

TALLAHASSEE  
Suite 200  
1500 Mahan Drive  
Tallahassee, Florida 32308  
(850) 224-4070 Tel  
(850) 224-4073 Fax

Nabors  
Giblin &  
Nickerson P.A.  
ATTORNEYS AT LAW

TAMPA  
The Pointe, Suite 1060  
2502 Rocky Point Drive  
Tampa, Florida 33607  
(813) 281-2222 Tel  
(813) 281-0129 Fax

August 21, 2006

By Electronic Mail and Hand Delivery

Ms. Blanca S. Bayo, Director  
Division of Commission Clerk  
And Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Docket No. 030458-WU: Amended And Restated Application For Transfer Of  
Majority Organizational Control And Amendment To Certificate

Dear Ms. Bayo:

Transmitted herewith is an original and 15 copies of Holiday Utility Company,  
Inc.'s Response to Motion to Dismiss.

Please acknowledge receipt of this motion by date-stamping the enclosed copy of  
this letter and returning it to the person filing this information.

Thank you for your assistance in connection with this matter.

Very truly yours,

  
Brian P. Armstrong

cc: Joseph Richards, Esq.  
(By electronic mail and overnight mail)

DOCUMENT NUMBER-DATE

07569 AUG 21 06

FPSC-COMMISSION CLERK

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

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DOCKET NO. 030458-WU

RESPONSE TO MOTION TO DISMISS

COMES NOW, Holiday Utility Company, Inc. ("Holiday"), by and through the undersigned attorney and files this Response to 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 denies that it 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. As confirmed by the title applied by the Commission to this matter, Holiday filed a simple transfer application in this docket. Upon Commission Staff review, Staff realized that the Commission had authorized a legal description of Holiday's service territory to be included in Holiday's tariff which was different than the description contained in the Commission's original order approving the creation of Holiday and granting Holiday a defined service territory. Upon such discovery, the parties met or otherwise discussed these matters on several occasions, ultimately agreeing to bifurcate the issues of transfer from the issues raised by the Commission's error.

3. Pursuant to the first Order Establishing Procedure (Order No. PSC-06-0198-PCO-WU), Holiday filed its direct testimony in April 2006. Due to the bifurcation of the transfer issue from the service territory description issues, Commission Staff believed that Holiday's testimony should be expanded to address certain issues pertinent to an application for authority to expand a utility's service territory. The Commission's rules and procedures differ between a transfer application and a request to expand service territory. Therefore, the parties agreed that a new schedule should be established on this matter.

4. Pursuant to the Order Modifying Procedural Order No. PSC-06-0463-PCO-WU, Holiday's direct testimony and exhibits were due on August 14, 2006. While the testimony was ready for filing on August 14, the person delivering the documents arrived at the Public Service Commission Clerk's office at 5:05 p.m. The staff attorney and Pasco County were so informed by e-mail transmission. The testimony and exhibits were duly filed with the Commission on the next day. Pasco County has informed Holiday that its copy of the testimony was not received on August 15<sup>th</sup>. Holiday is investigating this matter.

5. Holiday provided responses to Pasco County's discovery on August 15, 2006. In response to one of the County's documents requests, Holiday asked the County to schedule a time to review Holiday's documents at its office. Holiday and the County have scheduled a time for such review.

6. Holiday's compliance with applicable deadlines has in no way prejudiced Pasco County or impaired the County's ability to fully and timely prepare its testimony. The discovery requested by Pasco County consists of only two interrogatories and two

document requests. One interrogatory and one document request required Holiday to identify property owned by an individual in Pasco County, now deceased. The County is the best source for such information as it is maintained in a County Office and a County database which is available on the internet.

The other interrogatory and document request relates to information of which Pasco County remains intimately familiar as it monitors the activities of investor-owned utilities within the County's borders in its effort to halt the growth of such utilities. As indicated previously, pertinent documents have been made available to Pasco County.

7. A dismissal of this portion of the docket will accomplish no purpose as Holiday and the County would be forced to incur additional expense in a re-filed application.

WHEREFORE, Holiday respectfully requests the Commission to deny Pasco County's motion to dismiss this matter.

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Brian P. Armstrong, Esquire

### Certificate of Service

I HEREBY CERTIFY that I filed the foregoing Response to Motion to Dismiss electronically with the Florida Public Service Commission at [filings@psc.state.fl.us](mailto: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 Joseph D. Richards, Esquire, Office of the County Attorney, West Pasco Government Center, 7530 Little Road, Suite 340, New Port Richey, Florida, 34654, [jrichards@pascocountyfl.net](mailto:jrichards@pascocountyfl.net) and Katherine E. Fleming, Senior Attorney, [keflemin@psc.state.fl.us](mailto:keflemin@psc.state.fl.us) and Jennifer Brubaker, [jbrubake@psc.state.fl.us](mailto:jbrubake@psc.state.fl.us), Office of General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399 [Keflmin@psc.state.fl.us](mailto:Keflmin@psc.state.fl.us), this 21<sup>st</sup> day of August, 2006.



Brian P. Armstrong  
Florida Bar No.: 888575  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308  
Telephone: (850) 224-4070  
Facsimile: (850) 224-4073