

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Southern
Pines Homeowners of Bonita
Springs, Inc. to rescind
exemption granted to Bonita
Springs Utilities in Lee County.

DOCKET NO. 961343-WS
ORDER NO. PSC-97-1348-PCO-WS
ISSUED: October 27, 1997

The following Commissioners participated in the disposition of this matter:

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

ORDER GRANTING EXTENSION OF TIME

BY THE COMMISSION:

Bonita Springs Utilities, Inc. (Bonita Springs or utility), is a non-profit association which provides water and wastewater service in Lee County to approximately 19,542 water and 12,213 wastewater customers. The utility had been considered exempt from Commission regulation pursuant to Section 367.022(7), Florida Statutes.

We acknowledged Bonita Springs' exemption from regulation of its water system in Dockets Nos. 690404-W, 70337-W, 70145-W and 8188-W by Order No. 5223, issued June 7, 1971. Bonita Springs was granted a wastewater exemption in Docket No. 910604-SU, by Order No. 24921, issued August 16, 1991. These orders indicated that service would be provided only to members of the corporation.

On November 12, 1996, the Southern Pines Homeowners of Bonita Springs, Inc. (Southern Pines or homeowners) filed a petition to rescind the exemption granted to Bonita Springs. The petition stated that the exemption from our regulation was based on the assumption that Bonita Springs was a nonprofit cooperative providing service solely to members who own and control such cooperatives. Southern Pines alleged that Bonita Springs provided water and wastewater service to many individually metered and

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ORDER NO. PSC-97-1348-PCO-WS
DOCKET NO. 961343-WS
PAGE 2

billed customers who were denied membership in the corporation. Southern Pines has also alleged that Bonita Springs is collecting water and wastewater revenues in excess of the corporation expenses and that these excess revenues are dispensed in the form of capital credits to the corporate members, but that Southern Pines' members do not receive any share of these capital credits. The homeowners also requested that we review Bonita Springs' operations, audit its books, and "reassign the already distributed capital credits to every customer on a fair and equitable basis."

After receiving information from the homeowners, including the utility's bylaws, its corporate structure, financial statements, newspaper articles, and documents relating to Bonita Springs' rate proceeding before Lee County, we issued Order No. PSC-97-0841-FOF-WS on July 14, 1997, which required Bonita Springs to either revise its bylaws to comply with Section 367.022(7), Florida Statutes, or file for an original certificate within sixty days. That Order further stated that show cause proceedings would be considered unless Bonita Springs attained compliance with the statute, or applied for an original certificate within sixty days.

By letter dated September 5, 1997, the attorney for Bonita Springs advised our staff that, on September 2, 1997, the Board of Directors of Bonita Springs approved amending the company's bylaws to comply with Section 367.022(7), Florida Statutes. Also, the letter advised that the Board had directed its staff to provide a draft bylaw amendment for review and approval, and to advise the Commission of its intentions in this matter. However, by that same letter, Bonita Springs requests that it be given an additional sixty days to work out the mechanics of the bylaw amendment.

This Order addresses whether Bonita Springs should be given an additional sixty days in which to either revise its bylaws to comply with the requirements of Section 367.022(7), Florida Statutes, or otherwise comply with Order No. PSC-97-0841-FOF-WS. We believe that Bonita Springs has shown a good-faith response to our Order and that it is attempting to comply with our directive in an expeditious manner. Therefore, Bonita Springs shall be granted an additional sixty days, up to and including November 11, 1997, in which to comply with Order No. PSC-97-0841-FOF-WS, and we shall not initiate show cause proceedings at this time. Pending Bonita Springs' compliance with our directives, this docket shall remain open.

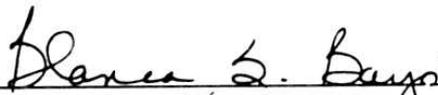
Based on the foregoing, it is

ORDER NO. PSC-97-1348-PCO-WS
DOCKET NO. 961343-WS
PAGE 3

ORDERED by the Florida Public Service Commission that Bonita Springs Utilities, Inc.'s request for an extension of time is granted, and it shall now have up to and including November 11, 1997, to either revise its bylaws to comply with the requirements of Section 367.022(7), Florida Statutes, or apply for an original certificate. It is further

ORDERED that, while we will not initiate show cause proceedings at this time, a show cause action shall be considered if Bonita Springs Utilities, Inc., fails to attain compliance with the statute, or fails to apply for an original certificate by November 11, 1997.

By ORDER of the Florida Public Service Commission this 27th day of October, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RRJ

ORDER NO. PSC-97-1348-PCO-WS
DOCKET NO. 961343-WS
PAGE 4

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

From: Troy Rendell Confirm receipt
To: Kay Flynn, Linda Williams
Subject: fwd: Dkt. 920199-WS

===NOTE=====10/27/97==4:33pm=
CC: Jo Ann Chase, Lila Jaber

.....
OOPs, put the wrong docket number - Sorry.

I just picked up the first set of letters concerning the potential refund/surcharges.

I wanted to let you know that in the stack that I received, there were a couple of times that multiple copies were included. One letter was copied twice and one letter was copied three times. These copies were not in consecutive order.

Also, there were a couple of copies that could not be read. Therefore, I will send an analyst over tomorrow to make legible copies.

Let me know if you have any questions.
Thanks.

Fwd=by:=Kay=Flynn=====

Fwd to: Troy Rendell

CC:
Carolea Schmidt, Linda Williams, Lila Jaber, Jo Ann Chase

.....
Troy, I'm sorry this happened. I will have Carolea check the copies to be sure there are no duplications next time, and will also check to be sure the copies are legible. To keep the duplication from occurring again, Linda is going to pull the originals that we received today and consecutively number them (upper left-hand corner). She is also going to write the name of the letter writer--if the name was given--and the number on a legal pad at the counter. If you would like to get a replacement copy of the letters with the number written on the copies--to keep your record and ours in sync--I will be glad to make a copy for you. (Lila, let me know if you would like a replacement copy as well.) Kay
