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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 900025-WS

FILED: 2-11-93

HEARING OFFICER'S PROPOSED RECOMMENDED ORDER

Pursuant to notice, a hearing was held on January 7, 1993, in Zephyrhills, Florida, before the undersigned Commissioner THOMAS M. BEARD, in his capacity as Hearing Officer.

APPEARANCES:

MATTHEW J. FEIL, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff.

RICHARD BELLAK, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0862
On behalf of the Commissioners.

I. 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 a staff-assisted rate case. By proposed agency action (PAA) Order No. 24084, issued February 8, 1991, the Commission approved a rate increase for Shady Oaks and ordered it to take various actions, including, that it install meters for all of its customers within six months, improve its quality of service, file information needed to process a name change, spend a fixed amount on preventative maintenance, and escrow a set portion of revenues. By Order No. 24409, issued April 22, 1991, the Commission dismissed a timely protest to the PAA Order and revived Order No. 24084, making it final and effective.

By Order No. 25296, issued November 4, 1991, the Commission found that the utility had failed to comply with the requirements of Order No. 24084. However, since numerous customers had not paid their utility bills as a result of a court dispute over the

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utility's rates, the Commission decided not to order the utility to show cause why it should not be fined for its noncompliance; instead, the Commission ordered the utility to obey its prior Order and bring the escrow account up to its proper balance. Upon reviewing the utility's situation a second time several months later, the Commission found that the utility had failed to abide by the above Orders. Therefore, by Order No. PSC-92-0367-FOF-WS, issued May 14, 1992, the Commission ordered the utility to show cause why it should not be fined for its continued noncompliance with Orders Nos. 24084 and 25296. Shady Oaks requested a hearing in response to the Order to Show Cause. Pursuant to that request, an administrative hearing was held on January 7, 1993.

At the hearing, nine customers testified regarding the utility's quality of service. The staff of the Florida Public Service Commission (staff) sponsored the testimony of two witnesses. Staff witness Rieger testified regarding the meter installation and quality of service requirements of Orders Nos. 24084 and 25296. Staff witness Lingo testified regarding the name change, preventative maintenance, and escrow requirements of Orders Nos. 24084 and 25296.

In all, six exhibits were identified and entered into the record. Exhibits Nos. 1 through 4 were letters, comments, and other documents proffered by customers. Exhibit No. 5 was a composite exhibit of the attachments to the prefiled testimony of staff witness Lingo. Said composite consisted of the following: an April 9, 1992, staff recommendation; Commission Orders Nos. 24084, 25296, and PSC-92-0367-FOF-WS; various correspondence between staff and the utility; an analysis of the utility's preventative maintenance expenditures; and an analysis of the utility's escrow account. Exhibit No. 6, which was sponsored by staff witness Lingo, is a composite consisting of staff interrogatories, requests for production, and requests for admissions along with utility's responses thereto.

Exhibit No. 6 contains requests for admissions served on the utility by staff to which the utility failed to respond. (EX 6, pp. 27-29) Pursuant to Florida Rules of Civil Procedure, Rule 1.370 (a), matters contained in a request for admission are deemed admitted unless the party to whom the request is directed serves an answer or objection on the party requesting the admission. Therefore, by its failure to respond to staff's requests for admissions, Shady Oaks has admitted the matters contained therein. The matters admitted are those itemized violations of Commission Orders listed in the Conclusions of Law below.

At the commencement of the proceeding, the undersigned Hearing Officer disposed of staff's November 29, 1992, Motion to Compel, Request for Sanctions, and Motion to Dismiss as follows: (1) the motion to compel was granted and the utility directed to produce the subject documents before the close of the hearing and (2) ruling on the motion for sanctions and motion to dismiss was reserved pending the utility's appearance. (TR 8-10) The utility never made an appearance. (TR 6, passim)

On January 19, 1993, the undersigned Hearing Officer issued Order No. PSC-93-0083-PCO-WS, entitled "Order Establishing Post-Hearing Procedure." This Order established the post-hearing filing requirements for this proceeding. Pursuant to said Order, staff timely filed proposed findings of fact and conclusions of law. The utility did not file anything.

II. FINDINGS OF FACT

The following abbreviations are used herein for purposes of citation: "TR" for Transcript, "EX." for Exhibit No., and "p." and "pp." for page(s).

I accept each and every proposed finding of fact submitted by the staff and, having considered the evidence presented at the hearing, I hereby make the following findings of fact.

ISSUE 1: Did the utility timely comply with Commission Orders Nos. 24084 and 25296 with respect to the meter installation requirements?

1. By Order No. 24084, issued February 8, 1991, the utility was to install water meters on all its customer's connections within six months, by August, 1991. (EX 5, FJL-2, pp. 6, 31)

2. In Order No. 25296, issued November 4, 1991, the Commission noted that the utility had installed 31 of the 185 meters required, but allowed the utility an additional five months, by April, 1992, to complete the meter installations. (EX 5, FJL-3, p. 5)

3. As of May 14, 1992, when the Order to Show Cause, Order No. PSC-92-0367-FOF-WS, was issued, the utility had installed a total of 47 of the 185 meters required. (EX 5, FJL-4, pp. 5, 6, 11)

4. The last meters were installed on June 17, 1992, which is 74 days past the extended deadline established in Order No. 25296. (TR 59)

5. The utility does not deny it failed to timely comply, but in a letter to the Commission, the utility claimed that the meter installations were delayed because of an additional monthly expense of \$1,155 for loan service expense and for past due engineering fees. (EX 6, p. 31)

6. The utility did not timely comply with the Commission's Orders with regard to meter installations. (TR 58, 59)

7. Some of the meters that were installed were installed in a haphazard fashion. (TR 64-66, 68-71)

ISSUE 2: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to improving its quality of service?

1. By Order No. 24084, issued February 8, 1991, the Commission found that the utility's quality of service was unsatisfactory, so the Commission took the following action: (1) It imposed a \$2,000 fine on the utility for unsatisfactory service and required the utility to accumulate the fine in an escrow account; however, the Commission suspended the fine for nine months pending review of the utility's service for improvement; (2) It ordered the utility to comply with a Department of Environmental Regulation (DER) Consent Order requiring specific repairs and improvements necessary for the proper operation of the utility's wastewater treatment and disposal facilities within the time period prescribed by that Consent Order; and (3) It directed the utility to spend a minimum of 85% of the \$1,700 per system per month preventative maintenance expense allowance on repairs and maintenance, and it ordered that if the utility had not spent the minimum over a period of six months, the utility must submit an explanation and a detailed statement of future plans to maintain the system. (EX 5, FJL-2, pp. 3, 4, 15)

2. By Order No. 25296, issued November 4, 1991, the Commission (1) suspended the \$2,000 fine until February, 1992; (2) required the utility to escrow the fine as previously ordered; (3) found that the quality of service had deteriorated, noting numerous customer complaints against the utility and the derelict condition of the utility systems; (4) required the utility to interconnect its wastewater system with Pasco County as agreed to in a court-approved settlement between the utility and DER; and (5) found that the utility had failed to spend the minimum of the monthly preventative maintenance allowance, but announced it would review the situation again before further action. (EX 5, FJL-3, pp. 6-9)

3. By Order No. PSC-92-0367-FOF-WS, issued May 14, 1992, the Commission lifted suspension of the fine and noted that the utility continued to disobey the Commission's directives. (EX 5, FJL-4, pp. 1-9)
4. The utility believes customer relations have improved, but does not deny it failed to interconnect with Pasco County or that it failed to expend funds on preventative maintenance, but it claims to have had cash flow problems. (EX 6, pp. 31-32)
5. The utility has failed to interconnect its wastewater system with Pasco County. (TR 59)
6. The utility's customer relations have not improved. (TR 13-53, 59; EX 1-5)
7. The utility has not spent sufficient funds on preventative maintenance or provided a schedule of its maintenance plans. (TR 78-80; EX. 6, pp. 11, 31)
8. The utility has violated the Commission's Orders regarding quality of service, and its quality of service remains unsatisfactory. (TR 59, all above citations)

ISSUE 3: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the name change and restructure requirements?

1. By Order No. 24084, the Commission required the utility to file a request for acknowledgement of a restructure and a name change within sixty days of the date of the Order. (TR. 76-78; EX 5, FJL-2, pp 2-3)
2. On March 17, 1991, staff received a letter from the utility requesting official recognition of the utility's new name, S&D Utility (S&D). On April 1, 1991, staff wrote the utility that the name change could not be recognized until the utility produced evidence that the utility land and assets had been properly transferred to S&D and that S&D had been properly registered as a fictitious name. (EX 5, FJL-3, p. 4)
3. In reliance on the utility owner's representation that he would be able to correct the title to the utility land and assets as part of a payment plan he entered into in a bankruptcy proceeding, the Commission allowed the utility, in Order No. 25296, an additional sixty days to complete the name change and restructure requirements. If the utility failed to produce the required

documentation, it was ordered to operate under its certificated name Shady Oaks Mobile-Modular Estates, Inc. (TR 76-78, EX. 5, FJL-3, p. 4)

4. Staff wrote the utility twice, by letters dated January 22, 1992, and July 21, 1992, to remind the utility of the filing requirements regarding the name change. (TR 77; EX 5, FJL-1 and FJL-5)

5. According to the utility, (1) The land upon which the utility assets are located is titled in the names of Richard D. Sims and Caroline Sue Sims, jointly, and the utility's assets are owned individually by Richard D. Sims d/b/a S&D Utility; (2) The utility is now a sole proprietorship for federal income tax purposes; and (3) The utility does not understand what it is supposed to file. (EX 6, pp. 5, 6, 30)

6. The utility is operating under the name S&D Utility. (TR 78, EX 5, FJL-6)

7. The utility has not filed the documents for a name change and restructure, nor has it complied with the Commission's order to revert to operating under its certificated name of Shady Oaks Mobile-Modular Estates, Inc.; therefore, the utility has not complied with Orders Nos. 24084 and 25296 with respect to the name change and restructure requirements. (TR 78; EX 6, pp. 5, 30, 31)

ISSUE 4: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the preventative maintenance requirements?

1. By Order No. 24084, the Commission allowed in rates a \$1,700 per system per month preventative maintenance expense allowance, directed the utility to spend a minimum of 85% of that allowance, and ordered that if the utility had not spent the minimum over a period of six months, the utility must submit an explanation and a detailed statement of future plans to maintain the system. (EX 5, FJL-2, pp. 3, 4, 15)

2. In Order No. 25296, the Commission found that the utility's failure to spend the maintenance allowance was likely due to decreased revenues collected due to a Court dispute, and, therefore, ordered the utility to comply with the requirements of Order No. 24084 on a prospective basis. (TR 79; EX 5, FJL-3)

3. For the months of September, 1991, through February, 1992, the utility's actual expenditures represented less than 40% of what the utility was ordered to spend. (TR 70)

4. Required expenditures for maintenance up to February, 1992, were \$8,670. Actual expenditures for maintenance by February, 1992, were \$3,291. (EX. 5, FJL-7)

5. The utility does not deny it failed to expend funds on preventative maintenance, but claims to have had cash flow problems. (EX 6, pp. 31-32)

6. The utility has not submitted a written schedule to the Commission showing what monthly maintenance will be adopted, along with a statement of the reason such funds were not expended, and a detailed statement of its future plans to maintain the system, and has, therefore, violated the Commission's Orders. (TR 78-80; EX. 6, pp. 11, 31)

ISSUE 5: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the escrow requirements?

1. By Order No. 24084, the Commission required the utility to escrow that portion of the rate increase related to the proforma plant allowed and the \$2,000 fine imposed, but suspended, until such time as the proforma plant was constructed and the Commission reviewed the utility's quality of service. (TR. 80-81; EX 5, FJL-2, pp., 3, 29)

2. In Order No. 25296, the Commission recognized that the utility did not comply with Order No. 24084 regarding the escrow requirements in large part because many of the utility's customers did not pay their water and wastewater bills. However, the utility was admonished for unilaterally ceasing to escrow without Commission approval. The utility was ordered to immediately correct the deficiency in the escrow account, and to continue placing the appropriate portion of revenues in the escrow account. (TR 80-81; EX 5, FJL-3, pp. 4, 5)

3. As of November 30, 1991, the utility had placed \$1,201 into escrow, or approximately \$3,417 less than the appropriate escrow amount of \$4,618. (TR 81)

4. As of September, 1992, the required escrow account balance was \$20,109, but the actual escrow account balance was \$9,251. (EX 5, FJL-8 (revised))

5. The utility does not deny it has not escrowed the required amounts, but claims it has been unable to meet the escrow obligation because of cash flow problems resulting from the Chapter 11 filing wherein the utility owner must escrow \$886.08 to cover back real estate taxes and must make payments (now delinquent) to

the U.S. Trustee. According to the utility, Richard D. Sims d/b/a S&D Utility filed for Chapter 11 bankruptcy on June 22, 1992. (EX. 6, p. 31)

6. The utility has violated the Commission's Orders requiring that a set amount of funds be escrowed and that the escrow account be brought up to the appropriate balance. (TR 81; above citations)

ISSUE 6: What punitive action should the Commission take against the utility?

1. The utility has failed to comply with Orders Nos. 24084 and 25296 regarding timely installation of water meters, implementing specific directives to improve quality of service, filing appropriate name change and restructuring documents, meeting preventative maintenance requirements, and escrow requirements. (See above citations)

2. The utility should be fined in the amount of rate base. The Commission should initiate a proceeding to reduce the utility's rates by the amount of proforma plant and preventative maintenance expense that has not been spent by the utility. The utility's certificate should be revoked. (TR 84)

3. Total rate base, less the wastewater system proforma allowances is \$60,572. (EX 5, FJL-2, p. 36)

III. CONCLUSIONS OF LAW

The Florida Public Service Commission has jurisdiction over the subject matter of this proceeding pursuant to Chapters 120, 350, and 367, Florida Statutes.

In consideration of the evidence presented and the above proposed findings, I make the following conclusions of law.

ISSUE 1: Did the utility timely comply with Commission Orders Nos. 24084 and 25296 with respect to the meter installation requirements?

No, utility did not timely install the meters. The utility was in violation of Order No. 25296 for 74 days.

ISSUE 2: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to improving its quality of service?

No. The quality of service is still unsatisfactory.

ISSUE 3: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the name change and restructure requirements?

No.

ISSUE 4: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the preventative maintenance requirements?

No.

ISSUE 5: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the escrow requirements?

No.

ISSUE 6: What punitive action should the Commission take against the utility?

The record supports fining the utility \$60,572 and taking action to revoke the utility's certificate. The record also supports the Commission's initiating action to reduce the utility's rates to remove from the rate calculation all proforma plant not constructed by the utility and the allowance for preventative maintenance not performed.

Chapter 367, Florida Statutes, bestows upon the Florida Public Service Commission exclusive jurisdiction over each utility with respect to its authority, service, and rates. Section 367.011(2), Florida Statutes. Further, section 367.011(3), Florida Statutes, declares, "The regulation of utilities is declared to be in the public interest, and this [Chapter] is an exercise of the police power of the state for the protection of the public health, safety, and welfare." In order for the Commission to prevent further violations of its regulatory directives and to protect the health, safety, and welfare of the customers of this utility, I believe the above punitive measures are necessary.

IV. RECOMMENDATION

In consideration of the foregoing, I recommend that the Commission enter an Order consistent with the above findings and conclusions and recommend that the Commission fine the utility \$60,572, take action to revoke the utility's certificate, and initiate action to reduce the utility's rates to remove from the rate calculation all proforma plant not constructed by the utility and the allowance for preventative maintenance not performed.

DONE AND ENTERED THIS 11th DAY OF February, 1993.



THOMAS M. BEARD, Commissioner and
Hearing Officer