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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Staff-)	DOCKET NO. 900025-WS
Assisted Rate Case in Pasco )	FILED: 11-29-92
County by SHADY OAKS MOBILE- )	
MODULAR ESTATES, INC. )	
_____ )	

COMMISSION STAFF'S MOTION TO COMPEL AND REQUEST FOR SANCTIONS AND STAFF'S MOTION TO DISMISS SHADY OAKS AS A PARTY

COMES NOW the staff of the Florida Public Service Commission, by and through its undersigned counsel, and states as follows in support of this, its motion to compel and motion to dismiss:

1. On October 15, 1992, the staff of the Commission (staff) served its first set of interrogatories, requests for production of documents, and requests for admissions by U.S. mail on Shady Oaks Mobile-Modular Estates, Inc. (Shady Oaks or utility).

2. By facsimile dated November 10, 1992, Shady Oaks' principal owner, Mr. Richard D. Sims, requested an additional 10 days, until November 29, 1992, to respond to the above discovery requests and requests for admissions. By letter dated November 19, 1992, the undersigned staff counsel informed Mr. Sims that an extension was not acceptable to staff because of the quickly approaching hearing dates.

3. Shady Oaks is not represented by counsel. However, the December 9, 1992, hearing scheduled in this matter for the purpose of determining whether the utility violated certain Commission Orders was docketed at Shady Oaks' request.

4. Responses to the above discovery requests and requests for admissions were due November 19, 1992. On November 23, 1992, Shady Oaks provided staff with responses to its interrogatories; however, not all of the interrogatory answers provided were responsive, and the answers were not made under oath as required by Florida Rules of Civil Procedure, Rule 1.340 (a). Shady Oaks did not provide all of the information requested in the applicable requests for production of documents, nor did it properly admit or deny staff's requests for admission. The discovery and requests for admissions served on Shady Oaks by mail on October 15, 1992, were accompanied by instructions for answering same.

5. Rule 25-22.034, Florida Administrative Code, provides that discovery will be conducted as set forth in Rules 1.280 through 1.400, Florida Rules of Civil Procedure.

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6. Pursuant to Florida Rules of Civil Procedure, Rule 1.370 (a), matters contained in a request for admission are deemed admitted unless the party to whom the request is directed serves an answer or objection on the party requesting the admission within 30 days after service. Therefore, by its failure to respond to staff's requests for admissions, Shady Oaks' has admitted the matters contained therein.

7. Pursuant to Florida Rules of Civil Procedure, Rule 1.380 (a)(2), the Commission may compel responses to discovery requests.

8. Pursuant to Florida Rules of Civil Procedure, Rule 1.380 (d), upon finding that a party has failed to respond to interrogatories or requests for production properly served, the Commission may impose any of the sanctions set forth in Florida Rules of Civil Procedure, Rule 1.380 (b)(2) (A), (B), and (C); namely, the Commission may order that matters regarding the questions asked in the discovery be deemed established; it may prohibit the disobedient party from supporting designated claims or defenses or introducing designated matters in evidence; and it may strike pleadings, stay the proceeding, dismiss the action, or render a default judgment (a sanction also authorized under Rules 25-22.034 and .042, Florida Administrative Code).

9. Staff is prejudiced by the utility's failure to respond fully to staff's discovery in that without responses, staff will not be prepared to agree or disagree with certain information which the utility may attempt to present at the hearing as evidence in support of its position.

10. The interrogatories posed and the objectionable, unresponsive answers provided are as follows:

Interrogatory No. 8

8. How much has the utility spent per month on preventative maintenance for each of the months of September, 1991, through September, 1992?

Response Provided

8. I have, because of cash flow restraints incurred little or no expense for preventative maintenance for the period in question.

Objection

The utility has not answered the question. If it spent

no money on maintenance, it should have so stated; if it spend any, it should have provided an amount.

Interrogatory No. 10

10. If any copies of maintenance-related invoices from September, 1991, through September, 1992, provided pursuant to Staff's Request for Production No. 4 do not indicate on their face the specific item purchased or service rendered, please provide an itemized list showing that information for each invoice.

Response Provided

10. See response to question 8.

Objection

Answer is unresponsive.

Interrogatory No. 11

11. If the utility has spent less than an average of \$1,445 per month from September, 1991, through September, 1992, on preventative maintenance, please explain why the utility has failed to submit a written schedule to the Commission showing what monthly maintenance will be adopted, along with a statement of the reason such funds were not expended, and a detailed statement of its future plans to maintain the system.

Response Provided

11. See response to question 8. It appears obvious that in order to have the resources to implement a meaningful and effective maintenance system, customer usage would have to increase, or a rate increase be granted.

Objection

Answer is unresponsive. The utility was ordered to submit a plan for maintenance if it did not spend the maintenance allowance. The utility's answer is a non sequitur.

Interrogatory No. 20

20. (a) Has the utility complied with all aspects of its settlement agreement (consent order) with DER?

- (b) If the response to 20(a) is negative, with what portion(s) of the agreement (consent order) has the utility failed to comply with and why?

Answer Provided

20. (a) No.

- (b) The Utility has complied with the consent order to the best of its ability under its present circumstances as outlined in response to earlier questions.

Objection

Answer is unspecific as to aspects of the consent order not complied with and, therefore, unresponsive.

Interrogatory No. 22 (related to 21)

21. Is there any pending legal action against the utility as a result of its failure to abide by its settlement agreement (consent order) with DER?
22. If the response to Interrogatory 21 is positive, please identify who brought the action(s) against the utility and the nature of the action(s).

Response Provided

22. D.E.R. initiated this action against Shady Oaks Mobile-Modular Estates, Inc., and the Commission has a copy of this action.

Objection

Answer is unresponsive.

Interrogatory No. 27

27. (a) How many of the remaining 28 homeowners who contributed to paying the utility's delinquent electric bill have been issued credits by the utility?
- (b) If the answer to (a) is less than 28, please explain why credits to all 28 have not been issued.
- (c) For each of the 28 customers who have not received

the credit, please indicate the customer's name and the date the utility plans to issue the credit to that customer.

- (d) For each of the 28 customers who have received the credit referred to in the above parts of this interrogatory, please indicate the customer's name and the date the utility issued the credit to that customer.

Response Provided

27. (a) Our figures show 26 homeowners.
- (b) Waiting upon Appellate Court decision.
- (c) Upon resolution of this matter by the Appellate Court.
- (d) With the limited resources available to the Utility I am unable to provide this information at this time. See also, response to b and c above.

Objection

Answer is unresponsive. The decision of the Second District Court of Appeal regarding the utility's ability to backbill for a two-month period when the utility was enjoined from charging Commission-approved rates has nothing to do with the utility's failure to credit customers' bills for the power bill some customers paid for the utility.

11. The requests for production of documents not responded to are as follows:

1. Please provide all copies of documents (deeds, title insurance, closing statements, etc.) in the utility's possession pertaining to title to all utility assets and to the land upon which utility assets are located.
2. Please provide copies of all documents that relate to the bankruptcy proceeding referred to in the utility's response to the Commission's Order to Show Cause.
3. Please provide copies of all invoices related to the utility's purchase of water meters.
4. Please provide copies of all maintenance-related invoices

from September, 1991, through September, 1992.

5. Please provide copies of any and all invoices relating to the utility's purchase of construction materials for the wastewater interconnection with Pasco County.
6. Please provide a copy of any DER-issued construction permit for the collection system modifications necessary for the utility to interconnect with Pasco County.
8. Please provide a copy of the settlement agreement (consent order) entered into between the utility and DER.
9. Please provide copies of all documents in the utility's possession related to any and all pending legal action against the utility as a result of the DER settlement agreement (consent order).
10. To the extent not already provided, please provide all official documents, invoices, cost estimates, contracts, permits, and other supporting documentation relating to the wastewater interconnection with Pasco County.
11. Please provide copies of all customer complaints and complaint resolutions from September, 1991, to September, 1992.
12. Please provide copies of all customer billing records from March 1992 through September 1992.

12. The requests for admission not properly admitted or denied are as follows:

1. The utility has not filed with the Public Service Commission an application for approval of or documents pertaining to a transfer of majority organizational control.
2. The utility has not filed with the Public Service Commission an application for approval of or documents pertaining to a change in its certificated name.
3. The utility is not operating under the name of Shady Oaks Mobile-Modular Estates, Inc.
4. The utility has violated and continues to violate Commission Orders Nos. 24084 and 25296 regarding the required actions for changing its name.

5. The utility violated Commission Order No. 25296 regarding the required actions on meter installations because it did not install the meters in a timely manner.
  6. The utility has violated and continues to violate Commission Orders Nos. 24084 and 25296 regarding the required actions for spending funds on preventative maintenance and filing reports in the absence of spending the amounts established.
  7. The utility has violated and continues to violate Commission Orders Nos. 24084 and 25296 regarding the required actions for escrowing funds.
  8. The utility has violated Commission Order No. PSC-92-0356-FOF-WS because it failed to issue credits to each of the remaining 28 homeowners who contributed to paying the utility's delinquent electric bill.
13. By Order No. PSC-92-1378-PHO-WS, the Prehearing Order entered in this proceeding, the Prehearing Officer noted the following:
- The utility did not prefile testimony or file a prehearing statement as required by Order No. PSC-92-0669-PCO-WS, issued July 16, 1992, the Order Establishing Procedure. According to the Order Establishing Procedure, "Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position." In addition, the utility did not attend the prehearing conference. According to the Order Establishing Procedure, "Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement." The utility was not excused from attending the prehearing conference.
14. Since the utility has waived its right to present testimony and waived all issues and positions, the utility is basically foreclosed from presenting its case to the Commission. Therefore, the Commission should dismiss Shady Oaks as a party, insert staff's prefiled testimony and exhibits into the record, and adjourn the proceeding.

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WHEREFORE, in consideration of the above, the staff of the Commission requests that the Commission order Shady Oaks Mobile-Modular Estates, Inc., and its owners to immediately respond to the above-stated interrogatories and requests for production of documents or, in the alternative, that the Commission impose such sanctions that it deems appropriate, and in addition, the staff requests that Shady Oaks Mobile-Modular Estates, Inc., be dismissed as a party to this proceeding.

Respectfully Submitted,



Matthew J. Feil, Staff Attorney

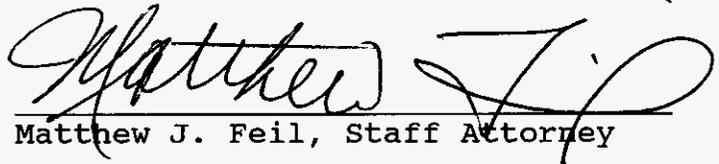
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Commission Staff's MOTION TO COMPEL AND REQUEST FOR SANCTIONS AND STAFF'S MOTION TO DISMISS SHADY OAKS AS A PARTY has been furnished by Federal Express to Mr. Richard D. Sims, 1315 Eckles Drive, Tampa, Florida, 33612, this 29<sup>th</sup> day of November, 1992.

  
Matthew J. Feil, Staff Attorney

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