

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of majority organizational control of Jasmine Lakes Utilities Corporation, holder of Certificates Nos. 83-S and 110-W in Pasco County, from James M. Dreher to AquaSource Utility, Inc.

DOCKET NO. 981780-WS
ORDER NO. PSC-99-0482-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 December 1, 1998, AquaSource Utility, Inc. (AquaSource) filed an application for approval of the transfer of majority organizational control of Jasmine Lakes Utilities Corporation (Jasmine Lakes or utility) from Mr. James M. Dreher to AquaSource. Jasmine Lakes is a Class B utility providing service to 1,581 water and 1,569 wastewater customers in Pasco County. Jasmine Lakes' service area is located in the Northern Tampa Bay Water-Use Caution Area as designated by the South Florida Water Management District. According to its 1997 annual report, the utility's operating revenue was \$448,471 for water and \$358,384 for wastewater and net operating income was \$37,849 for water and \$58,851 for wastewater.

Jasmine Lakes closed on the transfer of majority organizational control of its facilities on January 4, 1999, prior

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to obtaining Commission approval. This will be discussed further in this Order.

A rate base of \$167,966 for water and \$438,860 for wastewater was established for the utility pursuant to Order No. PSC-93-1675-FOF-WS, in Docket No. 920148-WS, issued November 18, 1993. According to the utility's 1997 annual report, rate base would be \$381,539 for water and \$583,527 for wastewater.

The Stock Purchase Agreement (agreement) submitted with the application states that AquaSource purchased the utility's stock in a cash transaction. The purchase price was \$3,500,000; however, the agreement states that this figure will be adjusted to reflect the value of Net Working Capital and other unknown assets or liabilities expenditures that may occur after the closing.

NO SHOW CAUSE REQUIRED

As noted above, Jasmine Lakes closed on the transfer of majority organizational control of its facilities to AquaSource on January 4, 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 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 Jasmine Lakes' 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 25, 1999, Jasmine Lakes 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 requirement to file bifurcated reports with the various regulatory agencies. Furthermore, there is a provision in the contract between Jasmine Lakes 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 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, Jasmine Lakes 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 evidence that the utility owns the land upon which the utility's 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 notice requirements. No objections to the notice of the application have been received, and the time for filing such has expired.

The application stated that the transfer is in the public interest because AquaSource's business is operating water and wastewater utilities. According to the application, AquaSource has an excellent reputation with the Texas regulatory agencies, which

is where most of its systems are located. Additionally, the application contained a statement, pursuant to Rule 25-30.037(3)(f), that AquaSource will fulfill the commitments, obligations and representations of Jasmine Lakes with regard to utility matters. In contrast, the application stated that Mr. James M. Dreher is no longer interested in continuing to own and operate the utility.

As to its financial ability to provide service, AquaSource submitted the company's consolidated financial statement, along with additional information regarding its sources of annual income. AquaSource is a wholly-owned subsidiary of DQE, Inc. (DQE). DQE, the funded parent of Duquesne Light Company, is listed on the New York Stock Exchange and has a market value in excess of \$2 billion. Moreover, DQE has assets of more than \$4.6 billion and annual revenues in excess of \$1.2 billion. All acquisitions by AquaSource are funded through direct capital contributions from DQE. According to AquaSource, DQE intends to continue to make substantial investments in AquaSource with the 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 make any necessary future improvements to the utility and to ensure consistent compliance with environmental regulations.

In regard to AquaSource's technical ability to provide service, its parent company, DQE, owns and operates water and wastewater systems serving approximately 125,000 customers. Although AquaSource is a relatively new organization, it has experienced staff who have been providing operation, maintenance, and management services to municipal and private water utilities for more than twenty-five years. AquaSource is expanding its technical capabilities and implementing improved quality control, maintenance management, training and safety programs. These improvements will provide direct tangible benefits to the utilities owned and operated by AquaSource.

The utility is current on its regulatory assessment fees and has annual reports on file with this Commission. The application stated that Jasmine Lakes will be responsible for filing the utility's annual report and regulatory assessment fees for 1998.

According to the application, AquaSource's representative performed an investigation of the Jasmine Lakes system pursuant to Rule 25-30.037(3)(h), Florida Administrative Code. AquaSource

stated that the plant facilities appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). Our staff contacted the DEP and confirmed that there are no outstanding notices of violation.

Based on the foregoing, we find the transfer of majority organizational control of Jasmine Lakes from Mr. James M. Dreher to AquaSource to be in the public interest, and it is approved.

RATE BASE

Section 367.071(5), Florida Statutes, authorizes us to establish the rate base for a utility when the sale, assignment, or transfer of the utility is approved. However, this transfer of majority organizational control from Mr. James M. Dreher 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.

ACQUISITION ADJUSTMENT

An acquisition adjustment results when the purchase price differs from the original cost calculation. We routinely make determinations regarding acquisition adjustments in cases involving the transfer of certificates, assets, or facilities because the purchase price is considered when determining whether the transfer is in the public interest. Conversely, acquisition adjustments are generally not considered in stock transfers because the price of stock has no regulatory relationship to a utility's established rate base. Because the assets are not actually being sold and the value will remain the same after the transfer of majority organizational control, we find that an acquisition adjustment shall not be calculated in this docket.

RATES AND CHARGES

The utility's rates were effective July 11, 1998, in an administrative price index proceeding. 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)."

ORDER NO. PSC-99-0482-FOF-WS
DOCKET NO. 981780-WS
PAGE 6

Accordingly, we find that AquaSource must adopt and use the rates, classification and regulations of Jasmine Lakes.

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 Jasmine Lakes Utilities Corporation, 1518 U.S. Highway 19, Suite C, Holiday, Florida 34691, from James M. Dreher, 1518 U.S. Highway 19, Suite C, Holiday, Florida 34691, 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 Jasmine Lakes Utilities Corporation for its apparent violation of Section 367.071(1), Florida Statutes. It is further

ORDERED that Jasmine Lakes Utilities Corporation shall file a 1998 annual report and remit 1998 regulatory assessment fees. It is further

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

ORDERED that an acquisition adjustment shall not be calculated at this time. It is further

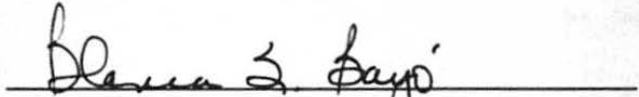
ORDERED that AquaSource Utility, Inc., shall continue to charge the rates and charges approved in Jasmine Lakes Utilities Corporation's tariff. It is further

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.

ORDER NO. PSC-99-0482-FOF-WS
DOCKET NO. 981780-WS
PAGE 7

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

A handwritten signature in cursive script, reading "Blanca S. Bayó", is written over a solid horizontal line.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

SAM

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.

Jasmine Lakes Utilities Corporation

Water and Wastewater Service Area

Pasco County

In Township 25 South, Range 16 East, Pasco County, Florida.

That portion of Sections 14, 15 and 16 being more particularly described as follows:

Commence at the Northwest corner of said Section 15; thence run South $0^{\circ}14'40''$ West, a distance of 1680.03 feet; thence South $89^{\circ}48'12''$ East, a distance of 24.08 feet for a Point of Beginning; thence continue South $89^{\circ}48'12''$ East, a distance of 1284.63 feet; thence North $0^{\circ}14'40''$ East, a distance of 334.62 feet; thence South $89^{\circ}44'34''$ East, a distance of 1308.74 feet; thence South $89^{\circ}54'36''$ East, a distance of 2623.16 feet; thence South $0^{\circ}21'11''$ West, a distance of 1328.55 feet; thence South $89^{\circ}43'05''$ East, a distance of 643.97 feet; thence South $03^{\circ}16'30''$ West, a distance of 2641.28 feet; thence North $89^{\circ}41'55''$ West, a distance of 475.00 feet; thence North $89^{\circ}54'36''$ West, a distance of 2650.37 feet; thence North $0^{\circ}15'00''$ East, a distance of 1645.51 feet; thence North $89^{\circ}53'51''$ West, a distance of 2617.11 feet; thence North $89^{\circ}45'23''$ West, a distance of 609.96 feet to the Easterly right-of-way line of U.S. #19 (SR #55); thence 2101.65 feet along said right-of-way line and along an arc of a curve to the left, said curve having a radius of 5803.87 feet and a chord of 2090.19 feet which bears North $17^{\circ}54'00''$ East, to the Point of Beginning.