

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and request  
for hearing by Linda J. McKenna  
and 54 petitioners regarding  
unfair rates and charges of  
Shangri-La by the Lake  
Utilities, Inc. in Lake County.

DOCKET NO. 990080-WS  
ORDER NO. PSC-00-2244-AS-WS  
ISSUED: November 27, 2000

The following Commissioners participated in the disposition of  
this matter:

E. LEON JACOBS, JR.  
BRAULIO L. BAEZ

ORDER APPROVING SETTLEMENT AGREEMENT, REQUIRING REFUNDS,  
ACKNOWLEDGING PROTEST WITHDRAWAL, AND FINALIZING ORDER NO. PSC-  
00-0259-PAA-WS, AS MODIFIED BY THE SETTLEMENT AGREEMENT

BY THE COMMISSION:

BACKGROUND

Shangri-La by the Lake Utilities, Inc. (Shangri-La or utility)  
is a Class C utility located in Lake County. The utility currently  
provides water and wastewater service to approximately 129 mobile  
homes and water service to five single family homes. On January  
19, 1999, Ms. Linda J. McKenna and 54 other customers filed the  
formal complaint which is the subject of this docket. The  
customers requested a formal hearing, rate relief, establishment of  
a seasonal rate for customers not in residence, that the utility  
not be allowed to charge for service until the matter was  
addressed, and that the utility's certificates be revoked until a  
satisfactory resolution was reached between all the concerned  
parties. By Order No. PSC-99-2254-PCO-WS, issued November 18,  
1999, we acknowledged the Office of the Public Council's (OPC)  
intervention in this docket.

By Proposed Agency Action (PAA) Order No. PSC-00-0259-PAA-WS,  
issued February 8, 2000, we adjusted rates, established a new class  
of service, authorized the collection of metered charges for

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irrigation, denied the request that the utility not be allowed to charge for service pending a resolution of the matter, and denied the request to revoke Shangri-La's certificates. On February 29, 2000, OPC timely filed a Petition on Proposed Agency Action and Objection to Proposed Agency Action.

By Order No. PSC-00-0629-PCO-WS, issued April 3, 2000, this matter was scheduled for an administrative hearing and controlling dates were established. The controlling dates were modified by Order No. PSC-00-1239-FOF-WS, issued July 10, 2000.

On June 13, 2000, OPC filed a Motion in Limine to Limit Issues Consistent with Prior Commission Rulings (Motion in Limine) and a Request for Oral Argument. Shangri-La filed its timely Response on June 26, 2000. By Order No. PSC-00-1549-PCO-WS, issued August 25, 2000, we granted in part and denied in part OPC's Motion in Limine, and restricted Shangri-La from raising new issues. On September 1, 2000, Shangri-La filed a Motion for Reconsideration by Entire Commission of Order No. PSC-00-1549-PCO-WS, and a Request for Oral Argument.

On October 12, 2000, the parties to this docket entered into a settlement agreement. On October 13, 2000, Shangri-La and OPC filed a joint Motion to Approve Settlement Agreement.

We have jurisdiction pursuant to Sections 367.081 and 120.569, Florida Statutes.

#### SETTLEMENT AGREEMENT

On October 13, 2000, the parties filed a joint Motion requesting the approval a settlement agreement which was executed on October 12, 2000. A copy of the settlement agreement is attached to this Order as Attachment A, which by reference is incorporated herein. The settlement agreement contains five provisions, as follows:

1. In addition to the refund provided for in the PAA Order, the Utility shall apply the rates approved in the PAA Order to recalculate the customer's bills and will refund to the customers the difference between the recalculated rates and the actual amount paid by the customer.

2. The utility will not file a rate case any earlier than January, 2002, based upon a test year any earlier than the year ended December 31, 2001.
3. Citizens will voluntarily dismiss the petition on Proposed Agency Action filed February 29, 2000.
4. Except as specially modified hereby, the provisions and rulings in PAA Order No. PSC-00-0259-PAA-WS are hereby affirmed.
5. The provisions of this Settlement Agreement are not severable and shall become effective only after the Commission has entered an order approving the Agreement in total. In the event the Agreement is not approved in whole, without modification, the Settlement Agreement shall be deemed withdrawn and null and void, and neither party may use this attempted Settlement Agreement in this or any other proceeding.

We have reviewed the settlement agreement and find that it reaches a reasonable compromise among the parties and is in the public interest. The settlement agreement resolves all the outstanding issues in this docket and avoids the time and expense of further litigation. All parties to the docket have signed the agreement. In consideration of the foregoing, the settlement agreement shall be approved.

We note that Rule 25-22.032(10), Florida Administrative Code, states in part that "during the pendency of the complaint proceedings, a utility shall not discontinue service to a customer because of an unpaid disputed bill." Accordingly, the utility has not disconnected any customers' potable water and wastewater service due to non-payment of their monthly bills during this proceeding. However, the utility will be within its rights to seek full payment of any delinquent bills. Therefore, it is important to note that customers who refuse to pay their water and wastewater bills after the PAA rates are implemented may be disconnected provided that the utility complies with Rule 25-30.320, Florida Administrative Code, regarding disconnection.

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Although the settlement agreement contains a provision for customer refunds, it does not address how the refunds will be administered. In accordance with Rule 25-30.360, Florida Administrative Code, all of the customers shall be refunded the difference between the original and PAA rates. However, as to interest, we are aware that some customers have withheld payment of their water and wastewater bills pending the resolution of this complaint. Ordinarily, refunds are made with interest to recognize that customers did not have use of their funds during the time that they paid inappropriate rates. In light of these circumstances, the utility shall not be required to include interest in the refund calculation for those customers who did not pay their bills because those customers were not deprived of the use of their money during the pendency of this proceeding. Correspondingly, customers who paid their utility bills during the pendency of this proceeding shall be entitled to interest as prescribed by the above-mentioned rule.

Based upon all of the foregoing, we grant the parties' Motion and approve the settlement agreement in its entirety. The withdrawal of OPC's protest is acknowledged, and PAA Order No. PSC-00-0259-PAA-WS is made final as modified by the settlement agreement. The utility shall file revised tariff sheets and a proposed customer notice to reflect the PAA rates. The approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code. The rates shall not be implemented until our staff has approved the proposed customer notice, and the notice has been received by the customers. The utility shall provide proof of the date notice was given no less than 10 days after the date of the notice. Further, the refund shall be issued in accordance with Rule 25-30.360, Florida Administrative Code, including interest for customers who paid their bills during the pendency of this complaint. However, customers who have not paid their bills shall receive a credit for the difference between the original and PAA rates, without interest.

We find that it is unnecessary to rule upon the Request for Oral Argument, Motion for Reconsideration by the Entire Commission, and Modified Joint Motion for Extension of Time to File Prefiled

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Testimony because they are moot in light of the settlement agreement.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Shangri-La by the Lake Utilities, Inc. and the Office of Public Counsel's Joint Motion to Approve Settlement Agreement is granted as set forth in the body of this Order. It is further

ORDERED that Attachment A, is attached to this Order, is incorporated herein by reference. It is further

ORDERED that the withdrawal of the Office of Public Counsel's protest is acknowledged. It is further

ORDERED that Proposed Agency Action Order No. PSC-00-0259-PAA-WS is hereby made final, as modified by the settlement agreement. It is further

ORDERED that the utility shall file revised tariff sheets and a proposed customer notice to reflect the PAA rates. The approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code. The rates shall not be implemented until our staff has approved the proposed customer notice, and the notice has been received by the customers. The utility shall provide proof of the date notice was given no less than 10 days after the date of the notice. It is further

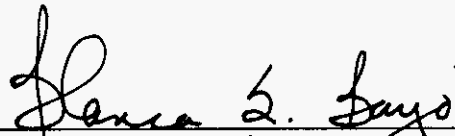
ORDERED that a refund shall be issued as set forth in the body of this Order and Rule 25-30.360, Florida Administrative Code, including interest for customers who paid their bills during the pendency of this complaint. Customers who have not paid their bills shall receive a credit for the difference between the original and PAA rates, without interest. It is further

ORDERED that the Request for Oral Argument, Motion for Reconsideration by the Entire Commission, and Modified Joint Motion for Extension of Time to File Prefiled Testimony are moot in light of the settlement agreement. It is further

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ORDERED that this docket shall be closed administratively upon our staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff, and that the refunds have been issued.

By ORDER of the Florida Public Service Commission this 27th day of November, 2000.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

DTV

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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,

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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.

SEP 29 2000 2:51 PM FR UERRILL & DANA 207 TO 918504894491 P.02

03/06/1995 05:47 8584884491

PUBLIC COUNSEL

PAGE 02  
NO. 001 4002

FROM : Jay and Laura Werner

FAX NO. : 815 739 2900

Sep. 08 2000 12:54PM #5

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT is made and entered into this 8<sup>th</sup> day of September, 2000, by and between Citizens of the State of Florida ("Citizens") through the Office of Public Counsel, and Shangri-La by the Lake Utilities, Inc. ("Utility").

**WITNESSETH**

WHEREAS, the Florida Public Service Commission ("PSC") issued Order No. PSC-00-0259-PAA-WS on February 8, 2000 taking certain action with regard to the Complaint filed by Linda J. McKenna and others against the Utility ("PAA Order"); and

WHEREAS, Citizens have filed a timely Petition on Proposed Agency Action objecting to certain portions of the PAA Order; and

WHEREAS, Citizens and Utility desire to resolve their differences with regard to the Citizens' Petition.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth below the Citizens and Utility agree as follows:

1. In addition to the refund provided for in the PAA Order, the Utility shall apply the rates approved in the PAA Order to recalculate the customer's bills and will refund to the customers the difference between the recalculated rates and the actual amount paid by the customer.
2. The Utility will not file a rate case any earlier than January, 2002, based upon a test year any earlier than the year ended December 31, 2001.
3. Citizens will voluntarily dismiss the Petition on Proposed Agency Action filed February 29, 2000.



SEP 29 2000 2:51 PM FR VERRILL & DANA PUBLIC COUNSEL 207 TO 918504884491 PAGE 03 P.03  
03/00/1995 00:47 8904884491 NO.321 0003  
FROM Jay and Laura Werner FAX NO. 1 913 736 2500 Sep. 29 2000 12:54Ph #3


4. Except as specifically modified hereby, the provisions and rulings in PAA Order No. PSC-00-0259-PAA-WS are hereby affirmed.

5. The provisions of this Settlement Agreement are not severable and shall become effective only after the Commission has entered an order approving the Agreement in total. In the event the Agreement is not approved in whole, without modification, the Settlement Agreement shall be deemed withdrawn and null and void, and neither party may use this attempted Settlement Agreement in this or any other proceeding.

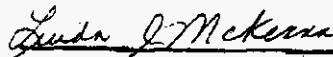
Citizens of the State of Florida

Shangri-La by the Lake Utilities, Inc.

By: Jack Shreve  
Public Counsel

  
Jay Werner  
President

Concurring with the Settlement Agreement:

  
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\_\_\_\_\_

Werner Settlement agr

10/12/2000 08:42 8584884491  
SEP 29 2000 2:51 PM FR VERRILL & DANA

PUBLIC COUNSEL  
207 TO 918564884491

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P. dc

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PUBLIC COUNSEL

PAGE 02  
NO. 321 4882

FROM : Jay and Laura Morner

FAX NO. : 815 738 2700

Sep. 08 2000 12:58PM #5

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT is made and entered into this 2<sup>nd</sup> day of September, 2000, by and between Citizens of the State of Florida ("Citizens") through the Office of Public Counsel, and Managri-La by the Lake Utilities, Inc. ("Utility").

**WITNESSETH**

WHEREAS, the Florida Public Service Commission ("FSC") issued Order No. PSC-00-0239-FAA-WS on February 8, 2000 taking certain action with regard to the Complaint filed by Linda J. McKeown and others against the Utility ("FAA Order"); and

WHEREAS, Citizens have filed a timely Petition on Proposed Agency Action objecting to certain portions of the FAA Order; and

WHEREAS, Citizens and Utility desire to resolve their differences with regard to the Citizens' Petition.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth below the Citizens and Utility agree as follows:

1. In addition to the refund provided for in the FAA Order, the Utility shall apply the rates approved in the FAA Order to recalculate the customer's bills and will refund to the customer the difference between the recalculated rates and the actual amount paid by the customer.

2. The Utility will not file a rate case any earlier than January, 2002, based upon a test year any earlier than the year ended December 31, 2001.

3. Citizens will voluntarily dismiss the Petition on Proposed Agency Action filed February 29, 2000.

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09/09/1999 09:47 0900234491

PUBLIC COUNSEL  
207 10 815564884491  
PUBLIC COUNSEL

PAGE 08  
NO. 321

FROM : Jay and Laura Werner

FAX NO. : 913 735 2388

Ses. 08 2000 12:54PM #2

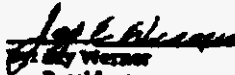
4. Except as specifically modified hereby, the provisions and rulings in PAA Order No. PSC-00-0236-PAA-WS are hereby affirmed.

5. The provisions of this Settlement Agreement are not severable and shall become effective only after the Commission has entered an order approving the Agreement in total. In the event the Agreement is not approved in whole, without modification, the Settlement Agreement shall be deemed withdrawn and null and void, and neither party may use this attempted Settlement Agreement in this or any other proceeding.


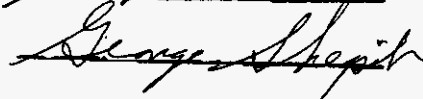
Citizens of the State of Florida

Shangri-La by the Lake Utilities, Inc.

By: Jack Shreve  
Public Counsel

  
By: Jay Werner  
President

Concurring with the Settlement Agreement:

www.vericourt.org