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April 26, 1993

JOHN R. WODRASKA  
SPECIAL CONSULTANT  
(NOT A MEMBER OF THE FLORIDA BAR)

Mr. Steve Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, FL 32301

RE: Application for staff-assisted rate case in Pasco County  
by Shady Oaks Mobile-Modular Estates, Inc.  
Docket No. 900025-WS  
Our File No. 29056.01

Dear Mr. Tribble:

Enclosed please find the original and fifteen copies of  
Shady Oaks' Motion For Reconsideration to be filed in the above-  
captioned case.

Should you have any questions or concerns regarding the  
above, please do not hesitate to contact me at your earliest  
convenience.

- ACK
- AFA
- APP
- CAF
- CMU
- CTR
- EAG
- LEG  W/m
- LIN  4
- CPC
- RCH
- SEC
- W/S
- GHT

Sincerely,  
  
ROSE, SUNDBSTROM & BENTLEY  
*John L. Wharton*  
John L. Wharton, Esq.  
For The Firm

JLW/lm  
Encl.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for staff-assisted )  
rate case in Pasco County by Shady ) DOCKET NO. 900025-WS  
Oaks Mobile-Modular Estates, Inc. ) ORDER NO. PSC-93-0542-FOF-WS  
ISSUED: 4/9/93

SHADY OAKS' MOTION FOR RECONSIDERATION

Shady Oaks Mobile-Modular Estates, Inc. ("Shady Oaks"), by and through undersigned counsel and pursuant to Rule 25-22.060, Fla. Admin. Code, and in support thereof would state and allege as follows:

1. This Commission issued its Final Order Fining Utility And Ordering That Revocation Proceedings Be Initiated on April 9, 1993.

2. That Order, Order No. PSC-93-0542-FOF-WS, states, inter alia, that the record in this case supports the Commission taking "punitive action" against the utility in the form of a fine in the amount of \$60,572.00. That Order indicates, at Page 8, that this conclusion was based on the Recommended Order's suggestion that "the utility should be fined in the amount of rate base" and that "total rate base, less the wastewater system pro forma allowances is \$60,572.00."

3. The Commission's decision to fine this utility in an amount "equal to rate base" is grossly disproportionate to any egregious conduct on the part of the utility which was established by the facts in the hearing (which the utility didn't even attend), is contrary to the spirit of Chapter 367, Fla. Stat., and exceeds the Commission's authority.

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4. The purpose of a Commission fine in circumstances such as these should be to force compliance with Commission orders and, secondarily, to send a clear signal to other regulated entities that non-compliance with Commission orders cannot and will not be tolerated. Punishment, whether in the form of incarceration or criminal fines, is not an appropriate purpose for Commission action. However, the Prehearing Officer's Proposed Recommended Order in this case actually states, at Issue 6 thereof, that the appropriate "punitive action" by the Commission is that the utility should be fined in the amount of rate base and "the utility's certificate should be revoked." The Commission did find, in its Final Order on this case, that "the second change (to the Recommended Order) that we believe is appropriate is that we not revoke the utility's certificate at this time . . ." Although the Commission properly decided that the utility's certificate could not be revoked in a proceeding on Proposed Agency Action to assess a fine (in which revocation was never at issue) the Commission did accept the amount of the "punitive" fine as recommended.

5. When read together, the Recommended Order's finding that the utility should be fined in an amount equal to rate base and that the utility's certificates should be unilaterally revoked smacks of a recommendation that this utility be, for all intents and purposes, seized without appropriate due process or compensation as required by the United States and Florida Constitutions. The fine, on its face, does not appear to be intended to insure that the utility comply with the Commission's Orders since, given

the resources of this utility and its owner, a much smaller fine would have accomplished the same purpose.

6. An order by this Commission, under any conceivable facts and circumstances, that all of Southern States' certificates be revoked and that Southern States be fined in an amount equal to its total and cumulative rate base, would seem ridiculous on its face. An analogous recommendation in the case of a small utility is no less a violation of the spirit and intent of Chapter 367 and exceeds the powers which the Legislature has granted to the Commission.

7. Most governmental entities including, for example, the Florida Department of Environmental Regulation and the United States Environmental Protection Agency, employ a matrix when determining the appropriate amount of a fine to assess in a given case. That matrix includes categories such as economic benefit realized by the party to be fined, the party's ability to pay, the prior compliance history of the party, etc. It is not apparent on the face of the Commission's Order that the Commission considered in any way, shape or form, the party's ability to pay in this case. When stripped to its essence, the Commission's Order is nothing more than a back-door attempt to destroy this utility.

8. The Commission's fine in this case, given all the facts and circumstances surrounding Shady Oaks' size, alleged actions, ability to pay, etc. would have been appropriate if the fine was only a fraction of the assessed amount. This utility is contemporaneously attempting to show the Commission that it can not even

afford to obey the Commission's escrow requirements, much less pay a fine "in the amount of rate base."

9. The utility respectfully requests an opportunity to present oral argument on its Motion to the Commission.

DATED this 26<sup>th</sup> day of April, 1993.




John L. Wharton, Esq.  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by regular U.S. Mail to the following on this 26<sup>th</sup> day of April, 1993.

Matthew J. Feil, Esq.  
Florida Public Service Commission  
101 E. Gaines Street  
Tallahassee, FL 32399-0863

Richard Bellak, Esq.  
Florida Public Service Commission  
101 E. Gaines Street  
Tallahassee, FL 32399-0862



John L. Wharton, Esq.

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