

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-

DATE: AUGUST 26, 1999

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

FROM: DIVISION OF WATER AND WASTEWATER (REHWINKEL, REDEMANN)
DIVISION OF LEGAL SERVICES (CIBULA, CROSSBY) *ose rre JON S.M.C. JB H.OMA*

RE: DOCKET NO. 982017-SU - APPLICATION FOR TRANSFER OF FACILITIES AND CERTIFICATE NO. 268-S IN LEE COUNTY FROM SOUTH SEAS UTILITY COMPANY TO AQUASOURCE UTILITY, INC. COUNTY: LEE

AGENDA: 09/07/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUES 3 AND 4 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\982017SU.RCM

CASE BACKGROUND

South Seas Utility Company (South Seas or utility) is a Class B utility serving approximately 65 wastewater customers in Lee County. The utility was initially granted Wastewater Certificate No. 268-S by Order No. 8851, issued April 27, 1979, in Docket No. 780586-S. The utility's 1998 annual report on file with the Commission lists annual revenues of \$499,754. The annual report also includes annual operating expenses of \$540,747 resulting in a net operating loss of \$40,993.

On December 30, 1998, South Seas filed an application for transfer of wastewater facilities and Certificate No. 268-S to AquaSource Utility, Inc. South Seas closed on the transfer of its facilities to AquaSource on February 26, 1999, prior to obtaining Commission approval. Staff addresses this matter in Issue 1.

DOCUMENT NUMBER-DATE

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SPD-RECORDS/REPORTING

DISCUSSION OF ISSUES

ISSUE 1: Should South Seas Utility Company 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. (CIBULA)

STAFF ANALYSIS: As stated in the case background, South Seas closed on the transfer of its facilities to AquaSource on February 26, 1999, 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 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 South Seas' failure to obtain Commission approval prior to transferring its facilities to AquaSource is an apparent violation of Section 367.071(1), Florida Statutes, according to a letter dated July 6, 1999, there is a provision in the contract between South Seas and AquaSource which states that the sale is subject to this Commission's jurisdiction and if the Commission does not approve the transfer, the parties will "unwind" the transaction.

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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 South Seas to show cause for failing to obtain Commission approval prior to transferring its facilities to AquaSource.

ISSUE 2: Should the transfer of facilities and Wastewater Certificate 268-S from South Seas Utility Company to AquaSource Utility, Inc. be approved?

RECOMMENDATION: Yes, the transfer of facilities and Wastewater Certificate 268-S from South Seas Utility Company to AquaSource Utility, Inc., should be approved. The utility should provide a recorded copy of the deed within 60 days from the issuance date of the Order. (REHWINKEL, REDEMANN)

STAFF ANALYSIS: As stated in the case background, South Seas applied for a transfer of its wastewater facilities and Wastewater Certificate No. 268-S in Lee County to AquaSource Utility, Inc., on December 30, 1998. 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 \$1,500, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence, in the form of a warranty deed, that the utility owns the land upon which the utility's facilities are located as required by Rule 2530.037(2)(q), Florida Administrative Code. However, the warranty deed on file has not been recorded. Therefore, staff is recommending that the utility be required to provide a recorded copy of the deed within 60 days from the issuance date of the Order.

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. A description of the territory served by the utility is appended to this memorandum as Attachment A. The service area has been verified as the service area granted to South Seas initially through Orders Nos. 8851 and 8851-A issued April 27, 1979 and May 9, 1979, respectively. The utility amended its territory in two additional dockets since its initial certification. The service area has been verified as the service area granted to South Seas in the most recent amendment of territory docket by Order No. PSC-93-1487-FOF-SU, issued October 12, 1993, in Docket No. 930673-SU.

With regard to the purchaser's technical ability, AquaSource has indicated that it will maintain and operate the system in compliance with the appropriate laws and rules. Even though 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, training and safety programs. These improvements provide direct tangible benefits to utilities owned and operated by AquaSource and municipal utilities served by AquaSource. Further, the Buyer has agreed to continue to employ the operations and clerical personnel currently employed by the Seller 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 services will continue with the same high quality of service that has existed under previous ownership.

In addition to 25 years of experience in operating water and wastewater utilities, AquaSource has the financial resources to ensure consistent compliance with environmental regulations. Regarding the financial ability of AquaSource, the buyer supplied financial statements to staff, along with additional information regarding the sources of annual income. AquaSource is a wholly-owned subsidiary of DQE, Inc. DQE 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, Inc., 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 the Buyer, DQE currently intends to continue to make 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.

AquaSource has several additional applications for transfer pending with the Commission. According to the application for this transfer, the utility's wastewater system is subject to a Consent Order entered into with the Department of Environmental Protection (DEP) on October 29, 1998. By letter dated August 18, 1999, AquaSource is aware of the DEP concerns and has discussed the proposed solution to the reject and wet weather storage issues. Also, AquaSource has offered alternatives to the original Consent Order and expects to receive a new Consent Order "which (AquaSource) will enter into directly with DEP and which will provide for 12 months to complete the project." Therefore, according to AquaSource, "there is no outstanding default in compliance with the existing Consent Order that should have any adverse effect on the Commission's approval of this transfer."

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

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assumed and disposition of customer deposits and interest. Based on the application, there are no guaranteed revenue contracts, developer agreements, customer advances, debt of the utility, and 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 through December 1998 and has filed an annual report for 1998 and all prior years. Also, according to the application and conversations with the Buyer, the Seller will be responsible for payment of all regulatory assessment fees through closing and will make payment for those fees within two months of the date of closing. As stated in Issue 1, the parties closed on this matter February 26, 1999. It should be noted that, as of the date of this recommendation, even though the 1999 regulatory assessment fees are not considered due by this Commission until March 31, 2000, the regulatory assessment fees for January and February 1999 have not been paid by the Seller as was agreed upon by the two parties. Further, according to the application, AquaSource will be responsible for payment of all regulatory assessment fees due for revenues from the date of closing forward.

Based on the above, staff recommends that the transfer of facilities and certificates from South Seas to AquaSource should be approved. In addition, staff is recommending that the utility be required to provide a recorded copy of the deed within 60 days from the issuance date of the Order.

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Attachment A

AquaSource Utility, Inc.
South Seas System
Wastewater Service Territory
Lee County

DOCKET NO. 780586-S, ORDER NO. 8851, 8851-A

Township 45 South, Range 21 East, Lee County, Florida:

All that part of Sections 15, 22, 23, 26, 27, Captiva Island, Lee County, Florida lying southerly from Redfish Pass: lying easterly of Gulfview, according to a map or plat thereof, recorded in Plat Book 3 at page 8 of the public records of Lee County; lying northerly of Binder Avenue, as shown on the plat of G.W. Bryant's Addition to Gulfview recorded in Plat Book 3 at page 21 of said public records; and lying westerly and northerly of the following described boundary: From the northwest corner of Lot 70 of F.A. Lane's Bayview Subdivision, according to a map or plat thereof recorded in Plat Book 3 at page 75 of said public records, run North 02 degrees, 55 minutes 20 seconds East along the said line of Munson Street for 305 feet to a steel pin marking the intersection with the northeasterly line of Binder Avenue: thence run North 71 degrees 18 minutes 20 seconds West along said northeasterly line for 250 feet to the southeasterly corner of lands conveyed by deed recorded in Official Record Book 503 at page 33 of said public records and the POINT OF BEGINNING of the herein described boundary. FROM SAID POINT OF BEGINNING, run North 02 degrees 55 minutes 20 seconds East along the easterly boundary of said lands for 235.67 feet to a concrete monument marking the intersection with the southerly boundary of lands conveyed by deed recorded in Deed Book 130 at page 21 of said public records; thence run North 85 degrees 47 minutes 00 seconds West along said southerly boundary for 71.60 feet to a concrete monument; thence run North 02 degrees 47 minutes 50 seconds East along the westerly boundary of said lands for 450.32 feet to a concrete monument; thence run South 85 degrees 50 minutes 20 seconds East along the northerly boundary of said lands for 500 feet more or less to the waters of Pine Island Sound and the end of the herein described boundary. Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone.

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DOCKET NO. 910858-SU, ORDER NO. 25242

A tract or parcel of land lying in Section 26, Township 45 South, Range 21 East, Captiva Island, Lee County, Florida which tract or parcel is described as follows:

Section 26, Township 45 South, Range 21 East: From the northwest corner of said Section 26, run South $08^{\circ}29'50''$ West along the west line of said section for 3,250 feet, more or less, to an intersection with the northeast right-of-way line of a public road being 30 feet wide; thence run South $16^{\circ}50'00''$ East along said northeasterly right-of-way line for 775 feet, more or less, to an intersection with the southerly right-of-way line of Captiva Drive S.W. (formerly Binder Avenue); thence run South $77^{\circ}10'20''$ East along said line for 122.78 feet, more or less, to the Point of Beginning. From said Point of Beginning continue South $77^{\circ}10'22''$ East along the southerly right-of-way line for 200 feet, more or less, to a jog in said southerly right-of-way line; thence run South $12^{\circ}49'40''$ West along said jog for 2.10 feet, more or less, to the southerly line of Captiva Drive S.W. (formerly Binder Avenue); thence run South $71^{\circ}18'20''$ East along said line for 718.03 feet, more or less; thence run South $02^{\circ}55'20''$ West for 183.30 feet, more or less; thence run South $18^{\circ}41'20''$ West for 5.00 feet; thence run North $71^{\circ}18'20''$ West for 951.36 feet, more or less; thence run North $18^{\circ}41'40''$ East for 3.89 feet, more or less; thence run North $12^{\circ}49'40''$ East for 160 feet, more or less, to the Point of Beginning.

Bearings hereinabove mentioned are assumed, based on the west line of said Section 26, Township 45 South, Range 21 East to bear South $08^{\circ}29'50''$ West.

DOCKET NO. 930673-SU, ORDER NO. PSC-93-1487-FOF-SU

A tract or parcel of land lying in Section 26, Township 45 South, Range 21 East, Captiva Island, Lee County, Florida, which tract or parcel is described as follows:

Section 26, Township 45 South, Range 21 East: Commencing at the intersection of the Mean High Water Line of the Gulf of Mexico with the south line of Section 26, Township 45 South, Range 21 East,; thence run east along said section line for a distance of 1150 feet more or less to the easterly right-of-way (R.O.W.) line of Captiva Drive run North for 40.0 feet to the Point of Beginning. From said Point of Beginning continue North for 225.00 feet; then run N $89^{\circ}58'30''$ E departing said easterly R.O.W. line for 50.00 feet; thence run north 50.00 feet to an intersection with the southerly R.O.W. line of Andy Rossi Lane; thence run N $89^{\circ}58'30''$ E along said southerly R.O.W. line for 345 feet, more or less, to an intersection with the Mean High Water Line of Pine Island Sound; thence meandering southwesterly along said Mean High Water Line for

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290 feet, more or less to an intersection with the line that bears N 89°58'30" E from said Point of Beginning; thence run S 89°58'30" W along said line for 315 feet, more or less to the Point of Beginning.

Bearings hereinabove mentioned are based on the east R.O.W. line of Captiva Drive to bear North.

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ISSUE 3: What is the rate base of South Seas at the time of transfer?

RECOMMENDATION: The rate base of South Seas, which for transfer purposes reflects the net book value, is \$1,204,683. AquaSource should be put on notice that the accumulated depreciation amount will be adjusted in any future rate proceeding to reflect the appropriate depreciation rate pursuant to Rule 25-30.140, Florida Administrative Code. (REHWINKEL)

STAFF ANALYSIS: According to the application, and based on our records, rate base was previously established by this Commission in Docket No. 881518-SU, which was a rate proceeding. According to Order No. 22094, issued on October 26, 1989 in that docket, rate base was \$1,165,041. The applicant has provided adjustments to update this rate base to the date of the transfer.

Staff conducted an audit of the utility's books and records to determine rate base at the time of transfer. The audit reveals that the utility misclassified two of its plant additions. The auditor recomputed accumulated depreciation after adjusting the plant balances for two misclassifications. Based on Rule 25-30.140, Florida Administrative Code, the utility's accumulated depreciation is overstated by \$111,912. However, in accordance with Commission practice, no adjustment was made by the auditor given that this docket is not a rate proceeding. Staff agrees with the auditor and recommends no adjustments be made for this docket. Nevertheless, AquaSource should be put on notice that the accumulated depreciation amount will be adjusted in any future rate proceeding to reflect the appropriate depreciation rate pursuant to Rule 25-30.140, Florida Administrative Code.

Staff's calculation of rate base is shown on Schedule No. 1. Staff recommends that rate base for South Seas be established as \$1,204,683. This rate base calculation is used purely to establish the net book value of the property being purchased and does not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

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SCHEDULE NO. 1

SOUTH SEAS UTILITY COMPANY
SCHEDULE OF WASTEWATER RATE BASE
As of March 28, 1999

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>STAFF ADJUSTMENTS</u>	<u>BALANCE PER STAFF</u>
Utility Plant in Service	\$ 2,419,656		\$ 2,419,656
Land	\$ 60,000		\$ 60,000
Accumulated Depreciation	\$ 1,072,633		\$ 1,072,633
Contributions-in-aid-of-Construction	\$ 406,355		\$ 406,355
CIAC Amortization	\$ <u>204,015</u>	<u> </u>	\$ <u>204,015</u>
TOTAL	\$ 1,204,683		\$ 1,204,683

ISSUE 4: Should an acquisition adjustment be approved?

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

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. The acquisition adjustment resulting from the transfer of South Seas would be calculated as follows:

Purchase Price:	\$ 1,250,000.00
Staff Calculated Rate Base:	\$ 1,204,682.84
Positive Acquisition Adjustment:	\$ 45,317.16

In the absence of extraordinary circumstances, it has been Commission policy that a subsequent purchase of a utility system at a premium or discount should 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 5: Should the rates and charges approved for South Seas be continued?

RECOMMENDATION: AquaSource should continue charging the rates approved for South Seas. The tariff should 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, provided the customers have received notice. (REHWINKEL)

STAFF ANALYSIS: Rates and charges were approved in the utility's last rate proceeding by Order No. 22094, issued on October 26, 1989, in Docket No. 881518-SU. The utility's current rates and charges are a result of several pass-through and price index rate adjustments made since October 26, 1989.

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)...

The rates are reflected below:

WASTEWATER MONTHLY RATES

Residential Service

Meter Size

5/8 x 3/4"	\$ 26.17
1"	\$ 65.41
1 1/2"	\$ 130.82

Gallonge Charge \$ 3.60 per 1,000 gallons
(10,000 gallon max.)

General Service

Meter Size

5/8 x 3/4"	\$	26.17
1"	\$	65.41
1 1/2"	\$	130.82
2"	\$	209.30
3"	\$	457.88
4"	\$	784.93
8"	\$	1,635.81

Gallongage Charge \$4.32 per 1,000 gallons
 (No Max.)

MISCELLANEOUS SERVICE CHARGES

Initial Connection	\$	15.00
Normal Reconnection	\$	15.00
Violation Reconnection	\$	Actual cost
Premises Visit (in lieu of disconnect)	\$	10.00

DEPOSITS

<u>Meter Size</u>	<u>Residential</u>	<u>General Service</u>
	2 x the monthly minimum charge	2 x the monthly minimum charge
5/8" x 3/4"		
1"	N/A	N/A
1 1/2"	N/A	N/A
2"	N/A	N/A
4"	N/A	N/A
8"	N/A	N/A

Based on the above, staff recommends that AquaSource continue charging the rates and charges approved for South Seas. The tariff should 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, provided the customers have received notice.

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ISSUE 6: Should this docket be closed?

RECOMMENDATION: No. The docket should remain open for an additional 60 days from the issuance date of the Order to allow 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, the order should become final and effective upon the issuance of a consummating order. Once the recorded deed has been submitted, the docket should be closed administratively. (CIBULA)

STAFF ANALYSIS: The docket should remain open for an additional 60 days from the issuance date of the Order to allow 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, the order should become final and effective upon the issuance of a consummating order. Once the recorded deed has been submitted, the docket should be closed administratively.