



JACK SHREVE  
PUBLIC COUNSEL

ORIGINAL  
STATE OF FLORIDA  
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature  
111 West Madison St.  
Room 812  
Tallahassee, Florida 32399-1400  
850-488-9330

June 25, 2003

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0870

RECEIVED  
COMMISSION  
CLERK  
JUN 25 PM 3:31

Re: Docket No. 981079-SU

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens' Response to Motion for Extension of Time to File Proof of Transfer of Territory for filing in the above-referenced docket.

Also enclosed is a 3.5 inch diskette containing Citizens' Response to Motion for Extension of Time to File Proof of Transfer of Territory in WordPerfect 10 formation. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

RECEIVED & FILED  
*Th*  
FPSC-BUREAU OF RECORDS

*Stephen C. Reilly*  
Stephen C. Reilly  
Associate Public Counsel

AUS \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC     
OTH \_\_\_\_\_

SCR/dsb

DOCUMENT NUMBER DATE  
05672 JUN 25 8  
FPSC-001 PUBLIC CLERK

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

Filed: June 25, 2003

**CITIZENS' RESPONSE TO MOTION FOR  
EXTENSION OF TIME TO FILE PROOF OF TRANSFER OF TERRITORY**

The Citizens of the State of Florida ("Citizens"), by and through their undersigned attorney, pursuant to Rule 28-106.204, Florida Administrative Code, file this response to Hudson Utilities, Inc.'s ("Hudson," "Utility" or "Company") Motion for Extension of Time to File Proof of Transfer of Territory, and state:

1. 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 partially served by Pasco County ("County").
2. 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.

3. 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.

4. In its application Hudson represented to the Commission that it had the financial and technical ability to provide wastewater collection service to the additional territory. Hudson also claimed that the proposed extension was not expected to impact its monthly rates or service availability charges.

5. 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, the Commission 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.

6. 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, the Commission 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. In determining that Hudson's Motion for Extension of Time was reasonable the Commission expressly provided in Order No. PSC-00-0212-FOF-SU that:

“Hudson states that it estimates that the connection will occur in approximately six months, based on estimates that the finalization for the funding of the construction work will take two months and the completion of the necessary construction work will take four months. Thus, Hudson requests an additional six months, until June 27, 2000, to file proof of the transfer of the Signal Cove territory from the County to Hudson.” (Page 2 of Order).

7. 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. Hudson further stated that:

“. . . neither Pasco County nor the Signal Cove Homeowners Association has expressed any objection to Hudson’s plans to continue to seek acceptable commercial financing for the construction, and no other utility has offered or has requested authorization to provide service to the Signal Cove subdivision.” (Page 2 of Order).

By Order No. PSC-00-1512-PCO-SU, issued August 21, 2000 the Commission granted the Motion for Second Extension of Time and allowed the Utility an additional one year extension, until June 30, 2001, to file proof of the transfer.

8. 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, the Commission granted Hudson another one year extension, until June 30, 2002, to file proof of the transfer. Order No. PSC-01-1993-PCO-SU expressly states that:

“We (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.** We (the Commission) also 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.” (Pages 2 and 3 of Order) (Emphasis supplied).

Hudson did not file its application for an increase in service availability charges in Docket No. 020254-SU until March 19, 2002.

9. In the approximately 3 1/2 year period from the time the Commission granted the territory expansion (including Signal Cove) to Hudson, many customers made verbal requests for wastewater service from Hudson. By March, 2002 many of these customers formalized their request in writing. (See Exhibit A) In the over 3 1/2 years since the expanded territory was granted to Hudson it has knowingly refused to comply with the many deadlines imposed by this Commission to provide wastewater service to Citizens living in the expanded territory.

10. Under Florida law Hudson is required to “provide service to the area described in its certificate of authorization within a reasonable time” (Section 367.111(1), Florida Statutes (2001)). 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. . .” 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.”

11. On March 19, 2002, the Citizens 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 the Citizens’ Petition. With its Petition the Citizens sought to hold Hudson accountable for its continued failure to provide service to the expanded territory. The Petition requested the Commission to immediately initiate a Show Cause Proceeding against Hudson that should consider penalties that might be imposed upon Hudson because of its continued failure to provide service to the expanded territory and to consider such other relief that the Commission might deem just and equitable.

12. On June 25, 2002, Hudson filed its Motion for Fourth Extension of Time to File Proof of Transfer of Territory. By Order No. PSC-02-1166-PCO-SU, issued August 26, 2002, the Commission granted Hudson another one year extension, until June 30, 2003, to file proof of the transfer. Order No. PSC-02-1166-PCO-SU expressly states that:

“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.” (Page 5 of Order).

In a pleading filed on September 18, 2002, Hudson expressly states:

“Hudson Utilities 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.” (Page 6 of Hudson’s Proposed Settlement Agreement”)

Order No. PSC-02-1166-PCO-SU also expressly states that:

“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 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.” (Pages 5-6 of Order).

13. By September 18, 2002 Hudson did not file proof of the transfer of the territory or a Proposed Settlement Agreement between the opposing parties resolving the dispute concerning the delay in completing the transfer. Rather, on September 18, 2002 Hudson filed a pleading titled in part “Proposed Settlement Agreement” which was an agreement between Hudson and itself that merely restated its affirmative positions in Docket No. 020254-SU. Hudson’s one party Settlement Agreement states that if the Commission granted its request to increase its service availability charge from \$1,000.00 to \$2,400.00 per connection it would. .. “immediately commence contractual requirements to secure commercial financing for the expansion.” (Page 6 of “Proposed Settlement Agreement”). On November 25, 2002 the Commission issued Order No. PSC-02-1626-PAA-SU, which granted Hudson’s request to increase its service availability charge to \$2,400.00. Up until

June 17, 2003, Hudson failed to execute any contractual documents securing a commitment from any financial institution to provide financing to construct the needed expansion.

14. In addition to granting the increase in service availability charge to \$2,400.00, Order No. PSC-02-1626-PAA-SU denied the Citizens' Petition to Initiate a Show Cause Proceeding against Hudson. However, Order No. PSC-02-1626-PAA-SU expressly provides that:

“...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.**”  
(Page 12 of Order). (Emphasis supplied),

Order No. PSC-02-1626-PAA-SU also expressly requires Hudson to submit, in Docket No. 020254-SU, quarterly progress reports due on December 31, 2002; March 31, 2003 and June 30, 2003. The Order requires that each quarterly progress report shall list total expenses to date, anticipated remaining expenses, and an estimated date to complete construction of Phase I.

15. In its Quarterly Report dated December 30, 2002, Hudson reaffirms its claim that it “. . . expects financing to be obtained within sixty days of the Commission's Consummating Order Issued December 20, 2002.” (Page 2 of Quarterly Report). In the December 30, 2002 Report, Hudson states that no expenses have been made to date to construct Phase I to serve the Signal Cove area but that Hudson estimates Phase I to be completed on or before June 30, 2003.

16. In its Quarterly Report dated March 31, 2003 Hudson reports that the local committees for South Trust Bank and Regents Bank have approved Hudson's request for funds to construct the facilities to permit Hudson to serve the Signal Cove area. In the report Hudson claims it is awaiting approval from the senior loan committees for both banks, which decision was expected within the next few weeks. Again, the Quarterly Report conceded that no expenses have been made to date to

construct facilities and the date for completion of Phase I slipped from June 30, 2003 to “June 30, 2003, or as soon as practical after Hudson receives approval from a lending institution regarding monies necessary to fund construction of the project.” (Page 3 of the Quarterly Report).

17. Prior to filing its June 30, 2003 Quarterly Report, Hudson files its **Fifth** “Motion for Extension of Time to File Proof of Transfer of Territory.” (The word “Fifth” was omitted from the motion). In its Fifth Motion for Extension of Time Hudson seeks an additional eight month extension to complete the construction necessary to serve the Signal Cove subdivision. By the terms of the motion this eight month extension would be further extended if additional time was needed to “accommodate any avoidable construction delays.” (Page 4 of Fifth Motion). Presumably Hudson meant to say “unavoidable” rather than “avoidable” construction delays, although these past 3 1/2 years belies this presumption. This request for an additional eight months plus is made after the Utility has failed to serve this area for over 3 1/2 years, since the territory was approved by Order No. PSC-99-1916-PAA-SU, issued September 27, 1999 and made final and effective by Order No. PSC-99-2082-CO-SU, issued October 21, 1999. In its Fifth Motion Hudson makes no mention of what happened to the two banks which had given local committee approval of the loan request, as reported in the two Quarterly Reports. The Fifth Motion for Extension of Time has an unexecuted Commitment Letter, with no attached term sheet confirming the interest rates and terms of the promissory notes. The Commitment is highly conditional including four expressed conditions and a fifth open ended condition that includes any . . . “further requirements as may be recommended by legal counsel.” (Page 2 of Exhibit 1 of Fifth Motion). The Commitment is further conditioned upon written acceptance by July 25, 2003 **or if the loan does not close by August 11, 2003**, unless otherwise extended in writing. (Page 3 of Exhibit 1 of Fifth Motion), (Emphasis supplied). The

Commitment also provides that it is . . . “not intended to be all-inclusive, and other terms and conditions will be included in the loan and security documents.” (Page 3 of Exhibit 1 of Fifth Motion). Any material adverse change to Hudson’s position or material misrepresentation made by Hudson, as determined by the Lenders, will cause the lenders to have no further liability under the Commitment.

18. In its Fifth Motion for Extension, Hudson also requests that the Commission not initiate a Show Cause Proceeding against Hudson, because it contends it is . . . “maintaining its diligence in filing proof of the transfer of the Signal Cove territory.” (Page 4 of Fifth Motion).

19. At 5:00 PM on Monday, June 23, 2003, Citizens received a revised Exhibit 1 which included an executed copy of the Commitment Letter and the one page Term Sheet referred to in the Commitment Letter.

20. There appear to be unusual circumstances and conditions relating to the subordinated notes portion of the Commitment that need to be investigated prior to the Commission’s consideration of Hudson’s Fifth Motion for Extension of Time. Those unusual conditions include the requirement that Hudson pay an interest rate of “12% payable monthly.” (Page 6 of Revised Exhibit 1 of Fifth Motion). Does the Term Sheet mean 12% per annum paid monthly or 12% payable monthly? The holder of the Subordinate notes, presumably an entity owned by Mr. W.R. Hough, will continue to be provided with stock options which gives the lender an ownership position in Hudson. How much ownership in Hudson has been given to Mr. Hough to provide “financial services” for Hudson? The Commitment appears to provide that Hudson must pay a penalty to the Subordinate Notes Lender, of 1% per annum for each year between the date of redemption and the stated maturity date, for Hudson’s prepayment of the Subordinate Notes. The Subordinate loans and construction Lender

must approve all annual budgets and management salaries. A company apparently owned by Mr. W.R. Hough will receive an annual retainer in the amount of \$25,000 payable monthly for "consulting services" which will include advice and assistance on financial matters, budget matters and will include the servicing of all the debt. The same company will also receive a one percent placement fee on the construction notes and a 1/2 % placement and extension fee for the senior and subordinate notes payable at the closing. These fees payable to Mr. W.R. Hough's company will be in addition to the fees and costs payable to Republic Bank and United Bank under the Commitment.

21. The Commission must be able to determine if these financing arrangements are in the public interest before being rushed into approving these arrangements. It has taken us more than 3 1/2 years to reach this point, now Hudson tells the Commission it has a few days to approve its complex financial arrangements or risk losing it. The Commission should reject Hudson's brinkmanship. The Commission should initiate a Show Cause Proceeding which carefully and expeditiously investigates Hudson's conduct these past 3 1/2 years and investigates the details of the proposed financing arrangements to determine if they are in the public interest. Only after a complete understanding of what Hudson proposes and consideration of any alternatives will the Commission be in a position to determine what is in the public interest.

22. As outlined in detail in the preceding paragraphs Hudson has continued to fail to make arrangements to serve the expanded territory, despite its frequent assurances that it was doing everything possible to provide that service. More promises together with a highly conditional Commitment Letter that contemplates an additional eight months to be followed by potentially endless extensions, offers little assurance that Signal Cove or the other areas of the expanded territory will be provided wastewater service any time soon. The Commission's approval of

Hudson's Fifth Motion for Extension of Time prior to initiating the Show Cause Proceeding will effectively eliminate its ability to consider alternatives to Hudson in the Show Cause Proceeding.

23. The Commission should deny Hudson's Fifth Motion for Extension of Time. As quickly as possible after June 30, 2003, the Commission should initiate a show cause proceeding, as expressly required by Order No. PSC-02-1626-PAA-SU, to thoroughly investigate Hudson's conduct during the more than 3 1/2 year period it failed to provide service to the expanded territory. In the Show Cause Proceeding the Commission should determine what sanctions would be appropriate to impose upon Hudson because of its very protracted failure to provide service to the expanded territory, especially Signal Cove. The sanctions available to the Commission include, but are not limited to, fines up to \$5,000.00 per day the Utility fails to provide service, deletion of the expanded territory from Hudson's certificate and finally complete revocation of Hudson's certificate to provide wastewater collection service in Pasco County.

WHEREFORE, the Citizens respectfully request the Commission to deny Hudson's Fifth Motion for Extension of Time, and request the Commission to initiate a Show Cause Proceeding to investigate Hudson's conduct since October 21, 1999 with regard to providing service to the expanded territory, to consider possible sanctions to impose upon Hudson because of its failure to provide service, as well as considering alternatives for providing service to the expanded territory.

Respectfully submitted,

  
Stephen C. Reilly  
Associate Public Counsel

Office of Public Counsel

c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400

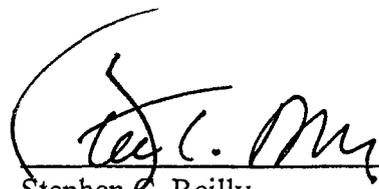
Attorney for the Citizens  
of the State of Florida

**CERTIFICATE OF SERVICE  
DOCKET NO. 981079-SU**

I HEREBY CERTIFY that a true and correct copy of the foregoing Citizens' Response to Motion to Extension of Time to File Proof of Transfer of Territory has been furnished by U.S. Mail or \*hand-delivery to the following parties this 25th day of June, 2003.

Rosanne Gervasi, Esquire\*  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Room 370  
Tallahassee, FL 32399-0850

Martin P. McDonnell, Esquire  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
P.O. Box 551  
Tallahassee, FL 32302

  
\_\_\_\_\_  
Stephen C. Reilly  
Associate Public Counsel