

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a 1993) DOCKET NO. 931047-WS
Price Index Rate Adjustment in) ORDER NO. PSC-93-1792-FOF-WS
Pasco County by SHADY OAKS) ISSUED: December 15, 1993
MOBILE-MODULAR ESTATES, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER APPROVING PRICE INDEX ADJUSTMENT, CONTINGENT UPON
UTILITY OBTAINING PROPER SECURITY FOR POTENTIAL REFUND

BY THE COMMISSION:

BACKGROUND

Shady Oaks Mobile-Modular Estates, Inc. (Shady Oaks or utility) is a Class C water and wastewater utility located in Pasco County. Based on information contained in the utility's 1992 annual report, the water system generated operating revenues of \$21,899 and incurred operating expenses of \$35,756, resulting in a net operating loss of \$13,857. The wastewater system generated operating revenues of \$43,467 and incurred operating expenses of \$38,899, resulting in a net operating income of \$4,568.

On March 7, 1989, the utility signed a Consent Final Judgment with the Department of Environmental Protection (DEP). The utility agreed to construct an additional effluent disposal system and a new percolation pond to eliminate discharge from the plant. The utility agreed to submit an application for a construction permit within 60 days of the date of the DEP order.

On January 10, 1990, Shady Oaks applied for the instant staff-assisted rate case. On February 8, 1991, the Commission issued proposed agency action Order No. 24084, which approved a rate increase and required the utility to do the following:

- 1) File a request for acknowledgement of a restructure and a name change;
- 2) Bring the quality of service to a satisfactory level;
- 3) Spend at least 85% of the allowance for preventative maintenance, or submit a written schedule showing what

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monthly maintenance will be implemented, along with a statement of the reasons such funds were not spent for preventative maintenance;

- 4) Install meters for all of its customers; and
- 5) Escrow a certain portion of the monthly rates.

The utility was also authorized to charge flat rates for six months, at the end of which time the base facility charge rate structure became effective. In this case, the base facility charge rates automatically became effective on October 1, 1991.

On March 1, 1991, several utility customers timely filed a protest to Order No. 24084. In their protest, the customers objected to the location of the percolation pond proposed by the utility. Because we have no jurisdiction to dictate the location of the proposed percolation pond, by Order No. 24409, issued April 22, 1991, we dismissed the protest and revived Order No. 24084, making it final and effective.

On June 24, 1991, in response to a suit filed by the homeowners, Judge Lynn Tepper with the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida, granted an emergency temporary injunction enjoining and restraining the utility from charging or attempting to collect the new utility rates.

On July 5, 1991, Judge Wayne L. Cobb with the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida, issued an Order to Show Cause why Shady Oaks should not be punished for contempt of Court for willfully and deliberately violating a 1983 order of the Court that prohibited the utility from charging more than \$25 per month as a service maintenance fee, which included the provision of water and wastewater service. The July 5, 1991 Order further enjoined the utility from collecting the utility rates established by this Commission and ordered that the \$25 per month service maintenance fee be tendered to the Clerk of the Circuit Court. In August 1991, both injunctions were lifted and the utility was able to begin collecting revenues.

The utility never applied for its construction permit as required by the Consent Final Judgment. Therefore, on July 8, 1991, as a result of a stipulated settlement to a motion for contempt brought against the utility by DEP, Judge Lynn Tepper ordered the utility to interconnect its wastewater system with Pasco County, rather than construct new disposal facilities. The

utility was given six months from the date of the Order to complete the interconnection. The utility has failed to interconnect its wastewater system to Pasco County; therefore, it is in violation of a court order. In addition, the utility is operating without a permit from DEP.

On November 4, 1991, the Commission issued Order No. 25296, which determined the utility's noncompliance with Order No. 24084. Order No. 25296 required the utility to:

- 1) Submit all necessary information for changing its certificated name, or revert to operating under its currently certificated name;
- 2) Immediately place in the escrow account all funds necessary to bring said account to its proper balance;
- 3) Install water meters for all of its customers; and
- 4) Improve the quality of service and interconnect with the Pasco County wastewater treatment system.

Because numerous customers did not pay their utility bills as a result of a court dispute over the utility's rates, Order No. 25296 allowed the utility to charge the flat rates for an additional five months. Beginning in December 1991, the utility once again began charging flat rates.

On May 14, 1992, the Commission issued two additional orders in this case. By Order No. PSC-92-0367-FOF-WS, the Commission imposed a \$2,000 fine that had been previously suspended and ordered the utility to show cause why it should not be fined for each item of noncompliance found in Orders Nos. 24084 and 25296. At the utility's request, these matters were set for hearing. By Order No. PSC-92-0356-FOF-WS, the Commission ordered the utility to issue credits to those customers who had paid a delinquent purchased power bill for the utility.

In June 1992, the utility completed the installation of all of the required water meters. By Order No. PSC-92-0723-FOF-WS, issued July 28, 1992, the Commission ordered the utility to implement the base facility and gallonage charge rates that had been approved in Order No. 24084. The utility implemented the new rates effective September 25, 1992.

In July 1992, the utility requested that the escrow requirements set forth in Orders Nos. 24084 and 25296 be suspended for a period of several months. By Order No. PSC-92-1116-FOF-WS,

issued October 5, 1992, the Commission denied the utility's request to suspend the escrow account requirements. On October 26, 1992, the utility timely filed a protest to that Order.

A hearing regarding the utility's noncompliance with Orders Nos. 24084 and 25296 was held on January 7, 1993 in Zephyrhills, Florida. The utility, although it requested the hearing, did not attend the hearing. By Order No. PSC-93-0542-FOF-WS, issued April 9, 1993, the Commission:

- 1) Fined the utility in the amount of its rate base;
- 2) Ordered that a proceeding be initiated to reduce the utility's rates by the amount of pro forma plant not constructed and the amount of preventative maintenance not spent; and
- 3) Ordered that revocation proceedings be initiated.

The utility filed a Motion for Reconsideration of Order No. PSC-93-0542-FOF-WS. However, the utility's Motion for Reconsideration was denied by Order No. PSC-93-1396-FOF-WS, issued September 27, 1993. In accordance with Order No. PSC-93-0542-FOF-WS, Docket No. 930944-WS has been opened to initiate proceedings to revoke the utility's water and wastewater certificates.

In preparation for the prehearing relating to the escrow requirements, Commission Staff met with the utility in an attempt to resolve certain concerns of the utility. Specifically, the utility contended that it was unable to meet its escrow requirements due to a shortfall in revenues collected. This Commission agreed to have Staff review the utility's contended revenue shortfall within the context of the proceeding to reduce the utility's rates. Consequently, the utility withdrew its escrow-related protest. Therefore, the prehearing and hearing relating to the escrow accounts were cancelled by Order No. PSC-93-0777-PCO-WS, issued May 20, 1993.

By Order No. PSC-93-1733-FOF-WS, issued December 1, 1993, we ordered the utility to reduce its rates, as set forth in that Order, to reflect the removal from the utility's rates all pro forma plant not constructed and preventative maintenance not spent. Additionally, that Order required Shady Oaks to refund to its customers the entire balance of all monies currently in the escrow account within 30 days of the effective date of that Order. The utility was also ordered to refund the total calculated underfunding, less the pro rata share of the escrow requirement

related to the installed water meters, over the period of the next three years.

On September 29, 1993, the utility filed its notice of intent to implement the 1993 price index rate adjustment, pursuant to Section 367.081(4)(a), Florida Statutes. This Order addresses the utility's request.

PRICE INDEX RATE ADJUSTMENT AND SECURITY

The rule that codifies the procedures for implementing the price index rate adjustment is Rule 25-30.420, Florida Administrative Code, which provides that:

- (2)The adjustment in rates shall take effect on the date specified in the notice of intention unless the Commission finds that the notice of intention or accompanying materials do not comply with the law, or the rules or orders of the Commission.

Based on this rule, the utility is entitled to implement the 1993 price index rate adjustment, despite its troubled history. However, the rule further provides that:

- (4) Upon a finding of good cause, the Commission may require that a rate increase pursuant to Section 367.081(4)(a), Florida Statutes, be implemented under a bond or corporate undertaking in the same manner as interim rates. For purposes of this subsection, "good cause" shall include:
 - (a) Inadequate service by the utility;
 - (b) Inadequate record-keeping by the utility such that the Commission is unable to determine whether the utility is entitled to implement the rate increase or decrease under this rule.
- (5) After a rate adjustment pursuant to this rule, the Commission may require a utility to file with it such information required in Rule 25-30.436, Florida Administrative Code, that is necessary to determine whether the utility has exceeded its last authorized rate of return.

As discussed earlier, due in part to the continuing unsatisfactory quality of service provided by the utility, the Commission has reduced the utility's rates, and has initiated

revocation proceedings. We believe that, based on the unsatisfactory quality of service, there is good cause to require that the price index rate increase be implemented only if security for a refund is provided. In addition, the recent rate reduction ordered by the Commission still allows the utility the opportunity to earn its 12.10% authorized return. If a price index increase is implemented, the utility may actually exceed its last authorized rate of return. We believe this is additional justification for requiring security for a refund.

Based on the utility's history of its failure to maintain an escrow account at the appropriate balance, we have reason to believe that the utility would not maintain an escrow account at the proper balance in this instance. Therefore, we find that the security for a potential refund must be in the form of a bond in the amount of \$601. The bond shall contain wording to the effect that it will be terminated only under the following conditions:

- 1) if the Commission finds that there should be no refund to the customers as a result of the utility implementing the 1993 price index rate adjustment; or
- 2) if the Commission finds that there should be a refund to the customers as a result of the utility implementing the 1993 price index rate adjustment, the utility shall refund the amount collected that is attributable to the increase.

In no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility. The utility shall maintain an account of all monies received as a result of the rate increase. This account must specify by whom and on whose behalf such monies were paid. If a refund is ultimately required, it shall be paid with interest calculated pursuant to Rule 25-30.360(4), Florida Administrative Code.

The utility shall maintain a record of the amount of the security provided, and the amount of revenues that are subject to refund. After the increased rates are in effect, the utility shall file reports with the Division of Water and Wastewater no later than 20 days after each monthly billing. These reports shall indicate the amount of revenue collected under the increased rates.

This docket shall remain open pending a determination as to the utility's achieved earnings level and quality of service.

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However, if the Commission revokes the utility's certificates prior to our determination of the utility's achieved earnings level and quality of service, we will dispose of any refund issues at that time.

Based on the foregoing, it is, therefore,


ORDERED by the Florida Public Service Commission that Shady Oaks Mobile-Modular Estates, Inc., may implement its 1993 price index adjustment, provided that it obtains, to the extent set forth herein, the proper security for a potential refund. It is further

ORDERED that the security for the potential refund must be in the form of a bond in the amount of \$601. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that this docket remain open pending this Commission's determination as to the utility's achieved earnings level and quality of service.

By ORDER of the Florida Public Service Commission, this 15th day of December, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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 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 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.