

1 BEFORE THE
2 FLORIDA PUBLIC SERVICE COMMISSION

3 In the Matter of:

4 DOCKET NO. 140115-WS

5 PETITION FOR DECLARATORY
6 STATEMENT BY CONTINENTAL
7 UTILITY, INC. THAT IN
8 PROVIDING SERVICE ONLY TO
9 OTHER ENTITIES OWNED BY
 CONTINENTAL COUNTRY CLUB R.O.,
10 INC., CONTINENTAL UTILITY, INC.
 WOULD BE EXEMPT FROM PUBLIC
 SERVICE COMMISSION JURISDICTION.
 _____ /

11
12 PROCEEDINGS: COMMISSION CONFERENCE AGENDA
13 ITEM NO. 3

14 COMMISSIONERS
15 PARTICIPATING: CHAIRMAN ART GRAHAM
16 COMMISSIONER LISA POLAK EDGAR
17 COMMISSIONER RONALD A. BRISÉ
18 COMMISSIONER EDUARDO E. BALBIS
19 COMMISSIONER JULIE I. BROWN

20 DATE: Tuesday, August 12, 2014

21 PLACE: Betty Easley Conference Center
22 Room 148
23 4075 Esplanade Way
24 Tallahassee, Florida

25 REPORTED BY: LINDA BOLES, CRR, RPR
 Official FPSC Reporter
 (850) 413-6734

P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** Okay. Let's circle back
3 around to item number 3.

4 **MS. PAGE:** Good morning, Commissioners.

5 **CHAIRMAN GRAHAM:** Good morning.

6 **MS. PAGE:** Should I proceed without --

7 **CHAIRMAN GRAHAM:** Please.

8 **MS. PAGE:** Pamela Page with the Office of
9 General Counsel.

10 Item 3 addresses a petition for declaratory
11 statement filed by Continental Utility, Inc.
12 Continental requests that the Commission issue an order
13 declaring that in providing service only to other
14 entities owned by Continental it would be exempt from
15 Commission jurisdiction under the nonprofit exemption in
16 Section 367.022(7), *Florida Statutes*.

17 Staff recommends that the Commission should
18 issue a declaratory statement that, based on the facts
19 in the petition, Continental would not be exempt from
20 Commission jurisdiction because it is a for-profit
21 corporation.

22 Staff wishes to make an oral modification to
23 the recommendation filed on July 31st to correct a
24 typographical error on pages 3 and 6 so that the
25 references to Section 366.022(7), *Florida Statutes*, read

1 367.022(7), *Florida Statutes*.

2 Mr. Martin Friedman, attorney for Continental
3 Utility, is present and wishes to address the
4 Commission.

5 **CHAIRMAN GRAHAM:** Mr. Friedman, welcome.

6 **MR. FRIEDMAN:** Thank you. Good morning.

7 Chairman, Commissioners, my name is Marty
8 Friedman. I'm the attorney for Continental Utility, and
9 we filed this declaratory statement.

10 I believe that in interpreting 367.022(7),
11 exemption from PSC jurisdiction, that the staff
12 overlooked the fundamental principle of statutory
13 construction, and that is that the legislative intent is
14 what controls statutory interpretation.

15 I just want to read for you a couple of
16 comments that kind of further explain what this process
17 of statutory construction is about. This is from a
18 Supreme Court case in 1981.

19 "In statutory construction, legislative intent
20 is the polestar by which we must be guided, and this
21 intent must be given effect even though it may appear to
22 contradict the strict letter of the statute and the
23 well-settled canons of construction."

24 And more recently, in May of this year, the
25 Fifth District Court of Appeal articulated, "To discern

1 legislative intent, courts apply a commonsense approach
2 that requires consideration of the statutory language,
3 the purpose of the statute, the evil to be corrected,
4 the legislative history, and the pertinent case law as
5 applied to the statute or to similar enactments."

6 And finally, also in, earlier this year, this
7 was in June of this year, the Second DCA, "Statutes must
8 be so construed as to give effect to the evident
9 legislative intent, even if the result seems to
10 contradict the rules of construction and the strict
11 letter of the statute. Particularly does this rule
12 apply when a construction based on the strict letter of
13 the statute would lend to an unintended result that
14 defeats the evident purpose of the legislation."

15 I think that the obvious purpose of that
16 legis -- of that exemption is that entities that,
17 nonprofit entities that basically run themselves, the
18 members themselves run the company, they make all the
19 decisions that those type of entities would be exempt.

20 This particular utility is currently a profit,
21 for-profit entity because it provides service to a
22 condominium that is not a, one of the members of the
23 HOA. The utility itself is owned by a nonprofit
24 resident-owned mobile home park. So the shareholder of
25 the utility clearly meets the nonprofit provision of

1 the, of the statute.

2 Once -- and it is contemplated that that
3 customer, that condominium customer will be connecting
4 to a government entity and that, therefore, this utility
5 in a year or so will only be serving itself, its
6 members, and two other nonprofit corporations that are
7 also owned by the HOA. So I think the evident intent of
8 the statute is that, is that entities that are
9 controlled by HOAs don't need the type of regulatory
10 oversight that, for -- that utilities that aren't owned
11 by themselves have. And so I think that the staff's
12 literal reading of this, of this exemption in light of
13 these rules of statutory construction I think is overly
14 strict, and I think that the intent, if you apply the
15 rules of statutory interpretation, are that this utility
16 will be exempt when that customer is no longer a
17 customer, notwithstanding the fact that it is
18 technically a for-profit because it is solely owned by a
19 non-for-profit. Thank you.

20 **CHAIRMAN GRAHAM:** Thank you, Mr. Friedman.

21 Commissioners, any questions of Mr. Friedman
22 or of staff? Seeing none, can I get a motion?

23 Commissioner Brown.

24 **COMMISSIONER BROWN:** Thank you. I just have a
25 question for staff. And, Mr. Friedman, with all due

1 respect, I think this may be a little bit of a stretch
2 here. I know the intent here is to determine the
3 applicability and whether the company wishes to renew
4 its negotiations and agreement with Sandalwood for which
5 it receives money as a for-profit corporation.

6 The question really is for staff. The company
7 is not precluded at any other time from coming back in
8 and changing its status as a for-profit corporation to a
9 not-for-profit corporation and then seeking Commission
10 approval at that time.

11 **MS. PAGE:** No, Commissioners, it's not -- the
12 utility is not precluded from doing so. They may
13 reincorporate themselves as a nonprofit corporation and
14 then be qualified for the exemption under 367.

15 **COMMISSIONER BROWN:** Thank you. That's all.

16 With that, I'd move staff recommendation.

17 **CHAIRMAN GRAHAM:** It's been moved, moved and
18 seconded, staff recommendation on item number 3. Any
19 further discussion? Seeing none, all in favor, say aye.

20 (Vote taken.)

21 Any opposed? By your action, you've approved
22 item number 3.

23 Thank you, staff. Thank you, Mr. Friedman.

24 **MR. FRIEDMAN:** Thank you very much.

25 (Agenda item concluded.)

1 STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
 2 COUNTY OF LEON)

3
 4 I, LINDA BOLES, CRR, RPR, Official Commission
 Reporter, do hereby certify that the foregoing
 5 proceeding was heard at the time and place herein
 stated.

6
 7 IT IS FURTHER CERTIFIED that I stenographically
 reported the said proceedings; that the same has been
 transcribed under my direct supervision; and that this
 8 transcript constitutes a true transcription of my notes
 of said proceedings.

9
 10 I FURTHER CERTIFY that I am not a relative, employee,
 attorney or counsel of any of the parties, nor am I a
 relative or employee of any of the parties' attorney or
 11 counsel connected with the action, nor am I financially
 interested in the action.

12 DATED THIS 18th day of August, 2014.

13
 14 *Linda Boles*

15
 16 LINDA BOLES, CRR, RPR
 FPSC Official Hearings Reporter
 17 (850) 413-6734