

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application For) DOCKET NO. 940839-WS
Certificates to Provide Water) ORDER NO. PSC-95-0485-FOF-WS
and Wastewater Service in Lake) ISSUED: April 13, 1995
County by Calflor Utility)
Services.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER REQUIRING CALFLOR UTILITY SERVICES TO
FILE AN APPLICATION FOR EXEMPTION

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING APPLICATION FOR WATER AND
WASTEWATER CERTIFICATES

BY THE COMMISSION:

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

DOCUMENT NUMBER-DATE
03734 APR 13 95
FPSC-RECORDS/REPORTING

Background

On August 11, 1994, Calflor Utility Services (Calflor) filed an application with this Commission for certificates to provide water and wastewater service in Lake County, pursuant to Section 367.045, Florida Statutes. Calflor has been in operation in Lake County for approximately 20 years and currently provides water and wastewater service at no cost to a 191-site campground, which it owns. Calflor applied for certification so that it could provide service to 160 acres of undeveloped land surrounding the campground. Calflor's plans to expand its existing facilities to serve the additional territory and implement rates for the services provided.

It is Calflor's intent to develop the land into a single family community, consisting of 650 residential units at completion. The area will be developed in two phases. Phase I includes the original campground, which will be served as a bulk customer, and 258 individually metered single-family units. Phase II will consist of an additional 394 individually metered single-family units. Although Calflor filed its application for certificates on August 11, 1994, the development has not yet been approved by Lake County.

No Show Cause Required

As stated previously, Calflor has been in existence for approximately 20 years and is in apparent violation of Section 367.031, Florida Statutes, which states, in part, "Each utility subject to the jurisdiction of the commission must obtain . . . a certificate of authorization to provide water or wastewater service or an order recognizing that the system is exempt from regulation as provided by s. 367.022" Calflor has been providing water and wastewater service for approximately 20 years without a certificate or order finding it exempt from Commission regulation. Such action is "willful" in the sense intended by Section 367.031, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Failure of Calflor to obtain a certificate or order finding it exempt from Commission regulation prior to providing service

appears to be due to lack of knowledge of the Commission's rules and regulations. Calflor became aware of this Commission's regulation and of the necessity to obtain a certificate or order from the Commission upon consulting with an engineering firm, Hartman & Associates, Inc., about expanding the existing facilities to serve the area surrounding the campground.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we find that the violation of Section 367.031, Florida Statutes, does not rise in these circumstances to the level of warranting initiation of show cause proceedings. Upon being advised by Hartman & Associates, Inc. of this Commission's regulation, Calflor filed an application for a certificate. Therefore, we do not find it appropriate to order Calflor to show cause for failing to obtain a certificate or order finding it exempt from Commission regulation prior to providing water and wastewater service.

Application

Upon review of the application filed by Calflor on August 11, 1994, it was determined that it is deficient, in that it does not contain the information required by Rule 25-30.033, Florida Administrative Code. On September 1, 1994, the Commission Staff sent a letter to Hartman & Associates, Inc., consultants acting on behalf of Calflor, outlining the information needed to complete the application. In subsequent conversations with the consultants, the Commission Staff was advised that Calflor was unable to proceed with the application because approval of the development plans by Lake County is still pending. The consultants were unable to estimate a time certain when they believed Calflor could go forward with the application.

Calflor was advised that if the necessary information was not provided by March 23, 1995, a recommendation would be taken to the Commission to deny the application. No additional information has been received. Therefore, we find it appropriate to deny Calflor's request for certificates to provide water and wastewater service in Lake County at this time. Upon approval of the development plans, Calflor shall file a completed application with this Commission for certificates to provide service in Lake County.

Application for Exemption

Pursuant to Section 367.031, Florida Statutes, each utility subject to the jurisdiction of the Commission must obtain a certificate or an order recognizing that the system is exempt from regulation as provided by Section, 367.022, Florida Statutes. As

stated previously, Calflor currently provides water and wastewater service to a campground at no cost. Since Calflor's application for certificates has been denied, we find it appropriate to require Calflor to file for an exemption pursuant to the appropriate subsection of Section 367.022, Florida Statutes, within 60 days of the effective date of this Order. We further find that Calflor shall continue to provide service at no cost until a determination of its exempt status has been made.

Docket No. 940839-WS shall remain open pending receipt of Calflor's application for the appropriate exemption pursuant to Section 367.022, Florida Statutes. Upon receipt of the application for exemption and if no timely protest to this order is received, Docket No. 940839-WS shall be closed. A separate docket will be opened to process Calflor's exemption application.

It is, therefore,

ORDERED by the Florida Public Service Commission that the application for certificates to provide water and wastewater service in Lake County filed by Calflor Utility Services, Post Office Box 2989, Orlando, Florida 32801, is hereby denied. It is further

ORDERED that upon approval of the development plans, as discussed in the body of this Order, Calflor Utility Services shall immediately refile its application with this Commission for certificates to provide water and wastewater service in Lake County. It is further

ORDERED that, pending approval of the development plans, Calflor Utility Services shall file an application with this Commission for an appropriate exemption pursuant to Section 367.022, Florida Statutes. Calflor shall file the application within 60 days of the effective date of this Order. It is further

ORDERED that the provisions of this Order denying Calflor Utility Services' application for certificates, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed upon receipt of Calflor Utility Services' application for exemption.

By ORDER of the Florida Public Service Commission, this 13th day of April, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Hays
Chief, Bureau of Records

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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.

As identified in the body of this order, our action denying Calflor Utility Services' application for certificates 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 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 4, 1995. In the absence of such a petition, this order shall become effective on the date 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 the relevant portion of 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.

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 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 after the issuance 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.