

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from Florida)	DOCKET NO. 900161-SU
Public Service Commission regulation for)	ORDER NO. 22943
a sewage treatment facility in Monroe)	ISSUED: 5-16-90
County by FIESTA KEY RESORT KOA)	
)	

ORDER INDICATING THE EXEMPT STATUS
OF FIESTA KEY RESORT KOA

Fiesta Key Resort KOA (Fiesta Key) is an existing motel and recreational vehicle facility in Monroe County. Fiesta Key's wastewater treatment needs are currently being met by an on-site extended aeration plant, which discharges to surface waters. Due to a combination of occasional system overloads and the need to eliminate the discharge to surface waters, Fiesta Key intends to construct a new wastewater treatment facility, for which it needs a construction permit from the Department of Environmental Regulation (DER). Pursuant to Section 367.031, Florida Statutes, before DER may issue a construction permit, it must receive either a certificate of authorization or an order indicating that the proposed system will be exempt from this Commission's regulation.

By letter dated February 18, 1990, Fiesta Key requested that it be found exempt from this Commission's jurisdiction. Attached to its letter were copies of the site plan, the engineering report, and an affidavit reciting the facts upon which Fiesta Key's asserted status are based.

According to Fiesta Key's affidavit, it does not charge its guests for wastewater service. Fiesta Key also states that all costs of providing such service are treated as operational expenses. Fiesta Key, therefore, asserts that it is not a utility as defined by Section 367.021(12), Florida Statutes. Under that Section, the definition of utility " . . . includes every person . . . who is providing, or proposes to provide, water or wastewater service to the public for compensation."

Historically, we have declared certain entities which provide water or wastewater service to themselves as an ancillary part of their operations, and which treat the costs thereof as operational expenses, to be exempt from our jurisdiction pursuant to Section 367.021(12), Florida Statutes. In this case, however, there is another, more specific exemption that pertains exactly to Fiesta Key's particular circumstances; Section 367.022(4), Florida Statutes, the public lodging establishment exemption. Under that section, public lodging

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establishments which provide water and/or wastewater service solely in connection with providing service to their guests are exempt from our regulation.

In cases in which they apply, we believe that the specific exemptions should be used, rather than the less specific definition of "utility." Accordingly, we find that, under the facts as presented herein, Fiesta Key is exempt from this Commission's regulation under Section 367.022(4), Florida Statutes, as a public lodging establishment providing service solely in connection with service to its guests. However, should there be any change in circumstances or method of operation, Fiesta Key, or its successor(s) in interest, shall notify the Commission with thirty days of such change so that we may reevaluate its regulatory status.

Upon consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that Fiesta Key Resort KOA is exempt from this Commission's regulation under Section 367.022(4), Florida Statutes, as a public lodging establishment providing service solely in connection with service to its guests. It is further

ORDERED that should there be any change in circumstances or method of operation, Fiesta Key Resort KOA, or its successors(s) in interest, shall notify this Commission within thirty (30) days of such change so that we may reevaluate its regulatory status. It is further

ORDERED that Docket No. 900161-SU be and is hereby closed.

By ORDER of the Florida Public Service Commission
this 16th day of MAY, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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.

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.