

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of	)	DOCKET NO.	900832-SU
Viva Villas Sewer System to Hudson	)		
Utilities, Inc.; cancellation of	)	ORDER NO.	24376
Certificate No. 220-S; and amendment	)		
of Certificate No. 104-S in Pasco	)	ISSUED:	4/17/91
County.	)		

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Pursuant to notice, a prehearing conference was held on April 11, 1991 before Commissioner Gerald L. Gunter, as Prehearing Officer, in Tallahassee, Florida.

APPEARANCES: SCOTT KNOX, Esquire, Scott Knox, P.A.  
28870 U.S. Hwy 19 N., Suite 230,  
Clearwater, Florida 34621  
On behalf of Hudson Utilities, Inc.

NANCY BRENNAN, President, and ROBERT B. PIERCE,  
Vice-President, Viva Villas Civic Association, Inc.  
8535 Bella Via, Hudson, Florida 34667  
On behalf of Viva Villas Civic Association

CATHERINE BEDELL, Esquire, Florida Public Service  
Commission, 101 East Gaines Street, Tallahassee,  
Florida 32399-0863  
On behalf of the Commission Staff

PRENTICE PRUITT, Esquire, Florida Public Service  
Commission, 101 East Gaines Street, Tallahassee,  
Florida 32399-0863  
Counsel to the Commission

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PSC-RECORDS/REPORTING

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PREHEARING ORDER

I. Case Background

On October 15, 1990, Hudson Utilities, Inc. (Hudson) filed an application with the Commission for the transfer of Viva Villas Sewer System from Pasco Testing Labs, Inc., a court appointed receiver, to Hudson. Hudson subsequently requested a limited rate proceeding and an emergency interconnection. On October 25, 1990, the Commission by Order No. 23685 found that a health hazard existed which warranted approving a temporary, emergency interconnection by Hudson of the Viva Villas Sewer System to the Pasco County wastewater system and authorizing Hudson to collect temporary rates and charges. Staff filed a recommendation on February 7, 1991 recommending approval of the transfer. At Agenda on February 19, 1991, the Commissioners voted to deny staff's recommendation and to set this docket for hearing in order to give customers an additional opportunity to participate in this transfer docket. The Viva Villas Civic Association, Inc. (Viva Villas) has intervened on behalf of the homeowners. Nancy Brennan and Robert Pierce, President and Vice President, respectively, of Viva Villas Civic Association, withdrew as individual intervenors at the Prehearing Conference.

This case is scheduled for an administrative hearing on April 22 and 23, 1991.

II. Prefiled Testimony and Exhibits

Testimony of all witnesses to be sponsored by the Utility has been prefiled. Viva Villas has filed no testimony. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

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Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

### III. Order of Witnesses

<u>Witness</u>	<u>Appearing for</u>	<u>Issues #</u>
<u>Direct</u>		
Robert Bammann	Hudson	1-8,13,14
Aileen B. Delehanty	Hudson	1
Michael Cox	Hudson	5
Doug Bramlett	Hudson	1-7,10,11,14,17
Dorothy Watkins	Hudson	1,5
Robert Pierce	Viva Villas	All
Nancy Brennan	Viva Villas	All

### IV. Basic Positions

HUDSON: The transfer of the Viva Villas Sewer System to Hudson Utilities is in the public interest and Hudson Utilities can fulfill the obligations, representations, and commitments of the Viva Villas Sewer System. The rates to be established for the Viva Villas Sewer System should be the same rates charged to other customers of Hudson Utilities.

VIVA VILLAS: The Association strongly believes that the proposed transfer is not in the public interest. Approval of the transfer would impose an unnecessary middleman upon the citizens of Viva Villas subdivision. The Association believes that imposing this middleman will cause the Viva Villas

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Sewer System's customers to ultimately pay more for wastewater treatment than they otherwise would have to pay if they were permitted to be served directly by Pasco County.

Transferring the certificate to Hudson would permit the Viva Villas Sewer System's customers to receive wastewater treatment without initially paying the impact fee to Pasco County. However, the benefits of being relieved from this up-front cost is more than offset by the substantially higher base facility charges and gallonage charges that would be imposed upon the Viva Villas Sewer System's customers. These higher base facility charges and gallonage charges would have to be paid by the Viva Villas Sewer System's customers in perpetuity.

STAFF:

The information gathered through discovery and prefiled testimony indicates, at this point, that the utility's application to transfer the Viva Villas Sewer System to Hudson Utilities, Inc. should be approved.

V. Issues and Positions

1. ISSUE: Does Hudson Utilities, Inc. have the financial and technical ability to serve Viva Villas Sewer System?

POSITIONS

HUDSON: Yes.

VIVA VILLAS: No. Mr. Bammann refers to his company as a MOM AND POP operation, and we feel the company is underfunded, undermanaged, and is dependent on revenue from Viva Villas Sewer System's customers to secure bonds funds. We further feel that they do not have sufficient business experience to guarantee performance of such an aggressive planned expansion of its services. Further, Pasco County denied them tax free bonds, which necessitated going to the open market to secure financing at taxable rates, reportedly at 13% per annum.

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STAFF: Yes, Hudson Utilities, Inc. is currently providing service to Viva Villas Sewer System, pending approval of the transfer. President and controlling stock-holder of the utility, Robert Bammann, has been active in this utility since 1985, and has plans for substantial expansion of the utility over the next several years.

2. ISSUE: Will the system be in competition with any other system?

POSITIONS

HUDSON: Same as Staff.

VIVA VILLAS: There is really only one provider of central sewer services and that provider is Pasco County. Hudson proposes to be the "middleman" between Viva Villas Sewer System and Pasco County.

STAFF: No, although Pasco County can directly provide collection services to Viva Villas Sewer System, the county has entered into an agreement not to compete with Hudson Utilities, Inc. for the Viva Villas Sewer System service area.

3. ISSUE: Is the Pasco County system adequate to meet the needs of Viva Villas Sewer System?

POSITIONS

HUDSON: The County does not have a collection system in this area.

VIVA VILLAS: Yes, reference letters from Pasco County to Florida Public Service Commission, dated January 30, 1991, and March 20, 1991, stating the County's position.

STAFF: Yes, Pasco County has significantly expanded its subregional wastewater system, and Hudson Utilities has interconnected the Viva Villas Sewer System to the Pasco County wastewater system. The county could adequately operate the collection system for Viva Villas Sewer System.

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4. ISSUE: Is Pasco County able and willing to provide reasonably adequate service to Viva Villas Sewer System?

POSITIONS

HUDSON: No, the County is not able to provide collection service because the County has no collection system in the area.

VIVA VILLAS: Yes, Pasco County is able and willing to provide service in the event the transfer is denied. Reference letters described in Issue 3.

STAFF: Yes, Pasco County has offered to serve Viva Villas Sewer System directly, if the Commission declines to approve the transfer.

5. ISSUE: Is the transfer in the public interest?

POSITIONS

HUDSON: Yes.

VIVA VILLAS: No, for the reasons stated above in IV, Basic Positions.

STAFF: Yes. Hudson Utilities, Inc. stepped in and took over Viva Villas Sewer System when DER threatened to shut down the system. Hudson has been responsible for operating the system since October, 1990, with no complaints other than the increase in rates. Pasco County is willing to provide collection service to Viva Villas Sewer System only if it is determined that Hudson Utilities, Inc. cannot, and only after all customers pay an impact fee to the County.

6. ISSUE: Has Pasco County, at any time, indicated that Viva Villas residents would be directly connected to the County Subregional Treatment Plant?

POSITIONS

HUDSON: No position at this time.

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VIVA VILLAS: Yes. At several meetings with Pasco County Utilities staff, and with county Commissioners, the customers were assured that Viva Villas Sewer System would be connected as soon as the County's treatment plant was completed. Our Association minutes since 1985 attest to this position. It should be noted that the present receiver/manager, Pasco Testing Lab, has a DER operating permit which expires in 1993.

STAFF: No position at this time.

7. ISSUE: Did Pasco County ever mention its intention to use a private Contractor to be a "middleman" between the residents and Pasco County?

POSITIONS

HUDSON: No position at this time.

VIVA VILLAS: No. At no time, or meeting, was there any mention of a "middleman." Furthermore, PSC engineer Tom Walden (9-17-85) stated the Pasco County should take over the Viva Villas Sewer System, because the COUNTY owed it to the tax-paying citizens of Viva Villas Subdivision. William Muntz, an engineer with Pasco County Utilities Division also recommended that our system (package treatment plant) should be owned by Pasco County. Pasco Testing Labs stated that our system was operating properly and was good for another 20 years.

STAFF: No position at this time.

8. ISSUE: What was the condition of the plant under the court appointed operator?

POSITIONS

HUDSON: No position at this time.

VIVA VILLAS: The treatment plant was at times poorly maintained, however, there were no complaints on record with Pasco County Environmental Health Department in the past two years. There have been no reported service problems with the collection system, the lines and lift stations throughout the subdivision.

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STAFF: DER was threatening to shut down the treatment plant.

9. ISSUE: What is the position of the homeowners of Viva Villas, regarding the proposed transfer of Hudson Utilities, Inc.?

POSITIONS

HUDSON: No position at this time.

VIVA VILLAS: A survey conducted in January, 1991 indicated that 90%+ of the respondents favored county ownership of our sewer system.

STAFF: No position at this time.

10. ISSUE: Has Pasco County agreed to waive the standard sewer impact fee of \$1,579 for the residents of Viva Villas?

POSITIONS

HUDSON: No position at this time.

VIVA VILLAS: No. At this time the County expects the entire fee to be paid.

STAFF: No.

11. ISSUE: Has Pasco County proposed an alternate financing plan for payment of the impact fee?

POSITIONS

HUDSON: No position at this time.

VIVA VILLAS: Yes. At their regular meeting of March 11, 1991, the Commissioners ordered, by unanimous vote, to amend the county ordinance #87-10 to allow for payment of 50% (\$789.50) up front, and the balance in five annual payments at 12% interest. This amendment was introduced to the Commission at their meeting on April 2, 1991, and has no opposition.

STAFF: No position at this time.



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12. ISSUE: What is the position of the Viva Villas residents to this proposed financing plan?

POSITIONS

HUDSON: No position at this time.

VIVA VILLAS: It has not been determined at this date. However, the Viva Villas Civic Association is in the process of polling homeowners for their reaction and a firm commitment to the county plan. Initial reaction indicates a positive response, with several already signed up to pay the total impact fee when billed by the county. There has been no adverse comment to date. It is anticipated that a substantial majority of the homeowners will favor the Pasco County plan of ownership and operation of the Viva Villas Sewer System.

STAFF: No position at this time.

13. ISSUE: Should customers of the Viva Villas Sewer System be forced into becoming customers of Hudson Utilities?

POSITIONS

HUDSON: No position at this time.

VIVA VILLAS: No. The major portion of Hudson's customers base comes from trailer parks and trailer homes in the canal areas of Hudson. These customers are not on county roads and most would not be paying property taxes to Pasco County, except for their mobile home tags. Viva Villas subdivision is a mature area of fine homes, served by county approved roads. We are mostly permanent residents and contribute to the county through property taxes. The Commission should not force the customers of Viva Villas Sewer System to pay higher rates to help subsidize the other customers of Hudson Utilities, Inc.

STAFF: No position at this time.

14. ISSUE: Would Pasco County or Hudson Utilities offer the more reliable sewer service for the Viva Villas Subdivision?

POSITIONS

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HUDSON: Hudson Utilities, Inc. would afford the more reliable collection system.

VIVA VILLAS: We feel that Pasco County would be a more reliable and efficient supplier of service to the owners and residents of Viva Villas. We are already on line with Pasco County and can see no justification for a middleman. We are strongly opposed to subsidizing the customers of Hudson and the company, in its expansion plans.

STAFF: No position at this time.

15. ISSUE: Will the Viva Villas Sewer System customers be financially better off if the proposed transfer is approved rather than permitting Pasco County to serve them directly?

POSITIONS

HUDSON: No position at this time.

VIVA VILLAS: No. The substantially higher base facility and gallonage charges that will be perpetually charged by Hudson Utilities will more than offset the value of not requiring an up-front impact fee. The extra expense of operating a regulated private utility with the costs of rate cases and regulatory assessment fees compares very unfavorably with a County owned and operated system. Whether paying the County impact fee up-front or taking advantage of the County's financing plan, all such costs can be added to the customer's tax basis in his or her home. This impact fee cost will help offset any gain ultimately realized from the sale of the home. Paying Hudson Utilities' higher rates offers no such tax benefit.

STAFF: No position at this time.

16. ISSUE: What effect would there be on property values and property conditions under Hudson ownership of the sewer system?

POSITIONS

HUDSON: No position at this time.

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VIVA VILLAS: The high monthly charges of Hudson would, in our opinion, inhibit the sale of property in Viva Villas subdivision. Further, the high rates would tend to curb the watering of lawns, which would tend to lower property values.

STAFF: No position at this time.

17. ISSUE: What are the monetary advantages to the Viva Villas homeowners as direct customers of Pasco County?

POSITIONS

HUDSON: Any monetary advantages are speculative at this time.

VIVA VILLAS: Comparative rates of Pasco County and Hudson Utilities indicate an average monthly saving on county rates of \$14 to \$15 (based on 5000 gallon usage), which would nearly pay for financed portion of the impact fee over the five year period. Further, the impact fee would be over and finished, but the higher charges of Hudson would go on and on with no relief.

STAFF: No position at this time.

VI. Proposed Stipulations

The parties propose the following stipulations for Commission approval.

1. If the transfer to Hudson Utilities, Inc. is approved, the rates of Hudson Utilities shall apply to Viva Villas customers.
2. In the event the transfer is denied and the County takes over Viva Villas Sewer System, Pasco County has not agreed to waive the \$1579 impact fee.

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VIII. Exhibits

<u>Witnesses</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Robert Bammann	Hudson	Composite RB-1	<p>Application filed with PSC for transfer of Viva Villas Sewer System to Hudson Utilities;</p> <p>Copies of paid receipt and canceled check indicating paid delinquent ad valorem taxes;</p> <p>PSC Order No. 23685, issued October 25, 1990;</p> <p>PSC PAA Order No. 23810, issued November 27, 1990, in Docket No. 900293-SU;</p> <p>Staff recommendation dated October 25, 1990 in Docket No. 900293-SU;</p> <p>Deed for Viva Villas Sewer System plant and percolation pond;</p>

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Robert Bammann	Hudson	Composite RB-1 (contd.)	Current certificate of Hudson Utilities
Doug Bramlett	Hudson	Composite DB-1	Agreement between Hudson Utilities, Inc. and Pasco County for bulk sewer service;  County sewer use ordinance 87-10, codified as Section 26- 81 through 26-95.5;  Letter dated January 30, 1990 from Pasco County Commis- sioners to PSC reflecting the County's position;  Resolution 87-118 regarding County water and sewer revenue bonds;  Resolution 86-31 regarding County water and sewer revenue bonds;  Wastewater element of County's comprehensive plan

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Michael Cox	Hudson	MC-1	Review of Pasco County wholesale wastewater rate findings and recommendations by Arthur Young, October 1988
Dorothy A. Watkins	Hudson	DW-1	Letter dated January 26, 1990 from William R. Hough & Co. to Mr. Robert Bammann regarding commitment to finance the expansion of Hudson Utilities, Inc.
Nancy Brennan	Hudson	NB-1	Deposition of March 21, 1991
Nancy Brennan	Viva Villas	Composite NB-2	Letter dated January 30, 1991 from County Commission Chairman Mike Wells to Catherine Bedell;  Letter from Robert Bammann to County Commission Chairman Mike Wells;  Viva Villas Civic Association minutes since 1985

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Robert B. Pierce	Hudson	RP-1	Deposition of March 21, 1991
Robert B. Pierce	Viva Villas	Composite RB-2	Copies of January, 1991 petitions;  Summary sheet documenting results of the January, 1991 petitions;  Copies of April, 1991 commitment forms;  Summary sheet documenting the results of April, 1991 survey

Parties and Staff reserve the right to identify exhibits for the purpose of cross-examination.

Based upon the foregoing, it is

ORDERED by Commissioner Gerald L. Gunter Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings unless modified by the Commission.

By ORDER of Commissioner Gerald L. Gunter, as Prehearing Officer, this 17th day of APRIL, 1991.



GERALD L. GUNTER, Commissioner  
and Prehearing Officer

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