

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

December 5, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF WATER & WASTEWATER (COKER, REDEMANN) ^{GSM} *RA* *AK* *JTC* *MSW* *af*
DIVISION OF LEGAL SERVICES (AGARWAL) *RA* *AK*

RE: DOCKET NO. 960057-WS
APPLICATION FOR CERTIFICATES TO PROVIDE WATER AND
WASTEWATER IN CHARLOTTE COUNTY UNDER GRANDFATHER
RIGHTS UNDER BURNT STORE COLONY R.O. ASSOCIATION, INC.
COUNTY: CHARLOTTE

AGENDA: DECEMBER 17, 1996 - REGULAR AGENDA - INTERESTED PERSONS
MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\WAW\WP\960057.RCM

DOCUMENT NUMBER-DATE

13006 DEC-5

FPSC-RECORDS/REPORTING

CASE BACKGROUND

On September 27, 1994, the Board of County Commissioners of Charlotte County adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring the privately owned water and wastewater utilities in that County subject to the provisions of Chapter 367, Florida Statutes. The Public Service Commission received the County's resolution on September 30, 1994. Pursuant to Section 367.031, Florida Statutes, all utilities subject to the Commission's jurisdiction must obtain either a certificate to provide water and wastewater service.

Burnt Store Colony R.O. Association, Inc. (Burnt Store or Utility) was established in 1981 to serve water and wastewater customers in Charlotte County, Florida. The utility received Permit No. WC08-7870 from the Florida Department of Environmental Regulation on October 9, 1981. The utility services residential customers as well as commercial customers for a total of approximately 187 water and wastewater customers.

On January 12, 1996, Burnt Store filed an application for a grandfather certificate to provide water service in Charlotte County. Pursuant to Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code, annual reports and regulatory assessment fees are due from regulated utilities regardless of whether a certificate has been granted. Burnt Store has been subject to this Commission's jurisdiction since September 27, 1994. The Utility was advised of the Commission's jurisdiction and the Utility's responsibility to obtain a certificate by a letter dated November 2, 1994. Burnt Store initially attempted to obtain an exemption from PSC regulation as a non-profit association. However, the application was denied in Order No. PSC-95-0648-FOF-WS, issued May 25, 1995, due to the utility providing service to the Country Store, which is not a member of the non-profit association. Burnt Store then applied for a certificate to operate as a regulated utility on January 12, 1996. On September 9, 1996 the utility requested the application for certification be withdrawn. Burnt Store submitted an affidavit stating that it would provide water service to the Country Store at no charge.

Florida law no longer requires an exemption order to be issued to entities exempt from Commission jurisdiction due to a statutory revision, which became effective July 1, 1996. However, since the original application was docketed prior to the statute change, staff believes it is appropriate to issue an order recognizing Burnt Store as an exempt entity.

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ISSUE 1: Should the Commission acknowledge the withdrawal of Burnt Store Colony R.O. Association, Inc.'s application for a water and wastewater certificate?

RECOMMENDATION: Yes, the Commission should acknowledge the withdrawal of Burnt Store Colony R.O. Association, Inc.'s application for a water and wastewater certificate. (COKER, REDEMANN)

STAFF ANALYSIS: As stated in the Case Background, Burnt Store Colony R.O. Association, Inc. initially attempted to obtain an exemption from PSC regulation as a non-profit association. However, the application was denied in Order No. PSC-95-0648-FOF-WS, issued May 25, 1995, due to the utility providing service to the Country Store, which is not a member of the non-profit association. Burnt Store subsequently filed its application for a grandfather certificate to provide service in Charlotte County.

On September 9, 1996 the utility requested the application for certification be withdrawn. Burnt Store submitted an affidavit stating that it would provide water service to the Country Store at no charge. Burnt Store now requests an exemption from PSC regulation by means of a landlord/tenant exemption pursuant to Chapter 367.022(5) F.S. and for a non-jurisdictional finding pursuant to Chapter 367.021(12) F.S.

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ISSUE 2: Should the Commission grant Burnt Store Colony R.O. Association, Inc. an exemption from Florida Public Service Commission regulation pursuant to Section 367.022(5) Florida Statutes and for a non-jurisdictional finding pursuant to Section 367.021(12) Florida Statutes?

RECOMMENDATION: Yes, Burnt Store Colony R.O. Association, Inc. should be granted an exemption from Florida Public Service Commission regulation pursuant to Chapter 367.022(5) Florida Statutes. Its service to the Country Store should be found to be non-jurisdictional pursuant to Section 367.021(12) Florida Statutes. (COKER, REDEMANN)

STAFF ANALYSIS: Staff has determined that Burnt Store meets the requirements for status as a landlord providing service to tenants without specific compensation for the service as provided in Section 367.022(5), F.S. Burnt Store will provide water and wastewater services solely for the use of its tenants without separate additional charges. President of Burnt Store, Mr. Calvin Lustig signed the application and submitted a sample lease.

Burnt Store, which operates as a corporation, is currently serving 186 residential customers within Burnt Store Colony Mobile Home Park. Water service will be provided by a well, and wastewater service provided by an on-site wastewater treatment facility. The service area is identified by the following description: 15550 Burnt Store Road, Punta Gorda, Florida 33955.

Burnt Store does serve one connection outside the mobile home park. Only the Country Store, which is a general merchandise retail store, is an connection outside the mobile home park. However, Burnt Store submitted an affidavit stating that it would provide water and wastewater service to the Country Store at no charge. This stipulation allows Burnt Store to meet the rules and requirements of a landlord/tenant exemption as service to the Country Store would be non-jurisdictional.

In summary, staff has determined that Burnt Store meets the necessary qualifications for an exemption pursuant to Section 367.022(5), F.S. and Rule 25-30.060(3)(e), F.A.C. The applicant substantiated that services will be provided solely to its tenants. In addition, Mr. Lustig acknowledged Section 837.06, Florida Statutes, regarding false statements.

Staff recommends that an order be issued finding Burnt Store exempt from Commission regulation pursuant to Section 367.022(5), F.S. Staff further recommends that the order require Burnt Store to notify this Commission in the event of any change of circumstances or method of operation of its water system.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. No further action is required and this docket should be closed. (AGARWAL)

STAFF ANALYSIS: Since no further action is required in this docket, Staff recommends this docket be closed.