

ORIGINAL
RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
RICHARD M. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
MARTIN P. McDONNELL
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

R. DAVID PRESCOTT
HAROLD F. X. PURNELL
MARSHA E. RULE
GARY R. RUTLEDGE
GOVERNMENTAL CONSULTANTS
MARGARET A. MENDUNI
M. LANE STEPHENS

June 1, 2004

Ms. Blanca S. Bayo, Director
Division Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

COMMISSION
CLERK

JUN - 1 PM 4:29

RECEIVED-FPSC

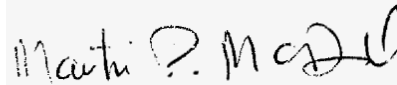
Re: Hudson Utilities' Response in Opposition to Office of Public Counsel's Motion to Initiate a Show Cause Proceeding
Case No. 981079-SU

Dear Ms. Bayo:

Enclosed please find the original and fifteen copies of Hudson Utilities' Response in Opposition to Office of Public Counsel's Motion to Initiate a Show Cause Proceeding pertaining to the above referenced docket number.

Please acknowledge receipt of these documents by date-stamping the enclosed copy of this letter and returning it to the undersigned.

Sincerely,



Martin P. McDonnell

CMP _____
COM 5
CTR _____
ECR _____
GCL _____ MPM/tls
OPC _____ Enclosures
MMS _____
RCA _____
SCR _____
SEC 1
OTH _____

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

06226 JUN-1 3

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment)
of Certificate No. 104-S to extend)
service territory in Pasco County by)
Hudson Utilities, Inc., and request for)
limited proceeding.)
_____)

Docket No. 981079-SU

Filed:

**HUDSON UTILITIES' RESPONSE IN OPPOSITION TO
OFFICE OF PUBLIC COUNSEL'S MOTION TO INITIATE A SHOW CAUSE
PROCEEDING**

Comes now Hudson Utilities, Inc. ("Hudson"), by and through undersigned counsel, and hereby files this Response in Opposition to Office of Public Counsel's ("OPC") Motion to Initiate a Show Cause Proceeding Against Hudson in the instant docket and, in support thereof, states as follows:

1. Hudson has complied fully with the single outstanding issue in the instant docket; that is on April 21, 2004, Hudson filed with the Commission its Notice of Completion of Signal Cove and Transfer of Territory from Pasco County to Hudson Utilities.

2. By way of historical background, Hudson is a Class B Utility and was granted Certificate No. 104-S on June 19, 1973. Hudson provides wastewater collection service to its customers and contracts with Pasco County ("County") for wastewater treatment service pursuant to a bulk wastewater agreement as the County owns and operates regional wastewater treatment and disposable facilities. In order to accommodate expected population growth in the area, Hudson and the County have extended the terms of their bulk wastewater agreement to February 5, 2025.

3. In Hudson's Application filed in the instant docket, it included the request for approval to amend its territory to include the Signal Cove territory, which, at the time, was within the County's jurisdiction. The Commission determined that the amendment to Hudson's territory

DOCUMENT NUMBER-DATE

06226 JUN-13

FPSC-COMMISSION CLERK

to include Signal Cove should be treated as a transfer since some of the residents in Signal Cove received wastewater service from the County. In Order No. PSC-99-1916-PAA-SU, issued September 27, 1999 in the instant docket (the "1999 Order"), the Commission granted Hudson's Application to amend its certificate and held that the transfer of the Signal Cove territory from the County to Hudson was in the public interest, and was therefore approved.

4. Instead of closing the docket, however, the Commission ordered the docket to remain open for a singular purpose: "[T]o allow Commission Staff to verify that Hudson Utilities, Inc., has filed proof of the territory transfer [of Signal cove from the County to Hudson]. Upon receipt of proof that the transfer has occurred, and if no protest has been received, this docket shall be closed administratively. ("1999 Order, page 11.")

5. In Order No. PSC-03-0889-PCO-SU (the "2003 Order") issued by the Florida Public Service Commission ("PSC" or "Commission") on August 4, 2003 in Docket Nos. 981079-SU and 020254-SU, the Commission ordered Hudson to:

"[C]omplete construction to Signal Cove and finalize the transfer of the Signal Cove territory from Pasco County to Hudson Utilities, Inc., within eight (8) months . . ."

...

And specifically ordered that:

"Dockets 981079-SU and 020254-SU shall remain open pending completion of the construction to Signal Cove and proof of the transfer of the Signal Cove territory from Pasco County to Hudson Utilities, Inc." 2003 Order, pages 15 and 16.

Hudson has complied with the Commission's mandates of the 1999 and 2003 Orders.¹

¹On April 21, 2004 Hudson filed with the Commission its Notice of Completion of Signal Cove service territory and proof of transfer of territory from Pasco County to Hudson Utilities.

6. To establish service to the Signal Cove area, Hudson constructed a new collection system, lift station, and force main, and rebuilt an existing lift station and force main. Additionally Hudson has connected each and every resident in the Signal Cove Service area to allow for sewer service.

7. On May 25, 2004, PSC filed its motion to initiate a show cause proceeding in the instant docket because of Hudson's purported "continued failure to provide service to the *Sea Pines Community* located within its service territory." (Emphasis supplied) OPC's Motion be denied as it is irrelevant to any pertinent matter outstanding in the instant docket. As Hudson has complied with the letter and spirit of the 1999 Order, and satisfactorily complied with all Commission requirements in Docket No. 980179-SU, OPC's Motion should be denied.

8. Hudson is mindful of the duties and powers conferred upon OPC by the Florida Legislature and respects OPC's authority to file appropriate pleadings. However, OPC's Motion to Initiate a Show Cause proceeding against Hudson filed in the instant case should be denied for its failure to address any outstanding issues in the docket. ²

9. Section 367.161(1), Florida Statutes, provides that if any utility [k]nowingly refuses to comply with, or willfully violates any provision of this chapter or any lawful rule or order of the Commission, such utility shall incur a penalty of each such offense of not more than \$5,000. . . [E]ach day that such refusal or violation continues constitutes a separate offense". Hudson is not, and has never been in violation of Section 361.161(1), FS, as Hudson has never knowingly refused

²If OPC wishes to initiate a show cause proceeding against Hudson for its purported failure to service the Sea Pines area pursuant to Chapter 28-106, F.A.C., Hudson respectfully reserves its right to file a responsive pleading in opposition.

to comply with or willfully violated any provisions of Chapter 367 or any lawful rule or order of the Commission.

WHEREFORE, Hudson respectfully requests that the Commission deny OPC's Motion to Initiate a Show Cause Proceeding, and close the instant docket.

Respectfully submitted,



Kenneth A. Hoffman, Esq.
Martin P. McDonnell, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302
(850) 681-6788
Counsel for Hudson Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States Mail to the following this 1 day of June, 2004.

Samantha Cibula, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, Florida 32399

Steve Reilly, Esq.
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400



Martin P. McDonnell, Esq.