

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Silver) DOCKET NO. 911235-WU
Oaks Subdivision for a Water) ORDER NO. PSC-93-0204-POF-WU
Certificate in Lake County,) ISSUED: 02/09/93
Florida.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA J. JOHNSON
LUIS J. LAUREDO

ORDER APPROVING WITHDRAWAL OF APPLICATION FOR
CERTIFICATE AND INDICATING NONJURISDICTIONAL
STATUS OF SILVER OAKS SUBDIVISION

BY THE COMMISSION:

On July 1, 1991, Silver Oaks Subdivision (Silver Oaks or utility) filed a request for recognition of its exempt status pursuant to Section 367.022(6), Florida Statutes. Docket No. 910736-WU was opened to process the application, which was filed at the direction of the Commission.

The Commission became aware of Silver Oaks' existence as a result of the application of Southern States Utilities (SSU) to amend its Lake County certificate to include territory served by Silver Oaks (Docket No. 900712-WU). Although Silver Oaks' customers had not previously been billed for water service, it was SSU's intent to begin charging for water service upon finalization of Docket No. 900712-WU. However, later SSU decided not to acquire the system and withdrew its application. At that time, Silver Oaks was instructed to file an application for a certificate or an exemption by July 1, 1991. As stated previously, Silver Oaks filed for exemption on July 1, 1991, pursuant to the provisions of Section 367.022(6), Florida Statutes.

Section 367.022(6), Florida Statutes, states that "systems with the capacity or proposed capacity to serve 100 or fewer persons" are exempt from Commission regulation. In addition, Rule 25-30.055(1), Florida Administrative Code, provides that:

A water or sewer system is exempt under section 367.022 (6), Florida Statutes, if its current or proposed water or sewage treatment facilities and distribution or

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collection system have and will have a capacity, excluding fire flow capacity, of no greater than 10,000 gallons per day or if the entire system is designed to serve no greater than 40 equivalent residential connections (ERCs). For purposes of this rule only, one ERC equals 250 gallons per day.

According to its application, Silver Oaks is a small utility providing water service to a 38 lot subdivision. However, since Silver Oaks' system has the capacity to serve up to 155 ERCs, the exemption was denied and Silver Oaks was ordered to file for an original certificate (Order No. 25097).

On December 31, 1991, Silver Oaks filed an application for a certificate. The instant docket was opened to process the application. Silver Oaks has failed to correct any deficiencies or provide economic information upon which to base initial rates and charges. From discussions with the utility, it was determined that, although Silver Oaks attempted to sell its system to SSU, it never intended to charge for service and become a regulated utility.

Therefore, on November 23, 1992, Silver Oaks requested to withdraw its application for a certificate. In addition, Silver Oaks requested recognition of its nonjurisdictional status pursuant to the provisions of Section 367.021(12), Florida Statutes. According to the request, Silver Oaks is not now nor has it ever received compensation for the provision of water service.

Section 367.021(12), Florida Statutes, states that a "utility means a water or wastewater utility and except as provided in Section 367.022, includes every person, lessee, trustee, or receiver owning, operating, managing or controlling a system, or proposing construction of a system, who is providing or proposes to provide water or wastewater service to the public for compensation."

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of a water or wastewater system if it qualifies under the appropriate provision of Chapter 367, Florida Statutes. According to the information provided by Silver Oaks, water service is provided only to the subdivision, and there is no charge for providing the service.

Therefore, we find it appropriate to approve Silver Oaks' request to withdraw its application for a certificate. In addition, based on the facts as represented, we find that Silver Oaks is not a utility pursuant to the provisions of Section 367.021(12), Florida Statutes. Accordingly, Silver Oaks is not subject to this Commission's jurisdiction. However, should there be any change in circumstances or method of operation, the owner of Silver Oaks shall inform the Commission within 30 days of such change so that its nonjurisdictional status may be reevaluated. In addition, it is suggested that Silver Oaks provide each of its customers with a copy of this Order or post the order in a central location.

It is, therefore,

ORDERED by the Florida Public Service Commission that the request of Silver Oaks Subdivision, 720 Montrose Street, Post Office Box 374, Clermont, Florida 34712-0374, to withdraw its application for a water certificate is hereby granted. It is further

ORDERED that, based on the facts as represented, Silver Oaks Subdivision is not a utility subject to this Commission's jurisdiction, pursuant to the provisions of Section 367.021(12), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation, the owner of Silver Oaks Subdivision or any successors in interest shall inform this Commission within 30 days of such change so that we may reevaluate Silver oaks' nonjurisdictional status. It is further

ORDERED that this Docket is hereby closed.

By ORDER of the Florida Public Service Commission this 9th day of February, 1993.



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.