

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption) DOCKET NO. 921079-SU
from Florida Public Service) ORDER NO. PSC-93-0208-FOF-SU
Commission regulation for) ISSUED: 02/09/93
provision of wastewater)
service in St. Lucie County)
by HUTCHINSON ISLAND BEACH)
CLUB CONDOMINIUM ASSOCIATION,)
INC.)
_____)

ORDER INDICATING THE EXEMPT STATUS OF HUTCHINSON
ISLAND BEACH CLUB CONDOMINIUM ASSOCIATION, INC.

BY THE COMMISSION:

On October 19, 1992, Hutchinson Island Beach Club Condominium Association, Inc. (Hutchinson Island or the Association) filed its request for exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes, as a nonprofit corporation. The contact person is Ms. Donna Mann, 10410 South Ocean Drive, Jensen Beach, FL 34957. The wastewater plant is located at the same address. Hutchinson Island provides wastewater service solely to the Hutchinson Island Beach Club condominiums. Water service is provided to the condominiums by Ft. Pierce Utilities.

Hutchinson Island requested that it be found exempt pursuant to Section 367.022(7) of Chapter 367, Florida Statutes. Under this section, "[N]onprofit corporations, associations, or cooperatives" are exempt from Florida Public Service Commission regulation. In addition, Rule 25-30.060 (g) 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-

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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 the applicant stated 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 the Association will provide wastewater service for which it will provide its own billing. The service area is limited to the Hutchinson Island Beach Club condominiums. The applicant also provided the Articles of Incorporation as filed with the Secretary of State and the Bylaws, which clearly show the requirements for membership and that the members' voting rights are one vote per unit of membership.

The applicant provided sufficient evidence in the form of a standard deed, which shows each condominium owns a portion of the wastewater plant as a common element, and an affidavit that the developer, Hutchinson Island Club Corporation, has turned over control to the association. The applicant also acknowledged Section 837.06, Florida Statutes, regarding false statements.

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 Hutchinson Island is exempt from our regulation under the terms of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances of Hutchinson Island, a representative of the Association must inform the Commission within 30 days of such change, so we may determine whether exempt status is still appropriate.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based on the facts as represented, Hutchinson Island Beach Club

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Condominium Association, Inc., located at 10410 South Ocean Drive, Jensen Beach, Florida 34957, with Ms. Donna Mann as the contact person, 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 Hutchinson Island Beach Club Condominium Association, Inc., a representative of Hutchinson Island Beach Club Condominium Association, Inc. shall inform the Commission within 30 days of such change. It is further

ORDERED that this docket is 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.