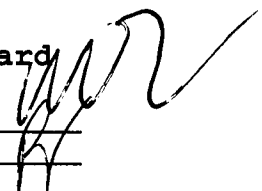



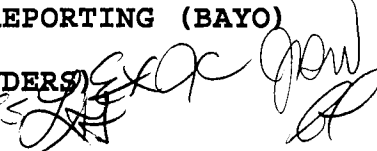

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center, 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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M E M O R A N D U M

August 3, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (XANDERS) 
DIVISION OF LEGAL SERVICES (SAGER) 

RE: DOCKET NO. 921098-WS - FAMILY DINER, INC. AND TURKEY
CREEK, INC. D/B/A TURKEY CREEK UTILITIES - APPLICATION
FOR CERTIFICATES UNDER GRANDFATHER RIGHTS IN ALACHUA
COUNTY
COUNTY: ALACHUA

AGENDA: AUGUST 15, 1995- REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\WAW\WP\921098WS.RCM

CASE BACKGROUND

Family Diner, Inc. and Turkey Creek, Inc. d/b/a Turkey Creek Utilities (Turkey Creek) was a Class C utility in Alachua County which provided water and wastewater service to approximately 300 customers. On October 26, 1992, Turkey Creek filed an application for a certificate to provide water and wastewater service pursuant to Section 367.171, Florida Statutes. Order No. PSC-93-0229-FOF-WS, issued February 10, 1993, granted the certificates to Turkey Creek, approved its service territory and reduced its rates to those which were in effect the date the Public Service Commission received jurisdiction of Alachua County, June 30, 1992. The utility protested this proposed agency action order and as a result, the certificates were never issued to the utility. A second order, Order No. PSC-93-0819-FOF-WS, issued July 27, 1993, regarding rates and charges was issued and was also protested by the utility. Refunds were required in each of these orders because the utility had illegally increased the rates and charges after the Commission assumed jurisdiction over Alachua County on June 30, 1992.

Prior to the Commission's hearing, which was scheduled for November 3, 1993, the utility withdrew the protests. By Order No. PSC-93-1769-FOF-WS, issued December 3, 1993, the two prior orders

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were made final and effective. Turkey Creek subsequently filed an appeal of Order No. PSC-93-1769-FOF-WS with the First District Court of Appeal on January 6, 1994. On March 27, 1995, the First District Court of Appeal affirmed the decision made by the Commission in this docket. Accordingly, the correct territory was granted to the utility which would allow for the certificates to be issued. However, the utility has been subsequently sold to the City of Alachua. Therefore, certificates were never issued to Turkey Creek. The sale to the city and the pending refunds of rates collected by Turkey Creek are the subject of this recommendation.

Normally, staff would approve this type of transfer administratively. However, we are bringing this recommendation to the attention of the Commission because of the outstanding refund owed by the utility.

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DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of Family Diner, Inc. and Turkey Creek, Inc. d/b/a Turkey Creek Utilities to the City of Alachua be acknowledged?

RECOMMENDATION: Yes. (XANDERS)

STAFF ANALYSIS: On September 23, 1993, Turkey Creek was purchased by the City of Alachua. Due to the pending Commission hearing and subsequent appeal, the City did not file the appropriate application for a transfer. Since the appeal is now complete, we have received the appropriate documentation for a transfer to a governmental authority. In accordance with Rule 25-30.037(4), Florida Administrative Code, we have received the name and address of the utility and its authorized representative, the name of the governmental authority and the name and address of its authorized representative, a copy of the contract transferring the utility system to the governmental authority, and the date on which the governmental authority took official action to acquire the utility, which was September 23, 1993. In accordance with Section 367.071(4)(a), Florida Statutes, Commission staff forwarded Turkey Creek's most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes and contributions-in-aid-of-construction to the City. In addition, we have received a statement from the City that Turkey Creek's customer deposits were transferred to the City when the City purchased the utility. To date, the City has refunded 85% of these deposits.

Since the city purchased Turkey Creek in September, Turkey Creek will remain liable for outstanding regulatory assessment fees due for the period January - September, 1993. This amount is estimated to be \$2,454. This matter will be processed in a separate docket. In addition, Turkey Creek must refund to its customers the excess amounts it received as a result of two unapproved increases in rates and service availability charges. The refunds were required by Order No. PSC-93-1769-FOF-WS, issued December 3, 1993. To date, these refunds have not been completed. This matter will be discussed further in Issue 2.

Section 367.071(4)(a), Florida Statutes, provides that the sale of facilities, in whole or in part to a governmental entity, shall be approved as a matter of right. Therefore, staff recommends that the transfer from Turkey Creek Utilities to the City of Alachua be acknowledged.

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ISSUE 2: Should the Commission order Turkey Creek to show cause, in writing within twenty days, why it should not be fined \$5,000 for not complying with Order No. PSC-93-1769-FOF-WS, by not making the required refunds?

RECOMMENDATION: Yes. Show cause proceedings should be initiated.
(SAGER)

STAFF ANALYSIS: As stated earlier, on December 3, 1993, by Order No. PSC-93-1769-FOF-WS, this Commission voted to make Orders Nos. PSC-93-0229-FOF-WS and PSC-93-0816-FOF-WS, final and effective. These orders required Turkey Creek to refund any excess amount, including interest, that it had received that was related to the two unapproved increases in its rates and service availability charges. On January 6, 1994, Turkey Creek appealed Order No. PSC-93-1769-FOF-WS to the First District Court of Appeal. On March 27, 1995, the First District Court of Appeal affirmed the Commission's orders.

Pursuant to the First District Court of Appeal's affirmation of the Commission's order, by letter dated April 6, 1995, staff informed Turkey Creek of its obligation to complete its refund requirement in accordance with Order No. PSC-93-1769-FOF-WS, Section 367.071(2), Florida Statutes, and Rule 25-30.360, Florida Administrative Code. Section 367.071(2), Florida Statutes, states that "[t]he transferor remains liable for any outstanding regulatory assessment fees, fines, or refunds of the utility."

As noted earlier, the City purchased Turkey Creek on September 23, 1993, but it did not apply for a transfer application until Turkey Creek's appeal had been completed. In a follow-up letter, dated May 26, 1995, staff again informed Turkey Creek of its refund obligation and asked Turkey Creek to submit by June 9, 1995, a scheduled date for completing its refund requirements. Staff also told Turkey Creek that it would pursue show cause proceedings if Turkey Creek did not respond by June 9, 1995. By letter dated June 8, 1995, Turkey Creek stated that it was researching its obligation to make the refunds since it was a "non-utility owner-operator," which it estimated would take two weeks to complete. To date, staff has not received any response.

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, Florida Statutes, or any lawful rule or order by the Commission. Utilities are charged with the knowledge of the Commission's rules and statutes. As stated above, staff has, on numerous occasions,

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informed Turkey Creek of its obligation to comply with Order No. PSC-93-1769-FOF-WS. Staff believes that Turkey Creek has been given ample time and sufficient information to comply with the Commission's order. Accordingly, based on the foregoing, staff recommends that the Commission order Turkey Creek to show cause, in writing within twenty days, why it should not be fined \$5,000 for not complying with Order No. PSC-93-1769-FOF-WS.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. (SAGER)

STAFF ANALYSIS: If the Commission agrees with staff recommendation in Issue No. 2, then Docket No. 921098-WS should remain open so staff can process the show cause proceeding initiated against Turkey Creek.