



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: November 15, 1996
 TO: Alice Crosby, Division of Legal Services
 Division of Records and Reporting
 FROM: Patricia Brady, Division of Water and Wastewater *Pb BSM*
 RE: Docket No. 960734-WS, Request for exemption from Florida Public Service Commission regulation for provision of water and wastewater service in Putnam County by HIAWATHA & HART POINT TREATMENT FACILITY, INC.

On June 14, 1996, an application for a nonprofit exemption from regulation by the Florida Public Service Commission was filed on behalf of Hiawatha & Hart Point Treatment Facility, Inc. (Hiawatha or association) pursuant to Section 367.022(7), Florida Statutes. The application was signed by Mr. Ben Bates as President of the association. The primary contact person is Mr. Edward E. Hedstrom, P.O. Box 1354, Palatka, Florida 32178 (904/328-6778). The physical location, mailing address and service territory for Hiawatha is 116 Hiawatha Court, East Palatka, Florida 32131. This location is in Putnam County.

In accordance with Section 367.022(7), Florida Statutes, and Rule 25-30.060(3)(g), Florida Administrative Code, the application states that Hiawatha is a nonprofit corporation providing water and wastewater service solely to members which own and control it. The application contained a copy of Hiawatha's articles of incorporation as filed with the Secretary of State and bylaws. A description of the voting rights was provided along with a statement that control has been turned over to the new corporation. By signing the application, Mr. Bates has acknowledged that he is aware of the penalty pursuant to Section 837.06, Florida Statutes, for knowingly making false statements in writing with the intent to mislead.

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Hiawatha is a master non-profit corporation formed by three separate corporations for the purpose of providing an entity to assume control of water and wastewater treatment facilities previously owned and operated by Hiawatha Management, Inc. (HMI). In addition to HMI the other member corporations are Hart Point Properties, Inc. (motel) and Lemon Street Restaurant, Inc. (restaurant). The Commission previously granted HMI a non-profit exemption pursuant to Order No. 25283, issued October 31, 1991 in Docket No. 910526-WS. HMI was formed in 1981 to provide water and wastewater services to fifty-eight condominium units from on-site plants. However, HMI's wastewater treatment plant was DEP-rated to 36,000 gallons per day (gpd) of which HMI needs only 15,000 gpd. In 1993, HMI permitted a group of investors to connect to the plant to the extent of 9,000 gpd for purposes of constructing the motel. In 1994, HMI permitted the same group of investors to connect to the plant to the extent of an additional 6,000 gpd for purposes of constructing the restaurant. Currently there is 6,000 gpd of uncommitted capacity.

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Section 367.022(7), Florida Statutes, requires that service be provided solely to members which own and control the non-profit entity. The motel and restaurant were granted easement to HMI's facilities, but not membership in HMI. As a consequence, by letter dated March 28, 1995, staff required that HMI either file for a certificate of authorization or form a master non-profit association. HMI chose the latter option. The units of ownership in the new corporation are based loosely on relative capacity. Of the committed capacity, Hiawatha uses 50% and appoints three members to the Board of Directors. The motel uses 30% and appoints one member to the Board. The restaurant uses 20% and also appoints one member to the Board. The reason it was decided that HMI should appoint three members to the Board is so the Board will have an odd number of members. In the event a fourth corporation acquires membership through the remaining 6,000 gpd capacity, that corporation would be entitled to appoint one member to the board and HMI's rights would be reduced to appointing two members.

Turnover of developer control does not apply in this case since HMI already owned and controlled the facilities and the land upon which the facilities are located. Instead, the application contains a twenty-five (25) year lease from HMI to Hiawatha commencing on July 1, 1996. According to the application, HMI has turned over all records to the new corporation and, effective that date, the new corporation has control of the facility.

Section 2.08(C)(14) of the Administrative Procedures Manual grants staff the administrative authority to approve requests for determination of exempt status that are clear-cut and without controversy. Staff finds the application in compliance with statutory requirements and, while unusual, without apparent controversy. Staff recommends that an administrative order be issued granting Hiawatha & Hart Point Treatment Facility, Inc. an exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes. Staff recommends that the order put Hiawatha or any successors in interest 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. Furthermore, staff recommends that this docket be closed.

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