

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from ) DOCKET NO. 910488-SU  
 Florida Public Service Commission )  
 regulation for a sewage treatment ) ORDER NO. 24803  
 and disposal system in Monroe County )  
 by DOLPHIN MARINA ) ISSUED: 7-11-91  
 \_\_\_\_\_ )

ORDER INDICATING EXEMPT STATUS OF DOLPHIN MARINA

BY THE COMMISSION:

Dolphin Marina is an existing establishment that is being redeveloped to include a proposed thirty-five (35) unit motel and restaurant. Dolphin Marina consists of a marine repair building (building), an office and reception facility (office), a two unit apartment, and a marina. Dolphin Marina is located in Monroe County, Florida.

By letter and affidavit received April 8, 1991, Dolphin Marina requested recognition of the exempt status of its proposed wastewater treatment and disposal system to serve the proposed motel and restaurant. Dolphin Marina seeks an exemption from this Commission's regulation under Section 367.022(5), Florida Statutes, which exempts certain landlords. Pursuant to Section 367.031, Florida Statutes, the Department of Regulation (DER) will not issue a permit for the construction of a new water or wastewater facility until it receives either a certificate authorizing the system to provide service or an order recognizing that the system is not subject to the regulation of the Commission.

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater facilities, if they qualify under the appropriate provision of Chapter 367, Florida Statutes. Dolphin Marina initially sought an exemption on the basis that it is a landlord pursuant to Section 367.022(5), Florida Statutes. Upon our review, we discovered that the nature of Dolphin Marina's operations caused other exemption sections to be applicable. Dolphin Marina submitted an additional affidavit, received June 10, 1991, requesting exempt status for its proposed wastewater system, insofar as it relates to its existing facilities also.

Upon consideration, we find that an exemption for public lodging establishments pursuant to Section 367.022(4), Florida Statutes, is more applicable in the case of the motel, two unit apartment, and marina. Under that section, public lodging establishments that provide water or wastewater service solely in connection with providing services to its guests are exempt from Commission regulation.

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As to the restaurant, building, and office, Dolphin Marina states that it will provide wastewater service solely for the operation of the restaurant and building; no charges will be made to anyone for wastewater service to the restaurant, building or office; the costs of wastewater service to the restaurant and building will be treated as an operational expense of Dolphin Marina; the office discharges its wastewater to an existing septic system which is to remain in service; the wastewater system will be located solely on the premises of the establishment; and the facility's physical address will be U.S. Highway No.1, Mile Marker 28.5, Little Torch Key, Florida 33042.

Section 367.021(12), Florida Statutes, defines a utility as "every person . . . who is providing or proposes to provide, water or sewer service to the public for compensation." Based upon the foregoing facts, it does not appear that the portion of Dolphin Marina's facilities serving the restaurant, building, and office, will be a utility, as defined by Section 367.021(12), Florida Statutes, and thereby will not be subject to this Commission's jurisdiction.

Our findings are based upon the facts as presented by Dolphin Marina. Should there be any change in circumstances or method of operation, the owner of Dolphin Marina or any successor in interest must inform the Commission within thirty (30) days of such change so that we may determine whether exempt status is still appropriate.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Dolphin Marina's proposed wastewater and disposal treatment system, to be located at U.S. Highway No. 1, Mile Marker 28.5, Little Torch Key, Florida 33042, is hereby exempt under Sections 367.022(4) and 367.021(12), Florida Statutes, as set forth in the body of this Order. It is further

ORDERED that should there be any change in circumstances or method of operation of Dolphin Marina's wastewater system, the owner of Dolphin Marina or any successor in interest shall inform this Commission within thirty (30) days of such change. It is further

ORDERED that this docket be closed.

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By ORDER of the Florida Public Service Commission, this  
11th day of July, 1991.

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

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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.