

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from) DOCKET NO. 910754-WS
Florida Public Service Commission)
regulation for provision of water) ORDER NO. 25462
and wastewater services to Heather)
Glen Apartments in Orange County) ISSUED: 12/10/91
by Conservation Billing Services, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
MICHAEL MCK. WILSON

ORDER GRANTING EXEMPTION

BY THE COMMISSION:

Background

Mr. Frank Manno is the President of Conservation Billing Services, Inc., (CBS) and a general partner of Heather Glen Apartments (Heather Glen or applicant). CBS proposes to install meters within Heather Glen, an apartment complex consisting of 396 units.

Pursuant to Section 367.031, Florida Statutes, before the Department of Environmental Regulation will issue a construction permit and before a water management district will issue a consumptive use or drilling permit, a utility must first obtain from the Commission a certificate of authorization service or proof that the utility is not subject to Commission regulation. Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater facilities which qualify under an appropriate section of Chapter 367, Florida Statutes.

By correspondence and affidavit dated July '8, 1991, the applicant asked that it be found exempt from Florida Public Service Commission regulation as a reseller of water and wastewater services pursuant to Section 367.022(8), Florida Statutes.

DOCUMENT NUMBER-DATE

12200 DEC 10 1991

Exemption Request

In its affidavit, the applicant states that it is aware of the requirements of Rule 25-30.111, Florida Administrative Code, that it will resell both water and wastewater services, that its service area will be limited to the apartment complex, that it will resell utility service at a rate not exceeding its actual purchase price. The applicant provided the rates and charges Orange County Public Utilities (OCPU) is currently charging for service.

Under a contract between Heather Glen and CBS, CBS has agreed to install and maintain meters on each individual apartment unit in the Heather Glen complex. CBS will bill the apartment tenants and collect the amounts due. The contract between Heather Glen and CBS states that billing will be at the same rate as the main meter. Until it recovers the capital cost stated in the contract, CBS will retain 80% of the gross billings. After its capital costs are recovered, CBS will retain just 30% of gross billings.

There is no contract for service between CBS and individual tenants. The tenants are obligated to pay for water and wastewater service separately by virtue of their lease agreements with the landlord. Each lease agreement will identify CBS as the landlord's billing agent. The applicant has stated that tenant complaints about meter maintenance or bills will be handled, at least initially, by CBS. Bills from CBS will have a 1-800 number which tenants can call to complain.

CBS will read each tenant's meter on a monthly cycle and bill the tenant according to his/her usage at the same rates OCPU charges Heather Glen, \$1.10 per 1,000 gallons for water and \$2.83 per 1,000 gallons for wastewater, plus a pro-rata share of the constant charges OCPU assesses Heather Glen. Heather Glen will phase in the meter service on a new lease and lease renewal basis only.

Section 367.022(8), Florida Statutes, provides that "any person who resells water or wastewater service at a rate or charge which does not exceed the actual purchase price thereof . . ." is exempt from regulation. The applicant will be passing onto its tenants a pro rata share of the constant charges it pays plus a gallonage charge at the same rate it pays. The applicant will therefore be reselling water and wastewater service at a rate which does not exceed its own purchase price.

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In addition, we believe that this case is distinguishable from our decision in Docket No. 910655-WU, Request for Exemption from Florida Public Service Commission Regulation for Provision of Water Service in Broward County by H2oulton Metering Services, Inc. By proposed agency action (PAA) Order No. 24936, issued August 20, 1991, (an Order which was protested) we proposed denying the exemption request of the H2oulton billing service. In H2oulton, we concluded that H2oulton was not the proper entity to be exempted. We noted that "if any exemptions are granted, they should be in the name of the landlord." This was because the landlord, and not the billing service, is the person reselling the water and is thus ultimately responsible for the provision of the exempt utility service.

Also, in H2oulton, we were concerned with the billing service's collection of deposits from apartment tenants and its claimed authority to terminate service for nonpayment. The billing service's terminating service to tenants, this Commission believed, circumvented the Landlord-Tenant Act which prohibits a landlord directly or indirectly terminating or interrupting utility service.

In the instant case it is clear that it is the apartment building owner, not CBS, the billing service, which is the exempt entity. Unlike in H2oulton, the billing service here is not requesting anything in the nature of a statewide exemption. Some confusion arose in this case, however, because the apartment building's owner asked for the exemption in the affidavit filed, but correspondence regarding the application was ostensibly from CBS. We believe that this confusion is likely attributable to the fact that the general partner of the partnership which owns the apartment building and the president of CBS are the same man, Mr. Frank Manno. Mr. Manno has acknowledged that it is the apartment building which is the exempt entity and which is ultimately responsible for the provision of the exempt utility service.

The other distinctions between this case and H2oulton are that here no one will collect any charges other than charges for monthly service and there is no threatened circumvention of the Landlord-Tenant Act. To show that it does not intend to circumvent the Landlord-Tenant Act, the apartment building owner has agreed to have all leases under metering state the following: "Although CBS does the billing for water and wastewater service, neither CBS or Heather Glen can terminate water and wastewater service without an eviction proceeding." The inclusion of such a clause in all leases

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under metering indicates that the landlord acknowledges his responsibility to abide by the Landlord-Tenant Act before terminating service for nonpayment.

Based on the facts as represented, we shall grant the request of Heather Glen that it be exempt from Commission regulation as a reseller of water and wastewater services pursuant to Section 367.022(8), Florida Statutes. In the event of any change in circumstances or method of operation that might affect its exempt status, Heather Glen, or its successor(s) in interest, is hereby ordered to inform the Commission within thirty days of said change so that its exempt status may be reevaluated.

It is, therefore

ORDERED by the Florida Public Service Commission that the request of Heather Glen Apartments, 10801 Heather Ridge Circle, Orlando, FL 32817-3337, for an exemption from regulation pursuant to Section 367.022(8), Florida Statutes, is hereby granted.

ORDERED that should there be any change in the circumstances or method of operation of the exempt service, Heather Glen Apartments, or any successor in interest, shall inform this Commission within thirty days of such change so that the Commission may have the opportunity to reevaluate the exempt status granted. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this
10th day of DECEMBER, 1991.



STEVE TRIBBIE, Director
Division of Records and Reporting

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MJF

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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.