

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption) DOCKET NO. 920461-WS
from Florida Public Service) ORDER NO. PSC-92-1181-FOF-WS
Commission regulation as a) ISSUED: 10/19/92
reseller of water and)
wastewater service to Hidden)
Harbor in Broward County by)
H2OULTON METERING SYSTEMS, 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

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 actions discussed herein are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

On May 14, 1992, H2Oulton Metering Systems Inc. (H2Oulton) applied for a reseller exemption pursuant to Section 367.022(8), Florida Statutes, to provide water and wastewater service to the Hidden Harbor Apartments (Hidden Harbor) in Palm Beach County. Based on its application, H2Oulton will install and maintain meters to resell utility service within the 200-unit apartment complex.

Water and wastewater service is provided to Hidden Harbor by the Village of Royal Palm Beach and is resold to the individual tenants by H2Oulton. Based on its standard contract, H2Oulton would operate in the following manner. H2Oulton will individually meter each unit. They will retain ownership of the meters and responsibility for any maintenance. H2Oulton will read the meters, bill the tenants/customers, receive payment and maintain all records. H2Oulton will file annual reports for each property pursuant to Rule 25-30.111, Florida Administrative Code.

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PSC-RECORDS/REPORTING

The sub-metering service is provided at no up-front cost to Hidden Harbor. Hidden Harbor will be the primary obligor for payment of water or wastewater bills based on the master meter to the property. The payments received by H2Oulton will be payments from the individual tenants for utility service. Such service will be billed at a rate that will not exceed the purchase price of the service being resold through the master meter. Each month H2Oulton will remit a portion of the revenue collected to Hidden Harbor. Initially, 25% of the revenue will go to Hidden Harbor until the cost of the meters is recouped. Upon recovery of these costs, Hidden Harbor will receive 70% of the revenue collected by H2Oulton.

Based on the foregoing, we do not find that an exemption should be granted to H2Oulton. If an exemption is granted, it should be granted in the name Hidden Harbor as opposed to H2Oulton. Under this scenario, H2Oulton would be the provider of metering and billing services for the exempt utility.

As previously noted, this Commission in Docket No. 910655-WU found that H2Oulton did not qualify for an exemption. The only change in H2Oulton's method of operation since that time is that it is now a co-obligor for the purchase of water and wastewater services for Hidden Harbor at the master meter. However, this change does not impact on our major point in denying the exemption, which was that H2Oulton is not a utility.

In Order No. PSC-92-0410-FOF-WU, Conclusion of Law No. 1 clearly states:

H2Oulton is not a utility.... H2Oulton does not have a system that it owns, operates, manages or controls.... H2Oulton does not own, operate, manage or control a water or wastewater facility or plant or land connected with such a facility. Accordingly, H2Oulton does not provide water or wastewater services.... H2Oulton is, therefore, not a utility pursuant to Chapter 367, Florida Statutes.

Conclusion of Law No. 6, within that order, reiterates: "As stated in Conclusion of Law No. 1, H2Oulton is not a utility and, therefore, shall cease holding itself out as a utility."

On page 8 of the Final Order, this Commission held:

We find that the Hearing Officer's Recommended Order clearly sets out the proper rationale for finding that H2Oulton does not possess a "system" in the sense required in Section 367.021(11) for a "utility." H2Oulton simply ignores the definition of "utility" in Section 367.021(12) which informs the meaning of "system" set out in Section 367.021(11). The "system" must have facilities and land used to provide water or wastewater service to the public for compensation. H2Oulton does not provide the water or wastewater service in the situations in which it proposes to operate.

On page 9 of the Final Order, the Commission held:

Clearly, the Commission's jurisdiction is over utilities. H2Oulton is attempting to perform functions of a utility, such as collecting deposits for service and discontinuation of service. Since H2Oulton is not, by definition, a utility, it cannot avail itself of the exemptions provided in Section 367.022, Florida Statutes, to utilities and cannot act in a fashion authorized for utilities by Chapter 367, be they regulated or exempt.

Additionally, in the final order this Commission clearly stated that Section 367.022(8), Florida Statutes, does not provide for the assignability of exemption rights.

Since H2Oulton's method of operation has not substantially changed, such operation does not meet the definition of a utility, and because exemptions are not assignable, we find no reason to vary from our previous decision.

Based on the above, the request by H2Oulton that it be treated as a reseller of water and wastewater services pursuant to section 367.022(8), Florida Statutes, and that it be exempt from Commission regulation is hereby denied. In addition, Hidden Harbor is ordered to file an application for an exemption within 30 days of the date of this Order.

H2Oulton represents itself as a utility as opposed to a metering and billing agent of Hidden Harbor. It asserts utility status by alleging its ability to collect deposits and terminate service for cause, which a landlord is prohibited from doing under the Landlord Tenant Act. We believe that any exemption request should be in the name of Hidden Harbor. Hidden Harbor can then contract with H2Oulton or any other metering or billing service to facilitate submetering. Under this scenario, the submetering program would properly be subject to the provisions of the Landlord Tenant Act.

H2Oulton is neither a utility nor the appropriate party to file for an exemption. However, the Commission will be able to review H2Oulton because reseller exemption requests may be denied based on provisions of the contracts executed between the applicant and H2Oulton. Therefore, H2Oulton must immediately cease claiming that it can turn off tenant service for nonpayment and collecting utility deposits. As a result, H2Oulton must modify its contract with Hidden Harbor by removing any reference to such claims. This must be accomplished prior to the Commission approving any reseller exemption in which H2Oulton is involved.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the request for an exemption from Commission regulation by H2Oulton Metering Systems, Inc. as a reseller of water and wastewater services in Palm Beach County is hereby denied. It is further


ORDERED that Hidden Harbor Apartments in Palm Beach County shall file an application for a reseller exemption with 30 days of the date of this Order. It is further

ORDERED that the provisions of this Order are issued as proposed agency action and shall become final, unless a person whose interests are substantially affected files an appropriate petition in the form provided by Rule 25-22.036, Florida Administrative Code, with the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that this docket shall be closed if no timely protest is received from a substantially affected person.

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By ORDER of the Florida Public Service Commission this 19th
day of October, 1992.



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.

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 November 9, 1992.

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.

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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.