

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption) DOCKET NO. 920281-WU
from Florida Public Service) ORDER NO. PSC-92-0746-FOF-WU
Commission regulation for) ISSUED: 8/4/92
provision of water service by)
GEM ESTATES WATER SYSTEM in)
Pasco County)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING EXEMPTION AND
REQUIRING APPLICATION FOR CERTIFICATE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are preliminary in nature, and as such, 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.

Gem Estates Water System (Gem Estates or Utility) provides water service to 215 mobile homes in the Gem Estates Mobile Home Village located in Pasco County. The utility is owned by Hollis Malberg acting as trustee for her late mother's Trust. The mobile home owners are utilizing septic tanks for their wastewater service.

On March 27, 1992, Gem Estates requested recognition of the exempt status of its water system under Section 367.022(5), Florida Statutes, which provides for an exemption from Florida Public Service Commission regulation for "[1]andlords providing service to their tenants without specific compensation for the service."

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Subsequent to filing its application, we requested that the utility send this Commission a copy of the landlord's current lease or rental agreement, and an assurance by the utility that there was no separate charge for water service. On May 19, 1992, by letter, the utility submitted a Deed of Easements, Restrictions, and Reservations, instead of the requested lease or rental agreement, which indicated that the mobile home owners owned their own land. Because the mobile home owners own their own land, the utility's owners are not landlords. If the utility's owners are not the landlords for the customers served by Gem Estates, the landlord-tenant exemption cannot apply. Therefore, based on the above, we hereby deny Gem Estates' request for exemption from Public Service Commission jurisdiction.

In addition, we hereby require Gem Estates to submit an application for an original certificate within 90 days of the effective date of this Order. If no protest is filed to this proposed agency action, this docket shall be closed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the request for an exemption from Florida Public Service Commission regulation by Gem Estates Water System, located at 39410 North Avenue, Zephyrhills, Florida 33540, for its water system in Pasco County is hereby denied. It is further

ORDERED that Gem Estates Water System shall submit an application for an original certificate within 90 days of the effective date of this Order. It is further

ORDERED that the provisions of this Order are issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceeding below. It is further

ORDERED that this docket shall be closed if no timely protest is received from a substantially affected person.

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By ORDER of the Florida Public Service Commission, this 4th
day of August, 1992.



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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on August 25, 1992.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.