



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: FEBRUARY 4, 1997

TO: CHAIRMAN JULIA L. JOHNSON
 COMMISSIONER SUSAN F. CLARK
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER DIANE K. KIESLING
 COMMISSIONER JOE GARCIA
 BILL TALBOTT, EXECUTIVE DIRECTOR
 MARY A. BANE, DEPUTY EXECUTIVE DIRECTOR/TECH.
 JAMES A. WARD, DEPUTY EXECUTIVE DIRECTOR/ADM.
 CHUCK HILL, DIRECTOR OF WATER & WASTEWATER
 ROB VANDIVER, GENERAL COUNSEL
 DAVID SMITH, DIRECTOR OF APPEALS
 NOREEN DAVIS, DIRECTOR OF LEGAL SERVICES

FROM: CHRISTIANA T. MOORE, ASSOCIATE GENERAL COUNSEL *CTM*

RE: TURKEY CREEK, INC., AND FAMILY DINER, INC., D/B/A TURKEY CREEK UTILITIES V. FLORIDA PUBLIC SERVICE COMMISSION, FIRST DCA CASE NO. 96-1383, FPSC DOCKET NO. 921098-WS

DOCUMENT NUMBER-DATE

01333 FEB-56

FPSC-REGDROS/REPORTING

On January 27, 1997, the First District Court of Appeal dismissed Turkey Creek Utilities's ("Turkey Creek") appeal for failure to respond to the court's previous order to show cause why the appeal should not be dismissed for failure to file the initial brief. A copy of the order is attached. The history of this appeal is an example of the degree to which the court will let a party violate the rules and ignore its orders before it will go as far as to dismiss an appeal.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- EG _____
- IN _____
- DO _____
- SH _____
- LC L _____
- AS _____
- _____

Turkey Creek appealed the Commission's March 11, 1996, Order No. PSC 96-0350-FOF-WS. That order imposed a \$5,000 fine for failure to make refunds pursuant to a previous order (that was upheld on appeal) or to deposit \$42,000 in an escrow account, and denying a formal hearing. Turkey Creek did not file its initial brief on June 19, 1996, when it was first due, nor did it file a motion for an extension of time until after the due date. Nonetheless, the court granted the extension to August 19, 1996, but stated that no further extensions of time would be granted except in case of emergency. That due date came and went with nary a word from Turkey Creek, but no matter, on October 1 the court on its own gave Turkey Creek another 20 days to file a brief or show cause why the appeal should not be dismissed. The court also stated that if no brief or response was filed within the 20 days, the appeal would be dismissed without further notice. Apparently the court was not entirely serious, because Turkey Creek did not file a brief or respond by the due date, yet its appeal was not dismissed. The court discharged its show cause order after Turkey Creek filed a late response and gave Turkey Creek another 30 days to file its brief, although it did caution Turkey Creek file its brief or ask for an extension before the expiration of the extended time

period.

Turkey Creek did not file a brief or a request for an extension of time by the deadline, or by 3 weeks after the deadline. Still not offended enough to dismiss the appeal, the court on December 19, 1996, entered another show cause order with a 10-day response time. This time the court said it would impose sanctions, including dismissal, for failure to respond. The due date of December 29 came and went with no word from Turkey Creek, or from the court for another month. Finally, on January 27, 1997, the court issued an order dismissing the appeal. Coincidentally, Turkey Creek served a notice of voluntary dismissal on that same date.

The Division of Water and Wastewater is now free to pursue collection of the fine and attempt to secure the refund for the customers.

Attachment

cc: All Attorneys
All Directors

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904)488-6151

RECEIVED

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January 27, 1997

FLORIDA PUBLIC SERVICE COMMISSION
DIVISION OF APPEALS

CASE NO: 96-01383

L.T. CASE NO. 921098-WS

Turkey Creek, Inc. and v. Florida Public Service
Family Dinner, Inc. Commission

Appellant(s),

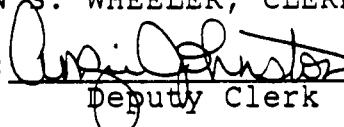
Appellee(s).

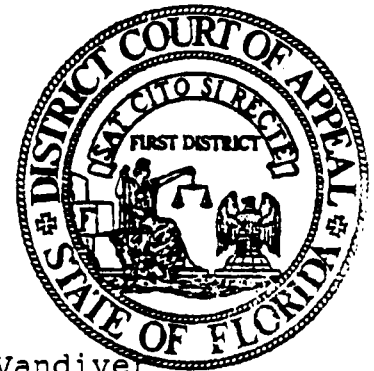
BY ORDER OF THE COURT:

Having not received a response to this court's order of December 19, 1996, requiring appellant to show cause why appeal should not be dismissed for failure to file the initial brief, the above styled cause is hereby dismissed.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.


JON S. WHEELER, CLERK

By: 
Deputy Clerk



Copies:

Michael W. Jones
Christiana T. Moore

Robert Vandiver
Blanca Bayo, Clerk