

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Exemption) DOCKET NO. 930028-WS
From Florida Public Service) ORDER NO. PSC-93-1451-FOF-WS
Commission Regulation for) ISSUED: October 5, 1993
Provision of Water and) RE-ISSUED: October 18, 1993
Wastewater Service in Clay)
County by MEADOWLAND SHOPPING)
CENTER.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON

ORDER TO SHOW CAUSE

BY THE COMMISSION:

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 Duval 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), and Mr. Allison resells it to the individual tenants.

Mr. Allison initially applied for an exemption from this Commission's regulation pursuant to Section 367.022(8), Florida Statutes. 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 service and rolled the utility cost into the monthly rental charges. However, this Order concerns only an associated complaint and not the merits of the exemption application.

Mr. Richard Adams, a former tenant of Mr. Allison, had initially alerted this Commission to the existence of Mr. Allison's operation. Upon receipt of the application, we contacted Mr. Allison and advised him that he would not qualify for an exemption

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because his charges were in excess of those charged to him by Kingsley. Additionally, Mr. Allison was advised of Mr. Adams' concerns regarding excessive billing and that the potential for a refund existed. Mr. Allison was not receptive to an informal settlement of this matter. In May, Mr. Adams filed a formal complaint with this 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's response only requested clarification on many questions to which he apparently already knew the answers. For example, he asked what rate he was charged by Kingsley, what rate he charged Mr. Adams, and how much water Mr. Adams had used while one of his customers.

Based upon Mr. Allison's exemption application and information filed by Mr. Adams, Mr. Allison was reselling and billing separately for water and wastewater service at rates which exceeded that of the supplier of water and wastewater service. Meadowland was therefore operating as a jurisdictional utility.

Section 367.031, Florida Statutes, requires each jurisdictional utility to obtain a certificate of authorization from this Commission. Further, Section 367.081(1), Florida Statutes, mandates that a utility may only charge rates and charges which have been approved by this Commission. Therefore, Meadowland is in violation of both statutes.

As part of the exemption application filed with this Commission, Mr. Allison provided 1992 billing information for all his tenants and provided copies of his bills from Kingsley for 1992. Within his complaint, Mr. Adams provided billing information for the entire period that he was Mr. Allison's tenant. Billing information for the other tenants for other than 1992 was not provided. We have reviewed all billing information relating specifically to Mr. Adams' complaint.

During the period of April 1990 through August 1992, Mr. Adams operated a coin laundry at Meadowlands. Based upon the nature of his business, he consumed more water than the other businesses in the shopping center. During his tenancy, the combined water and wastewater rate billed by Kingsley to the building, in which Mr. Adams was one of eight tenants, consisted of a quarterly base facility charge of \$177.77 and a gallonage charge of \$1.92 per 1,000 gallons. Mr. Allison in turn billed Mr. Adams' laundry a combined water and wastewater rate consisting of a quarterly base

facility charge of \$108.96 with a gallonage charge of \$3.25 per 1,000 gallons. Based upon the rate differential, the bill for the laundry exceeded the bill from Kingsley for all eight tenants. Such a scenario is obviously intended to generate revenues in excess of the cost of service.

As previously noted, the laundry was the largest water user in the shopping center. Based on this one tenant, which was the only tenant for which all billing information was available, the appropriate amount of the refund to Mr. Adams shall be \$3,912.18.

Therefore, we find it appropriate to order Mr. Allison to show cause, in writing, within 20 days why he should not be fined up to \$5,000 per day for operating his utility without a certificate in violation of Section 367.031 and further be required to refund to his tenants at Meadowland Shopping Center all revenues based upon rates in excess of those charged by Kingsley from January 1, 1990 through February 28, 1993, the date in which he ceased charging separately for water and wastewater service.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Mr. Virgil Allison, owner of Meadowland Shopping Center, in Duval County, shall show cause, in writing, within 20 days of the issuance of this Order, why he should not be fined \$5,000 per day for failure to comply with Section 367.031, Florida Statutes and ordered to refund Mr. Adams the amount of \$3,912.18 and refund his other tenants at Meadowland Shopping Center all revenues based upon rates in excess of those charged by Kingsley from January 1, 1990 through February 28, 1993. It is further

ORDERED that Mr. Allison's response must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on November 8, 1993. It is further

ORDERED that Mr. Allison's response must contain specific allegations of fact and law. It is further

ORDERED that Mr. Allison's opportunity to file a written response shall constitute his opportunity to be heard prior to final determination of noncompliance and assessment of penalty by this Commission. It is further

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ORDERED that Mr. Allison's failure to file a timely response to this show cause order shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing.

By ORDER of the Florida Public Service Commission this ^{18th} ~~5th~~ day of October, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LK/MO

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.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on ~~October 25, 1993~~ November 8, 1993.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

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ORDERED that Mr. Allison's failure to file a timely response to this show cause order shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing.

By ORDER of the Florida Public Service Commission this 5th day of October, 1993.

A handwritten signature in cursive script, appearing to read "Steve Tribble", written over a horizontal line.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LK/MO

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This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 25, 1993.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

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