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Public Service Commission

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COMMISSION
CLERK

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

DATE: October 21, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Brady, Redemann, Romig)
Office of the General Counsel (Fleming)

Handwritten initials and signatures: BR, BL, JS, PB, PD, JDT, [Signature]

RE: Docket No. 030747-SU – Application for transfer of assets and Certificate No. 285-S in Pasco County to HV Utility Systems, L.L.C., by Hacienda Utilities, Ltd.
County: Pasco

AGENDA: 11/02/04 – Proposed Agency Action for Issues 2 and 3 -- Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\030747.RCM.DOC

Case Background

On August 1, 2003, an application was filed for the transfer of the assets and certificate of Hacienda Utilities, Ltd. (Hacienda or utility) to HV Utility Systems, L.L.C. (HV Utility). Hacienda is a Class C utility providing wastewater service in Pasco County. Its service area includes approximately 506 lots in a mobile home community known as Hacienda Village Mobile Home Park (Hacienda Village) and 44 single family homes in an adjacent subdivision. Hacienda is located in New Port Richey which is in the North Tampa Bay Water Use Caution area of the Southwest Florida Water Management District (SWFWMD). In its 2003 Annual Report, the utility reported 533 active connections with annual revenues of \$77,535 and a net operating loss of \$46,617.

The utility's water and wastewater facilities were constructed in 1973 under the name of End Gate Mobile Home Park. Sometime subsequent to construction, the development was renamed Hacienda Village Mobile Home Park and a separate corporation was established for the utility. Originally, the utility was exempt from Commission regulation pursuant to Section

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367.022(5), Florida Statutes, which exempts water and wastewater service provided to tenants without specific compensation. There are no water meters and the utility does not bill tenants directly. Instead, both then and now, the utility provides water and wastewater services to Hacienda Village which reimburses the utility from money collected in lot rent.

Wastewater service became jurisdictional in 1979 when Hacienda extended a line to serve 42 single family homes in an adjacent subdivision. The Commission granted the utility Certificate No. 285-S by Order No. 9600, issued October 20, 1980, in Docket No. 790813-S, In Re: Application of Hacienda Utilities, Inc. for a certificate to operate a sewer utility in Pasco County. Subsequent to certification, the Commission has subsequently approved three utility transfers in 1984, 1993, 1999.¹

The current transfer of assets occurred December 17, 2002, subject to approval by the Commission. The purpose of this recommendation is to address the transfer, rate base for transfer purposes, an acquisition adjustment, and rates and charges. The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes.

¹ Order No. 13949, issued December 28, 1984, Docket No. 840394-SU, In Re: Joint application of Robert Parsonson, Alfred Parsonson, and Robert Huhn, Sellers, and Hacienda Village Limited Partnership, Buyer, for the transfer of majority organizational control of Hacienda Utilities, Inc., from the Seller to the Buyer; Order No. PSC-93-0020-FOF-SU, issued January 5, 1993, Docket No. 920419-SU, In Re: Application for transfer of Certificate No. 285-S and assets of Hacienda Utilities, Inc. in Pasco County to Hacienda Village Utilities, Inc.; and Order No. PSC-99-0636-FOF-SU, issued April 5, 1999, Docket No. 981265-SU, In Re: Application for transfer of Certificate No. 285-S in Pasco County from Hacienda Village Utilities, Inc. to Hacienda Utilities, Ltd.

Discussion of Issues

Issue 1: Should the transfer of wastewater facilities and Certificate No. 285-S from Hacienda Utilities, Ltd. to HV Utility Systems, L.L.C. be approved?

Recommendation: Yes. The transfer is in the public interest and should be approved. The territory being transferred is described in Attachment A. The effective date for the transfer of certificate should be the date of the Commission vote. HV Utility Systems, L.L.C. should be responsible for filing annual reports and paying RAFs for 2004 and subsequent years. (Brady, Redemann, Romig, Fleming)

Staff Analysis: On August 1, 2003, an application for the transfer of the wastewater assets and certificate of Hacienda to HV Utility was filed with the Commission. The transfer of assets occurred December 17, 2002, subject to approval by the Commission.

The application as filed and amended is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules pertaining to an application for the sale, assignment, or transfer of certificates of authorization. The territory being transferred is described in Attachment A.

Noticing. Pursuant to Rule 25-30.030, Florida Administrative Code, the application contained the requisite proof of noticing. No objections to the application were received by the Commission and the time for filing such has expired.

Sale Contract and Financing. The transfer of the utility facilities was part of a much larger transaction involving the purchase and sale of ten manufactured home communities and recreational vehicle resort properties in Arizona, Florida, and Minnesota. The purchaser, HV Utility, is a Delaware limited liability company which was registered in the State of Florida as a foreign limited liability company on July 24, 2002. HV is owned through a series of parent limited liability companies, all of which consist of a single owner/member. HV is owned by Liquid Assets, L.L.C. (Liquid Assets), which is owned by MHC Operating Limited Partnership (MHCOLP), which is owned by Manufactured Home Communities, Inc. Liquid Assets is also the sole member of four other Florida utilities, two of which are regulated by the Florida Public Service Commission.²

The Purchase and Sale Agreement provides that the portion of the purchase price attributable to the Hacienda properties will be deemed to be the net book value of the utility assets established by the Commission as part of this proceeding. There were no customer deposits, guaranteed revenue contracts, developer agreements, leases, or customer advances at the time of the closing on December 17, 2002.

² BE Utility Systems, L.L.C. dba Buccaneer Water Service, holder of Certificate No. 366-W in Lee County and CC Utility Systems, L.L.C. dba Coral Cay Water & Sewer Company, holder of Certificate Nos. 481-W and 417-S in Broward County.

Proof of Ownership. Pursuant to Rule 25-30.037(2)(q), Florida Administrative Code, the application contained a recorded Warranty Deed dated December 17, 2002 for the land upon which the utility's wastewater treatment facilities are located. The application also included a Grant of Non-Exclusive Easement made December 17, 2002 which granted the utility easement rights with respect to the water and wastewater lines and related appurtenances located throughout Hacienda Village.

Annual Reports and Regulatory Assessment Fees (RAFs). Staff has verified that, in accordance with Rule 25-30.110, Florida Administrative Code, Hacienda filed its annual reports for 2002 and prior years. The utility's 2003 annual report was filed by HV Utility. Staff also verified that, in accordance with Rule 25-30.120, Florida Administrative Code, the utility's RAfs for 2003 and all prior years have been paid. No penalties or interest are outstanding for annual reports or RAF payments. HV will be responsible for filing annual reports and paying RAfs for 2004 and subsequent years.

Books and Records. The audit conducted pursuant to this transfer revealed that the utility was not maintaining its books and records in conformity with NARUC Uniform System of Accounts (USOA) as required by Rule 25-30.115, Florida Administrative Code, and Order No. PSC-93-0375-FOF-SU, issued March 11, 1993, in Docket No. 920701-SU, In Re: Application for staff-assisted rate case in Pasco County by Hacienda Utilities, Inc. In addition, the rate base balances authorized in PSC-99-0636-FOF-SU were not reflected on the utility's books and records and the utility was not using the guideline depreciation rates in Rule 25-30.140, Florida Administrative Code. In addition, the utility was also maintaining its books and records out of state in violation of Rule 25-30.110 (1)(b), Florida Administrative Code. Once the buyer was made aware of the problems, immediate steps were taken to bring the utility's books and records into compliance. Staff has verified that the buyer is using the NARUC USOA, depreciation is being recorded using the guideline rates in Rule 25-30.140, Florida Administrative Code, and the utility's books and records and 2003 annual report now reflect the rate base balances approved in Order No. PSC-99-0636-FOF-SU. Further, the buyer understands that the utility's books and records and annual report will need to be adjusted to reflect the adjustments to rate base approved in this case and that a copy of the books and records must be maintained in state.

Environmental Compliance. Pursuant to Rule 25-30.037(2)(p), Florida Administrative Code, the application contained a statement that, after reasonable investigation, the system being acquired appears to be in satisfactory condition and operating in full compliance with all applicable standards set by the Florida Department of Environmental Protection (FDEP). Prior to HV acquiring the utility, FDEP had required improvements to the percolation ponds and wastewater treatment plant along with repairs to the collection system. Staff has verified with FDEP that compliance had been achieved. According to FDEP, the facility was recently inspected and found to be in the best condition it has been in over two years. While water service is not regulated by the Commission, staff also contacted the SWFWMD to verify that water withdrawals are under permit levels and that there is no requirement for the installation of meters.

Technical and Financial Ability. Pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, the application contained a statement indicating how the transfer is in the public interest, including a summary of the buyer's experience and showing of financial ability.

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The application also contained a statement that HV Utility will fulfill the commitments, obligations, and representations of the prior owner with regard to utility matters. According to the application, MHCLOP, through Liquid Assets, will provide funding to HV Utility as needed. Also, according to the application, the transfer is in the public interest because utility customers will receive quality service through HV Utility's use of accounting, operations and engineering, and legal firms with experience in Florida regulatory requirements. In addition, as noted earlier, Liquid Assets has had experience operating two other Commission certificated utilities. Therefore, it appears that HV has the financial and technical ability to operate the utility and will fulfill the commitments, obligations, and representations of the prior owner with regard to utility matters.

Conclusion. Based on all the above, staff recommends that the transfer of the assets and Certificate No. 285-S from Hacienda Utilities, Ltd. to HV Utility Systems, L.L.C. is in the public interest and should be approved. The territory being transferred is described in Attachment A. The effective date of the transfer should be the date of the Commission vote. HV Utility Systems, L.L.C. will be responsible for filing annual reports and paying RAFs for 2004 and subsequent years.

Issue 2: What is the rate base for Hacienda Utilities, Ltd.'s wastewater systems at the time of the transfer?

Recommendation: The rate base is \$ 445,897 for the wastewater system as of December 31, 2002. Within 60 days of the date of the order, the utility should be required to provide a statement from its accountant indicating that the utility's books have been adjusted to reflect the Commission approved rate base adjustments and balances. (Brady, Redemann)

Staff Analysis: The Commission last established rate base for the utility as of October 8, 1998 pursuant to the prior transfer in Docket No. PSC-99-0636-FOF-SU. The transfer of Hacienda's assets to HV Utility occurred on December 17, 2002. Therefore, staff recommends that rate base be established for transfer purposes as of December 31, 2002.

Utility Plant in Service (UPIS). The utility's books and records as of December 31, 2002 reflected UPIS of \$622,589. A reduction of \$255,494 is necessary to reflect adjustments approved in Order No. PSC-99-0636-FOF-SU. In addition, the audit verified invoices for \$355,363 in plant additions that were either expensed instead of capitalized or were not recorded on the utility's general ledger but were included in the utility's 2002 annual report. The majority of the plant additions were improvements needed to bring the plant into FDEP compliance as discussed in Issue 1. In addition, adjustments of \$14,787 are recommended for plant retirements. Staff, therefore, recommends that the utility balance for UPIS be increased by a net amount of \$85,082 to reflect UPIS of \$707,671 as of October 31, 2002.

Land. The utility's books and records as of December 31, 2002 reflected land in the amount of \$232,015. That amount should be reduced by \$188,573 to reflect the adjustment approved in Order No. PSC-99-0636-FOF-SU. Staff therefore recommends that the correct balance for land is \$43,442 as of December 31, 2002.

Accumulated Depreciation. The utility's books and records as of December 31, 2002 reflected accumulated depreciation of \$172,794. That amount should be increased by \$172,313 to reflect the adjustment approved in Order No. PSC-99-0636-FOF-SU. The audit then revealed that the utility had not been depreciating plant using the guideline rates required by Rule 25-30.140, Florida Administrative Code. Since rate base was previously established using the guideline rates, staff recommends that accumulated depreciation be reduced by \$64,762 to reflect guideline rates. Therefore, staff recommends that total accumulated depreciation as of December 31, 2002 is \$280,345.

Contributions-in-Aid-of-Construction (CIAC) and Amortization of CIAC. According to the audit, the utility did not record CIAC or amortization of CIAC. Order No. PSC-99-0636-FOF-SU established the balances for CIAC and accumulated CIAC at \$35,264 and \$22,315, respectively, as of October 8, 1998. Staff recommends including CIAC of \$12,600 for the 18 new connections added since 1998. Amortization of CIAC should be increased by \$10,678 using a composite depreciation rate for each year. Therefore, staff recommends that CIAC and amortization of CIAC as of December 31, 2002, should be \$47,864 and \$32,993, respectively.

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Conclusion. Based upon all the above, staff recommends that rate base for transfer purposes is \$445,897, for the wastewater system as of December 31, 2002. Schedule 1 shows the calculation of wastewater rate base. Schedule 2 details staff's recommended adjustments. Schedule 3 shows staff's recommended account balances for UPIS and accumulated depreciation as of December 31, 2002. Staff notes that rate base for transfer purposes does not include the normal rate making adjustments for used and useful or working capital. Within 60 days of the date of the order, the utility should be required to provide a statement from its accountant indicating that the utility's books have been adjusted to reflect the Commission approved rate base adjustments and balances.

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Issue 3: Should an acquisition adjustment be recognized for ratemaking purposes?

Recommendation: No. An acquisition adjustment should not be included in the calculation of rate base for transfer purposes. (Brady, Fleming)

Staff Analysis: An acquisition adjustment results when the purchase price differs from the net original cost of the assets. Effective August 4, 2002, the Commission adopted Rule 25-30.0371, Florida Administrative Code, regarding acquisition adjustments. Since the transfer in this case occurred December 17, 2002, it is subject to the new rule. However, as noted in Issue 2 the Purchase and Sale Agreement provides that there was no determination made for the individual purchase price of the utility. Instead, the parties agreed that the purchase price will be deemed to be the net book value of the utility assets established by the Commission as part of this proceeding. **Therefore, the amount of the acquisition adjustment would be zero.** Staff recommends that an acquisition adjustment not be included in the calculation of rate base for transfer purposes.

Issue 4: Should the utility's existing rates and charges be continued?

Recommendation: Yes. The existing rates and charges for the utility should be continued until authorized to change by the Commission in a subsequent proceeding. The utility should be required to continue to bill Hacienda Village monthly for lot usage. In addition, the utility should be required to record CIAC for any new connections to the wastewater system. The tariff sheets reflecting the existing rates and charges should be effective for services rendered or connections made on or after the stamped approval date. (Brady)

Staff Analysis: Rule 25-9.044(1), Florida Administrative Code, provides that, "[i]n the 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's current rates and charges were approved by Order No. PSC-93-0375-FOF-SU, issued March 11, 1993, Docket No. 920701-SU, In Re: Application for staff-assisted rate case in Pasco County by Hacienda Utilities, Inc. Those rates and charges are:

Monthly Wastewater Service

Flat rate	\$ 12.13
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Service Availability Charges

Plant capacity charge	\$700.00
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Miscellaneous Service Charges

Initial Connection Fee	\$ 15.00
Norman Reconnection Fee	\$ 15.00
Violation Reconnection Fee	Actual Cost
Premise Visit Fee (in lieu of disconnection)	\$ 10.00

Since the utility is located in a water use caution area, the Commission considered implementing a base facility/gallonage charge rate structure in Order No. PSC-93-0375-FOF-SU. However, it was determined that this could not be considered because water service to the mobile home park was neither metered nor jurisdictional. As noted, staff has confirmed with the SWFWMD that Hacienda's current water usage is under the permitted amount and there are no plans to require the installation of meters.

In prior Commission orders, it was clear that the utility does not bill the lots in Hacienda Village directly, only the single family homes in the adjacent subdivision. Instead, Hacienda Village is the customer of the utility. From the audit, it appears that the utility is correctly booking the appropriate amount of revenue based on the number of occupied lots and reporting the income in its annual reports. However, as a customer of the utility, Hacienda Village is not being billed pursuant to Rule 25-30.335(1), Florida Administrative Code, which requires the

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utility to render bills to customers at regular intervals. In response, the utility has provided a statement that, as of December 2003, it has begun billing Hacienda Village monthly. Staff recommends that the utility be required to continue to bill Hacienda Village monthly for wastewater usage.

Based on the above, staff recommends that existing rates and charges for Hacienda Utilities, Ltd. be continued pursuant to Rule 25-9.044(1), Florida Administrative Code, until authorized to change by the Commission in a subsequent proceeding. The utility should be required to continue to bill Hacienda Village monthly for wastewater usage. In addition, the utility should be required to record CIAC for any new connections to the wastewater system. The tariff sheets reflecting the current rates should be effective for services rendered or connections made on or after the stamped approval date.

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Issue 5: Should this docket be closed:

Recommendation: No. If no timely protest is received to the proposed agency action issues on rate base and acquisition adjustment, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending receipt of the statement from the utility's accountant indicating that the utility's books have been adjusted to reflect the Commission approved rate base adjustments and balances. Upon receipt of such statement, the docket should be administratively closed. (Fleming)

Staff Analysis: If no timely protest is received to the proposed agency action issues on rate base and acquisition adjustment, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending receipt of the statement from the utility's accountant indicating that the utility's books have been adjusted to reflect the Commission approved rate base adjustments and balances. Upon receipt of such statement, the docket should be administratively closed.

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ATTACHMENT A

**HACIENDA UTILITIES, LTD.
Wastewater Service Area
Pasco County, Florida**

Township 26 South, Range 16 East
Section 3

The West 1/2 of the Southeast 1/4 of Section 3.

SCHEDULE 1

**HACIENDA UTILITIES, LTD.
 WASTEWATER RATE BASE
 DOCKET NO. 030747-WS
 AS OF DECEMBER 31, 2002**

DESCRIPTION	UTILITY BALANCE	STAFF ADJUSTMENTS		RECOMMENDED BALANCE
Utility Plant in Service	\$622,589	\$85,082	A	\$707,671
Land	232,015	(188,573)	B	43,442
Accumulated Depreciation	(172,794)	(107,551)	C	(280,345)
Contributions-in-aid-of-contributions (CIAC)	0	(47,864)	D	(47,864)
Accumulated Amortization of CIAC	<u>0</u>	<u>32,993</u>	E	<u>32,993</u>
	\$681,810	\$(225,913)		\$445,897

SCHEDULE 2

**HACIENDA UTILITIES, LTD.
SCHEDULE OF RATE BASE ADJUSTMENTS
AS OF DECEMBER 31, 2002**

<u>Explanation</u>	<u>Recommended Adjustment</u>
A. Utility-Plant-in-Service	
1. To reflect adjustments pursuant to Order No. PSC-99-0636-FOF-SU.	\$(255,494)
2. To record plant additions.	355,363
3. To record plant retirements.	<u>(14,787)</u>
	\$ 85,082
B. Land	
1. To reflect adjustments pursuant to Order No. PSC-99-0636-FOF-SU.	\$(188,573)
C. Accumulated Depreciation	
1. To reflect adjustments pursuant to Order No. PSC-99-0636-FOF-SU.	\$(172,313)
2. To adjust accumulated depreciation using correct plant balances and guideline rates from October 8, 1998 through December 31, 2002.	<u>64,762</u>
	\$(107,551)
D. Contributions-in-Aid-of-Construction (CIAC)	
1. To reflect CIAC pursuant to Order No. PSC-99-0636-FOF-SU.	\$(35,264)
2. To record CIAC for 18 connections added from October 8, 1998 through December 31, 2002.	<u>(12,600)</u>
	(47,864)
E. Amortization of CIAC	
1. To reflect amortization of CIAC pursuant to Order No. PSC-99-0636-FOF-SU.	\$ 22,315
2. To adjust amortization of CIAC from October 8, 1998 through December 31, 2004.	<u>10,678</u>
	32,993
TOTAL ADJUSTMENTS	<u>\$(225,913)</u>

SCHEDULE 3

**HACIENDA UTILITIES, LTD.
STAFF RECOMMENDED ACCOUNT BALANCES
AS OF DECEMBER 31, 2002**

ACCT NO.	ACCOUNT NAME	PLANT BALANCE	ACCUMULATED DEPRECIATION BALANCE
354	Structures and Improvements	\$10,094	\$8,252
360	Collection Sewers – Force	11,138	9,172
361	Collection Sewers – Gravity	20,026	14,343
362	Special Collecting Structures	29,699	19,027
363	Services	2,647	2,002
364	Flow Measuring Devices	7,463	7,463
370	Receiving Wells	40,693	4,985
380	Treatment and Disposal Equipment	538,143	184,515
380	Drainfield and Sand Filtration Unit	47,768	30,586
	Totals	<u>\$707,671</u>	<u>\$280,345</u>