

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption) DOCKET NO. 920091-WU
from Florida Public Service) ORDER NO. PSC-92-0902-FOF-WU
Commission regulation of a water) ISSUED: 08/31/92
facility in Escambia County by)
FARM HILL UTILITIES, INC.)
_____)

ORDER INDICATING THE EXEMPT STATUS OF
FARM HILL UTILITIES, INC.

BY THE COMMISSION:

On January 31, 1992, Farm Hill Utilities, Inc. (Farm Hill or corporation) filed an application for an exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes. Farm Hill is located at 109 Rittenberry Road, Cantonment, Florida 32533, and it provides water service to 1,011 residential members, five commercial members, and six churches in various subdivisions of a rural area. All of the customers are on septic systems.

Under Section 367.022(7), Florida Statutes, "[N]onprofit corporations, associations, or cooperatives" are exempt from Florida Public Service Commission regulation. In addition, Rule 25-30.060 (g) states:

For an exemption pursuant to Section 367.022(7), Florida Statutes, a statement from the corporation, association, or cooperative that it is nonprofit; that it provides service solely to members who own and control it; stating whether it provides water service, wastewater service or both; specifying who will do the billing for such service; and specifying the service area. The applicant must submit its articles of incorporation as filed with the Secretary of State and its bylaws, which documents must clearly show the requirements for membership that the members' voting rights are one vote per unit of ownership, and the circumstances under which control of the corporation passes to the non-developer members. Control of the corporation must pass: 1) at 51 percent ownership by the non-developer members or, 2) at some greater percentage delimited by a time period not to exceed 5 years from the date of incorporation. The applicant must provide proof of ownership

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of the utility facilities and the land upon which the facilities will be located or other proof of its right to continued use of the land, such as a 99-year lease....

In its application, dated January 31, 1992, Farm Hill states that it is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes, that it will provide service solely to its members who own and control it, and that it will provide water service for which it will provide its own billing. The service area is specified as well.

Farm Hill submitted its Articles of Incorporation (articles) and Bylaws when it filed its application. However, Farm Hill's articles indicated that service could be provided to non-members, contrary to the requirements of Section 367.022(7), Florida Statutes. In addition, sections of Farm Hill's articles were inconsistent with its Bylaws. On April 27, 1992, by and through Order No. PSC-92-0261-FOF-WU, this Commission stated that Farm Hill would be required to amend its articles to comport with the legal requirements within 90 days, at which time the application would be reviewed by our staff and, if sufficient, could be approved administratively.

On July 17, 1992, we received a letter from Farm Hill's attorney dated July 15, 1992, which stated that the corporation had approved the amendments to its articles on July 9, 1992, with a copy of the amendments enclosed and indicating that she had forwarded the amendments to the Secretary of State's office for filing as required and would forward a stamped copy as soon as possible. Subsequently, in early August 1992, Farm Hill's attorney informed us that the Secretary of State had rejected the amendments she had submitted which then required her to revise the amendments and resubmit them for filing. On August 12, 1992, we received the revised amendments along with a letter from Farm Hill's attorney indicating that she would send a copy of the filed, stamped amendments to this Commission as soon as they are returned to her.

Upon review of Farm Hill's amendments to its articles, the articles now comport fully with the statutes, rules, and regulations concerning the requirements for non-profit corporation exemptions.

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In addition, 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. Based upon the facts as represented, we find that Farm Hill is exempt from our regulation under the terms of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances of Farm Hill, a representative of Farm Hill 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, Farm Hill Utilities, Inc., located at 109 Rittenberry Road, Cantonment, Florida 32533, with Ms. Louise Brazwell as contact person, and a mailing address of Post Office Box 61, Cantonment, Florida 32533-0061, is hereby exempt from Commission regulation pursuant to the terms of Section 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in circumstances of Farm Hill Utilities, Inc., a representative of Farm Hill Utilities, Inc. 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 31st day of August, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LK

by: Kay J. [Signature]
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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.