

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for ) DOCKET NO. 920114-WU  
exemption from Florida Public ) ORDER NO. PSC-92-0990-FOF-WU  
Service Commission regulation ) ISSUED: 9/14/92  
for provision of water service)  
in Escambia County by COTTAGE )  
HILL WATER WORKS, INC. )  
\_\_\_\_\_ )

ORDER INDICATING THE EXEMPT STATUS OF  
COTTAGE HILL WATER WORKS, INC.

BY THE COMMISSION:

On February 7, 1992, Cottage Hill Water Works, Inc. (Cottage Hill or applicant) filed an application for an exemption from regulation by the Florida Public Service Commission (Commission) pursuant to Section 367.022(7), Florida Statutes. Cottage Hill is a non-profit corporation which provides water service solely to its members. Its service area includes the communities of Cottage Hill and Quintette, Florida. The system is located at 16 Williams Ditch Road, Cottage Hill, Florida, in Escambia County.

Pursuant to Section 367.022(7), Florida Statutes, "[N]onprofit corporations, associations, or cooperatives" are exempt from Commission regulation. In addition, Rule 25-30.060(g), Florida Administrative Code states:

For an exemption pursuant to Section 367.022(7), Florida Statutes, a statement from the corporation, association, or cooperative that it is nonprofit; that it provides service solely to members who own and control it; stating whether it provides water service, wastewater service or both; specifying who will do the billing for such service; and specifying the service area. The applicant must submit its articles of incorporation as filed with the Secretary of State and its bylaws, which documents must clearly show the requirements for membership that the members' voting rights are one vote per unit of ownership, and the circumstances under which control of the corporation passes to the non-developer members. Control of the corporation must pass: 1) at 51 percent ownership by the non-developer members or, 2) at some greater percentage delimited by a time period not to

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exceed 5 years from the date of incorporation. The applicant must provide proof of ownership of the utility facilities and the land upon which the facilities will be located or other proof of its right to continued use of the land, such as a 99-year lease....

In its application, dated January 29, 1992, Cottage Hill states 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 which it will provide its own billing. The service area is specified also.

However, Cottage Hill did not include a copy of its Articles of Incorporation with its application. On March 3, 1992, we received Cottage Hill's Articles of Incorporation and Bylaws and found that they did not comport with the pertinent legal requirements, specifically, Articles II and III contained provisions which permitted the corporation to provide service to non-members. By letter dated April 21, 1992, we requested that the Articles be amended to comport with the applicable law.

On May 18, 1992, we received a letter from Cottage Hill, which stated that the articles had been amended during a special meeting held on May 12, 1992.

Subsequently, Cottage Hill sent its amendments to the Secretary of State on August 7, 1992, and this Commission received a stamped copy of the amendments on August 17, 1992.

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. Based upon the facts as represented, we find that Cottage Hill is exempt from our regulation under the terms of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances of Cottage Hill, a representative of Cottage Hill must inform this Commission within thirty days of such change, so that we may determine whether exempt status is still appropriate.

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Further, we find it appropriate to require that Cottage Hill send a certified copy of this Order for recordation to the Clerk of the Court for Escambia County. Such recordation will provide constructive notice to the public, as well as specific notice to any potential purchaser, of the exempt status of Cottage Hill.

In consideration of the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Cottage Hill Water Works, Inc., located at 16 Williams Ditch Road, with Ted D. McGlothorn as contact person, and a mailing address of Post Office 581, Cantonment, Florida 32533, is hereby exempt from Commission regulation pursuant to the terms of Section 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in circumstances of Cottage Hill Water Works, Inc., a representative of Cottage Hill Water Works, Inc., shall inform this Commission within thirty days of such change. It is further

ORDERED that Cottage Hill Water Works, Inc. shall send a certified copy of this Order for recordation to the Clerk of the Court of Escambia County. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission, this 14th day of September, 1992.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

by: Kay Hizon  
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 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.