

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 921098-WS
certificates to provide water) ORDER NO. PSC-95-1101-FOF-WS
and wastewater service in) ISSUED: September 6, 1995
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:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER ACKNOWLEDGING TRANSFER

AND

INITIATING SHOW CAUSE PROCEEDING

BY THE COMMISSION:

Background

Turkey Creek, Inc., & Family Diner, Inc., d/b/a Turkey Creek Utilities (Turkey Creek) was a Class C utility in Alachua County which provided water and wastewater service to approximately 300 customers. On October 26, 1992, Turkey Creek filed an application for a grandfather certificate to provide water and wastewater service pursuant to Section 367.171, Florida Statutes. By Order No. PSC-93-0229-FOF-WS, issued February 10, 1993, this Commission granted Turkey Creek its water and wastewater certificates, approved its service territory and reduced its rates to those which were in effect the date we received jurisdiction of Alachua County, June 30, 1992. Turkey Creek protested the proposed agency action order and, as a result, was never issued its certificates. We reviewed Turkey Creeks' rates and charges in a second order, Order No. PSC-93-0816-FOF-WS, issued May 27, 1993, but Turkey Creek protested this order as well. We required Turkey Creek to make refunds in each of these orders because it illegally increased its rates and charges after we assumed jurisdiction over Alachua County on June 30, 1992.

DOCUMENT NUMBER-DATE

08674 SEP-6 95

FPSC-RECORDS/REPORTING

We set the case for a November 3, 1993, hearing. Prior to the scheduled hearing, Turkey Creek withdrew its protests. By Order No. PSC-93-1769-FOF-WS, issued December 3, 1993, we made the two prior orders final and effective. On September 23, 1993, the City of Alachua (City) purchased Turkey Creek. On January 6, 1994, Turkey Creek appealed Order No. PSC-93-1769-FOF-WS to the First District Court of Appeal (1st DCA). On March 27, 1995, the 1st DCA affirmed our decision regarding this order.

Transfer

As stated earlier, on September 23, 1993, the City purchased Turkey Creek. But, due to Turkey Creek's protest and its subsequent appeal, the City did not file a transfer application. Now that the appeal has been completed, the City has submitted the appropriate documentation for a transfer to a governmental authority, pursuant to Section 367.071, Florida Statutes. In accordance with Rule 25-30.037(4), Florida Administrative Code, the City has submitted the name and address of the utility, and its authorized representative; the name of the governmental authority and its authorized representative's name and address; a copy of the contract which transferred the utility system to the governmental authority; and the date on which the governmental authority took official action to acquire the utility, which was September 23, 1993. Pursuant to Subsection 367.071(4)(a), Florida Statutes, we forwarded to the City, Turkey Creek's most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes and contributions-in-aid-of-construction. In addition, the City stated that it received Turkey Creek's customer deposits when it purchased Turkey Creek. To date, the City has refunded 85% of these deposits.

Although the City purchased Turkey Creek in September 1993, pursuant to Section 367.071, Florida Statutes, Turkey Creek remains liable for all outstanding regulatory assessment fees due for the period January through September 1993. We have estimated the regulatory assessment fees to be \$2,454. The collection of those fees will be handled in a separate docket. We hereby require Turkey Creek to refund to its customers any excess amounts that it has received as a result of the two unapproved increases in its rates and service availability charges. We had previously required Turkey Creek to make these refunds in Order No. PSC-93-1769-FOF-WS, issued December 3, 1993. As of this date, Turkey Creek has not completed its refund requirements. Subsection 367.071(4)(a), Florida Statutes, states that the sale of facilities, in whole or in part to a governmental entity, shall be approved as a matter of right. Therefore, pursuant to the cited section, we hereby acknowledge the transfer of Turkey Creek to the City.

Show Cause

As mentioned earlier, on December 3, 1993, by Order No. PSC-93-1769-FOF-WS, we voted to make Orders Nos. PSC-93-0229-FOF-WS and PSC-93-0816-FOF-WS, final and effective. These orders required Turkey Creek to refund any excess amount, including interest, that it had received that was related to the two unapproved increases in its rates and service availability charges. On January 6, 1994, Turkey Creek appealed Order No. PSC-93-1769-FOF-WS to the 1st DCA. On March 27, 1995, the 1st DCA affirmed our order.

By letter dated April 6, 1995, we informed Turkey Creek of its obligation to complete its refund requirement in accordance with Order No. PSC-93-1769-FOF-WS, Subsection 367.071(2), Florida Statutes, and Rule 25-30.360, Florida Administrative Code. Subsection 367.071(2), Florida Statutes, states that "[t]he transferor remains liable for any outstanding regulatory assessment fees, fines, or refunds of the utility."

In a follow-up letter, dated May 26, 1995, we again informed Turkey Creek of its refund obligation and asked Turkey Creek to submit by June 9, 1995, a scheduled date for completing its refund requirements. We also told Turkey Creek that we would pursue show cause proceedings if Turkey Creek did not respond by June 9, 1995. By letter dated June 8, 1995, Turkey Creek stated that it was researching its obligation to make the refunds since it was a "non-utility owner-operator," which it estimated would take two weeks to complete. To date, we have not received any response.

Subsection 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 rule or order by the Commission. Utilities are charged with the knowledge of the Commission's rules and statutes. Subsection 367.161(1), Florida Statutes, also states "[e]ach day that such refusal or violation continues constitutes a separate offense." As stated above, we have, on numerous occasions, informed Turkey Creek of its obligation to comply with Order No. PSC-93-1769-FOF-WS. We find that Turkey Creek has been given ample time and sufficient information to comply with our order. Accordingly, based on the above, we hereby order Turkey Creek to show cause, in writing within twenty days, why it should not be fined \$5,000 for not complying with Order No. PSC-93-1769-FOF-WS. Docket No. 921098-WS shall remain open pending its final resolution.

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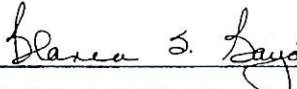
Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of Turkey Creek, Inc., & Family Diner, Inc., d/b/a Turkey Creek Utilities to the City of Alachua is hereby acknowledged. It is further

ORDERED that Turkey Creek, Inc., & Family Diner, Inc., d/b/a Turkey Creek Utilities shall show cause, in writing within twenty days, why it should not be fined \$5,000 for not complying with Order No. PSC-93-1769-FOF-WS. It is further

ORDERED that Docket No. 921098-WS shall remain open.

By ORDER of the Florida Public Service Commission, this 6th day of September, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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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.

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.