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Commission Conference Agenda
January 8, 2019

Item 1

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: December 17, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Industry Development and Market Analysis (Wendel) BHW AF CH
Office of the General Counsel (Murphy) CM TH

RE: Application for Certificate of Authority to Provide Telecommunications Service

AGENDA: 01/08/2019 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

Please place the following Application for Certificate of Authority to Provide Telecommunications Service on the consent agenda for approval.

DOCKET NO.	COMPANY NAME	CERT. NO.
20180200-TX	American Dark Fiber, LLC	8926

The Commission is vested with jurisdiction in this matter pursuant to Section 364.335, Florida Statutes. Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee if the certificate is active during any portion of the calendar year. A Regulatory Assessment Fee Return Notice will be mailed each December to the entity listed above for payment by January 30.

Item 2

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: December 27, ~~2019~~ 2018 AT

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Harper) AEH SMC
Division of Economics (Coston, Guffey) EJD PD WSH SKG JSH MBM

RE: Docket No. 20180121-EG – Amendment of Rule 25-17.015, F.A.C., Energy Conservation Cost Recovery Clause.

AGENDA: ~~01/08/18~~ 01/08/19 AT – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

The Energy Conservation Cost Recovery (ECCR) clause is a mechanism through which utilities recover reasonable and prudent costs related to energy conservation programs. Rule 25-17.015, Florida Administrative Code (F.A.C.), Energy Conservation Cost Recovery, requires all electric and gas utilities that seek to recover conservation program-related costs to file with the Commission ECCR program costs and collected revenue for the prior year (actual and true-up amounts), the current year (actual and estimated amounts), and the future year (projected amounts).

By Order No. PSC-2018-0423-PAA-GU, issued on August 24, 2018, in Docket No. 20180004-GU, the Commission granted a Petition for Waiver of Rule 25-17.015(1)(b), F.A.C, by Peoples Gas System, Florida Public Utilities Company, Florida Division of Chesapeake Utilities Corporation, Florida Public Utilities Company- Fort Meade, Florida Public Utilities Company-Indiantown Division, Florida City Gas, St. Joe Natural Gas Company, and Sebring Gas System

(collectively utilities). The utilities asserted that it was a substantial hardship to file eight months of current year actual and four months estimated data reflecting ECCR program costs as required by Rule 25-17.015(1)(b), F.A.C. The utilities asserted that they could provide the Commission with filings based on six months of actual data and six months of projected data, which would allow the utilities to meet the deadline set forth by the Commission's Order Establishing Procedure (OEP)[1] and which would be a more reasonable means of achieving the purpose of Rule 25-17.015(1)(b), F.A.C.[2]

Accordingly, staff initiated this rulemaking to amend Rule 25-17.015 (1)(b), F.A.C., to remove the provisions that require investor-owned electric and gas utilities to file the current year's ECCR program costs and collected revenue for eight months actual and four months estimated. Additionally, the rulemaking will remove the requirement that the ECCR proceeding occur in November of each year. The removal of the eight and four month filing and proceeding requirements will allow the Commission flexibility to establish the filing dates for the ECCR proceedings by an OEP.

Staff also recommends that the rule be amended to remove an unnecessary form requirement and to add clarifying language concerning the evaluation of advertising costs associated with ECCR conservation efforts.

The Commission's Notice of Development of Rulemaking was published in the Florida Administrative Register on March 20, 2018, in Volume 44, No. 55. There were no requests for a rule development workshop, and no workshops were held. No comments from interested parties were received.

This recommendation addresses whether the Commission should propose the amendment of Rule 25-17.015, F.A.C. The Commission has jurisdiction pursuant to Section 120.54, F.S., Section 366.04, F.S., and Section 366.05, F.S.

[1]See Order No. PSC-2018-0094-POC-EG, in Docket No. 20180002-EG, where the Commission issued an Order Establishing Procedure for the electric utilities in the ECCR docket, and Order PSC-2018-0115-GU, in Docket No. 20180004-GU, where the Commission issued an Order Establishing Procedure for the gas utilities in the ECCR docket.

[2]See Order No. PSC-2018-0244-PAA-EG, in Docket 20180002-EG, where the Commission granted a joint petition for waiver of Rule 25-17.015(1)(b), F.A.C, by Tampa Electric Company, Florida Power & Light Company, Duke Energy Florida, LLC, and Gulf Power Company, and held that six months of ECCR actual data and six months of ECCR projected data would allow the Commission to determine the utilities' appropriate recovery of energy conservation costs.

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rule 25-17.015, F.A.C., Energy Conservation Cost Recovery?

Recommendation: Yes. The Commission should propose the amendment of Rule 25-17.015, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify amended Rule 25-17.015, F.A.C., as a minor violation rule. (Harper, Coston)

Staff Analysis: Sections 366.80, 366.81, 366.82, 366.83 and 403.519, F.S., collectively, provide conservation requirements for the utilities. Section 366.82, F.S., requires that the Commission develop rules that establish conservation goals, approve conservation plans, and monitor programs related to the promotion of demand-side renewable energy systems and the conservation of electric energy and natural gas usage. Rule 25-17.015, F.A.C. (ECCR rule), requires utilities to report certain costs and revenues associated with each utility's conservation programs.

Rule 25-17.015, F.A.C., is the Commission's only cost recovery clause rule that includes a fixed timeline for the actual and estimated filings and a requirement that ECCR proceedings occur during November of each calendar year. Paragraph (1)(b) requires that the utilities file the current year's actual and estimated filings with eight months actual and four months estimated actual true-up amounts. The filing deadlines and hearing schedule associated with the other annual cost recovery clauses are dictated by each respective clause's OEP. Staff is recommending that paragraph (1)(b) be amended to remove the November proceeding requirement and the eight months actual and four months estimated filing provisions to allow the Commission greater flexibility in scheduling the annual ECCR hearing.

Paragraph (1)(e) states that within the 90 days immediately following a utility's true-up filing, each utility must file a report of the first six-month actual results for the current docket year. The utilities must use Form PSC/ECO/44 (11/97), Energy Conservation Cost Recovery Annual Short Form (Short Form), to provide this information. Staff recommends that Paragraph (1)(e) be removed because the Short Form becomes unnecessary with the proposed change to Paragraph (1)(b). The original purpose of this form was to provide a six month update on the actual costs or true-up, per Section 366.82(11) F.S. If Paragraph (1)(b) of the rule is amended as set forth in Attachment A, the actual/estimated filings will satisfy the requirements set forth in Section 366.82(11), F.S.

Staff is also recommending that Subsection (5) of the ECCR rule be amended to clarify language concerning the evaluation of advertising costs associated with conservation efforts. The current rule language is vague and could potentially limit the Commission's ability to assess and evaluate the appropriateness of these costs. Staff recommends that Subsection (5) of the rule be amended to refer the Commission to the Order approving the program when evaluating whether advertising costs are directly related to an approved conservation program. This amendment is clarifies that electric and natural gas conservation programs are approved by Commission order.

Minor Violation Rules Certification

Pursuant to Section 120.695, F.S., beginning July 1, 2017, for each rule filed for adoption, the Commission is required to certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. A list of the Commission rules designated as minor violation rules is published on the Commission's website, as required by Section 120.695(2), F.S. Currently, Rule 25-17.015, F.A.C., is on the Commission's list of rules designated as minor violations. If the Commission proposes the amendment of Rule 25-17.015, F.A.C., the rule would continue to be considered a minor violation rule. Therefore, for purposes of filing the amended rules for adoption with the Department of State, staff recommends that the Commission certify proposed amended Rule 25-17.015, F.A.C., as a minor violation rule.

Statement of Estimated Regulatory Costs

Pursuant to Section 120.54, F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. The SERC is appended as Attachment B to this recommendation. The SERC evaluates whether the rule amendment is likely to have an adverse impact on growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years of implementation of the proposed rule.[3]

The SERC concludes that the rule amendment will not likely directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in Florida within one year after implementation. Further, the SERC concludes that the rule amendment will not likely have an adverse impact on economic growth, private sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation in excess of $1 million in the aggregate within five years of implementation. Thus, the rule amendment does not require legislative ratification pursuant to Section 120.541(3), F.S. In addition, the SERC states that the rule amendment will not have an adverse impact on small business and will have no impact on small cities or counties. No regulatory alternatives were submitted pursuant to paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revision.

Conclusion

Based on the foregoing, staff recommends the Commission propose the amendment of Rule 25-17.015, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify amended Rule 25-17.015, F.A.C., as a minor violation rule.

[3] Section 120.541(2), F.S.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rule may be filed with the Department of State, and this docket should be closed. (Harper)

Staff Analysis: If no requests for hearing or comments are filed, the rule may be filed with the Department of State, and this docket should be closed.

25-17.015 Energy Conservation Cost Recovery.

(1) The Commission shall conduct annual energy conservation cost recovery (ECCR) proceedings ~~during November of~~ each calendar year. Each utility over which the Commission has ratemaking authority may seek to recover its costs for energy conservation programs. Each utility seeking cost recovery shall file the following at the times directed by the Commission, pursuant to the order establishing procedures in the annual cost recovery proceeding:

(a) An annual final true-up filing showing the actual common costs, individual program costs and revenues, and actual total ECCR revenues for the most recent 12-month historical period from January 1 through December 31 that ends prior to the annual ECCR proceedings. As part of this filing, the utility shall include a summary comparison of the actual total costs and revenues reported to the estimated total costs and revenues previously reported for the same period covered by the filing in paragraph (1)(b). The filing shall also include the final over- or under-recovery of total conservation costs for the final true-up period.

(b) An annual estimated/actual true-up filing showing ~~eight months~~ actual and ~~four months~~ projected common costs, individual program costs, and any revenues collected. Actual costs and revenues should begin January 1 immediately following the period described in paragraph (1)(a). The filing shall also include the estimated/actual over- or under-recovery of total conservation costs for the estimated/actual true-up period.

(c) An annual projection filing showing 12 months projected common costs and program costs for the period beginning January 1 following the annual hearing.

(d) An annual petition setting forth proposed energy conservation cost recovery factors to be effective for the 12-month period beginning January 1 following the annual hearing. The ~~Such~~ proposed ~~cost recovery~~ factors shall take into account the data filed pursuant to paragraphs (1)(a), (b) and (c).

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

~~(c) Within the 90 days that immediately follow the first six months of the reporting period in paragraph (1)(a), each utility shall report the actual results for that period on Form PSC/ECO/44 (11/97), entitled, Energy Conservation Cost Recovery Annual Short Form, which is incorporated by reference in this rule, and may be obtained from the Director, Division of Economics, Florida Public Service Commission.~~

(2) Each utility shall establish separate accounts or subaccounts for each conservation program for purposes of recording the costs incurred for that program. Each utility shall also establish separate subaccounts for any revenues derived from specific customer charges associated with specific programs.

(3) A complete list of all account and subaccount numbers used for conservation cost recovery shall accompany each filing in paragraph (1)(a).

(4) New programs or program modifications must be approved prior to a utility seeking cost recovery. A utility may seek cost recovery for implementation costs associated with new or modified programs incurred prior to Commission approval. ~~Specifically, any incentives or rebates associated with new or modified programs may not be recovered if paid before approval.~~ However, ~~if~~ a utility may not seek cost recovery for any incentives or rebates associated with new or modified programs paid prior to Commission approval ~~incurs prudent implementation costs before a new program or modification has been approved by the Commission, a utility may seek recovery of these expenditures~~.

(5) Advertising expense recovered through energy conservation cost recovery shall be directly related to an approved conservation program, shall not mention a competing energy source, and shall not be company image enhancing. When the advertisement makes a specific claim of potential energy savings or states appliance efficiency ratings or savings, all data sources and calculations used to substantiate these claims must be included in the filings required by subsection ~~paragraph~~ (1)~~(a)~~. In determining whether an advertisement is "directly

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

related to an approved conservation program,"~~,~~ the Commission shall refer to the Order approving the program. In addition, the Commission shall consider~~, but is not limited to,~~ whether the advertisement or advertising campaign:

(a) Identifies a specific problem;

(b) States how to correct the problem; and

(c) Provides direction concerning how to obtain help to alleviate the problem.

Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 366.04(2)(f), 366.06(1), 366.82 (2), (7)-(11), ~~*(3), (5)*~~ *FS. History–New 1-27-81, Amended 12-30-82, 3-27-86, Formerly 25-17.15, Amended 8-22-90, 11-16-97, 5-4-99,*_____.

State of Florida

Public Service Commission

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

DATE: May 7, 2018

TO: Adria E. Harper, Senior Attorney, Office of the General Counsel

FROM: Sevini K. Guffey, Public Utility Analyst I, Division of Economics S.K.G.

RE: Statement of Estimated Regulatory Costs (SERC) for Proposed Amendments of Rule 25-17.015, Florida Administrative Code (F.A.C.), Energy Conservation Cost Recovery

The recommended rule revisions implement changes to Rule 25-17.015, F.A.C., which addresses the Energy Conservation Cost Recovery (ECCR) clause. The proposed changes are to: (1) delete the requirement that the Commission conduct the ECCR hearing in November and, instead, the proceedings will follow the schedule outlined in the Order Establishing Procedure (OEP) of the ECCR clause docket; (2) modify the requirement that utilities file eight months actual and four months projected costs for the annual true-up filings and, instead, allow utilities to file their actual and projected data within the timeline established in the OEP; (3) delete the requirement that utilities file form PSC/ECO/44, titled Energy Conservation Cost Recovery Annual Short Form, as the form contains redundant information; and (4) clarify the evaluation of advertising costs associated with conservation efforts.

The proposed rule revisions are not imposing any new regulatory requirements and seek to improve the scheduling of the ECCR filings and subsequent hearing. The utilities affected by the recommended rule revisions potentially may achieve cost savings as a result of not having to file form PSC/ECO/44. No workshop was requested in conjunction with the recommended rule revisions. No regulatory alternatives were submitted pursuant to Section 120.541(1)(a), F.S. None of the impact/cost criteria established in Section 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

cc: SERC file

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rule 25-17.015, F.A.C.

1. Will the proposed rule have an adverse impact on small business? [120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes ☐ No ☒

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes ☐ No ☒

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of $1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)1, F.S.]

Economic growth	Yes ☐	No ☒
Private-sector job creation or employment	Yes ☐	No ☒
Private-sector investment	Yes ☐	No ☒

(2) Is likely to have an adverse impact on any of the following in excess of $1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets)	Yes ☐	No ☒
Productivity	Yes ☐	No ☒
Innovation	Yes ☐	No ☒

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(3) Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes ☐ No ☒

Economic Analysis: As a result of the proposed rule amendments, the Commission and the 13 affected utilities (5 electric IOUs and 8 gas IOUs) should achieve cost savings by not having to collect, file, and evaluate duplicative information and forms. If the proposed revisions are approved, the Short Form will become redundant to the actual/estimated filings. The revisions will also improve the scheduling of the ECCR filings and subsequent hearing. Finally, the modification will add clarifying language related to the evaluation of advertising costs associated with conservation efforts.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

Five electric IOUs and eight natural gas IOUs.

(2) A general description of the types of individuals likely to be affected by the rule.

The proposed rule amendments should reduce the cost to the affected utilities by removing redundant filing requirements. The rule currently affects five electric IOUs (Duke Energy Florida, Florida Power & Light Company, Florida Public Utilities Company, Gulf Power Company, and Tampa Electric Company) and eight natural gas IOUs (Florida City Gas, Florida Public Utilities Company, Florida Division of Chesapeake Utilities Corporation, Florida Public Utilities Company – Indiantown and Ft. Meade Divisions, Peoples Gas System, Sebring Gas System, and St. Joe Natural Gas Company).

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

☒ None. To be done with the current workload and existing staff.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

☒ None.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities: [120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned

and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

☒ No adverse impact on small business.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

☒ No impact on small cities or small counties.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful. [120.541(2)(f), F.S.]

☒ None.

Additional Information:

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

☒ No regulatory alternatives were submitted.

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☐ A regulatory alternative was received from

☐ Adopted in its entirety.

☐ Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.

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Item 3

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: December 27, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (DuVal, Nieves)
Division of Engineering (Knoblauch)

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: 1/08/19 – Regular Agenda – Show Cause – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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Case Background

Commission staff opened the instant docket to initiate show cause proceedings against Palm Tree Acres Mobile Home Park (Palm Tree Acres or Park or Utility) for apparent violation of Section 367.031, Florida Statutes (F.S.), and Rule 25-30.033, Florida Administrative Code (F.A.C.), for providing water and wastewater service to the public for compensation without first obtaining a certificate of authorization from the Florida Public Service Commission (Commission or PSC).

Palm Tree Acres is located in Zephyrhills, Pasco County, Florida. The Park is comprised of two types of residents: those who rent their lot from the Park (renters) and those who own their lot (owners). There are approximately 244 total lots within the Park; approximately 222 lots are leased by renters and approximately 22 lots are owned by owners.[1] The Park has provided water and wastewater service to both renters and owners for compensation through a monthly lot rent for approximately 34 years. The Park is not certificated to provide water or wastewater service and has never filed an application for a certificate of authorization or for recognition of exempt status under Section 367.022, F.S.

The renters' lot rent includes a single charge for rental of the lot, water and wastewater service, and amenities (community center, pool, etc.); this charge is included as part of the renters' rental agreement. The owners' lot rent includes a single charge for water and wastewater service and amenities (community center, pool, etc.). This arrangement was contemplated by the restrictive covenants that ran with the owners' land, but, on December 8, 2016, a court ruled that these covenants expired pursuant to the Marketable Record Title Act.[2]

At some point, several owners (Lot Owners) ceased paying for the amenities (community center, pool, etc.) and requested that water and wastewater service be provided on a standalone basis. This dispute has been the subject of court litigation between the Park and those Lot Owners for approximately four years.

In June 2017, the Lot Owners' attorney requested that the Commission assert jurisdiction over the Park as the Lot Owners believed the Park was operating as an uncertificated utility by providing water and wastewater service to non-tenant customers for compensation.

During preliminary discussions, the Park claimed exempt status under the landlord-tenant exemption contained in Section 367.022(5), F.S., as it asserted the Park maintained a landlord-tenant relationship with the Lot Owners pursuant to Chapter 723, F.S. (Florida Mobile Home Act). The Park claimed that the lot rent charged to the Lot Owners created such a tenancy relationship because the Lot Owners "rent" access to the common areas of the Park. Commission legal staff analyzed the Park's claim and concluded that no agreement exists between the Park and Lot Owners anymore and that Palm Tree Acres does not qualify, and has never qualified, for exempt status under Section 367.022(5), F.S., or any other subsection of Section 367.022, F.S.

[1] Staff notes that these amounts are based on information provided in the Park's letter, dated November 21, 2018 (Document No. 07230-2018).
[2] Attachment A - Order on Defendants' Motion for Partial Summary Judgment.

Staff delayed pursuing show cause action because the Park and Lot Owners attempted to resolve their court litigation through mediation and explore other means of maintaining service while attaining exempt status. These included, but were not limited to: (1) negotiating an appropriate landlord-tenant agreement with the Lot Owners; (2) creating a master homeowners' association; (3) providing service to the Lot Owners free of charge on a permanent basis; (4) creating a utility owned by the Lot Owners; and (5) requesting that Pasco County provide service to the Lot Owners.

On or about November 20, 2017, the Park and Lot Owners engaged in mediation and allegedly discussed one or more of the above options. On January 31, 2018, Commission staff was notified that the Park and Lot Owners were unable to reach an agreement and the mediation process ended in an impasse.

On February 23, 2018, staff held a noticed, informal meeting with Palm Tree Acres and interested persons to review the status of the discussion between Palm Tree Acres and the Lot Owners. Then, by certified letter, dated March 8, 2018, Commission staff notified Palm Tree Acres of its apparent violation of Section 367.031, F.S., and Rule 25-30.033, F.A.C., for providing water and wastewater service to the public for compensation without first obtaining a certificate of authorization from the Commission.[3] Palm Tree Acres was informed in that letter that Section 367.161, F.S., provides:

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

[3] Attachment B – Notice of Apparent Violation.

Commission staff's letter put Palm Tree Acres on notice that staff would open a docket to initiate a show cause proceeding if Palm Tree Acres did not correct the violation by filing an application for original certificates of authorization as an existing system requesting initial rates and charges to provide water and wastewater services, pursuant to Rule 25-30.033, F.A.C., by April 9, 2018.

The Park provided its initial response on April 9, 2018, and its supplemental response on April 30, 2018.[4] On May 21, 2018, Commission staff issued a follow-up data request to the Park.[5] The Park provided its response on June 6, 2018.[6] On November 21, 2018, the Park filed a letter summarizing its positions and providing its interpretation of two recent orders issued by the court presiding over the civil litigation involving the Park and the Lot Owners.[7]

In its responses, similar to the previously mentioned preliminary discussions, Palm Tree Acres claimed exempt status under Section 367.022(5), F.S., as it asserted that the Park is a hybrid mobile home park/mobile home subdivision and therefore had a landlord-tenant relationship with the Lot Owners pursuant to the Florida Mobile Home Act. The Park claimed that the lot rent charged to the Lot Owners created such a tenancy relationship under Section 723.002(2), which provides the entities to which the Chapter applies, and Section 723.058, F.S., which imparts that conditions of tenancy may exist between mobile home subdivisions and owners of lots in a mobile home subdivision, because the Lot Owners "rent" access to the common areas of the Park.

Palm Tree Acres provided that a circuit court has recently found that those portions of the Florida Mobile Home Act that relate to mobile home subdivisions apply to the relationship between the Park and the Lot Owners by operation of Section 723.002(2), F.S. Accordingly, Palm Tree Acres asserted that this tenancy relationship should qualify the Park for the Commission's landlord-tenant exemption under Section 367.022(5), F.S. Palm Tree Acres maintained that, although the circuit court has made no finding on whether the Lot Owners are "tenants" for purposes of the Commission's landlord-tenant exemption, the court's order should be informative to the Commission as it did include a finding that a "tenancy" exists between the Lot Owners and the Park. Furthermore, Palm Tree Acres provided that, while the Legislature has not defined what constitutes a "landlord" or a "tenant" for purposes of the Commission's landlord-tenant exemption, it likewise has given no indication that a tenancy under the Florida Mobile Home Act would not qualify for the Commission's exemption.

Additionally, the Park maintained that it meets the dictionary definition of "landlord," pursuant to its interpretation of the definition provided in Black's Law Dictionary (Fifth Edition). The Park presented the following definition:

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

[4] Attachment C – Palm Tree Acres' Response, dated April 9, 2018 and Attachment D – Palm Tree Acres' Supplemental Response, dated April 30, 2018.
[5] Attachment E – Staff's data request, dated May 21, 2018.
[6] Attachment F – Palm Tree Acres' Response to Staff's data request, dated June 6, 2018.
[7] *See* Document No. 07230-2018, in Docket No. 20180142-WS.

Applying this definition, the Park asserted that it holds common areas, recreational facilities, roads, water and wastewater facilities, and other amenities that were leased to the Lot Owners for a monthly rent, and is, therefore, the landlord for the lot owner tenants of that "rental property."

The Park also attempted to argue that it is not operating under any regulatory compact with the State, has not been given any franchise service area, and has no corresponding obligation to serve. Even so, the Park confirmed that it agreed to continue providing the Lot Owners with use of the Park's water and wastewater facilities at no charge while the circuit court litigation is pending. The Park further stated that any payments tendered by the Lot Owners will not be accepted or processed.

However, the Lot Owners' attorney subsequently provided information indicating that the Park no longer considers the Lot Owners as tenants, yet has never directed the Lot Owners to stop tendering payments, has never refused to accept payments from the Lot Owners, has never returned any payments tendered by the Lot Owners, and has not released the liens it placed against the Lot Owners' property for nonpayment of the full amount of monthly lot rent. Based on information received by Commission staff, individual Lot Owners have been pursuing different routes regarding payments for their water and wastewater service while the circuit court litigation is pending; some have continued tendering payments of the entire monthly lot rent under protest, some are only tendering payments of what they estimate is the cost of their water and wastewater service, and some are not tendering any payment at all.

By certified letter, dated July 26, 2018, the Commission's Office of the General Counsel notified Palm Tree Acres that Commission staff opened a docket initiating a show cause proceeding for the Utility's apparent statute and rule violation.[8]

On October 15, 2018, the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida, issued its Order Granting Defendant's Motion for Partial Summary Judgment.[9] In that order, the court found that, under the narrow issue of property rights, Palm Tree Acres has a constitutional right to refuse to use its property for the benefit of others, including the right to discontinue providing water and sewer service to the Lot Owners but whether or not to exercise that right is for the Park to decide. In other words, the court appeared to be limiting its jurisdiction to a pure property rights matter. In so doing, the court acknowledged that Section 367.165(1), F.S., does not authorize the court to prohibit termination (or presumably order termination) of water and sewer service because that authority lies exclusively with the Commission. The Lot Owners are currently seeking appellate review of this order.[10]

The court also issued its Order Granting in Part, Denying in Part Plaintiffs' Motion for Summary Judgment as to Count One on October 15, 2018.[11] In that order, the court found that: (1) the Lot Owners are not a "mobile home owner," "mobile homeowner," "home owner," or "homeowner"

[8] Attachment G – Staff's letter, dated July 26, 2018.
[9] Attachment H - Order Granting Defendant's Motion for Partial Summary Judgment.
[10] On November 12, 2018, the Lot Owners filed their Petition for a Writ of Certiorari with Florida's Second District Court of Appeal (Case No. 2D18-4480). *See* Document No. 07226-2018, in Docket No. 20180142-WS.
[11] Attachment I - Order Granting in Part, Denying in Part Plaintiffs' Motion for Summary Judgment as to Count One.

as defined in Section 723.003(11), F.S.; (2) Chapter 723, F.S., does not authorize Palm Tree Acres to impose any lien upon the Lot Owners' property; (3) Chapter 723, F.S., does not authorize Palm Tree Acres to evict the Lot Owners for failure to pay any "lot rental amount," "maintenance fee," or other fees or charges; and (4) Palm Tree Acres and the Lot Owners are not parties to a "mobile home lot rental agreement" as defined in Chapter 723.003(10), F.S. Furthermore, the court also found that Palm Tree Acres is a "mobile home subdivision" as defined by Section 723.003(14), F.S., and those portions of Chapter 723, F.S., that apply to a mobile home subdivision apply to the relationship between Palm Tree Acres and the Lot Owners.[12] [13] However, the court specifically made no finding, adjudication, or declaration as to whether Palm Tree Acres is a "landlord" or the Lot Owners are a "tenant" as those terms are used in Section 367.022(5), F.S., as the application of those terms under Chapter 367, F.S., is exclusively within the jurisdiction of the Commission.

This recommendation addresses whether or not the Commission should order Palm Tree Acres to show cause as to why it is not obligated to submit the relevant fine and bring itself into compliance with the Commission's statutes and rules.

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

[12] Those portions of Chapter 723, F.S., that appear to apply include Sections 723.035, 723.037, 723.038, 723.054, 723.055, 723.056, 723.058, 723.068, and 723.074, F.S.

[13] None of the sections of Chapter 723, F.S., that appear to apply to the relationship between the Park and the Lot Owners impute any enforceable authority of the Department of Business and Professional Regulation over a mobile home subdivision relative to the provision of water and wastewater service. Neither do they purport to preempt the Commission's ability to interpret the applicability of the landlord-tenant exemption under Section 367.022(5), F.S.

Discussion of Issues

Issue 1: Should Palm Tree Acres Mobile Home Park be ordered to show cause in writing, within 21 days, as to why it (1) 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, Florida Statutes, and Rule 25-30.033, Florida Administrative Code, and (2) should not bring itself into compliance with the Commission's statutes and rules?

Recommendation: Yes. Palm Tree Acres Mobile Home Park should be ordered to show cause in writing, within 21 days, as to why it (1) should not be fined in the amount of $5,000 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, Florida Statutes, and Rule 25-30.033, Florida Administrative Code, and (2) should not bring itself into compliance with the Commission's statutes and rules. The show cause order should incorporate the conditions as set forth in the staff analysis. (DuVal, Nieves)

Staff Analysis:

I. Show Cause Law

Pursuant to Section 367.031, F.S., each utility subject to the jurisdiction of the Commission must obtain from the Commission a certificate of authorization to provide water and/or wastewater service. Pursuant to Rule 25-30.033, F.A.C., an existing system seeking to establish initial rates and charges must file an application for an original certificate in accordance with the procedure set forth in that Rule. Section 367.022, F.S., provides the scenarios in which an individual's or entity's activities are not subject to regulation by the Commission as a utility. Specifically, Section 367.022(5), F.S., states that "[l]andlords providing service to their tenants without specific compensation for the service" are not subject to regulation by the Commission as a utility.

Pursuant to Section 367.161, F.S., the Commission has the power to impose upon any entity that is subject to its jurisdiction under this chapter and that is found to have refused to comply with, or to have willfully violated, any lawful rule or order of the Commission or any provision of this chapter a penalty for each offense of not more than $5,000, for each such day a violation continues, which penalty shall be fixed, imposed, and collected by the commission; or the Commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it.

When evaluating staff's recommendation, a review of the Commission's authority regarding a utility's alleged violations of Commission rules, statutes, or orders is helpful.

Pursuant to Section 367.161(1), F.S., the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than $5,000 for each such day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 367, F.S. Each day a violation continues is treated as a separate offense. Each penalty is a lien upon the real and personal property of the utility and is enforceable by the Commission as a statutory lien. If a

penalty is also assessed by another state agency for the same violation, the Commission's penalty will be reduced by the amount of the other agency's penalty. As an alternative to the above remedies, Section 367.161(2), F.S., permits the Commission to amend, suspend, or revoke a utility's certificate for any such violation. Part of the determination the Commission must make in evaluating whether to penalize a utility is whether the utility willfully violated the rule, statute, or order. Section 367.161, F.S., does not define what it is to "willfully violate" a rule or order.

Willfulness is a question of fact.[14] The plain meaning of "willful" typically applied by the Courts in the absence of a statutory definition, is an act or omission that is done "voluntarily and intentionally" with specific intent and "purpose to violate or disregard the requirements of the law." *Fugate* at 76.

The procedure followed by the Commission in dockets such as this is to consider the Commission staff's recommendation and determine whether or not the facts warrant requiring the utility to respond. If the Commission finds that the facts warrant requiring the utility to respond, the Commission issues an Order to Show Cause (show cause order). A show cause order is considered an administrative complaint by the Commission against the utility. If the Commission issues a show cause order, the utility is required to file a written response, which response must contain specific allegations of disputed fact. If there are no disputed factual issues, the utility's response should so indicate. The response must be filed within 21 days of service of the show cause order on the respondent.

In recommending a penalty, staff reviews prior Commission orders. While Section 367.161, F.S., treats each day of each violation as a separate offense with penalties of up to $5,000 per offense, staff believes that the general purpose of the show cause penalties is to obtain compliance with the Commission's rules, statutes, and orders. If a utility has a pattern of noncompliance with a particular rule or set of rules, staff believes that a higher penalty is warranted. If the rule violation adversely impacts the public health, safety, or welfare, staff believes that the sanction should be the most severe.

The utility has two options if a show cause order is issued. The utility may respond and request a hearing pursuant to Sections 120.569 and 120.57, F.S. If the utility requests a hearing, a further proceeding will be scheduled before the Commission makes a final determination on the matter. Or, the utility may respond to the show cause order by remitting the fine and bringing itself into compliance with the Commission's statutes and rules. If the utility pays the fine and brings itself into compliance with the Commission's statutes and rules, this show cause matter is considered resolved, and the docket closed.

In the event the utility fails to timely respond to the show cause order, the utility is deemed to have admitted the factual allegations contained in the show cause order. The utility's failure to timely respond is also a waiver of its right to a hearing. If the utility does not timely respond, a final order will be issued imposing the sanctions set out in the show cause order.

[14] *Fugate v. Fla. Elections Comm'n*, 924 So. 2d 74, 75 (Fla. 1st DCA 2006), *citing, Metro. Dade County v. State Dep't of Envtl. Prot.*, 714 So. 2d 512, 517 (Fla. 3d DCA 1998).

II. Analysis of Substantive Issues Relative to Show Cause

1. Apparent Prior Noncompliance with Section 367.031, F.S.

Palm Tree Acres began providing utility services approximately 34 years ago. Therefore, because the Park began providing utility services prior to July 1, 1996, Section 367.031, F.S., obligated the Park to file an application for a certificate of authorization or for recognition of its exempt status under Section 367.022, F.S.[15] Even though the Park may have believed it qualified for exemption under Section 367.022(5), F.S., it failed to submit an application to the Commission for recognition of its alleged exempt status, in violation of Section 367.031, F.S. Instead, Palm Tree Acres elected to continue providing water and wastewater service to the Lot Owners for compensation under only its misplaced understanding of the applicability of Section 367.022(5), F.S. Assuming facts identical to those at present, had Palm Tree Acres properly submitted its required application for exempt status at the time it began providing service, as required by law, Commission staff would have evaluated the applicability of the exemption at that time and presumably recommended that the Park submit an application for a certificate of authorization to provide service and that the Lot Owners be included in the utility's service area approximately 34 years ago.

The Park now attempts to argue that it is not operating under any regulatory compact with the State, has not been given any franchise service area, and has no corresponding obligation to serve. However, this argument becomes circuitous as it appears that the only reason why the Park was not given a franchise over the service territory is because it did not comply with the law and properly submit its application for exempt status. If Palm Tree Acres had complied with the law as enacted at the time it began providing utility services, the Commission would have likely authorized the Park's provision of water and wastewater service to an identified service area (to include both the lot renters and Lot Owners) and the obligation to serve would have been found.

Summary

Because Palm Tree Acres has been operating as a utility subject to the Commission's regulation since it began providing utility services and has created a constructive service area to include the lot renters and Lot Owners, it should be required to comply with Chapter 367, F.S., and Chapter 25-30, F.A.C.

[15] Prior to July 1, 1996, pursuant to Section 367.031, F.S., water and wastewater utilities subject to the Commission's jurisdiction were required to file an application for a certificate of authorization or for recognition of its exempt status under Section 367.022, F.S. *E.g.* Order No. PSC-04-0398-FOF-WS, issued April 16, 2004, in Docket No. 20030986-WS, *In re: Application for acknowledgment of sale of land and facilities of Little Sumter Utility Company to Village Center Community Development District, and for cancellation of Certificate Nos. 580-W and 500-S in Marion and Sumter Counties*, and Docket No. 20021238-WS, *In re: Investigation of rate structure and conservation initiative of Little Sumter Utility Company in Sumter County, pursuant to Order PSC-00-0582-TRF-SU*. Upon sufficient proof of its qualification under Section 367.022, F.S., the Commission would issue an order indicating the exempt status of the utility. *E.g.* Order No. PSC-96-0891-FOF-WS, issued July 9, 1996, in Docket No. 19960328-WS, *In re: Request for exemption from Florida Public Service Commission regulation for provision of water and wastewater service in Orange County by Maitland Club, Inc*. The 1996 Legislature amended Section 367.031, F.S., making exemptions from Commission regulation self-executing. Therefore, utilities meeting the requirements of Section 367.022, F.S., are no longer required to apply for exempt status.

2. Section 367.022(5), F.S. – Landlord-Tenant Exemption

A review of past Commission orders shows that landlords providing water and/or wastewater service to tenants are exempt from regulation if they provide service without a specific charge identified within the tenants' rent or maintenance agreement. The orders further indicate that a mobile home park or subdivision that provides service to Lot Owners for compensation cannot qualify for the landlord-tenant exemption and is subject to Commission regulation.

Order No. PSC-92-0746-FOF-WU

In Order No. PSC-92-0746-FOF-WU, the Commission considered Gem Estates Water System's (Gem Estates') application for exempt status under the landlord-tenant exemption. Gem Estates was owned and operated by the owners of Gem Estates Mobile Home Village, a mobile home subdivision, for the purpose of providing water service to the lot owner residents of the mobile home subdivision. In that case, the Commission found that "[b]ecause the mobile home owners own their own land, the utility's owners are not landlords."[16] Therefore, "[i]f the utility's owners are not the landlords for the customers served by Gem Estates, the landlord-tenant exemption cannot apply."[17] In its subsequent order granting Gem Estates a certificate to provide water service, the Commission noted that since the park's inception, the residents paid for water service, street lighting, recreational facilities, and upkeep of the common areas through a "composite annual fee."[18] Notably, Gem Estates remained under the Commission's jurisdiction until the Commission approved the utility's transfer to the homeowner's association, comprised of all of the subdivision's lot owners as members, as it qualified for exemption under Chapter 367.022(7), F.S., as a nonprofit association providing water service solely to its members who own and control the association.[19] [20]

Similar to the residents of Gem Estates Mobile Home Village, the Lot Owners within Palm Tree Acres own their own land within a mobile home subdivision and paid a monthly fee to the Park for water and wastewater service and other amenities. Applying the same rationale as provided by the Commission in the above-referenced order, Palm Tree Acres is not the landlord for the Lot Owners and the landlord-tenant exemption cannot apply.

Order No. 23150

In Order No. 23150, the Commission found that a maintenance agreement between Florilow, Inc. (a mobile home and recreational vehicle park) and its 99-year lessees that included a fee to cover maintenance of the park's sewage plant, water system, roads, taxes, and garbage service did not subject the utility to regulation because it did not identify a specific charge for such water and

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[16] Order No. PSC-92-0746-FOF-WU, issued August 4, 1992, in Docket No. 19920281-WU, *In Re: Request for Exemption from Florida Public Service Commission Regulation for Provision of Water Service by GEM Estates Water System in Pasco County*.

[17] *Id*.

[18] Order No. PSC-94-1472-FOF-WU, issued November 30, 1994, in Docket No. 19921206-WU, *In Re: Application for Certificate to Provide Water Service in Pasco County by GEM Estates Utilities, Inc*.

[19] Order No. PSC-01-1241-FOF-WU, issued June 4, 2001, in Docket No. 19990256-WU, *In re: Application for transfer of facilities of Gem Estates Utilities, Inc. in Pasco County to Gem Estates Mobile Home Village Association, Inc., and cancellation of Certificate No. 563-W*.

[20] Staff notes that it presented Palm Tree Acres and the Lot Owners with the option to create a "master homeowners' association" (to include the Park, the Lot Owners, and the renters) in order to obtain exempt status under Section 367.022(7), F.S. However, this option was apparently considered and, ultimately, rejected.

wastewater service.[21] The Commission specifically stated: "We believe that this interpretation is consistent with the protection inherent in the landlord-tenant exemption; if a tenant is dissatisfied with a maintenance agreement, as with a rental agreement, he or she can move to another residence. We also believe that the 99-year lessees discussed herein are adequately protected under Chapter 723, Florida Statutes." [22]

The Lot Owners within Palm Tree Acres paid a monthly fee similar to the maintenance fee paid by Florilow's 99-year lessees. However, a distinction may be drawn because Palm Tree Acres' Lot Owners own their land outright and are not a party to any type of rental agreement. Therefore, it appears that the inherent protection provided in the landlord-tenant exemption does not apply to the Lot Owners because they have no agreement with the Park and cannot simply move to another residence if they are dissatisfied with their monthly fee charged by Palm Tree Acres. Furthermore, because the Lot Owners cannot claim protection under all provisions of Chapter 723, F.S., it appears that the Lot Owners may not have adequate protection under Chapter 723, F.S., comparable to that of their neighboring lot renters within the Park.

Order No. 24806

In Order No. 24806, the Commission found that Oak Leafe Wastewater Treatment Plant was subject to the Commission's jurisdiction because Oak Leafe would not be providing service strictly to tenants because some of the residents would own their lots.[23] In reaching this conclusion, the Commission applied the definition of "tenant" as provided by Section 83.43(4), F.S. (Landlord and Tenant, Part II Residential Tenancies).[24]

Palm Tree Acres argues that Order No. 24806 is not applicable to Palm Tree Acres because Oak Leafe was not a mobile home park or subdivision. As such, Palm Tree Acres maintains it is inappropriate for Commission staff to apply the definition of "tenant" as provided by Section 83.43(4), F.S., when examining the Commission's landlord-tenant exemption. However, the other orders discussed above provide the Commission's interpretation of a landlord-tenant relationship for purposes of Chapter 367, F.S., and do not contain any references to Chapter 83, F.S. Accordingly, the Commission need not consider the definition of "tenant" as provided by Section 83.43(4), F.S., to reach the conclusion that Palm Tree Acres does not qualify for exempt status under Section 367.022(5), F.S.

Summary

Because the Lot Owners own their land, Palm Tree Acres is not the landlord of those Lot Owners for purposes of Chapter 367, F.S. Moreover, the Lot Owners appear to lack the protection inherent in the Commission's landlord-tenant exemption. As such, Palm Tree Acres should be required to comply with Chapter 367, F.S., and Chapter 25-30, F.A.C.

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[21] Order No. 23150, issued July 5, 1990, in Docket No. 19870060-WS, *In Re: Resolution by Board of Sumter County Commissioners Declaring Sumter County Subject to Jurisdiction of Florida Public Service Commission*.
[22] *Id*.
[23] Order No. 24806, issued July 11, 1991, in Docket No. 19910385-SU, *In re: Request for exemption from Florida Public Service Commission regulation for a wastewater treatment plant in Highlands County by Oak Leafe Wastewater Treatment Plant*.
[24] "'Tenant' means any person entitled to occupy a dwelling unit under a rental agreement." Section 83.43(4), F.S.

3. Legal Definition of Landlord-Tenant Relationship

Black's Law Dictionary (Tenth Edition) defines "landlord-tenant relationship" as "[t]he legal relationship between the lessor and lessee of real estate." A "lessor" is defined as "[s]omeone who conveys real or personal property by lease" and a "lessee" is "[s]omeone who has a possessory interest in real or personal property under a lease." A "possessory interest" is defined as "[t]he present right to control property, including the right to exclude others, by a person who is not necessarily the owner" and "[a] present or future right to the exclusive use and possession of property." "Tenancy" is defined as "[t]he possession or occupancy of land under a lease; a leasehold interest in real estate" and "occupancy" is defined as "[t]he act, state, or condition of holding, possessing, or residing in or on something; actual possession, residence, or tenancy, especially of a dwelling or land." Further, a "common area" is defined as "[t]he realty that all tenants may use though the landlord retains control over and responsibility for it" and "land" is defined as "[a]n estate or interest in real property."

Based on the above definitions, it appears that the Park's assertion that a landlord-tenant relationship exists between it and the Lot Owners based on the "lease" for the common areas is unsubstantiated. If the Park's argument were true, the Lot Owners, as lessees of the common areas, would maintain a possessory interest in the common areas and would have the right to exclude others' use of those areas. Based on the facts provided by the Park, it appears that the Lot Owners do not have such a possessory right with regard to the common areas. Additionally, based on the facts provided, it appears that the Lot Owners do not hold, possess, or reside in or on the common areas; therefore, they do not occupy them under a tenancy. Furthermore, the definition of a common area implies that its use is an added benefit resulting from a landlord-tenant relationship, not that a landlord-tenant relationship is created through the use of common areas.

Summary

It appears that the legal definition of a "landlord-tenant relationship" supports a finding that Palm Tree Acres is not a landlord for the Lot Owners and should be required to comply with Chapter 367, F.S., and Chapter 25-30, F.A.C.

4. PSC's Landlord-Tenant Exemption In Light Of Florida Mobile Home Act

Based on the Circuit Court of the Sixth Judicial Circuit in and for Pasco County's recent order, certain provisions of the Florida Mobile Home Act apply to the relationship between Palm Tree Acres and the Lot Owners. However, the Department of Business and Professional Regulation's jurisdiction over Palm Tree Acres as a mobile home subdivision remains unclear. Nonetheless, a review of past Commission orders shows that the Commission maintains exclusive and superseding jurisdiction over matters related to the provision of utility services when a question arises pertaining to the appropriate application of Chapter 367, F.S., in conjunction with Chapter 723, F.S.

Order No. PSC-99-1228-PAA-WS

In Order No. PSC-99-1228-PAA-WS, the Commission briefly referenced the relationship between Chapter 723, F.S., and the PSC's jurisdiction.[25] In that docket, the utility was

[25] Order No. PSC-99-1228-PAA-WS, issued June 21, 1999, in Docket No. 19981342-WS, *In re: Application for grandfather certificates to operate water and wastewater utility in Polk County by Anglers Cove West, Ltd.*

concerned with how to adjust its rates to cover RAFs while still complying with the mobile home park agreements under Chapter 723, F.S. The Commission noted that the owner was informed (presumably by Commission staff) that Section 367.011, F.S., provides the Commission with exclusive jurisdiction over utilities with regard to service, authority, and rates, and that the Commission's authority supersedes all other laws, agreements, and contracts with regard to jurisdiction over utilities.

The same response can be applied to Palm Tree Acres. The Park believes that a tenancy relationship is created with the Lot Owners under Chapter 723, F.S., and argues that this qualifies as a landlord-tenant relationship under Chapter 367, F.S. Additionally, the circuit court has recently found that the relationship between the Park and the Lot Owners is subject to those portions of Chapter 723, F.S., that apply to mobile home subdivisions. However, even if Palm Tree Acres is considered a mobile home subdivision as defined by Section 723.003(14), F.S., Chapter 723, F.S., does not impute any enforceable authority of the Department of Business and Professional Regulation over a mobile home subdivision relative to the provision of water and wastewater service. Neither does it purport to preempt the Commission's ability to interpret the applicability of the landlord-tenant exemption under Section 367.022(5), F.S. To the contrary, the Commission maintains exclusive and superseding jurisdiction over utilities and its interpretation of its landlord-tenant exemption is controlling. Therefore, even if the relationship between the Park and the Lot Owners qualifies as a landlord-tenant relationship for purposes of Chapter 723, F.S., the Commission can find that the relationship does not meet the standards of a landlord-tenant arrangement as contemplated by Chapter 367, F.S.

Order No. PSC-99-0266-FOF-WS

In Order No. PSC-99-0266-FOF-WS, the Commission found that "for Chapter 723, Florida Statutes, to have any effect on the Commission's determination of appropriate rates and regulatory assessment fees, the Legislature would have to have enacted it after Chapter 367, Florida Statutes with 'express reference' to superseding Chapter 367, Florida Statutes." [26]

Applying this same rationale, for Chapter 723, F.S., to have any effect on the determination of a utility's exemption, the Legislature would have to have enacted language with express reference to superseding Chapter 367, F.S. Chapter 723, F.S., was enacted after Section 367.022, F.S., and does not contain an express reference indicating that any sections of Chapter 723, F.S., supersede any sections of Chapter 367, F.S., neither was Chapter 367, F.S., amended to reflect that the landlord-tenant exemption should be read in conjunction with Chapter 723, F.S. Accordingly, any interpretation of the meaning of a landlord-tenant relationship under Chapter 723, F.S., need not influence the Commission's interpretation of its exemption statutes.

Summary

Pursuant to Sections 367.011(2) and (4), F.S., the Commission maintains exclusive and superseding jurisdiction over water and wastewater utilities with regard to authority, service, and rates, its interpretation of its landlord-tenant exemption is controlling. As such, based on the Commission's prior orders that include its interpretation of its landlord-tenant exemption, Palm Tree Acres should be required to comply with Chapter 367, F.S., and Chapter 25-30, F.A.C.

[26] Order No. PSC-99-0266-FOF-WS, issued February 10, 1999, in Docket No. 19971673-WS, *In re: Petition by Hacienda Village Utilities, Inc. in Pasco County for ruling on appropriate amount of regulatory assessment fees.*

5. Constitutional Property Rights

As provided in the Case Background, the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida, recently found that under the narrow issue of property rights, Palm Tree Acres has a constitutional right to refuse to use its property for the benefit of others, including the right to discontinue providing water and sewer service to the Lot Owners but whether or not to exercise that right is for the Park to decide.[27] However, in so doing, the court acknowledged that Section 367.165(1), F.S., does not authorize the court to prohibit termination (or presumably order termination) of water and sewer service because that authority lies exclusively with the Commission.

Clearly, Palm Tree Acres' constitutional property rights are outside of the Commission's jurisdiction. However, Section 367.011, F.S., imparts that the Commission shall have exclusive jurisdiction over each water and wastewater utility with respect to its authority, service, and rates, recognizing that vested rights other than procedural rights or benefits cannot be impaired or taken away. Therefore, the Commission retains the ability to assert its jurisdiction to ensure that a utility continues to provide service to any person reasonably entitled to such service and/or ensure that termination of such service is properly executed absent any infringement of a utility's vested rights. Furthermore, the Commission has previously noted its ability to conduct a proceeding concerning the question of whether or not a utility must provide service.[28]

Summary

Once the Park began providing water and wastewater service to the Lot Owners, it became subject to the Commission's regulation and assumed an obligation to maintain service to those customers. If Palm Tree Acres wishes to exercise the aforementioned declared constitutional right, it should do so in compliance with the Commission's controlling laws. Any finding that Palm Tree Acres must continue to provide service to the Lot Owners would presumably not infringe upon the Park's constitutional rights, as the Park would need to fulfill its duty to serve by identifying methods to maintain such service without using the property in question.

6. Determination of Willfulness

As previously mentioned, for purposes of this recommendation the definition of a willful violation is an act or omission that is done "voluntarily and intentionally" with specific intent and "purpose to violate or disregard the requirements of the law." *Fugate* at 76.

Prior to Commission staff's analysis of this situation, Palm Tree Acres appears to have acknowledged that its provision of water and wastewater services to the Lot Owners has caused it to operate in violation of the Commission's statutes, but also appears to have indicated that it does not intend to obtain a certificate of authorization to provide water and wastewater service.[29] Since that time, Commission staff relayed its analysis and opinion that Palm Tree Acres does not and has never qualified for the Commission's landlord-tenant exemption, culminating in staff's

[27] As previously mentioned, the Lot Owners have sought appellate review of this order by filing a Petition for a Writ of Certiorari with Florida's Second District Court of Appeal (Case No. 2D18-4480).
[28] Order No. 5856, issued September 19, 1973, in Docket No. 73402-WS, *In re: Complaint of Biscay Properties, Inc. v. Margate Utility Authority, Inc. and Diversified Utility Services*.
[29] Attachment J - Transcript of Hearing held on July 7, 2017, before the Honorable Gregory G. Groger, in the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida, pgs. 51-53.

issuance of its Notice of Apparent Violation. To date, Palm Tree Acres has not submitted its application for certificates of authorization to provide water and wastewater services. Although the Park communicated to Commission staff that it intended to provide water and wastewater services to the Lot Owners at no charge while the circuit court litigation is pending, it has apparently provided subsequent statements to the Court that the Lot Owners know, or should know, that the Park is not offering its services "on a free or gratuitous basis" and "will offer their services to each [Lot Owner] only on a package basis."[30] Additionally, the Park appears to still be providing water and wastewater service for compensation to individuals who own their lots within the Park (these individuals are apparently not a part of the group of Lot Owners who have requested water and wastewater service on a standalone basis).[31] Staff notes that such offered and/or provided service still does not allow the Park to qualify for the Commission's landlord-tenant exemption as it is the exact activity that prompted staff's Notice of Apparent Violation.

Summary

Due to the Park's past acknowledgement of its status in violation of the Commission's statutes and its apparent intent to potentially resume charging the Lot Owners for water and wastewater services, Palm Tree Acres should be found to be in willful violation of Section 367.031, F.S., and Rule 25-30.033, F.A.C.

III. Conclusion

Ultimately, the Lot Owners no longer have an agreement with the Park for "lot rent" or for use of the common areas; therefore, no landlord-tenant relationship, as previously defined by the Park, can currently exist. Moreover, based on the Commission's past interpretation of Section 367.022(5), F.S., which is also supported by the legal definition of a "landlord-tenant relationship," the Park does not qualify for the Commission's landlord-tenant exemption because the Lot Owners own their land and appear to lack the protection inherent in the exemption.

Although the court recently found that Palm Tree Acres possesses a constitutional right to refuse to use its property for the benefit of others, terminating the Lot Owners' utility services would essentially be the Park's attempt to continue to avoid regulation by improperly abandoning a portion of its customers. Palm Tree Acres has been operating as a utility subject to the Commission's regulation for over 30 years and has created a constructive service area to include the renters and owners; thereby assuming the duty to serve those customers. As such, the Park should be required to bring itself into compliance with Section 367.031, F.S., and Rule 25-30.033, F.A.C., by submitting an application for certificates of authorization to provide water and wastewater services. Furthermore, Palm Tree Acres should be cautioned that improper termination of the Lot Owners' utility services may be a violation of Section 367.111, F.S., for failure to provide service to its constructive service area, and Rule 25-30.320, F.A.C., for improperly refusing or discontinuing service to customers that may lead to staff's initiation of further show cause proceedings.[32]

[30] Attachment K - Defendant's Amended Counterclaim, filed on June 19, 2018, in Case No. 2017-CA-1696-ES, in the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida.
[31] Document No. 07226-2018, pgs. 522-523, in Docket No. 20180142-WS.
[32] *See* Order No. 5141, issued June 11, 1971, in Docket No. IS-71007-WS, *In re: On the Complaint of Supreme Brevard Homes, Inc. v. Blondy's Utilities, Inc. for Failure to Provide Water and Sewer Service as Required by Subsection (1) of Section 367.11, Florida Statutes* (In that docket, although the Utility was not issued its certificates

By knowingly failing to comply with the provisions of Section 367.031, F.S., and Rule 25-30.033, F.A.C., the Commission should find that Palm Tree Acres' acts were "willful" in the sense intended by Section 367.161, F.S., and contemplated by *Fugate*. Therefore, staff recommends that Palm Tree Acres be ordered to show cause in writing, within 21 days, as to why it should not be fined in the amount of $5,000 for providing water and wastewater service to the public for compensation 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. Staff recommends that the show cause order incorporate the following conditions:

1. This show cause order is an administrative complaint by the Florida Public Service Commission, as petitioner, against Palm Tree Acres Mobile Home Park, as respondent.

2. Palm Tree Acres shall respond to the show cause order within 21 days of service on the Utility, and the response shall reference 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.*

3. Palm Tree Acres has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.

4. Requests for hearing shall comply with Rule 28-106.2015, F.A.C.

5. Palm Tree Acres' response to the show cause order shall identify those material facts that are in dispute. If there are none, the petition must so indicate.

6. If Palm Tree Acres files a timely written response and makes a request for a hearing pursuant to Sections 120.569 and 120.57, F.S., a further proceeding will be scheduled before a final determination of this matter is made.

7. A failure to file a timely written response to the show cause order will constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue.

8. In the event that Palm Tree Acres fails to file a timely response to the show cause order, the fine will be deemed assessed and a final order will be issued.

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of authorization to provide service until December 17, 1970, the Commission found that it had jurisdiction over the Utility effective July 2, 1970, based on its operation as a utility subject to the Commission's regulation. As such, the Utility had a duty to provide service and failed to show that its refusal of service to some customers from July-December 1970 complied with the Commission's rules and regulations authorizing such refusal. For these reasons, the Commission ordered the Utility to provide service to these affected customers. The Commission further noted that water and sewer utilities that refuse to provide service do so at their peril, that refusal to provide such service must come within the rules and regulations of this Commission authorizing such refusal, and that the utility bears the burden of proving that the refusal of service complies with those rules and regulations.).

9. If Palm Tree Acres responds to the show cause order by remitting the fine and submitting its application for certificates of authorization to provide water and wastewater services, this show cause matter will be considered resolved, and the docket closed.

Furthermore, the Utility should be warned and put on notice that continued failure to comply with Commission orders, rules, or statutes will again subject the Utility to show cause proceedings and fines of up to $5,000 per day per violation for each day the violation continues, as set forth in Section 367.161, F.S.

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves Issue 1 and Palm Tree Acres timely responds in writing to the Order to Show Cause, this docket should remain open to allow for the appropriate processing of the response. If the Commission approves Issue 1 and Palm Tree Acres responds to the Order to Show Cause by remitting the fine and submitting its application for certificates of authorization to provide water and wastewater services, this show cause matter will be considered resolved, and the docket should be closed administratively. If the Commission approves Issue 1 and Palm Tree Acres does not remit payment and submit its application, or does not respond to the Order to Show Cause, this docket should remain open to allow the Commission to pursue further enforcement action and collection of the amount owed by the Utility. (DuVal, Nieves)

Staff Analysis: If the Commission approves Issue 1 and Palm Tree Acres timely responds in writing to the Order to Show Cause, this docket should remain open to allow for the appropriate processing of the response. If the Commission approves Issue 1 and Palm Tree Acres responds to the Order to Show Cause by remitting the fine and submitting its application for certificates of authorization to provide water and wastewater services, this show cause matter will be considered resolved, and the docket should be closed administratively. If the Commission approves Issue 1 and Palm Tree Acres does not remit payment and submit its application, or does not respond to the Order to Show Cause, this docket should remain open to allow the Commission to pursue further enforcement action and collection of the amount owed by the Utility.

Attachment A
Page 1 of 1

IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

NELSON P. SCHWOB,

Plaintiff,

v.

CASE NO. 51-2014-CC-000519-ES

PALM TREE ACRES MOBILE HOME PARK,

Defendant.

ORDER ON DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter was considered on Defendants' Motion for Partial Summary Judgment (the "Motion"). Upon review of the Motion and incorporated memorandum of law, the memorandum in opposition provided by Plaintiffs, as well as the pleadings and attachments to the pleadings, and having considered the arguments and stipulations of counsel,

IT IS ADJUDGED THAT:

1. Defendants' Motion for Partial Summary Judgment is GRANTED in part.

2. Upon the parties' stipulations and on the record evidence attached to Plaintiffs' Second Amended Complaint, the Court holds that "Restrictions" recorded on August 30, 1972, at OR Book 624, Pages 426-427, in the Public Records of Pasco County, Florida are invalid pursuant to Chapter 712, Florida Statutes.

3. The above reflects the limited ruling of the Court on the Motion.

DONE AND ORDERED in chambers at Dade City, Pasco County, Florida on DECEMBER 8, 2016

Honorable William B. Sestak,
County Court Judge

cc: J. Allen Bobo
Richard A. Harrison

STATE OF FLORIDA

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

Public Service Commission

March 8, 2018

via Email, US Mail, and Certified Mail

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Tallahassee, FL 32301-1872

NOTICE OF APPARENT VIOLATION

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

Dear Sirs,

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

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

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

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

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

Section 367.161, F.S., provides:

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

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

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

Sincerely,

Margo A. DuVal
Senior Attorney

MAD
Enclosures

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

FLORIDA PUBLIC SERVICE COMMISSION

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

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

General Information

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

Instructions

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

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

PSC 1001 (12/15)
Rule 25-30.033, F.A.C.

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

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

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

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

PART I **APPLICANT INFORMATION**

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

_____
Utility Name

_____
Office Street Address

_____
City State Zip Code

_____
Mailing Address (if different from Street Address)

_____
City State Zip Code

( ) - ( ) -
_____
Phone Number Fax Number

_____
Federal Employer Identification Number

E-Mail Address

Website Address

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

Name

Mailing Address

City State Zip Code

( ) - ( ) -
Phone Number Fax Number

E-Mail Address

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

☐ Corporation _____ Number

☐ Limited Liability Company _____ Number

☐ Partnership _____ Number

☐ Limited Partnership _____ Number

☐ Limited Liability Partnership _____ Number

☐ Sole Proprietorship

3

☐ Association
☐ Other (Specify) _____

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

☐ Fictitious Name (d/b/a) _____
Registration Number

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

_____
_____
_____
_____

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

_____
_____

PART II ORIGINAL CERTIFICATE REQUESTING INITIAL RATES

A) DESCRIPTION OF SERVICE

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

_____
_____
_____
_____
_____

B) FINANCIAL ABILITY

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

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

_____
_____
_____
_____

C) TECHNICAL ABILITY

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

_____
_____
_____
_____

2) Exhibit _____ - Provide the copy of all current permits from the Department of Environmental Protection (DEP) and the water management district;

3) Exhibit _____- Provide a copy of the most recent DEP and/or county health department sanitary survey, compliance inspection report and secondary water quality standards report; and

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

5

D) NEED FOR SERVICE

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

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

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

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

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

6

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

_____
_____
_____
_____

E) TERRITORY DESCRIPTION, MAPS, AND FACILITIES

1) Exhibit _____ - Provide a legal description of the proposed service area in the format prescribed in Rule 25-30.029, F.A.C.

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

3) Exhibit _____ - Provide a detailed system map showing the existing and proposed lines and treatment facilities, with the territory proposed to be served plotted thereon, consistent with the legal description provided in E-1 above. The map shall be of sufficient scale and detail to enable correlation with the description of the territory proposed to be served.

4) Exhibit _____ - Provide an official county tax assessment map or other map showing township, range, and section, with a scale such as 1" = 200' or 1" = 400', with the proposed territory plotted thereon, consistent with the legal description provided in E-1 above.

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

6) Exhibit _____ - Provide a description of the type of water treatment, wastewater treatment, and method of effluent disposal.

7

F) PROPOSED TARIFF

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

G) ACCOUNTING AND RATE INFORMATION

1) Exhibit _____ - Describe the existing and projected cost of the system(s) and associated depreciation by year until design capacity is reached using the 1996 National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA), which is incorporated by reference in Rule 25-30.115, F.A.C. The applicant shall identify the year that 80 percent of design capacity is anticipated.

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

3) Exhibit _____ - Provide the current annual operating expenses and the projected annual operating expenses at 80 percent of design capacity using the 1996 NARUC USOA. If the utility will be built in phases, this shall apply only to the first phase.

4) Exhibit _____ - Provide a schedule showing the projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches 80 percent of the design capacity of the system. If the utility will be built in phases, this shall apply only to the first phase. A return on common equity shall be established using the current equity leverage formula established by order of this Commission pursuant to Section 367.081(4), Florida Statutes, unless there is competent substantial evidence supporting the use of a different return on common equity. Please reference subsection 25-30.033(4), F.A.C., for additional information regarding the accrual of allowance for funds used during construction (AFUDC).

5) Exhibit _____ - Provide a schedule showing how the proposed rates were developed. The base facility and usage rate structure (as defined in subsection 25-30.437(6), F.A.C.) shall be utilized for metered service, unless an alternative rate structure is supported by the applicant and authorized by the Commission.

6) Exhibit _____ - Provide a schedule showing how the proposed service availability policy and charges were developed, including meter installation, main extension, and plant capacity charges, and proposed donated property.

7) Exhibit _____ - Provide a schedule showing how the customer deposits and miscellaneous service charges were developed, including initial connection, normal reconnection, violation reconnection, and premises visit fees, consistent with Rules 25-30.311 and 25-30.460, F.A.C.

H) NOTICING REQUIREMENTS

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

PART III SIGNATURE

Please sign and date the utility's completed application.

APPLICATION SUBMITTED BY: _____
Applicant's Signature

_____
Applicant's Name (Printed)

_____
Applicant's Title

_____
Date

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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April 9, 2018

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

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Re: Response to Notice of Apparent Violation

Dear Ms. Duval:

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

HOLLAND & KNIGHT LLP

D. Bruce May, Jr.

DBM:kjg

cc: Office of Public Counsel
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April 30, 2018

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

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Re: Supplemental Response to Notice of Apparent Violation

Dear Ms. Duval:

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

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

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

[1] *See, e.g.*, § 553.895(1), Fla. Stat. (Legislature specifically referenced the definitions in Section 83.43 for purposes of imposing fire safety requirements).

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

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

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

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

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

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

> 723.004 Legislative intent; preemption of subject matter.—

---

[2] § 723.003(13), Fla. Stat. (defining a "mobile home park owner" as "an owner or operator of a mobile home park"); *see also* § 723.003(12), Fla. Stat. (defining "mobile home park" as "a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential").
[3] *See* § 723.003(14), Fla. Stat. (defining a "mobile home subdivision" as "a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer").
[4] The courts have recognized that the unique landlord/tenant relationship under Chapter 723, Florida Statutes, is "distinct from a traditional landlord/tenant relationship." *Fed'n of Mobile Home Owners v. Fla. Manufactured Hous. Ass'n.*, 683 So. 2d 586, 588 (Fla. 1st DCA 1996) (citing *Stuart v. Green*, 300 So. 2d 889, 892 (Fla. 1974)).

. . . .

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

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

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

723.002 Application of chapter.—

. . . .

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

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

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

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

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

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

Sincerely,

HOLLAND & KNIGHT LLP

D. Bruce May, Jr.

DBM:kjg

cc: Office of Public Counsel
Richard Harrison, Esq.
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[5] *See* Ch. 96-407, s. 3, Laws of Fla.

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Public Service Commission

May 21, 2018

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

Dear Sirs:

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

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

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

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

2. Statement clarifying the date on which Palm Tree Acres began providing the lot owners with use of the Park's water and wastewater facilities without charge.

3. Statement clarifying the date on which Palm Tree Acres ceased collecting or accepting monies/checks/etc., for payment for water and/or wastewater services, from the lot owners. This includes monies/checks/etc. that were or are provided under protest.

4. Statement clarifying the date on which Palm Tree Acres returned the monies/checks/etc. that the Park previously accepted and held from the lot owners as payment for water and/or wastewater services. This includes monies/checks/etc. that were or are provided under protest.

5. Statement clarifying that Palm Tree Acres no longer possesses any monies/checks/etc. that the Park previously accepted and held from the lot owners as payment for water and/or wastewater services. This includes monies/checks/etc. that were or are provided under protest.

6. Statement clarifying whether Palm Tree Acres intends to continue providing water and/or wastewater service at no charge to the lot owners if the circuit court litigation is resolved in the Park's favor.

7. Statement clarifying whether Palm Tree Acres intends to continue providing water and/or wastewater service at no charge to the lot owners if the circuit court litigation is resolved in the lot owners' favor.

8. Statement verifying the date on which any monies/checks/etc. collected but not deposited for water and/or wastewater service for the lot owners, including monies/checks/etc. provided under protest, will be refunded to the lot owners.

9. Statement verifying that Palm Tree Acres has not resumed and does not plan to resume collecting or accepting monies/checks/etc., for payment for water and/or wastewater services, from the lot owners. This includes monies/checks/etc. that were or are provided under protest.

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

Sincerely,

Margo A. DuVal
Senior Attorney

MAD

cc: **Division of Engineering (Graves, King, Ballinger)**
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June 6, 2018

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

Dear Ms. Duval:

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

I. **The History**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

LUTZ, BOBO & TELFAIR, P.A.

J. Allen Bobo

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

STATE OF FLORIDA

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

Public Service Commission

July 26, 2018

Palm Tree Acres Mobile Home Park
10912 N. 56th Street
Temple Terrace, FL 33617

via certified and electronic mail

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

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

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, Florida Statutes, and Rule 25-30.033, F.A.C.

Dear Palm Tree Acres Mobile Home Park:

Please be advised that the staff of the Florida Public Service Commission (Commission) has opened a docket initiating a show cause proceeding against Palm Tree Acres Mobile Home Park (Palm Tree Acres) for failing to comply with Commission rules and regulations. The proceeding is based upon Palm Tree Acres' failure to obtain a certificate of authorization to provide water or wastewater service, pursuant to Section 367.031, Florida Statutes (F.S.), and Rule 25-30.033, Florida Administrative Code (F.A.C.).

Violations of the provisions of any lawful rule or any statute administered by the Commission may result in penalties as provided by Section 350.127, F.S. Specifically, violations of the provisions of Chapter 367, F.S., or any rule adopted pursuant to the Chapter may result in penalties as provided by Section 367.161, F.S.

Commission staff intends to present a recommendation to the Commission on the show cause proceeding at a Commission Conference as soon as practicable. A copy of staff's recommendation will be sent to Palm Tree Acres once it has been completed and filed. Please note that Palm Tree Acres and/or its legal representative(s) are invited and encouraged to attend the Commission Conference, and to address the Commission regarding the recommendation. Should Palm Tree Acres or its legal representative(s) plan to attend the Conference, please let me know the name(s) of the person(s) who will be attending.

Should you have questions, please do not hesitate to contact me at (850) 413-6076 or MDuval@psc.state.fl.us.

Sincerely,

/s/ Margo A. DuVal

Margo A. DuVal
Senior Attorney

MAD

cc: Office of Public Counsel (J.R. Kelly/Patricia Christensen)
Office of Commission Clerk
Richard Harrison, Esq.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

2017 – CA – 1696

NELSON P. SCHWOB, et al.,
Plaintiffs,

V.

JAMES C. GOSS; EDWARD HEVERAN;
MARGARET E. HEVERAN; and PALM
TREE ACRES MOBILE HOME PARK,
Defendants.

ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This Cause having come before the Court on Defendant Motion for Partial Summary Judgment, and the Court having considered the motion, the response by the Plaintiffs, and the summary judgment evidence, this Court enters this Order and Judgment as to Count I of Defendants' Amended Counterclaim:

FINDINGS OF FACT

The Court finds that there is no genuine issue of material fact to the following:

1. The Plaintiffs are fee simple owners of lots within the Palm Tree Acres Mobile Home Park. They also own the mobile home that exists on their respective lots.
2. The Defendant Palm Tree Acres Mobile Home Park (hereinafter "Palm Tree Acres") owns in fee simple 183 of the 244 lots. These lots are leased to other residents.
3. Palm Tree Acres offers certain amenities to include water and sewer service and access to other recreational areas. These amenities are offered in a single package for a single fee; there is no *a la carte* pricing for any particular amenity.
4. When the Plaintiffs purchased their lots from the developer, there was a deed restriction that required Palm Tree Acres to provide water and sewer service to the Plaintiffs. Subsequent to the Plaintiffs purchasing their lots, Palm Tree Acres purchased the remaining lots from the developer. A predecessor court has adjudicated that these deed restrictions

expired by operation of the Marketable Record Title Act and are no longer in force or effect.

5. There is presently no other written contractual agreement between the Plaintiffs and Palm Tree Acres to provide any amenities, and more specifically, there is no written contractual agreement for Palm Tree Acres to provide water and sewer service to the Plaintiffs. However, for many years, the Plaintiffs had been paying the fee that Palm Tree Acres charged to its other residents for water, sewer, and recreational amenities.
6. The water that is provided to all of the residents of Palm Tree Acres, including the Plaintiffs, is pumped from a well that exists on property owned in fee simple by Palm Tree Acres.

The Court finds that the Plaintiffs and the Defendant Palm Trees Acres Mobile Home Park are in doubt as to the affect of Chapter 367, Fla. Stat.; Article I, § 3, Fla. Const; and Amend. V, U.S. Const. to their rights, obligations, status, or other equitable or legal relations as it pertains the Defendant's actions in discontinuing water and sewer service to the Plaintiffs, and that declaratory judgment is appropriate.

ANALYSIS AND CONCLUSIONS OF LAW

Palm Tree Acres asserts that it has a constitutional right to refuse to use its property for the enjoyment of others, and that, if it chooses to do so, it can discontinue water and sewer service to the Plaintiffs. The Plaintiffs argue that in providing water and sewer service, Palm Tree Acres is a public utility, and §367.165(1), Fla. Stat. prevents a public utility from discontinuing service until certain requirements are satisfied.

This Court previously stated in the August 21, 2017 Order Granting in Part, Denying in Part Defendants' Motion to Dismiss Count 3, etc., that it has no jurisdiction regarding the enforcement of Chapter 367, Florida Statutes. This includes the determination of whether an entity is or is not a utility. See Florida Public Service Commission v. Bryson, 569 So.2d 1253 (Fla. 1990); Fletcher Properties, Inc. v. Florida Public Service Commission, 356 So.2d 289 (Fla. 1978). Assuming, though, that the Court had the jurisdiction to make the threshold finding of whether Palm Tree Acres were a utility and could, therefore, prohibit it from discontinuing service until compliance had be made with §367.165(1), Fla. Stat., this Court is clearly without jurisdiction to

make the evidentiary finding of whether Palm Tree Acres had, in fact, complied. For the same reasons that this Court determined it lacked jurisdiction to regulate the rates charged to provide water and sewer service as requested by the Plaintiffs in Count 3 of its Third Amended Complaint, the Court also has no jurisdiction to regulate the manner in which a utility terminates operations. Therefore, the Court finds that §367.165(1) does not authorize the Court to prohibit termination of water or sewer service, and that authority lies exclusively with the Public Service Commission.

However, the Court does have jurisdiction to make a determination as to constitutional rights. Under this narrow issue, Palm Tree Acres prevails. Property rights are one the most basic rights protected by both the Florida and United States Constitutions. These rights include the ability to use, and not to use, the property as the owner of the property sees fit. The government may impose regulations on how a property is used, and neighboring property owners can seek to enjoin their neighbors from offensive or nuisance use of property. However, the Court is unaware of, and the Plaintiffs have not provided, any authority that the Court can compel a property owner to use its property in a manner solely for the benefit of a neighboring property owner.

Therefore, it is hereby **ORDERED, ADJUDGED, and DECLARED** that the Defendant Palm Tree Acres Mobile Home Park has a right under the Article I, § 3, Fla. Const. and Amend. V, U.S. Const. to refuse to use its property for the benefit of others. This right includes the right to discontinue providing water and sewer service to other property owners. Whether it chooses to exercise that right, is for the Defendant to decide.

DONE and ORDERED in Dade City, Pasco County, Florida this 15 October, 2018.

Electronically Conformed 10/15/2018

Hon. Gregory G. Groger
Circuit Court Judge

CC:
Richard Harrison
J. Allen Bobo
Jody B. Gabel

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

2017 – CA – 1696

NELSON P. SCHWOB, et al.,
Plaintiffs,

V.

JAMES C. GOSS; EDWARD HEVERAN;
MARGARET E. HEVERAN; and PALM
TREE ACRES MOBILE HOME PARK,
Defendants.

ORDER GRANTING IN PART, DENYING IN PART PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO COUNT ONE

This Cause having come before the Court on Plaintiffs' Motion for Summary Judgment as to Count One, and the Court having considered the motion, the response by the Defendants, and the summary judgment evidence, this Court enters this Order and Judgment as to Count I of Plaintiffs' Third Amended Complaint:

FINDINGS OF FACT

The Court finds that there is no genuine issue of material fact to the following:

1. The Plaintiffs are fee simple owners of lots within the Palm Tree Acres Mobile Home Park. They also own the mobile home that exists on their respective lots.
2. The Defendant Palm Tree Acres Mobile Home Park (hereinafter "Palm Tree Acres") owns in fee simple 183 of the 244 lots. These lots are leased to other residents.
3. Palm Tree Acres offers certain amenities to include water and sewer service and access to other recreational areas. These amenities are offered in a single package for a single fee; there is no *a la carte* pricing for any particular amenity.
4. When the Plaintiffs purchased their lots from the developer, there was a deed restriction that required Palm Tree Acres to provide water and sewer service to the Plaintiffs. Subsequent to the Plaintiffs purchasing their lots, Palm Tree Acres purchased the remaining lots from the developer. A predecessor court has adjudicated that these deed restrictions

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expired by operation of the Marketable Record Title Act and are no longer in force or effect.

5. There is presently no other written contractual agreement between the Plaintiffs and Palm Tree Acres to provide any amenities, and more specifically, there is no written contractual agreement for Palm Tree Acres to provide water and sewer service to the Plaintiffs. However, for many years, the Plaintiffs had been paying the fee that Palm Tree Acres charged to its other residents for water, sewer, and recreational amenities.
6. The water that is provided to all of the residents of Palm Tree Acres, including the Plaintiffs, is pumped from a well that exists on property owned in fee simple by Palm Tree Acres.

ANALYSIS AND CONCLUSIONS OF LAW

The Plaintiffs have sought declaratory judgment as to the following issues:

1. Whether the Plaintiffs are a "mobile home owner," "mobile homeowner," "home owner," or "homeowner" as those terms are defined in Chapter 723, Fla. Stat.;
2. Whether the Plaintiffs are parties to any "mobile home lot rental agreement" as that term is defined in Chapter 723, Fla. Stat.;
3. Whether the Plaintiffs are parties to any "tenancy" within the meaning or scope of Chapter 723, Fla. Stat.;
4. Whether the Plaintiffs are subject to payment of any "lot rental amount" as that term is defined in Chapter 723, Fla. Stat.;
5. Whether Chapter 723, Fla. Stat. authorizes the Defendant Palm Tree Acres Mobile Home Park to collect any "maintenance fee" from the Plaintiffs;
6. Whether the Defendant Palm Tree Acres Mobile Home Park is authorized to impose any lien upon the property of the Plaintiffs;
7. Whether Chapter 723, Fla. Stat. authorizes the Defendant Palm Tree Acres Mobile Home Park to evict the Plaintiffs for failure to pay any "lot rental amount," "maintenance fee," or other fees or charges; and
8. Whether Chapter 723, Fla. Stat. applies to the relationship between the Plaintiffs and Defendant Palm Trees Acres Mobile Home Park.

The Court finds that the Plaintiffs and the Defendant Palm Trees Acres Mobile Home Park are in doubt as to the affect of Chapter 723, Fla. Stat. to their rights, obligations, status, or other equitable or legal relations, and that declaratory judgment is appropriate.

The Plaintiffs and Defendant Palm Tree Acres Mobile Home Park agree to the following:

1. The Plaintiffs are not a "mobile home owner," "mobile homeowner," "home owner," or "homeowner" as those terms are defined in §723.003(11), Fla. Stat.
2. Chapter 723, Fla. Stat. does not authorize the Defendant Palm Tree Acres Mobile Home Park to impose any lien upon the property of the Plaintiffs.
3. Chapter 723, Fla. State does not authorize the Defendant Palm Tree Acres Mobile Home Park to evict the Plaintiffs for failure to any "lot rental amount," "maintenance fee," or other fees or charges.

While Defendant did not stipulate that the Plaintiffs are not parties to any "mobile home lot rental agreement" as that term is defined in Chapter 723, Fla. Stat, the Court finds that the definition of the term applies only to "mobile home owner." Therefore, given the stipulation that the Plaintiffs are not a "mobile home owner," the Court finds that the Plaintiffs are not parties to a "mobile home lot rental agreement."

The remaining issues require a determination of the status of the Defendant Palm Tree Acres as a "mobile home subdivision." Palm Tree Acres argues that it is a hybrid of a "mobile home park" and "mobile home subdivision" as those terms are defined in §723.003, Fla. Stat. Palm Tree Acres states that it is a "mobile home park" as it relates to the lots that it owns and leases to residents other than the Plaintiffs, and it is a "mobile home subdivision" as it pertains to the Plaintiffs. The Plaintiffs have argued that Chapter 723, Florida Statutes does not expressly define such a hybrid; therefore, one cannot exist. The Court disagrees with the Plaintiffs' argument.

First, the term "hybrid" is a misnomer. In a general sense, "hybrid" implies that an entity has been created by putting together parts of one thing and parts of another thing to create something that is new and different, and is not fully one or the other. Palm Tree Acres' argument, and the Plaintiffs' rebuttal, is not that it is a little bit of a park and a little bit of a subdivision, but that it is both entirely a park and entirely a subdivision. The Defendant argues it can operate in this manner, the Plaintiffs say it must be one or the other.

A "mobile home subdivision" is defined as a "subdivision of mobile homes where individual lots are owned by the owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer." §723.003(14), Fla.

Stat. A "mobile home park" is defined 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." §723.003(12), Fla. Stat. Nothing in these definitions would prevent a "mobile home park" and "mobile home subdivision" from co-existing because the definition is focused on the status of the possession of the lot. If the lot is owned by the possessor, then the community is a "mobile home subdivision." If the lot is leased by the possessor, then the community is a "mobile home park." Additionally, Chapter 723 does not present any conflict in maintenance or governance of the community whether it is a "mobile home subdivision" or "mobile home park." The legislature has also stated that a "mobile home subdivision" should follow many of the same rules as a "mobile home park," indicating an intent that subdivisions and parks be managed in a consistent manner. See §723.002(2), Fla. Stat. The Court also agrees with the Defendant that §723.0751 contemplates the existence of an entity being both at the same time where owners have organized into an association and can be represented by the association in park meetings about the amenities and fees charged. Florida Statute §723.074 also contemplates the existence of a community where both a subdivision and a park co-exist. That statute states that "[a] mobile home subdivision in which no more than 30 percent of the total lots are leased will not be deemed to be a mobile home park..." and infers the existence of a blended community where some lots are owned and some are leased. Factually, the evidence shows that Palm Tree Acres has historically governed the use of the amenities consistent with the requirements of Chapter 723 as it would apply to both lessees and owners. Therefore, the Court finds that a mobile home park, such as the Defendant, can operate simultaneously as a mobile home park with respect to its lessees and as a mobile home subdivision with respect to its owners.

Whether Palm Tree Acres is in fact a "mobile home subdivision" requires a two part analysis: first, "are the individual lots owned by owners?" and second, "did the developer retain any portion of the subdivision or the amenities exclusively serving the subdivision?" There is no genuine issue of material fact that the Plaintiffs own their respective lots in fee simple. There is also no genuine issue of material fact that the developer retained both portions of the subdivision and the amenities, and conveyed this interest to the Defendant Palm Tree Acres Mobile Home Park. Therefore, the Court finds that Palm Tree Acres Mobile Home Park is a "mobile home subdivision" as that term is defined by §723.003(14), Fla. Stat., and those portions of Chapter 723 that apply to mobile home subdivisions apply to the relationship between the Plaintiffs and Defendant Palm Tree Acres Mobile Home Park.

Electronically Conformed 10/15/2018

It is hereby **ORDERED, ADJUDGED, and DECLARED** that:

1. The Plaintiffs are not a "mobile home owner," "mobile homeowner," "home owner," or "homeowner" as those terms are defined in §723.003(11), Fla. Stat.
2. Chapter 723, Fla. Stat. does not authorize the Defendant Palm Tree Acres Mobile Home Park to impose any lien upon the property of the Plaintiffs.
3. Chapter 723, Fla. State does not authorize the Defendant Palm Tree Acres Mobile Home Park to evict the Plaintiffs for failure to pay any "lot rental amount," "maintenance fee," or other fees or charges.
4. The Plaintiffs are not parties to a "mobile home lot rental agreement" as that term is defined in §723.003(10), Fla. Stat.

It is further **ORDERED, ADJUDGED, and DECLARED** that those portions of Chapter 723, Florida Statutes, that relate to mobile home subdivisions apply to the relationship between the Plaintiffs and Defendant Palm Tree Acres Mobile Home Park. This includes §723.035, §723.037, §723.038, §723.054, §723.055, §723.056, §723.058, and §723.068 by operation of §723.002(2). It also includes §723.058 and §723.074. To the extent the terms "tenancy," "lot rental amount," and "maintenance fee" are used in these statutes, those terms apply to the Plaintiffs and the Defendant Palm Tree Acres Mobile Home Park. The Court specifically makes no finding, adjudication, or declaration as to whether the Plaintiffs are a "tenant" or the Defendant Palm Trees Acres Mobile Home Park is a "landlord" as those terms are used in § 367.022(5), Fla. Stat. The application of these terms to the Plaintiffs and Defendant Palm Trees Acres Mobile Home Park under Chapter 367, Florida Statutes, is exclusively within the jurisdiction of the Public Service Commission.

DONE and ORDERED in Dade City, Pasco County, Florida this 15 day of October, 2018.

Electronically Conformed 10/15/2018

Hon. Gregory G. Groger
Circuit Court Judge

CC:
Richard Harrison
J. Allen Bobo
Jody B. Gabel

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Filing # 76312404 E-Filed 08/11/2018 01:06:23 PM

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

NELSON P. SCHWOB; et al.,

Plaintiffs,

vs.

CASE NO.: 2017-CA-1696-ES
DIVISION: B

JAMES C. GOSS;
EDWARD HEVERAN;
MARGARET E. HEVERAN; and
PALM TREE ACRES MOBILE
HOME PARK,

Defendants.
_____/

NOTICE OF FILING HEARING TRANSCRIPT

Plaintiffs, by and through the undersigned counsel, hereby give Notice of Filing the attached transcript of the hearing which took place on July 7, 2017.

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was furnished by email via the Florida Courts E-Filing Portal on August 11, 2018 to all counsel of record.

s/ Richard A. Harrison
RICHARD A. HARRISON
Florida Bar No.: 602493
Primary Email: rah@harrisonpa.com
Secondary Email: Lisa@harrisonpa.com
DANIELA N. LEAVITT
Florida Bar No.: 70286
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RICHARD A. HARRISON, P.A.
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Tampa, FL 33602
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Electronically Filed Pasco Case # 2017CA001696CAAXES 08/11/2018 01:06:23 PM

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 2017-CA-19690ES

NELSON P. SCHWOB, ET AL.,
Plaintiffs,

-vs- DIVISION: B

JAMES C. GOSS; EDWARD HEVERAN; MARGARET E. HEVERAN; and PALM TREE ACRES MOBILE HOME PARK,

Defendants.
_____/

TRANSCRIPT OF HEARING PROCEEDINGS

Defendants' Motion to Dismiss
Plaintiffs' Third Amended Complaint
and
Plaintiffs' Motion to Refer Case to Mediation
(Pages 1 - 57)

DATE TAKEN: Friday, July 7, 2017
TIME: 10:00 a.m. - 11:00 a.m.
PLACE: Pasco County Courthouse
38053 Live Oak Avenue
Room 115
Dade City, Florida 33523-3819
BEFORE: Gregory G. Groger,
Circuit Judge

This cause came on to be heard at the time and place aforesaid, when and where the following proceedings were stenographically reported by:

LINDA S. BLACKBURN, RPR, CRR, CRC

APPEARANCES:

On behalf of the Plaintiffs:
RICHARD A. HARRISON, PA
400 North Ashley Drive
Suite 2600
Tampa, Florida 33602-4310
813.712.8757
BY: RICHARD A. HARRISON, ESQUIRE
rah@harrisonpa.com

On behalf of the Defendants:
LUTZ BOBO TELFAIR
2 North Tamiami Trail
Suite 500
Sarasota, Florida 34236-5575
941.951.1800
BY: J. ALLEN BOBO, ESQUIRE
jabobo@lutzbobo.com

On behalf of the Defendants:
LUTZ BOBO TELFAIR
2 North Tamiami Trail
Suite 500
Sarasota, Florida 34236-5575
941.951.1800
BY: JODY B. GABEL, ESQUIRE
jbgabel@lutzbobo.com

Thereupon,
the following proceedings began at 10:00 a.m.:

THE COURT: All right. We're here on Nelson Schwob versus Palm Tree Acres Mobile Home Park. My name is Judge Greg Groger. And we're here on -- it's the plaintiffs' motion to refer to mediation and the defendants' motion to dismiss the third amended complaint. That's all.

Was there anything else, Counselors, that was scheduled for today that --

MR. HARRISON: That's what we have for today.

MR. BOBO: Yes, sir.

THE COURT: Okay. For the plaintiff, sir, if you could introduce yourself?

MR. HARRISON: Yes. My name is Richard Harrison. I represent Mr. Schwob and the other plaintiffs. There's a whole group.

THE COURT: Okay. And for the defendant?

MR. BOBO: Your Honor, I'm Allen Bobo, and my partner and I, Jody Gabel, represent all the defendants in the case.

THE COURT: Okay. Before we begin, I want to tell you I took a lot of time the last couple of days going through the files and trying to get

myself up to speed as far as where we've come. So if you'll allow me to kind of regurgitate what I have read --

MR. BOBO: Yes, sir.

THE COURT: -- and where I think we're at so far and I think it may help our hearing today.

What I gathered is initially, Mr. Schwob, is it --

MR. HARRISON: Schwob.

THE COURT: -- Schwob -- filed a pro se complaint against the mobile home park in county court.

MR. HARRISON: Right.

THE COURT: Then he hired you, and you were on the third amended complaint. And in your latest complaint, there was about 180 counts, all various degrees. And you're looking for a declaratory judgment as far as the rights of the landowners, the plaintiff landowners?

MR. HARRISON: Right.

THE COURT: Okay. And some other civil claims in there as well.

The mobile home park has, so far -- well, from what I've been able to gather is Judge Sestak had granted your motion to declare the covenants

regarding the water and sewage as unenforceable.

MR. HARRISON: Correct.

THE COURT: Is that right?

MR. BOBO: Yes, sir.

THE COURT: Okay. And also if I understand correctly, as far as what the facts are is the defendants had purchased the mobile home lots, but not all of them, and the lots that were not purchased are owned by the plaintiffs.

MR. HARRISON: That's correct.

MR. BOBO: That's correct, Your Honor.

THE COURT: Okay. So far, I'm good?

MR. BOBO: You're perfect.

THE COURT: All right. So then -- so what we have today is plaintiff is seeking to refer the case to mediation, and defendant would like me to make a ruling as far as my jurisdiction on the providing water services to plaintiffs before any determination of mediation.

MR. BOBO: Yes, sir.

THE COURT: Am I good so far?

MR. BOBO: Yes, sir.

THE COURT: All right. Not bad for a first week and a half, huh?

MR. BOBO: That's good. This one's sticky.

MR. HARRISON: And it's only taken us three and a half years to get there.

MR. BOBO: This one's kind of sticky, yeah.

THE COURT: Yeah. I knew when I came in, I said this was going to be a coffee hearing.

MR. BOBO: For us, it's Red Bull.

THE COURT: Okay.

MR. HARRISON: We get the prize for the largest complaint on your docket.

THE COURT: Well, in my first week and a half, yeah, you've got it so far.

All right. So what I would like to first cover is the defendants' motion to dismiss and I'd like to hear your argument on those points before we address the motion for mediation.

MR. BOBO: Thank you, Your Honor. And may it please the court, Your Honor.

Here, we had sent copies to --

THE COURT: I've got a copy here.

MR. BOBO: -- the court. I didn't know if you had it still, those. There's two documents that are on this that are the summary judgment motion and the covenants that were not in the original package.

THE COURT: Okay.

MR. BOBO: I've given counsel copies of all the cases a week in advance with -- and they're highlighted.

THE COURT: Okay.

MR. BOBO: Your Honor, you've got the gist of the case. The gravamen of the case has always been, for the last three years, these lot owners attempting to force the mobile home park owner to continue to provide water and sewer services to them.

A little bit about the park. Palm Tree is a rental mobile home park, so the residents, most of the residents, own their homes and they lease their lots from the mobile home park owner. So it's governed by Chapter 723, Florida Statutes, under the Mobile Home Act.

Now, our clients bought this park in 1984. At the time that the park was purchased, it had been subject to kind of a failed development or a failed subdivision attempt, and about 50 of the 244 lots had been sold in a fee simple ownership basis out to other people. So at the time my guy came in, or my guys came in, in 2000 -- or in 1984, about 50 of those lots were owned fee simple.

They came in and started operating the mobile home park. They ultimately converted --

THE COURT: Let me stop you there. When they purchased in 1984, the lots that they purchased, were they vacant and just --

MR. BOBO: Some of them had homes on them. Some of them were unfilled.

THE COURT: Okay.

MR. BOBO: The development was kind of -- was --

THE COURT: Sporadic?

MR. BOBO: -- was moving. Yes, yes.

THE COURT: Okay. All right. Go ahead.

MR. BOBO: So it's a normal, you know, Pasco County mobile home park. It's a 55-plus mobile home park. It's got the normal amenity package for a 55-plus park. It's got a clubhouse and a pool and, you know, common areas and a shuffleboard court, and it's got a system of roads.

So all of this packages of service had been offered not only to the residents of the park, to the rental residents of the park, but also to these fee simple owners of the park.

Counsel's clients, the 22 who own the fee

simple lots, all of those were purchased from the original buyers of these fee simple lots. So, in the court file are the deeds from all of these 22 residents. None of these people bought from the mobile home park --

THE COURT: Okay.

MR. BOBO: -- so the defendants aren't in any of the chains of title in any of these. So these things just ultimately went from the original fee simple owners and they progressed to fee simple owners on down the line without involvement of the mobile home park owner.

So kind of if you picture a mobile home park lot layout, scattered in one section are these little fee simple lots kind of scattered in. They actually bought their lots inside the mobile home park. When they bought, the covenants that are on the top of the package that I just gave the court, the covenants were in existence. They're kind of a set of Mickey Mouse elementary types of covenants. But if you look at page 2, here's what we were originally dancing with.

Under paragraph 14, it says: If you plan to use the recreational facilities, any or all, you must have a yearly membership to do so. The

membership entitle your guests to use the facilities while they're visiting.

And then paragraph 16 said: Water and sewage shall be paid by the individual lot owners directly from [sic] Palm Tree Acres forever.

All right. We looked at those. They weren't very clear. I don't know that we could come to some understanding about what those meant. Arguably, they gave somebody who purchased a lot the right to either get the whole packages of service, including the recreational facilities, or just the water and sewer services. It was kind of unclear what was permitted there.

THE COURT: Let me -- on the copy he gave me, there's -- on paragraph number 16, I can -- just the copy I have is somewhat unclear. So water and --

MR. BOBO: It is on mine too.

THE COURT: -- sewage shall be paid by the individual lot owners directly to Palm Tree, does that say Acres?

MR. BOBO: Acres, yes. And I believe that word is "forever."

THE COURT: Forever?

MR. BOBO: I think that word --

MS. GABEL: I think it's --
MR. BOBO: Anyway, these are --
THE COURT: It doesn't look --
MS. GABEL: It's longer than that.
THE COURT: It doesn't look like "forever."
MR. BOBO: Look at the original one. We were trying to scan those things.
THE COURT: Okay.
MR. BOBO: I'll figure out what that word is.
THE COURT: Either way, whatever that word --
MR. BOBO: They're gone anyway.
THE COURT: Synonym for "forever."
MR. BOBO: Right, right.
THE COURT: All right.
MR. BOBO: Yeah. They're gone anyway or these covenants are -- have deemed -- been deemed expired anyway.
THE COURT: Okay.
MR. BOBO: As far as the water and sewer system is concerned, the defendant park owners own the water and sewer system. Water comes from a series of two wells. It's pumped out of the well, it's pumped into a treatment plant, and then it

goes through the mobile home park in a series of distribution lines, main waters and lateral lines, and it goes to all the lots.

Now, it also goes to the plaintiffs' lots, and they're continuing to get water and sewer services without paying.

THE COURT: Who owns and operates the treatment plant?

MR. BOBO: The mobile home park owner. So it's his responsibility to maintain it, operate it, and provide potable water to his tenants.

THE COURT: Okay. And is there a requirement for licensure through the PSC to do that?

MR. BOBO: No. I'll show you that in a second.

THE COURT: Okay. Go ahead.

MR. BOBO: Then there's a sewer plant and -- I mean there's a sewer system, and the park uses a collection system, its own internal collection system, to collect all the sewer, including from the rental residents, including Mr. Harrison's clients as well, and that goes to a lift station. It's pumped up from a lift station and goes into the Pasco County Regional Utilities

system.

THE COURT: Okay.

MR. BOBO: So sewage disposed of by Pasco County once it leaves the park.

The park is ultimately responsible for maintaining all these facilities, for paying to operate the facilities, and handling any kind of a breakdown that occurs in the facilities, which they are continuing to do today. So for both the rental residents and the plaintiffs in this case, they are continuing to get water. The rental -- the plaintiffs are simply not paying.

Historically, for 30 years, since my client purchased the park, all of this package of -- it was about 50 residents, now it's down to about 22, historically, all of them chose the election you saw in those covenants to get the package of services. So they were paying a monthly fee, a fee less than the rental residents were paying, they paid a monthly fee, and for that monthly fee they got to enjoy free use of the park's facilities, or not free use, they were actually paying to rent the park's facilities. Sometimes that was called rent, sometimes it was called a maintenance fee, it was called other things, but

they were -- they had their lot inside the park, they paid the park owner, and they could go and come, using the park facilities just like everybody else that was a rental resident, and they got water and sewer services. Importantly, there was no separate charge for those water and sewer services. For 30 years, this worked perfectly.

First of all, there was -- it was easy. There was no billing requirement, you know. Everybody could just come and go and use the facilities just the same as everyone else, and the plaintiffs were basically treated like any other renter. The real advantage was that it avoided problems with the Public Service Commission.

In the package that I've given you, if you will look past to the first document that's highlighted like this in the case materials.

THE COURT: Okay.

MR. BOBO: These are the exemptions to Public Service Commission regulation. One of the exemptions that applies is landlords providing service to their tenants without specific compensation for the service.

So we were providing to these lot owners a

package of services, they were renting the right to use our land facilities, and they were getting water and sewer services for no separate charge, just a package fee just like our rental residents got, so we were operating under this particular exemption.

Now, the action was commenced, as you noted, when Mr. Schwob decided that he didn't want the package of services any longer. Mr. Schwob was the first plaintiff. He decided that I don't want to use the rec hall or the pool or the shuffleboard court or any of those facilities any longer, I just want to have water and sewer service to my lot, so he filed a lawsuit.

Judge Sestak looked at the lawsuit, and we pled -- in defense, we pled the Marketable Record Title Act, and he, I think, rightfully said to him, you know, you need to go get counsel for this one, this is too technical for you to use.

He reached out and got Mr. Harrison, good, competent counsel, and Mr. Harrison filed the first amended, the second amended, and the third amended complaint. Somewhere along the line, the other 21 residents joined in and they became the plaintiffs in the action.

You've seen that Judge Sestak issued a summary judgment, because the first issue was the validity of these covenants. Are these covenants still valid? Is there anything that still makes the mobile home park provide water and sewer services to these residents as far as the land action? And you can see that summary judgment order that was entered by the county court saying that the covenants that you saw were extinguished by Florida's Marketable Record Title Act, which basically extinguished covenants after a 30-year time period.

All right. We thought that would likely resolve the action. It did not. We offered to continue to providing -- provide the services, the water and sewer services, as a package basis as it had been historically done for the last 30 years, and -- and that's not worked out. Our position is we cannot provide water and sewer services on a separate basis. It is illegal.

THE COURT: From -- and just so I understand what you're saying, as a stand-alone basis?

MR. BOBO: Yes, sir. As a fee-for-service basis. We cannot provide water and sewer services

as a fee-for-service basis because it's illegal. We simply do not have a Public Service Commission certificate.

THE COURT: Okay.

MR. BOBO: We don't have a -- when you get a Public Service Commission certificate, the PSC grants you authority to provide utility services within a given geographic area. Not only does the PSC do that, the PSC also establishes a rate structure for you providing those utilities.

So we don't have a certificate. We don't have a rate structure. We don't even have meters in this mobile home park.

THE COURT: Okay.

MR. BOBO: So we don't have any billing systems. We have no ability to do this, number one.

Number two, we don't intend to seek a Public Service Commission certificate here. And the reason is simple. We have, like you said, 244 sites, 22 of those sites are the plaintiffs, so we have 222 tenants who get water and sewer as part of rent. If we went through ratemaking with the Public Service Commission, we got a certificate and we went through ratemaking -- we have retained

a Public Service Commission lawyer to make sure that everything that we're arguing is kosher as far as the Public Service Commission rules and regs are concerned, we probably spent 10 grand on this guy -- one thing we can confirm is if we go through ratemaking, by law and by rule, we're going to have to have a rate structure that's going to take into effect things like debt service, working capital, maintenance, depreciation, taxes, legal, accounting.

We're even going to have to impute a profit into that rate structure, so that we're going to have to charge our 222 core rental residents, which is really what our business is, we're going to have to penalize those customers by paying a substantially higher rate if we go through the ratemaking process. We don't intend to do that.

This is about more than 30 years for me doing mobile home parks. I've been through this practice before. It will double, triple, even quadruple the cost of providing water and sewer services if you go through a ratemaking service, and so we don't intend to do it.

We also don't intend to suffer the additional administrative responsibilities

associated with the Public Service Commission, and we don't want to go through the billing responsibilities to try to bill anybody on a separate basis, so that kind of gets to the core of our argument.

You know, you saw from the memorandum, the core of our argument is that the Public Service Commission's jurisdiction over the provision of water and sewer service is exclusive. I mean, it has -- it is exclusive over the authority to provide the utilities, the services provided, and the rate structure.

And we can say what we want, you can -- if you went back and saw all the original pleadings that were filed in the county court, the gist of this case is all about whether the mobile home park owner has a perpetual responsibility to burden its land and to provide water and sewer services to all these individual residents. We asked the court in our motion to dismiss to look at this Count Number 3.

Here's the demand in Count Number 3. They're asking the court to enter a judgment finding and determining and declaring the rights and duties of the lot owners -- the plaintiffs --

and the park owner with respect to the potable water supply, in other words, they're asking the court to affect the service issue, and the amounts that the lot owners can be charged for such water supply, in other words, the rates.

All right. What we're asking the court to do is simply confirm that under a 367 -- 367.011, which is the second thing in this package, this is the jurisdictional statute for the Public Service Commission, the statute says in sub (2) 367.011: The Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, so we're saying the court can't make us provide water and sewer system, only the Public Service Commission can give us that authority, over the service, we don't have to provide service, the only way we can do it is to go through the Public Service Commission, and the rates to be charged, which is exactly what they're asking you to order in Count 3 of the complaint.

Now, the Public Service Commission is -- we said it's exclusive jurisdiction, it's preemptive jurisdiction, but it's also presumptive jurisdiction. And the presumptive is important.

We gave the court several cases,

Your Honor, and the seminal case is this Hill Top Developer case, which is the first one after the statute that you just looked at. Okay. Everything that we provided you is either Supreme Court law or 2nd DCA. So, this Hill Top is kind of the seminal decision. Page 370 is where they discussed with the Supreme Court -- I'm sorry, the 2nd District discusses the preemption doctrine.

THE COURT: Okay.

MR. BOBO: And this preemption doctrine is stated to assure that a legislatively intended allocation of jurisdiction between administrative agencies and the judiciary is maintained without disruption which would flow from judicial intrusion into the province of the agency. And they conclude that -- this is an electric case, but they said that anything that the PSC has jurisdiction over, its jurisdiction is preemptive. The court has no right to step into that ring.

Then when you look on down, we've highlighted in headnote 9 here -- and the reason I -- we highlighted that is in this pleading the court is saying that it should have been pled that the plant facility expansion charge had been approved by the PSC. The failure to plead that

pack -- that fact imposed an infirmity upon the debt claim which ousted the trial court of subject matter jurisdiction to grant a judgment.

All right. There is no pleading anywhere in this monstrous third amended complaint that we have the authority to provide these plaintiffs water or sewer services or a rate structure has been enacted so that we can charge them a rate structure in accordance with the law that has been approved by the administrative agency.

All right. We go from Hill Top, we go to the next case, which is a Supreme Court case. Again, we're dealing here again with electricity in this case. There was a dispute in Pinellas County. A guy who was in a condominium said he was overcharged for electricity and gas. He wanted to bring a claim to recover his overcharges. Judge Bryson used to be a circuit court judge down in Hillsborough County. Judge Bryson enjoined the Public Service Commission from acting. A writ of prohibition was filed against Judge Bryson by the Public Service Commission, and that went to the Florida Supreme Court ultimately.

The court then is looking, when you're dealing -- the court first says that the PSC has

exclusive jurisdiction over utility issues, and then we look to see this presumptive jurisdiction issue comes up again on page 1225 -- or 1255, is the court says the question is who decides whether a particular complaint is within the PSC jurisdiction. The PSC argues that it alone has the right, and obviously the other side is arguing that the circuit court has the right to make that initial determination.

The court says that ultimately it is the Public Service Commission that determines whether it has jurisdiction on anything that is arguably within the ambit of its jurisdiction and the appropriate remedy, if the Public Service Commission was wrong, was for an appellate court then to review the Public Service Commission's actions and determine whether it ultimately had original jurisdiction in the case. And it goes on to say neither the general law nor the constitution provides the circuit court concurrent or cumulative power of direct review over PSC action.

So, again, the PSC is something that's supposed to be within its playing field. The PSC makes the initial determination. If that

determination is wrong, it goes to the appellate court. It bypasses the circuit court altogether. Anything that is arguably within the preemption of the Public Service Commission goes to the commission itself.

Then the greatest caution to the courts over these PSC issues was in the next case, which is, again, another 2nd District Court of Appeals case, and this one arose right out of this county and on very similar facts.

This is the Public Service Commission versus Lindahl case. All right. In Lindahl, the PSC had approved rates for a mobile home park owner to charge in a mobile home park. The tenants of the park claimed that those rates violated a restrictive covenant that had been long ago recorded and it told them that they were going to be able to get water, sewer, and other things for I think it's $300 a year.

When the PSC looked at this, the PSC established a rate structure that was higher than that, the tenants complained, they sued, they came into the Pasco County court and they asked Judge Tepper to enter an injunction enjoining the charging of those rates, and Judge Tepper entered

that injunction.

That was appealed to the 2nd District Court of Appeals, and the 2nd District said there on page 64, the court question arising from this dispute is whether the trial court was invested with subject matter jurisdiction to issue the injunction.

And that had been one of the claims that was pled here.

The court says: We determined in Hill Top Developers that the legislature intended the PSC to have plenary jurisdiction to establish the rates charged by regulated utilities. To preserve the legislature's allocation of jurisdictional authority between the administrative agency and the general equitable power of the circuit courts, we cautioned the bench against judicial intrusion into the province of the agency.

And then they say something that you rarely see in cases. They said: We, again, face judicial interference with the regulatory function and, as we did in Hill Top Developers, condemn the trial court's intrusion into the PSC statutorily delegated responsibility to fix a just, reasonable, and compensatory rate for service

availability. We, of course, reject the view urged by the residents that the 1972 deed restrictions supersede the order of the Public Service Commission approving the rate structure. It says the PSC's authority to raise or lower utility rates, even those established by contract, is preemptive.

Then the only other case that we've provided in advance that affects this issue is this next Supreme Court decision, PW Ventures versus Nichols. That's cited solely for the proposition that, Your Honor, even if we serve one customer who is not our rental resident, just one customer, water and sewer on a fee-paid basis, we're within the jurisdiction of the Public Service Commission.

So we can't serve any of these residents because, right now, they've disavowed any lease arrangement with the park owner. They're telling us that they don't want to use any of our facilities, that they don't want to rent any of our real estate, none of our rec halls, our pools or anything. All they want is stand-alone water sewer and service. We can't do that. The only way we can do that is to go through the Public

Service Commission.

And what we're asking the court is simply to confirm the plain language of the jurisdictional statute which says that the PSC has exclusive jurisdiction over authority, in other words, the legal right to provide water and sewer services, service, the obligation to provide the service, and rates, which is exactly what they're asking the court to order us to do in Count 3 of the complaint. That's what they started doing, that's what they've continued to do now for three years is to make the allegation that, I'm sorry, we bought our lots inside your mobile home park, so, therefore, you forever and a day, you have to continue to provide water and sewer services to us.

We will do it on a package basis so long as we can make an arguable claim that we come under the jurisdiction -- or we come under the exemptions here. But we are not going to provide water and sewer services to them on an individual basis because we do not have a certificate and we are not going to go seek that certificate.

That's where we are.

THE COURT: Okay. Mr. Harrison, what's

your --

MR. HARRISON: Sure. Now --

THE COURT: I think that -- well, first, before you start, what's most troubling to me is this 2nd DCA opinion, the Lindahl one. I mean, there's some pretty strong language there by the DCA that this is an area that I need to be very careful getting myself involved in.

MR. HARRISON: Well, absolutely. And we'll talk -- I want to talk about his cases in a minute.

THE COURT: Yeah.

MR. HARRISON: But let's talk about what has happened here factually, because I think that's important. The facts have not changed one bit in the 30 years that these folks have owned the park. The plaintiffs have always been fee owners of their lots. We've never been anybody's tenant. The park owners have always owned and operated the water and sewer. That hasn't changed, and it's always been operated in the system that Mr. Bobo described to you. It's sort of a unitary system, furnishes all the lots, the rental lots and the fee-owned lots, no separate metering, that's accurate. That has not changed

one bit. That is exactly what's going on today, exactly what's going -- everybody's getting water, everybody's getting sewer under that exact same system. It has not changed.

This claim that the park falls under the exemption for landlord-tenant is apparently what the park has relied on for many years to avoid going to the PSC, but it's problematic on the face of it. It's problematic because how can we be their tenants when we own our lots in fee and we're not leasing our property.

So they come up with this argument that you're leasing the recreational amenities. At one point they even said you're leasing the roads, you're leasing the water pipes. We're not leasing those things. We don't have any of possessory interest in any of those things.

Their conduct for the past 30 years has been under this sort of concocted notion that we're somehow their tenants so that they fall under this exemption.

We've never been their tenants of anything. There's no agreement they can hand you that says we're renting anything from them and there never has been, and that's never changed.

And, frankly, that's an argument that the PSC has seen before. We cited one of those decisions in our response. Mobile home park says we're under the exemption for landlord-tenant, and the PSC says you can't be under the exemption, these people own their lots in fee simple.

So it's a ruse. It's a sham. It's a way to avoid PSC jurisdiction, and that's what they've been happily doing, perhaps with a bunch of senior citizens who don't know any better and didn't care, until somebody decides to say, well, wait a minute, you know, I want to take a look at this system and see what's going on and if I don't want to use all this other stuff, I shouldn't have to pay for it.

But another fact that hasn't really changed, although it's been modified slightly, there's no other public supply of water to these fee-owned lots. While the covenants were in effect, the covenants had a separate covenant in there that said you can't have well and septic on the lots. So while the covenants were in effect, there was no other way for anybody to get potable water except from this system that was in existence.

The covenants are now gone, so that restriction's gone. So, presumably, every one of these fee-owned lots, at least in theory, could go out and seek to put in a private well to supply water. That hasn't happened. Don't know if it's feasible. We don't know if the lots are big enough. There's a lot of other things that go into that. But at this moment, the only available water supply is this system.

Same is true of the sewer. We couldn't do septic tanks while the covenants were in effect because the covenants said no well and septic. We can't do septic tanks even without the covenants being in effect because the lots -- the dimensions of the lots are not large enough to meet Department of Health restrictions for separation, so we couldn't do septic tanks even if we wanted. So there's no available sewer system other than the one that currently exists.

THE COURT: Go ahead.

MR. HARRISON: So the defendants take the position that, yeah, you've been our tenants and we've been under this exemption for all these years. Whether or not that's the way that exemption is supposed to work, I suppose we may

get to at some point or maybe the PSC will get to at some point, but that's been their theory.

And now the question has arisen, well, number one, are you obligated to supply us water; number two, if you're going to supply us water, what rights do we have.

There have been threats in this case that are alleged in the complaint, more than one occasion, where the park owners have said, you know what, we're just going to turn off everybody's water. We're not going to supply your water anymore. Well --

THE COURT: Supply yours? As the plaintiffs' water or --

MR. HARRISON: To the fee owners, to the plaintiffs.

THE COURT: Okay.

MR. HARRISON: Well, when you've got the only available potable water supply, that becomes problematic. When you say I'm cutting off potable water to 20 lots and however many residents that is, that's not a contract dispute anymore, that's not a tort claim anymore, that's a public health issue. You can't cut off the only supply of potable water. But they've talked about doing

that.

So we have a very convoluted set of facts that have been in place for a very long time. These people live there, bought there, in reliance on having a water supply, because it's the only water supply that's ever been and it's the only water supply that's available today. Same with the sewer. There's no other way to do it.

So the park owners say either you go along with our construct that we're exempt or we're illegal and we can't do it.

What we have asked for in Count 3 is for the court to simply declare what the rights are of these lot owners in terms of the existing water supply. It's not a question of whether the court can make them give us water. They're already giving us water. They've been giving us water for 30 years. So we're not coming in saying, Your Honor, you've got to order them to give us water. We're coming in saying, Judge, they've been giving us water for 30 years and now they're threatening to cut the water off. We really need the court to decide whether that can happen or not. That's what this case is about. It's not about ordering somebody who's never done it to

come in and start running a utility.

And if the court determines based on 30 years of history among these parties and lots of historical facts that somebody's going to have to hear at some point that the water supply cannot be terminated to these property owners, if that means that they've got to go get a license from the PSC, it may well mean that in the end, but that's not the question that we're asking you to decide. We're not asking you to tell them to go to the PSC. We're not asking you to tell them to do anything that they're not already doing.

What we're asking the court to do is declare whether or not tomorrow, if they don't want to litigate this issue anymore, they can send out a notice to all these 22 lot owners and say, as of Friday, you have no more water, good luck, have a nice life, because that's what they've threatened to do. That's what the case is with.

So, obviously the court has jurisdiction to grant declaratory relief. Your declaration can take many forms. Your declaration, in the end after you hear all the evidence, may well be, you know what, they don't have any right to do any -- any obligation to do anything. You folks might be

on your own. You might have to go seek out some other way to get water. That's where you might end up.

Your declaration might be, historically, we have a 30-year course of conduct, a 30-year practice, we have reliance, we have history, and we have the very practical consideration that there's no other way to get water and sewer. That's a pretty serious practical consideration.

So, we can't predict what the ultimate decision may be. We can't predict what the court will ultimately declare are the rights as between the parties, but we're certainly entitled to have the court declare them. That's what the case is about.

Every case that they cited to you involves either a currently regulated utility, the one that Mr. Bobo talked about where the PSC had approved a rate and somebody was complaining that they were overcharged, well, if you're a currently regulated utility, your revenues go to the PSC.

Other disputes in these cases involving -- in these cases, it was really no question about the PSC's jurisdiction because in almost every one of them, you had a regulated utility in some

fashion. You had a dispute in the Bryson case of enjoining the PSC from essentially doing what statute says it's supposed to do. So those cases are pretty clear.

There's no case that they've presented to you that looks like our situation. You have a currently unregulated entity seemingly acting like a utility but, at the same time, claiming they're exempt from being licensed.

So, on the one hand, they're telling you, you can't deal with this problem today or in this case because the PSC has jurisdiction at the very same time they're telling you but we're exempt from the PSC's jurisdiction.

Well, they can't have it both ways. If they're exempt, then the court's got to have the ability to declare the rights of the parties. If they're not exempt and it's really something that needs to be regulated by the PSC, well, they ought to go get a PSC license and then we can deal with the PSC. We cannot have a situation where nobody governs their conduct. And that's what they're arguing. We're -- you can't do anything in the circuit court because PSC has exclusive jurisdiction, but, aha, we're exempt, so we're

going to go to the PSC. We're going to operate in this completely unregulated matter. That can't be the right answer.

So at this point we think it is premature to dismiss the claim for declaratory relief. We know the court can declare the rights of the parties. No issue about that. In this context ultimately, after the court hears some evidence, hears some facts, you may decide to defer, you may decide to grant very limited relief, you may decide to declare that they're subject to PSC jurisdiction and somebody ought to go to the PSC, but, we don't think it's appropriate in this case to do that on a motion to dismiss where we've got a 30-year history, we've got reliance, we've got no other available source of water, and we've got people who are telling us, you know, at any moment, if they decide they're irritated with us, they'll just turn off water.

And, again, critically, you can't come in and say the court can't act because of PSC jurisdiction and in the same breath say but we're exempt from PSC jurisdiction.

THE COURT: Give me just one second.

The other part that caused me some concern

is the PW Ventures versus Nichols that says, in my reading it, that a -- it looks like a private entity providing electrical service to a single customer necessarily brought them under the jurisdiction of the PSC as a public utility.

So my initial concern with it is if you -- if you get what you're asking for, does that necessarily transform the mobile home park into a public utility, and if that's -- if that's the case, do I have the authority to require them to become a public utility.

MR. HARRISON: There's no question that the issue resolved in that case, the PW Ventures case, was this question of the meaning of supplying utility service to the public. That's how the issue arose. The company in that case was saying if we've only got one person we supply service to, that's not, quote, the public. The statute says you're subject to utility regulation if you're supplying utility service to the public. So the court in that case said, no, one customer who's not you is sufficient to bring you under PSC jurisdiction. So, one person out there constitutes the public. That's what that case was about.

THE COURT: Yeah.

MR. HARRISON: In this case, again, they're already doing it. So whether or not they're acting as a utility is not something the court has to declare and we're not asking you to declare that or not. That is a de facto determination that perhaps the PSC might make some day, and they may well start looking at this at some point. We're not asking the court to declare that they're a utility. We're asking the court to resolve rights between private property owners based on a historical set of facts.

Now, if the outcome is that we are entitled to continue to receive water because it's the only way we can get water, the result of that ruling might mean that they're now a utility, unless they find some exemption that applies and, as a result, they might be -- they might be required to go to the PSC and become regulated. But it's not the action of the court that turns them into a utility or not.

What they're doing and what we're asking the court to continue to require is exactly what they've been doing for 30 years. So it's not that the court will turn them into a utility. Either

they're a utility or not today. Either that exemption that they're relying on under this sort of concocted idea that you're renting the clubhouse and, therefore, you're our tenant, so, therefore, we're exempt, the courts doesn't have to worry about that. Somebody down the road might decide that that's a bunch of hooey and you're not really exempt, but we're not asking the court to decide that either.

So we're not asking the court to do anything that will change the status of what they're doing or what the legal effect of it is. The legal effect is the legal effect no matter what this court says.

So if the court says these folks are entitled to continue to receive water, no, you cannot turn it off, for a variety of reasons, that may well be the extent of the court's determination. In fact, you may at that point say, and it looks like by virtue of that, you've become subject now to regulation by the PSC, so go apply for a license and let them set the rates. The court may decline to set a price or a rate. But we're not there yet.

The fundamental question is can they take

the position that they're not subject to regulation by anybody. They're exempt from PSC jurisdiction under this theory that they've come up with for 30 years and, at the same time, you can't tell us what we have do in this case, Judge, because that's a matter for the PSC. Something fundamentally flawed with that.

THE COURT: Has there been any contractual arrangement between the -- between your clients and the mobile home park that would establish the -- anything at all that shows this agreement of the mobile home park providing services and amenities or the water and sewage as part of the broader amenity package?

MR. HARRISON: There's no written agreements where any individual lot owner has signed onto anything that looks like a lease or even a contract. And I think the park owner in his deposition even said, no, there's no agreements.

They would, each year, send out a notice that is formatted to sort of follow the requirements of the Mobile Home Act, and it's the same notice that would go to the rental people in the park, that says, okay, under the Mobile Home

Act, we have to tell if you there's going to be a rental increase and here's what we're telling you for the new year. Some years, there were increases. Some years, there weren't. And that form called it varies things. It called it monthly rent. It called it monthly maintenance. It called it three or four different things.

But, again, as to our people who own their lots in fee, it's clearly not rent. It doesn't matter what you call it on a form.

So other than that, other than that once-a-year notice that says for the upcoming year this is how much you're going to have to pay, there's no contracts with our folks, there's no agreements, there's nothing that says you're renting or leasing the amenities. And I'm pretty sure everybody's dug through whatever records they have got at this point. We've been litigating for a few years. Nobody's come up with a contract.

And Mr. Goss, the main party on the other side, the main park owner, said in his deposition, no, there's no leases, there's no agreements, so....

THE COURT: Is there anything in 723 that -- well, never mind. I'll look that up

myself.

If I understand correctly, the covenants that put all this into motion would have expired in what, 2006? Would that be the 30 years from --

MR. HARRISON: I forget what we used as the trigger date for the 30 years.

MR. BOBO: '14. They would have expired in '14.

THE COURT: It would have expired in '14. Okay.

MR. HARRISON: And the other thing about the covenants, although the covenants have that provision that we've looked at that says you're going to pay the park owners for water and sewer, that was always a little bit of a mystery too. Because if you read those covenants carefully, there's nothing in the covenants that says park owner's required to supply water and sewer.

So the obligation to supply water and sewer, wherever it comes from, does not emanate from that those covenants. You could look at those covenants all day long, they're not very long, and nothing in there says park owner will furnish water and sewer.

So we don't think the fact that the

covenants have now been determined to be invalid and that they no longer are in effect really affects that fundamental question. The water was not being provided under the covenants because there's nothing in the covenants that says they have to do that. That's just been a matter of course. When these folks came in and bought a lot, that's what existed.

THE COURT: Okay.

MR. HARRISON: It came with water and sewer.

THE COURT: You have five minutes to respond.

MR. BOBO: Let me -- let me try to blow through this quickly as I can, Your Honor.

THE COURT: Okay.

MR. BOBO: You asked if there was a contract. There is no contract that complies with the statute of frauds.

THE COURT: Okay.

MR. BOBO: So they're asking for a perpetual obligation for the park owner to provide their water and sewer service. There is no written contract that complies with the statute of frauds.

Counsel is correct. We would send out a notice on what we were going to charge you to use our facilities for a year. We would negotiate with the renting residents. We would negotiate with the lot owners. We would come to a number, and that's the number that would be charged on an annual basis.

THE COURT: Well, if anything, they get -- the contract would be what that notice was and the check that was paid.

MR. BOBO: Oral contract for that year, yes.

THE COURT: Okay.

MR. BOBO: You asked if there's anything in 723. No, sir, there's not. Nothing in 723 will govern these fee simple lots. It will not.

THE COURT: Okay.

MR. BOBO: Counsel made an argument that we were never renters. Well, either they were renting the right to use our rec hall and pool and shuffleboard courts or they were getting a license to use them, but for whatever it was, we come down to the fundamental question for today. The fundamental question for today is exactly what counsel just told you, and I wrote it down. He

said, we're asking you to declare what our rights are. We're -- we believe that we have rights to the water.

All right. When you look over at the jurisdictional statute for the Public Service Commission, it says they'll have exclusive jurisdiction over authority, service, and rates.

So, saying that we have rights to the water, at the very least, is either authority or service. And then he also goes on to ask you to set the rates. And that's -- we are falling squarely within the Public Service Commission's regulated authority by what he's just told you he's asking for in Count 3.

They bought these lots. They made an independent decision to buy them. The deeds show that they did not buy them from the park owner. They made their own bed. They decided to buy lots inside a mobile home park.

So counsel argues to you that we've got a 30-year history, that there's reliance, that there's this historical basis of you providing our water services and there are practical considerations here that we don't have anywhere else where we can get water or sewer service.

None of those four things or anything else they've alleged in the complaint overrides the jurisdiction of the Public Service Commission. I don't care if there's a 75-year history of providing water and sewer service. If it's not done in compliance with the Public Service Commission regulation, it is illegal, it's a violation of 367, and only the Public Service Commission has jurisdiction to address that issue.

So these independent considerations, the 30 years, the reliance, the history, we can't get it any other way, none of those things are stated in the chapter to be exemptions for Public Service Commission regulation, and they can't be argued to do so.

You got it absolutely right. You said, if you get what you're asking for, it transforms the mobile home park into a public utility.

If you told us that we have the obligation to forever provide these 22 lots water and sewer services, you've just transferred us and you have just made us a public utility company.

You asked the question do I have any right to make them go get a Public Service Commission certificate, and the answer is no, sir, you do

not.

We have been in this case for three years. Counsel's excellent. I've watched him for three years. I've watched him in the appellate court. He knows what he's doing. If he could find a case that would require us to provide utility services to a neighboring landowner, you would have seen it. At the first five minutes of the argument today, you would have seen it.

THE COURT: One question I've got for you that gives me some pause is the result, is if I -- if I dismiss the count, the public health issue. Is that a -- and this hasn't really been vetted in what I've seen in the responses.

But do any of these people have certain rights under any of the public health statutes or -- that would address this kind of situation?

MR. BOBO: No, sir. First of all, the public health risk argument that he's making does not override Public Service Commission jurisdiction. Number one, it does not.

Number two, Public Service Commission regulations would say if you don't pay for your water and sewer services, you can get it turned off. You might make the argument, but if you turn

off my water and sewer system, then that's a public health issue. But you've got the right under Public Service Commission regulations to turn off water if somebody doesn't pay for it. They're not paying.

THE COURT: So you're saying because regular utilities --

MR. BOBO: Yeah.

THE COURT: -- have the ability to turn off the water --

MR. BOBO: I'm primarily saying that an argument that if you turn off my water, I have a public health issue, doesn't change the fact that Chapter 367 gives exclusive jurisdiction to the Public Service Commission. The fact that here it makes it convoluted doesn't change the fact that only the Public Service Commission has jurisdiction over authority, service, and rates, which is exactly what he's asking you to affect in Count 3.

And the case law, I think, is clear that even if you get near that sandbox, you have to defer to the PSC.

THE COURT: Okay. I want to move on to the plaintiff's motion for mediation. I'm sorry.

We're kind of running short on time, but I think probably most the issues are kind of overlapped. Let me -- I've read the motion. I don't know that I need to hear much more argument as far as that.

But let's -- let's assume for the moment that I grant your motion to dismiss count, why should I not send the rest of the counts to mediation? I mean, they're the counts of intentional infliction of emotional distress, there are -- and I'll give you a chance to address that, too, but from what I've read in the case law, I'm thinking I'm probably going to have to deny your motion on that unless there's more argument you had to provide on that.

MR. BOBO: The whole thing, I mean the entire dispute in all the individual counts stem from simply the fact that they say we have to provide them water and sewer services, they are no longer paying for it, and then there were debt-related actions after that point to try to recover the charges that they're continuing to run up for a three-year period of time.

They're continuing to get water, sewer, garbage. They're continuing to use the facilities of the park. We got pictures of them all.

THE COURT: Okay.

MR. BOBO: So they're continuing to operate just as they have for the last 30 years without paying.

So, for example, part of the FDUPTA claim is, hey, you're trying -- or you're threatening to cut off water and sewer services to us.

We know we're illegally providing water and sewer services to you. We cut them off, we're complying with the law.

THE COURT: All right. I understand what you're --

MR. BOBO: Everything flows from that one original point.

THE COURT: Okay.

MR. BOBO: It's like big bang theory.

MR. HARRISON: Let me take issue with that.

THE COURT: Go ahead.

MR. HARRISON: No, it doesn't. Whether or not they have any ongoing obligation to continue to supply water and sewer has nothing do with the fact that historically they have done so. And historically, in an effort to collect money -- and let me -- counsel said this three times now, whether or not people are paying is way beyond

anything in the complaint that you can deal with on a motion to dismiss. But since he said it, the facts are that some of these folks are paying. We -- some of our folks are sending a check every month that they're not cashing. They're putting it in a drawer --

THE COURT: Okay.

MR. HARRISON: -- pending the dispute. But that's neither here nor there.

The counts that we have alleged include things like they say you owe us all this money from this water, so they go out and they slap a lien on my clients' property. That's got nothing to do with PSC jurisdiction. Either you've got a valid basis for a lien because you think I owe you money or you don't. Doesn't matter what the PSC says.

Intentional infliction of emotional distress. We've alleged these are all senior citizens, fixed income, some of them are disabled. They're threatening these people, telling them we're going to put up a gate and call you trespassers, all this kind of stuff. Nothing to do with PSC.

So, those are money claims, those are

damages claims, including claims for slander of title and other damages claims. If they're violating -- if they think what they're doing is not a violation of FDUPTA, well, the court can decide that or we can go talk about it in mediation. But I've never seen somebody fight so hard for three years not to go mediate a dispute.

MR. BOBO: Well, I'll give you the offer right now. I mean, here's the mediation: We will continue to provide water and sewer services on a package basis as we have historically done for 30 years. That's it. That's our offer. It's available today. You know, it may be available for a few weeks. That's our offer in mediation. That's what we will do.

We will not go through and get a Public Service Commission certificate. We'll fight that to the end of time.

THE COURT: Okay.

MR. BOBO: So that's the reason why -- and I've said it formally, informally, for three years. We will provide you water and sewer services just like we have been doing. That is going to be our offer in mediation, and the mediation will last five minutes.

MR. HARRISON: Well, that's not how mediation works and that his nothing to do with what about this lien you put on my property.

THE COURT: Yeah. I get it.

I'm going to take it under advisement, and I will -- I'll take it under advisement. I'll enter an order.

Do we have anything else set after this?

MR. BOBO: No, sir.

MR. HARRISON: Nothing -- nothing pending right now.

THE COURT: Okay.

MR. BOBO: Would you like -- can we help at all? Would you like proposed orders or anything from us, Your Honor? I don't know what your practice is or what you'd like.

THE COURT: Well, I honestly haven't figured out what my practice is yet.

Proposed orders from both sides, I think, would be -- would be appropriate, at least so that it will give me an understanding of -- yeah, I'll take proposed orders from both of you. What kind of time frame do you think you can --

MR. BOBO: I mean, at least for our motion to dismiss. I don't know the proposed order on

the motion for mediation --

MR. HARRISON: Mediation's kind of yes or no.

MR. BOBO: That's yes or no, yeah.

THE COURT: Right. Yeah. So I'll just -- I'm more focused on the motion to dismiss, so --

MR. HARRISON: 10 days?

THE COURT: 10 days. Is that --

MR. BOBO: It works for me.

THE COURT: -- good enough time?

MR. BOBO: Yes, sir.

THE COURT: Okay. All right. So --

MS. GABEL: Your Honor?

THE COURT: -- 10 days from today. Yes, ma'am.

MS. GABEL: Just so -- just so you clear up this one question mark, that word in number 16 of the covenants --

THE COURT: Yes.

MS. GABEL: -- it's "Incorporated." Palm Tree Acres, comma, Incorporated. Because there's a big difference between "forever" and "incorporated."

THE COURT: Incorporated. Yes, there is.

MS. GABEL: Just thought I'd let you know.

THE COURT: Thank you.

MS. GABEL: Sorry about that.

MR. HARRISON: Well, even if it's forever, it's not forever anymore.

MS. GABEL: Well, it's ironic.

THE COURT: Yeah. Okay.

MR. HARRISON: Thank you, Judge.

THE COURT: All right. Thank you.

MR. HARRISON: I'll take the transcript, please.

THE COURT REPORTER: An E-Tran or --

MR. HARRISON: The whole works. Expedite that for me.

THE COURT REPORTER: When do you need it?

MR. HARRISON: What's today?

THE COURT REPORTER: Today is Friday.

MR. HARRISON: Middle of next week, Wednesday.

THE COURT REPORTER: Mr. Bobo, he ordered this.

MR. BOBO: Give me a copy.

THE COURT REPORTER: Do you want an E-Tran?

MR. BOBO: Yes, please.

(Thereupon, the proceedings were concluded at 11:00 a.m.)

COURT CERTIFICATE

STATE OF FLORIDA)
COUNTY OF PASCO)

I, LINDA S. BLACKBURN, Registered Professional Court Reporter, Certified Realtime Reporter, and Certified Realtime Captioner, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 11th day of July, 2017.

Linda S. Blackburn
LINDA S. BLACKBURN, RPR, CRR, CRC

Filing # 73790327 E-Filed 06/19/2018 03:32:46 PM

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

NELSON P. SCHWOB, et al.,

Plaintiffs,

v.

CASE NO. 2017-CA-1696-ES
DIVISION: B

JAMES C. GOSS; EDWARD HEVERAN; MARGARET E. HEVERAN; and PALM TREE ACRES MOBILE HOME PARK,

Defendants.
_____/

DEFENDANTS' AMENDED COUNTERCLAIM

Pursuant to Rule 1.190, Florida Rules of Civil Procedure, and this Court's Order entered on May 31, 2018, Defendants, James C. Goss, Edward Heveran, Margaret E. Heveran and Palm Tree Acres Mobile Home Park ("Owners") amend their Counterclaim and allege:

COUNT I
OWNERS' CONSTITUTIONAL RIGHTS AS OWNERS OF REAL PROPERTY

1. **Action**. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes. The amounts in controversy are within the jurisdictional limits of the Circuit Court.

2. **Plaintiffs**. Plaintiffs are the owners, in fee simple, of lots (collectively, the "Lots") within Palm Tree Acres mobile home park ("Palm Tree").

3. **Defendants**. Defendants are the Owners and operators of Palm Tree (the "Property"). Owners' title is evidenced by a copy of Owners' Corrective Warranty Deed attached to Plaintiffs' Complaint and recorded in OR Book 1477, pages 0673-0680 of the Public Records of Pasco County, Florida.

4. **Palm Tree Acres Mobile Home Park**. Palm Tree is a rental mobile home park consisting of approximately 244 lots. Approximately 222 lots are occupied by homeowners who own their mobile homes and lease their respective lots from Owners (collectively, the

"Homeowners"). The landlord tenant relationship between Owners and the Homeowners is governed by Chapter 723, Florida Statutes.

5. **Venue.** Venue is proper in Pasco County, Florida, as Palm Tree is located in Pasco County and the cause of action accrued in Pasco County.

6. **Plaintiffs' Claims**. Plaintiffs maintain that Owners' Property is burdened to supply utility services to the Lots for an indefinite period of time. Plaintiffs also maintain that Owners' Property must supply utility services to their successors, heirs and assigns. Plaintiffs base their claims, in part, on the fact that Owners have provided utility services to the Lots in the past, and Plaintiffs contend that they have no other reasonable option to obtain utility services.

7. Plaintiffs further contend that without Owners' supply of utility services, the Lots are not habitable and public health issues will arise from Plaintiffs' occupancy if utility services currently supplied by Owners are discontinued.

8. No privity of contract exists between Plaintiffs and Owners.

9. Owners are not present in the chain of title to any Plaintiff's individual Lot. Each Plaintiff purchased his or her Lot from an individual prior owner of the Lots not associated with Owners.

10. There are no covenants, or restrictions running with the land that are binding upon Plaintiffs and Owners. The former covenants applicable to the Lots attached as Exhibit A, have been extinguished by the Florida Marketable Record Title Act, Chapter 712, Florida Statutes. *See*, Order On Defendants' Motion For Partial Summary Judgment dated December 8, 2016, attached as Exhibit B.

11. **Owners' Constitutional Claims**. Owners own the Property comprising Palm Tree, in fee simple.

12. Various improvements exist on the Property including the utility systems used to

supply utility services to all Homeowners (the "Utility Systems"). The Utility Systems include, but are not limited to, a well field containing two wells, tanks, pumps, water treatment equipment, controls, a generator, a water distribution system, a sewer collection system, and a lift station.

13. Owners have basic constitutionally protected property rights arising from their ownership of the Property. Owners maintain that as the fee simple owners of the Property, Owners are entitled to the full bundle of ownership rights constitutionally guaranteed to the owners of real property by the Florida Constitution. The most valuable aspect of the ownership of the Property is the right to use it for any lawful purpose, or no use at all. Any infringement on Owners' full and free use of the privately owned Property is a direct limitation on, and diminution of the value of the Property. Any forced use of the Property to supply utility services to neighboring parcels violates Owners' basic constitutional rights.

14. Property rights are among the most basic substantive rights expressly protected by the Florida Constitution.

15. Burdening the Property with any obligation to supply utility services to the Lots would unconstitutionally restrict the Property, and thereby adversely affect its use, marketability and value.

16. While a landowner may constitutionally be required to suffer access by the owners of a neighboring landlocked parcel, no similar principle requires a landowner to supply utility services to an adjacent landowner who lacks access to the utility services necessary to make the adjacent property habitable. Any such burden, requirement, or even governmentally imposed restrictions, infringes upon Owners' constitutionally protected bundle of rights to use the Property for any lawful purpose, or no use at all.

17. There is a bona fide, actual, present practical need for the declaration by the Court concerning these matters.

18. The request for declaratory relief addresses a present, ascertained or ascertainable state of facts as alleged above.

19. The parties have, or reasonably may have, an actual, present adverse and antagonistic interest in the subject matter, facts and law alleged.

20. The antagonistic and adverse interests are all before the Court.

21. The relief sought by Owners is not merely the giving of legal advice or a request for direction from the Court.

22. The parties are in doubt about their rights and the obligation of the Property to supply the requested utility services, and are entitled to have those doubts removed.

23. Only the Circuit Court can adjudicate these constitutional rights. The Florida Public Service Commission lacks the jurisdiction or authority to interpret or determine ownership rights constitutionally guaranteed to the owners of real property by the Florida Constitution.

24. All conditions necessary for the filing of this action have been fulfilled, otherwise satisfied or waived.

25. Plaintiffs' persistent claims and alleged rights in Owners' Property constitute clouds upon the title of Owners' Property.

26. Owners have retained the undersigned law firm to represent them in this action and are obligated to pay a reasonable fee for the undersigned's services. Owners are entitled to an award of their costs and reasonable attorneys' fees for removing the claims and alleged rights.

WHEREFORE, Owners seek a declaratory judgment confirming that:

a. Owners are entitled to the full bundle of ownership rights constitutionally guaranteed to the owners of real property by the Florida Constitution;

b. Owners have a constitutional right to use their Property for any legal purpose or no use at all;

c. Any forced use of the Property for the benefit of Plaintiffs violates Owners' basic constitutional rights;

d. Burdening the Property with any obligation to supply utility services to the Lots would unconstitutionally restrict the Property, and thereby adversely affect its use, marketability and value;

e. Owners have no duty to suffer the use of the Property to make the Lots habitable. Any such burden, requirement, or even governmentally imposed restrictions, infringes upon Owners' constitutionally protected bundle of rights.

f. Owners are entitled to the costs and attorneys' fees incurred to remove Plaintiffs' claims and asserted rights; and,

g. Such other relief as the Court deems appropriate.

COUNT II
OBLIGATION TO SUPPLY WATER AND SEWER

27. Owners reallege Paragraphs 1 through 26 as if fully set forth herein.

28. All Plaintiffs are alleged in the complaint to be Lot owners.

29. Owners own the recreational amenities for the Community, as well as the water and sewer systems servicing each Lot.

30. **The Covenants.** Originally, Owners and each Lot owner were subject to recorded restrictive covenants (the "Covenants") described in the original complaint.

31. Lot owners are permitted to use the Community's recreational facilities and receive water and sewer services for a fee.

32. The custom and practice has been for each Lot owner to pay a monthly fee for this package of services.

33. Owners' obligation under the Covenants to supply any amenities or services have expired or been rendered unenforceable by the marketable record title act, Chapter 712, Florida Statutes (the "Act")

34. As a result, Owners are no longer obligated to provide any services to the Lot owners, including Plaintiffs.

35. Some Plaintiffs also may no longer be obligated to accept and pay for services under the Covenants. Their individual obligations may have expired or been rendered unenforceable by the Act. A lot-by-lot, title-by-title examination is required to make this determination.

36. **Owners Have No Obligation To Unbundle Services**. Recently, some Plaintiffs have failed or refused to pay for any services furnished by Owners, even for the water and sewer services which Owners continue to provide.

37. Upon information and belief, some or all of these Plaintiffs contend that they may select which of Owners' services they intend to accept. These Plaintiffs argue that Owners must offer their services on an à la carte basis, enabling each individual Plaintiff to select which services, if any, they intend to accept.

38. Owners disagree with this premise. Owners maintain that they have the right to offer services, if at all, as a package only. A Lot owner may accept the package of services in its entirety, or not at all.

39. Owners contend that as the "master of their offer," Owners may offer or not offer services in their sole discretion.

40. Custom and practice has established that the Lot owners have accepted this package arrangement and have negotiated for services only as a package.

41. No written contracts continue to exist between Owners and any Plaintiff. Owners are not obligated in any respect to supply any services to Plaintiffs.

42. All Plaintiffs are accepting services from Owners, including water, sewer, and garbage services. Each Plaintiff knows, or should know, that Owners are not offering their services on a free or gratuitous basis.

43. The parties are in doubt about their rights. The prerequisites for declaratory relief as stated in section 86.021, Florida Statutes, are present.

44. Owners will offer their services to each Plaintiff only on a package basis. Plaintiffs may take all or nothing.

45. Plaintiffs contend that Owners must structure their offer as dictated by Plaintiffs, on an individual basis.

46. Each Plaintiff knew, or should have known, from their purchase of a Lot in the Community, their title documents, as well as a physical inspection of their Lot and its location inside the mobile home park, that services, including water and sewer services, were being supplied by Owners.

WHEREFORE, Owners seek a declaratory judgment confirming that:

a. Contract principles indicate that the offeror is the master of the offer;

b. Owners may appropriately offer utility services only as part of a package of services and amenities;

c. Owners may condition their offer of services and amenities upon an application and written contract; and

d. Such other relief as the Court deems appropriate.

COUNT III - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS NELSON P. AND BARBARA J. SCHWOB

47. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Nelson P. Schwob and Barbara J. Schwob ("Schwobs").

48. The amount in controversy is within the jurisdictional limits of this Court.

49. Prior to the institution of this action, Schwobs contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Schwobs.

50. With the filing of this action, Schwobs disavowed any contractual relationship with Owners and insisted that Owners must contract with Schwobs on Schwobs' terms. Owners have refused to do so.

51. Schwobs have continued to use Owners' Amenities and Services.

52. Schwobs have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

53. Schwobs impliedly recognized that compensation for the Amenities and Services was due Owners.

54. Schwobs have been unjustly enriched by the use of Owners' Amenities and Services.

55. Schwobs owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Schwobs for damages, costs and such other relief as the Court deems appropriate.

COUNT IV - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS DARRELL L. AND MARTHA K. BIRT

56. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Darrell L. Birt and Martha K. Birt ("Birts").

57. The amount in controversy is within the jurisdictional limits of this Court.

58. Prior to the institution of this action, Birts contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Birts.

59. With the filing of this action, Birts disavowed any contractual relationship with Owners and insisted that Owners must contract with Birts on Birts' terms. Owners have refused to do so.

60. Birts have continued to use Owners' Amenities and Services.

61. Birts have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

62. Birts impliedly recognized that compensation for the Amenities and Services was due Owners.

63. Birts have been unjustly enriched by the use of Owners' Amenities and Services.

64. Birts owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Birts for damages, costs and such other relief as the Court deems appropriate.

COUNT V - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS FRANK E. AND LINDA J. BROWN

65. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Frank E. Brown and Linda J. Brown ("F&L Brown").

66. The amount in controversy is within the jurisdictional limits of this Court.

67. Prior to the institution of this action, F&L Brown contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage,

amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with F&L Brown.

68. With the filing of this action, F&L Brown disavowed any contractual relationship with Owners and insisted that Owners must contract with F&L Brown on F&L Brown's terms. Owners have refused to do so.

69. F&L Brown have continued to use Owners' Amenities and Services.

70. F&L Brown have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

71. F&L Brown impliedly recognized that compensation for the Amenities and Services was due Owners.

72. F&L Brown have been unjustly enriched by the use of Owners' Amenities and Services.

73. F&L Brown owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against F&L Brown for damages, costs and such other relief as the Court deems appropriate.

COUNT VI - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS PAUL AND SANDRA BROWN

74. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Paul Brown and Sandra Brown ("P&S Brown").

75. The amount in controversy is within the jurisdictional limits of this Court.

76. Prior to the institution of this action, P&S Brown contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage,

amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with P&S Brown.

77. With the filing of this action, P&S Brown disavowed any contractual relationship with Owners and insisted that Owners must contract with P&S Brown on P&S Brown's terms. Owners have refused to do so.

78. P&S Brown have continued to use Owners' Amenities and Services.

79. P&S Brown have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

80. P&S Brown impliedly recognized that compensation for the Amenities and Services was due Owners.

81. P&S Brown have been unjustly enriched by the use of Owners' Amenities and Services.

82. P&S Brown owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against P&S Brown for damages, costs and such other relief as the Court deems appropriate.

COUNT VII - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS DENNIS M. AND CAROL J. COSMO

83. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Dennis M. Cosmo and Carol J. Cosmo ("Cosmos").

84. The amount in controversy is within the jurisdictional limits of this Court.

85. Prior to the institution of this action, Cosmos contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage,

amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Cosmos.

86. With the filing of this action, Cosmos disavowed any contractual relationship with Owners and insisted that Owners must contract with Cosmos on Cosmos' terms. Owners have refused to do so.

87. Cosmos have continued to use Owners' Amenities and Services.

88. Cosmos have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

89. Cosmos impliedly recognized that compensation for the Amenities and Services was due Owners.

90. Cosmos have been unjustly enriched by the use of Owners' Amenities and Services.

91. Cosmos owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Cosmos for damages, costs and such other relief as the Court deems appropriate.

COUNT VIII – IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS MARILYN C. MORSE, STEVEN P. AND LAURIE A. CUMMINGS

92. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Marilyn C. Morse, Steven P. Cummings and Laurie A. Cummings ("Morse-Cummings").

93. The amount in controversy is within the jurisdictional limits of this Court.

94. Prior to the institution of this action, Morse-Cummings contracted for and

received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Morse-Cummings.

95. With the filing of this action, Morse-Cummings disavowed any contractual relationship with Owners and insisted that Owners must contract with Morse-Cummings on Morse-Cummings' terms. Owners have refused to do so.

96. Morse-Cummings have continued to use Owners' Amenities and Services.

97. Morse-Cummings have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

98. Morse-Cummings impliedly recognized that compensation for the Amenities and Services was due Owners.

99. Morse-Cummings have been unjustly enriched by the use of Owners' Amenities and Services.

100. Morse-Cummings owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

101. WHEREFORE, Owners demand judgment against Morse-Cummings for damages, costs and such other relief as the Court deems appropriate.

COUNT IX - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES
AND AMENITIES USED BY PLAINTIFF KAROL FLEMING

102. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, Karol Fleming ("Fleming").

103. The amount in controversy is within the jurisdictional limits of this Court.

104. Prior to the institution of this action, Fleming contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Fleming.

105. With the filing of this action, Fleming disavowed any contractual relationship with Owners and insisted that Owners must contract with Fleming on Fleming's terms. Owners have refused to do so.

106. Fleming has continued to use Owners' Amenities and Services.

107. Fleming has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

108. Fleming impliedly recognized that compensation for the Amenities and Services was due Owners.

109. Fleming has been unjustly enriched by the use of Owners' Amenities and Services.

110. Fleming owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Fleming for damages, costs and such other relief as the Court deems appropriate.

COUNT X- IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFF SOLANGE GERVAIS

111. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, Solange Gervais ("Gervais").

112. The amount in controversy is within the jurisdictional limits of this Court.

113. Prior to the institution of this action, Gervais contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Gervais.

114. With the filing of this action, Gervais disavowed any contractual relationship with Owners and insisted that Owners must contract with Gervais on Gervais' terms. Owners have refused to do so.

115. Gervais has continued to use Owners' Amenities and Services.

116. Gervais has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

117. Gervais impliedly recognized that compensation for the Amenities and Services was due Owners.

118. Gervais has been unjustly enriched by the use of Owners' Amenities and Services.

119. Gervais owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Gervais for damages, costs and such other relief as the Court deems appropriate.

COUNT XI - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND
AMENITIES USED BY PLAINTIFFS BERND J. AND OPAL B GIERSCHKE

120. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Bernd J. Gierschke and Opal B. Gierschke ("Gierschkes").

121. The amount in controversy is within the jurisdictional limits of this Court.

122. Prior to the institution of this action, Gierschkes contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Gierschkes.

123. With the filing of this action, Gierschke disavowed any contractual relationship with Owners and insisted that Owners must contract with Gierschkes on Gierschkes' terms. Owners have refused to do so.

124. Gierschkes have continued to use Owners' Amenities and Services.

125. Gierschkes have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

126. Gierschkes impliedly recognized that compensation for the Amenities and Services was due Owners.

127. Gierschkes have been unjustly enriched by the use of Owners' Amenities and Services.

128. Gierschkes owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Gierschkes for damages, costs and such other relief as the Court deems appropriate.

COUNT XII - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND
AMENITIES USED BY PLAINTIFFS CHARLES H. AND CAROL A. LePAGE

129. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Charles H. LePage, Sr. and Carol A. LePage ("LePages").

130. The amount in controversy is within the jurisdictional limits of this Court.

131. Prior to the institution of this action, LePages contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with LePages.

132. With the filing of this action, LePages disavowed any contractual relationship with Owners and insisted that Owners must contract with LePages on LePages' terms. Owners have refused to do so.

133. LePages have continued to use Owners' Amenities and Services.

134. LePages have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

135. LePages impliedly recognized that compensation for the Amenities and Services was due Owners.

136. LePages have been unjustly enriched by the use of Owners' Amenities and Services.

137. LePages owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against LePages for damages, costs and such other relief as the Court deems appropriate.

COUNT XIII - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND
AMENITIES USED BY PLAINTIFFS JAMES L. AND REBECCA L. MAY

138. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, James L. May and Rebecca L. May ("Mays").

139. The amount in controversy is within the jurisdictional limits of this Court.

140. Prior to the institution of this action, Mays contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Mays.

141. With the filing of this action, Mays disavowed any contractual relationship with Owners and insisted that Owners must contract with Mays on Mays' terms. Owners have refused to do so.

142. Mays have continued to use Owners' Amenities and Services.

143. Mays have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

144. Mays impliedly recognized that compensation for the Amenities and Services was due Owners.

145. Mays have been unjustly enriched by the use of Owners' Amenities and Services.

146. Mays owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Mays for damages, costs and such other relief as the Court deems appropriate.

COUNT XIV - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES
ANDAMENITIES USED BY PLAINTIFF LORI OFFER

147. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, Lori Offer ("Offer").

148. The amount in controversy is within the jurisdictional limits of this Court.

149. Prior to the institution of this action, Offer contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage,

amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Offer.

150. With the filing of this action, Offer disavowed any contractual relationship with Owners and insisted that Owners must contract with Offer on Offer's terms. Owners have refused to do so.

151. Offer has continued to use Owners' Amenities and Services.

152. Offer has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

153. Offer impliedly recognized that compensation for the Amenities and Services was due Owners.

154. Offer has been unjustly enriched by the use of Owners' Amenities and Services.

155. Offer owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Offer for damages, costs and such other relief as the Court deems appropriate.

COUNT XV - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES
AND AMENITIES USED BY PLAINTIFF ELVIRA PARDO

156. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, Elvira Pardo ("Pardo").

157. The amount in controversy is within the jurisdictional limits of this Court.

158. Prior to the institution of this action, Pardo contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Pardo.

159. With the filing of this action, Pardo disavowed any contractual relationship with Owners and insisted that Owners must contract with Pardo on Pardo's terms. Owners have refused to do so.

160. Pardo has continued to use Owners' Amenities and Services.

161. Pardo has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

162. Pardo impliedly recognized that compensation for the Amenities and Services was due Owners.

163. Pardo has been unjustly enriched by the use of Owners' Amenities and Services.

164. Pardo owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Pardo for damages, costs and such other relief as the Court deems appropriate.

COUNT XVI - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES
AND AMENITIES USED BY PLAINTIFF JAMES A. PASCO

165. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, James A. Pasco ("Pasco").

166. The amount in controversy is within the jurisdictional limits of this Court.

167. Prior to the institution of this action, Pasco contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Pasco.

168. With the filing of this action, Pasco disavowed any contractual relationship with Owners and insisted that Owners must contract with Pasco on Pasco's terms. Owners have refused to do so.

169. Pasco has continued to use Owners' Amenities and Services.

170. Pasco has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

171. Pasco impliedly recognized that compensation for the Amenities and Services was due Owners.

172. Pasco has been unjustly enriched by the use of Owners' Amenities and Services.

173. Pasco owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Pasco for damages, costs and such other relief as the Court deems appropriate.

COUNT XVII - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS JAMES A AND JOYCE A PASCO

174. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, James A. Pasco and Joyce A. Pasco ("J&J Pasco").

175. The amount in controversy is within the jurisdictional limits of this Court.

176. Prior to the institution of this action, J&J Pasco contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with J&J Pasco.

177. With the filing of this action, J&J Pasco disavowed any contractual relationship with Owners and insisted that Owners must contract with J&J Pasco on J&J Pasco's terms. Owners have refused to do so.

178. J&J Pasco have continued to use Owners' Amenities and Services.

179. J&J Pasco have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

180. J&J Pasco impliedly recognized that compensation for the Amenities and Services was due Owners.

181. J&J Pasco have been unjustly enriched by the use of Owners' Amenities and Services.

182. J&J Pasco owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against J&J Pasco for damages, costs and such other relief as the Court deems appropriate.

COUNT XVIII - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS DAVID L. AND KAY J. SMITH

183. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, David L. Smith and Kay J. Smith ("D&K Smith").

184. The amount in controversy is within the jurisdictional limits of this Court.

185. Prior to the institution of this action, D&K Smith contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with D&K Smith.

186. With the filing of this action, D&K Smith disavowed any contractual relationship with Owners and insisted that Owners must contract with D&K Smith on D&K Smith's terms. Owners have refused to do so.

187. D&K Smith have continued to use Owners' Amenities and Services.

188. D&K Smith have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

189. D&K Smith impliedly recognized that compensation for the Amenities and Services was due Owners.

190. D&K Smith have been unjustly enriched by the use of Owners' Amenities and Services.

191. D&K Smith owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against D&D Smith for damages, costs and such other relief as the Court deems appropriate.

COUNT XIX - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND
AMENITIES USED BY PLAINTIFFS JAMES L. AND FRANCES E. SMITH

192. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, James L. Smith and Frances E. Smith ("J&F Smith").

193. The amount in controversy is within the jurisdictional limits of this Court.

194. Prior to the institution of this action, J&F Smith contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with J&F Smith.

195. With the filing of this action, J&F Smith disavowed any contractual relationship with Owners and insisted that Owners must contract with J&F Smith on J&F Smith's terms. Owners have refused to do so.

196. J&F Smith have continued to use Owners' Amenities and Services.

197. J&F Smith have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

198. J&F Smith impliedly recognized that compensation for the Amenities and Services was due Owners.

199. J&F Smith have been unjustly enriched by the use of Owners' Amenities and Services.

200. J&F Smith owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against J&F Smith for damages, costs and such other relief as the Court deems appropriate.

COUNT XX - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS JAMES E. AND MARGO M. SYMONDS

201. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, James E. Symonds and Margo M. Symonds ("Symonds").

202. The amount in controversy is within the jurisdictional limits of this Court.

203. Prior to the institution of this action, Symonds contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Symonds.

204. With the filing of this action, Symonds disavowed any contractual relationship with Owners and insisted that Owners must contract with Symonds on Symonds' terms. Owners have refused to do so.

205. Symonds have continued to use Owners' Amenities and Services.

206. Symonds have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

207. Symonds impliedly recognized that compensation for the Amenities and Services was due Owners.

208. Symonds have been unjustly enriched by the use of Owners' Amenities and Services.

209. Symonds owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Symonds for damages, costs and such other relief as the Court deems appropriate.

COUNT XXI - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFF JEANETTE M. TATRO

210. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, Jeanette M. Tatro ("Tatro").

211. The amount in controversy is within the jurisdictional limits of this Court.

212. Prior to the institution of this action, Tatro contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Tatro.

213. With the filing of this action, Tatro disavowed any contractual relationship with Owners and insisted that Owners must contract with Tatro on Tatro's terms. Owners have refused to do so.

214. Tatro has continued to use Owners' Amenities and Services.

215. Tatro has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

216. Tatro impliedly recognized that compensation for the Amenities and Services was due Owners.

217. Tatro has been unjustly enriched by the use of Owners' Amenities and Services.

218. Tatro owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Tatro for damages, costs and such other relief as the Court deems appropriate.

COUNT XXII - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS RICHARD AND ARLENE TAYLOR

219. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Richard Taylor and Arlene Taylor ("Taylors").

220. The amount in controversy is within the jurisdictional limits of this Court.

221. Prior to the institution of this action, Taylors contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Taylors.

222. With the filing of this action, Taylors disavowed any contractual relationship with Owners and insisted that Owners must contract with Taylors on Taylors' terms. Owners have refused to do so.

223. Taylors have continued to use Owners' Amenities and Services.

224. Taylors have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

225. Taylors impliedly recognized that compensation for the Amenities and Services was due Owners.

226. Taylors have been unjustly enriched by the use of Owners' Amenities and Services.

227. Taylors owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Taylors for damages, costs and such other relief as the Court deems appropriate.

COUNT XXIII - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFF ANTHONY A. VARSALONE, JR.

228. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, Anthony A. Varsalone, Jr. ("Varsalone").

229. The amount in controversy is within the jurisdictional limits of this Court.

230. Prior to the institution of this action, Varsalone contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Varsalone.

231. With the filing of this action, Varsalone disavowed any contractual relationship with Owners and insisted that Owners must contract with Varsalone on Varsalone's terms. Owners have refused to do so.

232. Varsalone has continued to use Owners' Amenities and Services.

233. Varsalone has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

234. Varsalone impliedly recognized that compensation for the Amenities and Services was due Owners.

235. Varsalone has been unjustly enriched by the use of Owners' Amenities and Services.

236. Varsalone owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Varsalone for damages, costs and such other relief as the Court deems appropriate.

COUNT XXIV - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES
AND AMENITIES USED BY PLAINTIFF KATHLEEN R. VALK

237. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, Kathleen R. Valk ("Valk").

238. The amount in controversy is within the jurisdictional limits of this Court.

239. Prior to the institution of this action, Valk contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Valk.

240. With the filing of this action, Valk disavowed any contractual relationship with Owners and insisted that Owners must contract with Valk on Valk's terms. Owners have refused to do so.

241. Valk has continued to use Owners' Amenities and Services.

242. Valk has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

243. Valk impliedly recognized that compensation for the Amenities and Services was due Owners.

244. Valk has been unjustly enriched by the use of Owners' Amenities and Services.

245. Valk owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Valk for damages, costs and such other relief as the Court deems appropriate.

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing has been furnished by email to Richard A. Harrison and Daniella N. Leavitt, Richard A. Harrison, P.A., 400 North Ashley Drive, Suite 2600, Tampa, FL 33602, rah@harrisonpa.com, dnl@harrisonpa.com and lisa@harrisonpa.com, on this 19th day of June, 2018.

J. Allen Bobo
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Attorneys for Defendants

Item 4

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: December 27, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (M. Watts)
Division of Accounting and Finance (Bulecza-Banks, Fletcher, Johnson, Norris)
Division of Economics (Friedrich)
Office of the General Counsel (Crawford, Nieves)

RE: Docket No. 20170249-WS – Application for certificates to provide water and wastewater service in Orange County by RSPI MHC, LLC.

AGENDA: 01/08/19 – Regular Agenda – Proposed Agency Action for Issues 2 through 6 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: 02/28/19 (Statutory deadline for original certificate pursuant to Section 367.031, Florida Statutes, waived by applicant until this date.)

SPECIAL INSTRUCTIONS: None

Case Background

RSPI MHC, LLC (RSPI or Utility) is located in Orange County, Florida. Based on its application, the Utility provides water and wastewater service to 519 residential mobile home customers. According to Florida Department of Environmental Protection (DEP) documents, the water and wastewater systems were built in 1973 to service the mobile home park and a convenience store. RSPI acquired the mobile home park, including the provision of water and wastewater treatment service in 2005. At that time, the convenience store referenced in a 1973 DEP construction permit document was no longer a customer of the Utility. Until 2016, RSPI included the cost of providing water and wastewater service to the residents of the mobile home

park (MHP) in the rent. Therefore, pursuant to Section 367.022(5), Florida Statutes (F.S.), the Utility was exempt from Florida Public Service Commission (Commission) regulation.

On February 29, 2016, a resident of the MHP contacted the Commission via email regarding the regulatory status of RSPI.[1] The resident stated that RSPI had been installing individual meters to each residence since March 2015. She also stated that they had received a notice on January 2, 2016, informing them that new rent rates would go into effect on April 1, 2016, along with separate bills for water and wastewater service.

On May 20, 2016, staff held a teleconference with RSPI to discuss the nature of the service being provided to the MHP residents, and the conditions that would exempt it from Commission regulation. After considering staff's comments during the teleconference, together with its own business goals, RSPI concluded that it should file an application for original water and wastewater certificates. Staff worked with an engineering firm retained by the Utility to prepare financial records, maps, and territory descriptions that met the requirements of the Commission's rules. On November 20, 2017, RSPI filed its application for original water and wastewater certificates. Staff found its application to be deficient and issued a deficiency letter on December 20, 2017.[2] The Utility cured the deficiencies on September 7, 2018.

Pursuant to Section 367.031, F.S., the Commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application. The application was deemed complete on September 7, 2018, which is considered the official filing date. RSPI has waived the 90-day statutory deadline through February 28, 2019.[3]

This recommendation addresses the application for original water and wastewater certificates and the appropriate rates and charges for the Utility. The Commission has jurisdiction pursuant to Sections 367.031 and 367.045, F.S.

[1]Document No. 07364-2018, filed on December 3, 2018, in Docket No. 20170249-WS.
[2]Document No. 10776-2017, filed on December 20, 2017, in Docket No. 20170249-WS.
[3]Document No. 06689-2018, filed on October 22, 2018, in Docket No. 20170249-WS.

Discussion of Issues

Issue 1: Should the application for water and wastewater certificates by RSPI be approved?

Recommendation: Yes. RSPI should be granted Certificate Nos. 673-W and 574-S to serve the territory described in Attachment A, effective the date of the Commission's vote. The resultant order should serve as RSPI's water and wastewater certificates and it should be retained by the Utility. (M. Watts, Johnson)

Staff Analysis: On November 20, 2017, RSPI filed its application for original water and wastewater certificates in Orange County, Florida. Upon review, staff determined the original filing was deficient and sent a deficiency letter on December 20, 2017. Staff also sent data requests to the Utility seeking additional information. RSPI corrected the deficiencies on September 7, 2018, which is considered the official filing date for the application. The Utility's application is in compliance with the governing statutes, Sections 367.031 and 367.045, F.S.

Notice

On September 7, 2018, RSPI filed proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code (F.A.C.). No entity filed a protest during the protest period and the time for filing objections has expired.

Land Ownership and Service Territory

RSPI provided adequate service territory and system maps and a territory description as required by Rule 25-30.034, F.A.C. The legal description of the service territory is appended to this recommendation as Attachment A. The application contains a copy of a special warranty deed that was executed on February 2, 2005, as evidence that the Utility owns the land upon which the water and wastewater treatment facilities are located pursuant to Rule 25-30.037(2)(s), F.A.C.

Financial and Technical Ability

Pursuant to Rule 25-30.034(1)(i), F.A.C., the Utility provided statements describing its financial ability to provide service. Staff reviewed the financial statements of RSPI and believes the current owner has documented adequate resources to support the Utility's water and wastewater operations.

Regarding technical ability, the Utility stated in its application that it has owned and operated the subject water and wastewater system since purchasing the community in 2005. RSPI also stated that it has a full-time utility director responsible for the operation and maintenance of the RSPI water and wastewater treatment systems as well as other facilities throughout the country. RSPI has no compliance issues on file with the DEP and is current with its monitoring requirements.

Conclusion

RSPI should be granted Certificate Nos. 673-W and 574-S to serve the territory described in Attachment A, effective the date of the Commission's vote. The resultant order should serve as RSPI's water and wastewater certificates and it should be retained by the Utility.

Issue 2: What are the appropriate rates and charges for RSPI?

Recommendation: The recommended monthly water and wastewater rates, on Schedule No. 1, are reasonable and should be approved. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Friedrich)

Staff Analysis: The Utility provides water and wastewater service to approximately 519 customers within the Palm Isles and Rock Springs Mobile Home Communities. All of the Utility's customers are residential with the exception of a community club house. Additionally, the Utility indicated that all customers, including the club house have 3/4" meters. Currently the Utility bills its customers a combined rate for water and wastewater service which consists of a monthly base facility charge (BFC) of $14.00 and inclining block rates of $1.50 per 1,000 for 0-4,000 gallons, $3.50 per 1,000 for 4,001-8,000, and $6.50 per 1,000 for all gallons in excess of 8,000. Due to the combined nature of the utility's current rates, there is no residential wastewater cap.

It is Commission practice to establish separate rates for water and wastewater systems.[4] The Utility allocated its existing rates between its water and wastewater systems to reflect the approximate costs to serve each system. This resulted in approximately 35 percent allocated to the Utility's water system and 65 percent allocated to the Utility's wastewater system. Staff believes this is reasonable because, typically, it is more costly to provide wastewater than water service. The Utility's current rates are shown in Table 2-1, as well as the Utility's proposed allocation between its water and wastewater systems.

[4]Order No. PSC-05-1116-PAA-WS, issued November 7, 2018, in Docket No. 050061-WS, *In re: Application for grandfather certificates to operate water and wastewater facility in Okeechobee County by Pine Ridge Management Corporation.*

Table 2-1
RSPI's Water and Wastewater Rates

	Current Rates	Proposed Rates	
	Water and Wastewater	Water	Wastewater
Base Facility Charge	$14.00	$5.00	$9.00
Gallonage Charge			
0-4,000	$1.50	$0.50	$1.00
4,001-8,000	$3.50	$2.50	$1.00
All Over 8,000	$6.50	$5.50	$1.00
Typical Residential 3/4" Meter Bill Comparison			
3,000 Gallons	$18.50	$6.50	$12.00
5,000 Gallons	$23.50	$9.50	$14.00

Based on the above, the recommended monthly water and wastewater rates, on Schedule No. 1, are reasonable and should be approved. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

Issue 3: What are the appropriate miscellaneous service charges for RSPI?

Recommendation: The miscellaneous service charges identified in Table 3-5 are reasonable and should be approved. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved miscellaneous service charges. The approved charges should be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets provided customers have received notice pursuant to Rule 25-30.475, F.A.C. The Utility should provide proof of noticing within 10 days of rendering its approved notice. (Friedrich)

Staff Analysis: RSPI does not currently have miscellaneous service charges in place. Section 367.091, F.S., authorizes the Commission to establish miscellaneous service charges. The Utility requested establishment of miscellaneous charges and staff compiled the Utility's cost justification, as required by Section 367.091(6), F.S., through a series of data requests in order to calculate staff's recommended miscellaneous service charges.

The calculations for staff's recommended miscellaneous service charges are shown in Tables 3-1 through 3-4 and are rounded up to the nearest tenth. Staff's recommended miscellaneous service charges are shown in Table 3-5. Furthermore, staff's recommended miscellaneous service charges are applicable for the Utility's water and wastewater systems. If both water and wastewater services are provided, only a single charge is appropriate unless circumstances beyond the control of the Utility require multiple actions.

Initial Connection Charge

The initial connection charge is levied for service initiation for new customers. An RSPI representative makes one trip when performing the service for an initial connection. Based on labor and transportation to and from the service territory, staff recommends initial connection charges for RSPI's water and wastewater systems of $11.50 for normal hours and $14.00 for after hours. Staff's calculations are shown below in Table 3-1.

Table 3-1
Initial Connection Charge Calculation

Activity	Normal Hours Cost	Activity	After Hours Cost
Administrative Labor ($15/hr x1/4hr)	$3.75	Administrative Labor ($15/hr x1/4hr)	$3.75
Field Labor ($15/hr x 1/3 hr)	$5.00	Field Labor ($22.50/hr x 1/3 hr)	$7.50
Transportation ($0.535/mile x 5 miles-to/from)	$2.68	Transportation ($0.535/mile x 5 miles-to/from)	$2.68
Total	$11.43	Total	$13.93

Normal Reconnection Charge

A normal reconnection charge is levied for the reconnection of service subsequent to a customer requested disconnection. A normal reconnection requires two trips, which includes one to turn service off and the other to turn service on. Based on labor and transportation to and from the service territory, staff recommends normal reconnection charges of $20.40 for normal hours and $24.20 for after hours. Staff's calculations are shown in Table 3-2.

Table 3-2
Normal Reconnection Charge Calculation

Activity	Normal Hours Cost	Activity	After Hours Cost
Administrative Labor ($15/hr x1/4hr x 2)	$7.50	Administrative Labor ($15/hr x1/4hr)	$7.50
Field Labor ($15/hr x 1/4 hr x 2)	$7.50	Field Labor ($22.50/hr x 1/4hr x 2)	$11.25
Transportation ($0.535/mile x 5 miles-to/from x 2)	$5.36	Transportation ($0.535/mile x 5 miles-to/from x 2)	$5.36
Total	$20.36	Total	$24.11

Violation Reconnection Charge

The violation reconnection charge is levied prior to reconnection of an existing customer after discontinuance of service for cause. The service performed for violation reconnection requires two trips, which includes one trip to turn off service and a subsequent trip to turn on service once the violation has been remedied. Based on labor and transportation to and from the service territory, staff recommends violation reconnection charges for RSPI's water system of $20.40 for normal hours and $24.20 for after hours. However, for RSPI's wastewater system, this charge should be set at actual cost pursuant to Rule 25-30.460(1)(c), F.A.C., and should only be levied if service is discontinued for a wastewater only customer. Staff's calculations are shown in Table 3-3.

Table 3-3
Violation Reconnection Charge Calculation

Activity	Normal Hours Cost	Activity	After Hours Cost
Administrative Labor ($15/hr x1/4hr x 2)	$7.50	Administrative Labor ($15/hr x1/4hr x 2)	$7.50
Field Labor ($15/hr x 1/4 hr x 2)	$7.50	Field Labor ($22.50/hr x 1/4 hr x 2)	$11.25
Transportation ($0.535/mile x 5 miles-to/from x 2)	$5.36	Transportation ($0.535/mile x 5 miles-to/from x 2)	$5.36
Total	$20.36	Total	$24.11

Premises Visit Charge

The premises visit charge is levied when a service representative visits a premises at the customer's request for complaint resolution and the problem is found to be the customer's responsibility. In addition, the premises visit charge can be levied when a service representative visits a premises for the purpose of discontinuing service for nonpayment of a due and collectible bill, and does not discontinue service because the customer pays the service representative or otherwise makes satisfactory arrangements to pay the bill. A premises visit requires one trip.

Based on labor and transportation to and from the service territory, staff recommends a premises visit charge of $11.50 for normal hours and $14.00 for after hours. Staff's calculations are shown in Table 3-4.

Table 3-4
Premises Visit Charge Calculation

Activity	Normal Hours Cost	Activity	After Hours Cost
Administrative Labor ($15/hr x1/4hr)	$3.75	Administrative Labor ($15/hr x1/4hr)	$3.75
Field Labor ($15/hr x 1/3 hr)	$5.00	Field Labor ($22.50/hr x 1/3 hr)	$7.50
Transportation ($0.535/mile x 5 miles-to/from)	$2.68	Transportation ($0.535/mile x 5 miles-to/from)	$2.68
Total	$11.43	Total	$13.93

Table 3-5
Recommended Miscellaneous Service Charges

	Staff Recommended	
	Normal Hours	After Hours
Initial Connection Charge	$11.50	$14.00
Normal Reconnection Charge	$20.40	$24.20
Violation Reconnection Charge (Water Only)	$20.40	$24.20
Violation Reconnection Charge (Wastewater Only)	Actual Cost	
Premises Visit Charge	$11.50	$14.00

Conclusion

Based on the above, the miscellaneous service charges identified in Table 3-5 are reasonable and should be approved. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved miscellaneous service charges. The approved charges should be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets provided customers have received notice pursuant to Rule 25-30.475, F.A.C. The Utility should provide proof of noticing within 10 days of rendering its approved notice.

Issue 4: What is the appropriate late payment charge for RSPI?

Recommendation: The appropriate late payment charge for RSPI is $4.50. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective for services rendered on or after the stamped approval date on the tariff sheet provided customers have received notice pursuant to Rule 25-30.475(1), F.A.C. The Utility should provide proof of noticing within 10 days of rendering the approved notice. (Friedrich)

Staff Analysis: RSPI does not currently have a late payment charge in place. The Utility requested a late payment charge and staff compiled the Utility's cost justification, as required by Section 367.091(6), F.S., through a series of data requests in order to calculate staff's recommended late payment charge.

The goal of allowing late payment charges is two fold: first, it encourages customers to pay their bills on time, and second, if payments are not made on time, it ensures that the cost associated with collecting late payments are not passed on to the customers who do pay on time.[5] The Utility has a total of 519 customer accounts and approximately 4 percent of the customers do not pay by the due date each month. Because the Utility does not currently have an approved late payment charge, the Utility's only recourse is to discontinue service.

The Utility included $3.75 for labor associated with processing late payments. The late payment notices are processed by an RSPI employee who is paid $15 per hour. The billing employee spends approximately 5 hours per month processing an average of 20 delinquent accounts. This equates to approximately 15 minutes to process a single late payment notice. The Commission has found that 10 to 15 minutes is an appropriate amount of time for a billing employee to process a single late payment.[6]

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[5]Order No. PSC-01-0998-TRF-WU, issued April 23, 2001, in Docket No. 20010232-WU, *In re: Request for approval of tariff filing to add "set rate" late fee to water tariff, by Lake Yale Treatment Associates, Inc. in Lake County.*

[6]Order Nos. PSC-16-0041-TRF-WU, in Docket No. 20150215-WU, issued January 25, 2016, *In re: Request for approval of tariff amendment to include miscellaneous service charges for the Earlene and Ray Keen Subdivisions, the Ellison Park Subdivision and the Lake Region Paradise Island Subdivision in Polk County, by Keen Sales, Rentals and Utilities, Inc.*; PSC-15-0569-PAA-WS in Docket No. 20140239-WS, issued December 16, 2015, *In re: Application for staff-assisted rate case in Polk County by Orchid Springs Development Corporation.*; PSC-16-0523-TRF-WU, in Docket No. 20160023-WU, issued November 21, 2016, *In re: Application for transfer of majority organizational control of Sunny Shores Water Company, Inc., holder of Certificate No. 578- W in Manatee County, from Jack E. Mason to Jack E. Mason, II and Debbie A. Mason.*

The Commission has previously approved late payment charges ranging from $4.90 to $7.15.[7] Based on the salary and time spent per notice, the labor cost of $3.75 is reasonable. The Utility is also requesting recovery of $0.20 for supplies and $0.49 for postage. The Utility's cost justification for its requested late payment charge is shown on Table 4-1. Staff recommends rounding the calculated late payment charge up to the nearest tenth. Therefore, staff recommends the appropriate late payment charge for RSPI is $4.50.

Table 4-1
Late Payment Charge Cost Justification

Activity	Cost
Labor	$3.75
Supplies	0.20
Postage	0.49
Total Cost	$4.44

Source: Utility's cost justification documentation

Based on the above, the appropriate late payment charge for RSPI is $4.50. The Utility should file the revised tariff sheet and a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective for services rendered on or after the stamped approval date on the tariff sheet provided customers have received notice pursuant to Rule 25-30.475(1), F.A.C. The Utility should provide proof of noticing within 10 days of rendering the approved notice.

[7]Order Nos. PSC-14-0105-TRF-WS, in Docket No. 20130288-WS, issued February 20, 2014, *In re: Request for approval of late payment charge in Brevard County by Aquarina Utilities, Inc.;* PSC-15-0535-PAA-WU, in Docket No. 20140217-WU, issued November 19, 2015, *In re: Application for staff-assisted rate case in Sumter County by Cedar Acres, Inc.;* PSC-15-0569-PAA-WS, in Docket No. 20140239-WS, issued December 16, 2015, *In re: Application for staff-assisted rate case in Polk County by Orchid Springs Development Corporation.*

Issue 5: Should RSPI be authorized to collect Non-Sufficient Funds Charges (NSF)?

Recommendation: Yes. RSPI should be authorized to collect NSF charges. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved NSF charges. The approved charges should be effective for service rendered on or after the stamped approval date on the tariff sheets provided customers have received notice pursuant to Rule 25-30.475, F.A.C. The Utility should provide proof of noticing within 10 days of rendering its approved notice. (Friedrich)

Staff Analysis: Section 367.091, F.S., authorizes the Commission to establish miscellaneous service charges. Staff believes that RSPI should be authorized to collect NSF charges consistent with Section 68.065, F.S., which allows for the assessment of charges for the collection of worthless checks, drafts, or orders of payment. As currently set forth in Section 68.065(2), F.S., the following NSF charges may be assessed:

(1) $25, if the face value does not exceed $50,

(2) $30, if the face value exceeds $50 but does not exceed $300,

(3) $40, if the face value exceeds $300,

(4) or 5 percent of the face amount of the payment instrument, whichever is greater.

Approval of NSF charges is consistent with prior Commission decisions.[8] Furthermore, NSF charges place the cost on the cost-causer, rather than requiring that the costs associated with the return of the NSF checks be spread across the general body of ratepayers. As such, RSPI should be authorized to collect NSF charges. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved NSF charges. The approved charges should be effective for service rendered on or after the stamped approval date on the tariff sheets provided customers have received notice pursuant to Rule 25-30.475, F.A.C. The Utility should provide proof of noticing within 10 days of rendering its approved notice.

[8]Order Nos. PSC-14-0198-TRF-SU, issued May 2, 2014, in Docket No. 20140030-SU, *In re: Request for approval to amend Miscellaneous Service charges to include all NSF charges by Environmental Protection Systems of Pine Island, Inc.;* and PSC-13-0646-PAA-WU, issued December 5, 2013, in Docket No. 20130025-WU, *In re: Application for increase in water rates in Highlands County by Placid Lakes Utilities, Inc.*

Issue 6: What are the appropriate initial customer deposits for RSPI?

Recommendation: The appropriate initial customer deposits are $19.00 for water and $28.00 for wastewater for the residential 3/4" meter size. The initial customer deposit for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding. (Friedrich)

Staff Analysis: Rule 25-30.311, F.A.C., contains criteria for collecting, administering, and refunding customer deposits. Rule 25-30.311(1), F.A.C., requires that each company's tariff contain its specific criteria for determining the amount of initial deposits. RSPI currently does not have approved initial customer deposits for its water and wastewater systems. Customer deposits are designed to minimize the exposure of bad debt expense for the utility and, ultimately, the general body of ratepayers. In addition, collection of customer deposits is consistent with one of the fundamental principles of ratemaking—ensuring that the cost of providing service is recovered from the cost causer.

Rule 25-30.311(7), F.A.C., authorizes utilities to collect new or additional deposits from existing customers not to exceed an amount equal to the average actual charge for water and/or wastewater service for two billing periods for the 12-month period immediately prior to the date of notice. The two billing periods reflect the lag time between the customer's usage and the utility's collection of the revenues associated with that usage. Commission practice has been to set initial customer deposits equal to two months bills based on the average consumption for a 12-month period for each class of customers.[9] The Utility indicated that the average monthly residential usage is 5,000 gallons per customer. Therefore, the average residential monthly bill is approximately $9.50 for water and $14.00 wastewater service.

Based on the above, the appropriate initial customer deposits are $19.00 for water and $28.00 wastewater for the residential 3/4" meter size. The initial customer deposit for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding.

[9]Order Nos. PSC-2017-0428-PAA-WS, issued November 7, 2017, in Docket No. 20160195-WS, *In re: Application for staff-assisted rate case in Lake County by Lakeside Waterworks, Inc.*; and PSC-17-0113-PAA-WS, issued March 28, 2017, in Docket No. 20130105-WS, *In re: Application for certificates to provide water and wastewater service in Hendry and Collier Counties, by Consolidated Services of Hendry & Collier, LLC.*

Issue 7: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff. Once these actions are complete, this docket should be closed administratively. (Nieves)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff. Once these actions are complete, this docket should be closed administratively.

RSPI MHC, LLC
Description of Water and Wastewater Service Territory

Orange County

A PORTION OF W. LESTER ROAD, A 60 FOOT PUBLIC RIGHT-OF-WAY, AND A PORTION OF SECTIONS 28 & 33, ALL IN TOWNSHIP 20 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 33, TOWNSHIP 20 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; THENCE RUN SOUTH 87°56'33" WEST, ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33, A DISTANCE OF 71.00 FEET; THENCE SOUTH 02°03'27" EAST A DISTANCE OF 30.00 FEET TO THE INTERSECTION OF THE WEST RIGHT-OF-WAY LINE OF STATE ROAD 435 AND THE SOUTH RIGHT-OF-WAY LINE OF W. LESTER ROAD FOR A POINT OF BEGINNING; THENCE SOUTH 87°56'33" WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE A DISTANCE OF 1,159.63 FEET; THENCE NORTH 01°41'41" WEST, A DISTANCE OF 632.79 FEET; THENCE NORTH 87°59'49" EAST, A DISTANCE OF 38.50 FEET; THENCE NORTH 01°41'41" WEST, A DISTANCE OF 208.00 FEET; THENCE SOUTH 87°59'49" WEST, A DISTANCE OF 208.00 FEET; THENCE SOUTH 01°41'41" EAST, DISTANCE OF 208.00 FEET; THENCE NORTH 87°59'49" EAST, A DISTANCE OF 93.61 FEET; THENCE SOUTH 01°53'16" EAST, A DISTANCE OF 632.85 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF W. LESTER ROAD; THENCE SOUTH 87°56'33" WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 646.50 FEET; THENCE NORTH 02°02'14" WEST, A DISTANCE OF 1,360.66 FEET; THENCE SOUTH 88°01'08" WEST, A DISTANCE OF 651.82 FEET; THENCE SOUTH 02°07'29" EAST, A DISTANCE OF 1,361.53 FEET TO A POINT LYING ON THE SOUTH RIGHT-OF-WAY LINE OF W. LESTER ROAD; THENCE SOUTH 87°56'33" WEST, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 368.03 FEET; THENCE SOUTH 01°44'49" EAST A DISTANCE OF 1,327.67 FEET; THENCE NORTH 88°59'06" EAST, A DISTANCE OF 344.65 FEET; THENCE SOUTH 01°00'09" EAST A DISTANCE AT 1,336.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF WELCH ROAD; THENCE NORTH 90°00'00" EAST, ALONG SAID NORTH RIGHT-OF-WAY LINE A DISTANCE OF 30.00 FEET; THENCE NORTH 01°00'09" WEST A DISTANCE OF 630.00 FEET; THENCE NORTH 90°00'00" EAST A DISTANCE OF 793.62 FEET; THENCE SOUTH 01°00'09" EAST, A DISTANCE OF 460.00 FEET; THENCE NORTH 90°00'00" EAST A DISTANCE OF 594.00 FEET; THENCE SOUTH 01°00'09" EAST A DISTANCE OF 170.00 FEET TO SAID NORTH RIGHT-OF-WAY LINE OF WELCH ROAD; THENCE NORTH 90°00'00" EAST, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 863.93 FEET; THENCE NORTH 01°01'47" WEST A DISTANCE OF 630.00 FEET; THENCE SOUTH 90°00'00" WEST A DISTANCE OF 664.21 FEET; THENCE NORTH 01°01'39" WEST A DISTANCE OF 660.00 FEET; THENCE NORTH 90°00'00" EAST A DISTANCE OF 330.00 FEET; THENCE NORTH 01°01'39" WEST A DISTANCE OF 330.00 FEET; THENCE NORTH 90°00'00" EAST A DISTANCE OF 610.00 FEET TO SAID WEST RIGHT-OF-WAY LINE OF STATE ROAD 435; THENCE NORTH 01°01'39" WEST, ALONG SAID WEST RIGHT-OF-WAY

LINE, A DISTANCE OF 70.56 FEET; THENCE SOUTH 90°00'00" WEST A DISTANCE OF 150.00 FEET; THENCE NORTH 01°01'39" WEST A DISTANCE OF 150.00 FEET; THENCE NORTH 90°00'00" EAST A DISTANCE OF 150.00 FEET TO SAID WEST RIGHT-OF-WAY LINE OF STATE ROAD 435; THENCE NORTH 01°01'39" WEST, ALONG SAID WEST RIGHT-OF-WAY LINE A DISTANCE OF 752.30 FEET TO A POINT OF CURVATURE ON A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 31,202.24 FEET, A CHORD BEARING OF NORTH 01°09'38" WEST, A CHORD DISTANCE OF 144.92 FEET. RUN THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 00°15'58", A DISTANCE OF 144.92 FEET; THENCE SOUTH 88°42'23" WEST A DISTANCE OF 20.00 FEET TO A NON-TANGENT POINT ON A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 31,182.24 FEET, A CHORD BEARING OF NORTH 01°18'56" WEST, A CHORD DISTANCE OF 23.90 FEET, RUN THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 00°02'38", A DISTANCE OF 23.90 FEET TO THE POINT OF BEGINNING.

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

RSPI MHC, LLC
pursuant to
Certificate Number 673 -W

to provide water service in Orange County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rule, regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
*	*	20170249-WS	Original Certificate

* Order Number and date to be provided at time of issuance.

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

RSPI MHC, LLC
pursuant to
Certificate Number 574 -S

to provide wastewater service in Orange County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rule, regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
*	*	20170249-WS	Original Certificate

* Order Number and date to be provided at time of issuance.

RSPI MHC, LLC
Monthly Water and Wastewater Rates

Water Service

Residential and General Service

Base Facility Charge – All Meter Sizes	$5.00
Charge Per 1,000 gallons	
0-4,000 gallons	$0.50
4,001-8,000 gallons	$2.50
Over 8,000 gallons	$5.50

Wastewater Service

Residential and General Service

Base Facility Charge - All Meter Sizes	$9.00
Charge Per 1,000 gallons	$1.00
No Cap	

Item 5

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: December 27, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Guffey) SKG PAD EJD GSH
Office of the General Counsel (Nieves) JN JSC

RE: Docket No. 20180159-EU – Joint petition for approval of amendment to territorial agreement in Hardee, Highlands, Polk, and Osceola Counties, by Peace River Electric Cooperative and Duke Energy Florida, LLC.

AGENDA: 01/08/19 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On August 31, 2018, Peace River Electric Cooperative (PRECO) and Duke Energy Florida, LLC (DEF) filed a joint petition for approval of an amendment to their current territorial agreement in Hardee, Highlands, Polk, and Osceola Counties. The proposed agreement is shown in Attachment A and a map depicting the current service territories and proposed changes is shown in Attachment B to this recommendation. Detailed maps delineating the service boundaries and their written descriptions are provided in petition Exhibits A and B, respectively. Due to their voluminous nature, the detailed maps are not attached to this recommendation.

In 1994, the Commission approved a territorial agreement that established the boundaries for the utilities' service territories in the counties mentioned above.[1] The 1994 agreement contained a provision permitting DEF (Florida Power Corporation at the time) to provide transmission level electric service (69 kilovolt and higher) to certain phosphate mining companies in PRECO's service territory. The mining companies have unique service requirements and PRECO did not have the appropriate facilities to meet the phosphate customers' transmission level electric needs.

In 2006, the Commission approved an amendment to Sections 1.9 and 2.4 of the 1994 territorial agreement.[2] These sections address the provision of electric service to the phosphate mining companies in PRECO's service territory and the 2006 amendment clarified the parties' obligations with respect to the existing phosphate mining customers in PRECO's service territory. The number of phosphate mining customers served by DEF in PRECO's service territory, pursuant to the 1994 territorial agreement, decreased from nine customers in 1994 to two customers in 2006. The 2006 agreement will expire on December 12, 2019.

PRECO and DEF entered into the proposed territorial agreement and filed the instant petition. The proposed agreement replaces the current 2006 agreement in its entirety while incorporating many provisions of the current agreement. Under the proposed agreement the territorial boundaries have been modified and, if approved, the agreement would result in the transfer of 2,858 customers from DEF to PRECO and 28 customers from PRECO to DEF.

During the review of this joint petition, staff issued a joint data request to DEF and PRECO on November 8, 2018, for which responses were received on November 20, 2018. Staff also had follow-up questions for which responses were received on December 20, 2018. The responses have been placed in the docket file. The Commission has jurisdiction over this matter pursuant to Section 366.04(2)(d), Florida Statutes (F.S.).

[1] Order No. PSC-94-1522-FOF-EU, issued December 12, 1994, in Docket No. 940376-EU, *In re: Joint Petition for approval of territorial agreement between Florida Power Corporation and Peace River Electric Cooperative, Inc.*
[2] Order No. PSC-06-0673-PAA-EU, issued August 7, 2006, in Docket No. 060277-EU, *In re: Joint petition for approval of territorial amendment in Polk, Hardee, Highlands, Manatee, and Osceola Counties by Progress Energy Florida, Inc. and Peace River Electric Cooperative, Inc.*

Discussion of Issues

Issue 1: Should the Commission approve the joint petition by DEF and PRECO for approval of their territorial agreement in Hardee, Highlands, Polk, and Osceola Counties?

Recommendation: Yes. The Commission should approve the joint petition by DEF and PRECO for approval of their territorial agreement in Hardee, Highlands, Polk, and Osceola Counties. The proposed territorial agreement is in the public interest and will enable DEF and PRECO to serve their customers in an efficient manner. (Guffey)

Staff Analysis: Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440, Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.[3]

Through the proposed agreement, the joint petitioners desire to revise the service area boundaries within the four-county area in order to serve customers more reliably and economically. Under the proposed agreement, 2,858 customers in Hardee County and a small area in southern Polk County will be transferred from DEF to PRECO (409 commercial, 6 industrial, and 2,443 residential customers). The petitioners explained in their response to staff's data request that over the years the service areas of the two utilities have overlapped and resulted in duplicate electric service facilities and that such evolution is not unusual in rural areas. As an example, the petitioners stated that in Hardee County, DEF has facilities on one side and PRECO has facilities on the other side of the same road. The petitioners stated that transferring customers from DEF to PRECO will eliminate the duplication of services, create operational efficiencies for both utilities, and will ensure customers continue to receive safe and reliable service.

In addition to the customer transfers discussed above, 28 PRECO customers will be transferred to DEF (two commercial and 26 residential customers). The petitioners stated that during due diligence field surveys of the service territory, 28 customers located in DEF's service territory were identified as being inadvertently being served by PRECO. All the customers are expected to be transferred within 36 months of the effective date of this agreement and the petitioners will notify the Commission in writing if additional time is needed. The territorial boundary maps have been modified to reflect the customer transfers and have been updated to a GIS format to show the lines in greater detail.[4] Additionally, parcels that were divided (between the two electric providers) by the prior territorial boundary lines have been modified to eliminate split parcels.

The petitioners explained that the customer transfer process includes the following steps: planning and coordinating between multiple departments of each utility, seeking Commission approval of the proposed agreement, conducting engineering studies, developing customer communications plan, evaluating facilities, conducting various field reviews, and conducting individual engineering work requests designed for each customer being transferred.

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[3] Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).
[4] Composite Exhibit A of the petition.

In accordance with Rule 25-6.0440(1)(d), F.A.C., the petitioners state that prior to the filing of this petition, the impacted customers were notified by mail of the transfer and provided a description of the differences in rates between DEF and PRECO.[5] As of July 2018, the bill for a residential customer using 1,000 kilowatt hours (kWh) was $128.78 for PRECO and $124.16 for DEF. As of July 2018, the bill for a commercial non-demand customer using 1,500 kWhs was $207.63 for PRECO and $189.41 for DEF. Customer deposits for DEF and PRECO customers will be applied to their last electric bill and any surplus will be refunded directly to the customers.

Additionally, the joint petitioners held an open house in Wauchula on August 14, 2018, for customers affected by the proposed transfers. Issues and concerns discussed at the open house were regarding differences in rates, billing, customer deposits, and residential seasonal service programs. The petitioners stated that PRECO and DEF had several representatives present to answer questions and there were no outstanding concerns after the open house. The petition includes customer notification letters and a summary of customer issues and concerns stated at the open house.[6]

Pursuant to Section 2.5 of the proposed agreement, DEF provides electric service to a phosphate mining customer in PRECO's service territory. DEF's service to the mining customer is limited to the electric requirements directly associated with the mining operations. The phosphate mining customer is referred to as a Special Industrial Customer in the agreement. The agreement provides that once the Special Industrial Customer operating in PRECO's service territory completes its mining operations, all rights to serve the Special Industrial Customer in PRECO's service territory will revert back to PRECO.

Pursuant to Section 3.4 of the proposed agreement, either utility may elect to purchase electric distribution facilities exclusively for providing electric service to the transferred customers. To determine the facilities' value, the utilities will use a common engineering cost estimation methodology such as the Handy-Whitman index. In response to staff's data request, the joint petitioners stated that they have not yet made a final decision regarding transferring or purchasing facilities, but will undertake a valuation of facilities once the proposed agreement is approved by the Commission.

Pursuant to Section 1.14 of the proposed agreement, the effective date of the agreement will be the date on which a final Order is issued by the Commission. The proposed agreement has been negotiated for an initial term of 30 years and may automatically be extended for succeeding periods of five years. The agreement may be terminated by either party upon one year's written notification to the other utility. Section 5.1 of the agreement states that any modifications to the agreement must be submitted to the Commission for approval.

[5] Exhibit F of the petition.
[6] Attachment 1 of the petition.

Conclusion

After review of the petition, the proposed territorial agreement, and the joint petitioners' responses to staff's data request, staff believes that the proposed amendments to the territorial agreement are in the public interest and will enable DEF and PRECO to serve their customers in an efficient manner. The joint petitioners in their responses state that they have worked collaboratively to structure the proposed amendments to their territorial agreement and that it furthers the goals of avoiding duplication of service and enables them to achieve operational efficiency. It appears that the proposed amendments will eliminate any potential uneconomic duplication of facilities and will not cause a decrease in the reliability of electric service to the customers. As such, staff believes that the proposed territorial agreement between DEF and PRECO will not cause a detriment to the public interest and recommends that the Commission approves it.

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Nieves)

Staff Analysis: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

Territorial Agreement Between
Duke Energy Florida, LLC
And
Peace River Electric Cooperative, Inc.
Polk, Hardee, Highlands, and Osceola Counties

AGREEMENT

Section 0.1: Duke Energy Florida, LLC d/b/a Duke Energy (DEF) and Peace River Electric Cooperative, Inc. (PRECO) (collectively, the "Parties" and individually, a "Party") enter into this Territorial Agreement (the "Agreement") on this 31st day of August, 2018.

WITNESSETH:

Section 0.2: WHEREAS, PRECO, by virtue of Chapter 425, Florida Statutes, and the Charter issued to it thereunder, is authorized and empowered to furnish electricity and power to its members, governmental agencies and political subdivisions, and to other persons, as defined by the laws of Florida, and pursuant to such authority, presently, furnishes electricity and power to members and customers in areas of Polk, Hardee, Highlands, and Osceola counties[1]; and

Section 0.3: WHEREAS, DEF, by virtue of Chapter 425, Florida Statutes, is authorized and empowered to furnish electricity to customers throughout the State of Florida, and pursuant to such authority, presently, furnishes electric service to customers in areas of Polk, Hardee, Highlands, and Osceola counties; and

Section 0.4: WHEREAS, PRECO and DEF are Parties to a currently effective territorial agreement approved by the Florida Public Service Commission (the "Commission") in Order No. PSC-94-1522-FOF-EU, issued December 12, 1994 and in Order PSC-2006-0742-CO-EU, issued September 1, 2006, in Docket No. 20060277-EU (the "Existing Agreement"), which delineates the Parties' respective service territories in Polk, Hardee, Highlands and Osceola counties; and

Section 0.5: WHEREAS, the Existing Agreement has a term of twenty five years through December 12, 2019, and provides for automatic renewal for another twenty five year period with prerequisite approval by the Commission.

[1] PRECO presently furnishes retail electric service in Manatee and DeSoto counties, however, those territorial areas are not contiguous to any DEF territorial areas and therefore are not part of this agreement.

Section 0.6: WHEREAS, the Parties desire to amend and restate the Existing Agreement in its entirety through this amended Agreement to gain further operational efficiencies and customer service improvements in their respective retail service areas, while continuing to eliminate circumstances giving rise to uneconomic duplication of service facilities; and;

Section 0.7: WHEREAS, the respective areas of service of the Parties are contiguous in many places, and the Parties seek to minimize costs to their respective rate payers by avoiding duplication of generation, transmission and distribution facilities; and

Section 0.8: WHEREAS, the Commission has previously recognized that any such duplication of facilities results in needless and wasteful expenditures and may create hazardous conditions, both being detrimental to the public interest; and

Section 0.9: WHEREAS, the Parties desire to continue to avoid and eliminate the circumstances giving rise to potential duplications of facilities and hazardous conditions, and in furtherance of such desire have established Territorial Boundary Lines to delineate their respective retail Territorial Areas, subject to the approval of the Commission; and

Section 0.10: WHEREAS, the Commission is empowered by Section 366.04(2)(d), Florida Statutes, to approve territorial agreements and resolve territorial disputes between rural electric cooperatives and other electric utilities under its jurisdiction, has often recognized the wisdom of such territorial agreements, and held such agreements, when properly presented to the Commission are advisable in proper circumstances, and, indeed, in the public interest;

Section 0.11: NOW, THEREFORE, in consideration of the premises of aforesaid and the mutual covenants and agreements herein set forth, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1: Territorial Boundary Line(s). As used herein, the term "Territorial Boundary Line(s)" shall mean the boundary lines which circumscribe the geographic areas

shown on the maps attached hereto as **Composite Exhibit "A"**, which differentiate and divide the PRECO Territorial Areas from the DEF Territorial Areas in Polk, Hardee, Highlands, and Osceola counties. The portions of the counties which are not subject to this agreement are marked on the maps as "Not Part Of This Agreement." Additionally, as required pursuant to Rule 25-6.0440(1)(a), F.A.C., a written description of the territorial areas served is attached as **Exhibit "B"**. If there are any discrepancies between Composite Exhibit "A" and Exhibit "B", then the territorial boundary maps in Composite Exhibit "A" shall prevail.

Section 1.2: PRECO Territorial Area. As used herein, the term "PRECO Territorial Area" shall mean the geographic areas in Polk, Hardee, Highlands, and Osceola counties allocated to PRECO as its retail service territory and labeled as "PRECO" on the maps contained in Composite Exhibit "A."

Section 1.3: DEF Territorial Area. As used herein, the term "DEF Territorial Area" shall mean the geographic areas in Polk, Hardee, Highlands, and Osceola counties allocated to DEF as its retail service territory and labeled as "DEF" on the maps contained in Composite Exhibit "A."

Section 1.4: Transmission Line. As used herein, the term "Transmission Line" shall mean any electric line of either party having a rating of 69kV or greater.

Section 1.5: Distribution Line. As used herein, the term "Distribution Line" shall mean any electric line of either party having a rating of up to, but not including 69 kV.

Section 1.6: Person. As used herein, the term "Person" shall have the same inclusive meaning given to it in Section 1.01(3), Florida Statutes.

Section 1.7: New Customer. As used herein, the term "New Customer" shall mean any person that applies to either PRECO or DEF for retail electric services after the Effective Date of this Agreement at a Point of Use in the Territorial Area of either Party.

Section 1.8: Existing Customer. As used herein, the term "Existing Customer" shall mean any person receiving retail electric service from either PRECO or DEF on the Effective Date of this Agreement.

Section 1.9: Special Industrial Customers. As used herein, the term "Special Industrial Customers" shall mean phosphate mining customers in PRECO's service territory.

Section 1.10: Extra-Territorial Customers. As used herein, the term "Extra Territorial Customers shall mean any person receiving retail electric service from either PRECO or DEF on the Effective Date of this Agreement who are located in the Territorial Area of the other Party established by this Agreement.

Section 1.11: Temporary Service Customers. As used herein, the term "Temporary Service Customers" shall mean any person being served under the temporary service provisions of the Agreement in Section 2.3.

Section 1.12: Point of Use. As used herein, the term "Point of Use" shall mean the location within the Territorial Area of a Party where a customer's end-use facilities consume electricity, wherein such Party shall be entitled to provide retail service under this Agreement, irrespective of where the customer's point of delivery or metering is located.

Section 1.13. Commission. As used herein, the term "Commission" shall mean the Florida Public Service Commission.

Section 1.14: Effective Date. As used herein, the term "Effective Date" shall mean the date on which the final Order of the Commission granting approval of this Agreement in its entirety becomes no longer subject to judicial review.

ARTICLE II
AREA ALLOCATIONS AND SERVICE TO CUSTOMERS

Section 2.1: Territorial Allocations. Except as otherwise specifically provided herein, during the term of this Agreement, PRECO shall have the exclusive authority to furnish retail electric service within the PRECO Territorial Area and DEF shall have the exclusive authority to furnish retail electric service within the DEF Territorial area. The Territorial Boundary Line shall not be altered or affected by any change that may occur in the corporate limits of any municipality or county through annexation or otherwise unless such change is agreed to in writing by the Parties and approved by the Commission.

Section 2.2: Service to New Customers. The Parties agree that neither of them will knowingly serve or attempt to serve any new customer whose Point of Use is located within the Territorial Area of the other Party, except as specifically provided in Section 2.3 of this Agreement.

Section 2.3: Temporary Service. The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may indicate that a New Customer's Point of Use either cannot or should not be immediately served by the Party in whose Territorial Area, such Point of Use is located. In such instances, upon written request by the Party in whose Territorial Area the New Customer's Point of Use is located, the other Party may agree, in writing, to temporarily provide service to such New Customer. Prior to the commencement of temporary service, the Party providing such service shall inform the New Customer of the temporary nature of such service and that the other Party will ultimately serve the customer. In the event any such temporary service exceeds a period of one year, the Parties shall submit a list of said temporary services exceeding one year to the Commission for approval.

In conjunction with such discontinuance, the Party providing temporary service shall be compensated by the requesting Party in accordance with Section 3.4 for its distribution facilities used exclusively to provide such service, which the other Party may elect to acquire, but the other Party shall not be entitled to compensation for any loss of revenues for the period during which such temporary service is provided.

Subject to the exceptions for temporarily providing service provided for in the immediately preceding paragraph, in the event that a New Customer or prospective New Customer requests or applies for service from either Party to be provided to a Point of Use located in the Territorial Area of the other Party, the Party receiving such a request or application shall refer the New Customer or prospective New Customer to the other party with citation to this Agreement as approved by the Commission, and shall notify the other Party of such request or application.

Section 2.4: Correction of Inadvertent Service Errors. If any situation is discovered during the term of this Agreement in which either Party is inadvertently providing retail electric service to a customer's Point of Use located within the Territorial Area of the other Party, service to such customer will be transferred to such other Party, and service by the other Party shall be established at the earliest practical time, but in any event, within twelve (12) months of the date the inadvertent service error was discovered. Until service by the other Party can be reasonably established, the inadvertent service will be deemed to be temporary service provided and governed in accordance with Section 2.3 above.

Section 2.5: Service to Special Industrial Customer. DEF provides retail electric service to a single phosphate mining customer in PRECO' s service territory. This customer has unique service requirements due to the nature of its businesses. In order to provide safe and efficient service to this customer and to avoid uneconomic duplication of service and facilities, the Parties have agreed that DEF will provide retail electric service to this Special Industrial Customer, and its successors and assigns, but only in that portion of PRECO's service territory depicted in the maps attached hereto as **Composite Exhibit "C"** as specifically provided herein. Service to the Special Industrial Customer shall be limited to the electric requirements directly associated with the mining operations of this customer at present locations and expansions of present locations in that portion of PRECO's Territorial Area depicted in Composite Exhibit "C." Except as otherwise specifically provided for in this Agreement, PRECO will continue to provide retail electric service to all other customers in its service territory, and DEF's limited right to serve the Special Industrial Customer shall not affect PRECO's right to serve such other customers. Further, once the Special Industrial Customer currently operating in PRECO's service

territory completes its mining operations, all rights to serve Special Industrial Customers in PRECO's Territorial Area will revert back to PRECO. Consistent with the provisions of Sections 3.3 and 3.4 of this Agreement, any substations owned by DEF within PRECO's service territory that are used exclusively to serve the Special Industrial Customer may be sold by DEF to PRECO for the replacement cost of such facilities, less depreciation, once the Special Industrial Customer currently operating in PRECO's service territory completes its mining operations.

ARTICLE III
TRANSFER OF CUSTOMERS AND FACILITIES

Section 3.1: In General. In order to achieve the operational efficiencies and other benefits contemplated by this Agreement, except as provided in Section 2.5, all Extra-Territorial Customers of either Party shall be served by the Party in whose Territorial Area they are located in at the earliest practical time, consistent with sound utility practices and reasonable customer notice. Accordingly, no later than thirty-six (36) months after the Effective Date of this Agreement, except as provided in Section 2.5 all Extra-Territorial Customers located in the PRECO Territorial Area who are served by DEF on the Effective Date shall be transferred to and thereafter served by PRECO, and all Extra-Territorial Customers located in the DEF Territorial Area who are served by PRECO on the Effective Date of this Agreement shall be transferred to and thereafter served by DEF.

In accordance with Rule 25-6.0440(1)(d), F.A.C., the affected Extra-Territorial Customers subject to transfer have been sent written notification of this Agreement and the transfer provisions described above. Sample copies of the letters providing such notification are attached as **Exhibit F**.

In the event that circumstances arise during the term of this Agreement in which the Parties agree that, based on sound economic considerations or good engineering practices, an area located in the Territorial Area of one Party would be better served if reallocated to the service territory of the other Party, the Parties shall jointly petition the Commission for approval of a modification of the Territorial Boundary Line that places the area in question (the

"Reallocated Area") within the Territorial Area of the other Party and transfer of the customers located in the Reallocated Area to the other Party.

Section 3.2: Transfer of Extra-Territorial Customers. The Extra-Territorial Customers currently served by PRECO and subject to transfer to DEF pursuant to this Agreement are listed by the service address and/or other identifying factor, in **Exhibit D**, hereto. The Extra-Territorial Customers currently served by DEF and subject to transfer to PRECO pursuant to this Agreement are listed by the service address and/or other identifying factor, in **Exhibit E**, hereto.

Section 3.3: Transfer of Related Service Facilities. In conjunction with the transfer of Extra-Territorial Customers pursuant to Sections 3.1 and 3.2 above, the receiving Party may elect to purchase the electric distribution facilities of the transferring Party used exclusively for providing electric service to the transferred customers for an amount to be determined in accordance with Section 3.4 below.

Section 3.4: Compensation for Transferred Facilities. Should the receiving Party elect to purchase the electric distribution facilities of the transferring Party used exclusively for providing electric service, the receiving Party shall compensate the transferring Party in an amount based upon the replacement cost (new), less depreciation calculated on a straight line basis over the life of the asset (facility) as determined from the transferring Party's books and records. The replacement cost shall be determined by applying a cost calculator such as the Handy Whitman index or a common engineering cost estimation methodology to the original cost, as long as both Parties apply the same estimation method.

Section 3.5: Transfer Segment Closings. The Parties acknowledge that it may be more efficient to accomplish a particular transfer in segments or phases. The Parties shall mutually agree on a closing date for each transfer segment, allowing sufficient time for the Parties to identify the customers and facilities to be transferred; to determine the compensation for transferred customers and facilities; and to prepare the appropriate closing statements, assignments, and other instruments to transfer and convey the transferring Party's interest in the electric distribution facilities to the receiving Party pursuant to Section 3.3 above. At the closing, the receiving Party shall pay the transferring Party the compensation due it, and the transferring

Party shall execute and deliver to the receiving Party the assignments and other instruments referred to above.

Section 3.6: Transfer Instruments. For each transfer made under this Agreement, the transferring Party will make, execute, and deliver to the receiving Party a conveyance, deed or other instrument of transfer, as is appropriate, in order to convey all rights, titles and interests of the transferring Party in any facilities, rights-of-way, easements, road permits, or other rights to the receiving Party.

Section 3.7: Time of Payment. All payments from the receiving Party to the transferring Party determined in accordance with this section shall be made in cash within 60 days of the presentation of an invoice from the transferring Party.

ARTICLE IV
OPERATION AND MAINTENANCE

Section 4.1: Facilities to Remain. Except as expressly provided herein, a generating plant, transmission line, substation, distribution line or related facility now or hereafter constructed or used by either party in conjunction with its electric utility system, which is directly or indirectly used and useful in service to its customers by either of the Parties, shall be allowed to remain where situated and shall not be subject to removal or transfer hereunder; provided, however, that each party shall operate and maintain all such plants, lines, substations or facilities in such a matter as to minimize any interference with the operations of the other party.

Section 4.2: PRECO Facilities to be served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of PRECO to serve any facility of PRECO located in the DEF Territorial Area; provided, however, that PRECO shall construct, operate, and maintain its lines and facilities in such a manner as to minimize any interference with the operations of DEF in the DEF Territorial area.

Section 4.3: DEF Facilities to be served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of DEF to serve any facility of DEF located in the PRECO Territorial Area; provided, however, that DEF shall construct, operate and maintain its lines and facilities in such a manner as to minimize any interference with operations of PRECO in the PRECO Territorial Area.

ARTICLE V
PREREQUISITE APPROVAL

Section 5.1: Commission Approval. The provisions and the Parties' performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by that body of the provisions of this Agreement shall be an absolute prerequisite to the validity, enforceability, and applicability hereof. This Agreement shall have no effect whatsoever until that approval has been obtained, and the date of the Commission's Order, if any, granting initial Commission Approval of this Agreement shall be deemed to be the Effective Date of this Agreement. Any proposed modification to this Agreement shall be submitted to the Commission for approval. In addition, the Parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the Parties' performance of this Agreement.

Section 5.2: No Liability in the Event of Disapproval. In the event approval of this Agreement pursuant to Section 5.1 hereof is not obtained, neither Party will have any cause of action against the other arising under this document or on account of such nonattainment of approval.

Section 5.3: Supersedes Prior Agreements. Upon approval by the Commission, this Agreement shall be deemed to specifically supersede any and all prior agreements between the Parties regarding their respective retail service areas in Polk, Hardee, Highlands, and Osceola counties.

ARTICLE VI
DURATION

Section 6.1: This Agreement shall become effective upon approval by the Commission and shall continue in effect until termination, or until supplemented and amended by mutual written agreement of the parties and approval by the Commission, but in no event for a period exceeding thirty (30) years from the date of the Commission's initial Order approving this Agreement. Thereafter, the Agreement may automatically be extended for succeeding periods of five (5) years except that this Agreement may be terminated by either Party after expiration of the thirty (30) year term period or succeeding five (5) year period upon one (1) year's written notice to the other Party.

ARTICLE VII
CONSTRUCTION OF AGREEMENT

Section 7.1: Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other things, to further this State' s policy of approving territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction; to further the State's policy of actively regulating and supervising the service territories of electric utilities; and supervising the planning, development, and maintenance of a coordinated electric power grid throughout Florida; and avoiding uneconomic duplication of transmission and distribution facilities.

Section 7.2: Other Electric Utilities. Nothing in this Agreement shall restrict or affect in any manner the right of either Party to establish its retail service area with respect to the retail service territory of any other electric utility not a party to this Agreement. The Parties understand that PRECO or DEF may, from time to time and subject to Commission approval, enter into territorial agreements with other electric utilities that have adjacent or overlapping service areas and that, in such event, nothing herein shall be construed to prevent PRECO or DEF from designating any portion of its Territorial Area under this Agreement as the service area of such other electric utility.

Section 7.3: Bulk Power for Resale. Nothing herein shall be construed to prevent either party from providing bulk power supply for resale purposes as defined in the Final Judgment dated August 19, 1971 in the *United States of America v. Florida Power Corporation and the Tampa Electric Company*, United States District Court for the Middle District of Florida, Case No. 68-297-Civ-T ("the Final Judgment"), regardless of where the purchaser for resale may be located. Further, no other section or provision of this Agreement shall be construed as applying to a bulk power supply for resale purposes as defined in the Final Judgment.

ARTICLE VIII
MISCELLANEOUS

Section 8.1: Negotiations. Regardless of any other terms or conditions that may have been discussed during the negotiations leading up to the execution of this Agreement, the only terms or conditions agreed upon by the parties are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the Parties hereto unless the same shall be in writing, attached hereto, signed by both of the parties and approved by the Commission in accordance with Article V, Section 5.1 hereof.

Section 8.2: Successors and Assigns; for Benefit Only of Parties. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended, or shall be construed, to confer upon or give to any person other than the Parties hereto, or their respective successors or assigns, any right, remedy, or claim under or by reason of this Agreement, or any provision or condition hereof; and all provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of the Parties of their respective successors or assigns.

Section 8.3: Notices. Notices and other written communications contemplated by this Agreement shall be deemed to have been given if sent by certified mail, postage prepaid, by prepaid private courier with confirmed receipt, or by confirmed facsimile transmittal, as follows:

To Peace River Electric Cooperative, Inc.:

Randall W. Shaw, General Manager/CEO
Peace River Electric Cooperative, Inc.
P.O. Box 1310
Wauchula, Florida 33873
Fax: 855-278-7403

To Duke Energy Florida:

Catherine Stempien, State President
Duke Energy Florida, LLC
P.O. Box 14042
St. Petersburg, Florida 33733
Fax: 727-820-5044

Either Party may change its designated representative or address to which such notices or communications shall be sent by giving written notice thereof to the other Party in the manner herein provided.

IN WITNESS WHEREOF, the Parties hereby have caused this Agreement to be executed in their respective corporate names and their corporate seals affixed by their duly-authorized officers on the day and year first above written.

PEACE RIVER ELECTRIC COOPERATIVE, INC.

By: _____
Chris Portale, President
P.O. Box 1310
Wauchula, Florida 33873

ATTEST:

By: _____
Ellen Bachman, Secretary

DUKE ENERGY FLORIDA, LLC

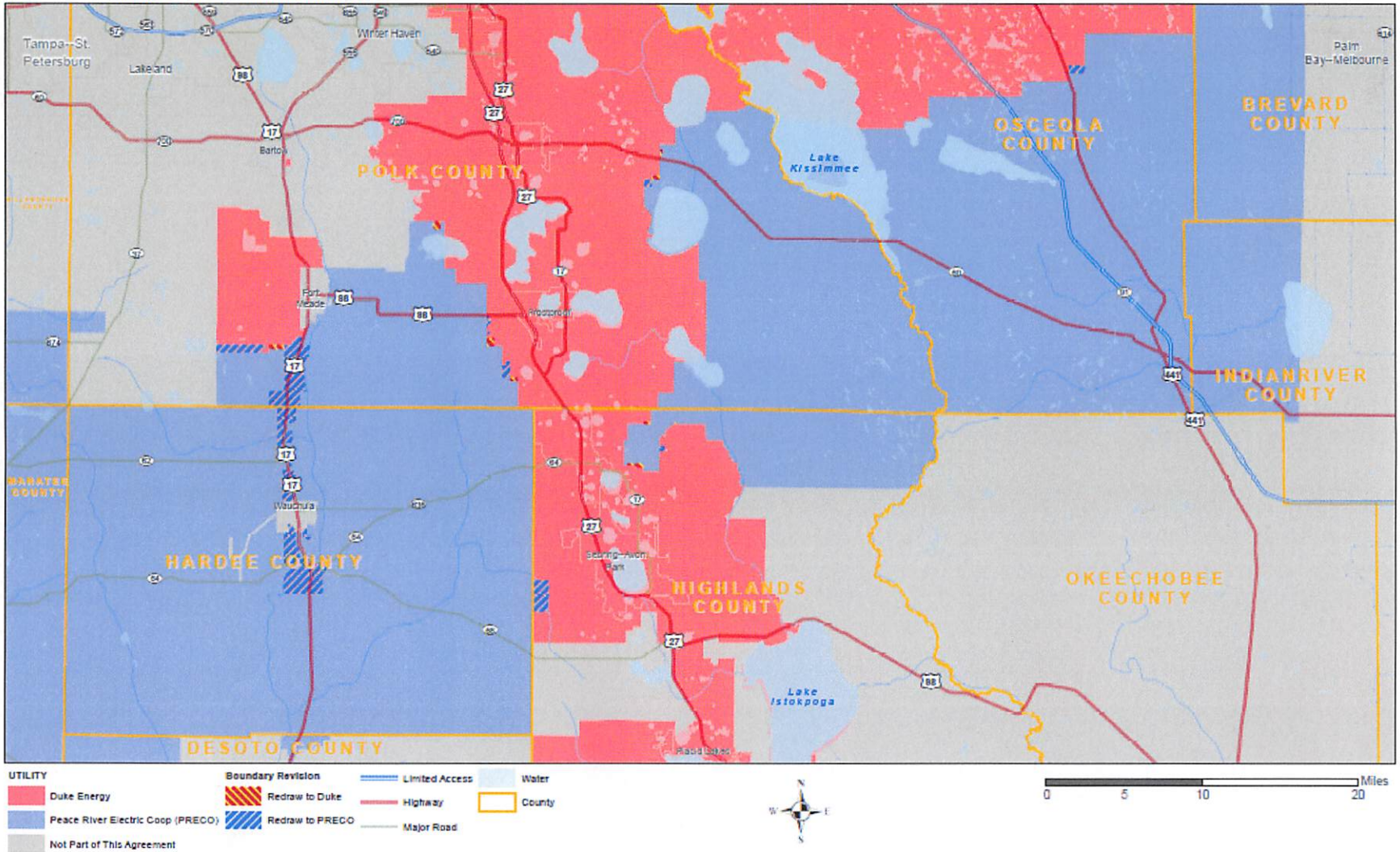
DUKE ENERGY, INC.
LEGAL DEPARTMENT
APPROVED BY: _____
DATE: _____

By: _____
Catherine Stempien, State President
P.O. Box 14042
St. Petersburg, Florida 33733

ATTEST:

By: _____
Dianne Triplett, Deputy General Counsel

DUKE ENERGY - PEACE RIVER ELECTRIC COOP (PRECO)
TERRITORIAL AGREEMENT
HARDEE, HIGHLANDS, OSCEOLA, and POLK COUNTIES



Item 6

State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: December 27, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Bruce)
Division of Accounting and Finance (Cicchetti)
Office of the General Counsel (Crawford)

RE: Docket No. 20180212-WS – Application for gross-up of CIAC in Brevard County, by Aquarina Utilities, Inc.

AGENDA: ~~12/08/18~~ 1/09/19 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 01/14/19 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

Aquarina Utilities, Inc. (Aquarina or utility) is a Class B utility providing water and wastewater services in Brevard County to approximately 301 water, 123 non-potable, and 335 wastewater customers. The utility reported in its 2017 annual report operating revenues in the amount of $437,201 for water and $176,053 for wastewater. The utility did not collect contributions in aid of construction (CIAC) for water or wastewater in 2017.

On November 15, 2018, the utility filed an application for approval of tariffs to allow for gross-up of CIAC. As indicated in the utility's application, the recent change in tax law may cause it to risk the loss of its opportunity to earn a reasonable return on its used and useful property if it is not allowed to collect the tax impact on receipt of CIAC. This recommendation addresses the utility's request for approval of gross-up tariffs related to changes in the federal tax code effective in 2018. Any potential refund related to the change in the federal tax rate currently

embedded in the utility's rates is outside of this recommendation and will be addressed in the generic Docket No. 20180013-PU.[1] The Commission has jurisdiction pursuant to Sections 367.081 and 367.091, Florida Statutes (F.S.).

[1] Docket No. 20180013-PU, *In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings, by Office of Public Counsel.*

Discussion of Issues

Issue 1: Should Aquarina's request for approval of tariffs to allow the gross-up of CIAC be approved?

Recommendation: Yes. The tariffs filed on November 15, 2018, should be approved. The utility should provide notice to all persons in the service areas included in the application who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the application was filed. The approved gross-up charges should be effective for connections made on or after the stamped approval date on the tariff sheets. The utility should provide proof of noticing within 10 days of rendering its approved notice. (Bruce, Crawford)

Staff Analysis: Effective January 1, 2018, the Federal Tax Cuts and Jobs Act amended Section 118 of the Internal Revenue Code. Prior to the amendments, CIAC was exempt from taxable gross income for water and wastewater utilities. As a result of the amendments, both cash and property CIAC are now taxable gross income for water and wastewater utilities. In recognition of this change in the tax law, the Commission has opened Docket No. 20180013-PU, *In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings by Office of Public Counsel* to address the potential rate impacts on regulated electric, gas, water, and wastewater utilities.

A similar law, the Tax Reform Act of 1986, became effective in 1987.[2] In Docket No. 19860184-PU, the Commission found that it was appropriate to allow water and wastewater utilities to recover the tax on CIAC from the contributor, including the tax associated with the gross-up tax on CIAC that would also become taxable income. For those utilities that were approved to collect the gross-up on CIAC, the gross-up amounts collected were held subject to refund and were evaluated on a case-by-case basis as to whether any refunds were subsequently required.

On November 15, 2018, the utility filed tariffs (Attachment A) to gross-up cash service availability charges and property contributions to recover the federal and state corporate income taxes associated with those contributions for water. However, for wastewater, Aquarina filed a tariff to gross-up only contributed wastewater property since it is not authorized to collect cash CIAC for wastewater service. According to the utility, Aquarina could risk loss of its opportunity to earn a reasonable return on its property used and useful in the public service if it is not allowed to collect the tax impact on receipt of CIAC.

The tariffs recognize that, for depreciable property, depreciation expense is tax deductible and the utility's tax liability will be reduced by depreciation claimed for tax purposes. The proposed tariffs are mathematically the same, regarding the gross-up for taxes, as the tariff approved by the Commission following the hearing in Docket No. 19860184-PU.[3] Because the proposed

[2]The act was repealed in 1996.
[3]Order No. 23541, issued October 1, 1990, in Docket No. 860184-PU, *In re: Request by Florida Waterworks Association for investigation of proposed repeal of Section 118(b), Internal Revenue Code [Contributions-in-aid-of-construction].*

tariffs accurately depict the utility's expected tax expense associated with CIAC, staff believes no further Commission action would be required once the gross-up formula has been approved. The proposed tariffs are the same as those approved in Order No. PSC-2018-0330-TRF-WS in Docket No. 20180042-WS, Order No. PSC-2018-0331-TRF-WS in Docket No. 20180059-WS, and Order No. PSC-2018-0269-TRF-WS in Docket No. 20180100-WS.[4]

Based on the above, staff recommends that the tariffs be approved. The approved gross-up charges should be effective for connections made on or after the stamped approval date on the tariff sheets. The utility should provide notice to all persons in the service areas included in the application who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the application was filed. The utility should provide proof of noticing within 10 days of rendering its approved notice.

[4] Order No. PSC-2018-0330-TRF-WS, issued June 27, 2018, in Docket No. 20180042-WS, *In re: Application for approval of tariff for the gross-up of CIAC in Martin County by Indiantown Company, Inc.;* Order No. PSC-2018-0331-TRF-WS, issued June 27, 2018, in Docket No. 20180059-WS, *In re: Application for approval of tariff for the gross-up of CIAC in Escambia County by Peoples Water Service Company of Florida, Inc.; and* Order No. PSC-2018-0269-TRF-WS, issued May 30, 2018, in Docket No. 20180100-WS, *In re: Application for approval of tariff for the gross-up of CIAC for water rates in Lee County and wastewater rates in Pasco County, by Ni Florida, LLC.*

Issue 2: Should this docket be closed?

Recommendation: If a protest is filed by a substantially affected person within 21 days of issuance of the order, the tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, the order should become final upon the issuance of a consummating order. However, the docket should remain open to allow staff to verify that the appropriate notice has been filed by the utility and approved by staff. Once the utility has provided proof of noticing, the docket should be closed administratively. (Crawford)

Staff Analysis: If a protest is filed by a substantially affected person within 21 days of issuance of the order, the tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, the order should become final upon the issuance of a consummating order. However, the docket should remain open to allow staff to verify that the appropriate notice has been filed by the utility and approved by staff. Once the utility has provided proof of noticing, the docket should be closed administratively.

AQUARINA UTILITIES, INC.
WATER TARIFF

ORIGINAL SHEET NO. 17.2

Income Taxes Related to Cash and Property Contributions-in-Aid-of-Construction

The utility may gross-up cash service availability charges and property contributions-in-aid-of-construction in order to recover the federal and state corporate income taxes associated with these contributions. The formula to be used to gross-up cash service availability charges and contributed property are as follows:

TAX IMPACT = Full Gross Up:

Depreciable Plant:

For utilities using straight-line depreciation for tax purposes, the gross-up formula shall be:

((CP-(CP * (1/TL) * .5)) * (CTR/(1-CTR)

For utilities using an accelerated rate of depreciation for tax purposes, the gross-up formula shall be: (CP-((CP * AR) * .5)) * (CTR/(1-CTR))

Land (and Cash): CL * (CTR/(1-CTR))

Where:

CP = Contributed Plant
TL = Tax Life of Contributed Plant
AR = First Year Accelerated Depreciation Rate for Tax Purposes
CTR = Combined Federal (FT) and State (ST) Income Tax Rate. ST+FT (1-ST)
CL = Contributed land (and Contributed Cash)

AQUARINA UTILITIES, INC.
WASTEWATER TARIFF

ORIGINAL SHEET NO. 18.1

Income Taxes Related Property Contributions-in-Aid-of-Construction

The utility may gross-up property contributions-in-aid-of-construction in order to recover the federal and state corporate income taxes associated with these contributions. The formula to be used to gross-up contributed property are as follows:

TAX IMPACT = Full Gross Up:

Depreciable Plant:

For utilities using straight-line depreciation for tax purposes, the gross-up formula shall be:

((CP-(CP * (1/TL) * .5)) * (CTR/(1-CTR)

For utilities using an accelerated rate of depreciation for tax purposes, the gross-up formula shall be: (CP-((CP * AR) * .5)) * (CTR/(1-CTR))

Land: CL * (CTR/(1-CTR))

Where:

CP = Contributed Plant
TL = Tax Life of Contributed Plant
AR = First Year Accelerated Depreciation Rate for Tax Purposes
CTR = Combined Federal (FT) and State (ST) Income Tax Rate. ST+FT (1-ST)
CL = Contributed land (and Contributed Cash)