

MEMORANDUM

RECEIVED

MAY 26 1995

May 22, 1995

11.90
FPSC-RECORDS/REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (VACCARO) *OV ZAS*

RE: DOCKET NO. 941044-WS - RESOLUTION OF BOARD OF COMMISSIONERS OF CHARLOTTE COUNTY DECLARING CHARLOTTE COUNTY SUBJECT TO PROVISIONS OF CHAPTER 367, FLORIDA STATUTES - REQUEST FOR EXEMPTION FOR PROVISION OF WATER AND WASTEWATER SERVICE BY BURNT STORE RO ASSOCIATION, INC.

0647- FdE

Attached is an NOTICE OF PROPOSED AGENCY ACTION, ORDER DENYING EXEMPTION REQUEST, REQUIRING BURNT STORE RO ASSOCIATION, INC. TO FILE AN APPLICATION FOR ORIGINAL CERTIFICATE to be issued in the above-referenced docket. (Number of pages in Order - 4)

TV/ji

Attachment

cc: Division of Water and Wastewater (Massey-Azpell)

I:941044-H.TV

8-1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of Board of) DOCKET NO. 941044-WS
Commissioners of Charlotte) ORDER NO. PSC-95-0648-FOF-WS
County declaring Charlotte) ISSUED: May 25, 1995
County subject to provisions of)
Chapter 367, F.S. - Request for)
Exemption for Provision of Water)
and Wastewater Service by Burnt)
Store RO 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

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING EXEMPTION REQUEST, REQUIRING
BURNT STORE RO ASSOCIATION, INC. TO FILE AN
APPLICATION FOR ORIGINAL CERTIFICATE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On November 14, 1994, Burnt Store Colony RO Association, Inc. (the Association) filed its application for an exemption from our jurisdiction for the provision of water and wastewater service in Charlotte County. The exemption request was filed pursuant to Section 367.022(7), Florida Statutes, which provides for exemptions to qualifying non-profit entities.

The Association, a Florida not-for-profit corporation, is a cooperative which was formed by certain residents of Burnt Store Colony Mobile Home Park (the Park). Those residents formed the corporation for the purpose of purchasing the property from the prior owner/developer, Mr. Donald Calcaterra. The cooperative has

DOCUMENT NUMBER-DATE
05026 MAY 25 95
FPSC-RECORDS/REPORTING

been organized as a not-for-profit cooperation under Chapters 617 and 719, Florida Statutes.

The property was not originally developed by the cooperative. The cooperative acquired it with all facilities, recreation areas and completed units already in place at the time of acquisition, which were constructed by the Developer. Burnt Store Colony RO Association, Inc. provides water and wastewater service to the Association and a certain commercial property (the "Country Store" which is a non-member) located near the Association property.

In order to qualify for an exemption pursuant to Section 367.022(7), Florida Statutes, and Rule 25-30.060(2)(g), Florida Administrative Code, a non-profit association must provide service solely to members who own and control it. Presently, the Association is providing water and wastewater service to the Country Store property located near the Association's property. The Association receives \$75.00 per month for this service. The Association states that there is no other way for the Country Store property to receive this service, as there are no municipal water and wastewater lines near that property.

While this commercial property is currently being served water and wastewater service for compensation by the Association, there is no provision to make this customer a member of the Association. The Association contends that it is impossible for the owner of the Country Store property to become a member of the Association, and that Chapter 719, Florida Statutes, sets out the requirements, definitions, and regulations pertaining to cooperative associations. Burnt Store RO Association, Inc. is a not-for-profit corporation composed solely of shareholders (Members) who have purchased a proportionate share in the corporation, and is a residential cooperative as defined in Chapter 719.013. Neither the Association, nor its Members, have any ownership interest in the Country Store property, and the owner of the Country Store property has no ownership interest in the Association property.

In addition, it has come to our attention that the Association is providing water and wastewater service to tenants renting lots in the cooperative which are still owned by the Association. The renters are not members of the corporation nor do they own any interest therein.

We find that the Association does not qualify for any exemption available under Section 367.022, Florida Statutes. Therefore, the Association shall file an application for an original certificate within ninety days of the effective date of the order denying its exemption request.

ORDER NO. PSC-95-0648-POF-WS
DOCKET NO. 941044-WS
PAGE 3

We further find that if no person, whose interests are substantially affected by the proposed action, files a protest within the 21 day protest period, no further action will be required. However, this docket shall remain open to process additional Charlotte County applications for exemptions.

Based on the foregoing, it is, therefore,

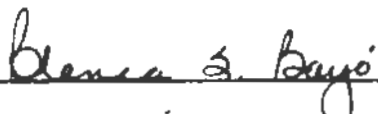
ORDERED by the Florida Public Service Commission Burnt Store RO Association, Inc.'s request for exemption from Commission regulation is hereby denied. It is further

ORDERED that Burnt Store RO Association, Inc. shall file an application with the Commission for an original certificate within ninety days from the effective date of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that, in the event this Order becomes final, this docket shall remain open pending the process of additional Charlotte County applications for exemptions.

By ORDER of the Florida Public Service Commission, this 25th day of May, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

TV

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 15, 1995.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.