

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for exemption) DOCKET NO. 940176-WU
from Florida Public Service) ORDER NO. PSC-94-1477-FOF-WU
Commission regulation for) ISSUED: December 1, 1994
provision of water service in)
Palm Beach County by ROYAL MANOR)
ESTATES COMMUNITY WATER)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING REQUEST FOR EXEMPTION

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.

BACKGROUND

Royal Manor Estates (Royal Manor) is a mobile home park consisting of 437 lots in Palm Beach County. The park has been operating under its prospectus since March 27, 1985. In January, 1994, several residents of Royal Manor telephoned this Commission to make a complaint against Royal Manor. These residents are concerned with the new rental agreement used by Royal Manor pursuant to which each unit is required to pay a pro rata amount of Royal Manor's recent connection to the City of Boynton Beach's wastewater system. In addition, the complainants indicated that there are other charges imposed by Royal Manor pertaining to water and/or wastewater service.

Royal Manor provides water service to its tenants. Until recently, it also provided wastewater service; however, it retired its wastewater plant and service is now provided by the City of Boynton Beach.

DOCUMENT NUMBER-DATE

12092 DEC-1 1994

FPSC-RECORDS/REPORTING

According to the lot lease agreement submitted with the application, Royal Manor charges \$5.00 monthly for those tenants who have washing machines. The lease agreement also includes an assessment of \$693.63 per lot, which represents a pro rata share of the total impact fee and direct costs for connecting to the City of Boynton Beach's wastewater system.

On February 18, 1994, Royal Manor filed a request for exemption from Commission regulation under Section 367.022(5), Florida Statutes, for its provision of water service. On August 1, 1994, Royal Manor filed a request for a determination that it is not subject to the jurisdiction of this Commission with regard to its pass-through of the City of Boynton Beach's impact fee.

WATER SERVICE

Under Section 367.022(5), Florida Statutes, and Rule 25-30.060(3)(e), Florida Administrative Code, in order to qualify for a landlord-tenant exemption, the landlord must provide water and/or wastewater service without specifically charging for the service(s). The Commission has interpreted this to mean that any charges for such services must be included as nonspecific portions of the rent.

Under the Florida Mobile Home Act, Chapter 723, Florida Statutes, mobile home parks are required to disclose the manner in which certain services will be provided and the entity furnishing them. In addition, mobile home parks are required to disclose any factors which may affect the lot rental amount, including water and/or wastewater rates. According to its prospectus, water is furnished by the landlord. The prospectus further provides that the landlord may separately charge for water service upon ninety days' written notice.

It appears that Royal Manor is operating in compliance with the requirements of Chapter 723, Florida Statutes, and that the washing machine charge is appropriately identified as an "extra" to the basic lot rental amount. Although the charge may be related to the provision of water and/or wastewater service, it is not a charge for water and/or wastewater service. As such, it does not subject Royal Manor to the regulation of this Commission. Royal Manor's request for an exemption under Section 367.022(5), Florida Statutes, is, therefore, granted. However, should Royal Manor begin to separately charge for water service, it shall immediately notify this Commission.

WASTEWATER SERVICE

As noted above, Royal Manor has also assessed its tenants a charge of \$693.63 per lot, which represents a pro rata share of the total impact fee and direct costs for connecting to the City of Boynton Beach's wastewater system. Under the lease agreement, tenants may pay their share of the impact fee either in whole or over a period of eight years. Royal Manor claims that the latter charge is a "pass-through" charge as defined in Section 723.046, Florida Statutes.

Under Sections 723.012(9)(c) and 723.031(5)(b), Florida Statutes, mobile home park owners may pass-through certain charges which, under Section 723.003(10), Florida Statutes, are defined as:

[T]he mobile home owner's proportionate share of the necessary and actual direct costs and impact or hook-up fees for a governmentally mandated capital improvement, which may include the necessary and actual direct costs and impact or hook-up fees incurred for capital improvements required for public or private regulated utilities.

From information provided by Royal Manor, it appears that the Department of Health and Rehabilitative Services required Royal Manor to connect to the City of Boynton Beach's wastewater system in 1993. As a result, Royal Manor was assessed an impact fee of \$172,908 by the City of Boynton Beach. Royal Manor also incurred construction and engineering fees of \$130,208 related to complying with the interconnection.

Pursuant to the requirements of Chapter 723, Royal Manor met with the Homeowners' Association to discuss and negotiate the pass through charge. The charge is fully disclosed in the prospectus and the rental agreement, and has been approved by the Department of Business and Professional Regulation (BPR).

Based upon the discussion above, it appears that Royal Manor is operating within the guidelines of Chapter 723, Florida Statutes. The pass-through of the impact fee and direct costs is not a charge for wastewater service which would subject Royal Manor to the jurisdiction of this Commission. It is more appropriately regulated by BPR. Accordingly, Royal Manor's request for a determination that it is not subject to the jurisdiction of this Commission with regard to the pass-through charge is granted.

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It is, therefore,

ORDERED by the Florida Public Service Commission that Royal Manor Estates Community Water's request for exemption for the provision of water service under Section 367.022(5), Florida Statutes, is granted. It is further

ORDERED that Royal Manor Estates Community Water's request for a determination that it is not subject to the jurisdiction of this Commission for its pass-through of the impact fee and direct costs for connecting to the City of Boynton Beach's wastewater system is granted. It is further

ORDERED that, should Royal Manor Estates Community Water begin charging separately for water service, it shall immediately notify this Commission. It is further

ORDERED that, unless a person whose interests are substantially affected by the action proposed herein files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, this Order shall become final and this docket shall be closed on the following date.

By ORDER of the Florida Public Service Commission, this 1st day of December, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Heyan
Chief, Bureau of Records

(S E A L)

RJP

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 Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 22, 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 substantially 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.