

**REQUEST TO ESTABLISH DOCKET**

(Please type or print. File original with CLK.)

<b>Date:</b>	7/26/2018	
<b>1. From Division / Staff:</b>	Office of the General Counsel (M. DuVal)	
<b>2. OPR:</b>	GCL	
<b>3. OCR:</b>	ENG/ECO	
<b>4. Suggested Docket Title:</b>	<u>Initiation of show cause proceedings against Palm Tree Acres Mobile Home Park, in Pasco County, for Noncompliance with Section 367.031, Florida Statutes, and Rule 25-30.033, Florida Administrative Code.</u>	
<b>5. Program/Module/Submodule Assignment:</b>	B8b / B1a	
<b>6. Suggested Docket Mailing List</b>		
<b>a. Provide NAMES/ACRONYMS, if registered company</b>		<input checked="" type="checkbox"/> <b>Provided as an Attachment</b>
<b>Company Code, if applicable:</b>	<b>Parties (include address, if different from MCD):</b>	<b>Representatives (name and address):</b>
<b>b. Provide COMPLETE NAME AND ADDRESS for all others (match representatives to companies)</b>		
<b>Company Code, if applicable:</b>	<b>Interested persons, if any, (include address, if different from MCD):</b>	<b>Representatives (name and address):</b>
	Office of Public Counsel	JR Kelly, Esq., Public Counsel Patricia Christensen, Esq.
<b>7. Check one:</b>	<input checked="" type="checkbox"/> <b>Supporting documentation attached</b>	<input type="checkbox"/> <b>To be provided with Recommendation</b>
<b>Comments:</b>		

6. Suggested Docket Mailing List

a. Provide NAMES/ACRONYMS, if registered company

<b>Parties</b>	<b>Representatives</b>
Palm Tree Acres Mobile Home Park 10912 N. 56th Street Temple Terrace, FL 33617	J. Allen Bobo, Esq. jabobo@lutzbobobob.com Lutz, Bobo & Telfair, P.A. 2 N. Tamiami Trail, Suite 500 Sarasota, FL 34236-5575  Bruce May, Esq. bruce.may@hklaw.com Holland & Knight LLP 315 S. Calhoun Street, Suite 600 Tallahassee, FL 32301-1872

COMMISSIONERS:  
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DONALD J. POLMANN  
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ANDREW GILES FAY

STATE OF FLORIDA



OFFICE OF THE GENERAL COUNSEL  
KEITH C. HETRICK  
GENERAL COUNSEL  
(850) 413-6199

## Public Service Commission

March 8, 2018

J. Allen Bobo, Esq.  
jabobo@lutzbobobob.com  
Lutz, Bobo & Telfair, P.A.  
2 N. Tamiami Trail, Suite 500  
Sarasota, FL 34236-5575

via Email, US Mail, and Certified Mail

Bruce May, Esq.  
bruce.may@hkllaw.com  
Holland & Knight LLP  
315 S. Calhoun Street, Suite 600  
Tallahassee, FL 32301-1872

### NOTICE OF APPARENT VIOLATION

**Re: Apparent Violation of Section 367.031, Florida Statutes, and Rule 25-30.033, Florida Administrative Code, and Possible Implementation of Show Cause Proceedings Against Palm Tree Acres Mobile Home Park, pursuant to Section 367.161, Florida Statutes.**

Dear Sirs,

Section 367.011, Florida Statutes (F.S.), provides that under Chapter 367, F.S., the Florida Public Service Commission (Commission) shall have exclusive jurisdiction over each water and wastewater utility with respect to its authority, service, and rates. Section 367.021, F.S., defines a water or wastewater utility to include every person, lessee, trustee, or receiver who owns, operates, manages, or controls a system that is providing water or wastewater service to the public for compensation. Pursuant to Section 367.022(5), F.S., "[l]andlords providing service to their tenants without specific compensation for the service" are not subject to regulation by the Commission.

Pursuant to Section 367.031, F.S., each utility subject to the jurisdiction of the Commission must obtain from the Commission a certificate of authorization to provide water or wastewater service. Rule 25-30.033, Florida Administrative Code (F.A.C.), provides that an existing system seeking to establish initial rates and charges must file an application for an original certificate in accordance with the procedure set forth in that Rule.

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Internet E-mail: [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us)

Palm Tree Acres Mobile Home Park (Palm Tree Acres) is not certificated to provide water or wastewater service.

Based on information provided by Palm Tree Acres, Commission staff believes that Palm Tree Acres may be operating in violation of Section 367.031, F.S., and Rule 25-30.033, F.A.C., as it appears that Palm Tree Acres is providing water and wastewater service to the public for compensation without a certificate of authorization from the Commission. Furthermore, it appears that Palm Tree Acres is not exempt from the Commission's jurisdiction under Section 367.022(5), F.S., as Palm Tree Acres appears to be selling water and/or wastewater service to non-tenants for compensation.

Palm Tree Acres and its non-tenant customers recently engaged in discussions to explore alternative service agreement structures that might result in Palm Tree Acres' exemption under Section 367.022, F.S. Commission staff held a noticed meeting on February 23, 2018, for the purpose of discussing the status of this matter. Based on the information provided at that meeting, it is my understanding that Palm Tree Acres and its non-tenant customers have not reached, nor does it appear they will reach, an agreement that provides Palm Tree Acres with the ability to properly claim a valid exemption.

Section 367.161, F.S., provides:

- (1) If any utility, by any authorized officer, agent, or employee, knowingly refuses to comply with, or willfully violates, any provision of this chapter or any lawful rule or order of the commission, such utility shall incur a penalty for each such offense of not more than \$5,000, to be fixed, imposed, and collected by the commission. However, any penalty assessed by the commission for a violation of s. 367.111(2) shall be reduced by any penalty assessed by any other state agency for the same violation. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the utility, enforceable by the commission as statutory liens under chapter 85.
- (2) The commission has the power to impose upon any entity that is subject to its jurisdiction under this chapter and that is found to have refused to comply with, or to have willfully violated, any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$5,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien under chapter 85. The collected penalties shall be deposited into the General Revenue Fund unallocated.

J. Allen Bobo, Esq. & Bruce May, Esq.  
March 8, 2018  
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By this letter, I am requesting that Palm Tree Acres file an application for an original certificate of authorization as an existing system requesting initial rates and charges to provide water and wastewater services, pursuant to Rule 25-30.033, F.A.C., by April 9, 2018. If Palm Tree Acres fails to take appropriate action by April 9, 2018, you are hereby notified that Commission staff will immediately begin enforcement proceedings pursuant to Section 367.161, F.S.

If you have any questions, please contact me at (850) 413-6076 or [mduval@psc.state.fl.us](mailto:mduval@psc.state.fl.us).

Sincerely,



Margo A. DuVal  
Senior Attorney

MAD  
Enclosures

cc: Division of Engineering (Graves, King, Ballinger)  
Office of Public Counsel (Patti Christensen, JR Kelly)  
Richard Harrison, Esq.

**FLORIDA PUBLIC SERVICE COMMISSION**

**INSTRUCTIONS FOR COMPLETING EXAMPLE  
APPLICATION FOR ORIGINAL CERTIFICATE OF AUTHORIZATION  
FOR A PROPOSED OR EXISTING SYSTEM REQUESTING  
INITIAL RATES AND CHARGES**

**(Pursuant to Sections 367.031, 367.045, and 367.081, Florida Statutes, and  
Rule 25-30.033, Florida Administrative Code)**

**General Information**

The attached form is an example application that may be completed by the applicant and filed with the Office of Commission Clerk to comply with Rule 25-30.033, Florida Administrative Code (F.A.C.). Any questions regarding this form should be directed to the Division of Engineering at (850) 413-6910.

**Instructions**

1. Fill out the attached application form completely and accurately.
2. Complete all the items that apply to your utility. If an item is not applicable, mark it "N.A." Do not leave any items blank.
3. Remit the proper filing fee pursuant to Rule 25-30.020, F.A.C., with the application.
4. Provide proof of noticing pursuant to Rule 25-30.030, F.A.C. This may be provided as a late-filed exhibit.
5. The completed application, attached exhibits, and the proper filing fee should be mailed to:

**Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850**

**APPLICATION FOR ORIGINAL CERTIFICATE OF AUTHORIZATION  
FOR A PROPOSED OR EXISTING SYSTEM REQUESTING  
INITIAL RATES AND CHARGES**

(Pursuant to Sections 367.031, 367.045, and 367.081, Florida Statutes, and  
Rule 25-30.033, Florida Administrative Code)

To: **Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850**

The undersigned hereby makes application for original certificate(s) to operate a water   
and/or wastewater  utility in \_\_\_\_\_ County, Florida, and submits the following  
information:

**PART I APPLICANT INFORMATION**

- A) Contact Information for Utility. The utility's name, address, telephone number, Federal  
Employer Identification Number, and if applicable, fax number, e-mail address, and website  
address. The utility's name should reflect the business and/or fictitious name(s) registered  
with the Department of State's Division of Corporations:

\_\_\_\_\_  
Utility Name

\_\_\_\_\_  
Office Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Mailing Address (if different from Street Address)

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

( ) -  
\_\_\_\_\_  
Phone Number

( ) -  
\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Federal Employer Identification Number

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E-Mail Address

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Website Address

- B) The contact information of the authorized representative to contact concerning this application:

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Name

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Mailing Address

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City

State

Zip Code

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( ) -  
Phone Number

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( ) -  
Fax Number

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E-Mail Address

- C) Indicate the nature of the utility's business organization (check one). Provide documentation from the Florida Department of State, Division of Corporations showing the utility's business name and registration/document number for the business, unless operating as a sole proprietor.

Corporation \_\_\_\_\_  
Number

Limited Liability Company \_\_\_\_\_  
Number

Partnership \_\_\_\_\_  
Number

Limited Partnership \_\_\_\_\_  
Number

Limited Liability Partnership \_\_\_\_\_  
Number

Sole Proprietorship



- Association
- Other (Specify) \_\_\_\_\_

If the utility is doing business under a fictitious name, provide documentation from the Florida Department of State, Division of Corporations showing the utility's fictitious name and registration number for the fictitious name.

- Fictitious Name (d/b/a) \_\_\_\_\_  
Registration Number \_\_\_\_\_

D) The name(s), address(es), and percentage of ownership of each entity or person which owns or will own more than 5 percent interest in the utility (use an additional sheet if necessary).

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E) The election the business has made under the Internal Revenue Code for taxation purposes.

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**PART II ORIGINAL CERTIFICATE REQUESTING INITIAL RATES**

**A) DESCRIPTION OF SERVICE**

Exhibit \_\_\_\_\_ - Provide a statement indicating whether the application is for water, wastewater, or both. If the applicant is applying only for water or wastewater, the statement shall include how the other service is provided.

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**B) FINANCIAL ABILITY**

- 1) Exhibit \_\_\_\_ - Provide a detailed financial statement (balance sheet and income statement), audited if available, of the financial condition of the applicant, that shows all assets and liabilities of every kind and character. The financial statements shall be for the preceding calendar or fiscal year. The financial statement shall be prepared in accordance with Rule 25-30.115, F.A.C. If available, a statement of the sources and uses of funds shall also be provided.
  
- 2) Exhibit \_\_\_\_ - Provide a list of all entities, including affiliates, upon which the applicant is relying to provide funding to the utility and an explanation of the manner and amount of such funding. The list need not include any person or entity holding less than 5 percent ownership interest in the utility. The applicant shall provide copies of any financial agreements between the listed entities and the utility and proof of the listed entities' ability to provide funding, such as financial statements.

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**C) TECHNICAL ABILITY**

- 1) Exhibit \_\_\_\_ - Provide the applicant's experience in the water or wastewater industry;  
  

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- 2) Exhibit \_\_\_\_ - Provide the copy of all current permits from the Department of Environmental Protection (DEP) and the water management district;
  
- 3) Exhibit \_\_\_\_ - Provide a copy of the most recent DEP and/or county health department sanitary survey, compliance inspection report and secondary water quality standards report; and
  
- 4) Exhibit \_\_\_\_ - Provide a copy of all correspondence with the DEP, county health department, and water management district, including consent orders and warning letters, and the utility's responses to the same, for the past five years.

**D) NEED FOR SERVICE**

1) Exhibit \_\_\_\_\_ - Provide the following documentation of the need for service in the proposed area:

a) The number of customers currently being served and proposed to be served, by customer class and meter size, including a description of the types of customers anticipated to be served, i.e., single family homes, mobile homes, duplexes, golf course clubhouse, commercial. If the development will be in phases, this information shall be separated by phase;

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b) A copy of all requests for service from property owners or developers in areas not currently served;

c) The current land use designation of the proposed service territory as described in the local comprehensive plan at the time the application is filed. If the proposed development will require a revision to the comprehensive plan, describe the steps taken and to be taken to facilitate those changes, including changes needed to address the proposed need for service area;

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d) Any known land use restrictions, such as environmental restrictions imposed by governmental authorities.

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- 2) Exhibit \_\_\_\_\_ - Provide the date the applicant began or plans to begin serving customers. If already serving customers, a description of when and under what circumstances applicant began serving.

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**E) TERRITORY DESCRIPTION, MAPS, AND FACILITIES**

- 1) Exhibit \_\_\_\_\_ - Provide a legal description of the proposed service area in the format prescribed in Rule 25-30.029, F.A.C.
- 2) Exhibit \_\_\_\_\_ - Provide documentation of the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located. This documentation shall be in the form of a recorded warranty deed, recorded quit claim deed accompanied by title insurance, recorded lease such as a 99-year lease, or recorded easement. The applicant may submit an unrecorded copy of the instrument granting the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located, provided the applicant files a recorded copy within the time prescribed in the order granting the certificate.
- 3) Exhibit \_\_\_\_\_ - Provide a detailed system map showing the existing and proposed lines and treatment facilities, with the territory proposed to be served plotted thereon, consistent with the legal description provided in E-1 above. The map shall be of sufficient scale and detail to enable correlation with the description of the territory proposed to be served.
- 4) Exhibit \_\_\_\_\_ - Provide an official county tax assessment map or other map showing township, range, and section, with a scale such as 1" = 200' or 1" = 400', with the proposed territory plotted thereon, consistent with the legal description provided in E-1 above.
- 5) Exhibit \_\_\_\_\_ - Provide a description of the separate capacities of the existing and proposed lines and treatment facilities in terms of equivalent residential connections (ERCs) and gallons per day estimated demand per ERC for water and wastewater and the basis for such estimate. If the development will be in phases, this information shall be separated by phase.
- 6) Exhibit \_\_\_\_\_ - Provide a description of the type of water treatment, wastewater treatment, and method of effluent disposal.

**F) PROPOSED TARIFF**

Exhibit \_\_\_\_ - Provide a tariff containing all rates, classifications, charges, rules, and regulations, which shall be consistent with Chapter 25-9, F.A.C. See Rule 25-30.033, F.A.C., for information about water and wastewater tariffs that are available and may be completed by the applicant and included in the application.

**G) ACCOUNTING AND RATE INFORMATION**

- 1) Exhibit \_\_\_\_ - Describe the existing and projected cost of the system(s) and associated depreciation by year until design capacity is reached using the 1996 National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA), which is incorporated by reference in Rule 25-30.115, F.A.C. The applicant shall identify the year that 80 percent of design capacity is anticipated.
- 2) Exhibit \_\_\_\_ - Provide the existing and projected annual contributions-in-aid-of-construction (CIAC) and associated amortization by year including a description of assumptions regarding customer growth projections using the same projections used in documented need for service for the proposed service area. The projected CIAC shall identify cash and property contributions and amortization at 100 percent of design capacity and identify the year when 80 percent of design capacity is anticipated. The projected CIAC shall be consistent with the service availability policy and charges in the proposed tariff provided in F-1 above, the schedule provided in G-6 below, and the CIAC guidelines set forth in Rule 25-30.580, F.A.C. If the utility will be built in phases, this shall apply only to the first phase.
- 3) Exhibit \_\_\_\_ - Provide the current annual operating expenses and the projected annual operating expenses at 80 percent of design capacity using the 1996 NARUC USOA. If the utility will be built in phases, this shall apply only to the first phase.
- 4) Exhibit \_\_\_\_ - Provide a schedule showing the projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches 80 percent of the design capacity of the system. If the utility will be built in phases, this shall apply only to the first phase. A return on common equity shall be established using the current equity leverage formula established by order of this Commission pursuant to Section 367.081(4), Florida Statutes, unless there is competent substantial evidence supporting the use of a different return on common equity. Please reference subsection 25-30.033(4), F.A.C., for additional information regarding the accrual of allowance for funds used during construction (AFUDC).

- 5) Exhibit \_\_\_\_\_ - Provide a schedule showing how the proposed rates were developed. The base facility and usage rate structure (as defined in subsection 25-30.437(6), F.A.C.) shall be utilized for metered service, unless an alternative rate structure is supported by the applicant and authorized by the Commission.
- 6) Exhibit \_\_\_\_\_ - Provide a schedule showing how the proposed service availability policy and charges were developed, including meter installation, main extension, and plant capacity charges, and proposed donated property.
- 7) Exhibit \_\_\_\_\_ - Provide a schedule showing how the customer deposits and miscellaneous service charges were developed, including initial connection, normal reconnection, violation reconnection, and premises visit fees, consistent with Rules 25-30.311 and 25-30.460, F.A.C.

**H) NOTICING REQUIREMENTS**

Exhibit \_\_\_\_\_ - Provide proof of noticing pursuant to Rule 25-30.030, F.A.C. This may be provided as a late-filed exhibit.

**PART III SIGNATURE**

Please sign and date the utility's completed application.

APPLICATION SUBMITTED BY:

\_\_\_\_\_

Applicant's Signature

\_\_\_\_\_

Applicant's Name (Printed)

\_\_\_\_\_

Applicant's Title

\_\_\_\_\_

Date

367.031 Original certificate.—Each utility subject to the jurisdiction of the commission must obtain from the commission a certificate of authorization to provide water or wastewater service. A utility must obtain a certificate of authorization from the commission prior to being issued a permit by the Department of Environmental Protection for the construction of a new water or wastewater facility or prior to being issued a consumptive use or drilling permit by a water management district. The commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application, unless an objection is filed pursuant to ss. 120.569 and 120.57, or the application will be deemed granted.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 5, 25, 26, ch. 80-99; ss. 2, 3, ch. 81-318; s. 1, ch. 85-85; ss. 4, 26, 27, ch. 89-353; s. 4, ch. 91-429; s. 8, ch. 93-35; s. 183, ch. 94-356; s. 3, ch. 96-407; s. 94, ch. 96-410.

**25-30.033 Application for Original Certificate of Authorization and Initial Rates and Charges.**

(1) Each applicant for an original certificate of authorization and initial rates and charges shall file with the Commission Clerk the information set forth in paragraphs (a) through (q). Form PSC 1001 (12/15), entitled "Application for Original Certificate of Authorization for a Proposed or Existing System Requesting Initial Rates and Charges," which is incorporated by reference in this rule and is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-06237>, is an example application that may be completed by the applicant and filed with the Office of Commission Clerk to comply with this subsection. This form is also available on the Commission's Web site, [www.floridapsc.com](http://www.floridapsc.com).

(a) A filing fee pursuant to paragraph 25-30.020(2)(a), F.A.C.;

(b) Proof of noticing pursuant to Rule 25-30.030, F.A.C.;

(c) The utility's name, address, telephone number, Federal Employer Identification Number, authorized representative, and, if available, email address and fax number;

(d) The nature of the utility's business organization, i.e., corporation, limited liability company, partnership, limited partnership, sole proprietorship, or association. The applicant must provide documentation from the Florida Department of State, Division of Corporations, showing:

1. The utility's business name and registration/document number for the business, unless operating as a sole proprietor, and,

2. The utility's fictitious name and registration number for the fictitious name, if operating under a fictitious name;

(e) The name(s), address(es), and percentage of ownership of each entity or person that owns or will own more than 5 percent interest in the utility;

(f) The election the business has made under the Internal Revenue Code for taxation purposes;

(g) A statement indicating whether the application is for water, wastewater, or both. If the applicant is applying for water or wastewater only, the statement shall include how the other service is provided;

(h) To demonstrate the necessary financial ability of the applicant to provide service to the proposed service area, the applicant shall provide:

1. A detailed financial statement (balance sheet and income statement), audited if available, of the financial condition of the applicant, which shows all assets and liabilities of every kind and character. The financial statements shall be for the preceding calendar or fiscal year. The financial statement shall be prepared in accordance with Rule 25-30.115, F.A.C. If available, a statement of the sources and uses of funds shall also be provided; and,

2. A list of all entities, including affiliates, upon which the applicant is relying to provide funding to the utility and an explanation of the manner and amount of such funding. The list need not include any person or entity holding less than 5 percent ownership interest in the utility. The applicant shall provide copies of any financial agreements between the listed entities and the utility and proof of the listed entities' ability to provide funding, such as financial statements;

(i) To demonstrate the technical ability of the applicant to provide service, the applicant shall provide:

1. A statement of the applicant's experience in the water or wastewater industry;

2. A copy of all current permits from the Department of Environmental Protection (DEP) and the water management district;

3. A copy of the most recent DEP and/or county health department sanitary survey, compliance inspection report, and secondary standards drinking water report; and,

4. A copy of all correspondence with the DEP, county health department, and water management district, including consent orders and warning letters, and the utility's responses to the same, for the past five years;

(j) To describe the proposed service area, the applicant shall provide:

1. A legal description of the proposed service area in the format described in Rule 25-30.029, F.A.C.;

2. A detailed system map showing the existing and proposed lines and treatment facilities, with the territory proposed to be served plotted thereon, consistent with the legal description provided in subparagraph (j)1. above. The map shall be of sufficient scale and detail to enable correlation with the description of the territory proposed to be served; and,



3. An official county tax assessment map, or other map showing township, range, and section with a scale such as 1" = 200' or 1" = 400', with the proposed territory plotted thereon, consistent with the legal description provided in subparagraph (j)1. above;

(k) To demonstrate the need for service in the proposed area, the applicant shall provide:

1. The number of customers currently being served and proposed to be served, by customer class and meter size, including a description of the types of customers currently being served and anticipated to be served, i.e., single family homes, mobile homes, duplexes, golf course clubhouse, or commercial. If the development will be in phases, this information shall be separated by phase;

2. A copy of all requests for service from property owners or developers in areas not currently served;

3. The current land use designation of the proposed service territory as described in the local comprehensive plan at the time the application is filed. If the proposed development will require a revision to the comprehensive plan, describe the steps taken and to be taken to facilitate those changes, including changes needed to address the proposed need for service; and,

4. Any known land use restrictions, such as environmental restrictions imposed by governmental authorities;

(l) The date applicant began or plans to begin serving customers. If already serving customers, a description of when and under what circumstances the applicant began serving;

(m) Documentation of the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located. Documentation of continued use shall be in the form of a recorded warranty deed, recorded quit claim deed accompanied by title insurance, recorded lease such as a 99-year lease, or recorded easement. The applicant may submit an unrecorded copy of the instrument granting the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located, provided the applicant files a recorded copy within the time required in the order granting the certificate;

(n) A description of the separate capacities of the existing and proposed lines and treatment facilities in terms of equivalent residential connections (ERCs) and gallons per day estimated demand per ERC for water and wastewater and the basis for such estimate. If the development will be in phases, this information shall be separated by phase;

(o) A description of the type of water treatment, wastewater treatment, and method of effluent disposal;

(p) To support the proposed rates and charges, the applicant shall provide:

1. The existing and projected cost of the system(s) and associated depreciation by year until design capacity is reached using the National Association of Regulatory Utility Commissioners (NARUC) 1996 Uniform System of Accounts (USOA), which is incorporated by reference in Rule 25-30.115, F.A.C. The applicant shall identify the year that 80 percent of design capacity is anticipated. If the utility will be built in phases, this shall apply only to the first phase;

2. The existing and projected annual contributions-in-aid-of-construction (CIAC) and associated amortization by year including a description of assumptions regarding customer growth projections using the same projections used in subparagraph (1)(k)1. above for the proposed service area. The projected CIAC shall identify cash and property contributions and amortization at 100 percent of design capacity and identify the year when 80 percent of design capacity is anticipated. The projected CIAC shall be consistent with the service availability policy and charges in the proposed tariff provided in paragraph (q) below, the schedule provided in subparagraph (1)(p)6. below, and the CIAC guidelines in Rule 25-30.580, F.A.C. If the utility will be built in phases, this shall apply only to the first phase;

3. A schedule showing the projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches 80 percent of the design capacity of the system. If the utility will be built in phases, this shall apply only to the first phase;

4. The current annual operating expenses and the projected annual operating expenses at 80 percent of design capacity using the NARUC USOA. If the utility will be built in phases, this shall apply only to the first phase;

5. A schedule showing how the proposed rates were developed;

6. A schedule showing how the proposed service availability policy and charges were developed, including meter installation, main extension, and plant capacity charges, and proposed donated property; and,

7. A schedule showing how the customer deposits and miscellaneous service charges were developed, including

initial connection, normal reconnection, violation reconnection, and premises visit fees, consistent with Rules 25-30.311 and 25-30.460, F.A.C.; and,

(q) A tariff containing all rates, classifications, charges, rules, and regulations which shall be consistent with Chapter 25-9, F.A.C. Form PSC 1010 (12/15), entitled "Water Tariff," which is incorporated by reference in this rule and is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-06247> and Form PSC 1011 (12/15), entitled "Wastewater Tariff," which is incorporated by reference in this rule and is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-06248>, are example tariffs that may be completed by the applicant and included in the application. These forms may also be obtained from the Commission's website, [www.floridapsc.com](http://www.floridapsc.com).

(2) The base facility and usage rate structure (as defined in subsection 25-30.437(6), F.A.C.) shall be utilized for metered service, unless an alternative rate structure is supported by the applicant and authorized by the Commission.

(3) A return on common equity shall be established using the current equity leverage formula established by order of this Commission pursuant to Section 367.081(4), F.S., unless there is competent substantial evidence supporting the use of a different return on common equity.

(4) Utilities obtaining original certificates of authorization pursuant to this rule are authorized to accrue allowance for funds used during construction (AFUDC) for projects found eligible pursuant to subsection 25-30.116(1), F.A.C.

(a) The applicable AFUDC rate shall be determined as the utility's projected weighted cost of capital as demonstrated in its application for original certificate and initial rates and charges.

(b) A discounted monthly AFUDC rate calculated in accordance with subsection 25-30.116(3), F.A.C., shall be used to insure that the annual AFUDC charged does not exceed authorized levels.

(c) The date the utility shall begin to charge the AFUDC rate shall be the date the certificate of authorization is issued to the utility so that such rate can apply to the initial construction of the utility facilities.

*Rulemaking Authority 350.127(2), 367.045(1), 367.121, 367.1213 FS. Law Implemented 367.031, 367.045, 367.1213 FS. History—New 1-27-91, Amended 11-30-93, 1-4-16.*

# Holland & Knight

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April 9, 2018

*Via E-Mail: mduval@psc.state.fl.us*

Margo A. DuVal  
Senior Attorney  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Response to Notice of Apparent Violation

Dear Ms. Duval:

Our law firm represents the owners and operators of the Palm Tree Acres Mobile Home Park, a mobile park and a mobile home subdivision in Pasco County, Florida (the "Park"). We are in receipt of the Notice of Apparent Violation dated March 8, 2018, in which you allege that the Park "appears" to be operating as a utility without a certificate of authority in violation of Section 367.031, Florida Statutes, and Florida Administrative Code Rule 25-30.033. More specifically, you suggest that the Park is "not exempt from the Commission's jurisdiction under Section 367.022(5), F.S., as [the Park] appears to be selling water and/or wastewater service to non-tenants for compensation." The Park respectfully declines your invitation to complete an application for a certificate of authority because, as explained below, it does not sell water and/or wastewater services to non-tenants for compensation and is not a utility.

The Park's owners have operated the Park for more than three decades. The Park is small and has only 244 tenants. The owners have recognized that utility regulation carries with it layers of regulatory fees and expenses, along with rigorous working capital, depreciation, and accounting requirements, that can be extremely costly for small water and wastewater providers and their end users. Thus, in order to control costs the owners of the Park have purposefully structured their business model and the way they operate the Park's premises to ensure that the Park is not a public utility regulated by the Commission. Under Section 367.022(5), Florida Statutes, "[I]andlords providing service to their tenants without specific compensation for the service" are not utilities regulated by the Commission and are not subject to Chapter 367, Florida Statutes. The Park does not provide water and wastewater services to any non-tenants. Rather, the Park only provides its

tenants with access to and use of the Park's water and wastewater facilities, garbage collection system, and other common area facilities, including a fitness center and community center. Access to and use of these facilities are all bundled into the tenants' rent; there is no specific compensation paid for the provision of water and wastewater services. Consequently, the owners have operated the Park for over thirty years with the understanding that the Park is not a public utility under Section 367.022(5). The exemption under Section 367.022(5) is self-executing and there is no requirement that the Park's owners apply for the exemption.

Any question concerning the application of the exemption to the Park has only arisen as the result of a small group of disgruntled tenants at the Park. As background, the Park has two types of tenants: (i) those that rent the lot on which their mobile homes are located and rent access to and use of other facilities on the Park's premise (the "Non-landowner Tenants"); and (ii) those that own the lot upon which their mobile homes are located and rent access to and use of other facilities on the Park's premise (the "Landowner Tenants"). Non-landowner Tenants pay the owner/operator of the Park a fixed monthly rent which covers the value of the lot as well as access to and use of other facilities on the Park premises, including the Park's water and wastewater facilities, garbage collection system, and other common area facilities including unrestricted access to the Park's community center, fitness center, and swimming pool. Landowner Tenants meanwhile pay a lower fixed monthly rent that covers the value of the access to and use of other facilities on the Park's premises, including water and wastewater facilities, garbage collection system, and other common area facilities including unrestricted access to the Park's community center, fitness center and swimming pool. The rent paid by all tenants of the Park is fixed and does not fluctuate based on the amount of water or wastewater the tenant uses.

A few years ago, a small group of disgruntled Landowner Tenants began to attempt to prevent the Park from qualifying for the landlord tenant exemption in section 367.022(5), and to force the Park to become a regulated utility despite the Park's operation as a non-utility for over three decades. They did so by disavowing their tenancies, primarily arguing that they are not "tenants" because they own the lots upon which their mobile homes are situated. The owners of the Park have repeatedly reminded these disgruntled tenants that they are tenants since they rent access to various parts of the Park's premises including its water and wastewater facilities, garbage collection system, and other common area facilities such as the fitness center, community center and swimming pool, all of which is bundled into their fixed monthly rent.<sup>1</sup>

The owners of the Park have explained the Park has no intention of becoming a public utility. They also have explained that if the Park's status as a non-utility is jeopardized by it continuing to provide these disgruntled tenants with access to and use of the Park's water and wastewater facilities and other common area facilities, it will no longer do so. At the same time, the Park has made it clear that it would not block the disgruntled tenants from obtaining water and

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<sup>1</sup> The term "tenant" is not defined in Chapter 367, Florida Statutes. However, the legislature recognizes that a mobile home lot owner can be a tenant under the Mobile Home Act, Chapter 723, Florida Statutes. See, e.g., §§ 723.002(2) and 723.058(3), Fla. Stat. In addition, the term "tenant" is broadly defined in section 715.102(5), Florida Statutes to include "any paying guest, lessee, or sublessee of any premises for rent, whether a dwelling unit or not."

wastewater from other sources. Indeed, the Park is not operating under any regulatory compact with the State. It has not been given any exclusive franchise service area and has no corresponding obligation to serve. Thus, there is nothing to prohibit the disgruntled tenants from obtaining water and wastewater from other sources.

Nonetheless, these disgruntled Landowner Tenants proceeded to initiate independent litigation against the Park and its owners in the Circuit Court of Pasco County. The case is styled, *Nelson P. Schwob, et al v. James C. Goss et al*, Case no. 2017-CA-1696-ES, Division B (“*Schwob*”). A material constitutional issue in *Schwob* is whether the disgruntled Landowner Tenants can compel the Park owners to offer them access to and use of the Park’s water and wastewater facilities. No authority allows the disgruntled Landowner Tenants to compel the Park owners to provide such access and use. The Park owners have alleged that they cannot be forced to provide a neighbor with access to and use of their private water and wastewater property when the neighbor has no ownership rights in that private property. In fact, the demands of the disgruntled tenants destroy the Park owners’ constitutionally protected right to use or not use their private property, and to exclude others from such private property. The Park owners are entitled to the full bundle of ownership rights constitutionally guaranteed to all owners of real property by Article I, Section 2 of the Florida Constitution. Any infringement on the Park owners’ full and free use of their privately-owned property is a direct limitation on, and diminution in value of, the property. Consequently, any court order forcing or directing the Park owners to allow the plaintiffs in *Schwob* to access and use the Park’s private water and wastewater property would violate the Park owners’ basic constitutional rights. Those constitutional claims were filed well before the Commission staff issued its Notice of Apparent Violation and remain pending before the circuit court. Only the circuit court can adjudicate this pending constitutional issue.

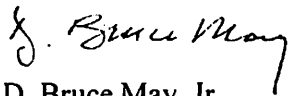
Importantly, while that circuit court litigation is pending, the Park has agreed to continue to provide the disgruntled tenants with use of the Park’s water and wastewater facilities, and not to charge for them for that use. Indeed, the disgruntled tenants are not paying for the use of the Park’s water and wastewater facilities. Under Section 367.021(12), Florida Statutes, a “utility” subject to the Commission’s regulation “means a water or wastewater utility and, except as provided in s. 367.022, includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation.” (Emphasis added.) Thus, setting aside for a moment whether the Park qualifies for the exemption under Section 367.022(5), the Park is not a utility subject to the Commission’s jurisdiction so long as it does not charge the disgruntled tenants for the use of the Park’s water and wastewater facilities.

Margo A. DuVal  
April 9, 2018  
Page 4

Until the circuit court rules on the Park owners' pending constitutional claims concerning whether they may be compelled to provide a neighbor with access to their water and wastewater property, the Commission should refrain from further action. It would be counterproductive and inefficient to proceed with a show cause proceeding at the Commission when this fundamental constitutional issue is pending before the circuit court, and where the Park is not charging the disgruntled tenants for use of the Park's water and wastewater facilities.

Sincerely,

HOLLAND & KNIGHT LLP



D. Bruce May, Jr.

DBM:kjg

cc: Office of Public Counsel  
Richard Harrison, Esq.  
Keith Hetrick, Esq.  
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April 30, 2018

*Via E-Mail: mduval@psc.state.fl.us*

Margo A. DuVal  
Senior Attorney  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Supplemental Response to Notice of Apparent Violation

Dear Ms. Duval:

This letter supplements my letter to you dated April 9, 2018, which responded to your Notice of Apparent Violation. The reason for this supplement is to alert staff that moving forward with a show cause proceeding against Palm Tree Acres Mobile Home Park (“Palm Tree”) carries unintended consequences and industry-wide policy implications.

Your Notice of Apparent Violation appears to assume that the landlord/tenant exemption in section 367.022(5), Florida Statutes, only applies where the supplier of water or wastewater meets the definition of “landlord” in section 83.43(3), Florida Statutes, and the end user meets the definition of “tenant” in section 83.43(4), Florida Statutes. But the Legislature did not reference those definitions in section 83.43 when it established the landlord/tenant exemption, although it certainly knew how to do so.<sup>1</sup> If you are intent on limiting the landlord/tenant exemption to landlords and tenants as defined in Chapter 83, there are many mobile home parks around the state of Florida that would no longer qualify for the exemption and would suddenly become utilities regulated by the Florida Public Service Commission. We respectfully submit that was never the intention of the Legislature.

Chapter 83 governs landlord/tenant relationships in which the landlord owns or leases the “dwelling unit” that is being rented to the tenant. A “landlord” is defined in section 83.43(3), Florida Statutes, as “the owner or lessor of a dwelling unit.” A “tenant” is

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<sup>1</sup> See, e.g., § 553.895(1), Fla. Stat. (Legislature specifically referenced the definitions in Section 83.43 for purposes of imposing fire safety requirements).

defined in section 83.43(4), Florida Statutes, as “any person entitled to occupy a dwelling unit under a rental agreement.”

A “dwelling unit” is defined in Section 83.43(2) as:

- (a) A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household.
- (b) A mobile home rented by a tenant.
- (c) A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.

Thus, a “dwelling unit” is defined to mean a mobile home being rented or some other “structure or part of a structure” that is rented. A mobile home lot is not a “dwelling unit” under Chapter 83, Florida Statutes. Section 83.43(5), which defines “premises,” clearly differentiates a “dwelling unit” from a “mobile home lot.” *See id.* (“‘Premises’ means a dwelling unit and the structure of which it is a part and a mobile home lot and the appurtenant facilities and grounds, areas, facilities, and property held out for the use of tenants generally.”).

Throughout Florida there are many mobile home park owners<sup>2</sup> and mobile home subdivision developers,<sup>3</sup> like Palm Tree, that do not rent “dwelling units” as defined in section 83.43(2), Florida Statutes. Instead, they rent either (a) mobile home lots for the placement of a mobile home, in the case of a mobile home park owner, or (b) common areas, recreational facilities, roads, and other amenities, in the case of mobile home subdivision developers. While those mobile home park owners and mobile home subdivision developers may not fall under the definition of “landlord” in section 83.43(3), they are considered landlords for the purposes of the Florida Mobile Home Act, Chapter 723, Florida Statutes (the “Mobile Home Act”).<sup>4</sup>

Tenancies in mobile home parks and mobile home subdivisions like Palm Tree are governed by provisions of the Mobile Home Act rather than those of Chapter 83. For example, Section 723.004(3), Florida Statutes, provides:

723.004 Legislative intent; preemption of subject matter.—

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<sup>2</sup> § 723.003(13), Fla. Stat. (defining a “mobile home park owner” as “an owner or operator of a mobile home park”); *see also* § 723.003(12), Fla. Stat. (defining “mobile home park” as “a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential”).

<sup>3</sup> *See* § 723.003(14), Fla. Stat. (defining a “mobile home subdivision” as “a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer”).

<sup>4</sup> The courts have recognized that the unique landlord/tenant relationship under Chapter 723, Florida Statutes, is “distinct from a traditional landlord/tenant relationship.” *Fed’n of Mobile Home Owners v. Fla. Manufactured Hous. Ass’n.*, 683 So. 2d 586, 588 (Fla. 1st DCA 1996) (citing *Stuart v. Green*, 300 So. 2d 889, 892 (Fla. 1974)).



....

(3) It is expressly declared by the Legislature that the relationship between landlord and tenant as treated by or falling within the purview of this chapter is a matter reserved to the state and that units of local government are lacking in jurisdiction and authority in regard thereto. All local statutes and ordinances in conflict herewith are expressly repealed.

Mobile home park landlords and mobile home subdivision landlords look to Chapter 723—not Chapter 83—for their rights and duties. For example, section 723.062, Florida Statutes, allows the park owner as “landlord or the landlord’s agent” to remove personal property or a mobile home following an eviction. Another example is found in section 723.085(2), Florida Statutes, which requires a park owner to “comply with the provisions of s. 723.061 in determining whether the homeowner may qualify as a tenant.”

Likewise, the Mobile Home Act expressly provides that mobile home subdivision developers have a landlord/tenant relationship with the lot owners who rent access to common elements. Section 723.002(2), Florida Statutes, specifies that the Mobile Home Act applies to mobile home subdivisions like Palm Tree and owners of lots in mobile home subdivisions:

723.002 Application of chapter.—

....

(2) The provisions of ss. 723.035, 723.037, 723.038, 723.054, 723.055, 723.056, 723.058, and 723.068 are applicable to mobile home subdivision developers and the owners of lots in mobile home subdivisions.

Section 723.058, Florida Statutes, expressly recognizes that a “tenancy” can exist between a “mobile home subdivision developer” and the “owner of a lot in a mobile home subdivision.” Moreover, section 723.0751 recognizes that a lot owner tenant can rent access to “common areas, recreational facilities, roads, and other amenities . . . in a mobile home park.” Those lot owner tenants are also afforded protections under Chapter 723. They are subject to the rules that govern tenants in section 723.035, Florida Statutes. They are expected to pay rent and are entitled to receive 90-day notice of any rent increases under section 723.037, Florida Statutes. They can use the alternative dispute resolution procedures of section 723.038, Florida Statutes, to object to rent increases, reductions in service, and changes in rules. Section 723.0751(3) even allows lot owner tenants who rent access to common areas, recreational facilities, roads, and other amenities, and share those amenities with tenants that rent a mobile home lot, to be represented by the mobile home owners’ association.

There can be no doubt that the owners of Palm Tree, as park owners and mobile home subdivision developers, are landlords, and mobile home lot owners are tenants under Chapter 723.

Margo A. DuVal  
April 30, 2018  
Page 4

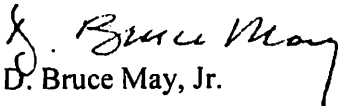
However, some have suggested that the definitions of landlord and tenant under Chapter 83 must be used by the Commission because of a prior decision in Docket No. 910385-SU, Order No. 24806 (July 11, 1991) (*Oak Leafe*). That prior ruling, which was rendered five years before the Florida Legislature eliminated any requirement that a landlord apply for the exemption,<sup>5</sup> should not bind the Commission here. *Oak Leafe* did not involve tenancies under Chapter 723, nor did it involve a mobile home park or a mobile home park subdivision. Instead, the subdivision in *Oak Leafe* was a traditional single family home subdivision subject to Chapter 83, and the Commission had no reason in that docket to even address the tenancies that are governed by Chapter 723.

If the Commission ignores the unique landlord/tenant relationships established under Chapter 723, and relies exclusively on the definitions of landlord and tenant as set forth in Chapter 83, Florida Statutes, it would exclude many mobile home park owners and subdivision developers from the benefits of section 367.022(5), Florida Statutes. Nowhere in Chapter 367 does the legislature express the intent to so restrict the exemption.

For the foregoing reasons, and for the reasons explained in my earlier letter of April 9, we would respectfully ask that Commission staff not move forward with a show cause action against Palm Tree.

Sincerely,

HOLLAND & KNIGHT LLP

  
D. Bruce May, Jr.

DBM:kjg

cc: Office of Public Counsel  
Richard Harrison, Esq.  
Keith Hetrick, Esq.  
Mary Anne Helton, Esq.  
Jennifer Crawford, Esq.  
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<sup>5</sup> See Ch. 96-407, s. 3, Laws of Fla.

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STATE OF FLORIDA



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## Public Service Commission

May 21, 2018

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315 S. Calhoun Street, Suite 600  
Tallahassee, FL 32301-1872

**Re: Apparent Violation of Section 367.031, Florida Statutes, and Rule 25-30.033, Florida Administrative Code, and Possible Implementation of Show Cause Proceedings Against Palm Tree Acres Mobile Home Park, pursuant to Section 367.161, Florida Statutes.**

Dear Sirs:

On March 8, 2018, Commission staff provided Palm Tree Acres Mobile Home Park (Palm Tree Acres or Park) with a Notice of Apparent Violation, as Commission staff believes that Palm Tree Acres may be operating in violation of Section 367.031, Florida Statutes, and Rule 25-30.033, Florida Administrative Code. Palm Tree Acres submitted its initial response on April 9, 2018, and submitted its supplemental response on April 30, 2018.

Pursuant to Palm Tree Acres' response, dated April 9, 2018, Palm Tree Acres agreed to continue providing use of the Park's water and wastewater facilities, at no charge, to its customers who own the lot upon which their mobile homes are located (lot owners) while their circuit court litigation is pending.

By this letter, I am requesting that Palm Tree Acres provide the following clarifying information:

1. Statement clarifying the date on which Palm Tree Acres informed the lot owners that the Park would begin providing the lot owners with use of the Park's water and wastewater facilities without charge.

2. Statement clarifying the date on which Palm Tree Acres began providing the lot owners with use of the Park's water and wastewater facilities without charge.
3. Statement clarifying the date on which Palm Tree Acres ceased collecting or accepting monies/checks/etc., for payment for water and/or wastewater services, from the lot owners. This includes monies/checks/etc. that were or are provided under protest.
4. Statement clarifying the date on which Palm Tree Acres returned the monies/checks/etc. that the Park previously accepted and held from the lot owners as payment for water and/or wastewater services. This includes monies/checks/etc. that were or are provided under protest.
5. Statement clarifying that Palm Tree Acres no longer possesses any monies/checks/etc. that the Park previously accepted and held from the lot owners as payment for water and/or wastewater services. This includes monies/checks/etc. that were or are provided under protest.
6. Statement clarifying whether Palm Tree Acres intends to continue providing water and/or wastewater service at no charge to the lot owners if the circuit court litigation is resolved in the Park's favor.
7. Statement clarifying whether Palm Tree Acres intends to continue providing water and/or wastewater service at no charge to the lot owners if the circuit court litigation is resolved in the lot owners' favor.
8. Statement verifying the date on which any monies/checks/etc. collected but not deposited for water and/or wastewater service for the lot owners, including monies/checks/etc. provided under protest, will be refunded to the lot owners.
9. Statement verifying that Palm Tree Acres has not resumed and does not plan to resume collecting or accepting monies/checks/etc., for payment for water and/or wastewater services, from the lot owners. This includes monies/checks/etc. that were or are provided under protest.

Please provide your responses no later than May 31, 2018. If you have any questions, please contact me at (850) 413-6076 or [mduval@psc.state.fl.us](mailto:mduval@psc.state.fl.us).

Sincerely,



Margo A. DuVal  
Senior Attorney

Palm Tree Acres Mobile Home Park  
May 21, 2018  
Page 3

MAD

cc: Division of Engineering (Graves, King, Ballinger)  
Office of Public Counsel (Patti Christensen, JR Kelly)  
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FAX 941-366-1603

June 6, 2018

Margo A. DuVal  
Senior Attorney  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Palm Tree Acres Mobile Home Park Notice of Apparent Violation

Dear Ms. Duval:

Please allow us to respond to your letter of May 21, 2018, and provide the clarifications you requested. A brief recital of the history, our disagreement on the Section 367.022(5) exemption and an explanation of the pending litigation is necessary to put our response in perspective.

**I. The History.**

Ed Heveran and James Goss ("Owners") purchased Palm Tree in 1984. At that time, the former developer had sold some of the individual mobile home lots (the "Lots") to purchasers in fee simple (the purchasers shall be referred to as the "Lot Owners"). Owners intended to continue operating the remaining lots at Palm Tree as a rental mobile home park.

At the time Owners purchased Palm Tree, Chapter 723, Florida Statutes, the Mobile Home Act (the "Act") had recently been enacted. The Act was a new set of regulations governing mobile home parks and mobile home subdivisions. Under the Act, Palm Tree became a hybrid type of property containing some subdivision lots, with the remaining lots being offered for to mobile home owners ("Homeowners"). Accordingly, Palm Tree is a mobile home park and a mobile home subdivision. As explained by Section 723.004 of the Act, the tenancies in mobile home parks and mobile home subdivision are governed by the Act and not Chapter 83 of the Florida Statutes. Both types of tenancies were defined respectively in Sections 723.003(14) and (9), Florida Statutes.

Margo A. DuVal  
Senior Attorney  
Florida Public Service Commission  
June 6, 2018  
Page 2

**723.003 Definitions.**—As used in this chapter, the term:

(14) “Mobile home subdivision” means a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.

(9) “Mobile home lot” means a lot described by a park owner pursuant to the requirements of s. 723.012, or in a disclosure statement pursuant to s. 723.013, as a lot intended for the placement of a mobile home.

A rudimentary set of covenants had been recorded by the former developer which governed the Lots (the “Covenants”). Although the Covenants were not clear, they allowed the Lot Owners the option of electing between the receipt of water and sewer services only, or to rent access to all of the park’s facilities, services, amenities and management, and receive water and sewer services as part of the monthly rent. For over 30 years, all of the Lot Owners elected the latter option and rented access to all of the park’s amenities and facilities for a monthly rent of roughly equal to half of the rent payable by the other mobile homeowners. The Covenants have been extinguished by the Marketable Record Title Act, and the Court has confirmed that they are no longer effective.

Pursuant to Section 723.0751(3), Florida Statutes, the Lot Owners shared common areas, recreational facilities, roads and other amenities with the owners of mobile homes. This allowed the Lot Owners to participate with the Homeowners to negotiate rents payable to Owners. Under this process, a separate rent was negotiated for the Lot Owners and the Homeowners.

This process continued until Mr. Schwob filed the initial lawsuit in 2014 (the “Action”). In 2015, a number of other Lot Owners joined as plaintiffs in the Action. There are approximately 19 Lot Owners who are currently involved in the Action.

## **II. The Section 367.022(5) Exemption.**

As you have heard, Owners maintain that providing water and sewer services to both types of “tenants” is exempt from Public Service Commission (“PSC”) regulation pursuant to the self-executing exemption found in Section 367.022(5), Florida Statutes (the “Exemption”). As Mr. May accurately indicated in his correspondence to you of April 9 and 30 2018, the Act provides that the relationship between Owners and mobile home subdivision Lot Owners and Homeowners falling within the purview of Chapter 723 is a “landlord tenant” relationship. *See*, Section 723.004(3), Florida Statutes. As such, we maintain that the Exemption applies.

Margo A. DuVal  
Senior Attorney  
Florida Public Service Commission  
June 6, 2018  
Page 3

Up until now, the PSC staff has narrowly interpreted the Exemption to apply only to leases of a “dwelling” as specified by Section 83.43, Florida Statutes. If the lease of a dwelling is required for the Exemption, no mobile home park or mobile home subdivision will qualify. As we have urged, we maintain that this narrow interpretation is not authorized. The legislature has made clear that the landlord tenant relationships in mobile home parks and mobile home subdivisions like Palm Tree are governed by the Act and not Chapter 83. The legislature is presumed to know of the common meaning of words. *See, State v. Bodden*, 8777 So.2d 680 (Fla. 2004). It did not define landlord or tenant in Chapter 367, and there is no authority suggesting that it intended the terms landlord or tenant to be limited to the lease of a dwelling.

To the extent that staff may shift its position, ignore the landlord-tenant relationships under the Act, and try to rely on a “dictionary” definition of landlord, we would respectfully point out that Black’s Law Dictionary (Fifth Edition) defines landlord as follows:

**Landlord.** He of whom lands or tenements are holden. He who, being the owner of an estate in land, or a rental property, has leased it to another person, called a “tenant.” Also, called “lessor.”

This “dictionary” definition supports Owner’s interpretation of the Exemption. Owners held common areas, recreational facilities, roads, water and wastewater facilities, and other amenities that were leased to the Lot Owners for a monthly rent. Owners were “landlords” of the Lot Owner “tenants” of that “rental property.”

### **III. Our Discussions, The Action And the Partial Payments.**

We have repeatedly discussed our differing opinions on the issues. We have tried to reach a compromise to allow the courts to resolve the fundamental and primary constitutional issue between the Lot Owners and Owners, specifically *whether Owner’s have a constitutional right to use their property for any use, or no use at all*. As you know, Owner’s maintain that requiring them to provide the neighboring landowners with water and sewer services takes from the constitutionally protected bundle of rights associated with land ownership.

This constitutional issue has been alleged in the Action and a summary judgment motion on the issue is pending before the circuit court.

Understanding that the staff of the PSC disclaims application of the Exemption and has requested that water and sewer services not be disconnected during the litigation, on Friday, February 23, 2018, during our informal conference, we agreed not to charge the Lot Owners for water and sewer services while the issue was being determined. There is no way to accurately determine usage since there are no water or sewer meters servicing the individual Lots.



Margo A. DuVal  
Senior Attorney  
Florida Public Service Commission  
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While Owner's initially sued for the reasonable value of the services provided, we informed the Circuit Court that we had agreed with the PSC staff not to charge while the litigation was pending. We are also amending our pleadings to drop the implied contract claims for the reasonable value of water and sewer service. The Lot Owner's counsel was present when the Court was advised of our changed position on May 22, 2018.

Most of the Lot Owners have tendered a monthly sum of \$90 to Owners. How they arrived at this sum is unknown. Some continue to use all the park's facilities and other amenities. Others receive only access, garbage, water and sewer. Some provide restrictive endorsements on the checks, some say nothing.

These tendered payments have not been accepted by Owners. Most are now stale, worthless checks. If the Lot Owners feel that they need the protection of a monthly tender, they can deposit in the court registry. Owner's cannot accept the payments, or a waiver argument could be created.

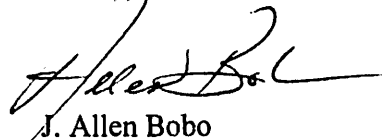
Owners will pursue their claim in circuit court to protect their constitutional rights. We have found no authority suggesting that a landowner must provide access to his water and sewer systems for a neighboring landowner – and we maintain that none exists. The Court will ultimately decide the fundamental constitutional issue.

In the meantime, we confirm our agreement not to charge the Lot Owners for water and sewer use. We assume that they will continue to tender whatever payments their counsel recommends. These payments will not be accepted or processed.

We hope that this clarifying information is helpful to the staff.

Sincerely,

**LUTZ, BOBO & TELFAIR, P.A.**



J. Allen Bobo

JAB/ljp  
cc: Office of Public Counsel  
Keith Hetrick  
Richard Harrison  
Bruce May