

State of Florida



# Public Service Commission

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**DATE:** FEBRUARY 4, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF WATER AND WASTEWATER (WALKER, REDEMANN)  
DIVISION OF LEGAL SERVICES (MCRAE, REYES)

**RE:** DOCKET NO. 981509-WS - APPLICATION FOR APPROVAL OF TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL OF ARREDONDO UTILITY COMPANY, INC., (HOLDER OF CERTIFICATES NOS. 479-S AND 549-W) IN ALACHUA COUNTY, FLORIDA, TO AQUASOURCE UTILITY, INC.

**AGENDA:** 02/16/99 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\WAW\WP\981509.RCM

**CASE BACKGROUND**

Arredondo Utility Company, Inc., (Arredondo) is a Class C utility system that provides water and wastewater service for customers in Alachua County. According to its 1997 annual report, Arredondo serves about 530 residential connections. In 1997, it recorded annual operating revenues of \$220,674 and net operating income of \$27,690.

On November 3, 1998, an application for authority to acquire majority organizational control of Arredondo was filed by AquaSource Utility, Inc. (AquaSource). AquaSource is purchasing all of the utility's outstanding stock from Partnership 97, Ltd., a Florida Limited Partnership. AquaSource is a wholly owned subsidiary of DQE, Inc. (DQE), a self-described energy services holding company with assets exceeding \$4.6 billion dollars. DQE recently acquired a number of water and wastewater systems,

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including several in Florida. Formed on June 1, 1997, AquaSource is reportedly the largest investor-owned water utility in Texas. In its mission statement, AquaSource proclaims that it is dedicated to providing clean water and superior service to its customers at the lowest practical cost.

Pursuant to the purchase agreement, AquaSource agreed to pay \$700,000 for all of Arredondo's common stock. Arredondo's most recent rate base balances were set in Docket No. 951234-WS for the year ended October 31, 1995. Per Order No. PSC-96-0728-FOF-WS, issued May 30, 1996, the approved rate base balances were \$156,994 for water and \$82,748 for wastewater. Referring to Arredondo's 1997 Annual Report, a \$264,046 rate base balance is suggested for the combined water and wastewater systems. The combined rate base balance at September 30, 1998, would be about \$254,436.

The agreement to purchase Arredondo's common stock closed on December 28, 1998, before this Commission approved the proposed transfer. This topic is discussed further in Issue 1.

The staff recommends approval of the application to transfer majority organizational control of Arredondo to AquaSource. Our review indicates that Arredondo is current with regard to submission of annual reports and payment of regulatory assessment fees.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should Arredondo Utility Company, Inc., be ordered 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. A show cause proceeding should not be initiated. (MCRAE)

**STAFF ANALYSIS:** As stated in the case background, Arredondo closed on the transfer of majority organizational control of its facilities to AquaSource on December 28, 1998, prior to obtaining Commission approval. Section 367.071(1), Florida Statutes, states that:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof..., without determination and approval of the

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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 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 Arredondo's failure to obtain Commission approval prior to transferring majority organizational control of its facilities to AquaSource is an apparent violation of Section 367.071(1), Florida Statutes, there are circumstances which appear to mitigate the utility's apparent violation. According to counsel for the utility, Arredondo needed to close on the sale of the utility as close to January 1, 1999, as possible to facilitate the regulatory reporting requirements and to eliminate any need to file bifurcated reports with the various regulatory agencies. Furthermore, there is a provision in the contract between Arredondo and AquaSource which states that the sale is subject to this Commission's jurisdiction and if the application is denied by the Commission, the parties will "unwind" the transaction.

Staff does not believe 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, staff recommends that the Commission not order Arredondo to show cause for failing to obtain Commission approval prior to transferring majority organizational control of its facilities to AquaSource.

**ISSUE 2:** Should the transfer of majority organization control of Arredondo to AquaSource be approved?

**RECOMMENDATION:** Yes, the transfer of majority organizational control should be approved. (WALKER, REDEMANN)

**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 majority organizational control. The application contains a check in the amount of \$2,250, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

The applicant has provided evidence that the utility owns or leases the land upon which its treatment facilities are presently located pursuant to Rule 25-30.037(1)(o), 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, including notice to the customers of the system that will be transferred.

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

According to the application, the present owners established the utility to support their development activities, but they are no longer interested in owning, operating, or expanding the utility systems. By contrast, AquaSource is actively involved in operating and managing utility systems. AquaSource also has the financial support of its parent company, DQE, a holding company with assets exceeding \$4.6 billion dollars. DQE's subsidiary companies provide electric service in Pennsylvania and invest in other activities that support DQE's core energy business. In 1997, DQE expanded its holdings to include water and wastewater systems. AquaSource is reported to be the largest investor-owned water utility in Texas, with employees that have worked with municipal or private water systems for more than 25 years. In its mission statement, AquaSource proclaims that it is dedicated to providing clean water and superior service to its customers at the lowest practical cost. AquaSource also agrees that it will fulfill any commitments, obligations, and representations of Arredondo with respect to utility matters.

AquaSource reported that its own investigation indicates that the acquired systems are in satisfactory condition and are complying with standards adopted by the Department of Environmental

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Protection (DEP). Upon inquiry, staff was informed by the DEP that this system does not have any outstanding notices of violation.

Based on the above, staff recommends that the transfer of majority organizational control of Arredondo from Partnership 97, Ltd., to AquaSource is in the public interest and should be approved.

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Attachment A

Arredondo Utility Company, Inc.  
Water and Wastewater Service Area  
Alachua County, Florida

A parcel of land located in Sections 21 and 28, Township 10 South, Range 19 East, Alachua County, Florida, being more particularly described as follows:

Commence at a found concrete monument marking the Southwest corner of Section 28, Township 10 South, Range 19 East, Alachua County, Florida, thence North 00°01'40" East along the West line of Section 28, a distance of 3992.10 feet to the intersection with the Southeasterly Right-of-Way line of the Seaboard Coast Line Railroad (abandoned), thence North 58°48'00" East along said Right-of-Way line a distance of 1096.25 feet to a set iron pin (#3524) and the Point of Beginning, thence continue North 58°48'00" East along said Right-of-Way line a distance of 1598.94 feet to a found concrete monument, thence South 31°08'14" East a distance of 635.98 feet to a found concrete monument, thence South 58°49'22" West a distance of 103.20 feet to a found nail and disk, thence South 31°11'26" East, a distance of 692.22 feet to a found concrete monument marking the Southwesterly corner of Lot 13 of Smithers Survey of Section 28, as record in Plat Book "A", Page 113 of the public records of Alachua County, Florida, thence South 31°14'12" East a distance of 309.90 feet to a found concrete monument, thence South 31°22'09" West a distance of 300.06 feet to a found concrete monument, thence South 52°21'24" West a distance of 172.42 feet to a found concrete monument, thence North 31°00'56" West a distance of 37.74 feet to a found concrete monument, thence South 58° 52'43" West a distance of 1273.72 feet to a set iron pin (#3524), thence North 31°08'40" West a distance of 499.27 feet to a found concrete monument, thence continue North 31°08'40" West a distance of 43.40 feet to a set iron pin (#3524), thence North 58°41'37" East a distance of 138.39 feet to a set iron pin (#3524), thence North 31°09'25" West a distance of 638.06 feet to a set iron pin (#3524), thence North 58°45'49" East a distance of 76.28 feet to a set iron pin (#3524), thence North 31°09'23" West a distance of 574.11 feet to the Point of Beginning, containing 65.414 acres more or less.

That part of Section 21, Township 10 South, Range 19 East, Alachua County, Florida, being more particularly described as follows:

Commence at the northwest corner of the southeast 1/4 of said Section 21, for the point of beginning; thence from the point of beginning run S. 89 deg. 49 min. 25 sec. east, a distance of 961.10 feet to the southwesterly right of way line of county road number

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SW 24C; thence run S. 24 deg. 48 min. 51 sec. east along said southwesterly right of way line a distance of 715.90 feet; thence run S. 89 deg. 22 min. 57 sec. west, a distance of 422.10 feet; thence run S. 21 deg. 26 min. 10 sec. east, a distance of 841.68 feet to the northwesterly right of way line of state road number 24; thence run S. 58 deg. 24 min. 36 sec. west along the said northwesterly right of way line of state road number 24, a distance of 1,029.64 feet, thence run N. 29 deg. 16 min. 22 sec. west, a distance of 322.37 feet; thence run S. 66 deg. 00 min. 27 sec. west, a distance of 117.10 feet; thence run S. 58 deg. 25 min. 11 sec. west, a distance of 405.64 feet; thence N. 00 deg. 05 min. 49 sec. west, a distance of 50.9 feet; thence S. 89 deg. 26 min. 11 sec. west, a distance of 200.00 feet; thence S. 00 deg. 05 min. 49 sec. east, a distance of 78.45 feet; thence S. 58 deg. 25 min. 11 sec. west, a distance of 117.15 feet; thence S. 00 deg. 15 min. 49 sec. west, a distance of 93.6 feet; thence N. 58 deg. 25 min. 11 sec. east, a distance of 100.00 feet; thence S. 31 deg. 33 min. 09 sec. east, a distance of 365.00 feet to the northwesterly line of state road number 24, thence S. 58 deg. 26 min. 51 sec. west along the said northwesterly line of state road 24, a distance of 150.0 feet; thence run N. 31 deg. 33 min. 09 sec. west, a distance of 364.88 feet; thence run S. 58 deg. 25 min. 20 sec. west, a distance of 749.24 feet; thence run N. 00 deg. 03 min. 09 sec. west a distance of 267.42; thence run N. 00 deg. 17 min. 42 sec. east, a distance 1,351.99 feet; thence run N. 00 deg. 20 min. 53 sec. west, a distance of 930.0 feet; thence run N. 89 deg. 31 min. 50 sec. east, a distance of 1,198.0 feet; thence run S. 00 deg. 20 min. 53 sec. east a distance of 65.0 feet; thence run N. 89 deg. 31 min. 58 sec. east, a distance of 120.38 feet to the point of beginning.

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**ISSUE 4:** Should the rates and charges approved for this utility be continued?

**RECOMMENDATION:** Yes, the rates and charges approved for this utility system should be continued. (WALKER)

**STAFF ANALYSIS:** The utility's current rates and charges for water service were approved on July 8, 1997, to implement the 1997 rate index, with an offsetting adjustment to reflect full amortization of certain rate case costs.

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)..."

AquaSource 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 has filed a revised tariff reflecting the change in the issuing officer due to a transfer of majority organizational control. Staff will approve the tariff filing effective for services provided or connections made after the stamped approval date.