

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Objection to notice by HUDSON) | DOCKET NO. 890662-SU |
| UTILITIES, INC. of intent to transfer) | |
| Certificate 104-S in Pasco County to) | ORDER NO. 21710 |
| Robert Bammann and Judith Bammann) | |
| _____) | ISSUED: 8-10-89 |

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER GRANTING MOTION TO
STRIKE AND/OR DISMISS

BY THE COMMISSION:

On May 16, 1989, Mr. John Renoe (Objector), a customer of Hudson Utilities, Inc. (Hudson or utility), filed a timely objection to the notice of intent to transfer published by Hudson. The objection raises two points. First, that if Hudson is successful in its \$4,000,000 bond issuance and subsequently defaults, the bond holders "could experience difficulties in the continued operation of Hudson" if the utility's certificate was registered in a name other than Hudson's. Second, that the utility is involved in a rate proceeding before the Public Service Commission and comparison of Hudson's rates with nearby utilities is difficult because Hudson uses a flat rate charge. The Objector asks for a delay in the approval of the transfer for 120 days, pending the resolution of the bond issue and rate adjustment.

The utility subsequently filed a Motion to Strike and/or Dismiss, stating that the grounds for the objection are "irrelevant, immaterial, and do not raise any issue of substance which would prohibit transfer of the Certificate". The utility states the objection seems to contemplate a transfer of the certificate to some entity or person other than Hudson. The transfer, however, is a transfer of majority

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organizational control from some of the previous stockholders to Mr. and Mrs. Bammann, who are presently stockholders. The utility will continue under its existing name and the bond financing will be conducted in the name of Hudson Utilities, Inc. Further, part of the objection relates to a rate proceeding before the Public Service Commission which is a separate proceeding and thus is immaterial and irrelevant to the issues raised by the transfer application.

No response as such was filed by the Objector. He did, however, file a "Motion to Amend the Objection" in which he raises two additional points. First, that the notice to customers was "illegally placed" in customer's mailboxes and "subsequently confiscated by the United States Postal Service mailperson, thereby depriving most of the customers of Hudson Utilities of 'notice'." Second, that the legal notice was incorrect in that the Hudson service area was not properly identified.

The utility responded with a Motion to Strike the Motion to Amend Objection on the basis that it attempts to state new objections after the time for filing objections has passed and that the Motion is frivolous and scandalous in that the legal notice conforms to the rules. Also, the Objector did not allege facts indicating he did not receive legal notice of the stock transfer; he lacks standing to raise the notice issue for the other customers; and he waived any defect in the notice by having previously filed an objection based on substantive matters.

Upon consideration, we find that the utility's Motion to Strike and/or Dismiss should be granted since the objections do not raise relevant or sufficient points to be sustained. A transfer of majority organizational control (stock transfer) does not cause a change in the name on the utility's Certificate of Convenience and Public Necessity. Thus, if the utility defaults on its anticipated bond payments, any difficulties in the continued operation of Hudson would not be related to the name on the Certificate since nothing changes. The transfer is not related to the staff-assisted rate case pending before this Commission and so to delay the transfer because of the rate case would serve no purpose.

While the Objector's Motion to Amend the Objection does raise new points of objection past the time for raising

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objections, we will exercise our discretion and consider the motion. The requirement of notice to the customers, by mail or personal delivery, is additional to notice by publication. Even if the notices were removed from the mailboxes, the customers would be deemed to have constructive notice by the publication of the notice in the newspaper. Further, the Objector apparently received notice since he timely filed his objection and attached to it a copy of the notice. Finally, it appears that there were errors in the legal description. Section 18 appears among the other sections listed in the legal description, while the legal description in the utility's order shows Section 28. Further, Section 32 was omitted from the description. The utility has agreed to re-notice with the correct description. The omissions to the legal description are harmless error since they did not deter an objection from being filed.

Processing of the transfer application can continue in this docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion to Strike and/or Dismiss filed by Hudson Utilities, Inc. is hereby granted.

By ORDER of the Florida Public Service Commission
this 10th day of AUGUST, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 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 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 or sewer 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.