

State of Florida



Public Service Commission

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AUG 19 AM 11:39
REPORTING AND
PROPOSING

DATE: AUGUST 19, 1999

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

FROM: DIVISION OF WATER AND WASTEWATER (REHWINKEL, REDEMANN)
DIVISION OF LEGAL SERVICES (CIBULA) *S.M.C. PJ*

RE: DOCKET NO. 981697-WS - APPLICATION FOR TRANSFER OF
FACILITIES AND CERTIFICATES NOS. 585-W AND 503-S IN POLK
COUNTY FROM VILLAGE WATER, LTD. TO AQUASOURCE UTILITY,
INC.
COUNTY: POLK

AGENDA: 08/31/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR
ISSUE 4 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\981697WS.RCM

CASE BACKGROUND

Village Water, Ltd. (Village Water or utility) is a Class C utility serving approximately 167 water customers and 32 wastewater customers in Polk County. The utility was initially granted grandfather certificates in Docket No. 960989-WS, by Order No. PSC-96-1568-FOF-WS, issued December 23, 1996, Water Certificate No. 585-W and Wastewater Certificate No. 503-S. The utility's 1998 annual report on file with the Commission lists annual revenues of \$104,632 for water and \$107,616 for wastewater. The annual report also includes annual operating expenses of \$126,276 for water and \$69,846 for wastewater resulting in a net operating loss of \$21,644 and operating income of \$37,770 for water and wastewater, respectively.

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FPSC-RECORDS/REPORTING

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On November 23, 1998, Village Water submitted an application for transfer of water and wastewater facilities and Certificates Nos. 585-W and 503-S to AquaSource Utility, Inc.

Village Water closed on the transfer of its facilities to AquaSource on December 17, 1998, prior to obtaining Commission approval. This matter will be addressed in Issue 1.

DISCUSSION OF ISSUES

ISSUE 1: Should Village Water, Ltd., 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, Village Water closed on the transfer of its facilities to AquaSource on December 17, 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 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 Village Water's failure to obtain Commission approval prior to transferring its facilities to AquaSource is an apparent violation of Section 367.071(1), Florida Statutes, staff believes a show cause proceeding is not warranted and should not be initiated. According to a letter dated August 10, 1999, the parties needed to close on the sale as close to January 1, 1999, as possible to facilitate regulatory reporting requirements and to eliminate any requirements for filing bifurcated reports with the various regulatory agencies. Furthermore, there is a provision in the contract between Village Water and AquaSource which states that

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the sale is subject to this Commission's jurisdiction and if the Commission does not approve the transfer, the parties will "unwind" the transaction. Staff also notes that, while it does not apply to this utility because the closing occurred on December 17, 1998, Section 367.071(1), Florida Statutes, changed effective June 11, 1999, to allow a utility to close on the sale of its facilities prior to Commission approval if the contract is made contingent upon Commission approval.

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 Village Water to show cause for failure to obtain Commission approval prior to transferring its facilities to AquaSource.

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ISSUE 2: Should the transfer of facilities and Water Certificate 585-W and Wastewater Certificate 503-S from Village Water, Ltd. to AquaSource Utility, Inc. be approved?

RECOMMENDATION: Yes, the transfer of facilities and Water Certificate 585-W and Wastewater Certificate 503-S from Village Water, Ltd. to AquaSource Utility, Inc., should be approved. AquaSource should be required to provide a recorded copy of the deed within 60 days from the issuance date of the Order issued as a result of action taken at this agenda conference. (REHWINKEL, REDEMANN)

STAFF ANALYSIS: As stated in the case background, Village Water, Ltd. applied for a transfer of its water and wastewater facilities, including Water Certificate No. 585-W and Wastewater Certificate No. 503-S in Polk County to AquaSource Utility, Inc., on November 23, 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 25-30.037(2)(q), Florida Administrative Code. However, the deed is not recorded in accordance with Section 695.01, Florida Statutes. Therefore, AquaSource should be required to provide a recorded copy of the deed within 60 days from the issuance date of the Order issued as a result of action taken at this agenda conference.

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 original service area granted to Village Water in Order No. PSC-96-1568-FOF-WS, issued December 23, 1996.

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 Utility, Inc. 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. Staff has contacted the Polk County Health Department, Engineering Division for water service and the Department of Environmental Protection (DEP) for wastewater service and has learned that there are no outstanding notices of violation against the utility.

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, 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 and has filed an annual report for 1998 and all prior years. Also, according to the application and conversations with the Buyer, all outstanding regulatory assessment fees due as of March 31, 1999 for the year ended December 31, 1998 have been paid by Village Water. Village Water will be responsible

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for payment of all regulatory assessment fees through closing and will make payment for those fees within two months of the date of closing. AquaSource will be responsible for payment of all regulatory assessment fees due for revenues from the date of closing forward. As stated in Issue 1, the parties closed on this matter on December 17, 1998.

Based on the above, staff recommends that the transfer of facilities and certificates from Village Water to AquaSource should be approved. In addition, AquaSource should be required to provide a recorded copy of the deed within 60 days from the issuance date of the Order issued as a result of action taken at this agenda conference.

VILLAGE WATER, LTD.

Water and Wastewater Service Area

In Township 28 South, Range 24 East, Polk County, Florida:

Section 24:

The Southwest 1/4 of Southeast 1/4.

Section 25:

The West 3/4 Less the North 1/8 of Northwest 1/4.

Section 26:

The South 1/2 of the Northeast 1/4 less the North 247 feet thereof, and the Southeast 1/4.

Section 35:

The East 1/2.

Section 36:

All Less (a) the Southeast 1/4 of Southeast 1/4 and (b) that part of the Southwest 1/4 of Southeast 1/4 described as: begin at the intersection of the West line of the Southwest 1/4 of Southeast 1/4 of Section 36 with North right-of-way line of State Road 540, being 19 feet North of the Southwest corner of the Southwest 1/4 of Southeast 1/4, run thence North 519 feet, thence turn right an angle of 89 degrees from North to East and run East 587.38 feet, thence turn left an angle of 45 degrees from East to Northeast and run Northeast 331.75 feet, thence turn left an angle of 44 degrees 30 feet from Northeast to North and run North 549 feet, more or less, to the North line of the Southwest 1/4 of Southeast 1/4, thence run East 509 feet, more or less, to the Northeast corner of Southwest 1/4 of Southeast 1/4, thence South 1314 feet, more or less, to the North right-of-way line of State Road South 540, thence Westerly along said North right-of-way line 1321.84 feet to the point of beginning.

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ATTACHMENT A

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Section 26:

The North 1/2 of the Northeast 1/4 less the North 1/8 of the East 3/4 of the said Northeast 1/4; and also, the North 247 feet of the South 1/2 of the Northeast 1/4; and also, the Southeast 1/4 of the North 1/4; and also the East 1/2 of the Southwest 1/4; and also, the South 2 1/2 acres of the Southwest 1/4 of the Southwest 1/4.

Section 35:

The Northwest 1/4 and the Northeast 1/4 of the Southwest 1/4.

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ISSUE 3: What is the rate base of Village Water at the time of transfer?

RECOMMENDATION: The rate base of Village Water could not be determined. AquaSource should be put on notice that an original cost study will be required upon the filing of any rate petition. Also, AquaSource should be required to maintain its books and records in compliance with the NARUC Uniform System of Accounts. (REHWINKEL)

STAFF ANALYSIS: In its application, AquaSource included calculations for rate base. According to the application, the utility has a net book value of approximately \$1,353,761 (approximately \$384,301 for water and \$969,460 for wastewater). These amounts are included in the application for transfer as Exhibit D.

Staff conducted an audit of the utility's books and records. While the application appears to include extensive detail regarding the determination of net book value, the staff audit stated that, among other things, rate base could not be determined. The audit report states that utility representatives could only provide supporting documentation for \$2,135 and \$7,005 of the water and wastewater investment. Staff believes that given the discrepancy between the amount which could be supported in the audit and the amount which is included in the transfer application, an original cost study should be performed in conjunction with the next rate proceeding for the utility.

Based on the above, staff recommends that rate base at the time of the transfer not be set. Staff further recommends that AquaSource be put on notice that it will be required to conduct an original cost study upon the filing of any rate petition. Staff also recommends that the utility be required to maintain its books in compliance with the NARUC Uniform System of Accounts.

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ISSUE 4: Should an acquisition adjustment be approved?

RECOMMENDATION: An acquisition adjustment cannot be determined since rate base cannot be established at this time. (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 utility did not request an acquisition adjustment in this proceeding. Therefore, since rate base for the utility at the time of the transfer cannot be established, and the utility did not request an acquisition adjustment, staff recommends that no acquisition adjustment be approved in this docket.

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ISSUE 5: What are the appropriate rates and charges for Village Water?

RECOMMENDATION: AquaSource should continue charging the rates approved for Village Water. The tariff should be effective for services provided 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: The utility's current rates and charges were approved by Order No. PSC-96-1568-FOF-WS issued December 23, 1996.

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

Meter Size

5/8 x 3/4" \$ 11.94

Gallonage Charge \$ 2.32 per 1,000 gallons

General Service

Meter Size

5/8 x 3/4" \$ 11.94

1" \$ 29.85

1 1/2" \$ 59.70

2" \$ 95.52

3" \$191.04

4" \$298.50

8" \$955.20

Gallonage Charge \$2.32 per 1,000 gallons

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METER TEST DEPOSIT

5/8" x 3/4" meter	\$ 15.00
1" and 1 1/2" meter	\$ 20.00
2" and over meter	Actual Cost

MISCELLANEOUS SERVICE CHARGES

Initial Connection	\$ 15.00
Normal Reconnection	\$ 15.00
Violation Reconnection	\$ 25.00
Premises Visit (in lieu of disconnect)	\$ 15.00
Temporary Absence Disconnection	\$ 15.00
Theft of Service	\$100.00
Late Charge	\$ 3.00
Returned Check Charge	\$ 20.00
Fire Hydrant Charge	\$500.00
Reconnect Charge	\$ 25.00

DEPOSITS

<u>Meter Size</u>	<u>Residential</u>	<u>General Service</u>
3/4" meter	\$25.00	\$ 50.00
1"	N/A	\$ 50.00
1 1/2"	N/A	\$100.00
2"	N/A	\$125.00
4"	N/A	\$150.00
8"	N/A	\$300.00

WASTEWATER

MONTHLY RATES

Residential Service

No residential Wastewater Service is available at this time

General Service

Meter Size

5/8 x 3/4"	\$ 39.63
1"	\$ 99.08
1 1/2"	\$ 198.15
2"	\$ 317.04
3"	\$ 634.08
4"	\$ 990.75
8"	\$3,170.40

Gallage Charge \$3.61 per 1,000 gallons

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MISCELLANEOUS SERVICE CHARGES

Initial Connection	\$ 15.00
Normal Reconnection	\$ 15.00
Violation Reconnection	\$ 25.00
Premises Visit (in lieu of disconnect)	\$ 15.00
Temporary Absence Disconnection	\$ 15.00
Theft of Service	\$100.00
Late Charge	\$ 3.00
Returned Check Charge	\$ 20.00
Fire Hydrant Charge	\$500.00
Reconnect Charge	\$ 25.00

DEPOSITS

<u>Meter Size</u>	<u>Residential</u>	<u>General Service</u>
3/4" meter	\$N/A	\$ 50.00
1"	N/A	\$100.00
1 1/2"	N/A	\$150.00
2"	N/A	\$200.00
4"	N/A	\$450.00
8"	N/A	\$900.00

Based on the above, staff recommends that AquaSource continue charging the rates and charges approved for Village Water. The tariff should be effective for services provided 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 to allow staff to verify that AquaSource has submitted a recorded deed. If no timely protest is received to the proposed agency action issue 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 to allow staff to verify that AquaSource has submitted a recorded deed. If no timely protest is received to the proposed agency action issue 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.