

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request For Exemption) DOCKET NO. 960703-WU
from Florida Public Service) ORDER NO. PSC-96-0970-FOF-WU
Commission Regulation For) ISSUED: July 26, 1996
Provision of Water Service in)
Marion County by Dorothy and)
Keith Shively.)
_____)

ORDER INDICATING THE EXEMPT STATUS
OF DOROTHY AND KEITH SHIVELY AND CLOSING DOCKET

BY THE COMMISSION:

On June 5, 1996, Tom Shively Hi Performance (TSHP) filed an application with this Commission for recognition of its nonjurisdictional status, pursuant to Section 367.021(12), Florida Statutes. TSHP is located at 6901 West Highway 40, Ocala, Marion County, Florida. Ms. Dorothy Shively, property owner and primary contact person, filed the application on behalf of TSHP.

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 367.021(12), Florida Statutes, and Rules 25-30.060(2) and (3)(j), Florida Administrative Code.

Section 367.021(12), Florida Statutes, states that a "utility means a water or wastewater utility and except as provided in Section 367.022, includes every person, lessee, trustee, or receiver owning, operating, managing or controlling a system, or proposing construction of a system, who is providing or proposes to provide water or wastewater service to the public for compensation."

After reviewing the application, it was determined that TSHP does not qualify for exemption pursuant to Section 367.021(12), Florida Statutes. The water system and the property which it serves is owned by Dorothy and Keith Shively (Shivelys). Since TSHP leases the property, the Shivelys qualify for exemption pursuant to Section 367.022(5), Florida Statutes. Therefore, on July 9, 1996, the Shivelys refiled the application seeking recognition of their exemption pursuant to Section 367.022(5), Florida Statutes.

Section 367.022(5), Florida Statutes, states that an entity qualifies for exemption from Commission regulation if it provides service solely to its tenants, and there are no specific charges for the utility service. The application indicates that service is

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provided only to the tenant of the property located at 6901 West Highway 40, Ocala, Florida. Also, the water service is included as a nonspecific portion of the yearly rent. Wastewater service is provided by septic tank.

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, Ms. Shively acknowledged that she is aware of Section 837.06, Florida Statutes, and the penalties for making false statements in the application.


Based on the facts as represented, we find that the Shivelys are exempt from our regulation pursuant to Section 367.022(5), Florida Statutes. However, the Shivelys or any successors in interest are put on notice that if there is any change in circumstance or method of operation which causes it to no longer qualify for exemption pursuant to Section 367.022, Florida Statutes, it should inform the Commission within 30 days of such change so that its status may be reevaluated.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Dorothy and Keith Shively, 6800 West Highway 40, Ocala, Florida 34482, are exempt from Commission regulation, pursuant to the provisions of Section 367.022(5), Florida Statutes. It is further

ORDERED that this Docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 26th day of July, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.