FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

MARCH 12, 1998

RECEIVED
MAR 12 1998

TO: DIRECTOR OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER AND SEWER (WALKER)
DIVISION OF LEGAL SERVICES (REYES)

RE: DOCKET NO. 961006-WS - APPLICATION FOR CERTIFICATES UNDER GRANDFATHER RIGHTS TO PROVIDE WATER AND WASTEWATER SERVICE BY SPORTS SHINKO UTILITY, INC. D/B/A GRENELEFE UTILITIES IN POLK COUNTY

AGENDA: MARCH 24, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\WAW\WP\961006A.RCM

CASE BACKGROUND

On May 14, 1996, the Board of County Commissioners of Polk County (County Commission, Polk County or County) adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring the privately-owned water and wastewater utilities in that County subject to the provisions of Chapter 367, Florida Statutes. This Commission acknowledged the County's resolution by Order No. PSC-96-0896-FOF-WS, issued July 11, 1996, in Docket No. 960674-WS.

This utility system has provided water and wastewater service for customers in Polk County since 1977. In 1987, it was acquired by Sports Shinko Utility, Inc., d/b/a Grenelefe Utilities (Grenelefe or utility). The utility provides water service for about 646 residential customers and 102 general service customers and wastewater service for about 634 residential customers. In 1996, Grenelefe recorded operating revenues of $366,000 for water service and $210,000 for wastewater service. Operating income of $91,000 was reported for water service, while a $42,000 operating loss was reported for wastewater service.

Grenelefe has been subject to this Commission's jurisdiction since May 14, 1996. By letter dated July 30, 1996, Grenelefe was advised about this Commission's jurisdiction and its obligation to obtain a certificate. On August 30, 1996, Grenelefe filed an application for a grandfather certificate to provide water and wastewater service in Polk County in accordance with Section 367.171(2)(b), Florida Statutes.

On July 2, 1996, the Board of County Commissioners in Polk County approved a plan to restructure service rates for this system, a pending matter when this Commission's jurisdiction was first invoked. Previously, Grenelefe collected fixed charges of $20 for water service and $15 for wastewater service. However, as directed by the Southwest Florida Water Management District (SWFWMD), Grenelefe installed meters to measure water consumption for domestic and irrigation purposes. Grenelefe has potable and non-potable water sources available for use to provide irrigation service; therefore, meters were installed to measure both sources. The rates approved by Polk County Commission utilized the base facility and gallonage charge rate structure. In particular, Polk County approved an irrigation rate, which the utility has been charging for all irrigation use since September 1, 1996.

On December 9, 1997, by Order No. PSC-97-1546-FOF-WS, this Commission issued Certificates Nos. 589-W and 507-S to Grenelefe and approved rates for its potable water and wastewater systems. In addition, as a proposed agency action, the Commission ordered

Grenelefe to refund revenues for non-potable irrigation service because those charges were not approved by Polk County. The Commission likewise by proposed agency action directed Grenelefe to commence collection of the Commission approved base facility charges and reduced gallonage charges for non-potable irrigation service. Other measures were also required.

On December 30, 1997, Grenelefe timely filed a protest to the proposed agency actions contained in Order No. PSC-97-1546-FOF-WS in the form of a Petition for Formal Proceeding. Grenelefe argues that the non-potable irrigation rate was approved by Polk County, that the refund is inappropriate, and that other elements must be considered when setting non-potable irrigation charges. On January 15, 1998, Grenelefe Association of Condominium Owners No. 1, Inc. (Association) filed a Counter-Petition for Formal Administrative Proceeding. On February 20, 1998, the Association filed an Amended Counter-Petition to clarify that its interests would not be served by imposing a fine on Grenelefe for the utility's collection of non-potable irrigation rates. However, the Association contends that Polk County did not approve non-potable irrigation service rates. An administrative hearing on this matter has been scheduled for September 17-18, 1998.

On March 3, 1998, the Association filed a Petition to Intervene in this proceeding. The Association states that its previously filed Counter-Petition and Amended Counter-Petition were intended merely as a statement of its interests, concerns, and positions for the edification of the Commission, its staff, and the protesting utility and did not require any action by the Commission. The Association in its Petition to Intervene specifically requests that it be granted intervenor status in this proceeding and asserts that its substantial interests are affected since non-potable irrigation rates, if approved, will be imposed for the first time in this proceeding. The Association's Petition to Intervene should be addressed at a subsequent time after the time for all responses has expired.

This recommendation addresses the need for security measures to support potential refunds if the Commission approves Grenelefe's continued collection of its non-potable irrigation rates.

DISCUSSION OF ISSUES

ISSUE 1: Should Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities be allowed to continue collecting its non-potable irrigation rates as temporary rates, subject to refund, with interest, pending the outcome of this proceeding?

RECOMMENDATION: Yes, the utility should be allowed to continue to collect its non-potable irrigation rates as temporary rates, subject to refund, with interest, pending the outcome of this proceeding.

STAFF ANALYSIS: As stated in the Case Background, by Order No. PSC-97-1546-FOF-WS, this Commission issued grandfather certificates to Grenelefe and approved rates for its potable water system and its wastewater system. In addition, as a proposed agency action, the Commission ordered Grenelefe to refund revenues for non-potable irrigation service because the Commission did not believe those charges were approved by Polk County. The Commission also by a proposed agency action directed Grenelefe to commence collection of Commission approved base facility charges and reduced gallonage charges for non-potable irrigation service. Order No. PSC-97-1546-FOF-WS did not provide for the collection of temporary rates in the event of a protest.

On December 30, 1997, Grenelefe timely filed a protest to the proposed agency actions contained in Order No. PSC-97-1546-FOF-WS contending that the non-potable irrigation rates were approved by Polk County, and, therefore, the Commission should have grandfathered the non-potable irrigation rates being charged by the utility. On January 15, 1998, the Association filed a Counter-Petition for Formal Administrative Proceeding. On February 20, 1998, the Association filed an Amended Counter-Petition for Formal Administrative Proceeding. In these petitions, the Association contends that Polk County did not approve non-potable irrigation rates, and, therefore, the utility had no non-potable irrigation rates which could be grandfathered. Accordingly, this matter has been scheduled for an administrative hearing on these issues.

Staff believes that it is both necessary and appropriate for the Commission to approve the utility's collection of temporary rates in this case. Given that one possible outcome of this proceeding may be a finding by the Commission that Polk County did in fact authorize non-potable irrigation rates, an unrecoverable

loss of revenues to the utility will occur if the utility is not allowed to continue to collect these rates during the pendency of this proceeding. Conversely, the customers must be protected in the event the Commission determines that no non-potable rates were approved by Polk County and that lower rates are appropriate. In addition, Grenelefe is operating under a mandate by the SWFWMD to meter all service connections, which includes water for domestic use and all types of irrigation. To disallow the collection of any non-potable irrigation rates pending the outcome of this proceeding would cause the utility to run afoul of that mandate.

The Commission has previously addressed similar issues. By Order No. PSC-93-1090-FOF-WS, issued July 27, 1993, in Docket No. 921098-WS, In Re: Application for Certificates to Provide Water and Wastewater Service in Alachua County under Grandfather Rights by Turkey Creek, Inc. & Family Diner, Inc. d/b/a/ Turkey Creek Utilities, the Commission allowed Turkey Creek to continue collecting its current charges pending a final decision on the appropriate amount of the charges, but ordered the utility to hold the difference between its current charges and the PAA charges subject to refund. By Order No. PSC-95-0624-FOF-WU, issued May 22, 1995, in Docket No. 930892-WU, In Re: Application for Amendment of Certificate No. 488-W in Marion County by Venture Associates Utilities Corp., the Commission authorized the utility to collect the previously approved PAA rates and charges as temporary rates, subject to refund, with interest, pending the final outcome of the proceeding.

While Turkey Creek was only required to hold the difference between its current charges and the PAA charges subject to refund and Venture was required only to hold the PAA rates and charges subject to refund, staff recommends that Grenelefe be required to hold the entire amount collected under its current rates subject to refund. Staff makes this recommendation because the PAA rate approved by the Commission in this docket was based on information which did not provide the level of detail necessary for the Commission to determine with certainty if any of the non-potable plant and expense items were included in the County's potable water rate calculation. Given the limited information which was then available for review and the utility's need for a non-potable water rate, the Commission adopted a "minimalist" approach as the most reasonable solution at that time in calculating the PAA rates and charges and only used those items it felt confident were not included in the County's rate calculation.

Staff believes the hearing process will provide more extensive data, will allow for a more comprehensive review of the data, and may very well result in the calculation of a non-potable rate which differs from the PAA rate if it is determined that the County did not approve a non-potable rate for Grenelefe. Therefore, staff recommends that Grenelefe be allowed to continue collecting the disputed non-potable irrigation rates as temporary rates pending the outcome of this proceeding. This will protect both the utility and the ratepayers and allow Grenelefe to remain in compliance with SWFWMD's mandate. However, staff further recommends that the utility be required to hold all revenues collected pursuant to the disputed non-potable irrigation rates subject to refund with interest.

ISSUE 2: If the Commission approves Issue 1, what is the appropriate security to guarantee the potential refund associated with the collection of non-potable irrigation rates?

RECOMMENDATION: The utility should be required to file a bond, letter of credit or escrow agreement as security to guarantee any potential refunds of non-potable irrigation charges. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. (WALKER)

STAFF ANALYSIS: Staff has calculated the total amount of potential refunds for this utility system as $415,000. This amount is based on collecting unauthorized charges for non-potable irrigation services for a twenty-eight month period including a provision for accrued interest. The contingent refund amount was derived based on reported usage during the eight-month period ended May 31, 1997, annualized to reflect a yearly amount, and carried forward until March 31, 1999, the approximate date used to estimate completion of potential refunds. According to Grenelefe, the reported consumption and base fees for raw water irrigation for the eight-month period ended May of 1997 totaled $102,902 for consumption (70,235 Kgals) and $39,153 for base fees. Staff used Grenelefe's reported consumption charges to estimate the approximate refund amount but adjusted the base charge element to reflect the anticipated "actual" revenue amount for 179 customers paying $5.50 each month. Using this information, the approximate monthly charge for non-potable irrigation is $13,848. A $27,000 provision for accrued interest was added.

Based on the financial analysis by the Division of Auditing and Financial Analysis, the utility cannot support a corporate undertaking due to its minimal equity ownership condition and lack of liquidity. These concerns cast doubt on the utility's ability to back a corporate undertaking. Therefore, staff recommends that the utility provide a letter of credit, bond, or escrow agreement to guarantee the funds collected subject to refund.

If the security provided is an escrow account, said account should be established between the utility and an independent financial institution pursuant to a written escrow agreement. The Commission should be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement should state the following: That the account is established at the direction of this Commission for the purpose set forth above, that no withdrawals of funds should occur without the prior approval of the Commission through the Director of the Division of Records and Reporting, that the account should be interest bearing, that

information concerning the escrow account should be available from the institution to the Commission or its representative at all times, and that pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d. DCA 1972), escrow accounts are not subject to garnishments.

If the security provided is a bond or a letter of credit, said instrument should be in the amount of $415,000. If the utility chooses a bond as security, the bond should state that it will be released or should terminate upon subsequent order of the Commission addressing the appropriate rates or requiring a refund. If the utility chooses to provide a letter of credit as security, the letter of credit should state that it is irrevocable for the period it is in effect and that it will be in effect until a final Commission order is rendered addressing the appropriate rates or requiring a refund.

Irrespective of the type of security provided, the utility should keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

In no instance should maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and should be borne by, the utility.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. (REYES)

STAFF ANALYSIS: Because this matter is scheduled for a hearing in September of 1998, this docket should remain open.