

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
ORDER NO. PSC-02-1166-PCO-SU
ISSUED: August 26, 2002

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR FOURTH
EXTENSION OF TIME TO FILE PROOF OF TRANSFER OF TERRITORY

BY THE COMMISSION:

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 contracts with Pasco County (County) for wastewater treatment service pursuant to a Bulk Wastewater Treatment Agreement (Agreement).

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 Signal Cove, that was being served by the County.

Signal Cove is adjacent to the southern boundary of a portion of territory served by Hudson. The community includes 382 existing buildings, 131 of which are currently receiving wastewater service from the County. The remaining buildings in the community use septic tanks. Signal Cove is located in an area which has been federally designated as a flood plain area unsuitable for the

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efficient use of septic tanks and drain fields. The comprehensive land use plan adopted by the County calls for coastal areas, including Signal Cove, to be provided with sanitary sewer collection and treatment systems. However, the County generally does not construct gravity sewer collection systems. Thus, pursuant to an Addendum to the Agreement included in the application, the County and Hudson agreed that the Signal Cove territory would be transferred from the County to Hudson.

To serve Signal Cove, Hudson must construct an additional collection system, lift station, and force main, and rebuild the existing lift station and force main. Pursuant to the Agreement, the transfer of the Signal Cove territory will close when Hudson connects its force main to the County's wastewater collection system currently serving the 131 Signal Cove customers.

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, we approved Hudson's application to amend its certificate, including the transfer of the Signal Cove territory from the County to Hudson. Pursuant to Order No. PSC-99-1916-PAA-SU, Hudson was ordered to file proof of the transfer of the Signal Cove territory from the County to Hudson within three months from the issuance date of the order.

On December 9, 1999, Hudson filed a Motion for Extension of Time to File Proof of Transfer of Territory. By Order No. PSC-00-0212-FOF-SU, issued February 2, 2000, we granted the utility's motion and allowed the utility an additional six months, until June 27, 2000, to file proof of the transfer of the Signal Cove territory from the County to Hudson.

On June 27, 2000, Hudson filed a Motion for Second Extension of Time to File Proof of Transfer of Territory. In support of its motion, the utility stated that it needed additional time to file the proof of the territory transfer because it was having problems obtaining acceptable financing for the construction work needed to extend its service to Signal Cove. By Order No. PSC-00-1512-PCO-SU, issued August 21, 2000, we granted the motion and allowed the utility until June 30, 2001, to file proof of the transfer.

On June 29, 2001, Hudson filed a Motion for Third Extension of Time to File Proof of Transfer of Territory. In support of its motion, the utility stated that Hudson and its commercial lender had determined that Hudson's current service availability charge of \$1,000 is insufficient to enable the utility to recover its current costs of construction and to obtain acceptable commercial financing for new construction of facilities, including the additional facilities for Signal Cove. Hudson requested additional time to file the proof of the territory transfer to allow the utility time to seek an increase in its service availability charge, to secure acceptable financing, and to complete the necessary construction of the facilities. By Order No. PSC-01-1993-PCO-SU, issued October 8, 2001, we granted the motion and allowed the utility until June 30, 2002, to file proof of the transfer. On March 19, 2002, Hudson filed an application for an increase in service availability charges in Docket No. 020254-SU.

On June 25, 2002, Hudson filed its Motion for Fourth Extension of Time to File Proof of Transfer of Territory (Motion). On July 10, 2002, the Office of Public Counsel (OPC) filed its Notice of Intervention in this docket. Also on July 10, 2002, OPC filed a Response to Hudson's Motion. On July 15, 2002, OPC filed an Amended Notice of Intervention. OPC's Notice of Intervention was acknowledged by Order No. PSC-02-0966-PCO-SU, issued July 16, 2002. This Order addresses the utility's Motion. We have jurisdiction pursuant to Sections 367.071 and 367.045, Florida Statutes.

MOTION FOR FOURTH EXTENSION OF TIME

On June 25, 2002, Hudson timely filed its Motion pursuant to Rule 28-106.303(3), Florida Administrative Code, which provides that "[m]otions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request."

In support of the Motion, Hudson states that because the utility and its commercial lender have concluded that Hudson's current service availability charge is insufficient to enable the utility to obtain acceptable commercial financing, Hudson filed an application for an increase in service availability charges on March 19, 2002. Hudson requests that we extend the time in which proof of the transfer from the County may be filed, to permit

Hudson to secure an increase in its service availability charge and to allow for a reasonable period of time to complete the necessary construction of the facilities. Hudson requests that we extend the date by which the utility must file the proof of the transfer to June 30, 2003.

In its Response and Amended Notice of Intervention, OPC argues that under Section 367.111(1), Florida Statutes, Hudson is required to "provide service to the area described in its certificate of authorization within a reasonable time." This section further provides that the certificate of authorization may be amended or revoked, "whether or not there has been a demand for such service, within 5 years after the date of authorization for service to such part. . . ." Since the date of the Commission's Order approving Hudson's application for additional territory, "Hudson has apparently failed to make satisfactory financial arrangements for funding the necessary construction to provide service to Signal Cove or any of the other portions of the expanded service area (an area of approximately four or five square miles)." According to OPC, Hudson should be required to fully justify, and document, what it has done, is doing, and plans to do, to provide service to the customers if there is to be any consideration for an additional extension of time. By this time, Hudson should be held to the highest standards - beyond reasonable. It is unreasonable for the Citizens currently living in the expanded service territory to pay an increased service availability charge when Hudson said (in its application) that it had the technical ability to provide the service under its currently approved rate structure. Moreover, any discussions between counsel for the Citizens and Hudson should not be relied upon as any reason for Hudson's continued failure to provide service to Signal Cove or other portions of its expanded service territory. Hudson has total responsibility for its delay. OPC requests that we issue an order requiring Hudson to begin and complete construction of the necessary facilities, and to initiate show cause proceedings against Hudson.

We note that Hudson's service availability case is being processed in Docket No. 020254-SU. By Order No. PSC-02-0652-PCO-SU, issued May 13, 2002, in that docket, we determined that Hudson's service availability application met the minimum filing requirements of Rule 25-30.565, Florida Administrative Code, and designated March 19, 2002, as the official filing date. We

suspended the proposed service availability tariff pending further investigation into the proposed charge and the information filed in support thereof. Additionally, on March 19, 2002, OPC filed a Petition to Initiate Show Cause Proceedings Against Hudson Utilities, Inc., for failure to provide service within a reasonable time to the customers who live within the additional service territory approved by Order No. PSC-99-1916-PAA-SU. OPC's Petition is being processed in Docket No. 020253-SU. Staff recommendations are currently scheduled to be filed in the service availability and show cause dockets for the November 5, 2002, agenda conference.

On June 6, 2002, our staff held an informal meeting with representatives of Hudson and OPC. At that meeting, Hudson agreed to attend an informal meeting between OPC, any interested persons, and Hudson in an effort to resolve any issues regarding Hudson's request for increase in service availability charges. Hudson advises that it is in the process of scheduling such a meeting.

Additionally, our staff contacted Mr. Doug Bramlett, Pasco County Administrator, Utilities Services Branch, to determine if the County objects to Hudson's request for extension of time. Mr. Bramlett advised that if a further extension of time will enable Hudson to provide the service within a reasonable time, the County does not object. However, if the utility is unable to secure the financing for the interconnection to the County's facilities within a reasonable time, the County may be interested in serving the territory. The County Commission has recently begun to take an interest in upgrading older systems in order to provide service in areas where septic tanks are being used. In fact, the County secured a federal grant to upgrade a system that serves an area known as Sea Pines, which is only three miles from Signal Cove. If the interconnection with Hudson is delayed too much longer, the County may look into potential funding mechanisms to serve Signal Cove if Hudson agrees to give up the area.

Based upon the foregoing information from the County, we find it appropriate to grant the Motion in part and deny it in part. Hudson shall be given until September 18, 2002, to either file proof of the transfer of territory or a proposed settlement agreement resolving the dispute concerning the delay in completing the transfer, as well as a schedule setting forth the timetable for

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completion of the interconnection with Pasco County's facilities and transfer of territory from the County. Should Hudson be unable to resolve the dispute concerning the delay in completing the transfer, our staff will file a recommendation concerning whether proceedings should be initiated to delete the territory at issue from Hudson's certificate.

This docket shall remain open to allow our staff to verify that Hudson has filed proof of the transfer of the Signal Cove territory from the County to the utility. Once our staff has verified this information, this docket shall be closed administratively.

Based on the foregoing, it is

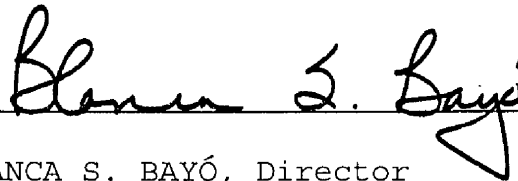
ORDERED by the Florida Public Service Commission that Hudson Utilities, Inc.'s Motion for Fourth Extension of Time to File Proof of Transfer of Territory is hereby granted in part and denied in part, as set forth in the body of this Order. It is further

ORDERED that Hudson Utilities, Inc., shall be allowed until September 18, 2002, to either file proof of the transfer of territory or a proposed settlement agreement resolving the dispute concerning the delay in completing the transfer, as well as a schedule setting forth the timetable for completion of the interconnection with Pasco County's facilities and transfer of territory from the County. It is further

ORDERED that this docket shall remain open to allow Commission staff to verify that Hudson has filed proof of the transfer of the Signal Cove territory from the County to the utility. Once Commission staff has verified this information, this docket shall be closed administratively.

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By ORDER of the Florida Public Service Commission this 26th
day of August, 2002.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

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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 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric,

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gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.