

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Revocation by Florida) DOCKET NO. 930944-WS
Public Service Commission of) ORDER NO. PSC-94-0407-PCO-WS
Certificates Nos. 451-W and) ISSUED: April 7, 1994
382-S issued to Shady Oaks)
Mobile-Modular Estates, Inc. in)
Pasco County Pursuant to Section)
367.111, F.S.)

ORDER DENYING MOTIONS TO DETERMINE
PRESENTATION OF EVIDENCE AND FOR ORAL ARGUMENT

On September 23, 1993, pursuant to Section 367.111(1), Florida Statutes, this Commission gave notice of its intent to initiate proceedings to revoke Certificates Nos. 451-W and 382-S, issued to Shady Oaks Mobile-Modular Estates, Inc. (Shady Oaks or utility). On October 18, 1993, Shady Oaks filed an objection to our notice. Accordingly, this matter has been set for an administrative hearing on August 4 and 5, 1994.

On January 13, 1994, Shady Oaks filed a Motion to Determine the Presentation of Evidence along with a Motion for Oral Argument. On January 18, 1994, Shady Oaks filed a Motion for Extension of Time in Which to Prefile Direct Testimony. The latter motion was granted by Order No. PSC-94-0126-PCO-WS, issued February 2, 1994. Shady Oaks filed its direct testimony and exhibits on March 2, 1994. This Order concerns Shady Oaks' motions of January 13, 1994.

In its Motion to Determine the Presentation of Evidence, Shady Oaks argues that the Commission has not alleged any specific violations, only that Shady Oaks has a "long history of failure to comply with Commission statutes, orders, and rules." According to Shady Oaks, "[a]bsent any specific allegations, the Utility is not in a position to adequately respond or to present direct testimony in its defense." Shady Oaks further argues that the Commission Staff, as the party asserting that Shady Oaks has a long history of noncompliance with Commission requirements, has the burden of proof and must establish such noncompliance by clear and convincing evidence. Shady Oaks, therefore, argues that the Commission Staff should be required to file its direct testimony and exhibits first in this proceeding. In support of its argument regarding the burden of proof in this matter, Shady Oaks cites Pic N' Save v. Dept. of Business Reg., 601 So.2d 245 (Fla. 1st DCA 1992). In Pic N' Save, the Court reversed the Department of Business Regulation's (DBR's) suspension of a liquor license for sales of beer to minors

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because DBR failed to establish, by clear and convincing evidence, personal misconduct by the licensee,

Since Shady Oaks filed its direct testimony and exhibits on March 2, 1994, its request that Staff be required to file testimony and exhibits first is moot and, as such, its Motion to Determine the Presentation of Evidence is denied. Further, although Shady Oaks' arguments regarding burden of proof seem premature at this stage of the proceeding, the Prehearing Officer does not agree with Shady Oaks' interpretation of where the burden appropriately lies. It appears that Shady Oaks may be confusing the burden of proof with the burden of going forward. See, for example, 3 K.C. Davis, Administrative Law Treatise § 16.9 (2d ed. 1980), and the cases cited therein.

By Section 367.011(3), Florida Statutes, the legislature has declared that the regulation of water and wastewater services is in the public interest and that Chapter 367 "is an exercise of the police power of the state for the protection of the public health, safety, and welfare." Moreover, Section 367.011(3) states that "[t]he provisions of this Chapter shall be liberally construed for the accomplishment of this purpose." The Commission only grants certificates of authorization upon a showing that it is in the public interest to do so. However, such determination is not thereafter conclusive for all time. Under Chapter 367, generally, and Section 367.111(2), more specifically, utilities are under a continuing obligation to provide service consistent with the public interest. Accordingly, while Staff may have a burden of going forward in this case, the Prehearing Officer believes that the ultimate burden of proof rests upon Shady Oaks.

As for Shady Oaks' Motion for Oral Argument, Shady Oaks has not stated how oral argument would aid the Prehearing Officer in comprehending and evaluating the subject matter at issue. Accordingly, Shady Oaks' Motion for Oral Argument is denied.

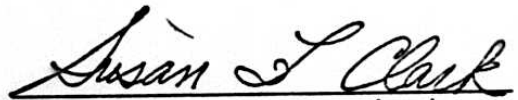
It is, therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Shady Oaks Mobile-Modular Estates, Inc.'s Motion to Determine the Presentation of Evidence is denied. It is further

ORDERED that Shady Oaks Mobile-Modular Estates, Inc.'s Motion for Oral Argument is denied.

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By Order of Commissioner Susan F. Clark, as Prehearing Officer, this 7th day of April, 1994.


SUSAN F. CLARK, Commissioner
and Prehearing Officer

(S E A L)

RJP

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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Records and Reporting, 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.