

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption) DOCKET NO. 920758-SU
from Florida Public Service) ORDER NO. PSC-92-1062-FOF-SU
Commission regulation for) ISSUED: 09/24/92
provision of wastewater service)
in Franklin County by REGENCY)
SEWER AUTHORITY, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION

ORDER INDICATING THE EXEMPT STATUS OF
REGENCY SEWER AUTHORITY, INC.

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On July 27, 1992, Regency Sewer Authority, Inc. (Regency or Applicant), a nonprofit corporation, filed its request for an exemption pursuant to Section 367.022(7), Florida Statutes. Deficiencies in Regency's request were corrected on August 24, 1992. Regency plans to build a wastewater facility serving a portion of St. George Island. The company's mailing address is 5430 LBJ Freeway, Suite 1070, Dallas, Texas 75240, and the contact person is George J. Mahr. Pursuant to Section 367.031, Florida Statutes, a utility must obtain a certificate of authorization to provide service or an order recognizing that the system is exempt prior to being issued a construction permit by the Department of Environmental Regulation (DER).

DOCUMENT NUMBER-DATE

11148 SEP 24 1992

FPC-RECORDS/REPORTING

Exemption Request

Regency requested that it be found exempt pursuant to Section 367.022(7), Florida Statutes. Under this section, nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit entities are exempt from Commission regulation. In addition, Rule 25-30.060 (3) (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....

In an affidavit, dated July 25, 1992, the President of Regency stated that Regency is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes, that Regency will provide service solely to its members who own and control it, and that Regency will provide wastewater service. The applicant also stated that Regency or a third-party company appointed by Regency, will do the billing for such service. Included in the application were copies of the

Articles of Incorporation as filed with the Secretary of State and Amended Bylaws which show the requirements for membership; the members' voting rights, which are one vote per unit of ownership; and the circumstances under which control of the corporation passes to non-developer members, which is after 51 percent. We find that these provisions comply with the requirements of Rule 25-30.060(3)(g), Florida Administrative Code. The applicant has also submitted proof of ownership of the land upon which the utility facilities will be located in the form of a recorded warranty deed. The applicant acknowledged Section 837.06, Florida Statutes, regarding making false statements.

Based upon the facts as represented, we find that Regency is exempt from our regulation under the terms of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances of Regency, a representative of Regency must inform the Commission within thirty days of such change, so that we may determine whether exempt status is still appropriate. Also, Regency shall have a certified copy of this order recorded with the Clerk of the Court for Franklin County.

Based on concerns voiced by potential members of Regency, this order is being issued as a proposed agency action to allow a point of entry in this docket for affected parties. Rule 25-22.029, Florida Administrative Code, effective July 8, 1992, provides that the 21 day protest period may be shortened to 14 days for good cause shown. In this case Regency must obtain DER permits and begin vertical construction by November 2, 1992, to avoid the expiration of the Development of Regional Impact Order which governs this development. We find this to be good cause for abbreviating the protest period. Therefore, the protest period for this Order shall be 14 days.

This docket shall be closed if no timely protests are filed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Regency Sewer Authority, Inc., located at Leisure Lane, St. George Island, Florida, and a mailing address of 5430 LBJ Freeway, Suite 1070, Dallas, Texas 75240, with George J. Mahr as contact person, is hereby exempt from Commission regulation pursuant to Section 367.022(7), Florida Statutes. It is further

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ORDERED that should there be any change in circumstances or method of operation, Regency Sewer Authority, Inc. shall notify the Commission within 30 days of the change. It is further

ORDERED that Regency Sewer Authority, Inc. shall be required to record a certified copy of this order with the Clerk of the Court in and for Franklin County. It is further

ORDERED that the provisions of this order are issued as proposed agency action and shall become final, unless a person whose interest are substantially affected files an appropriate petition in the form provided by Rule 25-22.036, Florida Administrative Code, with the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that the appropriate protest period should be fourteen days. It is further

ORDERED that should there be no timely protests to this Order, this docket shall be closed.

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

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

CB

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 15, 1992.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.