

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 970201-WU
ORDER NO. PSC-00-0913-PAA-WU
ISSUED: May 8, 2000

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

ORDER APPROVING TRANSFER, DECLINING TO INITIATE
SHOW CAUSE PROCEEDINGS, REQUIRING REFUNDS, AND
ESTABLISHING RATES AND CHARGES

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER CONCERNING RATE BASE FOR PURPOSES OF THE TRANSFER
AND DECLINING TO RECOGNIZE AN ACQUISITION ADJUSTMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the actions concerning rate base for purposes of
the transfer and declining to recognize an acquisition adjustment
discussed herein are 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 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.

DOCUMENT NUMBER-DATE

05720 MAY-88

FPSC-RECORDS/REPORTING

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This Commission acknowledged the resolution by Order No. PSC-96-0896-FOF-WS, issued July 11, 1996, in Docket No. 960674-WS.

Section 367.171, Florida Statutes, requires utilities subject to Commission jurisdiction to obtain a certificate of authorization from this Commission. At the time this Commission received jurisdiction in Polk County, Lake Region Paradise Island (Lake Region or utility) was owned by S & S Utilities, Inc. (S & S or seller), a dissolved corporation. Steve and Susan Cliett, the primary stockholders in S & S, decided to sell Lake Region instead of filing an application for a grandfather certificate to provide water service in Polk County. The utility was sold to Keen Sales, Rental and Utilities, Inc. (Keen) on January 9, 1997.

Keen, which is a Class C utility located in Polk County, was granted Certificate No. 582-W by Order No. PSC-97-0152-FOF-WU, issued February 11, 1997, in Docket No. 961007-WU. On February 14, 1997, an application was filed with this Commission for approval of the transfer of Lake Region's facilities to Keen. Keen currently serves approximately 249 residential customers and four general service customers in the Ray Keen, Earlene Keen, and Ellison Park Subdivisions, the Lake Region service area and the Alturas service area. The facilities of Alturas Water Works were transferred to Keen by Order No. PSC-98-1752-FOF-WU, issued December 22, 1998, in Docket No. 980536-WU.

Show Cause - Transfer Without Commission Approval

S & S bought Lake Region from W. F. Morrison in 1983. S & S was dissolved in 1985, and Lake Region was dissolved in 1987. None of the names have been legally registered since that time. The Clietts sold the utility to Keen on January 9, 1997, prior to Commission approval. Therefore, the Clietts are in apparent violation of Section 367.071, Florida Statutes, which states, in part, "No utility shall sell, assign, or transfer its certificate of authorization, facilities, or any portion thereof . . . without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest." Such action is "willful" in the sense intended by Section 367.161, Florida Statutes.

Section 367.161, Florida Statutes, authorizes us 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 provision of Chapter 367, Florida Statutes.

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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, 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 "[i]n 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.

This Commission received jurisdiction in Polk County on May 14, 1996. The Clietts first became aware of the Commission's regulation when contacted by the Commission staff in September, 1996. Rather than file for a certificate under grandfather rights, the Clietts sold the utility to Keen on January 9, 1997. Keen has been operating the system, and providing satisfactory service to the customers since that time. Upon becoming aware of the requirement, Keen immediately filed the application for approval of the transfer of the Clietts' facilities. As stated previously, the application was filed on February 14, 1997.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we do not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level of warranting the initiation of a show cause proceeding. Further, we believe that, in this instance, the initiation of a show cause proceeding would not achieve the goal of bringing the utility into compliance, since the utility has been sold. Therefore, we do not find it appropriate to initiate a show cause proceeding against the Clietts for transferring the utility facilities to Keen without prior approval.

This decision is consistent with the Commission's decisions in Order No. 19848, issued August 22, 1988, in Docket No. 880013-WS, In re: Application of Homosassa Utilities, Inc. for water and sewer certificates under grandfather rights, in Sumter County, Florida; Order No. PSC-98-0371-FOF-WS, issued March 6, 1998, in Docket No. 961014-WS, In re: Application for Certificates under grandfather rights to provide water and wastewater service by Crystal River Utilities, Inc. in Polk County; and Order No. PSC-98-1550-FOF-WS, issued November 23, 1998, in Docket No. 971192-WS, In re: Application for grandfather certificates to operate a water and wastewater utility in Polk County by Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities.

Show Cause - Charging of Unapproved Rates

At the time of the transfer of the utility facilities to Keen, Lake Region charged a base facility charge of \$9.85, which included 5,000 gallons. The gallonage charge was \$1.15 per 1,000 gallons in excess of 5,000 gallons. According to Keen, the Clietts stated, at the time of the transfer, that the base facility charge was \$10.35, including 5,000 gallons, and the gallonage charge was \$1.21 per 1,000 gallons in excess of 5,000 gallons. Shortly thereafter, Keen applied index and pass-through increases to all of its customers, including the customers of Lake Region. The index and pass-through were not appropriate for Lake Region because the rates the increases were applied to had not been approved by this Commission. Further, at the time the index and pass-through increases were applied, Keen changed the base facility charge to include 3,000 gallons. The change in rates is an apparent violation of Section 367.121, Florida Statutes, and Rule 25-9.044, Florida Administrative Code. Section 367.121, Florida Statutes, states, in part,

(1) In the exercise of its jurisdiction, the commission shall have power:

(a) To prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and to prescribe service rules to be observed by each utility, except to the extent such authority is expressly given to another state agency.

Further, Rule 25-9.044, Florida Administrative Code, states, in part,

In case of change of ownership or control of a 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)
. . . .

This Commission received jurisdiction in Polk County on May 14, 1996. The transfer occurred on January 7, 1997. When we became aware of the change in rates, Keen was instructed to stop charging the incorrect rates. Since that time, Keen has been charging the rates approved for Lake Region when this Commission received jurisdiction in Polk County (\$9.85, including 5,000

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gallons and a gallonage charge of \$1.15 per 1,000 gallons in excess of 5,000 gallons).

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we do not believe that the apparent violation of Section 367.121, Florida Statutes, and Rule 25-9.044, Florida Administrative Code, rises in these circumstances to the level of warranting initiation of a show cause proceeding. When contacted about the inappropriate charges, Keen immediately stopped charging the incorrect rates. Therefore, we do not find it appropriate to initiate a show cause proceeding against Keen for charging the Lake Region customers unapproved rates. We do, however, find it appropriate to order Keen to refund, with interest, all revenues collected as a result of charging unapproved rates. Keen has indicated that it will begin refunding the money to the customers in the April bill.

We have calculated the amount of revenues collected between February 1997 and November, 1999, and the interest resulting from the collection of the unapproved rates. The total amount to be refunded is \$9,612.61. Keen shall complete the refunds to the Lake Region customers within one year of the effective date of this Order. The refunds should be mailed to each customers' last known address. Keen shall submit copies of canceled checks or other evidence which verifies that the refunds have been made, within 30 days from the date of the refund. Also, within 30 days of the date of the refund, the utility shall provide a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refund. After verification by the Commission staff and review of the refund process, any unclaimed refunds shall be treated as contributions-in-aid-of-construction (CIAC).

Application

Except as discussed previously, the application is in compliance with Section 367.071, Florida Statutes, and other pertinent rules and statutes, and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$750, as prescribed by Rule 25-30.020, Florida Administrative Code. Keen also provided evidence, in the form of a warranty deed, that the utility owns the land upon which its facilities are located, as required by Rule 25-30.037(2)(q), Florida Administrative Code.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system being transferred. No objections to the application have been received and the time for filing such has expired.

The application contains a copy of the contract, which includes the general description of assets purchased. There are no customer deposits, guaranteed revenue contracts, developer agreements, or customer advances. The Clietts remain responsible for the existing debts of the utility including regulatory assessment fees (RAFs) owed from May 14, 1996, through January 9, 1997. Keen has included Lake Region in its annual reports and RAF payments since its purchase. All outstanding RAFs and annual reports will be addressed in this docket at later date.

With regard to technical ability, Keen currently operates and maintains two utilities and has an additional application for transfer of another system pending before this Commission. Regarding financial ability, because the utility is small, the financial foundation of Keen should be adequate to insure continued operation of the utility. Keen has been certificated since February 11, 1997, and continues to make a profit as a regulated utility, maintaining the facilities according to regulation.

Further, Keen has indicated that it will maintain and operate the system in compliance with the appropriate laws and rules. In Polk County, water withdrawal is regulated by the Southwest Florida Water Management District (SWFWMD); and water environmental compliance is regulated by the Polk County Health Department (PCHD). The utility was inspected within the last twelve months and some corrective actions were cited. We have contacted SWFWMD

and PCHD and verified that the utility is essentially in compliance with all the requirements of these agencies.

Based on the foregoing, we find that the transfer of facilities from S & S to Keen and the amendment of Certificate No. 582-W, held by Keen, to include the territory served by Lake Region, are in the public interest and they are approved. The territory Lake Region is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. Certificate No. 582-W has been returned to this Commission for entry reflecting the territory served by Lake Region.

Rate Base

At the time of the transfer, the Clietts had no records beyond canceled checks and bank statements. The auditor was, however, able to calculate an estimated land value by dividing the 1959 purchase price (\$71,000) for the development by 102, which is the total number of lots in the development. The average value of each lot was estimated to be \$700. The auditor determined that S & S installed 80 meters in 1983 at a cost of \$20 per customer. In the period between 1983 and January 9, 1997, four more meters were installed at a cost of \$300 per meter. The meter installation resulted in an estimated \$2,800 in CIAC. We find that as a result of the audit an original cost study should be performed in conjunction with the next rate proceeding for the utility.

With regard to the net book value of the utility, according to the application, the buyer determined the purchase price for the utility by estimating the value of 84 meters at \$300 per meter. As a result, a "handshake" purchase price of \$25,000 was agreed to by the Clietts and Keen.

Based on the foregoing, we find that rate base cannot be set for Lake Region at the time of the transfer. Keen is, therefore, put on notice that an original cost study may be required at the time a rate petition is filed in the future. In addition, Keen shall maintain its book and records in compliance with the NARUC Uniform System of Accounts, in accordance with Rule 25-30.110, Florida Administrative Code.

Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the original cost calculation. Because rate base

cannot be established for the utility at the time of the transfer, no acquisition adjustment is approved herein.

Rates and Charges

Lake Region's rates and charges were last officially approved by Polk County prior to its transfer to Keen. When Keen's records for Lake Region were audited in June of 1997, some irregularities were revealed with respect to the rates billed by Keen to the customers of Lake Region. The rates approved by Polk County are set forth below.

Water
Residential and General Service

<u>Meter Size</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 9.85*
<u>Gallonage Charge</u>	
Per 1,000 Gallons over 5,000 Gallons	\$ 1.15

*includes 5,000 gallons per month.

From the time of the transfer, Keen has been charging the customers of Lake Region the rates it calculated using Lake Region's approved rates plus Commission regulatory assessment fees and the County's tax. In addition, Keen reduced the number of gallons included in the base facility charge. The rates charged by Keen are as follows:

Water
Residential and General Service

<u>Meter Size</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 10.58*
<u>Gallonage Charge</u>	
Per 1,000 Gallons over 3,000 Gallons	\$ 1.24

*includes 3,000 gallons per month.

Assuming usage of 10,000 gallons per month, Lake Region customers have been paying \$19.26 for monthly service, versus the old rate of \$15.60. This is a 23 percent increase in the rates without authorization from this Commission.

Keen indicated it charged Lake Region's customers the new rates because the purchase of Lake Region occurred after Keen applied for a grandfather certificate and an application for a pass-through rate adjustment. When the pass-through rates were approved, Keen assumed that the pass-through also applied to Lake Region.

On November 2, 1999, when we became aware that Keen was charging the customers of Lake Region unapproved rates, Keen was notified to stop charging the unapproved rates. Since that time, Keen has been charging the rates approved by Polk County.

Since becoming subject to Commission regulation, there have been extensive conversations between Keen and the Commission staff. Keen's management has had some difficulty in understanding the relationship of the utility with the regulatory authority of the Commission. This problem, if it continues, may result in show cause action against Keen.

However, Keen did respond to the directive to charge the approved rates. We are hopeful that Keen now understands the need to consult and follow the Florida Statutes and provisions of the Florida Administrative Code regarding utility regulation prior to changing rates or acquiring other utilities.

Therefore, in accordance with Rule 25-9.044(1), Florida Administrative code, we find that the rates and charges approved by Polk County for the Lake Region system to be reasonable and they are approved. The rates and charges approved by Polk County for Lake Region are set forth in the body of this Order. Keen shall continue to charge these rates and charges until authorized to change by this Commission in a subsequent proceeding.

Keen may request that a pass-through of those rates be approved to accommodate the collection of the regulatory assessment fees by the Commission. Further, Keen has been informed of the process involved in requesting a staff-assisted rate case. In processing a staff-assisted rate case, income and expense information concerning all of Keen's systems would be gathered and appropriate rates set. A staff-assisted rate case would help

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Keen's management to better understand the need for keeping accurate records and the benefits of working cooperatively with the Commission.

Keen shall submit tariff sheets reflecting the rates and charges approved by Polk County for Lake Region. The tariff shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets, in accordance with Rule 25-30.475, Florida Administrative Code.

If no timely protest is received to a proposed agency action issue, upon the expiration of the protest period, this Order shall become final and effective upon the issuance of a Consummating Order. However, the Docket shall remain open pending verification of the refund and that any unclaimed refunds have been treated as CIAC, as set forth in this Order. Further, the docket shall remain open to address outstanding regulatory assessment fees and annual report for the period from May 1996 through January 7, 1997.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of the facilities of Lake Region Paradise Island from Steven and Susan Cliett, S & S Utilities, Inc., 115 Scenic Highway, Haines City, Florida 33844, to Keen Sales, Rentals and Utilities, Inc., 685 Dyson Road, Haines City, Florida 33844, is hereby approved. It is further

ORDERED that Certificate No. 582-W, held by Keen Sales, Rentals and Utilities, Inc., is hereby amended to include the territory shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that a show cause proceeding shall not be initiated against Steven and Susan Cliett, S & S Utilities, Inc., for the apparent violation of Section 367.071, Florida Statutes. It is further

ORDERED that a show cause proceeding shall not be initiated against Keen Sales, Rentals and Utilities, Inc. for its apparent violation of Section 367.121, Florida Statutes, and Rule 25-9.044, Florida Administrative Code. It is further

ORDERED that Keen Sales, Rentals and Utilities, Inc. shall refund, with interest, pursuant to Rule 25-30.360, Florida

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Administrative Code, all revenues collected as a result of charging unapproved rates. The total amount collected in excess of the authorized rates is \$9,612.61. It is further

ORDERED that Keen Sales, Rentals and Utilities, Inc. shall complete the refunds to the customers of Lake Region Paradise Island within one year of the effective date of this Order. Keen Sales, Rentals and Utilities, Inc. shall submit copies of canceled checks or other evidence which verifies that the refunds have been made, within 30 days from the date of the refund. Further, within 30 days of the date of the refund, the utility shall provide a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refund. After verification and review of the refund process by this Commission, any unclaimed refunds shall be treated as contributions-in-aid-of-construction. It is further

ORDERED that rate base shall not be established for Lake Region Paradise Island in this proceeding, for the reasons set forth in the body of this Order. It is further

ORDERED that an acquisition adjustment shall not be approved for Lake Region Paradise Island in this proceeding, for the reasons set forth in the body of this Order. It is further

ORDERED that the rates approved by Polk County, as set forth herein, for Lake Region Paradise Island are hereby approved. Keen Sales, Rentals and Utilities, Inc. shall continue to charge the customers of the utility these rates and charges until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that Keen Sales, Rentals and Utilities, Inc. shall file tariff sheets that reflect the rates and charges approved by Polk County for Lake Region Paradise Island. The tariff sheets shall be effective for service rendered or connections made on or after the stamped approval date, in accordance with Rule 25-30.475, Florida Administrative Code. It is further

ORDERED that Keen Sales, Rentals and Utilities, Inc. shall maintain its book and records in compliance with the NARUC Uniform System of Accounts, in accordance with Rule 25-30.110, Florida Administrative Code. It is further

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ORDERED that this docket shall remain open pending verification of the refund and that any unclaimed refunds have been treated as CIAC, as set forth in the body of this Order. Further, the docket shall remain open to address outstanding regulatory assessment fees and annual report for the period from May 1996 through January 7, 1997. Upon verification that all the provisions of this Order have been satisfied, this docket shall be administratively closed.

By ORDER of the Florida Public Service Commission this 8th day of May, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

ALC

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 actions concerning rate base for purposes of the transfer and declining to recognize an acquisition adjustment are preliminary in nature. Any person whose substantial interests are affected by the actions 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 May 29, 2000. 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 and final upon the issuance of a Consummating Order.

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.

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.

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ATTACHMENT A

KEEN SALES, RENTALS AND UTILITIES, INC.
Polk County

Water Service Area

Lake Region on Paradise Island Subdivision

Township 28 South, Range 27 East, Section 8

Serving the Lake Region on Paradise Island Subdivision in the Northwest 1/4 described as follows:

The North 2,000 feet, East of U.S. Highway 27 (State Road 25) in the Northwest 1/4. Less Little Lake Hamilton.