

State of Florida



# 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 6, 2008

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

**FROM:** Division of Economic Regulation (Johnson, Kaproth)  
Office of the General Counsel (Klancke)

*Handwritten initials and signatures: CK, P, D, AS, KK, JS, C, M, T, J, B, M, T*

**RE:** Docket No. 070740-SU – Joint application for approval of transfer of Hudson Utilities, Inc.'s wastewater system and Certificate No. 104-S, in Pasco County, to Ni Florida, LLC.

**AGENDA:** 03/18/08 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Argenziano

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\070740.RCM.DOC

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CLERK

### Case Background

Hudson Utilities, Inc. (Hudson, utility or seller) is a Class B utility serving approximately 2,574 residential and 144 commercial customers. The utility provides wastewater collection service to its customers and purchases wastewater treatment service from Pasco County (County) pursuant to a Bulk Wastewater Treatment Agreement. The majority of Hudson's service territory is located in an area designated as a flood plain area, which is unsuitable for the use of septic tanks and drain fields. The utility is in the South Florida Water Management District and is not in a water use caution area. The utility's 2006 annual report shows total operating revenue of \$1,489,915 and net operating income of \$256,160 for the system.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

The utility was granted Certificate No. 104-S in 1973.<sup>1</sup> There have been numerous subsequent transfers and amendments as shown on page 4 of Attachment A.

On December 19, 2007, Hudson entered into an Asset Purchase Agreement with Ni America Operating LLC (Ni America or buyer) and Ni America Capital Management, LLC (parent company or Ni Management) to acquire the wastewater facilities. The wastewater facilities were purchased for more than net book value; however, the buyer is not requesting an acquisition adjustment. Ni America assigned its contractual interest in the utility to Ni Florida, LLC (Ni Florida), pursuant to an Assignment and Assumption Agreement dated December 19, 2007. The closing on the sale of the utility is scheduled to occur after the Commission approves the transfer.

On December 27, 2007, Hudson and Ni Florida filed a joint application for transfer of Hudson's wastewater facilities and certificate to Ni Florida. No deficiencies were found in the application. Rate base was last established by the Commission in Order No. 23810, issued November 27, 1990, in Docket No. 900293-SU, In Re: Application for a Staff-Assisted Rate Case in Pasco County by Hudson Utilities, Inc. Therefore, an audit is being conducted to establish rate base at the time of transfer and a subsequent recommendation will be filed upon the completion of the audit.

This recommendation addresses the transfer of the wastewater facilities and Certificate No. 104-S from Hudson to Ni Florida. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

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<sup>1</sup> Wastewater certificate issued pursuant to Order No. 5781, issued June 19, 1973, in Docket No. C-72696-S, In Re: Application of Allyn Water Supply, Inc., for certificates to operate its existing water and sewer system in Pasco County.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the transfer of facilities and Certificate No. 104-S from Hudson Utilities, Inc. to Ni Florida, LLC?

**Recommendation:** Yes, the transfer of facilities and Certificate No. 104-S from Hudson Utilities, Inc. to Ni Florida, LLC is in the public interest and should be approved effective the date of the Commission's vote. The subsequent order will serve as the utility's wastewater certificate and should be retained by the utility. Pursuant to Rule 25-9.044(1), Florida Administrative Code, the rates and charges approved for the utility should be continued until authorized to change by the Commission in a subsequent proceeding. Hudson is responsible for the payment of the 2008 regulatory assessment fees (RAFs) from January 1, 2008 to the date of the closing and for filing the 2007 annual report by March 31, 2008. Ni Florida is responsible for payment of the RAFs from the date of closing through December 31, 2008 and the RAFs for future years. Also, Ni Florida is responsible for filing the 2008 annual report and future annual reports. A description of the territory being transferred is appended to this recommendation as Attachment A. The buyer should be required to file documentation confirming the closing of the purchase within 15 days of the closing. (Johnson, Kaproth, Klancke)

**Staff Analysis:** On December 27, 2007, a joint application was filed by the parties for approval of the transfer of the facilities and Certificate No. 104-S from Hudson Utilities, Inc. to Ni Florida, LLC. The application is complete and in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and rules concerning an application for transfer. The closing on the sale of the utility is scheduled to occur after the Commission approves the transfer. A description of the territory is appended to this memorandum as Attachment A.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application were received, and the time for the filing of such objections has expired.

The application contains a copy of the purchase agreement which includes the purchase price, terms of payment, and a list of the assets purchased. The customer deposits are being transferred to Ni Florida. There are no guaranteed revenue contracts, developer agreements, or customer advances that must be disposed of in relation to the transfer. In addition, Ni Florida confirmed that it has reviewed the federal income tax returns of Hudson for the years 2005 and 2006. Ni Florida's parent company, Ni Management, financed the purchase of the utility through the use of equity financing. The utility's assets were purchased by Ni America for \$5,600,000 plus deferred payments of \$400,000. Ni America assigned all of its contractual rights for the utility to Ni Florida.

Rule 25-30.037(2)(q), Florida Administrative Code, requires proof that the utility owns or has provided for the continued use of the land upon which the utility facilities are located. In lieu thereof, the applicants have provided a copy of the agreement between Hudson and Pasco County dated June 5, 1990, for bulk wastewater treatment service and a copy of the Addendum to the Bulk Wastewater Treatment Agreement assigning the agreement to Ni Florida.

The application also contains a statement, pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, regarding how the transfer is in the public interest. According to the applicant, the transfer is in the public interest because the seller is no longer interested in continuing in the utility business. The applicant states that the founders of Ni America and Ni Management have management and operational experience in the wastewater industry. In addition, the customers of the utility will be served by a fiscally sound company that has the capability to finance capital additions. According to the applicant, Ni Management and its subsidiaries' sole focus is to provide high quality water and wastewater services at reasonable prices.

According to the application, with regard to the buyer's technical ability, the two principal management members of Ni America and Ni Florida will oversee the day to day activities of Ni Florida. One of the managing members was the former Chief Operating Officer of the Southwest Water Company. While in the employment of Southwest Water Company for over eleven years, the managing member held the position of Chief Executive Officer, President, and Chief Operating Officer, until his departure in June 2006. The other managing member started AquaSource in 1996 and served as the Chief Financial Officer.

With regard to the buyer's financial ability, the buyer is sufficiently funded to acquire the utility and maintain it in accordance with applicable regulatory standards. Staff reviewed the financial statements of Ni America and it appears that there are more than adequate resources to support the utility. Additionally, the application contains a statement that Ni Florida intends to fulfill the commitments, obligations, and representations of the sellers with regard to utility matters.

The application contained a statement that, after a reasonable investigation, the utility system appears to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). However, Ni Florida noted certain capital improvements and chloride level issues that need to be addressed and resolution of the chloride pollutant level issue has been addressed with DEP and the County. Staff has confirmed with DEP that the utility's wastewater system is currently in environmental compliance with respect to DEP's standards.

The application states that all RAFs have been paid and there are no refunds or fines outstanding. Staff has verified that the utility is current on annual reports and RAFs through 2006. The seller will be responsible for the payment of the 2008 RAFs from January 1, 2008, to the date of closing and filing the 2007 annual report by March 31, 2008. The buyer is responsible for all RAFs from the date of closing through December 31, 2008, and the RAFs for future years. In addition, the buyer is responsible for filing the 2008 annual report and future annual reports.

Staff has discussed the responsibilities of a regulated utility with a managing member of Ni Florida. The applicant indicated that they are using the National Association of Regulatory Utility Commissioners Uniform System of Accounts and understand it may not change its rates or serve outside the utility's authorized territory without obtaining prior Commission approval.

Hudson's rates and charges were established pursuant to Order No. 23810 in 1990. In addition, the rates have been modified as a result of indexes and pass-through rate adjustments. Rule 25-9.044(1), Florida Administrative Code, provides that in the case of change of ownership or control of a utility, the rates, classification, and regulations of the former owner must continue unless authorized to change by the Commission. The new owner has not requested a change; therefore, the existing rates and charges shown on Attachment B should continue in effect.

Based on the above, staff recommends the transfer of facilities and Certificate No. 104-S from Hudson Utilities, Inc., to Ni Florida, LLC, is in the public interest and should be approved effective the date of the Commission's vote. The subsequent order will serve as the utility's wastewater certificate and should be retained by the utility. Pursuant to Rule 25-9.044(1), Florida Administrative Code, the rates and charges approved for the utility should be continued until authorized to change by the Commission in a subsequent proceeding. Hudson is responsible for the payment of the 2008 RAFs from January 1, 2008, to the date of the closing and for filing the 2007 annual report by March 31, 2008. Ni Florida is responsible for payment of the RAFs from the date of closing through December 31, 2008, and the RAFs for future years. Also, Ni Florida is responsible for filing the 2008 annual report and future annual reports. A description of the territory being transferred is appended to this recommendation as Attachment A. The buyer should be required to file documentation confirming the closing of the purchase within 15 days of the closing.

Docket No. 070740-SU  
Date: March 6, 2008

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

**Recommendation:** No, this docket should remain open until staff receives proof of the executed purchase agreement confirming the closing and after rate base is set in a subsequent recommendation. (Klancke)

**Staff Analysis:** This docket should remain open until staff receives proof of the executed purchase agreement confirming the closing and after rate base is set in a subsequent recommendation.

**NI FLORIDA, LLC**

**Pasco County**

**Wastewater Service Area**

Township 24 South, Range 16 East

**Section 14:**

All of said Section, LESS the following described portions thereof: Commence at the Southwest corner of said Section 14 and the POINT OF BEGINNING; Thence run North, along the West line of said Section 14, 30 feet to the center line of Old Dixie Highway; Thence run North 40 degrees East along the center line of Old Dixie Highway, 670 feet; Thence run North 32 degrees East along the centerline of Old Dixie Highway, 780 feet; Thence run East, 1,566 feet; Thence run South, 1,075 feet; Thence run West, 500 feet; Thence run South, 120 feet to the South line of said Section 14; Thence run West, along the South line of said Section 14; 1,910 feet to the POINT OF BEGINNING. Also, commence at the Southwest corner of said Section 14; Thence run North along the West line of said Section 14, 30 feet to the center line of Old Dixie Highway; Thence run North 40 degrees East along the center line of Old Dixie Highway, 670 feet; Thence run North 32 degrees East along the centerline of Old Dixie Highway, 1,160 feet to the POINT OF BEGINNING; Thence continue North 32 degrees East along the center line of Old Dixie Highway, 1,704 feet; Thence run East, 1,975 feet; Thence run South, 2,965 feet to the South line of said Section 14; Thence run West, along the South line of said Section 14, 1,240 feet; Thence run North, 1,520 feet; Thence run West, 1,638 feet to the POINT OF BEGINNING. The areas excepted are portions of the Viva Villas and Sea Pines Subdivisions served by Pasco County.

LESS the following described portion thereof: Commence at the Southwest corner of said Section 14; thence run North, along the West line of said Section 14, 30 feet to the center line of Old Dixie Highway; thence run North 40 degrees East along the center line of Old Dixie Highway 670 feet; thence run North 32 degrees East along the center line of Old Dixie Highway 780 feet to the POINT OF BEGINNING; thence continue North 32 degrees East along the centerline of Old Dixie Highway 380 feet; thence run East 1,638 feet; thence run South, 1,520 feet to the South line of Section 14; thence run West along the South line of Section 14, 790 feet; thence run North 120 feet; thence run East 500 feet; thence run North, 1,075 feet; thence run West 1,566 feet to the POINT OF BEGINNING.

**Section 15:** All of said Section.

**Section 16:** All of said Section.

**Section 21:**

All of Said Section, LESS the South 1500 feet of the North 2500 feet of the East 500 feet of said Section. The areas excepted is a portion of the Sea Pines Subdivision served by Pasco County.

Section 22:

All of said Section, LESS the following described portions thereof: Commence at the Northwest corner of said Section 22; Thence run South along the West Section line 1,000 feet to the POINT OF BEGINNING; Thence run East 1,500 feet to the center of a canal; Thence run South 600 feet; Thence run East 2,200 feet to the center of Old Dixie Highway; Thence run South 47 degrees West along center of Old Dixie Highway 1,300 feet; Thence run West approximately 2,720 feet to the West section line of said Section 22; Thence run North along the West section line 1,500 feet to the POINT OF BEGINNING. Also, commence at the Northwest corner of said Section 22; Thence run South along the West Section line 1,000 feet; Thence run East 1,500 feet to the POINT OF BEGINNING: Thence run North 350 feet; Thence run East 3,225 feet to the center of Old Dixie Highway; Thence run South 47 degrees West along center of Old Dixie Highway 513 feet; Thence run West approximately 2,850 feet to the POINT OF BEGINNING. Also, commence at the Northeast corner of said Section 22 and the POINT OF BEGINNING, Thence run South along the East line of said section 945 feet; Thence run West 949 feet to the center line of Old Dixie Highway; Thence run North 47 degrees East along the center line of Old Dixie Highway 790 feet; Thence run North 40 degrees East along the centerline of Old Dixie Highway 530 feet to the North line of said Section 22; Thence run East, along the North line of said Section 22, 30 feet to the POINT OF BEGINNING. The areas excepted is a portion of the Sea Pines Subdivisions served by Pasco County.

LESS the following described portions thereof: Commence at the Northeast corner of said Section 22; thence run South along the East Section line, 945 feet to the POINT OF BEGINNING; thence continue South along East line of said Section, 300 feet; thence run West 970 feet; thence run South 47 degrees West parallel to centerline of Old Dixie Highway, 530 feet; thence run West 2,460 feet; thence run North, 600 feet to a point in the Canal; thence run East along centerline of Canal, 2,850 feet to the centerline of Old Dixie Highway; thence run North 47 degrees along the centerline of Old Dixie Highway, 80 feet; thence run East 949 feet to the POINT OF BEGINNING.

Section 23:

All of said Section, LESS the following described portions thereof: Commence at the Northwest corner of said Section 23 and the POINT OF BEGINNING; Thence run East along the North line of said Section 23, 1,910 feet; Thence run South 945 feet; Thence run West 1,910 feet to the West section line of said Section 23; Thence run North along the West section line of said Section 23, 945 feet to the POINT OF BEGINNING. Also, commence at the Northwest corner of said Section 23; Thence run East along the North line of said Section 23, 2,700 feet to the POINT OF BEGINNING; Thence continue East along the North line of said Section 23, 1,240 feet; Thence run Southwesterly, parallel to U.S. 19, 1,500 feet; Thence run South, 100 feet; Thence run Southwesterly, parallel to U.S. 19, 140 feet; Thence run West, 175 feet; Thence run North, 1,380 feet to the POINT OF BEGINNING. The areas excepted are portions of the Viva Villas and Sea Pines Subdivisions served by Pasco County.

LESS the following described portion thereof: Commence at the Northwest corner of said



Section 23; thence run East along the North line of said Section 23, 1,910 feet to the POINT OF BEGINNING; thence run East along North line of said Section 23, 790 feet; thence run South, 1,640 feet; thence run South 28 degrees East, 60 feet to the West Right-of-Way line of U.S. Highway 19; thence run Southwest along West Right-of-Way line of U.S. Highway 19, 325 feet; thence run North 28 degrees West, 250 feet; thence run North, 375 feet; thence run West, 165 feet; thence run North 64 degrees West, 280 feet; thence run West 1,960 feet to a point on West line of said Section; thence run North, 300 feet; thence run East, 1,910 feet; thence run North 945 feet to the POINT OF BEGINNING.

Section 26:

All of the North 1/2 of said Section 26.

Section 27:

All of said Section 27; LESS the South 1/2 of the Southeast 1/4.

Section 28: All of said Section.

Section 32: The East 818 feet of the North 1/2 of said Section 32.

Section 33: All of said Section.

Section 34:

The West 1/2 of the Northwest 1/4. The Northwest 1/4 of the SW 1/4.

Township 25 South, Range 16 East.

Section 4:

The North 150 feet of said Section 4.

**FLORIDA PUBLIC SERVICE COMMISSION**

Authorizes

**Ni Florida, LLC**  
pursuant to  
**Certificate Number 104-S**

to provide wastewater service in Pasco 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.

Order Number	Date Issued	Docket Number	Filing Type
5781	6/19/73	C-72696-S	Original Certificate
7824	6/02/77	750558-S	Transfer
13823	10/31/84	840296-SU	Amendment
14477	06/18/85	850149-SU	Amendment
15556	01/16/86	850779-SU	TMOC
22852	04/24/90	900065-SU	Amendment
23846	12/10/90	900020-SU	Amendment
PSC-98-1543-FOF-SU	11/20/98	981081-SU	Name Change
PSC-99-1916-PAA-SU	09/27/99	981079-SU	Amendment
PSC-99-2381-FOF-SU	12/06/99	981080-SU	TMOC
PSC-04-1278-AS-SU	12/27/04	041207-SU	Amendment
*	*	070740-SU	Transfer

**\*Order Numbers and dates to be provided at time of issuance.**

**WASTEWATER**  
**Residential**  
**Monthly Service Rates**

<u>Meter Size</u>	<u>Base Facility Charge</u>
All Meter Sizes	\$ 15.72
Charge Per 1,000 Gallons (Maximum 10,000 per month)	\$ 5.17
Signal Cove Customers Charge Per 1,000 Gallons (Maximum 10,000 per month)	\$ 4.12

**General, Multi-Residential And Bulk Service**  
**Monthly Service Rates**

<u>Meter Size</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 15.72
Full 3/4"	\$ 23.56
1"	\$ 39.26
1 1/2"	\$ 78.51
2"	\$ 125.63
3"	\$ 251.25
4"	\$ 392.56
6"	\$ 785.16
8"	\$1256.24
10"	\$1805.86
General, Multi-Residential Charge Per 1,000 Gallons	\$ 6.17
Bulk Service Charge Per 1,000 Gallons	\$ 6.45

**MISCELLANEOUS SERVICE CHARGES**

Initial Connection Fee	\$ 15.00
Normal Reconnection Fee	\$ 15.00
Violation Reconnection Fee	Actual Cost
Premises visit Fee (in lieu of disconnection)	\$ 10.00

**SERVICE AVAILABILITY CHARGES**

System Capacity Charge	\$2400.00
All Others Per Gallon	\$ 13.87