

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Sue Warner ) DOCKET NO. 920735-WU  
against FLORALINO PROPERTIES, ) ORDER NO. PSC-93-0022-FOF-WU  
INC. in Pasco County regarding ) ISSUED: 01/05/93  
removal of trees from utility )  
easement. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION

ORDER REQUIRING FLORALINO PROPERTIES, INC.  
TO REIMBURSE COMPLAINANT AND TO SEND RETRACTION  
LETTERS TO CUSTOMERS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are preliminary in nature, and as such, will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

Floralino Properties, Inc. (Floralino or utility) is a Class C water utility providing water service to approximately 717 customers in Pasco County, Florida. On May 6, 1992, we received a letter from a Floralino customer, Ms. Sue Warner, concerning complaints about Floralino Properties, Inc. Ms. Warner's letter stated that she had paid for repairs made to the utility's property on three occasions. The first repair was performed by the utility, which she had contacted upon discovering a leak in the pipes between the curb and the meter. The utility service representative offered to make the necessary repairs but only if she would agree to pay one-half of the cost. She asked that it be repaired, and she paid \$30.00 for the work, even though the repair was made to utility property. Soon afterward, the leak reappeared. She contacted the utility which made several appearances but refused to replace the necessary parts or repair the damage. Thereafter, she discovered a handwritten note from the utility in which the utility stated that she should not contact it further for any repair work needed in the future.

DOCUMENT NUMBER-DATE

00078 JAN-58

FPSC-RECORDS/REPORTING

Ms. Warner then decided to contact a plumber in order to have the leak repaired. The plumber repaired the leak, and she paid for the repairs to the utility's property. She did not request reimbursement for the money spent for this repair because she was unable to locate the receipt for the work, and she does not remember the amount charged for the services.

However, Ms. Warner's letter requested reimbursement for another repair bill for repairs to utility property performed by a plumber in 1992. She discovered a large leak from pipes located on the utility's side of the meter. The utility sent service representatives to her home, but they refused to make the needed repairs because a concrete sidewalk was located above the piping. The utility has stated in correspondence to us that it considers pipes under concrete walkways inaccessible, and, therefore, not within the utility's responsibility to maintain. Thereafter, the private plumber that Ms. Warner contacted repaired the pipes beneath the sidewalk. She paid \$153.08 to the plumber to make the necessary repairs to the utility's property.

In Order No. 20653, issued January 24, 1989, as a result of a staff assisted rate case filed by Floralino, we told the utility to "accept its responsibility for maintenance of service lines up to and including the meter, meter control valves, and meter box." In addition, we stated that the utility is responsible for any consequential damages caused by water leaks or by its repairs. However, the utility has failed to comply with Chapter 367, Florida Statutes, and our rules by refusing to accept its responsibility to maintain utility property.

In addition to the complaint concerning the utility's failure to make repairs to its property, Ms. Warner informed us that she had been notified by the utility that she was required to remove the trees in her backyard which were growing in Floralino's easement. We discovered that the utility installed its lines along the boundaries of many customers' backyards, instead of along the side of the neighborhood streets. Therefore, the utility has easements running across many of its customers' backyards. Since the installation of these lines, trees have been planted and have grown quite large.

Recently, the company experienced a break in a main line located in a neighborhood near the complainant's community, and it had to perform repairs as a result of tree roots crushing the main line.

This has caused the utility to become concerned about trees located on or near the utility's easements throughout its service area.

As a result, the utility notified some of its customers of its concern regarding the trees, and customers have complained about receiving that notice. Ms. Sue Warner complained that she has received two letters from the utility demanding that she remove any trees located within the utility's easement across her backyard in order to prevent possible future damage to the utility's lines. In addition to requiring her to remove any trees, the second notice stated that any fences or other obstructions would have to be removed.

Ms. Warner, the complainant, submitted a copy of a letter which she had received from the utility in April 1992. The letter demands that the customer remove the trees which are situated over the utility's easement which is located in the customer's backyard within 30 days after receiving the letter. We have discovered that many of the utility's customers received the identical letter. Ms. Warner was frightened and upset by the tone of the demand. We also discovered that, along with the letter, the customers received a copy of a complaint filed by the utility suing a customer residing in a nearby subdivision for approximately \$4,500 in damages as a result of a leak in a main line caused by the customer's trees. The utility decided to demand that the remaining customers who have trees in its easement have the trees removed prior to any possible future damage occurring elsewhere.

Furthermore, the utility sent Ms. Warner a second notice informing her that the utility would be walking her property in order to determine if any trees or other obstructions to the utility's access to its lines existed. The utility states in the notice that if such obstructions exist, the customer is required to remove them.

The utility has responded to the complaint by stating that the homeowner's deed restrictions legally require its customers to pay for any maintenance necessary to the utility's property within the easements. However, Chapter 367, Florida Statutes, provides that we have the exclusive jurisdiction over privately owned water and wastewater utilities, and, as such, our statutes, rules, and orders control whenever any conflicting deed restrictions exist. Pursuant to Rule 25-30.231, Florida Administrative Code, the utility is responsible for any maintenance and repair involving the service lines up to and including the service control valve, meter, and meter box. This includes maintenance and repairs in the utility's

ORDER NO. PSC-93-0022-FOF-WU  
DOCKET NO. 920735-WU  
PAGE 4

easements. The utility does not have the authority to demand that customers remove trees, fences, or other property from the easements.

Therefore, based on the information above, we find that it is appropriate to order the utility to reimburse Ms. Warner, the complainant herein, for \$183.08, which is the amount that she has paid the utility and private plumbers to make repairs to utility property. The utility shall pay Ms. Warner within 30 days of the effective date of this Order.

In addition, we find that it is appropriate to order the utility to send a retraction letter to every customer. The letter should retract the previous demand letter and notice which required the customers to remove the trees growing in the utility's easements and any other obstructions discovered by the utility. The utility shall cease sending any other threatening correspondence to its customers, and instead, it is ordered to send a letter which requests customers to cooperate with any problems the utility may have concerning the possible need to remove specific trees in the easements. The retraction letter shall be sent to all of the utility's customers within 30 days of the effective date of this Order. If the utility fails to comply with the provisions of this Order, show cause proceedings may be initiated.

The utility is free to submit any tariff proposals for the consideration of this Commission requesting that it be authorized to collect the costs of making repairs necessary when utility property has been damaged as a direct result of being crushed by tree roots.

Within 15 days of its compliance with the provisions of this Order, the utility shall submit to this Commission a copy of a cancelled check or other evidence that Ms. Warner has been reimbursed and a copy of the retraction letter with an affidavit that it has been distributed to all customers.

Based upon the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Floralino Properties, Inc. shall, within 30 days of the effective date of this Order, reimburse its customer, Ms. Sue Warner, of 5041 Farley Drive, Holiday, Florida 34690, in the amount of \$183.08. It is further

ORDER NO. PSC-93-0022-FOF-WU  
DOCKET NO. 920735-WU  
PAGE 5

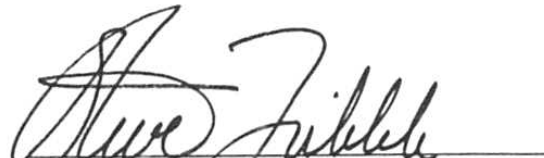
ORDERED that Floralino Properties, Inc. shall, within 30 days of the effective date of this Order, send all customers a letter informing them that the demand letter and notice they received earlier are retracted. It is further

ORDERED that Floralino Properties, Inc. shall, within 15 days of its compliance with this Order, submit to this Commission a copy of a cancelled check or other evidence that Ms. Warner has been reimbursed, and a copy of the retraction letter with an affidavit that it has been distributed to all customers. It is further

ORDERED that the provisions of this Order are issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that the utility shall maintain all utility property as required by Chapter 367, Florida Statutes, and Commission rules.

By ORDER of the Florida Public Service Commission this 5th day of January, 1993.



STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

LK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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

ORDER NO. PSC-93-0022-FOF-WU  
DOCKET NO. 920735-WU  
PAGE 6

hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 26, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.