

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 (DuVal, Crawford) *MAD JSC*
Division of Engineering (Knoblauch, Ramos) *TB*

RE: 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.

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

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Place immediately after Docket No. 20190041-WS.

Case Background

Palm Tree Acres Mobile Home Park (Palm Tree Acres or Park) is located in Zephyrhills, Pasco County, Florida. The Park is comprised of two types of residents: those who rent their lot from the Park (tenants) and those who own their lot (lot owners). The Park provides water and wastewater service to both tenants and lot owners. Since its inception, the Park has not petitioned the Florida Public Service Commission (Commission) for a certificate of authorization to provide water or wastewater service or for recognition of exempt status under Section 367.022, Florida Statutes (F.S.).¹

In June 2017, the attorney for several lot owners requested that the Commission assert jurisdiction over the Park as they believed it was operating in violation of Chapter 367, F.S., as

¹ Prior to July 1, 1996, Section 367.031, F.S., required water and wastewater utilities to obtain either a certificate of authorization or an order recognizing their exempt status.

an uncertificated utility by providing water and wastewater service to non-tenant customers for compensation.

Following the Park and lot owners' unsuccessful attempts to resolve their dispute, Commission staff opened the instant docket to initiate show cause proceedings against Palm Tree Acres for allegedly providing water and wastewater service to the public for compensation without first obtaining a certificate of authorization from the Commission.

At the January 8, 2019 Commission Conference, staff recommended that the Commission order Palm Tree Acres to show cause in writing, within 21 days, as to why it should not be fined for providing water and wastewater service to the public for compensation without first obtaining a certificate of authorization from the Commission in apparent violation of Section 367.031, F.S., and Rule 25-30.033, Florida Administrative Code (F.A.C.), and why it should not bring itself into compliance with the Commission's statutes and rules. Representatives for Palm Tree Acres, the lot owners, and the Office of Public Counsel (OPC) were present at the Commission Conference and participated in the discussion on staff's recommendation. The Commission ultimately 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.

Staff opened a rulemaking docket² on February 13, 2019 and a Notice of Development of Rulemaking was published in the February 15, 2019 edition of the Florida Administrative Register. On March 4, 2019, staff held a rule development workshop. 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 OPC. All three groups filed post-workshop comments on March 18, 2019.

At the October 3, 2019 Commission Conference, staff recommended the adoption of Rule 25-30.0115, F.A.C., to define "landlord" and "tenant" as used within Section 367.022(5), F.S. The Commission voted to defer its determination until after the end of the 2020 Florida Legislative session.

On March 13, 2020, the Florida Legislature passed HB 1339. Among other things, the bill created 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 and provide water or wastewater service to 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.

This recommendation revisits the issue of whether the Commission should order Palm Tree Acres to show cause as to why it should not be fined for providing water and wastewater service without first obtaining a certificate of authorization from the Commission and why it should not bring itself into compliance with the Commission's statutes and rules, in light of the new statutory language.

The Commission has jurisdiction over this matter pursuant to Sections 367.011 and 367.161, F.S.

² Docket No. 20190041-WS – Proposed adoption of Rule 25-30.0115, F.A.C., Definition of Landlord and Tenant.

Discussion of Issues

Issue 1: Should Palm Tree Acres be ordered to show cause in writing, within 21 days, as to why it should not be fined for providing water and wastewater service without first obtaining a certificate of authorization from the Commission, as required by Section 367.031, F.S., and Rule 25-30.033, F.A.C., and as to why it should not bring itself into compliance with the Commission's statutes and rules?

Recommendation: No. A show cause proceeding should not be initiated because Palm Tree Acres is now exempt from the Commission's jurisdiction pursuant to Section 367.022(14), F.S. (DuVal, Crawford)

Staff Analysis: Pursuant to Section 367.031, F.S., each utility subject to the Commission's jurisdiction must obtain a certificate of authorization to provide water or wastewater service. Rule 25-30.033, F.A.C., sets forth the procedure for filing an application for an original certificate as an existing system seeking to establish initial rates and charges. Section 367.022, F.S., Exemptions, lists certain persons and activities that are exempt from the Commission's regulation and from the provisions of Chapter 367, F.S.

On June 9, 2020, the Governor signed HB 1339 (Chapter 2020-027, Laws of Florida) into law, adding subsection (14) to the list of exemptions found in Section 367.022, F.S. This section exempts:

(14) 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, 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.

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. This new exemption addresses the issue of whether Palm Tree Acres is operating as a utility subject to the Commission's jurisdiction and the provisions of Chapter 367, F.S.

Palm Tree Acres meets the criteria of Section 367.022(14), F.S. First, Palm Tree Acres has been recognized by the Circuit Court of the Sixth Judicial Circuit of the State of Florida in and for Pasco County, as operating as both a mobile home park and a mobile home subdivision as those terms are defined in Section 723.003, F.S.³ Second, Palm Tree Acres provides water and wastewater service to a combination of tenants and lot owners. Third, the tenants' water and wastewater service is included in their lot rent and is without specific compensation. Therefore, pursuant to the new statutory exemption section, Palm Tree Acres is exempt from Commission regulation, and is not operating in violation of any Commission statutes or rules. Accordingly, a show cause proceeding should not be initiated because Palm Tree Acres is now exempt from the Commission's jurisdiction pursuant to Section 367.022(14), F.S.

³ Document No. 07229-2018 – Order Granting in Part, Denying in Part Plaintiffs' Motion for Summary Judgment as to Count One.

Issue 2: Should this docket be closed?

Recommendation: This docket should be closed because no further action is required.
(DuVal, Crawford)[~~Click here and type Recommendation text~~ AT
6/24/20

Staff Analysis: This docket should be closed because no further action is required.