

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-01-2151-FOF-WU
ISSUED: November 2, 2001

The following Commissioners participated in the disposition of
this matter:

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

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS,
MODIFYING ORDER NO. PSC-01-0424-PAA-WU,
AND CLOSING DOCKET

BY THE COMMISSION:

Background

This Commission received jurisdiction in Polk County on May 14, 1996, pursuant to a resolution adopted by the Board of County Commissioners of Polk County. At that time, Lake Region Paradise Island (Lake Region or system) was owned by S & S Utilities, Inc. (S&S or seller). Steve and Susan Cliett (the Clietts), the primary stockholders in S&S, sold Lake Region to Keen Sales, Rentals and Utilities, Inc. (Keen, utility or buyer) on January 9, 1997, without prior Commission approval.

Lake Region was transferred to Keen by Order No. PSC-00-0913-PAA-WU, issued May 8, 2000, in Docket No. 970201-WU. By that Order, we also amended Keen's certificate to include the territory served by Lake Region, and declined to initiate show cause proceedings against the Clietts for transferring Lake Region

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without prior Commission approval. In addition, we declined to initiate show cause proceedings against Keen for charging unapproved rates. 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 overcharge was discontinued. The refund was required to be made within one year from May, 2000.

With regard to the refunds, information contained in Keen's index and pass-through application filed on July 20, 2000, caused us to reassess the refund amount set forth in Order No. PSC-00-0913-PAA-WU. Consequently, by Order No. PSC-01-0424-PAA-WU, issued February 22, 2001, we approved a reduction in the amount to be refunded by Keen. By Orders Nos. PSC-00-0913-PAA-WU and PSC-01-0424-PAA-WU, we held Docket No. 970201-WU open pending completion of the refunds and to address the utility's outstanding 1996 annual report.

1996 Annual Report

Rule 25-30.110, Florida Administrative Code, requires utilities subject to our jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Requests for extensions of time must be in writing and must be filed before March 31. One extension of 30 days is automatically granted. A further extension may be granted upon a showing of good cause. Incomplete or incorrect reports are considered delinquent, with a 30-day grace period in which to supply the missing information.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3 per day. Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, we may impose lesser or greater penalties.

Additionally, Section 367.161, Florida Statutes, authorizes this 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 Commission rule,

order or 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, Florida Administrative Code, 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 as to why it should not be fined, stating that "in 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.

Lake Region became subject to this Commission's jurisdiction on May 14, 1996, when the Board of County Commissioners of Polk County adopted a resolution making utilities in that County subject to the provisions of Chapter 367, Florida Statutes. At the time the utility became jurisdictional, it was owned by the Clietts. Letters were sent to the Clietts regarding outstanding regulatory assessment fees (RAFs) and the annual report for 1996.

On February 27, 2001, this Commission received a check from the Clietts in the amount of \$582.76, which was the total amount of RAFs due, including penalties and interest. On March 19, 2001, we received a letter from Mr. Cliett indicating that he is in poor health and that he had to borrow the money to pay the outstanding RAFs. He stated in the letter that if he is required to pay penalties for failure to file the annual report, he will have to file for bankruptcy. Further, according to the letter, he no longer has any information from which to generate the annual report.

Although regulated utilities are charged with knowledge of this Commission's rules and statutes, we do not believe that the apparent violation of Rule 25-30.110, Florida Administrative Code, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. As stated previously, Mr. Cliett has not owned the utility since January of 1997. Further, we no longer need the information included in the annual report. The amount of revenues earned during that time was estimated using revenues collected during 1997. The Clietts have paid the RAFs resulting from that estimate. In addition, the Clietts have demonstrated good cause for noncompliance with Rule 25-30.110, Florida Administrative Code.

Based on the foregoing, we do not find it appropriate to initiate a show cause proceeding against the Cletts for failing to file the annual report for 1996, in apparent violation of Rule 25-30.110, Florida Administrative Code. In addition, we do not find it appropriate to require the Cletts to file the 1996 annual report.

Refund

As stated previously, Order No. PSC-00-0913-PAA-WU required Keen to refund, with interest, revenues collected as a result of charging unapproved rates, pursuant to Rule 25-30.360, Florida Administrative Code. Keen was given one year to complete the refund.

Subsequent to the issuance of that Order, we reassessed the refund amounts based on information in the utility's index and pass-through application filed on July 20, 2000. By Order No. PSC-01-0424-PAA-WU, the amount of the refund was reduced to reflect a correction to the rates Keen was authorized to charge. The Order indicated that the refund amount was estimated to be \$9,372.29, plus interest. Consummating Order No. PSC-01-0669-CO-WU was issued on March 19, 2001.

Keen calculated the amount of the refund due to each customer, issuing the refunds on April 16, 2001. Keen provided our staff with detailed calculations for each customer account including monthly usage, amount billed using the unapproved rates, the amount that should have been billed using the approved rates, total refunds due the customer, and the interest calculation for each refund. While preparing to issue the refunds, Keen discovered that it had incorrectly reported that it had overcharged the customers in February and March 1997. Copies of its ledgers from these two months were provided as proof that the rates charged to the customers were the same rates approved by Polk County for Lake Region. We have reviewed the ledger pages provided by Keen and verified that the amounts charged for the two months in question were based on the rates approved by Polk County.

However, from a review of the information provided, we determined that the interest had not been calculated correctly. A letter was sent to Keen explaining the problem and the method to

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use to calculate the correct interest for a supplemental refund. The supplemental refunds were made on June 7, 2001.

Keen submitted its final reports regarding the refunds on September 11 and 20, 2001. The reports indicate that the amount refunded was \$7,542.27, plus \$1,224.43 in interest. The refunds were applied to the existing customer accounts and checks were mailed to former customers to their last known addresses with requests for forwarding addresses. Keen was unable to locate five former customers who are due refunds and interest totaling \$526.50. By Order No. PSC-01-0424-PAA-WU, we required the utility to credit unclaimed refunds to contributions-in-aid-of-construction (CIAC).

The total refund made by Keen for April 1997 through December 1999 is consistent with the requirements of Order No. PSC-01-0424-PAA-WU. It should be noted that while the Order indicated that the amount to be refunded was \$9,372.29, this amount was estimated. Therefore, Order No. PSC-01-0424-PAA-WU is hereby modified to reflect that the correct amount of the refund is \$7,542.27 and the order is otherwise affirmed in all other respects. Further, we find that Keen has satisfactorily complied with Order No. PSC-01-0424-PAA-WU by refunding all unapproved rates, plus interest. The unclaimed checks totaling \$526.50 shall be treated as cash CIAC, pursuant to Rule 25-30.360(8), Florida Administrative Code, and Order No. PSC-01-0424-PAA-WU.

It is, therefore,

ORDERED by the Florida Public Service Commission that a show cause proceeding shall not be initiated against Susan and Steven Cliett, 115 Scenic Highway, Haines City, Florida 33844, for failure to file the 1996 annual report for Lake Region Paradise Island. It is further

ORDERED that Susan and Steven Cliett shall not be required to file the 1996 annual report for Lake Region Paradise Island. It is further

ORDERED that Order No. PSC-01-0424-PAA-WU is hereby modified to reflect that the correct amount of overcharges to be refunded by Keen Sales, Rentals and Utilities, Inc. is \$7,542.27, plus interest

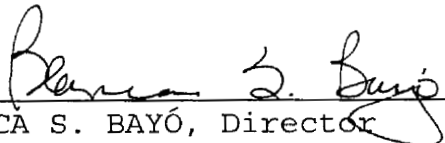
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of \$1,224.43. Order No. PSC-01-0424-PAA-WU is otherwise affirmed in all other respects. It is further

ORDERED that the unclaimed refunds in the amount of \$526.50 shall be treated as cash contributions-in-aid-of-construction, pursuant to Rule 25-30.360(8), Florida Administrative Code. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 2nd day of November, 2001.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(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.

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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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.