

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

### -M-E-M-O-R-A-N-D-U-M-

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**DATE:** May 25, 2006

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of the General Counsel (Gervasi)  
Division of Economic Regulation (Edwards, Rendell)  
Division of Regulatory Compliance & Consumer Assistance (Hicks)

**RE:** Docket No. 060074-WU – Initiation of show cause proceedings against Alturas Utilities, L.L.C. for apparent violation of Rule 25-30.251(2), F.A.C., Record and Report of Interruptions.  
County: Polk

**AGENDA:** 06/06/06 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Tew

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\060074.RCM.DOC

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### Case Background

Alturas Utilities, L.L.C. (Alturas or utility) is a Class C water utility providing water service in Polk County to approximately 50 residential and 12 general service customers. Alturas was issued Certificate No. 628-W by Order No. PSC-05-0309-PAA-WS, issued March 21, 2005,<sup>1</sup> upon Commission approval of a transfer of the utility from Keen Sales, Rentals and Utilities, Inc. (Keen). That Order shows that Alturas contracted with Keen for two years of

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<sup>1</sup> In Re: Application for transfer of portion of Certificate No. 582-W by Keen Sales, Rentals and Utilities, Inc. to Alturas Utilities, L.L.C., in Polk County (consummated by Order No. PSC-05-0399-CO-WU, issued April 18, 2005).

transitional management and operations assistance, and that during this time, staff in the Keen office would provide the bookkeeping services for the utility and the contract operator for the Keen systems would perform the system repairs, maintenance, and testing. According to its 2004 Annual Report, Alturas had water revenues of \$21,537 and a net operating income of \$6,035.

On at least six separate occasions in 2005, Alturas failed to notify the Commission of interruptions in service which affected 10 percent or more of its customers, in apparent violation of Rule 25-30.251(2), Florida Administrative Code. The Division of Regulatory Compliance and Consumer Assistance received two customer complaints to this effect, one of which included a petition signed by 26 Alturas customers requesting that the Commission investigate the frequent water outages. The complaints were reassigned to the Division of Economic Regulation for investigation. This docket was opened when it became apparent to staff that the complaints involved a potential rule violation on the part of Alturas.

This recommendation addresses the customer complaints and whether Alturas should be required to show cause as to why it should not be fined for its apparent violation of Rule 25-30.251(2), Florida Administrative Code. The Commission has jurisdiction pursuant to Sections 367.011, 367.121, and 367.161, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should Alturas Utilities, L.L.C. be ordered to show cause, in writing within 21 days, as to why it should not be fined for failure to notify the Commission of at least six separate interruptions in service that took place during 2005, in apparent violation of Rule 25-30.251(2), Florida Administrative Code?

**Recommendation:** Yes. Alturas Utilities, L.L.C. should be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$300 for failure to notify the Commission of at least six separate interruptions in service that took place during 2005, in apparent violation of Rule 25-30.251(2), Florida Administrative Code. The order to show cause should incorporate the conditions as set forth in the staff analysis. Further, the utility should be reminded of the importance of being courteous to its customers at all times. The utility should also be warned of the importance of complying with all Commission rules and statutes. (Gervasi, Edwards)

**Staff Analysis:** On October 28, 2005, the Division of Regulatory Compliance and Consumer Assistance received a customer complaint from Mr. Frank Hewett against Alturas, reporting that a water outage occurred on October 27, 2005. Mr. Hewett stated the water system broke down at least eight different times during 2005. Case No. 672670W was assigned to the complaint. In a follow-up e-mail to the Division of Regulatory Compliance and Consumer Assistance, Mr. Hewett's wife, Mrs. Trina Hewett, stated that because the utility office personnel were not on the Alturas water system, "they don't have to worry about not having water but we do."

On November 7, 2005, the Division of Regulatory Compliance and Consumer Assistance received another customer complaint against Alturas involving service interruptions, from Mr. Wesley Howell. Mr. Howell reported that during 2005, the water system was down at least seven to ten times. He inquired as to whether a back-up well should be installed for emergencies. Attached to his complaint was a petition signed by 26 customers of Alturas requesting that the Commission investigate the frequent water outages. Case No. 674785W was assigned to the complaint.

Pursuant to Rule 25-22.032, Florida Administrative Code, the Division of Regulatory Compliance and Consumer Assistance requested that Alturas provide a response to the complaints directly to the customers, with a copy to the Commission, within 15 working days after the complaints were filed, which the utility did. In response to Mr. Hewett's complaint, Alturas stated the service was interrupted due to a break in the line. In its written response to Mrs. Hewett's follow-up e-mail, Mrs. Earlene Keen, Manager of Alturas, stated: "I live in the country and I have my own personal well system which I am sure Mrs. Hewett will be delighted to know went down twice in the last three weeks."

Upon receipt of the second customer complaint, from Mr. Howell, the Division of Regulatory Compliance and Consumer Assistance requested that Alturas provide a complete outage history for the past 12 months. Alturas enclosed the requested outage history along with its response to Mr. Howell. That outage history shows that outages occurred on eight separate occasions from December 6, 2004 to November 18, 2005. Also in its response to Mr. Howell, Alturas stated that it had installed a new water tank and the water pump was replaced two years

ago and then again in October 2005. By letter to the Division of Regulatory Compliance and Consumer Assistance dated November 16, 2005, Alturas stated the water system had gone down six times in the last year, and that three of those outages were due to a main line clog, a pump cable break, and the pump going out. The other three outages were scheduled outages for system upgrades, including the removal of "EDB filters" that were causing problems, placing a bypass on the system, and for inspection of the interior of the tanks, as required by the Polk County Health Department. Customers were notified of the scheduled outages pursuant to Rule 25-30.250(2), Florida Administrative Code. Moreover, the utility issued "boil water notices" to customers when the hydroneumatic tank dropped below 20 psi, as required by the Polk County Health Department.

In December 2005, the Division of Regulatory Compliance and Consumer Assistance reassigned Case Nos. 674785W and 672670W to the Division of Economic Regulation for further investigation. This docket was opened when it became apparent to staff that the complaints involved a potential rule violation on the part of Alturas.

Rule 25-30.251(2), Florida Administrative Code, requires utilities to notify the Commission of any interruptions in service that affect ten percent or more of their customers, within one work day of notification to the utility that the interruption occurred and within one work week after service has been restored. The rule requires utilities to file a complete report of the record to the Commission regarding the interruption. The customers of Alturas experienced at least six interruptions in service during 2005. These outages affected Alturas's entire customer base and Alturas did not report them to the Commission either before or after the service was restored.

In February 2006, staff received a telephone call from Ms. Christie McCormick, from Alturas, stating that the utility had requested a copy of the Florida Administrative Code from staff on several occasions, but that the utility had not received a copy of those rules. By letter dated March 2, 2006, staff advised Ms. McCormick that the Division of Economic Regulation had sent the utility a copy of the requested rules along with a letter dated March 31, 2005, when Certificate No. 628-W was issued for the utility. Also enclosed with that March 31, 2005 letter was a copy of Chapter 367, Florida Statutes, and the Uniform System of Accounts for Class C Water Utilities (USOA). In that letter, the Director of the Division of Economic Regulation advised the utility that "Section 367.161, Florida Statutes, provides that violation of any Commission rule, statute, or order could result in penalties of up to \$5,000 per day. Therefore, it is important that you review this material and make yourself aware of your responsibilities as a regulated utility." Nevertheless, at Ms. McCormick's request, staff sent the utility another copy of the rules, as well as of Chapter 367, Florida Statutes, and the USOA. Staff again advised Alturas that it is the utility's responsibility to maintain a current copy of the Commission rules and statutes, and reminded the utility that current copies of these materials are also available on the Commission's website. Staff further notes that Ms. Keen, Alturas's Manager, attended the 1999 Class C Workshop held by staff, at which notebooks were distributed that also contained a copy of Chapter 367, Florida Statutes, and the applicable Commission rules.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not

excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), 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, or any lawful rule or order of the Commission. By failing to report the above-noted service interruptions to the Commission, the utility's acts were "willful" in the sense intended by Section 367.161, Florida Statutes. In Commission 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 "willful" implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

In response to a staff data request dated February 21, 2006, Alturas stated that due to staff changes at the utility, Alturas was not aware of any violation of Rule 25-30.251, Florida Administrative Code, and that the utility has always reported any outages to the Polk County Health Department. The utility provided information on the causes of each of the outages and stated that now that this rule has been brought to its attention, it will make sure to report any future outages to the Commission in accordance with the rule.

As stated in the case background, this utility was transferred from Keen to Alturas by Order No. PSC-05-0309-PAA-WS, issued March 21, 2005. That Order shows that Alturas contracted with Keen for two years of transitional management and operations assistance, and that during this time, staff in the Keen office would provide the bookkeeping services for the utility and the contract operator for the Keen systems would perform the system repairs, maintenance, and testing. Mrs. Keen, who manages Alturas, should certainly be aware of Order No. PSC-01-1162-PAA-WU, issued May 22, 2001, in Docket No. 001118-WU,<sup>2</sup> in which the Sunrise Water Company, also owned by Keen, was admonished about its apparent failure to comply with all Commission rules, specifically including Rule 25-30.251, Florida Administrative Code, regarding service interruptions.

Staff cannot ascertain any circumstances which would appear to mitigate Alturas's failure to report these service interruptions to the Commission in accordance with Rule 25-30.251(2), Florida Administrative Code. Staff therefore recommends the Commission require Alturas to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$300 for its failure to notify the Commission of at least six separate interruptions in service that took place during 2005, in apparent violation of Rule 25-30.251(2), Florida Administrative Code. In recommending this amount, staff takes into consideration the small size of the utility and believes that \$300, or \$50 per service interruption, is a reasonable amount which should serve to capture the utility's attention and encourage the utility to comply with all Commission rules.

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<sup>2</sup> In Re: Application for staff-assisted rate case in Polk County by Keen Sales, Rentals and Utilities, Inc. (Sunrise Water Company) (consummated by Order No. PSC-01-1299-CO-WU, issued June 14, 2001).

The order to show cause should incorporate the following conditions:

1. The utility's response to the show cause order should contain specific allegations of fact and law;
2. Should Alturas file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, a further proceeding should be scheduled before a final determination of this matter is made;
3. A failure to file a timely written response to the show cause order should constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue;
4. In the event that Alturas fails to file a timely response to the show cause order, the fine should be deemed assessed with no further action required by the Commission;
5. If the utility responds timely but does not request a hearing, a recommendation should be presented to the Commission regarding the disposition of the show cause order; and
6. If the utility responds to the show cause order by remitting the fine, this show cause matter should be considered resolved, and the docket closed administratively.

Further, the utility should be reminded of the importance of being professional and courteous to its customers at all times. Advising a customer who has experienced a series of frustrating water outages that she should be "delighted to know" that the utility manager's water service had gone down twice in the last three weeks is less than courteous and professional and does not foster good customer relations.

Alturas should also be warned and put on notice that failure to comply with Commission orders, rules, or statutes will again subject the utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, Florida Statutes.

Docket No. 060074-WU

Date: May 25, 2006

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes, if Alturas pays the fine as set by the Commission in Issue 1, this docket should be closed administratively. However, if the utility timely responds in writing to the Order to show cause, the docket should remain open to allow for the appropriate processing of the response. (Gervasi)

**Staff Analysis:** If Alturas pays the fine as set by the Commission in Issue 1, this docket should be closed administratively. If the utility timely responds in writing to the Order to show cause, the docket should remain open to allow for the appropriate processing of the response.