

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** March 21, 2019

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Division of Engineering (Doehling, Salvador) *JD*  
Office of the General Counsel (Simmons) *ALS TB PG*

**RE:** Docket No. 20180232-SU – Request for cancellation of Certificate No. 453-S by Pine Island Cove Homeowners Association, Inc.

**AGENDA:** 04/02/19 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Pine Island Cove Homeowners Association, Inc. (Pine Island or Utility), is a Class C wastewater utility located in Lee County. The Utility provides service to 324 mobile home lots. Water service is provided by Greater Pine Island Water Association, Inc., a co-op serving the entire island.

On January 11, 1994, the Florida Public Service Commission (Commission) approved the transfer of Certificate No. 453-S from Century Group, Inc., to Pine Island.<sup>1</sup> In the transfer, it was Pine Island's intent to be exempted from the Commission's jurisdiction as a non-profit association pursuant to Section 367.022(7), Florida Statutes (F.S.). However, Pine Island at the

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<sup>1</sup>Order No. PSC-94-0038-FOF-SU, issued January 11, 1994, in Docket No. 19910817-SU, *In re: Application for transfer of certificate No. 453-S from Century Group, Inc. to the Pine Island Cove Homeowners Association, Inc. in Lee County.*

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time did not qualify for exemption since it was providing service to customers that were not members of Pine Island and instead were members of Pinewood Cove Association, Inc. (Pinewood Cove).

On January 1, 1999, Pinewood Cove merged into Pine Island and the two customer groups became one entity.<sup>2</sup> However, it was not until new management reviewed Pine Island's books and records that they noticed the Utility now may qualify for exemption due to the 1999 merger. For this reason, on December 26, 2018, the Utility filed an application for transfer of facilities from a regulated utility to an exempt entity other than a governmental authority. After discussions with staff, it was determined that the Utility was not seeking a transfer, but instead seeking exemption from the Commission's jurisdiction pursuant to Section 367.022(7), F.S., and cancellation of its wastewater certificate.

The Commission has jurisdiction pursuant to Section 367.022, F.S.

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<sup>2</sup>Document No. 07673-2018, filed on December 26, 2018.

### Discussion of Issues

**Issue 1:** Should the Commission acknowledge Pine Island Cove Homeowners Association, Inc.'s exemption from the Commission's jurisdiction pursuant to Section 367.022(7), F.S.?

**Recommendation:** Yes. The Commission should acknowledge Pine Island's exemption from the Commission's jurisdiction pursuant to Section 367.022(7), F.S. Therefore, the Commission should cancel Certificate No. 453-S effective the date the consummating order is issued, and return the transfer application fee. Regulatory assessment fees (RAFs) for 2019 are due to the Commission within 30 days of the Commission vote. (Doehling, Salvador)

**Staff Analysis:** On December 26, 2018, Pine Island filed an application for transfer of facilities from a regulated utility to an exempt utility, along with a \$750 filing fee. Upon staff's review and communication with the Utility, it was determined that no transfer was actually taking place, and therefore no filing fee was required. Instead, the Utility was seeking exemption pursuant to Section 367.022(7), F.S. This exemption applies to nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives.

In determining Pine Island's eligibility for exemption, staff reviewed the Amended and Restated By-Laws of Pine Island Cove Homeowners Association, Inc. (By-Laws).<sup>3</sup> Section 2.11 of the By-Laws states that every person or entity which is an owner of a lot shall be entitled to one vote for each lot owned by that person or entity. In Section 15.2, the By-Laws also state that there is a mobile home park on leased lots within Pine Island's subdivision. The customers renting these leased lots are not members of Pine Island, and may not cast votes. However, eleven of the leased lots are owned by Pine Island, and pursuant to 2.11 of the By-Laws, Pine Island's Board of Directors maintains voting rights for these lots. The rest of the leased lots are owned by Pine Island homeowners, and therefore maintain their voting rights. Because every member or entity which is an owner of a lot has voting rights, staff believes Pine Island meets the exemption pursuant to Section 367.022(7), F.S.

Pine Island has submitted its 2018 Annual Report and has paid its 2018 RAFs. Pine Island has agreed to pay its 2019 RAFs.<sup>4</sup> In addition, Pine Island has notified its customers that it is seeking exemption from the Commission's jurisdiction.<sup>5</sup>

Based on the above, staff recommends that the Commission acknowledge Pine Island's exemption from the Commission's jurisdiction pursuant to Section 367.022(7), F.S. Therefore, the Commission should cancel Certificate No. 453-S effective the date the consummating order is issued, and return the transfer application fee. RAFs for 2019 are due to the Commission within 30 days of the Commission vote.

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<sup>3</sup>Id.

<sup>4</sup>2019 regulatory assessment fees are for the period from January 1, 2019, to April 2, 2019.

<sup>5</sup>Document No. 03123-2019, filed on March 15, 2019.

**Issue 2:** Should this docket be closed?

**Recommendation:** If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the order, a consummating order should be issued and the docket should be closed. (Simmons)

**Staff Analysis:** If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the order, a consummating order should be issued and the docket should be closed.