

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

January 7, 1993

TO : DIRECTOR OF RECORDS AND REPORTING

FROM : DIVISION OF WATER AND WASTEWATER (HOLMAN, RENDLELL) *EH 92*
DIVISION OF LEGAL SERVICES (ASHER-COHEN) *for fax bl*

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

AGENDA : January 19, 1993 - CONTROVERSIAL - PARTIES MAY
PARTICIPATE - PROPOSED AGENCY ACTION ON ISSUES 1,
2, AND 3

CRITICAL DATES: None

RECOMMENDATION FILE NAME: I:\PSC\WAW\WP\921098.RCM

DOCUMENT NUMBER-DATE

00237 JAN-78

FPSC-RECORDS/REPORTING 237

CASE BACKGROUND

On June 30, 1992, the Board of County Commissioners of Alachua County adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring that, as of June 30, 1992, the water and wastewater utilities in that County shall become subject to the provision of Chapter 367, Florida Statutes. The resolution was acknowledged by this Commission on September 9, 1992, by Order No. PSC-92-0964-FOF-WS. Pursuant to Section 367.031, Florida Statutes, a utility subject to the jurisdiction of this Commission must obtain a certificate of authorization or an order recognizing the exempt status of the system.

Turkey Creek Utilities (Turkey Creek) is a Class C utility in Alachua County which provides water and wastewater services to approximately 300 residential and general service customers within the Turkey Creek development. On October 26, 1992, Turkey Creek filed an application for certificates to provide water and wastewater services pursuant to Section 367.171, Florida Statutes. Although the utility has not yet met the minimum filing requirements for a grandfather certificate, we are bringing this to the attention of the Commission at this time because the utility has raised its rates twice since the Commission obtained jurisdiction, which is a violation of Section 367.171, Florida Statutes. Staff is not recommending that Turkey Creek be show caused for these increases at this time; however, staff is recommending that the utility be required to cease collecting rates in excess of the rates in effect on June 30, 1992, the date the Commission obtained jurisdiction of Alachua County. In addition, staff is recommending that Turkey Creek be required to refund monies collected pursuant to the two illegal rate increases, plus interest.

Staff has received several complaints from the customers regarding Turkey Creek Utilities. These complaints include high rates, two rate increases without notice to the customers, poor quality of water, the billing practices of the utility and certain charges made by the utility for service to the homeowners association. The Office of Public Counsel has intervened in this grandfather application on behalf of the customers. Additionally, the City of Alachua is looking into taking over the utility by eminent domain. According to the city, Norwood Hope, the owner of the utility, promised to give the utility to the city in 1977; however, there is no documentation supporting this promise.

In this recommendation, staff will not be addressing all of

Docket No. 921098-WS
January 7, 1993

the concerns regarding Turkey Creek. We are continuing to evaluate certain charges made by Turkey Creek as well as certain policies and procedures of the utility. Staff will be bringing a second recommendation to the Commission regarding the charges, policies and procedures of Turkey Creek at a later date.

DISCUSSION OF ISSUES

ISSUE 1: Should the application of Turkey Creek Utilities for water and wastewater certificates be granted?

RECOMMENDATION: Yes, Turkey Creek Utilities should be granted Water Certificate No. 550-W and Sewer Certificate No. 480-S to serve the territory described in Attachment A. In addition, Turkey Creek should be ordered to file a recorded warranty deed within thirty days of the effective date of the order. (HOLMAN, RENDELL)

STAFF ANALYSIS: On October 26, 1992, Turkey Creek Utilities (Turkey Creek) filed an application for water and wastewater certificates under grandfather rights to provide service in Alachua County. Turkey Creek has been providing service since 1977, prior to this Commission receiving jurisdiction of the water and wastewater utilities in Alachua County. The utility has a water treatment system, a water distribution system, a wastewater treatment system and a wastewater collection system.

The application is complete with the exception of adequate evidence that the utility owns the land upon which the utility's facilities are located, as required by Rule 25-30.035(6), Florida Administrative Code. The applicant filed a copy of a tax bill as evidence of land ownership. In staff's opinion, this is inadequate. Staff contacted the utility owner requesting a copy of a recorded warranty deed as evidence of land ownership. We were told that one could be furnished; however, to date nothing has been filed.

The rules and statutes do not require noticing for grandfather certificate applications. The applicant paid a filing fee in the amount of \$2,250. In addition, adequate service territory and system maps and a territory description have been provided as prescribed by Rules 25-30.035(9), (10), and (11), Florida Administrative Code.

Staff has contacted the Department of Environmental Regulation (DER) and learned that there are no outstanding notices of violation against this utility. A prior violation with the wastewater system was corrected and the utility currently owes \$6,000 in fines to the DER for that violation.

Turkey Creek is requesting more territory than is currently being served by the utility. The additional territory being requested is adjacent to the Turkey Creek subdivision; however, according to the utility, there are no immediate plans for

Docket No. 921098-WS
January 7, 1993

development of the area. According to Section 367.171, Florida Statutes, a utility is entitled to a grandfather certificate for "the area served by such utility on the day this chapter becomes applicable to it". Although the additional territory being requested is adjacent to the area the utility is currently serving, staff does not believe it should be granted with the grandfather certificate. As mentioned in the case background, we have had numerous customer complaints regarding the rates and charges and billing practices of this utility. In fact, the Office of Public Counsel has intervened in this grandfather proceeding on behalf of the customers of the utility. Staff has also become aware that the City of Alachua is considering taking control of the utility through eminent domain proceedings. Given the level of concern regarding the practices of this utility and the apparent lack of a need for service in the additional area being requested, staff believes the utility should be granted only the territory it is currently serving. If, in the future, the utility wants to serve the territory not granted in this case, it can file for an amendment of certificate pursuant to Section 367.045(2), Florida Statutes. An amendment proceeding requires noticing in the local newspaper as well as to neighboring utilities and governmental entities, an opportunity for objections to be filed to the application and a showing of the financial and technical ability of the applicant to provide the service. A grandfather proceeding includes none of these requirements, since this type of certificate is granted as a matter of right pursuant to the statute.

Based on the above information, staff recommends that Certificates Nos. 550-W and 480-S be granted to Turkey Creek for the territory described in Attachment A. In addition, we recommend that the utility be required to file within thirty days of the effective date of the order a recorded warranty deed as evidence of ownership of the utility land.

ATTACHMENT A

SERVICE TERRITORY DESCRIPTION - TURKEY CREEK, INC.

ALACHUA COUNTY

A part of Sections 27, 28, 32, 33, and 34, Township 8 South, Range 19 East, Alachua County, Florida; being more particularly described as follows:

Commence at the northwest corner of said Section 28 and run South 00° 42' 41" East, along the west line of said Section 28, 1315 +/- feet, to the Point of Beginning; thence South 89° 21' 23" East, 675 +/- feet; thence South 00° 58' 16" East, 275 +/- feet; thence easterly the following courses: North 89° 01' 44" East, 867 +/- feet; North 87° 08' 10" East, 50 +/- feet; South 87° 42' 54" East, 593 +/- feet; thence southerly the following courses: South 04° 23' 10" West, 253 +/- feet; South 04° 32' 21" West, 137 +/- feet; South 29° 43' 19" West, 142 +/- feet; South 11° 49' 06" East, 305 +/- feet; South 11° 49' 06" East, 110 +/- feet; South 08° 32' 03" East, 71 +/- feet; South 17° 14' 50" East, 27 +/- feet; thence easterly the following course: North 88° 38' 16" East, 516 +/- feet; North 88° 29' 14" East, 1387 +/- feet; thence North 01° 55' 03" West, 985 +/- feet; to the southerly right-of-way line of U.S. - 441; thence southeasterly along said right-of-way line 712 +/- feet, thence South 9° 30' West, 550 +/- feet; thence South 12° West, +/- 780 feet; thence North 87° 07' 53" East, 811 +/- feet; South 77° 30' 53" East, 304 +/- feet; South 12° 29' 07" West, 899 +/- feet; South 01° 08' 58" East, 1345 +/- feet; South 15° 11' 38" East, 544 +/- feet; South 19° 38' 13" East, 148 +/- feet; thence South 58° 28' 37" West, 493 +/- feet; thence North 34° West, 117 +/- feet; thence South 57° 44' 07" West, 110 +/- feet; thence South 27° East, 700 +/- feet; thence South 11° East, 280 +/- feet; thence South 9° West, 390 +/- feet; thence North 70° West, 105 +/- feet; thence North 10° East, 52 +/- feet; Thence North 79° West, 585 +/- feet; thence South 19° 48' 00" West, 201 +/- feet to the centerline of a creek; thence westerly along said centerline 2056 +/- feet, (or approximately North 82° West, 2050 +/- feet); thence North 34° West, 150 +/- feet; thence South 75° West, 450 +/- feet; thence South 24° West, 225 +/- feet; thence South 87° 08' 39" West, 319 +/- feet; thence North 02° 51' 21" West, 1515 +/- feet; thence North 73° 34' 38" West, 1284 +/- feet; thence North 29° 14' 16" East, 1719 +/- feet; thence South 89° 12' 04" West, 399 +/- feet; thence North 25° 30' 30" East, 300 +/- feet; thence North 56° West, 290 feet; thence North 42° West, 241 feet; thence South 67° West, 200 feet; thence South 86° West, 210 feet; thence South 00° 42' 41"

Docket No. 921098-WS
January 7, 1993

East, 410 +/- feet; thence South 89° 17' 19" West, 150 +/- feet; thence North 00° 42' 41" West, 18 +/- feet; thence South 89° 17' 19" West, 100 +/- feet; thence North 00° 42' 41" West, 2524 +/- feet to the Point of Beginning. Containing 580 Acres, more or less.

Docket No. 921098-WS
January 7, 1993

ISSUE 2: What rates and charges should be approved for this utility?

RECOMMENDATION: The rates and charges as detailed in the staff analysis should be approved. (HOLMAN, RENDELL)

STAFF ANALYSIS: As mentioned in the case background, the utility has increased its rates twice since June 30, 1992, the date on which the Commission received jurisdiction of Alachua County. The utility claims that it has increased the rates in order to implement the rate increase approved by the City of Alachua on August 27, 1991. The city has confirmed to staff that the current rates were never approved by the City of Alachua. The City of Alachua has been regulating water and wastewater utilities within its city limits since it passed an ordinance on October 7, 1991. Prior to that time, the city entered into an agreement with Turkey Creek in which Turkey Creek agreed to regulation of its rates and charges by the City of Alachua. Between the time of the agreement and October 7, 1991, Turkey Creek would advise the city of any rate increase. Turkey Creek did not advise the city of the rate increase on August 27, 1991. In fact, the city was not aware of the August 27, 1991, rates until staff brought these rates to the city's attention at a meeting with the city in early December, 1992. Additionally, Turkey Creek did approach the city for another rate increase on August 27, 1992 (after the Commission received jurisdiction), but this increase was never implemented and staff has made the utility aware that it cannot raise its rates again without prior PSC approval.

Staff has examined the books and records of Turkey Creek, and has determined that the rates which were being charged on June 30, 1992, were those in effect on December 26, 1990. These are the rates the City of Alachua has indicated as being approved for the utility. Therefore, staff recommends that the rates that should be approved are the rates which were in effect on December 26, 1990 and were being charged on June 30, 1992. For informational purposes, listed below are the rates that were in effect on June 30, 1992, the rates implemented in September, 1992 and the rates implemented in November, 1992:

Docket No. 921098-WS
January 7, 1993

WATER SYSTEM

Residential and General Service

Monthly Rates

June 30, 1992 Sept., 1992 Nov., 1992

Minimum Charge by Meter Size:

Meter Size

5/8 x 3/4" (includes 4,000 gal.)	\$ 10.35	\$10.85	\$11.35
1" (includes 6,000 gal.)	12.05	12.65	13.25
1 1/2" (includes 20,000 gal.)	23.95	25.25	26.55
2" (includes 40,000 gal.)	40.95	43.25	45.55
<u>Gallonage Rates:</u> (over 4000 gallons consumption)	\$.85	\$.90	\$.95

General Service

Two unmetered locations: \$ 21.40 per month (As of June 30, 1992)

Docket No. 921098-WS
January 7, 1993

WASTEWATER SYSTEM

Residential Service

Monthly Rates

	<u>June 30, 1992</u>	<u>Sept., 1992</u>	<u>Nov., 1992</u>
<u>Minimum Monthly Charge:</u> (includes 4,000 gallons consumption)	\$ 23.75	\$ 24.95	\$ 28.50
Usage between 4,000 <u>and 7,000 gallons:</u> (per 1,000 gallons)	3.90	4.10	4.70
<u>Maximum Monthly Charge:</u>	\$ 35.45	\$ 37.25	\$ 42.60

There are five general service customers who receive wastewater service from Turkey Creek Utilities. All of these customers pay the above-noted rates for service. However, for two customers, the utility adjusts the amount of water to which the rates apply to reflect that not all water usage is returned to the wastewater system. The utility applies the rates to 75% of the water consumption of the clubhouse of the Turkey Creek Country Club and to 30% of the water consumption of the maintenance house of the Turkey Creek Country Club.

Docket No. 921098-WS
January 7, 1993

ISSUE 3: Should Turkey Creek Utilities be required to cease collecting rates in excess of that which it was charging on June 30, 1992 and refund monies collected pursuant to the unauthorized rate increases?

RECOMMENDATION: Yes, Turkey Creek Utilities should be required to begin charging those rates which it was charging on June 30, 1992, on the next billing for service. In addition, Turkey Creek should be required to refund monies collected from its customers pursuant to the two unauthorized rate increases. Further, the utility should be ordered to pay interest on the overcharge, calculated in accordance with Rule 25-30.360, Florida Administrative Code (F.A.C.), that has accrued or will accrue until the date of refund. The refund should be accomplished within ninety days from the effective date of the order and the utility should be required to file reports consistent with Rule 25-30.360, F.A.C. In the event these refunds are unclaimed, staff recommends that all unclaimed amounts be treated as cash contributions-in-aid-of-construction. (CIAC). (HOLMAN, RENDELL)

STAFF ANALYSIS: As mentioned previously, Turkey Creek has increased its rates twice since the Commission received jurisdiction of Alachua County. The first increase occurred in September, 1992 and the second occurred in November, 1992. While the utility asserts that it was authorized by the City of Alachua to charge its current rates, these rates were not in effect on June 30, 1992. Additionally, the city has informed staff that the current rates were never approved by the city. Therefore, staff recommends that the utility be required to immediately cease collecting rates implemented in November, 1992, begin charging the rates it was charging on June 30, 1992 and refund to its customers the monies collected in excess of those rates, including interest.

For informational purposes, staff attempted to estimate the amount of monies collected pursuant to these unauthorized rate increases through December, 1992. The amount collected due to the first rate increase was approximately \$1,380.00, not including interest and the amount collected due to the second rate increase was approximately \$7,035.00, not including interest. These figures were calculated under the assumption that the average monthly consumption is 7,900 gallons and that each customer has a 5/8 inch meter. In addition, the second amount encompasses both the first increase and the second increase. It should be noted that these figures are preliminary and are subject to change.

Staff believes the utility should be required to refund the amount of the unauthorized rate increases within 90 days of the

Docket No. 921098-WS
January 7, 1993

effective date of the order. Since this refund is a result of specific rate changes, it should be calculated on a per customer basis. Thus, every customer receiving service during the time the rates were increased should receive a refund of the amount he or she overpaid. This is consistent with Rule 25-30.360, F.A.C., regarding the timing and basis for refunds. In addition, the utility should be required to refund any interest that has accrued from the collection of the charges to the date of the refund. Pursuant to Rule 25-30.360, F.A.C., the amount of interest should be based on the thirty-day commercial paper rate. Staff has provided the utility with the commercial paper rate for the appropriate period of time. The utility should file refund reports consistent with the rule. In the event any refunds are unclaimed, staff recommends that these unclaimed amounts should be treated as cash contributions-in-aid-of-construction (CIAC).

Docket No. 921098-WS
January 7, 1993

ISSUE 4: Should Turkey Creek Utilities be required to pay Regulatory Assessment Fees and file an Annual Report for 1992?

RECOMMENDATION: Yes. Turkey Creek Utilities should be required to pay regulatory assessment fees and file an Annual Report for the period June 30, 1992 through December 31, 1992 by March 31, 1993. (HOLMAN, RENDELL)

STAFF ANALYSIS: Pursuant to Rule 25-30.120(2), Florida Administrative Code, "any utility which is subject to this Commission's jurisdiction on or before December 31 of that year or for any part of that year, whether or not the utility has applied for or been issued a certificate" is required to pay regulatory assessment fees. Additionally, Rule 25-30.110(3), Florida Administrative Code, states that "(t)he obligation to file an annual report for any year shall apply to any utility which is subject to this Commission's jurisdiction as of December 31 of that year, whether or not the utility has actually applied for or been issued a certificate." Staff is recommending that Turkey Creek be required to pay Regulatory Assessment Fees and file an Annual Report from the jurisdictional date, which is June 30, 1992. Staff has sent the utility an annual report form. Regulatory assessment fee forms will be sent by staff when they are mailed to all other utilities.

Docket No. 921098-WS
January 7, 1993

ISSUE 5: Should the docket remain open?

RECOMMENDATION: Yes. The docket should remain open pending staff's analysis of the policies, procedures and certain charges made by Turkey Creek Utilities. (ASHER-COHEN)

STAFF ANALYSIS: As mentioned in the case background, there have been several complaints regarding the service provided by Turkey Creek. Staff is working with the customers, the city and the utility to resolve these complaints. In addition, staff will continue evaluating certain charges made by Turkey Creek as well as some of its policies and procedures. Staff will bring a second recommendation to the Commission at a later date which will address each of these concerns.