

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for exemption ) DOCKET NO. 920091-WU  
from Florida Public Service ) ORDER NO. PSC-92-0261-FOF-WU  
Commission regulation of a ) ISSUED: 04/28/92  
water facility in Escambia )  
County by FARM HILL UTILITIES, )  
INC. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

ORDER GRANTING FARM HILL UTILITIES, INC.  
ADDITIONAL TIME TO FILE AMENDED  
ARTICLES OF INCORPORATION

BY THE COMMISSION:

BACKGROUND

On January 31, 1992, Farm Hill Utilities, Inc. (Farm Hill or corporation) filed an application for an exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes. Farm Hill is located at 109 Rittenberry Road, Cantonment, Florida 32533, and it provides water service to 1,011 residential members, 5 commercial members, and 6 churches in various subdivisions of a rural area. All of the customers are on septic systems.

Farm Hill submitted its Articles of Incorporation (articles) and Bylaws when it filed its application. However, Farm Hill's articles indicated that service could be provided to non-members, contrary to the requirements of Section 367.022(7), Florida Statutes.

There is inconsistent language in Farm Hill's articles and bylaws concerning the definition of "member" or "membership." Article III states:

The members of the corporation shall be the subscribers hereto and all other persons, partnerships, corporations, or other legal entities having a reasonable accessibility to

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

the sources of and who desire to have water and other services supplied for domestic, commercial, agricultural, industrial, or other uses from the systems constructed, maintained, and operated by the corporation.... (Emphasis added)

Article III also states:

....The corporation shall not be required to admit additional members if the capacity of its water system is exhausted by the needs of its existing members and such other persons to whom it has been supplying water. (Emphasis added)

In addition, the articles address the nature of the business of the corporation as follows in Article II, Sections A and B:

(A) To construct, maintain, and operate a water system for the supplying of water for domestic, commercial, agricultural, industrial, and other purposes to its members and for the sale of any surplus water remaining after the needs of its members have been satisfied.... (Emphasis added)

(B) To construct, maintain, and operate a sewage disposal system for the use and benefit of its members. (Emphasis added)

The above citations illustrate that non-members are not excluded from being provided service by the corporation, which conflicts with the statutory requirements that service must be provided solely to members who own and control the nonprofit corporation. In addition, Farm Hill applied for an exemption for water service only, but the articles state that a sewage disposal system may also be provided by the corporation.

Farm Hill has indicated a desire for additional time in which to file amended articles which comport fully with the requirements of Section 367.022(7), Florida Statutes. Therefore, based upon the

ORDER NO. PSC-92-0261-FOF-WU  
DOCKET NO. 920091-WU  
PAGE 3

information as represented, we grant Farm Hill 90 days in which to file such amended articles.

This docket shall remain open until the amended articles are filed. Our Staff may then review the amended application, and if it comports with Section 367.022(7), Florida Statutes, our Staff may administratively approve the exemption request.

Based upon the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Farm Hill Utilities, Inc., is hereby given 90 days from the date of issuance of this Order in which to file its amended Articles of Incorporation as filed with the Secretary of State. It is further

ORDERED that this docket shall remain open until our Staff has reviewed the amended Articles of Incorporation and administratively approved the requested exemption.

By ORDER of the Florida Public Service Commission, this 28th day of April, 1992.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

LK

Commissioner Clark Dissents as follows:

I respectfully disagree with the majority on this case. The issue is whether the utility is currently providing service solely to members who own and control it. The statute is written in the present tense.

Farm Hill Utilities, Inc. is currently providing service exclusively to members of the association and has been doing so for over 25 years. It is beyond our authority to look into Articles of

Incorporation to review what a utility can and cannot do. Articles of Incorporation are typically very open-ended as to what a corporation can do. Our authority extends only to determining whether or not the utility is currently providing service to only members and, therefore, whether they qualify for an exemption pursuant to Section 367.022(7), Florida Statutes. A utility can change their status at any time by changing the way they provide service, and at that point they could become subject to our regulation.

I believe that Farm Hills has met the rule and statutory requirements for being exempt as a nonprofit association.

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.