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. PSC-92-0367-FOF-WS ISSUED: 05/14/92

The following Commissioners participated in the disposition of this matter:

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

ORDER TO SHOW CAUSE

AND

FINAL ORDER IMPOSING FINE

BY THE COMMISSION:

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. 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 preventative maintenance on systems maintenance or provide written explanation for not doing so, provide a detailed record of what monthly maintenance will be implemented, install meters for all of its customers, and escrow a certain portion of the approved monthly rates to account for a fine and pro forma plant allowances. By Order No. 24409, issued April 22, 1991, we dismissed a timely protest to the PAA Order and revived Order No. 24084, making it final and effective.

After the new rates became effective, the homeowners in the Shady Oaks park filed suit against Shady Oaks in Circuit Court complaining of, among other things, the increased water and

wastewater rates approved by this Commission. The deeds whereby the developer (Shady Oaks) transferred property in the Shady Oaks mobile home park to a buyer covenanted that Shady Oaks would provide certain services, including water and wastewater service, at a fixed annual cost; the homeowners sought to have the Court enforce the covenant.

On June 24, 1991, Circuit Court Judge Lynn Tepper granted the homeowners' 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 a 1983 Court Judgment upholding the restrictions. This latter 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, 1991, both injunctions were lifted, and the utility was able to begin collecting the Commission-approved rates; however, the homeowners' lawsuit is still pending.

In Order No. 25296, issued November 4, 1991, we determined that the utility failed to comply with the requirements of Order No. 24084. In Order No. 25296, we ordered the utility to comply with what was previously ordered and, specifically, to do the following: submit all necessary information for changing its certificated name or revert to operating under its currently certificated name, immediately place in the escrow account all funds necessary to bring said account to its proper balance, install water meters for all its customers within five months, to improve its quality of service, and (as is discussed further below) to interconnect with the Pasco County wastewater treatment system.

SHOW CAUSE

Prior to our considering action against the utility, we reviewed the utility's revenues and expenses from March, 1991, to February, 1992, and made a field inspection. By this Order, we are requiring the utility to show cause why it should not be fined for its substantial noncompliance with Orders Nos. 25296 and 24084. Our discussion of the specific items of noncompliance follows.

Name Change and Restructure

In August, 1990, Shady Oaks transferred the title of the utility land from Shady Oaks Mobile-Modular Estates, Inc. to its shareholders individually. Shady Oaks undertook this transfer

without the prior approval of the Commission. In Order No. 24084, 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. On April 1, 1991, we wrote the utility that the name change could not be recognized until we received evidence that the utility land and assets had been properly transferred to S & D Utility and that S & D Utility had been properly registered as a fictitious name. The utility submitted evidence that S & D Utility 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 Utility.

Since the utility's owners informed us that under the payment plan entered into in the bankruptcy proceeding they would soon be able to transfer the title to the utility land and assets, we allowed the utility additional time to complete the name change and restructuring. By Order No. 25296, we ordered the utility to submit within 60 days all necessary information for changing its certificated name, including evidence that the title to all the utility land and assets had been properly transferred to S & D Utility. If it did not timely submit that information, the utility was to revert to operating under its currently certificated name, Shady Oaks Mobile-Modular Estates, Inc.

By letter dated January 22, 1992, we reminded the utility of the information necessary to complete the name change and asked several questions regarding the utility's progress. In its February 16, 1992, reply, the utility was largely unresponsive to the questions in our letter. For example, the utility stated in its response that the name change request had already been made with the Commission, and it also indicated that the bankruptcy proceedings still presented an impediment. However, we are aware that on November 14, 1991, the Bankruptcy Judge issued an order dismissing the utility owner's case and on December 17, 1991, issued an order denying the owner's motion for reconsideration or, in the alternative, conversion to Chapter 11.

Not only has the utility failed to file the information necessary for the name change, it has disregarded our Order to revert to operating under its certificated name. We have verified that customer bills bear the heading of S & D Utility and that the utility makes deposits into and writes checks from a bank account in the name S & D Utility. When our Division of Consumer Affairs has called the utility's business phone, the recorded message answers in the name S & D Utility.

It is apparent that the utility is not in compliance with Orders Nos. 24084 and 25296 with regard to the name change and restructure requirements. Therefore, the utility is hereby ordered to show cause why it should not be fined up to $5,000 per day for such noncompliance.

Installation of Water Meters

By Order No. 24084, we required the utility to install water meters for all its customers within six months. As of mid-September, 1991, the utility had installed 31 of the 185 meters required. In Order No. 25296, we stated that although Shady Oaks was not in complete compliance with our Order, its installation of the 31 meters indicated an effort to comply. We acknowledged that prior to August of 1991, the utility collected less revenue than we had allowed it to collect, as the customers' refusal to pay and the Circuit Court litigation ensued. We estimate arrearages from past nonpayment to be over $15,000. By Order No. 25296, we allowed the utility an additional five months in which to complete the meter installations.

However, from our recent review of the utility's billing records, we have determined that by the end of 1991, the vast majority of the customers were paying the Commission-approved rates. In a January, 1992, letter, we requested the utility to provide plans and a time schedule for installing the remaining water meters. The utility responded that it intended to install additional meters in February, 1992. As of the end of March, 1992, the utility had only installed an additional 16 meters, which brings the total number of installed meters to 47.

Since the utility has not completed installation of the meters within the prescribed time frame and was unresponsive to our request for information, we hereby order the utility to show cause why it should not be fined up to $5,000 per day for its failure to install water meters.

Preventative Maintenance

As indicated above, in Order No. 24084, we ordered the utility to spend 85% of the monthly allowance of $1,700 for preventative maintenance for its stated purpose. In Order No. 25296, we evaluated the utility's disbursements for March through August, 1991, and noted that the utility did not spend what was required. We thought that the utility's failure to comply was likely caused by decreased revenues, but ordered it to thereafter comply with the preventative maintenance aspect of Order No. 24084.

We have reviewed the utility's expenditures for the months of September, 1991, through February, 1992. During this period, the utility spent approximately $3,300--less than 40% of the $8,670 which the utility was required to spend. Also, the utility did not explain its failure to meet the spending requirement for preventative maintenance as required by Order No. 24084.

We do not believe the utility has complied with Order No. 25296 regarding maintenance expenditures. Therefore, we order the utility to show cause why it should not be fined up to $5,000 per day for failing to spend at least 85% of its $1,700 monthly allowance for preventative maintenance.

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. We directed the utility to improve its quality of service by constructing a new effluent disposal system, obtaining the necessary permits, and operating its wastewater facilities within Florida Department of Environmental Regulation (DER) standards. DER-required plant improvements were included in rate base as pro forma plant.

In Order No. 25296, we found that the utility's quality of service remained unsatisfactory and, in fact, had deteriorated. However, for two reasons, we allowed the utility additional time to make quality of service improvements. First, we recognized that the quality of service deficiencies were at least partially attributable to the decreased revenues collected. Second, the utility had entered into a court-approved settlement agreement with DER wherein the utility agreed to interconnect its wastewater system with Pasco County within six months of the agreement, which was approved by Court Order on July 8, 1991. Accordingly, in Order No. 25296, we ordered the utility to improve its quality of service as prescribed by Order No. 24084, ordered it to interconnect with Pasco County within the designated time frame, and ordered it to improve deteriorating customer relations.

The interconnect with the County was scheduled to take place on or before January 8, 1992. To date, the utility has not only failed to interconnect with the County, but it has not even begun the design or construction of the required interconnect facilities. In addition, customer relations have not improved at all.

On the latter point, we note three incidents of concern.

First, on January 9, 1992, we received a customer complaint describing an incident between the utility's owner and a customer. The customer went to pay his water and wastewater bill during posted office hours, but the owner was not present. After mailing his bill, the customer went to discuss the matter with the owner. The customer claims to have been verbally abused by the owner. Although the owner denies using the profane language the customer claims he used, we think it evident that the customer was insulted.

On January 22, 1992, we received numerous complaints regarding a service outage. The customers claimed that the utility did not respond to their calls on the day the outage occurred. Apparently, service was restored only when the guest of one of the customers climbed the fence at the plant and switched on a circuit breaker. The customers are rightfully concerned that the utility did not promptly respond to their calls. In the utility's reply to our inquiry regarding the incident, the utility's owner stated that he could not have responded to the customer's calls any sooner, as he had been out of town on the day the outage occurred.

Finally, on February 24, 1992, we received a customer complaint regarding the utility's installation of several water meters on one customer's property. We conducted a field investigation and found that the utility was placing individual meters as close to the water main as possible even when that meant that the meter was on another customer's property. The utility was then directed to place the water meters on the individual properties associated with the consumption. Rule 25-30.260, Florida Administrative Code, requires utilities to locate meters at or near the customer's curb or property line except when doing so is impractical. It would appear in this instance that it is practical for the utility to place each meter on the property it serves.

It is evident that the utility has made no substantial improvement in the total quality of service as required by Orders Nos. 24084 and 25296. Therefore, we hereby order the utility to show cause why it should not be fined up to $5,000 per day for continuing to provide unsatisfactory quality of service.

Escrow Requirement

The utility's new rates under Order No. 24084 became effective on March 2, 1991. By Order No. 24084, we required the utility to place in escrow the portion of the rate increase attributable to the pro forma plant and a portion of the $2,000 penalty we imposed for poor quality of service; specifically, the utility was required

to escrow $333.34 per month. In Order No. 25296, we found that the utility had not been escrowing the proper amounts primarily because it had not been collecting sufficient revenues. We admonished the utility for ceasing to escrow the proper amount without our prior approval and ordered it to immediately place enough money in the escrow account to bring the balance up to the proper level.

As stated earlier, the vast majority of the utility's customers are now paying their utility bills. From our review of the utility's cash collections from customers from December, 1991, to February, 1992, we calculate that the utility should have escrowed approximately $5,600 during that three month period. However, the bank statements indicate that only $3,500 was deposited into the escrow account in that time. In addition, the utility did not place enough money in the escrow account to correct the deficiency that resulted from the utility's prior failure to place funds into the account.

We think the utility has failed to comply with Orders Nos. 24084 and 25296 regarding the escrow requirements. Therefore, we hereby order the utility to show cause why it should not be fined up to $5,000 per day for not maintaining the appropriate balance in the escrow account.

IMPOSITION OF FINE

As referenced above, by Order No. 24084, we imposed a $2,000 fine against the utility for its unsatisfactory quality of service, but suspended the fine for nine months, at the expiration of which we would review the situation. As was also previously stated, in Order No. 25296, we found that the utility's quality of service remained unsatisfactory, and we again required the utility to improve its quality of service, suspending the fine for another five months.

As discussed in detail above, the utility remains in substantial noncompliance with Orders Nos. 24084 and 25296 with regard to its quality of service. Therefore, the suspension on the $2,000 fine previously imposed is hereby lifted, and said fine is due and payable.

By Order No. 24084, we ordered the utility to escrow a portion of the $2,000 fine. Since the utility has not been escrowing the required amounts, the funds in the escrow account are insufficient to pay both the $2,000 fine and a refund to the customers in the event one is required. Therefore, we prohibit the utility from paying the $2,000 fine from the escrow account.

In the event that reasonable efforts to collect this fine fail, we hereby authorize its referral to the Comptroller's Office, as further collection efforts on our part would not be cost-effective. At a minimum, two certified letters demanding payment shall be sent.

It is, therefore,

ORDERED by the Florida Public Service Commission that Shady Oaks Mobile-Modular Estates, Inc., shall show cause in writing why it should not be fined up to $5,000 a day for violating Orders Nos. 24084 and 25296 as described in the body of this Order. It is further

ORDERED that Shady Oaks Mobile-Modular Estates, Inc.'s written response to this Order must be received as set forth in the Notice below. It is further

ORDERED that Shady Oaks Mobile-Modular Estates, Inc.'s response to this Order must contain specific allegations of fact and law. It is further

ORDERED that Shady Oaks Mobile-Modular Estates, Inc.'s opportunity to file a written response to this Order shall constitute its opportunity to be heard prior to final determination of noncompliance and assessment of penalty by this Commission. It is further

ORDERED that a failure to file a timely response to this Order shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that in the event that Shady Oaks Mobile-Modular Estates, Inc., files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57, Florida Statutes, further proceedings may be scheduled before a final determination on these matters is made. It is further

ORDERED that the suspension of the $2,000 fine previously imposed by Order No. 24084 is hereby lifted, and said fine is due and payable. The utility is hereby prohibited from paying said fine from escrowed funds. Our action in imposing this fine is final agency action. If reasonable collection efforts prove ineffective, further disposition of the fine will be referred to the Comptroller's Office. It is further

ORDERED that this docket shall remain open pending further Order of the Commission.

By ORDER of the Florida Public Service Commission, this 14th day of May, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

by: Kay Flynn
Chief, Bureau of Records

MJF

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.

The show cause portion of this order is preliminary, procedural or intermediate in nature. 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 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This 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 June 3, 1992.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida

Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to the show cause portion of this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any 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.

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.