Chief
Bureau of Records

(S E A L)

RRJ

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.