

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into retention of certificated area of Ellis & Company, Ltd. (Holiday Mall) by Floralino Properties, Inc. in Pasco County.

DOCKET NO. 991486-WU  
ORDER NO. PSC-01-1302-FOF-WU  
ISSUED: June 15, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER DELETING CERTAIN TERRITORY AUTHORIZED IN  
FLORALINO PROPERTIES, INC.'S CERTIFICATE NO. 153-W,  
ENCOMPASSING HOLIDAY MALL

BY THE COMMISSION:

BACKGROUND

Floralino Properties, Inc., (Floralino or utility), is a Class C utility located in southwestern Pasco County, Florida (County), which is in the Northern Tampa Bay Water-Use Caution Area, as designated by the Southwest Florida Water Management District. Floralino owns and operates water facilities on the east side of US Highway 19. According to its 1997 annual report, Floralino serves approximately 730 water customers with 1999 annual operating revenues of \$137,017 and net income of \$4,535.

Ellis & Company, Ltd. (Holiday Mall), a Floralino customer, had completed some remodeling in 1999 to Holiday Mall. Due to the remodeling, Holiday Mall needed increased fire flow to comply with the County code. Holiday Mall retained an outside consultant to test Floralino's fire line system on June 24, 1999, and July 7, 1999, and the results showed the utility's system to be deficient.

On October 1, 1999, Holiday Mall filed an Application for Deletion of Service Area - Emergency or Temporary Relief Requested.

DOCUMENT NUMBER-DATE

07451 JUN 15 2001

PSC-REC'D-REG REPORTING

In its application, Holiday Mall requested to be deleted from Floralino's service area because the utility was unable to provide adequate fire flow protection for the recently upgraded mall. Holiday Mall also alleged that the utility had low pressure problems in the past and would be unable to meet its current needs. In the alternative, Holiday Mall requested that it be released from Floralino's certificated territory for fire safety service alone. Included in its application, Holiday Mall attached a letter from the County which indicated that it was only willing to serve the mall if the mall was released for water and wastewater service.

On October 8, 1999, Floralino filed a letter which released Holiday Mall from Floralino's service territory for fire flow protection only. On October 25, 1999, Floralino requested that the fire flow tariff be deleted and held blank for future use. However, no revised tariff sheet was enclosed with the letter. Floralino does not provide wastewater service.

In a letter dated December 1, 1999, Holiday Mall indicated that it was requesting that we not act on Floralino's request to delete its fire flow tariff because of the uncertainty as to whether the County would provide fire flow service only and its expectation that it would be filing an amended deletion application. Subsequently, our staff was advised by the parties that the County had agreed to provide temporary fire flow service for a period of two years beginning on or about November 28, 1999, but the issue of a long-term solution had not been reached.

On November 29, 2000, Holiday Mall filed an Amended Application for Deletion of Service Area -- Emergency or Temporary Relief. In its prayer for relief, Holiday Mall renewed its request to be deleted from Floralino's service territory, added to the County's territory, and any emergency or temporary relief necessary to maintain service during the pendency of its application.

At the February 20, 2001, Agenda Conference, a recommendation was considered to initiate an investigation into whether to delete from Floralino's certificate certain territory encompassing Holiday Mall. By Order No. PSC-01-0555-FOF-WU, issued March 12, 2001, we initiated proceedings to delete the area encompassing Holiday Mall from Floralino's certificate.

DELETION OF TERRITORY

Section 367.111(1), Florida Statutes, states that:

Each utility shall provide service to the area described in its certificate of authorization within a reasonable time. If the commission finds that any utility has failed to provide service to any person reasonably entitled thereto, or finds that extension of service to any such person could be accomplished only at an unreasonable cost and that addition of the deleted area to that of another utility company is economical and feasible, it may amend the certificate of authorization to delete the area not served or not properly served by the utility, or it may rescind the certificate of authorization.

In accordance with Section 367.111(1), Florida Statutes, by Order No. PSC-01-0555-FOF-WU, we initiated proceedings to delete the area encompassing Holiday Mall from Floralino's certificate. We found that:

Currently, Holiday Mall is receiving temporary fire flow service from the County. Holiday Mall asserts that Floralino's facilities are unable to provide adequate service. Moreover, Holiday Mall has indicated that the County is only willing to continue to provide fire flow service until November 2001, after which time the service will be terminated unless the mall is released from Floralino's territory. We are not aware of any improvements that have been made to Floralino's system since the time that the initial fire flow tests conducted in June and July 1999. We believe that the utility has not provided a long-term resolution to the fire flow problem. For the foregoing reasons, we find that there are sufficient facts to support the initiation of a proceeding to delete the portion of Floralino's territory from Floralino's Certificate No. 153-W which encompasses Holiday Mall.

Id. at 4-5.

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Section 367.045(6), Florida Statutes, requires that we give 30 days' notice before we initiate a revocation, suspension, transfer or amendment action. Pursuant to Order No. PSC-01-0555-FOF-WU, notice was issued within seven days of the issuance date of the Order.

We note that the legal description in the notice which was provided pursuant to Order No. PSC-01-0555-FOF-WU, contained a duplicate line of description, specifically, "thence N 89°-14'-00" E" in paragraph 1, at lines 14-15. We find that this duplication has no impact on the territory described in the legal notice. Thus, we find that this duplication is a scrivener's error which does not invalidate the notice. However, for purposes of the legal description attached hereto as Attachment A, the scrivener's error has been corrected.

Subsections (5) and (6) of Rule 25-30.030, Florida Administrative Code, require that certain governing bodies, governmental agencies, and affected persons, including customers in the territory at issue, be noticed by regular mail or personal service. Notice was sent by regular mail to all relevant governmental agencies, utilities, and state officials within the County. Notice was also sent by regular mail, return receipt requested, to Floralino and Holiday Mall. The return receipt card indicates that Holiday Mall received the notice on March 7, 2001, and Floralino received the notice on March 8, 2001.

Rule 25-30.030(7), Florida Administrative Code, requires that notice be published once in a newspaper of general circulation in the territory proposed to be deleted. On March 8, 2001, notice was published in the Pasco Times. Additionally, notice was published in the Florida Administrative Weekly on March 9, 2001. In summary, we found in Order No. PSC-01-0555-FOF-WU, that Holiday Mall's complaint regarding insufficient fire flow and low pressure in conjunction with the utility's lack of responsiveness supported the initiation of deletion proceedings. We have noticed our intent to delete certain territory in Floralino's certificate encompassing Holiday Mall, in accordance with Section 367.045(6), Florida Statutes, and Rule 25-30.030, Florida Administrative Code. No timely protests have been received and the time for filing such has expired.

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For the foregoing reasons, the territory encompassed by Holiday Mall, set forth in Attachment A, shall be deleted from Floralino Properties, Inc.'s Certificate No. 153-W. The effective date of the deletion shall be November 28, 2001, or 10 days after notice that the interconnection with the County has been completed, whichever is earlier. The utility shall file the appropriate revised tariff sheets reflecting the deletion of territory within 30 days of the issuance date of the Order, and the tariffs shall be stamped approved upon our staff's verification that the interconnection with the County has been completed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the territory encompassed by Holiday Mall, set forth in Attachment A, which is attached hereto and incorporated herein by reference, shall be deleted from Floralino Properties, Inc.'s Certificate No. 153-W. It is further

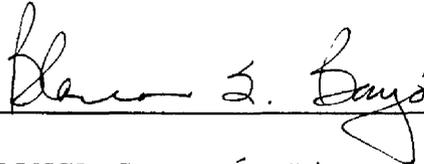
ORDERED that the effective date of the deletion shall be November 28, 2001, or 10 days after notice that the interconnection with Pasco County has been completed, whichever is earlier. It is further

ORDERED that the Floralino Properties, Inc., shall file the appropriate revised tariff sheets reflecting the deletion of territory within 30 days of the issuance date of this Order, and the tariffs shall be stamped approved upon our staff's verification that the interconnection with Pasco County has been completed. It is further

ORDERED that the docket shall be administratively closed upon our staff's verification that the interconnection with the County has been completed.

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By ORDER of the Florida Public Service Commission this 15th  
day of June, 2001.



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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( 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 Records and Reporting, 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 Records and reporting 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.

**ATTACHMENT A**

TERRITORY DESCRIPTION TO BE LESS AND EXCEPTED:

**HOLIDAY MALL**

Tract 38 and that portion of Tract 39 of Tampa-Tarpon Springs Land Co. Subdivision of Section 19, Township 26 South, Range 16 East, as shown on plat recorded in Plat Book 1, Pages 68, 69, and 70 of the public records of Pasco County, Florida, lying East of U.S. Highway No. 19 (State Road No. 55) as it is now constructed; LESS AND EXCEPT the following described portions of said tracts:

1. Commence at the Northwest corner of the Southeast 1/4 of said Section 19; thence run along the North boundary of the Southeast 1/4 of said Section 19, N 89°-14'-00" E a distance of 404.21 feet; thence S 4°-26'-28" W a distance of 15.05 feet to the South right of way line of Moog Road for a POINT OF BEGINNING; thence continue S 4°-26'-28" W a distance of 185.00 feet; thence S 89°-14'00" W a distance of 150.00 feet to the Easterly right of way line of State Road No. 55, Section 14030 (U.S. Highway No. 19) as it is now constructed; thence along said right of way line a distance of 185.01 feet along the arc of a curve to the right, to the South right of way line of Moog Rd. said curve having a radius of 7,507.44 feet and a chord of 185.00 feet which bears N 4°-26'-28" E; a distance of 150.00 feet to the POINT OF BEGINNING:
2. Commence at the intersection of the Southerly boundary of said Tract 39 and the Easterly right of way line of State Road No. 55 (U.S. Highway No. 19) as it is now constructed for a POINT OF BEGINNING; thence run along the said Easterly right of way line of State Road No. 55, N 1°-24'-23" E a distance of 150.00 feet; run thence N 89°-16'-17" E a distance of 175.00 feet; thence run S 1°-24'-23" W a distance of 150.00 feet; thence run S 89°-16'-17" W a distance of 175.00 feet along the Southerly boundary of said Tract 39 to the POINT OF BEGINNING at the Easterly right of way line of State Road No. 55:

3. Commence at the Northeast corner of Tract 38 for a POINT OF BEGINNING the Northeast corner of said Tract 38 being 15.0 feet South of the North boundary of the Southeast 1/4 of said Section 19; thence run S  $0^{\circ}-23'-57''$  W a distance of 975.56 feet; thence run S  $89^{\circ}-16'-17''$  W a distance of 90.0 feet; thence run N  $0^{\circ}-23'-57''$  E a distance of 360.00 feet; thence run N  $89^{\circ}-14'-00''$  E a distance of 60.00 feet; thence run N  $0^{\circ}-23'-57''$  E a distance of 370.00 feet; thence run S  $89^{\circ}-14'-00''$  W a distance of 80.00 feet; thence run N  $0^{\circ}-23'-57''$  E a distance of 245.0 feet, more or less, to the Southerly right of way line of Moog Road; thence run N  $89^{\circ}-14'-00''$  E along said Southerly right of way line of Moog Road a distance of 110.00 feet to the POINT OF BEGINNING.