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Public Service Commission
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CLERK

DATE: JULY 2, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (GERVASI) *PS Next mac PD*
DIVISION OF ECONOMIC REGULATION (CLAPP, REDEMANN, REVELL) *JR*

RE: DOCKET NO. 981079-SU - 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. 020254-SU - APPLICATION FOR INCREASE IN SERVICE
AVAILABILITY CHARGES FOR WASTEWATER CUSTOMERS IN PASCO
COUNTY BY HUDSON UTILITIES, INC.

AGENDA: 07/15/03 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: THIS ITEM SHOULD NOT BE DEFERRED, AS LOAN
COMMITMENT EXPIRES JULY 25, 2003, IF NOT
ACCEPTED IN WRITING BY THAT DATE, OR IF
LOAN DOES NOT CLOSE BY AUGUST 11, 2003,
UNLESS OTHERWISE EXTENDED IN WRITING.

FILE NAME AND LOCATION: S:\PSC\GCL\WP\981079.RCM

CASE 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

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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.

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, 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. In that order, the Commission noted that the addition of the Signal Cove area was not expected to impact the utility's monthly rates and service availability charges, and that Hudson's current lender had indicated its willingness to continue its existing financing for the additional service territories.

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Hudson's approved service availability charges at that time were \$1,000 per equivalent residential connection (ERC).

Since that time, Hudson has requested and the Commission has 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, the Commission 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, the Commission 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, the Commission 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.

By Order No. PSC-02-1166-PCO-SU, issued August 26, 2002, the Commission 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. The Commission 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, in

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apparent violation of Section 367.111(1), Florida Statutes. Docket No. 020253-SU was opened to process the 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. In its application, the utility stated that its commercial lender had concluded that its then current service availability charge was insufficient to enable it to obtain acceptable commercial financing for the new construction of facilities, including the facilities planned for the Signal Cove area. Docket No. 020254-SU was opened to process the application. 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.

By Order No. PSC-02-1626-PAA-SU, issued November 25, 2002, in Dockets Nos. 981079-SU, 020253-SU, and 020254-SU, the Commission denied OPC's Petition to Initiate Show Cause Proceedings upon noting that the Commission had found Hudson's four requests for extension of time to be reasonable and had granted them, and Docket No. 020253-SU was closed. Moreover, the Commission acknowledged Hudson's Proposed Settlement Agreement as its 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.¹

Further, by proposed agency action, the Commission approved Hudson's application for increased service availability charges, which action became final by Order No. PSC-02-1818-CO-SU, issued December 20, 2002. The utility had indicated that financing would

¹In that filing, Hudson explained that no settlement had been reached between Hudson and OPC with respect to the provision of service to Hudson's extended service territory. Hudson also advised that its ability to serve within its extended service territory was dependent upon the Commission granting Hudson's application for increased service availability charges.

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be obtained approximately 60 days after the order became final, and that it would take approximately four months thereafter to hook up Signal Cove. Therefore, the Commission ordered the utility to complete construction to the Signal Cove area by June 30, 2003, and to submit quarterly progress reports in Docket No. 020254-SU, on December 31, 2002, March 31, 2003, and June 30, 2003. Finally, the Commission ordered Hudson to file, in Docket No. 981079-SU, proof of the transfer of territory from the County to Hudson by June 30, 2003. The Commission put the utility on notice that failure to meet the June 30, 2003, deadline shall result in the immediate initiation of show cause proceedings.

Hudson timely filed its progress reports on December 30, 2002, March 31, 2003, and June 30, 2003, as required by Order No. PSC-02-1626-PAA-SU. On June 13, 2003, Hudson filed a fifth Motion for Extension of Time to File Proof of Transfer of Territory (Motion), along with Exhibit 1, an unexecuted Commitment Letter from Lender's Republic Bank, United Bank, and W.R.H. Mortgage, Inc., which effectively grants Hudson the financing necessary to complete the Signal Cove project (Commitment). A copy of the Motion and Exhibit 1 are attached to this recommendation as Attachment A. On June 23, 2003, Hudson filed a revised Exhibit 1, the fully executed Commitment, dated June 17, 2003, and a Term Sheet guaranteeing the terms of the loans. A copy of revised Exhibit 1 and the Term Sheet are attached to this recommendation as Attachment B. On June 25, 2003, OPC timely filed a Response in opposition to the Motion. This recommendation addresses these filings, as well as the immediate initiation of show cause proceedings, as required by Order No. PSC-02-1626-PAA-SU. The Commission has jurisdiction pursuant to Sections 367.045, 376.071, 367.121, and 367.161, Florida Statutes.

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DISCUSSION OF ISSUES

ISSUE 1: Should Hudson be required to show cause, in writing, within 21 days, as to why it should not be fined up to \$5,000 per day from July 1, 2003, until the date of connection to the County and transfer of territory from the County to Hudson, in apparent violation of Order No. PSC-02-1626-PAA-SU?

RECOMMENDATION: Yes. Pursuant to the express direction of Order No. PSC-02-1626-PAA-SU, show cause proceedings should be immediately initiated. Hudson should be required to show cause, in writing, within 21 days, as to why it should not be fined in the amount of \$1,500, for failure to complete construction to the Signal Cove area and file proof of the transfer of territory from the County to Hudson by June 30, 2003, in apparent violation of Order No. PSC-02-1626-PAA-SU. The show cause order should incorporate the conditions stated below in the staff analysis. (GERVASI, CLAPP)

STAFF ANALYSIS: In its Motion for Extension of Time, Hudson requests that the Commission not issue a show cause order as Hudson is maintaining its diligence in filing proof of the transfer of the Signal Cove territory. That Motion is the subject of Issue 2 of this recommendation.

In its Response in opposition to the Motion, OPC states that 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 these past 3-1/2 years, as well as the details of the proposed financing arrangements to determine if they are in the public interest. OPC further states that in the show cause proceeding, the Commission should consider alternatives for providing service to the expanded territory and 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. OPC states that the sanctions available to the Commission include, but are not limited to, fines up to \$5,000 per each day the utility fails to provide service, deletion of the expanded territory from Hudson's certificate, and complete revocation of Hudson's certificate to provide wastewater collection service in Pasco County.

By Order No. PSC-02-1626-PAA-SU, the Commission approved Hudson's application for increased service availability charges,

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which action became final by Order No. PSC-02-1818-CO-SU. The utility had indicated that financing would be obtained approximately 60 days after the order became final, and that it would take approximately four months thereafter to hook up Signal Cove. Therefore, the Commission ordered the utility to complete construction to Signal Cove by June 30, 2003, and to submit quarterly progress reports in Docket No. 020254-SU, listing total expenses to date, anticipated remaining expenses, and an estimated date to complete construction to Signal Cove. Finally, the Commission ordered Hudson to file, in Docket No. 981079-SU, proof of the transfer of territory from the County to Hudson by June 30, 2003. The Commission put the utility on notice that failure to meet the June 30, 2003, deadline shall result in the immediate initiation of show cause proceedings.

Pursuant to Order No. PSC-02-1626-PAA-SU, Hudson submitted the required quarterly progress reports on December 30, 2002, March 31, 2003, and June 30, 2003. In its December 30, 2002, quarterly report, the utility stated that it has continued to attempt to finalize its commercial financing for the construction project and that it expected financing to be obtained within 60 days of the Commission's December 20, 2002, Consummating Order. The utility reported no total expenses to date, as it was awaiting formal approval for the commercial financing prior to commencing construction. The anticipated remaining expenses at that time were as stated in the attachments to Hudson's application for increase in service availability charges, and the estimated date to complete construction to Signal Cove was June 30, 2003.

In its March 31, 2003, quarterly report, the utility stated that it has continued to diligently pursue the funding necessary to complete the construction to Signal Cove and that it expected to receive a decision on final approval from two different lenders within the next few weeks. Hudson reported that two banks were processing loan applications on its behalf, and that the utility had timely provided all supporting documentation and information to the lenders when requested. SouthTrust Bank had received local committee approval for the project and was awaiting final approval from its senior committee, and Hudson had been advised that the decision on that loan was imminent. Regents Bank had also received local committee approval for Hudson's loan and was awaiting final approval from a senior loan committee. Moreover, Hudson reported that both lenders were aware of the time constraints Hudson is facing and are aware of the desire and necessity for the services

to be connected to the residents of Signal Cove as soon as possible. Hudson further stated that it was doing everything within its power to hasten the decisions of the lenders, and that it would continue to do everything in its power to expedite completion of the construction and service to its customers. The utility reported no total expenses to date, as it was still awaiting formal approval for the commercial financing prior to commencing construction. The anticipated remaining expenses were again as stated in the attachments to Hudson's application for increase in service availability charges. The utility estimated the date to complete construction to Signal Cove to be June 30, 2003, or as soon as practicable after Hudson receives final approval from a lending institution.

In its June 30, 2003, progress report, Hudson states that it has continued to diligently pursue the funding necessary to complete the construction project in its service area. Hudson states that it has successfully negotiated the renewal and extension of a senior loan, a new construction loan, and the renewal and extension of a subordinate loan. On June 17, 2003, Hudson and the lenders entered into a formal Commitment for the construction loan. Hudson states that it will immediately commence construction of the project upon the closing of the loans. The utility again reported no total expenses to date, as it was awaiting commercial financing prior to commencing construction. Hudson reported the anticipated remaining expenses to be as illustrated by the Term Sheet attached to this recommendation as Attachment B, which shows the terms of the construction note and anticipated expenses. Hudson estimated the date to complete construction to Signal Cove to be approximately four months, assuming that the pending loans close in a timely manner. However, due to unforeseeable circumstances that may delay completion of the construction project, the Commitment by the lenders to finance the project is predicated upon the Commission granting Hudson an eight month extension to complete construction to Signal Cove, with additional extensions of time available to accommodate any unavoidable construction delays.

Because Hudson did not complete construction to the Signal Cove area or file proof of the transfer of territory from the County to Hudson by June 30, 2003, Hudson is in apparent violation of Order No. PSC-02-1626-PAA-SU. Section 367.161, Florida Statutes, authorizes the Commission 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. Each day that such refusal or violation continues constitutes a separate offense.

Utilities are charged with the knowledge of the Commission's orders, rules, and statutes. Additionally, "it 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 the failure to file proof of the transfer of territory within a time frame required by Commission order, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, having found that the company had not intended to violate a rule, the Commission 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.

As stated in the case background, 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 Health Department advises that wastewater service to this area is essential. The customers in the territory at issue have been awaiting service from Hudson for a very long time. By Order No. PSC-02-1626-PAA-SU at 18, after granting Hudson four motions for extension of time to file proof of the transfer of the territory from the County to Hudson, the Commission ordered that "[f]ailure to meet the June 30, 2003, deadline shall result in the immediate initiation of show cause proceedings."

Pursuant to the express direction of Order No. PSC-02-1626-PAA-SU, staff recommends that show cause proceedings should be immediately initiated. Hudson should be required to show cause, in writing filed in Docket No. 981079-SU, within 21 days, as to why it should not be fined in the amount of \$1,500, for failure to complete construction to the Signal Cove area and file proof of the transfer of territory from the County to Hudson by June 30, 2003, in apparent violation of Order No. PSC-02-1626-PAA-SU. Although the Commission is authorized to assess a penalty of up to \$5,000 per day for each day that Hudson fails to complete construction and file proof of the transfer of territory after June 30, 2003, staff believes that \$1,500 is a reasonable amount given that Hudson has apparently finally secured the necessary financing in order to

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begin construction immediately. Further, staff believes that a \$1,500 penalty is high enough to send a clear message to Hudson of the Commission's disapproval of the length of time that it is taking Hudson to provide service to the customers in the territory at issue.

OPC correctly points out that other sanctions are available to the Commission, which include, but are not limited to, the initiation of deletion proceedings, to determine whether the expanded territory should be deleted from Hudson's certificate. However, because Hudson advises that it has secured the necessary financing to complete construction to Signal Cove and that it fully intends to complete construction and begin serving in the expanded area as soon as practicable, staff is not recommending that deletion proceedings be initiated at this time. Nevertheless, in Issue 2, staff recommends that Hudson be required to continue to submit quarterly progress reports on the status of the project in Docket No. 020254-SU. If, in its next progress report, Hudson reports that it has still not even begun construction to Signal Cove, staff will file a recommendation concerning whether deletion proceedings should be initiated at that time. Finally, as explained in Issue 2, staff does not agree with OPC that the Commission should investigate, in the show cause proceeding, whether the financing arrangements as set forth in the Commitment and Term Letter are in the public interest.

The show cause order should incorporate the following conditions: Hudson's response to the show cause order shall contain specific allegations of fact and law. Should Hudson file a timely written response that raises material questions of fact and makes a request for hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, further proceedings shall be scheduled before a final determination on this matter is made. A failure to file a timely written response to the show cause order shall constitute an admission of the facts herein alleged and a waiver of the right to a hearing. In the event Hudson fails to file a timely response to the show cause order, the fine shall be deemed assessed with no further action required by the Commission. If Hudson timely responds but does not request a hearing, Commission staff shall prepare a recommendation for the Commission's consideration regarding the disposition of the show cause order. If Hudson responds to the order to show cause by remitting the penalty, then the show cause matter shall be considered resolved.

ISSUE 2: Should Hudson's Motion for Extension of Time to File Proof of Transfer of Territory be granted?

RECOMMENDATION: Yes, Hudson's Motion for Extension of Time to File Proof of Transfer of Territory should be granted. The eight-month time period should begin on the loan closure deadline of August 11, 2003, and should expire on April 11, 2004, with potential additional extensions of time available to accommodate any unavoidable construction delays. Hudson should be required to file proof of the closing of the new construction loan, in Dockets Nos. 981079-SU and 020254-SU, within ten days of the loan closure date. Further, Hudson should be required to continue to file quarterly progress reports in Docket No. 020254-SU, listing total expenses to date, anticipated remaining expenses, and an estimated date to complete construction to Signal Cove. The first quarterly progress report should be due on November 11, 2003, with a second quarterly progress report due on February 11, 2004. Finally, Hudson should be required to file proof of the completion of construction to the Signal Cove area in Dockets Nos. 981079-SU and 020254-SU, and of the transfer of territory from the County to Hudson in Docket No. 981079-SU, by April 11, 2004. If construction is not completed by that date, Hudson should be required to explain with specificity why the delay was truly unavoidable. The utility should be urged to make the completion of construction of the Signal Cove facilities a first priority. (GERVASI, CLAPP, REDEMANN, REVELL)

STAFF ANALYSIS:

Motion for Extension of Time

In its Motion, Hudson states that prior to the opening of Docket No. 981079-SU, the Signal Cove Homeowners, including residents of the buildings currently receiving wastewater collection service as customers of the County, unanimously voted for and signed a petition expressing their support of a proposal to request the County to approve the transfer of the Signal Cove territory to Hudson. By an Addendum to Bulk Wastewater Treatment Agreement with Hudson Utilities (Agreement), Hudson and the County agreed that the Signal Cove territory would be transferred to Hudson "at such time as [Hudson] connects its force main to the wastewater collection system presently serving the existing county customers." Thus, under the Agreement, the timing of the transfer is dependent upon completion of construction by Hudson of the

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additional collection system and force main to serve the remaining buildings in Signal Cove that are currently on septic tanks.

Hudson states that it fully intends to complete the construction to satisfy the Agreement and finalize the transfer of Signal Cove. Moreover, Hudson states that it has, at all times, been vigilant in seeking commercial financing. Unfortunately, despite Hudson's good faith estimate that the financing would be secured within approximately 60 days of the Commission's final order approving the increased service availability charges, Hudson was unable to secure a firm financial commitment from commercial lenders until June 12, 2003.

On June 12, 2003, Hudson received from W.R.H. Mortgage, Inc., a Commitment Letter from Lender's Republic Bank, United Bank, and W.R.H. Mortgage, Inc., that effectively grants Hudson the financing necessary to complete the Signal Cove project (Commitment), an unexecuted copy of which Hudson filed on June 13, 2003, as Exhibit 1 to its Motion. On June 23, 2003, Hudson filed a revised Exhibit 1, the fully executed Commitment, dated June 17, 2003, and a Term Sheet guaranteeing the terms of the loans.

According to Hudson, the three lenders have agreed to reduce the interest rate Hudson currently owes on two existing loans and issue a new construction loan. The Term Sheet shows that the senior notes presently outstanding will be renewed at a fixed interest rate of 6 percent, and the interest on the subordinated notes will bear interest at 12 percent. Counsel for Hudson has advised that Hudson will be in a better financial position after closing on the loans, as the current interest rate on the senior notes is 8.125 percent, and the current interest rate on the subordinated notes is 13.5 percent. The interest rate on the construction notes will be floating at prime plus 1-1/2, with a cap rate of 8.75 percent and a floor rate of 4.75 percent.

The Commitment to renew and extend the existing loans expires on July 25, 2003, if not accepted in writing by that date, or if the loan does not close by August 11, 2003. In addition, according to the Commitment, the closing of the loans are conditioned upon the Commission granting Hudson an eight month extension of time to complete the construction necessary to service the Signal Cove subdivision with additional extensions of time available to accommodate any unavoidable construction delays.

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OPC'S Response

In its Response to the Motion, OPC states that in the 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. (A summary of the information contained in the quarterly reports is provided in Issue 1.) Moreover, OPC argues that the Commitment is highly conditional, including four expressed conditions and a fifth open-ended condition that includes "further requirements as may be recommended by legal counsel." Page 2 of Revised Exhibit 1 (Attachment B). 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 Revised Exhibit 1 (Attachment B). Any material adverse change to Hudson's position or failure of Hudson to provide material information, as determined by the Lenders, will cause the lenders to have no further liability under the Commitment. Page 3 of Revised Exhibit 1 (Attachment B).

OPC further argues that there appear to be unusual circumstances and conditions relating to the subordinate notes portion of the Commitment that need to be investigated prior to the Commission's consideration of the Motion for Extension of Time. The unusual conditions include the requirement contained in the Term Sheet that Hudson pay an interest rate of "12% payable monthly." Page 6 of Revised Exhibit 1 (Attachment B). OPC questions whether this means 12 percent per annum paid monthly or 12 percent payable monthly.

Moreover, OPC states that the holder of the subordinated notes, presumably an entity owned by Mr. W. R. Hough (Hough), will continue to be provided with stock options which give the lender an ownership position in Hudson. OPC questions how much ownership in Hudson has been given to Hough to provide "financial services" for Hudson. The Commitment appears to provide that Hudson must pay a penalty to the subordinate notes lender for Hudson's prepayment of the subordinated notes. In addition, the subordinate loans and construction lender must approve all annual budgets and management salaries. And a company apparently owned by Hough will receive an annual retainer in the amount of \$25,000 payable monthly for "consulting services." The same company will also receive a one percent placement fee on the construction notes and a 1/2 percent placement and extension fee for the senior and subordinated notes, payable at the closing.

OPC argues that the Commission must be able to determine if these financing arrangements are in the public interest before being rushed into approving them. It has taken more than 3 1/2 years to reach this point, and now Hudson tells the Commission it has a few days to approve its complex financial arrangements or risk losing it. 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.

Further, OPC argues that 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 the 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. OPC requests that the Motion be denied.

On June 26, 2003, OPC filed an Exhibit A to its Response, which was inadvertently omitted from the Response. OPC's Exhibit A consists of 34 written requests for service from Hudson, many of which state that service should begin as soon as possible.

Staff Analysis and Recommendation

Staff has contacted the County regarding this matter. After a review of the Motion and discussion with the utility, on June 26, 2003, the County notified staff that because Hudson has assured the County that the financing is in place and that construction will move forward this time, the County supports the Motion. Moreover, in Order No. PSC-02-1626-PAA-SU, the Commission noted that the County had provided staff with a "ball park" estimate of costs that the County would charge to extend the collection system to Signal Cove and connect customers. The estimated amount as noted in the Order was \$4,000 to \$5,000 per ERC, plus a \$1,500 impact fee, for total connection fees of approximately \$5,500 to \$6,500 per ERC. According to the County, those estimates remain the same.

Staff has also contacted a Health Department representative, who advised that the Health Department is opposed to any delay and wants the customers to be served as soon as possible.

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Moreover, staff has questioned counsel for Hudson as to why the Commitment is conditioned upon Hudson receiving an eight month extension of time to complete the construction, with additional extensions of time available to accommodate any unavoidable construction delays, when Hudson estimates the construction to take only four months to complete upon receiving the necessary financing. Counsel for Hudson advises that the request for an additional eight months to complete construction is not based on any construction assessments, but is instead based on the terms of the Commitment. The contingency contained in the Commitment that requires Hudson to be granted an eight month extension of time reflects the lenders' desire to protect their investment.

Staff disagrees with OPC that the Commission should investigate, within the show cause proceeding that is the subject of Issue 1 of this recommendation, whether the financing arrangements as set forth in the Commitment and Term Letter are in the public interest. Section 367.071, Florida Statutes, provides that "[n]o utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, . . . without determination and approval of the [C]ommission that the proposed sale, assignment, or transfer is in the public interest. . . ." The statute does not require the Commission to determine whether the financing secured by a utility to provide the service is in the public interest during the certification process.

The decision to enter into a loan agreement is a business decision of the utility. In staff's view, such detailed analysis of the Commitment at issue outside of a rate proceeding, as suggested by OPC, would amount to micro management of the utility's business decisions. Pursuant to Section 367.081(2)(a), Florida Statutes, in a rate proceeding, the Commission considers the value and quality of the service and the cost of providing the service, including debt interest. Pursuant to Section 367.081(3), the Commission may determine the prudent cost of providing service during the period of time the rates will be in effect and use such costs to determine the revenue requirements that will allow the utility to earn a fair rate of return on its rate base. The time to analyze the prudence of a utility's costs to determine whether such costs should be included in rates is during the course of a rate proceeding. In this proceeding, Hudson is not seeking recovery of its costs. Should Hudson file an application for a rate increase in the future, all of its costs for which it seeks

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recovery, including its cost of debt, will be analyzed pursuant to Section 367.081, Florida Statutes.

Hudson has apparently secured the necessary financing to complete the construction to serve the Signal Cove customers at a cost that is substantially less than what the County has estimated that it would charge to provide the same service. Hudson's approved service availability charge is \$2,400 per ERC, which is less than half of the County's estimated connection fees of approximately \$5,500 to \$6,500 per ERC. Moreover, Hudson has assured the Commission that it fully intends to complete the necessary construction to satisfy the Agreement and to finalize the transfer of Signal Cove. For these reasons, staff recommends that the Motion for Extension of Time to File Proof of Transfer of Territory should be granted.

Hudson should be granted an eight month extension of time to complete construction to Signal Cove and to finalize the transfer of the Signal Cove territory from the County to Hudson, starting from the loan closure deadline of August 11, 2003, until April 11, 2004, with potential additional extensions of time available to accommodate any unavoidable construction delays. Hudson should be required to file proof of the closing of the new construction loan, in Dockets Nos. 981079-SU and 020254-SU, within ten days of the loan closure date. Further, Hudson should be required to continue to file quarterly progress reports in Docket No. 020254-SU, listing total expenses to date, anticipated remaining expenses, and an estimated date to complete construction to Signal Cove. The first quarterly progress report should be due on November 11, 2003, which date is three months after the loan closure deadline as set forth in the Commitment. If, in that November 11, 2003, progress report, Hudson reports that it has still not even begun construction to Signal Cove, staff will file a recommendation concerning whether deletion proceedings should be initiated. A second quarterly progress report should be due on February 11, 2004. Finally, Hudson should be required to file proof of the completion of construction to the Signal Cove area in Dockets Nos. 981079-SU and 020254-SU, and of the transfer of territory from the County to Hudson in Docket No. 981079-SU, by April 11, 2004. If construction is not completed by that date, Hudson should be required to explain with specificity why the delay was truly unavoidable. The utility should be urged to make the completion of construction of the Signal Cove facilities a first priority.

DOCKET NOS. 981079-SU, 020254-SU

DATE: July 2, 2003

ISSUE 3: Should Dockets Nos. 981079-SU and 020254-SU be closed?

RECOMMENDATION: No, the dockets should remain open pending completion of the construction to Signal Cove and proof of the transfer of the Signal Cove territory from the County to Hudson, and resolution of the show cause proceedings. (GERVASI)

STAFF ANALYSIS: Dockets Nos. 981079-SU and 020254-SU should remain open pending completion of the construction to Signal Cove and proof of the transfer of the Signal Cove territory from the County to Hudson, and resolution of the show cause proceedings.