

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for authority
to transfer facilities of South
Seas Utility Company and
Certificate No. 268-S in Lee
County to AquaSource Utility,
Inc.

DOCKET NO. 982017-SU
ORDER NO. PSC-99-1910-PAA-SU
ISSUED: September 27, 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 DECLINING TO INITIATE
A SHOW CAUSE PROCEEDING
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER ESTABLISHING RATE BASE AND DECLINING TO INCLUDE AN
ACQUISITION ADJUSTMENT IN THE CALCULATION
OF RATE BASE FOR TRANSFER PURPOSES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the actions discussed herein, regarding the
establishment of rate base and our decision not to include an
acquisition adjustment in the calculation of rate base for transfer
purposes are 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

On December 30, 1998, South Seas Utility Company (South Seas
or utility) filed an application for transfer of wastewater
facilities and Certificate No. 268-S to AquaSource Utility, Inc.
(AquaSource). South Seas is a Class B utility which serves

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FPSC-RECORDS/REPORTING

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approximately 65 customers in Lee County. The utility was granted Certificate No. 268-S by Order No. 8851, issued April 27, 1979, in Docket No. 780586-S.

South Seas filed its application for approval of the transfer to AquaSource on December 30, 1998.

NO SHOW CAUSE REQUIRED

South Seas closed on the transfer of its facilities to AquaSource on February 26, 1999, prior to obtaining Commission approval. Section 367.071, 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 [C]ommission 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 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 July 6, 1999, there is a provision in the contract between South Seas and AquaSource which states that the sale is subject to our jurisdiction and that 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, South Seas shall not be required to show cause for failure to obtain Commission approval prior to transferring its facilities to AquaSource.

APPLICATION

Except as discussed previously, the application is in compliance with Section 367.071, Florida Administrative Code, and other pertinent states and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$1,500, pursuant to Rule 25-30.020, Florida Administrative Code.

Rule 25-30.037(2)(q), Florida Administrative Code, requires the utility to provide "evidence that the utility owns the land upon which the utility treatment facilities are located, or a copy of an agreement which provides for the continued use of the land." South Seas provided evidence in the form of a warranty deed that the utility owns the land upon which its facilities are located. However, the warranty deed has not been recorded in accordance with Section 695.01, Florida Statutes.

The utility provided proof of compliance with the noticing provisions of Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system being transferred. No objections to the application have been received, and the time for filing such has expired.

The application contains a copy of the Asset Purchase Agreement, which includes the purchase price, terms of payment, a list of 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, debt of the utility, or leases that must be disposed of in association with this transfer.

The utility is current with regard to payment of its regulatory assessment fees through December 1998 and has filed an annual report for 1998 and all prior years. According to AquaSource's application, South Seas 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. The regulatory assessment fees are not considered due by this Commission until March 31, 2000. However, we note that the regulatory assessment fees for January and February of 1999 have not been paid by South Seas as was agreed upon between the parties. Furthermore, according to the application, AquaSource will be responsible for payment of all regulatory assessment fees from the date of closing forward.

With regard to its technical ability to provide service, AquaSource is a relatively new corporation in Florida. However, AquaSource has experienced employees who have been providing operation, maintenance and management services for municipal and private water utilities for more than 25 years. AquaSource currently operates and maintains one system in Florida and owns and operates other water and wastewater systems serving approximately 125,000 customers in other states.

AquaSource is expanding its technical capabilities and implementing improved quality control, maintenance management, training and safety programs. Such efforts provide direct tangible benefits to utilities owned and operated by AquaSource and municipal utilities served by AquaSource. Furthermore, AquaSource has agreed to retain the current operations and clerical personnel employed by South Seas, which will help to ensure that water and wastewater services will continue with the same high quality of service that has existed under previous ownership.

In regard to its financial ability to provide service, it appears that AquaSource has the financial resources to ensure continued operation of the utility. AquaSource is a wholly-owned subsidiary of DQE, Inc. (DQE). DQE, which is listed on the New York Stock Exchange, 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 the information provided, DQE intends to continue making substantial investments in AquaSource in order to provide the company with the financial stability required to maintain its utility systems in accordance with Commission standards.

It should be noted that the utility's wastewater system is subject to a Consent Order entered into with the Department of

Environmental Protection (DEP) on October 29, 1998. AquaSource stated that it is aware of DEP's concerns and has discussed a proposed solution to the reject and wet weather storage issues raised by DEP. AquaSource has also offered alternatives to the original Consent Order and expects to receive a new Consent Order which it will enter into directly with DEP. The new Consent Order provides for twelve months to complete the project.

Based on the foregoing, we find that the transfer of facilities and Certificate No. 268-S from South Seas to AquaSource is in the public interest, and it is approved. The territory the utility is authorized to serve is in Attachment A of this Order, which by reference is incorporated herein. South Seas shall provide a recorded copy of the deed for the land upon which the utility's facilities area located within 60 days from the issuance date of this Order.

RATE BASE

Rate base was previously established as \$1,165,041 by Order No. 22094, issued October 26, 1989, in Docket No. 881518-SU. Adjustments have been made to update this rate base to the date of the transfer.

An audit of the utility's books and records was conducted to determine rate base at the time of transfer. According to the audit, the utility misclassified two of its plant additions. Accumulated depreciation was recalculated after adjusting the plant balances for the misclassifications.

Based on Rule 25-30.140, Florida Administrative Code, the utility's accumulated depreciation is overstated by \$111,912. In accordance with Commission practice, no adjustment was made since this is not a rate proceeding. AquaSource is put on notice, however, that the accumulated depreciation amount shall be adjusted in any future rate proceeding to reflect the appropriate depreciation rate, pursuant to Rule 25-30.140, Florida Administrative Code.

Based on the foregoing, we find rate base to be \$1,204,683, as of the date of transfer. Our calculation of rate base is shown on Schedule No. 1 of this Order, which by reference is incorporated herein. The rate base calculation is used solely to establish the net book value of the property being transferred. The calculation does not include the usual ratemaking adjustments of working capital calculations and used and useful adjustments.

ACQUISITION ADJUSTMENT

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

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

In the absence of extraordinary circumstances, it has been our practice that the purchase of a utility system at a premium or discount does not affect the rate base calculation. The circumstances in this exchange do not appear to be extraordinary. Moreover, AquaSource has not requested an acquisition adjustment. Based on the foregoing, a positive acquisition adjustment shall not be included in the calculation of rate base for transfer purposes.

RATES AND CHARGES

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 became effective pursuant to several pass-through and price index rate adjustments made since October 26, 1989. The current rates are shown below.

Wastewater
Monthly Rates

Residential Service

<u>Meter Size</u>	<u>Rate</u>
5/8" x 3/4"	\$ 26.17
1"	\$ 65.41
1-1/2"	\$ 130.82
<u>Gallonage Charge</u>	
Per 1,000 Gallons (10,000 Gallon Max)	\$ 3.60

General Service

<u>Meter Size</u>	<u>Rate</u>
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

Gallonage Charge

Per 1,000 Gallons (No Max)	\$ 4.32
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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>
5/8" x 3/4"	2 x the monthly minimum charge	2 x the monthly minimum charge
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

Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a utility to adopt and use the rates, classifications and regulations of the former owner unless authorized to change by this Commission. AquaSource has not requested to change the rates and charges, and we see no reason to change them at this time. AquaSource shall continue to charge the rates and charges approved in South Seas' tariff until authorized to change by this Commission in a subsequent proceeding. AquaSource has submitted tariff sheets reflecting the change in ownership. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

If no protest is received within the 21-day protest period, this Order shall become final and effective upon the issuance of a Consummating Order. 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 our staff to verify that the recorded deed has been submitted. Once the recorded deed has been submitted, this docket shall be closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of facilities and Certificate No. 268-S from South Seas Utility Company, Post Office Box 194, Captiva, Florida 33924, to AquaSource Utility, Inc., 200 Corporate Center Drive, Suite 300, Coraopolis, Pennsylvania 15108, is hereby approved. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained in Attachment A and Schedule No. 1 attached hereto are incorporated herein by reference. It is further

ORDERED that a show cause proceeding shall not be initiated against South Seas Utility Company 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 warranty deed within 60 days from the issuance date of this Order. It is further

ORDERED that rate base shall be \$1,204,683, as of the date of transfer. It is further

ORDERED that the accumulated depreciation amount shall be adjusted in any future rate proceeding to reflect the appropriate depreciation rate. It is further

ORDERED that an acquisition adjustment shall not be included in the calculation of rate base for transfer purposes. It is further

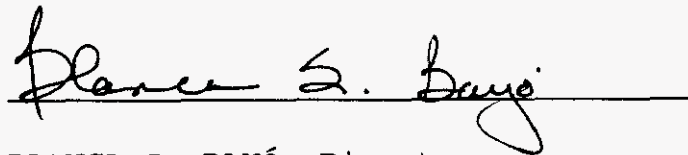
ORDERED that AquaSource Utility, Inc. shall continue to charge the rates and charges approved in South Seas Utility Company's tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that the tariff sheet reflecting the change in ownership shall be effective for service 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. Once the recorded deed has been submitted, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 27th day of September, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)
SMC/ALC

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 actions regarding the establishment of rate base and our decision not to include an acquisition adjustment in the calculation of rate base for transfer purposes are 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 18, 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.

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.

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°55'20" 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°18'20" 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°55'20" 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°47'00" West along said southerly boundary for 71.60 feet to a concrete monument; thence run North 02°47'50" East along the westerly boundary of said lands for 450.32 feet to a concrete monument; thence run South 85°50'20" 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.

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 North $89^{\circ}58'30''$ East 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 North $89^{\circ}58'30''$ East 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 290 feet, more or less to an intersection with the line that bears North $89^{\circ}58'30''$ East from said Point of Beginning; thence run South $89^{\circ}58'30''$ West 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.

SCHEDULE NO. 1

SOUTH SEAS UTILITY COMPANYSCHEDULE OF WASTEWATER RATE BASEAs of March 28, 1999

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>COMMISSION ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</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