

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption ) DOCKET NO. 911213-WS  
from Florida Public Service )  
Commission regulation for ) ORDER NO. 25797  
provision of water and wastewater )  
services in Lee County by HARBOUR ) ISSUED: 2/24/92  
CAY CONDOMINIUM ASSOCIATION, INC. )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

ORDER INDICATING THE EXEMPT STATUS OF  
HARBOUR CAY CONDOMINIUM ASSOCIATION, INC.

BY THE COMMISSION:

Harbour Cay Condominium Association, Inc. (Harbour Cay) is a nonprofit corporation in Lee County organized pursuant to Chapter 617, Florida Statutes, which provides water and wastewater services to its members. The Commission learned of the utility service provided by Harbour Cay through a customer complaint concerning a charge for installing the meter. By letter dated December 2, 1991, Mildred Barth, Secretary of Harbour Cay, and John Roberts, Treasurer of Harbour Cay, requested that Harbour Cay be found exempt from Florida Public Service Commission regulation pursuant to section 367.022(7), Florida Statutes, as a nonprofit corporation.

Harbour Cay filed its request for exemption from Commission regulation pursuant to section 367.022(7), Florida Statutes, as a nonprofit corporation. This section provides an exemption from Commission regulation for "nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such corporations, associations or cooperatives." Harbour Cay receives water and wastewater services from Lee County Utilities through a master meter and resells these services to the members of the association. that installed the meters at Harbour Cay Condominium Subdivision, charges the members a \$3.50 service charge for reading the meters and processing the bills.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

The members of Harbour Cay are the owners of the units within Harbour Cay Condominium Subdivision. These members have equal voting rights, and there is one vote per unit. According to the Articles of Incorporation dated May 22, 1973, the operation and control of the corporation was turned over from the developer to the members at the organizational meeting of the members.

Before an exemption of this nature may be granted, the applicant requesting exemption must file with the Commission a statement specifying the following: that the corporation is nonprofit, providing service solely to the members who own and control it; whether it provides water service, wastewater service, or both; who will do the billing; and the service territory. Additionally, the applicant must submit its Articles of Incorporation as filed with the Secretary of State and its Bylaws. These documents must show clearly the requirements for membership, the members' voting rights, and the circumstances under which control passes to the nondeveloper members.

The affidavit, Articles of Incorporation, and Bylaws submitted by Harbour Cay show that: Harbour Cay, Inc. is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes; Harbour Cay will provide service solely to the members who own and control it; Harbour Cay will provide both water and wastewater service; Energy Products and Services will do the billing; and the service territory will be limited to Harbour Cay Condominium Subdivision.

Based on the facts as represented, we find that Harbour Cay is exempt from our regulation pursuant to section 367.022(7), Florida Statutes, as a nonprofit corporation providing service solely to members who own and control it. In the event of any change in circumstances or method of operation that might affect its exempt status, Harbour Cay or its successor(s) in interest, shall notify this Commission within thirty days of the change so we may reevaluate its exempt status.

Harbour Cay shall record this order with the Clerk of the Court for Lee County. Such recordation will provide notice to the public and to any potential purchaser within the development of the exempt status of Harbour Cay.

It is, therefore,

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ORDERED by the Florida Public Service Commission that Harbour Cay Condominium Association, Inc., located at 5820 Harbour Club Road, Fort Myers, Florida 33919, is exempt from Commission regulation under section 367.022(7), Florida Statutes, as a nonprofit corporation providing service solely to members who own and control it. The contact person is Mr. John Roberts. It is further

ORDERED that should there be any change in circumstances or method of operation, Harbour Cay Condominium Association, Inc. or its successor(s) in interest, shall notify this Commission within 30 days of the change so we may reevaluate its exempt status. It is further

ORDERED that Harbour Cay Condominium Association, Inc. shall record this order with the Clerk of the Court for Lee County. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 24th day of FEBRUARY, 1992.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

KAC

by: Kay Flynn  
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 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.