

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

November 14, 1996

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

FROM: DIVISION OF WATER & WASTEWATER (VON FOSSEN) *RVF gc*
DIVISION OF LEGAL SERVICES (CROSBY) *CS*

RE: DOCKET NO. 941044-WS - APPLICATION FOR EXEMPTION FROM
FLORIDA PUBLIC SERVICE COMMISSION REGULATION FOR
PROVISION OF WATER AND WASTEWATER SERVICE IN CHARLOTTE
COUNTY BY GASPARILLA ISLAND WATER ASSOCIATION INC.
COUNTY: CHARLOTTE

AGENDA: NOVEMBER 26, 1996 - REGULAR AGENDA - INTERESTED PERSONS
MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\941044.RCM

DOCUMENT NUMBER-DATE
12118 NOV 14 96
FPSC-RECORDS/REPORTING

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CASE BACKGROUND

On November 27, 1994, this Commission received an application from Gasparilla Island Water Association, Inc. (GIWA or utility) for a non-profit exemption pursuant to Section 367.022(7), Florida Statutes for both its water and wastewater operations. According to Section 21.08(c)(14), Administrative Procedures Manual, staff has been given administrative authority to approve clear-cut or non-controversial requests for determination of exempt status. However, in this case, staff is bringing this application before the Commission for guidance regarding GIWA's voting rights as well as language within the Articles of Incorporation concerning the potential sale of surplus water.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Gasparilla Water Association, Inc. be granted an exemption pursuant to Section 367.022(7), Florida Statutes?

RECOMMENDATION: Yes. The Gasparilla Island Water Association, Inc., should be granted an exemption pursuant to Section 367.022(7), Florida Statutes. However, the members of the Association or any successors in interest should be put on notice that if there is any change in circumstance or method of operation which causes it to no longer qualify for exemption pursuant to Section 367.022, Florida Statutes, it should inform the Commission within 30 days of such change so that its status may be reevaluated. (VON FOSSEN, CROSBY)

STAFF ANALYSIS: As stated in the Case Background, on November 27, 1994, this Commission received an application from GIWA for a non-profit exemption pursuant to Section 367.022(7), Florida Statutes, for the water and wastewater systems. The application was filed at the request of staff upon the Commission receiving jurisdiction in Charlotte County. The primary contact person for GIWA is Mr. Darell Polk, its General Manager. On April 5, 1995, a statement was given by Robert Young, President of GIWA authorizing Mr. Polk to act on their behalf. Mr. Polk's address is P.O. Box 326, Boca Grande, Fl. 33921-0326.

The application was filed in accordance with Section 367.022(7), Florida Statutes, and Rules 25-30.060(1), (2), and (3)(g), Florida Administrative Code. Within its application GIWA provides a statement that it provides both water and wastewater service solely to members who own and control the Association. The application further indicates that voting is based upon one vote per member. Since the Association was not formed by or affiliated with a developer, turnover of control is not relevant to GIWA. Furthermore, the applicant acknowledged Section 837.06, Florida Statutes, regarding false statements.

Along with the application, GIWA provided a copy of the Articles of Incorporation and By-Laws. Based upon provisions contained in these documents, staff is bringing this case before the Commission.

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Article 5, Section 2 of the by-laws provide that a membership certificate will be issued for each connection to the systems. However, Section 3 of Article 5 provides that each member will be entitled to one vote only, regardless of the number of certificates held. The utility indicates that this provision has been in place from inception of the Association in 1966 to prevent any one person or entity from controlling the Association. Rule 25-30.060(3)(g)(3)(b), provides that the voting rights shall be one vote per unit of ownership or other voting rights if the Commission finds they are fair and non-discriminatory so that members have equitable control of the corporation. GIWA has been in operation since 1966 and presently provides service to approximately 1,400 members. Staff believes that one vote per member is fair and equitable. Based upon the size of the membership, limiting voting to one vote per member should have no impact upon the operation and control of the utility.

Article II of the Articles of Incorporation, provides that the Association may sell surplus water remaining after the needs of its members have been satisfied. Staff was initially concerned that this provision could result in the sale of utility service to non-members. However, on March 23, 1995, Mr. Polk filed an affidavit, wherein he stated that GIWA does not sell any surplus water nor does it intend to make such sales or provide such service in the future. Additionally, the affidavit also reaffirms that service is provided solely to members. Mr. Polk is aware that providing service to non-members would jeopardize GIWA's exemption, if granted.

Based upon the above discussion, staff recommends that GIWA's application for a non-profit exemption pursuant to Section 367.022(7), Florida Statutes, be approved. Staff further recommends that the members of the Association or any successors in interest should be put on notice that if there is any change in circumstance or method of operation which causes it to no longer qualify for exemption pursuant to Section 367.022, Florida Statutes, it should inform the Commission within 30 days of such change so that its status may be reevaluated.

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ISSUE 2: Should the docket be closed?

RECOMMENDATION: No, the docket should remain open to process other Charlotte County exemptions. (CROSBY)

STAFF ANALYSIS: Upon receiving jurisdiction within Charlotte County, this docket was opened as an umbrella docket to process all exemptions within the county. Since other Charlotte County exemptions are pending, the docket should remain open.