

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of water facilities from Sunrise Water Company, Inc., holder of Certificate No. 584-W, to Keen Sales, Rentals and Utilities, Inc., holder of Certificate No. 582-W, in Polk County, for cancellation of Certificate No. 584-W, and for amendment of Certificate No. 582-W to include additional territory.

DOCKET NO. 990731-WU
ORDER NO. PSC-00-1388-PAA-WU
ISSUED: July 31, 2000

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING TRANSFER AND
DECLINING TO INITIATE A SHOW CAUSE PROCEEDING

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER ESTABLISHING RATE BASE FOR PURPOSES OF THE TRANSFER AND
DECLINING TO RECOGNIZE A POSITIVE ACQUISITION ADJUSTMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action establishing rate base for purposes of the transfer, and declining to recognize a positive acquisition adjustment, as discussed herein, is 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.

DOCUMENT NUMBER-DATE

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FPSD-RECORDS/REPORTING

Background

On June 4, 1999, an application was filed with this Commission seeking approval of the transfer of Sunrise Water Company, Inc. (Sunrise or utility) to Keen Sales, Rentals and Utilities, Inc. (Keen or buyer). The application, as filed, contained deficiencies. The deficiencies were corrected on December 22, 1999.

Sunrise is a Class C utility located in Polk County. Sunrise, which is wholly-owned by Whiting Water Works (Whiting), was granted grandfather Certificate No. 584-W by Order No. PSC-97-0832-FOF-WU, issued July 11, 1997, in Docket No. 961249-WU. The utility's facilities consist of one water treatment plant and one water transmission and distribution system, which serve approximately 267 water customers.

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. Subsequent to that time, two systems have been transferred to Keen. Alturas Water Works was transferred to Keen by Order No. PSC-98-1752-FOF-WU, issued December 22, 1998, in Docket No. 980536-WU. The Lake Region Paradise Island water system was transferred to Keen by Order No. PSC-00-0913-PAA-WU, issued May 8, 2000 in Docket No. 970201-WU. Keen serves approximately 272 residential customers and four general service customers in the Ray Keen, Earlene Keen, and Ellison Park Subdivisions, and the Alturas and Lake Region Paradise Island service areas.

This Commission first became aware of the transfer of Sunrise to Keen when it was notified by letter from Keen dated March 22, 1999, that the transfer had occurred. As stated previously, the transfer of Sunrise to Keen was finalized on February 23, 1999, prior to Commission approval. This is an apparent violation of Section 367.071, Florida Statutes.

Show Cause

Section 367.071, Florida Statutes, 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." Sunrise sold the system to Keen on February 23, 1999, prior to Commission

approval. 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.

Failure of Sunrise to obtain Commission approval prior to transferring the utility to Keen appears to be due to lack of knowledge and understanding of the statutes and Commission rules. Since becoming subject to Commission regulation, Keen's management has had some difficulty understanding the regulatory authority of the Commission. By letter dated October 27, 1999, Keen stated that although it was aware of the Commission's regulation, it was under the impression that, because this was a small transaction, prior approval by the Commission was not necessary. The same confusion is apparent in all of the transfers of facilities to Keen. It should be noted, however, that Keen filed for approval of the transfer shortly after becoming aware of the requirement to do so. Since that time, Keen has been operating the system and providing satisfactory service to the customers.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we do not find 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. Therefore, we do not find it appropriate to order Sunrise to show cause for failing to obtain approval prior to transferring the utility to Keen.

Application

Except as discussed previously, the application is in compliance with Section 367.071, Florida Statutes, and other pertinent 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. The application also contains evidence in the form of a recorded 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.

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 have been received and the time for filing such has expired.

Keen provided a copy of the Bill of Sale and recorded Mortgage and Security Agreement, which includes a description of the assets purchased, and all books, records and accounts, including security deposits. Based on the information provided, there are no guaranteed revenue contracts, developer agreements, or customer advances. Further, Keen provided a statement that it will fulfill the commitments, obligations and representations of Sunrise.

With regard to Keen's technical ability, Keen currently operates and maintains three systems, providing satisfactory service to its customers. Keen has indicated that it will maintain and operate the Sunrise 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 (PSHD). According to SWFWMD and PCHD, the utility is essentially in compliance with all of their requirements.

Regarding financial ability, Keen has and continues to make a profit as a regulated utility. Further, Keen appears to have the overall financial ability to insure continued operation of the utility.

All regulatory assessment fees for the period prior to closing were paid by Sunrise on March 31, 2000. Keen also timely paid its portion of the 1999 regulatory assessment fees for Sunrise. Further, Keen has filed the 1999 annual report for the Sunrise system.

Based on the foregoing, we find the transfer of Sunrise to Keen to be in the public interest and it is approved. Certificate No. 582-W, held by Keen, shall be amended to include the territory served by Sunrise, and Certificate No. 584-W, held by Sunrise shall

be canceled. The territory Sunrise is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein.

Rate Base

Because rate base has never been established for Sunrise by this Commission, an audit was conducted of the utility's books and records. During the audit, several exceptions were noted. These exceptions are set forth below.

Sunrise did not maintain its accounts as prescribed by the NARUC Uniform System of Accounts. Consequently, all of the utility's plant-in-service entries were recorded in one account. Plant-in-service has been adjusted to reflect plant classified in the proper accounts.

Sunrise recorded \$84,433 in utility plant-in-service and \$22,111 in accumulated depreciation. An adjustment of (\$87) has been made to plant-in-service to correct an accounting error. Further, accumulated depreciation has been increased by \$14,098. Schedule 1 of this Order shows the valuation by account of plant-in-service and accumulated depreciation as of March 31, 1999. The adjustments to the accounts are shown on Schedule 2.

The utility's records record land value at \$2,000. According to the utility's Polk County rate case in 1993, utility land value was \$553. The utility has not acquired any additional land since the 1993 rate case. Therefore, an adjustment of (\$1,447) has been made to land value.

In addition, the audit reflected a zero balance for contributions-in-aid-of-construction (CIAC). A comment was included in the CIAC workpaper section to that effect. There was some concern regarding this comment since a system capacity charge of \$450 per equivalent residential connection (ERC) had been grandfathered with the utility when it came under Commission regulation. The workpapers from the Polk County rate case did not include any CIAC amounts and there have been no additional collections of CIAC documented by the utility since this Commission received jurisdiction in Polk County.

Our practice has been that CIAC collected prior to the jurisdictional date is recognized in the calculation of rate base. (Lindrick Service Corporation, Order No. 12691, issued November 16,

1983, in Docket No. 830062-WS). Further, this Commission has imputed CIAC based on Rule 25-30.570, Florida Administrative Code, when there has been no explanation for the absence of CIAC. (Tamiami Utility Company, Order No. 13796 issued October 22, 1984, in Docket No. 830559-WS).

Rule 25-30.570, Florida Administrative Code, states, in part, "If the amount of CIAC has not been recorded on the utility's books . . . the amount of CIAC shall be imputed to be the . . . portion of the cost of the facilities and plant attributable to the water transmission and distribution system . . ." Therefore, CIAC has been imputed in the calculation of rate base based on the portions of the cost of the facilities and plant attributable to the water transmission and distribution system (Account No. 334). The associated accumulated amortization has been imputed based on the accumulated depreciation for the water transmission and distribution system.

Schedule 2 of this Order sets forth Sunrise's calculated rate base, Commission adjustments, and the resulting rate base. The rate base equals utility plant-in-service of \$84,346, less accumulated depreciation of \$36,209, plus land value of \$553, less imputed CIAC of \$12,393, plus accumulated amortization of CIAC of \$5,410 for a total of \$41,707.

The audit exceptions with the related adjustments are shown on Schedule 3. Included in this schedule are the imputed CIAC and associated accumulated amortization of CIAC. The total audit exceptions and imputed amounts equal (\$22,615).

Based on the foregoing, we find that rate base for Sunrise is \$41,707, as of March 31, 1999. The rate base calculation is used solely to establish the net book value of the system being transferred. The calculation does not include the normal ratemaking adjustments of working capital and used and useful adjustments.

Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the rate base calculation. The purchase price of the system was \$100,000; rate base is \$41,707, as of the date of transfer. This results in a positive acquisition adjustment of \$58,293.

In the absence of extraordinary circumstances, it has been Commission practice that the purchase of a utility system at a premium or discount shall not affect the rate base calculation. The circumstances in this exchange do not appear to be extraordinary. In addition, Keen has not requested an acquisition adjustment. Therefore, an acquisition adjustment has not been included in the calculation of rate base.

Rates and Charges

Sunrise's current rates and charges were approved by Order No. PSC-97-0832-FOF-WU, issued July 11, 1997, in Docket No. 961249-WU. The current rates and charges are set forth below.

WATER
Monthly Rates

Residential Service

<u>Meter Size</u>	<u>Minimum Charge for first 5,000 gallons</u>	<u>Gallonage Charge per 1,000 gallons over 5,000 gallons</u>
5/8" x 3/4"	\$ 8.85	\$ 1.31

Meter Test Deposits

<u>Meter Size</u>	<u>Charge</u>
5/8" x 3/4"	\$ 20.00
1" and 1-1/2"	\$ 25.00
2" and over	Actual Cost

Miscellaneous Service Charges

	<u>Charge</u>
Initial Connection	\$ 15.00
Normal Reconnection	\$ 15.00
Violation Reconnection	\$ 15.00
Premises Visit (in lieu of disconnection)	\$ 10.00
Late Payment Fee	\$ 5.00

Deposits

<u>Meter Size</u>	<u>Charge</u>
5/8" x 3/4"	\$ 35.00

Service Availability Charge

Residential System Capacity Charge (per ERC)	\$450.00
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Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a system to adopt and use the rates, classifications and regulations of the former operating company unless authorized to change by this Commission. Keen has not requested to change the rates and we see no reason to change them at this time. Keen shall continue to charge the rates and charges approved in Sunrise's tariff until authorized to change by this Commission in a subsequent proceeding. Keen has submitted tariff sheets reflecting the above rates and the change in ownership. The tariff shall be effective for service 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 the proposed agency action portions of this Order, upon the expiration of the protest period, this Order shall become final and effective upon the issuance of a Consummating Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Sunrise Water Company, Inc., Post Office Box 2397, Winter Park, Florida 32790, to Keen Sales, Rentals and Utilities, Inc., 685 Dyson Road, Haines City, Florida 33844, is hereby approved. The territory Sunrise is authorized to serve is shown on Attachment A of this Order. It is further

ORDERED that Sunrise Water Company, Inc. shall not be required to show cause for failing to obtain Commission approval prior to transferring its system to Keen Sales, Rentals and Utilities, Inc. It is further

ORDER NO. PSC-00-1388-PAA-WU
DOCKET NO. 990731-WU
PAGE 9

ORDERED that rate base, which for transfer purposes reflects the net book value of the system being transferred, is \$41,707, as of March 31, 1999. It is further

ORDERED that the \$58,293 positive acquisition adjustment shall not be included in the calculation of rate base for purposes of the transfer. It is further

ORDERED that all schedules and attachments attached to this Order are incorporated herein by reference. It is further

ORDERED that Keen Sales, Rentals and Utilities, Inc. shall continue to charge the rates and charges approved in Sunrise Water Company, Inc.'s tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that the tariff filed by Keen Sales, Rentals and Utilities, Inc., which reflects the change in ownership, shall be effective for service 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. It is further

ORDERED that the provisions of this Order establishing rate base for purposes of the transfer, and declining to recognize a positive acquisition adjustment in the calculation of rate base, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

ORDER NO. PSC-00-1388-PAA-WU
DOCKET NO. 990731-WU
PAGE 10

By ORDER of the Florida Public Service Commission this 31st
day of July, 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 action establishing rate base for purposes of the transfer, and declining to recognize a positive acquisition adjustment is preliminary in nature. Any person whose substantial interests are affected by the action 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 August 21, 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,

ORDER NO. PSC-00-1388-PAA-WU
DOCKET NO. 990731-WU
PAGE 11

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.

ATTACHMENT A

KEEN SALES, RENTALS AND UTILITIES, INC.

SERVING FROM THE SUNRISE WATER SYSTEM

POLK COUNTY

Water Territory Description

Township 28 South, Range 25 East, Section 21

Serving an area generally known as Sunrise Acres Subdivision, an unrecorded subdivision known as Pinewood, and an unrecorded mobile home village. More particularly described as:

From the Northwest corner of Section 21, also the Point of Beginning, run due East (along the South line of Section 16 and the North line of Section 21) for a distance of 2618.23 feet, more or less; thence, due South a distance of 1313 feet, more or less; thence due West a distance of 1455.20 feet, more or less; thence due South a distance of 235 feet, more or less; thence due West a distance of 405 feet, more or less; thence due South a distance of 1063 feet, more or less; thence due West a distance of 420.71 feet, more or less; thence due North a distance of 695 feet, more or less; thence due West a distance of 340 feet, more or less, to the West line of Section 21; thence due North a distance of 1922.35 feet, more or less, to the Point of Beginning.

SCHEDULE 1

SUNRISE WATER COMPANY, INC.
Audited Utility Plant-in-Service
Period Ended March 31, 1999

<u>Acct. No.</u>	<u>Account Description</u>	<u>Plant</u>	<u>Acc. Dep.</u>	<u>Dep. Plant</u>
304	Structures & Improvements	\$5,169	(\$1,646)	\$3,523
307	Wells & Springs	16,972	(7,409)	9,563
310	Power Generation Equipment	11,074	(4,834)	6,240
311	Pumping Equipment	3,000	(1,310)	1,690
320	Water Treatment Equipment	3,933	(1,717)	2,216
330	Distributions Reservoirs	21,485	(9,379)	12,106
331	Meters	7,932	(3,462)	4,470
334	Transmission & Distribution	12,393	(5,410)	6,983
347	Miscellaneous Equipment	<u>2,388</u>	<u>(1,042)</u>	<u>1,346</u>
TOTAL		\$84,346	(\$36,209)	\$48,137

SCHEDULE 2

SUNRISE WATER COMPANY, INC.
Utility Rate Base
Period Ended March 31, 1999

<u>DESCRIPTION</u>	<u>PER UTILITY 3/31/99</u>	<u>COMMISSION ADJUSTMENTS</u>	<u>COMMISSION BALANCE</u>
Utility Plant-in-Service	\$84,433	(\$87)	\$ 84,346
Land	2,000	(1,447)	553
Accumulated Depreciation	(22,111)	(14,098)	(36,209)
CIAC	0	(12,393)	(12,393)
Accumulated Amort. of CIAC	<u>0</u>	<u>5,410</u>	<u>5,410</u>
RATE BASE	\$64,322	(\$22,615)	\$41,707

SCHEDULE 3

SUNRISE WATER COMPANY, INC.
Utility Rate Base Audit Exceptions
Period Ended March 31, 1999

<u>Description</u>	<u>Amount</u>
Correct an accounting error	(\$87)
Correct calculation for 30-year depreciation	(14,098)
Utility land valued at \$553 in 1993 Polk County rate case	<u>(1,447)</u>
TOTAL AUDIT EXCEPTIONS	(\$15,632)
Imputation of CIAC	(\$12,393)
Accumulated Amortization of CIAC	<u>5,410</u>
NET IMPUTED AMOUNTS	<u>(\$6,983)</u>
TOTAL ADJUSTMENTS	(\$22,615)