

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption)
from Florida Public Service)
Commission regulation for)
provision of water services)
by Astor-Astor Park Water)
Association, Inc., in Lake)
County)
_____)

DOCKET NO. 920750-WS
ORDER NO. PSC-92-0978-FOF-WS
ISSUED: 09/10/92

ORDER INDICATING THE EXEMPT STATUS OF
ASTOR-ASTOR PARK WATER ASSOCIATION, INC.

BY THE COMMISSION:

Astor-Astor Park Water Association, Inc., (Astor) is a non-profit association which, in 1974, was granted an exemption from Public Service Commission (Commission) regulation pursuant to the terms of Section 367.022(7), Florida Statutes. Astor provides water service to three communities in Lake County and Volusia County. On April 17, 1992, we contacted Astor after receiving a customer complaint regarding a rate increase. We requested Astor to send us its Articles of Incorporation and Bylaws.

By correspondence dated May 19, 1992, we informed Astor that it no longer qualifies for an exemption from Commission regulation, in that its Articles of Incorporation indicate that water service may be provided to non-members. In addition, we advised Astor that it could amend its Articles of Incorporation and apply for an exemption, or it could apply for an original certificate and be regulated by the Commission.

On August 4, 1992, Astor filed an application for an exemption from this Commission's regulation as a non-profit organization, pursuant to Section 367.022(7), Florida Statutes. In addition, Astor filed with its application Articles of Amendment to Articles of Incorporation which reflect the necessary limitations of service to members only.

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, 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

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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....

In its application dated February 11, 1992, Astor 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. In addition, Astor submitted a Warranty Deed which indicates that Astor owns the utility facilities and the land upon which the facilities are located.

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 Astor is exempt from our regulation under the terms of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances of Astor, a representative of the Association must inform this Commission within thirty 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 Lake County. Such recordation will provide constructive notice to the public, as well as specific notice to any potential purchaser, of the exempt status of Astor.

It is, therefore,

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ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Astor-Astor Park Water Association Inc., located at 54642 CR 445A, Astor, Florida 32102, with LuAnn VanHoose as contact person, and with a mailing address of P.O. Box 77, Astor, Florida, 32102, 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 Astor-Astor Park Water Association, Inc., a representative of Astor-Astor Park Water Association, Inc. shall inform this Commission within thirty 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 Lake 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 Flynn
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.