

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Revision of ) DOCKET NO. 951271-WS  
Rule 25-30.060, F.A.C. ) ORDER NO. PSC-95-1565-NOR-WS  
Application for Exemption from ) ISSUED: December 15, 1995  
Regulation or Nonjurisdictional )  
Finding )  
\_\_\_\_\_ )

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

NOTICE OF RULEMAKING

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to amend Rule 25-30.060, Florida Administrative Code, relating to application for exemption from regulation or nonjurisdictional finding.

The attached Notice of Rulemaking will appear in the December 22, 1995 edition of the Florida Administrative Weekly.

If timely requested, a hearing will be held at the following time and place:

Florida Public Service Commission  
9:30 a.m., February 13, 1996  
Betty Easley Conference Center  
Room 152, 4075 Esplanade Way  
Tallahassee, Florida

Written requests for hearing and written comments or suggestions on the rule must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0870, no later than January 12, 1996.

DOCUMENT NUMBER-DATE

12625 DEC 15 95

FPSC-RECORDS/REPORTING

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By ORDER of the Florida Public Service Commission, this 15th  
day of December, 1995.

BLANCA S. BAYÓ, Director  
Division of Records & Reporting

by: Kay Flynn  
Chief, Bureau of Records

( S E A L )

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FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 951271-WS

RULE TITLE: RULE NO.:

Application for Exemption from Regulation 25-30.060  
or Nonjurisdictional Finding

PURPOSE AND EFFECT: The purpose is to simplify the filing requirements for exemption pursuant to Section 367.022, Florida Statutes. The effect is less regulation of exempt entities and of nonprofit corporations, associations, and cooperatives that are reasonably controlled by their members, and avoidance of costly amendments to their articles and bylaws to obtain exempt status.

SUMMARY: The rule amendments eliminate the requirement for identifying the service area for all types of exemption requests and reduce the filing requirements for exemption pursuant to Section 367.022(7), F.S.

RULEMAKING AUTHORITY: 350.127(2), 367.121(1), F.S.

LAW IMPLEMENTED: 367.021(12), 367.022, 367.031, F.S.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

HEARING: IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 A.M., February 13, 1996

PLACE: Room 152, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THIS RULE AND THE ECONOMIC IMPACT STATEMENT IS: Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399.

THE FULL TEXT OF THE RULE IS:

**25-30.060 Application for Exemption from Regulation or Nonjurisdictional Finding.**

(1) Each application for an exemption shall be filed in original and four ~~two~~ copies, with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870. Sample application forms may be obtained from the Division of Water and Wastewater, ~~Bureau of Certification~~, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

(2) Each application for an exemption from regulation shall contain the following information:

(a) The name of the system owner;

(b) The physical address of the system;

(c) The mailing address of the applicant, if different from the system address;

(d) The name, address, and phone number of the primary contact person for the exemption request;

(e) The nature of the applicant's business organization, e.g., corporation, partnership, limited partnership, sole proprietorship, association; and

(f) A statement that the applicant is aware that pursuant to section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, ~~or s. 775.084.~~

(3) Each application must specifically state which type of exemption is being applied for and contain one of the following:

(a) For an exemption pursuant to section 367.022(1), Florida Statutes, a statement from the owner of the system that the system is used solely to provide bottled water and that water is not provided to customers through a water main or service pipe;

(b) For an exemption pursuant to section 367.022(2), Florida Statutes, a statement from the governmental authority specifying the statutory authority for the governmental authority; that the system is owned, operated, managed, or controlled by the governmental authority; and stating whether it provides water service, wastewater service or both; ~~and specifying the service area.~~ The applicant shall describe with particularity the nature of the ownership, operation, management, and control of the system;

(c) For an exemption pursuant to section 367.022(3), Florida Statutes, a statement from the manufacturer that service is provided solely in connection with its operations; and stating whether it provides water service, wastewater service or both; ~~and specifying the service area;~~

(d) For an exemption pursuant to section 367.022(4), Florida Statutes, a statement from the public lodging establishment that service is provided solely in connection with service to its guests; and stating whether it provides water service, wastewater service or both; ~~and specifying the service area;~~

(e) For an exemption pursuant to section 367.022(5), Florida Statutes, a statement from the landlord that it provides service solely to tenants; that charges for service are non-specifically contained in rental charges; and stating whether it provides water service, wastewater service or both; ~~and specifying the service area.~~ A copy of the landlord's most recent version of a standard lease or rental agreement shall be submitted with the application;

(f) For an exemption pursuant to section 367.022(6), Florida Statutes, a statement from the owner of the system that the system has or will have the capacity to serve 100 or fewer persons; and stating whether it provides water service, wastewater service or both; ~~and specifying the service area.~~ The applicant shall submit documentation verifying the capacity of the system(s). For a

wastewater system, the capacity of both the treatment and disposal facilities shall be documented;

(g) For an exemption pursuant to section 367.022(7), Florida Statutes, a statement that it provides service solely to members who own and control it; and stating that it provides water service, wastewater service or both.

1. When the applicant is a condominium formed pursuant to the Condominium Act, Chapter 718, Florida Statutes, it must provide:

a. A copy of the certificate obtained from the Secretary of State showing that it is formed under Chapter 718, Florida Statutes;

b. A statement as to whether the applicant's articles of incorporation and bylaws contain the requirements for turnover of control of the condominium to the nondeveloper members as set out in Chapter 718, Florida Statutes. If turnover of control has not occurred, a statement as to the date turnover of control to the nondeveloper members is expected to occur.

2. When the applicant is a cooperative formed pursuant to the Cooperative Act, Chapter 719, Florida Statutes, it must provide:

a. A copy of the certificate obtained from the Secretary of State showing that it is formed under Chapter 719, Florida Statutes;

b. A statement as to whether the applicant's articles of incorporation and bylaws contain the requirements for turnover of control of the cooperative to the nondeveloper members as set out in Chapter 719, Florida Statutes. If turnover of control has not occurred, a statement as to the date turnover of control to the nondeveloper members is expected to occur.

3. When the applicant is a nonprofit corporation formed pursuant to Chapter 617, Florida Statutes, it must provide:

a. The articles of incorporation as filed with the Secretary of State and the bylaws which documents must demonstrate that it provides service solely to members who own the corporation;

b. A description of the voting rights and their location in the articles of incorporation and the bylaws. The voting rights shall be one vote per unit of ownership or other voting rights if the Commission finds they are fair and nondiscriminatory so that members have equitable control of the corporation.

c. In circumstances where the applicant is a nonprofit corporation formed by a developer pursuant to Chapter 617, Florida Statutes, it must provide documentation showing that control has passed or, if not, the circumstances under which control of the corporation will pass to the nondeveloper members. The time must not exceed seven years from the date of incorporation unless the Commission finds that special circumstances justify a longer time.

~~(g) For an exemption pursuant to Section 367.022(7), Florida Statutes, a statement from the corporation, association, or cooperative that it is nonprofit; that it provides service solely to members who own and control it; stating whether it provides water service, wastewater service or both; specifying who will do the billing for such service; and specifying the service area. The applicant must submit its articles of incorporation as filed with the Secretary of State and its bylaws, which documents must clearly show the requirements for membership, that the members' voting rights are one vote per unit of ownership, and the circumstances under which control of the corporation passes to the non-developer members. Control of the corporation must pass: 1) at 51 percent ownership by the non-developer members or, 2) at some greater percentage delimited by a time period not to exceed 5 years from the date of incorporation. The applicant must provide proof of its ownership of the utility facilities and the land upon which the facilities will be located or other proof of its right to continued use of the land, such as a 99 year lease. The Commission may consider a written easement or other cost-effective alternative;~~

(h) For an exemption pursuant to section 367.022(8), Florida Statutes, a statement from the reseller that service is provided at a rate or charge that does not exceed the actual purchase price; stating that the reseller is aware of the requirements of Rule 25-30.111, Florida Administrative Code; stating that the reseller is

aware of the requirements of section 367.122, Florida Statutes, and Rules 25-30.262, .263, .264, .265, .266 and .267, Florida Administrative Code, relating to examination and testing of meters; and stating whether it provides water service, wastewater service or both; ~~and specifying the service area.~~ The reseller must also provide the name of the utility providing service to it and that utility's current rates and charges. The reseller must submit a schedule of all of its proposed rates and charges, an explanation of the proposed method of billing customers, separately, for both water and wastewater, and a schedule showing that the amount billed will not exceed the amount paid for water, wastewater, or both;

(i) For an exemption pursuant to section 367.022(9), Florida Statutes, a statement from the owner of the wastewater system that the system is primarily for the treatment of wastewater other than domestic wastewater, such as runoff and leachate from areas that receive pollutants associated with industrial or commercial storage, handling or processing; and identifying the principal source or nature of such wastewater; ~~and specifying the service area;~~

(j) For a nonjurisdictional finding pursuant to section 367.021(12), Florida Statutes, a statement from the system owner stating that it does not charge for providing utility service; specifying how operational costs of providing service are treated

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or recovered; and stating whether it provides water service, wastewater service, or both, ~~and specifying the service area.~~

Specific Authority: 350.127(2), 367.121(1), F.S.

Law Implemented: 367.021(12), 367.022, 367.031, F.S.

History: New 1/5/92, Amended 11/30/93, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Edith Xanders.

NAME OF SUPERVISOR OR PERSON(S) WHO APPROVED THE PROPOSED RULE:  
Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: December 5, 1995.

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting at (904) 413-6770 at least five calendar days prior to the hearing. If you are hearing or speech impaired, please contact the Florida Public Service Commission using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).