

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Mr. and) DOCKET NO. 950343-WS
Mrs. Ed Keohane against Gulf) ORDER NO. PSC-95-1231-FOF-WS
Utility Company in Lee County) ISSUED: October 3, 1995
concerning refund of)
contributions-in-aid-of-)
construction (CIAC) charges)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER FINDING SHOW CAUSE PROCEEDING NOT WARRANTED

BY THE COMMISSION:

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. By Order No. 14219, issued March 22, 1985, in Docket No. 840336-WS, we 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. By Order No. 18035, issued August 24, 1987, in Docket No. 861171-WS, we 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

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

the Keohanes to a refund of \$6,763.28 minus the base facility charge owed Gulf from January 18, 1985 to December of 1986.

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 us.

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.

At the agenda conference which resulted in Order No. PSC-95-0745-FOF-WS, we expressed our 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 our 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. Gulf responded by letter on July 10, 1995. On July 11, 1995, the Keohanes filed a Petition on Proposed Agency Action, protesting PAA Order No. PSC-95-0745-FOF-WS.

Show Cause

As noted earlier, Order No. 18035, issued August 24, 1987, required the utility to refund the Keohanes excess service availability charges of \$6,763.28, minus the base facility charge owned Gulf by the Keohanes, from January 18, 1985 to December of 1986. Gulf calculated the amount owed to be \$2,864.16. By Order No. PSC-95-0745-FOF-WS, we acknowledged this amount to be correct. However, Gulf failed to pay the excess service availability charges to the Keohanes until March 28, 1995.

Section 367.161(1), 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 lawful order of the Commission. The utility's failure to pay excess service availability charges to the Keohanes appears to be an apparent violation of Order No. 18035. However, the utility's act does not appear to be willful in the sense intended by Section 367.161, 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, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., this 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."

ORDER NO. PSC-95-1231-FOF-WS
DOCKET NO. 950343-WS
PAGE 4

We do not believe that Gulf intended to withhold payment to the Keohanes. According to Gulf, the delay in payment was an oversight which the utility promptly corrected, after the error was called to its attention.

Furthermore, Gulf paid the Keohanes \$1,897.85 in interest for the period of time in which the utility delayed paying the excess service availability charges. By Order No. PSC-95-0745-FOF-WS, we determined that pursuant to the thirty day commercial paper rate for interest specified in Rule 25-30.360, Florida Administrative Code, Gulf only owed the Keohanes \$1,685.92 in interest.

Upon consideration of the foregoing, we do not find that this utility's apparent violation of Order No. 18035, rises to the level of warranting that a show cause order be issued. Accordingly, a show cause proceeding shall not be initiated against Gulf Utility Company for failure to comply with Order No. 18035.

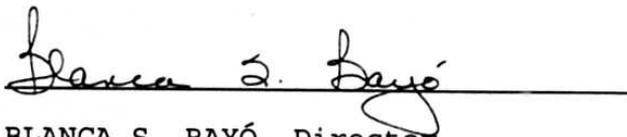
The Keohanes filed a Petition on Proposed Agency Action protesting PAA Order No. PSC-95-0745-FOF-WS. A formal hearing is scheduled for July 1-2, 1996. Therefore, this docket shall remain open pending final resolution of this case.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that a show cause proceeding shall not be initiated against Gulf Utility Company for failure to comply with Order No. 18035. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 3rd day of October, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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ORDER NO. PSC-95-1231-FOF-WS
DOCKET NO. 950343-WS
PAGE 5

NOTICE OF FURTHER PROCEEDINGS OR 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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.