

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 900025-WS
ORDER NO. 25296
ISSUED: 11/04/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

ORDER DETERMINING NONCOMPLIANCE WITH
PRIOR COMMISSION ORDER AND APPROVING
TEMPORARY RATES IN EVENT OF PROTEST

AND

NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING CHANGE IN RATES AND RATE STRUCTURE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein regarding changing rates and rate structure is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

Shady Oaks Mobile-Modular Estates, Inc., (Shady Oaks or utility) is a class "C" water and wastewater utility serving a 242 lot mobile-modular home park located in Pasco County, south of the City of Zephyrhills. By resolution of the Pasco County Commission, the provisions of Chapter 367, Florida Statutes, became effective in Pasco County as of July 11, 1972. By Order No. 14540, issued July 8, 1985, this Commission found that Shady Oaks was subject to Commission jurisdiction.

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On January 10, 1990, Shady Oaks applied for the instant staff-assisted rate case. On February 8, 1991, this Commission issued proposed agency action (PAA) Order No. 24084, wherein we approved a rate increase for Shady Oaks. In that Order, we also required Shady Oaks to do the following: file a request for acknowledgement of a restructure and a name change, improve its unsatisfactory quality of service, expend 85% of the allowance for preventive maintenance on systems maintenance or provide written explanation for not doing so, provide a detailed record of maintenance expenditures, install meters for all of its customers, and escrow a certain portion of the approved monthly rates to account for a fine and proforma plant allowances. The primary purpose of this Order is to evaluate Shady Oaks' compliance with Order No. 24084.

On March 1, 1991, several utility customers filed a timely protest to Order No. 24084. In their protest, the customers objected to the location of 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.

After the new rates became effective, the homeowners in the Shady Oaks park, on June 21, 1991, filed suit against Shady Oaks in Circuit Court attacking, among other things, the increased water and wastewater rates approved by this Commission. Each deed whereby the developer (Shady Oaks) transferred property in the Shady Oaks mobile home park to a buyer contained a covenant which requires Shady Oaks to provide certain services at a fixed annual cost. The listed services include water and wastewater service. In Order No. 14540, whereby we certificated Shady Oaks, we noted a 1982 decision of the Circuit Court for the Sixth Judicial Circuit in and for Pasco County which upheld the restrictive covenants included in the deeds. Shady Oaks did not request new rates upon certification, and we decided that the utility should continue billing its customers the rate established in the deed restrictions.

On June 24, 1991, Circuit Court Judge Lynn Tepper granted the homeowner's request for an emergency temporary injunction enjoining Shady Oaks from charging or attempting to collect the Commission-approved rates. In addition, on July 5, 1991, the Circuit Court issued an order requiring Shady Oaks to show cause why it should not be found in contempt for violating the 1982 Court Judgment.

This order also enjoined the utility from collecting the Commission-approved rates and ordered that the monthly service fee paid by the homeowners be deposited into the registry of the Clerk of the Court. In August, both injunctions were lifted, and the utility was able to begin collecting the Commission-approved rates; however, the homeowner's lawsuit is still pending.

During the time that the injunction was in effect, Shady Oaks was unable to pay its electric bills for May and June, 1991. On July 25, 1991, the Withlacoochee River Electric Cooperative discontinued electric service to the utility. All of the pertinent governmental agencies, including this Commission, were given prior notice. The Shady Oaks homeowners were without water and wastewater service when electric service was discontinued. In order to get service restored, the homeowners proposed paying the utility's electric bill. With no opposition from the utility or the Commission, the Circuit Court issued an order which allowed the homeowners to pay the electric bill, provided that payment would be credited to the homeowner's water and wastewater bills. The homeowners paid the electric bill, and Shady Oaks' power was restored.

In looking at all of the circumstances surrounding this case, we note two other relevant factors. First, on March 13, 1991, Shady Oaks' owners, Mr. Richard D. Sims and his wife Caroline S. Sims, filed for personal bankruptcy under Chapter 13 with the United States Bankruptcy Court for the Middle District of Florida, Tampa Division. Secondly, on July 8, 1991, the Circuit Court issued an order approving the stipulation of the parties in an action initiated by the Florida Department of Environmental Regulation (DER) against Shady Oaks. In the approved stipulation, Shady Oaks agreed to remove its wastewater treatment plant and to divert all flows to Pasco County's wastewater collection system within six months.

Noncompliance With Order No. 24084

Name Change

In August, 1990, Shady Oaks transferred the title of the utility land from the Shady Oaks corporation to its owners individually. Shady Oaks undertook this transfer without the prior approval of the Commission. As stated earlier, in Order No. 24084

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we ordered Shady Oaks to file a request for acknowledgement of a name change and restructure within sixty days.

On March 17, 1991, we received a letter from the utility wherein it requested official recognition of the utility's new name, S & D Utility (S & D). On April 1, 1991, we wrote the utility that the name change could not be recognized until we received evidence that utility land and assets had been properly transferred to S & D and that S & D had been properly registered as a fictitious name. The utility submitted evidence that S & D was registered as a fictitious name; however, it explained that because of the pending bankruptcy proceeding, title to the utility land and assets could not yet be transferred to S & D. Subsequently, the Shady Oaks' owners informed us that under the payment plan entered into in the bankruptcy proceeding, they will soon be able to correct the title to utility land and assets.

In consideration of the foregoing, we hereby require Shady Oaks' owners to submit within sixty days of the date of this Order evidence that the title to all the utility land and assets has been corrected.

We are concerned, as are the customers, that the utility has been billing the customers and operating under the name of S & D, even though we have not yet officially approved this name. However, this would appear to be an exceptional case. We believe that it is only a matter of time before the utility provides sufficient information for us to process the name change. Nonetheless, if for any reason, title to the utility land and assets cannot be corrected within sixty days, the utility shall revert to operating under the name currently shown on its certificate: Shady Oaks Mobile-Modular Estates, Inc.

Escrow Requirement

The utility's new rates under Order No. 24084 became effective on March 2, 1991. Pursuant to that Order, on March 26, 1991, the utility began placing a portion of its increased rates into an escrow account. From March until August, 1991, the utility escrowed the following amounts: March, \$284.18; April, \$350.88; May, \$256.38; June, \$243.19; July, \$61.18; August, \$0. The total amount escrowed was \$1,195.81

The utility did not comply with Order No. 24084, wherein we required it to escrow \$333.34 per month in order to accumulate the \$2,000 fine assessed and the revenues associated with the proforma plant improvements. We believe that the utility's failure to escrow the proper sums was caused by the failure of many Shady Oaks' customers to pay their water and wastewater bills.

As discussed in the Case Background, the customers filed suit against the utility regarding the increased water and wastewater rates. A majority of the customers withheld payment of their utility bills. As of mid-September, 1991, 98 customers (out of 185 total customers) owed \$100 or more and 50 customers owed over \$200. The utility had \$21,185 in total receivables. Revenues were also depleted by some \$13,861 because 71 customers had service discontinued during the summer while they were out of town. By July, 1991, the utility was receiving so few utility payments, that it unilaterally decided to discontinue placing money in escrow in order for it to pay its bills.

Although we understand the utility's difficulty in escrowing the required amount, we admonish it for ceasing to escrow without our approval. The utility should immediately place enough money in the escrow account to bring the balance up to the proper level. Although we will not order the utility to show cause why it should not be fined for violating a Commission Order at this time, if the utility does not immediately correct the deficiency or does not continue placing the appropriate portion of revenues in the escrow account, we shall take appropriate action.

Installation of Water Meters

By Order No. 24084, we required the utility to install water meters for all its customers. As of mid-September, the utility had installed 31 of the 185 meters required, and had dug holes for 41 more.

Although not in complete compliance with our Order, Shady Oaks' installation of the 31 meters indicates that it has made an effort to comply. As indicated above, Shady Oaks has been receiving less than half the revenues allowed in the rate case. Considering the insufficient funds on hand to purchase meters, we believe that the utility has done a reasonable job.

As noted in the Case Background, the Circuit Court lifted its injunction in August. Our review of the utility's books indicates that most of the customers have begun paying the Commission-approved rate. Indeed, as of mid-September, only twelve active customers have not made a payment in either August or September. Although the customers are currently paying their bills, they have not brought their accounts up-to-date. There is still some dispute about bills owing from March through July. Now that the utility appears to be collecting its appropriate level of revenue, we shall allow the utility another five months to complete the installation of the water meters.

Quality of Service

By Order No. 24084, we imposed a \$2,000 fine against the utility for its unsatisfactory quality of service, but suspended the fine for a nine-month period, by the end of which we would dispose of the fine. With six months passed from the time of Order No. 24084, we find that the utility's quality of service remains unsatisfactory.

In September, we conducted a site inspection of the utility and found that the physical condition of both the water and wastewater systems had deteriorated. Neither system had a certified operator for the period of July 12 through August 27, 1991. Virtually no maintenance other than emergency repairs had been performed on either system.

Very heavy vegetation had grown in and around the berms of the percolation pond causing the ponds to function improperly. In addition, the wastewater treatment plant equipment looked derelict and in need of maintenance. The cost of making the necessary improvements to the wastewater system would be significant. However, as stated in the Case Background, Shady Oaks has agreed to interconnect with Pasco County. The interconnection is scheduled to take place in five months. We believe that Shady Oaks should maintain the system according to DER standards until the interconnection takes place. We anticipate that the interconnection will cost at least as much as the amount we allowed in Order No. 24084 for a new percolation pond and the associated land. We shall compare the costs when we reevaluate the quality of service in five months.

As for the water system, we are specifically concerned with the holes in the pump house roof being significantly worse than in our prior inspection. This condition leaves the equipment unprotected from the environment and subject to corrosion and accelerated attrition.

All of the above conditions are at least partially attributable to decreased revenues. Now that revenues have increased, we expect the utility to improve its quality of service with respect to plant condition; in meeting this goal, the utility should complete its interconnection with Pasco County within the designated time.

The other aspect of quality of service which has deteriorated since the issuance of Order No. 24084 is customer relations. On November 17, 1991, we received a letter from the Shady Oaks Homeowners Association wherein the customers listed numerous complaints against the utility. For instance, the customers complained that when they asked a question of the utility owner, he would refer them to our staff. Our staff verifies that they have encountered this situation directly on more than one occasion. In addition, the customers assert that the utility owner is generally unresponsive, profane, abusive, and insulting.

The customers also complain about the utility's limited and inconsistent office hours. The office hours change from week to week, and the customers point out that they are inconvenienced by having to call the utility just to be told that the office hours are posted or that the office is currently open. Even when the office is open, the utility owner has refused to accept hand-delivered payments.

The customers also complain about the utility's billing format. Prior to the Commission's approving increased rates, the utility did not issue bills because utility service was part of the monthly service fee the customers had to pay. The customers want the utility's bills to show the previous balance, payment received, new charges, and total due. According to Rule 25-30.335, Florida Administrative Code, each bill need only contain the billing period, the applicable rate, the amount due, and the delinquent date. Our rules do not require the level of detail requested by the customers because our rules do not contemplate overdue balances. Normally, unpaid bills result in disconnection. The utility may, but is not required to, provide the detail which the

customers request. Indeed, it may be wise to do so in order to eliminate customer confusion and unnecessary bill inquiries.

In order to improve its quality of service, the utility must improve customer relations. Although customer relations is a somewhat subjective matter, we note several concrete steps the utility should undertake in this regard.

The utility should keep a complaint log which should list each customer complaint received and the corrective action taken. Customer complaints or inquiries should be responded to, if not resolved, within forty-eight hours. If the problem cannot be resolved within this time, the customer should be given the timetable for resolution.

The utility should maintain reasonable and dependable office hours. Although the expense we allowed in the rate case for the utility president and secretary was not intended to account for office hours only, we expect the utility's office to be open at least two to three hours, twice a week. The most important aspect in this case is consistency. The utility should maintain consistent hours. If the utility officers are not able to be in the office on a consistent basis, they should consider alternative staffing.

Finally, the utility shall stop referring customers to our staff to solve problems. We recognize that our staff is needed on occasion to explain Commission rules and procedures; but our staff should not be relied upon by the utility or its customers as a substitute for utility management.

Preventative Maintenance

As indicated in the Case Background, in Order 24084, we ordered the utility to spend 85% of the monthly allowance for preventive maintenance for its stated purpose. We have reviewed the utility's disbursements for March through August, 1991, and note the following outlays: March, \$193; April, \$366; May, \$0; June, \$294; July, \$0; August, \$300. As with its other failures, the utility's failure here was likely caused by decreased revenues. The utility shall henceforth comply with this aspect of Order No. 24084. We shall revisit this issue in five months' time.

Fine Suspension

In Order No. 24084, we imposed a \$2,000 fine, but suspended same for a nine-month period during which we expected the utility to improve its quality of service. We do not take lightly the utility's continued unsatisfactory quality of service or its continued failure to comply with other requirements of our prior order. However, this is a somewhat exceptional case because of the decreased revenue situation.

According to the utility's stipulation with DER, the utility should complete its interconnection with the Pasco County wastewater treatment system by January 8, 1992. We will extend our suspension of the \$2,000 fine for forty-five days beyond the interconnection date, until February 21, 1992, by which time we will begin our final review of the utility's quality of service. We remind the utility that it is not relieved of its obligation to accumulate the fine in escrow as required above and in Order No. 24084.

Change in Rates and Rate Structure

In Order No. 24084, we allowed the utility to charge a flat rate for the six months which we expected it would take the utility to install meters for all customers. At the end of six months, the base facility charge rate structure would become effective and any customers without water meters would only pay the base facility charge. In this case, the base facility charge rate structure became effective automatically on October 1, 1991.

The customers request that the tariff be adjusted so that only the base charge would be billed to all customers until all water meters have been installed. The customers state that the utility is not in such dire straits as it claims to be. In support of their claim, the customers estimated their payments for January through December, 1991. The customers' estimate includes monthly payments for utility services as well as a \$25 maintenance fee, which the Commission does not regulate.

Not considering the \$25 maintenance fee, we calculate that for the six months of March through August, 1991, the customers paid a total of \$28,371. This amount is considerably less than one-half of the \$98,592 annual revenue requirement which we approved in

Order No. 24084. Therefore, we will not adjust the tariff as requested by the customers.

Because we recognize that the likely cause of the utility's failure to install meters was its reduced revenues, we hereby allow the utility to continue to collect the flat rate set forth in Order No. 24084 until we reevaluate this case in five months. The applicable rate is as follows.

	<u>WATER</u>	<u>WASTEWATER</u>
Flat Monthly Rate	\$14.70	\$28.28

The approved flat rates shall be effective for service rendered on or after the stamped approval date on the revised tariff sheets. The utility shall submit revised tariff sheets reflecting the approved rates along with a proposed customer notice listing the new rates and explaining the reasons therefor. The revised tariff sheets will be approved upon staff's verification that the tariffs are consistent with the Commission's decision, that the proposed customer notice is adequate, and that the protest period has expired.

Temporary Rates in the Event of Protest

As discussed above, we are continuing the flat rate structure, rather than implementing the base facility charge rate structure. A timely protest could delay what may prove to be a justified revenue level pending the completion of a formal hearing and issuance of a final order, thus resulting in an unrecoverable loss of revenue to the utility. Therefore, in the event that a timely protest is filed by anyone other than the utility, we hereby authorize the utility to collect the rates approved herein, on a temporary basis, subject to refund. All revenue related to the difference in the base facility charge rate currently in the tariff and the flat rate approved above will be escrowed. This amount shall be escrowed in addition to the funds escrowed pursuant to Order No. 24084. Any withdrawals of funds from the escrow account shall be subject to the written approval of the Commission through the Director of Records and Reporting.

Once the temporary rates become effective, the utility shall deposit the funds to be escrowed into the escrow account within

seven (7) days of the utility's receipt thereof. The utility must keep an accurate and detailed account of all monies received as a result of its implementing the temporary rates, specifying by whom or on whose behalf such amounts were paid. By the twentieth day of the month for each month that the temporary rates are in effect, the utility shall file a report showing the amount of revenues collected pursuant to the implementation of the temporary rates and the amount of revenues that would have been collected under the prior rates. Should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

The temporary rates shall be effective for service rendered or after the stamped approval date on the revised tariff sheets. The utility shall submit revised tariff sheets reflecting the temporary rates along with a proposed customer notice listing the temporary rates and explaining the reasons and conditions for their implementation. The revised tariff sheets will be approved upon our staff's verification that the tariff sheets are consistent with our decision herein. The proposed customer notice will be approved upon our staff's determination that the notice is adequate.

It is, therefore

ORDERED by the Florida Public Service Commission that Shady Oaks Mobile-Modular Estates, Inc., shall submit within sixty days of this Order all necessary information for changing its certificated name, including evidence that title to all utility land and assets has been properly transferred to S & D Utility, or revert to operating under its currently certificated name. It is further

ORDERED that Shady Oaks Mobile-Modular Estates, Inc., shall immediately place in the escrow account established pursuant to Order No. 24084 all funds required to be deposited in said account by said Order. It is further

ORDERED that Shady Oaks Mobile-Modular Estates, Inc., shall within five months of the date of this Order install water meters for all of its customers. It is further

ORDERED that Shady Oaks Mobile-Modular Estates, Inc., shall within five months of the date of this Order improve its quality of service and interconnect with the Pasco County wastewater treatment

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system within the time designated therefor and improve its customer relations as set forth herein. It is further

ORDERED that the provisions of this Order regarding a change in rates and rate structure is issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of the Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that Shady Oaks Mobile-Modular Estates, Inc., is authorized to charge flat rates as set forth in the body of this Order. It is further

ORDERED that the rates approved herein shall be effective for service rendered on or after the stamped approval date on the revised tariff pages. It is further

ORDERED that prior to its implementation of the rates and charges approved herein, Shady Oaks Mobile-Modular Estates, Inc., shall submit and have approved a proposed notice to its customers of the increased rates and charges and the reasons therefor. The notice will be approved upon Staff's verification that it is consistent with our decision herein. It is further

ORDERED that prior to its implementation of the rates and charges approved herein, Shady Oaks Mobile-Modular Estates, Inc., shall submit and have approved revised tariff pages. The revised tariff pages will be approved upon Staff's verification that the pages are consistent with our decision herein and that the protest period has expired. It is further

ORDERED that in the event of a protest by any substantially affected person other than the utility, Shady Oaks Mobile-Modular Estates, Inc., is authorized to collect the rates approved herein on a temporary basis, subject to refund in accordance with Rule 25-30.360, Florida Administrative Code, provided that Shady Oaks Mobile-Modular Estates, Inc., has furnished satisfactory security for any potential refund and provided that it has submitted and Staff has approved revised tariff pages and a proposed customer notice. It is further

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ORDERED that this docket shall remain open pending further proceedings.

By ORDER of the Florida Public Service Commission, this
4th day of NOVEMBER, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MJF

by: Kay J. [Signature]
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.

As identified in the body of this order, our action approving a change in rates and rate structure is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This

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petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 11/25/91. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.

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