

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for cancellation of Certificate  
No. 453-S by Pine Island Cove Homeowners  
Association, Inc.

DOCKET NO. 20180232-SU  
ORDER NO. PSC-2019-0155-PAA-SU  
ISSUED: April 24, 2019

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
DONALD J. POLMANN  
ANDREW GILES FAY

NOTICE OF PROPOSED AGENCY ACTION ORDER  
CANCELLING PINE ISLAND COVE HOMEOWNERS  
ASSOCIATION, INC.'S CERTIFICATE NO. 453-S

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission (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 (F.A.C.).

**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, we 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 our jurisdiction as a non-profit association pursuant to Section 367.022(7), Florida Statutes (F.S.). However, Pine Island at the 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).

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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.*

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 Commission staff, it was determined that the Utility was not seeking a transfer, but instead seeking exemption from our jurisdiction pursuant to Section 367.022(7), F.S., and cancellation of its wastewater certificate.

We have jurisdiction pursuant to Section 367.022, F.S.

### **Decision**

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 our 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, we 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, we find that 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 and 2019 RAFs.<sup>4</sup> In addition, Pine Island has notified its customers that it is seeking exemption from our regulation.<sup>5</sup>

Based on the above, we find that Pine Island is exempt from our regulation pursuant to Section 367.022(7), F.S. We hereby cancel Certificate No. 453-S, effective the date the Consummating Order is issued, and return the transfer application fee. We further find that Pine Island, or its successor in interest, shall notify this Commission of any change in circumstances

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

<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.

or method of operation within thirty days of such change so that we may review the matter to determine whether exempt status is still appropriate.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Pine Island is exempt from regulation by this Commission pursuant to Section 367.022(7), F.S. It is further

ORDERED that Certificate No. 453-S shall be canceled effective the date the Consummating Order is issued. It is further

ORDERED that Pine Island's transfer application fee shall be refunded. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th day of April, 2019.



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ADAM J. TEITZMAN  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
[www.floridapsc.com](http://www.floridapsc.com)

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 15, 2019.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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