



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: NOVEMBER 19, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER AND WASTEWATER (CLAPP, REDEMANN)
DIVISION OF LEGAL SERVICES (FLEMING)

RE: DOCKET NO. 980536-WU - 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. COUNTY: POLK

AGENDA: 12/1/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUE 4 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\980536WU.RCM

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CASE 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 a grandfather Water Certificate No. 591-W in Docket No. 961109-WU, Order No. PSC-97-0513-FOF-WU. The utility's 1997 annual report on file with the Commission lists annual revenues of \$11,752 and net operating loss of \$319.

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

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name change was approved by Order No. PSC-98-1294-FOF-WU issued October 5, 1998. Therefore, this transfer application is now ready for action by the Commission.

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of 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 be approved?

RECOMMENDATION: Yes, the transfer of 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 should be approved. The utility should provide written confirmation of the transfer closing, which should be submitted to the Commission within 60 days of the closing. (CLAPP, REDEMANN)

STAFF ANALYSIS: As stated in the case background, 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(?) (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 memorandum 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. Staff has contacted the Department of Environmental Protection (DEP) and has learned that there are no outstanding notices of violation against the utility.

Regarding the financial ability of Keen, the buyer supplied financial statements to staff, which indicate 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. Staff believes that the owner possesses the overall financial ability to operate the water facility. Since the system is small, staff believes 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. Staff contacted both the seller and the buyer concerning payment of 1998 RAFS. The seller verified that it and the buyer have agreed on proration of the 1998 RAfs and the buyer will issue the payment. The utility should provide written confirmation of the transfer closing, which should be submitted to the Commission within 60 days of the closing.

In addition, customer deposits will 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, staff recommends 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 should be approved. In addition, written confirmation of the transfer closing should be submitted to the Commission within 60 days of the closing.

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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.

ISSUE 2: What is the rate base of Alturas Water Works at the time of transfer?

RECOMMENDATION: The rate base of Alturas Water Works could not be determined. Keen should be put on notice that it will be required to conduct an original cost study upon the filing of any rate petition. Keen should also be required to maintain its books in compliance with the NARUC Uniform System of Accounts. (CLAPP)

STAFF ANALYSIS: 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. Staff 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, the staff auditor stated that an original cost study should be performed in conjunction with the next rate proceeding for the utility.

The proposed net book value is addressed in Exhibit E of the application for transfer. The buyer reviewed an Alturas Water 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, staff recommends that rate base at the time of the transfer not be set. Staff further recommends that Keen be put on notice that it will be required to conduct an original cost study upon the filing of any rate petition. Staff also recommends that the utility be required to maintain its books in compliance with the NARUC Uniform System of Accounts.

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ISSUE 3: Should an acquisition adjustment be approved?

RECOMMENDATION: No, since rate base cannot be established at this time. (CLAPP)

STAFF ANALYSIS: 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, staff recommends that no acquisition adjustment be approved in this docket.

ISSUE 4: Should Keen Sales, Rentals and Utilities, Inc., continue to use the rates and charges approved by this Commission for Alturas Water Works?

RECOMMENDATION: Yes, Keen Sales, Rentals and Utilities, Inc., should continue charging the rates approved for Alturas Water Works. In addition, the utility should be authorized to collect a \$2.00 late payment charge. The tariff should 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. (CLAPP)

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

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

WATER

MONTHLY RATES

Residential Service

| <u>Meter Size</u> | <u>Minimum Charge for 3,000 gals.</u> | <u>Gallage 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, staff recommends that Keen 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 of free service, billing unapproved rates, and charging 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, the staff did not separately identify this charge during the analysis of the grandfather certification application, therefore it was not previously codified in the order granting the grandfather certificate. The staff has verified in this docket the past consistent collection of the charge by the utility. 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. Staff notes that the amount of the fee is lower than most late payment fees approved in recent dockets. This recommendation to approve the late payment fees is consistent with previously approved late payment charges for other water service utilities. See Order 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. This will be discussed further in Issue No. 5. 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. Staff has notified the utility to issue a refund for the over charge of the third base facility charge and to provide proof to that effect. 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.

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Based on the above, staff recommends that Keen continue charging the rates and charges approved for Alturas. In addition, the utility should be allowed to collect a late payment fee of \$2.00. The tariff should 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.

ISSUE 5: Should the Commission order Alturas to show cause, in writing within twenty-one days, why it should not be fined an amount up to \$5,000 for violations of Sections 367.081(1) and 367.091(3), Florida Statutes.

Recommendation: No, a show cause proceeding should not be initiated. However, the utility should 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.

Staff Analysis: As stated in Issue 4, 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 charging the incorrect meter and base facility charges. While staff does 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, staff does not believe that such violations rise to the level that warrant a show cause proceeding. First, 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, staff did not separately identify this charge during the analysis of the grandfather certification application, therefore it was not previously approved by the Commission in the order granting the grandfather certificate. Staff believes that the utility did not know that it had not been approved for the \$2.00 late fee until an audit was completed. The utility took the necessary steps to correct the violation by requesting approval of the fee as discussed in Issue 4.

Second, 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, staff recommends the Commission not issue a show cause order for those violations. However, the utility should 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.

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ISSUE 6: Should this docket be closed?

RECOMMENDATION: No, 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. After receipt of confirmation of closing, Water Certificate No. 582-W should be canceled, and Water Certificate No. 582-w should be amended, and this docket should be closed administratively. (FLEMING)

STAFF ANALYSIS: 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 should be canceled and Water Certificate No. 582-W should be amended, and this docket should be closed administratively.