

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution by the Board ) DOCKET NO. 920576-WS  
of County Commissioners of St. ) ORDER NO. PSC-93-1526-FOF-WS  
Lucie County Declaring St. Lucie ) ISSUED: October 18, 1993  
County Subject to the Provisions )  
of Chapter 367, F.S., Effective )  
10/1/92. )  
\_\_\_\_\_ )

ORDER INDICATING EXEMPT STATUS OF  
OCEANA RECREATION ASSOCIATION

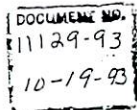
BY THE COMMISSION:

By Resolution dated May 19, 1992, the St. Lucie County Board of County Commissioners voted to transfer jurisdiction over privately owned water and wastewater utilities to the Public Service Commission. In Order No. PSC-92-0704-FOF-WS, issued on July 22, 1992, the Commission mandated that all privately-owned water and wastewater utilities must file an application for a grandfather certificate or for an exemption from Commission regulation, within 90 days of the October 1, 1992, effective date.

On May 12, 1993, Oceana Recreation Association (Oceana or Association) filed a request for recognition of its exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes. Oceana's wastewater plant is located at 9920 South Ocean Drive, Jensen Beach, Florida, 34957. The primary contact person is William L. Bartels, also at 9920 South Ocean Drive, Jensen Beach, Florida, 34957. Oceana provides wastewater service to Oceana I and Oceana II, which are both members of the Oceana Recreation Association. Oceana I and Oceana II receive water service from Fort Pierce Utilities.

Oceana has 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 25-30.0603(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-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, Oceana stated that it is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes. The Oceana Recreation Association will provide wastewater service solely to its members who own and control it. The Association provides its own billing. The service area will be limited to Oceana I, located at 9940 S. Ocean Drive, Jensen Beach, and Oceana II, located at 9900 S. Ocean Drive, Jensen Beach. The Association provided a recorded special warranty deed establishing proof of the Association's ownership of the facilities and continued use of the land where the facilities are located.

The Association also provided the Articles of Incorporation and Bylaws as filed with the Secretary of State which clearly show the requirements for membership, and that the members' voting rights are one vote per unit of ownership. The developer of Oceana turned over control of the facilities to the Association on January 8, 1980. However, Article X of the Bylaws allowed the Developer to retain certain rights. The Association thereafter amended Article X of the Bylaws to remove the rights granted to the Developer. The amended Bylaws now provide for complete control of the utility by Oceana, and are in compliance with the requirements of Rule 25-30.060(3)(g), Florida Administrative Code.

Based upon the facts as represented, we find that Oceana is exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances or method of operation, a representative of the Association must inform the Commission within thirty days of such change, so that we may reevaluate Oceana's exempt status.

It is, therefore,

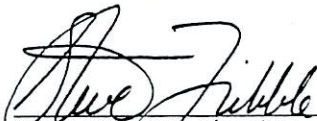
ORDER NO. PSC-93-1526-FOF-WS  
DOCKET NO. 920576-WS  
PAGE 3

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, the Oceana Recreation Association is hereby exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in circumstances of or method of operation, a representative of Oceana shall inform the Commission within thirty days of such change so that Oceana's exempt status may be reevaluated. It is further

ORDERED that this Docket shall remain open in order to process additional applications.

By ORDER of the Florida Public Service Commission this 18th day of October, 1993.

  
\_\_\_\_\_  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

MEO

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.