

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for exemption) DOCKET NO. 950810-WU
from Florida Public Service) ORDER NO. PSC-95-1304-FOF-WU
Commission regulation for) ISSUED: October 24, 1995
provision of water service in)
Alachua County by Lake Alto)
Estates Association, Inc.)
_____)

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 INDICATING THE EXEMPT STATUS OF
LAKE ALTO ESTATES ASSOCIATION, INC.,
CANCELLING CERTIFICATE AND CLOSING DOCKET

BY THE COMMISSION:

Certificate No. 556-W was granted to Landis Enterprises, Inc. in Order No. PSC 93-1550-FOF-WU, issued March 26, 1993, for operation of the Lake Alto Estates Water System. Lake Alto Estates Water System was a Class C utility serving 69 customers.

On December 23, 1994, Water Spectrum, Inc., on behalf of Landis Enterprises, Inc., filed its notice of abandonment of Lake Alto Estates Water System with this Commission, pursuant to Section 367.165, Florida Statutes. Water Spectrum, Inc., is an affiliate of Landis Enterprises, Inc., providing management services. On February 14, 1995, Berdell Knowles, Post Office Box 579, Gainesville, Florida, 32602, was appointed receiver by the Circuit Court, Eighth Judicial Circuit, Alachua County, Florida. On May 15, 1995, Lake Alto Estates Association, Inc. (Association) was incorporated as a Florida not-for-profit corporation under the provisions of Chapter 617, Florida Statutes, by property owners in Lake Alto Estates for the purpose of petitioning the Circuit Court, Eighth Judicial Circuit, Alachua County, Florida, for transfer of the assets of the water system and ultimately, operating the Lake Alto Estates Water System. On June 20, 1995, Berdell Knowles was removed as receiver of the Lake Alto Estates Water System.

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FPSC-RECORDS/REPORTING

On June 20, 1995, the Lake Alto Estates Water System was transferred from Landis Enterprises, Inc. to the Association through an order of the Circuit Court, Eighth Judicial Circuit, Alachua County, Florida. On July 12, 1995, the Association filed its application for an exemption from this Commission's jurisdiction pursuant to Section 367.022(7), Florida Statutes. The Association's mailing address is HCR 1, Box 758, Waldo, Florida 32694-9523. Mr. Henry M. Kabel, secretary and primary contact person, filed the application on behalf of the Association.

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; that it provides 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 Rules 25-30.060(1), (2), and (3)(g), Florida Administrative Code. Included with the application was a statement from Ms. Marie Licciardello, President, indicating that the Association is a nonprofit association, that it will provide water service, that the association will do the billing and that the service area will be limited to property owners of the Association. Also included with the application were the articles of incorporation as filed with the Secretary of State, and the bylaws which show the requirements for membership, and that the members voting rights are one vote per unit of ownership. The bylaws do not show when control passes to the nondeveloper members because this is a corporation which was formed to own and operate the utility and a developer was not involved. Proof of ownership of the land upon which the utility facilities are located was provided in the form of the Circuit Court order mentioned above, which transferred all right and title to the utility facilities to the Association.

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. Mr. Kabel acknowledged that he is aware

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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 Alto Estates Association, 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 the Association must inform the Commission within thirty days of such change, so that we may reevaluate Lake Alto Estates Association, Inc.'s exempt status. Furthermore, Certificate No. 556-W, issued in the name of Landis Enterprises, Inc., is hereby canceled.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Lake Alto Estates Association, Inc., HCR 1, Box 758, Waldo, Florida 32694-9523, 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 Alto Estates Association, Inc. shall inform the Commission within thirty days of such change so that Lake Alto Estates Association Inc.'s exempt status may be reevaluated. It is further

ORDERED that Certificate No. 556-W, issued in the name of Landis Enterprises, Inc., is hereby canceled. It is further

ORDERED that this docket is hereby closed.

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

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
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.