

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
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In Re: Revocation by Florida) DOCKET NO. 930944-WS
 Public Service Commission of)
 Certificates Nos. 451-W and 382-) FILED: 06/17/94
 S Issued to SHADY OAKS MOBILE-)
 MODULAR ESTATES, INC. in Pasco)
 County, Pursuant to Section)
 367.111(1), F.S.)

COMMISSION STAFF'S PREHEARING STATEMENT

Pursuant to Orders Nos. PSC-93-1779-PCO-WS, issued December 13, 1993, and PSC-94-0126-PCO-WS, issued February 2, 1994, the Commission Staff (Staff) files its prehearing statement as follows:

A. All Known Witnesses

Staff intends to call Frances J. Lingo, Pete Burghardt, and Brenda Arnold as witnesses. Ms. Lingo will testify on the owner's technical and financial ability to continue operating the utility, his noncompliance with past Commission Orders, and past due regulatory assessment fees. Mr. Burghardt will testify on the utility's technical ability and the utility's wastewater quality of service. Ms. Arnold will testify on the utility's water quality of service.

B. All Known Exhibits

Staff has identified a list of exhibits which it intends to utilize at hearing which are appended hereto as Appendix A. Staff reserves the right to identify additional exhibits at the Prehearing Conference and at hearing for purposes of cross-examination.

C. Staff's Statement of Basic Position

The information gathered through discovery and prefiled testimony indicates, at this point, that Certificates Nos. 451-W and 382-S, issued to Shady Oaks Mobile-Modular Estates, Inc., should be revoked because the current owner lacks the technical and financial ability to operate this utility. A final determination as to whether the certificates should be revoked cannot be made until the evidence presented at hearing is analyzed.

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D. Issues of Fact, Law and Policy

The following are issues identified by Staff and its positions on these issues. Staff's positions are preliminary, are based upon materials filed by the utility or obtained through discovery and are intended to inform the parties of Staff's preliminary positions. Staff's final positions will be based upon an analysis of the evidence presented at the hearing.

ISSUE 1: Does Shady Oaks Mobile-Modular Estates, Inc., have the technical ability to continue operating as a certificated utility?

POSITION: No, the utility lacks the technical ability to continue operating as a certificated utility because of the following reasons: 1) the utility has been found in contempt of court regarding noncompliance with the rules and regulations of the Department of Environmental Protection (DEP); 2) the wastewater treatment facility has not had a DEP operating permit since March 1986; 3) the utility does not have certified operators as required by Chapter 17-602, Florida Administrative Code; 4) the utility's lift station and collection system does not meet DEP requirements with respect to location, reliability and safety; 5) the overall maintenance of the wastewater treatment plant, collection, and disposal facilities is unsatisfactory; 6) the overall maintenance of the water treatment plant and water distribution facility is unsatisfactory; and 7) the overall quality of service of the wastewater system is unsatisfactory. (Burghardt, Arnold, Lingo)

ISSUE 2: Has Shady Oaks Mobile-Modular Estates, Inc. complied with Section 350.113, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, with regard to payment of regulatory assessment fees, and if not, what action should the Commission take in this regard?

POSITION: No, Shady Oaks Mobile-Modular Estates, Inc. has not complied with Section 350.113, Florida Statutes, and Rule 25-30.120, Florida Administrative Code. The utility is delinquent in its payment of regulatory assessment fees, and should be fined an amount up to \$5,000 for its failure to timely pay its regulatory assessment fees. (Lingo)

ISSUE 3: Has the utility properly refunded all monies in its escrow account to each customer owed a refund?

POSITION: No position at this time.

ISSUE 4: Does Shady Oaks Mobile-Modular Estates, Inc., have the financial ability to continue operating as a certificated utility?

POSITION: No, the utility lacks the financial ability to continue operating as a certificated utility because of the following reasons: 1) the utility has a history of misappropriating funds; 2) the utility owes this Commission outstanding fines totalling \$62,572; 3) the utility owes this Commission outstanding regulatory assessment fees of approximately \$12,321; 4) the utility owes its customers approximately \$24,000 associated with underfunding of its escrow account; and 5) in order for the utility to make the required refunds, this Commission ordered that the utility shall apply all of its net operating income to the customer refunds until the refunds are complete. (Lingo)

ISSUE 5: Has Shady Oaks Mobile-Modular Estates, Inc., demonstrated a willingness to comply with Commission statutes, rules and prior Commission orders?

POSITION: No, the utility has demonstrated a willful and flagrant disregard of Chapter 367, Florida Statutes, Commission rules, and prior Commission Orders. To date, the utility has not complied with Order No. 24084 with respect to the name change and restructure requirements. To date, the utility has not complied with Order No. 25296 with respect to: 1) improving its quality of service; 2) the name change and restructure requirements; 3) the preventative maintenance requirements; and 4) the escrow requirements. (Lingo)

ISSUE 6: Should Certificates Nos. 451-W and 382-S, issued to Shady Oaks Mobile-Modular Estates, Inc., be revoked?

POSITION: Yes, certificates nos. 451-W and 382-S, issued to Shady Oaks Mobile-Modular Estates, Inc., should be revoked. (Lingo)

E. Stipulated Issues

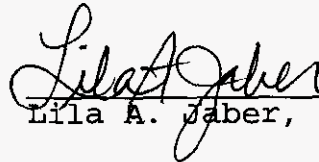
There are no issues that have been stipulated at this time.

F. Pending Matters

There are no matters pending at this time.

G. Requirements That Cannot Be Complied With

There are no requirements of Orders Nos. PSC-93-1779-PCO-WS and PSC-94-0126-PCO-WS that cannot be complied with at this time.



Lila A. Jaber, Senior Attorney

FLORIDA PUBLIC SERVICE COMMISSION
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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Brenda Arnold	Staff	BA-1	Warning Letter Dated February 18, 1992
Pete Burghardt	Staff	PB-1	Consent Order Dated October 21, 1986
"	Staff	PB-2	Consent Final Judgement Dated March 7, 1989
"	Staff	PB-3	July 8, 1991 Court Order on DER's Motion for Contempt
"	Staff	PB-4	Agreed Order Granting DEP's Motion for Contempt Dated February 18, 1994
"	Staff	PB-5	Inspection Report Dated February 17, 1994
Frances J. Lingo	Staff	FJL-1	Staff Recommendation Dated April 9, 1992 in Docket No. 900025-WS
"	Staff	FJL-2	Order No. 24084, Issued February 8, 1991

Frances J. Lingo	Staff	FJL-3	Order No. 25296, Issued November 4, 1991
"	Staff	FJL-4	Order No. PSC- 92-0356-FOF-WS, Issued May 14, 1992
"	Staff	FJL-5	Order No. PSC- 92-0367-FOF-WS, Issued May 14, 1992
"	Staff	FJL-6	Order No. PSC- 92-1116-FOF-WS, Issued October 5, 1992
"	Staff	FJL-7	Order No. PSC- 93-0542-FOF-WS, Issued April 9, 1993
"	Staff	FJL-8	Order No. PSC- 93-1396-FOF-WS, Issued September 27, 1993
"	Staff	FJL-9	Order No. PSC- 93-1733-FOF-WS, Issued December 1, 1993
"	Staff	FJL-10	Transcript From January 7, 1993 Show Cause Hearing

Appendix A
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Frances J. Lingo	Staff	FJL-11	Correspondence and Interroga- tories Related to Name Change
"	Staff	FJL-12	Analysis of Utility's Disbursements
"	Staff	FJL-13	Examples of Nonutility Expenditures
"	Staff	FJL-14	Delinquent Regulatory Assessment Fees

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Commission Staff's Prehearing Statement has been furnished to **Shady Oaks Mobile-Modular Estates, Inc.**, 38616 Shady Oaks Drive, Zephyrhills, Florida, 33540-6526, and **Gerald T. Buhr, Esquire**, 1519 N. Dale Mabry, Suite 100, Lutz, Florida, 33549, by U.S. Mail. A copy of same has been furnished to **Rick Mann, Esquire**, Office of Public Counsel, Claude Pepper Building, Room 812, 111 W. Madison Street, Tallahassee, Florida, 32399-1400, by hand delivery, this 17th day of June, 1994.



Lila A. Jaber, Senior Attorney

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