State of Florida

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: APRIL 6, 2000

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

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

RE: DOCKET NO. 970201-WU - 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.
COUNTY: POLK

AGENDA: APRIL 18, 2000 - REGULAR AGENDA - PROPOSED AGENCY ACTION ON ISSUES 4 AND 5 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\970201WU.RCM

CASE 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. The resolution was acknowledged by this Commission by Order No. PSC-96-0896-FOF-WS, issued July 11, 1996, in Docket No. 960674-WS. Pursuant to Section 367.171, Florida Statutes, a utility subject to the jurisdiction of this Commission must obtain a certificate of authorization. S & S Utilities, Inc., (S & S or seller), a dissolved corporation, was the owner of Lake Region Paradise Island water system (Lake Region, LRPI or system) which was franchised by Polk County on February 2, 1960. Steve and Susan Cliett (the Clietts), primary stock holders in S & S, decided to sell LRPI instead of filing an application for a certificate under grandfather rights to provide water service in Polk County. LRPI

was sold to Keen Sales, Rentals and Utilities, Inc., (Keen, buyer or utility) on January 9, 1997. This sale is addressed in Issue 1 of this recommendation.

Keen is a Class C utility located in Polk County. Keen was granted grandfather Certificate No. 582-W by Order No. PSC-97-0152-FOF-WU, issued February 11, 1997, in Docket No. 961007-WU. Additionally, Keen was granted the transfer of water facilities from Alturas Water Works pursuant to Order No. PSC-98-1752-FOF-WU, issued December 22, 1998, in Docket No. 980536-WU. The utility serves approximately 249 residential customers and 4 general customers in the Ray Keen, Earlene Keen, and Ellison Park Subdivisions, the Lake Region Paradise Island service area and the recently purchased Alturas service area. The utility's 1998 annual report lists annual operating revenues of $58,636.95 and operating expenses of $56,270.13, resulting in a net income of $2,366.82. Keen has included LRPI in its annual reports and Regulatory Assessment Fees (RAFs) since purchasing the system in 1997.

On February 14, 1997, Keen submitted an application for transfer of facilities of the LRPI water system. Many deficiencies were found in this application. The final corrections and additional information requested were received on March 10, 2000. Therefore, this transfer application is now ready for consideration by the Commission.

DISCUSSION OF ISSUES

ISSUE 1: Should Steven and Susan Cliett, former owners of the utility known as Lake Region Paradise Island, Inc., be ordered to show cause, in writing within twenty-one days, why it should not be fined for the apparent violation of Section 367.071, Florida Statutes?

RECOMMENDATION: No. Show cause proceedings should not be initiated. (CROSBY)

STAFF ANALYSIS: Steven and Susan Cliett, S & S Utilities, Inc., bought Lake Region from W. F. Morrison in 1983. S & S Utilities, Inc. was dissolved in 1985, and Lake Region Paradise Island, Inc., 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 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. 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 to 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, staff does not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level of warranting initiation of a show cause proceeding. Further, staff believes 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, staff recommends that the Commission not order the Clietts to show cause for failing to obtain Commission approval prior to transferring its facilities to Keen. This recommendation is consistent with the Commission's decision 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.

ISSUE 2: Should Keen Sales, Rentals and Utilities, Inc. be ordered to show cause, in writing within twenty-one days, why it should not be fined for the apparent violation of Section 367.121, Florida Statutes, and Rule 25-9.044, Florida Administrative Code, in that it charged the customers of Lake Region Paradise Island unapproved rates?

RECOMMENDATION: No. Show cause proceedings should not be initiated. However, Keen should be ordered to refund, with interest, all revenues collected as a result of charging unapproved rates, pursuant to Rule 25-30.360, Florida Administrative Code. The refunds should be made to the customers of Lake Region Paradise Island, and should be completed within one year of the effective date of the Order issued as a result of action taken at this agenda conference. Keen should 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 should provide a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refund. After staff's verification and review of the refund process, any unclaimed refunds should be treated as contributions-in-aid-of-construction (CIAC). (CROSBY, CLAPP)

STAFF ANALYSIS: As stated in the case background, Steven and Susan Cliett transferred the utility to Keen on January 7, 1997. At the time of the transfer, 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, which included the 5,000 gallons, and the gallonage charge was $1.21 per 1,000 gallons in excess of 5,000 gallons. Shortly thereafter, Keen applied an index and pass-through 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 increase were applied to had not been approved by the Commission. Further, at the time the index and pass-through was 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, "Powers of commission," 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.

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).

Section 367.161, 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. 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 transfer occurred on January 7, 1997. When the Commission staff became aware of the change in rates, Keen was instructed to stop charging the incorrect rates. Keen immediately stopped charging the unapproved rates. Since that time, Keen has been charging the rates approved for Lake Region when the Commission received jurisdiction in Polk County ($9.85, including 5,000 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, staff does 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, staff recommends that the Commission not order Keen to show cause for charging the customers of Lake Region unapproved rates. Staff does, however, recommend that Keen be ordered 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.

Staff has calculated the amount of revenues collected between February 1997 and December, 1999, and the interest resulting from the collection of the unapproved rates. The total amount to be refunded is $9,612.61. Staff recommends that Keen be required to complete the refunds to the Lake Region customers within one year of the effective date of the Order issued as a result of action taken at this agenda conference. The refunds should be mailed to each customers' last known address. Keen should 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 should provide a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refund. After staff's verification and review of the refund process, any unclaimed refunds should be treated as CIAC.

ISSUE 3: Should the transfer of the LRPI facilities from S & S to Keen and the amendment of Water Certificate No. 582-W be approved?

RECOMMENDATION: Yes. The transfer of the LRPI facilities from S & S to Keen and the amendment of Water Certificate No. 582-W to include the LRPI territory should be approved. The seller should be responsible for the RAFs owed from May 14, 1996 through January 9, 1997. (CLAPP, REDEMANN)

STAFF ANALYSIS: As stated in the case background, Keen applied for a transfer of the LRPI water facilities in Polk County on February 14, 1997. 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. Keen has provided evidence, in the form of a Warranty Deed, that the utility owns the land upon which LRPI'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. The original service area approved in the LRPI franchise from Polk County has been converted to proper territory description format and is appended to this memorandum as Attachment A.

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 two systems and has an additional application for transfer pending with the Commission. In Polk County, water withdrawal is regulated by the Southwest Florida Water Management District (SWFWMD); water environmental compliance is regulated by the Polk County Health Department (PCHD). Keen holds SWFWMD Permit No. 9569.00 and LRPI holds SWFWMD Permit No. 206679.01. Keen holds PCHD Public Water Systems (PWS) Id No. 6535235. The utility was inspected within the last twelve months and some corrective actions cited. Staff has verified with SWFWMD and PCHD that the utility is essentially in compliance with all requirements of these agencies.

Regarding the financial ability of the buyer, Keen has been a certificated utility since February 11, 1997. Keen has and continues to make a profit as a regulated utility and continues to

maintain the facilities according to regulation. 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 Keen should be adequate to insure the continued operations of the system.

The application contains a copy of the executed Bill of Sale which includes the general description of assets purchased being the well, pump, and installed utility lines and meters. Based on the application, there are no customer deposits, guaranteed revenue contracts, developer agreements, or customer advances. Keen has provided a statement that it will fulfill the commitments, obligations, and representations of the transferor. Keen has included LRPI in its annual reports and RAF payments since its purchase. The seller remains responsible for the existing debts of the utility including the RAFs owed from May 14, 1996 through January 9, 1997. A subsequent recommendation in this docket will address the unpaid RAFs and annual report due for 1996.

Based on the above, staff recommends that the transfer of the LRPI assets and facilities from S & S to Keen and the amendment of Water Certificate No. 582-W to include the LRPI territory is in the public interest and should be approved. Further, staff recommends that the seller be held responsible for the RAFs owed from May 14, 1996 through January 9, 1997.

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 NW 1/4 described as follows:

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

ISSUE 4: What is the rate base of Lake Region Paradise Island at the time of transfer?

RECOMMENDATION: The rate base of Lake Region Paradise Island could not be determined. Keen should be put on notice that an original cost study may be required at the time of filing a rate petition. Keen should also be required to maintain its books in compliance with the NARUC Uniform System of Accounts. (CLAPP)

STAFF ANALYSIS: The sellers had no records beyond canceled checks and bank statements. The staff auditor did determine an estimated land value for LRPI. The estimation of the land value was calculated by dividing the 1959 purchase price for the development of $71,000 by the total number of lots in the development (102) which gave an average per lot value of $700. Additionally, 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, the sellers installed four more meters at a cost of $300 per customer. The meter installation resulted in an estimated $2,800 in CIAC. Consequently, 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 determined a purchase price for the utility. Those items considered were the estimated value of 84 meters at $300 per meter. Based upon those items, a "handshake" deal of $25,000 was agreed to by the seller and buyer.

Based on the above, staff recommends that rate base at the time of the transfer cannot be set. Staff further recommends that Keen be put on notice that an original cost study may be required at the time of filing a rate petition. Staff also recommends that the utility be required to maintain its books in compliance with the NARUC Uniform System of Accounts, in accordance with Rule 25-30.110, Florida Administrative Code.

ISSUE 5: Should an acquisition adjustment be approved?

RECOMMENDATION: No. An acquisition adjustment should not be approved, 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. 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 6: Should Keen Sales, Rentals and Utilities, Inc., use the rates approved by Polk County for Lake Region Paradise Island?

RECOMMENDATION: Yes. Keen should charge the rates approved by Polk County for LRPI. The tariff should be effective for services provided on or after the stamped approval date, in accordance with Rule 25-30.475, Florida Administrative Code. (CLAPP)

STAFF ANALYSIS: As stated in the Case Background, Keen purchased the LRPI system on January 9, 1997. As a part of standard Commission practice, staff conducted an audit of the books and records of LRPI in June, 1997, which revealed some irregularities with respect to the rates billed by Keen to those former customers of LRPI. It seemed that the last officially approved rates for LRPI had been approved by Polk County, and were the following:

WATER

Residential & General Service

Meter Size	BFC	Gallonage
5/8" x 3/4"	$9.85*	$1.15 per 1,000 gallons over 5,000 per month

* includes 5,000 gallons per month

However, Keen had been charging those former customers of LRPI from the time of its purchase of the system, the rates it calculated using LRPI's approved rates plus Commission regulatory assessment fees and the county's tax. In addition, Keen reduced the gallonage included in the base rate. These rates are:

WATER

Residential & General Service

Meter Size	BFC	Gallonage
5/8" x 3/4"	$10.58*	$1.24 per 1,000 gallons over 3,000 per month

* includes 3,000 gallons per month

Assuming usage of 10,000 gallons per month, customers of the former LRPI system have been paying $19.26 for monthly service, versus the old rate of $15.60, which is a 23 percent increase, with no

authorization from the Commission. This matter is addressed in Issue 2 of this recommendation.

Keen's explanation of why it was charging LRPI's customers the new rates, was that the purchase of LRPI took place after the submittal of Keen's application for a Grandfather water certificate and application for pass-through rates. (Keen's grandfather application which did not include LRPI, was filed August 30, 1996; Keen bought LRPI in January 1997; the grandfather application was approved by Order in February 1997.) When the pass-through rates were approved, Keen assumed that the pass-through percentage could also be applied to LRPI.

Once it became clear what had happened, the staff notified Keen on November 2, 1999, that it was to stop charging the rates it had calculated for LRPI and start charging the prior rates of LRPI to those customers. Keen complied with this directive, and LRPI's original rates have been billed to it's former customers since January 2000.

Since being under the regulation of this Commission, Keen has filed three transfers. There have been extensive conversations between the utility and staff on what was required by the Commission in a transfer. The staff notes that in the first and third cases, Keen purchased other systems well prior to filing with the Commission for approval of those transfers, which has been also discussed in detail with the utility. The staff also notes that the management of Keen have had some difficulty in understanding the relationship of the utility to the regulatory authority of the Commission, which, if continued, may result in the recommendation of show cause actions against the utility.

However, Keen did respond to the directive to charge the old system rates to customers of LRPI. Further, the staff is hopeful that Keen now understands the need to consult and follow the Florida Statutes and Florida Administrative Code regarding utility regulation prior to changing rates to customers or acquiring other utilities.

The LRPI system is a stand alone system, continuing to serve the prior existing customer base. Currently, 84 of the 101 available lots have been developed. Therefore, pursuant to Rule 25-9.044(1), Florida Administrative Code, staff is recommending that the rates approved for the LRPI system prior to its acquisition by Keen should be continued for this system, at this time. Keen may request that a pass-through of those rates be

approved to accommodate the collection of the regulatory assessment fee by the Commission, once the rates are approved.

Staff also notes that Keen has been informed of the process of requesting a staff assisted rate case (SARC). In processing a SARC, staff would gather income and expense information concerning all of Keen's systems and recommend appropriate rates for them. A SARC would help Keen's management better understand the need for keeping accurate records and the benefits of working cooperatively with the Commission.

Based on the above, staff recommends that Keen submit tariff pages for the original rates approved for LRPI. The tariff should be effective for services provided on or after the stamped approval date, in accordance with Rule 25-30.475, Florida Administrative Code.

ISSUE 7: Should this docket be closed?

RECOMMENDATION: No. Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, the Order should become final and effective upon the issuance of a Consummating Order. The docket should remain open pending verification of the refund and that any unclaimed refunds have been treated as CIAC. Staff should be granted administrative authority to close the docket upon verification that the refunds have been made in accordance with the Commission Order. (CROSBY, CLAPP)

STAFF ANALYSIS: Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, the Order should become final and effective upon the issuance of a Consummating Order. The docket should remain open pending verification of the refund and that any unclaimed refunds have been treated as CIAC. Staff should be granted administrative authority to close the docket upon verification that the refunds have been made.