

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 930164-WU
amendment of Certificate No.) ORDER NO. PSC-93-1031-FOF-WU
116-W in Pasco County by Holiday) ISSUED: July 13, 1993
Gardens Utilities, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER GRANTING PARTIAL WAIVER OF NOTICING REQUIREMENTS,
PROVIDING FOR ADMINISTRATIVE APPROVAL OF APPLICATION FOR
AMENDMENT OF CERTIFICATE TO INCLUDE ADDITIONAL
TERRITORY AND CLOSING DOCKET IF NO OBJECTIONS ARE RECEIVED

BY THE COMMISSION:

BACKGROUND

On February 18, 1993, Holiday Gardens Utilities, Inc. (Holiday Gardens or utility) filed an application for an amendment of Certificate No. 116-W. Holiday Gardens is a Class C utility providing water service in Pasco County. The utility provides service to approximately 448 customers. The utility's customers receive wastewater service from private septic tanks. The utility's 1992 annual report shows an annual operating revenue of \$48,016 and a net operating income of \$10,489.

During the pendency of a staff assisted rate case proceeding in 1989, we discovered that the utility was serving approximately 44 residential and small general service customers outside of its certificated territory. In Order No. 21920, issued September 19, 1989, in Docket No. 890169-WU, we stated that, "[T]he matter of the utility providing service to uncertificated territory will be addressed in a separate proceeding." However, during the utility's next staff assisted rate case in Docket No. 920418-WU, we discovered that the utility had failed to file an application to amend its certificate to correct its certificated territory. By letter dated June 29, 1992, we informed Ms. Linda Emerick, President of Holiday Gardens, of the need to file an application for amendment. The application was filed on February 18, 1993, and this docket was opened to process the amendment.

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FLORIDA PUBLIC SERVICE COMMISSION

NO SHOW CAUSE APPROPRIATE

We do not find it appropriate to initiate a show cause proceeding against the utility for its violation of Section 367.045, Florida Statutes, for several reasons. First, the utility took the necessary steps to file the application once it was made aware of the violation. Although our Order issued in 1989 addressed the fact that the utility was serving outside of its certificated area, the utility apparently did not understand that it should have filed an application for amendment. According to Ms. Emerick, the utility believed that our staff was going to open a docket to approve the extension of territory. When it was pointed out that it is the utility's responsibility to file amendment applications, the utility complied. Secondly, it does not appear that any customers or other utilities were harmed by this violation. Since in this case the violation has been corrected and no apparent harm has been done, we believe that a show cause proceeding is not necessary or appropriate.

REQUEST FOR WAIVER OF SOME NOTICING REQUIREMENTS GRANTED

The utility has requested a waiver of the noticing requirements contained in Rule 25-30.030, Florida Administrative Code. This rule requires a utility which files an application for extension of its service area to provide notice by certified mail or personal service to: the governing body of the county; any municipality within a four-mile radius of the proposed territory; the regional planning agency; Public Counsel and the Commission. Also, any utilities within a four-mile radius of the proposed territory must be notified by certified mail. In addition, the notice is required to be published once each week for three consecutive weeks in a newspaper of general circulation in the territory proposed to be served. Further, the rule requires that each customer in the proposed territory must be noticed by regular mail or personal service.

Holiday Gardens has provided several reasons why it believes the noticing rule should be waived in this case. The utility stated that the customers in the proposed area have been served by Holiday Gardens for approximately 15 to 20 years. During that time, the service provided by the utility has consistently met DER rules and standards. In the utility's opinion, noticing of these customers would serve no useful purpose. Also, the proposed service territory is adjacent to Holiday Gardens's certificated territory and would logically be served by Holiday Gardens. The

proposed territory is bounded on one side by U.S. Highway 19, which is a major six lane highway, and on two other sides by County Road 595, which is a major road. These roads act as natural boundaries which would have to be crossed if any other utility were to serve the territory in question. The neighboring utilities include Forest Hills Utilities, Inc., Dixie Grove Estates, Inc., and Utilities, Inc. of Florida. Holiday Gardens has received written statements from Forest Hills Utilities, Inc., and Dixie Grove Estates, Inc., which indicate that they are not interested in serving the customers in the proposed territory.

Further, the utility asserts that both the time and cost involved in noticing is burdensome and detrimental to the utility. The utility has estimated that the total cost of complying with the noticing requirements in Rule 25-30.030, Florida Administrative Code, would be \$524, including \$300 to complete the newspaper noticing and \$224 to send certified letters to the utilities in a four-mile radius and the customers.

We agree with the utility that, in this case, no useful purpose would be served by requiring Holiday Gardens to complete all of the noticing requirements contained in Rule 25-30.030, Florida Administrative Code. Further, some of these noticing requirements are contained in Section 367.045, Florida Statutes, which cannot be waived. This statute requires notice of amendment applications to the county or municipality affected, the Public Counsel, the Commission and to "such other persons and in such other manner as may be prescribed by commission rule".

We find it appropriate in this instance to lessen the noticing requirements contained in the rule. Therefore, we find that the utility shall be required to notice the utilities and the governmental bodies within a four-mile radius, but by regular mail instead of certified mail. In addition, we find that only one newspaper notice shall be required instead of once a week for three consecutive weeks.

APPLICATION

Except as to the outstanding noticing requirements and the previous service provided to customers outside of its certificated territory, Holiday Gardens' application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and rules concerning an application for an amendment of certificate. The application contains a check for

\$150, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(1)(e), (f) and (i), Florida Administrative Code. A legal description of the requested territory is appended to this Order as Attachment A.

In addition, the applicant has provided evidence in the form of a chattel security agreement with satisfaction and title insurance that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.036(1)(d), Florida Administrative Code. The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission.

The utility is requesting additional territory for customers that have been served for years. The water treatment plant can treat 288,000 gallons per day (gpd), and current flows are approximately 110,000 gpd. The proposed new territory's flow is already included in the current flow. Therefore, we find that Holiday Gardens has sufficient capacity to continue serving the requested territory.

According to the utility, Holiday Gardens employs licensed operators. In the most recent rate case, we determined that the quality of service provided by the utility was satisfactory. Our investigation also included contacting the Department of Environmental Regulation from which we learned that there are no outstanding notices of violation issued for the Holiday Gardens system. Consequently, we find that the utility has demonstrated the technical expertise to provide quality service to these customers.

The utility's rates and charges were originally established by this Commission in Order No. PSC-93-0013-FOF-WS, effective January 27, 1993, in Docket No. 920418-WU. Holiday Gardens shall continue to charge customers in the additional territory the rates and charges for residential and general service as approved in its tariff until other rates and charges are approved by this Commission.

Based on the above information, we find that it is in the public interest to grant Holiday Gardens' request to amend Certificate No. 116-W, to include the territory in Pasco County as described in Attachment A. The utility has returned the

certificate for entry and filed revised tariff sheets that reflect the territory amendment. Therefore, if no timely objections are received to the noticing required, the application filed by Holiday Gardens to include the territory described in Attachment A shall be administratively approved, and the docket shall be closed.

It is, therefore,

ORDERED by the Florida Public Service Commission that Holiday Gardens Utilities, Inc., 4804 Mile Stretch Drive, Holiday, Florida 34690, shall comply with the noticing requirements as set forth in the body of this Order. It is further

ORDERED that if no timely objections to the noticing required herein are filed, the application for amendment of Certificate No. 116-W, held by Holiday Gardens Utilities, Inc., shall be administratively approved to include the territory described in Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that the customers in the territory added herein shall be charged the current rates and charges approved in Holiday Gardens Utilities, Inc.'s tariff. It is further

ORDERED that if no timely protests are received, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 13th day of July, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LK

by: Kay Higon

Chief, Bureau of Records

Chairman Deason and Commissioner Johnson dissented to this Commission's decision regarding the partial waiver of the noticing rule requirements.

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 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 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 or sewer 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

ATTACHMENT A

HOLIDAY GARDENS UTILITIES, INC.

Pasco County

A portion of the Southwest Quarter of Section 29, Township 26 South, Range 16 East, Pasco County, Florida being more particularly described as follows:

Commencing at the SE corner of the SW quarter of said Section 29 for a Point of Beginning, run North 00° 00' 39" East 168.00 feet to a point on the boundary of the present territory served; thence the following said boundary in successive courses and distances as follows;

South 89° 42' 02" East 501.55 feet;
South 00° 03' 03" West 168.00 feet;
South 89° 42' 02" East 100.00 feet;
North 00° 03' 03" East 168.00 feet;
South 89° 42' 02" East 280.00 feet;
North 00° 03' 03" East 832.07 feet;
South 89° 42' 18" East 440.58 feet;

Thence departing boundary of said present territory served; South 00° 02' 15" West 1000.61 feet returning to the Point of Beginning.

And

The Southeast Quarter of Section 30, Township 26 South, Range 16 East: From the Southeast Quarter of said section 30, also the Point of Beginning; run along the Southerly line of said section west 879 feet; thence North 1165 feet; thence East 879 feet; thence South 1165 feet returning to the Point of Beginning.