

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval
of transfer of majority
organizational control of
Arredondo Utility Company, Inc.,
holder of Certificate Nos. 479-S
and 549-W in Alachua County, to
AquaSource Utility, Inc.

DOCKET NO. 981509-WS
ORDER NO. PSC-99-0481-FOF-WS
ISSUED: March 8, 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 DECLINING TO INITIATE A SHOW CAUSE PROCEEDING, APPROVING
APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL,
AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

On November 3, 1998, AquaSource Utility, Inc. (AquaSource) filed an application for the transfer of majority organizational control of Arredondo Utility Company, Inc., (Arredondo or utility) from Partnership 97, Ltd., a Florida Limited Partnership, (Partnership 97) to AquaSource. Arredondo is a Class C utility providing water and wastewater service to approximately 530 residential customers in Alachua County. According to its 1997 annual report, the utility recorded annual operating revenues of \$220,674 and net operating income of \$27,690.

Arredondo closed on the transfer of majority organizational control of its facilities to AquaSource on December 28, 1998, prior to obtaining Commission approval. This will be discussed further in this Order.

DOCUMENT NUMBER-DATE

02952 MAR-89

FPSC-RECORDS/REPORTING

According to the purchase agreement, AquaSource paid \$700,000 for all of Arredondo's common stock. A rate base of \$156,994 for water and \$82,748 for wastewater was established for the utility for the year ended October 31, 1995, pursuant to Order No. PSC-96-0728-FOF-WS, in Docket No. 951234-WS, issued May 30, 1996. Based on Arredondo's 1997 annual report, a \$264,046 rate base is suggested for the combined water and wastewater systems. The combined rate base as of September 30, 1998, would be approximately \$254,436.

NO SHOW CAUSE REQUIRED

As noted above, 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 commission that the proposed sale, assignment, or transfer is in the public interest...

Section 367.161(1), Florida Statutes, authorizes us 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 our 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 our 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 a letter dated January 29, 1999, Arredondo needed to close on the sale of the utility as

close to January 1, 1999, as possible to facilitate 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 we deny the application, the parties will "unwind" the transaction.

Based on the foregoing, we do not find that the utility's 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, Arredondo shall not be required to show cause for failing to obtain Commission approval prior to transferring majority organizational control of its facilities to AquaSource.

APPLICATION

Except as previously discussed, the application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. The application included the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

Pursuant to Rule 25-30.037(3)(i), Florida Administrative Code, the utility provided proof of ownership or continued use of the land upon which its facilities are located. A description of the territory served by the utility is in Attachment A of this Order, which by reference is incorporated herein.

Pursuant to Rule 25-30.030, Florida Administrative Code, the utility furnished proof of compliance with the noticing requirements. No objections to the notice of the application were received, and the time for filing such has expired.

According to the application, the present owners are no longer interested in owning, operating, or expanding the utility. By contrast, AquaSource is actively involved in operating and managing utility systems. Moreover, AquaSource has the financial support of its parent company, DQE, Inc. (DQE), an energy services holding company with assets exceeding \$4.6 billion. 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.

In regard to AquaSource's technical ability to provide service, the company 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 twenty-five years. The application stated that AquaSource is dedicated to providing clean water and superior service to its customers at the lowest practical cost. AquaSource also stated, pursuant to Rule 25-30.037(3)(f), Florida Administrative Code, that it will fulfill the commitments, obligations, and representations of Arredondo with regard to utility matters.

According to the application, AquaSource performed an investigation of the Arredondo systems pursuant to Rule 25-30.037(3)(h), Florida Administrative Code. AquaSource stated that the systems are in satisfactory condition and in compliance with the standards set by the Florida Department of Environmental Protection (DEP). Our staff contacted the DEP and confirmed that the systems do not have any outstanding notices of violation.

Based on the foregoing, we find that the transfer of majority organizational control of Arredondo from Partnership 97 to AquaSource to be in the public interest, and it is approved.

RATE BASE

Section 367.071(5), Florida Statutes, authorizes us to establish rate base for a utility when the sale, assignment, or transfer of the utility is approved. However, this transfer of majority organizational control of Arredondo from Partnership 97 to AquaSource was accomplished by an acquisition of stock. Stock price has no direct relationship to a utility's established rate base. Therefore, we do not find it necessary in this docket to establish rate base.

RATES AND CHARGES

The utility's current rates and charges 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, states that the company which operates the utility business after a change of ownership or control "must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission)." Accordingly, we find that

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AquaSource must adopt and use the rates, classification and regulations of Arredondo.

The utility filed a revised tariff reflecting the transfer of majority organizational control. The tariff filing shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

No further action is required, and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of Arredondo Utility Company, Inc., 6500 Southwest Archer Road, Gainesville, Florida 32608, from Partnership 97, Ltd., a Florida Limited Partnership, 5517 Southwest 69th Terrace, Gainesville, Florida 32608, to AquaSource Utility, Inc., 16810 Barker Springs, Suite B215, Houston, Texas 77084, is hereby approved. It is further

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

ORDERED that rate base shall not be established at this time. It is further

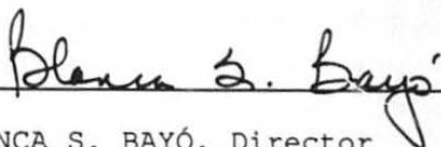
ORDERED that AquaSource Utility, Inc., shall continue to charge the rates and charges approved in Arredondo Utility Company, Inc.'s tariff. It is further

ORDERED that the tariff reflecting the transfer of majority organizational control 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 this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 8th
day of March, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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.

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 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.