

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Exemption) DOCKET NO. 921308-WU
from Florida Public Service) ORDER NO. PSC-93-0428-FOF-WU
Commission Regulation for) ISSUED: 03/22/93
Provision of Water Service in)
St. Lucie County by Oyster House.)
Restaurant.)
_____)

ORDER INDICATING EXEMPT STATUS
OF OYSTER HOUSE RESTAURANT AND CLOSING DOCKET

BY THE COMMISSION:

On October 6, 1992, the Oyster House Restaurant (Oyster House or applicant) filed an application with this Commission for recognition of its exempt status, pursuant to Section 367.022(3), Florida Statutes, which provides that manufacturers may be exempt from regulation. Oyster House is a restaurant located at 2304 North Federal Highway, Fort Pierce, Florida 34946. Mr. Jamal Asfour, president and primary contact person, filed the application on behalf of Oyster House.

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(3), Florida Statutes. However, after reviewing the application, we have determined that Oyster House is a nonjurisdictional system because it does not meet the definition of a utility in Section 367.021(12), Florida Statutes, which provides that a water and or wastewater utility includes:

....[e]very person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation....

Oyster House does not charge for providing water service, provides water service solely to its customers dining in the restaurant, and recovers the cost of the water service in its operational expenses. Therefore, Oyster House is not a utility as defined by Section 367.021(12), Florida Statutes, and, as a result, it is not subject to Commission regulation.

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In addition, the application form states that pursuant to Section 837.06, Florida Statutes, anyone knowingly making a false statement in writing with the intent to mislead is guilty of a misdemeanor. By signing the application, Mr. Asfour acknowledged that he 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 Oyster House is nonjurisdictional because it is not a utility subject to Commission regulation as defined in Section 367.021(12), Florida Statutes. In the event of any change of circumstances or method of operation, the owner of Oyster House or any successors in interest, must inform the Commission within 30 days of such change so that we may reevaluate its nonjurisdictional status.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Oyster House Restaurant is not a utility subject to Commission regulation pursuant to the provisions of Section 367.021(12), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation, the owner of Oyster House Restaurant or any successors in interest shall inform this Commission within 30 days of such a change so that we may reevaluate Oyster House Restaurant's nonjurisdictional status. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 22nd day of March, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

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by: Kay Jeyon
Chief, Bureau of Records

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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.