

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from)	DOCKET NO. 910123-WS
Florida Public Service Commission)	ORDER NO. 25441
regulation for a water and sewer)	ISSUED: 12/6/91
utility in Collier County by Lee)	
Cypress Water and Sewer Co-Op, Inc.)	
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL MCK. WILSON

ORDER ACKNOWLEDGING TRANSFER AND
INDICATING THE EXEMPT STATUS OF
LEE CYPRESS WATER AND SEWER CO-OP, INC.

BY THE COMMISSION:

CASE BACKGROUND

In Order No. 16027, issued April 22, 1986, we granted certificates Nos. 449-W and 402-S to Copeland Water and Sewage, Inc. (Copeland). Without prior Commission approval, Copeland transferred the certificates to Lee Cypress Water and Sewer Co-op, Inc. (Co-op or utility). The Co-op, a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes, was formed on August 31, 1990, from former customers of Copeland.

We became aware of the existence of the co-op during September 1990. We informed the Co-op that it would have to formally request an exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes. A letter, dated November 7, 1990, was received from Copeland stating that the Co-op had taken over the utility and that an exemption for a nonprofit corporation pursuant to Section 367.022(7), Florida Statutes, was being sought. The Co-op filed its request for exemption from Commission regulation on February 17, 1991, in accordance with Section 367.022(7), Florida Statutes, which provides for an exemption for

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nonprofit corporations providing service solely to members who own and control it.

Based on our investigation into the condition of the utility, we found that Copeland was not able to make repairs necessary to remedy the extremely run-down condition of the utility. The Co-op is seeking financial assistance from the U.S. Department of Agriculture, Federal Housing Administration, in order to obtain funds needed for capital improvements to the water and wastewater systems as required by the Department of Environmental Regulations (DER).

The applicant provided evidence of ownership of the land upon which the utility's facilities are located in the form of a recorded warranty deed, dated October 6, 1991. In addition, the Co-op submitted copies of its Articles of Incorporation and Bylaws. The Bylaws state that each membership certificate represents one vote. The Co-op also provided us with an affidavit indicating that the Co-op is nonprofit; that service is provided only to its members who own and control it; that it will provide water and wastewater service; that it will provide billing to its members; and that the service territory will be limited to the Village of Copeland and its surrounding area.

Although Copeland has failed to comply with Section 367.071(1), Florida Statutes, by not obtaining permission from the Commission to transfer the systems to the Co-op, we will not initiate a show cause proceeding because doing so would have no positive result due to the poor financial status of the Co-op. The regulatory assessment fees for 1988 and 1989 were previously determined uncollectible. Therefore, we find no further action is required on the 1988-1989 regulatory assessment fees. The outstanding 1990 regulatory assessment fees will be addressed separately from this docket.

Since the utility is in poor condition, needs financial assistance and a transfer has already taken place, we find that it is in the public interest to acknowledge the transfer. Further, because the utility is a nonprofit corporation providing service solely to its members, we find that Lee Cypress is hereby exempt from Commission regulation. It is further ordered that Certificates Nos. 449-W and 402-S issued to the now defunct Copeland Water and Sewage utility be canceled. The certificates

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must be returned to the Commission within thirty (30) days of the issue date of this Order for cancellation.

Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that the transfer from Copeland Water and Sewage, Inc. to Lee Cypress Water and Sewer Co-op, Inc., 15363 Janes Scenic Drive, Post Office Box 26, Copeland, Florida 33926, is hereby acknowledged. It is further

ORDERED that Lee Cypress Water and Sewer Co-op, Inc., 15363 Janes Scenic Drive, Post Office Box 26, Copeland, Florida 33926, is exempt from Commission regulation under Section 367.022(7), Florida Statutes, as a nonprofit corporation providing service solely to members who own and control it. It is further

ORDERED that Certificates Nos. 449-W and 402-S must be returned to the Commission within thirty (30) days of the issue date of this Order for cancellation. It is further

ORDERED that should there be any change in circumstances or method of operation, Lee Cypress Water and Sewer Co-op, Inc. or its successor(s) in interest, shall notify this Commission within thirty (30) days of such change so that we may reevaluate its regulatory status. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this
6th day of DECEMBER, 1991.


STEVE TRIBBLE, Director
Division of Records and Reporting

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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.