

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for water) DOCKET NO. 960057-WS
and wastewater certificates in) ORDER NO. PSC-97-0035-FOF-WS
Charlotte County under) ISSUED: January 7, 1997
grandfather rights, by Burnt)
Store Colony R.O. Association,)
Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER ACKNOWLEDGING WITHDRAWAL OF APPLICATION FOR CERTIFICATE,
ACKNOWLEDGING EXEMPT STATUS OF
BURNT STORE COLONY R.O. ASSOCIATION
AND CLOSING DOCKET

BY THE COMMISSION:

On September 27, 1994, the Board of County Commissioners of Charlotte County adopted a resolution pursuant to Section 367.171, Florida Statutes, subjecting privately owned water and wastewater utilities in that County to the provisions of Chapter 367, Florida Statutes. We received the County's resolution on September 30, 1994. Pursuant to Section 367.031, Florida Statutes, all utilities subject to Commission jurisdiction must obtain either an exemption from regulation or a certificate to provide water and wastewater service.

Burnt Store Colony R.O. Association, Inc. (Burnt Store or Utility) was established in 1981 to serve water and wastewater customers in Charlotte County, Florida. The utility received Permit No. WC08-7870 from the Florida Department of Environmental Regulation on October 9, 1981. The utility services approximately 187 water and wastewater residential and commercial customers in Burnt Store Colony Mobile Home Park (Park). Water service is provided from a well, and wastewater service provided by an on-site wastewater treatment facility. The service area is described as follows: 15550 Burnt Store Road, Punta Gorda, Florida 33955.

On January 12, 1996, Burnt Store filed an application for a grandfather certificate to provide water service in Charlotte

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FFSC-RECORDS/REPORTING

County. Pursuant to Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code, annual reports and regulatory assessment fees are due from regulated utilities regardless of whether a certificate has been granted. Burnt Store has been subject to our jurisdiction since September 27, 1994. The Utility was advised of our jurisdiction and its responsibility to obtain a certificate by a letter dated November 2, 1994. Burnt Store initially attempted to obtain an exemption from PSC regulation as a non-profit association. However, the application was denied in Order No. PSC-95-0648-FOF-WS, issued May 25, 1995, due to the utility providing service to the Country Store, a non-member of the non-profit association. Burnt Store then applied for a certificate to operate as a regulated utility on January 12, 1996.

On September 9, 1996 the utility requested that the application for certification be withdrawn. Burnt Store submitted an affidavit stating that it would provide water service to the Country Store at no charge and requested an exemption from regulation by means of a landlord/tenant exemption pursuant to Chapter 367.022(5) Florida Statutes and for a non-jurisdictional finding pursuant to Chapter 367.021(12) Florida Statutes.

Mr. Calvin Lustig, President of Burnt Store, signed the application and submitted a sample lease. Burnt Store states it will provide water and wastewater services solely for the use of its tenants without separate additional charges. Burnt Store also serves one connection, the Country Store, outside the mobile home park. However, Burnt Store submitted an affidavit stating that it will provide water and wastewater service to the Country Store without charge. This representation allows Burnt Store to meet the rules and requirements of a landlord/tenant exemption as service to the Country Store will be non-jurisdictional.

Mr. Lustig substantiated that services will be provided solely to Burnt Store's tenants. In addition, Mr. Lustig acknowledged Section 837.06, Florida Statutes, regarding false statements. In summary, we find that Burnt Store meets the necessary qualifications for an exemption pursuant to Section 367.022(5), Florida Statutes and Rule 25-30.060(3)(e), Florida Administrative Code.

Florida law no longer requires an exemption order to be issued to entities exempt from our jurisdiction due to a statutory revision, effective July 1, 1996. However, since the original application was docketed prior to the statutory change, we find it appropriate to issue an order acknowledging Burnt Store as an exempt entity. Further, Burnt Store is not subject to this Commission's jurisdiction for its service to a nonmember without

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compensation pursuant to Section 367.021(12), Florida Statutes. Burnt Store shall notify this Commission in the event of any change of circumstances or method of operation of its water system.


Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Burnt Store Colony R.O. Association, Inc., 15550 Burnt Store Road, Punta Gorda, Florida 33955, is exempt from Commission regulation for its service to its tenants without a specific charge pursuant to Section 367.022(5), Florida Statutes, and is not subject to this Commission's jurisdiction for its service to a nonmember without compensation pursuant to 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 Burnt Store Colony R.O. Association, Inc., or any successors in interest, are 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 of such a change so that its status may be reevaluated. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 7th day of January, 1997.



BLANCA S. BAYO, 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.