

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for exemption ) DOCKET NO. 930028-WS  
from Florida Public Service ) ORDER NO. PSC-94-0363-FOF-WS  
Commission regulation for ) ISSUED: March 29, 1994  
provision of water and )  
wastewater service in Clay )  
County by MEADOWLANDS SHOPPING )  
CENTER. )  
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The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
SUSAN F. CLARK  
JULIA L. JOHNSON  
DIANE K. KIESLING  
LUIS J. LAUREDO

ORDER RESOLVING SHOW CAUSE PROCEEDING AND RELATED COMPLAINT  
AND INDICATING EXEMPT STATUS OF MEADOWLAND SHOPPING CENTER  
AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

On January 5, 1993, Mr. Virgil Allison applied for an exemption from this Commission's jurisdiction for the provision of water and wastewater service to tenants of the Meadowland Shopping Center (Meadowland) in Clay County. Meadowland consists of four separate buildings each consisting of approximately eight individually metered stores. Both water and wastewater service are provided to Meadowland by Kingsley Service Company (Kingsley).

Mr. Allison initially applied for an exemption for Meadowland pursuant to Sections 367.022(5) and (8), Florida Statutes. At the time of the filing he was uncertain whether he would qualify as a landlord or as a reseller. However, upon being advised that his facility would not qualify for a reseller exemption because he was reselling service at a rate which exceeded his purchase price, he ceased billing separately for water and wastewater service and rolled the utility cost into the monthly rental charges, thereby qualifying Meadowlands to apply for a landlord-tenant exemption for water and wastewater.

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FPSC-RECORDS/REPORTING

Mr. Richard Adams, a former tenant of Mr. Allison, had initially alerted our staff to Mr. Allison's operation. Mr. Adams' concerns were whether Mr. Allison had the authority to charge for water and wastewater service and what Mr. Adams believed were excessive charges.

Based upon this information, Mr. Allison was required to file an exemption application. Upon receipt of the exemption application staff contacted Mr. Allison and advised him that he would not qualify for an exemption because his charges were in excess of those charged to him by Kingsley. In May of 1993, Mr. Adams filed a formal complaint with the Commission seeking a refund of excessive charges. Mr. Allison was advised of the complaint and responded within the given time seeking clarification. However, Mr. Allison requested clarification on many questions to which he apparently already knew the answer.

On October 5, 1993, Order No. PSC-93-1451-FOF-WS was issued, requiring Mr. Allison to show cause why he should not be fined for providing service without a certificate and ordered to refund all revenues collected based upon rates which were in excess of those which he was charged by Kingsley. Mr. Allison properly responded to the show cause and subsequently reached a settlement with Mr. Adams regarding a refund.

#### RESOLUTION OF SHOW CAUSE AND RELATED COMPLAINT

In Order No. PSC-93-1451-FOF-WS, Meadowland was ordered to show cause why it should not be fined for operating without a certificate in violation of Section 367.031, Florida Statutes. Additionally, Meadowland was ordered to show cause why it should not be required to refund all revenues based upon rates in excess of those charged by Kingsley for the period January 1, 1990, through February 28, 1993.

On October 25, 1993, Mr. Allison responded to the show cause regarding fines for operating without a certificate. Mr. Allison noted that Section 367.161, Florida Statutes, states that the Commission's power to assess penalties is for knowing and willful violations. Mr. Allison contended that he never knowingly or willfully refused to comply with any rule, order or provision of Chapter 367, Florida Statutes, and therefore should not be fined. Mr. Allison did not request a hearing.

As previously stated, Mr. Allison's operation was brought to our attention by Mr. Adams' complaint regarding excessive rates. Based upon our staff's initial dealing with Mr. Allison regarding filing an exemption, it was apparent that he was not aware of the

Commission's regulation of water and wastewater providers, or that he was operating as a jurisdictional entity. However, Mr. Allison has been timely and cooperative in filing for an exemption and in responding to the show cause. Upon being advised that he would not qualify for a reseller exemption, he immediately revised his lease to include water and wastewater service within his rental fees in order to qualify for a landlord-tenant exemption.

Mr. Allison has also negotiated in good faith with Mr. Adams in order to reach a settlement on an acceptable refund amount. Our initial show cause order concerned a \$3,912.18 refund amount which appeared to be an appropriate refund for Mr. Adams. Based upon payment of \$3,779.19 made by Mr. Allison to Mr. Adams, on February 4, 1994, Mr. Adams withdrew his complaint and acknowledged that the his complaint was fully resolved by the payment of \$3,779.19.

Because Meadowland's jurisdictional status was not clear to Mr. Allison, and because he was unaware that he was subject to regulation under Chapter 367, Florida Statutes, his reselling of service prior to the initiation of this docket does not appear to have been either a willful or knowing violation of Chapter 367. Further, the primary reason for the show cause proceeding was to address Mr. Adams' complaint. Based upon these factors, we find it appropriate that Mr. Allison not be fined. Furthermore, based upon high turnover of tenants at Meadowland and the fact that Mr. Adams was the only complainant and the dominant water user based upon his coin laundry, we find that it is appropriate that the refund be limited to Mr. Adams and deemed complete.

#### EXEMPTION GRANTED

Meadowland's request for a water and wastewater exemption was filed in accordance with Section 367.022(5), Florida Statutes and Rules 25-30.060(1), (2) and (3)(e), Florida Administrative Code. According to Section 367.022(5), Florida Statutes, an entity qualifies for exemption from Commission regulation if it provides service solely to its tenants, and charges for utility service are included as a non-specific portion of the rent. Meadowland's application indicates that Meadowland provides service solely to its tenants, that charges for service are non-specifically contained in rental charges, that it provides water and wastewater service and that the service territory is limited to the Meadowland Shopping Center property. As previously noted, Mr. Allison has revised his lease to include water and wastewater charges within his rental charges. He has been billing in this manner since February 1993. Additionally, the applicant acknowledged Section 837.06, Florida Statutes, regarding false statements.

Based upon the facts as represented, we find that Meadowland is exempt from Commission regulation, pursuant to Section 367.022(5), Florida Statutes. However, should there be any change in circumstances or method of operation, the owner of Meadowland or any successor in interest must inform the Commission within 30 days of such change so that we may determine whether exempt status is still appropriate.

Based on the foregoing, it is, therefore,

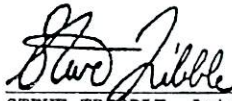
ORDERED by the Florida Public Service Commission that the show cause proceeding initiated against Meadowland Shopping Center in Order No. PSC-93-1451-FOF-WS is hereby resolved. It is further

ORDERED that based upon the facts as represented, Meadowland Shopping Center is exempt from Commission regulation, pursuant to the provisions of Section 367.022(5), Florida Statutes. It is further

ORDERED that should there be any change in circumstance or method of operation, the owner of Meadowland Shopping Center or any successors in interest, shall inform this Commission within 30 days of such a change so that we may re-evaluate Meadowland's exempt status. It is further

ORDERED that Docket No. 930028-WS is hereby closed.

By ORDER of the Florida Public Service Commission, this 29th day of March, 1994.



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STEVE TRIBBLE, Acting Director  
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.