

M E M O R A N D U M

April 24, 1995

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (EDMONDS) *CA* *JAT*

RE: DOCKET NO. 941044-WS - Resolution of Board of Commissioners of Charlotte County declaring Charlotte County subject to provisions of Chapter 367, Florida Statutes - Request for exemption for provision of water and wastewater service by EL JOBEAN WATER ASSOCIATION, INC.

3505 FOR 4/17

Attached is an ORDER INDICATING THE EXEMPT STATUS OF EL JOBEAN WATER ASSOCIATION, INC., to be issued in the above-referenced docket. (Number of pages in Order - 4)

SKE/dp

Attachment

cc: Division of Water and Wastewater (Coker)

I: 941044-E.SKE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of Board of) DOCKET NO. 941044-WS
Commissioners of Charlotte) ORDER NO. PSC-95-0505-POP-WS
County declaring Charlotte) ISSUED: April 24, 1995
County subject to provisions of)
Chapter 367, Florida Statutes -)
Request for exemption for)
provision of water and)
wastewater service by EL JOBEAN)
WATER ASSOCIATION, INC.)

ORDER INDICATING THE EXEMPT STATUS OF
EL JOBEAN WATER ASSOCIATION, INC.

BY THE COMMISSION:

On October 10, 1994, El Jobean Water Association, Inc. (El Jobean) filed a request for recognition of its exempt status, pursuant to Section 367.022(7), Florida Statutes. El Jobean is located in the community of El Jobean in Charlotte County, Florida. Mr. Robert M.C. Rose, primary contact person, filed the application on behalf of El Jobean.

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. Before an exemption of this nature may be granted, the applicant requesting the exemption must file with the Commission a statement specifying the following: that the corporation is nonprofit; providing service solely to the members who own and control it; whether it provides water service, wastewater service, or both; who will do the billing; and the service territory. Additionally, the applicant must submit its Articles of Incorporation as filed with the Secretary of State and its Bylaws. These documents must show clearly the requirements of membership, the members' voting rights, and the circumstances under which control passes to the nondeveloper members.

The application was filed in accordance with Section 367.022(7), Florida Statutes, and Rule 25-30.060, Florida Administrative Code. In its application, El Jobean stated that it is a nonprofit corporation; that it will provide service solely to its members who own and control it; and that it will provide water service for which it will provide its own billing. The service area is specified as the community known as El Jobean in the north central portion of Charlotte County, Florida. The utility did not provide proof of ownership of the land upon which utility

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facilities are located. However, Mr. Rose stated that El Jobean owns no land upon which water treatment facilities are located. El Jobean provides water purchased from Charlotte County, and therefore owns no water treatment facilities. Also included with the application were the Articles of Incorporation as filed with the Secretary of State and the Bylaws, which documents showed the requirements for membership, and that the members' voting rights are one vote per unit of ownership. The documents did not show when control passed to the nondeveloper members. The utility is unaware whether El Jobean was formed by a developer. However, Ms. Betty Lou Davis, current president of El Jobean, provided an affidavit which states that El Jobean is not currently owned, operated, managed or controlled by a developer.

At the time the application was filed in October, 1994, Mr. Ray Stillwagon was the president of El Jobean. However, by March, 1995, Ms. Davis had become president of El Jobean. Ms. Davis has provided an affidavit stating that the information submitted in the application is true and correct to the best of her knowledge and belief. Pursuant to Section 837.06, Florida Statutes, and Rule 25-30.060(2)(f), Florida Administrative Code, anyone knowingly making a false statement in writing with the intent to mislead is guilty of a misdemeanor. By signing the application, Mr. Stillwagon acknowledged that he is aware of Section 837.06, Florida Statutes, and the penalties for making false statements in the application. By filing the affidavit, Ms. Davis acknowledged that she is aware of Section 837.06, Florida Statutes, and the penalties for making false statements in the application.

Based upon the facts as represented, we find that El Jobean 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 El Jobean must inform the Commission within thirty days of such change, so that we may reevaluate El Jobean's exempt status.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, El Jobean Water Association, Inc., P.O. Box 27149, El Jobean, Florida 33297, 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 or method of operation, a representative of El Jobean Water Association shall inform the Commission within thirty days of such

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change so that El Jobean Water Association's exempt status may be reevaluated. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 24th day of April, 1995.

BLANCA S. BAYO, Director
Division of Records and Reporting

by: Kay Lynn
Chief, Bureau of Records

(S E A L)

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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 and/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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.