



Public Service Commission

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

DATE: April 9, 1997

TO: Division of Records and Reporting

FROM: Pat Brady, Division of Water and Wastewater
Alice Crosby, Division of Legal Services
Jennifer Brubaker, Division of Legal Services

*pb
JC*

RE: Docket No. 960541-WU, Request for exemption from Florida Public Service Commission regulation for provision of water service in Volusia County by Fernwood Mobile Home Estates, and

Docket No. ~~960541~~-WU, Application for certificate to operate a water utility in Volusia County by Fernwood Estates Mobile Home Park, Ltd.

On March 5, 1997, staff sent the applicant in Docket No. 960541-WU a letter indicating that the Mobile Home Park did not qualify for an exemption at its current rates. (Copy of staff's letter attached.) The applicant was given the choice to change the rates so that the exemption may apply or to file for a certificate of authorization. The applicant chose to file for a certificate but failed to indicate that the filing was pursuant to an existing docket. As a consequence, Docket No. 970373-WU was assigned to the application.

Section 2.07(C)(6), Administrative Procedures Manual, describes the circumstances under which a docket may be administratively closed by Records and Reporting. Upon consideration, OPR staff and Legal counsel jointly recommend that Docket No. 960541-WU be closed pursuant to subsection (d):

Other dockets initiated by the filing of a petition, application, notice, complaint or other request in which the applicant, petitioner or complainant seeks to withdraw its initial pleading and staff has determined that there are no pending issues that need to be addressed by the Commission regarding the filing, no request for refund of filing fee has been made, and no agency action has been taken.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPR _____
- REC _____
- SEC 1
- WAS _____
- DTI _____

Staff believes that by choosing to file for a certificate of authorization, the applicant has effectively withdrawn its earlier request for exemption. There are no pending issues that need to be addressed by the Commission, no filing fees are involved and no agency action has been taken. Therefore, Docket No. 960541-WU should be closed.

Attachment

*OK
SJS
4/11/97*

DOCUMENT DATE

00727 APR 11 1997

FPSC-RECORDS/REPORTING

Pat B

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



DIVISION OF WATER &
WASTEWATER
CHARLES HILL
DIRECTOR
(904) 413-6900

Public Service Commission

March 5, 1997

Mr. Stuart L. Periman
Fernwood Mobile Home Estates
4000 Town Center Suite 555
Southfield, Michigan 48075

Re: Docket No. 960541-WU: Request for exemption from Florida Public Service Commission regulation for provision of water service in Volusia County by Fernwood Mobile Home Estates.

Dear Mr. Periman:

As you may be aware, Section 367.031, Florida Statutes, requires a certificate of authorization from the Commission to provide water service unless the utility qualifies for one of nine specific exemptions from regulation pursuant to Section 367.022, Florida Statutes. On April 29, 1996, the Commission received your application on behalf of Fernwood Mobile Home Estates (Fernwood) for a reseller exemption pursuant to Section 367.022(8), Florida Statutes. By letter dated June 4, 1996, you were advised by my staff that it appeared you did not qualify for a reseller exemption as you were profiting from the resale of water service. According to staff's calculations, monthly revenues collected from the residents of Fernwood are approximately twice the cost to purchase their service. An application package for a certificate of authorization was transmitted with staff's letter.

In response, by letter dated June 25, 1996, you indicated you were in the process of negotiations with the City of Deland to provide water service directly to residents of Fernwood and requested a 60 day extension. A second extension was requested on September 13, 1996, and a third extension on November 7, 1996. Because of the extensive delays, staff contacted the City of Deland to inquire about the negotiations. According to Mr. Gary Schindler, there have never been any active negotiations between you and the city regarding the assumption of water service. It appears that you are in violation of Section 367.031, Florida Statutes. Therefore, it is extremely important that you act immediately to either file for a certificate of authorization or to reduce the rates you are charging so that an exemption pursuant to Section 367.022, Florida Statutes, may apply.

Mr. Stuart L. Perlman

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March 5, 1997

Completed forms for a certificate of authorization or written proof that you have reduced the rates must be received by March 31, 1997. Failure to comply with this request in a timely manner may result in the initiation of show cause proceedings and the possible imposition of penalties pursuant to Section 367.161, Florida Statutes, (copy enclosed).

Also, according to your application, the cost of providing wastewater service is included non-specifically in rent. If this is the case, you may qualify for a wastewater exemption pursuant to Section 367.022(5), Florida Statutes. Please send a copy of Fernwood's standard lease or rental agreement as evidence that wastewater utility service is included in rent.

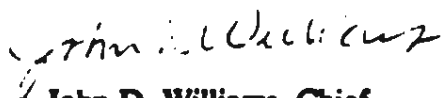
The original and five copies of the application for a water certificate and supporting documents or written proof of the reduction in water rates should be filed with:

The Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Attn: Docket No. 960541-WU

For the application for a water certificate, only one copy of the maps and the original and two copies of the tariff(s) are required. If you have any questions concerning this material, you may contact Ms. Patricia Brady, of my staff, at (904) 413-6686 or Ms. Alice Crosby in the Legal Division at (904) 413-6222.

Sincerely,



John D. Williams, Chief
Bureau of Policy Development
and Industry Structure

JDW/PLB/pb
Attachments

cc: Alice Crosby, FPSC, Division of Legal Services
Records and Reporting

Section 367.161: Penalties.

- (1) If any utility, by any authorized officer, agent, or employee, knowingly refuses to comply with, or willfully violates, any provision of this chapter or any lawful rule or order of the commission, such utility shall incur a penalty for each such offense of not more than \$5,000, to be fixed, imposed, and collected by the commission. However, any penalty assessed by the commission for a violation of s. 367.111(2) shall be reduced by any penalty assessed by any other state agency for the same violation. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the utility, enforceable by the commission as statutory liens under chapter 85. The proceeds from the enforcement of any such lien shall be deposited into the General Revenue Fund.
- (2) The commission has the power to impose upon any entity that is subject to its jurisdiction under this chapter and that is found to have refused to comply with, or to have willfully violated, any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$5,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien under chapter 85. The collected penalties shall be deposited into the General Revenue Fund unallocated.

History.

s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 21, 25, 26, ch. 80-99; ss. 2, 3, ch. 81-318; ss. 6, 8, ch. 84-149; ss. 21, 26, 27, ch. 89-353; s. 4, ch. 91-429.

LIST OF WATER AND WASTEWATER UTILITIES IN VOLUSIA COUNTY

(VALID FOR 90 DAYS)
03/04/1987-05/02/1987

UTILITY NAME

MANAGER

VOLUSIA COUNTY

DEBARY ASSOCIATES, INC. (WS053)
1 LEISURE DRIVE, S.
DEBARY, FL 32713-0742

CHARLES SMALETT
(407) 574-6801

ENTERPRISE UTILITIES CORPORATION (DELTONA) (WS067)
1000 COLOR PLACE
APOPKA, FL 32703-7753

FORREST L. LUDSEN
(407) 880-0058

NORTH PENINSULA UTILITIES CORPORATION (SUB15)
P. O. BOX 2803
ORMOND BEACH, FL 32175-2803

ROBERT HILLMAN
(904) 441-7528 OR -6286

PINE ISLAND UTILITY CORPORATION (WS101)
VOLUSIA COUNTY (RECEIVER)
123 WEST INDIANA AVENUE
DELAND, FL 32720-4262

MARY ANNE CONNORS
(904) 843-7027

PLANTATION BAY UTILITY CO. (WS479)
100 PLANTATION BAY DRIVE
ORMOND BEACH, FL 32174-8201

DOUGLAS R. ROSS, JR.
(904) 437-9185

SOUTHERN STATES UTILITIES, INC. (WS548)
1000 COLOR PLACE
APOPKA, FL 32703-7753

BRIAN P. ARMSTRONG
(407) 880-0058

TERRA MAR VILLAGE UTILITIES, INC. (WS748)
4383 SOUTH U.S. 1
EDGEWATER, FL 32141-7346

FRANK J. UDDO

TONOKA WATER WORKS, INC. (WU244)
1951 STATE ROAD 40
ORMOND BEACH, FL 32174-5826

STEVE P. SHIRAH
(904) 877-5702

TYMBER CREEK UTILITIES (WS246)
1951 S.R. 40
ORMOND BEACH, FL 32174-5826

STEVE P. SHIRAH
(904) 877-5702

DEPARTMENT OF WATER AND WASTEWATER UTILITIES IN VOLUSIA COUNTY

(VALID FOR 60 DAYS)
03/04/1997-05/02/1997

UTILITY NAME

MANAGER

GOVERNMENTAL AGENCIES

CLERK, BOARD OF COUNTY COMMISSIONERS, VOLUSIA COUNTY
COUNTY COURTHOUSE
DELAND, FL 32720

DEP CENTRAL DISTRICT
3319 MAGUIRE BLVD., SUITE 232
ORLANDO, FL 32803-3787

EAST CENTRAL FLORIDA PLANNING COUNCIL
1011 WYMORE ROAD, SUITE 105
WINTER PARK, FL 32780

MAYOR, CITY OF DAYTONA BEACH
P. O. BOX 551
DAYTONA BEACH, FL 32015

MAYOR, CITY OF DAYTONA BEACH SHORES
3050 SOUTH ATLANTIC AVENUE
DAYTONA BEACH SHORES, FL 32118-6150

MAYOR, CITY OF DELAND
P. O. BOX 449
DELAND, FL 32721-0449

MAYOR, CITY OF EDGEWATER
P. O. BOX 100
EDGEWATER, FL 32132-0100

MAYOR, CITY OF HOLLY HILL
1065 RIDGEMOOD AVENUE
HOLLY HILL, FL 32117-2000

MAYOR, CITY OF LAKE HELEN
P. O. BOX 39
LAKE HELEN, FL 32744-0039

LIST OF WATER AND WASTEWATER UTILITIES IN VOLUSIA COUNTY

(VALID FOR 90 DAYS)
03/04/1997-05/02/1997

UTILITY NAME

MANAGER

MAYOR, CITY OF NEW SMYRNA BEACH
210 SANS AVENUE
NEW SMYRNA BEACH, FL 32188-7040

MAYOR, CITY OF OAK HILL
P. O. BOX 98
OAK HILL, FL 32758-0098

MAYOR, CITY OF ORMOND BEACH
P. O. BOX 277
ORMOND BEACH, FL 32175-0277

MAYOR, CITY OF PORT ORANGE
1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32119-9619

MAYOR, CITY OF SOUTH DAYTONA
P. O. BOX 214980
SOUTH DAYTONA, FL 32121

MAYOR, TOWN OF ORANGE CITY
205 EAST GRAVES AVENUE
ORANGE CITY, FL 32768-6213

MAYOR, TOWN OF PIERSON
P. O. BOX 527
PIERSON, FL 32188-0527

MAYOR, TOWN OF PONCE INLET
4880 SOUTH PENINSULA DRIVE
PONCE INLET, FL 32019

ST. JOHN'S RIVER WTR MANAGEMENT DISTRICT
P.O. BOX 1429
PALATKA, FL 32178-1429

LIST OF WATER AND WASTEWATER UTILITIES IN FLORIDA COUNTY

**(VALID FOR 90 DAYS)
03/04/1997-05/02/1997**

UTILITY NAME

MANAGER

STATE OFFICIALS

**STATE OF FLORIDA PUBLIC COUNSEL
C/O THE HOUSE OF REPRESENTATIVES
THE CAPITOL
TALLAHASSEE, FL 32309-1300**

**DIVISION OF RECORDS AND REPORTING
FLORIDA PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32309-0950**

Notice to customers: Notice must also be given by regular mail or personal service, to each customer, of the system to be certificated. You will need to furnish another affidavit affirming when the notice was given to customers along with a copy of the notice given.

Published notice. Finally, the notice must be published once in a newspaper of general circulation in the area of Fernwood. Please request an affidavit of the publication from the newspaper and forward it to the Commission.

2. **Legal Description.** Rules 25-30.030(2) and 25-30.034, Florida Administrative Code, require that the legal description of the territory include:
 - a. a reference to township(s), range(s), land section(s) and county; and
 - b. a complete and accurate description of the territory served or proposed to be served in one of the following formats. The description may reference interstates, state roads, and major bodies of water. The description shall not rely on references to government lots, local streets, recorded plats or lots, tracts, or other recorded instruments.
 1. **Sections:** If the territory includes complete sections, the description shall only include the township, range, and section reference. If the territory includes partial sections, the description shall either identify the subsections included or excluded.
 2. **Metes and bounds:** A point of beginning which is referenced from either a section corner or a subsection corner, such as a quarter corner. The perimeter shall be described by traversing the proposed territory and closing at the point of beginning. The description shall include all bearings and distances necessary to provide a continuous description.

For the legal description of Fernwood's location, your application referred staff to a warranty deed. Apparently a description of the location was appended to the warranty deed as Exhibit A, but a copy of Exhibit A was not included with the application. As a first step, I would suggest you attempt to locate Exhibit A to the warranty deed. If the description in Exhibit A does not rely on references to government lots, local streets, recorded plats or lots, tracts, or other recorded instruments, it may be in the correct format for noticing. Staff will be able to verify whether the legal description in Exhibit A is sufficient for noticing if it is accompanied by a territory map.