

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of water facilities from Alturas Water Works to Keen Sales, Rentals and Utilities, Inc. In Polk County, cancellation of Alturas' Certificate No. 591-W and amendment of Keen's Certificate No. 582-W to include additional territory.

DOCKET NO. 980536-WU
ORDER NO. PSC-98-1752-FOF-WU
ISSUED: December 22, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER APPROVING TRANSFER, CANCELING CERTIFICATE NO 591-W,
AMENDING CERTIFICATE NO. 582-W, DECLINING TO INITIATE A SHOW
CAUSE PROCEEDING, APPROVING CONTINUATION OF RATES, AND NOTICE OF
PROPOSED AGENCY ACTION ORDER APPROVING A LATE PAYMENT CHARGE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action to approve the \$2.00 late payment charge 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

Alturas Water Works (Alturas or utility) is a Class C utility serving 53 residential customers and 4 general service customers in Polk County. The utility was initially granted Water Certificate No. 591-W in Docket No. 961109-WU, by Order No. PSC-97-0513-FOF-WU. The utility's 1997 annual report lists annual revenues of \$11,752 and net operating loss of \$319.

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FLORIDA PUBLIC SERVICE COMMISSION

ORDER NO. PSC-98-1752-FOF-WU
DOCKET NO. 980536-WU
PAGE 2

On April 20, 1998, Alturas submitted an application for transfer of water facilities to Keen Sales, Rentals and Utilities, Inc. (Keen), holder of Certificate No. 582-W. There was a short delay in processing the application due to the necessity of processing a name change application for Keen first, because Certificate No. 582-W was issued to Keen Sales & Rentals, Inc. The name change was approved by Order No. PSC-98-1294-FOF-WU issued October 5, 1998.

APPLICATION FOR TRANSFER

As stated previously, Alturas Water Works applied for a transfer of its water facilities, including Water Certificate No. 591-W in Polk County to Keen Sales, Rental, and Utilities, Inc., on April 20, 1998. The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer. The application contains a check in the amount of \$750, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence, in the form of a Warranty Deed, that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.037(2)(q), Florida Administrative Code.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application were received, and the time for the filing of such objections has expired. A description of the territory served by the utility is appended to this Order as Attachment A. The service area has been verified as the original service area granted to Alturas in Order No. PSC-97-0513-FOF-WU, issued May 5, 1997.

With regard to the purchaser's technical ability, Keen has indicated that it will maintain and operate the system in compliance with the appropriate laws and rules. Keen currently operates and maintains one system and has an additional application for transfer pending with the Commission. We contacted the Department of Environmental Protection (DEP) and learned that there are no outstanding notices of violation against the utility.

Regarding the financial ability of Keen, the buyer supplied financial statements, which indicated that approximately 93% of the company's net worth is in real estate and other assets, and that it has approximately \$14,000 in liquid assets. We find that

ORDER NO. PSC-98-1752-FOF-WU
DOCKET NO. 980536-WU
PAGE 3

the owner possesses the overall financial ability to operate the water facility. Since the system is small, we find that the financial foundation of the new owner should be adequate to insure the continued operations of the utility.

The application contains a copy of the contract for sale which includes the purchase price, terms of payment and a list of the assets purchased and liabilities assumed. Based on the application, there are no guaranteed revenue contracts or customer advances. The seller will remain responsible for the existing debts of the utility. We contacted both the seller and the buyer concerning payment of 1998 regulatory assessment fees. The seller verified that it and the buyer have agreed on proration of the 1998 regulatory assessment fees and the buyer will issue the payment. The utility shall provide written confirmation of the transfer closing, which shall be submitted to the Commission within 60 days of the closing.

In addition, customer deposits shall be transferred to the buyer. Keen has provided a statement that it will fulfill the commitments, obligations, and representations of the transferor.

Keen previously received Water Certificate No. 582-W in Polk County by Order No. PSC-97-0152-FOF-WS, issued February 11, 1997. Therefore, the appropriate action is to cancel Certificate No. 591-W, and to amend Keen's existing Certificate No. 582-W.

Based on the above, we find that the transfer of assets and facilities from Alturas Water Works to Keen Sales, Rentals and Utilities, Inc., the amendment of Water Certificate No. 582-W, and the cancellation of Water Certificate No. 591-W is in the public interest and approved.

RATE BASE

In its application, Keen proposed no net book valuation for the acquired assets due to intermingling of utility records with other business records of the owner. Our auditors verified that the utility was previously exempt from Polk County regulation. As an exempt utility, it was not required to maintain books and records. Since the utility had no records, an original cost study could not be conducted.

The proposed net book value is addressed in Exhibit E of the application for transfer. The buyer reviewed an Alturas Water

ORDER NO. PSC-98-1752-FOF-WU
DOCKET NO. 980536-WU
PAGE 4

Works balance sheet in determining a purchase price for the utility. Those items considered were estimated values for land, wells, pumps, meters, and goodwill. Based upon those items a "fair price" of \$12,000 was agreed to by the seller and buyer.

Based on the above, we find that rate base at the time of the transfer cannot be set. We also find it appropriate to put Keen on notice that an original cost study will be conducted upon the filing of a staff-assisted rate case. Further, the utility shall maintain its books in compliance with the NARUC Uniform System of Accounts.

ACQUISITION ADJUSTMENT

An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. Since rate base for the utility at the time of the transfer cannot be established, we find it appropriate that no acquisition adjustment be approved in this docket.

RATES AND CHARGES

Except for the late payment charge discussed below, the utility's current rates and charges were approved by certificate Order No. PSC-97-0513-FOF-WU, issued May 5, 1997.

Rule 25-9.044(1), Florida Administrative Code, provides that:

In cases of change of ownership or control of a utility which places the operation under a different or new utility... the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission)

Keen requested that the rates currently being charged by Alturas remain in effect. The rates are reflected below:

ORDER NO. PSC-98-1752-FOF-WU
DOCKET NO. 980536-WU
PAGE 5

WATER

MONTHLY RATES

Residential Service

<u>Meter Size</u>	<u>Minimum Charge for 3,000 gals.</u>	<u>Gallonge Charge per 1,000 over 3,000 gals.</u>
5/8 x 3/4"	\$ 13.50	\$ 1.00

General Service

Same as above

METER TEST DEPOSIT

5/8" x 3/4" meter	\$ 20.00
1" and 1 1/2" meter	\$ 25.00
2" and over meter	Actual Cost

MISCELLANEOUS SERVICE CHARGES

Initial Connection	\$ 15.00
Normal Reconnection	\$ 15.00
Violation Reconnection	\$ 15.00
Premises Visit	\$ 15.00

DEPOSITS

<u>Meter Size</u>	<u>Residential</u>	<u>General Service</u>
5/8" x 3/4" meter	\$35.00	\$35.00
1"	\$35.00	\$35.00
1 1/2"	\$35.00	\$35.00
Over 2"	\$35.00	\$35.00

Based on the above, Keen shall continue charging the rates and charges approved for Alturas.

Audit Findings

The audit of Alturas revealed some irregularities with respect to the billing of these rates. These irregularities were in three general areas: free service, billing unapproved rates, and charging an unapproved late payment fee.

Free Service

With respect to the free service, the audit revealed that the utility entered into an agreement on January 3, 1972, to furnish water to Wynette R. Register and Ruby S. Register free of charge for and during their lifetimes. These persons were the parents of the utility owner. Mr. Wynette R. Register is now deceased. However, Ms. Ruby S. Register is still a resident of the utility's service area and receives water from the utility free of charge.

Prior Commission Order No. 11241-A stated "... the practice of providing free water to be discriminatory,..." and required "... the utility to perform meter readings and charge these customers... for all water consumption." Since the audit was performed, Ms. Ruby S. Register executed a Quit Claim Deed releasing her water rights, resulting in her becoming a paying customer of the utility. This deed was executed on August 10, 1998, and filed with the Polk County Clerk of the Circuit Court on August 14, 1998.

Late Payment Fee

Another finding of the audit was that the utility was charging an apparently unauthorized \$2.00 late fee. The utility had been charging the late fee, and had included the identification of the charge in its sample customer bill. However, this charge was not separately identified during the analysis of the grandfather certification application, therefore it was not previously codified in the order granting the grandfather certificate. The utility shall be authorized to collect the \$2.00 late payment charge at this time. This charge not only provides an incentive for customers to make timely payments but also places the cost burden of processing such delinquent notices and accounts squarely upon those who are the causers. We note that the amount of the fee is lower than most late payment fees approved in recent dockets. We find that our decision to approve the late payment fee is consistent with Orders Nos. PSC-98-0172-FOF-WU, issued January 28, 1998 and PSC-97-1616-FOF-SU, issued December 24, 1997.

Billing Unapproved Rates

An additional finding of the audit was two instances of the use of unauthorized rates. One customer had three residential structures on the property with only two meters, but was charged for three base facility charges as though there were three meters. A second customer with two buildings - a store and a storage unit -

and two meters, was charged per the authorized tariff rate for the store, but only \$2.00 for the storage unit. Collection of unauthorized charges is an apparent violation of Sections 367.081 and 367.091, Florida Statutes. The utility management was unfamiliar with regulation requirements and thought the tariff was an operating guideline and not a requirement. Once the auditor informed the utility that these irregularities could not be allowed, they were immediately stopped.

According to a letter dated October 15, 1998, from the Alturas representative, the rates charged for the first customer above were corrected to the base facility charge plus actual service per meter and all future charges will be in accordance with the approved tariff. Consequently, that customer will be billed for only two meters, unless a third is installed. The utility has agreed to issue a refund for the over charge of the third base facility charge. The second customer had the water service to the storage unit disconnected and now only pays for use at the store. It appears that all of the audit billing findings have been satisfied.

Conclusion on Rates and Charges

Based on the above, Keen shall continue charging the rates and charges approved for Alturas. In addition, the utility shall be allowed to collect a late payment fee of \$2.00. The tariff shall be effective for services provided or connections made on or after the stamped approval date, in accordance with Rule 25-30.475, Florida Administrative Code, provided the customers have received notice.

NO SHOW CAUSE REQUIRED

The utility has charged unauthorized rates not contained in its tariff. Sections 367.081(1) and 367.091(3), Florida Statutes, provide that a utility may only charge rates and charges that have been approved by the Commission. Section 367.161(1), Florida Statutes, authorizes the 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 have willfully violated, any provision of Chapter 367, Florida Statutes.

Alturas appears to have violated Sections 367.081(1) and 367.091(3), Florida Statutes, by failing to obtain approval of the Commission prior to collecting the late payment fee and providing free service. Further, the utility has charged incorrect meter and base facility charges. While we do not have reason to believe that

the utility intended to violate the statutes, its act was "willful" in the sense intended by Section 367.161, Florida Statutes. See 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, F.A.C., 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Although Alturas' actions are an apparent violation of Sections 367.081(1) and 367.091(3), Florida Statutes, we do not find that such violations rise to the level that warrant the initiation of a show cause proceeding. First, the utility was furnishing water to the parents of the utility owner free of charge. Prior Commission Order No. 11241-A stated "... the practice of providing free water to be discriminatory ..." and required "... the utility to perform meter readings and charge these customers... for all water consumption. Since our audit, the customer executed a Quit Claim Deed releasing her water rights, resulting in her becoming a paying customer of the utility. The deed was executed on August 10, 1998. Second, the utility was charging an apparently unauthorized \$2.00 late fee. The utility had been charging the late fee, and had included the identification of the charge in its sample customer bill included in the grandfather certificate application filed on September 16, 1996. However, this charge was not separately identified during the analysis of the grandfather certification application, therefore we did not previously approve it in the order granting the grandfather certificate. It appears that the utility did not know that the \$2.00 late fee was not approved until an audit was completed. The utility took the necessary steps to correct the violation by requesting approval of the fee.

Lastly, there were two instances of billing errors. One customer had three residential structures on the property with only two meters, but was charged for three base facility charges as though there were three meters. A second customer with two buildings - a store and a storage unit - and two meters, was

charged per the authorized tariff rate for the store, but only \$2.00 for the storage unit. The charges are inconsistent with the utility's tariff which provides for a minimum charge of \$13.50 for the first 3,000 gallons. Further, the \$2.00 the utility charged for the storage unit was arbitrarily chosen by the utility and never approved by the Commission. The utility management was unfamiliar with regulation requirements and thought the tariff was an operating guideline and not a requirement. Once the auditor informed the utility that these irregularities could not be allowed, they were immediately stopped.

According to a letter dated October 15, 1998, from the Alturas representative, the rates charged for the first customer above were corrected to the base facility charge plus actual service per meter and all future charges will be in accordance with the approved tariff. Consequently, that customer will be billed for only two meters, unless a third is installed. The second customer had the water service to the storage unit disconnected and now only pays for use at the store. It appears that all of the audit billing findings have been satisfied.

With respect to the billing errors discussed above, the utility corrected the problems immediately after becoming aware of the Commission's statutes in this regard. Accordingly, we decline to initiate a show cause order for those violations. However, the utility shall be placed on notice that pursuant to Sections 367.081(1) and 367.091(3), Florida Statutes, it may in the future only collect rates and charges approved by the Commission.

CLOSING THE DOCKET

Upon expiration of the protest period, if no timely protest is received from a substantially affected person, the docket shall remain open until receipt of written confirmation of the date of closing of transfer. Once this information is received, Water Certificate No. 591-W shall be canceled and Water Certificate No. 582-W shall be amended, and this docket shall be closed administratively.

ORDER NO. PSC-98-1752-FOF-WU
DOCKET NO. 980536-WU
PAGE 10

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of water facilities from Alturas Water Works, 2565 Oak Drive, Alturas, Florida 33820 to Keen Sales, Rentals and Utilities, Inc., 685 Dyson Road, Haines City, Florida 33844, cancellation of Certificate No. 591-W, and amendment of Keen's Certificate No. 582-W to include additional territory is hereby approved. It is further

ORDERED that rate base for transfer purposes shall not be set. It is further

ORDERED that Keen Sales, Rentals and Utilities, Inc. shall maintain its books in compliance with the NARUC Uniform System of Accounts. It is further

ORDERED that no acquisition adjustment shall be approved. It is further

ORDERED that Keen Sales, Rentals and Utilities, Inc. shall continue to charge the rates and charges approved in the utility's tariff until authorized to change by this Commission in a subsequent proceeding. The rates and charges shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that the \$2.00 late payment charge is hereby approved. It is further

ORDERED that a show cause proceeding shall not be initiated against Alturas Water Works for violation of Sections 367.081(1) and 367.091(3), Florida Statutes. 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 matters contained in the attachments attached hereto are by reference incorporated herein. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee,

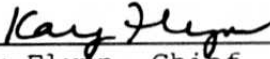
ORDER NO. PSC-98-1752-FOF-WU
DOCKET NO. 980536-WU
PAGE 11

Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that upon expiration of the protest period, if no timely protest is received from a substantially affected person, the docket shall remain open until receipt of written confirmation of the date of closing of transfer, at which time this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 22nd Day of December, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



Kay Flynn, Chief
Bureau of Records

(S E A L)

SRF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

As identified in the body of this order, our action to approve the \$2.00 late payment charge is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 12, 1999. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective on the date subsequent to the above date.

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 the relevant portion of this order becomes final and effective on the date described above, any party adversely 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.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by

ORDER NO. PSC-98-1752-FOF-WU
DOCKET NO. 980536-WU
PAGE 13

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 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 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.

ORDER NO. PSC-98-1752-FOF-WU
DOCKET NO. 980536-WU
PAGE 14

ATTACHMENT A

KEEN SALES, RENTALS AND UTILITIES, INC.

ALTURAS WATER WORKS SYSTEM

WATER SERVICE AREA

POLK COUNTY

In Township 30, Range 26 East, Section 16, Polk County, Florida:

The Northeast 1/4 less the Northwest 1/4 of the Northeast 1/4 and less the Northwest 1/4 of the Northeast 1/4 of the Northeast 1/4 and less Star Lake.

The Southeast 1/4 of the Southeast 1/4 of the Northwest 1/4.

The North 480 feet of the Southeast 1/4.

The East 672 feet of the Southeast 1/4 less the South 672 feet.