

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 970201-WU  
ORDER NO. PSC-01-0424-PAA-WU  
ISSUED: February 22, 2001

The following Commissioners participated in the disposition of  
this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION  
ORDER REVISING AMOUNT OF REFUND REQUIRED  
BY ORDER NO. PSC-00-0913-PAA-WU

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action 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.

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 or system) was  
owned by S & S Utilities, Inc. (S & S or seller), a dissolved

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corporation. Lake Region was franchised by Polk County on February 2, 1960. Instead of filing an application for a grandfather certificate, Steve and Susan Cliett, the primary stockholders in S & S, sold Lake Region to Keen Sales, Rental and Utilities, Inc. (Keen, utility or buyer). The sale occurred on January 9, 1997, without prior Commission knowledge 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. Additionally, the facilities of Alturas Water Works were transferred to Keen by 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.

On February 14, 1997, an application was filed with this Commission for approval of the transfer of Lake Region's facilities to Keen, pursuant to Section 367.071, Florida Statutes. By Order No. PSC-00-0913-PAA-WU, issued May 8, 2000, this Commission approved the transfer of the Lake Region 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. Keen was, however, ordered 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.

Subsequent to the issuance of Order No. PSC-00-0913-PAA-WU, information obtained in the utility's index and pass-through application filed on July 20, 2000, caused us to reassess the refund amounts required by that order.

Pursuant to Rule 25-30.360, Florida Administrative Code, Order No. PSC-00-0913-PAA-WU ordered Keen to refund, with interest, 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. The Consummating Order, Order No. PSC-00-2003-CO-WU, was issued on June 6, 2000.

The various rates charged by Lake Region and Keen are set forth in Table 1.

TABLE 1

	Column 1 Rates Filed by Keen in Transfer Application	Column 2 Lake Region Rates per Audit	Column 3 Rates Charged by Keen 2/97 to 11/99	Column 4 Lake Region 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
Gallonage	\$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

Included with the application for approval of the transfer to Keen, filed on February 14, 1997, was a tariff containing the Lake Region rates that were to be "grandfathered in." These rates are set forth in Column 1. Several deficiency letters were sent to Keen requesting additional rate information.

An audit of the Lake Region system was conducted in August 1997. No books and records were available to the auditor other than canceled checks and bank statements. Based on the available information, Audit Disclosure No. 3 identified the rates that were apparently being charged by Lake Region prior to the transfer (Column 2), as well as the rates Keen charged after the transfer (Column 3). It appears that neither Lake Region nor Keen ever charged the rates in Column 1.

It is not clear as to why Keen did not continue charging the Lake Region customers the rates they had previously charged or how the rates the utility charged from February 1997 to November 1999 were derived. However, in September, 1996, Keen applied for an

index and pass-through rate adjustment for all of the systems it owned, including Lake Region.

The pass-through portion of the rate adjustment was intended to recover this Commission's regulatory assessment fees (RAFs) of 4.5 percent. Because the transfer of Lake Region to Keen had not been approved, the utility was not allowed to include the index and pass-through for that system. It appears that Keen did not understand that the pass-through was not approved for Lake Region, and incorrectly implemented the increase on Lake Region's 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 audit as those being charged by Lake Region prior to the transfer.

On November 2, 1999, Keen was informed that, based on the audit and information from Keen, the rates Keen was charging the Lake Region customers were not the rates authorized by Polk County at the time the County came under Commission jurisdiction. Keen was told to cease charging the Lake Region customers the incorrect rates.

On July 20, 2000, subsequent to the transfer being approved, Keen again applied for an index and pass-through for Lake Region to recover RAFs pursuant to Section 367.081(4)(b), Florida Statutes. The utility requested the full 4.5 percent increase, as provided for by the statute. On August 30, 2000, Keen was informed that only a pass-through of 2 percent would be considered, because it appeared that the County franchise fee of 2.5 percent was already incorporated into Lake Region's rates as identified in the audit (Column 2). This was based on the facts that Lake Region had been regulated by Polk County under its prior owners, the County had authorized collection of a 2.5 percent charge, and the auditor had no information to indicate that the rate previously identified as the bill amount did not include the franchise fee.

At that point, Keen finally provided billing information which confirmed the County's approval of the 2.5 percent franchise fee and that Lake Region had been collecting the 2.5 percent prior to this Commission receiving jurisdiction. Those rates are shown in Column 4 of Table 1.

We verified with Polk County that it had approved a resolution implementing the 2.5 percent franchise fee. According to Polk County, the utilities were allowed to pass the fee on to their customers subsequent to the resolution. The fee was not, however, incorporated into Lake Region's rates until the utility had a rate case with the County. Since Lake Region did not have a rate case, the fee was never incorporated into the utility's monthly rate. Instead, it was billed as a surcharge to the monthly bill.

As a result of the additional information, Lake Region's 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 percent RAFs required by this Commission based on the rates shown in Column 2.

With regard to the refund, while Lake Region's rates did not incorporate the franchise fee, it was authorized to add a specific additional fee on the customer bills. This means that Keen did have the authority to charge Lake Region's customers the rate shown in Column 4 of Table 1, as opposed to the rate in Column 2. Therefore, the refund ordered by Order No. PSC-00-0913-PAA-WU, was based on the wrong base rate (Column 2 instead of Column 4).

Based on the foregoing, we find it appropriate to revise the amount of the refund Keen was required to make by Order No. PSC-00-0913-PAA-WU. The amount of the refund is hereby revised to reflect the difference between the amount that was billed to Lake Region's 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 estimated amount of the refund is \$9,372.29, plus interest.

The refund shall be made on a per customer basis, pursuant to Rule 25-30.360, Florida Administrative Code. The utility may submit the refund calculation for verification and approval by the Commission staff prior to the refund being made, pursuant to Rule 25-30.360(4)(e), Florida Administrative Code.

Keen shall complete the refunds to the Lake Region customers within one year of the effective date of Order No. PSC-00-0913-PAA-WU, issued May 8, 2000. The interest on the refund amount shall

continue to accrue until the refund is posted to current customer accounts or refund checks are issued to former customers. The refunds shall be credited to the customers' accounts or mailed to each customer's last known address. Keen shall 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 shall 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 shall be provided within 30 days from the date the refund is completed. Also, within 30 days of the date of the refund, the utility shall provide a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refund. After verification and review of the refund process by the Commission staff, any unclaimed refunds shall be treated as contributions-in-aid-of-construction (CIAC), pursuant to 25-30.360(8), Florida Administrative Code. In addition, the utility is hereby placed on notice that, pursuant to Sections 367.081(1) and 367.091(3), Florida Statutes, it may only charge rates and charges approved by this Commission.

This docket shall remain open pending verification of the refund and that any unclaimed refunds have been treated as CIAC. Further, the docket shall remain open to address outstanding RAFs and annual report for the period from May 1996 through January 7, 1997, as required by Order No. PSC-00-0913-PAA-WU. The docket shall be closed administratively upon verification that the refunds have been made and that outstanding RAFs and annual report issues have been addressed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the amount of revenues Keen Sales, Rentals and Utilities, Inc. was required to refund to the Lake Region Paradise Island customers by Order No. PSC-00-0913-PAA-WU is hereby revised as set forth in the body of this Order. Keen Sales, Rentals and Utilities, Inc. shall refund \$9,372.29, plus interest. The interest on the refund amount shall continue to accrue until the refund is posted to current customer accounts or refund checks are issued to former customers. It is further

ORDER NO. PSC-01-0424-PAA-WU

DOCKET NO. 970201-WU

PAGE 7

ORDERED that Keen Sales, Rentals and Utilities, Inc. shall complete the refunds required herein within one year of the effective date of Order No. PSC-00-0913-PAA-WU, which effective date is May 8, 2000. It is further

ORDERED that Keen Sales, Rentals and Utilities, Inc. shall make the refunds on a per customer basis, pursuant to Rule 25-30.360, Florida Administrative Code. It is further

ORDERED that Keen Sales, Rentals and Utilities, Inc. shall credit the refunds to the customers' accounts or mail the refunds to each customer's last known address. It is further

ORDERED that Keen Sales, Rentals and Utilities, Inc. shall provide monthly 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 shall include the information required by Rule 25-30.360(7), Florida Administrative Code. It is further

ORDERED that Keen Sales, Rentals and Utilities, Inc. shall provide the Commission with copies of canceled checks or other evidence, which verifies that the refunds have been made, within 30 days from the date the refund is completed. It is further

ORDERED that, within 30 days of the date the refund is complete, Keen Sales, Rentals and Utilities, Inc. shall provide a list of unclaimed refunds, detailing contributor and amount, and an explanation of the efforts made to make the refund. It is further

ORDERED that after verification and review of the refund process, any unclaimed refunds shall be treated as CIAC, pursuant to Rule 25-30.360(8), Florida Administrative Code. It is further

ORDERED that Keen Sales, Rentals and Utilities, Inc. is hereby placed on notice that it may only charge the rates and charges approved by this Commission, pursuant to Section 367.081 and 367.091, Florida Statutes. It is further

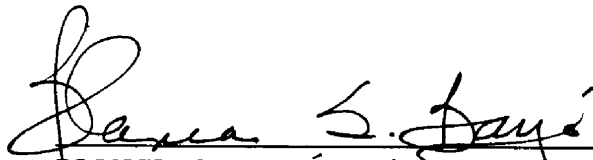
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form

ORDER NO. PSC-01-0424-PAA-WU  
DOCKET NO. 970201-WU  
PAGE 8

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 this docket shall remain open pending verification of the refund and that any unclaimed refunds have been treated as contributions-in-aid-of-construction. The docket shall also remain open to address outstanding regulatory assessment fees and annual report for the period from May 14, 1996 through January 7, 1997. This docket may be closed administratively upon verification that all requirements set forth in the body of this Order, and Order No. PSC-00-0913-PAA-WU, have been satisfied.

By ORDER of the Florida Public Service Commission this 22nd day of February, 2001.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

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.

The action proposed herein 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 15, 2001.

In the absence of such a petition, this order shall become final and effective 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.