

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for authority  
to transfer facilities and  
Certificate Nos. 585-W and 503-S  
in Polk County from Village  
Water, Ltd. to AquaSource  
Utility, Inc.

DOCKET NO. 981697-WS  
ORDER NO. PSC-99-1882-PAA-WS  
ISSUED: September 21, 1999

The following Commissioners participated in the disposition of  
this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.

ORDER APPROVING TRANSFER  
AND  
NOTICE OF PROPOSED AGENCY ACTION  
ORDER TO NOT ESTABLISH RATE BASE OR  
APPROVE AN ACQUISITION ADJUSTMENT  
FOR TRANSFER PURPOSES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action discussed herein regarding the decision  
not to establish rate base and not to approve an acquisition  
adjustment for transfer purposes 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.

BACKGROUND

Village Water, Ltd. (Village Water or utility) is a Class C  
utility serving approximately 167 water customers and 32 wastewater  
customers in Polk County. The utility was initially granted  
grandfather certificates, by Order No. PSC-96-1568-FOF-WS, issued  
December 23, 1996, in Docket No. 960989-WS. According to the  
utility's 1998 annual report, annual revenues are \$104,632 for

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water and \$107,616 for wastewater. The annual report also includes annual operating expenses of \$126,276 for water and \$69,846 for wastewater, resulting in a net operating loss of \$21,644 for water and operating income of \$37,770 for wastewater.

On November 23, 1998, AquaSource Utility, Inc. (AquaSource) filed an application for transfer of Village Water's facilities and Certificates Nos. 585-W and 503-S to AquaSource.

NO SHOW CAUSE REQUIRED

Village Water closed on the transfer of its facilities to AquaSource on December 17, 1998, prior to obtaining Commission approval. Section 367.071(1), Florida Statutes, states, "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."

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. In closing on the transfer of its facilities prior to Commission approval, the utility's act was "willful" in the sense intended by Section 367.161, 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 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."

Although Village Water's failure to obtain our approval prior to transferring its facilities to AquaSource is an apparent violation of Section 367.071(1), Florida Statutes, according to a letter dated August 10, 1999, it was necessary for the parties to close on the sale as close to January 1, 1999, as possible to facilitate regulatory reporting requirements and to eliminate any requirements for filing bifurcated reports with the various regulatory agencies. Furthermore, there is a provision in the contract between Village Water and AquaSource which states that the

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sale is subject to this Commission's jurisdiction and if we do not approve the transfer, the parties will "unwind" the transaction.

Based on the foregoing, we do not find that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, Village Water shall not be required to show cause for failure to obtain Commission approval prior to transferring its facilities to AquaSource.

#### APPLICATION

The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. The application contains a check in the amount of \$1,500, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The utility provided evidence, in the form of a warranty deed, that the utility owns the land upon which its facilities are located as required by Rule 25-30.037(2)(q), Florida Administrative Code. However, the deed is not recorded in accordance with Section 695.01, Florida Statutes.

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 filing such has expired. A description of the territory served by the utility is in Attachment A of this Order, which by reference is incorporated herein. The service area has been verified as the original service area granted to Village Water by Order No. PSC-96-1568-FOF-WS, issued December 23, 1996, in Docket No. 960989-WS.

As to its technical ability to provide service, AquaSource has indicated that it will maintain and operate the system in compliance with the appropriate laws and rules. Although AquaSource is a relatively new corporation in Florida, it has experienced staff who have been providing operation, maintenance and management services for municipal and private water utilities for more than 25 years. While AquaSource currently operates and maintains one system in Florida, the company owns and operates other water and wastewater systems serving approximately 125,000 customers.

AquaSource is expanding its technical capabilities and implementing improved quality control, maintenance management,

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training and safety programs. These improvements provide direct tangible benefits to utilities owned and operated by AquaSource and municipal utilities served by AquaSource.

Furthermore, AquaSource has agreed to continue to employ the operations and clerical personnel currently employed by Village Water after the purchase. The continued employment of the personnel who operate the utility on a day to day basis will ensure that water and wastewater service will continue with the same high quality that has existed under previous ownership. Our staff contacted the Polk County Health Department, Engineering Division, for water service, and the Department of Environmental Protection (DEP), for wastewater service, and confirmed that there are no outstanding notices of violation against the utility.

In regard to its financial ability to provide service, AquaSource submitted its financial statements, along with additional information regarding its sources of annual income. AquaSource is a wholly-owned subsidiary of DQE, Inc. (DQE), which is listed on the New York Stock Exchange and has a market value in excess of \$2 billion. All acquisitions are funded through direct capital contributions from DQE, the funded parent of Duquesne Light Company, which has assets of more than \$4.6 billion and annual revenues in excess of \$1.2 billion. According to AquaSource, DQE currently intends to continue making substantial investments in AquaSource, with a goal of providing the company with the financial stability required to maintain its utility systems in accordance with Commission standards. Moreover, AquaSource has the financial resources to ensure consistent compliance with environmental regulations.

The application contains a copy of the Asset Purchase Agreement, which includes the purchase price, terms of payment, a list of the assets purchased and liabilities assumed and not assumed, and disposition of customer deposits and interest. Based on the application, there are no guaranteed revenue contracts, developer agreements, customer advances, debts of the utility, or leases that must be disposed of in association with the transfer of the utility.

According to our records, the utility is current on its regulatory assessment fees and has filed an annual report for 1998 and all prior years. Also, according to the application and conversations with AquaSource, all outstanding regulatory assessment fees due as of March 31, 1999, for the year ended December 31, 1998, have been paid by Village Water. AquaSource

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will be responsible for payment of all regulatory assessment fees due for revenues from the date of closing forward.

Based on the foregoing, we find the transfer of facilities and Certificates Nos. 585-W and 503-S from Village Water to AquaSource to be in the public interest, and it is approved. AquaSource shall provide a recorded copy of the deed within 60 days from the issuance date of this Order.

#### RATE BASE

In its application, AquaSource included calculations for rate base. According to the application, the utility has a net book value of approximately \$1,353,761 (approximately \$384,301 for water and \$969,460 for wastewater).

We conducted an audit of the utility's books and records. While the application appears to include extensive detail regarding the determination of net book value, the audit stated that, among other things, rate base could not be determined. The audit report states that utility representatives could only provide supporting documentation for \$2,135 and \$7,005 of the water and wastewater investment, respectively. Given the discrepancy between the amount which could be supported in the audit and the amount which is included in the transfer application, an original cost study shall be performed in conjunction with the next rate proceeding for the utility.

Based on the foregoing, we find that rate base at the time of the transfer shall not be established. Furthermore, AquaSource shall be on notice that it will be required to conduct an original cost study upon the filing of any rate petition. Also, the utility shall be required to maintain its books in compliance with the NARUC Uniform System of Accounts.

#### ACQUISITION ADJUSTMENT

An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. The utility did not request an acquisition adjustment in this proceeding. Since rate base for the utility at the time of the transfer cannot be established, and the utility did not request an acquisition adjustment, we do not approve an acquisition adjustment in this docket.

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RATES AND CHARGES

The utility's current rates and charges were approved by Order No. PSC-96-1568-FOF-WS, issued December 23, 1996, in Docket No. 960989-WS.

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).

Accordingly, AquaSource shall continue charging the rates and charges approved for Village Water until authorized to change by the Commission in a subsequent proceeding. The utility filed a revised tariff reflecting the change in ownership. The tariff shall be effective for services rendered or connections made on or after the stamped approval date, in accordance with Rule 25-30.475, Florida Administrative Code.

The docket shall remain open for an additional 60 days to allow our staff to verify that AquaSource has submitted a recorded deed. If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period, this Order shall become final and effective upon the issuance of a Consummating Order. Once the recorded deed has been submitted, the docket shall be closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of facilities and Certificates Nos. 585-W and 503-S from Village Water, Ltd., Post Office Box 2211, Lakeland, Florida 33806, to AquaSource Utility, Inc., 200 Corporate Center Drive, Suite 300, Coraopolis, Pennsylvania 15108, is hereby approved. It is further

ORDERED that a show cause proceeding shall not be initiated against Village Water, Ltd., for its apparent violation of Section 367.071(1), Florida Statutes. It is further

ORDERED that AquaSource Utility, Inc., shall submit a recorded copy of the deed within 60 days from the issuance date of this Order. It is further

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ORDERED that rate base for transfer purposes shall not be established. It is further

ORDERED that AquaSource Utility, Inc., shall be required to conduct an original cost study upon the filing of any rate petition. It is further

ORDERED that AquaSource Utility, Inc., shall maintain its books and records in compliance with the NARUC Uniform System of Accounts. It is further

ORDERED that no acquisition adjustment shall be included in the calculation of rate base for transfer purposes in this docket. It is further

ORDERED that AquaSource Utility, Inc., shall continue to charge the rates and charges approved for Village Water, Ltd., until authorized to change by the Commission in a subsequent proceeding. It is further

ORDERED that the tariff sheet reflecting the change in ownership shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

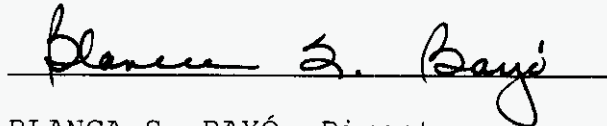
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records 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 in the event this Order becomes final, this docket shall remain open for an additional 60 days from the issuance date of this Order to allow Commission staff to verify that the recorded deed has been submitted. It is further

ORDERED that once the recorded deed has been submitted, this docket shall be closed administratively.

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By ORDER of the Florida Public Service Commission this 21st  
day of September, 1999.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

SMC

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.

As identified in the body of this order, our action regarding our decision not to establish rate base and not to approve an acquisition adjustment for transfer purposes 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, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 12, 1999. If such a petition is filed, 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. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.



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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.

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 Records and Reporting 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 or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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.

VILLAGE WATER, LTD.

Water and Wastewater Service Area

In Township 28 South, Range 24 East, Polk County, Florida:

Section 24:

The Southwest 1/4 of Southeast 1/4.

Section 25:

The West 3/4 Less the North 1/8 of Northwest 1/4.

Section 26:

The South 1/2 of the Northeast 1/4 less the North 247 feet thereof, and the Southeast 1/4.

Section 35:

The East 1/2.

Section 36:

All Less (a) the Southeast 1/4 of Southeast 1/4 and (b) that part of the Southwest 1/4 of Southeast 1/4 described as: begin at the intersection of the West line of the Southwest 1/4 of Southeast 1/4 of Section 36 with North right-of-way line of State Road 540, being 19 feet North of the Southwest corner of the Southwest 1/4 of Southeast 1/4, run thence North 519 feet, thence turn right an angle of 89 degrees from North to East and run East 587.38 feet, thence turn left an angle of 45 degrees from East to Northeast and run Northeast 331.75 feet, thence turn left an angle of 44 degrees 30 feet from Northeast to North and run North 549 feet, more or less, to the North line of the Southwest 1/4 of Southeast 1/4, thence run East 509 feet, more or less, to the Northeast corner of Southwest 1/4 of Southeast 1/4, thence South 1314 feet, more or less, to the North right-of-way line of State Road South 540, thence Westerly along said North right-of-way line 1321.84 feet to the point of beginning.

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ATTACHMENT A

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Section 26:

The North 1/2 of the Northeast 1/4 less the North 1/8 of the East 3/4 of the said Northeast 1/4; and also, the North 247 feet of the South 1/2 of the Northeast 1/4; and also, the Southeast 1/4 of the North 1/4; and also the East 1/2 of the Southwest 1/4; and also, the South 2 1/2 acres of the Southwest 1/4 of the Southwest 1/4.

Section 35:

The Northwest 1/4 and the Northeast 1/4 of the Southwest 1/4.