

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer)	DOCKET NO. 900832-WS
of assets from VIVA VILLAS SEWER)	
SYSTEM to HUDSON UTILITIES, INC.)	ORDER NO. 25576
amendment of Certificate No. 104-S)	
and cancellation of Certificate)	ISSUED: 1/7/92
No. 220-S)	
_____)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

ORDER DENYING MOTION FOR CLARIFICATION,
FINALIZING TRANSFER TO PASCO COUNTY,
RELEASING ESCROW FUNDS AND CLOSING THE DOCKET

BY THE COMMISSION:

BACKGROUND

On October 15, 1990, Hudson Utilities, Inc. (Hudson or the utility) filed its application to transfer the Viva Villas Sewer System (Viva Villas) from receivership to Hudson. At Agenda Conference on February 19, 1991, the Commission, on its own motion, set this matter for hearing. An administrative hearing on the transfer application was held on April 22, 1991, in the service area. At the hearing, a majority of customers testifying favored transfer of Viva Villas to Pasco County. Although Pasco County had neither intervened in this proceeding nor objected to the transfer, it had expressed willingness to take over Viva Villas in the event the Commission denied the transfer application of Hudson.

By Order No. 24739, issued July 1, 1991, the Commission denied Hudson's application for transfer subject to the following conditions: that Pasco County agrees to accept responsibility for operating Viva Villas; that Viva Villas is conveyed to Pasco County; that Pasco County reimburse Hudson \$68,098.25 for capital costs, plus interest; and that all of the conditions described above are finalized within 120 days of the date of the Order. In the body of Order No. 24739 the Commission also specified that an

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audit would be performed to verify the capital cost figures submitted by Hudson.

An audit was completed on June 21, 1991, and supplemented by an audit completed on July 18, 1991. In addition, on July 15, 1991, the Viva Villas Civic Association, Inc. (Intervenor) filed a Motion for Clarification or Reconsideration of Order No. 24739. Hudson filed an Objection to Motion for Clarification or Reconsideration on August 12, 1991.

On September 24, 1991, we received a copy of a Joint Motion For Order Approving Transfer filed in the Circuit Court in Pasco County by Hudson, Pasco County, and Pasco Testing Lab & Sales, Inc. (the receiver). In the joint motion the parties agreed that Pasco County was to reimburse Hudson \$50,000 for capital costs related to Viva Villas, and that the parties were to seek the Court's approval of an order conveying Viva Villas Sewer System to the County. On October 3, 1991, Circuit Judge W. Lowell Bray, Jr. entered a Corrected Order terminating the receivership pending receipt of evidence that Pasco County paid \$50,000 to Hudson and providing that all the conditions of Commission Order No. 24739 had been met.

On October 21, 1991, Hudson filed its Notice of Compliance With Public Service Commission Order No. 24739.

Motion for Clarification or Reconsideration

As grounds for the Motion for Clarification or Reconsideration the Intervenor alleged as follows: 1) that there is lack of adequate documentation of the costs of interconnection; 2) that because the Order states that we will perform an audit to verify the figures, the Commission should issue another Order to clarify the question as to whether the figures have been verified; 3) that their review of our audit raises more questions than it resolves; and 4) that if the reimbursement figure has not been finalized, the 120 day period should not begin to run until after the figure does become final.

We find Intervenor's objection to the adequacy of the documentation of costs to be untimely because the documentation, Late-Filed Exhibit 7, was filed on April 26, 1991, but the motion was not filed until August 12, 1991. The verification of the audit figures is addressed below. However, the purpose in ordering the

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audit was to confirm the capital expenditures, not to prove or disprove the documentation filed by the utility. We also find that Intervenor raised no compelling reason to toll the running of the 120-day period. Accordingly, for the reasons stated above, we deny Intervenor's Motion for Clarification and Reconsideration.

TRANSFER TO PASCO COUNTY FINALIZED

By Order No. 24739, issued July 1, 1991, this Commission denied Hudson's application for transfer of Viva Villas Sewer System from receivership to Hudson. The denial was subject to the following conditions: 1) that Pasco County agreed to accept the responsibility of operating Viva Villas Sewer System; 2) that the Viva Villas Sewer System was conveyed to Pasco County; 3) that Pasco County reimbursed Hudson Utilities, Inc. \$68,098.25 for capital costs, plus interest; and 4) that all of the conditions were satisfied within 120 days from the date of the Order.

Prior to the expiration of the 120-day deadline, Hudson filed its Notice of Compliance With Public Service Commission Order which stated that Hudson has been paid and accepted \$50,000 as compensation for capital expenditures related to the Viva Villas Sewer System, and that the Circuit Court has approved the transfer of the receivership to the County. Hudson submitted with its motion the Corrected Order of the Circuit Court and a copy of the Bill of Sale between Hudson and the County.

To date, the only condition of Order No. 24739 not fully met is the requirement that Pasco County reimburse Hudson \$68,098.25. By mutual agreement Hudson and the County arrived at a reimbursement amount of \$50,000, rather than \$68,098.25. Our finding in Order No. 24739, that Hudson should be reimbursed \$68,098.25, was based on Hudson's late-filed exhibit indicating its capital costs for interconnecting the Viva Villas System to the Pasco County regional wastewater collection system. Absent evidence to the contrary in the record, the Commission was limited to finding the \$68,098.25 amount to be appropriate at that time. We find the \$50,000 amount of reimbursement to be reasonable, particularly because it was freely negotiated and mutually agreed upon with full knowledge of our findings in Order No. 24739.

Based on our findings above, we find that all of the conditions of Order No. 24739 have been met. Accordingly, we approve, as final the transfer of Viva Villas to Pasco County.

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Further, as a result of the transfer to Pasco County, we find it appropriate to cancel Certificate No. 220-S held by Viva Villas Sewer System.

VERIFICATION OF STAFF AUDIT

In Order No. 24739, the Commission panel ordered that the amount of capital expenses submitted by Hudson, and used as a basis for the amount Pasco County was to reimburse Hudson, be verified by audit. The staff audit was completed on June 21, 1991, and supplemented on July 18, 1991. As discussed above, the \$50,000 amount agreed to by Hudson and the County is a reasonable amount in these circumstances. For that reason, there is no longer a need to rule on the staff audit as verification of the \$68,098.25 amount.

RELEASE OF ESCROW ACCOUNT FUNDS

The rates charged to the Viva Villas customers of Hudson Utilities, Inc. (Hudson) were approved as temporary rates pursuant to Order No. 23685 in this docket as the result of an emergency interconnection to Pasco County's wastewater treatment system. The Order specified that a portion of the rates were subject to an escrow agreement, pending the setting of final rates in a limited proceeding in this docket. A report was furnished by Hudson concerning the final accounting of the escrow arrangement. The report indicated that \$29,826.21 is currently in the escrow account and no further charges have been or will be levied against Viva Villas customers because, effective October 1, 1991, Pasco County was serving them.

Order No. 23685 specified that a refund with interest pursuant to Rule 25-030.360, Florida Administrative Code, would be necessary if excess revenues were collected from Viva Villas. We utilized the information filed by Hudson concerning revenues and expenses related to the Viva Villas service area and the 1990 annual report to determine whether or not any of the escrow account funds should be refunded to the Viva Villas customers.

Based on our analysis of this data we find that the charges levied by Hudson to the customers in Viva Villas did not exceed the customer cost to Hudson for its service, including the cost it incurred to Pasco County for treatment service. Accordingly, we find that no refund is required. Further, we find that the rates established as temporary were not excessive and were the fair, just

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and reasonable rates for the Viva Villas customers for the period from November 1, 1990 through September 30, 1991. For the purpose of disposition of the escrow account, we find these rates to be appropriate permanent rates.

Accordingly, based on the foregoing, we find it appropriate for the escrow account to be closed and the escrowed funds to be transferred to Hudson.

It is therefore,

ORDERED by the Florida Public Service Commission that the Motion for Clarification or Reconsideration filed by Viva Villas Civic Association, Inc. is hereby denied. It is further

ORDERED that all conditions of Order No. 24739 have been met. It is further

ORDERED that the transfer of the Viva Villas Sewer System to Pasco County is approved, as final. It is further

ORDERED that Certificate No. 220-S held by Viva Villas Sewer System is hereby cancelled. It is further

ORDERED that the escrow account required by Order No. 23685 shall be closed and the escrowed funds shall be transferred to Hudson Utilities, Inc. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this 7th
day of JANUARY, 1992.



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.