

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of delinquent regulatory assessment fees and delinquent annual report and penalties for Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities in Polk County.

DOCKET NO. 030289-WS  
ORDER NO. PSC-03-0550-FOF-WS  
ISSUED: April 28, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS; DECLINING TO ASSESS PENALTIES; DECLINING TO REQUIRE FILING OF ANNUAL REPORT; REFERRING DELINQUENT REGULATORY ASSESSMENT FEES AND ASSOCIATED PENALTIES AND INTEREST TO THE DEPARTMENT OF FINANCIAL SERVICES; AND CLOSING THE DOCKET

BY THE COMMISSION:

BACKGROUND

Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities (Sports Shinko or utility) is a Class B Water and Wastewater utility located in Polk County. Sports Shinko became subject to our jurisdiction on May 14, 1996, and was granted a certificate of operation by Order No. PSC-97-1546-FOF-WS, issued December 9, 1997, in Docket No. 961006-WS.

Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to this Commission's jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to timely file a complete annual report is subject to penalties (\$13.50 per day late

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for Class B utilities), absent demonstration of good cause for noncompliance. Pursuant to Rule 25-30.120(2), Florida Administrative Code, the obligation to remit regulatory assessment fees (RAFs) for any year shall apply to any utility which is subject to this Commission's jurisdiction on or before December 31 of that year.

Sports Shinko has failed to file its annual report for 2001 and to pay RAFs for 2001 and the period of January 1 through June 30, 2002. On December 24, 2002, our staff contacted Greg Maultsby, the utility manager, via certified mail regarding the missing 2001 annual report and RAFs. On January 17, 2003, Robert Jackson, an attorney representing the interests of Sports Shinko, responded to our letter stating that Sports Shinko's outstanding stock and assets were acquired by Grenelefe Resort, LLC (Grenelefe) in a bankruptcy proceeding on July 1, 2002. On February 4, 2003, Grenelefe Resort, LLC filed for a transfer of majority organizational control of Sports Shinko to Grenelefe in Docket No. 030123-WS.

This Order addresses whether Sports Shinko should be ordered to show cause, in writing, within 21 days, why it should not be fined for failure to remit its regulatory assessment fees (RAFs) as required by Section 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, and failure to file annual reports as required by Rule 25-30.110(3), Florida Administrative Code.

We have jurisdiction to pursue collection efforts for the failure to file annual reports and timely pay RAFs pursuant to Sections 367.145 and 367.161, Florida Statutes.

#### SHOW CAUSE ISSUES

##### Failure to Submit Regulatory Assessment Fees

Pursuant to Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, each water and wastewater utility shall remit annually RAFs in the amount of 0.045 of its gross operating revenue. Pursuant to Rule 25-30.120(2), Florida Administrative Code, "[t]he obligation to remit the [RAFs] for any year shall apply to any utility which is

subject to [the] Commission's jurisdiction on or before December 31 of that year or for any part of that year . . ."

Furthermore, pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.
2. The amount of interest to be charged is 1 percent for each 30 days or fraction thereof, not to exceed a total of 12 percent per annum.

According to the information available, this utility has outstanding RAFs for 2001 and the period of January 1 through June 30, 2002. We believe that Sports Shinko owned and controlled the utility from January 1, 2001, through June 30, 2002. Accordingly, Sports Shinko is responsible for RAFs for the time period of 2001 and January 1, 2002, through June 30, 2002. In failing to remit the RAFs for this time period, Sports Shinko is in apparent violation of the above-referenced statutory and rule provisions.

The calculation of the RAFs, plus penalties and interest owed by Sports Shinko for the periods indicated above is set out below. As of April 15, 2003, the amounts due are as follows:

TIME PERIOD	RAF AMOUNT	PENALTY	INTEREST	TOTAL
2001 - WATER	\$13,034.88	\$3,258.72	\$1,694.53	\$17,988.13
2001 - WASTEWATER	\$10,857.03	\$2,714.26	\$1,411.41	\$14,982.70

January 1 - June 30, 2002 - WATER	\$6,517.44	\$325.87	\$65.17	\$6,908.48
<b>TIME PERIOD</b>	<b>RAF AMOUNT</b>	<b>PENALTY</b>	<b>INTEREST</b>	<b>TOTAL</b>
January 1 - June 30, 2002 - WASTEWATER	\$5,428.52	\$271.43	\$54.29	\$5,754.24
<b>TOTAL DUE</b>				<b>\$45,633.55</b>

Failure to Submit Annual Reports

Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to our jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Annual reports are considered filed on the day they are postmarked or received. According to our records this utility failed to file an annual report for the year 2001. As stated previously, we believe that Sports Shinko had ownership and control over this utility for the period of January 1, 2001, through June 30, 2002. Accordingly, Sports Shinko was responsible for filing its annual report for 2001, and because it failed to do so, is in apparent violation of Rule 25-30.110(3), Florida Administrative Code.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class B utilities is \$13.50 per day, based on the number of calendar days elapsed from March 31, or from an approved extended filing date. As of the date of our April 15, 2003, Agenda Conference, the total penalty for the outstanding 2001 annual report is set out below.

YEAR	CALCULATION	AMOUNT
2001	358 X \$13.50	\$4,833.00
	<b>TOTAL DUE</b>	<b>\$4,833.00</b>

The penalty, if assessed, would continue to accrue until such time as Sports Shinko files its annual report for 2001. Further, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, the we may, in our discretion, impose greater or lesser penalties for noncompliance.

Show Cause Analysis

As indicated above, Sports Shinko is in apparent violation of the following Statutes and Commission Rules: 1) Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, for failure to submit RAFs; and 2) Rule 25-30.110(3), Florida Administrative Code, for failure to file annual reports.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to pay RAFs, plus applicable penalties and interest, would meet the standard for a "willful violation." In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., we found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

With respect to Sports Shinko's failure to remit RAFs and file its annual reports, and with respect to the penalties and interest incurred for both, we also find that the circumstances in this case are such that show cause proceedings should not be initiated.

Numerous attempts to contact Greg Maultsby, Utility Manager of Sports Shinko, have been made by our staff via certified mail. However, no response has been received from Sports Shinko. On January 17, 2003, we received a letter from Robert Jackson, an attorney representing Sports Shinko's interest, stating that Sports Shinko's outstanding stock and assets were sold in a bankruptcy

proceeding to Grenelefe Resort, LLC on July 1, 2002. As such, we believe that further collection efforts would not be cost effective. We also believe that any further attempts to collect would be futile, because in this situation, the corporate entity no longer exists, and it would be very difficult to locate the former President of Sports Shinko.

Accordingly, we find that show cause proceedings shall not be initiated against Sports Shinko for its apparent violation of the aforementioned statutes and Commission rules. Additionally, we shall refer the utility's unpaid RAFs and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible. We shall also exercise our discretion as stated in Rule 25-30.110(7), Florida Administrative Code, and not assess the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, for outstanding annual reports, because further collection efforts would be futile. Finally, we find that Sports Shinko shall not be required to file its annual report for 2001.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a show cause proceeding shall not be initiated against Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities for its failure to submit regulatory assessment fees for 2001 and January 1, 2002, through June 30, 2002. It is further

ORDERED that a show cause proceeding shall not be initiated against Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities for its failure to submit its 2001 annual report. It is further

ORDERED that the penalties set against Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities pursuant to Rule 25-30.110, Florida Administrative Code, for outstanding annual reports shall not be assessed. It is further

ORDERED that Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities shall not be required to file its 2001 annual report. It is further

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ORDERED that the delinquent regulatory assessment fees and associated penalties and interest as set forth in the body of this order shall be referred to the Florida Department of Financial Services, for permission to write off the accounts as uncollectible. It is further

ORDERED that this Docket is hereby closed.

By ORDER of the Florida Public Service Commission this 28th day of April, 2003.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.