

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption) DOCKET NO. 921067-WS
from Florida Public Service) ORDER NO. PSC-92-1457-FOF-WS
Commission regulation for) ISSUED: 12/15/92
provision of water and)
wastewater services in)
Brevard County by Palm Bay)
Utility Corporation.)

ORDER INDICATING THE EXEMPT STATUS OF
PALM BAY UTILITY CORPORATION

BY THE COMMISSION:

On October 15, 1992, Palm Bay Utility Corporation (PBUC) filed an application for exemption from Florida Public Service Commission regulation pursuant to Section 367.022(7), Florida Statutes, and Rule 25-30.060, Florida Administrative Code, as a nonprofit association.

PBUC has been organized by the City of Palm Bay, Florida as a nonprofit association that will own, manage and operate the water and wastewater systems previously owned by the City of Palm Bay and by General Development Utilities (GDU) in its Port Malabar Division. The sale and transfer of the GDU water and wastewater systems to the City of Palm Bay was acknowledged in Order No. PSC-92-1442-FOF-WS, issued December 14, 1992. The Order also cancels the certificates held by GDU effective December 16, 1992, the day of the transfer.

Upon request and sufficient proof, the Commission will issue an order indicating their nonjurisdictional status or exempt status of water or wastewater facilities, if they qualify under the appropriate section of Chapter 367, Florida Statutes. PBUC's application was filed in accordance with Section 367.022(7), Florida Statutes, and Rule 25-30.060(3)(g), Florida Administrative Code. Under above referenced statutory section, "[N]onprofit corporations, associations, or cooperatives" are exempt from Florida Public Service regulation.

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In addition, the above referenced rule provides as follows:

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 its 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 the application, PBUC states that any person or entity receiving utility services shall be voting members. Further, the application states that PBUC will do the billing and that the service territory will be the City of Palm Bay as shown on maps provided in the filing. To support its representations, PBUC filed its articles of incorporation and by-laws which contain language indicating voting rights and related matters. Copies of the purchase and sale agreements were furnished with the application. Because no developer is involved in the control, ownership or management of PBUC, the passing of control from a developer to non-developer members is not at issue in this docket.

Closing is scheduled to take place on December 16, 1992, following the transfer of the utility from GDU to the City of Palm Bay which is also scheduled to take place on December 16, 1992. A recorded warranty deed for the land on which the facilities are located will not be available until the transfers have been consummated. By letter dated December 10, 1992, PBUC has provided assurances that the required recorded deed will be furnished as soon as possible following the closings. Therefore, we find it appropriate to require the recorded warranty deed to be filed within thirty days from the date of this Order.

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In consideration of the foregoing, we find that the Palm Bay Utility Corporation qualifies under Section 367.022(7), Florida Statutes, as a non-profit corporation which is exempt from our regulation. Should there be any change in the circumstances or method of operation of the water and wastewater systems, PBUC or any successor in interest shall inform this Commission within thirty days of such change so that we may have the opportunity to review the exempt status of the system.

It is therefore,


ORDERED by the Florida Public Service Commission that the request of the Palm Bay Utility Corporation located at 1101 Troutman Blvd., Palm Bay, Florida 32905, with contact person and mailing address in care of Thomas A. Cloud, Gray Harris and Robinson, P.O. Box 3068, Orlando, Florida 32802-3068, for an exemption from regulation pursuant to Section 367.022(7), Florida Statutes, is hereby granted. It is further

ORDERED that Palm Bay Utility Corporation shall file a copy of the recorded warranty deed for the land on which the facilities are located within thirty days from the date of this Order. It is further

ORDERED that should there be any change in the circumstances or method of operation of the water and wastewater systems, Palm Bay Utility Corporation or any successor in interest shall inform this Commission within thirty days of such change so that this Commission may have the opportunity to review the exempt status of the system. It is further

ORDERED that this docket may be closed administratively upon receipt of the recorded deed.

By ORDER of the Florida Public Service Commission this 15th day of December, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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.