

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Staff- ) DOCKET NO. 900025-WS  
Assisted Rate Case in Pasco ) ORDER NO. PSC-93-1396-FOF-WS  
County by SHADY OAKS MOBILE- ) ISSUED: September 27, 1993  
MODULAR ESTATES, INC. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK  
JULIA L. JOHNSON

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

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 April 9, 1993, the Commission issued Order No. PSC-93-0542-FOF-WS fining Shady Oaks \$60,572 and ordering that a proceeding to revoke Shady Oaks' water and wastewater certificates be initiated. On April 26, 1993, Shady Oaks filed a Motion for Reconsideration of Order No. PSC-93-0542-FOF-WS.

Shady Oaks' Motion makes one basic argument: the fine imposed was too high. In Order No. PSC-93-0542-FOF-WS, the Commission imposed a fine of \$60,572 which was an amount "equal to rate base." Shady Oaks concedes in its Motion that a fine is appropriate. However, Shady Oaks believes that its conduct was not "egregious" enough to warrant the fine imposed. Specifically, the utility states:

The Commission's decision to fine this utility in an amount "equal to rate base" is grossly disproportionate to any egregious conduct on the part of the utility which was established by the facts in the hearing (which the utility didn't even attend), is contrary to the spirit of Chapter 367, Fla. Stat., and exceeds the Commission's authority. (emphasis added)

Perhaps the most telling statement in Shady Oaks' Motion is the phrase underlined above. The utility did not attend the hearing in this matter--a hearing which the utility had requested. Shady Oaks goes on to state that a much smaller fine would be more appropriate

DOCUMENT NUMBER-DATE

10335 SEP 27 83

FPSC-RECORDS/REPORTING

to achieve what it believes should be the purposes of a fine "given the resources of this utility and its owner. . . ."

Shady Oaks argues that the fact that this fine is clearly punitive somehow makes it inappropriate. The Commission's authority to penalize a utility emanates from Section 367.161, Florida Statutes, set forth below:

(1) If any utility, by any authorized officer, agent, or employee, knowingly refuses to comply with, or willfully violates, any provision of this chapter or any lawful rule or order of the commission, such utility shall incur a penalty for each such offense of not more than \$5,000, to be fixed, imposed, and collected by the commission. . . . Each day that such refusal or violation continues constitutes a separate offense. . . .

(2) The commission has the power to impose upon any entity that is subject to its jurisdiction under this chapter and that is found to have refused to comply with, or to have willfully violated, any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$5,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it. Each day that such refusal or violation continues constitutes a separate offense. . . .

The Commission's authority to penalize a utility found to have willfully violated its orders could not be more expressly provided. This authority to penalize is intended to secure compliance with Commission statutes, rules and orders both by encouraging an individual utility to comply with Commission statutes, rules and orders and also by letting other utilities know that the Commission has the power to enforce these statutes, rules and orders. This decision regarding Shady Oaks lets them know that the Commission will exercise such power when it is necessary.

This is a large fine in relation to the size of the utility. However, it is not a large fine in relation to the conduct of the utility. We hereby deny Shady Oaks' Motion for Reconsideration of Order No. PSC-93-0542-FOF-WS as it has raised no error in fact or law which the Commission failed to consider in its decision.

The utility, subsequent to its submission of its Motion for Reconsideration, submitted a letter, dated June 18, 1993, which reflects that it will complete certain requirements that were the subject of the proceeding that resulted in Order No. PSC-93-0542-FOF-WS and which have been outstanding for a long time. However, the time frames included in the letter do not provide any real assurance that the utility intends to rectify these long-standing problems immediately. Therefore, we find that the utility's additional letter proposing certain time frames for specific actions does not support the utility's Motion for Reconsideration.

However, we recognize that the fine is a large amount and that the ultimate goal of this proceeding was to assure that this utility would be operated appropriately. Also, we have already decided that a revocation proceeding should be initiated. Therefore, we believe that, if the utility were to be transferred to some other owner that would assure that it would be run appropriately, it would be reasonable to suspend the fine. Therefore, we will suspend the fine if the utility submits a completed application for transfer or cancellation of its water and wastewater certificates within 120 days of the issuance of this order.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Shady Oaks Mobile-Modular Estates, Inc.'s Motion for Reconsideration of Order No. PSC-93-0542-FOF-WS is hereby denied. It is further

ORDERED that if the utility submits a completed application for transfer or cancellation of its water and wastewater certificates within 120 days of the issuance of this order, the \$60,572 fine shall be suspended.

By ORDER of the Florida Public Service Commission this 27th day of September, 1993.

  
\_\_\_\_\_  
STEVE TRIBBLE Director  
Division of Records and Reporting

( S E A L )  
SFS

ORDER NO. PSC-93-1396-FOF-WS  
DOCKET NO. 900025-WS  
PAGE 4

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.