



Public Service Commission

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

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

DATE: MARCH 4, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (B-14)

FROM: DIVISION OF WATER AND WASTEWATER (JOHNSON, REDEMANN)
DIVISION OF LEGAL SERVICES (CROSBY, MCRAE)

RE: DOCKET NO. 981265-SU - APPLICATION FOR TRANSFER OF
CERTIFICATE NO. 285-S IN PASCO COUNTY FROM HACIENDA
VILLAGE UTILITIES, INC. TO HACIENDA UTILITIES, LTD.
COUNTY: PASCO

AGENDA: MARCH 16, 1999 - REGULAR AGENDA - PROPOSED AGENCY ACTION
FOR ISSUES NOS. 3 AND 4 - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\981265.RCM

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 RECORDS & REPORTING
 J.M.

CASE BACKGROUND

Hacienda Village Utilities, Inc. (HVUI or utility or Seller) is a class C utility that provides wastewater service in Pasco County and serves approximately 514 wastewater customers. According to its application, HVUI has been providing service since November 1991. The annual report along with staff's adjustments for 1997, shows that the operating revenues were \$71,558; the net operating loss was \$3,749, for the wastewater system.

On October 6, 1998, Hacienda Utilities, Ltd. (Hacienda or Buyer) filed an application for authority to transfer Wastewater Certificate No. 285-S from Hacienda Village Utilities, Inc. pursuant to Section 367.071, Florida Statutes. Hacienda Utilities, Ltd. is purchasing the wastewater collection and treatment facilities of Hacienda Village Utilities, Inc. Hacienda Utilities, Ltd., is a Florida limited partnership that was formed in 1998.

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Hacienda's general partner is a limited liability corporation, named Hacienda Utilities, L.C.

Section 367.071, Florida Statutes, states that no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without approval of the Commission. Review of the application indicates on March 17, 1998, Hacienda Village Utilities, Inc. (the seller) and Hacienda Utilities, Ltd. (the buyer) entered into an acquisition agreement for the purchase and sale of the Hacienda Village Manufactured Home Community, Ltd. and the utility system, which includes all of the assets of HVUI. The sale closed on October 8, 1998, which is an apparent violation of Section 367.071, F.S.

The water system of the utility is exempt from the Florida Public Service Commission's regulation. This recommendation addresses Hacienda Village Utilities, Inc.'s application for transfer of Certificates No 285-S to Hacienda Utilities, Ltd. and Hacienda Village's violation of section 367.071, F.S.

DISCUSSION OF ISSUES

ISSUE 1: Should Hacienda Village Utilities, Inc., be ordered to show cause, in writing within 21 days, why it should not be fined for violation of Section 367.071, Florida Statutes?

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

STAFF ANALYSIS: As stated in the case background, 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.

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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 staff has 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 Utilities 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 Utilities does not contain such a statement. Immediately upon becoming aware of the requirements of Section 367.071, Florida Statutes, Hacienda Utilities filed an application for approval of the transfer.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, staff does 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 Utilities filed the application immediately upon becoming aware of the requirement. Therefore, staff recommends that the Commission not order Hacienda Village to show cause for failing to obtain Commission approval prior to transferring its facilities to Hacienda Utilities.

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ISSUE 2: Should the transfer of Wastewater Certificate No. 285-S from Hacienda Village Utilities, Inc., to Hacienda Utilities, Ltd., be approved?

RECOMMENDATION: Yes, the transfer should be approved. Wastewater certificate No. 285-S, held by Hacienda Village Utilities, Inc., should be transferred to Hacienda Utilities, Ltd. Hacienda Utilities should also be required to provide a recorded copy of the deed within 60 days from the issuance date of the order issued as a result of action taken at this agenda conference. (JOHNSON, REDEMANN)

STAFF ANALYSIS: Except as previously discussed, the application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of certificate. The application contains a check in the amount of \$500, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.037(2)(q), Florida Administrative Code. The deed, however, is not recorded in accordance with Section 695.01, F.S. Hacienda Utilities should be required to provide a recorded copy of the deed within 60 days of the date of the order issued as a result of action taken at this agenda conference.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system to be transferred. No objections to the notice of application have been received and the time for filing such has expired. A description of the territory served by the utility is appended to this memorandum as Attachment A.

Regarding the Buyer's technical ability to operate the system, Hacienda Utilities Ltd. has indicated that it will retain the current operator of the plant, H2O Water Systems (H2O). This will facilitate the continued efficient operation of the utility. H2O Water Systems currently operates and maintains over eighty systems in Florida. The application states that the Buyer conducted a reasonable investigation of the wastewater system. The Buyer also conducted a review of the files at the Florida Department of Environmental Protection (DEP), and determined that there are no outstanding consent orders or violations with the DEP for this

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system. Only minor repairs and maintenance on the system are planned and anticipated.

Regarding the Buyer's financial ability to operate the utility, the application states the Buyer has the ability to raise cash when necessary to finance its operations through its limited partner, Hacienda Village Manufactured Home Community, Ltd. Hacienda Village Manufactured Home Community, Ltd. has approximately \$200,000 in available cash reserves. Staff believe that the Buyer possesses the overall financial ability to operate the wastewater facility and that the assets of the new owners are adequate to insure the continued operations of the utility.

The application contains a copy of the Agreement for Purchase and Sale which includes the purchase price, terms of payment and a list of the assets purchased. According to the Agreement, the purchase price for the mobile home park, utility facilities, and the treatment plant (including land, equipment and personal property) is \$13 million. Based upon the Buyer's utility settlement statement, the water and wastewater operations were valued at \$800,000. No separate valuation of the regulated wastewater system was made. The total purchase was financed with a combination of equity and debt. Based on the application, there are no guaranteed revenue contracts, developer agreements, utility debt or customer advances. The Seller will remain responsible for the existing debts of the utility incurred or accrued up to closing, which includes regulatory assessment fees until the date of closing. According to our records, the utility is current on its regulatory assessment fees and has filed an annual report for 1997 and all prior years. The Buyer is responsible for the regulatory assessment fees after the closing which occurred on October 8, 1998. Additionally, Hacienda Utilities, Ltd. has provided a statement that it will fulfill the commitments, obligations, and representations of the Seller regarding utility matters.

Based on the above, staff recommends the transfer of Wastewater Certificate No. 285-S from Hacienda Village Utilities, Inc. to Hacienda Utilities, Ltd. is in the public interest and should be approved.

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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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ISSUE 3: What is the rate base of Hacienda Village Utilities, Inc. at the time of transfer?

RECOMMENDATION: The rate base, which for transfer purposes reflects the net book value, is \$161,265 for the wastewater system. (JOHNSON)

STAFF ANALYSIS: 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 in Order No. PSC-93-0375-FOF-SU, issued March 11, 1993.

Staff conducted an audit of the books and records of the utility to determine the rate base (net book value) as of October 8, 1998 the date of the transfer. The rate base was determined by Staff from company provided historical records and supporting source documentation. 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 by Order No. PSC-93-0375-FOF-SU. The audit report contained several exceptions. The utility did not file a response to the audit report. The following adjustments were made by staff as a result of the audit.

According to the company ledger, the plant balances for the assets being transferred is \$410,575. The plant balance of \$410,575, 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 \$500,000 purchase price is allocated between the unregulated water system receiving 25% (\$125,000) of the purchase price and the 75% (\$375,000) of the purchase price is recorded as the cost of the regulated wastewater system. The utility's plant should be recorded at the original cost when placed in service and not at the 1992 purchase price.

Order No. PSC-93-0375-FOF-SU, issued March 11, 1993, established the wastewater plant to be \$311,931 and land to be \$43,442, for a total of \$355,373. The utility should adjust its plant and land accounts to reflect the requirements of Order No. PSC-93-0375-FOF-SU, by reducing the plant account by \$43,442 and increasing the land account by the same amount. The utility should also reduce the plant balance by \$19,627 to reflect the original cost as required by Order No. PSC-93-0375-FOF-SU. The utility recorded \$35,000 in plant additions in 1996. The utility could not provide support for the 1996 plant additions and unsubstantiated

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plant must be removed from the plant account. If the utility can later provide support for these plant additions, the cost can be recovered in a rate case proceeding. Therefore, the plant in service balance should be reduced by \$98,069.

LAND

The utility's general ledger reports a land balance of \$0. The land account should be increased by \$43,442 as required by Order No. PSC-93-0375-FOF-SU.

ACCUMULATED DEPRECIATION

The utility's application for transfer of its wastewater certificate included a proposed accumulated depreciation balance of \$155,693 as of December 31, 1997.

In the process of recalculating the accumulated depreciation balance, the field audit staff corrected the depreciation balance of Account 380, using a 15 year service life instead of the 18 year service life used in the last rate case. Audit staff also changed from using average depreciation to actual depreciation.

The utility disagrees with the auditor's finding, 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 actual depreciation expense is \$2,498.

Order No. PSC-93-0375-FOF-SU, issued March 11, 1993, in the utility's last rate case, prescribed the use of guideline rates which would require a 15 year service life even though the actual calculation was made using 18 years. Staff believes that the intent of the Order prescribing guideline rates should be the guiding factor in calculating the appropriate accumulated depreciation, as opposed to the incorrect mathematical calculation.

Therefore, consistent with Order No. PSC-93-0375-FOF-SU and guideline rates, accumulated depreciation should be increased by \$17,134. Staff has adjusted the accumulated depreciation balance by \$8,907 to reflect the additional depreciation through the closing of the transfer date of October 8, 1998. Based upon the above, accumulated depreciation should be increased by a total of \$26,041 to reflect a balance of \$181,734.

CIAC

The utility did not maintain a contributions-in-aid-of-construction (CIAC) account or the related amortization of CIAC account. According to Order No. PSC-93-0375-FOF-SU, the CIAC balance of \$30,364 and a 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 new line connections in 1993, and one in 1998 prior to the closing date of October 8, 1998. Therefore, CIAC should be increased by \$4,900 to reflect the unrecorded connections. The CIAC account balance should be adjusted to reflect a balance of \$35,264.

AMORTIZATION OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION (CIAC)

As discussed above, Hacienda did not maintain the amortization of CIAC account. Pursuant to Order No. PSC-93-0375-FOF-SU, an accumulated amortization of CIAC balance of \$9,515 should have been recorded. The amortization of CIAC accounts must be adjusted to reflect new connections over the past years. The staff auditor adjusted amortization of CIAC to reflect the approved guideline composite rates. According to the auditor, the utility did not maintain the records and did not apply amortization rates. Therefore, amortization of CIAC should be increased by \$12,800 to reflect the correct accumulated amortization of CIAC balance of \$22,315.

RATE BASE

Staff's calculation of rate base is shown on Schedule No. 1 for the system. Adjustments to rate base are itemized on Schedule No. 2. Based on the adjustments set forth herein, Staff recommends that rate base for Hacienda be established as \$161,265 for the wastewater system as of October 8, 1998. This rate base calculation is used purely to establish the net book value of the property being transferred and does not include the normal rate making adjustments of working capital calculations and used and useful adjustments.

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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 UTILITY</u>	<u>STAFF ADJUSTMENTS</u>	<u>BALANCE PER STAFF</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 =====	(\$85,029) =====	\$161,265 =====

HACIENDA VILLAGE UTILITIES, INC.
SCHEDULE OF WASTEWATER RATE BASE

<u>EXPLANATION</u>	<u>ADJUSTMENT</u>
Utility Plant in Service	
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>
Land	
1) To reclassify and record land	<u>\$43,442</u>
Accumulated Depreciation	
1) Adjustment related to FPSC Order	(\$17,134)
2) Adjustment to reflect the transfer date	(\$ 8,907)
Total	<u>(\$26,041)</u>
CIAC	
1) Adjustment Per FPSC Order No. 93-0375-FOF-SU	(\$30,364)
2) To reflect new connections	(\$ 4,900)
Total	<u>(\$35,264)</u>
Accumulated Amortization of CIAC	
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>

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ISSUE 4: Should a positive acquisition adjustment be approved?

RECOMMENDATION: No, a positive acquisition adjustment should not be included in the calculation of rate base for transfer purposes. (JOHNSON)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the rate base for transfer purposes. In this case, the acquisition price includes the costs of both the unregulated water system and the regulated wastewater systems. The Buyer paid \$13 million for the entire mobile home community and of this amount, estimated the entire utility to be valued at \$800,000. No attempt was made to allocate the purchase price between the unregulated water system and regulated wastewater system, since this could only be done after a dollar amount for the water division of the utility is determined. Therefore, the entire \$800,000 was assigned to the regulated wastewater division.

The acquisition adjustment resulting from the transfer of Hacienda would be calculated as follows:

Purchase Price:	\$800,000
Staff Calculated Rate Base:	<u>161,265</u>
Positive Acquisition Adjustment:	\$638,735 -----

An acquisition adjustment was not requested by the applicant. In the absence of extraordinary circumstances, it has been Commission practice that a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. Because there are no extraordinary circumstances regarding this purchase that would justify an acquisition adjustment to rate base and the Buyer stated in its application for transfer of the wastewater certificate that it was not seeking an acquisition adjustment; Staff recommends that a positive acquisition adjustment not be included in the calculation of rate base. Staff's recommendation is consistent with previous Commissions decisions in this regard. 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

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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.

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ISSUE 5: Should Hacienda Utilities, Ltd. adopt and use the rates and charges approved by this Commission for Hacienda Village Utilities, Inc.?

RECOMMENDATION: Yes, Hacienda Utilities, Ltd. should continue charging the rates and charges approved for this utility system. The tariff reflecting the change in ownership should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. (JOHNSON)

STAFF ANALYSIS: The utility's current rates and charges for residential and multi-residential service were approved administratively and became effective on March 27, 1997. The Commission approved these rates in a rate case reduction filing. The service availability charges and the miscellaneous service charges were effective April 2, 1993 pursuant to Order No. PSC-93-0375-FOF-SU, in Docket No. 920701-SU. The utility's approved rates and charges are as follows:

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 (in lieu of disconnection)	\$ 10.00

Service Availability Charges

Plant Capacity Charge Residential - per ERC	\$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, provides that:

[i]n case of change of ownership or control of a utility which places the operation under a different or new utility, . . . the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission).

Hacienda Utilities, Ltd., has not requested a change in the rates and charges of the utility. Accordingly, Staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges. The utility has filed a tariff reflecting the transfer of ownership. Staff will approve the tariff filing effective for services provided or connections made on or after the stamped approval date.

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ISSUE 6: Should this docket be closed?

RECOMMENDATION: Yes, upon expiration of the protest period, this docket should be closed if no timely protests are filed to the proposed agency action issues. (CROSBY)

STAFF ANALYSIS: If there are no timely protests filed by a substantially affected person to the proposed agency action issues (Issues Nos. 3, and 4), no further action is required in this docket. Staff recommends this docket should be closed.