

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

MEMORANDUM

AUGUST 15, 1991

TO : DIRECTOR OF RECORDS AND REPORTING

FROM : DIVISION OF WATER AND SEWER (VON FOSSEN) *RUFQC*
DIVISION OF LEGAL SERVICES (CROSBY) *used for also. A*

RE : UTILITY: MARICO PROPERTIES INC.
DOCKET NO. 910119-WU
COUNTY: MARION
CASE: APPLICATION FOR TRANSFER OF THE ASSETS OF
MARICO PROPERTIES, INC. TO A.P. UTILITIES,
INC. CANCELLATION OF CERTIFICATE NO. 425-W,
AND AMENDMENT OF CERTIFICATE NO. 380-W

AGENDA: AUGUST 27, 1991 - CONTROVERSIAL - PROPOSED AGENCY ACTION
FOR ISSUE NO. 2 - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: DOCKET NOS. 910115-WU, 910116-WU, 910118-WU
AND 910119-WU SHOULD BE SCHEDULED CONSECUTIVELY
IN NUMERICAL ORDER.

CASE BACKGROUND

Marico Properties Inc. (Marico) is a Class C Water Utility providing service to Quail Ridge, a rental residential community consisting of quadraplexes. The utility presently serves 75 individual units. Within its 1990 annual report, Marico reported annual revenues of \$4,195 and a net operating loss of \$4,593.

Marico was initially certificated in 1983 while under the ownership of Michael Slack and Daniel Hicks. In 1987 Marico was sold to Mike Blake, owner of both Aqua Pure Water Company (Aqua Pure) and A.P. Utilities Inc. (A.P.). Since 1987, Mr. Blake has operated Marico as part of Aqua Pure. However, an application was never filed for transfer of the system to Mr. Blake. At the time of transfer of his entire Marion County water operation, Mr. Blake was operating under three certificates.

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On November 30, 1991, Mr Blake entered into a sales agreement for transfer of his entire water operation to Mr. Philip Woods. On February 6, 1991, three separate applications were filed with the Commission to reflect the transfer. Docket No. 910117-WU was the application for transfer of majority organizational control of A.P. Utilities Inc. This application was approved at the August 6, 1991 agenda. Docket No. 910118-WU, also on this agenda, is the application for transfer of the assets of Aqua Pure to A.P. Utilities Inc. While Mr. Blake has operated Marico as part of Aqua Pure, a separate application is necessary because Marico is technically operating under Certificate No. 425-W. Also on this agenda are Docket Nos 910115 and 910116 which amend Aqua Pure's and A.P.'s certificates, respectively, to include territory to which the utilities are already providing service.

Upon completion of the above dockets, both Marico's and Aqua Pure's certificates will be cancelled, and Mr. Woods will operate the various systems within Marion County under the A.P. certificate. Further, through the amendments, the approved territories will properly reflect the service area.

Based upon the sales contract, Mr. Woods is purchasing the utilities for a \$41,463 down payment and the assumption of debt associated with the utilities. Mr. Woods is paying \$499,613 for the A.P. stock and \$150,467 for the Aqua Pure assets, which includes the Marico System. While the purchase agreement was executed in November, 1990, the agreement specifies that it is subject to Commission approval. Although Marico was never officially transferred to Mr. Blake, staff is treating this docket as a transfer from Mr. Blake to Mr. Woods. Staff is not recommending any legal action against Marico Properties Inc. based upon the unauthorized 1987 transfer since we are not pursuing an application for that transfer and the customers were not harmed.

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DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of the assets from Marico Properties, Inc. to A.P. Utilities Inc.; cancellation of Certificate No. 425-W and amendment of Certificate No. 380-W be approved?

RECOMMENDATION: Yes, the transfer should be approved. Certificate No. 425-W, held by Marico Properties Inc., should be cancelled and Certificate No. 380-W, held by A.P. Utilities, Inc., should be amended to include the territory described in Attachment A. (Von Fossen)

STAFF ANALYSIS: 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 of utility assets. The application contains a check in the amount of \$150.00, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided a recorded 99 year lease which provides for continued use of the land upon which the water treatment facilities are located as required by Rule 25-30.037(1)(o), Florida Administrative Code. The lease with Marico Properties, Inc. is for 99 years. A.P. is leasing the property for one dollar per year plus payment of associated property taxes.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system to be transferred. No objections to the notice of application have been received and the time for filing such has expired.

A description of the territory served by the utility is appended to this memorandum as Attachment A.

As previously noted, the purchase of the A.P. stock, Aqua Pure and Marico were included in one transaction. According to the amended purchase agreement, the purchase will be paid as follows: \$41,463 cash will be paid to Mr. Blake. The remainder of the purchase price will be through the assumption of promissory notes. For the A.P. stock Mr. Wood has assumed four notes in the amount of \$458,150. For Aqua Pure, including Marico, he has assumed an additional six notes in the amount of \$150,467. Based upon the above debt, Mr. Woods will make monthly payments of approximately \$5300. Mr. Woods is using two Certificates of Deposit of \$100,000 each as security for the notes assumed.

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Staff is very concerned over the amount of debt being assumed by Mr. Woods. Therefore, we requested and received from Mr. Woods a financial analysis regarding the anticipated profitability of A.P. Important to this analysis is an active growth rate of 80 ERCs per year in the various systems. Based upon the projections, A.P. will be able to cover expenses during its initial years and begin to show a profit in 1993.

Mr. Woods is a Registered Professional Engineer and is in the process of becoming a certified plant operator. In the meantime, he has contracted with Enviro-Masters to operate his plants. Enviro-Masters operates numerous water and wastewater systems in both Marion and Citrus Counties. Its owners, Len Tabor and Buddy Morris have combined 12 years experience in water and sewer utility operations. Staff has contacted the Department of Environmental Regulation (DER) and learned that there are no outstanding notices of violation issued against the Marico System.

Although this utility will struggle through its initial years of operation, staff believes that the customers of Marico will benefit from this transfer since Mr. Blake wishes to get out of the utility business. Further, Mr. Woods has been very aggressive in preventive maintenance and made substantial efforts in keeping the utility in compliance with DER standards.

The application contains a copy of the contract for sale which includes the purchase price, terms of payment and a list of the assets purchased and the liabilities assumed. Mr. Woods provided a statement that A.P. will fulfill the commitments, obligations and representations of Marico. Marico is up to date on both regulatory assessment fees and annual reports. Mr. Blake will reimburse Mr. Woods for customer deposits belonging to both Marico and Aqua Pure. Customer deposits have been transferred to Mr. Woods. Actually, this amount will be deducted from the cash due to Mr. Blake. This adjustment resulted in the amended purchase agreement.

Based on the above, staff believes the transfer of assets from Marico Properties Inc. to A.P. Utilities; cancellation of Certificate No. 425-W and amendment of Certificate No. 380-W is in the public interest and should be approved.

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ATTACHMENT A

Marico Properties, Inc.

TERRITORY DESCRIPTION

The following described lands located in portions of Section 25, Township 16 South, Range 21 East in Marion County, Florida:

Section 25

The Southeast 1/4 of the Southeast 1/4 of said section 25,

LESS AND EXCEPT

The South. 209 feet thereof and that portion lying North and East of State Road 475-A

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ISSUE 2: What is the rate base of Marico Properties Inc. at the time of transfer?

RECOMMENDATION: The rate base, which for transfer purposes reflects the net book value, is \$ 27,936. Further, the utility should not be show caused for illegal collection of CIAC. (Von Fossen)

STAFF ANALYSIS: According to the utility's books the net book value of the system being transferred as of the date of the transfer is \$35,142. Rate base was previously established by this Commission in Docket No. 830361-W, which was an original certificate application. Rate Base was established since the utility was already in operation. According to Order No. 13292 issued on May 15, 1984 in that docket, rate base was \$35,082 as of February 28, 1983.

Staff conducted an audit of the books and records of the utility to determine the rate base (net book value) as of November 30, 1990, the date of transfer. Based upon the balances established in Docket No. 830361-W, the only needed adjustments are to update accumulated depreciation and remove land cost to reflect the long term lease. However, numerous adjustments are needed to the utility's books to reach the appropriate rate base.

As previously noted, Mr. Blake purchased the utility in 1987 and never sought Commission approval of the transfer. Apparently, he set up his books without regard to the previously approved rate base. For utility plant in service he booked a 1980 bid price for construction of the utility of \$54,799. He then recorded \$24,000 in CIAC to offset the difference between the bid price and utility plant in service on the prior owners books. Staff has adjusted utility plant in service to the proper level which has not changed since 1983 and removed the \$24,000 of CIAC and associated amortization. Mr. Blake had also booked land cost at \$15,000 based upon his estimate of the value of the long term lease. Staff has removed this amount. Additionally, accumulated depreciation was recalculated at the approved 2 1/2% rate as opposed to the 3 1/2% rate used by the utility.

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The audit revealed that Mr. Blake had collected \$2,100 of CIAC for which he had no authority. The Marico system has approved neither a service availability policy nor charges. Upon being advised of this problem Mr. Blake indicated that it was his understanding from the prior owner that he could charge an impact fee. However, he realizes that collection of such fees was inappropriate and has agreed to refund this amount to the developer. Mr. Blake has adjusted the amount due from Mr. Wood on the sale of the utility by \$2100. Mr. Wood has filed a copy of a notarized agreement, signed by both parties, whereby he will pay back this amount in monthly installments of \$175. Staff has adjusted CIAC to reflect the refund and made an associated adjustment to amortization. Since Mr. Blake acknowledges his error and agrees to refund the \$2100, we recommend that show cause proceedings not be initiated against the utility.

Staff's calculation of rate base is shown on Schedule No 1. Adjustments to rate base are itemized on Schedule No. 2. Based on the adjustments set forth herein, staff recommends that rate base for Marico Properties Inc. be established as \$27,936 as of November 30, 1990. This rate base calculation is used purely to establish the net book value of the property being transferred and does not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

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SCHEDULE NO. 1

Marico Properties Inc.

SCHEDULE OF WATER RATE BASE

As of November 30, 1990

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>STAFF ADJUSTMENTS</u>	<u>BALANCE PER STAFF</u>
Utility Plant in Service	\$54,799	(\$18,434) (1)	\$ 36,365
Land	15,000	(15,000) (2)	0
Accumulated Depreciation	(15,437)	7,008 (3)	8,429
Contributions-in-aid-of-Construction	(26,100)	26,100 (4)	0
CIAC Amortization	<u>6,880</u>	<u>(6,880)</u> (5)	<u>0</u>
TOTAL	<u>\$35,142</u>	<u>\$ 7206</u>	<u>\$27,936</u>

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SCHEDULE NO. 2

Marico Properties Inc.

SCHEDULE OF WATER RATE BASE ADJUSTMENTS

EXPLANATION

ADJUSTMENT

Utility Plant in Service To adjust plant to Order No. 13292 and to reverse the sellers adjustment to increase plant to original bid price.	(1) (\$18,434)
Land To reflect land value at zero based upon long term lease.	(2) (15,000)
Accumulated Depreciation Adjust to Order No. 13292 and update through transfer date at approved 2 1/2 % rate.	(3) 7,008
Contributions-in-aid- of-Construction To reflect CIAC refund and reverse seller's adjustment based upon difference between bid price and plant balances on prior owners books.	(4) 26,100
CIAC Amortization to reflect adjustment to CIAC	(5) (6,880)

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ISSUE 3: 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. (VON FOSSEN)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the original cost calculation. Based upon the sales agreement, Aqua Pure and Marico were both purchased for \$150,467. Aqua Pure's rate base which has been calculated at \$118,228 in Docket No. 910118-WU is also being addressed at this agenda. The acquisition adjustment resulting from the transfers of Marico and Aqua Pure would be calculated as follows:

Staff Calculated Rate Base: (Marico and Aqua Pure)	\$ 146,164
Purchase Price: (Aqua Pure and Marico)	\$ 150,467
Positive Acquisition Adjustment:	\$ 4,303

In the absence of extraordinary circumstances it has been Commission policy that a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. The circumstances in this exchange do not appear to be extraordinary; therefore, a positive acquisition adjustment should not be included in the calculation of rate base. Also, an acquisition adjustment was not requested by the applicant.

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ISSUE 4: Should A.P. Utilities, Inc. adopt and use the rates and charges approved by this Commission for Marico Properties Inc.

RECOMMENDATION: Yes, A.P Utilities Inc. should continue charging the rates and charges approved for this utility system. (VON FOSSEN)

STAFF ANALYSIS: The utility's approved rates and charges were effective May 15, 1984 pursuant to Order No. 13292 issued in Docket No. 830361-W. This Docket was the utility's original certificate application and rates have not been changed since that time. As previously noted, Marico has no service availability charges. The only approved charges are a monthly flat rate of \$9.00 and a violation reconnection charge of \$8.00 during regular working hours and \$15.00 for overtime.

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)..."

A.P. Utilities, Inc. has not requested a change in the rates and charges of the utility and staff sees no reason to change them at this time. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges. The utility will file a tariff reflecting the transfer of ownership. Staff will approve the tariff filing effective for services provided or connections made after the stamped approval date.

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ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed if no timely protests are filed to the proposed agency action issue. (VON FOSSEN)

STAFF ANALYSIS: If there are no timely protests to the proposed agency action Issue No. 2, no further action will be required and the docket should be closed.

(MARICO.RVF)