

ORIGINAL



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July 10, 2002

COMMISSION
CLERK

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OFFICE OF THE PUBLIC COUNSEL

Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 981079-SU

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Response to Hudson Utilities, Inc.'s Motion for Fourth Extension of Time to File Proof of Transfer of Territory. A diskette in Word format is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Stephen M. Presnell
Associate Public Counsel

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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...." Amendment or revocation of authorization is not the exclusive remedy for failure to provide service. Section 367.161(1), Florida Statutes (2001), provides that if any utility "knowingly refuses to comply with, or willfully violates, any provision of this chapter or any lawful rule or order of the commission, such utility shall incur a penalty for each such offense of not more than \$5,000 ... Each day that such refusal or violation continues constitutes a separate offense." Section 367.161(2), Florida Statutes (2001), provides for a daily penalty of "not more than \$5,000 ... or the commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it."

4. Conditions within much of the area Hudson requested to serve are not appropriate for efficient use of septic tanks and drain fields. The area "includes a four to five square mile area The majority of Hudson's existing and proposed 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" (PSC-99-1916-PAA-SU, p. 4).

5. Hudson has been granted three extensions of time to file proof of transfer of territory from Pasco County: First, February 1, 2000, PSC-00-0212-FOF-SU; Second, August 21, 2000, PSC-00-1512-PCO-SU; and Third, October 8, 2001, PSC-01-1993-PCO-SU.

6. The Commission noted in its order granting the second extension, that "[i]n support of its motion, Hudson states that a series of increases in interest rates since February 2000 have prevented the utility from concluding negotiations for acceptable commercial financing for the construction work needed to extend its service to Signal Cove" (PSC-00-1512-PCO-SU, p. 2).

7. In its order approving Hudson's third motion for extension, the Commission stated; "In support of its motion, Hudson states that the utility and its commercial lender have determined 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 commercial financing.... Hudson states that for this reason, the utility intends to file a petition for an increase in its service availability charge" (PSC-01-1993-PCO-SU, p. 2). The Commission "contacted Hudson to determine exactly when it would be filing its application for a change in its service availability charge. Hudson stated that it would file its application by September 30, 2001" (PSC-01-1993-PCO-SU, p. 3). Hudson failed to meet this commitment. Hudson did not file its application for a change in its service availability charge until March 19, 2002. (Docket No. 02025A-SU).

8. During its consideration of Hudson's third request for an extension, the Commission "contacted the County and the County Department of Health to determine if they have any concerns in regard to Hudson's request for extension of time. The County stated that it does not oppose Hudson requesting and being granted an extension; however, it would not be in favor of any additional extensions. The County Department of Health stated that it would like the connection of the buildings currently using septic

tanks to the utility's wastewater system to take place at the earliest possible date" (PSC-01-1993-PCO-SU, p. 3).

9. Since September 27, 1999, the date of the Commission's Order (PSC-99-1916-PAA-SU) 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).

10. In its Annual Report for the year ended December 31, 2000, Hudson stated that it "expects to add approximately 100 new connections annually and with additional financing to complete the expansion of the collection system within the certificated area" (Company Profile, p. E-4). Hudson reported additions to its gravity collection sewers of a mere \$17,082. (Wastewater Utility Plant Accounts, p. S-4 (a)). Hudson reported 56 connections at \$1,000 each for an increase in CIAC of \$56,000. (Wastewater CIAC Schedule "A", p. S-8 (a)).

11. In its Annual Report for the year ended 2001, Hudson again indicated that it still "expects to add approximately 100 new connections annually and with additional financing to complete the expansion of the collection system within the certificated area" (Company Profile, p. E-4). Hudson failed to demonstrate any progress toward providing service to Signal Cove or any other portion of its expanded service territory. Hudson reported no (\$0.00) additions to its force or gravity collection sewers, and only \$7,301 for pumping equipment. Hudson also reported \$69,367 for transportation equipment. (Wastewater Utility Plant Accounts, p. S-4 (a)). Hudson reported 32 connections at

\$1,000 each for an increase in CIAC of \$32,000. (Wastewater CIAC Schedule "A", p. S-8 (a)).

12. In Paragraph No. 7 of its Fourth Motion, Hudson states "Notwithstanding the recent series of reductions in interest rates, Hudson and its commercial lender have concluded that Hudson's current service availability charge of \$1,000 is insufficient to enable it to recover its current costs of construction, and therefore is insufficient to enable it to obtain acceptable commercial financing for new construction of facilities including the additional facilities planned for Signal Cove." (Emphasis supplied). After a delay of approximately 33 months, Hudson's unsupported, conclusory statement is an unreasonable, feeble, attempt to justify an additional 12 months extension. 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 in Signal Cove and the remainder of the expanded service territory if there is to be any consideration for an additional (fourth) extension. By this time, Hudson should be held to the highest standards -- beyond "reasonable." In fact, Hudson's attempted justification is unreasonable on its face as it posits that the service availability charge should be sufficient "to enable it to recover its current costs of construction." The Commission's rules do not support the concept of a complete recovery of the "costs of construction." Rule 25-30.580, Florida Administrative Code, provides the guidelines for designing service availability charges -- CIAC "should not exceed 75%...." (Utilities like Hudson, that are solely collection, do not fit neatly into the rule). Data included in Hudson's 2001 Annual Report indicate that its contributed plant is less than 75%, however, the 75% is not construed as a minimum. Hudson has

also failed to support why it cannot obtain financing at less than the "costs of construction" at this time, while it has apparently been successful in the past.

13. It is unreasonable for the Citizens to be subjected to additional delays. Hudson has the obligation under Florida law and Order of the Commission to provide service within its service area within a reasonable time.

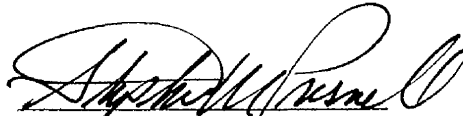
14. It is unreasonable for the Citizens currently living in Signal Cove and the remainder of the expanded service territory (who have been waiting for approximately 33 months for the service that Hudson said with its "technical ability and the current approved rate structure" (Hudson Petition, Exhibit K) it could provide) to pay an increased service availability charge.

15. 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 the other portions of its expanded service territory. Hudson has total responsibility for its delay.

WHEREFORE, Citizens request that the Commission issue an order denying Hudson's request for a fourth extension of time, requiring Hudson to begin and complete construction of the necessary facilities forthwith, and to initiate show cause proceedings against Hudson.

Respectfully submitted,

Jack Shreve
Public Counsel



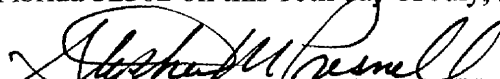
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Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE

I HEREBY certify that a copy of the foregoing CITIZENS' RESPONSE TO HUDSON UTILITIES, INC.'S MOTION FOR FOURTH EXTENSION OF TIME TO FILE PROOF OF TRANSFER OF TERRITORY has been served by hand delivery to Rosanne Gervasi, Esq., Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and by U.S. Mail to Kenneth A. Hoffman, Esq. and Martin P. McDonnell, Esq., Rutledge, Ecenia, Purnell & Hoffman, P.A., P.O. Box 551, Tallahassee, Florida 32302 on this 10th day of July, 2002.



Stephen M. Presnell
Associate Public Counsel