

State of Florida



Public Service Commission

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COMMISSION
CLERK

DATE: November 9, 2012
TO: Ann Cole, Commission Clerk, Office of Commission Clerk
FROM: Ana VanEsseltine, Regulatory Analyst II, Division of Accounting & Finance
RE: Docket No. 120272-WS, Joint application for expedited approval of transfer of Aqua Utilities Florida, Inc.'s water and wastewater facilities serving the Arredondo Farms Mobile Home Park in Alachua County to YES Companies, LLC, an exempt entity under Section 367.022(5), F.S., requesting cancellation of Certificate No. 479-S, and amendment of Certificate No. 549-W to delete Arredondo Farms Mobile Home Park service territory.

Please include the attached e-mail into the docket file referenced above. The e-mail is a request for clarification regarding the appropriate way to bill customers post-transfer submitted by David S. Bernstein on behalf of Yes Companies, LLC.

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK



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November 8, 2012

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VIA E-MAIL (bart.fletcher@psc.state.fl.us)
AND U.S. MAIL

Bart Fletcher
Public Utilities Supervisor
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399

Re: In Re: Joint application for expedited approval of transfer of Aqua Utilities Florida, Inc.'s water and wastewater facilities serving the Arredondo Farms Mobile Home Park in Alachua County to YES Companies, LLC, an exempt entity under Section 367.022(5), F.S., requesting cancellation of Certificate No. 479-S, and amendment of Certificate No. 549-W to delete Arredondo Farms Mobile Home Park service territory, Docket No. 12-0272-WS

Dear Mr. Fletcher:

As you know, this firm represents Yes Companies, LLC ("Yes"), co-applicant in the referenced joint application and owner of Arredondo Farms mobile home park in Gainesville. I am writing with regard to the issue we have previously discussed concerning the PSC's interpretation of the landlord exemption (the "Landlord Exemption") in Section 367.022(5), *Florida Statutes*. The Landlord Exemption requires a landlord to provide service to its tenants "without specific compensation" for that service. Yes understands that the PSC has suggested that the Landlord Exemption requires a landlord to include water and wastewater services as a component of rent.

As you may know, mobile home parks are regulated by statute in Florida. The governing statute is the "Florida Mobile Home Act" *Chapter 723, Florida Statutes* (the "Act"). In enacting the Act, the Florida Legislature specifically preempted to the State all matters related to that landlord/tenant relationship including with respect to rent. It specifically mandates that other laws and regulations inconsistent with the Act are superseded (See Section 723.004, *Florida Statutes*). In the context of rent, the Act specifically provides for itemized billing of services such as "utility charges." (See sections 723.031(5) and 723.031(3)), *Florida Statutes*. Moreover, utility charges are part of the "lot rental amount" (or rent) per Section 723.003, *Florida Statutes*. So in the context of mobile home parks, the PSC's interpretation of the Landlord Exemption

yields to the clear language of the Act which unambiguously permits a mobile home park owner to separately bill its tenants for utility services as a component of rent. *See Brookwood-Jackson County Convalescent Center v. Department of Health and Rehabilitative Services*, 591 So.2d 1085 (Fla. 1st DCA 1992)(holding that agency committed no error by harmonizing conflicting statutes and reading statutes *in para materia*). To rule otherwise is to take a legal position contrary to the Act and the preemption of this matter thereby.

A contrary position on the Landlord Exemption would also be inconsistent with the dictionary definition of the term “compensation” as defined by Black’s Law Dictionary (9th ed. 2009)¹. It defines that term to mean “remuneration...especially salary or wages” and “payment of damages, or any other act that a court orders to be done by a person who has caused injury to another.” [Emphasis added] Obviously, payment for the provision of water and wastewater utilities has nothing to do with salaries, wages, and legal damages.

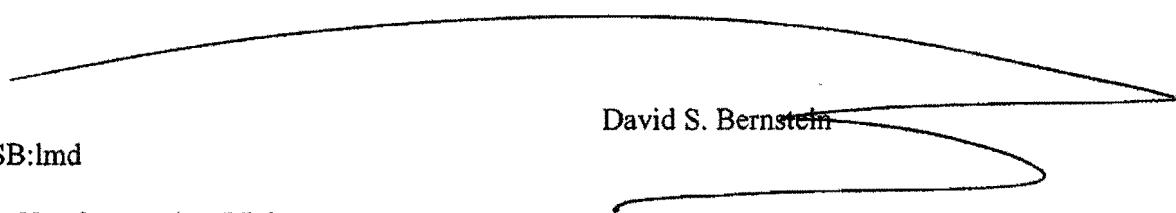
Respectfully, the inaccuracy of such an interpretation with respect to mobile home park rent is further illustrated by the repeal of Rule 25-30.060(e), F.A.C.² The fact that the prior Rule was repealed evidences that the Landlord Exemption does not require gross billing. *See Delray Medical Center, Inc. v. State, Agency for Health Care Admin*, 5 So.3d 26 (Fla. 4th DCA 2009)(holding that repeal of administrative rule altered legal standard at issue in case). Simply put, there is no support for such a position.

Moreover, there is no practical difference between billing a tenant indirectly—by way of monthly rental payments—or billing that same tenant directly via an itemized monthly bill. If anything, itemized billings are more accurate and more fair.

I look forward to speaking with you and your legal counsel about this in greater detail soon. It is of paramount importance to this application.

Thank you for your attention to this and your continued cooperation.

Very truly yours,



David S. Bernstein

DSB:lmd

cc: Yes Companies, LLC

¹ Florida Courts approve the use of Black’s Law Dictionary to determine the meaning of undefined or ambiguous terms in statutes. *Nunez v. Pulte Homes, Inc.*, 985 So.2d 695 (Fla. 1st DCA 695).

² See PSC Order No. PSC-92-1299-FOF-SU for discussion of this Rule.