

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Gulf Island) DOCKET NO. 931204-SU
Resort, LP against HUDSON) ORDER NO. PSC-94-0275-FOF-SU
UTILITIES, INC. d/b/a HUDSON BAY) ISSUED: March 9, 1994
COMPANY for failure to provide)
wastewater service in Pasco)
County.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

ORDER GRANTING PETITION FOR EMERGENCY RELIEF

BY THE COMMISSION:

BACKGROUND

Gulf Island Resort (Gulf Island or the condominium) is a condominium consisting of two phases of approximately 100 units each located in Hudson, Florida. Gulf Island is located within the certificated territory of Hudson Utilities, Inc., d/b/a Hudson Bay Co. (Hudson or utility), which provides wastewater service.

The condominium project was originally developed as three separate phases by Harbor Lights Ventures, Inc., in the early 1980's. In 1986, Hudson's approved service availability charge was \$200.00. In the course of a staff-assisted rate case conducted that year, we discovered that the utility's previous owners had failed to collect CIAC from all three phases. As a result, \$64,800 in CIAC (324 units x \$200) was imputed to the utility's rate base.

At the conclusion of the staff-assisted rate case, the utility and the condominium developer entered into a developer agreement which acknowledged that the developer had not paid Hudson any connection fees, even though the units were already connected. The developer agreed to pay the \$200.00 fee for connection of Phase I over a set period of time. The developer and Hudson agreed that if no agreement was made as to Phases II and III, Hudson would plug the connection to those Phases in order to prevent any sewage from Phases II and III from entering Hudson's lines.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

No agreement was made, and the connection was blocked. Because of the slow real estate market, it appears that Phases II and III have remained unoccupied for some time. In 1988, this Commission conducted another staff-assisted rate case, with the \$64,800 in CIAC still being imputed to Hudson's rate base. In that case, in Docket No. 881391, we authorized an increase in the utility's service availability charge to \$1,600.00. Between 1986 and the present, both the utility and the condominium project changed ownership. Gulf Island Resorts, Inc. purchased the remaining two condominium buildings, known as Phases II and III.

The condominium owner is now seeking wastewater service for Phases II and III. In mid-1993, an attorney from Gulf Island Resorts, Inc. contacted our staff and was advised that \$200.00 per connection had been imputed to the utility previously. The attorney then informed the Commission that Hudson Utilities was attempting to collect a \$1,600.00 connection fee for service to Phases II and III. On August 2, 1993, our staff sent a letter to Gulf Island which summarized past events, and concluded that the utility should only be permitted to require payment of \$200.00.

On December 16, 1993, Gulf Island filed a Complaint with this Commission, alleging that Hudson Utilities refused to provide service to the two condominium buildings until Gulf Island paid \$1,600.00 per unit, and \$20,000 for a lift station upgrade. Gulf Island was particularly concerned because January through April 1994 is the peak sales season, and it claimed that it would risk foreclosure if it could not sell the units during that time. In its complaint, Gulf Island requested that this Commission require Hudson to remove the plug from the wastewater line and provide service upon payment of \$200.00 per unit, payable upon closing of the sale of each unit.

On December 22, 1993, Gulf Island filed a Petition for Emergency Relief. In support of its position, Gulf Island states that it believes that its earlier-filed complaint will not be resolved in enough time for Gulf Island to take advantage of the sales season, thereby causing irreparable harm. The Emergency Petition requests that the Commission allow Gulf Island to connect to the wastewater system after paying \$200.00 during the pendency of the case.

In its Response to Gulf Island's Complaint, Hudson states that it is authorized to collect \$1,600.00 for new connections, that even if there was an agreement for a \$200.00 fee, according to case law the agreement may be modified, that the condominium was never connected, and that the Complaint should be dismissed for failing

to attach the purported \$200.00 service agreement and failure to state a cause of action.

PETITION FOR EMERGENCY RELIEF

Phases II and III of Gulf Island Resort are currently not receiving service from the utility. Our staff has begun to investigate the past events, rates, and engineering concerns which were raised by Gulf Island's Complaint. Gulf Island's primary concern is that this matter may take several months to resolve, which may substantially affect Gulf Island's ability to sell condominium units during its January through April sales season.

Gulf Island has requested in its Emergency Petition that it be permitted pay \$200.00 per unit to receive service. This amount is disputed by Hudson, which wishes to collect its present service availability charge of \$1,600.00 per unit, and \$20,000 for a lift station it states is needed to serve Phases II and III.

Service availability charges and charges such as the construction of a lift station are generally collected at once, at the time of connection and service. As it is evident that there are numerous disputed issues involved in this matter, we find it appropriate to protect the interests of both parties. We shall permit Gulf Island to receive service now, but allow Hudson Utilities to collect what it avers are the appropriate service availability charges. We find that it is also appropriate to allow Hudson to collect \$20,000 for the construction of the lift station on several grounds. As noted above, such charges for hookup are generally collected at the time of connection and service. In the case of a multi-residential condominium such as Gulf Island, it is also important to consider that the developer is not the final customer of the utility. If difficulties later arise concerning the payment for the construction of the lift station, customers who live in Gulf Island may be adversely impacted by an interruption of service.

Therefore, we find it appropriate that Hudson Utilities be authorized to collect up front the full amount of its current per unit service availability charge for all of the units located in Phases II and III (\$1,600 x the number of units in each building to be occupied), as well as the \$20,000 for the lift station upgrade, with all to be held subject to refund except the \$200.00 portion of the service availability per unit charge that is clearly not in dispute.

Hudson Utilities shall provide security for the potential refund of the \$20,000 and the \$1,400.00 of each per unit service

availability charge in the form of a bond, letter of credit, or escrow account. The utility shall submit, for our staff's approval, security for the potential refund of the service availability charges and lift station payment. The utility shall comply with this Commission's practice regarding the appropriate provisions to be included in the form of security submitted for approval. The utility shall also comply with Rule 25-30.360(6), Florida Administrative Code, regarding refunds.

This docket shall remain open during the investigation of the issues raised by Gulf Island's Complaint.

Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that Hudson Utilities, Inc., is authorized to collect its currently authorized service availability charge of \$1,600.00 per unit from Gulf Island Resorts, Inc. for the units located in Phase II and Phase III. It is further

ORDERED by the Florida Public Service Commission that Hudson Utilities, Inc., is authorized to collect \$20,000 from Gulf Island Resorts for the construction of a lift station to serve Gulf Island Resorts. It is further

ORDERED by the Florida Public Service Commission that \$1,400.00 of each \$1,600.00 per unit collected in service availability charge; and the \$20,000 collected for the construction of the lift station shall be held subject to refund by the utility. It is further

ORDERED that Hudson Utilities, Inc. shall provide security for the potential refund in the form of a bond, letter of credit, or escrow account, to be approved by our staff. It is further

ORDERED that this docket shall remain open during the investigation of the Complaint.

By ORDER of the Florida Public Service Commission, this 9th day of March, 1994.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
MEO

by: Kay Flynn

Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.