

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for exemption) DOCKET NO. 940365-WU
from Florida Public Service) ORDER NO. PSC-95-0899-FOF-WU
Commission regulation for) ISSUED: July 26, 1995
provision of water service in)
Nassau County by AMERICAN BEACH)
WATER SYSTEM.)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER INDICATING EXEMPT STATUS OF
AMERICAN BEACH WATER SYSTEM AND CLOSING DOCKET

BY THE COMMISSION:

Background

On April 13, 1994, American Beach Water System (American Beach or utility) applied for a small system exemption from Florida Public Service Commission regulation pursuant to Section 367.022(6), Florida Statutes. American Beach, located in Nassau County, provides water service to its motel, which has 23 units, and to nine, privately-owned homes. After reviewing American Beach's application, this Commission determined that American Beach did not qualify for an exemption pursuant to Section 367.022(6), Florida Statutes.

On April 29, 1994, American Beach filed a revised application and requested nonjurisdictional status pursuant to Section 367.021(12), Florida Statutes. By Proposed Agency Action (PAA) Order No. PSC-94-0662-FOF-WU, issued June 1, 1994, we granted American Beach exempt status for the motel, pursuant to Section 367.022(4), Florida Statutes, and nonjurisdictional status for the nine, privately-owned homes, pursuant to Section 367.021(12), Florida Statutes, since the utility did not charge for service.

Upon receipt of the final order, American Beach then contacted us seeking a correction to the order and stated that it planned to

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charge for water service. Since American Beach planned to charge for service, we found it appropriate to vacate Order No. PSC-94-0662-FOF because the utility did not qualify for either the non-jurisdictional or the public lodging exemption. See PAA Order No. PSC-94-0958-FOF-WU, issued August 8, 1994, which also denied American Beach's request for exemption. We also ordered American Beach to file for an original certificate within 60 days of the effective date of the order, which was October 31, 1994. By letter dated October 21, 1994, American Beach requested that we reevaluate its application pursuant to Section 367.022(6), Florida Statutes, and Rule 25-30.055, Florida Administrative Code, because its water system processed only 8,000 gallons per day (gpd) and served only 7 connections, even though its well is capable of producing 144,000 gpd. On October 31, 1994, American Beach refiled its application for a small system exemption, instead of the original certificate as ordered in PAA Order No. PSC-94-0662-FOF-WU.

Application

Pursuant to Rule 25-30.055, Florida Administrative Code, a water or wastewater system is exempt under Section 367.022(6), Florida Statutes, if its current or proposed water or wastewater treatment facilities and distribution or collection system have and will have a capacity of no greater than 10,000 gpd. Following American Beach's request for reevaluation of its application, we contacted the Department of Environmental Protection (DEP) in Jacksonville and learned that while American Beach had planned to build a bigger water system to serve a larger service area, it could not get the required funding. American Beach installed a very small water system with an 8,000 gpd capacity. Also, it would have cost American Beach a significant amount of money to upgrade its water system because the components in its water system were small. Moreover, DEP has placed American Beach under a moratorium, which means it cannot serve any additional customers.

As a result of our conversation with the DEP, we believe that American Beach's water system is limited to its current capacity of 8,000 gpd and that it falls within our rules requirement. American Beach has filed its application in accordance with Section 367.022(6), Florida Statutes, and Rules 25-30.055 and 25-30.060(3)(f), Florida Administrative Code. American Beach has acknowledged Section 837.06, Florida Statutes, regarding false statements. American Beach has stated that it will provide water service only and its service area will be restricted to the American Beach Subdivision, located on Amelia Island, Florida.

Based on the facts as represented, we find that American Beach qualifies for a small system exemption pursuant to Section

367.022(6), Florida Statutes, and Rules 25-30.055 and 25-30.060(3)(f), Florida Administrative Code. However, should there be any change in circumstances or method of operation, the owner of American Beach or any successors in interest shall inform this Commission within 30 days of such change so that we may reevaluate its exempt status.

Show Cause

As previously stated, we denied American Beach's exemption request in PAA Order No. PSC-94-0958-FOF-WU and ordered it to file for an original certificate by October 31, 1994. American Beach did not comply with our order; instead, by letter dated October 21, 1994, American Beach asked us to reevaluate its small system exemption application because its water system processed only 8,000 gpd and served only 7 connections.

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, Florida Statutes, or any lawful rule or order by the Commission. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). American Beach's failure to comply with Order No. PSC-94-0958-FOF-WU meets the willful standard. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating to Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Even though American Beach has failed to comply with PAA Order No. PSC-94-0958-FOF-WU, we find that a show cause proceeding is not necessary. First, American Beach filed its latest exemption application before the October 31, 1994, deadline for filing its original application. Second, American Beach originally filed for a small system exemption pursuant to Section 367.022(6), Florida Statutes, for which we initially determined it did not qualify. Upon further review and after confirmation from DEP, however, we reassessed American Beach's status and found that it qualifies for a small system exemption. Upon consideration of the foregoing, we find that American Beach's failure to comply with our earlier order

does not rise to the level which warrants a show cause order to be issued. Therefore, American Beach is not required to show cause why it should not be fined for failing to comply with our order. Since no further action is required, this docket shall be closed.

Based on the foregoing, it is, therefore,

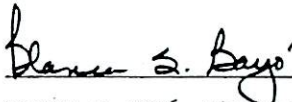
ORDERED by the Florida Public Service Commission that American Beach Water System, 5553 Gregg Street, American Beach, Amelia Island, Florida 32034, is hereby exempt from Commission regulation pursuant to Section 367.022(6), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation, the owner of American Beach Water System or any successor in interest shall inform this Commission within 30 days of such change so that we may reevaluate its exempt status. It is further

ORDERED that American Beach Water System is not required to show cause why it has not complied with Proposed Agency Action Order No. PSC-94-0958-FOF-WU, issued August 9, 1994. It is further

ORDERED that Docket No. 940365-WU is closed.

By ORDER of the Florida Public Service Commission, this 26th day of July, 1995.



BLANCA S. BAYÓ, 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.