

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Alturas Utilities, L.L.C. for apparent violation of Rule 25-30.251(2), F.A.C., Record and Report of Interruptions.

DOCKET NO. 060074-WU
ORDER NO. PSC-06-0532-SC-WU
ISSUED: June 26, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

ORDER TO SHOW CAUSE

BY THE COMMISSION:

Background

Alturas Utilities, L.L.C. (Alturas or utility) is a Class C water utility providing water service in Polk County to approximately 50 residential and 12 general service customers. Alturas was issued Certificate No. 628-W by Order No. PSC-05-0309-PAA-WS, issued March 21, 2005,¹ upon Commission approval of a transfer of the utility from Keen Sales, Rentals and Utilities, Inc. (Keen). That Order shows that Alturas contracted with Keen for two years of transitional management and operations assistance, and that during this time, staff in the Keen office would provide the bookkeeping services for the utility and the contract operator for the Keen systems would perform the system repairs, maintenance, and testing. According to its 2004 Annual Report, Alturas had water revenues of \$21,537 and a net operating income of \$6,035.

On at least six separate occasions in 2005, Alturas failed to notify the Commission of interruptions in service which affected 10 percent or more of its customers, in apparent violation of Rule 25-30.251(2), Florida Administrative Code. Our Division of Regulatory Compliance and Consumer Assistance received two customer complaints to this effect, one of which included a petition signed by 26 Alturas customers requesting that this Commission investigate the frequent water outages. The complaints were reassigned to the Division of Economic Regulation for investigation.

We have jurisdiction pursuant to Sections 367.011, 367.121, and 367.161, Florida Statutes.

¹ In Re: Application for transfer of portion of Certificate No. 582-W by Keen Sales, Rentals and Utilities, Inc. to Alturas Utilities, L.L.C., in Polk County (consummated by Order No. PSC-05-0399-CO-WU, issued April 18, 2005).

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Order to Show Cause

On October 28, 2005, the Division of Regulatory Compliance and Consumer Assistance received a customer complaint from Mr. Frank Hewett against Alturas, reporting that a water outage occurred on October 27, 2005. Mr. Hewett stated the water system broke down at least eight different times during 2005. Case No. 672670W was assigned to the complaint. In a follow-up e-mail to the Division of Regulatory Compliance and Consumer Assistance, Mr. Hewett's wife, Mrs. Trina Hewett, stated that because the utility office personnel were not on the Alturas water system, "they don't have to worry about not having water but we do."

On November 7, 2005, the Division of Regulatory Compliance and Consumer Assistance received another customer complaint against Alturas involving service interruptions, from Mr. Wesley Howell. Mr. Howell reported that during 2005, the water system was down at least seven to ten times. He inquired as to whether a back-up well should be installed for emergencies. Attached to his complaint was a petition signed by 26 customers of Alturas requesting that this Commission investigate the frequent water outages. Case No. 674785W was assigned to the complaint.

Pursuant to Rule 25-22.032, Florida Administrative Code, the Division of Regulatory Compliance and Consumer Assistance requested that Alturas provide a response to the complaints directly to the customers, with a copy to the Commission, within 15 working days after the complaints were filed, which the utility did. In response to Mr. Hewett's complaint, Alturas stated the service was interrupted due to a break in the line. In its written response to Mrs. Hewett's follow-up e-mail, Mrs. Earlene Keen, Manager of Alturas, stated: "I live in the country and I have my own personal well system which I am sure Mrs. Hewett will be delighted to know went down twice in the last three weeks."

Upon receipt of the second customer complaint, from Mr. Howell, the Division of Regulatory Compliance and Consumer Assistance requested that Alturas provide a complete outage history for the past 12 months. Alturas enclosed the requested outage history along with its response to Mr. Howell. That outage history shows that outages occurred on eight separate occasions from December 6, 2004 to November 18, 2005. Also in its response to Mr. Howell, Alturas stated that it had installed a new water tank and the water pump was replaced two years ago and then again in October 2005. By letter to the Division of Regulatory Compliance and Consumer Assistance dated November 16, 2005, Alturas stated the water system had gone down six times in the last year, and that three of those outages were due to a main line clog, a pump cable break, and the pump going out. The other three outages were scheduled outages for system upgrades, including the removal of "EDB filters" that were causing problems, placing a bypass on the system, and for inspection of the interior of the tanks, as required by the Polk County Health Department. Customers were notified of the scheduled outages pursuant to Rule 25-30.250(2), Florida Administrative Code. Moreover, the utility issued "boil water notices" to customers when the hydroneumatic tank dropped below 20 psi, as required by the Polk County Health Department.

In December 2005, the Division of Regulatory Compliance and Consumer Assistance reassigned Case Nos. 674785W and 672670W to the Division of Economic Regulation for

further investigation. This docket was opened when it became apparent that the complaints involved a potential rule violation on the part of Alturas.

Rule 25-30.251(2), Florida Administrative Code, requires utilities to notify this Commission of any interruptions in service that affect ten percent or more of their customers, within one work day of notification to the utility that the interruption occurred and within one work week after service has been restored. The rule requires utilities to file a complete report of the record to the Commission regarding the interruption. The customers of Alturas experienced at least six interruptions in service during 2005. These outages affected Alturas's entire customer base and Alturas did not report them to the Commission either before or after the service was restored.

In February 2006, our staff received a telephone call from Ms. Christie McCormick, from Alturas, stating that the utility had requested a copy of the Florida Administrative Code from staff on several occasions, but that the utility had not received a copy of those rules. By letter dated March 2, 2006, our staff advised Ms. McCormick that the Division of Economic Regulation had sent the utility a copy of the requested rules along with a letter dated March 31, 2005, when Certificate No. 628-W was issued for the utility. Also enclosed with that March 31, 2005 letter was a copy of Chapter 367, Florida Statutes, and the Uniform System of Accounts (USoA) for Class C Water Utilities. In that letter, the Director of the Division of Economic Regulation advised the utility that "Section 367.161, Florida Statutes, provides that violation of any Commission rule, statute, or order could result in penalties of up to \$5,000 per day. Therefore, it is important that you review this material and make yourself aware of your responsibilities as a regulated utility." Nevertheless, at Ms. McCormick's request, staff sent the utility another copy of the rules, as well as of Chapter 367, Florida Statutes, and the USoA. Our staff again advised Alturas that it is the utility's responsibility to maintain a current copy of the Commission rules and statutes, and reminded the utility that current copies of these materials are also available on the Commission's website. We further note that Ms. Keen, Alturas's Manager, attended the 1999 Class C Workshop held by our staff, at which notebooks were distributed that also contained a copy of Chapter 367, Florida Statutes, and the applicable Commission rules.

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). 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 to have willfully violated, any provision of Chapter 367, Florida Statutes, or any lawful rule or order of the Commission. By failing to report the above-noted service interruptions to the Commission, the utility's acts were "willful" in the sense intended by Section 367.161, Florida Statutes. In Commission 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.

In response to a staff data request dated February 21, 2006, Alturas stated that due to staff changes at the utility, Alturas was not aware of any violation of Rule 25-30.251, Florida Administrative Code, and that the utility has always reported any outages to the Polk County Health Department. The utility provided information on the causes of each of the outages and stated that now that this rule has been brought to its attention, it will make sure to report any future outages to this Commission in accordance with the rule.

As previously noted, this utility was transferred from Keen to Alturas by Order No. PSC-05-0309-PAA-WS, issued March 21, 2005. That Order shows that Alturas contracted with Keen for two years of transitional management and operations assistance, and that during this time, staff in the Keen office would provide the bookkeeping services for the utility and the contract operator for the Keen systems would perform the system repairs, maintenance, and testing. Mrs. Keen, who manages Alturas, should certainly be aware of Order No. PSC-01-1162-PAA-WU, issued May 22, 2001, in Docket No. 001118-WU,² in which the Sunrise Water Company, also owned by Keen, was admonished about its apparent failure to comply with all Commission rules, specifically including Rule 25-30.251, Florida Administrative Code, regarding service interruptions.

We cannot ascertain any circumstances which would appear to mitigate Alturas's failure to report these service interruptions to this Commission in accordance with Rule 25-30.251(2), Florida Administrative Code. We therefore find it appropriate to require Alturas to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$300 for its failure to notify this Commission of at least six separate interruptions in service that took place during 2005, in apparent violation of Rule 25-30.251(2), Florida Administrative Code. Given the small size of the utility, we find \$300 to be a reasonable amount which should serve to capture the utility's attention and encourage the utility to comply with all Commission rules.

Further, the utility is hereby reminded of the importance of being professional and courteous to its customers at all times. Advising a customer who has experienced a series of frustrating water outages that she should be "delighted to know" that the utility manager's water service had gone down twice in the last three weeks is less than courteous and professional and does not foster good customer relations.

Alturas is also warned and is hereby put on notice that failure to comply with Commission orders, rules, or statutes will again subject the utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues, as set forth in Section 367.161, Florida Statutes.

² In Re: Application for staff-assisted rate case in Polk County by Keen Sales, Rentals and Utilities, Inc. (Sunrise Water Company) (consummated by Order No. PSC-01-1299-CO-WU, issued June 14, 2001).

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Alturas Utilities, L.L.C. is ordered to show cause, in writing within 21 days, as to why it should not be fined for failure to notify this Commission of at least six separate interruptions in service, in apparent violation of Rule 25-30.251(2), Florida Administrative Code. It is further

ORDERED that Alturas Utilities, L.L.C.'s response to this Order to Show Cause shall contain specific allegations of fact and law. It is further

ORDERED that should Alturas Utilities, L.L.C. file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, a further proceeding shall be scheduled before a final determination of this matter is made. It is further

ORDERED that a failure to file a timely written response to this Order to Show Cause shall constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue. It is further

ORDERED that in the event Alturas Utilities, L.L.C. fails to file a timely response to this show cause order, the fine shall be deemed assessed with no further action required by this Commission. It is further

ORDERED that if Alturas Utilities, L.L.C. responds timely but does not request a hearing, a recommendation shall be presented to this Commission regarding the disposition of the show cause order. It is further

ORDERED that if Alturas Utilities, L.L.C. responds to this Order to Show Cause by remitting the fine, this show cause matter shall be considered resolved, and the docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 26th day of June, 2006.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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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.

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.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 17, 2006.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or

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wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk, 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.