

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Exemption) DOCKET NO. 930183-WS
From Florida Public Service) ORDER NO. PSC-93-0957-FOF-WS
Commission Regulation for) ISSUED: June 28, 1993
Provision of Water and)
Wastewater Service in Palm Beach)
County by HILLTOP GARDENS MOBILE)
HOME PARK.)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING 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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On February 24, 1993, Hilltop Gardens Mobile Home Park (Hilltop or utility) filed an application for an exemption from Commission jurisdiction pursuant to Section 367.022(8), Florida Statutes. Section 367.022(8), Florida Statutes, provides an exemption to utilities that resell water and wastewater service at a rate or charge not exceeding the actual purchase price thereof. To qualify for an exemption pursuant to Section 367.022(8), Florida Statutes, and Rule 25-30.060(2)(h), Florida Administrative Code, a utility's charges for reselling service cannot exceed the purchase price thereof.

Hilltop is presently reselling the water and wastewater service it receives from Seacoast Utility Authority (Seacoast) to the individual mobile homes within the mobile home park. Hilltop employs Utility Conservation Services, Inc. (UCS) to perform billing and collecting. The rates charged to the individual units are based upon a proration of the minimum charge charged to Hilltop by Seacoast and include a pass through of the gallonage charges

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billed by Seacoast. This billing scenario does not qualify Hilltop for an exemption because CS adds a charge of approximately \$5.00 to each customer's monthly bill.

Through these \$5.00 charges, CS is compensated for its services by Hilltop as opposed to being compensated directly by the mobile home park. While revenues attributable to this charge are not realized by Hilltop, they represent a part of the cost of receiving utility service to the unit owners. Since this customer charge is in excess of the rate being charged by Seacoast, Hilltop is providing service at a rate in excess of the purchase price and does not qualify for a reseller exemption.

Hilltop responded to our concerns in a letter dated April 29, 1993. In the letter, Hilltop states the following: 1) CS is not an agent of Hilltop; 2) CS is acting solely as an independent contractor which invoices Hilltop for its services; 3) CS does not own, operate, manage or control Hilltop's water and wastewater system; 4) Hilltop is not receiving any compensation for the service rendered by CS, is not making any profit and does not resell any service in excess of its cost; and 5) Section 723.045, Florida Statutes, allows mobile home park owners to charge for maintenance actually incurred and for administrative costs in providing service.

Regardless of whether CS is an agent or independent contractor, it is our finding that the charge assessed to Hilltop's customers for billing is in excess of Hilltop's purchase price. It is correct that Section 723.045, Florida Statutes, allows mobile home owners to collect an administrative cost for providing water service as long as such collection does not conflict with the provisions of Chapter 367, Florida Statutes. Since the \$5.00 add-on is not a pass-through to Hilltop, it does not qualify as an administrative cost to the utility. The \$5.00 add-on charge assessed to Hilltop's customers is a fee which CS collects for itself for billing and maintenance of the meters. As a result, the individual customers pay the add-on as a cost of receiving utility service and such add-on is with the approval of Hilltop. It is not appropriate for CS to charge for utility service since it is not a utility.

Based upon its present operation, Hilltop does not qualify for any exemption available under Section 367.022(8), Florida Statutes. Therefore, we hereby deny Hilltop's exemption request. Hilltop shall file an application for an original water and wastewater

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certificate within 90 days of the effective date of this Order denying its exemption request. If no timely protest is filed, this docket shall be closed upon expiration of the twenty-one day protest period.

Based on the foregoing, it is, therefore

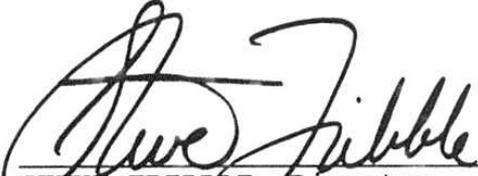
ORDERED by the Florida Public Service Commission that Hilltop Mobile Home Park's request for exemption is denied. It is further

ORDERED that Hilltop Mobile Home Park shall file an application for an original certificate within 90 days of the effective date of this order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, 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 in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 28th day of June, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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.

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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on July 19, 1993.

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.