

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: APRIL 3, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (ECHTERNACHT) / KNE DM JOT
DIVISION OF ECONOMIC REGULATION (KAPROTH, PEACOCK) KK 10*

RE: DOCKET NO. 030289-WS - DISPOSITION OF DELINQUENT
REGULATORY ASSESSMENT FEES AND DELINQUENT ANNUAL REPORT
AND PENALTIES FOR SPORTS SHINKO UTILITY, INC. D/B/A
GRENELEFE UTILITIES IN POLK COUNTY.

AGENDA: 04/03/03¹⁵ - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030289.RCM

CASE BACKGROUND

Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities (Sports Shinko or utility) is a Class B Water and Wastewater utility located in Polk County. Sports Shinko became subject to Commission jurisdiction on May 14, 1996, and was granted a certificate of operation by Order No. PSC-97-1546-FOF-WS, issued December 9, 1997, in Docket No. 961006-WS.

Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to the Commission's jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to timely file a complete annual report is subject to penalties (\$13.50 per day late for Class B utilities), absent demonstration of good cause for noncompliance.

DOCUMENT NUMBER-DATE

03138 APR-38

FPSC-COMMISSION CLERK

Pursuant to Rule 25-30.120(2), Florida Administrative Code, the obligation to remit regulatory assessment fees (RAFs) for any year shall apply to any utility which is subject to this Commission's jurisdiction on or before December 31 of that year.

Sports Shinko has failed to file its annual report for 2001 and to pay RAFs for 2001 and the period of January 1 through June 30, 2002.

On December 24, 2002, staff contacted Greg Maultsby, the utility manager, via certified mail regarding the missing 2001 annual report and RAFs. On January 17, 2003, Robert Jackson, an attorney representing the interests of Sports Shinko, responded to staff's letter stating that Sports Shinko's outstanding stock and assets were acquired by Grenelefe Resort, LLC (Grenelefe) in a bankruptcy proceeding on July 1, 2002. On February 4, 2003, Grenelefe Resort, LLC filed for a transfer of majority organizational control of Sports Shinko to Grenelefe in Docket No. 030123-WS.

This recommendation addresses whether Sports Shinko should be ordered to show cause, in writing, within 21 days, why it should not be fined for failure to remit its regulatory assessment fees (RAFs) as required by Section 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, and failure to file annual reports as required by Rule 25-30.110(3), Florida Administrative Code.

The Commission has jurisdiction to pursue collection efforts for the failure to file annual reports and timely pay RAFs pursuant to Sections 367.145 and 367.161, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Sports Shinko Utilities, Inc. be ordered to show cause, in writing, within 21 days, why it should not be fined for failure to remit its regulatory assessment fees (RAFs) as required by Section 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, and failure to file annual reports as required by Rule 25-30.110(3), Florida Administrative Code?

RECOMMENDATION: No. A show cause proceeding should not be initiated. Staff recommends that the Commission refer the utilities' unpaid regulatory assessment fees (RAFs) and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible. Staff further recommends that the penalties set according to Rule 25-30.110(6), Florida Administrative Code, for outstanding annual reports should not be assessed, and that Sports Shinko should not be required to file the annual report for the year designated. (ECHTERNACHT, KAPROTH, PEACOCK)

STAFF ANALYSIS:

Failure to Pay Regulatory Assessment Fees

According to the information available to staff, this utility has outstanding RAFs for 2001 and the period of January 1 through June 30, 2002. Staff believes that Sports Shinko owned and controlled the utility from January 1, 2001, through June 30, 2002.

Pursuant to Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, each water and wastewater utility shall remit annually RAFs in the amount of 0.045 of its gross operating revenue. Pursuant to Rule 25-30.120(2), Florida Administrative Code, "[t]he obligation to remit the [RAFs] for any year shall apply to any utility which is subject to [the] Commission's jurisdiction on or before December 31 of that year or for any part of that year" Accordingly, Sports Shinko is responsible for RAFs for the time period of 2001 and January 1, 2002 through June 30, 2002. In failing to remit the RAFs for this time period, Sports Shinko is in apparent violation of the above-referenced statutory and rule provisions.

Furthermore, pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7), Florida Administrative Code, a statutory

penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, 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 percent for each 30 days or fraction thereof, not to exceed a total of 12 percent per annum.

Staff's calculation of the RAFs, plus penalties and interest owed by Sports Shinko for the periods indicated above is set out below. As of April 15, 2003, the amounts due would be as follows:

TIME PERIOD	RAF AMOUNT	PENALTY	INTEREST	TOTAL
2001 - WATER	\$13,034.88	\$3,258.72	\$1,694.53	\$17,988.13
2001 - WASTEWATER	\$10,857.03	\$2,714.26	\$1,411.41	\$14,982.70
January 1 - June 30, 2002 - WATER	\$6,517.44	\$325.87	\$65.17	\$6,908.48
January 1 - June 30, 2002 - WASTEWATER	\$5,428.52	\$271.43	\$54.29	\$5,754.24
TOTAL DUE				\$45,633.55

Failure to Provide Annual Reports

Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to Commission jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Annual reports are considered filed on the day they are postmarked or received by the Commission. According to Commission records this utility failed to file an annual report for the year 2001. As stated previously, staff believes that Sports Shinko had ownership and control over this utility for the period of January 1, 2001, through June 30, 2002. Sports Shinko is in

apparent violation of Rule 25-30.110(3), Florida Administrative Code, for the failure to file its 2001 annual report.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class B utilities is \$13.50 per day, based on the number of calendar days elapsed from March 31, or from an approved extended filing date. As of the date of the April 15, 2003, Agenda Conference, the total penalty for the outstanding 2001 annual report is set out below.

YEAR	CALCULATION	AMOUNT
2001	358 X \$13.50	\$4,833.00
	TOTAL DUE	\$4,833.00

The penalty, if it were assessed, would continue to accrue until such time as Sports Shinko files its annual report for 2001. Staff notes that pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, the Commission may, in its discretion, impose greater or lesser penalties for noncompliance.

Staff Analysis on Whether Show Cause Action Should be Initiated

As indicated above, Sports Shinko is in apparent violation of the following Statutes and Commission Rules: 1) Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, for failure to submit RAFs; and 2) Rule 25-30.110(3), Florida Administrative Code, for failure to file annual reports.

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 RAFs, plus applicable penalties and interest, 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., the 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.

With respect to Sports Shinko's failure to remit RAFs and file its annual reports, and with respect to the penalties and interest incurred for both, staff believes that the circumstances in this case are such that show cause proceedings should not be initiated.

Numerous attempts to contact Greg Maultsby, Utility Manager of Sports Shinko, have been made by staff via certified mail. However, no response has been received from Sports Shinko. On January 17, 2003, staff received a letter from Robert Jackson, an attorney representing Sports Shinko's interest, stating that Sports Shinko's outstanding stock and assets were sold in a bankruptcy proceeding to Grenelefe Resort, LLC on July 1, 2002. As such, staff believes that further collection efforts would not be cost effective. Staff believes that any further attempts to collect would be futile, because in this situation, the corporate entity no longer exists, and it would be very difficult to locate the former President of Sports Shinko.

For these reasons, staff recommends that show cause proceedings not be initiated against Sports Shinko for its apparent violation of the aforementioned statutes and Commission rules. Staff recommends that the Commission refer the utility's unpaid RAFs and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible. Staff also recommends that the Commission exercise its discretion as stated in Rule 25-30.110(7), Florida Administrative Code, and not assess the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, for outstanding annual reports, because further collection efforts would be futile. In addition, staff recommends that the Commission not require Sports Shinko to file the annual report for 2001.

DOCKET NO. 030289-WS

DATE: 04/03/03

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. Because no further action is necessary, this docket should be closed. (ECHTERNACHT)

STAFF ANALYSIS: Because no further action is necessary, this docket should be closed.