

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Exemption from) DOCKET NO. 920519-WU
Florida Public Service Commission) ORDER NO. PSC-92-0991-FOF-WU
regulation for a water system) ISSUED: 9/14/92
in Volusia County by Lake)
Beresford Water Association,)
Inc.)
_____)

ORDER INDICATING THE EXEMPT STATUS OF
LAKE BERESFORD WATER ASSOCIATION, INC. IN VOLUSIA COUNTY

Background

On May 22, 1992, Lake Beresford Water Association, Inc. (Lake Beresford or utility) filed its request for an exemption from Florida Public Service Commission (Commission) regulation pursuant to Subsection 367.022(7), Florida Statutes, as a non-profit association. Lake Beresford currently provides water service to 461 customers on the Hontoon Peninsula located between Lake Beresford and the St. Johns River.

Exemption Request

The utility requested that it be determined exempt pursuant to Subsection 367.022(7), Florida Statutes. Under that subsection, "[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

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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....

Subsection 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. In its application, Lake Beresford asserts that it is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes, that it provides service solely to members who own and control it, and it will provide water service and its own billing. The utility supplied evidence of its ownership of the land on which the utility facilities are located.

Based upon the facts as represented, we find that Lake Beresford is exempt from our regulation pursuant to Subsection 367.022(7), Florida Statutes. However, should there be any change in circumstances of Lake Beresford, a representative of Lake Beresford must inform this Commission within thirty days of such change, so that the Commission may determine whether exempt status is still appropriate.

Further, we find it appropriate to require that Lake Beresford send a certified copy of this Order for recordation to the Clerk of the Court for Volusia County. Such recordation will provide constructive notice to the public, as well as specific notice to any potential purchaser, of the exempt status of Beresford.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that Lake Beresford Water Association, Inc., located at 955 Beresford Road, Deland, Florida with Ms. Deborah White as contact person, and a mailing address of Box 527, Deland, Florida 32721-0527, is hereby determined to be exempt from Commission regulation pursuant to the terms of Subsection 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in the operations of Lake Beresford Water Association, Inc., a representative of Lake Beresford Water Association, Inc. shall inform the Commission within thirty days of such change. It is further

ORDERED that Lake Beresford shall send a certified copy of this Order for recordation to the Clerk of the Court for Volusia

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County. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this 14th
day of September, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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MRC:bmi

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.