

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for Exemption from Florida) DOCKET NO. 900817-SU
Public Service Commission regulation for) ORDER NO. 23706
a sewage treatment and disposal system in) ISSUED: 10-31-90
Monroe County by Marker 88 Restaurant)
_____)

ORDER INDICATING THE NONJURISDICTIONAL
STATUS OF MARKER 88 RESTAURANT

BY THE COMMISSION:

The Marker 88 Restaurant is an existing restaurant in Monroe County that has been in business for many years. Wastewater treatment and disposal have been handled by an on-site septic tank, however, the owner of the restaurant plans to upgrade the system by installing a wastewater treatment and disposal system. Pursuant to Section 367.031, Florida Statutes, in order to obtain from the Department of Environmental Regulation a permit to build the system, the owner must obtain from this Commission a certificate authorizing service or an order recognizing that the system is exempt from regulation.

On September 24, 1990, the restaurant requested that it be found exempt from our regulation. The application for an exemption included an affidavit from the owner of the restaurant stating that the wastewater treatment and disposal system will provide service solely in connection with the restaurant's operations. The application also included information concerning the system's location, a site plan, and an engineering report.

We find that the restaurant is not a utility within the meaning of Section 367.021(12), Florida Statutes, and therefore is not subject to our jurisdiction.

According to Section 367.021(12), Florida Statutes:

"Utility" means a water or wastewater utility and, except as provided in Section 367.022, Florida Statutes, includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation.

Under the above definition, in order to constitute a utility, a wastewater facility must provide service for compensation to the public. In this case, no customers will be charged because the treatment plant will provide service solely to the restaurant and all costs will be treated as operating expenses.

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Upon consideration of the foregoing, we find that the restaurant's wastewater treatment facility is not a utility as defined in Section 367.021(12), Florida Statutes, because wastewater service will not be provided to the public for compensation. We therefore find that this facility is not under the jurisdiction of this Commission. We further find that Marker 88 Restaurant, or its successor in interest, should inform this Commission of any change in circumstances or method of operation within thirty days of such change so that we may review the matter to determine whether nonjurisdictional status is still appropriate.

It is therefore

ORDERED by the Florida Public Service Commission that the wastewater facility constructed to serve the Marker 88 Restaurant is not a utility within the definition provided in Section 367.021(12), Florida Statutes, and is therefore not under the jurisdiction of this Commission. It is further

ORDERED that should there be any change in circumstances or method of operation, the Marker 88 Restaurant or its successor in interest shall inform this Commission within thirty days of such change. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission, this
31st day of OCTOBER, 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.