State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: June 21, 2000

TO: Division of Records and Reporting

FROM: Division of Legal Services (Van Leuven) DTV

RE: Docket No. 990080-WS - Complaint and request for hearing by Linda J. McKenna and 54 petitioners regarding unfair rates and charges of Shangri-La by the Lake Utilities, Inc. in Lake County.

Please file the attached Motion in Limine to Limit Issues Consistent with Prior Commission Rulings, and Request for Oral Argument, both dated June 13, 2000, in the docket file for the above-referenced docket.

DTV/dm

cc: Division of Regulatory Oversight (Rieger)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION JUN 13 2000

In re: Complaint and request for hearing by Linda J. McKenna and 54 petitioners regarding unfair rates and charges of Shangri-La by the Lake Utilities, Inc. in Lake County.	)	DOCKET NO. 990080-WS FILED: June 13, 2000

MOTION IN LIMINE TO LIMIT ISSUES
CONSISTENT WITH PRIOR COMMISSION RULINGS

The Citizens of the State of Florida, through their attorney, the Public Counsel, pursuant to §350.0611, Florida Statutes, and Rule 28-106.204, Florida Administrative Code, hereby file this motion in limine, seeking a determination that the hearing in this proceeding be limited to those issues raised in the Citizens protest. The Citizens submit:

1. On June 17, 1994, Shangri-La Utilities, Inc. (Shangri-La) filed an application for an original certificate. The owner of Shangri-La did not give notice to the mobile home owners who were and are provided service by Shangri-La. In response to Shangri-La's petition, the Commission issued Order No. PSC-96-0062-FOF-WS, in which it set rates, as well as granted the certificates sought by Shangri-La.

2. Since they were never given notice, Shangri-La's customers were unaware of any of these proceedings until the utility began charging the new rates. Upon receiving the unnoticed bills, Linda J. McKenna and 54 petitioners filed with the Public Service Commission a complaint and request for hearing. In response the Commission opened this current docket to examine the customers' complaints. The customers raised a number of issues for consideration by the Commission. In addition, as a result of the customer complaint, the Commission re-examined some of its own findings from Order No. PSC-96-0062-FOF-WS. Through Order No. PSC-00-0259-PAA-

WS, the Commission conceded that the initial rates had been established in error, and adjusted the rates to be collected in the future.

3. On November 10, 1999, the Citizens intervened in this docket. On February 29, 2000, the Citizens filed a petition and objection to Order No. PSC-00-0259-PAA-WS, raising the following specific issues:

(a) Did the PAA overstate the used and useful percentage applicable to the sewage treatment plant?

(b) Did the PAA overstate the used and useful percentage applicable to the water distribution system?

(c) Did the PAA overstate the used and useful percentage applicable to the wastewater collection system?

(d) Has the utility collected excessive rates because of the error in the original cost study referenced on page 17 of the Order?

(e) Should the utility be required to refund what it has collected in excess rates associated with the error in the original cost study?

The Citizens raised no other issues. Shangri-La did not protest the PAA order.

4. Section 120.80(13)(b), Florida Statutes provides that:

> Notwithstanding ss. 120.569 and 120.57 a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed action which are not in dispute are deemed stipulated.

5. The Commission has interpreted that provision of Chapter 120 to prohibit the Commission from hearing any issue that was not raised by a party in an initial objection filed against

the PAA. In Mid-County Services, Inc., Docket No. 971065-SU, the Commission initially issued PAA Order No. PSC-97-1608-PCO-SU. Although the Citizens disagreed with some of the holdings of the PAA, on the whole they were satisfied with the result of the order. Accordingly, the Citizens did not protest. Mid-County Services, however, did protest and raised several specific issues.

6. During the prehearing process of Docket No. 971065-SU, the Citizens sought to raise several additional issues. Included among the proposed issues, the Citizens argued that because the rates would not be effective until late 1999, the utility's ROE should be established on the current 1999 data rather than the three-year-old 1996 ROE sought by Mid-County.

7. The Commission refused to entertain evidence proffered by the Citizens on any issues that were not raised in Mid-County's objection to the PAA. Neither was the Commission willing, of its own motion, to approve such self-evident principles as using 1999 ROE data for setting Mid-County's 1999 rates. Rather, the Commission held fast and strictly to an interpretation of §120.80(13)(b) that prohibited its consideration of any issue that was not raised in the initial objection to the PAA.

8. Applying the same Mid-County standard to the current docket would limit this docket to only those issues raised by the Citizens as enumerated in paragraph 3 of this motion.

9. By this motion, the Citizens seek a ruling that for this case, the Commission will entertain only those issues raised by the Citizens in their objection to the PAA. The Citizens seek this action at this time for the purpose of saving time and resources that might otherwise be expended by the utility, by the Staff and by the OPC. If the Commission might limit the issues consistent with the Mid-County case, all parties would benefit by a ruling that narrows the issues now, rather than after discovery and testimony are prepared on issues that the Commission ultimately excludes from the

hearing. A definitive statement by the Commission reiterating its holding in Mid-County would help all parties efficiently devote resources to only those issues that will be entertained at the hearing.

10. The Citizens have sought to confer with the other parties to this proceeding and represent (a) Linda J. McKenna currently resides in Maine, and the Citizens have been unable to contact her; (b) counsel for Shangri-La has taken no position, but will respond at the appropriate time; and (c) counsel for PSC Staff has taken no position, but will respond at the appropriate time.

WHEREFORE, the Citizens of the State of Florida move the Commission to determine that the hearing in this docket will be limited to the issues raised in the Citizens objection to Order No. PSC-00-0259-PAA-WS.

Respectfully submitted,

Jack Shreve
Public Counsel

Stephen C. Burgess
Deputy Public Counsel

Office of the Public Counsel
c/o The Florida Legislature
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Tallahassee, Florida 32399-1400
(850) 488-9330

Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
DOCKET NO. 990080-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion in Limine to Limit Issues Consistent With Prior Commission Rulings has been furnished by U.S. Mail or *hand delivery to the following parties, this 13th day of June, 2000.

Timothy Vaccaro, Esquire*
Division of Legal Services
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Tallahassee, Florida 32399-0850

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Stephen C. Burgess
Deputy Public Counsel

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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REQUEST FOR
ORAL ARGUMENT

The Citizens of the State of Florida, through their attorney, the Public Counsel, pursuant to Section 350.0611, Florida Statutes, and Rule 25-22.058, Florida Administrative Code, hereby request oral argument on their Motion in Limine filed contemporaneously with this request. The Citizens submit:

1. Through the Motion in Limine, the Citizens are seeking the Commission to limit the issues in this docket consistent with prior Commission interpretation of Section 120.80(13), Florida Statutes. There have been a limited number of cases in which that statutory provision has been applied. The Citizens were a party to the most recent water and wastewater case in which the Commission relied on Section 120.80(13) in limiting the issues which could be entertained during a hearing. The Citizens believe that oral argument would provide a valuable forum to resolve any concerns surrounding the application of this relatively recent statutory provision.

WHEREFORE, the Citizens of the State of Florida request the Public Service Commission grant oral argument on their Motion in Limine to Limit Issues.

Respectfully submitted,

Jack Shreve
Public Counsel

Stephen C. Burgess
Deputy Public Counsel

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