

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-98-1085-PCO-WS
ISSUED: August 11, 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 MODIFYING ORDER NO. PSC-98-0444-SC-WS,
GRANTING UTILITY ADDITIONAL TIME TO RESPOND TO SHOW CAUSE ORDER
AND DECLINING OFFER OF SETTLEMENT

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 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 began regulating utilities in Alachua County - June 30, 1992. Turkey Creek protested the PAA order and, as a result, was not issued its certificates.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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 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. The utility failed to remit its regulatory assessment fees.

By Order No. PSC-98-0444-SC-WS, issued on March 30, 1998, we ordered Turkey Creek to show cause, in writing within 20 days, why it should not remit a penalty and interest of \$613.50 and \$907.98, respectively, for its failure to pay its 1993 regulatory assessment fees. The order also directed the utility to immediately remit its delinquent fees. Additionally, the order required that the utility's response contain specific allegations of fact and law, and indicated that Turkey Creek's failure to file a timely written response would constitute an admission of the facts therein alleged, a waiver of the right to a hearing, and an automatic assessment of the penalty and interest. Turkey Creek's response was due on April 20, 1998.

On April 17, 1998, we received a request from the utility for an extension of time until May 6, 1998, in which to respond to the show cause order. We received the utility's response on May 4, 1998, which included an offer of settlement. Since that time, the utility and our legal staff have conducted repeated discussions regarding settlement of this docket, but to no avail. Further, the Division of Administration has determined that the interest associated with the utility's failure to pay regulatory assessment fees was miscalculated. This Order addresses the proper amount of interest to be assessed on the delinquent regulatory assessment fees, Turkey Creek's request for extension of time and its offer of settlement.

MODIFICATION OF PRIOR ORDER

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.

As discussed earlier, by Order No. PSC-98-0444-SC-WS, we ordered Turkey Creek to show cause why it should not remit a statutory penalty and interest in the amounts of \$613.50 and \$907.98, respectively, for failure to pay its 1993 fees.

During our legal staff's attempts to settle this matter, the Division of Administration discovered that the appropriate amount of interest set forth in the show cause order should have been \$1,202.46. Therefore, Order No. PSC-98-0444-SC-WS shall be amended to reflect this amount. As of the date of our vote on this matter, the utility owed \$1,300.62 in interest. This amount has been calculated through July 31, 1998 and will continue to accrue until the utility pays its delinquent 1993 regulatory assessment fees.

As a result of the miscalculation of interest, the utility shall be granted twenty days from the date of this order to respond to the show cause order, Order No. PSC-98-0444-SC-WS; therefore, Turkey Creek's request for extension of time to respond is moot. The following conditions shall apply to Turkey Creek's response: Turkey Creek's response shall address all issues raised in the show cause order. Turkey Creek's response to the show cause 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 will be scheduled before a final determination on this matter is made. A failure to file a timely written response to the show cause 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 the show cause order, the penalties and interest are deemed assessed with no further action required by this Commission. In that event, if Turkey Creek fails to respond to reasonable collection efforts by Commission staff, the collection of fees, penalties, and interest shall be referred to the

Department of Banking and Finance's Office of the Comptroller for further collection efforts. Reasonable collection efforts shall consist of two certified letters requesting payment. The referral to the Comptroller's office would be based on the conclusion that further collection efforts by this Commission would not be cost effective.

OFFER OF SETTLEMENT

In its initial response to the show cause order, the utility offered to pay \$2,454 in delinquent regulatory assessment fees and \$907.98 for interest associated with its failure to pay those fees. The utility offered to pay the two sums on or before October 10, 1998, with interest accrued until the date of payment. The utility specifically indicated that it did not wish to pay the penalty of \$613.50.

As discussed earlier, Section 350.113(4), Florida Statutes, requires us to collect a statutory penalty against any utility that fails to timely pay its regulatory assessment fees. The Commission is not authorized to waive a statutory mandate. Therefore, the offer of settlement is declined.

CLOSING OF DOCKET

If Turkey Creek responds to the show cause order by paying 1993 regulatory assessment fees, and remitting all associated penalties and interest, this docket shall be closed administratively. If Turkey Creek fails to timely respond to the show cause order and fails to respond to Commission staff's collection efforts, then this matter shall be referred to the Comptroller's office for further collection efforts and this docket shall be closed administratively. If Turkey Creek responds to the show cause order and requests a hearing, this docket shall remain open for final disposition.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. PSC-98-0444-SC-WS is modified as set forth in the body of this Order. It is further

ORDER NO. PSC-98-1085-PCO-WS
DOCKET NO. 980287-WS
PAGE 5

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that Turkey Creek, Inc., & Family Diner, Inc., d/b/a Turkey Creek Utilities' offer of settlement is hereby denied. It is further

ORDERED that Turkey Creek, Inc., & Family Diner, Inc., d/b/a Turkey Creek Utilities shall be granted twenty days from the date of this Order to respond to Order No. PSC-98-0444-SC-WS. It is further

ORDERED that Turkey Creek, Inc., & Family Diner, Inc., d/b/a Turkey Creek Utilities' motion for extension of time to respond to Order No. PSC-98-0444-SC-WS is moot. It is further

ORDERED that Turkey Creek, Inc., & Family Diner, Inc., d/b/a Turkey Creek Utilities' response to Order No. PSC-98-0444-SC-WS must contain specific allegations of fact and law. It is further

ORDERED that Turkey Creek, Inc., & Family Diner, Inc., d/b/a Turkey Creek Utilities' response to Order No. PSC-98-0444-SC-WS must 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 will be scheduled before a final determination is made. It is further

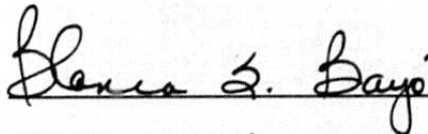
ORDERED that if Turkey Creek, Inc. & Family Diner, Inc. d/b/a Turkey Creek Utilities fails to file a timely response to Order No. PSC-98-0444-SC-WS, such failure shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that if reasonable collection efforts are unsuccessful, the collection of penalties and interest shall be forwarded to the Comptroller's office, and this docket shall be closed administratively. It is further

ORDER NO. PSC-98-1085-PCO-WS
DOCKET NO. 980287-WS
PAGE 6

ORDERED that if Turkey Creek, Inc. & Family Diner, Inc. d/b/a Turkey Creek Utilities responds to Order No. PSC-98-0444-SC-WS by remitting the regulatory assessment fees, penalty and interest, this docket shall be closed administratively. It is further

By ORDER of the Florida Public Service Commission this 11th day of August, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.

ORDER NO. PSC-98-1085-PCO-WS
DOCKET NO. 980287-WS
PAGE 7

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.