

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Exemption) DOCKET NO. 940194-WU
from Florida Public Service) ORDER NO. PSC-94-0501-FOF-WU
Commission Regulation for) ISSUED: April 27, 1994
Provision of Water Service in)
Putnam County by PARADISE VIEW)
ESTATES)
_____)

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

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING REQUEST FOR EXEMPT STATUS OF PARADISE VIEW ESTATES AND REQUIRING REFUND OF OVERCHARGES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On January 1, 1994, Water Spectrum, Inc. (WSI) purchased Paradise View Estates, (Paradise or utility) located at Magnolia Street, Hawthorne, Florida 32640, and on February 24, 1994, filed an application in behalf of Paradise for a small system exemption pursuant to Section 367.022(6), Florida Statutes.

Section 367.022(6), Florida Statutes, states that "[s]ystems with the capacity or proposed capacity to serve 100 or fewer persons" are exempt from Commission regulation. In addition, Rule 25-30.055(1), Florida Administrative Code, provides that:

A water or sewer system is exempt under section 367.022 (6), Florida Statutes, if its current or proposed water or sewage treatment facilities and distribution or collection system have and will have a capacity, excluding fire flow capacity, of no greater than 10,000 gallons per day (gpd) or if the entire system is designed

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to serve no greater than 40 equivalent residential connections (ERCs). For purposes of this rule only, one ERC equals 250 gallons per day.

According to the application, Paradise's system has an approved capacity for the water system of 86,000 gpd. Based on that information, this utility does not qualify for a small system exemption. Therefore, Paradise is subject to this Commission's jurisdiction. However, we are not requiring WSI to file for certification, because on February 24, 1994, WSI filed a notice of abandonment, pursuant to Section 367.165, Florida Statutes, and Rule 25-30.090, Florida Administrative Code.

Subsequent to its purchase of Paradise, WSI raised the rates from a flat fee of \$15, to \$25. Its justification in doing so was that the utility could not sufficiently operate on the existing rate of \$15, and it also believed the utility to be exempt. However, under Section 367.081(1), Florida Statutes, utilities may only charge rates that have been approved by this Commission. Since we have not approved Paradise's unilateral rate increase, Paradise is ordered to immediately lower its monthly rates from \$25 to \$15.

Paradise is also ordered to refund any amount that was paid as a result of the overcharging of rates, with interest, calculated in accordance with Rule 25-30.360, Florida Administrative Code, that has accrued or will accrue until the date all refunds are completed. Pursuant to Commission rule, the amount of interest should be based on the thirty day commercial paper rate for the appropriate period of time. The refund shall be made within 90 days of the effective date of this order and the utility is required to file reports consistent with Rule 25-30.360, Florida Administrative Code. If the refunds are unclaimed, they shall be treated as contributions-in-aid-of-construction. The Commission will verify when all refunds are complete. The amount refunded will only go to the five customers who have paid the increased water fee. The remaining customers have not paid the increase change, nor have they paid for service at all since WSI purchased Paradise.

As a result of this nonpayment, WSI sent a letter to the customers of the utility, on March 1, 1994, advising them that it is backbilling each customer for up to 18 months, due to nonpayment. This is inconsistent with Rule 25-30.350, Florida Administrative Code, which states that a utility may not backbill customers for any period greater than 12 months for any undercharge in billing which is the result of the utility's mistake. Therefore, Paradise shall allow the customers to pay for the

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unbilled service over the same time period which the underbilling occurred, or some other mutually agreeable time period, but not to exceed the amount of 12 months backbilling.

Chapter 367, Florida Statutes, states that a utility that is not exempt from the Commission's regulation must have a certificate and may charge only rates and charges approved by the Commission. Although we have found that Paradise has collected inappropriate rates, operated without a certificate, and increased its preexisting rates, we do not find it appropriate to require the utility to show cause why it should not be fined. Mr. Landis, upon purchasing the utility, believed it would qualify for an exemption. Subsequently, he filed an application for an exemption, pursuant to Commission rules. Regarding the increase in rates, Mr. Landis lowered them back to original rates once the Commission advised him to do so. Therefore, this Commission does not find it appropriate to require the utility to show cause regarding the above referenced issues.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, the application by Paradise View Estates, Magnolia Street, Hawthorne, Florida 32640, for a small system exemption is denied, pursuant to the provisions of Section 367.022(6), Florida Statutes. It is further

ORDERED that Paradise View Estates shall immediately lower its rates from \$25 to \$15. It is further

ORDERED that Paradise View Estates shall refund all monies collected as a result of its unapproved rate increase, with interest, pursuant to Rule 25-30.360, Florida Administrative Code. It is further

ORDERED that Paradise View Estates shall make all refunds within 90 days of the effective date of this Order. Any refunds not claimed shall be treated as contributions-in-aid-of-construction. It is further

ORDERED that Paradise View Estates shall not backbill its customers more than 12 months, pursuant to Rule 25-30.350, Florida Administrative Code, and that Paradise View Estates shall allow the customers to pay for the unbilled service over the same time period which the underbilling occurred, but not to exceed 12 months. It is further

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ORDERED that the provisions of this Order are issued as proposed agency action, and shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that this Docket shall remain open to allow the Commission to verify that the refunds made are complete, and to monitor the appointment of a receiver.

By ORDER of the Florida Public Service Commission this 27th day of April, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

MSN

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. 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 25-22.029(4), 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

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Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 18, 1994.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an 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. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.