

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Hudson
Utilities, Inc. for transfer of
majority organizational control
in Pasco County.

DOCKET NO. 981080-SU
ORDER NO. PSC-99-2381-FOF-SU
ISSUED: December 6, 1999

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL,
DECLINING TO INITIATE A SHOW CAUSE PROCEEDING,
AND CLOSING DOCKET

BY THE COMMISSION:

On August 26, 1998, Hudson Utilities, Inc. (Hudson or utility) filed an application seeking approval of the transfer of majority organizational control of the utility from Mr. Robert Bammann (Mr. Bammann or Seller) to Mr. Bammann, Mr. Charles E. Griffin, and Mr. Mathew S. Griffin (Partners or Buyers). Hudson, which is a Class B utility located in Pasco County, was granted Certificate No. 104-S on June 19, 1973. The utility provides wastewater collection service to approximately 1,850 residential and eighty-seven commercial customers. Wastewater treatment is provided to Hudson by Pasco County, pursuant to a Bulk Wastewater Treatment Agreement entered into on June 5, 1990.

Originally, Mr. Bammann owned 100 shares or 100 per cent of the issued stock in Hudson. An additional 100 shares of unissued treasury stock were made available on March 29, 1995, at a reduced rate in recognition of and compensation for work performed by Mr. Charles E. Griffin. Mr. Mathew S. Griffin was also allowed to purchase a limited number of shares at the reduced rate.

On March 29, 1995, Mr. Charles E. Griffin purchased ninety-eight shares of Hudson stock from unissued treasury stock. Mr. Mathew S. Griffin purchased two shares of stock from unissued

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treasury stock and two shares from Mr. Bammann, which left Mr. Bammann with ninety-eight shares. 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 ten shares of stock back to the corporation. The corporation would then grant a stock option for six years from the date of closing for nineteen shares to WRH Mortgage, Inc., and issue an additional share to Mr. Mathew Griffin. As a result of this transaction, Mr. Robert Bammann owns eighty-eight shares of stock, Mr. Charles E. Griffin owns eighty-eight shares of stock, Mr. Mathew Griffin owns five shares of stock, and WRH Mortgage, Inc. has a stock option for nineteen shares. Because this transaction took place without prior Commission approval, Hudson is in apparent violation of Section 367.071, Florida Statutes.

Show Cause

As stated previously, 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." Originally, Mr. Bammann was 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 ninety-eight shares of Hudson stock from unissued treasury stock. Mr. Mathew S. 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 ten shares of stock back to the corporation. The corporation would then grant a stock option for six years from the date of closing for nineteen shares to WRH Mortgage, Inc., and issue an additional share to Mr. Mathew Griffin. The transfer of majority organizational 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.

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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.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we do not believe that the violation of Section 367.071, Florida Statutes, rises in these circumstances to the level of warranting initiation of a show cause proceeding. Therefore, a show cause proceeding shall not be initiated against Hudson for failure to obtain Commission approval prior to transferring stock to Mr. Charles E. Griffin and Mr. Mathew S. Griffin.

Application

Except as discussed previously, the application is in compliance with Section 367.071, Florida Statutes, and other pertinent states and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$2,250, as required by Rule 25-30.020, Florida Administrative Code.

Rule 25-30.036(3)(i), Florida Administrative Code, requires an applicant to provide proof of ownership or continued use of the land upon which its facilities are located. Hudson's wastewater collection system is constructed in platted road rights-of-way and easements, which provide for continued use of the land.

Hudson provided 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 have been received and the time for filing such has expired.

According to the application, 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 facilities. Such expertise includes twenty-five years experience in construction, operation and maintenance of water and wastewater facilities; thirty-five years experience as a professional engineer dealing with design, operation, and construction of water and wastewater facilities; and twelve years experience in surveying and utility management. Further, the Buyers have the financial resources to make future improvements to the utility systems as deemed necessary.

The transfer occurred because Mr. Bammann no longer wished to be the sole owner and operator of the utility. As a result, he caused an additional 100 shares of treasury stock to be issued. Of the total number of shares issued, Mr. Bammann owns eighty-eight shares, Mr. Charles Griffin owns eighty-eight shares, Mr. Mathew Griffin owns five shares, and WRH Mortgage, Inc. has a six-year option to purchase nineteen shares at \$250 per share. Although Mr. Bammann reduced his ownership share of the corporation, he will continue his operation of the utility.

The Buyers indicated in the application that collection and transmission systems are in satisfactory condition and in compliance with the applicable standards set by the Florida Department of Environmental Protection (DEP). According to DEP, there are no outstanding notices of violation against the utility.

Based on the foregoing, we find that the transfer of majority organizational control of the utility is in the public interest and it is approved. The territory Hudson is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. Because the name, issuing officer, and rates are not changing, a new tariff is not required.

Rate Base

Rate base is not normally established in transfers of majority organizational control because stock is traded and has no regulatory relationship to rate base. Because different ownership

of stock does not affect a utility's rate base balance, stock purchase price and rate base are not considered when determining whether a transfer of majority organizational control is in the public interest.

In addition, rate base audits have historically not been conducted in this type of transfer. The establishment of rate base in this docket would result in an unnecessary deviation from Commission practice. We do not believe the facts in this case warrant such a deviation. Therefore, we do not find it appropriate to establish rate base for Hudson in this docket.

Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the original cost calculation. Determinations of the appropriateness of an acquisition adjustment are made 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. 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. Therefore, we find that an acquisition adjustment is not appropriate in this docket.

Rates and Charges

Hudson's rates and charges were established by Order No. 23810, issued November 27, 1990, in Docket No. 900293-SU. 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, as a result of a 1998 price index and pass-through rate adjustment.

Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a company to adopt and use the rates, classifications and regulations of the former owner unless authorized to change by this Commission. The Buyers have not requested a change in the rates and charges and we see no reason to change them at this time. Hudson shall continue to charge the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding. As stated previously, because there is no change in the name, issuing office or the rates and charges as a result of this transfer, it is not necessary for the utility to file a revised tariff.

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Based on the foregoing, it is

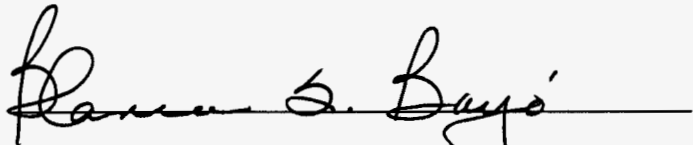
ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of Hudson Utilities, Inc., 14334 Old Dixie Highway, Hudson, Florida 34667, to Mr. Robert Bammann, Mr. Charles E. Griffin, and Mr. Mathew Griffin, is hereby approved. The territory Hudson is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that Hudson Utilities, Inc. shall continue to charge the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that Hudson Utilities, Inc. shall not be required to show cause for failing to obtain Commission approval prior to transferring majority organizational control of the utility to Mr. Bammann, Mr. Charles E. Griffin, and Mr. Mathew Griffin. It is further

ORDERED that Docket No. 981080-SU is hereby closed.

By ORDER of the Florida Public Service Commission this 6th day of December, 1999.


BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

ALC/SMC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as

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well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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. 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 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

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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.