

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for name change on Certificates Nos. 303-W and 252-S in Volusia County from Tymber Creek Utilities to Tymber Creek Utilities, Incorporated.	DOCKET NO. 041339-WS ORDER NO. PSC-05-0188-FOF-WS ISSUED: February 18, 2005
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The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDING AND APPROVING
NAME CHANGE

BY THE COMMISSION:

BACKGROUND

On November 24, 2004, Tymber Creek Utilities (Tymber Creek or utility) filed a request to change the name on Certificates Nos. 303-W and 252-S to Tymber Creek Utilities, Incorporated. Tymber Creek is a Class C water and wastewater utility serving 447 water and 415 wastewater customers in Volusia County. It is located in a water resource caution area of the St. Johns River Water Management District. In its 2003 annual report, the utility reported combined gross revenues of \$245,174 and a combined net operating loss of \$15,786.

We granted Tymber Creek its water and wastewater certificates in 1978.¹ There have been no other certification actions on behalf of the utility. When the utility was certificated, it was a partnership. In 1994 the utility reorganized as a Subchapter S corporation called Tymber Creek Utilities, Incorporated. The name change was discovered in the staff assisted rate case in Docket No. 040300-SU. Upon being informed that a change in name required Commission approval, the utility filed the application in this docket.

The purpose of this Order is to address the utility's failure to notify this Commission before changing its name as well as the utility's application for a name change. We have jurisdiction pursuant to Section 367.1214, Florida Statutes.

¹ Order No. 8242, issued April 6, 1978, in Docket Nos. 770324-W and 770325-S, In re: Application of Tymber Creek Utilities for certificate to operate a water and sewer utility in Volusia County, Florida. Section 367.041, Florida Statutes.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

SHOW CAUSE PROCEEDING

Section 367.1214, Florida Statutes, requires that a water and wastewater utility notify this Commission and its customers before changing its name. Effective February 21, 1994, the utility recorded with the Florida Department of State, Division of Corporations, a change in organization from a partnership to a corporation and a resulting change in name from Tymber Creek Utilities to Tymber Creek Utilities, Incorporated.

Utilities are charged with the knowledge of this 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). Section 367.161(1), Florida Statutes, authorizes this 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 order of this Commission. By failing to comply with the provisions of Section 367.1214, Florida Statutes, the utility's acts were "willful" in the sense intended by Section 367.161, Florida Statutes. In our Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, entitled 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., this Commission, having 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.

It appears that Tymber Creek has admitted to violating Section 367.1214, Florida Statutes, but that there are mitigating circumstances. Since neither the partners nor the partners' shares changed as a result of the reorganization, the utility stated it was unaware of the requirement to notify this Commission and its customers prior to changing its name. In addition, we did not receive any customer inquiries or complaints. Finally, once aware of the violation, the utility immediately took steps to file the necessary documents to request our approval of the name change. Due to the length of time the utility has operated under the changed name, the fact that it apparently caused no customer confusion, and the utility's willingness to immediately correct its error, we find that no show cause proceeding shall be initiated against Tymber Creek for its apparent violation of Section 367.1214, Florida Statutes.

CHANGE OF NAME

On November 24, 2004, an application was filed on behalf of the utility to change the name on its certificates to Tymber Creek Utilities, Incorporated. The application was filed pursuant to Rule 25-30.039, Florida Administrative Code, which provides for changes in name only, with no change in the ownership or control of the utility or its assets.

The reason given for the name change was to recognize that the utility had reorganized from a partnership to a Subchapter S corporation. A statement was provided by the utility's Corporate Secretary attesting that neither the ownership nor the ownership percentage of the utility assets changed as a result of the name change. While the utility was reorganized from a partnership to a corporation, the prior owners of the partnership, Messrs. J. Stanley, Steve P., and

Ronald E. Shirah, each retained their 1/3 interest in the utility. The application included a copy of the utility's proposed water and wastewater tariffs showing the name change and returned the applicant's current water and wastewater certificates.

The application also included documentation from the Florida Department of State, Division of Corporations, showing recognition of the name change. The effective date of the name change was February 21, 1994. In accordance with Rule 25-30.039(2)(f), Florida Administrative Code, the utility provided a proposed notice to be given to customers. We find that the utility shall also provide a recorded warranty deed or long-term lease reflecting the new name of the utility for the land upon which the utility's wastewater treatment plant resides within 30 days of this Order.

The utility is current with annual reports and regulatory assessment fees. There are no outstanding fees, penalties, or interest, and no refunds are due. Our staff also verified that the utility's wastewater systems are in environmental compliance with the Florida Department of Environmental Protection, and that there are no water use issues with regard to the St. Johns River Water Management District.

We therefore find that the name change shall be approved, and the name on Certificates Nos. 303-W and 252-S shall be changed to Tymber Creek Utilities, Incorporated effective February 1, 2005. The revised tariffs shall be effective for services rendered on or after the stamped approval date.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the name change is approved, and the name on Certificates Nos. 303-W and 252-S shall be changed to Tymber Creek Utilities, Incorporated effective February 1, 2005. It is further

ORDERED that a show cause proceeding shall not be initiated against Tymber Creek Utilities, Incorporated for its failure to obtain Commission approval prior to changing its name in apparent violation of Section 367.1214, Florida Statutes. It is further

ORDERED that Tymber Creek Utilities, Incorporated shall provide a recorded warranty deed, or long-term lease, reflecting the name change within 30 days from the date of this Order for the land upon which the utility's wastewater treatment plant resides. It is further

ORDERED that the utility's revised tariffs shall be effective for services rendered on or after the stamped approval date. It is further

ORDERED that this docket shall be administratively closed upon receipt of a recorded warranty deed or long-term lease.

By ORDER of the Florida Public Service Commission this 18th day of February, 2005.



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

(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 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.