

MEMORANDUM

RECEIVED

APR 13 1998

April 13, 1998

55
FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (REYES) *blr*

RE: DOCKET NO. 961006-WS - APPLICATION FOR CERTIFICATES UNDER GRANDFATHER RIGHTS TO PROVIDE WATER AND WASTEWATER SERVICE BY SPORTS SHINKO UTILITY, INC. D/B/A GRENELEFE UTILITIES IN POLK COUNTY.

98 0508-PCO-WS

Attached is an ORDER APPROVING TEMPORARY RATES SUBJECT TO REFUND, to be issued in the above-referenced docket.

(Number of pages in order - *3*)

*4/14/98
incubated to
CK - Polk
- R.W.*

BLR/lw

See 1

Attachment

cc: Division of Water and Wastewater (Walker, Redemann)

I:961006oa.blr

*2 fax
1 mail*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificates under grandfather rights to provide water and wastewater service by Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities in Polk County.

DOCKET NO. 961006-WS
ORDER NO. PSC-98-0503-PCO-WS
ISSUED: April 13, 1998

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

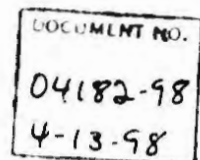
ORDER APPROVING TEMPORARY RATES SUBJECT TO REFUND

BY THE COMMISSION:

On May 14, 1996, the Board of County Commissioners of Polk County (County Commission, Polk County or County) adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring the privately-owned water and wastewater utilities in that County subject to the provisions of Chapter 367, Florida Statutes. This Commission acknowledged the County's resolution by Order No. PSC-96-0896-FOF-WS, issued July 11, 1996, in Docket No. 960674-WS.

This utility system has provided water and wastewater service for customers in Polk County since 1977. In 1987, it was acquired by Sports Shinko Utility, Inc., d/b/a Grenelefe Utilities (Grenelefe or utility). The utility provides water service for about 646 residential customers and 102 general service customers and wastewater service for about 634 residential customers. In 1996, Grenelefe recorded operating revenues of \$366,000 for water service and \$210,000 for wastewater service. Operating income of \$91,000 was reported for water service, while a \$42,000 operating loss was reported for wastewater service.

Grenelefe has been subject to this Commission's jurisdiction since May 14, 1996. By letter dated July 30, 1996, Grenelefe was advised of this Commission's jurisdiction and its obligation to



ORDER NO. PSC-98-0503-PCO-WS
DOCKET NO. 961006-WS
PAGE 2

obtain a certificate. On August 30, 1996, Grenelefe filed an application for a grandfather certificate to provide water and wastewater service in Polk County in accordance with Section 367.171(2)(b), Florida Statutes.

On July 2, 1996, Polk County approved a plan to restructure service rates for this system, a pending matter when this Commission's jurisdiction was first invoked. Previously, Grenelefe collected fixed charges of \$20 for water service and \$15 for wastewater service. However, as directed by the Southwest Florida Water Management District (SWFWMD), Grenelefe installed meters to measure water consumption for domestic and irrigation purposes. Grenelefe has potable and non-potable water sources available for use to provide irrigation service; therefore, meters were installed to measure both sources. The rates approved by Polk County utilized the base facility and gallonage charge rate structure. In particular, Polk County approved an irrigation rate, which the utility has been charging for all irrigation use since September 1, 1996.

On December 9, 1997, by Order No. PSC-97-1546-FOF-WS, we issued Certificates Nos. 589-W and 507-S to Grenelefe and approved rates for its potable water and wastewater systems. In addition, as a proposed agency action, we ordered Grenelefe to refund revenues for non-potable irrigation service because those charges were not approved by Polk County. By proposed agency action we also directed Grenelefe to commence collection of the Commission approved base facility charges and reduced gallonage charges for non-potable irrigation service. Other measures were also required.

On December 30, 1997, Grenelefe timely filed a protest to the proposed agency actions contained in Order No. PSC-97-1546-FOF-WS in the form of a Petition for Formal Proceeding. Grenelefe argues that the non-potable irrigation rate was approved by Polk County, that the refund is inappropriate, and that other elements must be considered when setting non-potable irrigation charges. On January 15, 1998, Grenelefe Association of Condominium Owners No. 1, Inc. (Association) filed a Counter-Petition for Formal Administrative Proceeding. On February 20, 1998, the Association filed an Amended Counter-Petition to clarify that its interests would not be served by imposing a fine on Grenelefe for the utility's collection of non-potable irrigation rates. However, the Association contends that Polk County did not approve non-potable irrigation service

rates. An administrative hearing on this matter has been scheduled for September 17-18, 1998.

TEMPORARY RATES

Given that one possible outcome of this proceeding may be a finding that Polk County authorized non-potable irrigation rates, Grenelefe will incur an unrecoverable loss of revenues if the utility is not allowed to continue to collect these rates during the pendency of this proceeding. Conversely, the customers must be protected in the event we determine that non-potable rates were not approved by Polk County and that lower rates are appropriate. In addition, Grenelefe is operating under a mandate by the SWFWMD to meter all service connections, which includes water for domestic use and all types of irrigation. To disallow the collection of any non-potable irrigation rates pending the outcome of this proceeding would cause the utility to run afoul of that mandate. Accordingly, we find it both necessary and appropriate to approve the utility's collection of temporary rates during the pendency of this proceeding.

We have previously addressed similar issues. By Order No. PSC-93-1090-FOF-WS, issued July 27, 1993, in Docket No. 921098-WS, In Re: 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, we allowed Turkey Creek to continue collecting its current charges pending a final decision on the appropriate amount of the charges, but ordered the utility to hold the difference between its current charges and the PAA charges subject to refund. By Order No. PSC-95-0624-FOF-WU, issued May 22, 1995, in Docket No. 930892-WU, In Re: Application for Amendment of Certificate No. 488-W in Marion County by Venture Associates Utilities Corp., we authorized the utility to collect the previously approved PAA rates and charges as temporary rates, subject to refund, with interest, pending the final outcome of the proceeding.

While Turkey Creek was only required to hold the difference between its current charges and the PAA charges subject to refund and Venture was required only to hold the PAA rates and charges subject to refund, we find it appropriate to require Grenelefe to hold the entire amount collected under its current rates subject to refund. We make this finding because the PAA rate we previously approved in this docket was based on information which did not

provide the level of detail necessary for us to determine with certainty if any of the non-potable plant and expense items were included in the County's potable water rate calculation. Given the limited information which was then available for review and the utility's need for a non-potable water rate, we adopted a "minimalist" approach as the most reasonable solution at that time in calculating the PAA rates and charges and used only those items we felt confident were not included in the County's rate calculation.

The hearing process will provide more extensive data, will allow for a more comprehensive review of the data, and may very well result in the calculation of a non-potable rate which differs from the PAA rate if it is determined that the County did not approve a non-potable rate for Grenelefe. Accordingly, Grenelefe shall be allowed to continue collecting the disputed non-potable irrigation rates as temporary rates pending the outcome of this proceeding; however, the utility shall hold all revenues collected pursuant to the following rates subject to refund with interest:

Base Facility Charge

All Meter Sizes \$5.50

<u>Gallage Charge</u>	(0-25,000 gallons)	\$1.44
(per 1,000 gallons)	(25,000+)	\$2.16

SECURITY FOR REFUND

We have calculated the total amount of potential refunds for this utility system to be \$415,000. This amount is based on collecting unauthorized charges for non-potable irrigation services for a twenty-eight month period including a provision for accrued interest. The contingent refund amount was derived based on reported usage during the eight-month period ended May 31, 1997, annualized to reflect a yearly amount, and carried forward until March 31, 1999, the approximate date used to estimate completion of potential refunds. The security shall be in the form of a letter of credit, bond, or escrow agreement to guarantee the revenues collected subject to refund.

If the security provided is an escrow account, said account shall be established between the utility and an independent financial institution pursuant to a written escrow agreement. The Commission shall be a party to the written escrow agreement and a

ORDER NO. PSC-98-0503-PCO-WS
DOCKET NO. 961006-WS
PAGE 5

signatory to the escrow account. The written escrow agreement shall state the following: That the account is established at the direction of this Commission for the purpose set forth above, that no withdrawals of funds shall occur without the prior approval of the Commission through the Director of the Division of Records and Reporting, that the account shall be interest bearing, that information concerning the escrow account shall be available from the institution to the Commission or its representative at all times, and that pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d. DCA 1972), escrow accounts are not subject to garnishments.

If the security provided is a bond or a letter of credit, said instrument shall be in the amount of \$415,000. If the utility chooses a bond as security, the bond shall state that it will be released or shall terminate upon subsequent order of the Commission addressing the appropriate rates or requiring a refund. If the utility chooses to provide a letter of credit as security, the letter of credit shall state that it is irrevocable for the period it is in effect and that it will be in effect until a final Commission order is rendered addressing the appropriate rates or requiring a refund.

Irrespective of the type of security provided, the utility shall keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

In no instance shall maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and shall be borne by, the utility.

Because this matter is scheduled for a hearing, this docket shall remain open.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sports Shinko Utility, Inc., d/b/a Grenelefe Utilities shall be allowed to

ORDER NO. PSC-98-0503-PCO-WS
DOCKET NO. 961006-WS
PAGE 6

collect the disputed non-potable irrigation rates as temporary rates. It is further

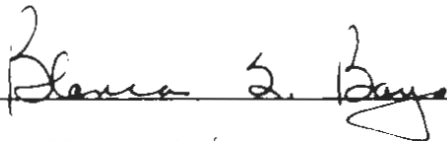
ORDERED that the temporary rates shall be subject to refund, with interest, pending the final outcome of this docket. It is further

ORDERED that Shinko Utility, Inc., d/b/a Grenelefe Utilities shall provide the Commission with a bond or letter of credit in the amount of \$415,000 or in the alternative shall provide an escrow agreement, as a guarantee of any potential refund of revenues collected under temporary conditions. It is further

ORDERED that by no later than the twentieth of each month, Sports Shinko Utility, Inc., d/b/a Grenelefe Utilities shall file a report showing the amount of revenues collected each month and the amount of revenues collected to date relating to the amount subject to refund. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 13th day of April, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

BLR

ORDER NO. PSC-98-0503-PCO-WS
DOCKET NO. 961006-WS
PAGE 7

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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

FLORIDA PUBLIC SERVICE COMMISSION - RECORDS AND REPORTING

Requestion for Photocopying and Mailing

Date 4/11/11
 Number of Originals 2 Copies Per Original 12
 Requested By [Signature]

Item Presented

Agenda For (Date) _____ Order No. 1111 In Docket No. _____
 Notice of _____ For (Date) _____ In Docket No. _____
 Other _____

Special Handling Instructions

Distribution/Mailing

Number	Distributed/Mailed To	Number	Distribution/Mailed To
<u>11</u>	<u>Commission Offices</u>	<u>--</u>	_____
<u>11</u>	<u>Docket Mailing List - Mailed</u>	_____	_____
<u>11</u>	<u>Docket Mailing List - Faxed</u>	_____	_____

Note: Items must be mailed and/or returned within one working day after issue unless specified here:

Print Shop Verification

Job Number 150 Verified By [Signature]
 Date and Time Completed 4/15 Job Checked For Correctness and Quality (Initial) _____

Mail Room Verification

Date Mailed _____ Verified By _____