

Case No. 96-01383
Docket # 921098-WS
Volume III 1

96-01383

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of
Application for Certificates
to Provide Water and Wastewater
Service in Alachua County Under
Grandfather Rights by TURKEY
CREEK, INC. & FAMILY DINER,
INC. d/b/a TURKEY CREEK
UTILITIES.

DOCKET NO. 921098-WS

FILED
96 AUG 8 11 8 47
JULIA L. JOHNSON
COMMISSIONER

PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER JULIA L. JOHNSON
Prehearing Officer

DATE: Wednesday, October 20, 1993

TIME: Commenced at 1:00 p.m.
Concluded at 1:25 p.m.

PLACE: FPSC Hearing Room 122
101 East Gaines Street
Tallahassee, Florida

REPORTED BY: PAMELA A. CANELL
Official Commission Reporter



FILED
96 AUG -8 11 8 47
JULIA L. JOHNSON
COMMISSIONER
21-NOV 05 11 11
DOCUMENT NUMBER 921098-WS

1 APPEARANCES:

2 JOHN L. WHARTON, Rose, Sundstrom and Bentley,
3 2548 Blairstone Pines Drive, Tallahassee, Florida
4 32301, Telephone No. (904) 877-6555, on behalf of
5 Turkey Creek Utilities.

6 PETER C. K. ENWALL, 211 Northeast First
7 Street, Post Office Box 23879, Gainesville, Florida
8 32602, Telephone No. (904) 376-5226, on behalf of
9 Turkey Creek Master Owners Association, Inc.

10 STEVEN C. REILLY, Office of Public Counsel,
11 111 West Madison Street, Tallahassee, Florida
12 32399-1400, Telephone No. (904) 488-9330, on behalf of
13 the Citizens of the State of Florida.

14 CATHERINE BEDELL and JOSE LORENZO, Florida
15 Public Service Commission, 101 East Gaines Street,
16 Tallahassee, Florida 32399-0863, Telephone No. (904)
17 487-2740, on behalf of the Commission Staff.

18

19

20

21

22

23

24

25

26

27

P R O C E E D I N G S

(Hearing convened at 1:00 p.m.)

COMMISSIONER JOHNSON: Could we read the notice?

MS. BEDELL: Pursuant to notice, this prehearing was scheduled for this time and place in Docket No. 921098-WS, application for certificate to provide water and wastewater service in Alachua County under grandfather rights by Turkey Creek, Inc. and Family Diner, Inc., doing business as Turkey Creek Utilities.

COMMISSIONER JOHNSON: Thank you. Could we take appearances, please.

MR. ENWALL: Madam Commissioner, my name is Peter Enwall. I represent Turkey Creek Master Owners Association, Inc.

MR. REILLY: Steve Reilly, with the Office of the Public Counsel, representing the ratepayers.

MR. WHARTON: Commissioner, I'm John Wharton, and I represent the Utility in this matter until it was dismissed about 20 minutes ago. I'm not making an appearance on this behalf, because there is no longer a proceeding to go forward with.

But John Wharton with the firm of Rose, Sundstrom and Bentley.

1 COMMISSIONER JOHNSON: Okay.

2 MR. WHARTON: Thank you, Commissioner.

3 MS. BEDELL: Catherine Bedell and Jose
4 Lorenzo, on behalf of the Public Service Commission
5 Staff.

6 COMMISSIONER JOHNSON: Thank you.

7 Staff, how would you suggest that we proceed?

8 MS. BEDELL: Well, that is a good question.

9 If the protest of the PAA is withdrawn, then the PAA is
10 revived and the -- I think we still have the issue of
11 what the people have been charged during this period
12 that the hearing has been pending, while the protest
13 was -- while we were dealing with the protest. And I
14 think to not drop the issues that we have in front of
15 us right now, I think that would be premature. We
16 still would have to deal in some fashion with what has
17 been occurring since we obtained jurisdiction over this
18 utility.

19 COMMISSIONER JOHNSON: Okay. Do any of the
20 parties have any comments in that regard?

21 MR. REILLY: The Public Counsel would concur
22 with the position of the Staff attorney. We would say
23 that to the extent that the Utility is willing to
24 stipulate to Staff's positions on all -- that was taken
25 in the PAA, it may be that we will not need a hearing

1 to decide these, other than just getting some discovery
2 on the necessary information, we would have to find in
3 terms of overcollection to determine that refund.

4 I don't know that Mr. -- whether the attorney
5 for the Utility is prepared to stipulate to this, but I
6 don't believe that the Utility can just walk away with
7 the customers' overcollections for this last year.
8 Because I don't think this whole concept of a
9 grandfather certificate is voluntary. They had to come
10 in. This isn't like a rate case where we've decided we
11 want a rate increase and now we've changed our mind and
12 we don't want a rate increase. They were, at least up
13 to the time that they had this certificated -- they
14 were supposed to be certificated. So, I think it was a
15 mandatory proceeding that they get a certificate.

16 COMMISSIONER JOHNSON: Okay.

17 MR. REILLY: The PSC needs to retain
18 jurisdiction for purposes of determining that refund.

19 COMMISSIONER JOHNSON: Any other comments?

20 MR. ENWALL: I would concur, Commissioner.

21 At this point, of course, this is surprising. But the
22 PAA would go back into effect and, as I understand the
23 extent of the PAA, it was an order to the Utility to
24 escrow, collect and continue to maintain funds which it
25 had been charged in excess, plus the interest.

1 And presumably the Utility has done that, and
2 they would be entitled to come forward upon reasonable
3 -- within a reasonable time to show exactly what
4 they've collected and some format needs to be provided
5 so as to verify that the amount collected is the
6 accurate amount and to provide a mechanism for the
7 refund. And, of course, the Commission should continue
8 to exercise jurisdiction to do that pursuant to its
9 original order.

10 COMMISSIONER JOHNSON: Now, Mr. Wharton, I
11 don't know if you have filed an appearance or not filed
12 an appearance and don't intend to participate or do
13 intend to participate, but I do, as a hearing officer,
14 intend to go ahead and proceed through this Prehearing
15 Order. Whether or not it's a legal issue that you want
16 to take up later --

17 MR. WHARTON: Well, Commission, I would like
18 to address the subject the other attorneys just
19 addressed.

20 COMMISSIONER JOHNSON: Okay.

21 MR. WHARTON: That is, what occurs now?

22 COMMISSIONER JOHNSON: In what capacity? In
23 a capacity --

24 MR. WHARTON: In a capacity for Turkey Creek,
25 the Utility that had filed the protest that's been

1 dismissed and none other.

2 COMMISSIONER JOHNSON: Okay.

3 MR. WHARTON: Commissioner, the only thing
4 that can occur, the Commission issued two proposed
5 agency actions. Turkey Creek filed a protest to both
6 of those PAAs, and those were consolidated into this
7 prehearing and the hearing that was going to be held on
8 November the 3rd. With the withdrawal of the petitions
9 for administrative hearing, the only thing that can
10 occur is that those PAAs will be reduced to final
11 order, nothing else. And, therefore, we maintain
12 there's no proceeding to go forward on.

13 To the extent that the Staff needs to do
14 internal work in order to determine how that order will
15 be effectuated, such as the amounts and the time that
16 has gone by, that's fine. But those PAAs will be
17 reduced to final order as my understanding of the
18 effect of what we've done today. There's certainly no
19 hearing to go forward on. There are no longer any
20 issues. We raised the issues, and we're withdrawing
21 them.

22 COMMISSIONER JOHNSON: Challenging our PAAs,
23 so you are withdrawing your challenge to the proposed
24 agency action?

25 MR. WHARTON: Yes, ma'am. And I would assume

1 that both of those would become -- well, in point of
2 fact, both of those will be reduced to final orders.

3 COMMISSIONER JOHNSON: Final orders.

4 MR. REILLY: One of the difficulties I'm sure
5 Staff has, as well as Public Counsel has, is we've just
6 now heard about this as soon as you heard about it.
7 And, you know, somewhere along the line it would have
8 been helpful if a day or two before this prehearing
9 conference we might have gotten some notice of this
10 particular strategy. But it may be that such a result
11 would be acceptable to the ratepayers.

12 If I'd understand that, we're basically --
13 because our position, for the most part, has been that
14 we support Staff in all of its positions in this entire
15 docket. So that if we would revert back to these PAA
16 positions and, in effect, it's a like a stipulation. I
17 agree that perhaps we don't need to go to hearing. And
18 then it's just a matter of Staff getting the discovery
19 it needs to make sure that the refund is properly
20 calculated and accomplished. And that goes even to the
21 step of making sure there's enough money in escrow to
22 cover that because we have a utility now that,
23 apparently, has been sold. And as of this morning, you
24 said it has even been accomplished, the closing has
25 actually taken place. So we are not privy to that.

1 MS. BEDELL: Commissioner Johnson, I have
2 been reminded by groups of attorneys the usual process
3 for actually accepting his withdrawal is through the
4 recommendation process. And then an order would issue
5 that would revive the PAA orders, and that is probably
6 the appropriate mechanism for us to go forward with.

7 We don't have any idea, however -- I mean,
8 there's nothing in the record and there certainly
9 wasn't anything in the record before the PAA as to when
10 the sale is, in fact, completed. So we wouldn't be
11 able to determine what refund period would be involved
12 in this docket. But, you know, perhaps what we need to
13 do is to just take a break for a few minutes and have a
14 minute for everybody to think this through.

15 COMMISSIONER JOHNSON: Okay. I'm going to go
16 ahead and allow us to have a ten-minute recess so that
17 we can confer, perhaps, with your clients and with
18 Staff. But my initial reaction is that, Mr. Wharton,
19 they were -- they did appeal the action. And if they
20 are satisfied with our PAA and no one else challenged
21 it, then it will become a final order and probably
22 everyone will probably be happy. But I'll give you
23 that time to further think about the issue and then
24 come back, and we'll all just determine how we should
25 proceed.

1 MR. REILLY: Okay.

2 MR. WHARTON: Thank you, Commissioner.

3 (Brief recess.)

4 - - - - -

5 COMMISSIONER JOHNSON: We're going to go back
6 on the record. Any comments from Staff with respect to
7 how we should proceed?

8 MS. BEDELL: Yes, we will take the notice
9 dismissing the petitions back to an agenda, the soonest
10 agenda that we can get to. And I recommend that the
11 PAA orders be revived, made final and effective, and
12 address the refund issue in that recommendation. And I
13 believe that, though they may have some comments, that
14 everybody has agreed that that is the appropriate
15 direction to take.

16 COMMISSIONER JOHNSON: Okay. Any comments
17 from the other parties?

18 MR. REILLY: No comments from me.

19 MR. ENWALL: Madam Commissioner, we would
20 concur with that and, certainly, that's the appropriate
21 procedure. I'm rapidly looking through the rules
22 trying to find a method by which an interim order might
23 be entered, which would preserve the assets of the
24 Corporation. We have some concerns that because of
25 this device, the sale and now the dismissal of the

1 petition protesting the agency action, that the Utility
2 is now left in a position where it has no assets left,
3 and there's no reason for it to exist anymore. And so
4 without casting askance at the Utility, there is a
5 potential the Utility might file some sort of
6 bankruptcy proceeding. There would be no assets to
7 refund. We are concerned with that and think that the
8 Commission's jurisdiction would extend to a specific
9 order to the Utility to escrow an amount of money now,
10 as a condition to going further -- or as a condition to
11 the Commission accepting this unilateral dismissal.

12 MR. WHARTON: Commissioner, if I may. The
13 dismissal was not filed to frustrate the Commission,
14 but to the extent that the dismissal frustrates
15 something the Commission now wants to do or that the
16 hearing officer wants to do, that is the law.

17 I think your lawyers will tell you that this
18 proceeding is over and your authority to act alone as
19 the Prehearing Officer is limited by that fact. Only a
20 certain number of Commissioners can issue an interim
21 order in this docket. And to the extent they're going
22 to issue an interim order like that, perhaps it will be
23 done, perhaps there will be a Staff recommendation, and
24 that will occur. But I do not think you could do it as
25 the Prehearing Officer in a proceeding that we have now

1 dismissed our petition on, with all due respect.

2 COMMISSIONER JOHNSON: Certainly. The issue
3 that he's raised is one that I am concerned with. With
4 respect to whether I can act unilaterally without a
5 full panel is a different issue. Certainly, if I were
6 to conclude that this action was still a valid open
7 action, then I could continue this matter and handle it
8 in a different manner. But perhaps the issue that
9 you've raised could be addressed through the Staff
10 recommendation before the full panel. Staff, could you
11 -- and I think that would probably be the prudent
12 procedure to take.

13 MS. BEDELL: Yes. If we can get a
14 recommendation prepared, the next agenda is November
15 the 9th, and the date for filing that recommendation is
16 not until Thursday, a week. And we can, you know, do
17 what we can to put that -- to address those concerns.
18 That is what our intent is to address Mr. Enwall's
19 concerns. And, I believe, at least on that issue, they
20 may well be able to participate.

21 MR. REILLY: Maybe file a motion for your
22 consideration or something, and let him respond. But I
23 would argue that this docket is very much open. We may
24 not have a hearing.

25 MR. WHARTON: We would agree to that.

1 MR. REILLY: But this docket is open until
2 it's finally -- the final order is issued and the
3 recommendation is disposed of, and it's through this
4 docket that we can address the concern that Mr. Enwall
5 has.

6 COMMISSIONER JOHNSON: Does everyone agree
7 with that, and are we fine with that procedure? So
8 that in this action, in adjourning this hearing, I'm
9 not closing out anything other than adjourning this
10 hearing.

11 MR. ENWALL: Correct.

12 MR. REILLY: Correct.

13 COMMISSIONER JOHNSON: Okay. This hearing is
14 adjourned. Thank you.

15 MR. WHARTON: Thank you, Commissioner.

16 (Thereupon, the hearing adjourned at 1:25
17 p.m.)

18 - - - - -

19

20

21

22

23

24

25

1 F L O R I D A)
 2 :
 3 COUNTY OF LEON)

CERTIFICATE OF REPORTER

4 I, PAMELA A. CANELL, Official Commission
 5 Reporter,

6 DO HEREBY CERTIFY that the Prehearing Order
 7 in this cause, Docket No. 921098-WS, was heard by the
 8 Florida Public Service Commission at the time and place
 9 herein stated; it is further

10 CERTIFIED that I stenographically reported
 11 the said proceedings; that the same has been
 12 transcribed under my direct supervision, and that this
 13 transcript, consisting of 13 pages, constitutes a true
 14 transcription of my notes of said proceedings.

15 DATED this 1st day of November, A. D., 1993.

16 *Pamela A. Canell*
 17 PAMELA A. CANELL
 18 Official Commission Reporter
 19 (904) 488-5981

20 STATE OF FLORIDA)
 21 :
 22 COUNTY OF LEON)

23 The foregoing certificate was acknowledged
 24 before me this 1st day of November, 1993, by PAMELA A.
 25 CANELL who is personally known to me.

26 *Evelyn L. Borschel*
 27 EVELYN BORSCHEL
 28 Notary Public - State of Florida



EVELYN L. BORSCHEL
 MY COMMISSION # CC289265 EXPIRES
 May 25, 1997
 BONDED THRU TROY FAIR INSURANCE, INC.