

FLORIDA PUBLIC SERVICE COMMISSION
Fletcher Building, 101 East Gaines Street
Tallahassee, Florida 32399-0850

MEMORANDUM

April 20, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO) *Am...*

FROM: DIVISION OF WATER & WASTEWATER (MASSEY-AZPELL) *Am...*
DIVISION OF LEGAL SERVICES (VACCARO) *used for...*

RE: DOCKET NO. 941044-WS - BURNT STORE RO ASSOCIATION, INC. -
REQUEST FOR EXEMPTION FOR PROVISION OF WATER AND
WASTEWATER SERVICE.
COUNTY: CHARLOTTE

AGENDA: MAY 2, 1995 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\WAW\WP\941044WS.RCM

CASE BACKGROUND

On November 14, 1994, Burnt Store Colony RO Association, Inc. filed its application for an exemption from this Commission's jurisdiction for the provision of water and wastewater service in Charlotte County. The exemption request was filed pursuant to Section 367.022(7), Florida Statutes, which provides for exemptions to qualifying non-profit entities.

Burnt Store Colony RO Association, Inc., a Florida not-for-profit corporation (the Association) is a cooperative which was formed by certain residents of Burnt Store Colony Mobile Home Park (the Park). Those residents formed the corporation for the purpose of purchasing the Property from the prior owner/developer, Mr. Donald Calcaterra. The Cooperative has been organized as a not-for-profit cooperation under Chapters 617 and 719, Florida Statutes.

The Property was not originally developed by the Cooperative. The Cooperative acquired it with all facilities, recreation areas and completed units already in place at the time of acquisition, which were constructed by the Developer. Burnt Store Colony RO

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Association, Inc. provides water and wastewater service to the Association and a certain commercial property (the "Country Store" which is a non-member) located near the Association property.

Although Staff has administrative authority to approve exemptions, we are bringing this to the attention of the Commission recommending denial of the request for exemption.

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DISCUSSION OF ISSUES

ISSUE I.: Should Burnt Store RO Association, Inc. (the Association) be granted an exemption pursuant to Section 367.022(7), Florida Statutes?

RECOMMENDATION: No. The Association should not be granted an exemption pursuant to Section 367.022(7), Florida Statutes. Staff further recommends that the Association be required to file an original certificate application within ninety days of the effective date of the order denying the exemption request. (MASSEY-AZPELL)

STAFF ANALYSIS: On November 14, 1994, this Commission recieved an application from Burnt Store RO Association, Inc. (the Association) for a non-profit exemption pursuant to Section 367.022(7), Florida Statutes.

In order to qualify for an exemption pursuant to Section 367.022(7), Florida Statutes, and Rule 25-30.060(2)(g), Florida Administrative Code, a non-profit association must provide service solely to members who own and control it. Presently, the Association is providing water and wastewater service to certain commercial property (the Country Store Property) located near its property. The Association receives \$75.00 per month for this service. The Association states that there is no other way for the Country Store Property to receive this service, as there are no municipal water and wastewater lines near that property.

While this commercial property is currently being served water and wastewater service for compensation by the Association, there is no provision to make this customer a member of the Association. The Association contends that it is impossible for the owner of the Country Store Property to become a member of the Association, and that Chapter 719, Florida Statutes, sets out the requirements, definitions, and regulations pertaining to cooperative associations. Burnt Store RO Association, Inc. is a not-for-profit corporation composed solely of shareholders (Members) who have purchased a proportionate share in the corporation, and is a residential cooperative as defined in Chapter 719.013. Neither the Association, nor its Members, have any ownership interest in the Country Store Property, and the owner of the Country Store Property has no ownership interest in the Association property.

Based upon its present operation, Burnt Store RO Association, Inc. does not qualify for any exemption available under Section 367.022, Florida Statutes. Therefore, Staff

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recommends that Burnt Store RO Association, Inc. be ordered to file an application for an original certificate within ninety days of the date of the order denying its exemption request.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, no further action will be required. However, this docket should remain open to process additional Charlotte County applications.
(VACCARO)

STAFF ANALYSIS: Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, no further action will be required. However, this docket should remain open to process additional Charlotte County applications.