

Diamond Williams

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Sent: Friday, August 26, 2011 6:24 AM
To: Filings@psc.state.fl.us
Subject: Amended Petition for Formal Hearing
Attachments: Amended Petition 08_26_2011.docx

Electronically filed by:
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Docket No. 110019-WS

Aqua Utilities Florida, Inc's application for original certificate for an existing wastewater system, request for initial rates and charges for Harbor Hills Utilities, L.P.'s wastewater system, amendment of wastewater Certificate No. 120-S, in Lake County, to include Harbor Hills Utilities, L.P.'s wastewater service area; and application for approval of transfer of Harbor Hills Utilities, L.P.'s water system to Aqua Utilities Florida, Inc., amendment of Aqua Utilities Florida, Inc.'s water Certificate No. 106-W, in Lake County, to include the Harbor Hills Utilities L.P.'s water service territory, and cancellation of Harbor Hills Utilities, L.P.'s water Certificate No. 522-W

The document is filed on behalf of:
Robert V. Nicholson
6201 Topsail Rd.
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Total number of pages in the document is seven (7)

The document is briefly described as
"AMENDED PETITION FOR FORMAL HEARING"
with respect to the above entitled Docket No. 110019-WS

8/26/2011

DOCUMENT NUMBER-DATE

06144 AUG 26 =

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Aqua Utilities Florida, Inc.'s application for original certificate for an existing wastewater system, request for initial rates and charges for Harbor Hills Utilities, L.P.'s wastewater system, amendment of wastewater Certificate No. 120-S, in Lake County, to include Harbor Hills Utilities, L.P.'s wastewater service area; and application for approval of transfer of Harbor Hills Utilities, L.P.'s water system to Aqua Utilities Florida, Inc., amendment of Aqua Utilities Florida, Inc.'s water Certificate No. 106-W, in Lake County, to include the Harbor Hills Utilities, L.P.'s water service territory, and cancellation of Harbor Hills Utilities, L.P.'s water Certificate No. 522-W.

Docket No. 110019-WS

Dated: August 26, 2011

AMENDED PETITION FOR FORMAL HEARING

I, Robert V. Nicholson, pursuant to paragraph cc. of my initial Petition for Formal Hearing, do hereby file my Amended Petition for Formal Hearing, and allege the following:

1. I hereby reallege and incorporate into this Amended Petition for Formal Hearing all of the paragraphs of my Petition filed with the Commission on August 15, 2011 (Document No. 05749-11).

2. With regard to a concise statement of the ultimate facts alleged, including specific facts that the Petitioner contends warrant denial of the application to transfer Harbor Hills Utilities, L.P.'s ("Harbor Hills" or "Utility") water system, and the application for an original certificate for the existing Harbor Hills wastewater system ("proposed transfers"), Petitioner hereby provides the following additional allegations:

- a) The proposed transfers are not in the public interest because the residential customers are universally opposed to the applications.

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- b) The proposed transfers are not in the public interest, because there are alternatives that will provide better quality of service at a lower cost to the customers.
- c) The proposed transfers are not in the public interest, because the superior alternatives will not only provide better quality of service at a lower cost to the customers, they will also provide the Seller with the full purchase price stipulated by the proposed transfers.
- d) Denial of the proposed transfers will better serve the broader long-term interests of the Seller, because the superior alternatives will provide better quality of service at a lower cost to the Seller's affiliates that are current customers of the Utility. These alternatives will also provide better quality of service at a lower cost to the future purchasers of lots and homes currently owned or built in the future by an affiliate of the Seller. This better quality of service at a lower cost will materially assist the Seller's affiliate's future development activities located within the current service territory, as well as potential additions to that territory.
- e) The public interests of Lake County and the State of Florida will be better served if the Utility is locally owned and operated. The revenues received by the locally owned Utility to provide service will largely stay in the local community to support the local economy, including local job creation and retention.
- f) It is not in the public interest of Lake County or the State of Florida that the profits earned from this Utility's operation in Harbor Hills would be sent out-of-state to help fund dividends being paid largely to out-of-state shareholders of the proposed Buyer's parent company. Recent financial reports of the Buyer's parent company confirms that the parent is paying increasing dividends based upon record earnings.
- g) The public interest will be better served if the Harbor Hills Utility is locally owned and operated. When properly funded and competently staffed and operated, as will be the

case in Harbor Hills, local ownership results in more informed and responsive customer service.

- h) The Asset Purchase Agreement (“Agreement”) fails to adequately disclose the purchase price for either the water or wastewater systems. While the Agreement provides a method for calculating the purchase prices, the Petitioner cannot determine what the ultimate price will be for either system.
- i) The applications fail to adequately describe the proposed net book value of the systems being purchased as of its date of the proposed transfers.
- j) The applications fail to confirm that the Buyer has completed its investigations of the systems and determined them to be in satisfactory condition and in compliance with all applicable standards set by the Department of Environmental Protection (“DEP”). In fact the Agreement provides:

Prior to Closing, Aqua will perform a final due diligence of all facilities and assets. The due diligence is to ensure all assets are in the same working condition, that all permits are valid, current and that there are no compliance infractions in force at the time of the date of this final completion of this Agreement. If, after conducting the final due diligence, AQUA determines that the assets are not in the same working condition, that any permit is no longer valid or current, or that there are compliance infractions, Seller shall have 60 days to either correct the condition or reach an agreement with Aqua for a reduction to the purchase price. If Seller refuses to correct the condition or is unable to reach agreement with Aqua concerning a reduction to the Purchase Price, AQUA may elect to terminate this Agreement without penalty or to proceed to Closing.

- k) The applications fail to explain the inconsistency of the terms of the Agreement and the Applicant’s response to Staff’s data request No. 14. Paragraph 7.1 (d) of the Agreement provides:

Future Expansion. Aqua acknowledges that Seller has additional property to be developed. Aqua agrees to expand the water and wastewater Assets upon mutually agreeable terms and conditions to be negotiated at a time requested by Seller. By way of example, such terms and conditions shall include, but not limited to, terms of Seller's costs to expand or extend the Assets, Aqua's reimbursements to be paid to Seller. Seller's contributions and responsibilities for the expansion and a mutually agreeable to the parties when Seller's expansion is desired. Aqua does not warrant approval by governmental authorities having regulatory authority over any such expansion and any obligation hereunder is expressly conditioned upon Seller and Aqua reaching a mutually acceptable agreement and the receipt of all such approvals, which shall be pursued diligently by Aqua.

The Applicant's response to the Staff's request for additional information concerning paragraph 7.1 (d) is found on page 8 of the March 4, 2011 letter to Staff. The response provides:

There is no intention or expectation of AUF to reimburse the developer for any future expansion of wastewater collection lines. The language you reference was **inadvertently included** in the Asset Purchase Agreement from a prior draft agreement. This paragraph is simply intended to ensure that wastewater service would be available and provided to the developer (current utility owner) for the future growth in projected customers.

AUF will only reimburse the current owner of Harbor Hills Utilities, L.P. for any required upgrades or replacements to the existing systems. Harbor Hills Utilities, L.P. is currently installing additional required water plant to the existing plant, which will be purchased by AUF at closing. This addition to the existing water plant is not for expansion. This will be booked as plant in service upon the closing of the transaction. (Emphases supplied).

Notwithstanding the Applicant's assurance that the language committing the Buyer to reimburse the Seller for Seller's cost to expand or extend the systems in the future was "inadvertently included" in the Agreement, paragraph 10.1 of the Agreement provides in part:

The Agreement sets forth the **entire understanding** of the parties

hereto with respect to the transactions contemplated hereby. **It shall not be amended or modified except by written instrument** duly executed by each party hereto. (Emphases supplied).

The Applicant has provided no written instrument to modify this important provision of the Agreement.

- l) It is unclear from the plain language of the Agreement if there are any supplemental agreements or understandings concerning additional consideration that might be paid by the Buyer to the Seller in the future as a result of the proposed transfers.
- m) The applications provide insufficient information that the Utility will own the land upon which the water and wastewater facilities are located, or a copy of an agreement which provides for the continued lease of the land, such as a 99 year lease.
- n) The application for an original wastewater certificate provides insufficient and inaccurate information concerning the number of equivalent residential connections (ERC's) proposed to be served, by meter size and customer class.
- o) The application for an original wastewater certificate provides insufficient and inaccurate information concerning the types of customers anticipated, i.e., single family homes, mobile homes, duplexes, golf course, club house, commercial, etc.
- p) The application for an original wastewater certificate provides insufficient and inaccurate information to support its cost study, including customer growth projections, supporting the proposed wastewater rates, charges and availability charges.
- q) The application for an original wastewater certificate provides insufficient and inaccurate information to support the schedule showing the projected operating expenses of the wastewater system by USOA account numbers, when 80% of the design capacity of the system is being utilized.

3. Commission Rule 25-30.036, F.A.C., should be added to the list of rules Petitioner contends require denial or modification of the applications.

WHEREFORE, for the reasons stated above, the Petitioner requests the Commission to conduct a formal evidentiary hearing pursuant to the provisions of Section 120.57 (1), F.S.; and further petitions that such hearing be scheduled at a convenient time within or as close as practical to the Harbor Hills certificated service area in Lady Lake, Florida; and further petitions that all other related matters also be venued in Lady Lake, or in the alternative, that Petitioner be permitted to appear by telephone.

Respectfully submitted,

s/ Robert V. Nicholson

Robert V. Nicholson
6201 Topsail Road
Lady Lake, FL 32159
352-259-2789

**CERTIFICATE OF SERVICE
DOCKET NO. 110019-WS**

I HEREBY CERTIFY that this petition was electronically filed with the Florida Public Service Commission, Director, Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850 this 26th day of August, 2011, and true and correct copies of the above and foregoing have been furnished electronically and by mail to D. Bruce May, Esq., attorney for Aqua Utilities Florida, Inc., 315 South Calhoun St., Tallahassee, FL 32301 and Lisa Bennett, Esq. Office of the General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL. 32399-0850.

s/ Robert V. Nicholson

Robert V. Nicholson