

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

March 21, 1991

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING 
FROM : DIVISION OF WATER AND SEWER (VANDIVER, LANDIS) 
DIVISION OF LEGAL SERVICES (FEIL) 
RE : UTILITY: SHADY OAKS MOBILE-MODULAR ESTATES, INC.

DOCKET NO. 900025-WS

COUNTY: PASCO

CASE: STAFF-ASSISTED RATE CASE

AGENDA: APRIL 2, 1991 - CONTROVERSIAL - FINAL AGENCY ACTION -
PARTIES MAY PARTICIPATE

PANEL: FULL COMMISSION

CRITICAL DATES: NONE

CASE BACKGROUND

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 the instant 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," a copy of which is attached and marked Exhibit "A." This recommendation concerns the disposition of this protest.

DOCUMENT NUMBER-DATE

02811 MAR 21 1991

FPSC-RECORDS/REPORTING

DOCKET NO. 900025-WS
MARCH 21, 1991

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission dismiss the protest to proposed agency action Order No. 24084? (Vandiver, Feil)

RECOMMENDATION: Yes, the Commission should dismiss the protest to proposed agency action Order No. 24084 because the basis of the protest is a matter outside of the Commission's jurisdiction.

STAFF ANALYSIS: In proposed agency action Order No. 24084, issued February 8, 1991, the Commission included costs associated with a proposed new percolation pond in the utility's rate base. In the "Petition of Objection or Protest" received March 1, 1991, approximately nine utility customers protest specifically and exclusively the location of the new percolation pond. Because the pond will be within 100 feet of their property, they allege that it will cause offensive odors and other health hazards and that it 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 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 the petitioning customers are complaining of.

Essentially, the petitioning customers allege that the location of the proposed pond will constitute a nuisance. Although Staff is sympathetic to the plight of the customers, it was DER, not the Commission, who 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. Thus, Staff recommends that the Commission find that the PSC does not have subject matter jurisdiction over what the petitioning customers are protesting.

Furthermore, it is the operation of the utility, and not the location of the percolation pond per se, which is the subject of the instant proceeding. The location and size of the pond was not approved, disapproved, or otherwise addressed in the protested order. The Commission's only involvement with the pond was in including its cost in rate base. Since the Commission 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

DOCKET NO. 900025-WS
MARCH 21, 1991

pond. In essence, the protest is to a decision that the Commission did not make.

Therefore, based on the above discussion, Staff recommends that the protest be dismissed.

ISSUE 2: Should Order No. 24084 be revived and made final and effective?

RECOMMENDATION: Yes. (Feil)

STAFF ANALYSIS: If the Commission accepts Staff's recommendation in Issue 1, Order No. 24084 should be revived and made final and effective. No other protests to the Order were filed, so if the aforementioned protest is dismissed, the Order should become final.

ISSUE 3: Should the docket be closed?

RECOMMENDATION: No. This docket should remain open. (Vandiver)

STAFF ANALYSIS: Order No. 24084 required that Staff monitor the utility for several months, so the docket must remain open for that purpose.

DOCKET NO. 900025-WS
MARCH 21, 1991

EXHIBIT "A"

RECEIVED
MAR 1 1991

Director, Division of Records & Reporting
101 E. Gaines St.
Tallahassee, Fla. 32399-0870

FPSC-RECORDS/REPORTING

Petition of Objection or Protest

In re: Application for staff assisted rate case in Pasco County
by SHADY OAKS MOBILE MODULAR ESTATES, INC.

DOCKER NO: 900025-WS
ORDER NO: 24084
ISSUED: 2-8-91

RE: To pages 5 and 6 of above Docket No. 900025-WS.
The proposed percolation pond approved by D.E. R. and
directly related to the waste water rates for Shady Oaks Est.

We, the following property owners, wish to protest the
construction of this pond. We feel this pond would be a
hazard to our health and welfare. These ponds would be
within 100 feet of our property lines causing offensive
odors and other health hazards, mosquitoes, etc. We are
aware there is another method available for waste water
treatment for this system, which in our thinking is a more
up to date, more sanitary and less costly in the long run.

With these ponds at proposed location our property values
will be greatly reduced as well as all the balance of
property in Shady Oaks Estates.

Howard E. Penston	Ollie Mitchell
Margaret Penston	Jean Mitchell
3604 CASTLE DR.	3552 Castle Dr
ZEPHYRHILLS, FL. 33540	3-kills Dr 33540
Charles E. Beck	Idell Houston
Norma E. Beck	3608 Castle Dr
3558 CASTLE DR.	Fred B. Peterson
ZEPHYRHILLS, FL. 33540	Mable B. Peterson
Barbara McBride	3540 Castle Dr
Muriel W. McBride	Cora McCusker
3570 Castle Dr	Cora McCusker
Zephyrhills #C-33540	35251 Castle Dr 33540
James E. Harrison	Kenneth A. Patcher
Britchen D. Harrison	Elda S. Patcher
38630 Monet Dr.	98523 Monet Dr, 33540
Zephyrhills, FL 33540	

Copy to: D.E.R.

DOCUMENT NUMBER-DATE

02093 MAR -1 1991

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