

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20180142-WS

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.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, January 8, 2019

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
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TALLAHASSEE, FLORIDA
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1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Okay. Let's swing back to
3 Item No. 3.

4 MS. DUVAL: Good morning, Chairman and
5 Commissioners. Margo DuVal with Commission staff.

6 Item 3 addresses the initiation of show cause
7 proceedings against Palm Tree Acres Mobile Home
8 Park for apparent violations of Section 367.031,
9 Florida Statutes, and Rule 2530 dash -- 25-30.033,
10 Florida Administrative Code.

11 Issue 1 of staff's recommendation addresses
12 whether the Commission should order Palm Tree Acres
13 to show cause as to why it should not be fined in
14 the amount of \$5,000 for providing water and
15 wastewater service to the public for compensation
16 without first obtaining a certificate of
17 authorization from the Commission, and why it
18 should not bring itself into compliance with the
19 Commission's statutes and rules. Issue 2 of the
20 recommendation addresses the matter of docket
21 closure.

22 At this juncture, staff is not requesting that
23 the Commission make any ultimate findings as to any
24 facts or points of law; rather, we are asking that
25 the Commission allow staff to continue pursuing

1 this show cause action by issuing a show cause
2 order, which is otherwise known as an
3 administrative complaint.

4 Mr. Richard Harrison, on behalf of the lot
5 owners, and Mr. Bruce May and Allen Bobo, on behalf
6 of Palm Tree Acres, are present today and would
7 like to address the Commission on this item. And
8 Patty Christensen, on behalf of the Office of
9 Public Counsel, is also present and available for
10 questions.

11 And at this point, staff is available for any
12 questions.

13 CHAIRMAN GRAHAM: Thank you, Ms. DuVal.

14 Mr. May, I guess we will start with you first.

15 MR. MAY: Happy New Year, Commissioners, and
16 Mr. Chairman.

17 I am Bruce May with the law firm of Holland &
18 Knight. I serve as regulatory counsel for Palm
19 Tree Acres. With me today is Mr. Allen Bobo. Mr.
20 Bobo is trial counsel for Palm Tree.

21 We received staff's recommendation on Thursday
22 afternoon, December 27th. And after reviewing it,
23 we disagree with the analysis and wanted to take
24 just a few your minutes to explain why.

25 There are a lot of moving parts to staff's

1 analysis, and so to move through this as quickly as
2 possible, what Mr. Bobo and I are going to do, we
3 are going to split our time. I will talk briefly
4 about the regulatory policy issues associated with
5 the recommendation, as well as the implication of
6 staff's recommendation as an unadopted rule under
7 Florida's Administrative Procedures Act.

8 Mr. Bobo will explain the industry wide
9 implications of staff's recommendation, the
10 tendencies that exist between Palm Tree and the
11 owners under the Mobile Home Park Act, the status
12 of the circuit court litigation between the lot
13 owners and Palm Tree, as well as the circuit
14 court's recent ruling that Palm Tree has a private
15 property rights that are protected by the Florida
16 and the United States Constitutions.

17 Let me start with regulatory policy.

18 In a nutshell, we don't believe a show cause
19 enforcement action with administrative penalties is
20 warranted as a matter of regulatory policy under
21 the facts of this case. Palm Tree is very small.
22 There is only 244 tenants. The owners have
23 recognized that utility regulation carries layers
24 of regulatory fees and expenses, capital, working
25 capital requirements, depreciation and accounting

1 requirements that can be extremely costly for small
2 water and wastewater providers and their end users.
3 Thus, to control costs, Palm Tree, our client, has
4 never held itself out as a utility, and has
5 expressly structured its business plan so as to not
6 fall under the PSC's regulatory jurisdiction.

7 More specifically, Palm Tree, for decades, has
8 operated under a good faith belief that it had a
9 tenancy with the lot owners in the mobile home park
10 subdivision under Chapter 723, and that tenancy
11 exempted it from the PSC jurisdiction under the
12 landlord/tenant exemption found in Section
13 367.055 -- excuse me, 022(5).

14 Now, there has been a recent order of the
15 circuit court which confirmed that Palm Tree is
16 indeed a mobile home park and a mobile home park
17 subdivision, and that there is a tenancy between
18 Palm Tree and the lot owners under Section -- under
19 Chapter 723, the Mobile Home Park Act.

20 Now, to be sure, staff disagrees with Palm
21 Tree's interpretation of Section 367.022(5), and
22 apparently disagrees with the circuit court's
23 determination that there is a tenancy. However,
24 the fact that there is an honest disagreement
25 between our client and the staff with respect to

1 the proper interpretation of Section 367.022(5) we
2 believe shouldn't give rise to an enforcement
3 action. We have an honest disagreement, and I
4 don't think an honest disagreement is an
5 appropriate basis for penalties or a show cause.

6 Now, let me talk briefly about staff's
7 interpretation in the context of the Administrative
8 Procedures Act.

9 Staff is recommending that you bring an
10 enforcement action against Palm Tree and fine Palm
11 Tree because Palm Tree does not meet staff's
12 interpretation of Section 367.022(5). We believe
13 that the interpretation in Section 367.022(5)
14 recommended by staff, if approved, would result in
15 the PSC relying on an unadopted rule in enforcement
16 action, which is prohibited by the Legislature's
17 2008 amendments to Chapter 120, Florida's
18 Administrative Procedures Act.

19 The 2008 amendments put teeth into the
20 unadopted rule prohibition by first establishing a
21 procedure for challenging an agency's reliance on
22 an unadopted rule before the Division of
23 Administrative Hearings, which we call DOAH; and,
24 two, it exposes the agency that relies on an
25 unadopted rule to reasonable attorney's fees and

1 costs.

2 Section 120.52(20) defines unadopted rule as,
3 quote: An agency statement that meets the
4 definition of the term rule but has not been
5 adopted pursuant to rule-making requirements.

6 Section 120.52(16) defines rule as, in
7 pertinent part, as each agency statement of general
8 applicability that interprets law.

9 In its recommendation, the PSC staff is
10 purporting to define the terms landlord and tenant
11 based upon its interpretation of the law, Section
12 367.022(5). We believe this is a textbook example
13 of an unadopted rule which would have a substantial
14 impact on Palm Tree and other similarly situated
15 companies in Florida that operate as a mobile home
16 park and a mobile home park subdivision.

17 For this reason, about the Commission were to
18 approve the staff's recommendation, we put the
19 Commission on notice last Friday that we would file
20 an unadopted rule challenge with DOAH pursuant to
21 120.56(4).

22 Finally, Commissioners, I want to bring your
23 attention to a statement on page 14 of staff's
24 recommendation, which I believe sums up our
25 concerns about the unadopted rule issue.

1 There, staff basically says that it's
2 irrelevant that the subject court has ruled that
3 Palm Tree is a mobile home park subdivision and
4 that there is a tenancy between the owners of Palm
5 Tree and the lot owners under the Mobile Home Park
6 Act.

7 Staff goes on to state, and I quote: Neither
8 does it purport to preempt the Commission's ability
9 to interpret the applicability of the
10 landlord/tenant exemption under 367.022(5)). To
11 the contrary, the Commission maintains exclusive
12 and superseding jurisdiction over utilities and its
13 interpretation of landlord/tenant exemption is
14 controlling.

15 Commissioners, I want to be clear here. We
16 are not saying that the PSC can't interpret section
17 367.022(5). What we are saying is that if the
18 Commission is going to interpret 367.022(5), it
19 needs to do so in accordance with recognized
20 Supreme Court principles regarding your
21 jurisdiction, and it needs to do so in accordance
22 with the rule-making provisions in Chapter 120, as
23 well as in harmony with Florida's Constitution.

24 In the Lee County Electric Cooperative V
25 Jacobs case, the Florida Supreme Court made it very

1 clear that in interpreting your jurisdiction and
2 determining whether you should exercise
3 jurisdiction over a particular entity, any
4 reasonable doubt over your jurisdiction to exercise
5 that jurisdiction should be resolved against the
6 exercise thereof. We believe there is reasonable
7 doubt here as to whether you have jurisdiction to
8 regulate Palm Tree, given that we believe there is
9 a tenancy there.

10 No. 2, if you are going to interpret Section
11 367.022(5), which we certainly acknowledge you have
12 that right and that responsibility, but you have
13 got to do so in accordance with the rule-making
14 provisions in Chapter 120. Not to do that would
15 expression to you an unadopted rule challenge, as I
16 mentioned earlier.

17 And finally, Commissioners, we believe that --
18 well, we really take issue with the statement in
19 staff's recommendation on page 14 that the PSC's
20 interpretation of the statute is, quote,
21 controlling. In making this statement, we believe
22 that staff has overlooked a Amendment 6 to
23 Florida's Constitution, which the voters approved
24 last November. I have a copy of that, and if you
25 would like to see a copy, I could provide it to the

1 Commission. In fact, we would ask that it be
2 entered into the record at the appropriate time.
3 But that amendment took effect at 12:01 this
4 morning. It was passed last November at the --
5 during the last election. And essentially what it
6 says, is an agency's interpretation of a statute is
7 no longer to be given deference by a court or the
8 Administrative Law Judge.

9 We believe it's important that you keep
10 Amendment 6 in mind as you move forward,
11 particularly if we are going to move forward before
12 an Administrative Law Judge at DOAH.

13 Finally, Commissioners, we believe that the
14 appropriate course here is to avoid the time and
15 the cost of an unadopted rule challenge. So we
16 would suggest that you not initiate enforcement
17 action at this point in time, and you proceed to
18 rule-making to -- and workshop the issue. Take
19 comments from the industry. Take comments from all
20 stakeholders, and fashion a policy that everyone
21 has input to, and everyone understands going
22 forward that these are the rules of the game.

23 Thank you, Commissioners, and I will turn it
24 over to Mr. Bobo to talk about some of the
25 constitutional issues and the industry-wide

1 implications.

2 MR. BOBO: Good morning, Commissioners. I am
3 Allen Bobo. I am the industry guy here. So our
4 firm basically represents mobile home parks and RV
5 parks, is our primary business.

6 So I can start by telling you that this is not
7 a one-off circumstance. There are many mobile home
8 parks in the state of Florida that are so-called
9 hybrid, or mixed use mobile home parks in which
10 there is a smattering of fee simple owned lots in
11 addition to the classic rental lots that we see in
12 mobile home parks.

13 We are governed by Chapter 723, Florida
14 Statutes, which is the Mobile Home Act. That
15 Mobile Home Act recognizes in many of the statutes
16 this mixed use variety of parks that exist in
17 Florida.

18 For example, one of the statutes allows the
19 homeowners' association for the residents to
20 negotiate the rents payable by, not only the
21 residents who rent their lot, but also the
22 residents who have mobile home subdivision lots
23 within the park. So we have one association that
24 can negotiate the rents for both types of tenancies
25 under the terms of the statute.

1 This dispute about whether our types of
2 tenancies fall within the ambit of the
3 landlord/tenant relationships expressed in
4 367.022(5) is very material to our industry. The
5 trade organizations for both the park owners and
6 the homeowners have weighed in.

7 The Florida Manufactured Housing Association
8 represents the park owners. Mr. Ayotte and
9 Ms. Killinger are here on behalf of the FMHA. They
10 have weighed. The Federation of Mobile Homeowners
11 who represents the tenant organizations inside the
12 state have also weighed in via letter to the
13 Commission. Both of them have said that they favor
14 including all types of mobile home tenancies within
15 the ambit of the exemption. If the exemption
16 applies, our dispute ends.

17 Bruce mentioned the need for rule-making. I
18 would like to echo his thoughts on that necessity.
19 And the primary reason, Commissioner, is no one
20 understands our industry. You ride up and down the
21 road, you see these mobile home parks, but you
22 don't understand how they operate. I don't believe
23 that the report demonstrates that there is an
24 understanding here about how our industry operates.

25 We would welcome the opportunity during a

1 rule-making process to describe the extent of our
2 landlord/tenant relationship, because, candidly, in
3 the mobile home park world, mobile home park owners
4 and subdivision developers know we have a
5 landlord/tenant relationship with our residents.
6 We know it because we rent them the land. On that
7 land, we construct, build and maintain a lifestyle
8 for the residents' use.

9 We build clubhouses, pools, exercise rooms,
10 shuffleboard courts, pool tables, bingo facilities,
11 dance floors, all of that is rented to our
12 residents. And for that property that they rent
13 from us, they pay rent. Some rent the land that's
14 underneath their homes in connection with the
15 common areas that are furnished by the mobile home
16 park owner. Some just rent the common areas that
17 are furnished by the mobile home park owner, and
18 they use that land just like all the other tenants
19 of the mobile home park; but for that, both types
20 of tenancies pay rent. We know it's rent because
21 the statute tells us it is.

22 The statute, the Mobile Home Act, requires
23 that we actually give the resident a 90-days notice
24 of any rent increase that we seek to impose on
25 these residents. During that 90-day period, the

1 residents are permitted to follow an alternative
2 dispute resolution process with us.

3 Now, that's both types of residents. That's
4 the guy who rents his homesite and the guy who
5 simply rents the use of our facilities, amenities
6 and other property. We have to sit down with both
7 types of residents. We have to explain and
8 disclose the material reasons for the rent
9 increase. If they ask for it, we have to actually
10 mediate that rent increase.

11 For the 30 years that was involved between the
12 time this park owner bought this park and the
13 initiation of the litigation down in Pasco County,
14 15 of those years we had negotiated rental
15 agreements in place with these lot owners where we
16 negotiated the amount of money they were going to
17 pay. They are our tenants. We agreed that we
18 would tie their increases to the Social Security
19 level increases for 15 of those years. They are
20 our tenants and we have those negotiations with
21 them. There are other things that we can explain
22 during the rule-making process.

23 The report indicates that they could find no
24 written reasonable agreement. If they could find
25 no written rental agreement, therefore, there must

1 not be a landlord/tenant relationship here. We can
2 explain during the rule-making process that in the
3 800,000 some odd tenancies that exist in Florida
4 mobile home parks, virtually none of them have
5 written rental agreements. And the reason they
6 don't is the Legislature doesn't require it. Even
7 more so, the Legislature doesn't allow you to
8 enforce having a written rental agreement. If you
9 can't make somebody have one, they won't sign one.
10 So all these tenancies in mobile home parks are
11 oral in nature.

12 The report requests that we be fined because
13 of the conclusion that we didn't have a
14 landlord/tenant relationship with our residents.
15 Well, the court found that we had a landlord tenant
16 relationship. Through four years of litigation in
17 Pasco County in circuit court, the court found, and
18 I am going to quote the Court's ruling:

19 To the extent that the terms tenancy, lot
20 rental amount and maintenance fees are used in the
21 Mobile Home Act, those terms apply to plaintiffs,
22 who are the lot owners in this case, and the
23 defendants, who are the park owner.

24 We truly believe that if we are allowed to
25 participate in a rule-making process, that we can

1 close these gaps. We can explain how our industry
2 works, as we explained it to the circuit judge.
3 The circuit judge certainly had no trouble finding
4 that a landlord/tenant relationship existed in the
5 community. We believe the Commission would also
6 find that to be the case if we just had an
7 opportunity to explain what our industry really is.

8 There is one other thing I would like to touch
9 on, too, please.

10 The circuit court has made some constitutional
11 arguments that even staff recognizes are outside
12 the ambit of the Commission's jurisdiction. If we
13 look at an organizational chart of laws, the
14 Constitution is going to sit at the top of the
15 chain.

16 The court has made a ruling that the park
17 owner, just like any other landowner in the state,
18 has a constitutional right to use their property
19 for any use, or no use at all. In other words, you
20 can't be compelled to convert your land to a
21 servient estate so that you serve those people who
22 live next door to you. We think the court is
23 right.

24 While everybody knows, as a landowner, you
25 might have to suffer access to somebody coming

1 through your land because they have a landlocked
2 parcel behind you, there has been no expansion of
3 the law to suggest that you have to serve utilities
4 to your neighbor. Through centuries of real
5 property law, that has never developed, and the
6 court has industrial accident made that finding.
7 More importantly, that finding is before the Second
8 District Court of Appeal.

9 Mr. Harrison is here on behalf of the
10 homeowners, or the lot owners. He is a fine lawyer
11 and very capable guy. We've briefed this. It's
12 been briefed to the Second District. The briefs
13 were closed, I believe, on the 27th of December.
14 There is no oral argument schedule. We are simply
15 waiting on the Second District to rule.

16 If rule-making is pursued, we can at least
17 understand during that rule-making process what the
18 Court's ruling on that constitutional issue may be
19 because that very well could be dispositive.

20 But to conclude, we truly believe if we had an
21 opportunity to explain our industry during the
22 rule-making process, you would recognize that we
23 are a landlord and tenant situation -- we are in a
24 landlord and tenant situation. The Legislature
25 refers that to us. We truly believe that if the

1 Legislature calls us landlord and tenant in Chapter
2 723, and you have an exemption that says it applies
3 to landlord and tenant, if you are going to say
4 that does not apply to our species of
5 landlord/tenant, you need to have a rule that tells
6 us that and tells us why; because if you find that
7 exemption applies, we are done. Our dispute ends,
8 and we can move on.

9 Thank you.

10 COMMISSIONER GRAHAM: Thank you, Mr. Bobo.

11 Mr. Harrison, I hear that you are a fine
12 lawyer and a very capable guy. What do you have to
13 say?

14 MR. HARRISON: I am not used to people saying
15 nice things about me like that.

16 Thank you. I am Richard Harrison, Richard A.
17 Harrison, P.A. in Tampa. I represent Mr. Schwob
18 (ph) and the other 18 or 20 so individual lot
19 owners. They are all identified in your docket as
20 interested parties. And I suppose I am the reason
21 we are all here, so you can either blame me or
22 thank me as you see fit.

23 CHAIRMAN GRAHAM: Mr. Harrison, before we
24 continue, how many clients do you have?

25 MR. HARRISON: It started out with a group

1 about 22. Some of them have dropped out. It's
2 between 18 and 20 at this point. And these are
3 people who own their individual lots within the 250
4 or so lot park.

5 Most of those lots overwhelmingly are rental
6 lots, where the park owners own the property and
7 they rent you a lot, and then you put a mobile home
8 on it. Historically -- and I am not sure how it
9 happened, I don't know that anybody is, and I don't
10 think it matters -- these originally 22 or so
11 individual lots within the park ended up being sold
12 off to people. So my clients own their lots in fee
13 simple. They do not rent those lots. They own
14 them.

15 I only want to address a couple of these
16 points because your staff has done a very thorough
17 job, and of course we fully support their
18 recommendation. I think they have done a fine job
19 on the research, and provided you with all the
20 information you need to move forward.

21 Like everybody who doesn't want to be
22 regulated, the park's representatives have come in
23 and tried to convince you that this is way more
24 complicated than it really is. It's not really
25 that complicated.

1 The first thing I want to address is the
2 suggestion that somehow this would be unfair to the
3 park, that they've acted in good faith. They
4 structured their whole business operation around
5 this notion that they were exempt, which is
6 interesting, because as your staff has pointed out
7 in its recommendation to you, this practice of the
8 park's applying water and sewer services to these
9 folks goes back many, many years, at least 30
10 years, maybe 40 years, it's not entirely clear.

11 For as long as these people have lived there,
12 for as long as it's been a park, the water and
13 sewer have been complied supplied by the park
14 owners through a common system, which they own,
15 they operate, they construct, they maintain, they
16 improved. No dispute about any of that.

17 But as your staff pointed out, at the time
18 they began providing those services, the
19 landlord/tenant exemption was not self-executing.
20 At the time they began providing those services,
21 they should have come to the PSC and requested a
22 finding that they were exempt, and that's in your
23 staff's recommendation.

24 The first time we heard about this was about
25 two years into this litigation in the circuit

1 court, where it wasn't really even an issue in our
2 case, but in one conversation, the park's counsel
3 mentioned that they were exempt under the
4 landlord/tenant exemption. And my immediate
5 response was, how can we be your tenants when we
6 own our property? We are not renting our property
7 from you.

8 If you live in a single family home, if you
9 live in a subdivision, you own your property. You
10 may have a homeowners' association that maintains a
11 clubhouse and a pool and other amenities, just like
12 they do. Nobody thinks that if you own a home, you
13 are renting the clubhouse, or you are renting the
14 pool, or you are renting a shuffleboard court.
15 That's not a landlord/tenant relationship.

16 My folks own their lots. They don't rent them
17 from the park. The park cannot be a landlord. And
18 we cannot be a tenant. To the extent they provide
19 other amenities, that's not a landlord/tenant
20 relationship. That's some sort of a use fee. Some
21 sort of a license.

22 The essence of a landlord/tenant relationship,
23 and your staff points this out, is that it is a
24 possessory interest, okay. If you rent an
25 apartment from a landlord, you have the right to

1 possess the apartment exclusively, and you have the
2 right to keep other people out. That's a
3 possessory interest.

4 If you buy a ticket to go see a movie in the
5 theater, you don't have a possessory interest. You
6 have the right to go sit in a seat, and when the
7 movie is I over, you leave. You don't have the
8 right to keep anybody else out. You are not a
9 landlord/tenant -- you are not in a landlord/tenant
10 relationship with the movie theater because you
11 bought a ticket, or that because you bought a
12 ticket to a sporting event or a concert. You have
13 the right to use it temporarily. You can't keep
14 anybody else out. When it's over, you leave.
15 That's called a license, and your staff points out
16 the difference. And these are all common concepts.
17 There is nothing new or novel to any of this.

18 The constitutional argument, I want to address
19 briefly, and then I want to talk about Chapter 723
20 briefly, but I also think it is very important for
21 this commission to understand the current state of
22 affairs.

23 The current state of affairs is that the park,
24 as we speak, has contractors on site, and surveyors
25 on site. They are marking utilities. They are

1 digging up utilities. They are installing shutoff
2 valves, and they are preparing to move forward to
3 either turn off service to these lot owners'
4 individual lots, because right now it's a common
5 unmetered system. It's just a single series of
6 pipes. And they are preparing to cut these lot
7 owners off, to disconnect these utility services.

8 The circuit court's order declaring this
9 constitutional right, which I will talk about
10 briefly, seems to have emboldened them in that
11 regard. They feel somewhat protected by that. But
12 you need to understand that there is no other
13 source of potable water or sanitary sewer for most
14 of these lots.

15 These lots are too small, under health
16 department regulations, for septic tanks. They are
17 very small typical mobile home lots. Many of them
18 are interior lots. There may be some possibility
19 for some of them of drilling individual wells, but
20 that would be extremely cost-prohibitive. And of
21 course, that well doesn't do you any good if you
22 can't have a septic -- you have got to have both
23 services.

24 But they are preparing, as we speak, to move
25 forward apparently with doing something, and they

1 have told my clients, and told others in the park,
2 that, you know, they are not -- they are never
3 going to be a utility. They will turn off the
4 water and sewer to these lots. That's what we are
5 faced with.

6 This constitutional argument is interesting,
7 and Mr. Bobo is right, it's on appeal in the Second
8 District. And our position is that the court went
9 astray here because, effectively -- although, the
10 court said, I am not invading the PSC's
11 jurisdiction. The affect is to invade the PSC's
12 jurisdiction, because it is essentially declared
13 that somebody -- who everybody agrees is acting as
14 a utility by the way, there is no dispute that they
15 are providing these services to our 20 or so
16 people. There is no dispute that if you provide
17 utility service to even one other person under the
18 law, you are a utility unless you are exempt. And
19 there is no dispute about any of those. We all
20 agree on those principles.

21 So they are acting, and have been acting for
22 30 or 40 years, as a utility by providing water and
23 sewer service to other people. And the only way
24 they are not subject to regulation is if they are
25 exempt.

1 The court said, any property owner has a
2 constitutional right to do what they want with
3 their property. Well, in a broad general sense, of
4 course that's correct.

5 And back in history, there was a point where
6 the park owners could have said, we don't want to
7 be a utility. We are not going to build this
8 system of pipes and pumps and sewer lines. We are
9 not going to be a utility. We don't want to be a
10 utility, and nobody can make us be a utility.

11 And that's a very important distinction
12 because nobody has made them do anything. They did
13 this on their own. They chose to do it, hoping,
14 thinking, believing, wishing that they were exempt,
15 or maybe knowing they weren't exempt and just not
16 bothering to ask, but nobody made them do any of
17 this. So for the court to say now, after they've
18 built a utility system, and been acting as a
19 utility for 30 or 40 years, that you have got a
20 constitutional right not to do it.

21 Think of the ramifications for that. Because
22 it doesn't matter whether it's the park as a
23 utility, or whether it's a major statewide or
24 regional utility. Could you imagine the
25 ramifications if some court said Duke Energy has a

1 right not to be an electric utility, and they can
2 should down their entire sometime system tomorrow?
3 Y'all are going to have something to say about
4 that. And that's exactly what the court has said
5 this in this case. And it doesn't matter whether
6 it's a big utility or a small utility, the
7 principle is the same. If they are a utility, and
8 if they are subject to regulation, which we believe
9 they are, then they would also be subject to this
10 commission's rules about how you terminate utility
11 services, whether you can terminate utility
12 services, you have got rules about that.

13 So we think the court went astray. It's on
14 appeal. It will get sorted out at some point.

15 The last thing I want to talk about is Chapter
16 723. And the language in 723 is a little bit
17 convoluted. I think we would all agree on that.
18 The court made some very specific findings, though,
19 and one of those findings was that we, the
20 plaintiffs, the lot owners, are not parties to any
21 mobile home lot rental agreement with these folks,
22 because the only way under Chapter 723 you can be a
23 party to a lot rental agreement is if you are
24 renting a lot, and clearly we are not. So the
25 court made that specific finding.

1 The way the act works, though, even if you are
2 not subject to it because you have a lot rental
3 agreement, there are pieces of it, five or six
4 sections of the statute that apply to the
5 subdivision scenario anyway, and that's where the
6 court said if it uses the term tenancy, it applies
7 here.

8 The Mobile Home Act is not really a picture of
9 clarity in the way it's written. And it's
10 unfortunate, and probably nobody ever envisioned
11 some of this stuff but here we are, but the court
12 very specifically said it's not deciding whether
13 landlord and tenant under your exemption are
14 satisfied here, because it knows it can't do that.

15 I don't think that anything the court said
16 about Chapter 723 can create a tenancy that
17 otherwise doesn't exist. There is no lot rental
18 agreement. We don't rent our lots. They don't
19 rent lots to us. And this notion that there is a
20 landlord/tenant agreement because we allow you to
21 use our clubhouse or our shuffleboard court -- at
22 one point they even said you are renting our
23 utility pipes, which is frankly just absurd on the
24 face of it. There is no landlord/tenant agreement.

25 They have tried to convince you that it's very

1 complicated. That you are going to have this huge
2 impact on this industry. It's not that
3 complicated. And more importantly, something needs
4 to happen, because while all this is playing out,
5 we've got a group of 18 or 20 elderly couples, many
6 of them with health issues, they are not people who
7 can simply pick up and move someplace else. They
8 don't have the resources do that.

9 These are their homesteads. These are their
10 homes. And if the park, at any moment, decides to
11 cut off these utilities, not only is that going to
12 be an individual crisis, but that may well be a
13 public health crisis, because I don't know how 20
14 couples, elderly folks, are going to survive
15 without potable water and sewer service with no
16 readily available way to replace it.

17 So we have a real problem that needs
18 attention, and this is the agency that's got the
19 jurisdiction to exercise over people who choose to
20 act and continue to act as utilities. And we ask
21 you to approve your staff's recommendation and move
22 forward.

23 They will certainly have any chance to make
24 any arguments they want to make in response to your
25 show cause order should it issue, but to suggest

1 that we delay and take sort of aside street down a
2 rule-making path is, frankly, not going to
3 accomplish anything, and allow them to continue to
4 operate as, as they continue to today, effectively
5 as a rogue utility.

6 At this moment, they are a utility not subject
7 to control by anyone. The court has said, I don't
8 have any jurisdiction to control what you do as a
9 utility. And then they come here and say, you
10 can't control what we do as a utility either
11 because we are exempt. Well, that can't go right.
12 You can't have both cases. Somebody has to be able
13 to, one, decide if they are exempt. That's you.
14 And then control and regulate people who choose to
15 operate as utilities. And that is a situation we
16 have.

17 So we ask you to move forward and support your
18 staff recommendation.

19 CHAIRMAN GRAHAM: Thank you, sir.

20 Ms. Christensen.

21 MS. CHRISTENSEN: Commissioners, we were here
22 today to support staff's recommendation and to
23 answer any questions that you may have. We would
24 be concerned if any of the customers were left
25 without water or wastewater service even on a

1 temporary basis. We think that, at least thus far,
2 this mobile home park owner has been operating a
3 utility. Whether or not the Commission chooses to
4 go forward and do a rule-making on the issue of
5 whether landlord/tenant applies, and how that
6 should be interpreted within 367, even if that is
7 something that the Commission chooses to do, as the
8 Commission has done in past cases, that would not
9 preclude you from moving forward and deciding, we
10 believe, on this recommendation to show cause.

11 So at a minimum, we would ask that, you know,
12 these customers continue to be provided water and
13 wastewater service for health and safety reasons
14 irrespective of whether or not the court believes
15 that the property owner doesn't have to provide --
16 can't be compelled to provide water or wastewater
17 service. Once they've chosen to do that, then it's
18 within this commission's jurisdiction to say you
19 can't cut them off we believe.

20 So we are here to support them, and we are
21 available to answer any other questions the
22 Commission may have.

23 CHAIRMAN GRAHAM: Thank you.

24 I have a quick question for you, Mr. Harrison.
25 You said that Palm Tree Acres is the only option

1 now for water and for wastewater. Isn't the
2 wastewater basically a pass-through to a second
3 entity?

4 MR. HARRISON: Ultimately, the wastewater
5 system connects to the Pasco County system, but the
6 only service to these individual lots is through
7 the system that is -- that was constructed and is
8 maintained by the park. There are no individual
9 meters. There is no way, because we've
10 investigated, there is no way for the individual
11 lots to connect to the county system because that
12 connection is fairly distant under a main road.
13 That's a high-pressure connection. That's not
14 where people are going to go hookup their
15 individual lots.

16 So there is -- there is no practical way to do
17 that, and I don't even think it's possible in terms
18 of the wastewater.

19 CHAIRMAN GRAHAM: That leads right to my next
20 question. Top of page four in the recommendation,
21 where there is five options that staff gave you
22 guys to try to negotiate your way through this,
23 what happened to those discussions?

24 MR. HARRISON: I am sorry, what's your
25 question, sir?

1 CHAIRMAN GRAHAM: What happened to those
2 discussions? It says here that you guys came to an
3 impasse.

4 MR. HARRISON: We actually conducted a formal
5 mediation that was not successful, and there is a
6 privilege that attaches to what people say in
7 mediation, so we can't really talk about what the
8 parties said in the mediation.

9 I can tell you generally that with some
10 guidance from your staff, there were -- there were
11 some ways that we could have addressed this. We
12 discussed them, and I think the parties discussed
13 those in good faith. We just weren't able to get
14 there. But that was not just the lawyers talking.
15 We did a formal mediation and just weren't able to
16 get to a resolution.

17 CHAIRMAN GRAHAM: Okay. Mr. May, same
18 question -- well, first of all, in this
19 subdivision, this area, the roads in between that
20 lead to each one of these, are those public roads
21 or is that owned by the mobile park association?

22 MR. MAY: I will defer to Mr. Bobo on the
23 ownership of the roads.

24 MR. BOBO: So the roads are -- the interior
25 roads are privately owned. Some of these residents

1 are on the perimeter of the property, and they are
2 on public roads. So it's a mixture of the two.

3 CHAIRMAN GRAHAM: Okay. Back to the original
4 question, top of page four, these five issues,
5 what's your theory on what happened there? Why
6 couldn't you come to some sort of --

7 MR. BOBO: Sir, I apologize, and I don't mean
8 to try to avoid your question, but the statutes
9 require that we maintain the discussions that
10 occurred in a mediation in confidence, and I am
11 uncomfortable about discussing any more than Mr.
12 Harrison what we did at the mediation.

13 COMMISSIONER GRAHAM: Okay. All right.
14 Commissioners -- first, staff, do you have anything
15 to add before I go to my commissioners?

16 MS. DUVAL: I don't believe so, Chairman,
17 other than just to reiterate some of the statements
18 that Mr. Harrison and Ms. Christensen had already
19 made.

20 COMMISSIONER GRAHAM: Okay.

21 MR. BOBO: Is there any room for rebuttal,
22 sir?

23 CHAIRMAN GRAHAM: Sure.

24 MR. MAY: Just a -- let me mention one.

25 Just to sort of respond to a couple of points

1 that Mr. Harrison made, that he suggested that
2 because the park did not come in and apply for the
3 exemption, that somehow the park should be at fault
4 for that.

5 In 1996, the Florida Legislature essentially
6 abolished the requirement that if someone believed
7 in good faith that they were entitled to the
8 exemption they had to come in and apply for it.
9 That application process was abolished. The Public
10 Service Commission had rules in place at the time.
11 They rescinded those rules. And for the last 22
12 years we have taken the position, I think a
13 reasonable position, that we had a tenancy under
14 Chapter 723, which the circuit court has endorsed
15 now, and that tenancy entitled us to the exemption.

16 To the extent that we should have come in 30
17 or 40 years ago and asked for the exemption, I
18 think if that, indeed, is a defect, which I
19 wouldn't concede is a defect, but if it is a
20 defect, I any that defect has been cured over the
21 last 22 years.

22 The other thing I wanted to mention is that he
23 basically said that we are -- it's clear that we
24 are a utility. That's the crux of the issue here.
25 We don't believe we are a utility, and we think we

1 have a good faith reason, a good faith basis for
2 making that -- taking that position.

3 It's very important, I think, for rule-making
4 purposes, you are not applying a statute here.
5 Your staff's analysis is replete with references
6 that you are essentially -- the staff is
7 recommending that you interpret Section 367.022(5).

8 The terms landlord and tenant in Section
9 367.022(5) are not defined. What you are doing now
10 is you are defining those terms for purposes of
11 fleshing out the exemption. That interpretation
12 falls, we think, squarely within the definition of
13 a rule, and if you are going to do that, we would
14 urge you do that through rule-making. That, in
15 fact, we think is required under the Administrative
16 Procedures Act as a result of the 2008 amendments.

17 The other thing to keep in mind is in 2016,
18 the Legislature made it clear that if, indeed, an
19 agency is going to rely on an unadopted rule in an
20 enforcement proceeding, which is what your staff is
21 recommending that you do, that we would have a
22 right not to challenge the rule before you, or to
23 raise that issue before you. We have an absolute
24 right to file a collateral challenge with the DOAH
25 to basically ask the Administrative Law Judge to

1 determine that this, indeed, is an unadopted rule.

2 And that's what -- you know, we would hope
3 that we don't have to go there, but I do think, in
4 full disclosure, if you approve staff's
5 recommendation, that's precisely where we are going
6 to be. We are going to have a protest to the show
7 cause order. We will have a collateral attack at
8 DOAH. And quite frankly, I don't think that's a
9 good use of your resources, or my client's
10 resources, or the Office of Public Counsel's
11 resources, or Mr. Harrison's client's resources.

12 We think the most expedient and efficient way
13 to resolve this issue is for you to go to
14 rule-making and put everyone on notice, Mr. Ayotte,
15 his industry, the stakeholders, the 800,000
16 tenancies out there that are in limbo, put them all
17 on notice and listen to them, and then formulate a
18 reasoned and balanced interpretation of the statute
19 that works for all stakeholders.

20 CHAIRMAN GRAHAM: So, Mr. May, why should this
21 be a rule-making and not a legislative fix?

22 MR. MAY: It very well could be a legislative
23 fix, but right now you are in a position -- you
24 don't have -- the Legislature has not provided you
25 with a definition of landlord, nor has it provided

1 you with a definition of tenant. Therefore, in
2 order to enforce the landlord/tenant exemption, you
3 are placed in the uncomfortable -- we didn't do
4 this. I mean, you are placed in the uncomfortable
5 position of having to interpret the statute.

6 In 2008, the Legislature said if you are going
7 to interpret the statute in a fashion that's
8 generally applicable, which this certainly would
9 be, you need to do that through rule-making. The
10 Legislature required that.

11 And I think there is a policy behind that,
12 Chairman Graham, and that is the whole policy of
13 the unadopted rule was to avoid phantom government
14 is not have one commission decide, well, this is a
15 landlord for this particular instance, and next
16 week, or next year, maybe we will look at it a
17 little different. It's to really open up the
18 process. Allow all of the stakeholders, allow --
19 take public comment. And then having all of that
20 before you, then you learn about the mobile home
21 industry, as Mr. Bobo suggested.

22 But that's the purpose of the rule-making.
23 And the rule-making, right now you are about to
24 step into what's called quasi-judicial enforcement
25 proceedings. And I think, as a matter of

1 regulatory policy, it's not appropriate to
2 establish policy that has industry-wide
3 implications in a quasi-judicial proceeding. That
4 should be done in a quasi-legislative proceeding,
5 and that's rule-making. You put on your
6 quasi-legislative hats, you listen to comments, and
7 you formulate rules so everybody understands the
8 rules of the game going forward.

9 COMMISSIONER GRAHAM: But you said that the
10 statute does not define landlord and tenant. What
11 if it's just a basic definition of landlord and
12 tenant means, and this is just unintended
13 consequences, so that's what makes me ask the
14 question, why isn't this more a legislative fix
15 because this is an unintended consequence?

16 MR. MAY: Well, I think, again, in order --
17 you are going to have to -- if you are going to
18 adopt staff's recommendation, staff's
19 recommendation, I think there is seven or eight
20 specific references where they have acknowledged
21 and they are recommending that you interpret the
22 statute. You are not applying the statute. You
23 are interpreting the statute.

24 The reason why, you know, if you look back
25 historically, at one time back in the early '90s,

1 before the Commission -- before the Legislature
2 made the exemption self-executing, the Commission
3 said, well, we are going to use the definitions of
4 landlord and tenant in Chapter 83, the
5 landlord/tenant law. We pointed out in this
6 proceeding that if you -- if you did that, the
7 definition of tenant is someone who leases a
8 dwelling unit. And nobody leases a dwelling unit
9 in the mobile home world.

10 So if you use that definition in this
11 particular instance in the mobile home park
12 industry, you are essentially going to throw the
13 regulatory net over 800,000 tenancies. So we
14 pointed that out to staff, and staff came back and
15 said, okay, well, maybe we won't use the Chapter 83
16 definitions, let's look at the Black's Law
17 dictionary.

18 Well, that may be appropriate. But again,
19 that shut be done in the context of rule-making;
20 after you understand the mobile home industry;
21 after you understand the issues and listen to all
22 of the stakeholders. That's the only thing we are
23 suggesting, Mr. Chairman.

24 MR. BOBO: And, Mr. Chairman, I can say that
25 when you say why is it your responsibility for

1 rule-making as opposed to the Legislature's
2 responsibility. Mr. Harrison points out that
3 Chapter 723 is not, in his words, a picture of
4 clarity. However, one thing 723 does tell us, it
5 tells us we are landlords. That's what it says.
6 723 says we have a landlord/tenant relationship
7 with our residents.

8 You, the Commission, are saying that the words
9 landlord and tenant in Chapter 723 somehow don't
10 qualify for landlord and tenant under 367.022(5).
11 So what we are telling you is you are making that
12 distinction between the term landlord as used in
13 723 and landlord as used in 367. We think that
14 requires rule-making.

15 So that's really where we are. If we are a
16 landlord for the purpose of the Legislature in 723,
17 we think we are a landlord for the purpose of 367,
18 so that's just -- that's it.

19 And let me anticipate one question that I
20 think may be coming our way, is the cutting off of
21 these utilities.

22 We have proceeded in court for four years.
23 Obviously, we've gotten to know each other. And
24 for four years, the circuit court has listened to
25 all of us talk, has taken evidence in some of our

1 cases and understands the exact picture that we are
2 dealings with here. There is a lot of moving parts
3 to this.

4 Some of these people appearing before you and
5 they are saying, we only want the utilities of the
6 park owner. We don't want to use any other
7 facilities. Here are the residents using our
8 facilities every day; sitting out by the pool,
9 going to our clubhouse, sharing our free dinners,
10 everything.

11 We are scheduled to appear before the judge on
12 the 24th, so two weeks from today virtually we are
13 scheduled to appear before the circuit judge in
14 Pasco County. That judge is going to take
15 evidence, and he is going to follow the rule of
16 appellate procedure that allows him to stay any
17 action to cut off the utilities.

18 Frankly, we don't oppose a stay. But for four
19 years, these folks haven't paid anything for what
20 they've been getting and what they've been using in
21 the mobile home park. We want them to have some
22 skin in the game. We are going to ask the judge,
23 we are going to tell him that we don't oppose you
24 staying it --

25 CHAIRMAN GRAHAM: Mr. Bobo, that's fine.

1 Mr. Harrison, one more last bite of the apple
2 before I come back to commissioners.

3 MR. HARRISON: Yes, sir, just one last bite on
4 the issue of the rule-making. You don't need to
5 decide what the words landlord/tenant in the
6 exemption mean in all possible scenarios that might
7 be out there in the world. All you need to do to
8 move forward with your staff's recommendation is to
9 look at the facts of this case that you have in
10 front of you and decide that there is enough of a
11 question about what they mean. You don't need to
12 define those terms universally for every possible
13 scenario. You can move forward, and they will have
14 their chance to respond to any show cause order
15 that may issue.

16 CHAIRMAN GRAHAM: Thanks you, sir.

17 Ms. DuVal?

18 MS. DUVAL: Yes, I would like to briefly
19 respond to that as well.

20 I don't believe staff has ever changed its
21 position on what the definition of landlord/tenant,
22 or if there is -- you know, there is no definition
23 set out for landlord and tenant in our exemption
24 statutes. I believe that we have only been relying
25 on the plain meaning of that.

1 When we provided these orders to the parties
2 to look at, when the Commission has looked at
3 situations similar to this before, I don't believe
4 that we were going back and forth between, oh,
5 let's look at Chapter 83 now, let's look at Black's
6 Law now. I believe that in staff's recommendation,
7 we were simply providing counter arguments to what
8 was provided to us.

9 And then also, as far as the court order, I
10 don't believe, in my reading, that the court found
11 that the park was a landlord for purposes. What
12 they said was, to the extent the terms tenancy, lot
13 rental amount and maintenance fee are used in
14 Chapter 723 of the Mobile Home Act, those terms
15 applied to the park and the lot owners. And the
16 court specifically makes no finding, adjudication
17 or declaration as to whether the plaintiffs,
18 meaning the lot owners, are a tenant, or the
19 defendant, Palm Tree Acres, is a landlord as those
20 terms are used in the PSC's exemption statute,
21 367.022(5).

22 CHAIRMAN GRAHAM: Thank you.

23 All right, Commissioners, Commissioner Brown.

24 COMMISSIONER BROWN: So I have to ask this
25 question, Mr. Harrison. There have been a lot of

1 resources expended, spent on this particular case,
2 both at the staff level, at your client's level, as
3 well as the park level. And this does appear to --
4 if our decision today, if we choose to proceed, it
5 doesn't appear to have industry-wide implications,
6 and with -- under the understanding over the past
7 30 years, there was this inherent landlord/tenant
8 relationship up until the four years ago, when the
9 covenants expired. The parties have been acting in
10 good faith together here. It just -- in looking at
11 the different options that were available to remedy
12 the situation that you have here today, why do your
13 clients want us to have jurisdiction?

14 MR. HARRISON: Well, I think in part because
15 they don't see any other alternative. This dispute
16 really began four or so years ago. Now, all of the
17 people in the park, whether they are my people who
18 own lots, or whether they are the other 200 and
19 something folks who rent a lot, get an annual
20 statement from the park that says this is how much
21 your monthly fee is going to be. It's called rent
22 because that's what the mobile home park says. And
23 for most of those people, they are actually
24 tenants, and there was a slight difference in the
25 amounts, which makes sense, because if you are

1 renting a lot from the park, well, you are going to
2 pay something for that, too.

3 So our amount was somewhat less than what
4 renters were paying because we are not renting any
5 lot. But the rest of that money that they were
6 paying was not broken out in any way. It was a
7 single universal fee to cover these utility
8 services plus those amenities, plus other things
9 that the park provides, like roads and maintenance
10 and electric lights, and all those things that you
11 would need.

12 COMMISSIONER BROWN: So there is a lot of
13 different bundled services that those -- that rent
14 amount covered over the years. There is not a
15 meter, a separate meter for each mobile home?

16 MR. HARRISON: Correct. Right. And the
17 dispute started because my folks said, you know,
18 again some of these people are very, very old.
19 Many of them are frail and have a variety of health
20 issues. Some of my folks --

21 COMMISSIONER BROWN: It's a shame they are
22 paying a lot of money in legal fees over the four
23 years.

24 MR. HARRISON: Well, I don't know that they
25 are ever going to pay what my accounting department

1 tells me the fees are, and that's okay. We are
2 going to see it to the end, and at some point all
3 be over. Sometimes you just do things because
4 somebody has to do them.

5 But the dispute started because some of my
6 folks said, look, we don't really care about the
7 clubhouse. We are not going to use the
8 shuffleboard court. We are not using these other
9 amenities. What we would like to know is what's
10 the actual cost that you are charging us for water
11 and sewer. And we understand that we have got to
12 pay you for that. Now, Mr. Bobo said we haven't
13 been paying. What he didn't tell you was that
14 throughout the litigation, some of my folks
15 actually wrote a check every month and sent it to
16 the park and the park didn't cash them. They
17 tossed them in a drawer, the checks all went stale.
18 So finally I said, if you are not going to cash the
19 checks, don't bother.

20 But they all understand. I have told them
21 repeatedly, you are not entitled to free water and
22 sewer. Nobody gets free utilities. That's not
23 what this is about.

24 COMMISSIONER BROWN: But the past four years,
25 the 20 so customers who you represent, they have

1 not paid a dime to the park for any of the
2 services?

3 MR. HARRISON: No, that's not true. Some have
4 written checks for the full amount. Some have
5 written checks for some partial amount. And
6 frankly, they took a guess at what would be enough
7 to cover the water and the sewer. Those checks
8 that they sent were never cashed.

9 So it's not fair to say they didn't pay. If I
10 give you a check and you choose not to cash it, you
11 can't say I didn't pay you. At some point we
12 figured out they are not cashing any of these
13 checks. So I said, set your money aside and, you
14 know, there is no reason to keep writing checks
15 that they are not going to cash. And they told us,
16 we are not going to cash your checks, which I
17 understand because they don't want that to be some
18 kind of a waiver of their legal argument. So there
19 is no point in everybody writing checks every month
20 that everybody understands nobody is going to cash.

21 COMMISSIONER BROWN: I mean, this is just such
22 a convoluted messy, messy situation before us
23 today. It would have been nice of the parties to
24 be able to have mediated this, because this does
25 have industry-wide ramifications. I do believe I

1 agree with the park on that.

2 And I also believe that mobile home parks are
3 a niche industry. I personally don't understand
4 the dynamics that are going on, what the services
5 are being pro provided.

6 Mr. Bobo, I know you are familiar with this
7 industry, correct?

8 MR. BOBO: Yes, ma'am.

9 COMMISSIONER BROWN: So, Mr. Harrison
10 suggested that a landlord/tenant relationship, of
11 course, conveys a possessory interest. What would
12 you -- what do you think that the park -- what
13 possessory interest specifically do you think the
14 park has over the lot owners?

15 MR. BOBO: Thank you.

16 Mr. Harrison said, quote: We are not renting
17 our property from you. He is right. But you are
18 renting our property from us.

19 So these residents are renting our property
20 from us. They are renting. They are using the
21 recreation facilities. They are using our
22 management, our services, our pool, our
23 shuffleboard courts. They are using our bingo
24 facilities. They are coming to our free lunches.
25 They are renting our property from us every day.

1 So he talks about a movie theater. When you
2 go into a movie theater, that's a license. You are
3 a lawyer, you know that, when you go in and pull a
4 license. But if I go on to the paper company's
5 land and I'm using it for a hunting lease, I am
6 using it for one particular person -- or for one
7 particular purpose, and I am not using it to the
8 exclusion of the other lease members, but I still
9 have a hunting lease on that property.

10 They are renting our land. They are utilizing
11 the lifestyles that we create, construct and
12 maintain, and they are renting that from us.

13 COMMISSIONER BROWN: So you suggested that
14 there are eight -- did you say 800,000?

15 MR. BOBO: There is about 800,000 total
16 manufactured housing tenancies in the state, yes,
17 ma'am.

18 COMMISSIONER BROWN: So of those, obviously --
19 I am not familiar with a variety -- that we have
20 service. I can't specify who we have jurisdiction
21 over in the mobile home park industry at this time.

22 MR. BOBO: Right.

23 COMMISSIONER BROWN: Are you aware of how the
24 breakdown is? Is it typical -- is it standard
25 rent? How does it apply with regard to those

1 mobile home parks that provide water and wastewater
2 services?

3 MR. BOBO: You mean -- I want to understand
4 the question. You mean how many provide water and
5 sewer as part of rent?

6 COMMISSIONER BROWN: Yes.

7 MR. BOBO: I polled one client that has about
8 120 parks, and they said they had about 30 out of
9 the 120 that they gave water and sewer as part of
10 the lot rent.

11 COMMISSIONER BROWN: And then I imagine
12 another utility provider for the other parks
13 provided service.

14 MR. BOBO: We have -- there are all kinds of
15 things. Like at this particular property, we
16 control the collection -- or the disposal system
17 and the lift station for the sewer disposal, but
18 then it's disposed actually into Pasco County.
19 There are a lot of those kind of situations.

20 And then there are some situations, just like
21 this one, where we maintain our own wellfield, and
22 we supply the water individually.

23 COMMISSIONER BROWN: So just from a cost-based
24 perspective, okay, of the water and wastewater
25 services that the park provides, how much of that

1 percentage-wise over all of the rent would you say
2 that it's covered? I am just trying get an
3 understanding for the reason, the core reason for
4 this dispute.

5 MR. BOBO: I couldn't guess on that number.

6 COMMISSIONER BROWN: I just don't understand
7 how you all have not been able to work together.
8 You have had a relationship for 30 plus years, and
9 so much expense and time has gone wasted.

10 Mr. Chairman, I don't really have anything
11 more to say at this time.

12 MR. HARRISON: Mr. Chairman, may I have one
13 moment to follow up on a point that the
14 Commissioner just made?

15 CHAIRMAN GRAHAM: We will, circle back to you.

16 MR. HARRISON: Thank you.

17 CHAIRMAN GRAHAM: Commissioner Clark.

18 COMMISSIONER CLARK: I want to just,
19 Commissioner Brown, thank you. I think you hit on
20 some very key points here, and I want to just
21 expound on the one, the 800,000. I don't see
22 800,000 consumers being the issue here, because
23 seems to me, as my basic elementary understanding
24 is that you do have a landlord/tenant relationship
25 with a very, very large portion of those. Those

1 issues kind of address themselves.

2 Isn't this specifically a case about where you
3 have individual fee simple lot owners inside of an
4 existing mobile home park? Is that a more accurate
5 assessment of what we are dealing with here?

6 MR. HARRISON: Yes. And that was the point I
7 was going to make in follow-up. I don't know that
8 there is an industry-wide problem of any
9 significant magnitude for exactly that reason. The
10 vast majority of lots in mobile home parks across
11 the state are true rental lots because they are
12 true rental parks.

13 This is an anomaly, No. 1. No. 2, it's a
14 situation this commission has dealt with before in
15 your staff recommendation. There is at least one
16 other instance, and I think there may have been a
17 second instance, in which the Commission ruled in
18 exactly this situation, that lots owned by -- in
19 fee simple within a mobile home park don't get you
20 under the landlord/tenant exemption.

21 So, one, nobody is asking you to do anything
22 new and different. And you are correct,
23 Commissioner Clark, it's not the number of total
24 mobile home lots that matters, because
25 overwhelmingly, those are pure rental lots.

1 MR. BOBO: Commissioner, Chapter 723 covers
2 both types of tenancies that you are discussing.
3 So Chapter 723 indicates that we have this
4 landlord/tenant relationship with both types. And,
5 in fact, we negotiate our rents with both types of
6 tenants.

7 All of those 800,000 are not fee simple lot
8 owners. But I can tell you it is not uncommon to
9 have fee simple lot owners, or so-called mixed use
10 community. I was dealing with one yesterday that a
11 sale has now had to be extended on a \$30 million
12 transaction because as a result of what we are
13 doing here today, we don't know what to do with
14 these 52 lot owners who are in a 400-space park.

15 So these issues are a problem, and the statute
16 still refers to us as having a landlord/tenant
17 relationship with these type of tenancies.

18 COMMISSIONER CLARK: Mr. Bobo, could you
19 explain -- define for me kind of the -- going back
20 to the rent issue, and you call it -- you keep
21 calling it. In most of these cases, do you have
22 some sort of homeowners' association, or lot
23 owners' association that would negotiate the fees
24 for the pool, the common areas, and things like
25 that?

1 MR. BOBO: Yes, sir, we absolutely do. And
2 like in this particular park, I could show you
3 multiple agreements where the homeowners'
4 association actually sat down and negotiated the
5 rent for those people who rent their lots, as well
6 as those people who own their lots.

7 In fact, the statute, 72 -- I can't remember
8 the number. But the statute gives the power to the
9 homeowners' association to negotiate with the park
10 owner for the rent payable by both types of
11 tenancies.

12 So they can reach an agreement with us for
13 what the rent is going to be for the next year, or
14 the next, the next and the next, and then the
15 statute contemplates that if we reduce that
16 agreement to writing we have a binding agreement
17 urged the law.

18 COMMISSIONER CLARK: Okay. So in terms of you
19 have the right -- they have the homeowners'
20 association, you are telling me that?

21 MR. BOBO: They do.

22 COMMISSIONER CLARK: And you have the right to
23 negotiate. And the statute gives you the right to
24 negotiate with them. Does it give you remedy if
25 you don't meet a resolution?

1 MR. BOBO: It gives them remedies, yes, sir.

2 COMMISSIONER CLARK: What is their remedy?

3 MR. BOBO: Sue us for unreasonable rent.

4 COMMISSIONER CLARK: And have they done that?

5 MR. BOBO: Actually they have.

6 COMMISSIONER CLARK: They have?

7 MR. BOBO: One time. They really didn't sue
8 us for unreasonable rent -- no, sir, let me strike
9 that. They sued us over a utility charge for
10 connection to Pasco County's utilities, but then
11 that ultimately was resolved, and for 34 years we
12 have agreed periodically as to what the rent would
13 be for each of these types.

14 COMMISSIONER CLARK: And could you share with
15 me what the rents are? I would like to know how
16 much they are paying on each of those.

17 MR. BOBO: I can get real close. I mean, I
18 could tell you that the --

19 COMMISSIONER CLARK: Ballpark.

20 MR. BOBO: -- the lot owned tenancies were
21 paying a little more than half of the rent that was
22 payable --

23 COMMISSIONER CLARK: 500 a year? 10,000 a
24 year?

25 MR. BOBO: Less than that. It was, like, high

1 threes, low fours.

2 COMMISSIONER CLARK: 300 a year for water and
3 s --

4 MR. BOBO: No, a month.

5 COMMISSIONER CLARK: A month, okay. \$300 a
6 month, and that included?

7 MR. BOBO: Water, sewer, the use of all the
8 park facilities, and then the residents who didn't
9 own their lots were paying about double.

10 COMMISSIONER CLARK: 600. So it's specific --

11 MR. BOBO: And that's round numbers.

12 COMMISSIONER CLARK: Okay. So your water --
13 your sewer system is a pass-through. It goes
14 straight into lines that you own, maintain. You
15 have a lift station. You pass that to Pasco. You
16 pay a fee to Pasco, I assume, based on a metered
17 charge, or a flat charge. How is your water
18 served? Do you have your own wellfields?

19 MR. BOBO: Yes, sir. We have a wellfield
20 adjacent to the property. Obviously, it's a
21 designated wellfield. It has two wells, and it has
22 all the treatment and generator facilities we are
23 required to have by law. And then those wellfields
24 service the mobile home park inclusive of these lot
25 owners.

1 COMMISSIONER CLARK: And I will of that is
2 billed at an arbitrary flat amount? You don't
3 calculate usage or charge usage to anyone?

4 MR. BOBO: No, sir. Everybody -- we have
5 always offered, for 34 years, a package of
6 services. So you can use everything and you get
7 water and sewer as part of the package with no
8 separate charge.

9 COMMISSIONER CLARK: Do you require any
10 deposits from any of your customers?

11 MR. BOBO: No, sir.

12 COMMISSIONER CLARK: That's all I have, Mr.
13 Chairman.

14 CHAIRMAN GRAHAM: Commissioner Fay.

15 COMMISSIONER FAY: Thank you, Mr. Chairman.

16 I will start with my first question probably
17 with Margo, just to help me procedurally.

18 So we have a ruling from the circuit court
19 that's under cert petition to the Second DCA that's
20 pending appeal, correct?

21 MS. DUVAL: Yes, that's my understanding.

22 COMMISSIONER FAY: Okay. We also have the
23 staff recommendation for the show cause order in
24 front of us at that time, which would initiate the
25 procedure of the park going through the process of

1 showing why they believe they don't meet
2 certification requirements -- or they don't need to
3 meet certification requirements and/or need an
4 exemption; is that correct?

5 MS. DUVAL: With the exception of the
6 exemption part. So staff's recommendation is for
7 the park to show cause as to why they shouldn't be
8 assessed the fine, why they shouldn't pay the fine,
9 and why they shouldn't bring themselves into
10 compliance by submitting applications for the
11 certificates.

12 COMMISSIONER FAY: And so part --

13 MS. DUVAL: I am presuming that --

14 COMMISSIONER FAY: Go ahead.

15 MS. DUVAL: -- the exemption would be
16 something they would bring up in their response.

17 COMMISSIONER FAY: Exactly. So part of what
18 they would argue would be those exemption
19 components in there.

20 MS. DUVAL: I would expect that.

21 COMMISSIONER FAY: Okay. And then we also
22 have a letter from Mr. May stating that based on
23 the decision made by the Commission, there would be
24 a 120 challenge to an undelegated authority for a
25 decision; is that also correct?

1 MS. DUVAL: That's my understanding, that if
2 the Commission were to vote to accept staff's
3 recommendation today, that that would be the
4 response from the park.

5 COMMISSIONER FAY: Okay. And in addition to
6 the show cause decision, there is also, under 120,
7 ability for a request for a hearing at some point
8 after that show cause decision is completed; is
9 that correct?

10 MS. DUVAL: Correct. Yes. And we've laid
11 that out in the staff recommendation. So the
12 options for the park are to provide a response, or
13 provide a response and request a hearing.

14 COMMISSIONER FAY: So if -- I just want to
15 make sure I am clear on what legally would be the
16 next step if the Commission makes a certain
17 decision.

18 Would there be a potential, I guess, stay, or
19 any sort of decision being intertwined? Because if
20 the challenge for undelegated authority is pending
21 at the same time that the show cause order and/or
22 the hearing is requested, I would presume that --
23 and if the Chair will allow me, I presume counsel
24 can respond to that, but I am just curious how that
25 would move forward at the same time.

1 MS. DUVAL: Staff is under the belief that we
2 can move forward with the show cause proceeding.
3 If the park decides to go forward with their
4 unadopted rule challenge, that's obviously their
5 choice, but there is -- built into the show cause
6 proceedings, there is the opportunity for a
7 response within 21 days. I am assuming that a
8 hearing would be requested, and then at that point
9 it would be a matter of setting it for hearing, so
10 they could run simultaneously.

11 COMMISSIONER FAY: Okay. Because -- I mean --
12 I guess -- I presume either party is entitled to
13 that hearing request. And the only component of it
14 to me that I think is -- I wouldn't say the only,
15 probably one of the most relevant components is I
16 just want to ensure that, from a due process
17 perspective, that we have this information in front
18 of us now, we are getting information from both of
19 the parties. If a hearing was, a formal hearing
20 was requested under that, it would trigger specific
21 procedures that would mandate certain staffs and
22 certain roles, prosecutorial roles and others who
23 serve in just sort of an advisory commission role;
24 is that correct, too?

25 MS. DUVAL: Yes.

1 COMMISSIONER FAY: Okay. All right. Mr.
2 Chairman, is it -- can I ask if the counsel could
3 respond to that, please? Thank you.

4 CHAIRMAN GRAHAM: Sure.

5 COMMISSIONER FAY: And I am happy to start
6 with Mr. May.

7 MR. MAY: Sure. Commissioner Fay, the way
8 things -- we certainly hope this doesn't -- this is
9 not the way the way things unfold, but if the
10 Commission were to approve staff's recommendation,
11 again we believe that you would then be relying on
12 an unadopted rule to bring an enforcement action
13 against our client, Palm Tree.

14 So the way things would unfold, presumably you
15 would issue an Order to Show Cause within 10 or 20
16 days after today's vote.

17 We have already put the Commission on notice
18 last Friday that if, indeed, that's the course,
19 then we will bring a what's called a 120.56
20 challenge to an unadopted rule at DOAH. Again, not
21 to overstate or to make any -- I am not threatening
22 anything, but the way things unfold is the
23 Legislature put real teeth into the unadopted rule
24 prohibition back in 2008. And so the purpose of us
25 providing the notice on Friday was to put you all

1 on notice that if, indeed, you did rely on an
2 unadopted rule, we would file the challenge at
3 DOAH. And the purpose of the notice on Friday was
4 to put you on notice that you would be subject to,
5 or vulnerable to fees and costs if the
6 Administrative Law Judge determined that, yes, this
7 was an unadopted rule and you should have gone
8 through rule-making.

9 So the way the statute works, 120.595, is that
10 if you don't adopt rules, if you don't -- if you
11 issue the show cause order and we file our
12 unadopted rule challenge at DOAH, and we also file
13 a protest to the show cause order. So we will have
14 two parallel proceedings.

15 COMMISSIONER FAY: And the appellate decision
16 pending.

17 MR. MAY: And then the appellate decision
18 pending. The issue that I think -- and Mr. Hetrick
19 certainly is very familiar with the unadopted rule.
20 There are some fees and costs vulnerability and
21 exposure to the Commission, if you were to
22 eventually adopt rules, I think your fees are
23 capped at \$50,000. If you don't adopt rules, then
24 there is no cap. The DBPR recently, Administrative
25 Law Judge awarded \$160,000 in fees against that

1 agency for moving forward with an unadopted rule.

2 And I just -- again, that's not a threat.

3 It's just, I think it's in full disclosure.

4 Everybody needs to understand how things are going
5 to unfold here. And again, I don't think that's
6 the most efficient use of our resources. What we
7 believe the solution is is not to proceed forward
8 with the enforcement action, but to go ahead and
9 adopt rules and put everybody in the industry on
10 notice as to, you know, what qualifies and what
11 doesn't qualify for the exemption, because right
12 now there is a great deal of uncertainty.

13 COMMISSIONER FAY: But you would have the
14 intent of responding to a show cause from the
15 Commission while this challenges is pending?

16 MR. MAY: We would have -- we would -- if the
17 Commission issues a show cause order, we will
18 protest that order. So there will be a 120.57
19 hearing ongoing at the Commission. At the same
20 time file a collateral unadopted rule change at
21 DOAH. That will be a separate proceeding. And at
22 the same time, as you mentioned, there is the
23 appeal before the Second DCA.

24 COMMISSIONER FAY: And when you say protest
25 the decision on 120.57, so you don't mean just ask

1 for an agency hearing. You mean actually challenge
2 that preliminary decision, or the show cause
3 decision?

4 MR. MAY: Well, the way -- I will have to
5 defer to staff, but my understanding is the way
6 show cause orders are structured, they require us
7 to either concede that we are subject to the
8 utility -- to the Commission's jurisdiction, come
9 in with an application and pay a \$5,000 fine, or we
10 protest, and in that protest we have to identify
11 disputed issues of fact and law, which we would
12 intend to do.

13 COMMISSIONER FAY: I thought they were
14 entitled to request a hearing.

15 MS. HELTON: A protest is essentially request
16 for a hearing. That's the vernacular for that.

17 COMMISSIONER FAY: Okay. Thank you.

18 And you intend to do that?

19 MR. MAY: We would do that, but only if the
20 Commission were to move forward with staff's
21 recommendation today.

22 COMMISSIONER FAY: Okay.

23 Mr. Harrison, did you --

24 MR. HARRISON: Yes, sir. Yeah, I would assume
25 that if a show cause order were to issue, the park

1 would respond and assert -- their reason they would
2 show for not being regulated is they would come in
3 and argue that they are exempt, the issue we have
4 been taking about. And so within the context of
5 your show cause proceeding, somebody, an
6 Administrative Law Judge or some other agency will
7 decide that issue.

8 So they -- within the context of the show
9 cause action, they would have all their due process
10 rights to make their exemption argument. And of
11 course, if they choose to do something else in
12 terms of a rule challenge, that certainly has
13 whatever set of due process rights go with that.

14 COMMISSIONER FAY: Now -- and just one second.
15 I didn't want to ^{leave at 2/17/19} believe Ms. Christensen out if you
16 wanted to respond.

17 MS. CHRISTENSEN: I think that's correct. I
18 mean, I think you can have these two processes
19 going on parallel tracks, if, you know, that is the
20 utility's decision that they want to challenge this
21 definition of landlord and tenant is an unadopted
22 rule, they certainly have that discretion. But,
23 you know, there is no statutory time limit, that I
24 am aware of, as far as show cause proceedings, so
25 that gives the Commission some latitude as to how

1 you schedule a protested show cause and when that
2 would go forward to hearing.

3 So there is some ability for the Commission to
4 coordinate the two proceedings, if they were to go
5 forward.

6 COMMISSIONER FAY: Yeah. And I -- just as
7 sort of a closing comment on the issue, I mean, I
8 want to ensure that the resources are being used
9 efficiently and both sides have been, I think for
10 four years now, litigating this dispute. So how we
11 move forward, I think, procedurally is important to
12 try to get to some finalized decision.

13 I do think both parties have -- I don't want
14 to make a concession for you, Mr. Harrison, but it
15 is clear that this decision does have a broader
16 impact than the facts that are in front of us. I
17 think there is some debate as to if it would
18 trigger rule-making or not, but I think that is
19 relevant to our decision.

20 Mr. Harrison, I do want to ask you, I guess
21 sort of a clarifying question. You mentioned that
22 you had 20 to 18 homeowners. The staff analysis
23 explains some of that, but it's my understanding --
24 I guess you had 22 initially. When you say you
25 have 18 or 22, can you explain -- are there some

1 people who are not formalized as parties, and are
2 there homeowners who are not, I guess not in a
3 agreeance with moving forward with this?

4 MR. HARRISON: No. The discrepancy, for lack
5 of a better word, is that when this case started
6 four years ago, the group was, I want to say, 22 or
7 23 lot owners, and some of them are husband and
8 wife, you know, owned jointly. As the litigation
9 has progressed, at least a couple of those that I
10 am aware of have either moved out of the park, or
11 actually sold their lots to the park, so they are
12 no longer involved.

13 So the number has reduced over time as the
14 litigation has moved forward. I think the current
15 number is 18, but don't hold me to that. It's in
16 that neighborhood. It's less than the original 21
17 or 22 that we started with.

18 COMMISSIONER FAY: And that's just because you
19 may not have received notice from them, or -- I am
20 confused as to why you don't know who is included
21 in this.

22 MR. HARRISON: Some of them actually have --
23 we just learned of another one recently of one of
24 the owners who sold their lot to the park, and we
25 didn't hear about it until it had already happened.

1 So some of these folks, I think, are getting
2 frustrated. Again, they are mostly elderly folks.
3 This is not what they want to do with the rest of
4 their lives. So, yeah, we had another one
5 recently. We had another one earlier, where the
6 lot owner, without consulting with us, without
7 checking with us, worked out some deal with the
8 park and sold their lots. So obviously, when they
9 sell their lot, they have no longer have any issue
10 to be involved in, and we didn't learn about that
11 until after-the-fact.

12 COMMISSIONER FAY: Sure. And can you just
13 clarify for me what -- and I know, since more than
14 one individual here, it gets complicated, but the
15 intent of moving forward with this action, your
16 comments earlier were basically that it's really
17 the only option left to try to get resolution, and
18 I guess in your opinion.

19 Does resolution include being a regulated
20 entity even if the costs aren't known, if what we
21 move forward as under a regulated entity may impact
22 what those individuals pay related to their water
23 and wastewater?

24 MR. HARRISON: Yes. And the property owners,
25 the lot owners understand that, and I have

1 explained it to them. You know, one of the things
2 that comes with regulation of a utility is
3 rate-making and everything that goes into that.
4 And they understand that, and we have no way to
5 predict. We don't know what the finances of the
6 park are, or what their expenses would be.

7 But, yes, they do understand that one of the
8 things that comes with regulation is the park's
9 ability and the necessity of a rate-making process,
10 and that ends up being what it is, and it may or
11 may not be more than what they are paying now.

12 Part of the problem is -- and again, this all
13 started because they don't know what they are
14 paying for water and sewer. The park says, well,
15 we are throwing it in free with the other stuff,
16 but if you say I don't want to pay for the other
17 stuff because I don't use it, what am I paying for
18 water?

19 COMMISSIONER FAY: Sure. And that's what I am
20 trying to get at. So transparency is the key
21 issue, even if it ends up being more -- the expense
22 is more to provide that service --

23 MR. HARRISON: Right.

24 COMMISSIONER FAY: -- that's okay?

25 MR. HARRISON: Right, because if that happens,

1 then there would have -- then their global
2 universal monthly fee that includes everything
3 couldn't be a universal fee anymore because there
4 would be one rate for utility services and then
5 some other fee for all those other amenities, and
6 then at least everybody would know what the water
7 and sewer charges are.

8 COMMISSIONER FAY: And they also understand,
9 depending on the decision, it may impact everyone
10 who is within this park --

11 MR. HARRISON: Yes, sir.

12 COMMISSIONER FAY: Is that correct, too?

13 MR. HARRISON: Yes.

14 COMMISSIONER FAY: So out of the 20 something,
15 the 222 renters would also be impacted, correct?

16 MR. HARRISON: Right. I think the serve -- if
17 the ultimate conclusion of all of this is that,
18 yes, they are a utility, and, no, they are not
19 exempt, then I think the service area would be the
20 entire park.

21 COMMISSIONER FAY: Okay. Mr. Chairman, I
22 might have a recommendation, but I will let
23 Commissioner Polmann, or anybody else who has --

24 CHAIRMAN GRAHAM: Commissioner Polmann.

25 COMMISSIONER POLMANN: Thank you, Mr.

1 Chairman.

2 A very interesting discussion here today, but
3 honestly, I don't know that anything has been
4 presented here today that I would see as new or
5 additional information. Certainly nothing new or
6 additional that I would interpret as leading toward
7 resolution.

8 There is a lot of reference to the mediation,
9 and things have been presented that are maybe
10 clarification, but I don't think we've had any
11 additional or new information. There has been
12 discussion about next steps, and so forth.

13 In terms of looking at what we already have in
14 the record, and looking at authority, case law and
15 facts presented in the case, it gives me reason to
16 think that this entity should be a regulated
17 utility. I don't -- I don't see it otherwise.

18 And it's a lot of information here staff has
19 presented in the analysis. I think it's very
20 informative. I appreciate the briefing I have had
21 on this. But as I understand the action today,
22 staff is asking this commission for authority to
23 formalize the process in order to move forward in
24 an orderly manner, and it's very specific to the
25 show cause.

1 As I see it, all parties, their due process
2 rights are maintained. There was discussion here
3 about next steps, things that may be filed, a rule
4 challenge, and so forth. I think Ms. DuVal has
5 answered aspects of that in terms of timing,
6 coordination.

7 As I understand it, just for clarification,
8 Ms. DuVal, in your recommendation under Issue 1,
9 there is a requirement for a 21-day turnaround on a
10 show cause response, is that correct? So that is a
11 specific deadline?

12 MS. DUVAL: Yes, that's correct. And that
13 comes from the uniform rules that apply to agencies
14 for these types of procedures.

15 COMMISSIONER POLMANN: So other than that 21
16 days that Ms. Christensen identified in terms of if
17 the mobile home Palm Tree Acres request a hearing,
18 as you have outlined here among the various
19 alternative steps, it's if there is a request for
20 hearing, then a schedule will be set, but there is
21 no particular time limit for that. That's just
22 according to the hearing officer, and things would
23 proceed --

24 MS. DUVAL: That's correct.

25 COMMISSIONER POLMANN: -- as they will?

1 MS. DUVAL: Yes, that's correct.

2 COMMISSIONER POLMANN: Okay. So if there is
3 rule challenge or anything else that comes, those
4 schedules and calendars would just be coordinated?

5 MS. DUVAL: That's correct.

6 COMMISSIONER POLMANN: Okay. Okay.

7 Mr. Chairman, I don't know what Commissioner
8 Fay had in mind, but I am prepared to vote whenever
9 the Commission is ready. Thank you, Mr. Chairman.

10 CHAIRMAN GRAHAM: Thank you.

11 Mr. May and Mr. Bobo, what sort of
12 fact-finding do you think that is going to come out
13 of rule-making that would not come out of the
14 hearing that follows the show cause?

15 MR. MAY: I guess, No. 1, I think it's
16 important to understand that when you have the
17 collateral unadopted rule challenge at DOAH, the
18 Legislature, in 2008, amended Chapter 120.57 to
19 make it very clear that an agency like the Public
20 Service Commission cannot rely on an unadopted rule
21 in an enforcement proceeding.

22 So your's going to -- what you are going to
23 have is you will have parallel proceedings, one at
24 DOAH. And the purpose of the DOAH proceeding, the
25 Administrative Law Judge will look at the -- it

1 will be a very -- it will be -- presumably it will
2 be an expedited hearing. The Administrative Law
3 Judge will look at, you know, what you have done
4 today. They will look at the staff's
5 recommendation.

6 CHAIRMAN GRAHAM: I realize what you are
7 saying, and staff is really not worried about
8 the -- what's going on in DOAH and what happens
9 over there. They are confident enough that that's
10 not going to be an issue. I am talking about back
11 before you were talking about we can put more
12 things on the record. We can do more fact-finding.
13 We can do more this, more this. What is it that
14 you cannot do in the hearing that you think you can
15 do in the rule-making?

16 MR. MAY: With all due respect, Mr. Chairman,
17 the Legislature has delegated to the Administrative
18 Law Judge at DOAH the jurisdiction and the
19 responsibility to determine what's an unadopted
20 rule and what's not. That's really outside of your
21 purview.

22 So do you are not -- you are not -- with all
23 respect, you don't have the authority to determine
24 what's an unadopted rule and what's not an
25 unadopted rule. That's the decision of the

1 Administrative Law Judge at DOAH, and that's the
2 reason we would go there. That's why -- I hope
3 that explains, kind of answers your question.
4 That's what you can't do here.

5 CHAIRMAN GRAHAM: No, I just -- when you and
6 Mr. Bobo were speaking earlier, you made it sound
7 like there is so much more that needs to be into
8 the record, there is so much more we need to talk
9 about and therefore we need to go to rule-making.
10 And I was saying, if it's just a fact-finding
11 mission, then why do you have to do rule-making?
12 Why can't you do it in the hearing? That's the
13 question I am trying to ask you now. And you are
14 saying that that's not the case.

15 MR. MAY: Right. That's -- your role is not
16 to determine what's an unadopted rule and what's
17 not. That's within the exclusive province of the
18 DOAH hearing officer, the Administrative Law Judge.

19 CHAIRMAN GRAHAM: Commissioner Clark.

20 MR. HETRICK: Excuse me, Mr. Chair, just to
21 clarification, and I am not trying to put words in
22 your mouth, but, Mr. May, I think what the Chairman
23 is asking is what additional facts would you
24 develop if the Commission were to go to rule-making
25 in that process, versus going through the actual

1 120.57 hearing once the show cause is issued. What
2 would be the difference, not what the
3 Administrative Law Judge would do.

4 MR. MAY: I'm sorry. I misunderstood the
5 question.

6 In that regard, the -- to me, the beauty of
7 the rule-making at DOAH is the -- excuse me, the
8 rule-making proceeding, as opposed to the
9 adjudicatory proceeding, allows you to put on your
10 legislative hat, and allows you to accept the
11 comments and testimony and the positions of the
12 entire industry.

13 In a formal 120.57 adjudicatory proceeding,
14 you don't have that flexibility. You don't have
15 that leeway, so you are not able to really develop
16 the policy, we think, in an appropriate way, and
17 that's one of the benefits, we believe, of
18 rule-making versus trying to establish policy
19 through adjudication.

20 CHAIRMAN GRAHAM: So basically it's just only
21 the facts are presenting in the hearing are the
22 only ones we can make the decision off of rather
23 than what we think the future lies.

24 Commissioner Clark.

25 COMMISSIONER CLARK: Thank you, Mr. Chairman.

1 I got two quick questions. I am trying to
2 still stay on the utility side of this thing so
3 that I understand.

4 Two questions: Are you accepting full fee
5 payment that you are billing the lot owners now if
6 they pay you in full?

7 MR. BOBO: No, sir, Mr. Commissioner. Right
8 now, there are 8 of 17 lot owners who tender a
9 check for \$90, which is being refused. The rest of
10 them are not paying anything.

11 We agreed with staff long ago that we would
12 not charge these residents for utility services
13 until the circuit court had an opportunity to rule
14 on the issue. Staff, likewise, agreed that they
15 wouldn't seek to show cause proceedings against us.

16 We still have not charged the residents for
17 utility service. In fact, we amended our circuit
18 court pleadings to take out any request for utility
19 service costs.

20 COMMISSIONER CLARK: You kept alluding to the
21 fact they are using your services free of charge,
22 but the fact is you are not billing them for these
23 amenities; is that correct?

24 MR. BOBO: Based upon our understanding with
25 staff --

1 COMMISSIONER CLARK: Based on the agreement.

2 MR. BOBO: -- we would in the bill them for
3 that during the pendency of the circuit court
4 action, yes, sir.

5 COMMISSIONER CLARK: That was an agreement
6 with our staff that you made?

7 MR. BOBO: Yes, sir.

8 COMMISSIONER CLARK: How does our staff have
9 any say as to what you bill in terms of other
10 amenities?

11 MR. BOBO: Sir, I am not a Public Service
12 Commission lawyer, but I can tell you we had
13 discussions to try to resolve all these issues with
14 staff. They suggested to us that they would feel a
15 lot more comfortable if we weren't billing the
16 residents during the pendency of our discussions,
17 and we agreed.

18 MR. HETRICK: Mr. Clark, I think Jennifer
19 would like to comment on that.

20 MS. DUVAL: Well, yeah. If we could clarify a
21 little bit what those conversations included.

22 It was our understanding that any type of
23 agreement that was made was that the termination of
24 services would not happen during the pendency of
25 these proceedings, not that -- not for any amount

1 of charges, or that billing wouldn't occur.

2 COMMISSIONER CLARK: So staff has no
3 reservation whatsoever about the mobile home park
4 continuing to bill the consumers for their rent of
5 the full amount of amenities that they are
6 providing, which includes water and sewer?

7 MS. CRAWFORD: I mean, the basic tenet of a
8 utility/customer relationship is they provide
9 service for compensation. And historically that
10 has certainly been the case here, whether you are a
11 tenant or whether you are a landowner. And because
12 of the disagreement, that pay stream has been
13 interrupted.

14 What I would struggle with, since they are not
15 currently certificated and don't currently have
16 Commission certified rates is what amount would you
17 charge? And that is an issue we did struggle with
18 for some time.

19 Ultimately, whether they charge -- what amount
20 they charge, to me, that is a secondary issue. To
21 me -- and it has always been clear, we've always
22 made it clear to the utility, our primary
23 consideration is that while this dispute is
24 pending, that service not be interrupted to the
25 customers.

1 COMMISSIONER CLARK: Understood. But you have
2 no objection to them continuing to bill the lot
3 owners for the amenities that they are providing to
4 them --

5 MS. CRAWFORD: The amenities is completely
6 outside our --

7 COMMISSIONER CLARK: -- which include water
8 and sewer?

9 MS. CRAWFORD: According to them, yes, that's
10 their assertion?

11 COMMISSIONER CLARK: Well, they are still
12 providing it now without being billed for it, that
13 kind of plays into their argument a little bit,
14 because you said in order to be a utility, they
15 have to be remunerated for their services. They
16 are not being remunerated for their services right
17 now.

18 MS. CRAWFORD: Well, that's because of the
19 dispute.

20 COMMISSIONER CLARK: This, that -- I am with
21 you, okay.

22 MS. DUVAL: That's correct, our rationale has
23 been is essentially they have been operating as a
24 jurisdictional utility for the last 30 or so years.
25 So at this point, if they were to stop acting as a

1 utility, then it would be an improper abandonment
2 of those customers that they should have the
3 certificate to serve and have that regulated
4 service territory.

5 COMMISSIONER CLARK: Barring the fact that
6 they are technically exempt, according to them,
7 they would not be required --

8 MS. CRAWFORD: I think that's the rub of why
9 we are here. That's -- their understanding and our
10 understanding is different.

11 COMMISSIONER CLARK: Right.

12 The second part of my question has to do with
13 the covenant. You -- in the documents, I recall
14 there were originally covenants what were kept with
15 the deed. Those have expired, as I understand.
16 How long have they been expired?

17 MR. BOBO: The covenants expired on -- in
18 September of 2014. So that's another ancillary
19 issue, Commissioner.

20 The Marketable Record Title Act Section 712.04
21 has give own a very broad definition of what is
22 extinguished by the Marketable Record Title Act.
23 It's basically all interest, charges, claims
24 whatsoever exist in any form or fashion against a
25 piece of property.

1 So the judge has confirmed that those
2 covenants have expired, and so that is also an
3 issue. Basically the staff's position is that if
4 covenants ever addressed utilities, then the
5 utilities fall out of that bar, and staff believes
6 that even if you have a restricted covenant that
7 required the provision of utilities and you
8 provided them pursuant to the restrictive covenant,
9 when the covenant has expired, your obligation to
10 continue to provide utilities continues. We see no
11 such exception in Chapter 712.

12 MS. DUVAL: If I could --

13 COMMISSIONER CLARK: Staff, I would like to
14 hear your --

15 MS. DUVAL: Yeah, if I could respond to that
16 briefly.

17 I think that maybe the point here that we are
18 kind of missing is that even with those covenants,
19 and with the agreement that the park had with those
20 lot owners, they were providing service for a
21 compensation to those individuals, and at that
22 point, they did not qualify for the landlord/tenant
23 exemption. So it doesn't really turn on the fact
24 that the covenants have expired, or the
25 restrictions no longer exist. Even when they did,

1 they did not qualify for the exemption.

2 COMMISSIONER CLARK: Mr. Bobo, would you
3 respond to that? Do you think that you would
4 have -- that you would have fallen under the
5 exemption based on that, on the covenants being in
6 there?

7 MR. BOBO: Do we think we come under the
8 exemption? We think we still are, we think we
9 still have a landlord/tenant relationship. But
10 what the statute says is what is extinguished by
11 the bar of MRTA is all estates, interest, claims or
12 charges however denominated against the property.
13 So we believe that that would include the
14 utilities.

15 Honestly, Commissioner, when we bought this
16 property, the park owner said, hey, there is a set
17 of restricted covenants out there. You got these
18 bunch of fee simple lot owners. They pay you and
19 you treat them like any other tenant. We weren't
20 involved in discussing with the seller, oh, there
21 is this PSC problem.

22 Until everybody lawyered up as part of the
23 litigation, no one even focused on that. We just
24 continued to operate the property just as the
25 former landlord had. And only when we were sued by

1 these tenants did we take look at these covenants,
2 because the covenants were very Micky Mouse
3 drafted. They could have allowed the resident to
4 ask just for utility service. They were unclear.
5 So the first thing we needed to know was are the
6 covenants still in existence, and the judge said
7 they are not.

8 Now, our belief is kind of a subset, but our
9 belief is once MRTA extinguished the covenants, it,
10 likewise, extinguished any responsibility to
11 provide utilities.

12 COMMISSIONER CLARK: I am done, Mr. Chairman.

13 CHAIRMAN GRAHAM: Commissioner Brown.

14 COMMISSIONER BROWN: Is your head about to
15 explode?

16 You know, I think Commissioner Fay and
17 Commissioner Polmann, the whole bench here have
18 raised some really good points. I know
19 Commissioner Fay has a recommendation. I would be
20 curious to here it. But ultimately whatever we do
21 today it is not go to resolve the dispute. It's
22 just -- it is not going to resolve it. If we go
23 through and go ahead with the show cause, that is
24 not -- it's just going to protract this process
25 further.

1 If Mr. May proceeds on another course, again,
2 I mean, how can we encourage you all to forget -- I
3 mean, because everything is costly to all of the
4 customers, and ultimately that's -- the goal is to
5 ensure adequate service, reliable service, and I
6 think all of this is only going to cost these
7 customers more money.

8 Is there a way, Mr. May -- Mr. Harrison, is
9 there a way to do this outside of our proceedings?

10 MR. HARRISON: Not that I can see, and the
11 reason is that we, as part of our claims against
12 the park in circuit court, we had a claim -- we
13 asked the court to make a declaratory judgment as
14 to what piece of this monthly fee was water and
15 sewer, and how much, and the court said, I can't
16 do. The issue for rates of utilities is
17 exclusively PSC jurisdiction.

18 COMMISSIONER BROWN: So you -- like
19 Commissioner Fay said, you want transp -- your
20 customer -- pardon me, your clients want
21 transparency, Mr. May; is that right?

22 MR. HARRISON: It's more than transparency.
23 Here's -- what we want is for the agency that is
24 responsible for the regulation of utilities to
25 regulate these folks that are acting as a regulated

1 utility.

2 COMMISSIONER BROWN: Well, that's -- that's --
3 that has evolved after the want. So you want --
4 your clients want to be able to pick and choose the
5 services that they have been paying for under a
6 bundled rate for 34 years. So now that the
7 covenants have expired, you are using a litigation
8 tactic to attach a utility definition under an
9 inherent landlord/tenant relationship that has
10 existed for decades.

11 MR. HARRISON: Well, there is a whole lot of
12 assumptions that you just made that I think go
13 beyond what you can do at this point and actually
14 are the essence of the dispute. They say they have
15 a landlord/tenant relationship.

16 COMMISSIONER BROWN: I know you have a lot of
17 facts here, but this is my perspective, Mr.
18 Harrison. Just one second.

19 Mr. May, is there a way to accomplish what --
20 the rudimentary desire of his clients, is there a
21 way to accomplish that outside of litigation?

22 MR. MAY: Again, I think there is, and I would
23 like Mr. Bobo to weigh in, but again, I think the
24 solution is found in the rule-making, and that
25 process would be a quasi-legislative process.

1 Mr. Harrison and his clients would certainly have a
2 seat at the table. Mr. Ayotte, the associations,
3 the industry, the other mobile home subdivisions
4 who are hybrid type would have an opportunity to
5 voice theirs.

6 And, you know, at the end of the day, if the
7 Commission lawfully adopts a rule and says these
8 are the rules of the game, we are going to abide by
9 that. But right now, I don't think there is a way
10 to resolve this outside the rule-making proceeding.

11 MR. BOBO: We have hundreds of mobile home
12 parks throughout the state that offer utility
13 services as part of rent. 723 governs that, and
14 there is no requirement under 723 that we attempt
15 to break out or provide this so-called transparency
16 that we attempt to code every expense so that we
17 can tell them exactly what that utility cost is.

18 COMMISSIONER BROWN: One thing I just want to
19 make sure on the record, and I know you said that
20 the park is not going to stop service, and that
21 you have a court action regarding staying, and
22 regardless of what we do, there will not be a
23 discontinuation of service to customers, I just
24 want that on the record right now of that
25 validation.

1 MR. BOBO: Let me clarify that, Commissioner
2 Brown.

3 What we are saying is that we are going before
4 the judge and we are going to a hearing on the
5 24th. We are going to tell the judge on the 24th
6 we don't necessarily oppose a stay of a cutoff of
7 any utilities. What we are going to ask the judge
8 for is some security, recognizing the fact that
9 these people are enjoying a service that is for
10 free. And there is a bond requirement, as you may
11 know, in the statute, or in the rule of procedure.
12 We are going to ask the judge to impose an
13 appropriate bond, and we believe that's necessary.

14 COMMISSIONER BROWN: Got it.

15 CHAIRMAN GRAHAM: Commissioner Fay.

16 COMMISSIONER FAY: Mr. Chairman, I have just
17 one quick question for staff and then maybe we can
18 move forward.

19 I -- as usual, Commissioner Brown puts things
20 in much better words than I can, and so I agree
21 with a lot of her points. I share a lot of
22 frustration on this issue, fortunately, staff has
23 had to share that with me. But I feel like there
24 is -- to a large extent, because there is no good
25 solution, and Mr. Harrison, your parties feel

1 strongly about both the transparency and the legal
2 requirements that they are defined -- as the park
3 is defined as a utility for those services, it does
4 create a challenge for the end result, which may
5 actually cause rates to be higher possibly. We
6 don't know that. That would -- we would go through
7 a rate -- a SARC, and we would make that
8 determination.

9 This question might be for Margo, but if we
10 don't make a decision on the show cause order
11 that's in front of us, is it mandated that a party
12 request a 120.57 hearing, or can the Commission
13 request to move forward with that procedure to give
14 both sides the opportunity in a formal proceeding?

15 MS. HELTON: Can I ask your question again to
16 make sure I understand it?

17 COMMISSIONER FAY: Sure, you can.

18 MS. HELTON: Are you asking whether the
19 Commission has the ability to take this issue
20 straight to hearing instead of entering a show
21 cause order?

22 COMMISSIONER FAY: Correct.

23 MS. HELTON: I don't believe so. The reason I
24 do not believe so is because I think there has to
25 be some sort of charging document, for lack of a

1 better word, where we are putting the party that we
2 want to prosecute on notice what issues we have
3 with that party. So I don't think that we can just
4 take this straight to hearing.

5 COMMISSIONER FAY: Okay. So a formalized
6 decision in addition to the staff recommendation of
7 that document. In other words, you don't believe
8 the recommendation could be use the as a charging
9 document?

10 MS. HELTON: I believe that the recommendation
11 statement, which I think is on page --

12 COMMISSIONER FAY: 17?

13 MS. HELTON: -- eight, I think that, boiled
14 down, is essentially what the charging document
15 would say. And in addition to that, then, as it
16 says at the end of that recommendation, there are
17 some conditions that would need to also be set out
18 in that order, and those conditions are listed on
19 page 17.

20 COMMISSIONER FAY: Okay. Because then based
21 on the testimony from Mr. May, as we go forward to
22 eventually provide some legal, I don't know if
23 resolution is the right word, but provide legal
24 direction as to what this would look like and
25 potentially impact others who are in a similar

1 situation, it's been made clear to me by the
2 testimony today from counsel on both sides that
3 since this isn't going to be the end of it, that
4 that opportunity just moves us forward closer to a
5 final resolution.

6 It also targets the -- it stays narrow to the
7 issue that we are looking at within this
8 commission, because I think there is testimony here
9 that the Commission only has certain authority to
10 make certain decisions, and the challenge to an
11 unadopted rule theory that has been presented gets
12 outside of what the purview of what the Commission
13 can do. And fundamentally, I think that, once
14 again, triggers this due process argument and this
15 engagement of all parties.

16 And I think Mr. May has made that point, and
17 it's relevant and he is entitled to file that
18 challenge, but I think to move forward that we
19 have -- the Commission has to make a decision.
20 Arrange originally, I felt fairly comfortable with
21 a deferment recommendation because of this Second
22 DCA cert and decision that's out there on appeal,
23 and then you have a hearing on the 24th, I believe,
24 is that correct?

25 So if you defer and allow for additional

1 clarification on that end, then maybe legally it
2 puts us in a better posture. But based on what
3 both parties are telling us now, I am not sure
4 that's even the case. It sounds like they are
5 going to still continue to push forward and
6 challenge whatever decision is made by the
7 Commission. And so for us to move towards a
8 resolution, that's why I am sort of hinting at, or
9 recommending potentially that that 120.57 hearing
10 because I think that brings us closer to a
11 finalized due process decision within the 120
12 parameters.

13 MS. HELTON: I'm sorry. Well, if I understand
14 Mr. May and what he said today, and what his letter
15 from, I think it was last Friday, says, that if you
16 all do approve staff's recommendation and the show
17 cause order is issued, there will be a hearing
18 because his client will request a hearing.

19 COMMISSIONER FAY: Fair enough.

20 Mr. Chairman, I would be inclined to move
21 forward with staff's recommendation, but I do want
22 to give the other Commissioners an opportunity to
23 weigh in, and I would also be open to the
24 discussion of a deferment based on the two
25 outstanding legal issues.

1 CHAIRMAN GRAHAM: Commissioner Polmann.

2 COMMISSIONER POLMANN: Thank you, Mr.

3 Chairman. I think maybe just two points, either
4 that or I can't count. Commissioner Brown raised a
5 couple things, and I just want to follow up on
6 that.

7 To the utility, to Palm Tree Acres, I just
8 wanted to follow-up, and I think it's been very
9 clear, and let me just state it. I think you
10 heard, from the perspective of this commission, as
11 I understand what I think the commissioners have
12 indicated, as far as we are concerned, you have
13 been providing utility service -- you are providing
14 utility service, and we believe you are a utility
15 subject to regulation by this commission. Now, you
16 may have a different opinion. It appears that you
17 do.

18 I would urge you in the strongest possible
19 terms to not terminate utility service. I am just
20 saying that on the record. So whatever it is you
21 do, that's my statement on the record. I think you
22 have heard that. I just urge you to follow that
23 course of business, whatever else happens. We take
24 that very seriously. And I think having said that,
25 I will just leave it there.

1 What I understood Commissioner Brown was
2 looking for in terms of is there some other way to
3 solve this rather than continuing on in the course
4 that appears to be before us. There was reference
5 in some discussion here, and I appreciate the
6 confidential aspect of mediation, but I would go
7 back to page four and look at the five items listed
8 there of the first paragraph. And I am sure a
9 variety of things were talked about in mediation,
10 so I don't mean to question what they may have
11 been.

12 But I had raised this issue in discussions
13 yesterday, and the underlying question being is
14 there some way to solve this problem other than the
15 manner in which has been discussed here in many
16 different ways today? And the question of are you
17 a utility? Are you providing service as a utility?
18 Are you regulated? Should you be regulated? And
19 it has been said here one of the key aspects is are
20 you providing that service for compensation? And
21 if we look at No. 3 on that list, it says providing
22 service on the lot owners free of charge on a
23 permanent basis.

24 And whatever else happens here today and goes
25 forward, perhaps you could strongly consider some

1 way to get to No. 3, and just go home and take care
2 of that and this will be done, and it will have
3 nothing to do with the rest of the industry, and
4 nothing to do with anything. It won't involve a
5 rule, a rule challenge or DOAH proceeding or
6 anything else. You have relatively few lot owners
7 within this entire community. It will be over.

8 It's not clear to me why that cannot be done
9 by whatever means the park owners choose to deal
10 with those few people. This is in your control.
11 You don't need to be here. We don't need to be
12 here. Nobody needs to be here.

13 Commissioner Brown didn't ask the question
14 that way. I am asking the question that way, and I
15 am stating it. You would be regulated as a utility
16 as far as we are concerned because you are asking
17 for payment for that service.

18 I don't care about the swimming pool. We
19 don't care about the shuffleboard. We regulate
20 utilities who provide utility service and get paid
21 for it. If you are not getting paid by those
22 customers, we don't need to have this discussion.

23 And as Commissioner Clark said, I am done.

24 CHAIRMAN GRAHAM: Okay. I think we hit our
25 two-hour mark, so I am going to take about a

1 five-minute break. And so by that clock back
2 there, we will say at 11:42, we will start back
3 again.

4 (Brief recess.)

5 CHAIRMAN GRAHAM: Okay. Let's get back to
6 this Agenda Conference. Okay. Thank you very much
7 for that indulgence. Our court reporter feels
8 better, stretched her fingers.

9 During the break, I had a chance to meet with
10 staff and to ask a couple of questions about
11 rule-making. And I asked for Samantha to come up
12 so she can talk to us about if we decide to go
13 through some sort of rule-making what the potential
14 outcomes could be.

15 MS. CIBULA: Yeah. I just want to, I guess,
16 caution the Commission that it might not be a fast
17 process. So if we go through rule-making, we will
18 have, you know, initiate rule-making. Then we will
19 have a workshop. And after the workshop, we will
20 bring a recommendation back to the Commission to
21 whether or not to propose a rule and based on the
22 input we get at the workshop. But then there is a
23 bunch of statutory requirements after that.

24 So once we propose a rule, then people have a
25 right to ask for a rule hearing. They could

1 challenge that rule that we come up with at DOAH to
2 say that maybe we, you know, went outside our
3 statutory authority when we defined that term. And
4 then after that, there is a potential for appeal of
5 that as well.

6 So I just want to caution that just going
7 through the rule-making process won't have, maybe,
8 a fast resolution to the situation either.

9 MR. MAY: Mr. Chair.

10 CHAIRMAN GRAHAM: Yes.

11 MR. MAY: Just to follow up with that Samantha
12 said, and I don't disagree with that, but one of
13 the things that my client, and we talked about
14 during the break after listening to the dialogue,
15 and we appreciate the conversation. But one of the
16 things that we would be willing to do is if the
17 Commission were to proceed to rule-making, we would
18 agree on the record that during the course of that
19 entire rule-making proceeding, we would not
20 terminate service to the lot owners.

21 So that would, I think, protect Mr. Harrison's
22 clients. It would give you an opportunity to
23 develop a policy in a reasoned fashion that would
24 allow you to take input for the entire industry,
25 including the lot owners. Again, that's something

1 that we would propose to move this thing forward
2 and to avoid a train wreck here.

3 MR. BOBO: And, Mr. Chairman, we were -- it
4 was suggested that maybe your question about what
5 could be developed during rule-making that couldn't
6 be developed during a, you know, a normal 120
7 hearing, that that question wasn't appropriately
8 answered, and I will take the hit for that.

9 What we can do in a rule-making proceeding is
10 it's open to everyone. If we come into a 120
11 proceeding, it's just, you know, you and us. So we
12 are the only parties that are going to be involved.

13 We already know that the Federation of Mobile
14 Homeowners is very interested in this, because,
15 candidly, we have already gone through the process
16 of determining what the utility costs are likely to
17 be for these 18 people, it's likely to be about
18 \$750 a month.

19 So the Federation of Mobile Homeowners could
20 come into that rule-making, and they could explain
21 why it is so important for them to enjoy this
22 landlord/tenant exemption when they have
23 subdivision lots that are available. We can bring
24 all the other clients in. We can bring the large
25 operators in and they can explain how many parks

1 they have that have these fee simple lots within
2 them, and why it is important for that
3 landlord/tenant relationship to be drawn under the
4 umbrella, so to speak.

5 So it broadens the process considerably. It
6 allows you to sit down at least with our industry
7 and get an idea of how we operate, and allows
8 everyone associated with the industry to come in
9 and say why this has an impact not just on Palm
10 Tree, but why it has an impact industry-wide on
11 everyone.

12 So I do believe, and I apologize to you that
13 we didn't answer your question completely. But it
14 opens the universe up to come in and address to you
15 how our 723 works; how it works for the people who
16 own their lot; how it works for the people who
17 rents their lot, and how the whole process works
18 with Chapter 723, and why we have this
19 landlord/tenant relationship.

20 So I do believe that the rule-making will be
21 much broader than the Chapter 120 proceeding, and
22 there will be a lot more opinions under the table.

23 CHAIRMAN GRAHAM: Okay. Commissioner Clark,
24 your light is on.

25 COMMISSIONER CLARK: I am sorry.

1 COMMISSIONER BROWN: He said he is done.

2 CHAIRMAN GRAHAM: Okay. Commissioners, I am
3 here to entertain a motion.

4 Commissioner Brown.

5 COMMISSIONER BROWN: Mr. Chairman, I would
6 move to defer this item and initiate rule-making in
7 this proceeding.

8 COMMISSIONER CLARK: Second, Mr. Chairman.

9 CHAIRMAN GRAHAM: It's been moved and
10 seconded.

11 Any further discussion on the motion?

12 Commissioner Polmann.

13 COMMISSIONER POLMANN: Commissioner Brown,
14 your motion is to proceed to rule-making?

15 COMMISSIONER BROWN: Initiate rule-making.

16 COMMISSIONER POLMANN: Initiate. And could
17 you clarify what type -- I mean, what is the
18 subject of the rule-making exactly?

19 COMMISSIONER BROWN: The subject, Mr.
20 Chairman, if I may.

21 CHAIRMAN GRAHAM: Sure.

22 COMMISSIONER BROWN: The subject of my motion
23 is to initiate rule-making, to look at the
24 exemptions under 367.022.

25 COMMISSIONER POLMANN: And, Mr. May, does that

1 have an affect specifically on your notice and your
2 interest in proceeding with the unadopted rule
3 challenge?

4 MR. MAY: Yes, Commissioner Polmann, it
5 certainly would. If Commissioner Brown's motion
6 were to be approved, there would be no need for an
7 unadopted rule challenge. The Commission would
8 proceed through the rule adoption process, and it
9 would essentially nullify the letter that I sent on
10 Friday.

11 COMMISSIONER POLMANN: You say nullify. Is
12 that a legal term? Does that mean you are
13 withdrawing the notice? Is that --

14 MR. MAY: We could withdraw it, or nullify it,
15 or eviscerate it --

16 COMMISSIONER POLMANN: Okay. Ms. DuVal or
17 Cibula.

18 MS. CIBULA: Yes, as long as he said that on
19 the record, I feel comfortable.

20 COMMISSIONER POLMANN: Yeah, I was checking to
21 make sure that we are satisfied that --

22 MS. DUVAL: And also, just for clarification
23 purposes, would that include not terminating
24 services to the individuals during the pendency?

25 MR. MAY: That's the commitment that we made

1 during the break, and that's the commitment that we
2 stand behind and state on the record formally.

3 MS. CIBULA: And I guess all the way through
4 the process, even if we go on appeal?

5 mr.may: That's correct.

6 COMMISSIONER POLMANN: Mr. Chairman, I would
7 just ask other Commissioners if there is any --
8 anyone feels any need to bring up the issue of
9 payment for those services during any of that time?
10 I don't know if we need anything on the record for
11 that.

12 CHAIRMAN GRAHAM: Nobody has got their light
13 on, so I would say no.

14 Commissioner Fay.

15 COMMISSIONER FAY: Commissioner Polmann, I
16 didn't know if you were done. I didn't want to --

17 COMMISSIONER POLMANN: I am done. Thank you,
18 Mr. Chairman.

19 COMMISSIONER FAY: Just two quick points.

20 One, I am fully in support of Commissioner
21 Brown's motion. I think it's appropriate. I think
22 counsel stating the -- whatever we want to call it,
23 the stay or the agreement to not terminate services
24 on the record is appropriate, and I think that's
25 part of what so many of us have discussed up here,

1 is trying to get to some points of both protections
2 and resolutions at the same time for both parties,
3 which we understand are extremely difficult going
4 forward.

5 And I think Commissioner Polmann stated
6 earlier his concern about services being stopped
7 and ending. And so I think addressing that on the
8 record is also a key component to some of the
9 comments you heard from others here, and so I
10 appreciate you doing that.

11 And with that, I would support the motion, and
12 if anyone else has any comments.

13 CHAIRMAN GRAHAM: I -- my light is not on.
14 Nobody else has any other comments.

15 All in favor of the motion, signify by saying
16 aye.

17 (Chorus of ayes.)

18 CHAIRMAN GRAHAM: Any opposed?

19 (No response.)

20 CHAIRMAN GRAHAM: By your action, the Brown
21 motion passes.

22 The that's the last thing on our agenda. We
23 have a Duke tax hearing that's going to start
24 exactly at noon by that clock back there. So
25 that's five minutes.

1 So we are adjourned. Thank you very much.

2 MR. MAY: Thank you.

3 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
certify that the foregoing proceeding was heard at the
time and place herein stated.

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

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 counsel connected with the action, nor am I
financially interested in the action.

DATED this 14th day of January, 2019.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
EXPIRES JULY 27, 2020