

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from) DOCKET NO. 910011-WU
Florida Public Service Commission)
regulation for provision of water) ORDER NO. 24096
service in Jackson County by DWAIN'S)
FOODS) ISSUED: 2-12-91
_____)

ORDER INDICATING THE NONJURISDICTIONAL STATUS
OF DWAIN'S FOODS

Dwain's Foods (Dwain's or establishment) is an existing convenience store and gas station, which owns and operates a water system. By letter and affidavit received January 4, 1991, Dwain's requested recognition of the nonjurisdictional status of its water facility.

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater facilities, if they qualify under the appropriate section of Chapter 367, Florida Statutes. Dwain's requested recognition of the nonjurisdictional status of its water facility under Section 367.021(12), Florida Statutes.

Upon an inquiry by Staff, it was determined that Dwain's is a convenience store and gas station located in Cypress, Florida. The affidavit shows that: Dwain's will provide water service solely for the operation of its establishment; no charges will be made to anyone for the water service; the costs of water service will be treated as an operational expense of Dwain's; the water system will be located solely on the premises of the establishment; and the facility's physical address is at the intersection of U.S. 90 and County Road 275, Cypress, Florida 32432.

Section 367.021(12), Florida Statutes, defines a utility as "every person . . . who is providing or proposes to provide, water or sewer service to the public for compensation." Based upon the facts as presented herein, it does not appear that Dwain's will be a utility, as defined by Section 367.021(12), Florida Statutes, since it will not be providing water service for compensation. Accordingly, it does not appear that Dwain's will be subject to this Commission's jurisdiction. However, should there be any change in circumstances or method of operation, the owner of Dwain's, or his successor(s) in interest, must inform the Commission within thirty (30) days of such change, so that we may determine whether nonjurisdictional status is still appropriate.

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It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Dwain's Foods, located at the intersection of U.S. 90 and County Road 275, Cypress, Florida 32432, is not a utility subject to this Commission's jurisdiction pursuant to the terms of Section 367.021(12), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation of Dwain's Foods' water system, the present owner or any successor in interest shall inform the Commission within thirty (30) days of such change. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this 12th day of February, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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.

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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.