

ORIGINAL

Matilda Sanders

From: Linda Strumski [lstrumski@pascocountyfl.net]
Sent: Wednesday, August 16, 2006 2:10 PM
To: Filings@psc.state.fl.us
Cc: Joseph Richards; Katherine Fleming; Jennifer Brubaker
Subject: Motion to Dismiss
Attachments: Motion to Dismiss.pdf

Attached please find for filing:

Docket No. 030458-WU

Motion to Dismiss filed on behalf of Pasco County.

Total number of document pages = 3

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DOCUMENT NUMBER-DATE

07362 AUG 16 06

FPSC-COMMISSION CLERK

ORIGINAL

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

MOTION TO DISMISS

COMES NOW, Pasco County, by and through the undersigned attorney and files this Motion to Dismiss pursuant to Fla.R.Civ.P.1.420 and Rule 28-106.204, F.A.C., and as grounds therefore alleges that:

1. Holiday Utilities has failed to prosecute this matter, has delayed progress toward final hearing and failed to promote the just, speedy and inexpensive determination of all aspects of this case.

2. Pursuant to the first Order Establishing Procedure (Order No. PSC-06-0198-PCO-WU), Holiday's direct testimony was due in April 2006. Holiday's testimony, however, failed to meet the burden of proof and the entire schedule in this matter had to be re-set with a new hearing date and time to file testimony.

3. Pursuant to the Order Modifying Procedural Order No. PSC-06-0463-PCO-WU, Holiday Utilities direct testimony and exhibits were due on August 14, 2006.

4. Holiday Utilities has failed to fully comply with said Order as of today August 16, 2006. Apparently, an insufficient number of copies were filed with the Commission today, but the County has not received a copy and therefore, cannot begin to craft its testimony in response.

5. Pasco County served Holiday Utilities with a First Set of Interrogatories and First Request for Production on May 19, 2006, pursuant to Order No. PSC-06-0198-PCO-WU,

DOCUMENT NUMBER-DATE

07362 AUG 16 8

FPSC-COMMISSION CLERK

issued March 13, 2006 (Order Establishing Procedure). Any objection or request for clarification to the discovery was to be made within 10 days of service of the request. Holiday Utilities' responses were due on June 23, 2006. Holiday neither objected nor responded to the discovery request.

6. On July 10, 2006, Pasco County filed a Motion to Compel Discovery. Holiday Utilities failed to respond to the motion, and the time for filing such response expired.

7. Prior to the Motion to Compel, Pasco County contacted Holiday's attorney regarding the discovery requests. Holiday's attorney said he would check with his client, but he failed to respond back to Pasco County.


8. Pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, the Prehearing Officer assigned to this matter issued an Order Granting Motion to Compel on August 8, 2006 requiring Holiday to comply with the discovery requests within seven days from the date of the Order, or by August 15, 2006. Holiday did not fully comply with this deadline.

9. Although Pasco County received responses late on August 15, 2006, the responses contain barely legible hand written answers. Their cryptic answers also require the County to schedule a time to review Holiday's documents at its office. This production will take more time to schedule and execute. This further delay will adversely impact the County as it must file testimony in less than 30 days. We also understand that the Commission did not receive the response until today.

10. Holiday's failure to comply with these deadlines has prejudiced Pasco County. Holiday's delay has impaired the County's ability to fully and timely prepare its testimony.

11. The Commission has the authority to dismiss this case pursuant to Rules 28-106.204 and 28-106.211, F.A.C.

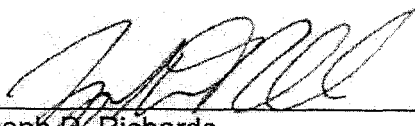
WHEREFORE, Pasco County respectfully requests the Commission to dismiss this matter pursuant to Fla.R.Civ.P.1.420 and Rules 28-106.204 and 28-106.211, F.A.C.



Joseph D. Richards, Esquire

Certificate of Service

I HEREBY CERTIFY that I filed the foregoing Motion to Dismiss electronically with the Florida Public Service Commission at filings@psc.state.fl.us and a true and correct copy of the foregoing was served via Electronic Mail and regular U.S. Mail upon Holiday Utility Company, Inc., c/o Brian P. Armstrong, Esquire, Nabors, Giblin & Nickerson, The Pointe, Suite 1060, 2502 Rocky Point Drive, Tampa, FL 33607, barmstrong@ngn-tally.com and Katherine E. Fleming, Senior Attorney, keflemin@psc.state.fl.us and Jennifer Brubaker, jbrubake@psc.state.fl.us, Office of General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399 keflemin@psc.state.fl.us, this 16th day of August, 2006.



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