

SCANNED

FLORIDA PUBLIC SERVICE COMMISSION

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

M E M O R A N D U M

October 28, 1993

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BEDELL, LORENZO) *cb*
DIVISION OF WATER AND WASTEWATER (XANDERS, RENDELL) *JP*

RE: UTILITY: TURKEY CREEK, INC. & FAMILY DINER, INC. d/b/a
TURKEY CREEK UTILITIES
DOCKET NO. 921098-WS
COUNTY: ALACHUA

CASE: APPLICATION FOR CERTIFICATES TO PROVIDE WATER AND
WASTEWATER SERVICE UNDER GRANDFATHER RIGHTS

AGENDA: NOVEMBER 9, 1993 - REGULAR AGENDA - REVIVING PAA -
PARTICIPATION LIMITED TO COMMISSION STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\921098.RCM

DOCUMENT NUMBER-DATE

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CASE BACKGROUND

On June 30, 1992, the Board of County Commissioners of Alachua County voted to transfer jurisdiction of water and wastewater utilities to the Public Service Commission. In compliance with Section 367.171, Florida Statutes, on October 26, 1992, Family Diner, Inc., and Turkey Creek, Inc., d/b/a/ Turkey Creek Utilities (Turkey Creek), filed an application for grandfather certificates. On November 16, 1992, the Office of Public Counsel filed a Notice of Intervention.

By proposed agency action (PAA) Order No. PSC-93-0229-FOF-WS, issued February 10, 1993, the Commission granted Turkey Creek water certificate No. 550-W and wastewater certificate No. 480-S. The Commission also determined that the appropriate rates for Turkey Creek were those rates it was charging on June 30, 1992, the date the Commission received jurisdiction in Alachua County. The Order found that Turkey Creek had violated Sections 367.081 and 367.171, Florida Statutes, and Rule 25-3-.035, Florida Administrative Code, by raising its rates in September of 1992, and November of 1992. The Order directed Turkey Creek to cease collection of the unauthorized rates and required a refund. In addition, pursuant to Section 367.171, Florida Statutes, and Rule 25-30.035, Florida Administrative Code, the Commission denied Turkey Creek's request to extend its service area beyond the territory it served prior to the Commission's assuming jurisdiction over Turkey Creek. On March 4, 1993, Turkey Creek filed a timely petition protesting PAA Order No. PSC-93-0229-FOF-WS.

By PAA Order No. PSC-93-0816-FOF-WS, issued May 27, 1993, the Commission required, among other things, a reduction in certain charges, a refund of accrued interest associated with customer deposits, and discontinuance of the charge for public fire protection. On June 17, 1993, Turkey Creek filed a timely protest of PAA Order No. PSC-93-0816-FOF-WS.

Pursuant to the protests filed by Turkey Creek, an administrative hearing was set for November 3, 1993. By Order No. 93-1090-FOF-WS, issued July 27, 1993, the Commission required that the difference between Commission approved PAA charges and Turkey Creek's charges be held subject to refund.

On September 15, 1993, the City of Alachua made a preliminary determination to purchase Turkey Creek. According to the utility,

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the City began operating the utility effective September 23, 1993. According to information provided by the City, the sale has been closed and that the proceeds were to be held in escrow pending Department of Environmental Protection permitting. On October 20, 1993, the utility filed a Notice Dismissing Petitions which is the subject of this Recommendation.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge the Dismissal of the Petitions and revive PAA Orders Nos. PSC-93-0229-FOF-WS, issued February 10, 1993, and PSC-93-0816-FOF-WS, issued May 27, 1993, making them final and effective?

RECOMMENDATION: Yes, PAA Orders Nos. PSC-93-0229-FOF-WS and PSC-93-0816-FOF-WS should be revived and made final and effective. (BEDELL, LORENZO)

STAFF ANALYSIS: As discussed in the Case Background, by PAA Order No. PSC-93-0229-FOF-WS the Commission granted Turkey Creek Certificates Nos. 550-W and No. 480-S. Since the certificates were issued pursuant to Section 367.071, Florida Statutes, the Commission also determined that the appropriate rates for Turkey Creek were those rates it was charging on June 30, 1992, the date the Commission received jurisdiction in Alachua County. By PAA Order No. PSC-93-0816-FOF-WS, issued May 27, 1993, the Commission required discontinuance of a charge for public fire protection, a reduction in certain charges, a refund of accrued interest, the installation of irrigation meters, the replacement of certain residential meters, and revision of the service application. Petitions protesting both PAA Orders were timely filed. No other protests to the Orders were filed.

On October 20, 1993, the utility filed a Notice Dismissing Petitions filed in this docket. Based on this Notice, staff recommends that PAA Orders Nos. PSC-93-0229-FOF-WS and PSC-93-0816-FOF-WS be revived and made final and effective. The Orders are attached to this Recommendation and are marked as Attachment 1. The refunds required by the PAA Orders are discussed below.

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ISSUE 2: Should Turkey Creek Utilities be required to refund with interest monies collected in excess of the rates and charges approved in Orders Nos. PSC-93-0229-FOF-WS and PSC-93-0816-FOF-WS?

RECOMMENDATION: Yes, Turkey Creek Utilities should be required to refund all monies collected in excess of the rates and charges approved in Orders Nos. PSC-93-0229-FOF-WS and PSC-93-0816-FOF-WS. The utility should be ordered to pay interest on the refunds, calculated in accordance with Rule 25-30.360, Florida Administrative Code (F.A.C.), that has accrued or will accrue until the date of refunds. In addition, the refunds should be made on a per customer basis. The refunds 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. The periods which the refunds cover should be those outlined below in the Staff Analysis. All unclaimed refunds should be forwarded to the City Alachua for further disposition. (XANDERS, BEDELL)

STAFF ANALYSIS: Order No. PSC-93-0229-FOF-WS, issued February 10, 1993, required that Turkey Creek Utilities reduce its monthly service rates to those which were in effect on June 30, 1992, the date the Commission received jurisdiction over Alachua County and that Turkey Creek be required to refund any monies collected pursuant to the rate increases implemented in September 1992 and November 1992, including interest. This order was issued as a Proposed Agency Action (PAA) and was subsequently protested by the utility. As a result, the utility continued to charge the higher rates and a refund was never made to the customers.

By PAA Order No. PSC-93-0816-FOF-WS, issued May 27, 1993, the Commission required, among other things, a reduction in certain charges, a refund of accrued interest associated with customer deposits, and discontinuance of the charge for public fire protection. By Order No. PSC-93-1090-FOF-WS, issued July 27, 1993, the Commission ordered the utility to hold the difference between its current charges and the charges approved in Order No. PSC-93-0816-FOF-WS subject to refund pending the final decision after the hearing. In addition, the Commission ordered that the utility provide by August 27, 1993, a bond, letter of credit or escrow agreement to guarantee the funds collected subject to refund. However, an escrow agreement was not executed prior to the sale of the utility to the City of Alachua. Therefore, there are no escrowed funds to be disbursed.

Staff believes that, Turkey Creek, as the transferor of the utility, remains liable for any outstanding refunds of the utility, pursuant to Section 367.071 (2), Florida Statutes. Therefore, staff recommends that the Commission require Turkey Creek to refund the monies collected in excess of the appropriate rates and charges as determined in the above-referenced orders. Staff recommends that the utility should be ordered to pay interest on the refunds, calculated in accordance with Rule 25-30.360, Florida Administrative Code (F.A.C.), that has accrued or will accrue until the date of refunds. In addition, the refunds should be made on a per customer basis. The refunds should be accomplished within ninety days from the effective date of the order and Turkey Creek should be required to file reports consistent with Rule 25-30.360, F.A.C. Because the utility has been sold to the City of Alachua, staff further recommends that all unclaimed refunds should be forwarded to the City Alachua for further disposition.

The periods which the refunds should cover should be as follows:

1. Rates: The monthly service rates should be refunded to the customers for the period June 30, 1992, through the date of the sale to the City of Alachua.
2. Accrued interest on customer deposits: The accrued interest associated with the customer deposits should be refunded to the customers for the period June 30, 1992, through the date each customers' deposit was returned.
3. Public fire protection: The public fire protection charge should be refunded to the TCMOA for all of 1992 and any payment made for 1993.
4. Miscellaneous service charges: The miscellaneous service charges should be refunded to the customers for the period July 6, 1993, through the date of the sale to the City of Alachua.
5. Late payment charges: The late payment charges should be refunded to the customers for the period July 6, 1993, through the date of the sale to the City of Alachua.

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ISSUE 3: Should this Docket be closed?

RECOMMENDATION: No, this docket should remain open to monitor the refunds. Upon completion of the refund, the docket may be closed administratively. (BEDELL, LORENZO)

ANALYSIS: As discussed in Issue 2, staff recommends that Turkey Creek should make certain refunds to customers. Therefore, staff recommends that this docket remain open to monitor the refunds. Upon completion of the refund in accordance with the Commission's decision, staff may close this docket administratively.

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Attachment 1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for)	DOCKET NO. 921098-WS
certificates to provide)	ORDER NO. PSC-93-0229-FOF-WS
water and wastewater service)	ISSUED: 02/10/93
in Alachua County under)	
grandfather rights by TURKEY)	
CREEK, INC. & FAMILY DINER,)	
INC. d/b/a TURKEY CREEK)	
UTILITIES)	

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING CERTIFICATES NOS. 550-W AND 480-S.
APPROVING RATES AND REQUIRING REFUND

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

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 provisions 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 that provides water and wastewater services to approximately 300 residential and general service customers within the Turkey Creek development.

DOCUMENT NUMBER-DATE

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Application

On October 26, 1992, Turkey Creek Utilities (Turkey Creek) filed an application for water and wastewater certificates under grandfather rights pursuant to Section 367.171, Florida Statutes, 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. We find this to be inadequate.

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. A description of the territory we are authorizing the utility to serve is appended to this Order as Attachment A, which by reference is incorporated herein. The territory includes only the territory actually being served by the utility prior to our receiving jurisdiction.

Turkey Creek requested 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 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, because the utility is not currently serving the area, we do not find it appropriate to grant the utility that territory with the grandfather certificate. In the future, the utility may file for an amendment of certificate pursuant to Section 367.045(2), Florida Statutes, when it wants to serve the territory not granted in this case.

We have contacted the Department of Environmental Regulation (DER) and learned that there are no outstanding notices of violation against this utility.

Based on the above information, we find it in the public

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interest to grant the utility's application for grandfather certificates. Accordingly, Turkey Creek Utilities is hereby granted Certificates Nos. 550-W and 480-S to serve the territory described in Attachment A. In addition, we hereby find that the utility shall file within 30 days of the effective date of this order a recorded warranty deed as evidence of ownership of the utility land.

Rates And Charges

The utility has increased its rates twice since June 30, 1992, the date on which the Commission received jurisdiction over the privately owned water and wastewater utilities in Alachua County. The utility stated that it increased the rates to implement the rate increase approved by the City of Alachua (the City) on August 27, 1991. Upon investigation, the City confirmed to our Staff that the current rates were never approved by the City. The City 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. Between the time of the agreement and October 7, 1991, Turkey Creek was to advise the City of any rate increase. However, 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 our 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.

Upon our examination of the books and records of Turkey Creek, we have determined that the rates that 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 were approved for the utility. Therefore, we find that the rates that should be approved are the rates that were in effect on December 26, 1990, and were being charged on June 30, 1992.

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Turkey Creek's approved rates are as follows:

WATER SYSTEM

Residential and General Service

Monthly Rates

Minimum Charge by Meter Size:

Meter Size

5/8 x 3/4" (includes 4,000 gal.)	\$ 10.35
1" (includes 6,000 gal.)	12.05
1 1/2" (includes 20,000 gal.)	23.95
2" (includes 40,000 gal.)	40.95

Gallonage Rates: \$.85
(over 4000 gallons consumption)

General Service

Two unmetered locations: \$ 21.40 per month

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WASTEWATER SYSTEM

Residential Service

Monthly Rates

Minimum Monthly Charge: \$ 23.75
(includes 4,000 gallons consumption)

Usage between 4,000
and 7,000 gallons: 3.90
(per 1,000 gallons)

Maximum Monthly Charge: \$ 35.45

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.

The utility shall file a tariff reflecting the above rates. The effective date of the tariff will be the stamped approval date.

Refund

Turkey Creek increased its rates twice since the Commission received jurisdiction in Alachua County, once in September 1992, and again in November 1992. While the utility maintains 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 informed our Staff that the current rates were never approved by the City. Therefore, we find that the utility shall cease collecting rates implemented in November 1992 and shall begin charging the rates as approved and set forth in the body of this Order, and shall refund to its customers the monies collected in excess of those rates, including interest.

The utility shall refund the unauthorized rate increases within 90 days of the effective date of this Order. As this refund is a result of specific rate changes, it shall be calculated on a per customer basis. Thus, every customer receiving service during the time the rates were increased shall receive a refund of the amount he or she overpaid. This is consistent with Rule 25-30.360,

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Florida Administrative Code, regarding the timing and basis for refunds. In addition, the utility shall refund any interest that has accrued from the collection of the charges to the date of the refund. Pursuant to Rule 25-30.360, Florida Administrative Code, the amount of interest shall be based on the 30-day commercial paper rate. We will provide the utility with the commercial paper rate for the appropriate period of time. The utility shall file refund reports consistent with the rule. If any refunds are unclaimed, we find that these unclaimed amounts should be treated as cash contributions-in-aid-of-construction (CIAC).

Regulatory Assessment Fees and Annual Report

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." We hereby find that Turkey Creek is required to pay Regulatory Assessment Fees and file an Annual Report from the jurisdictional date, which is June 30, 1992. The utility has been sent an annual report form. Regulatory assessment fee forms will be sent by our Staff when they are mailed to all other utilities.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the application of Turkey Creek Utilities for grandfather water and wastewater certificates is hereby granted. It is further

ORDERED that all of the provisions of this Order are issued as proposed agency action and shall become final unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that Certificates Nos. 550-W and 480-S shall be issued to Turkey Creek Utilities. It is further

ORDERED that Turkey Creek Utilities' service territory shall be that described in Attachment A, appended hereto. It is further

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ORDERED that Turkey Creek Utilities' rates and charges shall be those set forth in the body of this Order. It is further

ORDERED that Turkey Creek Utilities shall file within 30 days of the effective date of this Order a recorded warranty deed as evidence of ownership of utility land. It is further

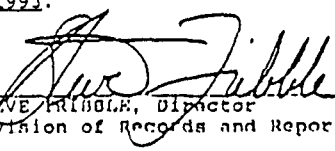
ORDERED that Turkey Creek Utilities shall refund to its customers the amount collected since June 30, 1992, in excess of the rates set forth in the body of this Order, plus interest. The refund shall be made within 90 days of the effective date of this Order and shall be consistent with Rule 25-30.360, Florida Administrative Code. The utility shall file refund reports consistent with this rule. It is further

ORDERED that Turkey Creek Utilities shall pay regulatory assessment fees for the period June 30, 1992, through December 31, 1992, by March 31, 1993. It is further

ORDERED that Turkey Creek Utilities shall file an annual report for the period June 30, 1992, through December 31, 1992, by March 31, 1993. It is further

ORDERED that this docket shall remain open pending our investigation and analysis of other policies, procedures, and charges of Turkey Creek Utilities, and pending a timely protest from a substantially affected person by the expiration of the protest period.

By ORDER of the Florida Public Service Commission this 10th day of February, 1993.



STEVE FRIBBLE, Director
Division of Records and Reporting

(S E A L)
KAC

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.026(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0070, by the close of business on MARCH 4, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.

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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' 04" 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 54° West, 290 feet; thence North 42° West, 241 feet; thence South 67° West, 700 feet; thence South 86° West, 210 feet; thence South 00° 42' 41" 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 921098-WS
certificates to provide water) ORDER NO. PSC-93-0816-FOF-WS
and wastewater service in) ISSUED: May 27, 1993
Alachua County under grandfather)
rights by Turkey Creek, Inc. &)
Family Diner, Inc. d/b/a Turkey)
Creek Utilities.)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

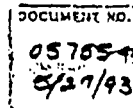
NOTICE OF PROPOSED AGENCY ACTION ORDER
REQUIRING REDUCTION IN UTILITY CHARGES,
REFUND OF ACCRUED INTEREST ON CUSTOMER DEPOSITS,
INSTALLATION OF IRRIGATION METERS,
REPLACEMENT OF CERTAIN RESIDENTIAL METERS,
AND REVISION OF SERVICE APPLICATION

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

By resolution dated June 30, 1992, the Board of County Commissioners of Alachua County transferred jurisdictional authority over the water and wastewater utilities within its boundaries to this Commission. On October 26, 1992, Family Diner, Inc., and Turkey Creek, Inc., d/b/a Turkey Creek Utilities (Turkey Creek or utility), which provides water and wastewater service to approximately 300 customers, filed an application for certificates of authorization pursuant to § 367.171, Florida Statutes.

By proposed agency action (PAA) Order No. PSC-93-0229-FOF-WS, issued February 10, 1993, we granted Turkey Creek water certificate no. 550-W and wastewater certificate no. 480-S, reduced Turkey Creek's rates to those which were effective December 26, 1990, and ordered a with interest refund of monies collected pursuant to two



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post-June 1992 rate increases. The utility protested the PAA Order, so the issues considered therein are currently scheduled for hearing on November 3, 1993.

Since we received jurisdiction over this utility, we have received numerous customer complaints regarding water quality and the utility's service charges. Although by this Order we shall not formally consider the water quality complaints, we note that the Department of Environmental Regulation (DER) sent a representative to Turkey Creek to test the water and inspect the plant. DER found no deficiencies with the facility and found that the water met its quality standards.

PUBLIC FIRE PROTECTION CHARGE

For the year 1992, the utility charged the Turkey Creek Master Owners Association (TCMOA or association) \$19.98 per fire hydrant for service to approximately 92 hydrants. Prior to 1992, the utility owner was president of TCMOA. In early 1992, the association elected a new board of directors which excluded the utility owner. When the new TCMOA board was billed in October 1992 for that year's fire protection, it refused to pay the bill. The new board claimed that it was not aware of the existence of the charge prior to being billed and that it was not aware of any written agreement which would prove that TCMOA had agreed to pay the charge.

According to the utility owner, the public fire protection charge was assessed when he was president of TCMOA, but he acknowledged that there was no written instrument showing that TCMOA had agreed to the charge. From the documentation the utility made available, we know that the utility billed TCMOA for the public fire protection in 1991. However, the utility did not present sufficient documentation to show that TCMOA paid the charge that year; the utility produced only a 1991 deposit slip and receipt for amounts which did not match the amount of the 1991 fire protection bill.

Turkey Creek was operating in a regulatory vacuum where none of its rates or charges were approved by an authorized regulatory body. Notwithstanding these circumstances, we would normally grandfather in a utility's rates and charges if the rates and charges were documented, verifiable, and accepted by the customer(s). The problem with respect to the public fire protection charge in this case, however, is that the charge does

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not bear the aforementioned indicia of a legitimate charge. Therefore, we shall not hold TCMOA responsible for paying any portion of public fire protection charges assessed since the date we received jurisdiction over Turkey Creek.

Further, we have two other concerns with respect to public fire protection: service termination and the prospective charge.

When the association refused to pay the 1992 bill, the utility owner threatened to discontinue the fire protection service. The Office of Public Counsel filed a motion for an emergency order wherein it requested that the Commission prohibit the utility from discontinuing the service. Subsequently, Turkey Creek agreed not to discontinue service, and it is our understanding that TCMOA has not yet paid the 1992 bill.

It is the practice of this Commission to include the cost of providing public fire protection in the customer's service rates rather than to develop a separate cost-of-service charge. There is a cogent explanation for this. Public fire protection is, in principle, a service which benefits the public at large and should therefore be the responsibility of local government. In instances where a utility has a separate charge for fire hydrants, the utility usually bills the local government which then passes that cost on to property owners through real estate taxes. However, in most cases, this is not a practical arrangement.

The true cost of providing fire protection can only be determined through a cost of service study. Based on our experience, a true cost-of-service public fire protection charge would be significant. Even the cost of performing a cost-of-service study would be prohibitive for most water utilities. These considerations notwithstanding, if a charge for fire protection is not paid, a very critical problem arises. A utility is within its rights under our rules to discontinue service for nonpayment. Although we recognize a utility's need to recover its costs for providing public fire protection service, we do not think a separate cost-of-service based charge is the proper avenue for such cost recovery when the threat of service termination looms over the community. We have therefore included the cost of providing public fire protection in the customers' service rates for most of the utilities we regulate.

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We think the above justifications for disapproving a separate public fire protection charge hold true in this case, especially in light of the utility's prior threat to terminate the service for nonpayment. Additionally, we are concerned that the utility has billed TCMOA for the fire protection service when those benefitting from the service are not necessarily members of the association. This allocation problem would become more inequitable if the utility extends its service area beyond the Turkey Creek development.

We requested that the utility provide a cost justification for its public fire protection charge. The utility's owner responded that the \$19.98 per hydrant charge is "a token fee" for furnishing the fire hydrant service, for maintenance, and for water to each fire hydrant. We agree that the charge is nominal and does not reflect the real cost of providing the service. Indeed, the revenue effect of the charge is roughly just \$1,850.00 per year. Therefore, we do not believe that removing the charge will have a significant effect on the utility's earnings or put it in the posture of not earning a fair return on its investment.

Accordingly, in consideration of the foregoing, we order that the utility shall not charge a public fire protection charge on a prospective basis. Further, pursuant to our powers to protect the public interest, we order the utility not to terminate the public fire protection service for nonpayment of any bills rendered therefor.

MISCELLANEOUS SERVICE CHARGES

Currently, Turkey Creek charges the following miscellaneous service charges:

<u>TYPE OF SERVICE</u>	<u>Water</u>	<u>Wastewater</u>
Initial Connection:	\$40.00	\$40.00
Prepaid Disconnection:	\$40.00	\$40.00
Disconnection:	\$40.00	\$40.00
Normal Reconnection:	\$40.00	\$40.00

At the time of connection, the utility charges each customer \$40.00 for connection and \$40.00 as a prepaid disconnection charge. Anytime a customer requests that the utility disconnect service (such as to receive service from a plumber), Turkey Creek charges \$40.00 to disconnect the service and then \$40.00 to reconnect the

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service. In addition to the above, the utility charges \$60.00 for any of the above services if provided after normal working hours. We asked the utility to provide cost justification for the above miscellaneous service charges, but none was provided.

Pursuant to § 367.121(1)(a), Florida Statutes, we have the power to prescribe fair and reasonable rates and charges. We do not believe that the above charges for miscellaneous services are fair and reasonable. The utility's present charges are considerably higher than the cost-based charges which we have approved for miscellaneous services in the past. Further, the connection fees we have previously approved have been designed to allow recovery of costs attributable to an ultimate disconnection, so we have not approved separate disconnect charges. Also, we have allowed higher charges for services provided after normal working hours only if justified.

In consideration of the above, we hereby order that appropriate miscellaneous service charges are as follows:

<u>TYPE OF SERVICE</u>	<u>WATER</u>	<u>WASTEWATER</u>
Initial Connection	\$15.00	\$15.00
Normal Reconnection	\$15.00	\$15.00
Violation Reconnection	\$15.00	Actual cost
Premises Visit (in lieu of disconnection)	\$10.00	\$10.00

When both water and wastewater service is provided, only a single charge is appropriate unless circumstances beyond the control of the utility require multiple actions.

We find that the above charges are fair and reasonable and note that we have approved these charges for numerous other water and wastewater utilities we regulate. Turkey Creek shall file revised tariff sheets consistent with our decision. The new charges will be effective for service rendered on or after expiration of the protest period provided for below if no timely protest is received.

CUSTOMER DEPOSITS

We have learned from the customers that the utility has, on its own initiative, refunded a portion of each customer's deposit and that such refunds were made without interest. According to the

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customers, the utility provided no explanation of what the refund represented or why a portion was being retained. Apparently, the utility has retained \$40.00 of each deposit. The utility did not collect a \$40.00 prepaid disconnection charge from all of its customers, but it retained \$40.00 of each deposit. Thus, it would seem that the utility has retained \$40.00 of each deposit in order to recoup that prepaid disconnection charge.

On a prospective basis, we shall consider the retained \$40.00 as a customer deposit for which the utility must pay interest in accordance with Rule 25-30.311(4), Florida Administrative Code. Pursuant to subsection (5) of that rule, the utility must refund deposits in their entirety, with accrued interest, to customers who have established a satisfactory payment record for 23 months. The 23 month period as to a particular customer will begin to run from the date his or her \$40.00 was retained or from the date we received jurisdiction over the County, whichever occurred later.

Under Rule 25-30.311, Florida Administrative Code, utilities are required to refund deposits with interest. Turkey Creek should therefore refund accrued interest on that portion of the customer deposits it has refunded. Interest should be calculated in accordance with the Rule, beginning from June 30, 1992, the date we obtained jurisdiction. The utility shall complete the refund within sixty days of the expiration of the protest period if no protest is received. The utility shall file refund reports of the type contemplated in Rule 25-30.360(7), Florida Administrative Code. Further, since the utility never advised the customers of the partial refund of the deposit, the utility shall send the affected customers a notice explaining the circumstances of the refund already made as well as our decision with regard to interest. The notice should be submitted to the Commission staff for approval before it is sent to the customers.

LATE PAYMENT FEE

Currently, the utility charges a late payment charge \$20.00 or 10% of the amount of the overdue bill, whichever is greater. We requested cost justification for the late payment charge, but none was provided.

As stated above, pursuant to § 367.121(1)(a), Florida Statutes, we have the power to prescribe fair and reasonable rates and charges. We do not believe that Turkey Creek's late payment charge is fair and reasonable, as it is considerably higher than

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the \$3.00 cost-based charges we have approved for other utilities in the past. Therefore, we hereby order that the appropriate late payment charge for Turkey Creek is \$3.00, which we find to be fair and reasonable. Turkey Creek shall file revised tariff sheets consistent with this decision. The new charges will be effective for bills rendered on or after expiration of the protest period provided for below if no timely protest is received.

As a supplemental matter, we note that Turkey Creek has at its disposal other incentives to encourage timely payment. Our rules provide that the utility has the right to demand higher customer deposits under certain circumstances and that it may disconnect service for nonpayment after allowing the customer 20 days to pay the bill and providing 5 working days written notice.

SERVICE AVAILABILITY CHARGES

As of December 26, 1990, Turkey Creek had the following service availability charges in effect:

WATER SYSTEM

Capital Facilities Charge

<u>Meter Size</u>	<u>Charge</u>
5/8 x 3/4"	\$380.00
1"	545.00
1 1/2"	675.00
2"	900.00

Meter Installation Charges

<u>Meter Size</u>	<u>Charge</u>
5/8 x 3/4"	\$375.00
1"	460.00
1 1/2"	675.00
2"	900.00

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WASTEWATER SYSTEM

Capital Facilities Charge

<u>Meter Size</u>	<u>Charge</u>
5/8 x 3/4"	\$440.00
1"	590.00
1 1/2"	725.00
2"	950.00

We think that some adjustments to these charges are necessary in order for them to comport with Commission practice. For instance, what Turkey Creek has labelled a capital facilities charge appears akin to what we refer to as a plant capacity charge. A plant capacity charge allows the utility to recover each customer's pro rata share of the cost of treatment plant. Normally, we base the amount of the charge on the anticipated demand the customer will place on the system as measured in equivalent residential connections (ERCs), not meter size, because ERCs can be easily converted into flows, the basic unit of measurement for plant design and permitting.

Further, we normally design meter installation charges which allow a utility to recover only the cost of the meter and the cost of its installation, including materials and labor. A typical meter installation fee for a 5/8 x 3/4" meter, which is used by most residential customers, is about \$100. What Turkey Creek has labelled a meter installation charge appears to include the costs of tapping into the utility's main and running a lateral to the customer's meter. Normally, we allow a utility to recover those costs in a separate charge. Such costs can vary substantially from customer to customer and utility to utility, so we normally allow a utility to charge the actual cost of the requisite facilities, materials, and labor.

Pursuant to our authority under § 367.121(1)(a), Florida Statutes, we order the following changes to the utility's current service availability charges. First, the utility's plant capacity charge shall be based on ERCs, not meter size. For both water and wastewater system charges, the charge for one ERC shall be that which is listed above for a 5/8 x 3/4" meter; i.e., the charges we approve are \$300 for water and \$440 for wastewater per ERC. Second, the current meter installation fee shall be divided into

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two components: meter installation and a customer connection charge. The appropriate meter installation charges are as follows:

Meter Installation Charges

<u>Meter Size</u>	<u>Charge</u>
5/8 x 3/4"	\$100
1"	\$175
Above 1"	Actual cost

Turkey Creek shall be allowed to collect a customer connection charge based on the actual cost of connecting a customer to the utility's main.

Turkey Creek shall file revised tariff sheets consistent with this decision. The new charges will be effective for connections made on or after expiration of the protest period provided for below if no timely protest is received.

UNMETERED IRRIGATION USES

Currently, Turkey Creek services seven unmetered irrigation systems. The utility charges the irrigation customers a flat rate which the utility represents was agreed to by the utility and the customers. As was the case with other charges, there is no cost basis for this charge. Two of the seven unmetered systems are located at a condominium within the Turkey Creek subdivision; the remaining five irrigate common areas of the Turkey Creek subdivision. According to the utility, the systems at the condominium have not been metered because the customers were unable to locate the cut-offs so that the utility could install meters.

TCMOA is the customer for the systems which irrigate the subdivision common areas. Turkey Creek terminated irrigation service to TCMOA when, as with the public fire protection charge, the new board of directors questioned the appropriateness of the irrigation charge. The utility owner acknowledged that there was no written instrument showing that TCMOA had agreed to the irrigation charge. However, the utility owner indicated he would reinstate irrigation service to TCMOA if TCMOA pays the appropriate charges for metering the irrigation systems.

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We firmly believe that all of the irrigation systems should be metered. Turkey Creek is located within the St. Johns River Water Management District, which has designated its entire district as a critical use area, and metering the irrigation systems would promote the State's water conservation goals.

Accordingly, if the customers desire irrigation service, we order the utility to install meters for the irrigation systems within sixty days of the expiration of the protest period if no timely protest is filed. The customer shall designate the appropriate meter size and shall pay the appropriate meter installation fee. Once meters are installed, the utility shall charge the appropriate general service customer rate for that size meter.

METER REPLACEMENT

Several utility customers alleged that the utility has on its own initiative installed 1" meters, rather than the standard 5/8 x 3/4" meters, for some residential properties and then charges a higher service availability charge and higher monthly service rate to those properties. When asked, the utility owner offered no explanation for practice.

We believe the utility acted improperly in this practice and therefore require it to do one of the following: (1) install a standard 5/8 x 3/4" meter at these locations, at no cost to the customer, and bill the rates for that size meter or (2) not change out the meter, but bill the customer as if he were receiving service from a 5/8 x 3/4" meter.

The utility shall complete the above corrective action within 30 days of the expiration of the protest period, if no protest is filed, and shall within the same 30 days file an affidavit wherein the utility owner avers to what action has been taken.

APPLICATION FOR SERVICE

Turkey Creek requires applicants for utility service to sign an application for service. Since such applications become a part of a utility's tariff, we reviewed Turkey Creek's application as part of our normal tariff analysis. We have also received several inquiries from Turkey Creek customers regarding the application. The application does not meet with our approval in several respects.

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Paragraph 2 of the application states, "A \$40.00 fee will be charged where any service is connected or disconnected for any reason during normal business hours. Any connections or disconnections at any other time will be charged at the rate of \$60.00 each." Paragraph 5 states, "I will pay a late charge of \$20.00 or 10%, whichever is greater." As set forth hereinabove, we have ordered changes to the utility's miscellaneous service and late payment charges. The application should, therefore, reflect those changes or the subject references should be deleted.

Paragraph 6 of the application states, "My service will be disconnected after 5 working days written notice of said account being delinquent and pursuant to PSC rules for non-compliance with the rules and regulations, and before service may be reinstated, my account with Turkey Creek Utilities must be paid current, including the appropriate disconnection and reconnection fees." The reference to disconnection fees in this paragraph should be deleted since we have ordered the utility to discontinue collection of disconnect fees.

Paragraph 9 states that "I further agree to be responsible for any damage done to any seals, material or equipment of Turkey Creek Utilities." This statement should be deleted. We believe it inequitable for the utility to require the applicant to assume total responsibility for any damage that may be done in the future to utility property. If such damage occurs, responsibility therefore should be determined on a case-by-case basis.

Paragraph 10 states, "I am not to use any water, except as approved in writing by Turkey Creek Utilities on or in connection with the above premises which is not furnished or supplied by Turkey Creek Utilities, or its successors, designees, nominees, or assignees." This statement should be deleted. The statement is entirely too broad in scope, as it would apparently require the customer to get Turkey Creek's permission to use bottled water. Moreover, assuming the language is intended to prohibit the use of private wells, we believe the utility has no right--and the Commission no jurisdiction--to assume such authority over the customer. County ordinance or deed restrictions should determine whether or not private wells are allowed. Paragraph 13, which states that "water from a well, stream, lake or basin may only be used for the purpose of watering grass, shrubs, gardens, and as approved by Turkey Creek Utilities," should likewise be deleted because neither the utility nor the Commission has the authority over such consumptive uses of water.

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Paragraph 15 states, "I agree to be responsible for all attorneys' fees and costs incurred on behalf of Turkey Creek Utilities as a result of action taken to collect any charges incurred by me." This statement should be deleted. Simply put, it is inappropriate for a regulated utility to require the customer's assent to paying fees and costs as a condition to receiving service when courts, by law, have discretion over such matters. Moreover, we believe this Commission does not have the authority to sanction a blanket award for attorney's fees and costs.

Therefore, the utility shall modify its application for service as set forth above and shall file the corrected version within thirty days of the expiration of the protest period if no protest is filed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the provisions of this Order are issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of the Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that the Turkey Creek Master Owners Association is not responsible for paying any portion of public fire protection charges billed to it since the date this Commission received jurisdiction over utilities in Alachua County. It is further

ORDERED that Turkey Creek Utilities shall not charge a public fire protection charge on a prospective basis and shall not terminate the public fire protection service for nonpayment of any bills rendered therefor. It is further

ORDERED that Turkey Creek Utilities shall file revised tariff sheets consistent with our decision herein. It is further

ORDERED that the new miscellaneous service charges will be effective for service rendered on or after expiration of the protest period provided for below if no timely protest is received. It is further

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ORDERED that the new late payment charge will be effective for bills rendered on or after expiration of the protest period provided for below if no timely protest is received. It is further

ORDERED that the new service availability charges will be effective for connections made on or after expiration of the protest period provided for below if no timely protest is received. It is further

ORDERED that Turkey Creek Utilities shall complete the refund required in the body of this Order within sixty days of the expiration of the protest period if no protest is received, shall file refund reports of the type contemplated in Rule 25-30.360(7), Florida Administrative Code, and shall comply with the noticing provision respecting same refund as set forth in the body of this Order. It is further

ORDERED that Turkey Creek Utilities shall install meters for the irrigation service as set forth in the body of this Order within sixty days of the expiration of the protest period if no timely protest is filed. It is further

ORDERED that Turkey Creek Utilities shall complete the meter replacement action set forth in the body of this Order within thirty days of the expiration of the protest period if no protest is filed and shall also within the same thirty days file an affidavit wherein the utility owner avers to what action has been taken. It is further

ORDERED that Turkey Creek Utilities shall modify its application for service as set forth in the body of this Order and shall file such corrected version within thirty days of the expiration of the protest period if no protest is filed.

ORDERED that the docket should remain open.

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By ORDER of the Florida Public Service Commission this 22th
day of May, 1993.

STEVE TRINDLE, Director
Division of Records and Reporting

(S E A L)

MJF

by: Kay Flynn
Chief, Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on JUNE 17, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.