

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of) DOCKET NO. 910951-WU
Certificate No. 99-W from McGRAW)
WATER SYSTEM to ZELLWOOD WATER USERS,) ORDER NO. 25641
INC. and request for exemption from)
Florida Public Service Commission) ISSUED: 1/27/92
regulation in Orange County)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

ORDER APPROVING TRANSFER, GRANTING EXEMPTION FOR ZELLWOOD
WATER USERS, INC., AND CLOSING DOCKET

BY THE COMMISSION:

I. BACKGROUND

On September 10, 1991, this Commission received an application for the transfer of McGraw Water System (McGraw) to Zellwood Water Users, Inc. (Zellwood). The McGraw water system, which serves approximately 80-85 residences in Orange County, is currently regulated by this Commission under Certificate No. 99-W. McGraw purchases water wholesale from Zellwood and then resells this water to its customers. According to the application, Gardner McGraw, owner of McGraw, is no longer interested in or physically capable of, operating the system and wishes to transfer McGraw to Zellwood.

Zellwood is a nonprofit corporation organized in 1949 under Chapter 617, Florida Statutes, for the purpose of operating and maintaining a water system for the residents or property holders of Zellwood, Florida. Zellwood is an unincorporated community of about 5,000 residents located about 20 miles northwest of Orlando in northwest Orange County. In Docket No. 900814-WU, Zellwood requested exemption from Public Service Commission regulation as a non-profit association pursuant to section 367.022(7), Florida Statutes. However, the request was denied by Order No. 24044, issued January 29, 1991, because Zellwood was providing service for compensation to two non-members: McGraw Water System and a public elementary school operated by the Orange County Board of Public

DOCUMENT NUMBER-DATE

00957 JAN 27 1992

FPSC-RECORDS/REPORTING

Instruction. Zellwood was given six months to apply for an original certificate. During that time, the public elementary school and the customers of McGraw have paid the appropriate fees and have become members of Zellwood.

II. APPLICATION FOR TRANSFER

The application for transfer is in compliance with the governing statute, section 367.071, Florida Statutes, and other pertinent statutes and administrative rules. The application contains a check in the amount of \$150.00, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant included evidence that the utility owns the land upon which its facilities are located as required by Rule 25-30.037(1)(o), Florida Administrative Code. Proof of notice of the application, as prescribed by Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system to be transferred was also provided with the application. No objections to the notice of application have been received and the time for filing such has expired.

Zellwood's water system serves about 300 residences and businesses. There are approximately 5,000 people living in the service area, and those not served by Zellwood or McGraw have individual wells. Wastewater service is provided by septic tanks. Persons who wish to become a member of Zellwood and are not already connected to the system must pay an installation fee of \$500.00 and a one-time membership fee of \$50.00. At the time of application, 69 of the 85 customers served by the McGraw Water System were members of Zellwood. Upon discovering that all the customers served by McGraw had not yet become members of Zellwood, the Commission requested that Zellwood attempt to make all the customers of McGraw members of Zellwood. On December 3, 1991, Zellwood's Vice-President sent the Commission an affidavit amendment stating that the remaining customers of McGraw had become members of Zellwood and that, with the exception of two accounts no longer served by McGraw, all of the customers of McGraw were now members of Zellwood.

From our review of the application, we find that the transfer is in the public interest and it is hereby approved. The tariff of McGraw as well as Certificate No. 99-W should be canceled.

III. EXEMPTION

Zellwood, as a non-profit corporation, has once again filed a request for exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes. Under that section, a nonprofit association which provides service solely to members is exempt from the Commission's regulation. As mentioned previously, in Order No. 24044, Zellwood failed to qualify as a nonprofit corporation under this section of the statute because it was providing service for compensation to two non-members. However, these two non-members have subsequently become members of Zellwood.

In an affidavit dated September 9, 1991, the president of Zellwood, Charles Grinnell, who is the contact person for the utility, avers that Zellwood is a non-profit corporation, organized pursuant to Chapter 617, Florida Statutes, that Zellwood will provide service solely to its members who own and control it, and that Zellwood will provide only water service for which it will provide its own billing and accounting.

To support its representations, Zellwood filed its articles of incorporation and bylaws. According to Zellwood's by-laws, each member of Zellwood is entitled to one vote. Moreover, when the transfer does occur, former McGraw customers will be subject to the same Articles of Incorporation and same Bylaws as Zellwood's members, thus they will have the same voting rights.

The application does not contain a purchase agreement or other written agreement because the transfer from McGraw Water System to Zellwood Water Users, Inc. is a gift from Gardner McGraw, the owner of McGraw Water System, to insure that his customers would be served and supplied with potable water. Mr. McGraw has never collected customer deposits.

Based on the foregoing, we find that Zellwood qualifies under section 367.022(7), Florida Statutes, as a nonprofit corporation which is exempt from our regulation. Further, should there be any change in the circumstances or method of operation of the water system, Zellwood Water Users, Inc. or any successor(s) in interest shall inform the Commission within thirty days of such change so that we may have the opportunity to review the exempt status of the system.

Based on the foregoing, it is

ORDER NO. 25641
DOCKET NO. 910951-WU
PAGE 4

ORDERED by the Florida Public Service Commission that the transfer of McGraw Water System, Post Office Box, 162, Altoona, Florida 32702, to Zellwood Water Users, Inc., 5249 King Avenue, Zellwood, Florida 32798, is hereby approved. It is further

ORDERED that the request of Zellwood Water Users, Inc, for an exemption from regulation pursuant to section 367.022(7), Florida Statutes, is hereby granted. It is further

ORDERED that the tariff of McGraw Water System as well as Certificate No. 99-W should be cancelled. It is further

ORDERED that should there be any change in the circumstances or method of operation, Zellwood Water Users, Inc., or its successor in interest, shall inform this Commission within 30 days of such change. It is further

ORDERED that Docket No. 910951-WU is hereby closed.

By ORDER of the Florida Public Service Commission, this 27th
day of JANUARY, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RG

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

ORDER NO. 25641
DOCKET NO. 910951-WU
PAGE 5

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 or sewer 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.