

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for  
transfer of facilities and  
Certificate No. 424-W in  
Highlands County from Lake  
Josephine Water to AquaSource  
Utility, Inc.

DOCKET NO. 991001-WU  
ORDER NO. PSC-00-1389-PAA-WU  
ISSUED: July 31, 2000

The following Commissioners participated in the disposition of  
this matter:

J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.  
LILA A. JABER

ORDER APPROVING TRANSFER OF CERTIFICATE NO. 424-W AND ORDERING  
UTILITY TO FILE AN APPLICATION TO AMEND ITS SERVICE TERRITORY  
AND  
NOTICE OF PROPOSED AGENCY ACTION  
ORDER ESTABLISHING RATE BASE, AND DECLINING TO INCLUDE A POSITIVE  
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 establishing rate base  
and declining to include a positive 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

Lake Josephine Water (Lake Josephine or utility) is a Class C  
utility serving approximately 474 water customers in Highlands  
County. On September 9, 1982, the Board of County Commissioners of  
Highlands County adopted a resolution which bestowed jurisdiction  
over privately owned water and/or wastewater utilities in the  
County upon this Commission. By Order No. 12989, issued February

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FPSC-RECORDS/REPORTING

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13, 1984, the utility was granted Certificate No. 424-W and initial rates were established.

The utility's 1998 annual report lists annual revenues of \$103,889. The annual report also includes annual operating expenses of \$97,731 resulting in a net operating income of \$6,158.

On August 2, 1999, Lake Josephine filed an application for the transfer of its water facilities and Certificate No. 424-W to AquaSource Utility, Inc. (AquaSource). Lake Josephine closed on the transfer of its facilities to AquaSource on June 10, 1999, prior to obtaining Commission approval.

NO SHOW CAUSE REQUIRED

Transfer Prior to Commission Approval

As stated in the case background, Lake Josephine closed on the transfer of its facilities to AquaSource on June 10, 1999, prior to obtaining our approval. Section 367.071(1), Florida Statutes (1998), states:

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 . . . .

This statute was subsequently revised, effective June 11, 1999, to allow closing prior to our approval provided that it is made contingent upon our approval.

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 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 Lake Josephine's failure to obtain our approval prior to transferring its facilities to AquaSource is an apparent violation of Section 367.071(1), Florida Statutes, there are circumstances that appear to mitigate the utility's apparent violation. The parties were concerned that after having done extensive research regarding the system's status, and negotiating an agreement for transfer, any additional passage of time might have a detrimental effect on the agreement. Moreover, Mr. Donald Pugh, the owner of Lake Josephine, was anxious to get out of the utility business. Furthermore, there is a provision in the Asset Purchase Agreement between Lake Josephine and AquaSource which states that if the Regulatory Authority (FPSC) does not approve the transfer, the parties will "unwind" the transaction.

In this instance, the apparent violation of Section 367.071, Florida Statutes, does not rise to a level which warrants the initiation of a show cause proceeding. Therefore, we find it unnecessary to require Lake Josephine to show cause for failing to obtain our approval prior to transferring its facilities to AquaSource.

#### Failure to Maintain Books and Records

Rule 25-30.115(1), Florida Administrative Code, states that "Water and wastewater utilities shall, effective January 1, 1998, maintain their accounts and records in conformity with the 1996 NARUC Uniform Systems of Accounts adopted by the National Association of Regulatory Utility Commissioners."

During our staff's audit of Lake Josephine's books and records, we learned that the utility had not reconciled its books and records with Order No. PSC-95-1044-FOF-WU, issued August 22, 1995 in Docket No. 950020-WU, a staff assisted rate case. That Order required Lake Josephine to keep its books and records in accordance with the 1984 National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA). Our staff's actual adjustments to the utility's rate base is discussed in the rate base portion of this Order.

We find that Lake Josephine's failure to maintain its books and records in accordance with NARUC USOA is in apparent violation

of Rule 25-30.115, Florida Administrative Code, and Order No. PSC-95-1044-FOF-WS. Nevertheless, Lake Josephine has ceased to operate the utility because AquaSource has acquired its facilities and is currently operating the utility. In light of these circumstances, we decline to initiate a show cause proceeding because the primary purpose of a show cause proceeding is to bring a utility into compliance with our orders, rules, and statutes. To do so in this instance would serve no purpose since the utility is being transferred to another party.

As to the current state of Lake Josephine's books and records, it is our understanding that the books and records have been transferred to AquaSource and that AquaSource is in the process of bringing the utility's books and records into compliance with the 1996 NARUC USOA. Furthermore, AquaSource has stated in conversations with our staff and in a letter received on June 28, 2000, that its the books and records will be in compliance with 1996 NARUC USOA by December 2000.

For the foregoing reasons, Lake Josephine shall not be ordered to show cause, in writing within 21 days, why it should not be fined up to \$5,000 per day for failure to maintain its accounts and records in conformance with the NARUC USOA, in apparent violation of Rule 25-30.115(1), Florida Administrative Code and Order No. PSC-95-1044-FOF-WU.

#### Serving Outside Certificated Territory

Section 367.045(2), Florida Statutes, states that "A utility may not . . . extend its service outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the commission." However, Lake Josephine has been serving customers outside of its certificated territory since at least August 22, 1995, the issuance date of Order No. PSC-95-1044-FOF-WU. Order No. PSC-95-1044-FOF-WU states that

The utility is currently providing service to customers outside the approved service territory. Therefore, the utility is in violation of Section 367.045(2), Florida Statutes. . . . LJW [Lake Josephine] shall file an application for an amendment of its certificate of authorization to extend its service territory, within 90 days of the issuance of this Order.

In this instance, Lake Josephine has ceased to operate the utility because AquaSource has acquired its facilities and is currently operating the utility. In light of these circumstances, a show cause proceeding shall not be initiated because the purpose of a show cause proceeding is to bring a utility into compliance with the our orders, rules, and statutes. To do so in this instance would serve no purpose since the utility is being transferred to another party. In addition, on June 28, 2000, our staff received a letter from AquaSource stating that it will file an amendment application within 60 days of the effective date of this Order to include this territory. Therefore, we find that Lake Josephine shall not be ordered to show cause for its apparent violation of Section 367.045(2), Florida Statutes and Order No. PSC-95-1044-FOF-WS and that AquaSource shall be ordered to file an amendment application within 60 days of the effective date of this Order to include the territory being served outside of its certificated area.

TRANSFER OF CERTIFICATE NO. 424-W

As stated in the case background, Lake Josephine applied for a transfer of its water facilities and Water Certificate No. 424-W in Highlands County to AquaSource Utility, Inc., on August 2, 1999. Lake Josephine's 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. Lake Josephine has provided evidence, in the form of a warranty deed, that the utility owns the land upon which its facilities are located, as required by Rule 25-30.037(2)(q), 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. 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 Order as Attachment A, which by reference is incorporated herein. Lake Josephine's service area was granted by Order No. 12989, issued February 13, 1984, in Docket No. 830083-W. However, according to the former owner, the utility is currently serving outside its certificated service area. As previously noted, AquaSource shall file an amendment application within 60 days of

the effective date of this Order to correct its certificated service area.

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 an 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 three systems in Florida under our jurisdiction, the company owns and operates other water and wastewater systems serving approximately 135,000 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, AquaSource has agreed to continue to employ the operations and clerical personnel currently employed by Lake Josephine. 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 the previous ownership.

In addition to 25 years of experience in operating water and wastewater utilities, we find that AquaSource has the financial resources to ensure consistent compliance with environmental regulations. Regarding the financial ability of AquaSource, the buyer supplied financial statements to our 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 AquaSource, 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 our standards.

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 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 the transfer of the utility.

According to our records, the utility requested and was granted an extension for filing its 1999 annual report. The 1999 annual report is due to be filed with the Commission on June 30, 2000. The utility's extension request cited complications arising from preparing a consolidated 1999 annual report for AquaSource's various systems, many of which have been acquired in the last year as its basis for requesting an extension. The utility paid its 1999 regulatory assessment fees in the amount of \$2,828 on March 31, 1999 and is current with its regulatory assessment fees through December 1999.

Based on the above, we find that the transfer of the facilities and certificate from Lake Josephine to AquaSource is in the public interest and it shall therefore be approved. AquaSource shall file an amendment of territory application within 60 days of the effective date of this Order. AquaSource shall be responsible for the filing of the 1999 annual report and the payment of the 1999 regulatory assessment fees.

#### RATE BASE

According to the application, and based on our records, rate base was previously established in Docket No. 950020-WU, which was a staff-assisted rate case. According to Order No. PSC-95-1044-FOF-WU, issued on August 22, 1995 in that docket, rate base was \$34,432.

Our staff conducted an audit of the utility's books and records to determine rate base at the time of transfer. The audit revealed that the utility did not reconcile its books and records with Order No. PSC-95-1044-FOF-WU. Therefore, we have made the necessary adjustments to reconcile the utility's balance with the above-referenced order and to bring the utility's books and records up to date.

The plant-in-service account was understated by \$247,514. We have adjusted this account by \$247,514 to reflect the reconciliation to the above-referenced order and to reflect the

proper amount of plant retirements. The total adjustment to plant-in-service is \$247,514 resulting in a plant balance of \$520,859. Similarly, to reconcile the land value with the last rate case order, we have decreased land by \$4,900. The resulting land value is \$20,100.

In addition, the utility did not book imputed contributions-in-aid-of-construction (CIAC) in the amount of \$97,167 pursuant to Order No. PSC-95-1044-FOF-WU for the period ending December 31, 1994. Also, an adjustment in the amount of \$12,962 was necessary to reflect additions to CIAC since the last rate case. Therefore, CIAC was adjusted by \$110,129 to reflect the appropriate amount of CIAC at the time of transfer. The related amortization of CIAC is \$62,567. An adjustment to this account in the amount of \$5,912 is necessary to reflect the appropriate balance.

We have calculated accumulated depreciation after adjusting the plant balances for the above-mentioned discrepancies. Accumulated depreciation was understated by \$943. Accordingly, we have increased the accumulated depreciation balance by \$943 to reflect the depreciation associated with the above adjustments to plant-in-service and to reflect the appropriate accumulated depreciation balance at the time of transfer.

Based on all the above, we find it appropriate to establish rate base for Lake Josephine as \$178,226. This rate base calculation is used solely 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. Our calculation of rate base is shown on Schedule No. 1, which by reference is incorporated herein.

#### ACQUISITION ADJUSTMENT

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 Lake Josephine would be calculated as follows:

Purchase Price:	\$ 200,000.00
Commission Calculated Rate Base:	\$ 178,226.00
Positive Acquisition Adjustment:	\$ 21,774.00



In the absence of extraordinary circumstances, it has been our policy that a subsequent purchase of a utility system at a premium or discount should not affect the rate base calculation. See In re: Application for transfer of Certificate No. 456-S from Del Vera Limited Partnership to Coolidge-Ft. Myers Realty Limited Partnership d/b/a Heron's Glen Utilities in Lee County, Order No. PSC-00-0758-PAA-WU, issued April 17, 2000, in Docket No. 991056-SU; In re: Application for transfer of Certificates Nos. 469-W and 358-S in Bay County from Bayside Utility Services, Inc., Order No. PSC-99-1818-PAA-WS, issued September 20, 1999, in Docket No. 981403-WS. The circumstances in this exchange do not appear to be extraordinary. Therefore, a positive acquisition adjustment shall not be included in the calculation of rate base. Also, a positive acquisition adjustment was not requested by the applicant.

RATES AND CHARGES

Rates and charges were approved in the utility's last rate proceeding by Order No. PSC-95-1044-FOF-WU, issued August 22, 1995, in Docket No. 950020-WU. The utility's rates and charges have been increased each year since the staff-assisted rate case through price index/pass-through filings with the most recent increase effective August 12, 1999.

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:

WATER MONTHLY RATES

Residential Service, Multi-Residential, and General Service

<u>Meter Size</u>	<u>Base Facility Charge</u>
5/8 x 3/4"	\$ 8.60
3/4"	\$ 12.90
1"	\$ 21.48

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1 1/2"	\$ 42.98
2"	\$ 68.76
3"	\$ 137.53
4"	\$ 214.89
6"	\$ 429.77
Gallage Charge per 1,000 gallons	\$ 1.64

Based on the above, AquaSource shall continue charging the rates and charges approved for Lake Josephine until authorized to change by this Commission in a subsequent proceeding. The tariff shall 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.

DOCKET CLOSURE

This docket shall remain open to allow AquaSource to file an application for an amendment within 60 days of the effective date of this Order. If no timely protest is received to the proposed agency action issues upon the expiration of the protest period, this Order shall become final and effective upon the issuance of a Consummating Order.

Based on the foregoing, it is

ORDERED that the transfer of Certificate No. 424-W from Donald Pugh d/b/a/ Lake Josephine Water, 760 Henscratch Road, Lake Placid, Florida 33852, to AquaSource Utility, Inc., 11100 Brittmoore Park, Houston, Texas 77041, is hereby approved. It is further

ORDERED that the rate base for the wastewater system at the time of transfer shall be \$178,226. It is further

ORDERED that the \$21,774 positive 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 for Lake Josephine Water, until authorized to change by this Commission in a subsequent proceeding. It is further

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ORDERED that the tariff reflecting the change in ownership 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 AquaSource Utility, Inc. shall file an application to amend its certificated service area within 60 days of the effective date of this Order to include the territory identified in the body of this Order. It is further

ORDERED that Attachment A and Schedule No. 1 attached hereto are incorporated herein by reference. 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 to allow 60 days for AquaSource Utility, Inc. to submit an application for amendment of its certificated service territory.

By ORDER of the Florida Public Service Commission this 31st day of July, 2000.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

DTV

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 establishing rate base and declining to include a positive acquisition adjustment in the calculation of rate base for transfer purposes are preliminary in nature. Any person whose substantial interests are affected by the actions 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 August 21, 2000. 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

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notice of appeal must be in the form specified in Rule 9.900(a),  
Florida Rules of Appellate Procedure.

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ATTACHMENT A

AQUASOURCE UTILITY, INC.

HIGHLANDS COUNTY

WATER SERVICE AREA

SERVING THE LAKE JOSEPHINE SUBDIVISION

(Docket No. 830083-W, Order No. 12989)

Township 35 South, Range 29 East

Section 34

The North 1/2 of the SE 1/4 and that portion of the SW 1/4 lying South of the shoreline of Lake Josephine.

Section 34

The NW 1/4 of the SW 1/4.

SCHEDULE NO. 1

LAKE JOSEPHINE WATER

SCHEDULE OF WATER RATE BASE

As of June 30, 1999

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>COMMISSION ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant-in- Service	\$ 273,345	\$ 247,514	\$ 520,859
Land	\$ 25,000	\$ (4,900)	\$ 20,100
Accumulated Depreciation	\$ (133,723)	\$ (943)	\$ (134,666)
Contributions-in- aid-of-Construction	\$ (180,505)	\$ (110,129)	\$ (290,634)
CIAC Amortization	<u>\$ 56,655</u>	<u>\$ 5,912</u>	<u>\$ 62,567</u>
TOTAL	\$ 40,772	\$ 137,454	\$ 178,226