

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Turkey Creek, Inc. & Family Diner, Inc. d/b/a Turkey Creek Utilities for violation of Rule 25-30.120, F.A.C., Regulatory Assessment Fees.

DOCKET NO. 980287-WS
ORDER NO. PSC-98-0444-SC-WS
ISSUED: March 30, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE AND
REQUIRING IMMEDIATE PAYMENT OF REGULATORY ASSESSMENT FEES

BY THE COMMISSION:

BACKGROUND

Turkey Creek, Inc., & Family Diner, Inc., d/b/a Turkey Creek Utilities (Turkey Creek or utility) 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 Proposed Agency Action (PAA) Order No. PSC-93-0229-FOF-WS, issued February 10, 1993, we granted Turkey Creek its water and wastewater certificates, approved its service territory and reduced its rates to those which were in effect on the date we received jurisdiction of Alachua County - June 30, 1992. Turkey Creek protested the PAA order and, as a result, was never issued its certificates.

By Order No. PSC-95-1101-FOF-WU, issued September 6, 1995, in Docket No. 921098-WS, we acknowledged the transfer of Turkey Creek to the City of Alachua. By that Order, we found Turkey Creek

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PSC-98-0444-SC-WS

responsible for payment of regulatory assessment fees for the period of January through September of 1993, for a total of \$2,454. The amount was estimated because the utility did not file an annual report for 1993. To date, the utility has failed to remit its regulatory assessment fees.

REGULATORY ASSESSMENT FEES

Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(5)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its regulatory assessment fees, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.
2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% annum.

In addition, pursuant to Sections 367.145(1)(b) and 367.161, Florida Statutes, and Rule 25-30.120(5)(b), Florida Administrative Code, this Commission may impose an additional penalty upon a utility for failure to pay regulatory assessment fees in a timely manner.

Notices of delinquency for failure to remit regulatory assessment fees were mailed to the utility on May 3, 1994, June 28, 1995, May 21, 1997, November 7, 1997 and January 15, 1998. As of March 31, 1998, the utility owes the following: \$2,454 in regulatory assessment fees, as well as a penalty in the amount of \$613.50 and interest in the amount of \$907.98, for a total of \$3,975.48. We calculated the penalty and interest based on the number of days elapsed since the respective regulatory assessments were due and the date of this agenda. The date of the agenda is included in computing the amount of time elapsed. We note that penalties and interest will continue to accrue until the utility pays the delinquent regulatory assessment fees.

Regulatory assessment fees are intended to defray the costs incurred in our regulation of utilities. Apparently, the utility has no inclination to pay the fees voluntarily, nor does it appear

that the utility is making a good faith effort toward payment. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to pay regulatory assessment fees, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., this Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Accordingly, Turkey Creek, Inc. & Family Diner, Inc. d/b/a Turkey Creek Utilities, 158 Turkey Creek, Alachua, Florida 32615-9572, is ordered to show cause, in writing, why it should not remit a penalty in the amount of \$613.50 and interest in the amount of \$907.98 for its failure to remit its regulatory assessment fees. Further, Turkey Creek is ordered to immediately remit a total of \$2,454 in delinquent regulatory assessment fees for 1993.

RESPONSE TO ORDER TO SHOW CAUSE AND CLOSING THE DOCKET

Turkey Creek's response to this Order must contain specific allegations of fact and law. Should Turkey Creek file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings shall be scheduled before a final determination on this matter is made. If the utility responds timely but does not request a hearing, our staff will prepare and present a recommendation to us regarding the disposition of this proceeding, and the docket shall not be closed. If Turkey Creek responds to this Order by paying 1993 regulatory assessment fees, and remitting all associated penalties and interest, this docket shall be closed administratively.

A failure to file a timely written response to this Order shall constitute an admission of the facts herein alleged and a waiver of the right to a hearing. In the event Turkey Creek fails to file a timely response to this Order, the penalties and interest are deemed assessed with no further action required by the Commission. In that event, if Turkey Creek fails to respond to

ORDER NO. PSC-98-0444-SC-WS
DOCKET NO. 980287-WS
PAGE 4

reasonable collection efforts by Commission staff, the collection of fees, penalties, and interest shall be referred to the Comptroller's office for further collection efforts. Reasonable collection efforts shall consist of two certified letters requesting payment from the utility. Referral of this matter to the Comptroller's office would be based on the conclusion that further collection efforts by this Commission would not be cost effective. After referral of this matter to the Comptroller's office, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Turkey Creek, Inc. & Family Diner, Inc. d/b/a Turkey Creek Utilities, 158 Turkey Creek, Alachua, Florida 32615-9572, show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$613.50 and interest in the amount of \$907.98 for violation of Rule 25-30.120(5)(b), Florida Administrative Code. It is further

ORDERED that Turkey Creek, Inc. & Family Diner, Inc. d/b/a Turkey Creek Utilities immediately remit \$2,454 in delinquent regulatory assessment fees for 1993. It is further

ORDERED that any response to this Order to show cause must contain specific allegations of fact and law. It is further

ORDERED that any response to this Order to show cause be filed with the Director of the Division of Records and Reporting within 20 days of this Order. It is further

ORDERED that in the event that Turkey Creek, Inc. & Family Diner, Inc. d/b/a Turkey Creek Utilities files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57, Florida Statutes, further proceedings may be scheduled before a final determination is made. It is further

ORDERED that if Turkey Creek, Inc. & Family Diner, Inc. d/b/a Turkey Creek Utilities fails to file a timely response to this Order to show cause, such failure shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that if reasonable collection efforts are unsuccessful, the collection of penalties and interest shall be

ORDER NO. PSC-98-0444-SC-WS
DOCKET NO. 980287-WS
PAGE 5

forwarded to the Comptroller's office, and the docket shall be closed. It is further

ORDERED that if Turkey Creek, Inc. & Family Diner, Inc. d/b/a Turkey Creek Utilities responds to this Order to show cause by remitting the regulatory assessment fees, penalty and interest, this docket shall be closed administratively. It is further

ORDERED that any payment of the penalty shall be forwarded to the Comptroller's office for deposit in the State General Revenue Fund.

By ORDER of the Florida Public Service Commission this 30th day of March, 1998.

A handwritten signature in cursive script, reading "Blanca S. Bayó", is written over a horizontal line.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

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ORDER NO. PSC-98-0444-SC-WS
DOCKET NO. 980287-WS
PAGE 6

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

This order is preliminary, procedural or intermediate in nature. 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 25-22.037(1), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 19, 1998.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any 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.