

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of) DOCKET NO. 910119-WU
the assets of Marico Properties, Inc.) ORDER NO. 25063
to A. P. Utilities, Inc., cancella-) ISSUED: 9/13/91
tion of Certificate No. 425-W, and)
amendment of Certificate No. 380-W in)
Marion County.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

ORDER APPROVING TRANSFER

AND

NOTICE OF PROPOSED AGENCY ACTION

ORDER ESTABLISHING RATE BASE

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission that the action discussed herein is final except for the establishment of rate base, which is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for formal proceedings pursuant to Rule 25-22.029, Florida Administrative Code.

Background

Marico Properties, Inc. (Marico or Utility) has been operating under Certificate No. 425-W since 1983. At that time, Marico was owned by Michael Slack and Daniel Hicks. In 1987, Marico was sold to Mike Blake, owner of Aqua Pure Water Company (Aqua Pure) and A. P. Utilities, Inc. (A. P.). Although Mr. Blake has operated Marico as a part of Aqua Pure since 1987, no application was ever filed with the Commission for approval of the transfer of Marico to Mr. Blake.

Aqua Pure, A. P. Utilities, Inc. (A. P.) and Marico Properties, Inc. (Marico) were purchased from Michael Blake by Philip Woods on November 30, 1990. We became aware of the transfers in November, 1990. At that time, Mr. Woods was advised of the need to file applications for approval of the transfers. He was also advised of the need to file applications for amendment of

DOCUMENT NUMBER-DATE

09152 SEP 13 1991

FPSC-RECORDS/REPORTING

Certificates Nos. 380-W and 395-W, held by A. P. and Aqua Pure, respectively, to include all of the territory currently served by the Utilities.

On February 6, 1991, Mr. Woods filed five applications. Two of the applications requested approval of the amendment of A. P. and Aqua Pure's certificated territory to include territory the systems are currently serving. Two applications requested approval of the transfers of Aqua Pure and Marico to A. P. The other application, which requested approval of the transfer of majority organizational control of A. P. from Mr. Blake to Mr. Woods, was approved by the Commission on August 6, 1991.

At the time of the transfer of Marico from Mr. Blake to Mr. Woods, Mr. Blake was operating under three certificates. The sales contract, executed in November, 1990, states that the transaction is subject to Commission approval. Although Marico was never officially transferred to Mr. Blake, we are treating the instant application as a request for approval of the transfer of Marico from Mr. Blake to Mr. Woods. Further, we will not institute show cause proceedings against Marico for transferring the system to Mr. Blake in 1987 without Commission approval, since we are not pursuing an application for that transfer and the customers of the system do not appear to have been harmed.

Application

The application filed in this docket, Docket No. 910119-WU, is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules. In particular, the application contains:

1. A filing fee in the amount of \$150, as prescribed by Rule 25-30.020, Florida Administrative Code.
2. A recorded 99-year lease, which provides for continued use of the land upon which the facilities are located, as required by Rule 25-030.037(1)(o), Florida Administrative Code.
3. Proof of compliance with the noticing provisions of Rule 25-30.030, Florida Administrative Code, including notice to the customers of Marico. No objections to the

application have been received and the time for filing such has expired.

We are concerned about the amount of debt assumed by Mr. Woods to accomplish the purchase of A. P., Aqua Pure and Marico. According to the purchase agreement, and the amendment thereto, Mr. Woods will pay Mr. Blake \$41,463 cash as partial payment for the systems. The remainder of the purchase price will be paid through the assumption of promissory notes in the amounts of \$458,150 and 150,467 for A. P. and Aqua Pure, respectively. The monthly payments on these notes total approximately \$5,300. Mr. Woods is using two Certificates of Deposit as security for the notes assumed. We requested a financial analysis of the anticipated profitability of A. P. Based upon projections, A. P. will be able to cover expenses during its initial years and begin to show a profit in 1993.

Mr. Woods is a Registered Professional Engineer and is in the process of becoming a certified plant operator. In the meantime, he has contracted with Enviro-Masters to operate the systems. Enviro-Masters operates numerous water and wastewater systems in Marion and Citrus Counties. Its owners have 12 years' experience in water and wastewater utility operations. Further, according to the Department of Environmental Regulation (DER), there are no outstanding notices of violation against Marico.

Based on the foregoing, we find that the transfer of the assets of Marico Properties, Inc. from Mike Blake to A. P. is in the public interest and it is approved. Certificate No. 425-W is hereby cancelled, and Certificate No. 380-W is amended to include the territory described in Attachment A of this Order, which by reference is incorporated herein. Certificate No. 425-W shall be returned to this Commission for cancellation within 30 days of the date of this Order. Mr. Woods is also directed to return Certificate No. 380-W to this Commission entry reflecting the territory described in Attachment A within 30 days of the date of this Order.

Rate Base

According to Marico, the net book value of the system being transferred is \$35,142, as of the date of the transfer. Rate Base was previously established in Docket No. 830361-W. According to

Order No. 13292, issued May 15, 1984, rate base was \$35,082 as of February 28, 1983.

An audit of the Utility's books and records has been conducted to determine rate base (net book value) as of November 30, 1990, the date of transfer. Based upon balances established in Docket No. 830361-W, the only adjustments necessary are the updating of accumulated depreciation and removal of land cost to reflect the long term lease. However, numerous adjustments to the Utility's books are needed to reach the appropriate rate base.

When Mr. Blake purchased the Utility in 1987, he apparently set up his books without regard to the previously approved rate base. A 1980 bid of \$54,799 for construction of the utility was booked by Mr. Blake as utility plant-in-service. He also recorded \$24,000 in contributions-in-aid-of-construction (CIAC) to offset the difference between the bid price and utility plant-in-service on the prior owner's books. Utility plant-in-service has been adjusted to the proper level and \$24,000 of CIAC and associated amortization has been removed. We also removed \$15,000 booked by Mr. Blake as land cost, based upon his estimate of the value of the long term lease. Additionally, accumulated depreciation has been recalculated using the 2.5 percent rate approved by the Commission instead of the 3.5 percent used by the Utility.

According to the audit, Mr. Blake collected \$2,100 of CIAC, which he was not authorized to collect. The Marico system does not have an approved service availability policy or charges. Mr. Blake stated that it was his understanding from the prior owner that he could charge an impact fee. Mr. Blake has agreed to refund the \$2,100 and has adjusted the amount owed by Mr. Woods for the system. Since the purchase price of the system has been reduced by \$2,100, Mr. Woods will make the refund to the developer. Mr. Woods filed a copy of the agreement, whereby he will pay back this amount in monthly installments of \$175. We have adjusted CIAC to reflect the refund and made the associated adjustment to amortization.

An acquisition adjustment results when the purchase price of a utility differs from the original cost calculation. In the absence of extraordinary circumstances, the purchase of a utility at a premium or discount does not affect the rate base calculation. The circumstances in this transfer do not appear to be extraordinary and A. P. has not requested an acquisition

adjustment. Therefore, no acquisition adjustment has been included in rate base.

Based on the adjustments, rate base for Marico is \$27,936, as of November 30, 1990. Calculation of rate base is shown on Schedule No. 1, which adjustments to rate base shown on Schedule No. 2.

The rate base calculation is used purely to establish the net book value of the property being transferred and does not include the normal ratemaking adjustment of working capital calculations and used and useful adjustments.

Rates and Charges

The only rates and charges approved for Marico are a monthly flat rate of \$9.00 and a violation reconnection charge of \$8.00 during working hours and \$15.00 for overtime. Marico has no service availability charges.

According to Rule 25-9.044(1), Florida Administrative Code, the new owner of a utility must adopt and use the rates, classification and regulations of the former operating company unless authorized to change by the Commission. A.P. has not requested a change in the rates and charges of Marico and we see no reason to change them at this time. A. P. shall continue to charge the rates and charges approved in Marico's tariff until authorized to change by the Commission. A. P. is directed to file a tariff reflecting the change in ownership. The tariff shall be effective for service provided or connections made after the stamped approval date on the tariff sheets.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of assets of Marico Properties, Inc., 108 North Magnolia Avenue, Post Office Box 53, Ocala, Florida 32678, to A.P. Utilities, Inc., 1705 SE Fort King Street, Ocala, Florida 32671, is hereby approved. It is further

ORDERED that Certificate No. 425-W, held by Marico, is hereby cancelled. Certificate No. 425-W shall be returned to this Commission within 30 days of the date of this Order for cancellation. It is further

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ORDERED that Certificate No. 380-W, held by A. P., is hereby amended to include the territory described in Attachment A of this Order, which by reference is incorporated herein. A.P. shall return the Certificate to this Commission within 30 days of the date of this Order for entry reflecting the change in ownership. It is further

ORDERED that rate base, which for purposes of this transfer reflects net book value, is \$27,936 as of November 30, 1990. It is further

ORDERED that A. P. shall continue to charge the rates and charges approved in Marico's tariff until authorized to change by the Commission. It is further

ORDERED that A. P. shall file a tariff reflecting the change in ownership. The tariff filing shall be effective for service provided or connections made after the stamped approval date on the tariff sheets. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition in the form provided by Rule 25-22.036, Florida Public Service Commission, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event that this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 13th
day of SEPTEMBER, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ALC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 action establishing rate base is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 10/04/91. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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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 sewer 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 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

Marico Properties, Inc.

TERRITORY DESCRIPTION

The following described lands located in portions of Section 25, Township 16 South, Range 21 East in Marion County, Florida:

Section 25

The Southeast 1/4 of the Southeast 1/4 of said section 25,

LESS AND EXCEPT

The South 209 feet thereof and that portion lying North and East of State Road 475-A

SCHEDULE NO. 1

Marico Properties Inc.

SCHEDULE OF WATER RATE BASE

As of November 30, 1990

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>COMMISSION ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	\$54,799	(\$18,434) (1)	\$ 36,365
Land	15,000	(15,000) (2)	0
Accumulated Depreciation	(15,437)	7,008 (3)	8,429
Contributions-in- aid-of-Construction	(26,100)	26,100 (4)	0
CIAC Amortization	<u>6,880</u>	<u>(6,880)</u> (5)	<u>0</u>
TOTAL	<u>\$35,142</u>	<u>\$ 7206</u>	<u>\$27,936</u>

SCHEDULE NO.2

Marico Properties Inc.

SCHEDULE OF WATER RATE BASE ADJUSTMENTS

EXPLANATION

ADJUSTMENT

Utility Plant in Service

To adjust plant to Order No. 13292 and to reverse the sellers adjustment to increase plant to original bid price.

(1) (\$18,434)

Land

To reflect land value at zero based upon long term lease.

(2) (15,000)

Accumulated Depreciation

Adjust to Order No. 13292 and update through transfer date at approved 2 1/2 % rate.

(3) 7,008

Contributions-in-aid-of-Construction

To reflect CIAC refund and reverse seller's adjustment based upon difference between bid price and plant balances on prior owners books.

(4) 26,100

CIAC Amortization

to reflect adjustment to CIAC

(5) (6,880)