

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of a staff-)
assisted rate case in Pasco County)
by Shady Oaks Mobile-Modular)
Estates, Inc.)
_____)
DOCKET NO. 900025-WS
ORDER NO. 24409
ISSUED: 4/22/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
J. TERRY DEASON
BETTY EASLEY
GERALD L. GUNTER
MICHAEL MCK. WILSON

ORDER DISMISSING PROTEST AND
MAKING ORDER NO. 24084 FINAL AND EFFECTIVE

BY THE COMMISSION:

Shady Oaks Mobile-Modular Estates, Inc., (Shady Oaks or utility) is a class "C" water and wastewater utility which serves a 242 lot mobile-modular home park in Pasco County, approximately 1-1/2 miles south of Zephyrhills. On January 10, 1990, Shady Oaks applied for a staff-assisted rate case. The Commission issued proposed agency action Order No. 24084 on February 8, 1991, granting Shady Oaks a rate increase. On March 1, 1991, several of the utility's customers caused to be filed a document entitled "Petition of Objection or Protest" (hereinafter "Protest"). This Order concerns the disposition of the Protest.

In proposed agency action Order No. 24084, we included costs in the utility's rate base associated with a proposed new percolation pond. In the Protest, approximately nine utility customers protested specifically and exclusively the location of the new percolation pond. Because the pond will be within 100 feet of their property, the customers alleged that the pond will cause offensive odors and other health hazards and that will decrease the value of their property.

As part of a March 7, 1989, Consent Final Judgment between the utility and the Department of Environmental Regulation (DER), the utility agreed to construct an additional effluent disposal system which would eliminate discharge from the utility's wastewater plant. DER issued the utility a permit for the construction of a new percolation pond. The DER permit approved the size and location of the pond and established a March 31, 1991, deadline for

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completion. (On March 1, 1991, DER gave the utility an extension for the pond's completion, until September 6, 1991.) This is the pond which is the basis of the petitioning customers' complaint.

Essentially, the petitioning customers allege that the location of the proposed pond will constitute a nuisance. Although this Commission is not unsympathetic to the plight of the customers, it was DER, not the Commission, which approved the location of the new percolation pond. This was so because the Legislature gave DER, and not the Commission, subject matter jurisdiction for making such determinations. In other words, this Commission does not have subject matter jurisdiction over what the petitioning customers are protesting.

Furthermore, the location and size of the pond were not approved, disapproved, or otherwise addressed in the protested order. Our only involvement with the pond was including its cost in rate base. Since we made no determination whatsoever regarding the size or location of the proposed pond, nothing in the protested order affects the interests of the petitioning customers with regard to the location of the pond. In essence, the Protest is to a decision that this Commission did not make.

For the reasons set forth above, we hereby dismiss the Protest and declare Order No. 24084 to be revived, final and effective.

It is, therefore

ORDERED that the "Petition of Objection or Protest" filed March 1, 1991, to proposed agency action Order No. 24084 is hereby dismissed. It is further

ORDERED that Order No. 24084 is final and effective. It is further

ORDERED that the docket shall remain open as set forth in Order No. 24084.

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By ORDER of the Florida Public Service Commission this 22nd
day of APRIL, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MJF

by: *Ray Flynn*
Chief, Bureau of Records

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 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 sewer 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.