

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

TURKEY CREEK, INC., AND)
FAMILY DINER, INC. d/b/a :
TURKEY CREEK UTILITIES,) DOCKET NO.: ██████████
: ORDER NO. : PSC-93-1769-FOF-WS
Appellant,) ISSUED: DECEMBER 9, 1993
: First DCA No.:
vs.)
:)
FLORIDA PUBLIC SERVICE)
COMMISSION, :
Appellee. :

NOTICE OF ADMINISTRATIVE APPEAL

NOTICE IS GIVEN that TURKEY CREEK, INC., and FAMILY DINER, INC., d/b/a TURKEY CREEK UTILITIES, appeals to the First District Court of Appeal the order of the Florida Public Service Commission rendered December 9, 1993. A conformed copy of this order is attached hereto. The nature of this order is an order reviving proposed agency action, making them final and effective, and requiring refunds.

I HEREBY CERTIFY that the original and one copy of the foregoing has been furnished to the State of Florida Public Service Commission, C/O Steve Tribble, Director, Division of Records and Reporting, Fletcher Building, 101 East Gaines Street, Tallahassee,

436

DOCUMENT NUMBER-DATE

00216 JAN-6 83

FPSC-RECORDS/REPORTING

Florida 32399-0850, by Federal Express and a copy of the foregoing has been furnished to John S. Wheeler, Clerk, First District Court of Appeal, 301 Martin Luther King Boulevard, Tallahassee, Florida 32209, by Federal Express this 5th day of January 1994.

MICHAEL W. JONES, P.A.

Original Signed By
MICHAEL W. JONES

BY: _____

MICHAEL W. JONES
4046 Newberry Road
Post Office Box 90099
Gainesville, Florida 32607
(904) 375-2222
Fla. Bar No.: 296198
Attorney for Turkey Creek, Inc.

A TRUE COPY

ATTEST

Kay Hymas
Chief, Bureau of Records

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for)	DOCKET NO. 921098-WS
Certificates to Provide Water)	ORDER NO. PSC-93-1769-FOF-WS
and Wastewater Service in)	ISSUED: December 9, 1993
Alachua County Under Grandfather)	
Rights by TURKEY CREEK, INC. &)	
FAMILY DINER, INC. d/b/a TURKEY)	
CREEK UTILITIES.)	

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER REVIVING PROPOSED AGENCY ACTION ORDERS NOS.
PSC-93-0229-FOF-WS AND PSC-93-0816-FOF-WS.
MAKING THEM FINAL AND EFFECTIVE

AND

REQUIRING REFUNDS

BY THE COMMISSION:

By proposed agency action (PAA) Order No. PSC-93-0229-FOF-WS, issued February 10, 1993, this Commission granted Turkey Creek, Inc. & Family Diner, Inc. d/b/a Turkey Creek Utilities (Turkey Creek) water certificate No. 550-W and wastewater certificate No. 480-S. We determined that the appropriate rates for Turkey Creek were those rates it was charging on June 30, 1992, the date the Commission received jurisdiction in Alachua County. Also, we determined that Turkey Creek had violated Sections 367.081 and 367.171, Florida Statutes, and Rule 25-30.035, Florida Administrative Code, by raising its rates in September of 1992, and November of 1992. This Commission, therefore, directed Turkey Creek to cease collection of the unauthorized rates and required a refund. In addition, pursuant to Section 367.171, Florida Statutes, and Rule 25-30.035, Florida Administrative Code, we denied Turkey Creek's request to extend its service area beyond the territory it served on the date the Commission assumed jurisdiction over Turkey Creek. Subsequently, on March 4, 1993, Turkey Creek filed a timely petition protesting PAA Order No. PSC-93-0229-FOF-WS.

ORDER NO. PSC-93-1769-FOF-WS
DOCKET NO. 921098-WS
PAGE 2

Furthermore, by PAA Order No. PSC-93-0816-FOF-WS, issued May 27, 1993, this Commission required discontinuance of a charge for public fire protection, a reduction in certain charges, a refund of accrued interest, the installation of irrigation meters, the replacement of certain residential meters, and a revision of the service application. On June 17, 1993, Turkey Creek filed a timely protest of PAA Order No. PSC-93-0816-FOF-WS. As a result of Turkey Creek's timely filed protest to both orders, an administrative hearing was set for November 3, 1993.

On September 15, 1993, the City of Alachua made a preliminary determination to purchase Turkey Creek. The utility states that the City of Alachua began operating the utility effective September 23, 1993. According to information provided by the City, the sale has been closed and the proceeds were to be held in escrow pending Department of Environmental Protection permitting. Subsequently, on October 20, 1993, the utility filed a Notice Dismissing Petitions protesting Orders Nos. PSC-93-0229-FOF-WS and PSC-93-0816-FOF-WS.

Because of the utility's October 20, 1993, filing of a Notice Dismissing Petitions and the fact that no other protests to the orders were filed, we find it appropriate and necessary to revive Orders Nos. PSC-93-0229-FOF-WS, issued February 10, 1993, and PSC-93-0816-FOF-WS, issued May 27, 1993, and make them final and effective.

Refunds Required

As mentioned above, by Order No. PSC-93-0229-FOF-WS, we required Turkey Creek to reduce its monthly service rates to those which were in effect on June 30, 1992, the date the Commission received jurisdiction over Alachua County and to refund any monies collected pursuant to the rate increases implemented in September and November 1992, including interest. As a result of the utility's protest of that order, the order did not become final. Therefore, the utility continued to charge the higher rates and a refund was never made to the customers.

By Order No. PSC-93-1090-FOF-WS, issued July 27, 1993, we ordered the utility to hold the difference between its current charges and the charges approved in Order No. PSC-93-0816-FOF-WS subject to refund pending the final decision after the hearing. We also ordered the utility to provide by August 27, 1993, a bond, letter of credit or escrow agreement to guarantee the funds

DOCUMENT NUMBER-DATE
13135 DEC-93
FPSC-RECORDS/REPORTING

RECEIVED DEC 16 1993

438

RECEIVED DEC 10 1998

PAGE 3

collected subject to refund. However, an escrow agreement was not executed prior to the sale of the utility to the City of Alachua. Therefore, no funds have been escrowed.

Upon consideration of the above, we find it appropriate to require Turkey Creek to refund all monies collected in excess of the rates and charges approved in Orders Nos. PSC-93-0229-POF-WS and PSC-93-0816-POF-WS. Since this refund is a result of excess charges, the utility shall be required to pay the interest that has accrued from the collection of the charges to the date of the refunds, calculated in accordance with Rule 25-30.360, Florida Administrative Code. The refunds shall be made on a per customer basis. Also, the utility shall accomplish the refunds within ninety days from the issuance date of this order and shall file reports consistent with Rule 25-30.360, Florida Administrative Code.

Because the utility has been sold to the City of Alachua, we have determined that all unclaimed refunds shall be forwarded to the City of Alachua for further disposition. We find it appropriate to require the refunds of excess rates and charges for the following periods:

1. Monthly service rates - June 30, 1992, through the date of the sale to the City of Alachua.
2. Accrued interest on customer deposits - June 30, 1992, through the date each customer's deposit was returned.
3. Public fire protection charge to the Turkey Creek Master Owners Association (TCMOA) - all of 1992 and 1993, if any.
4. Miscellaneous service charges - July 6, 1993, through the date of the sale to the City of Alachua.
5. Late payment charges - July 6, 1993, through the date of the sale to the City of Alachua.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Turkey Creek Utilities' Notice Dismissing Petitions Protesting Orders Nos. PSC-93-0229-POF-WS and PSC-93-0816-POF-WS, is acknowledged and the

DOCKET NO. 921098-WS
PAGE 4

Orders are hereby revived and made final and effective. It is further

ORDERED that Turkey Creek Utilities shall refund all monies collected in excess of rates and charges as set forth in the body of this Order. It is further

ORDERED that such refunds shall include interest through the date of refund and shall be made on a per customer basis. It is further

ORDERED that Turkey Creek shall accomplish the refunds within ninety days from the issuance date of this Order. It is further

ORDERED that Turkey Creek shall be required to file reports to reflect the distribution of the required refunds as set forth herein. It is further

ORDERED that this docket remain open to monitor the refunds. It is further

ORDERED that upon completion of the refund, the docket may be closed administratively.

By ORDER of the Florida Public Service Commission, this 9th day of December, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

CB/JBL

by: Kay Hizon
Chief, Bureau of Records

439

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 sewer 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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.