

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Staff-) DOCKET NO. 900025-WS
Assisted Rate Case in Pasco) ORDER NO. PSC-92-1378-PHO-WS
County by SHADY OAKS MOBILE-) ISSUED: 11/30/92
MODULAR ESTATES, INC.)
_____)

Pursuant to Notice, a Prehearing Conference was held on November 25, 1992, in Tallahassee, Florida, before Commissioner BETTY EASLEY, as Prehearing Officer.

APPEARANCES:

MATTHEW J. FEIL, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee Florida, 32399-0863
On behalf of the Commission Staff.

PRENTICE PRUITT, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0862
On behalf of the Commissioners.

PREHEARING ORDER

I. CASE BACKGROUND

Shady Oaks Mobile-Modular Estates, Inc., (Shady Oaks or utility) is a class "C" water and wastewater utility serving a 242 lot mobile-modular home park located in Pasco County, south of the City of Zephyrhills. On January 10, 1990, Shady Oaks applied for a staff-assisted rate case. By proposed agency action (PAA) Order No. 24084, issued February 8, 1991, the Commission approved a rate increase for Shady Oaks and ordered it to take various actions, namely, that it install meters for all of its customers, improve its quality of service, file information to process a name change, spend a fixed amount on preventative maintenance, and escrow a set portion of its revenues. By Order No. 24409, issued April 22, 1991, the Commission dismissed a timely protest to the PAA Order and revived Order No. 24084, making it final and effective.

By Order No. 25296, issued November 4, 1991, the Commission found that the utility had failed to comply with the requirements of Order No. 24084. However, since numerous customers had not paid their utility bills as a result of a court dispute over the utility's rates, the Commission elected not to order the utility to show cause why it should not be fined for its noncompliance; instead, the Commission ordered the utility to obey its prior Order

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and bring the escrow account up to its proper balance. Upon reviewing the utility's situation a second time several months later, the Commission found that the utility had failed to abide by the Commission's Orders. Therefore, by Order No. PSC-92-0367-FOF-WS, issued May 14, 1992, the Commission ordered the utility to show cause why it should not be fined for its continued noncompliance with Orders Nos. 24084 and 25296. Shady Oaks requested a hearing in response to the Order to Show Cause. Pursuant to that request, this matter is scheduled for an administrative hearing on December 9, 1992.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the

confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the staff of the Commission (Staff) has been prefiled. The utility did not prefile any testimony. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits

appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
Rieger	Staff	1, 2
Lingo	Staff	3, 4, 5, 6

V. BASIC POSITIONS

UTILITY: The utility did not prefile testimony or file a prehearing statement as required by Order No. PSC-92-0669-PCO-WS, issued July 16, 1992, the Order Establishing Procedure. According to the Order Establishing Procedure, "Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position." In addition, the utility did not attend the prehearing conference. According to the Order Establishing Procedure, "Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement." The utility was not excused from attending the prehearing conference.

STAFF: The information gathered by Staff indicates, at this point, that the utility has violated Commission Orders Nos. 24084 and 25296. Staff's positions are preliminary and based on materials filed by the parties and on

discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VI. ISSUES AND POSITIONS

ISSUE 1: Did the utility timely comply with Commission Orders Nos. 24084 and 25296 with respect to the meter installation requirements?

POSITIONS

STAFF: No, utility did not timely install the meters. The utility was in violation of Order No. 25296 for 74 days. (Rieger)

ISSUE 2: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to improving its quality of service?

POSITIONS

STAFF: No. The quality of service is still unsatisfactory. (Rieger)

ISSUE 3: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the name change and restructure requirements?

POSITIONS

STAFF: No. (Lingo)

ISSUE 4: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the preventative maintenance requirements?

POSITIONS

STAFF: No. (Lingo)

ISSUE 5: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the escrow requirements?

POSITIONS

STAFF: No. (Lingo)

ISSUE 6: What punitive action should the Commission take against the utility?

POSITIONS

STAFF: The utility should be fined in the amount of rate base and have its certificate revoked. The Commission should also initiate a proceeding to reduce the utility's rates, removing from the rate calculation all proforma plant not constructed by the utility and removing the allowance for preventative maintenance. (Lingo)

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Lingo	Staff	FJL-1	Staff's Recommendation for the April 21, 1992, Agenda Conference
		FJL-2	Commission Order No. 24084
		FJL-3	Commission Order No. 25296
		FJL-4	Commission Order No. PSC-92-0367-FOF-WS
		FJL-5	Correspondence from PSC's Division of Water and Wastewater to Richard D. Sims
		FJL-6	Recent Correspondence from Utility to Staff

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Lingo	Staff	FJL-7	Analysis of Preventative Maintenance Expenditures
		FJL-8	Analysis of Balance in Escrow Account

Staff reserves the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

There are no issues that have been stipulated at this time.

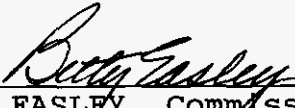
IX. PENDING MOTIONS

There are no matters pending at this time.

It is therefore,

ORDERED by Commissioner BETTY EASLEY, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner BETTY EASLEY, as Prehearing Officer, this 30th day of November, 1992.



BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

MJF

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.