

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.

DOCKET NO. 921098-WS  
ORDER NO. PSC-00-1470-AS-WS  
ISSUED: August 15, 2000

The following Commissioners participated in the disposition of  
this matter:

J. TERRY DEASON, Chairman  
E. LEON JACOBS, JR.

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE COMMISSION:

BACKGROUND

On October 26, 1992, Family Diner, Inc. and Turkey Creek, Inc., d/b/a Turkey Creek Utilities (Turkey Creek or utility), a utility in Alachua County, filed an application for a grandfather certificate to provide water and wastewater service pursuant to Section 367.171, Florida Statutes. On November 16, 1992, the Office of Public Counsel (OPC) filed its Notice of Intervention. By Order No. PSC-93-1152-PCO-WS, issued August 9, 1993, we acknowledged OPC's intervention.

By Proposed Agency Action (PAA) Order No. PSC-93-0229-FOF-WS, issued February 10, 1993, this Commission proposed to grant the certificates to Turkey Creek and approve its service territory. However, during the course of processing the application for a grandfather certificate, we found that Turkey Creek had, on two separate occasions, improperly increased its rates without obtaining our approval. Therefore, by that same order, we required the utility to make refunds and reduce its rates to those rates in effect on June 30, 1992, the date we received jurisdiction of Alachua County. The utility protested that PAA order.

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FLORIDA PUBLIC SERVICE COMMISSION

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On May 27, 1993, we issued a second PAA Order, Order No. PSC-93-0816-FOF-WS, regarding rates and charges. This Order was also protested by the utility. Refunds, with interest, were required in each of these orders because we found that the utility had improperly increased its rates and charges after we had obtained jurisdiction over Alachua County on June 30, 1992.

On August 30, 1993, subsequent to the utility's protests, Mr. Jim Cherry filed a Petition for Leave to Intervene on behalf of the Turkey Creek Master Owners Association. That Petition was granted by Order No. PSC-93-1430-PCO-WS, issued October 1, 1993.

Based on the protests by the utility, a formal hearing was scheduled, but was canceled when the utility withdrew the protests. By Order No. PSC-93-1769-FOF-WS (Final Order), issued December 3, 1993, the two prior PAA orders were revived and made final and effective.

The Final Order specifically required Turkey Creek to refund with interest the excess rates and charges as follows:

- A. Monthly service rates from June 30, 1992, through the date of the sale to the City of Alachua (September 23, 1993);
- B. Accrued interest on customer deposits from June 30, 1992, through the date each customer's deposit was returned;
- C. Public fire protection charge to the Turkey Creek Master Owners Association - all of 1992 and 1993, if any;
- D. Miscellaneous service charges - July 6, 1993, through the date of the sale to the City of Alachua; and
- E. Late payment charges - July 6, 1993, through the date of the sale to the City of Alachua.

Turkey Creek appealed that Final Order, and on March 27, 1995, the Final Order was affirmed by the First District Court of Appeal, in a per curiam decision.

Because the utility had been sold to the City of Alachua (City) on September 23, 1993, no certificates were ever issued to Turkey Creek. Instead, on September 6, 1995, we issued Order No. PSC-95-1101-FOF-WS, an Order Acknowledging Transfer and Initiating Show Cause Proceeding. That Order required Turkey Creek to show cause in writing within twenty days why it should not be fined \$5,000 for not complying with the Final Order (which required

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refunds to be made in accordance with Orders Nos. PSC-93-0229-FOF-WS and PSC-93-0816-FOF-WS).

In response to the Show Cause Order, Turkey Creek filed Respondents' Reply to Show Cause Order. In the response, Turkey Creek requested deferral of the show cause proceeding. By Order No. PSC-95-1445-FOF-WS, issued November 28, 1995, we denied the request for deferral of show cause proceedings, clarified the initial show cause order, and reinitiated the show cause proceeding against Turkey Creek.

Turkey Creek timely filed its response on December 18, 1995, requested a formal hearing pursuant to Section 120.57(1), Florida Statutes, and, subsequently, offered that, if we would abate the penalty proceedings, it would deposit with an appropriate escrow agent an amount of money which it considered sufficient to cover the refunds, and make the refunds from that escrow account if it were to be unsuccessful in its Circuit Court action. By Order No. PSC-96-0350-FOF-WS, issued March 11, 1996, we calculated that the maximum amount of any refund would not exceed \$42,000, and found that:

- A) there was no dispute of material fact and no formal hearing was required on the show cause proceedings;
- B) there was no reason to defer any show cause proceeding pending the outcome of Turkey Creek's suit in circuit court; and
- C) imposed a \$5,000 fine for Turkey Creek's failure to make refunds as required by Order No. PSC-93-1769-FOF-WS, but suspended such fine if the utility deposited \$42,000 in an appropriate escrow account within three weeks of the date of the Order.

Turkey Creek disagreed with the amount required to be escrowed, and filed a Notice of Administrative Appeal of that Order on April 10, 1996.

While the appeal was pending, by letter dated June 13, 1996, Turkey Creek offered to make all refunds which it calculated to be due if we would waive interest and any penalty or fine. We calculated that the refund, without interest, would be \$24,576.46, and that interest through June 13, 1996 would be about \$3,993.23. Upon review of the settlement offer, we found, as was previously determined, that any refund to the customers should be with interest. Order No. PSC-96-1526-FOF-WS, issued December 16, 1996.

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This Order was not appealed. Finally, on January 27, 1997, the First District Court of Appeal dismissed Turkey Creek's appeal of Order No. PSC-96-0350-FOF-WS.

Although we had required that the refunds be made with interest, the utility stated that its records and situation made it very difficult for it to calculate the amount of interest that was due to each individual customer. Beginning in 1997 and ending in early 1998, the utility provided documentation of refunds, without interest, to all the customers it could locate. As of January 12, 1998, we calculated the interest due to be \$7,011.29.

Because the utility had not made the refunds with interest as required, on June 18, 1998, we filed a Petition to Enforce Final Order in the Circuit Court of the Eighth Judicial Circuit in and for Alachua County, Florida. The case was assigned Circuit Court Case No. 98-2252-CA, Division J. While the action was pending in the Circuit Court, the utility continued to negotiate with the OPC and the Turkey Creek Master Owners Association to attempt to reach a settlement of this case.

#### SETTLEMENT AGREEMENT

By letter dated March 13, 2000, the utility offered to pay a lump sum of \$5,000 to the City in full settlement of this case. The City then agreed that it would remit the full amount to the Turkey Creek Master Owners Association. Upon being made aware of this offer, the Turkey Creek Master Owners Association agreed to accept the offer.

The settlement offer was subsequently reduced to writing and all parties, except OPC, signed the Settlement Agreement. Although OPC did not sign the Settlement Agreement, it advised the parties and our staff that it would not contest the Settlement Agreement. The Treasurer of the Turkey Creek Master Owners Association, Mr. Jones Mauldin, states that all residential customers are members of the association, and that the association has authorized him to sign the Settlement Agreement accepting the settlement offer. The Settlement Agreement was entered into on July 10, 2000, and duplicate originals were provided to our staff on July 13, 2000.

Pursuant to the terms of the Settlement Agreement, payment of the \$5,000 will be in total settlement of all remaining refunds and interest due in this docket. The settlement is specifically made

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contingent upon our permanently suspending the \$5,000 fine imposed by Order No. PSC-96-0350-FOF-WS.

We find that the purpose of the fine imposed by Order No. PSC-96-0350-FOF-WS was to force the utility to make refunds with interest for the benefit of the customers. With the agreement now reached among the parties, we believe that the purpose of the Order has been accomplished.

We note that interest was estimated to be approximately \$7,011 as of June 15, 1998, and that all customers who could be found had received the principal amount due. Therefore, very little interest would have continued to accrue from that date forward. While we do not wish to reward procrastination and delay, or a refusal of a utility to comply with a lawful order of this Commission, we believe that the judgment of the parties should be respected, and we therefore approve the Settlement Agreement in its entirety.

Pursuant to the Settlement Agreement, as the final disposition of all matters in Docket No. 921098-WS and Circuit Court Case No. 98-2252CA, Division J, the utility should pay \$5,000 to the City within 30 days of the issuance of this Order, and the City will then remit that amount to the Turkey Creek Masters Homeowners Association. Contingent upon such payment, the fine imposed by Order No. PSC-96-0350-FOF-WS, shall be permanently suspended, and we shall voluntarily dismiss with prejudice the Circuit Court case and close Docket No. 921098-WS. Upon verification by our staff that the payment has been made, our staff shall close the docket administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Settlement Agreement dated July 10, 2000, is hereby approved. It is further

ORDERED that contingent upon the \$5,000 payment being made to the City of Alachua within 30 days of the issuance of this Order, the fine imposed by Order No. PSC-96-0350-FOF-WS shall be permanently suspended. It is further

ORDERED that this Commission will voluntarily dismiss with prejudice Circuit Court Case No. 98-2252CA, Division J, and that this docket shall be administratively closed upon our staff's

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verification that the \$5,000 payment has been made to the City of Alachua.

By ORDER of the Florida Public Service Commission this 15th day of August, 2000.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

RRJ

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 Records and Reporting, 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 Records and reporting 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.

M E M O R A N D U M

August 14, 2000

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RECORDS AND  
REPORTING

TO: DIVISION OF RECORDS AND REPORTING  
FROM: DIVISION OF LEGAL SERVICES (JAEGER) *RRJ pel*  
RE: DOCKET NO. 921098-WS - 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.

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Attached is an ORDER APPROVING SETTLEMENT AGREEMENT, to be issued in the above-referenced docket.

(Number of pages in order - *116*)

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Attachment

cc: Division of Regulatory Oversight (Brady)

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