

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for exemption) DOCKET NO. 941332-WU
from Florida Public Service) ORDER NO. PSC-95-1070-FOF-WU
Commission regulation for) ISSUED: August 25, 1995
provision of water service in)
Lake County by LAKE BEAUCLAIRE,)
INC.)
_____)

ORDER INDICATING THE EXEMPT STATUS OF
LAKE BEAUCLAIRE, INC., AND CLOSING DOCKET

BY THE COMMISSION:

On December 27, 1994, Lake Beauclaire, Inc., (Lake Beauclaire or utility) filed a request for recognition of its exempt status, pursuant to Section 367.022(7), Florida Statutes. Lake Beauclaire is located at 18500 Highway 441, Mount Dora, Florida 32757. Thomas M. Felton, the primary contact person, filed the application on behalf of Lake Beauclaire. John J. Matsche, the President of Lake Beauclaire, signed a statement authorizing Mr. Felton to act on Lake Beauclaire's behalf.

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater systems if they qualify under the appropriate provision of Chapter 367, Florida Statutes. The application was filed in accordance with Section 367.022(7), Florida Statutes.

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.

In its application, Lake Beauclaire 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 it will provide water service for

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which it will provide its own billing. Wastewater service will be provided by septic tanks. The service area is specified as the Beauclaire Subdivision, Tavares, Florida. The Association provided a recorded warranty deed granting it the use of the land upon which the facilities are located. In addition Lake Beauclaire provided copies of its Articles of Incorporation as filed with the Secretary of State's office and its Bylaws, which documents clearly show the requirements for membership, and that the members' voting rights are one vote per unit of ownership. These documents also show that control of the corporation passes to the non-developer members at fifty-one percent ownership by the non-developer members, or at some greater percentage delimited by a period of time not to exceed five years from the date of incorporation. Lake Beauclaire incorporated on June 16, 1995. Under the terms of Lake Beauclaire's Articles of Incorporation and Bylaws, control of the corporation will pass to the non-developer members no later than June 16, 2000.

In addition, 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. Felton acknowledged that he 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 Lake Beauclaire, Inc. 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 Lake Beauclaire must inform the Commission within thirty days of such change, so that we may reevaluate Lake Beauclaire's exempt status.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Lake Beauclaire, Inc., 18500 Highway 441, Mount Dora, Florida 32757, 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 Lake Beauclaire, Inc. shall inform the Commission within thirty days of such change so that Lake Beauclaire's exempt status may be reevaluated. It is further

ORDERED that this docket is hereby closed.

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By ORDER of the Florida Public Service Commission, this 25th
day of August, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay J. Lynn
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.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.