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PREFILED TESTIMONY OF FRANCES J. LINGO
PSC BUREAU OF SPECIAL ASSISTANCE
DIVISION OF WATER AND WASTEWATER
FILED ON BEHALF OF
THE STAFF OF THE FLORIDA PUBLIC SERVICE COMMISSION
SHADY OAKS MOBILE-MODULAR ESTATES, INC.

DOCKET NO. 900025-WS

FILED: APRIL 26, 1993

- ACK _____
- AFA _____
- APP _____
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FPSC-RECORDS/REPORTING

1 DIRECT TESTIMONY OF FRANCES J. LINGO

2 Q. Would you please state your name and business address?

3 A. Frances J. Lingo, 101 East Gaines Street, Tallahassee, Florida 32399-
4 0850.

5 Q. By whom are you employed, and in what capacity?

6 A. I am employed by the Florida Public Service Commission as a Regulatory
7 Analyst IV.

8 Q. How long have you been employed by the Florida Public Service Commission?

9 A. I have been employed by the Commission since June 12, 1989.

10 Q. Would you please state your educational background and experience?

11 A. I received a Bachelor of Science Degree with a major in Accounting and a
12 Bachelor of Science Degree with a major in Economics, both from The Florida
13 State University, in August 1983.

14 From October 1983 to May 1989, I was employed by Ben Johnson Associates,
15 Inc. (BJA), an economic and analytic consulting firm specializing in the area
16 of public utility regulation. During my employment at BJA, I performed
17 research and analysis in more than 75 utility rate proceedings, assisting with
18 the coordination and preparation of exhibits. I also assisted with the
19 preparation of testimony, discovery and cross-examination regarding rate
20 design issues.

21 In particular, I prepared embedded cost-of-service studies, made typical
22 bill comparisons and examined local service rate and cost relationships. I
23 studied residential and general service rates, customer charges, management
24 decision-making processes, slippage in the engineering and construction of

25

1 | nuclear power plants, nuclear versus coal plant costs and seasonal load and
2 | usage patterns.

3 | In June 1989, I joined the Commission as a Regulatory Analyst II. In June
4 | 1990, I was promoted to Regulatory Analyst III, and in October 1991, I was
5 | promoted to my current position of Regulatory Analyst IV.

6 | Q. Would you describe your experience and duties at the Commission?

7 | A. Yes. My experience at the Commission includes but is not limited to:

8 | (a) reviewing and evaluating staff-assisted rate case filings, including
9 | auditing utilities' books and records, developing rate base, rate of
10 | return and revenue requirements, and preparing and presenting
11 | recommendations in cases in which I am involved;

12 | (b) reviewing and evaluating price index and pass-through rate
13 | adjustment applications;

14 | (c) desk audits of annual reports and determining the respective
15 | utility's rate of return;

16 | (d) overearning investigations; and

17 | (d) research and other related duties on accounting and financial
18 | matters relating to water and wastewater utilities subject to the
19 | jurisdiction of the Commission.

20 | In addition, I have attended the Eastern Utility Rate Seminar, a
21 | comprehensive seminar on utility ratemaking, including topics on rate base,
22 | income statement considerations, problems of small water utilities, return on
23 | investment and rate design. I have also received in-house training regarding
24 | utility regulation, rate base, rate of return, revenue requirements and rate
25 | design issues.

1 Q. Have you testified previously before this Commission?

2 A. Yes. In January 1993, I testified on behalf of Staff in the show cause
3 portion of this proceeding.

4 Q. What is the purpose of your testimony in this proceeding?

5 A. Although the testimony filed by Shady Oaks Mobile-Modular Estates, Inc. in
6 this proceeding spoke to numerous issues, my testimony speaks only to the
7 prospective escrow requirement of the utility; that is, whether the
8 continuation of the escrow requirement is appropriate. By Order No. PSC-93-
9 0542-FOF-WS, the Commission already addressed the other issues raised by the
10 utility in its testimony.

11 Q. Have you prepared exhibits which support Staff's position in this case?

12 A. Yes. As a matter of convenience, Commission Orders Nos. PSC-92-1116-FOF-
13 WS and PSC-93-0542-FOF-WS are attached as Exhibits FJL-1 and FJL-2,
14 respectively. Exhibit FJL-3 is an analysis of the billed consumption and
15 associated revenues of the utility since the utility converted to the base
16 facility/gallonage charge rate structure in October 1992.

17 Q. By Order No. PSC-92-1116-FOF-WS, did the Commission deny Shady Oaks
18 Mobile-Modular Estates, Inc.'s request for relief from prior Commission orders
19 with regards to its escrow requirement?

20 A. Yes, it did.

21 Q. Would you please summarize the events associated with the order in this
22 regard?

23 A. Yes. As discussed in detail in Exhibit FJL-1, by Order No. 24084, issued
24 February 8, 1991, the Commission approved a rate increase for the utility, and
25 ordered it to take various actions regarding its operations, including that

1 | it escrow a set portion of its revenues. By Order No. 25296, issued November
2 | 4, 1991, the utility was found to be in noncompliance with the requirements
3 | of Order No. 24084, including the escrow requirement. The utility was ordered
4 | to obey Order No. 24084 and to bring the escrow account up to its proper
5 | balance.

6 | By letter dated July 6, 1992, addressed to Staff, the utility requested
7 | that the escrow requirement established in Orders Nos. 24084 and 25296 be
8 | suspended for a period of several months. There had been no change in the
9 | number or composition of the utility's customers since those prior orders were
10 | issued, and the utility offered nothing persuasive to support the relief
11 | requested. Therefore, by Order No. PSC-92-1116-FOF-WS, the utility's request
12 | for relief from Orders Nos. 24084 and 25296 was denied.

13 | Q. Has the utility subsequently provided Staff with information regarding the
14 | utility's ability to meet the escrow requirement?

15 | Q. Yes, it has. Staff has recently obtained copies of the utility's customer
16 | billing records for period of June 1992 through April 1993. These billing
17 | records contain each customer's monthly consumption and billing information
18 | for that period.

19 | Q. Have you performed an analysis of this information?

20 | A. Yes, I have.

21 | Q. What are the results of your analysis?

22 | A. As shown on Exhibit FJL-3, my analysis indicates that during the six
23 | months of November 1992 through April 1993 that the utility has billed its
24 | customers for their consumption, the total average monthly billed consumption
25 | is 501,255 gallons. The average monthly revenues expected to be generated

1 | from this average consumption level is approximately \$5,160. However, based
2 | on the revenue requirement approved in the rate case, the utility's average
3 | monthly revenue should be approximately \$7,950. Therefore, the utility is
4 | experiencing a revenue shortfall of approximately \$2,790 per month.

5 | Q. What is the apparent reason for this revenue shortfall?

6 | A. As I stated previously, the average monthly billed consumption during the
7 | six month period is 501,255 gallons. However, as shown on Exhibit FJL-3, the
8 | utility was projected to bill approximately 1,110,000 gallons per month.
9 | Therefore, the actual consumption levels of the utility's customers are only
10 | 45% of what was projected in the rate case.

11 | Q. Based on your analysis, what should the utility's escrow requirement be on
12 | a prospective basis?

13 | A. It appears as though a reduction to the escrow requirement would be
14 | appropriate. However, Staff lacks sufficient information at this time to
15 | calculate what the appropriate escrow requirement should be. Staff will
16 | conduct discovery and perform additional analysis. After I have had an
17 | opportunity to review the additional information, I will supplement my
18 | testimony with a specific recommendation as to the utility's prospective
19 | escrow requirement.

20 | Q. Does this conclude your testimony?

21 | A. Yes, it does.

22 |

23 |

24 |

25 |

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | | |
|------------------------------|---|------------------------------|
| In re: Application for a |) | DOCKET NO. 900025-WS |
| staff-assisted rate case in |) | ORDER NO. PSC-92-1116-FOF-WS |
| Pasco County by SHADY OAKS |) | ISSUED: 10/05/92 |
| MOBILE-MODULAR ESTATES, INC. |) | |

The following Commissioners participated in the disposition of this matter:

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

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Fla. Public Service Commission
Division of Water and Sewer

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING REQUEST FOR RELIEF FROM
PRIOR COMMISSION ORDERS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein 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.

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. By proposed agency action (PAA) Order No. 24084, issued February 8, 1991, we approved a rate increase for Shady Oaks and ordered it to take various actions regarding its operations, including that it escrow a set portion of its revenues. 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.

By Order No. 25296, issued November 4, 1991, we found that the utility had failed to comply with the requirements of Order No. 24084, including the escrow requirement. However, since numerous customers had not paid their utility bills as a result of a court dispute over the utility's rates, we elected not to order the

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utility to show cause why it should not be fined for its noncompliance, but instead ordered it to obey our prior Orders and to bring the escrow account up to its proper balance. Upon reviewing the utility's situation a second time several months later, we again found that the utility had failed to abide by our Orders. Therefore, by Order No. PSC-92-0367-FOF-WS, issued May 14, 1992, we 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, and disposition over the violations is pending.

INFORMAL REQUEST FOR RELIEF

By a letter dated July 6, 1992, addressed to our staff, Shady Oaks requested that the escrow requirements established in Orders Nos. 24084 and 25296 be suspended for a period of several months. The apparent basis for the utility's request is that it does not have enough customers and, therefore, not enough revenues, to be able to escrow the required monies during the months many of its customers are on vacation. 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.

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. We shall, however, consider the utility's request. Shady Oaks is a small utility and is not represented by an attorney because it claims it cannot afford one.

As stated above, we have already ordered Shady Oaks to show cause why it should not be fined for failing to maintain the proper balance in the escrow account. Upon reviewing the monthly statements we receive from the escrow agent, we note that Shady Oaks remains in violation of Orders Nos. 24084 and 25296: it has not yet brought the account's balance up to the prescribed level, nor has it been escrowing the proper amount each month.

There has been no change in the number or composition of the utility's customer base since our prior Orders were issued, and the utility has offered nothing persuasive to support the relief requested. The appropriate time for the utility to address its concerns was when the prior Orders were issued. Indeed, we think the instant request can be denied as an untimely motion for

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reconsideration to either of the aforementioned orders.

In consideration of the foregoing, the utility's request is denied, and the requirements of our previous Orders affirmed.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that Shady Oaks Mobile-Modular Estates, Inc.'s request for relief from Orders Nos. 24084 and 25296 is denied. It is further

ORDERED that the provisions of this Order are 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.

By ORDER of the Florida Public Service Commission this 5th day of October 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MJF

by: Kay Helton
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.

ORDER NO. PSC-92-1116-FOF-WS
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The action proposed herein 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 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 October 26, 1992.

In the absence of such a petition, this order shall become effective on the day 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 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 wastewater 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORDER NO. PSC-93-0542-FOF-WS
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In Re: Application for staff-) DOCKET NO. 90025-WS
assisted rate case in Pasco) ORDER NO. PSC-93-0542-FOF-WS
County by Shady Oaks Mobile-) ISSUED: 04/09/93
Modular Estates, Inc.)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON

Pursuant to notice, an administrative hearing was held on January 7, 1993, in Zephyrhills, Florida, before Commissioner Thomas M. Beard, sitting as Hearing Officer.

APPEARANCES:

MATTHEW J. FBII, 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.

The Hearing Officer's Recommended Order was entered on February 11, 1993. No exceptions to the order were filed. After consideration of the evidence, we now enter our Order.

FINAL ORDER FINING UTILITY AND
ORDERING THAT REVOCATION PROCEEDINGS BE INITIATED

BY THE COMMISSION:

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 protest to the PAA Order on jurisdictional grounds 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 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, before Commissioner Beard sitting as Hearing Officer. Shady Oaks did not appear or participate in the hearing.

In accord with Order No. PSC-93-0083-PCO-WS, establishing post-hearing procedure, staff timely filed proposed findings of fact and conclusions of law. The utility did not file anything. The Hearing Officer filed his Recommended Order on February 11, 1993.

The full text of the Hearing Officer's Recommended Order is set forth below, beginning with "Findings of Fact."

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).

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EXHIBIT FJL-2
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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 customers' 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 expand 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 pro forma plant allowed and the \$2,000 fine imposed, but suspended, until such time as the pro forma 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 pro forma 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 this Commission to prevent further violations of its regulatory directives and to protect the health, safety, and welfare of the customers of this utility, we find 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.

Upon consideration, we find the Hearing Officer's findings to be supported by competent substantial evidence in the record, and therefore, adopt the Recommended Order in all respects except two. The record reflects that the proceeding related to both the utility's water and wastewater certificates, and not just one of the utility's certificates as the Recommended Order indicates.

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The second change that we believe is appropriate is that we will not revoke the utility's certificates at this time, but will initiate a proceeding to revoke the certificates. This is because Section 367.045(6), Florida Statutes, provides that the Commission shall give 30 days' notice before it initiates any such action. This was not a proceeding initiated to revoke the utility's certificates. During the 30 days following the notice, the utility will have the opportunity to file an objection to the Commission's notice of intent to initiate a revocation proceeding. If an objection is received, we will set the revocation proceeding for hearing at which time the utility will have the opportunity to put on evidence that revocation of its certificates is not appropriate. Based on the record in that proceeding, the Commission will ultimately determine if it is appropriate to revoke Shady Oaks' water and wastewater certificates.

Upon review and consideration of the complete record, we find that Shady Oaks has violated the provisions of Order Nos. 24084 and 25296 and that it is appropriate to fine the utility \$60,572. We also find it appropriate to initiate a proceeding to revoke the utility's water and wastewater certificates. Finally, we find it appropriate to initiate action to reduce the utility's rates to remove from the rate calculation all pro forma plant not constructed by the utility and the allowance for preventative maintenance not performed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each and every finding herein is specifically approved. It is further

ORDERED that Shady Oaks Mobile-Modular Estates, Inc., is hereby fined \$60,572. It is further

ORDERED that this docket shall remain open for the proceeding discussed in the body of this order.

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By ORDER of the Florida Public Service Commission, this 2th day of April, 1993.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

SFS

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.

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

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SHADY OAKS MOBILE MODULAR ESTATES, INC.

ANALYSIS OF BILLED CONSUMPTION
AND ASSOCIATED REVENUES

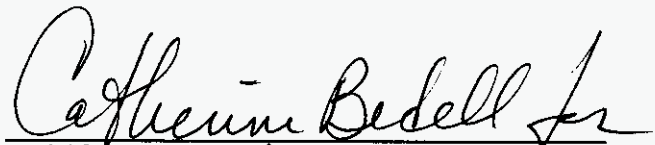
| Month/Year ===== | Total Monthly Billed Consumption ===== | Anticipated Revenues Associated With Billed Consumption ===== |
|---|--|---|
| November 92 | 386,500 | \$4,664.36 |
| December 92 | 431,750 | 4,983.56 |
| January 93 | 400,920 | 4,939.26 |
| February 93 | 564,500 | 5,504.92 |
| March 93 | 604,061 | 5,498.63 |
| April 93 | 619,799 | 5,373.70 |
| | | |
| Average per Month | 501,255 | \$5,160.74 |
| | | |
| Monthly Average Allowed in Rate Case | 1,110,000 ----- | \$7,951.50 ----- |
| | | |
| Over (Under) Recovery per Month | (608,745) | (\$2,790.76) |

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Staff-) DOCKET NO. 900025-WS
Assisted Rate Case in Pasco)
County by SHADY OAKS MOBILE-) FILED: 4/26/93
MODULAR ESTATES, INC.)
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Prefiled Direct Testimony of Frances J. Lingo, filed in this proceeding on behalf of the Staff of the Florida Public Service Commission on this date, with attached exhibits, has been furnished by hand delivery to Marshall Deterding, Rose, Sundstrom & Bently, 2548 Blairstone Pines Drive, Tallahassee, Florida, 32301, 26th day of April, 1993.


Matthew J. Feil, Staff Attorney

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0863
(904) 487-2740