

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for exemption) DOCKET NO. 930334-WU
from Florida Public Service) ORDER NO. PSC-93-0880-FOF-WU
Commission regulation for) ISSUED: June 10, 1993
provision of water service in)
Okeechobee and Glades Counties)
by Okeechobee Beach Water)
Association, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON

ORDER INDICATING THE EXEMPT STATUS OF
OKEECHOBEE BEACH WATER ASSOCIATION, INC.

BY THE COMMISSION:

On March 29, 1993, Okeechobee Beach Water Association, Inc. (OBWA) filed its request for exemption from our regulation pursuant to Section 367.022(7), Florida Statutes. OBWA has been in operation since 1965. OBWA is a water system which services the south end of Okeechobee County and the community known as Buckhead Ridge located in Glades County. OBWA purchases water as a wholesale customer from the City of Okeechobee. The present wholesale contract with the City of Okeechobee expires in October 1994. In 1991, OBWA decided to build a water plant which will be operational in 1994 when the contract with the City expires. In preparation to build the plant, OBWA applied for a consumptive use permit from the South Florida Water Management District. The Water Management District requires proof that OBWA is not regulated by the Public Service Commission (Commission), and the utility must obtain the consumptive use permit before DER will issue the necessary permits to begin construction. The utility must begin construction by June 1993 in order for the plant to be operational by the time the contract with the City expires in 1994. Therefore, OBWA applied for an expedited exemption from our regulation in order to obtain the necessary permits to begin construction of the new water plant.

OBWA is providing service to areas which transverse county lines, namely, Okeechobee and Glades Counties. We do not have

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jurisdiction over Okeechobee or Glades Counties. However, pursuant to Chapter 367.171(7), Florida Statutes, "the Commission has exclusive jurisdiction over all utility systems whose services transverse county boundaries, whether the counties involved are jurisdictional or nonjurisdictional." Therefore, Okeechobee Beach Water Association, Inc. filed its application for an exemption pursuant to Section 367.022(7), Florida Statutes, on March 29, 1993, as a nonprofit corporation. In addition, the application was filed in accordance with Rule 25-30.060(3)(g), Florida Administrative Code.

Section 367.022(7), Florida Statutes, provides that an entity may be exempt from our regulation if the corporation, cooperative, or association is nonprofit and provides water service solely to members who own and control it. Included in OBWA's application was a statement from the applicant that the mailing address for the primary contact person, Burton C. Conner, Esquire, is 301 Northwest Fifth Street, Okeechobee, Florida 34972. The corporation is nonprofit, providing water service solely to members who own and control it. OBWA will do the billing for service provided, and the service territory will be the south end of Okeechobee County and the community known as Buckhead Ridge in Glades County. The applicant's Articles of Incorporation clearly show the requirements for membership and that the members' voting rights are one vote per unit of ownership. In addition, the applicant provided proof of ownership of the utility and the utility's site in the form of a recorded warranty deed. The applicant, Mr. Leland Pierce, President of OBWA, also acknowledged Section 837.06, Florida Statutes, regarding the penalties for making false statements in this application.

On April 29, 1993, the utility filed amended Articles II and III of its Articles of Incorporation to clearly state that only members will be served. The amended Articles of Incorporation, which were filed with the Secretary of State, comport with the rule and statute. Therefore, OBWA's application is in accordance with Section 367.022(7), Florida Statutes.

Based upon the facts as represented, we find that OBWA is exempt from our regulation under the terms of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances of OBWA, a representative of the Association must inform this Commission within 30 days of such change, so that we may reevaluate the Association's exempt status.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Okeechobee Beach Water Association, Inc., located at 8840 Highway 78 West, Okeechobee, Florida 34974, 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 Okeechobee Beach Water Association, Inc., a representative of the Association shall inform this Commission within 30 days of such change so that we may reevaluate its exempt status. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission this 10th day of June, 1993.



STEVE TRIBBLE, 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 within fifteen (15) days of the issuance of

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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.