

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by BEACH BAY)	DOCKET NO. 890508-SU
RESTAURANT for exemption from FPSC)	ORDER NO. 21255
regulation for a sewage treatment)	ISSUED: 5-18-89
facility in Lee County.)	
)	

ORDER INDICATING THE NON-JURISDICTIONAL STATUS OF
BEACH BAY RESTAURANT

BY THE COMMISSION:

By letter and affidavit received April 28, 1989, Beach Bay Restaurant (Beach Bay) has requested recognition of the non-jurisdictional status of its proposed sewage treatment facility. Beach Bay seeks an exemption as a prerequisite to obtaining a Department of Environmental Regulation (DER) construction permit for its sewage treatment facility. Pursuant to Section 367.031, Florida Statutes (1987), before DER will issue a construction permit, it requires either a certificate authorizing service or proof that the utility is not subject to the regulation of this Commission.

The affidavit shows that: Beach Bay is a dining establishment in Lee County; Beach Bay will provide sewer service solely for the operation of its restaurant; no charges will be made to anyone for the sewer service; the costs of sewer service will be treated as an operational expense of the restaurant; the sewage treatment facility will be located on the premises of the restaurant.

As a matter of practice, upon request and sufficient proof, the Commission will issue an order indicating the non-jurisdictional or exempt status of water or sewer facilities, if they qualify under the appropriate section of Chapter 367, Florida Statutes (1987). Beach Bay requested recognition of the non-jurisdictional status of its sewage treatment facility under Section 367.021(3), Florida Statutes (1987).

Section 367.021(3), Florida Statutes (1987), defines a utility as "every person... who is providing or proposes to provide, water or sewer service to the public for compensation." (Emphasis supplied). Since Beach Bay will not be providing sewer service for compensation, it is not a utility within the meaning of Section 367.021(3), Florida Statutes, and thus is not subject to this Commission's jurisdiction. However, should there be any change in circumstances or method of operation, the owner of Beach Bay, or his successor(s) in interest, must inform the Commission within thirty days of such change, so that we may determine whether non-jurisdictional status is still appropriate.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Beach Bay Restaurant's sewage treatment facility, located at 15551 Captiva Drive, Captiva, Florida 33924, is not a utility subject to this Commission's jurisdiction pursuant to the terms of Section 367.021(3), Florida Statutes (1987). It is further

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ORDERED that should there be any change in circumstances or method of operation of Beach Bay Restaurant's sewage treatment facility, the present owner or any successor in interest shall inform the Commission within thirty days of such change. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission,
this 18th day of May, 1989.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DCS

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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.