

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption)
from Florida Public Service) DOCKET NO. 920173-WU
Commission regulation for) ORDER NO. PSC-92-0977-FOF-WU
provision of water services by) ISSUED: 09/10/92
Walnut Hill Water Works, Inc.,)
in Escambia County)
_____)

ORDER INDICATING THE EXEMPT STATUS OF
WALNUT HILL WATER WORKS, INC.

Walnut Hill Water Works, Inc. (WHWWI) provides water service to approximately 620 residential customers, churches, service stations, and grocery stores in its service area. On February 24, 1992, WHWWI filed an application for an exemption from this Commission's regulation as a non-profit organization, pursuant to Section 361.022(7), Florida Statutes

Section 367.022(7), Florida Statutes provides that "[N]onprofit corporations, associations, or cooperatives" are exempt from Commission regulation. In addition, Rule 25-30.060(g) Florida Administrative Code, 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 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....

DOCUMENT NUMBER-DATE

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FPC-RECORDS ADMIN

In its application, dated February 21, 1992, WHWWI 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 Robert R. Davis and Company P.C. will do the billing for such service. The service area is specified as well. In addition WHWWI submitted a Warranty Deed which indicates that WHWWI owns the utility facilities and the land upon which the facilities are located.

However, the application contained WHWWI's Articles of Incorporation which did not demonstrate that service was to be provided solely to members who own and control the association. In addition WHWWI's Articles of Incorporation made reference to a sewage disposal system that does not exist. Therefore, in order to comport with this Commission's statutory requirements and rules, on June 30, 1992, WHWWI amended its Articles of Incorporation to reflect the necessary limitations of service to members only and deleted the language that made reference to a sewage disposal system. These amendments were filed with this Commission on August 11, 1992.

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 WHWWI is exempt from our regulation under the terms of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances of WHWWI, a representative of WHWWI must inform the Commission within thirty (30) days of such change, so that we may determine whether exempt status is still appropriate.

Further, we find it appropriate that a certified copy of this Order be sent by our Division of Records and Reporting to be recorded with the Clerk of the Court for Escambia County. Such recordation will provide constructive notice to the public, as well as specific notice, to any potential purchaser, of the exempt status of WHWWI.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Walnut Hill Water Works, Inc.,

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located at P.O. Box 127, Walnut Hill, Florida 32568, with Losson White as contact person, and with a mailing address of P.O. Box 127, Walnut Hill Florida 32568, 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 Walnut Hill Water Works, Inc., a representative of Walnut Hill Water Works, Inc. shall inform the Commission within thirty (30) days of such change. It is further

ORDERED that a certified copy of this Order be sent by our Division of Records and Reporting to be recorded with the Clerk of the Court for Escambia County. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission this 10th day of September, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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by: Kay Jeyon
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.

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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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.