

State of Florida



Public Service Commission

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RECORDS AND REPORTING

DATE: NOVEMBER 4, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER AND WASTEWATER (CLAPP) ^{33M}
DIVISION OF LEGAL SERVICES (CROSBY, CIBULA) ^{smc. P.S. Bl. And}

RE: DOCKET NO. 981080-SU - APPLICATION BY HUDSON UTILITIES, INC. FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL IN PASCO COUNTY.
COUNTY: PASCO

AGENDA: 11/16/99 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\981080SU.RCM

CASE BACKGROUND

Hudson Utilities, Inc. (Hudson or utility) is a Class B utility located in Pasco County. Hudson was granted Certificate No. 104-S on June 19, 1973. The utility provides wastewater collection service to its customers and contracts with Pasco County (County) for wastewater treatment service pursuant to a Bulk Wastewater Treatment Agreement entered into on June 5, 1990. Hudson serves approximately 1,850 residential and 87 commercial customers. According to Hudson's 1998 annual report, the utility had annual operating revenues of \$948,129 and a net loss of \$164,691. The utility's facilities consist of one wastewater collection system.

On August 26, 1998, Mr. Robert Bammann, Mr. Charles E. Griffin, and Mr. Mathew S. Griffin (Partners or Buyers) filed an application for transfer of majority organizational control (TMOC) of Hudson, from Mr. Robert Bammann (Mr. Bammann or Seller) to the

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Buyers. The actual transfer of the 100 shares of unissued treasury stock took place on or around March 29, 1995. This was an "in house" transaction that provided for additional unissued stock to be available at a reduced rate in recognition of and compensation for work performed by Mr. Charles E. Griffin. In addition, his son, Mr. Mathew S. Griffin, was also allowed to purchase a limited number of shares at the reduced rate.

There was a delay in processing the application due to the necessity of processing an amendment/transfer application for three territories to Hudson, because territory included in the TMOc application was not yet approved for Hudson. The amendment/transfer application was approved by Order No. PSC-99-1916-PAA-SU issued September 27, 1999, in Docket No. 981079-SU. Therefore, this TMOc application is now ready for action by the Commission.

It has been Commission practice that rate base is not established in TMOc proceedings, and thus, rate base audits are not conducted in TMOc cases. However, for informational purposes, rate base was established for this wastewater utility in a 1990 Staff Assisted Rate Case as \$511,380. The total purchase price paid for the additional utility stock is \$11,160.

This recommendation addresses the petition to transfer majority organizational control of the subject utility from Mr. Bammann to the Partners. Our review indicates that this utility is current with regard to submission of annual reports and payment of regulatory assessment fees.

DISCUSSION OF ISSUES

ISSUE 1: Should Hudson Utilities, Inc. be ordered to show cause, in writing within twenty-one days, why it should not be fined for apparent violation of Section 367.071, Florida Statutes?

RECOMMENDATION: No. Show cause proceedings should not be initiated. (CROSBY, CIBULA)

STAFF ANALYSIS: Hudson is in apparent violation of Section 367.071, Florida Statutes, which states, in part, "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." Mr. Robert Bammann is the President and holder of 100 shares of Hudson's stock. As sole stockholder, Mr. Bammann authorized 100 additional shares of Hudson stock to be issued from treasury stock. On March 29, 1995, at a shareholder meeting, Mr. Charles E. Griffin purchased 98 shares of Hudson stock from unissued treasury stock. Mr. Mathew Scott Griffin purchased two shares of stock from unissued treasury stock and two shares from Mr. Bammann. On May 6, 1997, the stockholders entered into a stock option agreement with WRH Mortgage, Inc., whereby Mr. Bammann and Mr. Charles Griffin would each sell 10 shares of stock back to the corporation. The corporation would then grant a stock option for six years from the date of closing for 19 shares to WRH Mortgage, Inc., and issue an additional share to Mr. Mathew Griffin. As a result of this transaction, Mr. Robert Bammann owns 88 shares of stock, Mr. Charles E. Griffin owns 88 shares of stock and Mr. Mathew Griffin owns 5 shares of stock, and WRH Mortgage, Inc. has a stock option for 19 shares. The transfer of majority control occurred without prior Commission approval. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes.

Section 367.161, 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 to have willfully violated any provision of Chapter 367, 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 "[i]n 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.

Failure of Hudson to obtain Commission approval prior to transferring majority organizational control of the utility appears to be due to lack of knowledge of the statutes and Commission rules. The stockholders were not aware that they had to obtain Commission approval prior to the sale of stock in Hudson. Immediately upon becoming aware of the requirement to file for approval of the transfer, Hudson filed the application for Commission approval. As stated previously, the application was filed on August 26, 1998.

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Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, staff does not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level of warranting initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Hudson to show cause for failing to obtain Commission approval prior to transferring stock to Mr. Charles E. Griffin and Mr. Mathew S. Griffin.

ISSUE 2: Should the application for transfer of majority organizational control of the utility from Mr. Robert Bammann to Mr. Robert Bammann, Mr. Charles E. Griffin, and Mr. Mathew S. Griffin be approved?

RECOMMENDATION: Yes, the application for transfer of majority organizational control of the utility from Mr. Robert Bammann to Mr. Robert Bammann, Mr. Charles E. Griffin, and Mr. Mathew S. Griffin should be approved. The submittal of a new tariff should not be required. (CLAPP)

STAFF ANALYSIS: As discussed in the case background, on August 26, 1998, the Partners filed an application for transfer of majority organizational control of Hudson from Mr. Bammann to the Partners. 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 majority organizational control. The application contains a check in the amount of \$2,250, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

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 utility 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.

The application states that the transfer is in the public interest, as required by Rule 25-30.037(3)(f), Florida Administrative Code, because the Buyers have diverse expertise in areas of or relating to operation of wastewater utilities, such as: 25 years experience in construction, operation and maintenance of water and wastewater facilities; 35 years experience as a professional engineer dealing with design, operation, and construction of water and wastewater facilities; and 12 years experience in surveying and utility management. The Buyers have the financial resources to make the future improvements to the utility systems as deemed necessary. Additionally, the application contains a statement that the Buyers will fulfill the commitments, obligations and representations of the Seller with regard to utility matters. In contrast, the Seller no longer wishes to continue to own and operate the utility system as the sole owner.

Mr. Bammann was the original owner of the only issued shares of Hudson. He decided to include additional shareholders in the

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corporation and arranged to issue 100 shares of treasury stock. Subsequently, the Partners decided to offer, from existing issued stock, a 5-year option for 19 shares of stock at \$250 each to WRH Mortgage, Inc., a lender of the utility. According to the application, the 200 shares of issued stock are accounted for as follows: Mr. Bammann, 88 shares; Mr. Charles E. Griffin, 88 shares; Mr. Mathew S. Griffin, 5 shares; and WRH Mortgage, Inc., a 5-year option to purchase 19 shares currently held by the utility. Ultimately, the Seller is simply reducing his ownership share of the corporation, but will continue in his operation of the utility.

The application states that the Buyers have performed a reasonable investigation of the utility system as required by Rule 25-30.037(3)(h), Florida Administrative Code. The Buyers included a statement that the sanitary sewer collection and transmission systems are in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). Staff has contacted the DEP and learned that there are no outstanding notices of violation.

According to the application, Hudson has the financial and technical ability to provide wastewater collection service. The utility has been certificated in the wastewater collection business since 1973. The utility's wastewater collection system is constructed in platted road right-of-ways and easements, which provide for the continued use of the land as required by Rule 25-30.036(3)(i), Florida Administrative Code. According to our records, the utility is current on its regulatory assessment fees and has filed an annual report for 1998.

Based on the above, staff recommends that the Commission find that the transfer of majority organizational control of Hudson to the Partners is in the public interest and, therefore, that it should be approved. Also, since the name, issuing officer, or rates are not changing, staff recommends that the submittal of a new tariff should not be required.

ATTACHMENT A

Hudson Utilities, Inc.

Wastewater Territory Description

Pasco County

Composite Territory Description

This composite territory description includes all previous territory additions and the new area. The utility was first granted their original territory by Order No. 5781 in Docket No. C-72695-S. The utility amended their territory by Order No. 13823, Docket No. 840296-SU; Order No. 14477, Docket No. 850149-SU; Order No. 15556, Docket No. 850779-SU; Order No. 22852, Docket No. 900065-SU; Order No. 23846, Docket No. 900832-SU and Order No. PSC-99-1916-PAA-SU, Docket No. 981079-SU. This composite territory greatly simplifies their territory description.

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.

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The areas excepted are portions of the Viva Villas and Sea Pines Subdivisions served by Pasco County.

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.

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

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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.

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.

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ISSUE 3: Should rate base be established?

RECOMMENDATION: No, different ownership of stock does not affect the rate base balance. (CLAPP)

STAFF ANALYSIS: It is Commission practice that rate base is not established in TMOC proceedings. The reason behind this approach is the philosophy that stock is traded and has no regulatory relationship to rate base. Thus, different ownership of stock does not affect a utility's rate base balance. Consequently, stock purchase price and rate base are not considered in making a public interest determination of a TMOC. This approach is followed if the stock is privately held or publicly traded.

Because rate base is not considered in TMOC proceedings, rate base audits have historically not been conducted in TMOC proceedings. Further, staff believes that establishment of rate base in this docket would result in an unnecessary deviation from Commission practice. Staff does not believe the facts of this particular case warrant a deviation from past practice. The sale of the stock of Hudson from Mr. Bammann to the Partners will not alter the utility's asset and liability accounts. Accordingly, the transfer of stock ownership will not change the rate base balance. In consideration of the above, staff recommends that rate base not be established in this docket.

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ISSUE 4: Should an acquisition adjustment be approved?

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

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the original cost calculation. The Commission routinely makes determinations regarding acquisition adjustments in cases involving the transfer of certificates, assets, or facilities because the purchase price is considered when determining whether the transfer is in the public interest. Conversely, it is Commission practice that acquisition adjustments are generally not considered in stock transfers because the price of stock has no regulatory relationship to a utility's established rate base.

Because the assets are not actually being sold and the value will remain the same after the transfer, staff believes that an acquisition adjustment does not result from this transfer. Therefore, staff recommends that an acquisition adjustment should not be included in the calculation of rate base.

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ISSUE 5: Should the rates and charges approved for this utility be continued?

RECOMMENDATION: Yes, the rates and charges approved for Hudson Utilities, Inc. should be continued. (CLAPP)

STAFF ANALYSIS: Hudson's rates and charges were established most recently by Order No. 23810, issued November 27, 1990, in Docket No. 900293-SU, as the result of a staff-assisted rate case. The rates were amended by Order No. PSC-98-0316-AS-SU, issued February 23, 1998, in Docket No. 980076-SU. In addition, the rates were modified effective March 29, 1999, by way of the 1998 price index and pass-through rate adjustment.

Rule 25-9.044(1), FAC, provides that:

In 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).

The Buyer has not requested a change in the rates and charges of the utility and staff sees no reason to change them at this time. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges. The utility has not filed a revised tariff since there is no change in issuing officer or utility name due to the transfer of majority organizational control.

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ISSUE 6: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed. (CROSBY,
CIBULA)

STAFF ANALYSIS: No further action is required in this docket.
Therefore, staff recommends that this docket be closed.