

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for exemption) DOCKET NO. 930120-WU
from Florida Public Service) ORDER NO. PSC-93-0565-FOF-WU
Commission Regulation for) ISSUED: April 13, 1993
Provision of Water Service in)
St. Lucie County by CUMBERLAND)
FARMS, INC. (Store #9745).)
_____)

ORDER INDICATING NONJURISDICTIONAL STATUS
OF CUMBERLAND FARMS, INC. (STORE NO. 9745)

On February 1, 1993, Cumberland Farms, Inc. (Store No. 9745) (Cumberland Farms) filed an application with this Commission for recognition of its nonjurisdictional status pursuant to Section 367.021(12), Florida Statutes. There are two other Cumberland Farms stores in St. Lucie County. Both of these stores have filed applications with this Commission seeking exemptions. Cumberland Farms is located at 973 S.W. Del Rio Boulevard, Port St. Lucie, Florida 34950. Mr. Emile Tayeh, the store's director of environmental affairs, filed the application on behalf of Cumberland Farms.

Cumberland Farms is a convenience store that provides water service to the store only. Wastewater service for Cumberland Farms is furnished by a septic tank. 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.

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 proposes to provide water or wastewater service to the public for compensation."

The application was filed in accordance with Section 367.021(12), Florida Statutes, and Rules 25-30.060(1), (2), and (3) (j), Florida Administrative Code. According to the application, water service is provided only to the store's property, there is no charge for providing the service, and all costs of providing service are treated or recovered as operational expenses.

In addition, pursuant to Section 837.06, Florida Statutes, and Rule 25-30.060(2), Florida Administrative code, anyone knowingly making a false statement in writing with the intent to mislead is

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guilty of a misdemeanor. By signing the application, Mr. Tayeh acknowledged that he is aware of Section 837.06, Florida Statutes, and the penalties regarding making false statements in the application.

Since, based on the facts as represented, Cumberland Farms will not be providing water service to the public for compensation, we find that it is not a utility pursuant to the provisions of Section 367.021(12), Florida Statutes. However, should there be any change in circumstances or method of operation, the owner of Cumberland Farms, or its successors in interest, must inform the Commission within 30 days of such change so that Cumberland Farms' nonjurisdictional status may be reevaluated.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Cumberland Farms, Inc. (Store No. 9745), located at 973 S.W. Del Rio Blvd., Port St. Lucie, Florida 34950, with Mr. Emile C. Tayeh as contact person, located at 777 Dedham Street, Canton, MA 02021, is not a water and wastewater utility subject to this Commission's jurisdiction, 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 Cumberland Farms, Inc. (Store No. 9745), or any successors in interest, shall inform this Commission with 30 days of such a change so that we may reevaluate the store's nonjurisdictional status. It is further

ORDERED that this Docket is hereby closed.

By ORDER of the Florida Public Service Commission this 13th day of April, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RG

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 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.