

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

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COMMISSION CLERK

**DATE:** February 7, 2013

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Accounting and Finance (VanEsselstine, Fletcher, Maurey) *ALM*  
Division of Engineering (Buys, Lewis) *CKL*  
Office of the General Counsel (Brown) *MCB* *DS* *JSC* *CRB* *W*

**RE:** Docket No. 120272-WS – Joint application for expedited approval of transfer of Aqua Utilities Florida, Inc.'s water and wastewater facilities serving the Arredondo Farms Mobile Home Park in Alachua County to YES Companies, LLC, an exempt entity under Section 367.022(5), F.S., requesting cancellation of Certificate No. 479-S, and amendment of Certificate No. 549-W to delete Arredondo Farms Mobile Home Park service territory.

**AGENDA:** 02/19/13 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\AFD\WP\120272.RCM.DOC

### Case Background

Aqua Utilities Florida, Inc. (AUF or Utility) is a wholly-owned subsidiary of Aqua America, Inc. (AAI). AUF provides water and wastewater service in 85 certificated service areas (58 water and 27 wastewater systems) in 17 counties under the Commission's jurisdiction. Arredondo Farms Mobile Home Park ("Park") is served by the Arredondo water and wastewater systems that are currently a part of AUF's water and wastewater rate band 4. According to AUF's 2011 annual report, rate band 4 reported operating revenues of \$3,420,517 for water and

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\$509,340 for wastewater, which equates to an annual operating loss of \$106,895 for water and annual operating income of \$55,007 for wastewater.

On June 30, 1992, the Alachua County Board of County Commissioners passed a resolution which gave jurisdiction over the regulation of privately water and wastewater utilities to the Public Service Commission. On September 28, 1992, Arredondo Utility Company, Inc. (Arredondo) filed an application with this Commission for a certificate to provide water and wastewater service in Alachua County under grandfather rights pursuant to Section 367.171, Florida Statutes (F.S.). Arredondo was a water and wastewater utility that provided service to Arredondo Estates and Arredondo Farms. The service territory is located on State Highway 24, and is approximately 5 miles southwest of Gainesville, Florida and consists of 335 customers. The utility was granted Certificate Nos. 549-W and 479-S in 1995.<sup>1</sup> On March 8, 1999, the transfer of majority organizational control of Arredondo from Partnership 97, Ltd to AquaSource Utility, Inc. (AquaSource) was approved. AquaSource became Aqua Utilities Florida, Inc. by Order No. PSC-04-0715-FOF-WS, issued July 21, 2004.<sup>2</sup>

On October 25, 2012, an application was filed for the transfer of AUF's water and wastewater facilities serving the Park to YES Companies, LLC (YES or Buyer), cancellation of Certificate No. 479-S, and amendment of AUF's Certificate No. 549-W to remove the Arredondo Farms water system from the service territory.

The purpose of this recommendation is to address the transfer of AUF's water and wastewater facilities serving the Park to YES, cancellation of Certificate No. 479-S, and amendment of AUF's Certificate No. 549-W. The Commission has jurisdiction to consider this matter pursuant to Sections 367.071 and 367.022, F.S.

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<sup>1</sup> See Order Nos. PSC-92-1454-FOF-WS, in Docket No. 920973-WS, issued December 15, 1995; In re: Application for certificate to provide water and wastewater service in Alachua County under grandfather rights by Arredondo Utility Company, Inc.

<sup>2</sup> See Order Nos. PSC-99-0481-FOF-WS, in Docket No. 981509-WS, issued March 8, 1999, In re: Application for approval of transfer of majority organizational control of Arredondo Utility Company, Inc., holder of Certificate Nos. 479-S and 549-W in Alachua County, to AquaSource Utility, Inc.; and PSC-04-0715-FOF-WS in Docket No. 040359-WS, issued July 21, 2004, In re: Application for authority to operate under fictitious name, Aqua Utilities Florida, Inc., by AquaSource Utility, Inc., holder of Certificates 268-S, 503-S, 585-W, 371-S, 441-W, and 424-W; Arredondo Utility Company, Inc., holder of Certificate Nos. 549-W and 479-S; Crystal River Utilities, Inc., holder of Certificate Nos. 441-S, 507-W, 510-S, 594-W, 396-W, 123-W, and 053-W; Jasmine Lakes Utilities Corporation, holder of Certificate Nos. 110-W and 083-S; Lake Suzy Utilities, Inc., holder of Certificate Nos. 514-S and 599-W; and Ocala Oaks Utilities, Inc., holder of Certificate No. 346-W.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the transfer of Aqua Utilities Florida, Inc.'s water and wastewater facilities serving the Arredondo Farms Mobile Home Park to YES Companies, LLC, the cancellation of Certificate No. 479-S, and the amendment of AUF's Certificate No. 549-W?

**Recommendation:** Yes. The transfer is in the public interest and the Commission should approve it effective the date of the Commission's vote. Certificate No. 479-S should be cancelled administratively upon receipt of the executed agreement confirming the actual date of closing, which is scheduled to take place fifteen business days after the Commission's approval of the transfer. AUF should be required to file closing documents that contain evidence of the date of closing within 90 days of the date of the closing. AUF is responsible for regulatory assessment fees (RAFs) through the closing date and the filing of the 2012 annual report. Finally, if the Commission approves the transfer, this territory should be deleted from Certificate No. 549-W. (VanEsselstine, Buys)

**Staff Analysis:** As stated in the case background, on October 25, 2012, a joint application was filed for the transfer of AUF's water and wastewater facilities serving the Park to YES, cancellation of Certificate No. 479-S, and amendment of AUF's Certificate No. 549-W to remove Arredondo Farms. The application is in compliance with the governing statutes and administrative rules concerning an application for transfer. In accordance with Section 367.071(1), F.S., the transfer was made contingent upon the Commission's approval. The closing is scheduled to take place fifteen days after the Commission's approval of the transfer. AUF should be required to file closing documents which contain evidence of the date of closing within 90 days of the date of the closing. The application contains proof of compliance with the noticing provisions set forth in Section 367.071, F.S., and Rule 25-30.030, Florida Administrative Code (F.A.C.). No objections to the transfer were timely filed with the Commission, pursuant to Section 367.071, F.S. and Rule 25-30.031, F.A.C.

Pursuant to Section 367.022(5), F.S., YES is exempt from the Commission's regulation as a landlord providing utility service without specific compensation. YES is the owner of the Park, which consists of 445 mobile home lots and common elements. YES leases to residents who own their own home located on a lot and to residents who lease both a home and a lot. The Park is designed and intended to provide quality, affordable housing to young families, military personnel, elderly residents, and others on fixed incomes.

YES, or any successors in interest, should be put on notice that, if there is a change in circumstance or method of operation or billing practices which causes YES to no longer qualify for exemption, pursuant to Section 367.022(5), F.S., it should inform the Commission within 90 days. A description of the territory being deleted from AUF's Certificate No. 549-W is shown in Attachment A.

### **Purchase Agreement and Financing**

Pursuant to Rule 25-30.037(2)(g), F.A.C., the application contains a copy of the purchase agreement executed on October 18, 2012. The purchase price for the Utility Assets was listed as \$1,065,000, secured by the Buyer's lender, General Electric Capital Corporation, in accordance

with Rule 25-30.037(2)(i), F.A.C. The Agreement also contained a description of the net book value of the assets purchased. Additionally, the agreement provided for the disposition of customer deposits, any accrued interest and a description of all considerations between the parties in accordance with Rule 25-30.311, F.A.C.

#### Facilities Description and Compliance

The Arredondo Farms water system consists of two 8-inch wells treated with chlorine. The treated water is channeled into two 5,000-gallon hydropneumatic tanks for distribution to customers. The wastewater system includes six aeration basins, two clarifiers, a chlorine contact chamber, and one digester. The treatment process consists of aeration, clarification, chlorination and effluent discharge into percolation ponds. Staff has verified that the water and wastewater systems are currently in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP).

#### Technical and Financial Ability

Pursuant to Rule 25-30.037(2)(j), F.A.C., the application contains a statement indicating how the transfer is in the public interest. According to the application, the transfer is in the interest of the customers as it settles litigation currently pending between YES and AUF. The application further states that YES has extensive experience providing water and wastewater utility service to the tenants of seven other mobile home parks around the State of Florida. Additionally, YES provided a statement agreeing to fulfill the commitments, obligations, and representations of the Seller with regard to utility matters. As a result, staff recommends that YES appears to have demonstrated the financial and technical ability to operate the Utility pursuant to Rule 25-30.037(2)(j), F.A.C.

#### Regulatory Assessment Fees and Annual Reports

Staff has verified that the AUF is current on its annual report for 2011 and all prior years, and there are no outstanding RAFs, fines, or refunds due. In accordance with Rule 25-30.120, F.A.C., AUF will continue to be responsible for RAFs for the Arredondo Farms water and wastewater systems through the closing date. Further, in accordance with Rule 25-30.110, F.A.C., since the water and wastewater systems were still regulated as of December 31, 2012, AUF will be responsible for including the Arredondo Farm's water and wastewater systems in its 2012 annual report.

Conclusion

Based on the above, staff recommends that this transfer is in the public interest and should be approved effective the date of the Commission's vote. Certificate No. 479-S should be cancelled administratively upon receipt of the executed agreement confirming the actual date of closing. The closing is scheduled to take place fifteen business days after the Commission's approval of the transfer. AUF should be required to file closing documents which contain evidence of the date of closing within 90 days of the date of the closing. AUF is responsible for RAFs through the closing date and the filing of the 2012 annual report. Finally, if the Commission approves the transfer, this territory should be deleted from Certificate No. 549-W.

**Issue 2:** Should this docket be closed?

**Recommendation:** No. This docket should remain open until the executed purchase agreement confirms the actual date of closing. Upon receipt, the docket should be closed administratively. (Brown, VanEsselstine)

**Staff Analysis:** This docket should remain open until the executed purchase agreement confirms the actual date of closing. Upon receipt, the docket should be closed administratively.

**YES Companies, LLC**

**Alachua County**

**Description of Water and Wastewater Territory to be Deleted**

**PER ORDER NO. PSC-99-0481-FOF-WS**

A parcel of land located in Sections 21 and 28, Township 10 South, Range 19 East, Alachua County, Florida, being more particularly described as follows:

Commence at a found concrete monument marking the Southwest corner of Section 28, Township 10 South, Range 19 East, Alachua County, Florida, thence North 00N01'40" East along the West line of Section 28, a distance of 3992.10 feet to the intersection with the Southeasterly Right-of-Way line of the Seaboard Coast Line Railroad (abandoned), thence North 58N48'00" East along said Right-of-Way line a distance of 1096.25 feet to a set iron pin (#3524) and the Point of Beginning, thence continue North 58N48'00" East along said Right-of-Way line a distance of 1598.94 feet to a found concrete monument, thence South 31N08'14" East a distance of 635.98 feet to a found concrete monument, thence South 58N49'22" West a distance of 103.20 feet to a found nail and disk, thence South 31N11'26" East, a distance of 692.22 feet to a found concrete monument marking the Southwesterly corner of Lot 13 of Smithers Survey of Section 28, as record in Plat Book "A", Page 113 of the public records of Alachua County, Florida, thence South 31N14'12" East a distance of 309.90 feet to a found concrete monument, thence South 31N22'09" West a distance of 300.06 feet to a found concrete monument, thence South 52N21'24" West a distance of 172.42 feet to a found concrete monument, thence North 31N00'56" West a distance of 37.74 feet to a found concrete monument, thence South 58N52'43" West a distance of 1273.72 feet to a set iron pin (#3524), thence North 31N08'40" West a distance of 499.27 feet to a found concrete monument, thence continue North 31N08'40" West a distance of 43.40 feet to a set iron pin (#3524), thence North 58N41'37" East a distance of 138.39 feet to a set iron pin (#3524), thence North 31N09'25" West a distance of 638.06 feet to a set iron pin (#3524), thence North 58N45'49" East a distance of 76.28 feet to a set iron pin (#3524), thence North 31N09'23" West a distance of 574.11 feet to the Point of Beginning.

**FLORIDA PUBLIC SERVICE COMMISSION**

**authorizes**

**Aqua Utilities Florida, Inc.**

**pursuant to**

**Certificate Number 549-W**

to provide wastewater service in Alachua County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-92-1454-FOF-WS	12/15/95	920973-WS	Grandfather Certificate
PSC-99-0481-FOF-WS	03/08/99	981509-WS	Transfer Majority Control
PSC-04-0715-FOF-WS	07/21/04	040359-WS	Name Change
*	*	120272-WS	Transfer of Certificate

**\*Order Number and date to be provided at time of issuance.**