

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK
FPSC

DATE: APRIL 24, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (REDEMANN)
OFFICE OF THE GENERAL COUNSEL (CROSBY, HELTON)

RRR in a PD
Matt JDJ

RE: DOCKET NO. 021142-WU - APPLICATION FOR AMENDMENT OF
CERTIFICATE NO. 441-W TO EXTEND WATER SERVICE AREA FOR 48
ESTATES SYSTEM IN LAKE COUNTY BY AQUASOURCE UTILITY, INC.
COUNTY: LAKE

AGENDA: 05/06/2003 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\021142.RCM

CASE BACKGROUND

AquaSource Utility, Inc. (AquaSource, or utility) is a Class A utility. AquaSource owns systems in Lee, Polk, Lake, and Highlands County. In addition, AquaSource owns the stock of Ocala Oaks Utilities, Inc., Jasmine Lakes Utilities, Inc., Arredondo Utilities, Inc., Crystal River Utilities, Inc., and Lake Suzy Utilities, Inc. AquaSource serves about 4,694 water customers and about 3,768 wastewater customers in systems that are regulated by the Florida Public Service Commission. The system that is the subject of this amendment application is the 48 Estates water system that serves approximately 75 water customers in Lake County. The utility is seeking to add about nine customers that were connected outside its existing service area within the past 4 years. This utility is in the St. Johns River Water Management District (SJRWMD); however, the system is too small to be regulated

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by the SJRWMD, therefore it does not have a Consumptive Use Permit. All systems in the SJRWMD are in a water use caution area.

By Order No. PSC-03-0163-FOF-WS, issued on February 3, 2003, in Docket No. 021023-WS, a transfer of majority organizational control of AquaSource was approved. Philadelphia Suburban Corporation is the parent company. For the AquaSource systems, the utility's 2002 annual reports lists combined water and wastewater revenues of \$1,041,767 and a net operating loss of \$193,461. For the 48 Estates water system, the utility's 2002 annual report lists annual revenues of \$25,909 and annual operating expenses of \$15,717, resulting in a net operating income of \$10,192.

While staff would normally process this application administratively if no protests had been filed, this case is being brought to the attention of the Commission because the utility is currently serving customers in the proposed territory, which is addressed in Issue 1. The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should AquaSource Utility, Inc. be ordered to show cause in writing within 21 days, why it should not be fined for its apparent violation of Section 367.045, Florida Statutes?

RECOMMENDATION: No. A show cause proceeding should not be initiated. (CROSBY, HELTON)

STAFF ANALYSIS: As stated in the case background, AquaSource is serving nine customers outside of its certificated territory. Section 367.045(2), Florida Statutes, states, in part:

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.

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 serving outside of its certificated territory without obtaining an amended certificate of authorization, 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 AquaSource's failure to obtain Commission approval prior to serving outside of its certificated service area is an apparent violation of Section 367.045(2), Florida Statutes, there are circumstances which appear to mitigate the utility's apparent violation. The nine customers AquaSource is serving outside of its territory are located immediately adjacent to AquaSource's service area. Seven of the customers have been served since September 28, 1999, and two have been served since October 4, 2000. When the customers were connected, AquaSource believed they were within its service area due to their location. In addition, there is no other utility in the area interested in serving these customers.

Believing that the nine customers were located within its service area, AquaSource has paid all the necessary regulatory assessment fees for the additional area. Furthermore, upon becoming aware that the customers were not located within its certificated territory, AquaSource filed an application for amendment of its certificate to include the additional area.

Staff does not believe that the apparent violation of Section 367.045, 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 AquaSource to show cause for failing to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

ISSUE 2: Should AquaSource's application to amend Certificate No. 441-W granted?

RECOMMENDATION: Yes, AquaSource's amendment application to expand its territory should be granted. The proposed territory amendment is described in Attachment A. Attachment B includes a composite territory description of the 48 Estates System. AquaSource should charge the customers in the territory added herein the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding. (REDEMANN)

STAFF ANALYSIS: On November 13, 2002, AquaSource filed an application for amendment of Certificate No. 441-W to add territory in Lake County. The application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning applications for amendment of certificate, except as noted in Issue 1. The application contains a check in the amount of \$100 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 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and territory descriptions have been provided as prescribed by Rule 25-30.036(3)(e), (f) and (i), Florida Administrative Code. A description of the territory proposed to be added by the utility is appended to this recommendation as Attachment A. Attachment B includes a composite territory description of the 48 Estates System. The area being added is already being served by AquaSource. The utility has filed an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. The local planning agency was provided notice of the application and did not file a protest to the amendment. The Department of Community Affairs has identified no growth management concerns with the proposed expansion of the utility. The utility states that to the best of its knowledge the provision of water service to this property by AquaSource is consistent with the Lake County Comprehensive Plan.

The water treatment system consists of one 4-inch well, a liquid chlorination system and a 3,000 gallon hydropneumatic tank. According to the Department of Environmental Protection (DEP), the average daily water use in 2002 was about 22,677 gallons per day (gpd). The highest maximum day demand in May of 2002 was 48,000 gpd in May of 2002. According to the DEP, the rated capacity of the water system was determined to be 57,600 gpd. According to the application, the water lines have already been constructed. Staff has contacted DEP and learned that there are no outstanding notices of violation issued for the water system.

With respect to technical ability AquaSource has three licensed operators, a regional controller and a controller. To demonstrate the utility's financial ability, the utility provided a copy of financial information from their 2001 Annual Report, which showed that the utility has total revenues of \$1,121,231 and net income of \$23,802 for the period of January 1, 2001 to December 31, 2001. The utility's balance sheet showed total assets of \$4,657,615 and total equity capital of \$2,777,521. Staff believes that AquaSource has adequate technical and financial ability to render service to the proposed territory.

AquaSource's rates and service availability charges were last set by Order No. PSC-95-0474-FOF-WU, issued April 12, 1995, in Docket No. 941107-WU, a staff assisted rate case. The rates have subsequently been subject to increases by price index. Staff recommends that AquaSource should charge the customers in the territory added herein the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding. The utility has filed revised tariff sheets incorporating the additional territory into its tariff and returned its certificate for entry reflecting the additional territory.

Based on the above information, staff recommends that AquaSource's amendment application to expand its territory should be granted. The proposed territory amendment is described in Attachment A.

DOCKET NO. 021142-WU
DATE: April 24, 2003

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, no further action is required and the docket should be closed. (CROSBY)

STAFF ANALYSIS: No further action is required and the docket should be closed.

AQUASOURCE UTILITY, INC.

TERRITORY DESCRIPTION

48 ESTATES SERVICE AREA

LAKE COUNTY

48 Estates Service Area to be added:

Beginning at the Southwest corner of Section 12, Township 19 South, Range 25 East, Lake County, run North 639 feet to the South boundary of Moore Street; thence East along Moore Street, 430 feet to the Northwest corner of Lot 16, Block C, Hilltop Subdivision, for a POINT OF BEGINNING.

From the POINT OF BEGINNING run North 11° West 50 feet to the North boundary of Moore Street and the Southwest corner of Lot 15, Block A, Hilltop Subdivision; thence on the East boundary of Hunt Avenue North 280 feet to the South boundary of Lackabee Street; thence East 400 feet; thence South 140 feet; thence West 100 feet; thence South 140 feet to the North boundary of Moore Street; thence East along Moore Street 200 feet; thence South 190 feet to the Southeast corner of Lot 8, Block A, Hilltop subdivision, Unit 3; thence West 260 feet to the West boundary of Hunt Avenue South; thence South along Hunt Avenue South 100 feet; thence West 200 feet; thence North 105 feet; thence West 50 feet; thence North 140 feet to the POINT OF BEGINNING.

AQUASOURCE UTILITY, INC.

TERRITORY DESCRIPTION

48 ESTATES SERVICE AREA

LAKE COUNTY

48 Estates Composite Service Area:

Beginning at the SE corner of the SW 1/4 of Section 12, Township 19S, Range 25E, Lake County, run West 508 feet (to the East boundary of the Forty-Eight Estates) for a POINT OF BEGINNING.

From the POINT OF BEGINNING run South (into Section 13, Township 19S, Range 25E) a distance of 396 feet, thence west a distance of 792 feet to the east boundary of Haines Creek Road, thence North 13° West along Haines Creek Road a distance of 300 feet, thence North 44° West a distance of 225 feet (more or less) to the SW corner of Lot 2, Block B, Hilltop Subdivision; thence north a distance of 180 feet, thence east a distance of 75 feet, thence North a distance of 190 feet to the SE corner of Lot 4, Block A, thence west a distance of 410 feet to the west boundary of Hunt Avenue South; thence south along Hunt Avenue South a distance of 100 feet to the SE corner of Lot 10, Block C, Hilltop Subdivision, Unit 3; thence west a distance of 200 feet; thence north a distance of 105 feet thence west 50 feet; thence north a 140 feet to the South boundary of Moore Street; thence North 10° West 50 feet to the Southwest corner of Lot 15 Block A, Hilltop Subdivision; thence North 280 feet on the East boundary of Hunt Avenue to the South boundary of Lackabee Street; thence run east a distance of 916 feet to the east boundary of Haines Creek Road, thence north along Haines Creek Road a distance of 100 feet; thence east a distance of 1300 feet; thence south a distance of 200 feet, thence west a distance of 220 feet, thence south a distance of 130 feet, thence west a distance of 193 feet, thence south a distance of 100 feet, thence east a distance of 100 feet, thence south a distance of 105 feet, thence west a distance of 100 feet, thence south a distance of 180 feet, thence west a distance 100 feet (to the east boundary of Forty-Eight Estates), thence south along the east boundary of Forty-Eight Estates a distance of 370 feet (more or less) to the POINT OF BEGINNING.