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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-SP

Filed: August 19, 2004

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HUDSON UTILITIES INC.'S RESPONSE IN OPPOSITION TO OFFICE OF PUBLIC COUNSEL'S MOTION TO INITIATE A SHOW CAUSE PROCEEDING AGAINST HUDSON UTILITIES, INC.

COMES NOW Hudson Utilities, Inc. ("Hudson") and pursuant to Rule 28-106.204, Florida Administrative Code and Order No. PSC -04-0708-PCO-SU issued by the Florida Public Service Commission ("PSC") July 20, 2004, hereby files this Response in Opposition to the Office of Public Counsel's ("OPC") Motion to Initiate a Show Cause Proceeding Against Hudson in the instant docket, and in support thereof, states as follows:

1. OPC's Motion to Initiate a Show Cause Proceeding Against Hudson for its purported failure to provide wastewater service to certain residents in the Sea Pines subdivision should be denied as Hudson is, and at all times has been, diligently attempting to provide wastewater service to the portions of Sea Pines within Hudson's service territory.

2. Hudson is a Class B utility and was granted Certificate No. 104-S on June 19, 1973. Hudson provides wastewater collection service to its customers and contracts with Pasco County ("county") for wastewater treatment service pursuant to a bulk wastewater agreement, as the county owns and operates regional wastewater treatment and disposable facilities. In order to accommodate expected population growth in the area, Hudson and the county have extended the terms of their bulk wastewater agreement through February 5, 2025.

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3. On May 25, 2004 OPC filed its Motion to Initiate a Show Cause Proceeding in the instant docket because of Hudson's purported "continued failure to provide service to the Sea Pines Community located within its service territory." Hudson is mindful of the duties and powers conferred upon OPC by the Florida legislature and respects OPC's authority to file appropriate pleadings. However OPC's Motion to Initiate a Show Cause proceeding in the instant case should be denied. Section 367.161(1), Florida Statutes, provides, in pertinent part, that if any utility "knowingly refuses to comply with, or wilfully violates, any provision of this chapter or any lawful rule or order of the commission, such utility shall incur a penalty of each such offense of not more than \$5,000 . . . Each day of such refusal or violation continues constitutes a separate offense."

4. Hudson is not, and has never been in violation of Section 361.161(1), F.S. as Hudson has never knowingly refused to comply with, or wilfully violated any provision of Chapter 367 or any lawful rule or order of the Commission. Additionally, Hudson continues to diligently work toward servicing the Sea Pines area.

5. The Signal Cove and Sea Pines communities are two residential neighborhoods within Hudson's newer certificated territory. Both neighborhoods had only the benefit of septic tanks prior to being added to Hudson's territory. Due to economic constraints and other circumstances beyond Hudson's control, Hudson had to complete the sewer construction at Signal Cove prior to commencing the sewer construction at Sea Pines. In Order No. PSC-03-0889-PSCO-SU, the PSC granted Hudson's Motion for Extension of Time to file proof of the transfer of the Signal Cove service territory from Pasco County to Hudson. In that Order, the Commission mandated that Hudson file proof of the completion of the construction to the Signal Cove area by April 11, 2004. Hudson timely fulfilled its commitment to service the Signal Cove

territory. On May 15, 2004, in Docket No. 020254-SU Hudson advised the Commission that Hudson had completed construction to Signal Cove and has been fully capable of serving all Signal Cove residents February 18, 2004.

6. However, the construction company that Hudson utilized in the construction of Signal Cove advised Hudson that it may not be able to construct the infrastructure necessary to service the Sea Pines subdivision. On May 7, 2004, counsel for Hudson advised OPC that Hudson's contractor was finalizing the projected construction costs, adjusted for recent cost increases, and that Hudson must then run financial feasibility tests to satisfy the three lenders involved in lending the Hudson money necessary for the construction of Sea Pines. Since that time, Hudson learned that Hudson's contractor is unable to complete the Sea Pines subdivision at a cost that would render the construction feasible to Hudson's lenders and customers.

7. Immediately thereafter, Hudson commenced a competitive bid process regarding the sewer line construction for sections of Sea Pines with the following construction contractors:

Donto Contractors, Inc. ("Donto")
3755 Commercial Highway US 19
Springhill, Florida 34606

Lester Construction Company, Inc. ("Lester")
15122 Reginald Lane
Hudson, Florida 34667

Spivy Utilities ("Spivy")
1338 Intersaken Road
Odessa, Florida

Simmons Construction Company ("Simmons")
US 41
Springhill, Florida

Centerline Construction Corporation ("Centerline")
4002 Broad Street
Brooksville, Florida 34604

Hudson had anticipated that all bids for the Sea Pines construction would be received by Hudson on or before July 31, 2004. However, the bids were not received by July 31, 2004. Donto has completed their bid and the bid was received by Hudson August 18, 2004. Lester's bid is expected to be received by Hudson on Friday 20, 2004 and Spivy's bid is expected to be received by Hudson by August 24, 2004. Simmons and Centerline failed to submit bids as they could not commence working on the project in a timely fashion. Once Hudson receives the final bids, they will be submitted to Hudson's lenders for a feasibility study. If Hudson's lenders approve a bid, construction of Sea Pines will commence as soon as practicable.¹

8. Hudson further recognizes that it may not be able to ultimately secure the financing necessary to build out Sea Pines. Therefore, On July 15, 2004 the owners of Hudson Utilities met with John Gallagher, the County Administrator in Pasco County, Florida Representative Heather Fiorentino, Stephen Reilly of OPC and others to discuss the feasibility of Pasco County purchasing part or all of Hudson Utilities and/or providing service to some customers within Hudson's current certificated territory, including Sea Pines. Hudson is waiting to hear from the county regarding potentially transferring territory to the county and a possible offer to purchase some or all of Hudson's assets.

9. Hudson's continued diligence and commitment to serve the residents of Sea Pines belies OPC's assertion that Hudson is in violation of Section 367.161(1), Florida Statutes.

¹On August 14, 2004, Hurricane Charley struck areas of Florida close to Hudson. At this time, Hudson is unable to determine whether damage caused by Hurricane Charley will impact the timing of Sea Pines construction.

Respectfully submitted this 19 day of August, 2004.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States Mail to the following this _____ day of August, 2004.

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