

State of Florida



Public Service Commission

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RECORDS AND REPORTING

DATE: NOVEMBER 4, 1999

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

FROM: DIVISION OF LEGAL SERVICES (VACCARO)
DIVISION OF WATER AND WASTEWATER (GOLDEN, RIEGER)

Handwritten initials and signatures: BAYO, VACCARO, GOLDEN, RIEGER

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: LAKE

AGENDA: NOVEMBER 16, 1999 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ALL ISSUES EXCEPT 1 AND 10 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\990080.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. According to the utility's 1998 annual report, the utility's operating revenues were \$15,002 for water and \$13,985 for wastewater. In 1998, the utility reported a net operating income of \$1,479 for the water system and a net operating loss of \$12,927 for the wastewater system.

DOCUMENT NUMBER-DATE

13577 NOV-4 99

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

The utility was established on April 21, 1983; however, Commission staff did not learn of its existence until approximately 1992. At that time, water and wastewater service was provided to the mobile home park tenants as part of their lot rent. If those had been the only customers of the utility, it would have qualified for exemption from regulation pursuant to Section 367.022(5), Florida Statutes. However, the utility was also providing water service to five single family homes outside of the mobile home park, and thus, did not qualify for exemption from regulation. After being informed by Commission staff that the utility was subject to Commission jurisdiction and was operating in apparent violation of Section 367.031, Florida Statutes, the utility promptly filed an application for water and wastewater certificates.

By Order No. PSC-96-0062-FOF-WS, issued January 12, 1996, in Docket No. 940653-WS, Shangri-La was granted Certificates Nos. 567-W and 494-S. Also, by that Order, the Commission established rate base, return on equity, rate of return, and rates and charges. No timely protests were received regarding the certificate application or Proposed Agency Action (PAA) portion of the Order; therefore, the Commission's actions regarding that case became final.

In the vast majority of certificate cases for a utility in existence, the utility is already charging rates and the Commission allows the utility to continue charging its existing rates. However, that proved to be difficult in Shangri-La's case. The utility initially charged a flat rate of \$10 per month to the five single family homes, but discontinued the charge upon being informed that it was in apparent violation of Commission rules by doing so. Also, as discussed above, water and wastewater service was provided to the mobile home park tenants as part of their lot rent. Therefore, the utility did not have existing rates which could be applied uniformly to all of its customers.

Consequently, it became necessary for the Commission to consider the calculation of rates within the utility's certificate docket in order to certificate the utility with rates to be used on a going-forward basis. The utility's application included proposed rates for the metered single family homes using the base facility charge rate structure, and flat rates for the un-metered mobile

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

home park tenants. However, current Commission practice is to calculate rates using the base facility charge rate structure and avoid the use of flat rates unless absolutely necessary. The Commission has recognized the benefits of the base facility charge rate structure in promoting water conservation for many years. In keeping with current Commission practice, Commission staff did not believe it would be appropriate to recommend flat rates in this case. Further, during an audit of the utility's records, Commission audit staff determined that the utility had exceeded its consumptive use permit during the test year. That factor further supported the need for metered consumption and usage specific charges for this utility. Therefore, the Commission approved rates for all customers using the base facility charge rate structure.

However, as discussed above, none of the mobile home park tenants were individually metered at that time, and therefore, could not be charged the new rates. As stated on page 10 of Order No. PSC-96-0062-FOF-WS, the Commission believed "the preferable situation would be to meter the mobile home park at this time and begin charging all of the customers under the base facility charge rate structure." However, the utility owner requested that the Commission allow the utility additional time to pursue approval of the remaining meter installations through the Mobile Home Landlord Tenant Act procedure.

Because a significant portion of the excessive consumption was attributable to the single family homes, the Commission ordered that the utility should begin charging the new rates to those customers immediately. However, the Commission also stated on page 10 of its order that "the utility shall continue to charge the mobile home park tenants in the current manner until such time as the utility is able to install water meters in the mobile home park." In other words, the utility was required to continue providing water and wastewater service as part of the tenants' lot rent until the water meters were installed.

In late 1998, staff began receiving inquiries from the residents in the mobile home park regarding the utility's plans to install water meters and begin charging them separately for water and wastewater service. On January 14, 1999, a number of customers discussed their concerns directly with the Commissioners during the

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

"Open Mike" session of the Agenda Conference. Subsequently, on January 19, 1999, Ms. Linda J. McKenna and 54 other customers filed the formal complaint which is the subject of this docket.

According to the complaint, the customers in the mobile home park did not receive the notice of the utility's application for certificates or the subsequently approved rates, and thus, could not file a timely objection. Also, the customers believe the rates are unfair and inaccurate. Further, they believe there should be a seasonal rate established for part-time residents. A major point of contention is that the mobile home park/utility owner is reducing the lot leases by an amount less than the anticipated future water and wastewater bills based upon the Commission approved rates. The customers also cited several quality of service concerns. Finally, there is concern that some customers are being metered and charged, while others are not.

The customers have requested a formal hearing, rate relief, establishment of a seasonal rate for customers not in residence, that the utility be disallowed from charging for service until the matter is addressed, and that the utility's certificate be revoked until a satisfactory resolution is reached between all concerned parties. Commission staff met with the customers on January 28, 1999, to discuss their concerns in more detail.

On February 24, 1999, the utility filed a response to the complaint. The response states that pursuant to Rule 25-30.030, Florida Administrative Code, the notices of the application and of the subsequently approved rates were provided to all customers of the utility. However, at that time, the individual residents of the mobile home park were not customers of the utility. Also, the rate base, revenue requirement, and rates were established in accordance with Commission rules and sound regulatory principles. The utility believes that the complainants have not provided sufficient justification for the time and expense of a rate investigation. Regarding the request for a seasonal rate, the utility believes that in accordance with established Commission policy, the seasonal customers are required to pay the utility's base facility charges for the time of the year during which they reside elsewhere.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

Further, regarding the issue of an appropriate rent reduction versus Commission approved rates, the utility's response states that this issue is governed by Chapter 723, Florida Statutes, which provides remedies for such disputes. Regarding the quality of service issues, the utility indicated that it would need specific factual information before being able to respond to those concerns. Finally, regarding the installation of meters, the utility acknowledges that not all of the water meters were installed at the same time. However, all residents of the mobile home park are paying for water and wastewater service either through their lot rent or directly to the utility.

During the course of staff's investigation of this complaint, some customers raised additional questions and concerns that were not included in the formal complaint. Staff has worked with the customers and utility to resolve these additional questions and concerns as they arose, and will continue to follow-up on them as needed. Therefore, staff is limiting our recommendation to the concerns raised and relief requested in the formal written complaint, and to those additional concerns that require the Commissions' vote for resolution.

Staff was originally scheduled to present our recommendation regarding this complaint at the June 29, 1999 Agenda Conference. However, staff's investigation of this complaint proved to be more time-consuming than originally anticipated, and staff was not able to obtain all of the necessary information by that date. Staff intended to present our recommendation at the following Agenda Conference on July 6, 1999. Because a number of customers were scheduled to leave Florida for several months, but wanted to attend the Agenda Conference, they requested that staff postpone presenting our recommendation to the Commission until they returned to Florida in November. Therefore, at the customers' request, staff has delayed presentation of our recommendation until the first Agenda Conference in November. The following is staff's recommendation regarding this complaint.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

DISCUSSION OF ISSUES

ISSUE 1: Did the utility improperly notice its application for water and wastewater certificates, and rates approved in Docket No. 940653-WS?

RECOMMENDATION: No. Therefore, no further noticing should be required regarding Docket No. 940653-WS. (GOLDEN, RIEGER, VACCARO)

STAFF ANALYSIS: As discussed in the case background, the customers' complaint states that they were not noticed of the utility's certificate application or approved rates and charges. Section 367.045(1), Florida Statutes, requires that the utility provide notice of its application for certificates, and an affidavit that notice was provided, as prescribed by Commission rule. Rule 25-30.030(6), Florida Administrative Code, requires that the utility provide notice to each customer of the utility being certificated. In accordance with this statute and rule, the utility provided affidavits that it had complied with the noticing requirements, including noticing of each customer of the utility. Likewise, following issuance of PAA Order No. PSC-96-0062-FOF-WS, which approved the utility's rates and charges, the utility submitted proof of noticing the customers of the approved rates and charges. No protests were received regarding the certificate application or rates, and the Commission's action regarding this certificate became final.

When staff was first contacted by customers in late 1998, staff was informed that the customers in the mobile home park did not become aware of the utility's status as a regulated utility and its plans to charge them separately for water and wastewater service until they received a 90-day notice regarding the change to their leases. The 90-day notice is required by the Landlord Tenant Act (Chapter 723, Florida Statutes) prior to any change in their rent or lease. Staff subsequently learned from the utility that the notices regarding the certificate application and rates were only sent to the customers in the five single family homes and the mobile home park office. Therefore, the individual tenants within the mobile home park were not noticed.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

In its response to the complaint, the utility stated:

At the time that the utility was certificated, the mobile home park where the complainants reside was receiving bulk service from the utility. The mobile home park did not bill residents for water and wastewater service, which was included in their lot rent. The notice required pursuant to Rule 25-30.030, Florida Administrative Code, was given to all customers of the utility. At that time, the individual residents of the mobile home park were not customers of the utility.

Rule 25-30.030(6), Florida Administrative Code, states in part that "the utility shall also provide a copy of the notice, by regular mail or personal service, to each customer, of the system to be certificated." Rule 25-30.210(1), Florida Administrative Code, specifies that the word "customer" shall mean any person, firm, association, corporation, governmental agency, or similar organization who has an agreement to receive service from the utility. At the time the certificate application was filed and rates were approved, the agreement for service was between the utility and the mobile home park, not each individual tenant within the mobile home park. Therefore, following the definition provided in Rule 25-30.210(1), Florida Administrative Code, the mobile home park was the official customer of record at that time. Based upon this definition, the utility believes it complied with the Statute and Rules regarding noticing.

Staff agrees that the utility did not violate the noticing rule, because by definition, the tenants of the mobile home park did not qualify as "customers" at the time of noticing. However, it appears that the residents of the mobile home park are affected by the Commission's actions in the certificate case.

Staff believes the Commission can adequately respond to the customers' concerns within this docket. Staff believes this alternative provides a more immediate response to the customers' concerns, while affording them the same opportunity to protest the Commission's Proposed Agency Action that they would receive if the certificate docket were reopened.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

For the foregoing reasons, staff recommends that the utility did not improperly notice its application for water and wastewater certificates and rates approved in Docket No. 940653-WS, and that no further noticing should be required regarding Docket No. 940653-WS.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

ISSUE 2: Should the customers' request that the Commission issue an injunction against the utility to cease and desist from charging for water and wastewater service be granted?

RECOMMENDATION: No. (GOLDEN, VACCARO)

STAFF ANALYSIS: As discussed in the case background, in the formal complaint, the customers requested that the Commission issue an injunction against the utility to cease and desist from charging for water and wastewater service, retroactive to January 1, 1999, until this petition can be heard and equitable relief provided. Rule 25-22.032(10), Florida Administrative Code, states:

During the pendency of the complaint proceedings, a utility shall not discontinue service to a customer because of an unpaid disputed bill. However, the utility may require the customer to pay that part of a bill which is not in dispute. If the parties cannot agree as to the amount in dispute, the staff member will make a reasonable estimate to establish an interim disputed amount until the complaint is resolved. If the customer fails to pay the undisputed portion of the bill the utility may discontinue the customer's service pursuant to Commission rules.

The rule specifically allows the utility to continue assessing charges, but provides the customers with protection against disconnection of their service pending resolution of the complaint. In other words, the utility is entitled to continue issuing monthly bills to the customers. However, if a customer refuses to pay all or part of their water and wastewater bill due to this pending complaint, the utility may not disconnect that customer's water and/or wastewater service.

Staff discussed the requirements of this rule with the utility in the early stages of our investigation. The utility owner indicated to staff that the utility did not intend to disconnect any customers who refused to pay pending resolution of the complaint. Consequently, staff did not believe it was necessary to establish an interim disputed amount as allowed by the rule. Further, during our investigation of this complaint, staff has not

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

received any complaints relating to disconnection of service for non-payment of a water and wastewater bill. Therefore, staff believed at the outset of this docket, and continues to believe, that the protection provided by this rule is sufficient in this case, and no further action is needed regarding the utility's authority to bill customers during the pendency of this complaint. Therefore, staff recommends that the customers' request that the Commission issue an injunction against the utility to cease and desist from charging for water and wastewater service should be denied.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

ISSUE 3: Should the customers' request that the Commission revoke the utility's water and wastewater certificates be granted?

RECOMMENDATION: No. (GOLDEN, RIEGER, VACCARO)

STAFF ANALYSIS: As discussed in the case background, the customers have requested that the utility's certificates be revoked until a satisfactory resolution is reached between all concerned parties. Although the Commission has the power to initiate revocation proceedings, it is not Commission practice to revoke certificates pending a dispute resolution. Revocation of certificate proceedings are reserved for cases of severe violations of the Commission's rules. Fortunately, revocation of certificates is rarely necessary in the water and wastewater industry. Traditionally, revocation of a utility's certificates is only sought as a remedy after all other efforts to bring a utility into compliance with Commission rules have failed. It is only after the Commission determines that the problem cannot be corrected, or that the utility is unwilling to cooperate with the Commission to bring the utility into compliance, that the Commission will pursue revocation of a utility's certificates.

The following are several examples of cases in which the Commission has revoked a utility's certificates. The Commission revoked a utility's certificate because that utility was unable to provide service, and had no known prospects of resuming service in the future (See Order No. 15638, issued February 7, 1986, in Docket No. 860033-WU titled Revocation of Certificate No. 432-W for West Mobile Village Water System in Volusia County, Florida). Also, the Commission has revoked a certificate for unsatisfactory quality of service (See Order No. 20781, issued February 20, 1989, in Docket No. 871308-WU titled Initiation of show cause proceedings against, and investigation into possible overearnings by, Sebring Country Estates Water Company in Highlands County). Additionally, a certificate may be revoked for abandonment of the utility without notice to the Commission (See Order 20884, issued March 13, 1989, in Docket No. 881075-SU titled Service investigation of Lanier Utility Commission in Pasco County). Finally, a certificate may be revoked for a utility's refusal to comply with Commission orders (See Order No. PSC-94-0976-FOF-WS, issued August 11, 1994, in Docket No. 930944-WS titled Revocation by Florida Public Service

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

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.). However, in each instance, the utility was given ample opportunity to correct the deficiencies and bring the utility into compliance with Commission rules and regulations before the Commission initiated revocation of certificate proceedings.

The issues raised in this complaint, while important, do not rise to the level that would invoke certificate revocation proceedings. And perhaps more importantly, revocation of the certificates is not needed in order for the Commission to address the customers' concerns regarding this utility. Further, the utility has been very cooperative with staff during our investigation. The utility has been very prompt in responding to staff's data requests, and worked willingly with staff to resolve various concerns that have arisen during our investigation. Consequently, staff does not believe the circumstances surrounding this case warrant the initiation of certificate revocation proceedings. Therefore, staff recommends that the customers' request that the Commission revoke the utility's water and wastewater certificates should be denied.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

ISSUE 4: Did the utility improperly bill its customers?

RECOMMENDATION: No. (GOLDEN, RIEGER, VACCARO)

STAFF ANALYSIS: As discussed in the case background, the customers have expressed concern that some residents of the mobile home park are now being billed based upon metered consumption but some other residents continue to pay for water and wastewater service through their lot rent. Also, staff was informed that some customers were billed separately for water and wastewater service prior to installation of a water meter.

As discussed in the case background, Order No. PSC-96-0062-FOF-WS, issued on January 12, 1996, in Docket No. 940653-WS, provided that "the utility shall continue to charge the mobile home park tenants in the current manner until such time as the utility is able to install water meters in the mobile home park." However, the Order did not specify the procedure that should be used by the utility to install meters in the mobile home park and implement metered billing. The day-to-day details of how to accomplish the required meter installations were left to the discretion of the utility.

A representative of the utility informed staff that the utility cannot charge tenants separately for water and wastewater service until their leases are adjusted, and the leases can only be adjusted when they are up for renewal. Accordingly, the mobile home park has been informing the tenants of the change to their leases 90 days prior to lease renewal as required by Chapter 723, Florida Statutes. Because leases are up for renewal at different times throughout the year, it will take the mobile home park approximately one year to modify all of the tenants' leases to allow for separate billing of water and wastewater service. It is anticipated that all of the water meters for potable water service to the mobile homes and clubhouse will be installed by January of 2000. However, until that time, some customers will continue to pay for service through their lot rent, while others are billed separately based upon metered consumption. Staff has been informed that as of October, 1999, there are approximately ten customers remaining for which the full meter installation has not yet been

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

completed (i.e., the meter boxes are in place, but the meters have not been set to begin registering water usage).

The Order does not require that the utility install every meter prior to being allowed to bill any customers based upon metered consumption. Staff is aware that metering an existing community is not an immediate process. While staff is sympathetic to the customers' belief that it is unfair for some residents to be billed based upon metered usage prior to others, we believe it would be unreasonable to prohibit the utility from billing tenants whose leases have already been modified and for whom a water meter has been installed, simply because every tenant's lease has not yet been modified. Staff believes the approach taken by the utility is reasonable and in compliance with the directives provided in Order No. PSC-96-0062-FOF-WS.

The second concern to be addressed in this issue is the customers' concern that some customers were billed separately for water and wastewater service prior to installation of a water meter. Based upon information provided by the customers at staff's January 28, 1999 meeting with the customers, it initially appeared that the utility was improperly billing its customers. On February 25, 1999, the customers provided staff with a list of 47 customers who received a bill for water and wastewater service prior to installation of their water meters. Staff believes that much of the confusion surrounding this subject stems from a misunderstanding of the utility's billing process, and the billing methodologies that are accepted by this Commission. Therefore, staff believes it will be helpful at this point to explain the utility's billing cycle and meter installation process in more detail.

Rule 25-30.335, Florida Administrative Code, provides guidelines for customer billing. The Commission generally leaves the specific details of the billing process up to the discretion of the utility. Rule 25-30.335(4), Florida Administrative Code, states that "a utility may not consider a customer delinquent in paying his or her bill until the 21st day after the utility has mailed or presented the bill for payment." The utility initially did not allow the required 20 days for payment. However, upon being notified by staff of the rule requirement, the utility

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

corrected the due date reflected on the monthly bills. Although the Commission only requires that customers be given 20 days to pay their bills, the utility has elected to allow the customers a full month to pay each bill. Specifically, the utility reads the water meters around the 15th of each month. The exact meter reading date is included on each customer's bill. The bills are delivered to the customers around the 20th of each month, and are due by the 20th of the following month.

Also, the utility has elected to bill the base facility charge in advance and the gallonage portion of the bill in arrears. For example, if a customer received a bill on September 20, that bill was due on October 20. That bill represented that customer's base facility charges for the month of October, but reflected metered usage that occurred from mid-August to mid-September when the meter was last read. This methodology is used by other utilities regulated by this Commission, and is considered to be an acceptable billing methodology. Further, this methodology is appropriate in cases such as this in which metered service is initiated in an existing community, for which the utility does not collect customer deposits. Although this does not provide as much protection to the utility as a customer deposit, the advanced billing of the base facility charge serves a similar function by helping the utility to minimize losses from any customers who might leave the service area without paying their final bill.

Having explained the billing cycle, we now return to the issue of the customers who believe they were improperly billed. As discussed above, the utility does not begin charging customers separately for water and wastewater until the first month in which their new lease becomes effective. However, due to the utility's billing cycle, this means that a customer will actually receive their first bill in the month prior to the effective date of the new lease. That bill will represent the base facility charges for the month in which the new lease becomes effective, and will be due by the 20th of the month in which the new lease becomes effective. Although the customer will receive the bill prior to the effective date of the new lease, the bill in fact represents the month in which the new lease becomes effective.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

The first set of leases that were modified by the mobile home park to allow separate billing for water and wastewater service became effective January 1, 1999. Consequently, the customers whose new leases became effective January 1, 1999, received their first separate bill for water and wastewater service around December 20, 1998. That bill represented the customer's base facility charges for the month of January, 1999; the month in which their new lease became effective. In a number of cases, the utility was able to set the meter box and meter in place prior to the effective date of the new lease. However, because the new leases became effective January 1, 1999, the utility did not set the water meters to begin registering water usage until January 1, 1999 or later.

Provided that the billing period represented by that bill, and payment due date, are for the same month in which the meter is installed, staff believes that this method of implementing metered billing for a specific customer is correct. Further, staff believes that this approach is fair to both the customers and utility. The mobile home park is reducing the tenants' lot rent by \$14.31 per month upon implementation of metered billing. The lot rent reduction and implementation of metered billing occur in the same month. Consequently, by using this approach, the utility has created a clean breaking point between customers paying for water and wastewater service through their lot rent and converting to metered billing.

While staff believes that this approach is acceptable, staff is aware that the utility encountered some timing problems in implementing the metered billing for some customers in January and February. As stated above, the customers previously provided staff with a list of customers who received a separate bill for water and wastewater service prior to installation of their water meter. The meter installations were accomplished for some of those customers during the first few days in January, 1999, but some others were not completed until two or three weeks later.

In order to resolve the customers' concerns over the initial bills, the utility proposed refunding the customers whose meters were installed later than originally planned the difference between what they previously paid through their lot rent and what they were

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

billed separately for water and wastewater service. Specifically, the tenants lot rent previously included \$14.31, which represented charges for water and wastewater service. Upon implementation of metered billing, the mobile home park is reducing the tenants' lot rent by \$14.31 per month. The total water and wastewater base facility charges equal \$23.91. The difference between the charge previously included in the lot rent and the Commission approved base facility charges is \$9.78. For the customers whose meters were not installed early enough in the month to allow a meter reading to be taken that month, the utility credited their water and wastewater account for the full \$23.91 base facility charges assessed the first month of separate billing. Then the utility recovered the previously assessed \$14.31 from the lot rent, with the net effect being a refund of \$9.78. Staff believes this was a reasonable solution to the problem, and complies with the intent of the billing instructions in Order No. PSC-96-0062-FOF-WS.

Although the refund was not ordered by this Commission, staff has obtained documentation from the utility to verify that the refund was calculated correctly. As discussed above, on February 25, 1999, the customers provided staff with a list of 47 customers who received bills for water and wastewater service prior to installation of a water meter. On April 6, 1999, a representative of the utility provided a response to that list, which indicated the months in which the customers' meters were installed. On July 1, 1999, the utility provided staff with billing records to document which customers were given the refund or "credit rebate" as it was referenced on the utility's billing records. There were some discrepancies between the list of customers who were given the refund and those included on the two lists discussed above. Therefore, staff requested additional documentation from the utility.

Based upon that information, staff believes that the utility processed the refunds correctly. Essentially, if the customer's water meter was not installed early in the month, thereby allowing a reading of that meter that month, that customer was issued a refund. The utility has issued credit rebates to 17 customers, two of whom were not on the customers' original list. One customer moved prior to the utility's issuance of the refund; therefore, that customer's refund was credited against her past due balance.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

The remaining customers' meters were installed early enough in the month to allow reading of the meter that month, therefore, the utility will not be providing them a refund. Staff believes that no further action is necessary regarding the refunds.

In consideration of the above, staff recommends that the utility did not improperly bill its customers.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

ISSUE 5: What is the quality of service rendered to the customers of the utility?

RECOMMENDATION: The quality of service provided to the customers should be considered satisfactory. (RIEGER)

STAFF ANALYSIS: Customer concerns about quality of service are identified in a petition to the Commission that was filed with a January 19, 1999, letter from Ms. Linda J. McKenna. That petition was first brought to the Commission's attention during the January 19, 1999, "Open Mike" session of Internal Affairs. Ms. McKenna provided additional concerns in a January 20, 1999, letter to Mr. Charles Hill. The petition and letters identify the following concerns: the lack of professional management; lack of the utility manager's technical qualifications and availability when emergencies occur; inadequate water outage notification and "boil water" instructions when outages occur; insufficient water pressure; over chlorination; impurities in the water; defective operational equipment (electrical and mechanical) at the water treatment plant and wastewater lift stations; improperly installed wastewater collection lines which cause backups; and problems with locating water shut off valves. In addition to the above concerns the Commission has also received inquiries and complaints concerning recent service outages, meter installations, meter accuracy, high consumption, water line leaks, and wastewater backups.

On January 28, 1999, Commission staff met with the customers of the utility at the Shangri-La by the Lake Community Center in Lake County. At that meeting, there were discussions concerning Commission jurisdiction, customer billing, rate structure, and quality of service. Accompanied by customer representatives, staff performed a field review of the service area. The biggest concern at that time was water treatment plant reliability.

The most recent unplanned water service outage occurred on February 3, 1999, and lasted several hours. The utility reported that a severe thunderstorm damaged a circuit breaker. The system was restored after repairs were made. The Commission received several complaints about this outage; however, staff believes that the utility responded properly in this situation.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

Several months earlier, the hydropneumatic tank at the treatment plant failed. In order to restore service quickly, the utility temporarily installed a smaller substitute tank. This was necessary to allow time for a new tank to be ordered and installed. A suitably sized replacement tank was installed on February 24, 1999. Staff was on site at that time to monitor the improvements. The utility also replaced the high service pumps, rewired the chlorination unit to operate in unison with the high service pumping, and cleaned a small reservoir. Although water service was discontinued for six to eight hours, staff believes that repairs were made in an efficient matter. With the rebuilding of the water treatment plant, the customers should see an increase in service reliability in areas of pressure, chlorination, and water quality.

As to the customer concerns about notification of outages, notification was issued prior to the last planned shutdown, and an all clear signal was sent out after the required testing was made to assure that the water was safe to drink. The utility noticed the customers about the planned outage through door hangers and by word of mouth. However, the customers complained that the utility's means of noticing was inadequate in that it may not have been timely enough to allow some residents to prepare for the event. Staff has spoken with the utility about the importance of proper notifications for outages and boiling water, and there appears to be no need at this time to make any additional recommendation concerning this matter.

With the advent of meter installations, the Commission received several complaints concerning the nature of the installations, meter accuracy, and high consumption. The customers were concerned that the meters being installed were purchased used and were inaccurate. The customers requested that an audit be conducted by a licensed meter technician to certify meter accuracy. In conjunction with the February 24, 1999, field visit to inspect the water treatment plant repairs, staff investigated the concerns about the meters. Staff determined that the installation of meters, which is still in progress, is being performed properly. Staff also verified that the meters are new and that their accuracy is certified by the manufacturer. Staff contacted several customers about their usage, and in every case staff found no indication that the high usage was due to meter inaccuracy. As

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

these connections were not previously metered, it appears that a number of customers were unaware of the volume they were using for irrigation. Most of the yards in the service area have in-ground irrigation systems. If not properly adjusted and monitored, large volumes of water can be used. Complete water consumption figures will not be fully identified until all water usage sources are metered. The utility has indicated that the metering of all connections should be completed by January of 2000. Water lost through line breaks cannot be fully identified until after that time. The utility has already noted a reduction in plant flow output, indicating that irrigation conservation is starting to take hold. As a result of staff's review, additional work to verify meter accuracy is unnecessary and not recommended.

The customers have complained that the utility does not locate and use existing isolation valves. As a result, when the water is shutdown to meter one home, an entire block is affected. To limit the number of customers affected during meter installation, the utility has informed staff that when possible, it does use valves to isolate areas. Staff has encouraged the utility to continue to do what it can to minimize the number of customers affected.

The customers are also concerned that the utility lacks professional and technically qualified management. Staff has no such concerns. The water and wastewater treatment facilities are in compliance with the rules and regulations of the Department of Environmental Protection. The utility has contracted with a licenced operator to perform the necessary plant operational requirements. Utility personnel perform the necessary maintenance and are accessible during off hours to handle emergency needs. Staff has reviewed the utility's after business hours emergency contact procedures, and has found them to be satisfactory. Staff believes that the utility has access to the necessary technical expertise to properly operate and maintain the water and wastewater systems. The recent water plant repairs were efficiently organized in such a manner that customer inconvenience was kept to a minimum, the meter installation program is proceeding in an orderly fashion, and the utility has properly assisted staff during its investigation in this case. All of the above indicates to staff that the utility has both the technical and professional expertise to provide adequate water and wastewater service to its customers.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

Finally, the customers have indicated that there have been collection system problems such as sewage backups and slow flushing toilets. They suspect that when originally constructed, the lines were poorly installed, thereby resulting in inadequate line sloping, which could interfere with proper gravity disposal. Staff interviewed two customers who had problems in the past, the most recent of which occurred over a year ago. Staff found one of those problems to be an actual backup caused by a lift station malfunction that has since been repaired. Staff has not found any indication that lines were improperly installed.

Another concern that has been brought to staff's attention is a problem with slow flushing toilets. In this case, a customer complained that it takes three or four flushes to do the job. The customer has had his system checked out by Roto Rooter, and the utility has flushed and rodded its lines and found no obstruction. Recently, it was discovered that water flow through the toilets was obstructed. The problem has since been corrected to the customer's satisfaction.

Staff believes that the quality of service concerns of the customers have been adequately addressed. No serious problems have been discovered. In addition, both the water and wastewater systems are in compliance with the rules and regulations of DEP and the Lake County Department of Health, with no outstanding complaints pending. Given the above determinations, the quality of service provided to the customers should be considered satisfactory.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

ISSUE 6: Should the utility's rate base established by Order No. PSC-96-0062-FOF-WS be modified?

RECOMMENDATION: Yes. To correct known errors that were made in the original calculations, rate base should be established as \$52,454 for water and \$45,563 for wastewater as of June 30, 1994. (GOLDEN, RIEGER)

STAFF ANALYSIS: As discussed in the case background, the customers believe that the rates are unfair and inaccurate. Some of the customers informed staff that they believe the utility facilities are not worth as much as reflected in the Commission established rate base. They also believe that some of the components were purchased used rather than new.

As discussed in the case background, although Docket No. 940653-WS was a certificate case for a utility in existence, the Commission determined that it was necessary to establish rates in that docket. Additionally, in consideration of the time which was expended in obtaining and verifying the rate base information, the Commission determined that it was appropriate to establish rate base in that docket as well. Pursuant to Order No. PSC-96-0062-FOF-WS, issued January 12, 1996, in Docket No. 940653-WS, rate base was established at \$62,185 for the water system and \$84,367 for the wastewater system.

In that docket, the Commission's Division of Auditing and Financial Analysis conducted an audit of the utility's books and records. As is common in this type of situation, the mobile home park did not maintain separate records for the utility operation at that time. Also, the utility did not have complete historical cost records relating to the utility's rate base. It has been Commission practice to utilize original cost study estimates in cases in which supporting documentation is not available. During the certificate proceeding, the utility contracted with a professional engineering firm to conduct an original cost study. That study was reviewed by Commission engineering staff and determined to be reasonable.

Regarding the customers' concerns that some components of the utility's plant in service were purchased used, staff has confirmed

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

that the wastewater treatment plant was one year old when purchased. However, staff was informed that the plant was refurbished at the time of purchase. The prior owner was not able to provide evidence of the purchase price, but believed it to be nearly twice as much as the value stated in the original cost study. As discussed above, in cases in which supporting documentation cannot be provided to substantiate the value of plant, staff must rely on available engineering data to assess its value. Although the plant was not purchased new, staff believes that the value shown in the original cost study is still a reasonable estimate of its value, and that the depreciable life originally assigned to this asset is still appropriate. Therefore, staff believes that no adjustment to rate base is necessary regarding this item. Further, staff has not found any evidence that any of the other plant components were purchased used.

However, in the course of our review, staff discovered an error in the original cost study. The original cost study indicated that it was based upon as-built plans, and as such, all of the utility facilities indicated on the utility's plans were included in the original cost study. Staff has discovered, however, that those plans were not as-built plans. They were preliminary plans which included two additional phases of the development (Phase IIB and Phase IIIA) which to date have not been constructed. Consequently, the original cost study incorrectly included the water transmission and distribution system, and wastewater collection system for those two phases. The number of lots connected for service was correctly stated in the original cost study, but the value of the lines was significantly overstated. Staff has determined that the water transmission and distribution lines were overstated by \$15,046, and the wastewater collection system (including lines, manholes, and lift stations) was overstated by \$65,734.

Additionally, although this point was not specifically raised by the customers, staff believes that the original assessment regarding the utility's used and useful status may be incorrect. During the certificate proceeding, it was determined that the utility's facilities were nearly built-out and thus no used and useful adjustments were made. Staff now believes that the

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

utility's wastewater treatment plant may not be 100% used and useful.

Staff believes it would be appropriate to adjust the utility's rate base to correct known errors that were made in the original calculations. Staff believes that modification of the utility's approved rate base to remove the Phases IIB and IIIA lines is a simple correction that can be easily verified by all parties concerned. However, assessment of the wastewater treatment plant's used and useful percentage is not so definitive. This assessment is further complicated by the fact that the utility does not yet have a full year of metered consumption data. The utility will not have a full year of metered consumption data until the year 2001. Staff believes that the level of review needed to properly assess the utility's used and useful status is more appropriately handled in a rate case proceeding. Therefore, staff believes the only adjustment that should be made to rate base at this time is an adjustment to remove the overstated lines.

Because the customers have reviewed and are already familiar with the schedules shown in Order No. PSC-96-0062-FOF-WS, staff believes that it may be easier for the customers to follow staff's recommended adjustments if we simply incorporate them into the existing schedules that were used in that Order. The following is a discussion of staff's recommended adjustments to rate base.

Utility Plant in Service: Staff recommends that the appropriate balance for utility plant in service is \$79,128 for water and \$86,331 for wastewater. In addition to the plant in service adjustments previously made in Docket No. 940653-WS, staff recommends that the water account should be reduced by (\$15,046) and the wastewater account should be reduced by (\$65,734) to reflect the removal of the water transmission and distribution system and wastewater collection system for Phases IIB and IIIA that were incorrectly included in the original cost study. These adjustments are shown as A.6. on Schedule No. 1-B.

Accumulated Depreciation: Staff recommends that the appropriate balance for accumulated depreciation is (\$25,482) for water and (\$44,017) for wastewater. In addition to the accumulated depreciation adjustments previously made in Docket No. 940653-WS,

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

staff recommends that the water account should be adjusted by \$5,210 and the wastewater account should be adjusted by \$26,825 to reflect the removal of the accumulated depreciation associated with the water transmission and distribution system and wastewater collection system for Phases IIB and IIIA that were removed above. These adjustments are shown as E.2. on Schedule No. 1-B.

Working Capital Allowance: As will be discussed in Issue 7, the adjustments to rate base affect the utility's operating expenses. Additionally, the customers informed staff of a mathematical error in staff's calculations which resulted in the exclusion of the utility's billing expense from the final rate calculations. Following current Commission practice and consistent with Rule 25-30.443, Florida Administrative Code (Form PSC/WAS 18), the Commission used the one-eighth of operation and maintenance expense formula approach for calculating the working capital allowance in the utility's certificate case. Applying that formula, staff recommends a working capital allowance of \$2,965 for water and \$3,248 for wastewater. The slight increase over the previous working capital allowance of \$2,860 for water and \$3,143 for wastewater results from the correction of the spreadsheet formula that excluded the utility's billing expense.

Rate Base Summary: Staff's revised calculation of rate base is shown on Schedules Nos. 1 and 1-A for the water and wastewater systems, respectively. Adjustments to rate base are itemized on Schedule No. 1-B. Staff recommends that the rate base established by Order No. PSC-96-0062-FOF-WS should be modified. Based on the adjustments set forth herein, staff recommends that rate base for Shangri-La be established as \$52,454 for water and \$45,563 for wastewater as of June 30, 1994.

Further, the utility's capital structure has been reconciled with staff's recommended rate base. Staff's recommended changes to rate base do not change the utility's return on equity and overall rate of return established by Order No. PSC-96-0062-FOF-WS. However, the return on equity and overall rate of return are shown on Schedule No. 2 for reference purposes.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

ISSUE 7: Should the rates approved by Order No. PSC-96-0062-FOF-WS be modified?

RECOMMENDATION: Yes. The rates set forth in the staff analysis are appropriate for all metered customers of the utility. The utility should file revised tariff sheets reflecting the approved rates within thirty days of the effective date of the order. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice. The rates may not be implemented until proper notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days after the date of the notice. (GOLDEN, RIEGER, VACCARO)

STAFF ANALYSIS: As discussed in the case background and in Issue 6, the customers believe that the rates are unfair and inaccurate. The utility's currently approved rates became effective February 23, 1996, pursuant to Order No. PSC-96-0062-FOF-WS, issued January 12, 1996, in Docket No. 940653-WS. The customers believe that those rates are incorrect. In addition to the rate base concerns discussed in Issue 6, the customers believe the operation and maintenance expenses used by the Commission to establish rates are too high.

As discussed in Issue 4, when a tenant's lease is modified to allow separate billing for water and wastewater service, the lot rent is reduced by \$14.31 per month. The primary basis for the customers' belief that the Commission authorized expenses are too high is that the mobile home park only included a portion of those expenses in its determination of the lot rent reduction. Based upon staff's previously estimated average usage of 10,000 gallons per month, a customer's combined water and wastewater bill under the currently approved rates will be \$53.65. Due to the difference between the anticipated average water and wastewater bill and the lot rent reduction, some customers believe that the rent should either be reduced by a greater amount or that the rates approved by the Commission should be lowered to reflect the expenses identified by the mobile home park as the basis for the rent reduction.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

Also, staff has been informed that approximately eight customers have lifetime leases which they believe prohibit modification of the lease to allow the utility to charge separately for water and wastewater service. Some of the customers are concerned that they will be required to pay the additional costs of the customers with the lifetime leases if the utility is not able to charge them separately.

The customers' leases and rent reduction are subject to regulation by Chapter 723, Florida Statutes. Section 367.011(2), Florida Statutes, states that "the Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates." Additionally, Section 367.011(4), Florida Statutes, states that "this chapter shall supersede all other laws on the same subject, and subsequent inconsistent laws shall supersede this chapter only to the extent that they do so by express reference." Shangri-La is a utility within the jurisdiction of the Commission. As such, the Commission is statutorily obligated to set fair, just, and reasonable rates and charges for Shangri-La as required by Section 367.081, Florida Statutes. For Chapter 723, Florida Statutes, to have any effect on the Commission's determination of appropriate rates and charges, the Legislature would had to have enacted it after Chapter 367, Florida Statutes with "express reference" to supersede Chapter 367 Florida Statutes. No express reference exists in Chapter 723, Florida Statutes.

The issue of whether a contract takes precedence over the Commission's statutes has been considered by the Courts. In State of Florida Public Service Commission v. Lindhal, 613 So. 2d 63 (Fla. 2d DCA 1993), the Commission sought review of a trial court injunction which prohibited Shady Oaks Mobile-Modular Estates (Shady Oaks) from charging its customers newly approved rates for water and wastewater service. The injunction was based upon a prior restrictive covenant between the customers and Shady Oaks, as mobile home park, which provided for an annual \$300 payment for water, sewage, cable television and a recreational center. On appeal, the Court "condemn[ed] the trial court's intrusion into the PSC's statutorily delegated responsibility to fix a 'just, reasonable, and compensatory' rate for service availability." Lindhal at 64. The Court, citing Cohee v. Crestridge Utilities

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

Corp., 324 So. 2d 155 (Fla. 5th DCA 1975), stated that "the PSC's authority to raise or lower rates, even those established by a contract, is preemptive." Id.

In Cohee, customers brought a class action suit seeking damages from the utility for charging Commission approved rates in excess of rates provided in a prior contract with the customer's subdivision developer. In upholding the trial court's decision in favor of the utility, the Court stated that:

[d]espite the fact that Crestridge had a pre-existing contract concerning its rates, now that Crestridge is under the jurisdiction of the Public Service Commission, these rates may be ordered changed by that body. The Public Service Commission has authority to raise as well as lower rates established by a pre-existing contract when deemed necessary in the public interest. State v. Burr, 1920, 79 Fla. 290, 84 So. 61. Cohee at 157.

The Court also stated, after setting out the full text of Section 367.081(2), Florida Statutes, that ". . . it would appear that the Commission would not even be authorized to take into consideration the pre-existing contract in its determination of reasonable rates." Cohee at 158

The Commission has determined in similar situations that a pre-existing contract is not determinative in setting rates for a utility under its jurisdiction. The Commission has the authority to charge rates which it finds to be in the public interest, even if they are contrary to a contractual agreement. See Order No. PSC-94-0171-FOF-WS, issued February 10, 1994 in Docket No. 930133-WS (In re: application for water and wastewater Certificates in Lake County by Lake Yale Corporation d/b/a Lake Yale Utility Company). See also Order No. 21680, issued August 4, 1989 (In re: application of Continental Country Club, Inc., for an increase in water and wastewater rates in Sumter County).

In consideration of this precedent, and the Commission's jurisdiction in this matter, staff believes that it would be inappropriate for the Commission to consider the lot rent reduction or lifetime leases in its determination of the utility's rates.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

The utility's currently approved rates were calculated in accordance with Commission practice, and designed to be recovered from all of the utility's customers once metered. Adjusting those rates based upon the lot rent reduction or lifetime lease provisions would be contrary to previously established precedent and Commission practice regarding ratesetting. Therefore, staff believes the utility's rates should not be adjusted for consideration of the lot rent reduction or lease agreements. As provided by prior Commission Order No. PSC-96-0062-FOF-WS, all of the utility's customers should be billed based upon the utility's Commission approved rates.

While reviewing this complaint, staff considered the option of recommending that the Commission initiate a rate investigation to provide the level of detailed review that the customers are seeking. However, staff does not believe that a rate investigation at this time will produce a better result than was achieved by staff's efforts in the certificate case. As discussed previously, the utility is still in the process of metering its customers. It is anticipated that all of the customers' homes will not be metered until January of 2000. Additionally, as will be discussed in Issue 9, a number of customers have in-ground irrigation systems which may be metered during the year 2000. Therefore, the utility will not have a full year of consumption data, or a record of its operations with all customers metered, until the year 2001. Staff believes that initiating a rate investigation while the utility is still in a transitional phase will not provide any better indication of the utility's expected consumption and expenses under full metered service than was achieved in the certificate docket. Therefore, staff does not believe the Commission should initiate a full rate investigation at this time.

However, staff does believe that it would be appropriate to modify the utility's rates to correct known errors. As discussed in Issue 5, staff determined that the original cost study incorrectly included lines from Phases IIB and IIIA that were never constructed. Consequently, staff has recommended removing those lines and the associated accumulated depreciation from the utility's rate base. If the Commission approves staff's recommendation in Issue 5, staff believes that corresponding adjustments should be made to the utility's expenses as well. Staff

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

has recalculated the utility's depreciation expense to reflect removal of the Phases IIB and IIIA lines as discussed in Issue 5. Accordingly, staff recommends that the depreciation expense account should be reduced by (\$396) for water and (\$2,182) for wastewater. Similar to Issue 5, staff has simply added this adjustment to the existing schedules that were used in the certificate case. This adjustment is shown as B.2. on Schedule No. 3-B.

Additionally, the customers discovered an error in a mathematical formula used in the original Schedule No. 3-B. Specifically, the water and wastewater subtotals for adjustment A.6. did not include the utility's authorized billing expense (line A.6.b.). Therefore, the approved rates did not include the utility's billing expense although that expense was approved by the Commission. Consequently, the approved rates were lower than they should have been. Staff has corrected the formula to include the authorized billing expense.

The recommended adjustments to rate base and the utility's expenses also trigger a recalculation of the utility's regulatory assessment fees and operating income. Staff's modified Schedule of Operations appears on Schedules Nos. 3 and 3-A, for water and wastewater, respectively. Staff's adjustments appear on Schedule No. 3-B.

Although the utility's capital structure was adjusted to reconcile with the utility's rate base, these adjustments did not alter the return on common equity or overall rate of return approved by Order No. PSC-96-0062-FOF-WS. The adjusted capital structure is shown on Schedule No. 2 for informational purposes.

The rates were recalculated based upon the revised revenue requirements of \$36,950 for water and \$39,715 for wastewater. The utility's existing rates which were approved by Order No. PSC-96-0062-FOF-WS and staff's recommended rates are shown below, including a calculation of the typical residential bills at various usage levels:

DOCKET NO. 990080-WS
 DATE: NOVEMBER 4, 1999

WATER
Monthly Rates

Residential and General Service

Base Facility Charge:

Meter Size:

	<u>Existing</u> <u>Rates</u>	<u>Staff's</u> <u>Recommended</u> <u>Rates</u>
5/8 x 3/4"	\$ 12.86	\$ 12.87
3/4"	19.29	19.31
1"	32.15	32.19
1-1/2"	64.30	64.37
2"	102.88	103.00
3"	205.75	205.99
4"	321.49	321.87
6"	642.98	643.73

Gallonage Charge		
per 1,000 gallons:	\$ 1.27	\$ 1.22

Typical Residential Water Bill

5/8" x 3/4" meter:

3,000 gallons	\$ 16.67	\$ 16.53
5,000 gallons	\$ 19.21	\$ 18.97
6,000 gallons	\$ 20.48	\$ 20.19
10,000 gallons	\$ 25.56	\$ 25.07

WASTEWATER
Monthly Rates

	<u>Existing</u> <u>Rates</u>	<u>Staff's</u> <u>Recommended</u> <u>Rates</u>
<u>Residential</u>		
<u>Base Facility Charge:</u>		
<u>All Meter Sizes:</u>	\$ 11.05	\$ 9.91

Gallonage Charge per 1,000 gallons		
(maximum 6,000 gallons):	\$ 2.84	\$ 2.43

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

Typical Residential Wastewater Bill

5/8" x 3/4" meter:

3,000 gallons	\$ 19.57	\$ 17.20
5,000 gallons	\$ 25.25	\$ 22.06
6,000 gallons	\$ 28.09	\$ 24.49
* 10,000 gallons	\$ 28.09	\$ 24.49

* Residential wastewater gallonage cap is 6,000 gallons per month

General Service

Base Facility Charge:

Meter Sizes:

5/8 x 3/4"	\$ 11.05	\$ 9.91
3/4"	16.58	14.87
1"	27.63	24.79
1-1/2"	55.27	49.57
2"	88.43	79.32
3"	176.86	158.63
4"	276.34	247.86
6"	552.67	495.73

Gallonage Charge		
per 1,000 gallons	\$ 3.41	\$ 2.92

In summary, staff recommends that the rates approved by Order No. PSC-96-0062-FOF-WS should be modified, and that the rates set forth in the staff analysis are appropriate for all metered customers of the utility. The utility should file revised tariff sheets reflecting the approved rates within thirty days of the effective date of the order. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice. The rates may not be implemented until notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days after the date of the notice.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

ISSUE 8: Should a vacation rate be established for this utility?

RECOMMENDATION: No. (GOLDEN, RIEGER)

STAFF ANALYSIS: In the formal complaint, the customers requested that the Commission establish fair and equitable relief to seasonal customers who shut-off water and wastewater service when not in residence and to discontinue charges for such seasonal users. Rule 25-30.335(9), Florida Administrative Code, states that "if a utility utilizes the base facility and usage charge rate structure and does not have a Commission authorized vacation rate, the utility shall bill the customer the base facility charge regardless of whether there is any usage."

Although the Commission has approved vacation rates for some utilities in the past, the Commission has gradually moved away from this practice. Under the base facility charge rate structure, the base facility charge is designed to recover the fixed costs of the utility that occur regardless of the level of usage, such as salaries, office rent, and insurance. Consequently, those costs do not change even though a customer may be out of residence. Therefore, the Commission generally requires utilities to assess the base facility charges for water and wastewater service even when seasonal customers are not in residence.

The rates approved for this utility by Order No. PSC-96-0062-FOF-WS were calculated using the base facility charge rate structure, and as such, the base facility charges were designed to recover the fixed costs of the utility. Although staff is recommending an adjustment to those rates in Issue 7, staff's recommended rates still utilize the base facility charge rate structure. In keeping with current Commission practice, staff does not believe that a separate vacation rate should be established for this utility. Therefore, staff recommends that a vacation rate should not be established for this utility.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

ISSUE 9: Should a new class of service for residential irrigation service be established for this utility?

RECOMMENDATION: Yes, a new class of service for residential irrigation service for the mobile home park should be established. The appropriate rate should be the utility's water gallonage charge. The utility should file a tariff sheet reflecting the approved rate within thirty days of the effective date of the order. The approved rate should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice. The rate should not be implemented until notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days after the date of the notice. The utility should be allowed to notice the new class of service in conjunction with the notice of rates required in Issue 7. Additionally, the utility should be authorized to charge its approved meter installation fee to customers who request installation of a separate irrigation meter.
(GOLDEN, RIEGER)

STAFF ANALYSIS: As discussed in Issue 5, staff has been informed that the majority of Shangri-La's customers have in-ground irrigation systems. Specifically, 107 of the utility's 134 customers have an in-ground irrigation system. As of July 1999, 92 customers obtain their irrigation water from the utility, 12 obtain irrigation water from canals located behind their homes, two had disconnected their irrigation systems, and one obtains irrigation from a private well. During installation of the water meters in the mobile home park, it was discovered that of the 92 customers who obtain their irrigation water from the utility, 68 customers' irrigation systems are connected directly to the utility's water distribution main.

This presents two problems - a health hazard and a lack of metering for water usage. An irrigation system connected directly to a public water system without an appropriate backflow prevention device is considered a health hazard and is prohibited by the Florida Department of Environmental Protection (DEP). The utility has an obligation pursuant to DEP rules to remove the hazard once identified.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

Further, Rule 25-30.255(1), Florida Administrative Code, states that "except as provided in subsection (2) of this rule, each utility shall measure water sold upon the basis of metered volume sales unless the Commission approved flat rate arrangements for that utility." The Commission has not approved flat rates for this utility, nor do any of the exceptions in subsection (2) apply. Therefore, the utility is required to meter all water sold. At present, of the 92 customers who obtain their irrigation water from the utility, 24 are connected properly and are paying for all water used, including water used for irrigation purposes. However, the remaining 68 customers are not properly connected, and thus, their water consumption for irrigation purposes is not being metered or billed. In addition to being a violation of DEP rules and Rule 25-30.255(1), Florida Administrative Code, this situation is unequitable to the 24 customers who are connected properly and are being billed for all water usage.

Rule 25-30.320(2)(h), Florida Administrative Code, states that the utility may discontinue service "without notice in the event of a condition known to the utility to be hazardous." Accordingly, the utility is authorized to disconnect the improperly connected irrigation systems from its water distribution main without notifying the customers. However, the utility believed, and staff agreed, that it would be more appropriate to give the customers an opportunity to choose which method they preferred to use to correct the hazard.

Consequently, on July 8, 1999, the utility issued a notice to all of the customers with improperly connected irrigation systems. The customers were given three options to correct the cross-connection hazard. First, a customer may repipe his or her irrigation system to connect to the potable water line behind their existing water meter. The water meters installed by the utility contain a backflow prevention device. Therefore, disconnecting the irrigation system from the utility's main and reconnecting it behind the existing meter solves both the cross-connection hazard and lack of metering concern. Second, the customers may request that the utility install a separate water meter on the irrigation line. The utility's currently approved meter installation fee is \$125. The customers were informed that they would be required to pay the approved meter installation fee prior to installation of

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

the separate water meter. Third, the customers may disconnect their irrigation system from the utility's main. The customers were also notified that if they failed to notify the utility of their desired course of action within 40 days, the utility would disconnect their irrigation system from its water distribution main.

The notice was met with great opposition from the customers, especially those who were out of residence at the time. Some of the customers requested that the utility postpone any action regarding this situation until they returned to Florida. Staff has been informed by both the customers and utility that approximately half of the customers are seasonal residents. However, a number of those customers leave their irrigation systems running while they are out of the state. Therefore, the risk of contamination of the water supply exists even though some customers are out of residence. Because this situation presents a health hazard and is in violation of DEP and Commission rules, staff believes the utility should correct the situation as soon as possible. However, in an effort to accommodate the customers' requests, the utility has decided to postpone final resolution of this situation until the majority of the customers return to the state.

Staff has been informed by the utility that approximately 20 customers still have not responded to the utility's notice. The utility plans to re-notice those customers early next year to give them another opportunity to decide how they choose to correct the cross-connection hazard. In addition to Rule 25-30.320(2)(h), Florida Administrative Code, cited above, Rule 25-30.320(2)(b), Florida Administrative Code, authorizes the utility to disconnect service "for failure or refusal of the customer to correct any deficiencies or defects in his piping or equipment which are reported to him by the utility." Accordingly, the utility is authorized to disconnect customers who refuse to correct the cross-connection hazard. The utility has informed staff that in the event disconnection of a customer's irrigation system becomes necessary, the utility will notify staff prior to the disconnection.

The utility has proposed charging its currently approved meter installation fee of \$125 to the customers who request to have a

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

separate irrigation meter installed on their irrigation system. In the utility's certificate case, the Commission ordered the utility to install the water meters in the mobile home park. However, the Commission included the cost of those meters in the utility's rate base, thereby allowing the utility to earn a return on its investment in those meters. Additionally, the Commission approved a meter installation fee to be applied to all new customers. Because the utility and staff were not aware that additional meters would be needed for the separately connected irrigation systems, the cost of those meters was not previously included in rate base.

The customers believe the utility should be required to pay for the separate irrigation meters as well. Staff considered recommending that the utility be required to install the additional meters. However, staff believes that this would result in an unequitable situation. The Commission is charged with the responsibility to set rates and charges which are just, reasonable, compensatory, and not unfairly discriminatory. Inclusion of the cost of the initial water meters in the utility's rates meets this standard, because every customer will receive a meter and pay their fair share of that cost. However, in the case of the irrigation meters, not every customer will receive an irrigation meter. Therefore, it is not fair for every customer to bear that cost through the monthly service rates.

Also, the customers who obtain a separate irrigation meter and use less than 6,000 gallons of water inside their homes, will receive the benefit of a lower wastewater bill, because they will not be assessed wastewater charges on the portion of their water usage which is strictly for irrigation purposes. The customers who do not obtain a separate irrigation meter will not receive that benefit. This factor further supports requiring the affected customers to pay for their irrigation meter rather than requiring all customers to share that cost through the rates.

Additionally, it has been argued that the customers should not be required to pay for the separate irrigation meters because they rent, rather than own, the lots in the mobile home park. However, staff has been informed by the utility, and this has been confirmed by several customers, that the customers installed their own irrigation systems. The developer of the mobile home park did not

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

purchase or install the irrigation systems. Inasmuch as the customers made the decision to install in-ground irrigation systems, staff believes that it is the responsibility of the customers to correct the cross-connection hazard. Therefore, staff believes the utility should be authorized to charge its approved meter installation fee to customers who request installation of a separate irrigation meter.

Additionally, staff believes that a new class of service should be authorized for the provision of residential irrigation service within the mobile home park. In most cases, the Commission authorizes utilities to assess both the water base facility charge and water gallonage charge for separate irrigation meters, as well as any applicable service availability charges. Depending on the size of the irrigation meter, the customer may place one or more additional equivalent residential connections (ERC) of demand on the utility's system through the use of a separate irrigation meter. This results in the utility incurring the same expenses to provide irrigation service as it does to provide service to the customer's home.

However, in this case, the separate irrigation meters are needed to correct a cross-connection hazard and properly meter all water consumption, rather than to obtain additional water capacity. Although staff believes the customers' usage levels are high for a retirement community, they do not appear to exceed one ERC per customer. Further, staff believes the customers' usage levels will decrease upon full implementation of metered rates. Therefore, staff does not believe that installation of separate irrigation meters in this case will result in customers placing additional demand on the utility's water system. Therefore, staff believes it is appropriate for the utility to only assess the water gallonage charge on water usage registered by the separate irrigation meters. Staff has discussed this alternative with the utility, and the utility has agreed to this rate. However, staff would like to caution both the utility and customers that the Commission's determination in this case does not preclude the Commission from reevaluating the residential irrigation service in a future rate proceeding and establishing different rates.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

Therefore, staff recommends that a new class of service for residential irrigation service for the mobile home park should be established for this utility. Further, staff recommends that the appropriate rate for this class of service is the utility's water gallonage charge. As discussed in Issue 6, staff is recommending that the utility's existing water gallonage charge be changed to \$1.22 per 1,000 gallons. The utility should file a tariff sheet reflecting the approved rate within thirty days of the effective date of the order. The approved rate should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice. The rate should not be implemented until notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days after the date of the notice. The utility should be allowed to notice the new class of service in conjunction with the notice of rates required in Issue 7. Additionally, staff recommends that the utility should be authorized to charge its approved meter installation fee to customers who request installation of a separate irrigation meter.

DOCKET NO. 990080-WS
DATE: NOVEMBER 4, 1999

ISSUE 10: Should this docket be closed?

RECOMMENDATION: Yes, because no further action is necessary, this docket should be closed if no person, whose interests are substantially affected by the proposed actions, files a protest within the 21 day protest period. (VACCARO)

STAFF ANALYSIS: Because no further action is necessary, upon expiration of the protest period, this docket should be closed if no person, whose interests are substantially affected by the proposed actions, files a protest within the 21 day protest period.

SHANGRI-LA BY THE LAKE UTILITIES, INC.
AS OF JUNE 30, 1994

SCHEDULE NO. 1
DOCKET NO. 990080-WS

SCHEDULE OF WATER RATE BASE

	<u>BALANCE PER UTILITY</u>	<u>STAFF ADJUST. TO UTIL. BAL.</u>	<u>BALANCE PER STAFF</u>
UTILITY PLANT IN SERVICE	\$0	\$79,128 A	\$79,128
LAND/NON-DEPRECIABLE ASSETS	0	0 B	0
PLANT HELD FOR FUTURE USE	0	0	0
NON-USED AND USEFUL PLANT	0	0 C	0
CWIP	0	0	0
CIAC	0	(4,520) D	(4,520)
ACCUMULATED DEPRECIATION	0	(25,482) E	(25,482)
AMORTIZATION OF ACQUISITION ADJUSTMENT	0	0	0
AMORTIZATION OF CIAC	0	363 F	363
WORKING CAPITAL ALLOWANCE	<u>0</u>	<u>2,965</u> G	<u>2,965</u>
WATER RATE BASE	\$0	\$52,454	\$52,454

SHANGRI-LA BY THE LAKE UTILITIES, INC.
AS OF JUNE 30, 1994

SCHEDULE NO. 1-A
DOCKET NO. 990080-WS

SCHEDULE OF WASTEWATER RATE BASE

	<u>BALANCE PER UTILITY</u>	<u>STAFF ADJUST. TO UTIL. BAL.</u>		<u>BALANCE PER STAFF</u>
UTILITY PLANT IN SERVICE	\$0	\$86,331	A	\$86,331
LAND/NON-DEPRECIABLE ASSETS	0	0	B	0
PLANT HELD FOR FUTURE USE	0	0		0
NON-USED AND USEFUL PLANT (NET)	0	0	C	0
CWIP	0	0		0
CIAC	0	0	D	0
ACCUMULATED DEPRECIATION	0	(44,017)	E	(44,017)
AMORTIZATION OF ACQUISITION ADJUSTMENT	0	0		0
AMORTIZATION OF CIAC	0	0	F	0
WORKING CAPITAL ALLOWANCE	<u>0</u>	<u>3,248</u>	G	<u>3,248</u>
WASTEWATER RATE BASE	\$0	\$45,563		\$45,563

ADJUSTMENTS TO RATE BASE

A. <u>UTILITY PLANT IN SERVICE</u>	<u>WATER</u>	<u>WASTEWATER</u>
1. To reflect original cost study	\$ 68,500	\$ 145,000
2. To reflect 1991 plant additions necessary to provide water service to five single family homes	4,845	0
3. To adjust for 1993 and 1994 plant additions per staff audit report	3,204	6,315
4. Proforma adjustment to reflect meters and meter installations for 135 existing mobile home lots	16,875	0
5. To reflect organization costs	750	750
6. To remove lines that were incorrectly included in the original cost study	(15,046)	(65,734)
	<u>\$ 79,128</u>	<u>\$ 86,331</u>
B. <u>LAND</u>		
1.	\$ 0	\$ 0
2.	0	0
	<u>\$ 0</u>	<u>\$ 0</u>
C. <u>NON-USED AND USEFUL PLANT</u>		
1.	<u>\$ 0</u>	<u>\$ 0</u>
D. <u>CIAC</u>		
1. To impute CIAC for water service provided to five single family homes	\$ (4,520)	\$ 0
2.	0	0
3.	0	0
4.	0	0
	<u>\$ (4,520)</u>	<u>\$ 0</u>
E. <u>ACCUMULATED DEPRECIATION</u>		
1. To reflect accumulated depreciation on plant in service	\$ (30,692)	\$ (70,842)
2. To remove accumulated depreciation for lines that were incorrectly included in the original cost study	5,210	26,825
3.	0	0
4.	0	0
5.	0	0
6.	0	0
	<u>\$ (25,482)</u>	<u>\$ (44,017)</u>
F. <u>AMORTIZATION OF CIAC</u>		
1. To reflect accumulated amortization of CIAC	\$ 363	\$ 0
2.	0	0
	<u>\$ 363</u>	<u>\$ 0</u>
G. <u>WORKING CAPITAL ALLOWANCE</u>		
1. To reflect 1/8 of test year O & M expenses	<u>\$ 2,965</u>	<u>\$ 3,248</u>

SHANGRI-LA BY THE LAKE UTILITIES, INC.
AS OF JUNE 30, 1994

SCHEDULE NO. 2
DOCKET NO. 990080-WS

SCHEDULE OF CAPITAL STRUCTURE

	<u>BALANCE PER UTILITY</u>	<u>STAFF ADJUST. TO UTIL. BAL.</u>	<u>BALANCE PER STAFF</u>	<u>PERCENT OF TOTAL</u>	<u>COST</u>	<u>WEIGHTED COST</u>
LONG-TERM DEBT	\$ 0	81,214	81,214	82.86%	10.59%	8.78%
EQUITY	0	16,803	16,803	17.14%	11.88%	2.04%
TOTAL	\$ 0	\$ 98,017	\$ 98,017	100.00%		10.82%
RATE BASE			98,017			

<u>RANGE OF REASONABLENESS</u>	<u>LOW</u>	<u>HIGH</u>
RETURN ON EQUITY	10.88%	12.88%
OVERALL RATE OF RETURN	10.64%	10.99%

SHANGRI-LA BY THE LAKE UTILITIES, INC.
AS OF JUNE 30, 1994

SCHEDULE NO. 3
DOCKET NO. 990080-WS

SCHEDULE OF WATER OPERATING INCOME

	TEST YEAR PER UTILITY	STAFF ADJ. TO UTILITY	STAFF ADJUSTED TEST YEAR	ADJUST. FOR INCREASE	TOTAL PER STAFF
OPERATING REVENUES	\$ 0	\$ 0	\$ 0	\$ 36,950 E	\$ 36,950
OPERATING EXPENSES					
OPERATION AND MAINTENANCE	0	23,720 A	23,720	0	23,720
DEPRECIATION	0	3,328 B	3,328	0	3,328
AMORTIZATION	0	121 C	121	0	121
TAXES OTHER THAN INCOME	0	2,445 D	2,445	1,663 F	4,108
INCOME TAXES	0	0	0	0	0
TOTAL OPERATING EXPENSES	\$ 0	\$ 29,614	\$ 29,614	\$ 1,663	\$ 31,277
OPERATING INCOME / (LOSS)	\$ 0		\$ (29,614)		\$ 5,673
WATER RATE BASE	\$ 0		\$ 52,454		\$ 52,454
RATE OF RETURN			-56.46%		10.82%

SHANGRI-LA BY THE LAKE UTILITIES, INC.
AS OF JUNE 30, 1994

SCHEDULE NO. 3-A
DOCKET NO. 990080-WS

SCHEDULE OF WASTEWATER OPERATING INCOME

	TEST YEAR PER UTILITY	STAFF ADJ. TO UTILITY	STAFF ADJUSTED TEST YEAR	ADJUST. FOR INCREASE	TOTAL PER STAFF
OPERATING REVENUES	\$ 0	\$ 0	\$ 0	\$ 39,715 E	\$ 39,715
OPERATING EXPENSES					
OPERATION AND MAINTENANCE	0	25,987 A	25,987	0	25,987
DEPRECIATION	0	4,265 B	4,265	0	4,265
AMORTIZATION	0	0 C	0	0	0
TAXES OTHER THAN INCOME	0	2,748 D	2,748	1,787 F	4,535
INCOME TAXES	0	0	0	0	0
TOTAL OPERATING EXPENSES	\$ 0	\$ 33,000	\$ 33,000	\$ 1,787	\$ 34,788
OPERATING INCOME / (LOSS)	\$ 0		\$ (33,000)		\$ 4,928
WASTEWATER RATE BASE	\$ 0		\$ 45,563		\$ 45,563
RATE OF RETURN	N/A		-72.43%		10.82%

ADJUSTMENTS TO OPERATING INCOME

REVENUE	WATER	WASTEWATER
a.	0	0
b.	0	0
	\$ 0	\$ 0
A. OPERATION AND MAINTENANCE EXPENSES		
<hr/>		
1. Salaries and Wages (Employees)		
a. To adjust per audit calculation	\$ 2,497	\$ 2,497
2. Salaries and Wages (Officers)		
a. To reflect officer's salary	\$ 2,165	\$ 2,165
3. Sludge Removal Expense		
a. To adjust per audit calculation	0	1,350
b.	0	0
	\$ 0	\$ 1,350
4. Purchased Power		
a. To adjust per audit calculation	3,002	4,129
	0	0
	\$ 3,002	\$ 4,129
5. Chemicals		
a. To adjust per audit calculation	0	410
b. To reflect appropriate chemical expense for water plant	495	0
	\$ 495	\$ 410
6. Materials and Supplies		
a. To adjust per audit calculation	495	997
b. To reflect utility billing expense	840	840
	\$ 1,335	\$ 1,837
7. Contractual Services		
a. To adjust engineering contractual services per audit calculation	3,150	3,763
b. To adjust legal contractual services per audit calculation	683	683
c. To reflect engineering contractual services for required DEP testing	2,500	1,000
d. To reflect accounting contractual services	2,100	2,100
e.	0	0
f.	0	0
g.	0	0
h.	0	0
i.	0	0
j.	0	0
	\$ 8,433	\$ 7,546
8. Rents		
a. To reflect lease for utility land	3,750	3,750
b. To reflect rent for office space	600	600
c.	0	0
	\$ 4,350	\$ 4,350
9. Transportation Expenses		
a. To reflect transportation expense for use of truck owned by parent company	435	435
b.	0	0
	\$ 435	\$ 435
10. Insurance Expense		
a. To reflect insurance expense on utility facilities	289	638
b.	0	0
c.	0	0
d.	0	0
e.	0	0
	\$ 289	\$ 638

(Continued on Sheet 2)

ADJUSTMENTS TO OPERATING INCOME

11. Regulatory Commission Expense		
a.	\$ <u>0</u>	\$ <u>0</u>
12. Miscellaneous Expenses		
a. To adjust per audit calculation	89	0
b. To allocate a portion of the office electric expense to the utility	72	72
c. To allocate a portion of the business phone service expense to the utility	353	353
d. To allocate a portion of the cellular phone service to the utility	205	205
e.	0	0
f.	0	0
g.	0	0
h.	0	0
i.	0	0
j.	0	0
k.	0	0
l.	0	0
m.	0	0
n.	0	0
	\$ <u>719</u>	\$ <u>630</u>
13. Unclassified disbursements		
a.	0	0
b.	0	0
c.	0	0
d.	0	0
	\$ <u>0</u>	\$ <u>0</u>
TOTAL O & M ADJUSTMENTS	\$ <u>23,720</u>	\$ <u>25,987</u>
B. DEPRECIATION EXPENSE		
1. To reflect annual depreciation expense	3,724	6,447
2. To remove depreciation expense for lines that were incorrectly included in the original cost study	(396)	(2,182)
3.	0	0
4.	0	0
5.	0	0
	\$ <u>3,328</u>	\$ <u>4,265</u>
C. AMORTIZATION EXPENSE		
1. To reflect annual amortization expense	\$ <u>121</u>	\$ <u>0</u>
D. TAXES OTHER THAN INCOME		
1. To adjust property taxes per audit calculation	1,667	1,970
2. To adjust payroll taxes per audit calculation	420	420
3. To reflect payroll taxes associated with officer's salary	358	358
4.	0	0
5.	0	0
6.	0	0
7.	0	0
	\$ <u>2,445</u>	\$ <u>2,748</u>
E. OPERATING REVENUES		
1. To reflect staff's recommended increase in revenue	\$ <u>36,950</u>	\$ <u>39,715</u>
F. TAXES OTHER THAN INCOME		
1. To reflect additional regulatory assessment fee associated with recommended revenue requirement	\$ <u>1,663</u>	\$ <u>1,787</u>