

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings  
against Palm Tree Acres Mobile Home Park, in  
Pasco County, for noncompliance with Section  
367.031, F.S., and Rule 25-30.033, F.A.C.

DOCKET NO. 20180142-WS  
ORDER NO. PSC-2020-0268-FOF-WS  
ISSUED: July 27, 2020

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman  
ART GRAHAM  
JULIE I. BROWN  
DONALD J. POLMANN  
ANDREW GILES FAY

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

**Background**

Palm Tree Acres Mobile Home Park (Palm Tree Acres or Park) is located in Zephyrhills, Pasco County, Florida. The Park is comprised of two types of residents: those who rent their lot from the Park (tenants) and those who own their lot (lot owners). The Park provides water and wastewater service to both tenants and lot owners. Since its inception, the Park has not petitioned this Commission for a certificate of authorization to provide water or wastewater service or for recognition of exempt status under Section 367.022, Florida Statutes (F.S.).<sup>1</sup>

In June 2017, the attorney for several lot owners requested that this Commission assert jurisdiction over the Park as they believed it was operating in violation of Chapter 367, F.S., as an uncertificated utility by providing water and wastewater service to non-tenant customers for compensation.

Following the Park and lot owners' unsuccessful attempts to resolve their dispute, our staff opened the instant docket to initiate show cause proceedings against Palm Tree Acres for allegedly providing water and wastewater service to the public for compensation without first obtaining a certificate of authorization from this Commission.

At the January 8, 2019 Commission Conference, our staff recommended that we order Palm Tree Acres to show cause in writing, within 21 days, as to why it should not be fined for providing water and wastewater service to the public for compensation without first obtaining a

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<sup>1</sup> Prior to July 1, 1996, Section 367.031, F.S., required water and wastewater utilities to obtain either a certificate of authorization or an order recognizing their exempt status.

certificate of authorization from this Commission in apparent violation of Section 367.031, F.S., and Rule 25-30.033, Florida Administrative Code (F.A.C.), and why it should not bring itself into compliance with our statutes and rules. Representatives for Palm Tree Acres, the lot owners, and the Office of Public Counsel (OPC) were present at the Commission Conference and participated in the discussion on our staff's recommendation. We ultimately voted to defer consideration of our staff's recommendation to issue a show cause order and initiated rulemaking to explore the possibility of adopting a rule defining "landlord" and "tenant" as used in Section 367.022(5), F.S.

Our staff opened a rulemaking docket<sup>2</sup> on February 13, 2019 and a Notice of Development of Rulemaking was published in the February 15, 2019 edition of the Florida Administrative Register. On March 4, 2019, our staff held a rule development workshop. The workshop was attended by representatives from the Florida Manufactured Housing Association, Inc., the Goss family (who owns several mobile home parks in Florida, including Palm Tree Acres), and OPC. All three groups filed post-workshop comments on March 18, 2019.

At the October 3, 2019 Commission Conference, our staff recommended the adoption of Rule 25-30.0115, F.A.C., to define "landlord" and "tenant" as used within Section 367.022(5), F.S. We voted to defer our determination until after the end of the 2020 Florida Legislative session.

On March 13, 2020, the Florida Legislature passed HB 1339. Among other things, the bill created a new exemption from our jurisdiction for owners of mobile home parks that operate both as a mobile home park and a mobile home subdivision and provide water or wastewater service to both tenants and lot owners within the park/subdivision. The Governor signed the bill into law on June 9, 2020, and the law took effect on July 1, 2020.

This Order resolves the issue of whether we should order Palm Tree Acres to show cause as to why it should not be fined for providing water and wastewater service without first obtaining a certificate of authorization from this Commission and why it should not bring itself into compliance with our statutes and rules, in light of the new statutory language.

We have jurisdiction over this matter pursuant to Sections 367.011 and 367.161, F.S.

### **Decision**

Pursuant to Section 367.031, F.S., each utility subject to our jurisdiction must obtain a certificate of authorization to provide water or wastewater service. Rule 25-30.033, F.A.C., sets forth the procedure for filing an application for an original certificate as an existing system seeking to establish initial rates and charges. Section 367.022, F.S., Exemptions, lists certain persons and activities that are exempt from our regulation and from the provisions of Chapter 367, F.S.

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<sup>2</sup> Docket No. 20190041-WS – Proposed adoption of Rule 25-30.0115, F.A.C., Definition of Landlord and Tenant.

On June 9, 2020, the Governor signed HB 1339 (Chapter 2020-027, Laws of Florida) into law, adding subsection (14) to the list of exemptions found in Section 367.022, F.S. This section exempts:

(14) The owner of a mobile home park operating both as a mobile home park and a mobile home subdivision, as those terms are defined in s. 723.003, who provides service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation.

Mobile home park owners meeting the criteria of Section 367.022(14), F.S., are not subject to regulation by this Commission as a utility, nor are they subject to the provisions of Chapter 367, F.S. This new exemption resolves the issue of whether Palm Tree Acres is operating as a utility subject to our jurisdiction and the provisions of Chapter 367, F.S.

Palm Tree Acres meets the criteria of Section 367.022(14), F.S. First, Palm Tree Acres has been recognized by the Circuit Court of the Sixth Judicial Circuit of the State of Florida in and for Pasco County, as operating as both a mobile home park and a mobile home subdivision as those terms are defined in Section 723.003, F.S.<sup>3</sup> Second, Palm Tree Acres provides water and wastewater service to a combination of tenants and lot owners. Third, the tenants' water and wastewater service is included in their lot rent and is without specific compensation. Therefore, pursuant to the new statutory exemption section, Palm Tree Acres is exempt from our regulation, and is not operating in violation of any our statutes or rules. Accordingly, a show cause proceeding shall not be initiated because Palm Tree Acres is now exempt from our jurisdiction pursuant to Section 367.022(14), F.S.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that show cause proceedings shall not be initiated because Palm Tree Acres Mobile Home Park is now exempt from this Commission's jurisdiction pursuant to Section 367.022(14), F.S. It is further

ORDERED that this docket shall be closed because no further action is required.

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<sup>3</sup> Document No. 07229-2018 – Order Granting in Part, Denying in Part Plaintiffs' Motion for Summary Judgment as to Count One.

By ORDER of the Florida Public Service Commission this 27th day of July, 2020.



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ADAM J. TEITZMAN  
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Florida Public Service Commission  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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 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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, 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.