

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: REQUEST BY OCEAN POINTE AT)	DOCKET NO. 890184-SU
PLANTERS POINTE FOR EXEMPTION FROM FPSC)	ORDER NO. 21770
REGULATION FOR A WASTEWATER TREATMENT)	ISSUED: 8-22-89
PLANT IN MONROE COUNTY.)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, CHAIRMAN
 THOMAS M. BEARD
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER INDICATING THE EXEMPT STATUS OF
OCEAN POINTE UTILITY ASSOCIATION, INC.

BY THE COMMISSION:

Ocean Pointe Development Corporation (Developer) proposes to construct a sewage treatment plant to serve a planned residential condominium complex in Monroe County. Pursuant to Section 367.031, Florida Statutes, before the Department of Environmental Regulation (DER) will issue a construction permit, it requires either a certificate authorizing service or proof that the utility is not subject to the regulation of this Commission. Therefore, by letter and affidavit received February 1, 1989, Developer has requested recognition of the exempt status of Ocean Pointe Utilities Association, Inc. (The Association), a nonprofit corporation organized to provide sewer service to the complex.

As a matter of practice, upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or sewer facilities, if they qualify under the appropriate section of Chapter 367, Florida Statutes. Developer requested recognition of the exempt status of The Association under Section 367.022(7), Florida Statutes.

Section 367.022(7), Florida Statutes, states that nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit entities are exempt from Commission regulation.

DOCUMENT NUMBER-DATE

08505 AUG 22 1989

FPSC-RECORDS/REPORTING

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The affidavit, articles of incorporation, and bylaws of The Association show that The Association is a nonprofit corporation organized solely to provide sewer service to Ocean Pointe Complex (The Complex), a 240 unit residential condominium complex. The Association will provide sewer service solely to its members. Membership in The Association is attained by ownership of a unit in The Complex. For all matters of The Association subject to membership vote, members are entitled to one vote for each unit owned in The Complex. Initially, Developer will appoint a three person board of directors. Sixty days after fifty-one percent of The Complex units have been sold to purchasers other than Developer, the three directors will resign. Members other than Developer will then elect a five person board of directors.

Prior to conveying the first unit in The Complex, Developer will convey title to the sewage treatment plant and the underlying land to The Association. The Association will be responsible for assessing its members for sewer service.

Based upon the facts as represented, we find that The Association is a nonprofit corporation providing sewer service solely to its members who own and control such nonprofit corporation. The control test is satisfied by the power of the members to appoint the board of directors after the members have acquired fifty-one percent of The Complex units. Accordingly, we find it appropriate to grant The Association an exemption from our regulation under the terms of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances of The Association, a representative of The Association must inform the Commission within thirty days of such change, so that we may determine whether exempt status is still appropriate.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Ocean Pointe Utilities Association, Inc., located at 43 Barkley Circle, Suite 101, Ft. Myers, Florida 33907, is hereby exempt from Commission regulation pursuant to the terms of Section 367.022(7), Florida Statutes. It is further

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ORDERED that should there be any change in circumstances of Ocean Pointe Utilities Association, Inc., a representative of the corporation shall inform the Commission within thirty days of such change. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission,
this 22nd day of AUGUST, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DCS

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

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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.