



Public Service Commission

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RECORDS AND REPORTING

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DATE: OCTOBER 5, 2000

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

FROM: DIVISION OF LEGAL SERVICES (CROSBY, GERVASI) *S.M.C. (msd)*
DIVISION OF REGULATORY OVERSIGHT (CLAPP, REDEMANN) *P. D. BSM*

RE: DOCKET NO. 990731-WU - 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.

AGENDA: 10/17/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990731.RCM

CASE 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). On July 31, 2000, this Commission issued Order No. PSC-00-1388-PAA-WU approving the transfer. The portion of the Order establishing rate base for purposes of the transfer and declining to recognize a positive acquisition adjustment was issued as proposed agency action. Any person whose interests were substantially affected by the Commission's action in the Order had until August 21, 2000 to file a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code. Upon expiration of the protest period, with no petitions having been

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filed, Order No. PSC-00-1566-CO-WU was issued on August 31, 2000, closing the docket.

Currently, Keen also has a staff assisted rate case (SARC) pending before the Commission (Docket No. 001118-WU). Keen indicated that it first became aware that Order No. PSC-00-1388-PAA-WU had been issued from an Commission auditor in the SARC. At that time, September 20, 2000, Keen called the Division of Records and Reporting (Records) and stated that it had not received the notice of the agenda conference or the Order. According to Records, the notice of the time and place of the agenda conference was mailed to Keen on June 30, 2000. The Order was issued and mailed to Keen on July 31, 2000. Records verified with Keen that the notice and Order had been mailed to the correct address.

Keen then called the Division of Legal Services, and stated that it disagreed with the rate base set by Order No. PSC-00-1388-PAA-WU. The telephone call was followed up with a letter dated September 22, 2000, in which Keen requested an opportunity to respond to the information in the Order and the audit report. This request is discussed in Issue 1 of this recommendation.

DISCUSSION OF ISSUES

ISSUE 1: Should the protest period set forth in Order No. PSC-00-1388-PAA-WU be reopened to allow Keen an opportunity to respond to the findings of the Commission with regard to the establishment of rate base for purposes of the transfer?

RECOMMENDATION: No, the protest period should not be reopened. Rate base was set by Order No. PSC-00-1388-PAA-WU for purposes of the transfer only. The calculation did not include the normal ratemaking adjustments of working capital and used and useful adjustments. Because Keen currently has a staff assisted rate case pending (Docket No. 001118-WU), staff recommends that Keen's concerns about rate base be addressed in that docket. (CROSBY, GERVASI)

STAFF ANALYSIS: As stated previously, Order No. PSC-00-1388-PAA-WU was issued on July 31, 2000, as a result of action taken at the July 11, 2000 agenda conference. That Order approved the transfer

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and established rate base for purposes of the transfer. The portion establishing rate base was issued as proposed agency action.

Notice of the agenda conference on July 11, 2000, was sent to Keen by Records on June 30, 2000. The Order was sent to Keen on July 31, 2000. We have no record of either being returned to the Commission as undeliverable. According to Records, the Notice and Order were sent to Keen at the following address:

685 Dyson Road
Haines City, Florida 33844

This is the address shown in the Docket file and on the Commission's master directory, and confirmed by Keen as being correct.

Keen indicated that it first became aware that Order No. PSC-00-1388-PAA-WU had been issued from a Commission auditor in the staff assisted rate case currently being processed in Docket No. 001118-WU. On September 20, 2000, Keen called Records and stated that it did not receive the notice of the agenda conference or the Order. Further, in its letter dated September 22, 2000, Keen indicated that it did not receive the notice, the audit report, or a copy of Order No. PSC-00-1388-PAA-WU. Keen did, however, receive the tariff sheets which were sent to them on September 9, 2000. The tariff sheets were mailed to the address shown above.

Keen also stated in its letter that numerous mailings had been sent to the previous owner, Sunrise, instead of Keen. Included with that letter was a copy of a letter from the Division of Regulatory Oversight to Sunrise Water Company regarding the audit request in Docket No. 001118-WU. This letter should have been addressed to Keen at the address shown above. Also included was an Affidavit from Sunrise stating that it had received "numerous mailings from the Florida Public Service Commission that should have actually gone to Keen . . ."

During the processing of the transfer application, both Sunrise and Keen would have received correspondence from the Commission staff regarding information needed to process the application. Although the letter from the Division of Regulatory Oversight was sent to the wrong address, it was not sent by Records. As previously stated, Records verified with Keen during the telephone conversation on September 20, 2000, that the 685 Dyson Road address is correct.

To our knowledge, there have been no previous problems regarding the receipt of information by Keen from the Commission. However, Keen maintains that it did not receive a copy of the Order, and, therefore, did not have an opportunity to respond to the information contained in Order No. PSC-00-1388-PAA-WU.

Any person whose interests were substantially affected by the Commission's action in the Order had until August 21, 2000 to file a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code. Upon expiration of the protest period, with no petitions having been filed, Order No. PSC-00-1566-CO-WU was issued on August 31, 2000, closing the docket.

It should be noted that rate base was established by Order No. PSC-00-1388-PAA-WU for purposes of the transfer only. The calculation did not include the normal ratemaking adjustments of working capital and used and useful adjustments. Currently, Keen has a staff assisted rate case (Docket No. 001118-WU) pending before the Commission. Instead of reopening the protest period for Order No. PSC-00-1388-PAA-WU, which only set rate base for purposes of the transfer, staff recommends that Keen's concerns about rate base be addressed in Docket No. 001118-WU. This will allow Keen an opportunity to respond to the audit findings of the Commission with regard to rate base.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission determines that Keen's request can be addressed in Docket No. 001118-WU, no further action is necessary and the docket should be closed. However, if the Commission denies staff's recommendation in Issue 1, the docket should remain open to allow Keen twenty-one days to respond to the findings in Order No. PSC-00-1388-PAA-WU, with regard to the establishment of rate base. (CROSBY, GERVASI)

STAFF ANALYSIS: If the Commission determines that Keen's request can be addressed in Docket No. 001118-WU, no further action is necessary and the docket should be closed. However, if the Commission denies staff's recommendation in Issue 1, the docket should remain open to allow Keen twenty-one days to respond to the findings in Order No. PSC-00-1388-PAA-WU, with regard to the establishment of rate base.