



Public Service Commission
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DATE: OCTOBER 4, 2001

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

FROM: DIVISION OF REGULATORY OVERSIGHT (CLAPP, REDEMANN) *RRR*
 DIVISION OF ECONOMIC REGULATION (IWENJIORA) *DM*
 DIVISION OF LEGAL SERVICES (CROSBY, GERVASI) *PS*

RE: DOCKET NO. 970201-WU - APPLICATION FOR TRANSFER OF FACILITIES OF LAKE REGION PARADISE ISLAND AND AMENDMENT OF CERTIFICATE NO. 582-W HELD BY KEEN SALES, RENTALS AND UTILITIES, INC. IN POLK COUNTY.
 COUNTY: POLK

AGENDA: 10/16/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\970201WU.RCM

CASE BACKGROUND

On May 14, 1996, the Board of County Commissioners of Polk County adopted a resolution, pursuant to Section 367.171, Florida Statutes, declaring the water and wastewater utilities in that County subject to the provisions of Chapter 367, Florida Statutes. The resolution was acknowledged by this Commission by Order No. PSC-96-0896-FOF-WS, issued July 11, 1996, in Docket No. 960674-WS. Pursuant to Section 367.171, Florida Statutes, a utility subject to the jurisdiction of this Commission must obtain a certificate of authorization.

At the time this Commission received jurisdiction in Polk County, Lake Region Paradise Island (Lake Region, LRPI or system) was owned by S & S Utilities, Inc. (S & S or seller), a dissolved

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corporation. LRPI was franchised by Polk County on February 2, 1960. Steve and Susan Cliett, the primary stockholders in S & S, sold the Lake Region system instead of filing an application for a grandfather certificate to provide water service in Polk County. The system was sold to Keen Sales, Rental and Utilities, Inc. (Keen, utility or buyer) on January 9, 1997, without prior Commission knowledge or approval.

Keen is a Class C utility located in Polk County. Keen was granted grandfather Certificate No. 582-W by Order No. PSC-97-0152-FOF-WU, issued February 11, 1997, in Docket No. 961007-WU for the Ray Keen, Earlene Keen, and Ellison Park Subdivisions' systems. Additionally, Keen was granted the transfer of water facilities from Alturas Water Works pursuant to Order No. PSC-98-1752-FOF-WU, issued December 22, 1998, in Docket No. 980536-WU. Keen serves approximately 272 residential customers and 4 general service customers in the Ray Keen, Earlene Keen, and Ellison Park Subdivisions, the Alturas service area, and the Lake Region service area. The utility's 2000 annual report lists total gross revenues of \$127,851 and operating expenses of \$117,452, resulting in a net operating income of \$10,399. Keen's regulatory assessment fees (RAFs) are paid through 2000 and annual reports have been filed for 1997 through 2000.

On February 14, 1997, an application was filed with this Commission for approval of the transfer of Lake Region's facilities to Keen. The application included a tariff containing the LRPI rates that were to be "grandfathered in". Numerous deficiencies delayed the staff's ability to process the case.

By Order No. PSC-00-0913-PAA-WU, issued May 8, 2000, the Commission approved the transfer of the LRPI system to Keen, amended Keen's water certificate, and declined to order Keen to show cause for charging unapproved rates and transferring without prior Commission approval. Nevertheless, the Commission ordered Keen to refund, with interest, all revenues collected as a result of charging unapproved rates from February, 1997 through November, 1999 when the utility discontinued the overcharge. The refund was to be made within one year from May, 2000.

Although the utility did not protest the PAA order requiring the refund, information obtained in the utility's index and pass-through application filed on July 20, 2000 caused staff to reassess the refund amounts required in that order. Consequently, by Order

No. PSC-01-0424-PAA-WU, issued February 22, 2001, the Commission approved a reduction in the amount to be refunded by Keen.

The subjects of this recommendation are the remaining issues concerning the delinquent 1996 annual report due from the previous owners, Steve and Susan Cliett, and the final refund completed by Keen. The Commission has jurisdiction pursuant to Sections 367.121 and 367.161, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Clietts, owners of Lake Region Paradise Island from May 14, 1996 to January 9, 1997, be ordered to show cause in writing within 21 days why they should not be fined for failing to file an annual report for 1996 in apparent violation of Rule 25-30.110, Florida Administrative Code?

RECOMMENDATION: No. A show cause proceeding should not be initiated. Further, the penalty set forth in Rule 25-30.110, Florida Administrative Code, should not be assessed. In addition, the Clietts should not be required to file the 1996 Annual Report. (CROSBY, IWENJIORA)

STAFF ANALYSIS: Rule 25-30.110, 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. Requests for extensions of time must be in writing and must be filed before March 31. One extension of 30 days is automatically granted. A further extension may be granted upon a showing of good cause. Incomplete or incorrect reports are considered delinquent, with a 30-day grace period in which to supply the missing information.

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 C utilities is \$3.00 per day.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, the Commission may impose lesser or greater penalties.

Section 367.161, Florida Statutes, authorizes this Commission to assess a penalty of not more than \$ 5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order or provision of Chapter 367, Florida Statutes. 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, Florida Administrative Code, 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 "in our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Lake Region Paradise Island became subject to this Commission's jurisdiction on May 14, 1996, when the Board of County Commissioners of Polk County adopted a resolution making utilities in that County subject to the provisions of Chapter 367, Florida Statutes. At the time the utility became jurisdictional, it was owned by the Clietts. Letters were sent to the Clietts regarding outstanding regulatory assessment fees (RAFs) and the annual report for 1996.

On February 27, 2001, this Commission received a check from the Clietts in the amount of \$582.76, which was the total amount of RAFs due, including penalties and interest. On March 19, 2001, we received a letter from Mr. Cliett indicating that he is in poor health and that he had to borrow the money to pay the outstanding RAFs. He stated in the letter that if he is required to pay penalties for failure to file the annual report, he will have to file for bankruptcy. Further, according to the letter, he no longer has any information from which to generate the annual report.

Although regulated utilities are charged with knowledge of the Commission's rules and statutes, staff does not believe that the apparent violation of Rule 25-30.110, Florida Administrative Code, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. As stated previously, Mr. Cliett has not owned the utility since January of 1997. Further,

we no longer need the information included in the annual report. The amount of revenues earned during that time was estimated using revenues collected during 1997, and annual reports have been filed for 1997 through 2000 by Keen. The Clietts have paid the RAFs resulting from that estimate. Therefore, staff recommends that the Commission not order the Clietts to show cause for failing to file the annual reports for 1996, in apparent violation of Rule 25-30.110, Florida Administrative Code. Staff further recommends that the Clietts have demonstrated good cause for noncompliance with Rule 25-30.110, Florida Administrative Code. Therefore, staff recommends that the penalty set forth in the Rule should not be assessed. In addition, the Clietts should not be required to file the 1996 Annual Report.

ISSUE 2: Has Keen satisfactorily completed the refunds required by Order No. PSC-01-0424-PAA-WU, issued February 22, 2001, in this docket?

RECOMMENDATION: Yes. Keen has satisfactorily completed the refunds required by Order No. PSC-01-0424-PAA-WU, issued February 22, 2001, in this docket. Order No. PSC-01-0424-PAA-WU should be modified to reflect that the actual amount of the refund is \$7,542.27. Unclaimed refunds of \$526.50 should be treated as cash contributions-in-aid-of-construction (CIAC) pursuant to Rule 25-30.360, Florida Administrative Code. (CLAPP, CROSBY)

STAFF ANALYSIS: This Commission approved the transfer of Lake Region and amended Keen's water certificate in Order No. PSC-00-0913-PAA-WU, issued May 8, 2000. The utility was also ordered to refund, with interest, revenues collected as a result of charging unapproved rates, pursuant to Rule 25-30.360, Florida Administrative Code. The utility was given one year to complete the refund.

Subsequent to the issuance of Order No. PSC-00-0913-PAA-WU, information was obtained in the utility's index and pass-through application filed on July 20, 2000 which caused the Commission to reassess the refund amounts. In response to a staff inquiry, Keen provided information to show that the County had authorized and Lake Region was collecting a 2.5 percent franchise fee prior to the Commission receiving jurisdiction. By Order No. PSC-01-0424-PAA-WU, issued February 22, 2001, the amount of the refund was reduced to reflect a correction to the rates Keen was authorized to charge. The order indicated that the refund amount was estimated to be \$9,372.29 plus interest. The Order was consummated by Order No. PSC-01-0669-CO-WU, issued on March 19, 2001.

Keen calculated the amount of refund due to each customer in April, 2001, and issued the refunds on April 16, 2001. The utility provided detailed calculations for each customer account including monthly usage, amount billed using the unapproved rates, the amount that should have been billed using the approved rates, total refund due the customer, and the interest calculation for each refund issued on April 16, 2001. While preparing to issue the refunds, Keen discovered that it had incorrectly reported that it had overcharged its customers in February and March 1997. Keen provided copies of its ledgers from these two months as proof that the rates charged to the customers were the same rates approved by

Polk County for the LRPI system. Staff reviewed the ledger pages provided and verified that it appears that amounts charged for the two months in question were based on Keen's approved rates.

Staff reviewed the information itemized above and determined that the interest had not been calculated correctly. Staff sent a letter to Keen explaining the problem and the method to use to calculate the correct interest for a supplemental refund. The supplemental refunds were made on June 7, 2001.

On September 11 and 20, 2001, Keen submitted its final reports regarding the refunds. The reports indicate that the amount refunded was \$7,542.27 plus \$1,224.43 in interest. The refunds were applied to the existing customer accounts and checks were mailed to former customers.

The total refund made by Keen for April 1997 through December 1999 of \$7,542.27 plus \$1,224.43 interest is consistent with the requirements of Order No. PSC-01-0424-PAA-WU. It should be noted that while the Order indicated that \$9,372.29 was to be refunded, this amount was estimated. Therefore, Order No. PSC-01-0424-PAA-WU should be modified to reflect that the actual amount of the refund is \$7,542.27. Staff recommends that the utility has satisfactorily complied with the order requiring the refund of unapproved rates plus interest. Keen mailed refund checks to all former customers to their last known addresses with requests for forwarding addresses. Keen has been unable to locate five former customers who are due refunds and interest totaling \$526.50. By Order No. PSC-01-0424-PAA-WU, the Commission ordered the utility to credit unclaimed refunds to CIAC. Therefore, staff recommends that the unclaimed checks totaling \$526.50, should be treated as cash CIAC, pursuant to Rule 25-30.360(8), Florida Administrative Code, and to the Commission's Order.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, since no further action is necessary, the docket should be closed. (CROSBY)

STAFF ANALYSIS: Since no further action is necessary, the docket should be closed.