

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

April 9, 1992

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF WATER AND WASTEWATER (KOSLOSKI) *copy*
DIVISION OF LEGAL SERVICES (GOLDEN) *rd* *lf*

RE : UTILITY: STEWART/BARTH UTILITY
DOCKET NO.: 920063-WS
COUNTY: LAKE
CASE: REQUEST FOR COMBINED EXEMPTION FROM FLORIDA PUBLIC
SERVICE COMMISSION REGULATION FOR PROVISION OF WATER AND
WASTEWATER SERVICE IN LAKE COUNTY BY STEWART/BARTH
UTILITY

AGENDA : APRIL 21, 1992-CONTROVERSIAL-PROPOSED AGENCY ACTION

CRITICAL DATES: NONE

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CASE BACKGROUND

The Stewart/Barth Utility, in Lake County, filed its application for a combined exemption pursuant to Sections 367.022(5) and 367.022(6), Florida Statutes on January 17, 1992. The utility is co-owned by Mr. Charles Stewart and Mr. Robert Barth, as tenants in common. The mailing address for Charles R. Stewart is 37936 Highway 19, Umatilla, FL 32784. Mr. Barth's mailing address is 4590 North Highway 19A, Mount Dora, FL 32757. Stewart/Barth Utility serves an RV park owned by Mr. Stewart, an RV park owned by Mr. Barth, and 30 units of a condominium complex known as Baywood Condominiums in Lake County. These customers receive both water and wastewater service from Stewart/Barth Utility. The Commission denied Stewart/Barth Utility's previous request for a landlord-tenant exemption, Docket No. 900733-WS, Order No. 24311, because Stewart/Barth serves two RV parks and the 30 units in Baywood condominiums. The Commission denied this request based on the fact that the condominiums were not owned by the utility owners.

Staff has authority to administratively approve applications for exemptions pursuant to Administrative Procedures Manual 2.08(c)(5), when cases are clear cut and without controversy. However, since this case is a combined exemption pursuant to Sections 367.022(5) and 367.022(6), Florida Statutes, it is being brought to the Agenda Conference for their decision. Staff recommends that the application for a combined exemption as landlord-tenant and small system be denied and that the applicant be required to file for an original certificate within 90 days.

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ISSUE 1: Should the request by Stewart/Barth Utility for a combined exemption from Florida Public Service Commission regulation for its water and wastewater utility be granted?
(KOSLOSKI)

STAFF RECOMMENDATION: No, the request by Stewart/Barth Utility for a combined exemption pursuant to Sections 367.022(5) and 367.022(6), Florida Statutes, should be denied and the utility should be ordered to file an original certificate application within 90 days of the final order.

STAFF ANALYSIS: Stewart/Barth Utility has requested a combined exemption under the landlord-tenant and small system exemption subsections. The two RV parks represent the landlord-tenant portion of the request. The application was filed in accordance with Sections 367.022(5) and 367.022(6), Florida Statutes. Also, the applicant acknowledged Section 837.06, Florida Statutes, regarding making false statements. In an exhibit attached to its application, the utility included prior Commission orders in which, in the utility's opinion, the Commission had combined exemption subsections to find certain utilities exempt from Commission regulation. Additional information regarding utility bills for Baywood Condominiums was received by staff on March 4, 1992. On January 30, 1992, staff sent a deficiency letter which requested a copy of the landlord's most recent version of a standard lease or rental agreement, and an assurance by the utility that there was no separate charge for water and wastewater service. Deficiencies were corrected on March 27, 1992 regarding the requested landlord-tenant exemption. Mr. Stewart and Mr. Barth are co-owners of Stewart/Barth Utility as tenants in common.

Stewart/Barth Utility provides water and wastewater service to an RV park owned by Mr. Stewart, an RV park owned by Mr. Barth, and 30 units of a condominium complex known as Baywood Condominiums. The utility's water treatment plant has a water capacity of 50,000 gallons per day. The utility has a 30,000 gallon per day extended aeration wastewater treatment facility.

The utility asserts that it qualifies for the landlord-tenant exemption for the two RV Parks. It further asserts that it is sufficient to show that the estimated usage for the condominiums meets the provisions of the rule and statute for a small system. Staff notes that since neither the RV parks or the condominiums are metered, the applicant is unable to show actual usage. Staff strongly disagrees with the utility, because usage is not the test contemplated by the statute and rule for the small system exemption. Rather, the test is the capacity of the system.

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The Commission has allowed combined exemptions in the past, where appropriate. The utility argues that in Order No. 13259, issued May 3, 1984, the Commission combined the small system exemption with another exemption to find Continental Home Parks, Inc., d/b/a/ Colony Mobile Park exempt from our regulation. The Commission found the system non-jurisdictional. In a subsequent case, the Commission has applied the small system exemption criteria to the whole system, not to the remainder of the system after other exemptions are applied. Section 367.022(6), Florida Statutes, exempts systems with the capacity or proposed capacity to serve 100 or fewer persons. The Commission's Rule 25-30.055, Florida Administrative Code, interpreting the small system exemption provides that a water or sewer system:

is exempt under Section 367.022(6), Florida Statutes, if its...treatment facilities and collection system have or will have a capacity, excluding fire flow capacity of no greater than 10,000 gallons per day and if the entire system is designed to serve no greater than 40 equivalent residential connections (ERCs).

In Order No. 20576, issued January 9, 1989, an exemption was denied in a scenario similar to the facts in the instant case. In that case, Gate Petrol filed for a combined exemption pursuant to Sections 367.021(3) (1987 F.S.) and 327.022(6), Florida Statutes. Gate Petrol provided water and sewer service to a motel and a service station, without charge, but charged a Burger King \$1,000 per year for sewer service. The Commission held that the utility's sewer service provided to Burger King was service to the public for compensation and thus the utility was subject to the Commission's jurisdiction citing P.W. Ventures. The Commission concluded that the capacity of Gate Petrol was over 10,000 gpd and thus the small system did not meet the exemption requirement. Thus, the Commission looked to the capacity of Gate Petrol's entire system, and not to the individual customer usage, when it denied the Section 367.022(6), Florida Statutes exemption.

Staff recommends that the statute requires that the Commission look to the capacity of Stewart/Barth's entire system when applying the small system exemption. As previously stated, the wastewater system's capacity is 30,000 gpd and the water capacity is 50,000 gpd, both well over the 10,000 gpd limit necessary to meet the small system exemption. The deciding factor is the total size of the system, not its components. The entire system serves the utility's three customers, the RV park owned by Mr. Barth, the RV park owned by Mr. Stewart, and the 30 condominium units. This

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analysis, staff believes, is supported by the Commission's past decision and is within the clear meaning of the statute.

As mentioned in the case background, the Commission denied Stewart/Barth Utility's previous request for a landlord-tenant exemption for the two RV parks and the 30 units in Baywood condominiums. Order No. 24311, issued April 2, 1991, states that "The obstacle to granting a landlord-tenant exemption in this case is that the utility currently serves condominiums, and these condominiums are not owned wholly or in part by the utility's owners. Thus, for that portion of the service area, the utility's owners are not landlords. If the utility's owners are not the landlords for all customers served by the systems, the landlord-tenant exemption cannot apply."

Therefore, the Commission should deny the utility's exemption request for small system and landlord/tenant since the utility did not meet the established rule and statutory criteria. In addition, staff recommends that the utility file for an original certificate within 90 days of the final order.

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ISSUE 2: Should the docket be closed?

STAFF RECOMMENDATION: Yes, the docket should be closed if no timely protest is filed. (GOLDEN)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue No. 1, the docket should be closed if no timely protest is filed.

(STEWART)