

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

In re: Petition by the Citizens of the State of Florida to initiate show cause proceedings against Hudson Utilities, Inc. for failure to provide wastewater service in its expanded service area in Pasco County within a reasonable time.

DOCKET NO. 020253-SU

In re: Application for increase in service availability charges for wastewater customers in Pasco County by Hudson Utilities, Inc.

~~DOCKET NO. 020254-SU~~
ORDER NO. PSC-02-1626-PAA-SU
ISSUED: November 25, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

ORDER DENYING PETITION TO SHOW CAUSE, ACKNOWLEDGING PROPOSED SETTLEMENT AGREEMENT, REQUIRING PROOF OF TRANSFER OF TERRITORY TO BE FILED BY JUNE 30, 2003, AND CLOSING DOCKET NO. 020253-SU

AND

NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING APPLICATION FOR INCREASE IN SERVICE AVAILABILITY CHARGES AND APPROVING TARIFF FILING TO MODIFY SYSTEM CAPACITY CHARGE

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein granting Hudson Utilities, Inc.'s application for increase in service availability charges and approving its tariff filing to modify system capacity charge is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

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, which was being served by the County. Docket No. 981079-SU was opened to process the application.

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 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.

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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 Docket No. 981079-SU, 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.

Since that time, Hudson has requested and we have granted four extensions of time in Docket No. 981079-SU for Hudson to file proof of the transfer of the Signal Cove territory from the County to Hudson.

By Order No. PSC-00-0212-FOF-SU, issued February 2, 2000, we granted Hudson's first motion for extension of time and allowed the utility an additional six months, until June 27, 2000, to file proof of the transfer.

By Order No. PSC-00-1512-PCO-SU, issued August 21, 2000, we granted the utility's second motion for extension of time and allowed Hudson until June 30, 2001, to file proof of the transfer because the utility was having problems obtaining acceptable financing for the construction work needed to extend its service to Signal Cove.

By Order No. PSC-01-1993-PCO-SU, issued October 8, 2001, we granted Hudson's third motion for extension of time and allowed the utility until June 30, 2002, to file proof of the transfer, in order to give 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.

Finally, by Order No. PSC-02-1166-PCO-SU, issued August 26, 2002, we granted in part and denied in part Hudson's fourth motion for extension of time, and required the utility, by September 18, 2002, to either file proof of the transfer of territory or a proposed settlement agreement resolving a dispute that had arisen with the Office of Public Counsel (OPC) concerning the delay in completing the transfer. We also required Hudson to file a schedule setting forth the timetable for completion of the interconnection with the County's facilities and transfer of territory from the County. On September 18, 2002, Hudson filed a Proposed Settlement Agreement as required by the Order.

On March 19, 2002, OPC filed a Petition to Initiate Show Cause Proceedings against Hudson, for failure to provide wastewater service in its expanded service area within a reasonable time. Docket No. 020253-SU was opened to process OPC's Petition.

Also on March 19, 2002, Hudson filed an application for increase of service availability charges, to increase its system capacity charge from \$1,000 to \$2,400, to recover the costs of extending its collection lines to serve the Signal Cove territory and additional areas north of Signal Cove. Docket No. 020254-SU was opened to process the application. The utility's existing system capacity charge of \$1,000 was approved by Order No. 23810, issued November 27, 1990, in Docket No. 900293-SU. By Order No. PSC-02-0652-PCO-SU, issued May 13, 2002, in Docket No. 020254-SU, we suspended the utility's tariff sheets pending further investigation into the request for increased service availability charges. On July 10, 2002, OPC filed its Notice of Intervention in the service availability docket, which was acknowledged by Order No. PSC-02-0963-PCO-SU, issued July 16, 2002. OPC also 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. On September 11, 2002, OPC filed a Motion to Expedite a ruling on Hudson's application for increased service availability charges.

This Order addresses OPC's Petition to Initiate Show Cause Proceedings filed in Docket No. 020253-SU, Hudson's Proposed Settlement Agreement filed in Docket No. 981079-SU, OPC's Motion to Expedite a ruling on Hudson's application for increased service availability charges, and Hudson's application for increased

service availability charges filed in Docket No. 020254-SU. We have jurisdiction pursuant to Sections 367.161, 367.071, 367.045, and 367.101, Florida Statutes.

PETITION TO SHOW CAUSE

On March 19, 2002, OPC filed a Petition to Initiate Show Cause Proceedings against Hudson, for failure to provide wastewater service in its expanded service area within a reasonable time. On March 20, 2002, OPC filed an Amended Certificate of Service of the Petition because Hudson was not included on the original certificate of service.

PETITION

OPC filed its Petition under Section 350.0611, Florida Statutes, which gives OPC the authority to recommend to this Commission, by petition, the commencement of any proceeding or action. In the Petition, OPC states that it represents citizens within Hudson's service territory who are substantially and adversely affected by the failure of Hudson to provide wastewater service within a reasonable time in the additional service territory approved by Order No. PSC-99-1916-PAA-SU. The majority of Hudson's service territory is located in an area 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 as required by the Department of Community Affairs states that coastal areas be provided with sanitary sewer collection and treatment systems.

OPC notes that Hudson had been granted three extensions of time in which to file proof of the transfer of the Signal Cove territory from the County to Hudson. In support of its Motion for Third Extension of Time, 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. In granting Hudson's Motion for Third Extension of time, by Order No. PSC-01-1993-PCO-SU, this Commission allowed the utility until June 30, 2002, to file proof of the transfer, and noted that the utility stated that it planned to file a service availability application by September 30, 2001.

OPC states that as of March 18, 2002, the date of the filing of the Petition, Hudson had failed to file its service availability application. According to OPC, Hudson is, or should be, well aware of its financial condition and the costs required to provide service, and of its obligation to provide the service to citizens living within the expanded service area. Hudson has apparently failed to make satisfactory financial arrangement for funding the necessary construction to provide service in the expanded service area.

OPC argues that Hudson's failure to provide service may create a risk to the health of the citizens, harm to the environment, and diminution of property values. Moreover, Section 367.111(1), Florida Statutes, requires Hudson to "provide service to the area described in its certificate of authorization within a reasonable time." Hudson's failure to provide service has continued for a period of about two and a half years and is a knowing and willful violation of Florida law and Order No. PSC-99-1916-PAA-SU. By virtue of that Order, Hudson was required to provide service within a reasonable time in accordance with Section 367.111(1), Florida Statutes. This statutory requirement is applicable even in the absence of a specific reference in the Commission's Order. OPC requests that this Commission initiate a show cause proceeding against Hudson, requiring Hudson to provide service at the earliest possible date and to impose a monetary penalty, not to exceed \$5,000 per day, beginning on September 27, 1999.

ANSWER

On April 15, 2002, Hudson timely filed its Answer to OPC's Petition pursuant to Rule 28-106.203, Florida Administrative Code. In its Answer, Hudson denies that it has violated Section 367.111(1), Florida Statutes, either willfully or otherwise, and requests that this Commission deny the Petition. Hudson states that it remains fully committed to serve all customers in its

certificated territory. Hudson argues that its diligence in attempting to serve the expanded territory granted by Order No. PSC-99-1916-PAA-SU is well documented in Hudson's pleadings, staff recommendations, and Commission Orders in Docket No. 981079-SU. Extensions of time to file proof of the transfer of the expanded territory from the County to Hudson have been requested, justified and granted by the Commission on three occasions covering a period of approximately two years. During that time and prior to filing its Petition, OPC has never appeared, objected or otherwise expressed any concern over Hudson's motions for extensions of time or over this Commission's orders granting the motions. Moreover, Hudson argues that OPC offers no citation to any statute, rule, court order, or Commission order supporting its contention that Hudson has failed to provide service within a reasonable time.

Hudson further states that since the issuance of this Commission's order approving its application to amend its certificate, Hudson has diligently and persistently attempted to gain the commercial financing necessary to construct the additional collection system and force main in order to serve Signal Cove. Hudson argues that OPC's Petition totally fails to acknowledge Hudson's ongoing efforts to service its entire certificated area within a reasonable time. Hudson's difficulties in securing financing for the project were brought to this Commission's attention on June 27, 2000, in Hudson's Motion for Second Extension of Time to file proof of the transfer of the Signal Cove territory from the County to Hudson. That motion was granted by Order No. PSC-00-1512-PCO-SU. In Hudson's Motion for Third Extension of Time, Hudson stated that the utility and its commercial lender had concluded that Hudson's current service availability charge of \$1,000 is insufficient to enable it to recover its current costs of construction and to obtain acceptable financing. That motion was granted by Order No. PSC-01-1993-PCO-SU.

With respect to Hudson's intention to file its service availability application by September 30, 2001, Hudson states that it was unable to do so due to circumstances beyond its control. Hudson has a limited staff and does not employ accountants or engineers who can adequately prepare the accounting and engineering schedules that are required to be filed in a service availability case. The accountant from the firm that Hudson engaged to prepare the accounting schedules for the service availability filing

suffered personal and family health problems which precluded him from completing the schedules by September 30, 2001. Ultimately, another partner in the firm completed the necessary schedules and forwarded them to counsel for Hudson, who diligently prepared the application and filed it with the Commission.

ANALYSIS AND DECISION

If we were to find, as OPC alleges, that Hudson has failed to provide service to its expanded territory within a reasonable time, in apparent violation of Section 367.111(1), Florida Statutes, we have the authority to require Hudson to show cause as to why it should not be fined up to \$5,000 per day pursuant to Section 367.161, Florida Statutes. Section 367.161, Florida Statutes, authorizes us to assess a penalty of not more than \$5,000 per day for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. Utilities are charged with the knowledge of this Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as a utility's failure to provide service within a reasonable time, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, entitled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Our staff held an informal meeting with Hudson and OPC on June 6, 2002, to discuss OPC's Petition, as well as Hudson's service availability case. During the meeting, our staff discussed the idea of mediation with the parties. However, the parties decided to instead enter into informal settlement discussions among themselves. Therefore, the staff rescheduled Docket No. 020253-SU for the November 5, 2002, agenda conference in order to give the parties time to attempt to settle their dispute. However,

settlement negotiations were unsuccessful, as evidenced by Hudson's Proposed Settlement Agreement and OPC's Motion to Expedite, which are discussed below.

We agree that it has taken much longer than originally expected for Hudson to construct the necessary facilities in order to provide wastewater service in its expanded territory granted by Order No. PSC-99-1916-PAA-SU. Nevertheless, we disagree that it is apparent that Hudson has violated Section 367.111(1), Florida Statutes, Order No. PSC-99-1916-PAA-SU, or any other order of this Commission. At the time of filing of OPC's Petition and Hudson's Answer thereto, and as noted by OPC and Hudson in their pleadings, this Commission had granted Hudson three extensions of time in which to prove the transfer of the Signal Cove territory from the County to Hudson in Docket No. 981079-SU.

Since the Petition and Answer were filed, and as previously noted, on June 25, 2002, Hudson timely filed a Motion for Fourth Extension of Time to file proof of the transfer of territory. By Order No. PSC-02-1166-PCO-SU, issued August 26, 2002, we granted the Motion in part and denied it in part, and required the utility, by September 18, 2002, to either file proof of the transfer of territory or a proposed settlement agreement resolving the dispute that had arisen with OPC concerning the delay in completing the transfer. We also required Hudson to file a schedule setting forth the timetable for completion of the interconnection with the County's facilities and transfer of territory from the County. On September 18, 2002, Hudson filed a Proposed Settlement Agreement as required by the Order.

Further, on March 19, 2002, the same day that OPC filed its Petition, and the day before OPC filed its Amended Certificate of Service of the Petition to include Hudson, Hudson filed its application for an increase in service availability charges. Docket No. 020254-SU was opened to process the application. By Order No. PSC-99-1916-PAA-SU, we noted that Hudson planned to file the application by September 30, 2001. For reasons explained by Hudson in its Answer and summarized above, Hudson filed its service availability application several months later than originally expected. Nevertheless, by Order No. PSC-99-1916-PAA-SU, we did not order Hudson to file the service availability case by a date certain. Therefore, there is no apparent violation of the Order

with respect to the filing of Hudson's service availability case.

Because we have found Hudson's four requests for extensions of time in which to complete the transfer of territory to be reasonable, it is not apparent to us that Hudson has violated Section 367.111(1), Florida Statutes, which requires Hudson to provide service to its certificated territory within a reasonable time. Because it is not apparent that Hudson has violated any statute, rule, or order of this Commission, we find it appropriate to deny OPC's Petition to Initiate Show Cause Proceedings.

PROPOSED SETTLEMENT AGREEMENT

As previously noted, by Order No. PSC-02-1166-PCO-SU, issued August 26, 2002, in Docket No. 981079-SU, we granted in part and denied in part Hudson's fourth motion for extension of time, and required the utility, by September 18, 2002, to either file proof of the transfer of territory or a proposed settlement agreement resolving a dispute that had arisen with OPC concerning the delay in completing the transfer. We also required Hudson to file a schedule setting forth the timetable for completion of the interconnection with the County's facilities and transfer of territory from the County.

On September 18, 2002, Hudson filed a Proposed Settlement Agreement as required by the Order. In that filing, Hudson explains that no settlement has been reached between Hudson and OPC with respect to the provision of service to Hudson's extended service territory. Hudson states that representatives of Hudson and OPC met with our staff on June 6, 2002, during which meeting Hudson agreed to attend an informal meeting between OPC and any other interested persons and Hudson in an effort to resolve any issues regarding Hudson's request for an increase in service availability charges. On July 11, 2002, representatives from Hudson again met with OPC and State Representative Heather Fiorentino, who has constituents residing in Pasco County. At that meeting, Hudson advised that its ability to service its extended service territory is dependent upon the Commission granting Hudson's application for the increase in service availability charges to \$2,400. According to Hudson, no acceptable reasonable alternatives were presented by OPC at the meeting.

Moreover, Hudson states that it has repeatedly advised OPC and our staff that Hudson's commercial lenders have maintained that service availability charges must be at least \$2,400 to allow Hudson to obtain commercial financing for the construction necessary to build out its system to service the additional territory. Hudson has no other financing options available for the project except through commercial financing.

Subject to our approval, Hudson proposes to increase its service availability charge to \$2,400, which will allow it to secure the financing necessary to construct the facilities necessary to serve the Signal Cove territory, as well as other areas within Hudson's service territory. Hudson states that upon approval of the service availability increase, Hudson will immediately commence the final contractual requirements to secure commercial financing for the expansion, and, if Hudson's commercial lenders obligate themselves to the financing, Hudson will immediately commence the construction work necessary to build out its service territory.

With respect to the filing of a schedule setting forth the timetable for completion of the interconnection with the County's facilities and transfer of territory from the County, Hudson states that on February 18, 2002, it proposed a construction schedule along with its application for increase in service availability charges, a copy of which is attached to the Proposed Settlement Agreement. However, that schedule will need to be revised after this Commission's final order is issued concerning Hudson's service availability application, at which time Hudson will be in a position to set forth a formal timetable to construct the necessary wastewater system.

Moreover, Hudson states that it has not in the past and will not in the future stand in the way of an area procuring sanitary sewer service from others in the event Hudson is unable to provide service. The other known local option for the Signal Cove area acquiring sanitary sewer service would be Pasco County Utilities, which in the past has indicated that its construction costs and impact fees are considerably higher than Hudson's requested service availability charges.

We hereby acknowledge Hudson's Proposed Settlement Agreement as Hudson's response in compliance with the requirement of Order No. PSC-02-1166-PCO-SU, to either file proof of the transfer of territory or a proposed settlement agreement concerning the delay in completing the transfer, as well as its response to the requirement that Hudson file a schedule setting forth the timetable for completion of the interconnection and transfer of territory. We find that Hudson has complied with the requirements of the Order to the extent possible at this time.

The merits of Hudson's service availability application are discussed below. Hudson has stated that if we grant its service availability application and no protest is filed, it anticipates that construction to the Signal Cove area will be completed by June 1, 2003. Therefore, the utility shall file, in Docket No. 981079-SU, proof of the transfer of territory from the County to Hudson by June 30, 2003. Failure to meet the June 30, 2003, deadline shall result in the immediate initiation of show cause proceedings.

MOTION TO EXPEDITE

On September 11, 2002, OPC filed a Motion to Expedite a ruling on Hudson's service availability case by rescheduling it for the earliest possible agenda conference. In support of the motion, OPC stated that a staff recommendation was scheduled to be filed in this case on October 24, 2002, for the November 5, 2002, agenda conference. Conditions within much of Hudson's expanded service territory are not appropriate for efficient use of septic tanks and drain fields. The majority of Hudson's existing and proposed service territory is located in an area federally designated as a flood plain and the comprehensive land use plan adopted by the County as required by the Department of Community Affairs states that coastal areas be provided with sanitary sewer collection and treatment systems. Some of the homes within Hudson's service area have experienced septic tank and drain field failures, and such failures can be expected to continue.

Moreover, OPC states that the delay in providing service to this area may result in significant economic costs to the citizens. The delay may also create a risk to their health, harm to the environment, and diminution of property values. Hudson has alleged that it must have an increase in service availability charges in

order to secure the financing necessary to provide service in the expanded service territory. This Commission should stop any additional harm to the citizens by resolving this matter at the earliest possible date.

OPC conferred with counsel for the Commission, who took no position on the motion at the time, and with counsel for Hudson, who agreed that the case should be expedited so long as the Commission staff had sufficient time to prepare its recommendation.

Our staff considered OPC's motion but determined that in order to have sufficient time to thoroughly analyze Hudson's service availability case, it would be unable to file a recommendation for an earlier agenda conference. Our staff thus informed OPC of its inability to file a recommendation for an earlier agenda conference and OPC was understanding of that.

Based upon the foregoing, because OPC's Motion to Expedite has been rendered moot by our staff's inability to file its recommendation in this matter for our consideration at an earlier agenda conference, the Motion need not be ruled upon.

APPLICATION FOR INCREASE IN SERVICE AVAILABILITY CHARGES

On March 19, 2002, Hudson filed an application to increase its system capacity charge from \$1,000 to \$2,400 per equivalent residential connection (ERC). By Order No. PSC-02-0652-PCO-SU, issued May 13, 2002, in Docket No. 020254-SU, we suspended Hudson's proposed system capacity charge.

The utility's service area has been expanded in cooperation with Pasco County to provide sanitary wastewater collection and treatment services to the coastal Hudson service area, historically served by septic tanks. There are currently 606 ERCs consisting of homes on septic tanks or vacant lots in areas where construction was complete prior to December 31, 2001. The utility assumes that these ERCs will be connected evenly over the next seven years. The proposed construction in 2003 and 2004 will add an additional 894 ERCs in three phases. Based on past experience, the utility expects that 80%, or 669, of the existing ERCs in the newly constructed areas, will connect within two months of construction completion, with the remaining 20% connecting in the following 12

months. The remaining 225 ERCs are vacant lots, and the utility expects these lots to be connected within four years after the completion of construction of the collection system.

The portions of the Signal Cove area that currently receive wastewater service are served by the County and this area is contiguously located south of the present Hudson service area. In its application, Hudson has described its proposed expansion into Signal Cove as Phase I. This phase is expected to be under construction by approximately February 1, 2003, and completed by approximately June 1, 2003. Phase II consists of construction of additional collection lines in Hudson's existing service territory. If the utility maintains the same relative timing for construction indicated in its application, construction of Phase II will begin approximately in February, 2004 and will be completed by October, 2004. Construction in Phase III will extend lines north of the utility's existing service territory to an area known as Sea Pines. The County presently serves most of this area. Hudson will also provide new service to small, contiguous sections not currently served by the County. This phase is projected to begin approximately in August, 2003, and to be completed by January, 2004. In its application, Hudson projects that it will begin and complete construction of Phase III prior to beginning construction of Phase II.

Hudson submitted a detailed breakdown of its costs to construct these phases. These projections were developed by the utility's engineer. The engineering report submitted with the application comprised of a listing of all plant additions by primary account and type, the estimated cost of the additions, and the estimated in-service dates of the additions. An additional report filed with the application projected growth through 2008. Based on our review, we find that the costs, functions, and in-service dates are reasonable. Additionally, we find that the method used to project the growth in the utility's service area is reasonable because it takes into consideration all currently existing and planned development projects.

Rule 25-30-580, Florida Administrative Code, states that a utility's service availability policy shall be designed in accordance with the following guidelines:

- (1) The maximum amount of contributions-in-aid-of-construction [CIAC], net of amortization, should not exceed 75% of the total original cost, net of accumulated depreciation, of the utility's facilities and plant when the facilities and plant are at their designed capacity; and
- (2) The minimum amount of [CIAC] should not be less than the percentage of such facilities and plant that is represented by the water transmission and distribution and sewage collection systems.

The above CIAC guidelines are in conflict for utilities that do not provide water or wastewater treatment services. They also can be in conflict when a utility's cost of lines represents more than 75% of total plant. Hudson is a wastewater collection-only facility, and its plant largely consists of collection lines. For Hudson, the minimum CIAC level would equate to almost 100%, which would cause it to exceed the maximum of 75%. We find that, in cases such as Hudson, where the minimum level exceeds the maximum, the maximum guideline level should be considered a reasonable level.

The anticipated construction costs for the phases and costs per ERC are detailed below:

<u>Phase</u>	<u>Construction Cost</u>	<u>ERCs</u>	<u>Cost Per ERC</u>
Phase 1	\$ 672,995	345	\$1,950
Phase 2	\$ 989,217	804	\$1,230
Phase 3	\$ 958,791	351	\$2,732
Totals	\$2,621,003	1500	\$1,747

As the above table indicates, the utility's proposed increase in its service availability charge to \$2,400 exceeds the average cost of new construction per ERC by \$653. This implies that the future customers will subsidize existing customers for a portion of the cost of the historical plant-in-service. This subsidization can occur quite easily because of various changes in the initial build-out estimates utilized to determine a utility's service availability charges. In virtually any given area, the initial development plans are subject to change. In addition, a utility could expand its service territory, which could significantly

change the amount of service availability charges. As a result, the setting of these charges can be considered a moving target. This is the reason why the above CIAC guidelines take into account the total plant and CIAC at build out, instead of only the incremental construction costs that were not considered when the existing charges were set.

In its application, the utility stated that its commercial lender had concluded that the current service availability charge was insufficient to enable it to obtain acceptable commercial financing for new construction of facilities, including the facilities planned for the Signal Cove area. William R. Hough & Co., a commercial lending company, is representing Hudson in seeking financing for extending its service area. By letter dated June 6, 2002, to our staff, Hough & Co. stated, in part:

We have been doing extensive feasibility work and have been interviewing potential lenders. In our opinion, this company needs a service availability charge in the amount of not less than \$2,400 per equivalent residential connection in order to successfully secure the financing necessary to provide this service.

Our staff also contacted County officials to determine what the County would charge customers located in the Signal Cove area if the County were to provide service rather than Hudson. Mr. Douglas S. Bramlett, Assistant County Administrator, advised our staff that a "ball park" estimate to extend the collection system to Signal Cove and connect customers would be \$4,000 to \$5,000 per ERC. This charge would be in addition to a \$1,500 charge for the County impact fee, for total connection fees of approximately \$5,500 to \$6,500 per ERC.

Based on our analysis, when Hudson's service area is built-out, the requested service availability charge of \$2,400 is projected to reflect a 75% level of CIAC, as indicated on Schedule No. 1, attached hereto and incorporated herein by reference. The purpose of this cut-off point is to encourage utilities to retain a 25% investment and maintain an interest in their facilities.

Based upon all of the foregoing, we find that the system capacity charge of \$2,400 per residential ERC is reasonable and it

shall be approved. Additionally, we hereby approve a system capacity charge of \$13.87 per gallon for all non-residential connections. If no timely protest is received, the utility shall file a proposed notice within twenty days of the issuance date of the Consummating Order to be issued in Docket No. 020254-SU. The service availability charges shall become effective for connections made on or after the stamped approval date on the revised tariff sheets, pursuant to Rule 25-30.475(2), Florida Administrative Code, provided the appropriate notice has been given.

The notice shall be mailed or hand-delivered to all persons in the service area who have filed a written request for service within the past 12 calendar months or who have been provided a written estimate for service within the past 12 calendar months. The utility shall provide proof of the date the notice was given within ten days after the date of the notice.

Further, we find it important to monitor the progress of the utility's construction, particularly for Phase I, which is construction to the Signal Cove area. The utility has indicated that financing will be obtained approximately 60 days after the Order in Docket No. 020254-SU becomes final, and it will take approximately four months after that date to hook up Signal Cove. As such, the utility shall complete construction to the Signal Cove area by June 30, 2003, and the utility shall submit, in Docket No. 020254-SU, quarterly progress reports due on December 31, 2002; March 31, 2003; and June 30, 2003. These reports shall list total expenses to date, anticipated remaining expenses, and an estimated date to complete construction of Phase I.

DOCKET CLOSURES

Docket No. 981079-SU shall remain open pending proof of the transfer of territory from the County to Hudson, after which time the docket shall be closed administratively.

Because no further action is necessary in Docket No. 020253-SU, that docket shall be closed.

With respect to Docket No. 020254-SU, if no timely protest is received to the proposed agency action taken in that docket, a Consummating Order shall be issued and the docket shall remain open

pending receipt of the required quarterly status reports. After the appropriate quarterly status reports are filed, and upon the timely transfer of territory from the County to Hudson, Docket No. 020254-SU shall be closed administratively. If a protest is received to this Commission's proposed agency action, Docket No. 020254-SU shall remain open pending final disposition and the tariff shall remain in effect, held subject to refund, pending resolution of the protest.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Office of Public Counsel's Petition to Initiate Show Cause Proceedings against Hudson Utilities, Inc., is denied. It is further

ORDERED that Hudson Utilities, Inc.'s Proposed Settlement Agreement is acknowledged. It is further

ORDERED that Hudson Utilities, Inc. shall file, in Docket No. 981079-SU, proof of the transfer of territory from Pasco County to Hudson Utilities, Inc., by June 30, 2003. Failure to meet the June 30, 2003, deadline shall result in the immediate initiation of show cause proceedings. It is further

ORDERED that Hudson Utilities, Inc.'s Application for Increase in Service Availability Charges is granted and its tariff filing to modify its system capacity charge to \$2,400 per equivalent residential connection is approved. A system capacity charge of \$13.87 per gallon for all non-residential connections is also approved. It is further

ORDERED that Schedule No. 1, attached hereto, is incorporated herein by reference. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth

in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no timely protest is received to the proposed agency action by a substantially affected person, Hudson Utilities, Inc., shall file a proposed notice within twenty days of the issuance date of the Consummating Order to be filed in Docket No. 020254-SU and the service availability charges approved herein shall become effective for connections made on or after the stamped approval date on the revised tariff sheets, pursuant to Rule 25-30.475(2), Florida Administrative Code, provided the appropriate notice has been given. It is further

ORDERED that Hudson Utilities, Inc. shall mail or hand-deliver the notice to all persons in the utility's service area who have filed a written request for service within the past 12 calendar months or who have been provided a written estimate for service within the past 12 calendar months. It is further

ORDERED that Hudson Utilities, Inc. shall provide proof of the date the notice was given within ten days after the date of the notice. It is further

ORDERED that Hudson Utilities, Inc. shall complete construction to the Signal Cove area by June 30, 2003, and shall submit, in Docket No. 020254-SU, quarterly progress reports due on December 31, 2002; March 31, 2003; and June 30, 2003. These reports shall list total expenses to date, anticipated remaining expenses, and an estimated date to complete construction to the Signal Cove area (Phase I). It is further

ORDERED that Docket No. 981079-SU shall remain open pending proof of the transfer of territory from Pasco County to Hudson Utilities, Inc., after which time the docket all be closed administratively. It is further

ORDERED that Docket No. 020253-SU shall be closed. It is further

ORDERED that if no timely protest is received to the proposed agency action taken in Docket No. 020254-SU, a Consummating Order shall be issued and the docket shall remain open pending receipt of

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the quarterly status reports required herein. If the appropriate quarterly status reports are filed, upon the timely transfer of territory from Pasco County to Hudson Utilities, Inc., Docket No. 020254-SU shall be closed administratively. It is further

ORDERED that if a timely protest is received to the proposed agency action taken in Docket No. 020254-SU, Docket No. 020254-SU shall remain open pending final disposition and the tariff shall remain in effect, held subject to refund, pending resolution of the protest.

By ORDER of the Florida Public Service Commission this 25th day of November, 2002.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

RG

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.

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As identified in the body of this order, our action granting Hudson Utilities, Inc.'s application for increase in service availability charges and approving its tariff filing to modify system capacity charge, is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 16, 2002. If such a petition is filed, 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. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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 the Commission Clerk and Administrative Services 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 wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.

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Hudson Utilities, Inc. Docket No.: 020254-SU		SCHEDULE NO. 1							
Staff Recommended:									
System Capacity Charge	\$2,400.00								
		<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Growth (in ERCs)			282	402	263	165	144	124	120
Utility Plant	\$6,697,159	\$7,370,154	\$8,929,682	\$9,318,162	\$9,318,162	\$9,318,162	\$9,318,162	\$9,318,162	\$9,318,162
Accumulated Depreciation	(1,554,493)	(1,798,623)	(2,053,464)	(2,332,469)	(2,606,613)	(2,880,457)	(3,153,634)	(3,426,756)	
Net Plant	<u>\$5,142,666</u>	<u>\$5,571,531</u>	<u>\$6,876,218</u>	<u>\$6,985,693</u>	<u>\$6,711,549</u>	<u>\$6,437,705</u>	<u>\$6,164,528</u>	<u>\$5,891,406</u>	
CIAC	\$2,625,584	\$3,302,384	\$4,267,184	\$4,898,384	\$5,294,384	\$5,639,984	\$5,937,584	\$6,225,584	
Accumulated Amortization	(646,522)	(749,076)	(880,029)	(1,038,594)	(1,214,929)	(1,404,093)	(1,604,385)	(1,814,808)	
Net CIAC	<u>\$1,979,062</u>	<u>\$2,553,308</u>	<u>\$3,387,155</u>	<u>\$3,859,790</u>	<u>\$4,079,455</u>	<u>\$4,235,891</u>	<u>\$4,333,199</u>	<u>\$4,410,776</u>	
Net Investment	<u>\$3,163,604</u>	<u>\$3,018,223</u>	<u>\$3,489,063</u>	<u>\$3,125,903</u>	<u>\$2,632,094</u>	<u>\$2,201,814</u>	<u>\$1,831,329</u>	<u>\$1,480,630</u>	
CIAC Ratio:	38.48%	45.83%	49.26%	55.25%	60.78%	65.80%	70.29%	74.87%	