

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer  
of Certificate No. 285-S in  
Pasco County from Hacienda  
Village Utilities, Inc. to  
Hacienda Utilities, Ltd.

DOCKET NO. 981265-SU  
ORDER NO. PSC-99-0636-FOF-SU  
ISSUED: April 5, 1999

The following Commissioners participated in the disposition of  
this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.

ORDER APPROVING TRANSFER AND  
DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS

AND

NOTICE OF PROPOSED AGENCY ACTION  
ORDER ESTABLISHING RATE BASE FOR  
PURPOSES OF THE TRANSFER

BY THE COMMISSION:

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

Background

On October 6, 1998, Hacienda Utilities, Ltd. (Hacienda) filed an application with this Commission for approval of the transfer of Certificate No. 285-S from Hacienda Village Utilities, Inc. (Hacienda Village or utility) to Hacienda, pursuant to Section 367.071, Florida Statutes. Hacienda Village is a Class C utility

DOCUMENT NUMBER-DATE

04320 APR-59

FPSC-RECORDS/REPORTING

that has been in existence since November 1991. The utility provides service to approximately 514 customers in Pasco County.

Hacienda is a Florida limited partnership formed in 1998. According to the acquisition agreement, Hacienda is purchasing the Hacienda Village Manufactured Home Community, Ltd. and the utility system, which includes all of the assets of Hacienda Village. The sale closed on October 8, 1998, prior to Commission approval, which is an apparent violation of Section 367.071, Florida Statutes.

Show Cause

As stated previously, Hacienda Village is in apparent violation of Section 367.071, Florida Statutes. Section 367.071 (1), Florida Statutes, requires 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 and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility.

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 have willfully violated, any provision of Chapter 367, Florida Statutes.

Hacienda Village appears to have violated Section 367.071(1), Florida Statutes, by failing to obtain the approval of the Commission before transferring its facilities to Hacienda Utilities. While we have no reason to believe that the utility intended to violate this statute, its 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, F.A.C., 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, "in our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to

all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Hacienda Village's failure to obtain Commission approval prior to transferring its facilities to Hacienda appears to be due to lack of knowledge of the statutes and Commission rules. Usually in a transfer if a utility is aware of the requirement to obtain commission approval prior to transferring a utility, the agreement for sale includes a statement making the sale contingent upon Commission approval. The agreement between Hacienda Village and Hacienda does not contain such a statement. Immediately upon becoming aware of the requirements of Section 367.071, Florida Statutes, Hacienda filed an application for approval of the transfer.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we do not believe that the violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Hacienda filed the application immediately upon becoming aware of the requirement. Therefore, a show cause proceeding will not be initiated against Hacienda Village for failing to obtain Commission approval prior to transferring its facilities to Hacienda.

#### Application

Except as discussed previously, the application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$500, as prescribed by Rule 25-30.020, Florida Administrative Code. Hacienda also provided evidence in the form of a warranty deed that the utility owns the land upon which its facilities are located, in accordance with Rule 25-30.037(2)(q), Florida Administrative Code. However, the deed is not recorded as required by Section 695.01, Florida Statutes. Hacienda shall file a recorded copy of the warranty deed with this Commission within 60 days of the issuance date of this Order.

Proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, has been provided, including notice to the customers of the system being transferred.

No objections to the application have been received and the time for filing such has expired.

The application also contained a copy of the Agreement for Purchase and Sale which includes the purchase price, terms of payment and a list of the assets purchased. The Agreement indicates that the purchase price for the mobile home park, utility facilities and treatment plant is \$13 million. The unregulated water and regulated wastewater operations are valued at \$800,000. According to the application, Hacienda Village is responsible for the existing debts of the utility, including regulatory assessment fees, up to the date of closing. Hacienda is responsible for regulatory assessment fees after the closing, which occurred on October 8, 1998. The utility is current with regard to regulatory assessment fees and annual report for 1997.

With regard to technical ability, Hacienda is retaining the current operator of the plant, H2O Water Systems (H2O), to operate the system. H2O currently operates and maintains over eight systems in Florida. In addition, it appears that Hacienda has the financial ability to continue to operate the utility. According to the application, Hacienda has the ability to obtain necessary financing for operation of the utility through its limited partner, Hacienda Village Manufactured Home Community, Ltd.

Hacienda indicated that it had conducted a reasonable investigation of the condition of the wastewater system, and only minor repairs and maintenance of the system are planned. In addition, according to the Department of Environmental Protection (DEP), there are not outstanding consent orders or violations against the utility.

Based on the foregoing, we find that the transfer of Certificate No. 285-S from Hacienda Village to Hacienda is in the public interest and it is approved. Hacienda Village has returned Certificate 285-S to this Commission for entry reflecting the change in ownership. The territory which the utility is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein.

#### Rate Base

According to the application, the net book value of the system being transferred was \$254,882, as of December 31, 1997, based upon the 1997 annual report. Rate base was last established for the

utility by Order No. PSC-93-0375-FOF-SU, issued on March 11, 1993, in Docket No. Docket No. 920701-SU.

An audit of the utility's books and records has been conducted to determine rate base as of October 8, 1998, the date of transfer. The utility does not maintain its books and records in conformity with the NARUC Uniform System of Accounts as required by Rule 25-30.115, Florida Administrative Code, and Order No. PSC-93-0375-FOF-SU. Rate base was determined from historical records and supporting source documentation provided by the company. The following adjustments were made to rate base as a result of the audit.

According to the company ledger, plant balance for the assets being transferred is \$410,575. The balance reflects the \$500,000 price paid for the utility in 1992 and \$35,000 in unsubstantiated plant additions that were included in 1996 and \$575 in plant additions in 1994. The 1992 purchase price includes \$125,000 (25 percent) for the water system, and \$375,000 (75 percent) for the wastewater system. The utility's plant shall be recorded at the original cost when it was placed in service, not at the 1992 purchase price.

Order No. PSC-93-0375-FOF-SU found the value of the wastewater plant and land to be \$355,373 (wastewater plant - \$311,931; land - \$43,442). The utility's general ledger reports a land balance of \$0. The plant account has been reduced by \$43,442, and the land account has been increased by \$43,442, to reflect the findings of Order No. PSC-93-0375-FOF-SU. Plant balance has been reduced by \$19,627, to reflect the original cost, as required by the Order. The utility recorded \$35,000 in plant additions, which could not be substantiated. Therefore, the plant account has been reduced by \$35,000. If the utility can provide support for these additions later, the cost can be recovered in a rate case proceeding.

#### Accumulated Depreciation

The utility's application included a proposed accumulated depreciation balance of \$155,693, as of December 31, 1997. In the process of recalculating the accumulated depreciation balance during the audit, the depreciation balance of Account 380 has been corrected using a 15-year service life instead of the 18-year service life used in the last rate case. In addition, actual depreciation was used instead of average depreciation.

The utility disagrees with the Commission's findings because in the last rate case the average depreciation expense amount was smaller (using 18 years) than the actual depreciation expense that resulted from using the correct 15 years. The utility believes that it is being penalized for an improper calculation. The difference between the average depreciation expense per year and the actual depreciation expense is \$2,498. Order No. PSC-93-0375-FOF-SU prescribed the use of guideline rates which would require a 15-year service life even though the actual calculation was made using 18 years.

Therefore, consistent with Order No. PSC-93-0375-FOF-SU, accumulated depreciation has been increased by \$17,134. The accumulated depreciation balance has been increased by \$8,907 to reflect the additional depreciation as of October 8, 1998, the closing date of the transfer. Based upon the foregoing, accumulated depreciation has been increased by a total of \$26,041 to reflect a balance of \$181,734.

#### Contribution-in-aid-of-Construction (CIAC)

The utility did not maintain a CIAC account or the related amortization of CIAC account. According to Order No. PSC-93-0375-FOF-SU, a CIAC balance of \$30,364, and an accumulated amortization of CIAC balance of \$9,515 should have been recorded. The order also established service availability charges of \$700 per new line connections. There was one new line connection in 1992, five in 1993, and one in 1998 prior to the closing date. Therefore CIAC has been increased by \$4,900 to reflect the unrecorded connections. The CIAC account balance has been adjusted to reflect a balance of \$35,264.

#### Amortization of CIAC

According to the audit, Hacienda Village did not maintain the records and did not apply amortization rates. Pursuant to Order No. PSC-93-0375-FOF-SU, an accumulated amortization of CIAC balance of \$9,515 should have been recorded. Amortization of CIAC has been adjusted to reflect the approved guideline composite rates and new connections over the past years. Therefore, amortization of CIAC has been increased by \$12,800 to reflect the correct accumulated amortization of CIAC balance of \$22,315.

### Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the rate base. Of the \$13 million paid for the entire mobile home community, \$800,000 is the estimated value of the entire utility. No attempt was made to allocate the purchase price between the unregulated water system and regulated wastewater system. Therefore, the entire \$800,000 has been assigned to the regulated wastewater system. This results in a positive acquisition adjustment of \$638,735.

In the absence of extraordinary circumstances, it has been Commission policy that the purchase of a utility system at a premium or discount shall not affect the rate base calculation. The circumstances in this exchange do not appear to be extraordinary. In addition, Hacienda has not requested an acquisition adjustment. Therefore, an acquisition adjustment has not been included in the calculation of rate base. This is consistent with Commission decisions. See, Order No. PSC-98-1231-FOF-WU, issued on September 21, 1998, in Docket No. 971670-WU; Order No. PSC-98-0514-FOF-SU, issued on April 15, 1998, in Docket No. 951008-SU; and Order No. PSC-98-0993-FOF-WS, issued on July 20, 1998, in Docket No. 971220-WS.

### Rate Base

For the foregoing reasons, we find rate base to be \$161,265 for the wastewater system, as of the date of transfer, October 8, 1998. Our calculation of rate base is shown on Schedule No. 1, with adjustments set forth on Schedule No. 2.

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

### Rates and Charges

Hacienda Villages' rates and charges for residential and multi-residential service were approved administratively in a rate case reduction filing, and became effective on March 27, 1997. The service availability charges and miscellaneous service charges became effective on April 2, 1993, pursuant to Order No. PSC-93-0375-FOF-SU. The utility's approved rates and charges are set forth below:

Monthly Service Rates

Residential

per residential unit \$ 12.13

Multi-Residential

per residential unit \$ 12.13

Miscellaneous Service Charges

|  |          |
|--|----------|
| Initial Connection Fee                           | \$ 15.00 |
| Normal Reconnection Fee                          | \$ 15.00 |
| Violation Reconnection Fee                       | Actual   |
| Premises Visit Fee<br>(in lieu of disconnection) | \$ 10.00 |

Service Availability Charges

|   |             |
|---|-------------|
| Plant Capacity Charge<br>Residential<br>per equivalent residential connection | \$700.00    |
| Inspection Fee  | Actual Cost |
| Plan Review Charge  | Actual Cost |
| Customer Connection (Tap-in) Charge   | Actual Cost |

Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a utility to adopt and use the rates, classifications and regulations of the former owner unless authorized to change by this Commission. Hacienda has not requested to change the rates and charges of the utility, and we see no reason to change them at this time. Hacienda shall continue to charge the rates and charges approved in the utility's tariff until authorized to change by this Commission in a subsequent proceeding. Hacienda has filed a tariff reflecting the change in ownership. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.



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It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of Certificate No. 285-S from Hacienda Village Utilities, Inc., 7107 Gibraltar Avenue, New Port Richey, Florida 34653-4014, to Hacienda Utilities, Ltd., 4340 East West Highway, Suite 206, Bethesda, Maryland 20814, is hereby approved. The territory the utility is authorized to service is shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that all schedules attached to this Order are incorporated herein by reference. It is further

ORDERED that Hacienda Village Utilities, Inc. shall not be required to show cause for failing to obtain Commission approval prior to transferring its facilities to Hacienda Utilities, Inc. It is further

ORDERED that Hacienda Utilities, Ltd. shall provide the Commission a recorded copy of the warranty deed, filed as proof of ownership of the land upon which its facilities are located, within 60 days of the issuance date of this Order. It is further

ORDERED that rate base, which for transfer purposes reflects the net book value of the system being transferred, is \$161,265, as of October 8, 1998, the date of transfer. It is further

ORDERED that Hacienda Utilities, Ltd. shall continue to charge the rates and charges approved in Hacienda Village Utilities, Inc.'s tariff until authorized to change by this Commission. It is further

ORDERED that the tariff filed, which reflects the change in ownership, shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

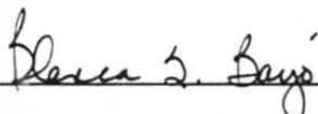
ORDERED that the provisions of this Order establishing rate base for purposes of the transfer, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth

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in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

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

By ORDER of the Florida Public Service Commission this 5th day of March, 1999.



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BLANCA S. BAYÓ, 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 120.569(1), 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, for purposes of the transfer, is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 26, 1999. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective on the date subsequent to the above date.

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 wastewater 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.

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 wastewater 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

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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

HACIENDA UTILITIES, LTD.

Territory Description

The following described lands located in portions of Section 03,  
Township 26 South, Range 16 East, Pasco County, Florida:

Section 03

The West 1/2 of the Southeast 1/4

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SCHEDULE NO. 1

HACIENDA VILLAGE UTILITIES, INC.  
SCHEDULE OF WASTEWATER RATE BASE  
As of October 31, 1998

| <u>DESCRIPTION</u>                   | <u>BALANCE PER COMMISSION</u> | <u>COMMISSION ADJUSTMENTS</u> | <u>BALANCE PER COMM.</u> |
|--------------------------------------|-------------------------------|-------------------------------|--------------------------|
| Utility Plant in Service             | \$410,575                     | (\$98,069)                    | \$312,506                |
| Land                                 | 0                             | \$43,442                      | \$ 43,442                |
| Accumulated Depreciation             | (\$155,693)                   | (\$26,041)                    | (\$181,734)              |
| Contributions-in-aid-of-Construction | 0                             | (\$35,264)                    | (\$ 35,264)              |
| Amortization of Accumulated CIAC     | <u>0</u>                      | <u>\$22,315</u>               | <u>\$ 22,315</u>         |
| TOTAL                                | \$254,882<br>=====            | (\$85,029)<br>=====           | \$161,265<br>=====       |

HACIENDA VILLAGE UTILITIES, INC.

SCHEDULE OF WASTEWATER RATE BASE

| <u>EXPLANATION</u>                              | <u>ADJUSTMENT</u> |
|---|-------------------|
| <b>Utility Plant in Service</b>                 |                   |
| 1) To remove unsupported plant addition         | (\$35,000)        |
| 2) To reclassify Land included in plant         | (\$43,442)        |
| 3) To remove purchase price markup per order    | (\$19,627)        |
| Total   | <u>(\$98,069)</u> |
| <b>Land</b>                                     |                   |
| 1) To reclassify and record land                | <u>\$43,442</u>   |
| <b>Accumulated Depreciation</b>                 |                   |
| 1) Adjustment related to FPSC Order             | (\$17,134)        |
| 2) Adjustment to reflect the transfer date      | (\$ 8,907)        |
| Total   | <u>(\$26,041)</u> |
| <b>CIAC</b>                                     |                   |
| 1) Adjustment Per FPSC Order No. 93-0375-FOF-SU | (\$30,364)        |
| 2) To reflect new connections                   | (\$ 4,900)        |
| Total   | <u>(\$35,264)</u> |
| <b>Accumulated Amortization of CIAC</b>         |                   |
| 1) Adjustment Per FPSC Order No. 93-0375-FOF-SU | (\$ 9,515)        |
| 2) To reflect new connections & composite rate  | (\$12,800)        |
| Total   | <u>(\$22,315)</u> |