

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF FLORIDA

Docket No. 991486-WU

In Re: Application of Ellis & Company, Ltd. (Holiday Mall) to be deleted from territory in Pasco County served by Floralino Properties, Inc.

MOTION TO DISMISS OR STRIKE APPLICATION

COMES NOW, Floralino Properties, Inc. ("Floralino") by and through its undersigned counsel, and files this Motion To Dismiss or Strike the Application for Deletion identified above filed by Ellis & Company, Ltd. ("Holiday Mall"), and says:

**I. Motion To Strike**

1. Holiday Mall has filed a pleading which purports to be an "application" to "delete" a parcel of property from the service territory of Floralino.

2. The Rules of the PSC do not provide a basis for such a pleading, or even a legal right to request such an action. Although rule 25-22.036 FAC provides that:

An application is appropriate when a person seeks authority from the Commission to engage in an activity subject to Commission jurisdiction.

The person requesting action must cite some rule in support of the request. In this instance, no rule is cited, because no rule supports such a request. Although the PSC would appear to have the

jurisdiction to remove a portion of property from a utility's territory under rule 25-30.036(4)

FAC, that rule provides that the request for deletion must come from the utility. Although the

PSC may also have jurisdiction to remove territory from a utility's certificate if the utility refuses

to serve the territory, that issue would only arise as a result of a show cause order or an

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OTH \_\_\_\_\_

unresolved complaint.

3. The PSC rules do not provide standing or any point of entry for a proposed, or existing customer to “apply” to remove itself from the certificated territory of a utility.

WHEREFORE, Floralino requests that the Commission find that the “application” lacks any legal basis in form, is an improper pleading before the Commission, and is null and void.

## **II. Motion To Dismiss**

4. Even if Holiday Mall could contend the PSC, through its general powers of regulation, has the jurisdiction to remove territory from Floralino without an application from Floralino or a complaint from Holiday Mall, the Application fails to state sufficient facts to establish even the most minimal case that the utility should lose that territory.

5. The application states no specific provision of the PSC rules entitling it to deletion from the certificated territory. It simply states that “Floralino is unable to supply the needed service . . . .” Even if this were true, it would be merely a cause for complaint to the PSC, rather than deletion from the territory.

6. It is Floralino’s responsibility to provide service to Holiday Mall in accordance with the terms and conditions of Floralino’s tariffs.

7. As proof of its assertions, Holiday Mall submits results from one test conducted by the Mall’s agents. Although the application states, in a somewhat cursory manner, the apparent rules applying to the Holiday Mall’s requirements for fire service, nowhere does the application state a legal obligation on the part of Floralino to provide those alleged requirements.

8. The Application states that if Floralino has pipes that do not meet their needs, they can be removed from Floralino’s territory. Floralino’s tariffs, page 9.0, states that “Extensions

will be made to the Company's facilities in compliance with Commission Rules and Orders and the Company's tariff." It is a standard practice accepted by the Commission, that when a commercial customer has special needs for improvement of the utility's facilities, those improvements are made at the expense of the customer having the unique needs, rather than adding the improvements to the rate base so that the other customers not enjoying those unique facilities have to pay for them. Furthermore, the Holiday Mall always has the option to accept the flows and pipes as-is, and make arrangements for fire flows on-site with their own pressure/storage tanks, emergency fire wells, and the like.

9. Even if it is the legal responsibility for Floralino to provide those fire flows, nowhere in the application does it state that this alleged failure to meet those alleged requirements rises to a level whereby they must act to delete the territory.

10. Holiday Mall also sites previous low water pressure problems as a basis for deletion of the territory. As proof, the application cites two (2) PSC orders, the most recent of which is 1989. Those orders are so remote in time as to have absolutely no bearing on the case at hand. The application cites no customer complaints or PSC staff comments for the ten (10) years after that last order. Nevertheless, even if the allegations meant that there were pressure problems in Floralino's system today, there is no basis under PSC rules to delete the territory in the summary manner proposed.

WHEREFORE, Floralino requests that the Commission find that the Application fails to state an appropriate cause for a hearing to delete territory from Floralino's certificate.

### **III. Complaint.**

11. Even if the Application is treated as a complaint, there is no basis in fact to

support the complaint. With regard to allegation 4, according to the operator, the test was not necessarily indicative of the actual ability to provide fire flows. Nevertheless, regardless of the ability of Floralino to provide these unique fire flow needs, those needs may be met with modifications paid for by Holiday Mall, as is the typical manner of providing such unique needs. Much of Floralino's water supply equipment, including the wells and storage tank, appear sufficient to provide the fire flows. If there is a problem with pumping or piping, those needs can be provided by the utility at Holiday's expense.

12. With regard to allegation 5, in order to meet Holiday Mall's unique fire flow needs, Floralino is willing to install a new 6" pressure sustaining valve at Holiday Mall's expense, so long as Pasco County is willing to maintain its present "Emergency" service for that purpose. If Pasco County is unwilling to maintain the emergency service, then high service pump modifications can also be made at the Floralino WTP to provide the necessary fire flows. If mains need to be replaced to meet current fire-rated codes in order to meet Holiday Mall's unique needs, then Holiday Mall should pay for those modifications, as discussed above. With regard to timing, Pasco County is currently providing temporary fire flow service to the Mall, so this is no longer an issue.

13. With regard to allegation 6, Pasco County has stated that it will not provide permanent fire flow service to the Mall unless it also provides potable water service. Floralino will not surrender its right to provide potable water service to Holiday Mall, and stands ready to provide fire flow service to Holiday Mall at Holiday Mall's expense, pursuant to its tariff.

14. With regard to allegation 7, as discussed below, there is absolutely no merit to the implied claim that pressure problems in 1989, or even 1995 have any bearing on service in 2000.

15. With regard to allegation 9, it is unclear what point the applicant is attempting to make with this allegation. Most of the comments are irrelevant, and disjointed. With regard to the comment about “a number of complaints,” if these complaints amounted to problem with the utility’s system, then it is quite likely that the PSC would have acted on those complaints, and required the utility to make improvements. It is likely, however, that as with any utility, main breaks and other breakdowns cause periodic low pressure simulations that do not amount of an inability to provide service.

16. With regard to allegation 10, Floralino contends that there never was an emergency situation that was not the making of Holiday Mall, nevertheless, their contrived emergency no longer exists, as they have temporary fire service from Pasco County.

Therefore, in response to the allegations in the Application, if deemed a complaint rather than an application for Commission action, Floralino asks the Commission to dismiss the complaint.

Respectfully submitted,

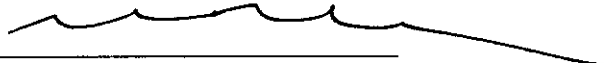
**BUHR & ASSOCIATES, P.A.**

By: \_\_\_\_\_

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Attorney for Floralino Properties, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss or Strike Application was served on Susan W. Fox, P.O. Box 1531, Tampa, Florida 33601, by U.S. Mail on April 4, 2000.

By:   
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Gerald T. Buhr