



JOE NEGRON
President of the Senate

J.R. KELLY
Public Counsel

STATE OF FLORIDA
OFFICE OF PUBLIC COUNSEL

C/O THE FLORIDA LEGISLATURE
111 WEST MADISON ST.
ROOM 812
TALLAHASSEE, FLORIDA 32399-1400
1-800-342-0222

EMAIL: OPC_WEBSITE@LEG.STATE.FL.US
WWW.FLORIDAOPC.GOV



RICHARD CORCORAN
Speaker of the House of Representatives

January 30, 2017

Suzanne Brownless, Esq.
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 170000 - The Harbor RV Resort & Marina (An Uncertificated Utility Providing Service in Polk County)

Dear Ms. Brownless:

This letter follows the January 18, 2017, phone conference regarding whether The Harbor RV Resort & Marina (Harbor or Utility) is exempt from the jurisdiction of the Florida Public Service Commission (Commission) under Section 367.022, Florida Statutes. The Office of Public Counsel (OPC) is of the opinion that Harbor has not provided sufficient evidence to support its contention that it meets a statutory exemption from Commission regulation.

Harbor is a utility currently providing water and wastewater service to approximately 188 water and 155 wastewater customers, of which 118 are located within the Harbor owned RV Resort, while the remaining customers reside outside the RV Resort. The Utility has continuously provided water and wastewater services since at least 1996 when Polk County adopted a resolution declaring that water and wastewater utilities in Polk County be subject to the jurisdiction of the Commission. It is OPC's understanding that, at this time, all of the customers are individually billed for water and wastewater service.

On or about June 30, 2016, a customer of the Utility contacted OPC with complaints about rates and service. The customer provided OPC with copies of utility bills, rate increase notices and a declaration of restrictions containing a provision governing water and wastewater service rates. On July 12, 2016, OPC provided this documentation to Commission staff. On or about July 26, 2016, staff notified OPC that it spoke with the Utility's owner, Robert M. Smith, regarding the Utility possibly being exempt from the Commission's jurisdiction, and that based upon this conversation, the staff believed no exemption applied. On July 27, 2016, staff sent the Utility

written notice of its opinion that the Utility did not meet any statutory exemption and that it must file an application for certification by August 31, 2016.

On August 23, 2016, Mr. Smith's attorney, Gerald T. Buhr, requested and received a 90-day extension of time, thereby giving the Utility until November 30, 2016, to file its application. On November 15, 2016, Mr. Buhr and Mr. Smith met with staff at the Commission's office in Tallahassee to discuss additional issues related to exempt status. On November 28, 2016, the Utility received an extension until December 30, 2016, as staff was still considering the issues presented at the November 15, 2016, meeting. On December 29, 2016, the Utility received an extension until July 14, 2017, to file its application. Around this same time, staff scheduled a conference call between all parties, including OPC, for January 18, 2017, to allow the Utility to present its argument for exempt status.

During the January 18, 2017, conference, the Utility asserted that it qualified for an exemption under both Sections 367.022(4) and (6), Florida Statutes. Section 367.022(4), Florida Statutes, exempts "public lodging establishments providing service solely in connection with service to their guests" from the Commission's regulation. Harbor argued it *can meet* the public lodging exemption by restructuring its agreement with the 118 customers within the RV Resort to move all charges into rent for water and wastewater service. Next, Harbor claimed the remaining part of the system providing service to 70 water and 27 wastewater customers located outside the RV Resort meets the small capacity exemption. Section 367.022(6), Florida Statutes, exempts systems "with the capacity or proposed capacity to serve 100 or fewer persons." Rule 25-30.005, Florida Administrative Code, defines service of 100 or fewer persons as a capacity, including fire flow capacity, of no greater than 10,000 gallons per day (gpd) or if the entire system is designed to serve no more than 40 equivalent residential connections (ERCs). Harbor's water system has a capacity of 76,800 gpd, which is sufficient to serve 307 ERCs. Harbor's wastewater capacity is 20,000 gpd, which is sufficient to serve 80 ERCs. Both system capacities are designed to serve amounts well over the limitations established in Rule 26-30.055, Florida Administrative Code. Nonetheless, Harbor contends the Commission should find it meets the exemption because these remaining customers outside the RV Resort - using the other part of its system - are seasonal/transient and there is no potential for growth. It also encourages the Commission to take into consideration that the number of customers has the potential to decrease as customers are free to leave the Utility to provide their own service with septic tanks and/or wells should they be "displeased with the rates."

In further support of its contention that it has a capacity to serve less than 100 persons, the Utility points to the Commission's decision in Docket No. 060481-WU, In re: Determination of Florida Public Service Commission Jurisdiction for Provision of Water Service in Columbia County by Lance Water System (Lance). See Order No. PSC-06-0682-PAA-WU, issued August, 7, 2006. In Lance, the utility provided water service to 41 mobile homes and single family homes. The facts demonstrated that Lance water treatment capacity exceeded the 10,000 gpd limit by 16,000 gpd, but that it met the distribution system design capacity limitation in serving less than 40 ERCs. Accordingly, the Commission determined that because Lance had no plans to expand

its service and was serving less than 40 ERCs, it was exempt from the jurisdiction of the Commission. Here, Harbor urges the Commission to find it meets the small capacity exemption simply because it has no plans to expand its service and “most of the year, there are only 32 water and 28 sewer ERCs.” Neither Section 367.022, Florida Statutes, nor Rule 25-30.055, Florida Administrative Code, afford such discretion in calculating the number of ERCs.

The Utility is proposing to divide its water and wastewater system such that part of the system is exempt as a public lodging establishment and the other part exempt as a small system. It is OPC’s position that Harbor may not bifurcate its system in an attempt to come under two distinct statutory exemptions. The public lodging establishment and small capacity system exemptions simply cannot be stretched to cover these circumstances.

OPC is of the opinion that Harbor does not qualify for an exemption from Commission regulation and it is in the public interest for Harbor to be regulated for the protection of its customers. We note that it is unclear as to why it has taken since 1996 for this Utility to be acknowledged as to the potential for being a regulated utility. OPC requests that the Commission open a docket to either: (i) require Harbor to submit an application for certification and ensure a completed application is timely filed; or, (ii) address Harbor’s request for an exemption.

Sincerely,

s/ Virginia L. Ponder

Virginia L. Ponder
Associate Public Counsel

Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400
850-717-0340
ponder.virginia@leg.state.fl.us

cc: Gerald T. Buhr, Esquire
Division of Engineering (Ballinger, King, Watts)
Division of Accounting and Finance (Fletcher)