

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for transfer of majority organizational control of Holiday Utility Company, Inc. in Pasco County to Holiday Waterworks Corporation, and amendment of Certificate No. 224-W.	DOCKET NO. 030458-WU ORDER NO. PSC-06-0380-FOF-WU ISSUED: May 8, 2006
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The following Commissioners participated in the disposition of this matter:

ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

FINAL ORDER APPROVING TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL, APPROVING DELETION OF TERRITORY, AND DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

Background

Holiday Utility Company, Inc. (Holiday or utility) is a Class C utility providing water service to one general service customer and approximately 337 residential service water customers in Pasco and Pinellas Counties. Wastewater service to 119 customers is provided by Pasco County and the remainder are on septic tanks. The utility is in the Tampa Bay Water Use Caution Area of the Southwest Florida Water Management District (SWFWMD). Holiday was granted Certificate No. 224-W in 1975.<sup>1</sup> The certificate was amended to delete territory in 1977.<sup>2</sup> The utility's 2004 annual report shows gross revenue of \$70,538 and a net operating loss of \$48,105.

Pursuant to Section 367.071, Florida Statutes, on May 23, 2003, Holiday Waterworks Corporation (HWC or buyer) applied for a transfer of majority organizational control of Holiday Utility Company, Inc. to Holiday Waterworks Corporation. According to the application, on April 25, 2003, Elaine Mickler individually and as personal representative of the estate of Bartley L. Mickler (the Micklers or seller) and the buyer entered into a stock purchase agreement for the utility. The closing on the transfer took place on April 30, 2003, subject to our approval. When the application was noticed, our staff advised the buyer that the order granting the

<sup>1</sup> Order No. 6780, issued July 17, 1975, in Docket No. 73489-W, In re: Application of Holiday Utility Company for a Certificate to operate a water system in Pasco County, Florida.

<sup>2</sup> Order No. 8080, issued December 5, 1977, in Docket Nos. 750227-WS (CP), 73489-W (PR), and 770521-W (GI), In re: Complaint of First Memphis Realty Trust and Forest Oaks, Inc. against Aloha Utilities, Inc. and Holiday Utility Company, Inc.; Extraordinary Petition of First Memphis Realty Trust and Forest Oaks, Inc. for Reconsideration of Order No. 6780 which granted Certificate No. 224-W to Holiday Utility Company, Inc.; Investigation of the quantity and quality of water service by Holiday Utility Company Inc. in Pasco County, Florida.

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grandfather certificate was for a lesser service territory than that included in the notice of transfer. No objections were received to the transfer notice, and the time for filing such has expired.

HWC filed an amended and restated application for transfer of majority organizational control and amendment of certificate on March 16, 2004. The amendment was to add the territory the buyer thought was part of the utility's original approved service territory. After receiving the notice of transfer and amendment Pasco County filed an objection with the Commission. Subsequently, HWC asked for time to negotiate a settlement with Pasco County.

On September 15, 2005, HWC filed a letter advising this Commission that HWC and Pasco County were unable to reach an agreement concerning the service areas. The letter also included a modified legal description of the service area sought by HWC, including an area to be deleted from the utility's approved service territory. No objections were received to the notice of deletion and the time for filing such has expired. There were deficiencies in the application which were corrected on March 3, 2006.

Our staff held a conference call with HWC and Pasco County on December 15, 2005. At that time Pasco County stated that it did not object to the transfer of majority organizational control or the proposed deletion of territory. However, Pasco County objected to the amendment of the utility's territory. We confirmed with both parties that neither would object to bifurcating the docket to proceed with the transfer and deletion prior to the hearing on the amendment portion. A hearing on the utility's proposed amendment is currently scheduled for January 17-18, 2007. We have jurisdiction pursuant to Sections 367.045 and 367.071, Florida Statutes.

#### No Show Cause Proceeding Initiated

In August 1973, Holiday filed an application to provide water service in Pasco County. In Order No. 6780, the Commission granted Holiday certificate No. 224-W to serve only the northeast and southwest parcels of the requested territory. However, when the tariff was approved, the territory description in the tariff reflected more territory than was granted by the Commission in Order No. 6780. On May 23, 2003, Holiday filed an application for transfer of majority organizational control. When the application was noticed, we advised the utility that the territory noticed in the transfer included more territory than the utility was authorized to serve. At that time, we were informed that Holiday was not aware that the Commission had not approved all of the territory requested in 1973 and that it was currently serving a Pasco County public school that was outside its certificated area.

Holiday has been serving a water customer outside of its certificated territory. Section 367.045(2), Florida Statutes, states that a utility may not extend its service outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from this Commission.

Section 367.161(1), Florida Statutes, authorizes this Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply

with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In serving outside of its certificated territory without obtaining an amended certificate of authorization, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "in our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Although Holiday's failure to obtain our approval prior to serving outside of its certificated service area is an apparent violation of Section 367.045(2), Florida Statutes, there are circumstances that mitigate the utility's apparent violation. The customer that Holiday is serving outside of its territory is adjacent to Holiday's service area. When the school was connected 15 years ago, Holiday believed the school was within its service area due to the school's location and Holiday's tariff; however, based on Commission Order No. 6780, that area is not part of Holiday's certificated service area. Believing that the school was located within its service area, Holiday has paid all the necessary regulatory assessment fees for the additional area. Furthermore, upon becoming aware that the school was not located within its certificated territory, Holiday filed an application for amendment of its certificate to include the additional area.

We do not believe that the apparent violation of Section 367.045, Florida Statutes, rises in these circumstances to the level that warrants the initiation of a show cause proceeding. Therefore, we find that a show cause proceeding against Holiday for failing to obtain an amended certificate of authorization prior to serving outside of its certificated territory is not warranted.

#### Transfer of majority organizational control

The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and Rule 25-30.037(3), Florida Administrative Code, pertaining to an application for transfer of majority organizational control. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. A description of the territory granted to Certificate No. 224-W is appended as Attachment A.

The application for transfer of majority organizational control contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to this application were received and the time for the filing of such objections has expired.

Pursuant to Rule 25-30.037(3)(i), Florida Administrative Code, the application contained a copy of the recorded warranty deed as evidence that HWC owns the land upon which one of the utility's wells and treatment facilities are located. The buyer also provided a copy of a signed and recorded 99-year lease for this property with the utility.

In addition, a copy of a recorded easement for the utility's additional wells and treatment facilities was provided. However, the name on the easement was not the exact name of the utility. Therefore, the utility has agreed to file a fictitious name with the Florida Department of State, Division of Corporations. Accordingly, Holiday shall provide proof of the Division of Corporations' approval of the fictitious name, as it appears on the easement by May 18, 2006.

We have verified that the utility is current on annual reports and RAFs through 2004. The buyers are responsible for filing the annual report and RAFs for 2005 and future years.

Pursuant to Rule 25-30.037(3)(h), Florida Administrative Code, the application contained a statement that the buyer performed a reasonable investigation of the utility systems. We have confirmed with the Florida Department of Environmental Protection (DEP) that the utility's water systems are currently in compliance with the quality of the water standards. However, there are compliance issues regarding a recent rule change concerning disinfection byproducts. Other DEP issues concern auxiliary power needs, fencing, and general plant upkeep. The above items are in the process of being addressed and were reflected as pro forma plant improvements in the most recent staff assisted rate case.<sup>3</sup>

The application contained a statement explaining why the transfer is in the public interest. The former owner, Bartley L. Mickler, died and the remaining family no longer wishes to own or operate the utility. As the service area has developed, it has become more complicated to maintain and requires a higher level of expertise in dealing with regulatory requirements and quality control. Mr. Gary Deremer, the principle shareholder of HWC, has many years of experience in private and public water and wastewater operations, maintenance, and compliance. He is the president of three other utilities under our jurisdiction, including Virginia City Utility Company, Dixie Groves Utility Company, and Colonial Manor Utility Company. HWC believes that the expertise it offers will benefit the local service area and bring the management of the utility to a higher level of sophistication and customer service.

For a showing of financial ability, the application included a personal financial statement of Gary and Patricia Deremer. According to the application, Mr. Deremer provided the funds for HWC to purchase the utility. The financial statement indicates that he has adequate funds to support the utility. In addition, the buyers provided a statement of intent to fulfill the commitments, obligations, and representations of the seller with regard to utility matters.

Pursuant to Section 367.071, Florida Statutes, we may set rate base in transfer dockets. Although rate base is typically set in transfer proceedings, no audit was performed in this docket as a cost savings measure for this Commission. Rate base was last set for Holiday at \$30,174, pursuant to Order No. PSC-05-0621-PAA-WU. The \$80,000 paid by HWC exceeds the \$30,174 rate base established for the utility, therefore, there would be no negative acquisition adjustment pursuant to Rule 25-30.0371, Florida Administrative Code.

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<sup>3</sup> Order No. PSC-05-0621-PAA-WU, issued June 6, 2005, in Docket No. 041145-WU, In re: Application for staff-assisted rate case in Pasco County by Holiday Utility Company, Inc.

Holiday's current rates for water service and miscellaneous service charges were approved by this Commission in Order No. PSC-05-0621-PAA-WU. The service availability charges were approved in 1985.<sup>4</sup> The utility's approved rates and charges are shown on Schedule 1. Pursuant to Rule 25-9.044(1), Florida Administrative Code, the rates and charges approved for Holiday should be continued until authorized to change by this Commission in a subsequent proceeding.

Based on all of the above, we find that the transfer of majority organizational control of Holiday Utility Company, Inc., holder of Certificate No. 224-W, to HWC is in the public interest and is hereby approved effective April 18, 2006. Pursuant to Rule 25-9.044(1), Florida Administrative Code, the rates and charges approved for Holiday shall be continued until authorized to change by this Commission in a subsequent proceeding. The utility shall provide proof of the Division of Corporations' approval of the fictitious name, as it appears on the easement, by May 18, 2006. HWC shall be responsible for all regulatory assessment fees and annual reports for 2005 and the future.

### Deletion

The amendment application is in compliance with the governing statute, Section 367.045, Florida Statutes, and Rule 25-30.036, Florida Administrative Code. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. The utility has no connections in the area proposed to be deleted. No objections were received and the time for filing objections has expired.

The request for deletion was made pursuant to an agreement between the utility and Gulf Winds, LLP (Gulf Winds). The territory to be deleted, which covers approximately forty-four acres, is part of a proposed development known as Gulf Winds Development. The utility previously had an agreement with Gulf Winds to provide water service to the area. The developer planned to obtain wastewater service from Pasco County. However, in March, 2005, the parties entered into the current agreement where the utility consented to Pasco County being the water and wastewater provider to the Gulf Winds Development. The agreement acknowledged that there may exist a dispute with Pasco County regarding the authority of Holiday to act as the water service provider to Gulf Winds, because a portion of the proposed development is not currently in Holiday's approved service territory. Holiday recognized that in order to allow for unified utility services to Gulf Winds without the threat or necessity of costly and time-consuming litigation, a release of its claim as provider of water service to the area proposed for deletion was necessary. The agreement included a payment by Gulf Winds to Holiday in the amount of \$548,252 for the relocation of a six-inch water pipe which traverses the Gulf Winds property.

The utility has indicated that the proposed deletion of the area will have no affect on any existing customer and allows for both water and wastewater service to the area by Pasco County. Therefore, based on the above information, we find that Holiday's application to amend

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<sup>4</sup> Order No. 14506, issued June 26, 1985, in Docket No. 840291-WU, In re: Application of Holiday Utility Company, Inc., for staff assistance on a rate increase to its customers in Pasco County, Florida.

Certificate No. 224-W to delete a portion of the utility's territory, as reflected in Attachment B, is in the public interest and is hereby approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of Holiday Utility Company, Inc., holder of Certificate No. 224-W, to Holiday Waterworks Corporation is in the public interest and is hereby approved effective April 18, 2006. It is further

ORDERED that all attachments appended hereto are incorporated herein by reference. It is further

ORDERED that Holiday Waterworks Corporation shall be responsible for the 2005 annual report and regulatory assessment fees and future annual reports and regulatory assessment fees. It is further

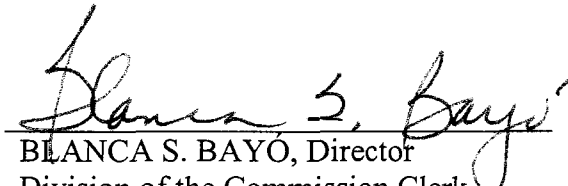
ORDERED that the existing rates and charges shall be continued by Holiday Waterworks Corporation until authorized to change by this Commission in a subsequent proceeding. The tariffs reflecting the transfer of ownership shall be effective on or after the stamped approval date. It is further

ORDERED that Holiday Utility Company, Inc. shall provide proof of the Division of Corporations' approval of its fictitious name, as it appears on the easement, by May 18, 2006. It is further

ORDERED that Holiday Utility Company, Inc.'s request to amend Certificate No. 224-W to delete a portion of its territory is in the public interest and is hereby approved as set forth in the body of this order. It is further

ORDERED that in the event Order becomes final, this docket shall remain open.

By ORDER of the Florida Public Service Commission this 8th day of May, 2006.

  
BLANCA S. BAYO, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Holiday Utility Company, Inc.  
Territory Description  
Pasco and Pinellas Counties

Commence at the SW corner of the SE  $\frac{1}{4}$  of Section 24, Township 26 South, Range 15 East, for a Point of Beginning; thence run North along the West line of the SE  $\frac{1}{4}$  of said Section 24, a distance of 1,100 feet, more or less, to the South line of Beacon Square Unit 12 as recorded in Plat Book 9, Page 70 of the Public Records of Pasco County, Florida; thence East along the South line of said Beacon Square Unit 12, a distance of 1,103 feet, more or less, to the SE corner of Lot 1467 of said Unit 12; thence North a distance of 220 feet, more or less, to the NE corner of Lot 1450 of said Unit 12; thence East, a distance of 62.75 feet, more or less, to the SE corner of Lot 1225 of Beacon Square Unit 10-A as recorded in Plat Book 9, pages 63 and 64 of the Public Records of Pasco County Florida; thence North a distance of 85 feet, more or less, to the NE corner of said Lot 1225; thence East a distance of 250.74 feet, more or less, to the NW corner of Lot 1229 of Beacon Square Unit 11-A as recorded in Plat Book 9, page 73 of the Public Records of Pasco County, Florida; thence South a distance 85.51 feet, more or less, to the SW corner of said Lot 1229; thence East a distance of 40 feet, more or less, to the SE corner of said lot 1229; thence North a distance of 85.72 feet, more or less, to the NE corner of said Lot 1229; thence East a distance of 1,188.80 feet, more or less to the NE corner of Lot 1247 of said Unit 11-A; thence South a distance of 92.00 feet, more or less, to the SE corner of said Lot 1247; thence East along the South boundary of Beacon Square Unit 6 as recorded in Plat Book 8, page 139 of the Public Records of Pasco County, Florida; and along the South Boundary of Beacon Square Unit 5, as recorded in Plat book 8, page 103 of the Public Records of Pasco County, Florida; and along the South boundary of Beacon Square Unit 1, as recorded in Plat Book 8, page 37 of the Public Records of Pasco County, Florida; and along the South boundary of Beacon Square Unit 1-A as recorded in Plat Book 8, page 112 of the Public Records of Pasco County, Florida, a distance of 2,631.97 feet, more or less, to the Westerly right-of-way State Road No. 55, Section 14030 (U.S. Highway 19), as it is now established; thence South along said right-of-way, a distance of 1,898 feet, more or less, to a point on the North right-of-way of Plaza Drive as it is now constructed; thence S89°10'44"W, a distance of 1,279 feet, more or less, to a point on the East boundary of an existing utility easement; thence S01°13'29"E, a distance of 744 feet, more or less, to the South line of the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 30; thence West along said South line a distance of 1,392 feet, more or less, to the SW corner of the NW  $\frac{1}{4}$  of said Section 30; thence West along the South line of the North  $\frac{1}{4}$  of Section 25, a distance of 2,640 feet, more or less, to the SW corner of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of said Section 25; thence North along the West line of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of said Section 25, a distance of 1,320 feet, more or less, to the Point of Beginning;

Also

Commence at the NE corner of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 35, for a Point of Beginning; thence run South along the East line of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 35, a distance of 1,320 feet, more or less, thence continue South along the East line of the SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of



said Section 35, a distance of 1,320 feet, more or less, to the South line of said Section 35; thence West along the South line of said Section 35, a distance of 660 feet, more or less, to the NE corner of Tract 22 of Tampa-Tarpon Springs Land Company Subdivision of Section 2, Township 27 South, Range 15 East, as recorded in Plat Book 1, page 116 of the Public Records of Hillsborough County of which Pinellas County formerly was part; thence South along the East line of said Tract 22 and its Southerly extension thereof, a distance of 2,165 feet, more ore less, to the mean high water line of the North Bank of the Anclote River; thence meander in a Northwesterly direction along said mean high water line, a distance of 3,590 feet, more or less, to the Easterly boundary of the property owned by the Florida Power Company, as described in the final judgment of Civil Circuit No. 2015 dated February 23,1971 and recorded February 23, 1971 in Official Records Book No. 531, page 31 as Clerk's Instrument No. 263921 of the Public Records of Pasco County, Florida; thence North along the Easterly boundary of said Florida Power Company Property, a distance of 2,670 feet, more or less, to the NW corner of the NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 34, Township 26 South, Range 15 East; thence East a distance of 1,320 feet, more or less, along the North line of the NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of said Section 34; thence continue East along the North line of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 35, a distance of 1,320 feet, more or less, to the Point of Beginning.

Less

Commence at the Southeast corner of the Northwest  $\frac{1}{4}$  of Section 30, Township 26 South, Range 16 East; thence S89°03'03"W, a distance of 104.34 feet; thence N01°21'03"E, along the West right-of-way line of U.S. Highway 19 as it is now constructed, 2,061.39 feet, more or less, to the North right-of-way line of Plaza Drive as it is now constructed, for a Point of Beginning; thence due West for 1300 feet, more or less, along said right-of-way; thence due North 250 feet, more or less, to the North boundary of a parcel of land described in Official Records 509, page 20 of the Official Records of Pasco County; thence due East 1300 feet, more or less, along said boundary to the West right-of-way line of U.S. Highway 19; thence due South along the said right-of-way 250 more or less to the Point of Beginning.

Holiday Utility Company, Inc.  
Deleted Territory Description  
Pasco County

(Gulf Winds Parcel)

Commence at the SE corner of the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 35, Township 26 South, Range 15 East, for a Point of Beginning; thence run South along the East line of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 35, a distance of 660 feet, more or less; thence continue South along the East line of the SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 35, a distance of 1,320 feet, more or less, to the South line of said Section 35; thence West along the South line of said Section 35, a distance of 1,320 feet, more or less, to the SW corner of said Section 35; thence north along the West line of the SW  $\frac{1}{4}$  of said Section 35, a distance of 991.69 feet; thence N89°36'45"E, a distance of 686.30 feet; thence N00°09'54"W, a distance of 428.88 feet; thence N00°04'04"E, a distance of 236.37 feet; thence N89°19'55"E, a distance of 332.74 feet; thence N00°04'51"E, a distance of 332.75 feet, more or less, to the North line of the SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 35; thence East along the North line of the SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 35, a distance of 333.19 feet, more or less, to the Point of Beginning.

HOLIDAY UTILITY COMPANY, INC.  
SCHEDULE OF WATER RATES  
Water Monthly Service Rates  
Residential and General Service

Meter Sizes:	Base Facility Charge
5/8" x 3/4"	\$ 7.52
3/4"	11.28
1"	18.80
1 1/2"	37.60
2"	60.16
3"	120.32
4"	188.00
6"	376.00
Charge Per 1,000 gallons	\$ 2.14

Miscellaneous Service Charges	
Initial Connection	\$15.00
Normal Reconnection	15.00
Violation Reconnection	25.00
Premises Visit (In lieu of disconnection)	15.00

Service Availability Charges

Customer Connection (Tap-in) Charge

Meter Sizes:	
5/8" x 3/4"	\$200.00
1"	500.00
1 1/2"	1000.00
2"	1,600.00
3"	3,200.00
4"	5,000.00
6"	10,000.00