

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application For) DOCKET NO. 940653-WS
Certificates to Provide Water) ORDER NO. PSC-96-1004-FOF-WS
and Wastewater Services in Lake) ISSUED: August 6, 1996
County by Shangri-La by the Lake)
Utilities, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER GRANTING TEMPORARY EXEMPTION FROM
COMPLIANCE WITH ANNUAL REPORT REQUIREMENT

BY THE COMMISSION:

On June 17, 1994, Shangri-La by the Lake Utilities, Inc. (Shangri-la or utility) filed an application with this Commission for certificates to provide water and wastewater service in Lake County, Florida. Shangri-La has been in existence providing service to customers in Lake County since April 21, 1983. The utility currently provides water and wastewater service to 135 mobile homes and water service to five single family homes.

Order No. PSC-96-0062-FOF-WS, issued on January 12, 1996, granted Shangri-La Certificates Nos. 567-W and 494-S, and established initial rates. That Order also ordered the utility to file a 1994 annual report within 45 days of the date the order was issued. On April 15, 1996, Shangri-La filed a petition for relief from the annual report requirements of Order No. PSC-96-0062-FOF-WS. In its petition, Shangri-La requested that the Commission eliminate the annual report requirements in Order No. PSC-96-0062-FOF-WS for 1994 and 1995. The Order did not specifically require an annual report for 1995; however, in accordance with Rule 25-30.110(3), Florida Administrative Code, one is required.

Rule 25-30.110(3), Florida Administrative Code, states that "each utility shall file with the Commission annual reports on forms prescribed by the Commission. The obligation to file an annual report for any year shall apply to any utility which is subject to this Commission's jurisdiction as of December 31 of that year, whether or not the utility has actually applied for or been issued a certificate." Although the Commission did not learn of Shangri-La's existence until early 1994, the utility has been

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subject to this Commission's jurisdiction since it was established in 1983. In original certificate proceedings, an existing utility is required to file an annual report beginning with the year in which the Commission learns of the utility's existence. Accordingly, Order No. PSC-96-0062-FOF-WS, required Shangri-La to file an annual report for 1994.

Shangri-La's petition states that since it did not charge for water or wastewater service in 1994 or 1995, it was not a "utility" as defined in Section 367.021(12), Florida Statutes, and was exempt pursuant to Section 367.022(5), Florida Statutes, during those years. Section 367.021(12), Florida Statutes, states that "utility means a water or wastewater utility and, except as provided in Section 367.022, includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation." Section 367.022(5), Florida Statutes, specifies that "landlords providing service to their tenants without specific compensation for the service" are exempt from regulation by this Commission.

The utility's argument that it was not a utility during 1994 and 1995 is without merit. It is true that the utility did not receive specific compensation for water and wastewater service during 1994 and 1995 and might have qualified for an exemption. However, the prior utility owner was charging the metered customers \$10 per month for water and wastewater service. These customers began to receive service at no charge only after the new owner was informed that he could not charge for service until he received approval from the Commission. Therefore, we are not persuaded by Shangri-La's argument.

The initial rates established by Order No. PSC-96-0062-FOF-WS became effective on February 23, 1996, for metered customers only. Of the utility's 140 customers, 135 are in un-metered mobile homes and five are in metered houses. At present, only the five metered customers are being charged specific rates for water and wastewater service. The unmetered customers receive water and wastewater service as part of their monthly mobile home lot rental fee and will continue to do so until the utility installs meters in the mobile home park. Prior to February 23, 1996, the current utility owner did not charge the five metered customers for utility service. Therefore, the utility did not receive specific compensation for water and wastewater service until after February 23, 1996.

The petition further states that Shangri-La did not previously object to the annual report requirements because it believed that since it did not charge for water or wastewater service in 1994 and 1995 the cost of preparing such reports would be nominal. However, the utility has learned that the cost of preparing each annual report will be between \$1,200 and \$1,500. The utility believes that the expense of preparing those reports is not justified by the benefit, if any, to be gained by the Commission.

We agree, in this instance, that the benefit gained by the Commission from having the 1994 and 1995 annual reports on file does not warrant the expense of preparing those reports. Rule 25-30.011(2), Florida Administrative Code, provides for temporary exemption from any rule within Chapter 25-30 in any case where compliance with the rule introduces "unusual hardship" or "unreasonable difficulty." We believe that, under the circumstances, Shangri-La's compliance with the annual reporting requirements of Rule 25-30.110(3), Florida Administrative Code, presents an unusual hardship for the utility, especially because most of the data that might be utilized from the 1994 and 1995 annual reports is already contained within the instant docket.

The utility is, however, put on notice that Rule 25-30.420(7), Florida Administrative Code, states that "no utility shall implement a [price index] rate increase pursuant to this rule unless the utility has on file with the Commission a current annual report as required by Rule 25-30.110(3), Florida Administrative Code." Further, in determining whether to grant or deny a utility's petition for a staff assisted rate case, Rule 25-30.455(8)(c), Florida Administrative Code, specifies that consideration must be given to whether the utility has filed annual reports. Therefore, the utility will not be eligible for a price index adjustment or staff assisted rate case until it has a current annual report on file with this Commission.

In consideration of the above, Shangri-La is granted a temporary exemption from compliance with the 1994 annual report requirement of Order No. PSC-96-0062-FOF-WS and the 1995 annual report requirement of Rule 25-30.110(3), Florida Administrative Code.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Shangri-La by the Lake Utilities, Inc. is hereby granted a temporary exemption from compliance with the 1994 annual report requirement of Order No. PSC-96-0062-FOF-WS and the 1995 annual report requirement of Rule 25-30.110(3), Florida Administrative Code.

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By ORDER of the Florida Public Service Commission, this 6th
day of August, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Deegan
Chief, Bureau of Records

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.