



Public Service Commission

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RECORDS AND REPORTING

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DATE: JUNE 29, 2000

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

FROM: DIVISION OF REGULATORY OVERSIGHT (CLAPP, REDEMANN)
DIVISION OF LEGAL SERVICES (CROSBY, GERVASI)

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.
COUNTY: POLK

AGENDA: JULY 11, 2000 - REGULAR AGENDA - PROPOSED AGENCY ACTION ISSUES 3 AND 4 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

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

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CASE BACKGROUND

Sunrise Water Company, Inc. (Sunrise or utility) is a Class C utility located in Polk County and serves approximately 267 water customers. The utility, wholly owned by Whiting Water Works (Whiting), was granted grandfather Certificate No. 584-W by Order No. PSC-97-0832-FOF-WU, issued July 11, 1997, in Docket No. 961249-WU. The utility's 1998 annual report lists gross revenues of \$41,875 with a net operating income of \$15,559. The utility's facilities consist of one water treatment plant and one water transmission and distribution system.

Keen Sales, Rentals and Utilities, Inc. (Keen or buyer) 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,

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issued February 11, 1997, in Docket No. 961007-WU. 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. Also, Keen was granted the transfer the Lake Region Paradise Island water system pursuant to Order No. PSC-00-0913-PAA-WU, issued May 8, 2000, and Order No. PSC-00-2003-CO-WU, issued June 6, 2000, in Docket No. 970201-WU. Keen serves approximately 272 residential customers and 4 general customers in the Ray Keen, Earlene Keen, and Ellison Park Subdivisions, the Alturas service area, and the Lake Region Paradise Island 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. RAFs are paid through 1999 for Keen's certificated systems and for the Sunrise system.

On March 22, 1999, Keen filed a letter of notification stating that Keen had finalized the purchase of Sunrise on February 23, 1999. Staff responded on March 30, 1999, with a letter forwarding an application for transfer of certificate of authorization and reminding Keen of Section 367.071, Florida Statutes, which states that no utility shall sell, assign, or transfer its certificate without prior commission approval. This will be addressed further in Issue 1.

On June 2, 1999, Keen submitted an application for transfer of water certificate from Sunrise. Many deficiencies were found in this application. The final corrections were received on December 22, 1999. The transfer application is the subject of this recommendation.

DISCUSSION OF ISSUES

ISSUE 1: Should Sunrise Water Company, Inc. be required to show cause, in writing within 21 days, why it should not be fined for its apparent violation of Section 367.071, Florida Statutes?

RECOMMENDATION: No. Show cause proceedings should not be initiated. (CROSBY, GERVASI)

STAFF ANALYSIS: As previously stated, Sunrise transferred its facilities to Keen prior to Commission approval. This action constitutes an apparent violation of Section 367.071, Florida Statutes, which states, in part, "No utility shall sell, assign, or transfer its certificate of authorization, facilities, or any portion thereof ... without determination and approval of the Commission that the proposed sale, assignment, or transfer is in the public interest." Sunrise sold the utility to Keen, effective February 23, 1999, prior to Commission approval. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes.

Section 367.161, 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. 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, 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 "[i]n 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.

Failure of Sunrise to obtain Commission approval prior to transferring the utility to Keen appears to be due to lack of knowledge and understanding of the statutes and Commission rules. Since becoming subject to Commission regulation, Keen's management has had some difficulty understanding the regulatory authority of the Commission. By letter dated October 27, 1999, Keen stated that although it was aware of the Commission's regulation, it was under the impression that, because this was a small transaction, prior approval by the Commission was not necessary. The same confusion is apparent in all of the transfers of facilities to Keen. It should be noted, however, that Keen filed for approval of the transfer shortly after becoming aware of the requirement to do so. Since that time, Keen has been operating the system and providing satisfactory service to the customers.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, staff does not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level of warranting initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Sunrise to show cause why it should not be fined for

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failing to obtain approval prior to transferring the utility to Keen.

ISSUE 2: Should the transfer of Sunrise to Keen and the amendment of Water Certificate No. 582-W to include the territory served by Sunrise be approved and should Water Certificate No. 584-W be canceled?

RECOMMENDATION: Yes. The transfer of Sunrise to Keen and the amendment of Water Certificate No. 582-W to include the Sunrise system should be approved and Water Certificate No. 584-W should be canceled. The seller has paid regulatory assessment fees for January 1 to February 23, 1999. Keen has paid the regulatory assessment fees for the remainder of 1999 and has submitted the annual report for 1999 for the Sunrise System. (CLAPP, REDEMANN)

STAFF ANALYSIS: As stated in the case background, on June 2, 1999, Keen submitted an application for transfer of water certificate from Sunrise. The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer. The application contains a check in the amount of \$750, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. Keen has provided evidence, in the form of a recorded Warranty Deed, that Keen owns the land upon which the Sunrise facilities are located as required by Rule 25-30.037(2)(q), Florida Administrative Code.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application were received, and the time for the filing of such objections has expired. Sunrise's territory description is appended to this memorandum as Attachment A.

With regard to the buyer's technical ability, Keen has indicated that it will maintain and operate the system in compliance with the appropriate laws and rules. Keen currently operates and maintains three systems. In Polk County, water withdrawal is regulated by Southwest Florida Water Management District (SWFWMD); water environmental compliance is regulated by the Polk County Health Department (PCHD). The utility was inspected within the last twelve months. Staff has verified with SWFWMD and PCHD that the utility is essentially in compliance with all requirements of these agencies.

Regarding the financial ability of the buyer, Keen has been a certificated utility since February 11, 1997. Keen has and continues to make a profit as a regulated utility and continues to

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maintain the facilities according to regulation. Staff believes that the owner possesses the overall financial ability to operate the water facility. Since the system is small, staff believes that the financial foundation of Keen should be adequate to insure the continued operations of the system.

The application contains a copy of the executed Bill of Sale and recorded Mortgage and Security Agreement which includes the general description of assets purchased such as pumps, tanks, installed utility lines and meters, as well as all books, records, and accounts, including security deposits. Based on the application, there are no guaranteed revenue contracts, developer agreements, or customer advances. Keen has provided a statement that it will fulfill the commitments, obligations, and representations of the transferor.

The June 18, 1999, deficiency letter specifically asked Keen who would be responsible for the RAFs due for the period of January 1 - February 23, 1999. According to Keen's response of July 23, 1999, Sunrise would be responsible for the period prior to closing. Sunrise paid its portion of the RAFs on March 31, 2000. Keen also timely paid its portion of the 1999 RAFs for the Sunrise system. Keen has filed the 1999 annual report for the Sunrise system as part of the 1999 annual report for all Keen operated systems.

Based on the above, staff recommends that the transfer of the Sunrise assets and facilities to Keen and the amendment of Water Certificate No. 582-W to include the Sunrise territory is in the public interest and should be approved, and Sunrise Water Certificate No. 582-W should be canceled.

ATTACHMENT A

KEEN SALES, RENTALS AND UTILITIES, INC.

SERVING FROM THE SUNRISE WATER SYSTEM

POLK COUNTY

Water Territory Description

Township 28 South, Range 25 East, Section 21

Serving an area generally known as Sunrise Acres Subdivision, an unrecorded subdivision known as Pinewood, and an unrecorded mobile home village. More particularly described as:

From the Northwest corner of Section 21, also the Point of Beginning, run due East (along the South line of Section 16 and the North line of Section 21) for a distance of 2618.23 feet, more or less; thence, due South a distance of 1313 feet, more or less; thence due West a distance of 1455.20 feet, more or less; thence due South a distance of 235 feet, more or less; thence due West a distance of 405 feet, more or less; thence due South a distance of 1063 feet, more or less; thence due West a distance of 420.71 feet, more or less; thence due North a distance of 695 feet, more or less; thence due West a distance of 340 feet, more or less, to the West line of Section 21; thence due North a distance of 1922.35 feet, more or less, to the Point of Beginning.

ISSUE 3: What is the rate base of Sunrise Water Company at the time of transfer?

RECOMMENDATION: The rate base of Sunrise Water Company is \$41,707 as of March 31, 1999. (CLAPP)

STAFF ANALYSIS: Rate base for Sunrise has not been previously established by the Public Service Commission. The field audit staff conducted an audit of the books and records as of March 31, 1999. After reviewing the utility's records and the Polk County 1993 rate case, the staff auditor did determine the water rate base as of March 31, 1999. As a result, the following exceptions were noted:

Audit Exception No. 1. According to the staff audit, the sellers did not maintain accounts prescribed by the NARUC Uniform System of Accounts. Consequently, all of the utility's plant-in-service entries were recorded in one account. The plant-in-service should be adjusted to reflect plant classified in the proper accounts.

Audit Exception No. 2. The utility recorded \$84,433 in utility plant-in-service and \$22,111 in accumulated depreciation. Schedule 1 is staff's recommended valuation by account of the plant-in-service and accumulated depreciation as of March 31, 1999. As shown in Schedule 2, staff recommends an adjustment of (\$87) to plant-in-service to correct an accounting error and an adjustment to increase accumulated depreciation by \$14,098.

Audit Exception No. 3. The utility recorded land of \$2,000. Per the Polk County rate case in 1993, utility land value was \$553. The utility has not acquired any additional land since the rate case in 1993. Staff therefore recommends an adjustment of (\$1,447) to land.

Staff Exception No. 1. In the calculation of rate base, the audit reflected a zero balance for CIAC, and included a comment in the CIAC workpaper section to that effect. The staff was concerned with this observation, since a system capacity charge of \$450 per ERC had been grandfathered with the utility when it came under Commission regulation. The workpapers from the Polk County rate case did not include any CIAC amounts and there have been no additional collections of CIAC documented by the utility since it was grandfathered under Commission regulation.

The Commission's policy has been that CIAC collected prior to a utility's jurisdictional date is to be recognized by the

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Commission in the calculation of rate base. (Lindrick Service Corporation, Docket No. 830062-WS, Order No. 12691). Further, the Commission has imputed CIAC based on Rule 25-30.570, Florida Administrative Code, when there has been no substantiation for the absence of CIAC. (Tamiami Utility Company, Docket No. 830559-WS, Order No. 13796). According to Rule 25-30.570, Florida Administrative Code, "If the amount of CIAC has not been recorded on the utility's books ... the amount of CIAC shall be imputed to be the ... portion of the cost of the facilities and plant attributable to the water transmission and distribution system...." Therefore, staff recommends that CIAC be imputed in the calculation of rate base based on the portions of the cost of the facilities and plant attributable to the water transmission and distribution system, (Account Number 334). The associated Accumulated Amortization should also be imputed based on the Accumulated Depreciation for the water transmission and distribution system.

Schedule 2 contains the seller's calculated rate base, the staff recommended adjustments, and the resulting rate base. The rate base equals Utility Plant-In-Service of \$84,346, less Accumulated Depreciation of \$36,209, plus land value of \$553, less imputed CIAC of \$12,393, plus Accumulated Amortization of CIAC of \$5,410 for a total of \$41,707. The land value is the same value identified in the 1993 Polk County rate case.

The audit exceptions with related adjustments are listed in Schedule 3. Also included in this schedule are the imputed CIAC and the associated Accumulated Amortization of CIAC. The total audit exceptions and imputed amounts equals (\$22,615).

Based on the above, staff recommends that rate base be set at \$41,707 as of March 31, 1999. This rate base calculation is used solely to establish the net book value of the property being transferred and does not include the normal ratemaking adjustments of working capital and used and useful adjustments.

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SCHEDULE 1

SUNRISE WATER COMPANY, INC.
Audited Utility Plant-in-Service
Period Ended March 31, 1999

<u>Acct. No.</u>	<u>Account Description</u>	<u>Plant</u>	<u>Acc. Dep.</u>	<u>Dep. Plant</u>
304	Structures & Improvements	\$5,169	(\$1,646)	\$3,523
307	Wells & Springs	16,972	(7,409)	9,563
310	Power Generation Equipment	11,074	(4,834)	6,240
311	Pumping Equipment	3,000	(1,310)	1,690
320	Water Treatment Equipment	3,933	(1,717)	2,216
330	Distributions Reservoirs	21,485	(9,379)	12,106
331	Meters	7,932	(3,462)	4,470
334	Transmission & Distribution	12,393	(5,410)	6,983
347	Miscellaneous Equipment	<u>2,388</u>	<u>(1,042)</u>	<u>1,346</u>
		\$84,346	(\$36,209)	\$48,137

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SCHEDULE 2

SUNRISE WATER COMPANY, INC.
Utility Rate Base
Period Ended March 31, 1999

<u>DESCRIPTION</u>	<u>PER UTILITY 3/31/99</u>	<u>STAFF RECOMMENDED ADJUSTMENTS</u>	<u>REFER TO</u>	<u>STAFF RECOMMENDED BALANCE</u>
Utility Plant-in-Service	\$84,433	(\$87)	E-2	\$84,346
Land	2,000	(1,447)	E-3	553
Accumulated Depreciation	(22,111)	(14,098)	E-2	(36,209)
CIAC	0	(12,393)	S-1	(12,393)
Accumulated Amort. of CIAC	<u>0</u>	<u>5,410</u>	S-1	<u>5,410</u>
RATE BASE	\$64,322	(\$22,615)		\$41,707

SUNRISE WATER COMPANY, INC.
Utility Rate Base Audit Exceptions
Period Ended March 31, 1999

<u>Exception Number</u>	<u>Description</u>	<u>Amount</u>
E-2	Correct an accounting error	(\$87)
E-2	Correct calculation for 30-year depreciation	(14,098)
E-3	Utility land valued at \$553 in 1993 Polk County rate case	<u>(1,447)</u>
	TOTAL AUDIT EXCEPTIONS	(\$15,632)
S-1	Imputation of CIAC	(\$12,393)
S-1	Accumulated Amortization of CIAC	<u>5,410</u>
	NET IMPUTED AMOUNTS	(\$6,983)
	TOTAL STAFF RECOMMENDED ADJUSTMENTS	<u>(\$22,615)</u>

ISSUE 4: Should a positive acquisition adjustment be approved?

RECOMMENDATION: No. A positive acquisition adjustment should not be included in the calculation of rate base for transfer purposes. (CLAPP)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the rate base for transfer purposes. The acquisition adjustment resulting from the transfer of Sunrise would be calculated as follows:

Purchase Price	\$100,000
Staff Calculated Rate Base	<u>41,707</u>
Positive Acquisition Adjustment	<u>\$58,293</u>

An acquisition adjustment was not requested by the buyer. The buyer stated that its board of directors considered the purchase price to be fair when considered with the number of customers, the monthly expenses and the monthly income.

The imputation of CIAC and accumulated amortization of CIAC had the impact of reducing rate base by \$6,983. This information was not available to Keen at the time of purchase since it was not information maintained by the seller.

In the absence of extraordinary circumstances, it has been Commission practice that a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. Since there are no extraordinary circumstances regarding this purchase that would justify an acquisition adjustment to rate base and the buyer stated in its application for transfer that it was not seeking an acquisition adjustment, staff recommends that a positive acquisition adjustment not be included in the calculation of rate base. Staff's recommendation is consistent with previous Commissions decisions in this regard. See Order No. PSC-98-1231-FOF-WU, issued September 21, 1998, in Docket No. 971670-WU; Order No. PSC-98-0514-FOF-SU, issued April 15, 1998, in Docket No. 951008-SU; and Order No. PSC-98-0993-FOF-WS, issued on July 20, 1998, in Docket No. 971220-WS.

ISSUE 5: Should Keen continue to charge the rates and charges approved by this Commission for Sunrise?

RECOMMENDATION: Yes. Keen should continue charging the rates and charges approved for Sunrise. The tariff should be effective for services provided or connections made on or after the stamped approval date, in accordance with Rule 25-30.475, Florida Administrative Code. (CLAPP)

STAFF ANALYSIS: The utility's current rates and charges were approved in grandfather certificate Order No. PSC-97-0832-FOF-WU, issued July 11, 1997, in Docket No. 961249-WU.

Rule 25-9.044(1), Florida Administrative Code, provides that:

In cases of change of ownership or control of a utility which places the operation under a different or new utility... the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission)

Keen has requested the rates currently being charged by Sunrise remain in effect. The rates are reflected below:

WATER

MONTHLY RATES
RESIDENTIAL SERVICE

<u>Meter Size</u>	<u>Minimum Charge for 5,000 gals.</u>	<u>Gallonage Charge per 1,000 over 5,000 gals.</u>
5/8 x 3/4"	\$ 8.85	\$ 1.31

METER TEST DEPOSIT

5/8" x 3/4" meter	\$ 20.00
1" and 1 1/2" meter	\$ 25.00
2" and over meter	Actual Cost

MISCELLANEOUS SERVICE CHARGES

Initial Connection	\$ 15.00
Normal Reconnection	\$ 15.00
Violation Reconnection	\$ 15.00
Premises Visit (in lieu of disconnection)	\$ 10.00
Late Payment Fee	\$ 5.00

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DEPOSITS

<u>Meter Size</u>	<u>Residential</u>
5/8" x 3/4"	\$35.00

SERVICE AVAILABILITY CHARGE

Residential System Capacity Charge \$450 per ERC

Based on the above, staff recommends that Keen continue charging the rates and charges approved for Sunrise. Staff further recommends that Keen be required to continue to charge these rates and charges until authorized to change by the Commission. The tariff should be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets, in accordance with Rule 25-30.475, Florida Administrative Code.

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ISSUE 6: Should this docket be closed?

RECOMMENDATION: Yes, since no further action is necessary, if no timely protest is filed to the proposed agency action issues, upon expiration of the protest period, the Order should become final and effective upon the issuance of a Consummating Order and the docket should be closed administratively. (CROSBY)

STAFF ANALYSIS: Since no further action is necessary, if no timely protest is filed to the proposed agency action issues, upon expiration of the protest period, the Order should become final and effective upon the issuance of a Consummating Order and the docket should be closed administratively.