

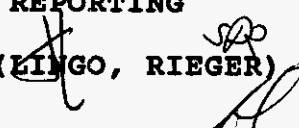
FLORIDA PUBLIC SERVICE COMMISSION

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

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FILE COPY**

M E M O R A N D U M

September 3, 1992

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING
FROM : DIVISION OF WATER AND WASTEWATER (LINGO, RIEGER) 
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: SEPTEMBER 15, 1992 - CONTROVERSIAL - PROPOSED AGENCY
ACTION - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: THIS DECISION SHOULD BE HEARD BY THE FULL
COMMISSION
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DOCUMENT NUMBER-DATE

10079 SEP -3 1992

FPSC-RECORDS/REPORTING

CASE BACKGROUND

Shady Oaks Mobile-Modular Estates, Inc. (Shady Oaks or utility) is a Class C water and wastewater utility located in Pasco County. It is a 242 lot mobile-modular home park developed in 1971. Its service area is approximately 1 1/2 miles south of the City of Zephyrhills. Based on information contained in the utility's 1991 annual report, the water system generated operating revenues of \$23,390 and incurred operating expenses of \$30,582, resulting in a net operating loss of \$7,192. The wastewater system generated operating revenues of \$41,581 and incurred operating expenses of \$30,011, resulting in a net operating income of \$11,570.

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

- 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 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 its customers.
- 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 (BFC) rate structure became effective. In this case, the BFC rates automatically became effective on October 1, 1991.

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 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, the Commission 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

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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. The July 5, 1991 order further enjoined the utility from collecting the utility rates established by this Commission and ordered that the \$25.00 per month service maintenance fee be tendered to the Clerk of the Circuit Court. In August, both injunctions were lifted and the utility was able to begin collecting revenues. However, the homeowners' lawsuit is still pending.

On November 4, 1991, the Commission issued Order No. 25296, which determined the utility's noncompliance with Order No. 24084. Order No. 25296 reiterated Order No. 24084 by requiring 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 its customers.
- 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: 1) imposed a \$2,000 fine that had been previously suspended; and 2) ordered the utility to show cause why it should not be fined for each item of noncompliance with Orders Nos. 24084 and 25296. (At the utility's request, these matters have now been set for hearing.) By Order No. PSC-92-0356-FOF-WS, the Commission ordered the utility to issue customer credits to the aforementioned customers.

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.

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Staff verified that the utility's proposed customer notice and revised tariff sheets were consistent with the Commission's decision; therefore, the customer notice and tariff sheets were approved. The utility plans to implement the new rates effective September 25, 1992.

The utility has requested that the escrow requirements set forth in Orders Nos. 24084 and 25296 be suspended for a period of several months (see Attachment A). The probable reason the utility made this request is the seasonal composition of the customer base. The utility's current flat rate structure does not contain a vacation rate. As a result, during the months the customers are away, the utility's cash flow is reduced, placing a financial strain on the utility.

The utility's request was not submitted in the form of a formal, written motion in conformity with Rule 25-22.037, Florida Administrative Code. Rather, the request came in the form of a memorandum to Staff. Although the utility's request did not meet the requirements of a formal motion, Staff believes that the utility's request should be decided by the Commission.

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ISSUE 1: Should the utility's memorandum asking that the requirements of Orders Nos. 24084 and 25296 to escrow monies be temporarily suspended, be treated as a formal request?

RECOMMENDATION: Yes, the utility's memorandum should be considered as a formal request. (FEIL)

STAFF ANALYSIS: Shady Oaks is a Class C utility. The utility is not represented by counsel; it states that it cannot afford one. Therefore, although the utility's request does not comply with the Commission's formal rules of pleading, Staff believes that the Commission should consider the utility's memorandum as a formal request for relief from Orders Nos. 24084 and 25296.

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ISSUE 2: Should the utility be granted relief from Orders Nos. 24084 and 25296 and authorized to temporarily suspend placing monies into the required escrow account?

RECOMMENDATION: No, the utility should neither be granted relief from Orders Nos. 24084 and 25296 nor authorized to temporarily suspend placing monies into the required escrow account. (LINGO)

STAFF ANALYSIS: By Order No. PSC-92-0367-FOF-WS, issued May 14, 1992, the utility was ordered to show cause within 20 days why it has not maintained the appropriate balance in the escrow account. In lieu of filing a response to the show cause, the utility has requested that those issues in the show cause order be set for hearing.

The utility remains in violation of Orders Nos. 24084 and 25296, as it still has not brought the balance in the escrow account up to the appropriate level. Furthermore, the utility has apparently been escrowing less than the appropriate amount of money each month.

The utility's apparent basis for its request for relief from Orders Nos. 24084 and 25296 is that it does not have enough customers, and therefore, revenues, to be able to escrow the required monies during the months many of its customers are on vacation. There has been no change in the number or composition of the utility's customer base since those orders were issued.

Therefore, the utility should neither be granted relief from Orders Nos. 24084 and 25296 nor authorized to temporarily suspend placing monies into the required escrow account. Additionally, the utility's request could be denied as an untimely motion for reconsideration to either of the aforementioned orders.

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MEMORANDUM

TO

Mr. Greg Shafer, Bureau Chief
P.S.C.
101 B. Gaines St.
Tallahassee, Fla. 32399-0864

FROM

S & D UTILITY
P.O. BOX 280012
TAMPA, FLA 33682-0012

DATE

7-6-92

SUBJECT

MESSAGE

Dear Mr. Shafer:

Our approximate income this month is approximately \$3,600.00, our expenditures are \$3,100.00, which does not take into consideration wages, with-holding and social security or any reserve for taxes. We would appreciate not having to put the required 25% into the escrow account for the months of July and August.

Very truly yours,

R. D. Sims
R. D. Sims

cc: J. Lingo

PLEASE REPLY BY

NO REPLY NECESSARY

Memorandum