



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

REC'D AND
REPORTING
JUL 23 AM 10:45
PSC

DATE: JULY 20, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (JAEGER) *RA*
DIVISION OF REGULATORY OVERSIGHT (BRADY) *pb* *CC* *Bl* *Am*

RE: DOCKET NO. 921098-WS - 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.

AGENDA: 08/1/2000 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\921098.RCM

CASE BACKGROUND

On October 26, 1992, Family Diner, Inc. and Turkey Creek, Inc., d/b/a Turkey Creek Utilities (Turkey Creek or utility), a utility in Alachua County, filed an application for a grandfather certificate to provide water and wastewater service pursuant to Section 367.171, Florida Statutes. On November 16, 1992, the Office of Public Counsel (OPC) filed its Notice of Intervention. By Order No. PSC-93-1152-PCO-WS, issued August 9, 1993, the Commission acknowledged OPC's intervention.

By Proposed Agency Action (PAA) Order No. PSC-93-0229-FOF-WS, issued February 10, 1993, the Commission proposed to grant the certificates to Turkey Creek and approve its service territory. However, during the course of processing the application for a grandfather certificate, the Commission found that Turkey Creek had, on two separate occasions, improperly increased its rates without obtaining Commission approval. Therefore, that same order

DOCUMENT NUMBER-DATE

08749 JUL 20 8

PSC-REG/ADR/REPORTING

found that the utility should make refunds and reduce its rates to those rates in effect on June 30, 1992, the date the Commission received jurisdiction of Alachua County. The utility protested this PAA order.

A second PAA Order, Order No. PSC-93-0816-FOF-WS, issued July 27, 1993, regarding rates and charges was issued and was also protested by the utility. Refunds, with interest, were required in each of these orders because the Commission found that the utility had improperly increased its rates and charges after the Commission assumed jurisdiction over Alachua County on June 30, 1992.

On August 30, 1993, subsequent to the utility's protests, Jim Cherry filed a Petition for Leave to Intervene on behalf of the Turkey Creek Master Owners Association. This Petition was granted by Order No. PSC-93-1430-PCO-WS, issued October 1, 1993.

Based on the protests by the utility, a formal hearing was scheduled, but was canceled when the utility withdrew the protests. By Order No. PSC-93-1769-FOF-WS (Final Order), issued December 3, 1993, the two prior PAA orders were revived and made final and effective.

The Final Order specifically required Turkey Creek to refund with interest the excess rates and charges as follows:

- A. Monthly service rates from June 30, 1992, through the date of the sale to the City of Alachua (September 23, 1993);
- B. Accrued interest on customer deposits from June 30, 1992, through the date each customer's deposit was returned;
- C. Public fire protection charge to the Turkey Creek Master Owners Association (TCMOA) - all of 1992 and 1993, if any;
- D. Miscellaneous service charges - July 6, 1993, through the date of the sale to the City of Alachua; and
- E. Late payment charges - July 6, 1993, through the date of the sale to the City of Alachua.

Turkey Creek appealed this Final Order, and on March 27, 1995, the First District Court of Appeal, in a per curiam decision, affirmed the Commission's Final Order.

Because the utility had been sold to the City of Alachua on September 23, 1993, no certificates were ever issued to Turkey Creek. Instead, the Commission issued Order No. PSC-95-1101-FOF-WS, an Order Acknowledging Transfer And Initiating Show Cause Proceeding, on September 6, 1995. That order required Turkey Creek to show cause in writing within twenty days, why it should not be fined \$5,000 for not complying with the Final Order (which order required refunds to be made in accordance with Orders Nos. PSC-93-0229-FOF-WS and PSC-93-0816-FOF-WS).

In response to the Show Cause Order, Turkey Creek filed Respondents' Reply to Show Cause Order. In the response, Turkey Creek requested deferral of the show cause proceeding. After considering this reply at its November 7, 1995 Agenda Conference, the Commission issued Order No. PSC-95-1445-FOF-WS (on November 28, 1995), which denied the request for deferral of show cause proceedings, clarified the initial show cause order, and reinitiated the show cause proceeding against Turkey Creek.

Turkey Creek timely filed its response on December 18, 1995, requested a formal hearing pursuant to Section 120.57(1), Florida Statutes, and, subsequently, offered that, if the Commission would abate the penalty proceedings, it would deposit with an appropriate escrow agent an amount of money which it considered sufficient to cover the refunds, and make the refunds from that escrow account if it was unsuccessful in its Circuit Court action. The Commission considered both the utility's response and the offer at the February 20, 1996 Agenda Conference. Based on the data available, the Commission calculated that the maximum amount of any refund would not exceed \$42,000. Accordingly, the Commission issued Order No. PSC-96-0350-FOF-WS on March 11, 1996, which found:

- A) there was no dispute of material fact; therefore no formal hearing was required on the show cause proceedings;
- B) there was no reason to defer any show cause proceeding pending the outcome of Turkey Creek's suit in circuit court; and
- C) imposed a \$5,000 fine for Turkey Creek's failure to make refunds as required by Order No. PSC-93-1769-FOF-WS, but suspended such fine if the utility deposited \$42,000 in an appropriate escrow account within three weeks of the date of the Order.

Turkey Creek, however, disagreed with the amount required to be escrowed, and filed a Notice of Administrative Appeal of that Order on April 10, 1996.

While the appeal was pending, Turkey Creek, by letter dated June 13, 1996, offered to make all refunds which it calculated to be due if the Commission would waive interest and any penalty or fine. Staff verified that the refund, without interest would be \$24,576.46, and that interest through June 13, 1996 would be about \$3,993.23. Upon review of the settlement offer, the Commission found, as was previously determined, that any refund to the customers should be with interest. See Order No. PSC-96-1526-FOF-WS. This Order was not appealed. Finally, on January 27, 1997, the First District Court of Appeal dismissed Turkey Creek's appeal of Order No. PSC-96-0350-FOF-WS.

Although the Commission had required that the refunds be made with interest, the utility stated that its records and situation made it very difficult for it to calculate the amount of interest that was due to each individual customer. Staff had estimated that \$3,993.23 in total interest was due to customers as of June 13, 1996. Beginning in 1997 and ending in early 1998, the utility provided documentation of refunds, without interest, to all the customers it could locate. As of January 12, 1998, staff calculated the interest to be due to be \$7,011.29.

Because the utility had not made the refunds with interest as required by the Commission, staff brought the matter before the Commission at the June 15, 1998 Internal Affairs for permission to seek enforcement in circuit court of the Commission's orders requiring the utility to make refunds with interest (interest was still estimated to be about \$7,011.29). The Commission approved this action, and on June 18, 1998, staff filed its Petition to Enforce Final Order in the Circuit Court of the Eighth Judicial Circuit in and for Alachua County, Florida. The case was assigned Circuit Court Case No. 98-2252-CA, Division J.

While the action was pending in the Circuit Court, the utility continued to negotiate with the OPC and the Turkey Creek Master Owners Association to attempt to reach a settlement of this case. By letter dated March 13, 2000, the utility offered to pay a lump sum of \$5,000 to the City of Alachua in full settlement of this case. Upon contact by staff, the City of Alachua agreed that it would pass on the full amount of this money to the Turkey Creek Master Owners Association. The Turkey Creek Master Owners Association was advised of this offer, and its members voted to accept the offer.

DOCKET NO. 921098-WS
DATE: JULY 20, 2000

The settlement offer was subsequently reduced to writing and all parties, except OPC, signed off on the Settlement Agreement. The Settlement Agreement was completed on July 10, 2000, and duplicate originals were provided to staff on July 13, 2000.

The purpose of this recommendation is to determine whether the Commission should approve the Settlement Agreement.

DISCUSSION OF ISSUES

ISSUE 1: Should the Settlement Agreement signed by Turkey Creek Utilities, the City of Alachua, and the Turkey Creek Master Owners Association be approved by the Commission?

RECOMMENDATION: Yes, the Commission should approve the Settlement Agreement. Pursuant to that agreement, the utility should pay \$5,000 to the City of Alachua within 30 days of the Commission's Final Order approving the Settlement Agreement, and the City will then remit that amount to the Turkey Creek Masters Homeowners Association. Contingent upon such payment, the fine imposed by Order No. PSC-96-0350-FOF-WS, should be permanently suspended, and the Commission should dismiss with prejudice the Circuit Court case and close Docket No. 921098-WS. Staff should be given the authority to administratively close the docket upon verification that the payment has been made. (JAEGER, BRADY)

STAFF ANALYSIS: As stated above, by letter dated March 13, 2000, the utility offered to pay a lump sum of \$5,000 to the City of Alachua in full settlement of this case. The City then agreed that it would remit the full amount to the Turkey Creek Master Owners Association. Upon being made aware of this offer, the Turkey Creek Master Owners Association agreed to accept the offer.

The settlement offer was subsequently reduced to writing and all parties, except OPC, signed off on the Settlement Agreement. OPC had previously advised staff that it did not think it was necessary for it to sign the Settlement Agreement, and that the parties could put in the Settlement Agreement that OPC would not contest the Settlement Agreement. OPC did note that as long as the customers through the Turkey Creek Master Owners Association approved the Settlement Agreement, then OPC would be satisfied. The Treasurer of the Turkey Creek Master Owners Association, Jones Mauldin, states that all residential customers are members of the association, and that the association has authorized him to sign the Settlement Agreement accepting the settlement offer. The Settlement Agreement was completed on July 10, 2000, and duplicate originals were provided to staff on July 13, 2000.

Staff notes that all through this proceeding, the Commission has been adamant that the refunds be made with interest. Staff further notes that beginning in March of 1997 and concluding in January of 1998, the utility began making refunds, without interest, to all the customers it could locate.

Because the utility had not made the refunds with interest as required by several orders of the Commission, the Commission issued Order No. PSC-96-0350-FOF-WS on March 11, 1996, imposing a \$5,000 fine for Turkey Creek's failure to make refunds as required by Order No. PSC-93-1769-FOF-WS, but suspending such fine if the utility deposited \$42,000 in an appropriate escrow account within three weeks of the date of the Order. Because the utility disagreed with the \$42,000 amount, the utility did not deposit the requisite amount and, pursuant to the terms of the Order, the fine was not suspended.

Pursuant to the terms of the Settlement Agreement, payment of the \$5,000 will be in total settlement of all remaining refunds and interest due in this docket. The settlement is specifically made contingent upon the Commission permanently suspending the \$5,000 fine imposed by Order No. PSC-96-0350-FOF-WS.

In Order No. PSC-98-1105-FOF-SU, issued August 20, 1998, in Docket No. 961220-SU, the Commission suspended a fine imposed by an order issued July 16, 1997, because it appeared that the utility was attempting to comply with the standards promulgated by the Department of Environmental Protection. Also, in Order No. PSC-96-0912-FOF-TC, issued July 16, 1996, in Docket No. 960649-TC, the Commission suspended a fine imposed by an order issued September 21, 1992, to give the utility time to correct the handicapped access violations. Staff believes that the purpose of the fine imposed by Order No. PSC-96-0350-FOF-WS was to force the utility to make refunds with interest for the benefit of the customers. With the agreement now reached among all parties, staff believes that the purpose of the Order has been accomplished. Therefore, staff believes that the Commission may and should permanently suspend the fine.

Staff also notes that interest was estimated to be approximately \$7,011 as of June 15, 1998, and that all customers who could be found had received the principle amount due. Therefore, very little interest would have continued to accrue from that date forward. While staff does not want to reward procrastination and delay or a refusal of a utility to comply with a lawful order of this Commission, staff believes that the judgement of the parties should be respected, and staff recommends that the Commission approve the Settlement Agreement in its entirety.

Pursuant to the Settlement Agreement, as the final disposition of all matters in Docket No. 921098-WS and Circuit Court Case No. 98-2252CA, Division J, the utility should pay \$5,000 to the City of

DOCKET NO. 921098-WS
DATE: JULY 20, 2000

Alachua within 30 days of the Commission's Final Order approving the Settlement Agreement, and the City will then remit that amount to the Turkey Creek Masters Homeowners Association. Contingent upon such payment, the fine imposed by Order No. PSC-96-0350-FOF-WS, should be permanently suspended, and the Commission should dismiss with prejudice the Circuit Court case and close Docket No. 921098-WS. Upon verification by staff that the payment has been made, staff should be given the authority to administratively close the docket.