

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from) DOCKET NO. 900303-SU
Florida Public Service Commission) ORDER NO. 23155
regulation for a sewage treatment) ISSUED: 7-5-90
and disposal system in Monroe County)
by Mangrove Mama's Restaurant.)
)

ORDER INDICATING THE NONJURISDICTIONAL STATUS OF
MANGROVE MAMA'S RESTAURANT

BY THE COMMISSION:

Mangrove Mama's Restaurant (restaurant) is an existing restaurant in Monroe County. The owner wishes to expand the seating capacity of the restaurant. To meet health department requirements, the restaurant's wastewater treatment system must be upgraded. Pursuant to Section 367.031, Florida Statutes, before the Department of Environmental Regulation (DER) will issue a construction permit for the proposed work on the wastewater treatment system, it requires a certificate from this Commission authorizing service, or an order recognizing that the system is exempt from regulation.

On April 23, 1990, the restaurant requested that it be found exempt from our regulation pursuant to the public lodging exemption, Section 367.022(4), Florida Statutes. The application for exemption included an affidavit from the owner of the restaurant stating that the wastewater system will provide service solely in connection with the restaurant's operations. The application also included information concerning the system's location, a site plan, and an engineering report.

Although the restaurant seeks an exemption as a public lodging establishment pursuant to Section 367.022(4), Florida Statutes, in our opinion, another section of Chapter 367, Florida Statutes, applies here. Specifically, we find that the restaurant is not a "utility" within the meaning of Section 367.021(12), Florida Statutes, and therefore is not subject to our jurisdiction.

Section 367.021(12) defines a "utility" as:

[A] water or sewer utility and, except as provided in §367.022, includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing or

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proposes to provide, water or wastewater
service to the public for compensation.
[Emphasis supplied.]

Under the above definition, in order to constitute a utility, a wastewater facility must provide service for compensation to the public. Here, no customers will be charged, as the treatment plant will provide service solely to the restaurant and all costs will be treated as operating expenses.

Upon consideration of the foregoing, we find that the restaurant's wastewater treatment facility is not a utility as defined in Section 367.021(12), Florida Statutes, as wastewater service will not be provided to the public for compensation. We therefore find that this facility is not under the jurisdiction of this Commission. We further find that Mangrove Mama's Restaurant should inform this Commission of any change in circumstances or method of operation, within thirty (30) days of such change, so that we may review the matter to determine whether nonjurisdictional status is still appropriate.

It is, therefore,

ORDERED by the Florida Public Service Commission that the wastewater facility constructed to serve Mangrove Mama's Restaurant is not a utility within the definition provided in Section 367.021(12), Florida Statutes, and is therefore not under the jurisdiction of this Commission. It is further

ORDERED that, should there be any change in circumstances or method of operation of this facility, Mangrove Mama's Restaurant, or its successor in interest, shall inform this Commission within thirty (30) days of such change. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission
this 5th day of JULY, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ASD

by: Kay Feyn
Chief, Bureau of Records.

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer 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 after the issuance 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.