

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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FILE COPY

In Re: Application for)
certificates to provide water : Docket No.: ~~921098-WS~~
and wastewater service in) Order No.: PSC-1101-FOF-WS
Alachua County under grandfather : Issued: September 6, 1995
rights by TURKEY CREEK, INC. and)
FAMILY DINER, INC. d/b/a TURKEY :
CREEK UTILITIES.)

RESPONDENTS' REPLY TO SHOW CAUSE ORDER

The Respondents, TURKEY CREEK, INC. and FAMILY DINER, INC. d/b/a TURKEY CREEK UTILITIES, reply to the Order to Show Cause issued by the Commission on September 6, 1995, as follows:

1. No fine or penalty should be imposed on the respondents, as they have not wilfully or contemptuously violated any order of the Commission. While it is true that the refunds ordered by the Commission have not been made, it is not a result of bad faith.

2. Rather, the respondents in good faith contest the Commission's jurisdiction over them, and thus contest the appropriateness of the refund order. The factual grounds for this contest center around the respondents' sale of the utility operation to the City of Alachua in September 1993. As this water and wastewater operation was the only utility owned and operated by the respondents, they believe that absent a utility the Commission has no jurisdiction, making the refund order invalid. The legal posture of this jurisdictional challenge is a suit for declaratory relief, which has been filed in circuit court and served on the commission. A copy of the complaint for declaratory relief is attached hereto.

DOCUMENT NUMBER-DATE

09631 SEP 28 1995

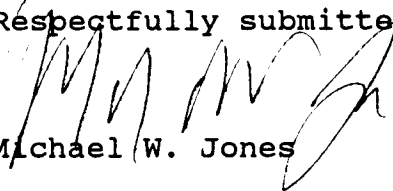
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3. To penalize or fine the respondents before the jurisdictional issue is resolved is to put the cart before the horse. The respondents are in good faith exercising their constitutionally guaranteed right of free access to the courts, and the statutorily provided remedy of declaratory relief, to settle the threshold issue of jurisdiction.

4. No penalty or fine should be imposed at this time. The parties should be allowed to pursue this matter to conclusion in the courts, reserving jurisdiction to revisit the matter when the case is resolved.

Respectfully submitted,


Michael W. Jones

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished this 27th day of September, 1995 to BLANCA S. BAYO, c/o Public Service Commission, Capitol Circle Office Center, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 by Federal Express.

MICHAEL W. JONES, P.A.

BY: 

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IN THE CIRCUIT COURT OF FLORIDA, EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA
CIVIL ACTION

TURKEY CREEK, INC., and)
FAMILY DINER, INC.,)
Plaintiffs,)
vs.)
FLORIDA PUBLIC SERVICE COMMISSION,)
Defendant.)

CASE NO.: 95-3065-CA
DIVISION: R

COMPLAINT FOR DECLARATORY RELIEF

The plaintiffs, TURKEY CREEK, INC., and FAMILY DINER, INC., sue the defendant, FLORIDA PUBLIC SERVICE COMMISSION, and say:

1. This is an action for declaratory relief, pursuant to Chapter 86, Florida Statutes (1993).

2. The plaintiffs were the former owners and operators of a water and wastewater utility facility, located in Alachua County, Florida. At all material times, the plaintiffs were active Florida corporations headquartered in Alachua County, Florida.

3. The defendant is an agency of the State of Florida which, among other things, regulates certain water and wastewater utilities.

4. On or about June 30, 1992, the defendant assumed jurisdiction over the plaintiffs' utilities operation, and thereafter, issued several orders affecting the plaintiffs' utility.

5. Effective on or about September 23, 1993, the plaintiffs sold said utility to the City of Alachua, which thereafter owned

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and operated it. Since said date, the plaintiffs have neither owned nor operated any utility under the defendant's jurisdiction.

6. On or about December 3, 1993, the defendant issued its Order No.: PSC-93-1769-FOF-WS, which finalized two underlying orders of the Commission. The effect of these orders from the Commission was to direct the plaintiffs to make certain refunds to its former customers, failing which the utility may be subject to various fines and penalties.

7. The plaintiffs have not made the refunds ordered by the Commission, challenging the Commission's jurisdiction and authority over companies which no longer own or operate utilities systems. The plaintiffs believe that, by virtue of their prior sale of the utilities to the City of Alachua, and by virtue of their cessation of utilities operations, they are no longer subject to the defendant's jurisdiction, and therefore, that the order requiring refunds is a nullity and is unenforceable. Also, Family Diner, Inc. did not own or operate the utilities when the order was entered.

8. The defendant disputes the plaintiffs' jurisdictional contentions and asserts its continuing authority over the plaintiffs. In fact, as recently as August 1995, the defendant's staff recommended to the defendant that the plaintiffs be sanctioned and that the highest monetary fine be imposed on the plaintiffs.


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9. There is a genuine dispute between the parties about their respective rights and obligations under the statutes and orders which govern these matters, and about the plaintiffs' obligation to comply with Commission orders. The dispute is real, current, and genuine.

WHEREFORE, the plaintiffs, TURKEY CREEK, INC., and FAMILY DINER, INC., request a judgment of this court declaring the rights and obligations of the parties in this dispute, and taxing costs against the non-prevailing party.

DATED this 17th day of September, 1995.

Respectfully submitted,


Michael W. Jones