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January 4, 2019

*Via E-Mail (bbaez@psc.state.fl.us;khetrick@psc.state.fl.us)
and Hand Delivery*

Braulio L. Baez
Executive Director
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Keith Hetrick
General Counsel
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: 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. - Docket No.: 20180142; **Notice pursuant to Section 120.595(4)(b), Florida Statutes.**

Dear Mr. Baez and Mr. Hetrick:

We are writing on behalf our client, Palm Tree Acres Mobile Home Park (“Palm Tree”). Palm Tree has operated in Florida as a mobile home park and a mobile home subdivision for decades with the understanding that it was not subject to PSC’s jurisdiction pursuant to section 367.022(5), Florida Statutes, which exempts “[l]andlords providing service to their tenants without specific compensation for the service.”¹ PSC staff’s memorandum dated December 27, 2018 recommends that the PSC initiate an enforcement action against Palm Tree for failure to obtain a

¹ The “landlord/tenant” exemption became self-executing in 1996, and for the past 22 years there has been no requirement that Palm Tree or any other person apply for the exemption or obtain PSC approval to utilize the exemption. See, Ch. 96-407, § 3, Laws of Fla.

water and wastewater utility certificate on grounds that Palm Tree did not meet staff's new found interpretation of section 367.022(5). The Legislature has not defined the terms "landlords" and "tenants" in Chapter 367, Florida Statutes. Staff's new found interpretation of section 367.022(5) is based on its reading of "landlord-tenant relationship" in the Tenth Edition of Black's Law Dictionary. Staff memorandum at p. 13. The PSC previously interpreted the landlord/tenant exemption in Section 367.022(5) by relying on the definitions in Florida's Landlord Tenant Law - Section 83.43, Florida Statutes. See PSC Order No. 24806 (July 11, 1991).

The PSC staff is purporting to define the terms "landlord" and "tenant" based on its interpretation of section 367.022(5) in a fashion that would subject Palm Tree to administrative penalties and extensive and costly utility regulation going forward. By doing so, the PSC staff is purporting to set forth a statement of general applicability that clearly would have a substantial impact on Palm Tree and other similarly situated companies in Florida that operate as mobile home parks and mobile home subdivisions.

Under these circumstances, if the PSC approves the staff's recommendation and moves forward with an enforcement action against Palm Tree, it will be basing agency action on an unadopted rule. Section 120.52(16), Florida Statutes, defines a rule as follows:

"Rule" means each agency statement of general applicability that implements, interprets, or prescribes law....

(Emphasis added.) Section 120.54, Florida Statutes, requires that each agency statement meeting the definition of a rule be adopted as a rule through the procedures set forth in that statute. Failure to do so constitutes an invalid exercise of delegated legislative authority pursuant to section 120.52(8)(a), Florida Statutes. *Id.* Moreover, an agency like the PSC may not base agency action that determines the substantial interests of a party on an unadopted rule. See section 120.57(1)(e), Florida Statutes.

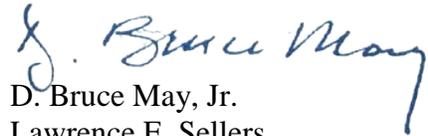
Based on the above, if the PSC approves the staff's recommendation, Palm Tree intends to initiate an unadopted rule challenge action pursuant to section 120.56(4), Florida Statutes. This letter shall serve as the notice required under section 120.595(4)(b), Florida Statutes, for purposes allowing recovery of reasonable costs and attorneys' fees as provided in section 120.595(4)(a), Florida Statutes.

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To avoid the time and the cost of an unadopted rule challenge, we respectfully submit that the PSC should defer consideration of this matter until it adopts rules regarding uniform definitions of “landlord” and “tenant” for purposes of section 367.022(5), or until the issue has been addressed by the Florida Legislature.

Sincerely,

HOLLAND & KNIGHT LLP

A handwritten signature in blue ink that reads "D. Bruce May, Jr." with a stylized flourish at the end.

D. Bruce May, Jr.
Lawrence E. Sellers

DBM:kjg

cc: Margo Duval
Jennifer Crawford
Johana Nieves
Allen Bobo
Richard Harrison
Adam Teitzman