BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Mr. and Mrs. Ed Keohane against Gulf Utility Company in Lee County concerning refund of contributions-in-aid-of-construction (CIAC) charges	DOCKET NO. 950343-WS ORDER NO. PSC-95-0745-FOF-WS ISSUED: June 21, 1995

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING IN PART AND GRANTING IN PART PAYMENT OF REFUNDABLE ADVANCES AND DETERMINING APPROPRIATE PAYMENT OF EXCESS SERVICE AVAILABILITY CHARGES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On August 24, 1984, Edward and Marie Keohane (The Keohanes) owners of Shady Acres Mobile Home Subdivision (Shady Acres) entered into an agreement with Gulf Utility Company (Gulf) for the provision of water service by Gulf to Shady Acres. The agreement provided that Gulf would provide service in exchange for prepaid service availability fees and guaranteed revenues. Thereafter, the Keohanes paid the service availability fee, which totalled $11,621.60. However, the Keohanes were not billed for and did not pay the guaranteed revenues. Prior to signing the agreement, the Keohanes installed a water line to receive service from Gulf. The line was accepted by Gulf on January 18, 1985. By Order No. 14219, issued March 22, 1985, in Docket No. 840336-WS, we increased Gulf's water system capacity charge from $248.50 to $800 per equivalent residential connection (ERC). The increase became effective on

determined that January 18, 1985, the date of acceptance by Gulf of the Keohanes' line, was the date of connection.

On December 5, 1994, we received a complaint against Gulf on behalf of Shady Acres and the Keohanes. The Keohanes stated that they had an agreement for refundable advances approved by us in Order No. 18035. The Keohanes failed to specify when this agreement was entered. The Keohanes stated that the agreement provided that they would be paid $265.90 per ERC by Gulf when and if any new customer connected to the water line advanced by the Keohanes.

In her complaint, Mrs. Keohane said that another customer, Shady Acres RV Park (RV Park), had been connected to the line but that Gulf had not responded to her requests that the rebate be paid. She also complained that, although she had contacted Gulf and had requested that her road not be cut when the RV Park's water lines were being installed, the road was trenched. As a result thereof, Mrs. Keohane claims that Gulf cut telephone lines that were under the road. She is not satisfied with Gulf's restoration of the road.

> The Keohanes should receive $265.90 per ERC as payment (sic) when and if other users connect to the advanced water line.

According to the Keohanes, we approved this stipulation in Order No. 18035.

The Keohanes also presented a Rebate Agreement that they had proposed to Gulf but Gulf had not signed. The rebate agreement was dated "this ____ day of October, 1986." The date had been left blank. The agreement included the following statement, "This agreement shall be valid for seven (7) years from the date hereof, at which time it expires and no further rebates shall be due or payable to the Developer." The agreement failed to specify the amount of the rebate per ERC.

In its initial determination of the complaint, Staff advised the Keohanes that it believed that since the stipulation in Prehearing Order No. 17534 was not mentioned in the final order, it was not approved. The determination further stated that since the Rebate Agreement the Keohanes had proposed was not signed, it was not valid. Even if it had been executed, it would have expired in October, 1993.

The Keohanes requested an informal conference which was conducted on March 9, 1995, at the Fort Myers City Hall. The Keohanes, Kathy Babcock and James Moore of Gulf, and Commission Staff attended the informal conference. No agreement between the parties could be reached at the informal conference.

At the informal conference, Mr. Keohane submitted a letter he drafted, alleging that Gulf failed to pay the Keohanes $3,311.28 in excess service availability charges as directed by us in Order No. 18035. A letter from Gulf, subsequent to the informal conference, dated March 14, 1995 (attachment 2), advised Staff and Mr. Keohane that excess service availability charges had indeed not been refunded to the Keohanes as they should have been in 1986. Gulf advised that it was prepared to issue a check to the Keohanes for the excess service availability charges, plus interest. Attachment 2 provides a break down of the funds paid to the Keohanes.

In a letter dated March 15, 1995, Gulf provided a chronology of its contacts with the Travel Park concerning provision of water service to it. The Travel Park initially contacted Gulf regarding service on October 9, 1992. Gulf provided the Travel Park with a developer's package and a copy of the October, 1986 rebate agreement that Gulf never signed. Although the Travel Park received a copy of the rebate agreement, both the Keohanes and Gulf conceded at the informal conference that the agreement was never formalized. The Travel Park signed a developer's agreement with Gulf on September 7, 1994.

On March 21, 1995, we received a letter from Mr. Keohane dated March 20, 1995. In his letter, Mr. Keohane stated that the Keohanes paid rebates to Gulf on behalf of Seven Winds, Inc. (Seven Winds) for an extension of Gulf's line by Seven Winds, at the time that the Keohanes originally contracted for service. Mr. Keohane requested proof that Seven Winds received the rebate. Gulf provided us with a copy of a September 18, 1984 letter from Gulf to Seven Winds, indicating that Seven Winds received the Keohanes' rebate payment. (attachment 3) Therefore, we find that the matter regarding Seven Winds is not at issue. Mr. Keohane also stated that he accepted payment by Gulf of the funds listed in attachment 2, and requested that we review Gulf's method of calculating interest. Mr. Keohane requested that the amount paid by Gulf not be considered to include $265.90 for an additional customer allegedly connected in the late 1980's.

Finally, our Staff contacted Gulf regarding the additional customer connection mentioned in Mr. Keohanes' letter of March 21, 1995. According to Gulf, a customer named Dale Rickards connected to Gulf for service via the Keohanes' line on August 29, 1984. A subsequent connection to a customer named Erma Boyette occurred on June 18, 1990. Gulf said it would pay rebates to the Keohanes for these connections if so ordered by us.

PAYMENT OF REFUNDABLE ADVANCES FOR SHADY ACRES TRAVEL PARK

As mentioned in the background, the Keohanes allege that they are entitled to a rebate from Gulf for the connection of Shady Acres Travel Park. The Keohanes rely on Order No. 18035 and stipulated Issued No. 5 of Prehearing Order No. 17534, both in Docket No. 861171-WS. Stipulated Issue No. 5 states:

> The Keohanes should receive $265.90 per ERC as paybacks (sic) when and if other users connect to the advanced water line. (Attachment 4).

In a letter dated March 20, 1995, Mr. Keohane states:

> These unopposed orders, for the first time, forced Gulf to accept a rebate agreement. I believe it was obvious to Commission(er) John T. Herndon that Gulf was trying to exploit the Keohanes, thus, his order...did not contain an expiration date with regards to the rebate. (Attachment 5)

Mr. Keohane is correct that Stipulated Issue No. 5 does not specify an expiration date. Page 51 of the prehearing transcript (Attachment 6) indicates that the Keohanes and Gulf stipulated to the amount to be refunded per ERC. However, according to the transcript, the Keohanes' attorney stated that he would try to get together with Gulf's in-house attorney, "to try to iron out the final details." Based on this information, we find that the rebate agreement had not been finalized by the parties. Only the amount of rebate per ERC was stipulated.

Furthermore, the record fails to indicate that we expressly voted on Stipulated Issue No. 5 at the formal hearing. However, under the procedures at that time, stipulations shown in an issued prehearing order were not always expressly voted on at hearing or final agenda. There is no mention of the stipulation in Order No. 18035, and the evidence fails to suggest that the parties ever worked out the final details of the rebate agreement.

Assuming, however, that Stipulated Issue No. 5 binds the parties, the duration of its effect must be determined. Rule 25-30.540(3)(b), Florida Administrative Code, which addresses agreements for service states in part:

> The agreement shall set forth the period of time within which a sale of the reserved capacity will require a

refund to the applicant, which time period shall not be less than four years. (emphasis added)

At the informal conference, Gulf stated that its rebate agreements typically expire after seven years. Gulf's Fourth Revised Sheet No. 27.3 of its water tariff (Attachment 7) set a seven year expiration on refundable advances. Fourth Revised Sheet No. 27.3 did not go into effect until May 15, 1990. However, if the seven year time frame were implemented, the Keohanes' rebate agreement would have expired on August 24, 1994, fourteen days prior to the developer agreement between the Travel Park and Gulf.

However, we find that Gulf's First Revised Sheet No. 27.3 (Attachment 8)which was in effect in 1987, controlled. It provided a five year expiration on refundable advances. Therefore, the Keohanes' rebate agreement expired on August 24, 1992, two years prior to the Travel Park's agreement for service from Gulf. We find that Stipulated Issue No. 5 only held the parties to a specific amount of money to be refunded per ERC. Therefore, we find it appropriate that Gulf Utility Company shall not be required to pay refundable advances to the Keohanes for connection of Shady Acres Travel Park.

PAYMENT OF REFUNDABLE ADVANCE FOR ADDITIONAL CONNECTIONS

As stated in the background, Dale Rickards connected to Gulf for service via the Keohanes' line on August 29, 1984, and Erma Boyette connected on July 18, 1990. Since Stipulated Issue No. 5 did not bind the Keohanes and Gulf to an agreement for refundable advances until the date of Prehearing Order No. 17534 on March 27, 1987, we find that Gulf shall not have to pay the Keohanes for connection of Dale Rickards. However, Erma Boyette connected within the five year expiration period pursuant to First Revised Sheet No. 27.3. Therefore, we find that Gulf shall pay the Keohanes $265.90 for Ms. Boyette's connection.

GULF'S REFUND OF EXCESS SERVICE ABILITY CHARGES

By Order No. 18035, issued August 24, 1987, we ordered Gulf to pay the Keohanes $6,763.28 in excess service availability charges. We further ordered that "Gulf may deduct from this amount the base facility charge from January 18, 1985, until it began imposing the appropriate charge, presumably in December 1986 when the meter was installed. The difference must be returned to the Keohanes." As a result of this order, Gulf placed the appropriate funds in an interest bearing account for the Keohanes.

At the informal conference, held on March 9, 1995, the Keohanes submitted a letter to the Commission where the Keohanes demanded that "Gulf Utility return all monies from our deposit to us immediately." They also included a calculation of the monies they believe they were owed pursuant to Order No. 18035. In the letter, the Keohanes stated that they were due a total of $3,311.28 in excess service availability charges.

In a letter dated March 14, 1995 from Gulf, the utility included its own calculation of the amount of excess service availability charges due to the Keohanes. The utility claimed that the Keohanes were only due $2,864.16. The difference between the utility's calculations and the Keohane's calculations lies in the base facility charge for the period of January 18, 1985 to January 18, 1986. In their calculations, the Keohanes used $127.25 as the base facility charge for these months, while the utility used $164.51. We have reviewed the utility's tariff and concluded that the appropriate base charge for this period was $164.51. Therefore, we accept the utility's calculations as an accurate reflection of the actual monies due to the Keohanes.

The total refund made to the Keohanes was $4,762.01, which included $1,897.85 in interest. We calculated the appropriate amount of interest due pursuant to Rule 25-30.360, Florida Administrative Code, using the 30 day commercial paper rates for the corresponding months. According to our calculations, the utility was required to pay the Keohanes interest in the amount of $1,685.92, which is lower than the amount actually paid the Keohanes by $211.93. Therefore, we find that the refunds paid the Keohanes, including the interest, were fair and reasonable.

Upon the expiration of the protest period, if no timely protest is received from a substantially affected person, this docket shall be closed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Gulf Utility Company shall not be required to pay refundable advances to Edward and Marie Keohane for connection of Shady Acres Travel Park. It is further

ORDERED that Gulf Utility Company shall not be required to pay a refundable advance to Edward and Marie Keohane for connection of Dale Rickards. It is further

ORDERED that Gulf Utility Company shall pay a refundable advance in the amount of $265.90 to Edward and Marie Keohane for connection of Erma Boyette. It is further

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

ORDERED that all provisions of this Order are issued as Proposed Agency Action and shall become final, unless an appropriate petition in the form provided by Rule 23-22.029, Florida Administrative Code, is received by the Director of the Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that this docket shall be closed if no timely protest is received from a substantially affected person.

By ORDER of the Florida Public Service Commission, this 21st day of June, 1995.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

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Commissioner Kiesling dissented without opinion.

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. 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 25-22.029(4), 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 July 12, 1995.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an 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. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.