



# Public Service Commission

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RECORDS AND REPORTING

**DATE:** OCTOBER 26, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (VAN LEUVEN) *DLV*  
 DIVISION OF POLICY ANALYSIS & INTERGOVERNMENTAL LIAISON (GOLDEN) *ms JDN KS*  
 DIVISION OF REGULATORY OVERSIGHT (RIEGER) *SDR* *RLT*

**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.  
 COUNTY: LEE

**AGENDA:** NOVEMBER 7, 2000 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\990080C.RCM

### CASE BACKGROUND

Shangri-La by the Lake Utilities, Inc. (Shangri-La or utility) is a Class C utility located in Lake County. The utility currently provides water and wastewater service to approximately 129 mobile homes and water service to five single family homes. On January 19, 1999, Ms. Linda J. McKenna and 54 other customers filed the formal complaint which is the subject of this docket. The customers requested a formal hearing, rate relief, establishment of a seasonal rate for customers not in residence, that the utility not be allowed to charge for service until the matter was addressed, and that the utility's certificates be revoked until a satisfactory resolution was reached between all the concerned parties. By Order No. PSC-99-2254-PCO-WS, issued November 18,

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1999, the Commission acknowledged the Office of the Public Council's (OPC) intervention in this docket.

By Proposed Agency Action (PAA) Order No. PSC-00-0259-PAA-WS, issued February 8, 2000, the Commission adjusted rates, established a new class of service, authorized the collection of metered charges for irrigation, denied the request that the utility not be allowed to charge for service pending a resolution of the matter, and denied the request to revoke Shangri-La's certificates. On February 29, 2000, OPC timely filed a Petition on Proposed Agency Action and Objection to Proposed Agency Action.

By Order No. PSC-00-0629-PCO-WS, issued April 3, 2000, this matter was scheduled for an administrative hearing and controlling dates were established. The controlling dates were modified by Order No. PSC-00-1239-FOF-WS, issued July 10, 2000.

On June 13, 2000, OPC filed a Motion in Limine to Limit Issues Consistent with Prior Commission Rulings (Motion in Limine) and a Request for Oral Argument. Shangri-La filed its timely Response on June 26, 2000. By Order No. PSC-00-1549-PCO-WS, issued August 25, 2000, the Commission granted in part and denied in part OPC's Motion in Limine, and restricted Shangri-La from raising new issues. On September 1, 2000, Shangri-La filed a Motion for Reconsideration by Entire Commission of Order No. PSC-00-1549-PCO-WS, and a Request for Oral Argument.

However, on October 12, 2000, the parties to this docket entered into a settlement agreement. On October 13, 2000, Shangri-La and OPC filed a joint Motion to Approve Settlement Agreement. The following is staff's recommendation regarding the Settlement Agreement and pending Motions. The Commission has jurisdiction pursuant to Sections 367.081 and 120.569, Florida Statutes.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant the Joint Motion to Approve Settlement Agreement filed by Shangri-La by the Lake Utilities, Inc. and the Office of Public Counsel?

**RECOMMENDATION:** Yes. Staff recommends that the Commission should grant the parties' Motion and approve the settlement agreement in its entirety. The withdrawal of OPC's protest should be acknowledged, and PAA Order No. PSC-00-0259-PAA-WS should be made final, as of November 7, 2000, as modified by the settlement agreement. The utility should file revised tariff sheets and a proposed customer notice to reflect the PAA rates. The approved rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code. The rates should not be implemented until staff has approved the proposed customer notice, and the notice has been received by the customers. The utility should provide proof of the date notice was given no less than 10 days after the date of the notice. Further, the refund should be issued in accordance with Rule 25-30.360, Florida Administrative Code, including interest for customers who paid their bills during the pendency of this complaint. Customers who have not paid their bills should receive a credit for the difference between the original and the PAA rates, without interest. (VAN LEUVEN, GOLDEN, RIEGER)

**STAFF ANALYSIS:** As discussed in the case background, on February 29, 2000, OPC timely filed a protest to Order No. PSC-00-0259-PAA-WS. However, on October 13, 2000, the parties filed a joint Motion requesting the Commission to approve a settlement agreement which was executed on October 12, 2000. A copy of the settlement agreement is attached to this recommendation as Attachment A. The settlement agreement contains five provisions, as follows:

1. In addition to the refund provided for in the PAA Order, the Utility shall apply the rates approved in the PAA Order to recalculate the customer's bills and will refund to the customers the difference between the recalculated rates and the actual amount paid by the customer.
2. The utility will not file a rate case any earlier than January, 2002, based upon a test year any earlier than the year ended December 31, 2001.
3. Citizens will voluntarily dismiss the petition on Proposed Agency Action filed February 29, 2000.

4. Except as specially modified hereby, the provisions and rulings in PAA Order No. PSC-00-0259-PAA-WS are hereby affirmed.
5. The provisions of this Settlement Agreement are not severable and shall become effective only after the Commission has entered an order approving the Agreement in total. In the event the Agreement is not approved in whole, without modification, the Settlement Agreement shall be deemed withdrawn and null and void, and neither party may use this attempted Settlement Agreement in this or any other proceeding.

Staff has reviewed the settlement agreement and believes that it reaches a reasonable compromise among the parties and is in the public interest. The settlement agreement resolves all the outstanding issues in this docket and avoids the time and expense of further litigation. All parties to the docket have signed this offer. In consideration of the foregoing, staff believes that this settlement offer should be approved.

Rule 25-22.032(10), Florida Administrative Code, states in part that "during the pendency of the complaint proceedings, a utility shall not discontinue service to a customer because of an unpaid disputed bill." Accordingly, the utility has not disconnected any customers' potable water and wastewater service due to non-payment of their monthly bills during this proceeding. However, if the Commission approves the settlement agreement, the utility will be within its rights to seek full payment of any delinquent bills. Therefore, it is important to note that customers who refuse to pay their water and wastewater bills after the PAA rates are implemented may be disconnected provided that the utility complies with Rule 25-30.320, Florida Administrative Code, regarding disconnection.

Although the settlement agreement contains a provision for customer refunds, it does not address how the refunds will be administered. In accordance with Rule 25-30.360, Florida Administrative Code, staff recommends that all of the customers should be refunded the difference between the original and PAA rates. However, as to interest, staff is aware that some customers have withheld payment of their water and wastewater bills pending the resolution of this complaint. Ordinarily, refunds are made with interest to recognize that customers did not have use of their funds during the time that they paid inappropriate rates. Therefore, staff recommends that the utility should not be required to include interest in the refund calculation for those customers

who did not pay their bills because those customers were not deprived of the use of their money during the pendency of this proceeding. Correspondingly, staff recommends that customers who paid their utility bills during the pendency of this proceeding should be entitled to interest as prescribed by the above-mentioned rule.

Based upon all of the foregoing, staff recommends that the Commission grant the parties' Motion and approve the settlement agreement in its entirety. The withdrawal of OPC's protest should be acknowledged, and PAA Order No. PSC-00-0259-PAA-WS should be made final, as of November 7, 2000, as modified by the settlement agreement. The utility should file revised tariff sheets and a proposed customer notice to reflect the PAA rates. The approved rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code. The rates should not be implemented until staff has approved the proposed customer notice, and the notice has been received by the customers. The utility should provide proof of the date notice was given no less than 10 days after the date of the notice. Further, the refund should be issued in accordance with Rule 25-30.360, Florida Administrative Code, including interest for customers who paid their bills during the pendency of this complaint. However, customers who have not paid their bills should receive a credit for the difference between the original and PAA rates, without interest.

**ISSUE 2:** Should Shangri-La's request for oral argument be granted?

**RECOMMENDATION:** No. Staff recommends that, if Issue 1 is approved by the Commission, Shangri-La's request for oral argument is moot. However, if staff's recommendation in Issue 1 is denied, staff recommends that the request for oral argument be denied. (VAN LEUVEN)

**STAFF ANALYSIS:** On September 1, 2000, Shangri-La filed a Request for Oral Argument on its Motion for Reconsideration. Rule 25-22.0376(5), Florida Administrative Code, states that "Oral argument on any motion filed pursuant to this rule may be granted at the discretion of the Commission. A party who fails to file a written response to a point on reconsideration shall be precluded from responding to that point during oral argument." Pursuant to this rule, Shangri-La has requested oral argument on its Motion for Reconsideration. Shangri-La's request for oral argument states that oral argument would be helpful because there are a limited number of Commission decisions addressing Section 120.80(13)(b), Florida Statutes. In addition, Shangri-La states that the Order entered by the Prehearing Officer will have significant implications on all regulated industries and that there are significant public policy issues which are better addressed in an open debate.

Staff recommends that if the Commission approves the settlement agreement in Issue 1, it is unnecessary to rule upon Shangri-La's request for oral argument because it is moot. If the Commission rejects the settlement agreement in Issue 1, staff recommends that Shangri-La's request for oral argument be denied because the Motion sufficiently presents Shangri-La's arguments and the Commission's decisions addressing Section 120.80(13)(b), Florida Administrative Code, are clear.



**ISSUE 3:** Should the Commission grant Shangri-La's Motion for Reconsideration by the Entire Commission?

**RECOMMENDATION:** No. Staff recommends that, if the Commission approves the settlement agreement in Issue 1, it is unnecessary for the Commission to rule upon the Shangri-La's motion because it is moot. However, if the Commission disagrees with staff's recommendation in Issue 1, staff recommends that Shangri-La's motion should be denied by the Commission panel assigned to this proceeding. (VAN LEUVEN)

**STAFF ANALYSIS:** As stated in the case background, on September 1, 2000, Shangri-La filed a Motion for Reconsideration by the Entire Commission of Order No. PSC-00-1549-PCO-WS. Staff recommends that if the Commission approves the settlement agreement in Issue 1, it is unnecessary for the Commission to rule upon Shangri-La's Motion because it is moot in light of the settlement agreement.

However, if the Commission disagrees with staff recommendation in Issue 1 and rejects the settlement agreement, staff recommends that the Commission panel should deny Shangri-La's Motion for Reconsideration. First staff notes that the utility requests reconsideration by the entire Commission. However, Rule 25-22.0376, Florida Administrative Code, allows parties to seek reconsideration of non-final orders by the Commission panel assigned to the proceeding, not by the entire Commission.

By Order No. PSC-00-1549-PCO-WS, the Prehearing Officer held that Section 120.80(13)(b), Florida Statutes, indicates that the issues raised in a protest are the issues in dispute. Further, the Prehearing Officer held that Section 120.80(13)(b), Florida Statutes, does not limit the Commission's discretion to address all the issues that it determines to be relevant to a full resolution of the case when a PAA order is protested.

The standard for determining whether reconsideration is appropriate is set forth in Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962). The purpose of a motion for reconsideration is to point out some matter of law or fact which the Commission failed to consider or overlooked in its prior decision. Id.; Pingtree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). A motion for reconsideration is not an appropriate vehicle for mere reargument or to introduce evidence or arguments which were not previously considered. In Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974), the Court found that the granting of a petition for reconsideration should be based upon specific factual matters set forth in the record and

susceptible to review. Staff applied the foregoing standard in our analysis of the Shangri-La's motion for reconsideration.

In its Motion, Shangri-La argues that the single case relied upon in the Order, Order No. PSC-97-0860-PCO-TL, issued July 16, 1997, in Docket No. 970281, has nothing to do with the facts as they exist in the instant case. According to the utility, that case did not involve an attempt by the non-protesting parties to raise new issues. Further, the utility argues that the Order ignores Order No. PSC-00-0629-PCO-WS, the Order Establishing Procedure issued in this docket, which states that issues not raised by parties prior to the issuance of the Prehearing Order are waived, except for good cause. Additionally, the utility argues that OPC's Motion in Limine constituted a rehearing of the Order on procedure and as such, was untimely. Finally, the utility argues that if the Order is allowed to stand, it will require that every PAA Order be protested by the utility as well as by OPC in order for the parties to preserve the right to raise all the issues contained in the Order being protested.

Staff notes that Shangri-La's arguments concerning the Commission's procedures and the effects of the Order are merely reargument. These same arguments were made in the utility's Response to OPC's Motion in Limine and were considered by the Prehearing Officer in rendering his decision. Moreover, the utility's argument that OPC's Motion in Limine amounted to an untimely rehearing of the Order Establishing Procedure is an entirely new argument. As previously discussed, a motion for reconsideration is not an appropriate vehicle for mere reargument or to introduce evidence or arguments which were not previously considered. Finally, the utility's argument that the facts at issue in Order No. PSC-97-0860-PCO-TL, have nothing to do with the facts in this case, is without merit. It is of no consequence that the facts differ in this case. The utility does not point out a mistake of fact or law contained in the Order at issue. The Order correctly applies the Commission's interpretation of Section 120.80(13)(b), Florida Statutes.

For the foregoing reasons, if the Commission rejects the settlement agreement in Issue 1, staff recommends that Shangri-La's Motion for Reconsideration should be denied by the panel assigned to this proceeding.



**ISSUE 4:** Should the Commission grant the Modified Joint Motion for Extension of Time to File Prefiled Testimony?

**RECOMMENDATION:** No. Staff recommends that, if Issue 1 is approved, it is unnecessary for the Commission to rule upon the motion because it is moot. However, if the settlement agreement is rejected in Issue 1, staff recommends that the Motion be denied, the hearing rescheduled, and the Order Establishing Procedure be revised to reflect new controlling dates. (VAN LEUVEN)

**STAFF ANALYSIS:** Staff recommends that it is unnecessary to rule upon the joint motion for an extension of time if the Commission approves the settlement agreement in Issue 1. If the settlement agreement is approved, OPC's protest will be dismissed and the need for an extension to file testimony will be moot.

However, if the settlement agreement is rejected in Issue 1, staff recommends that the Commission should deny the Motion because the requested filing dates have passed. Further, the hearing currently scheduled for December 13, 2000, should be rescheduled by the Chairman's Office and the Order Establishing Procedure should be revised to reflect new controlling dates.

**ISSUE 5:** Should this docket be closed?

**RECOMMENDATION:** Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed administratively upon staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff, and that the refunds have been issued. If the Commission does not approve Issue 1, this docket should remain open in order for the case to proceed to hearing. (VAN LEUVEN)

**STAFF ANALYSIS:** If the Commission approves staff's recommendation in Issue 1, this docket should be closed administratively upon staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff, and that the refunds have been issued. If the Commission does not approve Issue 1, this docket should remain open in order for the case to proceed to hearing.

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT is made and entered into this 8<sup>th</sup> day of September, 2000, by and between Citizens of the State of Florida ("Citizens") through the Office of Public Counsel, and Shangri-La by the Lake Utilities, Inc. ("Utility").

**W I T N E S S E T H**

WHEREAS, the Florida Public Service Commission ("PSC") issued Order No. PSC-00-0259-PAA-WS on February 8, 2000 taking certain action with regard to the Complaint filed by Linda J. McKenna and others against the Utility ("PAA Order"); and

WHEREAS, Citizens have filed a timely Petition on Proposed Agency Action objecting to certain portions of the PAA Order; and

WHEREAS, Citizens and Utility desire to resolve their differences with regard to the Citizens' Petition.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth below the Citizens and Utility agree as follows:

1. In addition to the refund provided for in the PAA Order, the Utility shall apply the rates approved in the PAA Order to recalculate the customer's bills and will refund to the customers the difference between the recalculated rates and the actual amount paid by the customer.

2. The Utility will not file a rate case any earlier than January, 2002, based upon a test year any earlier than the year ended December 31, 2001.

3. Citizens will voluntarily dismiss the Petition on Proposed Agency Action filed February 29, 2000.

4. Except as specifically modified hereby, the provisions and rulings in PAA Order No. PSC-00-0259-PAA-WS are hereby affirmed.

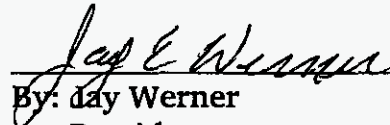
5. The provisions of this Settlement Agreement are not severable and shall become effective only after the Commission has entered an order approving the Agreement in total. In the event the Agreement is not approved in whole, without modification, the Settlement Agreement shall be deemed withdrawn and null and void, and neither party may use this attempted Settlement Agreement in this or any other proceeding.

Citizens of the State of Florida

Shangri-La by the Lake Utilities, Inc.

  
By: Jack Shreve  
Public Counsel

DEPUTY  
PUBLIC COUNSEL

  
By: Jay Werner  
President

Concurring with the Settlement Agreement:

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PUBLIC COUNSEL Page 3 of 4

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FROM : Jay and Laura Werner

FAX NO. : 815 739 2900

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**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT is made and entered into this 8<sup>th</sup> day of September, 2000, by and between Citizens of the State of Florida ("Citizens") through the Office of Public Counsel, and Shangri-La by the Lake Utilities, Inc. ("Utility").

**WITNESSETH**

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FROM : Jay and Laura Werner

FAX NO. : 813 738 2889

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ATTACHMENT A  
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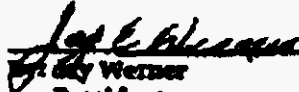
4. Except as specifically modified hereby, the provisions and rulings in PAA Order No. FSC-00-0239-PAA-WS are hereby affirmed.

5. The provisions of this Settlement Agreement are not severable and shall become effective only after the Commission has entered an order approving the Agreement in total. In the event the Agreement is not approved in whole, without modification, the Settlement Agreement shall be deemed withdrawn and null and void and neither party may use this attempted Settlement Agreement in this or any other proceeding.


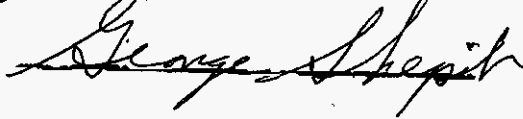
Citizens of the State of Florida

Shangri-La by the Lake Utilities, Inc.

By: Jack Shreve  
Public Counsel

  
By: Jay Werner  
President

Concurring with the Settlement Agreement:

www.settlement.org