

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 20, 2004

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of the General Counsel (Jaeger)  
Division of Consumer Affairs (Plescow)

**RE:** Docket No. 030828-WS – 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.

**AGENDA:** 6/1/04 – Regular Agenda – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** This recommendation completely replaces the recommendation filed on January 8, 2004

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\030828.RCM.DOC

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### **Case Background**

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

Staff filed its initial recommendation on these complaints for the Commission's consideration at the September 16, 2003, Agenda Conference. However, this recommendation was deferred at Mr. Shriver's request.

The Commission considered the recommendation of staff on the two complaints at the October 21, 2003 Agenda Conference. Mr. Shriver participated in this conference by telephone. Having allowed Mr. Shriver to address the Commission, the Commission then 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). Staff filed its initial recommendation addressing the proper disposition of Mr. Shriver's Petition for consideration by the Commission at the January 20, 2004 Agenda Conference. In that recommendation, 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. The Commission was reluctant to take such action and deferred action on that recommendation. However, it did direct staff to contact Mr. Shriver and advise him of the deficiencies and give him 41 days from January 20, 2004, to amend or modify his Petition to bring it into compliance with the above-noted rule.

In that same week, staff attempted to call Mr. Shriver, but was only able to reach his son, Mr. Rod Shriver, who said he would relay any communications to his father. The son indicated that his dad had been in an automobile accident and that he would be being taken care of his dad. Also, Mr. Shriver's son indicated that all mailings should continue to be mailed to his father's address on 11130 Baker Road, Keymar, Md.

In addition to the telephone calls, by letter dated January 23, 2004, 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 the Commission. Staff again attempted to call Mr. Shriver during the weeks of January 26-30, 2004, February 23-27, 2004, and on March 3, 4, 5, 12, 18, and 19, 2004, but all to no avail. In those attempts, staff was calling Mr. Shriver's home address, his son's home address, and his son's cellular telephone. However, staff was unable to reach Mr. Shriver, and only got an answering service for his son (on two occasions, staff reached the son's wife). Staff left a message on either the answering service or with the son's wife requesting a telephone

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call from Mr. Shriver and outlining the contents of the January 23, 2004 letter. Although staff did not receive a response from Mr. Shriver, on March 4, 2004, staff did receive a call from Mr. Joe Uddo, the former owner of the utility (utility has now been sold to the City of Edgewater), asking about the status of Mr. Shriver's complaints and expressing concern about the delay.

Having been unsuccessful in reaching Mr. Shriver by telephone, 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 the Commission as unclaimed on April 26, 2004.

Therefore, staff now files this recommendation in which it again recommends that Mr. Shriver's Petition be dismissed without prejudice. The Commission has jurisdiction pursuant to Sections 367.011, 367.081, and 367.121, Florida Statutes.

**Discussion of Issues**

**Issue 1:** What is the proper disposition of Mr. Harold Shriver's Petition for Initiation of Proceedings?

**Recommendation:** In accordance with Rule 28-106.201(4), Florida Administrative Code, the Commission should dismiss the Petition, without prejudice, for Mr. Shriver's failure to comply with the requirements of Rule 28-106.201(2)(b), (d), and (e), Florida Administrative Code. Mr. Shriver should be given 21 days from the date of the Order to amend his Petition to comply with Rule 28-106.201, Florida Administrative Code. (Jaeger, Plescow)

**Staff Analysis:** As noted in the Case Background, the Commission issued its PAA Order dismissing both complaints of Mr. Shriver on November 5, 2003. In that PAA Order, the Commission specifically stated:

The results of our staff's investigation show that the meter appears to have started at zero and is accurate, and the rates charged appear to be correct. Moreover, there is evidence that Mr. Shriver was having problems with his piping, his commode, and his washing machine which might account for excessive usage.

Purportedly in compliance with Rule 28-106.201, Florida Administrative Code, Mr. Shriver timely filed his Petition on November 20, 2003.

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; and

\* \* \*

In his Petition (attached as Attachment A), Mr. Shriver states:

-- Complainant Harold Shriver having read the July 30, 2003 Informal Conference report and finding therein numerous material facts changed, omitted from the voice tapes and misinformation in the PSC docket reports, and material facts omitted sufficient to change the whole truth and nothing but the truth, and without both the customer and the utility represented in the informal hearing conference (only the customer participated).

--Complainant Harold Shriver contends with the voice tapes reported with accurate tape transcriptions (exactly what was uttered was not (NOT) accurately reported) that these material facts were changed impressing the hearing committee to fault in the findings and this was extremely unfair and deserves to be heard correctly.

Complainant Harold Shriver charges the Commission hearing early [sic] into the Informal Conference abruptly ended by a motion by Mr. Bradley and a vote that ended immediately without reason given and NO complete hearing resulted. Again the utility chose NOT to participate

Mr. Shriver then concluded his Petition by stating:

Complainant Harold Shriver makes a demand plea to have an administrative law judge hear the above docketed case objectively to correct numerous material facts allowing an unbiased show cause for the two excessive water bills none of which was ever a benefit to the claimant. Only then can correct adjudication be fulfilled, which is the constitutional right of Harold Shriver.

Staff does not believe that the petitioner has 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, staff does not believe that Mr. Shriver makes “a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief.”

Staff is aware that, in the past, the Commission has given customers great leeway in filing petitions protesting PAA orders, and that “substantial compliance” is different from strict compliance. Also, staff notes that in his demand for relief, Mr. Shriver does state that there were “two excessive water bills none of which was ever a benefit to the claimant.” However, staff believes that this allegation is not enough to be in substantial compliance with the requirements of Rule 28-106.201(2)(d) and (e), Florida Administrative Code, which are set out above. In the case of Brookwood Extended Care Center of Homestead, LLP v. Agency for Health Care Administration, 28 Fla. Law Weekly D 1869 (Fla. 3d DCA August 13, 2003), the Third District Court of Appeal noted that general denials and nonspecific allegations were no longer sufficient, and further noted “that agencies are to review petitions for completeness before forwarding them on to DOAH.” Staff does not believe that this Petition is complete or in substantial compliance with Rule 28-106.201(2), Florida Administrative Code.

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.

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Therefore, because staff does not believe that the Petition is in substantial compliance with the aforementioned subparagraphs, and noting that the defects could be corrected, staff recommends that the Petition of the complainant 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 subparagraphs 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 should be given 21 days to amend his Petition to comply with Rule 28-106.201(2)(b), (d), and (e), Florida Administrative Code.

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**Issue 2:** Should the docket be closed?

**Recommendation:** 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 should be administratively closed. (Jaeger, Plescow)

**Staff Analysis:** 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 should be administratively closed.