

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20190041-WS

PROPOSED ADOPTION OF RULE
25-30.0115, F.A.C.,
DEFINITION OF LANDLORD AND
TENANT.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 2

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

DATE: Thursday, October 3, 2019

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

REPORTED BY: ANDREA KOMARIDIS
Court Reporter and
Notary Public in and for
the State of Florida at Large

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1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Okay. All right. Let's go
3 back to Item No. 2.

4 Before we get started on that -- Mary Anne,
5 was that sufficient?

6 MS. HELTON: Yes, sir. You did great.

7 CHAIRMAN GRAHAM: Thank you.

8 COMMISSIONER POLMANN: Not only sufficient;
9 you did great.

10 (Laughter.)

11 CHAIRMAN GRAHAM: Andrew.

12 MR. KING: Good morning, Commissioners.
13 Andrew King with legal staff. Item No. 2 is
14 staff's recommendation that the Commission propose
15 a new rule. It will be Rule 25-30.0115. It's
16 entitled "Definition of landlord and tenant," and
17 that kind of explains what the rule is. It is the
18 definition of "landlord" and "tenant," as it is
19 used -- as those terms are used in
20 Section 367.022(5) of the Florida Statutes.

21 .002 is a section that has list of exemptions
22 to the Commission's jurisdiction for water and
23 wastewater utilities. And there was some dispute
24 as to the definition for the terms "landlord" and
25 "tenant," and so, staff has drawn up a rule to

1 define those terms.

2 CHAIRMAN GRAHAM: Thank you, staff.

3 Mr. May, welcome.

4 MR. MAY: Thank you, Mr. Chairman,
5 Commissioners. Bruce May with Holland & Knight.
6 We represent the Goss family, which owns 27 mobile
7 home parks around the state.

8 I understand that you have a lot of other
9 matters to cover this morning, so I want to be
10 sensitive and respectful for that, but I did want
11 to limit my remarks, which will be very brief just
12 to three -- three areas.

13 The first is -- is an observation with respect
14 to timing. The Legislature convenes in just --
15 just over three months, on January 14th, and is
16 expected -- it's our understanding the Legislature
17 is expected this session to address the landlord-
18 tenant exemption that you're grappling with today.

19 Nothing under Chapter 120 or Florida law
20 requires you to move immediately into -- into the
21 rulemaking. And I think it could be in everyone's
22 interest to wait and see what the Legislature does
23 with respect to this exemption before expending
24 additional resources to adopt rules interpreting
25 the exemption. That's Point No. 1.

1 Point No. 2 is, if you decide to move forward
2 with the rulemaking before the legislative session
3 begins -- which is certainly your prerogative --
4 the Goss family intends to participate in the
5 rulemaking and to use the -- the due-process rights
6 that it has under Chapter -- under Section 120.54
7 to provide additional comments, to participate in
8 the public hearing, et cetera.

9 And my -- my third and final item is -- is
10 really a matter of clarification that I've spoken
11 to Mr. King about. There's language on Page 7 in
12 the second paragraph of the recommendation. And
13 that language could be interpreted or read to
14 predetermine factual rate-making and cost-
15 allocation issues that would be part of a future
16 licensing proceeding.

17 If the Goss family's Palm Tree Acres Mobile
18 Home Park was to required to come in and apply for
19 a utility certificate, we don't believe it's
20 appropriate to prejudge or predetermine a future
21 licensing proceeding in the midst of a 120.54
22 rulemaking proceeding.

23 And -- and we don't think it was staff's
24 intent to prejudge or predetermine the rates of a
25 particular utility. We're simply looking for --

1 for some confirmation that that wasn't the intent.

2 And I think that Mr. King and I spoke about
3 that. I don't want to put words in his mouth, but
4 I think we're com- -- comfortable that there was --
5 there's nothing in this recommendation that would
6 predetermine some future licensing or certification
7 proceeding.

8 That's -- that's my remarks. I'll be glad to
9 answer any questions, Mr. Chairman, Commissioners.
10 And thank you for the opportunity.

11 CHAIRMAN GRAHAM: Thank you, Bruce.

12 Ms. Christensen?

13 MS. CHRISTENSEN: Good morning, Commissioners.
14 Patti Christensen with the Office of Public
15 Counsel. We're here today to support staff's
16 recommendation. We believe that adopting the
17 ordinary, plain meaning of the words "landlord" and
18 "tenant" is really non-controversial and should be
19 non- controversial. This issue has been going on
20 since January, so it's been almost a year.

21 And you know, I appreciate Mr. May's comment
22 that the Legis- -- Legislature may address it, may
23 create an additional exemption, but I'm not sure
24 that that's a reason to defer this ruling on this
25 item today.

1 If the Legislature chooses to create an
2 exemption that may or may not address the Goss
3 family's issue with whether or not they should be
4 regulated -- I'm not sure that that's -- should be
5 the reason not to go forward with just adopting the
6 common sense, plain, ordinary language that the
7 staff has put forward.

8 I know we proposed slightly different
9 language, but we're satisfied that the
10 wordsmith-ing that the staff did addressed our
11 concerns. So, we're here to support staff.

12 Thank you.

13 CHAIRMAN GRAHAM: Thank you.

14 Mr. King, did you wish to speak to Mr. May's
15 comment or are you good?

16 MR. KING: I'm good.

17 CHAIRMAN GRAHAM: Okay. Commissioners, who
18 wants at it first?

19 Who wants to make a motion?

20 Who wants to hold my gavel?

21 (Laughter.)

22 COMMISSIONER BROWN: I'll hold your gavel.

23 CHAIRMAN GRAHAM: Okay. I --

24 COMMISSIONER BROWN: Mr. -- Mr. Chairman,
25 would you like to make a motion?

1 CHAIRMAN GRAHAM: I will make a motion. I
2 don't see a need for this, especially now. So, I
3 don't know if I should move to defer or to
4 withdraw.

5 MR. HETRICK: (Indicating.)

6 CHAIRMAN GRAHAM: Thank you.

7 COMMISSIONER BROWN: Mr. Hetrick.

8 MR. HETRICK: Thank you. Thank you.

9 Obviously, the issue of deferral -- you can
10 always defer if you want. If you're inclined to
11 vote "no" on staff's recommendation, we can always
12 come back at a later date and propose a new rule,
13 but if -- if -- at this time, we've kind of already
14 been through this. And we're fine if you vote "no"
15 on this rec; we're fine if you vote "yes" on this
16 rec; we're fine if you defer on this rec. Those
17 are your three options.

18 CHAIRMAN GRAHAM: If I defer, then we -- the
19 staff doesn't have to re- -- doesn't have to
20 rewrite this rec. We can just pull it back off the
21 table and -- and deal with it at that time.

22 MR. HETRICK: That's correct.

23 CHAIRMAN GRAHAM: Well, then I make a motion
24 to defer -- actually, I guess I don't have to make
25 a motion to defer -- well, I -- I -- let me go --

1 back up. I'll make that motion because I don't
2 want to overstep my colleagues because maybe
3 somebody else wants to move forward on this.

4 COMMISSIONER BROWN: Commissioners, any -- is
5 there a second?

6 COMMISSIONER POLMANN: (Indicating.)

7 COMMISSIONER BROWN: Commissioner Polmann?

8 COMMISSIONER POLMANN: Thank you, Madam Chair.

9 To general counsel, if -- if the Commission
10 does choose to defer, does that -- does that
11 involve setting any time frame or date into the
12 future or is deferral without regard to time?

13 MR. HETRICK: Well, that -- that is a good
14 point. There is no time limit. So, I guess I
15 would ask the Chair how long you would like to
16 defer. Would you like to defer until after the
17 legislative session? Would you like to defer for a
18 month?

19 CHAIRMAN GRAHAM: Well, I guess first, I --
20 point of order, if we can get a second, and then we
21 can go to -- back to discussion of that motion.

22 COMMISSIONER BROWN: That would be great.

23 Can I get a second, please?

24 COMMISSIONER FAY: Second.

25 CHAIRMAN GRAHAM: Okay. I am wide open. I --

1 I guess my motion would be until after the
2 legislative session.

3 MR. HETRICK: And -- and if I might add, it
4 might be good to get on the record again, as we did
5 previously, that the Goss family does not intend to
6 disconnect water during -- under any circumstance
7 for these customers during the time period of the
8 deferral.

9 COMMISSIONER BROWN: Mr. May?

10 MR. MAY: Madam Chair and -- and Chair, the --
11 we certainly would -- would continue our commitment
12 that we made in the prior hearing that, during the
13 pendency of this rulemaking, we would consider
14 this -- this rule to be pending; that we would
15 certainly not disconnect any of the lot-owner
16 tenants in the park.

17 COMMISSIONER BROWN: Thank you for that
18 confirmation.

19 Commissioner Polmann, you still have the
20 floor. Any further comment before I go to
21 Commissioner Fay?

22 COMMISSIONER POLMANN: No, that's all I have
23 for now. Thank you.

24 COMMISSIONER BROWN: Commissioner Fay.

25 COMMISSIONER FAY: Thank you, Madam Chair.

1 I would just make sure there's clarity, from a
2 legal perspective. I second your motion for the
3 deferral, which would be brought back up following
4 this legislative session. That's all I have.

5 COMMISSIONER BROWN: Thank you.

6 Okay. We have a motion, properly second.

7 All in favor, say aye.

8 (Chorus of ayes.)

9 COMMISSIONER BROWN: All right. Motion
10 passes.

11 CHAIRMAN GRAHAM: Thank you, Madam Chairwoman.

12 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS, Court Reporter, do hereby
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time and place herein stated.

IT IS FURTHER CERTIFIED that I
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I FURTHER CERTIFY that I am not a relative,
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financially interested in the action.

DATED THIS 14th day of October, 2019.



ANDREA KOMARIDIS
NOTARY PUBLIC
COMMISSION #GG060963
EXPIRES February 9, 2021