

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Mr. and ) DOCKET NO. 950343-WS  
Mrs. Ed Keohane against Gulf ) ORDER NO. PSC-95-0971-FOF-WS  
Utility Company in Lee County ) ISSUED: August 9, 1995  
concerning refund of )  
contributions-in-aid-of- )  
construction (CIAC) charges )

---

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

ORDER DENYING SUGGESTION OF RECONSIDERATION

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. This Commission, by Order No. 14219, issued March 22, 1985, in Docket No. 840336-WS, increased Gulf's water system capacity charge from \$248.50 to \$800 per equivalent residential connection (ERC). The increase became effective on March 12, 1985.

A dispute arose between the Keohanes and Gulf regarding whether or not the Keohanes would be required to pay the increased capacity charge. This Commission by Order No. 18035, issued August 24, 1987, in Docket No. 861171-WS, determined that the Keohanes were responsible for paying the original service availability charges of \$11,621.60, plus \$936.19 for installing the meter, which entitled the Keohanes to a refund of \$6,763.28 minus the base facility charge owed Gulf from January 18, 1985 to December of 1986.

DOCUMENT NUMBER-DATE

07574 AUG-98

FPSC-RECORDS/REPORTING

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 the Commission in Order No. 18035. 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.

The Keohanes stated that Shady Acres Travel Park (Travel Park) had been connected to the line but that Gulf had not paid the Keohanes rebates for the connection. We determined that the Travel Park signed a developer's agreement with Gulf on September 7, 1994.

Further, the Keohanes referred to Stipulated Issue No. 5 in Prehearing Order No. 17534, issued March 27, 1987, in Docket No. 861171-WS. The stipulation reads:

The Keohanes should receive \$265.90 per ERC as paybacks (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 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 excess service availability charges as directed by the Commission in Order No. 18035. Gulf subsequently paid the excess service availability charges to the Keohanes.

In addition to the Travel Park, we determined that other connections were made to the Keohanes' line. 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 this Commission.

By Proposed Agency Action (PAA) Order No. PSC-95-0745-FOF-WS, issued June 21, 1995, we denied payment of refundable advances to

the Keohanes by Gulf for connection of Shady Acres Travel Park and for connection of Dale Rickards. We granted payment of a refundable advance in the amount of \$265.90 to the Keohanes by Gulf for connection of Erma Boyette. Finally, we approved the amount paid to the Keohanes by Gulf for excess service availability charges pursuant to Order No. 18035.

Furthermore, we expressed a concern over the length of time in which it took Gulf to submit the excess service availability charges to the Keohanes as required by Order No. 18035. We directed Staff to pursue that matter with Gulf and noted that a Show Cause proceeding may be warranted. On June 26, 1995, our Staff sent a letter to Gulf requesting an explanation. Finally, on June 9, 1995, we requested an audit of Gulf's records to verify Gulf's proper accounting treatment of contributions-in-aid-of-construction and refundable advances. On June 8, 1995, the Keohanes filed with this Commission a Suggestion of Reconsideration of Order No. PSC-95-0745-FOF-WS.

#### SUGGESTION OF RECONSIDERATION

In their Suggestion of Reconsideration, the Keohanes allege that we should adopt a seven year expiration for payment of refundable advances by Gulf to the Keohanes, not five years.

Rule 25-22.060, Florida Administrative Code, provides in part that the Commission will not entertain a motion for reconsideration of a Notice of Proposed Agency Action issued pursuant to Rule 25-22.029, Florida Administrative Code. Order No. PSC-95-0745-FOF-WS was issued as a PAA. Pursuant to Section 120.57, Florida Statutes, a party whose substantial interests are determined by an agency may seek a formal hearing when the state proceeding involves a disputed issue of material fact. The Keohanes' proper remedy would be to protest Order No. PSC-95-0745-FOF-WS, by requesting a Section 120.57, Florida Statutes hearing pursuant to Rule 25-22.029, Florida Administrative Code.

Since the Keohanes have filed an inappropriate pleading, we find that it is unnecessary to discuss its merits. Reconsideration is not appropriate for considering arguments not previously made before the Commission. The appropriate vehicle for the Keohanes' argument is a Petition on Proposed Agency Action (protest). Accordingly, we hereby deny Edward and Marie Keohane's Suggestion of Reconsideration. On July 11, 1995, the Keohanes did, in fact, file a timely protest to Order No. PSC-95-0745-FOF-WS. This docket

ORDER NO. PSC-95-0971-FOF-WS  
DOCKET NO. 950343-WS  
PAGE 4

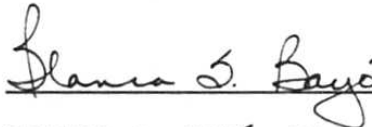
shall remain open pending final disposition of the protest filed by the Keohanes.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission the Suggestion of Reconsideration filed by Edward and Marie Keohane is hereby denied. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 9th day of August, 1995.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

TV

NOTICE OF 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 judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the

ORDER NO. PSC-95-0971-FOF-WS  
DOCKET NO. 950343-WS  
PAGE 5

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.