



# Public Service Commission

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REGISTRATION

**DATE:** JANUARY 25, 2001

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYG)

**FROM:** DIVISION OF REGULATORY OVERSIGHT (CLAPP, REDEMANN)  
DIVISION OF LEGAL SERVICES (CROSBY)  
DIVISION OF ECONOMIC REGULATION (IWENJIORA) DM Ret

**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:** FEBRUARY 6, 2001 - REGULAR AGENDA - PROPOSED AGENCY ACTION ON ISSUE 1 - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\RGO\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.

At the time this Commission received jurisdiction in Polk County, Lake Region Paradise Island (Lake Region, LRPI or system) was owned by S & S Utilities, Inc. (S & S or seller), a dissolved corporation. LRPI was franchised by Polk County on February 2,

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FPSC-RECORDS/REPORTING

1960. Steve and Susan Cliett, the primary stockholders in S & S, sold the Lake Region system instead of filing an application for a grandfather certificate to provide water service in Polk County. The system was sold to Keen Sales, Rental and Utilities, Inc. (Keen, utility or buyer) on January 9, 1997, without prior Commission knowlege or approval.

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 for the Ray Keen, Earlene Keen, and Ellison Park Subdivisions' systems. 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. Keen serves approximately 272 residential customers and 4 general service customers in the Ray Keen, Earlene Keen, and Ellison Park Subdivisions, the Alturas service area, and the Lake Region service area. The utility's 1999 annual report lists total gross revenues of \$100,451 and operating expenses of \$100,381, resulting in a net operating income of \$70. Keen's regulatory assessment fees (RAFs) are paid through 1999.

On February 14, 1997, an application was filed with this Commission for approval of the transfer of Lake Region's facilities to Keen. The application included a tariff containing the LRPI rates that were to be "grandfathered in". Numerous deficiencies delayed the staff's ability to process the case.

By Order No. PSC-00-0913-PAA-WU, issued May 8, 2000, the Commission approved the transfer of the LRPI system to Keen, amended Keen's water certificate, and declined to order Keen to show cause for charging unapproved rates and transferring without prior Commission approval. Nevertheless, the Commission ordered Keen to refund, with interest, all revenues collected as a result of charging unapproved rates from February, 1997 through November, 1999 when the utility discontinued the overcharge. The refund was to be made within one year from May, 2000.

The subject of this recommendation is a proposed change in the refund amount required in Order No. PSC-00-0913-PAA-WU. Although the utility did not protest the PAA order requiring the refund, the information obtained in the utility's index and pass-through application filed on July 20, 2000 has caused staff to reassess the refund amounts required in that order. The Commission has jurisdiction pursuant to Sections 367.081 and 367.121, Florida Statutes.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the amount of the refund the utility was required to make in Order No. PSC-00-0913-PAA-WU be revised?

**RECOMMENDATION:** Yes. The amount of the refund the utility was required to make in Order No. PSC-00-0913-PAA-WU should be revised to reflect the difference between the amount that was billed to the LRPI customers from February, 1997 to November, 1999 and the amount authorized on May 14, 1996, when the Commission obtained jurisdiction in Polk County. The utility may submit the refund calculation for staff's verification and approval prior to the refund being made, pursuant to Rule 25-30.360(4)(e), Florida Administrative Code. The refund should be made on a per customer basis, pursuant to Rule 25-30.360, Florida Administrative Code. In addition, Keen should be required to complete the refunds to the Lake Region customers within one year of the effective date of the original Order issued on May 8, 2000. The interest on the refund should continue to accrue until the refunds are complete. The refunds should be credited to the customers' accounts or mailed to each customer's last known address. Keen should provide monthly refund status reports to the Commission beginning March 20, 2001, pursuant to Rule 25-30.360(7), Florida Administrative Code. These reports should include the information required by Rule 25-30.360(7), Florida Administrative Code. Copies of canceled checks or other evidence which verifies that the refunds have been made should be provided within 30 days from the date the refund is completed. 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 pursuant to Rule 25-30.360(7), Florida Administrative Code. In addition, the utility should be again placed on notice that pursuant to Sections 367.081(1) and 367.091(3), Florida Statutes, it may, in the future, only charge rates and charges approved by the Commission. (CLAPP)

**STAFF ANALYSIS:**

This Commission approved the transfer of Lake Region and amended Keen's water certificate in Order No. PSC-00-0913-PAA-WU, issued May 8, 2000. The utility was also ordered to refund, with interest, pursuant to Rule 25-30.360, Florida Administrative Code, revenues in the amount of \$9,612.61 collected as a result of charging unapproved rates. The utility was given one year to complete the refund. As of the date of this recommendation, it has

not yet begun the refund. In addition, on April 19, 2000, a letter advising Keen of the Commission action and explaining how the refunds were to be calculated for the LRPI customers was issued. No written response was received from the utility regarding either the letter or the PAA order. The Consummating Order was issued on June 6, 2000.

The following discussion outlines the chronology of events concerning the application of rates for the LRPI system. This discussion will refer to various rates, which are summarized in Table 1:

TABLE 1

	Column 1 Rates Filed by Keen in Transfer Application	Column 2 LRPI Rates per Audit	Column 3 Rates Charged by Keen 2/97 to 11/99	Column 4 LRPI Rates with County Franchise Fee of 2.5%	Column 5 Current Tariff Rate with Index and Pass Through
Base Rate	\$10.35	\$9.85	\$10.58	\$10.10	\$10.47
gallons included	5,000	5,000	3,000	5,000	5,000
Gallonge	\$1.21	\$1.15	\$1.24	\$1.18	\$1.22
Bill at 10,000 gallons	\$16.40	\$15.60	\$19.26	\$16.00	\$16.57

On February 14, 1997, an application was filed with this Commission for approval of the transfer of Lake Regions' facilities to Keen. The application included a tariff containing the LRPI rates that were to be "grandfathered in". These are the rates in Column 1.

On August 20, 1997, a deficiency letter was issued to Keen requesting, among other items, documentation concerning the LRPI's approved rates. Between February 13, 1998, and June 18, 1999, five additional deficiency letters were issued to Keen requesting additional information, including rate information.

The staff completed an audit of the Lake Region system in August 1997. No books and records were available to the auditor other than canceled checks and bank statements. Based on the available information, staff audit Disclosure No. 3 identified the LRPI rates that were apparently being charged prior to the transfer (Column 2), as well as the rates Keen charged after the transfer (Column 3). It appears that neither LRPI or Keen ever charged the rates in Column 1.

Staff is not clear as to why Keen did not continue charging the LRPI customers the rates they had previously been charged or how the rates the utility charged from February 1997 to November 1999 were derived. However, it should be noted that in September, 1996, shortly after the Polk County utilities came under Commission jurisdiction, Keen applied for an index and pass-through rate adjustment. It appears that Keen intended the increase to apply to all of the systems it owned, including the subsequently purchased LRPI system. The pass-through portion of the rate adjustment was intended to recover the Commission's RAFs of 4.5%. However, because the transfer of the LRPI system to Keen had not yet been approved, the utility was not allowed to include the index and pass-through for the LRPI system. It appears that the utility did not understand that the pass-through for the LRPI system was not approved and it incorrectly implemented the increase on the LRPI system rates. The refund required by Order No. PSC-00-0913-PAA-WU was based on the difference in the rates in Column 3, which Keen charged from February 1997 to November 1999 and the rates in Column 2 that were identified in the staff audit as those being charged by LRPI.

On November 2, 1999, Keen was informally advised that, based on the staff audit and subsequent requests for information from Keen, staff had determined that the rates Keen was charging the LRPI customers were not the rates authorized by Polk County at the time the County came under Commission jurisdiction. Further, Keen was advised to discontinue charging that rate to the LRPI customers.

On July 20, 2000, subsequent to the utility transfer being approved, Keen again applied for an index and pass-through for LRPI to recover RAFs pursuant to 367.081(4)(b), Florida Statutes. The utility requested the full 4.5% increase, as provided for by the Statute. On August 30, 2000, the Commission staff advised Keen that it would only consider a pass-through of 2%, because it appeared that the County franchise fee of 2.5% was already incorporated into LRPI's rates as identified in the audit (Column 1). This was based on the fact that LRPI had been regulated by Polk

County under its prior owners, the County had authorized collection of a 2.5% charge, and the auditor's had no billing information to indicate that the rate previously identified as the bill amount did **not** include the franchise fee.

At that point, Keen finally provided staff with billing information which confirmed the County approval of a 2.5% franchise fee and that LRPI had been collecting the 2.5% as a separate add-on prior to the Commission receiving jurisdiction. Those rates are shown in Column 4.

In addition, the Division of Economic Regulation staff verified with Polk County staff that indeed, the County had approved a resolution implementing the 2.5% franchise fee. According to Polk County officials, the utilities were allowed to pass the 2.5% fee on to the customers subsequent to the resolution. However, the fee was **not** incorporated into the utility's rates until the utility had a rate case with the County. Since LRPI did not have a subsequent County rate case, the fee was never incorporated into the monthly rate. Instead, it was billed as a surcharge to the monthly bill.

As a result of this additional explanation, the 2000 price index and pass-through rates became effective September 18, 2000 (Column 5). The approved rates include the 2000 price index and a pass-through of the 4.5% RAF required by the Commission based on the rates shown in Column 2.

With respect to the refund issue, while the LRPI rates did not incorporate the franchise fee, LRPI was authorized to add a specific additional fee on the customer bills. This means that Keen did have the authority, and in effect, could charge the LRPI customers the rate shown in Column 4 of Table 1, as opposed to the rate in Column 2. Therefore, the refund ordered in Order No. PSC-00-0913-PAA-WU, was predicated on the wrong base rate (Column 2 instead of Column 4).

Since LRPI did have authorization from Polk County to charge the 2.5% County franchise fee, staff recommends that the Commission should revise the amount of the refund the utility was required to make by Order No. PSC-00-0913-PAA-WU. The refund amount should be revised to reflect the difference between the amount that was billed to the LRPI customers from February, 1997 through November, 1999 (the rates in Column 3 of Table 1) and the amount authorized on May 14, 1996, when the Commission obtained jurisdiction in Polk County (the rates in Column 4 of Table 1). The refund should be made on a per customer basis, pursuant to Rule 25-30.360, Florida

Administrative Code. The utility may submit the refund calculation for staff's verification and approval prior to the refund being made, pursuant to Rule 25-30.360(4)(e), Florida Administrative Code. The estimated amount of the refund is \$9,372.29, plus interest.

Staff recommends that Keen be required to complete the refunds to the Lake Region customers within one year of the effective date of the original Order issued on May 8, 2000. The interest should continue to accrue until the refund is posted to current customer accounts or refund checks are issued to former customers. The refunds should be credited to the customers' accounts or mailed to each customer's last known address. Keen should provide monthly refund status reports by the 20th of the following month pursuant to Rule 25-30.360(7), Florida Administrative Code, beginning March 20, 2001. These reports should include the information required by Rule 25-30.360(7), Florida Administrative Code. Copies of canceled checks or other evidence which verifies that the refunds have been made should be provided within 30 days from the date the refund is completed. 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 pursuant to 25-30.360(8), Florida Administrative Code. In addition, the utility should be again placed on notice that pursuant to Sections 367.081(1) and 367.091(3), Florida Statutes, it may, in the future, only charge rates and charges approved by the Commission.

**ISSUE 2:** 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. Also, the docket should remain open to address outstanding RAFs and annual report for the period from May 1996 through January 7, 1997, as specified in Order PSC-00-0913-PAA-WU. Staff should be granted administrative authority to close the docket upon verification that the refunds have been made and that the RAFs and annual report issues have been addressed in accordance with Commission orders. (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. Also, the docket should remain open to address outstanding RAFs and annual report for the period from May 1996 through January 7, 1997, as specified in Order PSC-00-0913-PAA-WU. Staff should be granted administrative authority to close the docket upon verification that the refunds have been made and that the RAFs and annual report issues have been addressed in accordance with Commission orders.