

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request For Exemption) DOCKET NO. 960317-WU
From Florida Public Service) ORDER NO. PSC-96-0931-FOF-WU
Commission Regulation For) ISSUED: July 17, 1996
Provision of Water Service in)
DeSoto County by Dave's Mini)
Mart.)
_____)

ORDER INDICATING NONJURISDICTIONAL STATUS
OF DAVE'S MINI MART AND CLOSING DOCKET

BY THE COMMISSION:

On March 11, 1996, David T. Cavalier filed an application with this Commission for recognition of his nonjurisdictional status, pursuant to Section 367.021(12), Florida Statutes, for a convenience store. Subsequent to the filing, Mr. Cavalier sold the convenience store to Mr. David Chiaramonte. On June 20, 1996, Mr. Chiaramonte refiled the application requesting recognition of Dave's Mini Mart's nonjurisdictional status. Dave's Mini Mart is a convenience store located at 36255 East State Road 70, Myakka City, DeSoto County, Florida. Mr. David Chiaramonte, Owner and primary contact person, filed the application on behalf of Dave's Mini Mart.

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater systems if they qualify under the appropriate provision of Chapter 367, Florida Statutes. The application was filed in accordance with Section 367.021(12), Florida Statutes, and Rules 25-30.060(2) and (3)(j), Florida Administrative Code.

Section 367.021(12), Florida Statutes, states that a "utility means a water or wastewater utility and except as provided in Section 367.022, 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."

According to the application, water service is provided only to the convenience store located at 36255 East State Road 70, Myakka City, Florida; there is no charge for providing the service; and all costs of providing service are treated or recovered as operational expenses. Wastewater service is provided by septic tank.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORDER NO. PSC-96-0931-FOF-WU
DOCKET NO. 960317-WU
PAGE 2

In addition, pursuant to Section 837.06, Florida Statutes, and Rule 25-30.060(2)(f), Florida Administrative Code, anyone knowingly making a false statement in writing with the intent to mislead is guilty of a misdemeanor. By signing the application, Mr. Chiaramonte acknowledged that he is aware of Section 837.06, Florida Statutes, and the penalties for making false statements in the application.

Based on the facts as represented, we find that Dave's Mini Mart is not a utility pursuant to the provisions of Section 367.021(12), Florida Statutes. Accordingly, Dave's Mini Mart is not subject to this Commission's jurisdiction. However, the owner of Dave's Mini Mart or any successors in interest are put on notice that if there is any change in circumstance or method of operation, it should inform the Commission within 30 days of such change so that its nonjurisdictional status may be reevaluated.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Dave's Mini Mart, Post Office Box 7029, North Port, Florida 34287, is not a water utility subject to this Commission's jurisdiction, pursuant to the provisions of Section 367.021(12), Florida Statutes. It is further

ORDERED that this Docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 17th day of July, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Lynn
Chief, Bureau of Records

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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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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 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.