

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

COMMISSION
CLERK

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DATE: November 30, 2004

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

FROM: Division of Economic Regulation (Redemann, Clapp) *ppr*
Office of the General Counsel (Gervasi) *PS* *west* *JDS* *JD*

RE: Docket No. 981079-SU – 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. 041207-SU – Application for amendment of Certificate No. 104-S to delete territory in Pasco County by Hudson Utilities, Inc.
County: Pasco

AGENDA: 12/07/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\041207.RCM.DOC

Case Background

Hudson Utilities, Inc. (Hudson or utility) is a Class B utility serving approximately 2,300 residential and 115 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 federally designated as a flood plain area, which is unsuitable for the efficient use of septic tanks and drain fields. The County comprehensive land use plan requires that coastal areas, including Hudson's service territory, shall be provided with sanitary sewer collection and treatment systems. The Environmental Administrator for the Pasco County Health Department advises that the Health Department favors the abandonment of septic tanks and the connection to central wastewater service when it is available.

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Docket Nos. 981079-SU, 041207-SU

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On August 26, 1998, Hudson filed an application for amendment of Certificate No. 104-S to extend its service area. The application included a request to serve a portion of territory known as the Signal Cove subdivision, which was being served by the County, as well as a request to serve an area comprising approximately four to five square miles of unserved territory. Part of that unserved territory is called Sea Pines. The Sea Pines area is adjacent to the Sea Pines, Sea Pines (Ironwood), and Viva Villas subdivisions, which are served by the County. Docket No. 981079-SU was opened to process the application.

By Order No. PSC-99-1916-PAA-SU, issued September 27, 1999, which was made final and effective by Order No. PSC-99-2082-CO-SU, issued on October 21, 1999, the Commission approved Hudson's application to amend its certificate, including the transfer of the Signal Cove territory from the County to Hudson, and the amendment to include the formerly unserved Sea Pines area. By that order, Hudson was required to file proof of the transfer of the Signal Cove territory within three months. An Addendum Agreement for Bulk Wastewater Services for the Signal Cove Subdivision by and between Hudson and the County dated April 28, 1998, provided for the transfer of the Signal Cove territory when Hudson connected its force main to the County's wastewater collection system. Since that time, Hudson requested and the Commission granted five extensions of time for Hudson to file proof of the transfer of the Signal Cove territory from the County to Hudson.¹

On March 19, 2002, Hudson filed an application for an increase of service availability charges to increase its system capacity charge from \$1,000 to \$2,400, in order to recover the costs of extending its collection lines to serve the Signal Cove territory and additional areas north of Signal Cove.² By Order No. PSC-02-1626-PAA-SU, issued November 25, 2002, in Dockets Nos. 981079-SU, 020253-SU³, and 020254-SU, the Commission approved Hudson's application for increased service availability charges, which action became final by Order No. PSC-02-1818-CO-SU, issued December 20, 2002. The Commission ordered the utility to complete construction to the Signal Cove area by June 30, 2003, and to submit quarterly progress reports in Docket No. 020254-SU. Finally, the Commission ordered Hudson to file, in Docket No. 981079-SU, proof of the transfer of territory from the County to Hudson by June 30, 2003. The Commission put the utility on notice that failure to meet the June 30, 2003, deadline would result in the immediate initiation of show cause proceedings.

By Order No. PSC-03-0889-PCO-SU, upon finding that Hudson had apparently secured the financing necessary to complete the Signal Cove project, the Commission declined to initiate show cause proceedings and granted Hudson's fifth and last request for extension of time to file

¹ See in Docket No. 981079-SU, Orders Nos. PSC-00-0212-FOF-SU, issued February 2, 2000; PSC-00-1512-PCO-SU, issued August 21, 2000; PSC-01-1993-PCO-SU, issued October 8, 2001; PSC-02-1166-PCO-SU, issued August 26, 2002; and PSC-03-0889-PCO-SU, issued August 4, 2003.

² OPC filed a notice and an amended notice of intervention in Docket No. 981079-SU, which was acknowledged by Order No. PSC-02-0966-PCO-SU, issued July 16, 2002.

³ Docket No. 020253-SU was opened to process a Petition filed by OPC to initiate show cause proceedings against Hudson for failure to provide wastewater service to the Signal Cove area within a reasonable time. By Order No. PSC-02-1626-PAA-SU, the Commission denied the Petition upon noting that the Commission had found Hudson's requests for extension of time to be reasonable and had granted them, and the docket was closed.

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proof of the transfer of territory, with the clarification that any potential additional extensions of time would be available to accommodate unavoidable construction delays due to *force majeure* only.

On April 21, 2004, Hudson filed a Notice of Completion of Signal Cove Service Territory and Proof of the Transfer of Territory from Pasco County to Hudson Utilities, Inc. (Notice). By Order No. PSC-04-0708-PCO-SU; issued July 20, 2004, the Commission acknowledged the Notice and closed Docket No. 020254-SU (the service availability docket).

Also by Order No. PSC-04-0708-PCO-SU, the Commission kept Docket No. 981079-SU open to process a Citizens' Motion to Initiate a Show Cause Proceeding Against Hudson Utilities, Inc. (Motion), filed by OPC on May 25, 2004. In the Motion, OPC alleged that Hudson has failed to serve its customers residing in the Sea Pines community within a reasonable time. The Commission ordered Hudson to provide information relative to the Motion within 30 days, and directed that the Motion would be addressed as soon as plausible thereafter. Hudson timely filed its Response in Opposition to the Motion on August 19, 2004.

A recommendation to grant the Motion was deferred from the September 21, 2004, agenda conference because on that same date, Hudson and OPC entered into a Settlement Agreement whereby Hudson agreed to the Commission's removal of the Sea Pines area from its service territory and the parties agreed that upon removal of the Sea Pines area from Hudson's service territory, OPC's Motion would be resolved, the show cause proceeding would not be opened, and Docket No. 981079-SU would be closed. The Settlement Agreement was filed in Docket No. 981079-SU on November 1, 2004. On October 13, 2004, Hudson filed an amendment application to delete the Sea Pines area from its certificate of authorization. Docket No. 041207-SU was established to process the application. This recommendation addresses the Settlement Agreement and the application for deletion of territory. The Commission has jurisdiction pursuant to Sections 367.045, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the Settlement Agreement entered into between the Office of Public Counsel and Hudson Utilities, Inc.?

Recommendation: Yes, provided the Commission approves Hudson's application for deletion of the Sea Pines territory from its certificate of authorization, which is the subject of Issue 2 of this recommendation, staff recommends that the Settlement Agreement should be approved in its entirety. (Gervasi)

Staff Analysis: In the Settlement Agreement, Hudson and OPC (the parties) state that Hudson has informed OPC that it has determined that it is not economically feasible for Hudson to serve the Sea Pines area at this time. The parties further state that they want to resolve their differences with regard to OPC's Motion so as to avoid the time and expense of a show cause proceeding, and any subsequent proceeding that might be established to consider removal of this area from Hudson's service territory and to enable wastewater service to be provided to this area as quickly as possible.

The Settlement Agreement provides that Hudson agrees to the Commission's removal of the Sea Pines area from its service territory, which deletion will include five named streets. As a result of the removal of these five streets from Hudson's service territory, they will join the other streets in Sea Pines to be served directly by the County. Moreover, the Settlement Agreement provides that upon removal of the Sea Pines area from Hudson's service territory, OPC's Motion shall be resolved, the show cause proceeding shall not be opened, and Docket No. 981079-SU shall be closed. Further, the Settlement Agreement provides that if it is not accepted and approved without modification by Commission order, then it is rejected and shall be considered null and void. By its terms, the Settlement Agreement will become effective on the date the Commission enters a final order approving it in total. Upon the Commission issuing a final order approving the Settlement Agreement, OPC's Motion shall be deemed to be resolved. A copy of the Settlement Agreement is appended to this recommendation as Attachment A.

On November 19, 2004, Hudson filed, among other things, a copy of a letter from the County to staff counsel, dated November 18, 2004, which states that because the County provides retail wastewater service to adjacent portions of the Sea Pines Subdivision, it would be in the public's best interest for it to serve the area once Hudson no longer has the authority to serve. The County further states that should the Commission approve the deletion, the County will work with the community to develop an acceptable solution to complete the project construction, and that any implementation plan for extension of sewers to Sea Pines must be approved by the Board of County Commissioners. A copy of the County's letter is appended to this recommendation as Attachment B.

It appears to staff that the Settlement Agreement is a reasonable resolution to this matter and will result in the customers of Sea Pines receiving the wastewater service that they need. Therefore, provided the Commission approves Hudson's application for deletion of the Sea Pines territory from its certificate of authorization, which is the subject of Issue 2 of this recommendation, staff recommends that the Settlement Agreement should be approved in its entirety.

Issue 2: Should the Commission approve Hudson Utilities, Inc.'s application to amend Certificate No. 104-S to delete the Sea Pines territory?

Recommendation: Yes, the Commission should approve Hudson Utilities, Inc.'s amendment application to delete the Sea Pines territory. The proposed territory amendment is described in Attachment C. (Redemann, Clapp)

Staff Analysis: On October 13, 2004, Hudson applied for an amendment to Wastewater Certificate No. 104-S in Pasco County, Florida, pursuant to Rule 25-30.036(3), Florida Administrative Code, to delete the Sea Pines territory.

The application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for amendment of certificate. The application contained a check in the amount of \$500, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. Hudson obtains bulk wastewater service from Pasco County and does not own any land.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(3) (e), (f) and (i), Florida Administrative Code. A description of the territory requested by the utility is appended to this recommendation as Attachment C. The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission.

In addition, 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 have been received and the time for filing such has expired. The local planning agency was provided notice of the application and did not file a protest to the amendment. The Department of Community Affairs does not object to the proposed deletion of wastewater service to the affected service area. The utility states that the provision of service will be consistent with the utility section of the local comprehensive plan.

Staff has contacted the Department of Environmental Protection and learned that there are no outstanding notices of violation issued for Hudson's wastewater system. The utility has filed revised tariff sheets removing the deleted territory from its tariff and returned its certificate for entry reflecting the deleted territory. Pasco County intends to serve the area.

Regarding financial impact, the deletion is not expected to impact Hudson's monthly rates and service availability charges.

Based on the above information, staff recommends that Hudson Utilities, Inc.'s amendment application to delete the Sea Pines territory should be granted. The proposed territory amendment is described in Attachment C.

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Issue 3: Should Docket Nos. 981079-SU and 041207-SU be closed?

Recommendation: Yes, because no further action is necessary, the dockets should be closed.
(Gervasi)

Staff Analysis: Because no further action is necessary, the dockets should be closed.

DOCKET NOS. 981079-SU, 041207-SU
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ATTACHMENT A

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)

In re: Citizens of the State of Florida)
Petition to initiate a Show Cause)
Proceeding against Hudson Utilities, Inc.)
For Failure to Provide Service)

DOCKET NO. 981079-SU
Filed: September 21, 2004

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into this 21st day of September, 2004, by and between the Citizens of the State of Florida ("Citizens") through the Office of Public Counsel and Hudson Utilities, Inc. ("Hudson," "Utility" or "Company").

WITNESSETH

WHEREAS, on August 26, 1998, Hudson filed an application with the Commission for an amendment of Certificate No. 104-S to extend its service territory. Included in this extended area is the Sea Pines Community. The Sea Pines area is located north of Hudson's preexpanded territory; and

WHEREAS, the Sea Pines residents in the Hudson service territory are currently served by septic tanks. The area has been federally designated as a flood plain area unsuitable for the efficient use of septic tanks and drain fields. The comprehensive land use plan adopted by the County calls for coastal areas, including Sea Pines, to be provided with sanitary sewer collection and treatment systems. However, the County generally does not construct gravity sewer collection systems; and

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WHEREAS, to serve Sea Pines, Hudson must construct a collection system including lift stations and force mains to connect the Sea Pines area with its other collection mains, that transport wastewater to Pasco County's treatment plant; and

WHEREAS, by Order No. PSC-99-1916-PAA-SU, issued September 27, 1999, in this docket, which was made final and effective by Order No. PSC-99-2082-CO-SU, issued on October 21, 1999, the Commission approved Hudson's application to amend its certificate, including the addition of the subject Sea Pines area. In the five (5) years since the Commission granted Hudson's request to include the Sea Pines area in its service territory Hudson has failed to begin construction of any wastewater collection system to serve this area; and

WHEREAS, as a result of Hudson's continued failure to serve the Sea Pines area, OPC, on May 25, 2004, filed a motion to initiate a show cause proceeding against Hudson. In its motion OPC requested the Commission to assess such penalties and or provide such other relief as it deems necessary to assure that Sea Pines is provided wastewater collection and treatment service as quickly as possible; and

WHEREAS, on August 19, 2004 Hudson filed a response to OPC's motion to show cause. In its response Hudson informed the Commission that it was seeking bids to determine the cost to serve the Sea Pines area, and that once the bids were received they would be submitted to Hudson's lenders to determine if it was feasible for Hudson to serve the area. In its response Hudson also informed the Commission of the potential of Pasco County purchasing all or part of Hudson Utilities; and

WHEREAS, on August 26, 2004, the Staff of the Commission ("Staff") filed a recommendation to grant OPC's motion to initiate a show cause proceeding against

Hudson. In its recommendation staff recommends that Hudson should be required to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$1,500.00 for failure to serve the Sea Pines area within a reasonable length of time, in apparent violation of Section 367.111(1), Florida Statutes; and

WHEREAS, Hudson has informed OPC that it has determined that it is not economically feasible for Hudson to serve the Sea Pines area at this time; and

WHEREAS, the Citizens and Hudson desire to resolve their differences with regard to OPC's motion to show cause so as to avoid the time and expense of a show cause proceeding, and any subsequent proceeding that might be established to consider removal of this area from Hudson's service territory and to enable wastewater service to be provided to this area as quickly as possible.

NOW THEREFORE, for and in consideration of the mutual covenants set forth below the Citizens and Hudson agree as follows:

1. Hudson agrees to the Commission's removal of the Sea Pines area from its service territory. This deletion will include the following streets: Mako Drive, Hatteras Drive, Gulf Way, Lyle Circle and Sea Pines Drive. As a result of the removal of these five streets from the service territory of Hudson, they will join the other streets in Sea Pines to be served directly by Pasco County.
2. Upon removal of the Sea Pines area from Hudson's service territory the OPC motion to show cause shall be resolved and the show cause proceeding shall not be opened and this docket shall be closed.
3. The submission of this Settlement Agreement by the Parties is in the nature of an offer to settle. Consequently, if this Settlement Agreement is not accepted and approved

without modification by Commission order, then this Settlement Agreement is rejected and shall be considered null and void and neither Party may use the attempted agreement in this or any other proceeding.

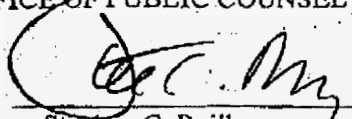
4. This Settlement Agreement will become effective on the date the Commission enters a final order approving the agreement in total. Upon the Commission issuing a final order approving this Settlement Agreement, OPC's motion to show cause shall be deemed to be resolved, with both Parties bearing their own expenses associated with this proceeding (OPC on behalf of the customers and the shareholders of the Company on behalf of Hudson).

5. The Parties have evidenced their acceptance and agreement with the provisions of this Settlement Agreement by their signatures.

6. The undersigned personally represent that they have authority to execute this Settlement Agreement on behalf of their respective Parties.

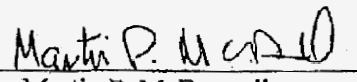
CITIZENS OF THE STATE OF FLORIDA,
OFFICE OF PUBLIC COUNSEL

By:


Stephen C. Reilly
Associate Public Counsel

HUDSON UTILITIES, INC.

By:


Martin P. McDonnell
Attorney for Hudson

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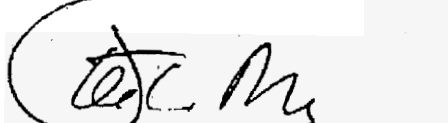
ATTACHMENT A

**CERTIFICATE OF SERVICE
DOCKET NO. 981079-SU**

I HEREBY CERTIFY that a true and correct copy of the foregoing Settlement Agreement has been furnished by U.S. Mail or *hand-delivery to the following parties
this 21st day of September, 2004.

Rosanne Gervasi, Esquire*
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

Martin P. McDonnell, Esquire
Rutledge, Ecenia, Purnel &
Hoffman, P.A.
Post Office Box 551
Tallahassee, FL 32302



Stephen C. Reilly
Associate Public Counsel

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ATTACHMENT B

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PASCO COUNTY, FLORIDA

DADE CITY (352) 521-4274
LAND O' LAKES (813) 996-7341
NEW PORT RICHEY (727) 847-8115
FAX (727) 815-7010

COUNTY ADMINISTRATOR'S OFFICE
WEST PASCO GOVERNMENT CENTER
7530 LITTLE ROAD, SUITE 340
NEW PORT RICHEY, FL 34654-5598
E-MAIL: padmin@pascocountyfl.net

November 18, 2004

Ms. Roseanne Gervasi, Senior Attorney
Office of the General Council
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0863

RE: **Application of Hudson Utilities, Inc.**
Amendment to Wastewater Certificate No. 104S
Deletion of Territory in Sea Pines Subdivision
Pasco County, Florida
PCU: 05-015.00.P

Dear Ms. Gervasi:

We are pleased to be able to provide information that may assist the Florida Public Service Commission (F.P.S.C.) in resolving the subject matter.

Pasco County has not developed any plans or made any commitments to provide retail wastewater disposal services to areas of the Sea Pines Subdivision proposed for deletion from the certificated service area of Hudson Utilities, Inc. However, because we do provide retail wastewater service to adjacent portions of the Sea Pines Subdivision, it would be in the public's best interest for Pasco County to serve the subject area once Hudson Utilities, Inc., no longer has authority to serve the area. Should the F.P.S.C. approve the deletion, the County will work with the community to develop an acceptable solution to include facility design, permitting, financing, and establishment of an acceptance timeline to complete the project construction. Any implementation plan for extension of sewers for the Sea Pines Subdivision must be acceptable to the community and approved by the Board of County Commissioners.

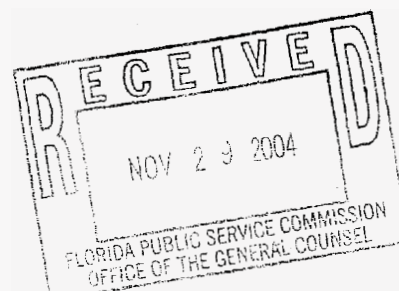
We do understand the community's strong desire to implement an acceptable solution as soon as possible. However, the County will need to determine specifically what will be involved, who will benefit, and how the cost of providing the service will be equitably recovered from the benefiting properties.

Should you have any questions, please contact us.

Sincerely,


John J. Gallagher
County Administrator

JJG/BEK/ltr/ggervasi



cc: Bruce E. Kennedy, P.E., Acting Assistant County Administrator (Utilities Services)

Hudson Utilities, Inc.
Pasco County Wastewater Service Area
The Sea Pines Subdivision
Wastewater Territory to be Deleted:

Township 24 South, Range 16 East

Section 14

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 22

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 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

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. Hwy. 19; Thence run Southwest along West Right-of-Way line of U.S. Hwy 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; Then run North 945 feet to the POINT OF BEGINNING.