

ORDER NO. 24044
DOCKET NO. 900814-WU
PAGE 2

Section 367.022(7), Florida Statutes, provides for the exemption from Commission regulation of "[n]on-profit corporations, associations, or cooperatives providing service solely to members who own and control such corporations, associations, or cooperatives." In interpreting this provision, this Commission has consistently required that service be provided only to members of the non-profit entity unless the service to non-members is provided without compensation, see Order No. 23897. A letter from the applicant and a second affidavit indicate that the applicant actually serves two non-members: the McGraw water system and a public elementary school run by the Orange County Board of Public Instruction. The McGraw water system, which serves approximately 80-85 residences, is currently regulated by this Commission under Certificate No. 099W. These two entities are not currently members of the corporation, and Water Users does charge them for service. Thus, the applicant is providing service to non-members for compensation and is not exempt from Commission regulation under Section 367.022(7), Florida Statutes.

According to the applicant, the McGraw water system simply resells water supplied by the Water Users. In his affidavit, the president stated McGraw formerly had its own wells and pump, but no longer operates them because of the expense and the burden of various regulations. The Water Users have discussed with McGraw a plan to acquire the McGraw Water System sometime in the future, although no application for transfer has been filed with this Commission to date. If a transfer does occur, the applicant states, former McGraw customers will be served by the same facilities as the other members of the Water Users and will be subject to the same articles of incorporation and the same by-laws, thus they will have the same voting rights.

The applicant charges each residence a \$50.00 membership fee and a \$500.00 installation fee for residences not previously connected to the system. The corporation by-laws provide that "[e]ach member shall have one vote for one membership." The articles of incorporation provide that "[a]ll property holders or residents of Zellwood, Florida, or any other person accepted by the membership of this Corporation shall be a member upon payment of the membership fee of \$50.00." The applicant states that, except for the McGraw system and the public elementary school, neither of which are members, "[t]he only persons entitled to membership in

ORDER NO. 24044
DOCKET NO. 900814-WU
PAGE 3

Zellwood Water Users are, in fact, persons who are currently served by the utility."

The affidavit which accompanied the application also stated that the service territory is limited to the Zellwood, Florida area and that the applicant "will provide its own billing and accounting for the water service provided to its customers." The applicant owns two parcels of property on which two separate wells and associated improvements are located. The applicant states that it owns "the properties, improvements, wells and other matters . . . free of any debt or encumbrances." A copy of a deed to certain real property, on which the facilities are situated, was included with the application.

Water Users does not meet the statutory criteria for an exemption because it does not provide service solely to members of the non-profit corporation. Therefore we deny the request for an exemption and direct the Water Users to apply for a certificate of authorization pursuant to Section 367.045, Florida Statutes, within six months of the date this Order becomes final. If no protest is filed to this proposed agency action, this docket will be closed.

It is therefore

ORDERED by the Florida Public Service Commission that the application of Zellwood Water Users, Inc. for an exemption from Commission regulation is denied. It is further

ORDERED that the Zellwood Water Users, Inc. file an application for a certificate of authorization within six months of the date this Order becomes final. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that if no protest is filed timely, this docket will be closed.

ORDER NO. 24044
DOCKET NO. 900814-WU
PAGE 4

By ORDER of the Florida Public Service Commission this 29th
day of JANUARY, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MJL

by: Kay J. Jenson
Chief, Bureau of Records

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 February 19, 1991.

ORDER NO. 24044
DOCKET NO. 900814-WU
PAGE 5

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.

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 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 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.