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State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER ● 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 24, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Cowdery) SMC
Division of Economics (Coston) JGH

RE: Docket No. 20190041-WS – Proposed adoption of Rule 25-30.0115, F.A.C., Definition of Landlord and Tenant.

AGENDA: 07/07/20 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

RULE STATUS: Proposal may be deferred

SPECIAL INSTRUCTIONS: Place immediately prior to Docket No. 20180142-WS

Case Background

This docket concerns whether the Commission should propose the adoption of a new rule that would define the terms "landlord" and "tenant" for purposes of Section 367.022(5), Florida Statutes (F.S.), which addresses exemptions from Commission water and wastewater utility regulation. Section 367.022(5), F.S., exempts from Commission jurisdiction "[l]andlords providing service to their tenants without specific compensation for the service."

The genesis of this docket was staff's recommendation in Docket No. 20180142-WS that the Commission should issue an order to show cause Palm Tree Acres Mobile Home Park (Palm Tree Acres) for allegedly providing water and wastewater services without a certificate of authorization.[1] Palm Tree Acres provides water and wastewater service to residents who lease

[1] Document No. 07686-2018, filed in Docket No. 20180142, *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.*

their lots and residents who own their lots. The core issue in the show cause docket is whether Palm Tree Acres is a utility subject to the Commission's jurisdiction. Palm Tree Acres argued that it is an exempt landlord under Section 367.022(5), F.S. Staff and certain residents of Palm Tree Acres argued that Palm Tree Acres and its residents that own their lots were not in a landlord-tenant relationship, so Palm Tree Acres is not exempt from the Commission's jurisdiction under Section 367.022(5), F.S. The staff recommendation was scheduled to be heard at the January 8, 2019 Commission Conference.

On January 4, 2019, Palm Tree Acres sent the Commission a letter requesting that the Commission defer consideration of the show cause recommendation until the Commission adopts a rule defining landlord and tenant for purposes of Section 367.022(5), F.S., or until the issue is addressed by the Florida Legislature. Palm Tree Acres argued that staff's interpretation of "landlord" and "tenant" in Section 367.022(5), F.S., constituted a rule of general applicability that was not adopted pursuant to the requirements of the Chapter 120, F.S., the Administrative Procedure Act. Palm Tree Acres argued in its letter and at the January 8, 2019 Commission Conference that if the Commission pursued enforcement action under staff's interpretation of Section 367.022(5), F.S., Palm Tree Acres would initiate an unadopted rule challenge.

At the January 8, 2019 Commission Conference, the Commission voted to defer consideration of staff's recommendation to issue a show cause order and initiated rulemaking to explore the possibility of adopting a rule defining "landlord" and "tenant" as used in Section 367.022(5), F.S. Notice of initiation of rulemaking was published in the February 15, 2019 edition of the Florida Administrative Register.

On March 4, 2019, a staff rule development workshop was held. The workshop was attended by representatives from the Florida Manufactured Housing Association, Inc.; the Goss family, who owns several mobile home parks in Florida, including Palm Tree Acres; and the Office of Public Counsel. All three filed post-workshop comments on March 18, 2019.

At the October 3, 2019 Commission Conference, staff recommended that the Commission propose Rule 25-30.0115, F.A.C., to define the terms "landlord" and "tenant" as used in Section 367.022(5), F.S. The Commission voted to defer its decision in order to give the Goss family time to pursue legislation to resolve the issue during the 2020 Florida Legislative session.

On March 13, 2020, the Florida Legislature passed HB 1339, which among other things, creates a new exemption from Commission jurisdiction for owners of mobile home parks that operate both as a mobile home park and a mobile home subdivision (as defined in Section 723.003, F.S.) and provide water and/or wastewater services to a combination of both tenants and lot owners within the park/subdivision. The Governor signed the bill into law on June 9, 2020, and the law takes effect on July 1, 2020. The Goss family is no longer requesting rulemaking.

This recommendation addresses whether the Commission should close this docket because rulemaking is unnecessary. The Commission has jurisdiction pursuant to Sections 120.54, 367.121(1)(f), and 367.022, F.S.

Discussion

Issue 1: Should this docket be closed?

Recommendation: Yes. Rulemaking to define "landlord" and "tenant" as used in Section 367.022(5), F.S., is unnecessary. (Cowdery, Coston)

Staff Analysis: Section 367.022(5), F.S., exempts from Commission water and wastewater jurisdiction "[l]andlords providing service to their tenants without specific compensation for the service." The Commission initiated rulemaking to define "landlord" and "tenant" under Section 367.022(5), F.S.

During the rule development process, the Goss family had argued that a mobile home park owner and lot owners residing in the mobile home park had a landlord-tenant relationship as defined in Section 367.022(5), F.S., thus exempting the mobile home park owners from Commission jurisdiction. Staff disagreed with this interpretation of Section 367.022(5), F.S., and recommended at the October 3, 2019 agenda conference that the Commission propose a new rule that would define the terms "landlord" and "tenant" using the plain meaning of those terms as found in Black's Law Dictionary.[2] The Commission voted to defer its decision on whether to propose a rule to give the Goss family time to pursue legislation to resolve the issue during the 2020 Florida Legislative session.

The question of whether mobile home park owners who provide service to lot owners within the park are exempt from Commission water and wastewater regulation was addressed by HB 1339. This law adds a new exemption to Section 367.022, F.S. Section 367.022(14), F.S., also exempts:

> The owner of a mobile home park operating both as a mobile home park and a mobile home subdivision, as those terms are defined in s. 723.003,[3] who provides service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation.

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[2] Staff recommended the Commission propose the following rule language:

> <u>25-30.0115 Definition of Landlord and Tenant</u>
>
> <u>As used in Section 367.022(5), F.S.:</u>
>
> <u>(1) "landlord" is the party who conveys a possessory interest in real property to a tenant by way of a lease and who provides water and/or wastewater service to the tenant at that property; and</u>
>
> <u>(2) "tenant" is the party to whom the possessory interest in real property is conveyed by the landlord by way of a lease and who receives water and/or wastewater service from the landlord at that property.</u>

[3] Section 723.003(12), F.S., defines mobile home park as a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential. Section 723.003(14), F.S., defines mobile home subdivision as a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.

Mobile home park owners meeting the criteria of Section 367.022(14), F.S., are not subject to regulation by the Commission as a utility nor are they subject to the provisions of Chapter 367, F.S. The Goss family is no longer requesting rulemaking.

Moreover, staff does not believe that it is necessary to adopt a rule to define the terms "landlord" and "tenant" as used in Section 367.022(5), F.S. Section 120.52(16), F.S., defines a "rule" as an "agency statement of general applicability that implements, interprets, or prescribes law or policy." Section 120.52(20), F.S., defines an "unadopted rule" as any rule that has not been adopted pursuant to the requirements of Section 120.54, F.S. In interpreting and applying these definitions, Florida courts have made clear that agency statements that merely reiterate a law, or declare "what is 'readily apparent' from the text of a law" are not rules as defined by Section 120.52(16), F.S., and therefore do not need to be adopted through formal rulemaking procedures. *Grabba-Leaf, LLC v. Dep't of Bus. & Prof'l Reg.*, 257 So. 3d 1205, 1208 (Fla. 1st DCA 2018) (citing *Amerisure Mut. Ins. Co. v. Dep't of Fin. Servs.*, 156 So. 3d 520, 532 (Fla. 1st DCA 2015); *St. Francis Hosp., Inc. v. Dep't of Health & Rehab. Servs.*, 553 So. 2d 1351, 1354 (Fla. 1st DCA 1989)).

As discussed above, staff originally recommended that the Commission propose a new rule that would define the terms "landlord" and "tenant" using the plain meaning of those terms as found in Black's Law Dictionary. Applying the plain meaning of statutory terms is declaring what is readily apparent from the text of the law; therefore, there is no need to define the terms "landlord" and "tenant" in a rule.

For the reasons set forth above, staff believes that rulemaking to define "landlord" and "tenant" as used in Section 367.022(5), F.S., is unnecessary. Thus, staff recommends that this docket should be closed.