

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

April 20, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER AND WASTEWATER (GALLOWAY, RIEGER) *SR*  
DIVISION OF LEGAL SERVICES (JABER) *WJ*

RE: UTILITY: SHADY OAKS MOBILE-MODULAR ESTATES, INC.  
DOCKET NO.: 930944-WS  
COUNTY: PASCO  
CASE: REVOCATION BY FLORIDA PUBLIC SERVICE  
COMMISSION OF CERTIFICATES NOS. 451-W AND  
382-S ISSUED TO SHADY OAKS MOBILE-MODULAR  
ESTATES, INC. IN PASCO COUNTY, PURSUANT  
TO SECTION 367.111, F.S.

AGENDA: MAY 2, 1995 - REGULAR AGENDA - POST HEARING DECISION -  
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\930944.RCM

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DOCUMENT NUMBER-DATE

03984 APR 20 95

FPSC-RECORDS/REPORTING

CASE BACKGROUND

Shady Oaks Mobile-Modular Estates, Inc. (Shady Oaks or utility) is a Class C water and wastewater utility located in Pasco County. The service area is a mobile-modular home park developed in 1971; the utility provides service to 181 customers in the 242 lot park. Shady Oaks has had a history of noncompliance with Commission statutes, rules, and orders. For purposes of convenience and information, a condensed version of relevant noncompliance is set forth below.

A hearing regarding the utility's noncompliance with Orders Nos. 24084, issued February 8, 1991, and 25296, issued November 4, 1991, was held on January 7, 1993 in Zephyrhills, Florida. The utility, although it requested the hearing, did not attend the hearing. By Order No. PSC-93-0542-FOF-WS, issued April 9, 1993, the Commission:

- 1) Fined the utility in the amount of its rate base, or \$60,572;
- 2) Ordered that a proceeding be initiated to reduce the utility's rates by the amount of pro forma plant not constructed and the amount of preventative maintenance not spent; and
- 3) Ordered that revocation proceedings be initiated.

The utility filed a Motion for Reconsideration of Order No. PSC-93-0542-FOF-WS. By Order No. PSC-93-1396-FOF-WS, issued September 27, 1993, the Commission denied the Motion for Reconsideration and ordered the utility to sell or transfer the utility within 120 days of the issuance date of the order. The Commission also voted to suspend the fine if a completed application for a transfer was timely submitted. The utility failed to transfer or interconnect the system within the 120 days. Therefore, the \$60,572 fine is due and payable. On October 19, 1993, the utility filed a Notice of Administrative Appeal of Order No. PSC-93-0542-FOF-WS. By Order No. PSC-94-1015-FOF-WS, issued August 23, 1994, the Commission denied Shady Oaks' motion for a stay of the provision imposing the fine. The District Court of Appeal heard oral argument on the appeal of Order No. PSC-93-0542-FOF-WS on January 11, 1995. A decision has not yet been made.

On September 23, 1993, the Commission, pursuant to Section 367.111(1), Florida Statutes, and in accordance with Order No. PSC-93-0542-FOF-WS, noticed its Intent to Initiate Revocation of Certificates Nos. 451-W and 382-S issued to Shady Oaks. On October 18, 1993, Shady Oaks timely filed an objection to the Notice.

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Accordingly, this matter was scheduled for an August 4, 1994, administrative hearing.

On July 19, 1994, Staff was notified that Shady Oaks filed for bankruptcy on July 14, 1994, in the Tampa Division of the United States District Court for the Middle District of Florida, under Case No. F94-6876-8G1. On July 26, 1994, Shady Oaks filed, in the Bankruptcy Court, a Motion for Order to Show Cause the Florida Public Service Commission. In its Motion, Shady Oaks asserted that the Commission was violating the automatic stay provisions of the Bankruptcy Code by going forward with the revocation hearing.

The revocation hearing was held on August 4, 1994, in Zephyrhills, Florida. Approximately forty customers attended the hearing. Five customers testified at the hearing regarding customer relations and poor quality of service. Six customers represented that they agreed with the previous customer testimony. Although the utility owner was present at the hearing, he refused to cross-examine any customers or any of the three staff witnesses. After hearing all of the evidence presented at the hearing, the Commission made a decision from the bench to revoke Shady Oaks' water and wastewater certificates. After notification from Commission Staff, Pasco County began operating the utility on an emergency basis. The Commission's decision was memorialized by Order No. PSC-94-0976-FOF-WS, Final Order Revoking Certificates, issued August 11, 1994.

On August 19, 1994, DEP filed, in Bankruptcy Court, a Motion to Appoint Trustee, Convert to Chapter 7 or Dismiss. On September 1, 1994, Judge Wayne Cobb awarded Pasco County temporary receivership of Shady Oaks. On January 4, 1995, Judge Paul M. Glenn dismissed the utility's bankruptcy filing and denied Shady Oaks' Motion to Order the Commission to Show Cause. In its Memorandum of Decision on Debtor's Motion for Order to Show Cause, the Court found the Commission did not violate the automatic stay provisions found in Section 362(b)(4) of the Bankruptcy Code. The Court stated:

It is clear that the Commission's proceeding was for the protection of the public health, safety, and welfare, and not to collect a monetary penalty. It is apparent that the Commission's actions were the culmination of years of problems which it had with the Debtor, and of literally hundreds of hours of Commission and staff time and effort in analyzing the utility's operations, working with the utility, pursuing administrative proceedings

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against the utility, and giving the utility every opportunity to correct its problems.

By Order No. PSC-0976-FOF-WS, the Commission ordered Shady Oaks, inter alia, to remit delinquent regulatory assessment fees in the amount of \$13,127, and outstanding fines totalling \$62,572. By letters dated February 8, 1995 and March 15, 1995, sent via Certified Mail to Mr. Richard D. Sims, utility owner, Staff requested that he remit \$75,699 in outstanding regulatory fees and fines. Mr. Sims has not responded to the collection letters and no payment has been made. The subject of this recommendation is the referral of the outstanding fines and fees to the Office of the Comptroller.

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**ISSUE 1:** Should the outstanding regulatory assessment fees and fines owed by Shady Oaks in the amount of \$13,127 and \$62,572, respectively, be referred to the Office of the Comptroller for further collection efforts?

**RECOMMENDATION:** Yes. The Commission should refer the outstanding regulatory assessment fees and fines owed by Shady Oaks in the amount of \$13,127 and \$62,572, respectively, to the Office of the Comptroller for further collection efforts. (JABER, GALLOWAY)

**STAFF ANALYSIS:** Order No. PSC-94-0976-FOF-WS was issued on August 11, 1994, revoking Shady Oaks' Certificates. That Order also ordered Shady Oaks to remit delinquent regulatory assessment fees in the amount of \$13,127, and outstanding fines totalling \$62,572. On January 4, 1995, the Bankruptcy Court dismissed the utility's bankruptcy filing and denied Shady Oaks' Motion to Order the Commission to Show Cause.

By letters dated February 8, 1995 and March 15, 1995, sent via Certified Mail to Mr. Richard D. Sims, utility owner, Staff requested that Mr. Sims remit \$75,699 in outstanding regulatory fees and fines. In each of those letters, Shady Oaks was given a reasonable length of time in which to respond (See Attachment A). To date, no response has been received, and the fees and fines have not been paid.

Since reasonable efforts have been made to collect the outstanding regulatory assessment fees and fines, Staff recommends that the outstanding regulatory assessment fees and fines totalling \$75,699 be referred to the Comptroller's office for further collection efforts.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** No, this docket should remain open pending final disposition of the escrow monies and receivership. (JABER)

**STAFF ANALYSIS:** In light of the Bankruptcy Court decision and Pasco County's temporary authorization to act as receiver, there are outstanding issues which must be resolved in a subsequent recommendation. Therefore, this docket should remain open pending the final disposition of the escrow monies and the receivership.

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## Public Service Commission

February 8, 1995

VIA CERTIFIED MAIL  
NO. P 407 857 499

Mr. Richard Sims  
Shady Oaks Mobile Modular Estates, Inc.  
1315 Eckles Drive  
Tampa, Florida 33612

RE: Docket No. 930944-WS - Revocation by Florida Public Service Commission of Certificates Nos. 451-W and 382-S issued to Shady Oaks Mobile Modular Estates, Inc. in Pasco County, Pursuant to Section 367.111 (1), F.S.

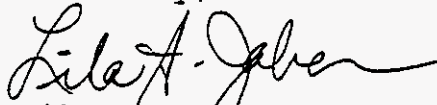
Dear Mr. Sims:

On August 11, 1994, the Florida Public Service Commission issued Order No. PSC-94-0976-FOF-WS. By that Order, the Commission required the utility to remit delinquent regulatory assessment fees in the amount of \$13,127. The utility was also required to remit outstanding fines in the amount of \$62,572.

Please submit payments totalling \$75,699 by February 20, 1995 by check made payable to the Florida Public Service Commission. The check should be mailed with a copy of this letter to the Division of Administration, Bureau of Fiscal Services, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0850, Attention, Evelyn Sewell.

If you do not remit payment, by February 20, 1995, the fine will be deemed uncollectible and referred to the Comptroller's Office for collection.

Sincerely,



Lila A. Jaber  
Bureau Chief, Legal Services

cc: Division of Records and Reporting  
Division of Water and Wastewater (Bethea, Galloway, Rieger)

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## Public Service Commission

March 15, 1995

VIA CERTIFIED MAIL  
NO. 931 359 388

Mr. Richard Sims  
Shady Oaks Mobile Modular Estates, Inc.  
1315 Eckles Drive  
Tampa, Florida 33612

RE: Docket No. 930944-WS - Revocation by Florida Public Service Commission of Certificates Nos. 451-W and 382-S issued to Shady Oaks Mobile Modular Estates, Inc. in Pasco County, Pursuant to Section 367.111 (1), F.S.

Dear Mr. Sims:

On August 11, 1994, the Florida Public Service Commission issued Order No. PSC-94-0976-FOF-WS. By that Order, the Commission required the utility to remit delinquent regulatory assessment fees in the amount of \$13,127. The utility was also required to remit outstanding fines in the amount of \$62,572.

Please submit payments totalling \$75,699 by March 27, 1995 by check made payable to the Florida Public Service Commission. The check should be mailed with a copy of this letter to the Division of Administration, Bureau of Fiscal Services, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0850, Attention, Evelyn Sewell.

If you do not remit payment, by March 27, 1995, the fine will be deemed uncollectible and referred to the Comptroller's Office for collection. Please be aware that this is the last notice you will receive from Staff.

Sincerely,



Lila A. Jaber  
Bureau Chief, Legal Services

cc: Division of Records and Reporting  
Division of Water and Wastewater (Bethea, Galloway, Rieger)