

State of Florida



Public Service Commission

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DATE: MAY 17, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF REGULATORY OVERSIGHT (WALDEN) *OBM*
DIVISION OF LEGAL SERVICES (CHRISTENSEN) *WJG* *sncl* *re* *pgg*

RE: DOCKET NO. 991486-WU - INVESTIGATION INTO RETENTION OF
CERTIFICATED AREA OF ELLIS & COMPANY, LTD. (HOLIDAY MALL)
BY FLORALINO PROPERTIES, INC.
COUNTY: PASCO

AGENDA: MAY 29, 2001 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\991486A.RCM

CASE BACKGROUND

Floralino Properties, Inc., (Floralino or utility), is a Class C utility located in southwestern Pasco County, Florida, 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 in Pasco County (County). 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,

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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. 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 this letter. Floralino does not provide wastewater service.

In a letter dated December 1, 1999, Holiday Mall indicated that it was requesting that the Commission 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, 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, the

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Commission initiated proceedings to delete the area encompassing Holiday Mall from Floralino's certificate.

Pursuant to Order No. PSC-01-0555-FOF-WU, notice of the Commission's intent to delete territory was issued. Notice was sent by regular mail to all governmental agencies, utilities, and state officials for Pasco County, Florida. 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. On March 8, 2001, notice was published in the Pasco Times. On March 9, 2001, notice was published in the Florida Administrative Weekly. No protests have been filed and the time for filing such has expired.

On March 15, 2001, Gerald T. Buhr, Esquire, of Buhr & Associates, P.A., filed a Motion to Withdraw as Counsel of Record for Floralino. By Order No. PSC-01-0862-PCO-WU, issued April 5, 2001, the motion was granted.

This recommendation addresses the deletion of Holiday Mall from Floralino's certificate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission delete certain territory authorized in Floralino Properties, Inc.'s Certificate No. 153-W, encompassing Holiday Mall?

RECOMMENDATION: Yes. Staff recommends that the Commission delete the territory encompassed by Holiday Mall from Floralino Properties, Inc.'s Certificate No. 153-W. (CHRISTENSEN, WALDEN)

STAFF ANALYSIS: As stated in the Case Background, 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.

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, issued March 12, 2001, the Commission initiated proceedings to delete the area encompassing Holiday Mall from Floralino's certificate. The Commission 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.

Section 367.045(6), Florida Statutes, requires that the Commission give 30 days' notice before it initiates 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.

Staff notes 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. Staff believes that this duplication has no impact on the territory described in the legal notice. Thus, staff believes 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 governmental agencies, utilities, and state officials for Pasco County, Florida. 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. No protest was received and the time filing a protest has expired.

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In summary, the Commission 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. The Commission has noticed its 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 protests have been received and the time for filing such has expired. Therefore, staff recommends that the Commission delete the territory encompassed by Holiday Mall set forth in Attachment A from Floralino's Properties, Inc.'s Certificate No. 153-W.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. The docket should be closed. (CHRISTENSEN)

STAFF ANALYSIS: If the Commission approves Staff's recommendation in Issue 1, no further action is necessary and this docket should be closed.

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

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15.0 feet South of the North boundary of the Southeast 1/4 of said Section 19; thence run S 0°-23'-57" W a distance of 975.56 feet; thence run S 89°-16'-17" W a distance of 90.0 feet; thence run N 0°-23'-57" E a distance of 360.00 feet; thence run N 89°-14'-00" E a distance of 60.00 feet; thence run N 0°-23'-57" E a distance of 370.00 feet; thence run S 89°-14'-00" W a distance of 80.00 feet; thence run N 0°-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°-14'-00" E along said Southerly right of way line of Moog Road a distance of 110.00 feet to the POINT OF BEGINNING.