

FLORIDA PUBLIC SERVICE COMMISSION

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

M E M O R A N D U M

October 3, 1991

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF WATER AND WASTEWATER [LANDIS] *MD*
DIVISION OF RESEARCH AND REGULATORY REVIEW [VANDIVER] *CB*
DIVISION OF LEGAL SERVICES [FEIL] *MD CB*

RE : UTILITY: SHADY OAKS MOBILE-MODULAR ESTATES, INC.

DOCKET NO. 900025-WS

COUNTY: PASCO

CASE: STAFF-ASSISTED RATE CASE

AGENDA: OCTOBER 15, 1991 - CONTROVERSIAL - FINAL AGENCY ACTION
EXCEPT ISSUE 5 - PARTIES MAY PARTICIPATE

PANEL: FULL COMMISSION

CRITICAL DATES: NONE

DOCUMENT NUMBER-DATE

09844 OCT -3 1991

FPSC-RECORDS/REPORTING

CASE BACKGROUND

Shady Oaks Mobile-Modular Estates, Inc. (Shady Oaks or utility) is a Class C water and wastewater utility located in Pasco County. It is a 242 lot mobile-modular home park developed in 1971. Its service area is approximately 1-1/2 miles south of the City of Zephyrhills.

On July 11, 1972, the provisions of Chapter 367, Florida Statutes, became effective for Pasco County, Florida. Those utilities not qualifying for exemption from regulation became subject to the Commission's jurisdiction. Order No. 14540, issued July 8, 1985, found Shady Oaks subject to the jurisdiction of this Commission. The order also took note of a 1982 decision of the Circuit Court of the Sixth Judicial Circuit upholding restrictive covenants included in the deeds of existing lot holders receiving service from Shady Oaks. A covenant in each deed requires the developer, Shady Oaks, to provide certain services at a fixed annual cost. These services include water and wastewater as well as other provisions. Based upon the data presented and the fact that the utility had not requested new rates, the Commission stated that the utility should continue billing its customers based upon the existing deed restrictions.

On January 10, 1990, Shady Oaks applied for this staff-assisted rate case. On February 8, 1991, the Commission issued PAA Order No. 24084. This order approved a rate increase and required the utility to: file a request for acknowledgement of a restructure and a name change, bring the quality of service to a satisfactory level, provide a detailed record of maintenance expenditures for a six month period, install meters and escrow a certain portion of the monthly rates. On March 1, 1991, several utility customers filed a document entitled "Petition of Objection or Protest." The petition objected to the location of the proposed percolation pond. By Order No. 24409, dated April 22, 1991, the Commission dismissed the protest.

On March 13, 1991, the utility's owners, Mr. and Mrs. Sims filed bankruptcy under Chapter 13 with the United States Bankruptcy Court for the Middle District of Florida - Tampa Division.

On June 24, 1991, in response to a suit filed by the homeowners, Judge Lynn Tepper with the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida granted an emergency temporary injunction enjoining and restraining the utility from charging or attempting to collect the new utility rates. At the Internal Affairs on July 2, 1991, the Commission authorized the staff to intervene and file a Motion to Vacate Injunction.

DOCKET NO. 900025-WS
OCTOBER 3, 1991

On July 5, 1991, Judge Wayne L. Cobb with the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida issued an Order to Show Cause why Shady Oaks should not be punished for contempt of Court for willfully and deliberately violating the permanent injunction granted by the Court. This order also enjoined the utility from collecting the utility rates established by this Commission and ordered that the \$25.00 per month service maintenance fee be tendered to the Clerk of the Circuit Court. In August, both injunctions were lifted and the utility was able to begin collecting revenues.

On July 8, 1991, in a case titled State of Florida Department of Environmental Regulation v. Shady Oaks Mobile-Modular Estates, Inc., Judge Tepper signed a stipulation reached between the parties, where the utility agreed to remove its sewage treatment plant and divert all flows to Pasco County's sewage collection system within six months.

Due to the utility's dire financial condition, it was unable to pay its electric bills for the months of May and June. Therefore, on July 25, 1991, the Withlacoochee River Electric Cooperative cut power to the utility. (The PSC, Pasco County, DER, HRS and county health department were all notified.) On July 26, 1991, Judge Tepper signed an order stating that whatever money the homeowners association might put up for payment of the electric bill would be credited to the residents' water and wastewater bills. (The utility expressed no opposition to this course of action.) Later that day, the homeowners paid the electric bill and the electric power was restored.

DOCKET NO. 900025-WS
OCTOBER 3, 1991

ISSUE 1: Has the utility complied with Commission Order No. 24084?

RECOMMENDATION: No. The utility should submit the corrected title to the land and evidence that all utility property was transferred within sixty days from the Commission order. In addition, the utility should immediately place the appropriate money in the escrow account to bring the balance up to the proper amount and begin placing a portion of all collections in escrow. Further, the utility should complete the installation of the water meters within five months from the Commission order. (VANDIVER)

STAFF ANALYSIS: Commission Order No. 24084 required Shady Oaks to complete the following activities: 1) file within sixty days a request for acknowledgement of a name change and restructure, 2) place in an escrow account \$333.34 per month in order to accumulate a \$2,000 fine for unsatisfactory quality of service plus the amount of the increase related to the proforma plant, and 3) install water meters for all customers. The utility has not satisfactorily completed these three items.

Name Change

In August 1990, Mr. Sims transferred the title of the utility land from Shady Oaks Mobile-Modular Estates, Inc. to Richard D. and Caroline Sue Sims. This transfer was not approved by the Commission. Therefore, in Order No. 24084 the Commission ordered Shady Oaks to file within sixty days a request for acknowledgement of a name change and restructure.

On March 17, 1991, the Commission received a letter from Mr. Sims requesting that the Commission recognize the change in name of Shady Oaks Mobile-Modular Estates, Inc. to S & D Utility. On April 1, 1991, staff responded that certain information was needed before the name change could be recognized. This information included evidence that the utility and its assets were properly transferred and the new utility name had been properly registered as a fictitious name. Specifically, staff wanted the title to reflect that the land was owned by Mr. and Mrs. Sims d/b/a the utility. Mr. Sims provided the evidence that the fictitious name had been registered. However, because Mr. and Mrs. Sims were in the midst of a bankruptcy filing, the title could not be corrected to reflect the name of the utility. Mr. Sims has now entered into a payment plan under the bankruptcy proceeding and believes that he is able to correct the name on the title. Therefore, staff recommends that within sixty days of the Commission order, Mr. Sims should submit evidence that the title to all the utility land and personal property has been corrected.

DOCKET NO. 900025-WS
OCTOBER 3, 1991

Escrow

The utility's rate increase became effective on March 2, 1991. On March 26, 1991, the utility began placing a portion of its increased rates into an escrow account. The utility placed the following amounts into escrow each month:

March	\$284.18
April	350.88
May	256.38
June	243.19
July	61.18
August	<u>0.00</u>
	\$1,195.81

Based on the above, it is obvious that the utility did not escrow sufficient funds to cover the \$2,000 penalty plus the revenues associated with the pro forma increase. This situation was caused by two factors. First, many customers have not paid their utility bills and second, the utility discontinued placing money in escrow in July 1991.

As discussed in the case background, the customers filed suit against the utility regarding the increased water and wastewater rates. In protest of the increase, a majority of the customers withheld payment of their utility bills. As of mid-September, 98 customers (out of 185 total customers) owed \$100 or more and 50 customers owed over \$200. The total receivables for the utility was \$21,185. In addition, 71 customers requested that their service be discontinued during the summer while they were out of town. Because the utility's vacation rate only goes into effect when the base facility charge becomes effective, the utility was unable to receive revenue from these customers. This resulted in a loss of revenues of about \$13,861. By July, 1991, the utility was receiving so few utility payments that it unilaterally decided to discontinue placing money in escrow, in order to pay its bills.

Based on this evidence, the utility did not comply with Commission Order No. 24084 in several ways. First, it did not accumulate sufficient monies to satisfy the fine. And second, the utility did not escrow a portion of all its revenues collected. Regarding the first part, staff does not believe that the utility should be held responsible for this noncompliance. Staff advised the utility to escrow a portion of each bill to meet the requirement. However, due to the customers' refusal to pay the bills, the utility was unable to accumulate the required amount.

Regarding the second point, the utility should be warned that it is not allowed to discontinue the escrow of monies ordered by the Commission. The utility should immediately place the

DOCKET NO. 900025-WS
OCTOBER 3, 1991

appropriate money in the escrow account to bring the balance up to the proper amount. Staff does not believe that the utility should be show caused at this time. But, if the utility does not correct the deficiency and does not continue placing the appropriate portion of all revenues in the escrow account, staff recommends that the commission should initiate show cause proceedings regarding why the utility should not be fined for violation of the Commission order.

Installation of Water Meters

The utility has begun installing water meters pursuant to the Commission order. However, in mid-September, the utility had only installed 31 meters with holes dug for 41 more. Out of 185 customers, not even half the meters have been installed. However, staff believes that the installation of the 31 meters indicates that the utility has made an effort to comply with the Commission order. As discussed above, the utility has been receiving less than half the revenues allowed in the rate case. Without the money coming in to buy the meters, staff believes that the utility has done a reasonable job.

In August, the Court vacated its injunction and the customers were to begin paying the utility bills. Staff's review shows that most of the customers have in fact begun paying the bills. By mid-September, only 12 active customers had not made a payment in either August or September. However, there is still some dispute about the bills from March through July. While the customers are currently paying the bills, they have not brought their accounts up-to-date. Therefore, now that the utility appears to be collecting its appropriate level of revenue, staff recommends allowing the utility another five months to complete the installation of the water meters.

ISSUE 2: Has the utility improved its quality of service?

RECOMMENDATION: No. However, the utility should be given another five months to improve the quality of service. This should include the interconnection of the system to Pasco county, the installation of all water meters and a significant improvement in customer relations. (VANDIVER, LANDIS)

STAFF ANALYSIS: Commission Order No. 24084 imposed a \$2,000 penalty on the utility for its unsatisfactory quality of service. However, the order stated that after six months, the Commission would reinspect the plant and assess the performance of the utility to determine the quality of service. If satisfactory, the Commission may suspend the fine permanently. The order stated that to improve the quality of service the utility should construct a new effluent disposal system, obtain the necessary permits to operate, and operate the wastewater facilities within DER standards.

Staff visited the utility in September and found that the quality of service had not improved. In fact, the quality of service has deteriorated. The most notable observations were:

1) Wastewater Plant site:

a) The staff noted very heavy vegetation in and around the berms of the percolation ponds that will require substantial labor and cost to clear. The consequences of the existing condition is a drop in the pond's capacity to handle wastewater effluent.

b) The plant's equipment looked derelict and in need of maintenance. Here, the consequences can be plant failure.

c) The cost to bring the system to a satisfactory level would be high. However, since the utility is expected to connect to Pasco county's wastewater collection system within the next five months, the staff recommends that the utility perform only that which is essential to maintain the system within DER standards until the interconnect.

2) Water Treatment site:

a) The gaping holes in the roof of the pump house noted by the staff in the last field inspection had become significantly worse. This condition leaves the plant's equipment unprotected from the environment, thus subject to corrosion and accelerated attrition.

DOCKET NO. 900025-WS
OCTOBER 3, 1991

b) No certified operation was provided to the water and wastewater systems from July 12 to August 27, 1991.

Among the contributing factors for plant deterioration was the gap in certified operation and that virtually no maintenance other than emergency repairs has been performed to either system. Staff attributes the number of deficiencies in the quality of service, at least in part, to the low level of revenue collections the utility has received.

In addition, the quality of service regarding customer relations has reached an all-time low. On September 17, 1991, the Shady Oaks Owners Association filed a letter detailing numerous complaints against the utility. The homeowners filed the letter as input to staff's review of the utility's progress since the PAA order. The customers state that when they ask the utility owner a question, he refers the customer to the Commission staff. The owner even sent two customer letters requesting the status of their account to staff to respond to. In addition, when the Division of Consumer Affairs requested information from Mr. Sims regarding a customer complaint, Mr. Sims referred the response to the Division of Water and Wastewater staff. In addition, the customers state that the utility owner has been unresponsive, profane, abusive and insulting.

The customers are also upset over the limited and ever-changing office hours the owner keeps. Commission Order No. 24084 set certain levels of expenses for the utility. These expenses allowed approximately 12 hours per week for the utility secretary and 10 hours per week for the president. These hours are not solely for office hours. However, staff has encouraged the utility to open the office at least two or three hours a week. The customers point out that the hours vary week to week and when they call the office to ask the hours, they are told that the hours are posted or that the office is currently open. In addition, at times the utility owner has refused to accept hand-delivered payments from customers.

After the increased rates became final, the utility began issuing bills for the first time. Previously, water and wastewater service was included in the monthly maintenance fee paid by all homeowners. The customers have also complained about the bill format. The customers would prefer a bill which shows the previous balance, payment received, new charges and total due. Commission rules do not require this amount of detail. Rule 25-30.335, Florida Administrative Code, requires that each bill shall indicate: the billing period covered; the applicable rate schedule; the amount of the bill; and the delinquent date or date after which the bill becomes past due. The rule does not anticipate a

continuing nonpayment of bills. Normally, if a bill is unpaid, service is discontinued. Because the utility is following the Commission's rule, staff does not believe that the utility should be ordered to change its bill format. The Commission does not make it a practice to become involved in these types of management decisions. However, if the utility were to consider these changes, staff would support the utility. As the customers state, such a format may eliminate some confusion and misunderstanding and allow the customers to review their bill instead of calling the utility.

Staff is very concerned with the deficiencies in the quality of service. Staff recommends that the nonpayment of the bills contributed significantly to the deterioration of the quality of operations as well as customer relations. However, staff recommends that now that the utility revenue is being collected, these deficiencies should be corrected within the next five months. Staff recommends that the quality of service should be improved with the completion of the following:

- 1) interconnection of the wastewater system with Pasco county;
- 2) installation of all the water meters;
- 3) improvement of customer relations.

While improvement of customer relations is a subjective statement, staff believes that there are certain steps which may be taken to achieve this goal. No matter what problems have existed between the customers and the utility in the past, these must be put aside before improvement in this area will be accomplished. This is true of both the customers and the owner. Certain steps which the utility owner should take to improve in this area would be:

1) Maintain a complaint log. The log should list every complaint received. Each entry should also reflect how the complaint was resolved and the date of the final resolution. The utility should respond to each complaint, or inquiry, within 48 hours. Resolution of a problem may require additional time. However, the complainant should receive notification that the utility is pursuing the complaint and the expected timetable for resolution.

2) Maintain reasonable and dependable office hours. Order No. 24084 allowed salaries and wages for the utility's secretary and president. The secretary was allowed 10 hours a week plus 8 hours a month to prepare the bills. The president was allowed 10 hours a week. Staff believes that these expenses provide sufficient time for the utility to staff the utility office on a regular basis. Staff believes that reasonable office hours for this utility would, at a minimum, consist of 2 or 3 hours at least

DOCKET NO. 900025-WS
OCTOBER 3, 1991

2 days a week. However, staff believes the most important aspect of the office hours should be consistency. If the utility officers are unable to personally staff the office on a regular basis, the utility should consider a staffing alternative.

3) The discontinuance of inquiries and complaints referred to the Commission staff. On a regular basis, customers make inquiries of the utility and are told to call the Commission. Staff recognizes the importance of staff explaining Commission rules and procedure. However, the Commission and its staff are not the utility owners or managers and should not be relied on explain utility operations. Staff also recognizes that the utility receives numerous inquiries from customers which may appear to be second-guessing on the customer's part. Staff would remind the customers that the Commission has certain rules and regulations, but the general management of the utility is left to the utility owners and managers. The Commission will not intervene in the details of management unless the operations drop below acceptable standards.

While these are still subjective measures, staff recommends that both areas of quality of service be reevaluated after five months. During this time frame, staff will monitor the utility's progress in improving the quality of service. In particular, staff plans to visit the utility to verify that progress is made.

DOCKET NO. 900025-WS
OCTOBER 3, 1991

ISSUE 3: Has the utility expended \$1,700 per month for preventive maintenance?

RECOMMENDATION: No. However, this should be reevaluated after five months of revenues have been collected. (VANDIVER, LANDIS)

STAFF ANALYSIS: The approved rates include a monthly expense of \$1,700 for preventive maintenance. Commission Order No. 24084 stated that if at six months from the effective date of the order the utility has not expended at least 85% of the amount allowed, the utility shall submit a written schedule to show 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. The order continued that if the maintenance was not performed, the Commission would consider initiating a show cause proceeding to fine the utility for not performing as ordered.

Staff reviewed the utility's disbursements for March through August of 1991. The utility did not spend the \$1,700 per month for preventive maintenance. However, as discussed previously, the utility has not been able to collect the increased revenues. In some months, the utility was not even collecting the revenues before the increase.

The utility's expenditures for maintenance appear to be \$193 for March; \$366 for April; \$294 for June and \$300 for August. The utility owner listed several items which he intends to do as the revenue starts coming in. These items are as follows:

- 1) install surge reducers for the wells;
- 2) install a back-up generator;
- 3) install a gas chlorinator; and
- 4) replace 1,000 feet of water line.

Staff recommends that this issue should also be reevaluated after six months of the increased revenues to determine the progress of the utility in using the money allocated for maintenance.

DOCKET NO. 900025-WS
OCTOBER 3, 1991

ISSUE 4: Should the fine imposed by Order No. 24084 be suspended?

RECOMMENDATION: Yes, the fine should be suspended until February 21, 1992. By that time staff will review the quality of service and recommend final disposition of the fine. (VANDIVER, LANDIS)

STAFF ANALYSIS: Commission Order No. 24084 imposed a \$2,000 fine for unsatisfactory quality of service. The order further stated that if the utility improved the quality of service in the next six months, the fine would be suspended. Staff believes that the Commission should not show undue permissiveness with utilities which have unsatisfactory quality of service and disregard its own orders. However, in this case, staff believes an exception should be made. Staff believes that the extent of the revenue deficiency contributed greatly to the utility's noncompliance with the Commission order.

The stipulation between the DER and the utility allows the utility six months to accomplish an interconnect with Pasco county. The stipulation was signed July 8, 1991. Therefore, the interconnect should be accomplished by January 8, 1991. Therefore, staff recommends that the Commission suspend the fine until 45 days after the deadline. This will allow staff time to reevaluate the quality of service and make a recommendation regarding a permanent suspension of the fine.

DOCKET NO. 900025-WS
OCTOBER 3, 1991

ISSUE 5: Should the rates be changed at this time?

RECOMMENDATION: Yes, the rates should revert back to the flat rate until this docket is reevaluated in six months. The flat rates shall be effective for service rendered on or after the stamped approval date on the revised tariff sheets. The tariff sheets will not be approved until the customer notice is approved and the security has been received. (VANDIVER)

STAFF ANALYSIS: Order No. 24084 required the utility to install the meters within the six month time frame and a flat rate was approved for those six months. At the end of six months, the base facility charge rate structure would become effective, and any customers without water meters would only pay the base facility charge. The current tariff reflects this situation. And, in fact, the base facility charge rate structure became effective on October 1, 1991. This means that the utility is required to bill the 154 customers without water meters solely the water base charge of \$6.34 and the wastewater base charge of \$12.50.

The customers requested in their letter dated September 17, 1991, that the tariff be adjusted to reflect only the base charge be billed to all customers until all water meters have been installed. The customers state that the utility is not as bad off as it claims to be. In support of their claim, the customers supplied estimated payments made by the customers for January through December 1991. The customers' numbers indicate the estimated monthly payments for utility services as well as the \$25.00 maintenance fee, which the Commission does not regulate. However, the owners' association instructed, by letter dated August 13, 1991, that all customers do not need to pay the \$25 maintenance fee. The combined payments for the six months March through August is less than six months of revenue established by the commission. The customers' estimates are that they paid \$28,371 while the PAA order established a yearly revenue requirement of \$98,592, or \$49,296 for a six-month period.

Staff believes that the revenue shortfall is a significant factor in why the meters were not installed in a timely basis. Staff does not believe that the tariff should be continued in its present form, or adjusted to include the customers' request. Staff recommends that the flat rate should be continued until this case is reevaluated in 1992.

The approved flat rates shall be effective for service rendered on or after the stamped approval date on the revised tariff sheets. The revised tariff sheets will be approved upon staff's verification that the tariffs are consistent with the

DOCKET NO. 900025-WS
OCTOBER 3, 1991

Commission's decision, that the proposed customer notice is adequate, and that the required security has been provided.

DOCKET NO. 900025-WS
OCTOBER 3, 1991

ISSUE 6: Should the utility continue operating as S & D Utility?

RECOMMENDATION: Yes. However, if the information required in Issue 1 to complete the name change is not filed within sixty days, the utility should revert to operating as Shady Oaks Mobile-Modular Estates, Inc. (VANDIVER)

STAFF ANALYSIS: The utility has been billing the customers and operating under the name of S & D Utility, even though the Commission has not officially approved a change on the Certificate. However, if for any reason, the title to the land cannot be cleared up within sixty days and the Commission cannot proceed in recognizing the name change, staff recommends that the utility should revert to operating under the name shown on its certificate - Shady Oaks Mobile-Modular Estates, Inc.

This issue first arose when the utility began billing under S & D Utility in March. The customers expressed their concern that the utility was holding itself out as S & D Utility even though it was not certificated as such. Staff believes that it is only a matter of time before the loose ends are tied up and the utility provides sufficient information to the Commission to process the name change. Therefore, it is not necessary for the Commission to order the utility to revert to its certificated name. However, if the utility is unable to provide the additional information within sixty days, then the utility should revert to operating as Shady Oaks Mobile-Modular Estates, Inc.

DOCKET NO. 900025-WS
OCTOBER 3, 1991

ISSUE 7: Should the rates be approved for the utility in the case of a protest by a party other than the utility?

RECOMMENDATION: Yes, the utility should be authorized to collect the recommended rates subject to refund should a protest be filed by anyone other than the utility. (VANDIVER)

STAFF ANALYSIS: This recommendation proposes a change in the water and wastewater rates. A timely protest could delay the collection of revenues the Commission has approved in its final order. This would probably result in an unrecoverable loss of revenue to the utility.

Accordingly, in the event a timely protest is filed by anyone other than the utility, we recommend authorizing the utility to collect the rates proposed herein, subject to refund. All revenue related to the difference in the current base facility charge rate and the flat rate will be subject to escrow. Any withdrawals of funds from this escrow account shall be subject to the written approval of the Commission through the Director of Records and Reporting. Should any refund ultimately be required, it shall be paid with interest calculated pursuant to Rule 25-30.360(4), Florida Administrative Code. These escrow monies should be in addition to the escrow ordered in Order No. 24084.

In addition, Shady Oaks should file reports with the Division of Records and Reporting no later than the twentieth day following the monthly billings, after the increased rates are in effect, indicating the amount of revenue collected under the implemented rates. Shady Oaks must also keep an account of all monies received by reason of the increase authorized herein, specifying by whom and in whose behalf such monies were paid.

DOCKET NO. 900025-WS
OCTOBER 3, 1991

ISSUE 8: Should the docket be closed?

RECOMMENDATION: No. (VANDIVER)

STAFF ANALYSIS: The previous issues have addressed numerous areas which need to be reevaluated after six months. In addition, the utility is escrowing money to accumulate a \$2,000 penalty and the increase related to the proforma plant. The proforma plant which was initially allowed in rates will not be built. At the time of the PAA, the utility proposed to build a new percolation pond to meet DER standards. However, as discussed in the case background, the utility entered a stipulation agreement to interconnect with Pasco county. Staff anticipates that this interconnect will cost at least as much as the proposed percolation pond and land. At the time that staff reevaluates the quality of service and the preventive maintenance expense, staff recommends that the actual cost of the interconnect be compared to the proforma cost allowed in rate base. The amount of the revenue related to the proforma plant should continue to be escrowed pending this evaluation. Because these issues need further review, staff recommends that the docket be held open.