

ORIGINAL

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
MARTIN P. McDONNELL
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

R. DAVID PRESCOTT
HAROLD F. X. PURNELL
MARSHA E. RULE
GARY R. RUTLEDGE
GOVERNMENTAL CONSULTANTS
MARGARET A. MENDUNI
M. LANE STEPHENS

April 15, 2002

Ms. Blanca Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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COMMISSION
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Re: Docket No. 020253-SU

Dear Ms. Bayo:

Enclosed for filing on behalf of Hudson Utilities, Inc. ("Hudson") are the following documents:

1. Original and fifteen copies of Hudson's Answer to the Office of Public Counsel's Petition to Initiate Show Cause Proceedings Against Hudson Utilities, Inc. for Failure to Provide Service in its Expanded Service Area Within a Reasonable Time; and
2. A disk containing a copy of the Answer in Word Perfect 6.0.

Please acknowledge receipt of these documents by date-stamping the enclosed copy of this letter and returning it to the undersigned.

Sincerely,

Martin P. McDonnell

Martin P. McDonnell

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of the Citizens of the State)
of Florida to initiate show cause)
proceedings against Hudson Utilities, Inc.)
for failure to provide service in its expanded)
service area within a reasonable time)
_____)

Docket No. 020253-SU

Filed: April 15, 2002

**HUDSON UTILITIES, INC.'S ANSWER TO THE
OFFICE OF PUBLIC COUNSEL'S PETITION TO INITIATE
SHOW CAUSE PROCEEDINGS AGAINST HUDSON
UTILITIES, INC. FOR FAILURE TO PROVIDE SERVICE
IN ITS EXPANDED SERVICE AREA WITHIN A REASONABLE TIME**

Hudson Utilities, Inc. ("Hudson") by and through undersigned counsel, and pursuant to Rule 28-106.203, F.A.C., files its Answer to Office of Public Counsel's ("OPC") Petition to initiate show cause proceedings against Hudson ("Petition") for failure to provide service in its expanded service area within a reasonable time, and as grounds therefor states:

INTRODUCTION AND SUMMARY

1. On March 19, 2002, OPC petitioned the Florida Public Service Commission ("Commission") to initiate show cause proceedings against Hudson on grounds that Hudson allegedly violated Section 367.111(1), Florida Statutes, by failing to provide service in its expanded service area within a reasonable time. Hudson denies that it has violated Section 367.111(1), Florida Statutes, either willfully or otherwise.

2. Section 367.111(1), Florida Statutes, states:

367.111 Service.-

(1) Each utility shall provide service to the area described in its certificate of authorization within a reasonable time. If the Commission finds that any utility has failed to provide service to any person reasonably entitled thereto, or finds that extension of service to any such person could be accomplished only at an unreasonable cost and that addition of the deleted territory to that of another utility

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company is economical and feasible, it may amend the certificate of authorization to delete the area not served or not properly served by the utility, or it may rescind the certificate of authorization. If utility service has not been provided to any part of the area which a utility is authorized to serve, whether or not there has been a demand for such service, *within five years after the date of authorization for service to such part, such authorization may be reviewed and amended or revoked by the Commission.* (Emphasis added).

3. On September 27, 1999, the Commission granted an application filed by Hudson to amend its certificate to expand its service area.¹ Since that time, Hudson has remained fully committed to serve all customers in its certificated territory. Hudson's diligence and vigilance in attempting to serve the expanded territory granted by the Commission on September 27, 1999 is well documented in Hudson's pleadings, the staff recommendations, and Commission Orders in Docket No. 981079-SU, *In Re: Application for Amendment of Certificate Number 104-S in Pasco County by Hudson Utilities, Inc.* As explained below, extensions of time to file proof of the transfer of the expanded territory from Pasco to Hudson have been requested, justified and granted by the Commission on three occasions covering a period of approximately two years. During that time and prior to filing its Petition, OPC has never appeared, objected or otherwise expressed any concern over Hudson's motions for extensions of time to file its proof of transfer of the territory or the Commission's orders granting the motions.

4. Further, OPC offers no citation to any statute, rule, court order, or Commission order supporting its contention that Hudson has failed to provide service within "a reasonable time."

HISTORICAL AND REGULATORY BACKGROUND

5. Hudson is a Class B utility serving approximately 2300 residential and 115

¹See Order No. PSC-99-1916-PAA-SU.

commercial customers. Hudson provides wastewater collection service to its customers and contracts with Pasco County (the "County") for wastewater treatment services pursuant to a Bulk Wastewater Treatment Agreement. An area known as Signal Cove is adjacent to the southern boundary of a portion of territory currently served by Hudson. The Signal Cove community includes approximately 382 existing buildings, 131 of which are currently receiving wastewater service from the County. The remaining buildings in the community use septic tanks for wastewater treatment and disposal.

6. The comprehensive land use plan adopted by the County calls for coastal areas including Signal Cove to be provided with sanitary wastewater collection and treatment systems. The County, however, generally does not construct gravity wastewater collection systems. Therefore, the County and Hudson agreed that the Signal Cove territory would be transferred from the County to Hudson, and signed an Addendum to their Bulk Wastewater Agreement to include a transfer of Signal Cove from the County to Hudson.

7. Pursuant to the Addendum to the Bulk Wastewater Agreement between the County and Hudson, the transfer of the Signal Cove territory will close when Hudson connects its force main to the County's wastewater collection system that currently serves a portion of the Signal Cove customers. In order to serve Signal Cove, Hudson must construct an additional collection system and force main.

8. On August 26, 1998, in Docket No. 981079-SU, Hudson filed an Application for Amendment of Certificate No. 104-S to extend its service territory. The application sought permission to provide wastewater service to the Signal Cove customers. Pursuant to agreement with the County, the Signal Cove customers will continue to be served by the County until Hudson

completes construction of additional collection lines and a force main. Hudson maintains its commitment to construct the additional collection system and force main as soon as possible and is fully committed to serving its entire certificated area, including the Signal Cove service area.

9. On September 27, 1999, by Order No. PSC-99-1916-PAA-SU, the Commission approved Hudson's Application to Amend its Certificate, including the transfer of the Signal Cove territory from the County to Hudson. That order was made final and effective by Order No. PSC-99-2082-CO, issued October 21, 1999. Since the Commission's order approving Hudson's application to amend its certificate, Hudson has diligently and persistently attempted to gain the commercial financing necessary to construct the additional collection system and force main in order to serve Signal Cove.

10. Hudson's persistence in its attempts to secure commercial financing necessary for the project is thoroughly documented in prior pleadings filed by Hudson before this Commission and orders of the Commission regarding same. On December 9, 1999, Hudson filed a motion for extension of time to file proof of transfer of territory from the County to Hudson in Docket No. 981079-SU. In its motion for extension of time, Hudson advised the Commission that it had not yet completed the construction of facilities necessary to provide wastewater collection service to the residents of Signal Cove. On February 2, 2000, in Order No. PSC-00-0212-OF-SU, the Commission found that Hudson's request was reasonable and granted Hudson until June 27, 2000, to file proof of the transfer of the Signal Cove territory from the County to Hudson.

11. Hudson's difficulties in securing financing for the project were brought to the Commission's attention on June 27, 2000 in Hudson's motion for a second extension of time to file proof of transfer of territory in Docket No. 981079-SU. In its motion for a second extension of time,

Hudson stated

[t]he series of increases in interest rates since February 2000 have prevented Hudson from being able to conclude negotiations for acceptable commercial financing for the construction work needed to extend service to the unserved areas of Signal Cove. Hudson intends to continue with its plans to construct the necessary facilities and to accept the transfer of the existing Signal Cove customers of the County upon completion of that construction. Neither the County nor the Signal Cove homeowners association has expressed any objections 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. Hudson will continue its efforts to obtain acceptable commercial financing for the construction of the Signal Cove facilities" (Motion, p. 3).

12. On August 21, 2002, the Commission granted Hudson's motion for second extension of time to file proof of transfer of territory and stated "Hudson's motion is reasonable and it is hereby granted. As noted above, there are no customers in the territory at issue who are without sewer service." (Order No. PSC-00-1512-PCO-SU, p. 3).

13. On June 29, 2001, Hudson filed its motion for a third extension of time to file proof of transfer of territory in Docket No. 981079-SU. In the motion, Hudson stated:

"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. Hudson's analysis is based on the costs of construction of the facilities completed in its most

recent expansion of its system, beginning in May 1997". (Motion, p. 3). Hudson further requested that "the Commission extend the time in which proof of transfer may be filed to June 30, 2002, to permit Hudson a reasonable period of time to complete the necessary construction of the facilities, seek and secure an increase in its service availability charge as outlined above, and to conclude its efforts to secure acceptable commercial financing." (Motion, p. 3).

Hudson advised Commission staff that it would file a petition to increase its service availability charges by September 30, 2001. On October 8, 2001, in Order No. PSC-01-1993-PCO-SU, the Commission granted Hudson's motion for third extension of time and noted that no customers in the territory were without wastewater service and as *no parties to the docket objected to Hudson's motion*. (emphasis added) (Order, p. 3). The Commission allowed Hudson until June 30, 2002, to file proof of the transfer of the Signal Cove territory from the County to Hudson. (Order, p. 3).

14. Hudson fully intended and attempted to file its Application for an increase in service availability charges by September 30, 2001, but due to circumstances beyond its control, it was unable to do so. Pursuant to Rule 25-30.565, F.A.C., an application for an increase in service availability charges must be accompanied by a significant number of accounting and engineering schedules including: a schedule showing the original costs of the existing treatment plant, the water transmission and distribution system and the sewage collection system, by uniform system of accounting account numbers as required by Rule 25-30.115, F.A.C., and the related capacity of each system as of ninety days prior to application; a detailed statement of accumulated depreciation for the plant as of ninety days prior to the application;² a detailed statement defining the capacity of the

²Rule 25-3.0565(f), FA.C.

treatment facilities in terms of ERCs as used in developing the proposed service availability charges;³ a detailed statement defining the capacity of the distribution or collection system in terms of ERCs as used in developing the proposed service availability charges;⁴ a schedule showing total collections of contributions-in-aid-of-construction (CIAC) as of ninety days prior to the date of application, detailing any prepaid CIAC by amount, the related reserved ERC, and the anticipated connection date;⁵ a detailed statement of accumulated amortization of CIAC as listed above as of ninety days prior to application;⁶ a detailed statement by a registered professional engineer showing the cost, by uniform system of accounting account numbers, and capacity of proposed plant expansion, and a timetable showing projected construction time;⁷ a detailed statement by a registered professional engineer showing how the proposed construction will affect the capacity of the existing systems;⁸ a schedule showing the projected growth rate for utilization of the existing plant and line capacity and future plant and line capacity;⁹ a summary schedule of how the proposed service availability charge was calculated;¹⁰ the company's present capital structure, including the cost of debt in the present capitalization. The availability and cost of other sources of financing the

³Rule 25-30.565(h), F.A.C.

⁴Rule 25-30.565(i), F.A.C.

⁵Rule 25-30.565(l), F.A.C.

⁶Rule 25-30.565(m), F.A.C.

⁷Rule 25-30.565(o), F.A.C.

⁸Rule 25-30.565(p), F.A.C.

⁹Rule 25-30.565(r), F.A.C.

¹⁰Rule 25-30.565(s), F.A.C.

proposed expansion or upgrading of the system also shall be given.¹¹ Hudson has a limited staff and does not employ accountants or engineers who can adequately prepare the accounting and engineering schedules mandated by Rule 25-30.565, F.A.C.

15. For many years, Hudson has engaged the certified public accounting firm of Cronin, Jackson, Nixon and Wilson, P.A. (“Cronin firm”). The Cronin firm is familiar with Hudson’s financing and accounting records and has assisted Hudson in numerous filings before the Commission. Hudson engaged the services of the Cronin firm to prepare the accounting schedules necessary pursuant to Rule 25-30.565, F.A.C. Unfortunately, Ron Jurgutis, the accountant from the firm that was preparing the documents, suffered personal and family health problems which precluded him from completing the accounting schedules by September 30, 2001. Mr. Jurgutis’ wife had surgery in the late summer of 2001 necessitating Mr. Jurgutis’ absence from the office. Additionally, Mr. Jurgutis then suffered what medical experts suspected was a heart attack, keeping Mr. Jurgutis from completing the schedules necessary to assist Hudson in its application by September 30, 2001. Ultimately, Robert Nixon, a partner in the Cronin firm completed the necessary schedules and forwarded them to the office of the undersigned. The undersigned then diligently prepared the application for the increase in service availability charges and filed it with the Commission.

16. On March 19, 2002, OPC filed its Petition against Hudson alleging Hudson’s failure to “provide service to the area described in its certificate of authorization within a reasonable time”

¹¹Rule 25-30.565(v), F.A.C.

in violation of Section 367.111(1), Florida Statutes.¹² In the Petition, OPC alleges that “as of March 18, 2002, Hudson has failed to file its application for a change in its service availability charge.” Had OPC contacted the undersigned or Hudson Utilities, it would have been made aware of Hudson’s good faith efforts to file the application for increase in service availability charges. Further, had OPC reviewed the docket history in Docket No. 981079-SU, OPC would have been aware of the circumstances necessitating the delay in filing the application.

17. In its continuing effort to secure commercial financing for the necessary construction to service its entire territory, officers of Hudson met with their long-time commercial lenders on April 9, 2002 to work toward securing commercial financing for the build out necessary to serve the expanded service area, subject to the Commission’s approval of Hudson’s application for increase in service availability charges.

18. Hudson remains committed to serving its entire certificated area within a reasonable time and has always acted in good faith toward fulfilling that commitment. In Docket No. 981079-SU, there is an unbroken string of timely filed motions explaining Hudson’s efforts to serve its expanded service territory and confirming Hudson’s commitment to serve Signal Cove and all other areas within its certificated territory within a reasonable time.

19. In its Petition, OPC fails to provide the Commission with any statute, rule, case law or Commission authority to support its subjective definition of “a reasonable time.” The plain

¹²Attached to the OPC Petition is a certificate of service stating that the petition was served by hand to PSC staff. On March 20, 2002, OPC filed an amended certificate of service certifying that a copy of the petition was mailed to Hudson Utilities, Inc. on March 20, 2002. Hudson, prior to receiving a copy of the Petition and without any knowledge that OPC was filing a Petition, filed its application for increase in service availability charges on March 19, 2002.

language of Section 367.111(1), Florida Statutes, does not support OPC's subjective definition of "a reasonable time." Further, OPC's Petition totally fails to acknowledge Hudson's on-going efforts to service its entire certificated area within a reasonable time as further explained herein. Hudson recognizes its duty to its customers and to the Commission to serve its entire certificated area within a reasonable time. OPC's Petition should be denied.

**HUDSON'S RESPONSE TO THE NUMBERED PARAGRAPHS
IN OPC'S PETITION TO INITIATE SHOW CAUSE PROCEEDINGS
AGAINST HUDSON UTILITIES, INC.**

20. Paragraph 1: Admitted.

21. Paragraph 2 Admitted that the name, address and telephone numbers of petitioner are as stated in the petition. Hudson lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 2.

22. Paragraph 3: Admitted.

23. Paragraph 4: Admitted.

24. Paragraph 5: Admitted that the Office of Public Counsel represents the Citizens. Hudson denies that it has failed to provide wastewater service within a reasonable time in its expanded territory. Hudson denies that the Citizens are substantially and adversely affected by the failure of Hudson to provide wastewater service within the territory because all customers in the service territory are currently being serviced.

25. Paragraph 6: Admitted.

26. Paragraph 7: Admitted that Section 367.111(1), Florida Statutes requires utilities to "provide service to the area described in its certificate of authorization within a reasonable time." Admitted that Section 367.16(1), Florida Statutes provides penalties for any utility that "knowingly

refuses to comply with, or willfully violates, any provision of this chapter or any lawful rule or order of the Commission...” Hudson denies that it has knowingly refused to comply with, or willfully violated any provision of Chapter 367.

27. Paragraph 8: Admitted.

28. Paragraph 9: Admitted.

29. Paragraph 10: Admitted. Hudson fully explained to the Commission in its motion for second extension of time filed June 27, 2000 in Docket No. 981079 the basis for its difficulty in securing commercial financing.

30. Paragraph 11: Admitted. The underlying justifications for Hudson not filing its application for increase in service availability charges by September 20, 2001, are fully explained and documented above.

31. Paragraph 12: Admitted that as of March 18, 2002, Hudson had failed to file an application for a change in its service availability charge. The application was filed March 19, 2002. Admitted that Hudson is aware of its financial condition and the cost required to provide service within its service area, and its obligation to provide service to citizens living within the expanded service territory. Hudson’s good faith attempt to secure commercial financing for the projects are fully explained above.

32. Paragraph 13: Admitted.

33. Paragraph 14: The first sentence of paragraph 14 is admitted. Hudson denies that the delay in providing service to the area is “intolerable” as all customers in the area are currently being serviced. Hudson denies that its failure to provide service is a violation of the laws of the State of Florida and Hudson lacks sufficient knowledge to admit or deny the remaining allegations in

paragraph 14.

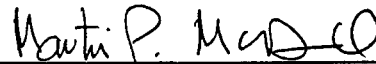
34. Paragraph 15: Admitted that Commission Order PSC-99-1916-PAA-SU authorized Hudson to provide wastewater service within the expanded service territory. Admitted that Hudson is required to provide service within a reasonable time. Hudson denies all other allegations in paragraph 15.

35. Paragraph 16: Denied.

36. Paragraph 17: Denied.

WHEREFORE, based on the foregoing, Hudson requests that the Commission deny OPC's Petition.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQ.
MARTIN P. MCDONNELL, ESQ.
MARSHA RULE, ESQ.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, Florida 32302
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)

Attorneys for Hudson Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was furnished by U.S. Mail to the following this 15th day of April, 2002:

Stephen M. Presnell, Esq.
Associate Public Counsel
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400

Samantha Cibula, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, Florida 32399-0850



MARTIN P. MCDONNELL, ESQ.

Hudson/motiontodismiss