

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of :
Application for amendment of : DOCKET NO. 960576-WS
Certificates Nos. 34-W and :
297-S in Pasco County by :
Mad Matter Utility, Inc. :



SECOND DAY - AFTERNOON SESSION

VOLUME 4

Pages 453 through 641

PROCEEDINGS:

HEARING

BEFORE:

COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER DIANE K. KIESLING

DATE:

Wednesday, May 14, 1997

TIME:

Commenced at 9:00 a.m.
Concluded at 5:16 p.m.

PLACE:

Land O'Lakes Community Center
5401 Land O'Lakes Boulevard
Land O'Lakes, Florida

REPORTED BY:

ROWENA NASH
H. RUTHE POTAMI, CSR, RPR
Official Commission Reporters

APPEARANCES:

(As heretofore noted.)

DOCUMENT NUMBER-DATE

05198 MAY 23 5

FILED RECORDS/REPORTING

FLORIDA PUBLIC SERVICE COMMISSION

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ITEM

CERTIFICATE OF REPORTERS

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P R O C E E D I N G S

(Transcript follows in sequence from
Volume 3.)

COMMISSIONER DEASON: Call the hearing back
to order. Ms. Hale?

MS. HALE: We would call Clyde Hobby, and I
think we need to call him by telephone. I think we
have an audio specialist who can hopefully hook up the
call for us.

COMMISSIONER DEASON: Very well.

THE AUDIO TECHNICIAN: Who is the
representative?

MS. HALE: The witness is Clyde Hobby, and
his telephone number is 844-3182. Is Mr. Hobby there,
please?

THE OPERATOR: I'm sorry. What number are
you trying to reach?

MS. HALE: 844-3182.

COMMISSIONER DEASON: We're going to go off
the record until we get Mr. Hobby on the phone and we
know who he is.

(Discussion off the record.)

COMMISSIONER DEASON: We'll go back on the
record at this point. Please have the witness
identify himself.

1 **MR. HOBBY:** My name is Clyde Hobby,
2 H-O-B-B-Y.

3 **COMMISSIONER DEASON:** Mr. Hobby, I need to
4 put you under oath.

5 **MR. HOBBY:** Okay.

6 **COMMISSIONER DEASON:** And I'm going to just
7 ask you to raise your right hand, if you can do that.

8 - - - - -

9 **CLYDE HOBBY**
10 was called as a witness telephonically on behalf of
11 Pasco County and, having been duly sworn, testified as
12 follows:

13 **DIRECT EXAMINATION**

14 **BY MS. HALE:**

15 **Q** Mr. Hobby, are you the same Clyde Hobby who
16 caused to be filed prefiled direct testimony in this
17 matter?

18 **A** Yes, I am.

19 **Q** Can you hear me okay, Mr. Hobby?

20 **A** Yes, I can hear you.

21 **Q** If at any time you can't hear me or anyone
22 else in this room, would you please let us know?

23 **A** Yes, I will.

24 **Q** Do you have any changes or corrections to
25 make to your testimony?

1 A The testimony is correct as submitted. You
2 know, it could be worded slightly different, but it's
3 correct.

4 **COMMISSIONER KIESLING:** This is
5 Commissioner Kiesling. The copy that I have is three
6 pages, and the sentence that ends at the bottom of the
7 second page is not the same sentence as continues at
8 the top of the next page and I'm --

9 **WITNESS HOBBY:** Let me look at this just a
10 minute, Commissioner. (Pause) That's an answer that
11 I'm giving. "It was Sunfield Home's idea because
12 Mad Hatter would not guarantee service -- you're
13 right. The third page -- that sentence is not
14 concluded on the third page on that copy.

15 Q **(By Ms. Hale)** Well, Can you tell us what
16 words are missing there, Mr. Hobby?

17 A "Pasco County did not solicit the Sunfield
18 homes -- Sunfield Homes as a utilities customer.

19 Q Other than that change to your testimony,
20 would your answers be the same if I were to ask you
21 those questions today?

22 A Yes, they would.

23 **MS. HALE:** We would propose to have
24 Mr. Hobby's testimony inserted into the record as
25 though read.

1 **COMMISSIONER DEASON:** Without objection, it
2 shall be so inserted.

3 **Q** (By Ms. Hale) Mr. Hobby, with regard to
4 the exhibit, did you prefile Exhibit CH-4 along with
5 your testimony?

6 **A** Hang on just a minute. I'm not sure that --
7 the exhibit with my testimony was a copy of a
8 contract.

9 **Q** Correct. And if you look --

10 **A** (Inaudible)

11 **COMMISSIONER DEASON:** Mr. Hobby. I need to
12 interrupt for just a second. The court reporter is
13 having a little bit of a problem, so if you would just
14 stand by for a second.

15 (Microphones adjusted.)

16 **COMMISSIONER DEASON:** Okay, Mr. Hobby. You
17 may continue.

18 **WITNESS HOBBY:** Of course on my prefiled
19 testimony the exhibit did not have an exhibit number,
20 but if you'll look about the bottom left-hand corner
21 of each page beginning with Table of Contents, there's
22 some identification numbers down there and a date,
23 September the 13th, 1994.

24 **MS. HALE:** Correct. We would like to have
25 Mr. Hobby's Exhibit CH-4 identified with the next

1 available exhibit number, which I think is --

2 COMMISSIONER DEASON: Exhibit 20.

3 (Exhibit 20 marked for identification.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

460

DOCKET NO. 960576-WS

MAD HATTER UTILITY, INC.

APPLICATION FOR AMENDMENT OF

WATER AND WASTEWATER CERTIFICATE

NOS. 340-W AND 297-S IN PASCO COUNTY, FLORIDA

PRE-FILED DIRECT TESTIMONY OF CLYDE HOBBY

Q. What is your name and occupation?

A. Clyde Hobby. I have been licensed to practice law in the State of Florida for 31 years.

Q. Is Sunfield Home one of your clients?

A. Yes.

Q. Is Sunfield Homes developing any real property in Pasco County?

A. Sunfield Homes is developing a project known as the Oak Grove subdivision. In addition, it sold a tract of land to the Pasco County School Board on which the Denham Oaks Elementary School was built. That parcel is adjacent to the Oak Grove development.

Q. Did you review a proposed contract between Sunfield Homes and Mad Hatter Utility, Inc.?

A. Yes.

Q. Was the contract ever signed by your client?

A. No.

Q. Why not?

1 A. There were several reasons but the primary reason
2 was that Sunfield Homes would not sign the contract because
3 I advised against it. The contract did not guaranty service
4 to my client's development and, in fact, required my client
5 to acknowledge that Mad Hatter would not guaranty service.
6 Another reason my client refused to sign the contract was
7 that it required Sunfield Homes to loan Mad Hatter
8 \$93,000.00 at a very low interest rate to provide funds so
9 that Mad Hatter could build the infrastructure to provide
10 service. The proposed contract also required my client to
11 pay fees of an undetermined amount in the future should they
12 ever be approved by the Public Service Commission. However,
13 the main reason was Mad Hatter would not and could not
14 guaranty service. A copy of the proposed contract is
15 attached as Exhibit 4.

16 Q. Why did you advise your client not to enter into
17 the contract?

18 A. I advised my client not to enter into the contract
19 because the client would then be obligated exclusively to
20 obtain service from Mad Hatter even if Mad Hatter could not
21 provide the service.

22 Q. Whose idea was it that Sunfield Homes obtain
23 service from Pasco County?

24 A. It was Sunfield Homes' idea because Mad Hatter
25 would not guaranty service. Pasco County did ~~nothing to~~ ^{not solicit the}

- Sunfield homes -- Sunfield Homes as a utilities customer,
- 1 ~~than Mad Hatters~~. A copy of the proposed contract is 462
 - 2 attached as Exhibit 1.

1 MS. HALE: Tender Mr. Hobby for
2 cross-examination.

3 WITNESS HOBBY: I apologize. I do see the
4 exhibit number on there now, CH-4.

5 COMMISSIONER DEASON: Mr. Deterding?

6 CROSS EXAMINATION

7 BY MR. DETERDING:

8 Q Mr. Hobby, this is Marty Deterding. I'm an
9 attorney for Mad Hatter Utilities.

10 A Yes, sir.

11 Q I'm going to ask you some questions.

12 A Okay.

13 Q Is Pasco County a client of yours?

14 A Yes, it is.

15 Q And what portion of your work do you do for
16 Pasco County? What type of work?

17 A I represent the Pasco County on matters
18 related to water supply and controversies --
19 litigation involving controversies of -- over well
20 field permits that are -- that Pinellas County, City
21 of St. Petersburg and the West Coast Regional Water
22 Supply Authority have.

23 I also do some work for Pasco County and
24 Tallahassee during the legislative session on those --
25 on that issue and also on transportation issues and

1 land use matters.

2 Q So they're a pretty substantial client of
3 yours, are they not?

4 A Yes, Pasco County is.

5 Q You -- hold on just a second. (Pause) You
6 state that the contract proposed by the Utility did
7 not guarantee service. Are you referring to paragraph
8 19 of the agreement when you say that?

9 A That's just one of the paragraphs that I
10 refer to.

11 Q Well, direct me to the paragraphs where it
12 says they will not guarantee service.

13 A Okay. I can give you several paragraphs.
14 One is the fourth "whereas" on Page 5 of the
15 agreement, the first "whereas" on Page 6 of the
16 agreement, paragraph 11 --

17 Q Hold on, Mr. Hobby. (Pause) Let's start at
18 the beginning. Fourth "whereas" on which page?

19 A Fourth "whereas" on Page 5.

20 Q Okay. What's the next one?

21 A And -- in which the developer has to
22 acknowledge that it has to promote the expansion of
23 the central water and sewage facilities of the service
24 company.

25 Q Where is that?

1 A Fourth "whereas" Page 5.

2 Q Okay. I got that one. Where else?

3 A Top of the next page: Developer has to
4 acknowledge that it is willing to install or fund the
5 necessary utility facility improvements to enable the
6 service company to furnish water, sewage disposal
7 service and that it's willing to pay for the
8 construction costs.

9 Q And the next one?

10 A Let's see. (Pause) I'm thumbing through
11 the contract now. Paragraph 11 on Page 10 requires
12 the developer to loan the service company the cost of
13 the expansion of the service company's facilities in
14 order for the service company to serve the
15 development.

16 Let me look over here now. (Pause) On
17 Exhibit D -- there was a later Exhibit D that was
18 filled in differently that requires the loan in the
19 amount of -- for the expansion of facilities a loan of
20 \$93,000.

21 On Exhibit G, that exhibit was likewise
22 completed in detail subsequent to this to provide the
23 expansion of the water facilities of the service
24 company with my client's funds.

25 And Exhibit I is the form note for the

1 \$93,000 loan, which was only to be repaid beginning --
2 incidentally at only 5.9% interest -- but no payments
3 on -- were to begin or no interest to accrue until to
4 one year after 80% of all connections were made, which
5 meant that my client might not have ever been repaid.

6 And paragraph 41 says "Service company shall
7 have the right to refuse to provide service."
8 Specifically in paragraph M, if the developer has not
9 made those contributions in aid of construction for
10 construction.

11 And then I believe there's another catchall
12 paragraph down there saying at the end, if it hasn't
13 carried out all the other terms of the agreement.

14 And paragraph 19, I think, would as well
15 give a complete out for the service company if --

16 COMMISSIONER CLARK: Mr. Hobby --

17 WITNESS HOBBY: (Inaudible)

18 COMMISSIONER CLARK: Mr. Hobby --

19 WITNESS HOBBY: Yes.

20 COMMISSIONER CLARK: This is Susan Clark. I
21 have no idea where you are.

22 MR. DETERDING: I think you lost us on 41,
23 and apparently you were referring to something in
24 paragraph 41.

25 WITNESS HOBBY: Yes. Paragraph 41 --

1 **COMMISSIONER CLARK:** So not Page 41,
2 paragraph 41?

3 **WITNESS HOBBY:** Paragraph 41 begins on
4 Page 21.

5 **Q** **(By Mr. Deterding)** And what is it about
6 that paragraph that concerns you and where --

7 **A** Specifically that developer agrees that
8 service company shall have the right to refuse to
9 provide service to any lot or building within the
10 property until developer, its successors or assigns
11 comply with all the terms of this agreement.

12 And further, service company shall not be
13 required to install water meters and boxes until all
14 the following conditions have been performed by
15 developer or its successors or assigns.

16 Subparagraph M of that, then, is one of
17 those prerequisites to service is that the developer
18 has paid to service company all contributions in aid
19 of construction or loans for construction.

20 **Q** Okay.

21 **A** And then the paragraph 19, which you
22 referred to previously and -- let's see. It says
23 basically, if for any -- any reason -- and in my
24 opinion, I read this it could be even the service
25 company's negligence or refusal to act. If it fails

1 to secure the necessary permits, then it doesn't have
2 to -- it's not guaranteeing service to the developer.
3 And it goes on and provides basically that the
4 developer has no recourse in that event.

5 Q Is that it?

6 A Yes.

7 Q Now, these are the provisions of the
8 agreement that you say constitute the Utility's
9 refusal to guarantee service, correct?

10 A That's right.

11 Q Let's go through these one by one. The
12 fourth "whereas" paragraph says "Developer is not
13 desirous of providing water and sewer facilities to
14 serve their property, but is desirous of promoting the
15 expansion of central water and sewage facilities by
16 service company so that the occupants of each resident
17 building or unit constructed thereon will receive
18 adequate water and sewer service."

19 A Right.

20 Q I don't understand how that is a failure to
21 guarantee service.

22 A Well, when you read it in conjunction with
23 the next "whereas" that I first referred you to on the
24 next page, the developer is saying, we don't have
25 capacity; the only way we can serve you is if you

1 provide funds for our -- for us to increase our
2 capacity, so we're -- we cannot guarantee you service
3 without your money.

4 Q Mr. Hobby, you're saying that paragraph --
5 the fourth "whereas" paragraph in -- read in
6 conjunction with the one that follows it gives you
7 this concern?

8 A Yes. And then the other paragraphs that I
9 referred to as well, because that same concept is
10 repeated over and over in the agreement that service
11 company does not have the capacity and will not have
12 the capacity without the developer's money.

13 Q Well, how does any one of these paragraphs
14 say that the Utility does not have the capacity?
15 Let's start with these three "whereas" paragraphs
16 you've referenced us to.

17 A Only two.

18 Q Well, I'm sorry. I thought you said that
19 paragraph 4, the one that followed that and --

20 A No, no, no. It's over -- the fourth one,
21 and then the one that's at the top of the next page.

22 Q Okay. So the one at the top of the next
23 page says "Developer is willing to install or fund the
24 necessary utility facility improvements and related
25 facilities to furnish potable and irrigation water

1 supply and sewage disposal service to the property,
2 and the developer is willing to pay all applicable
3 construction costs and charges."

4 A Right.

5 Q Didn't Pasco County require you to install
6 and contribute the internal facilities to your
7 development?

8 A That's very common, but that's not what this
9 contract is requiring.

10 Q Well, I don't see how you read anything else
11 into that paragraph.

12 A Well, you have to look at the rest of the
13 contract, because it requires -- it requires \$93,000
14 from the developer in order for the service company to
15 expand its water facilities to provide -- to have the
16 capacity to provide water to this development.

17 Q Where does it require the developer to loan
18 \$93,000?

19 A Well, on page -- paragraph 11 on Page 10, it
20 says "To enable service company to provide service to
21 the property, developer shall loan service company the
22 cost of this expansion project as set forth in
23 Exhibit D."

24 Q Okay.

25 A And then D refers to the promissory note

1 form.

2 Q And I'm looking at paragraph -- at Exhibit D
3 and at the promissory note form in "I"?

4 A Right.

5 Q Where does that require this developer to
6 provide a loan for \$93,000?

7 A Well, I believe that I was -- that I said
8 on -- previously in response to your questioning going
9 through those exhibits, that there were later
10 exhibits, completed exhibits, furnished that provided
11 exactly that.

12 Q Well, if you're going to allege that this
13 company required you to provide a loan, why did you
14 provide us a copy of the agreement that doesn't call
15 for that?

16 A This is the agreement that -- as I
17 understand it, that everybody has been going by. But
18 in any event, even without that, the contract still
19 says that my client is going to have to pay for the
20 expansion of those facilities. It may not fill in the
21 blanks, but it says that, without the completed
22 exhibits even.

23 Q Well, the copy I have at Exhibit D shows a
24 zero on the amount. Doesn't yours?

25 A Yes.

1 Q Let's go on to your other paragraphs.

2 COMMISSIONER CLARK: Mr. Deterding, before
3 you leave that, Mr. Hobby, this is Susan Clark. I'd
4 like to get something clear in my mind.

5 What facilities exactly did you understand
6 that needed to be put in to serve this development?
7 Were they the pipes in the ground?

8 WITNESS HOBBY: No, no. Hang on right here
9 and I'll give it to you, Commissioner.

10 "Off-site improvements to be constructed and
11 funded by developer. One, well with sampling. Two,
12 well approved site along Pebble Creek Road." Then
13 under that "Well pump, well pump controls, well pump
14 auxiliary, hydro tank engine and hydro tank, bows,
15 pipe --

16 COMMISSIONER KIESLING: Where is that in the
17 agreement?

18 WITNESS HOBBY: That was what is referred to
19 on Exhibit G on this, and later there was a completed
20 copy of that exhibit that was furnished.

21 MS. HALE: Commissioners, I have a copy of
22 that later agreement if you would like it.

23 COMMISSIONER KIESLING: But the problem with
24 that, Ms. Hale, is that we have the one that Mr. Hobby
25 attached to his testimony. That's the only one we

1 have.

2 MS. HALE: I understand that. I did not
3 realize that there was a later form of this agreement,
4 and now I have a copy of the later form. If you want
5 it, you're welcome to have it. Otherwise -- you know,
6 I've handed it to Mr. Deterding to have.

7 COMMISSIONER CLARK: Ms. Hale, how do you
8 intend to authenticate it? You can't give it to
9 Mr. Hobby.

10 MS. HALE: No, I can't, and it's not our
11 fault that Mr. Hobby had his back pulled out, but he
12 can certainly identify it by date.

13 WITNESS HOBBY: I can identify that
14 agreement over the phone.

15 MR. DETERDING: Well, I'm going to object to
16 their providing an exhibit on the day of the hearing
17 that is supposed to be the basis for Mr. Hobby's
18 opinions in his prefiled testimony.

19 COMMISSIONER DEASON: Well, I don't know
20 that it's been -- it's been offered, but it's not been
21 requested to be admitted. So until it's requested,
22 then you may make your objection at that time. I
23 think it was just a courtesy offer, and I think it's
24 been declined.

25 COMMISSIONER CLARK: Mr. Hobby, let me just

1 ask one more thing. This is Susan Clark. I'd like
2 you to contrast what you understood would be necessary
3 facilities that you would have to pay for if you took
4 service from Mad Hatter as opposed to taking service
5 from the County. What is the difference in
6 facilities?

7
8 **WITNESS HOBBY:** Commissioner, I don't have
9 that County agreement before me, and if I've looked at
10 it, I haven't looked at it in a couple years.

11 **COMMISSIONER CLARK:** Let me ask you this:
12 Would it be normal practice for the County to expect
13 you to put on the on-site facilities and then connect
14 up to their main?

15 **WITNESS HOBBY:** That's exactly right, and
16 that's what this agreement also contemplated. But the
17 County, and no other water sewer agreement that I've
18 ever seen -- and I've seen and reviewed many -- have
19 ever contemplated that the developer pay for the
20 expansion of the basic facilities, i.e., wells, water
21 treatment plants or sewer treatment plants.

22 **COMMISSIONER CLARK:** Who should pay for
23 that?

24 **WITNESS HOBBY:** The service company should.

25 **COMMISSIONER CLARK:** Well, but as you know,
service companies are regulated by the Commission.

1 They're entitled to earn a fair return on their
2 investment. That would mean the customers, existing
3 customers, would pay for it; is that right?

4 WITNESS HOBBY: I don't know how the
5 Commission might require that to be reimbursed, but --

6 COMMISSIONER CLARK: Would you agree with
7 me, then, that you wouldn't think a service company
8 would be required to be -- to provide service without
9 being compensated for it?

10 WITNESS HOBBY: Oh, there's -- absolutely
11 right.

12 COMMISSIONER CLARK: In this instance, who
13 should compensate the Utility for that investment?
14 Should it be the customers that are currently being
15 served, or the ones that are going to be served by the
16 development?

17 WITNESS HOBBY: Well, I don't know that, and
18 I'm not a -- I'm not a PSC expert, but I have for
19 better than 20 years represented most of the
20 developers in this area, and I can tell you it has
21 never been required in any instance for the developer
22 to require for sewage plant expansion or water plant
23 expansion or water source expansion.

24 COMMISSIONER CLARK: Okay.

25 Q (By Mr. Deterding) All right. I don't

1 want to dwell on this too much, Mr. Hobby, but I want
2 to go through those areas where you say we failed
3 to -- the Utility refused to guarantee service and
4 just try and understand what it is that you're
5 claiming is a failure to guarantee service.

6 A It's very, very simple; very simple. The
7 contract, even in its present form without the more
8 detailed exhibits, says that the developer has to pay
9 for the expansion of the service company's water
10 resource facilities in order to obtain service.

11 Q Okay.

12 A And that service company will not provide
13 that service if the developer does not pay for it.

14 Q Okay. Now, the developer pay for them, you
15 stated, through a loan arrangement, correct?

16 A That's right. And that loan document
17 provides that no interest will ever accrue on it nor
18 any payments be made on it until one year after 80% of
19 the units' connections are made, and I don't know of a
20 development in this entire area that will achieve that
21 kind of build-out, a development of that size, in less
22 than 10 years and -- if ever.

23 And I've seen many developments that never
24 achieve 80% build-out, and I represent two or three of
25 the larger in the Tampa Bay area, and I can tell you

1 they will never, never achieve 80% build-out.

2 Q Are you familiar -- do you deal regularly
3 with utilities regulated by the Florida Public Service
4 Commission?

5 A I have -- I have -- I have clients that do,
6 yes.

7 Q Have you dealt in service agreements related
8 to those --

9 A Yes.

10 Q -- regulated utilities?

11 A Yes.

12 Q And you've never seen language like that
13 required in paragraph 4 of the "whereas" paragraphs
14 and the "whereas" paragraphs on Page 6?

15 A That's right.

16 Q Okay.

17 A I've seen on-site improvements required.
18 I've seen the developer required to get to the nearest
19 connection, but never see anything requiring expansion
20 of the basic facilities.

21 Q How many equivalent residential connections
22 are to be served in the Oak Grove subdivision?

23 A I believe it's around 800.

24 Q Do you know what the County's existing water
25 capacity charge is?

1 A No, I don't.

2 Q Assume for the moment that it's been
3 testified to that it's \$532 per equivalent connection.

4 A Okay.

5 Q At 800 connections, would you agree that's
6 more than \$400,000?

7 A Yes. Well, yes, slightly more; yes.

8 Q Do you know what Mad Hatter's water plant
9 capacity charges are?

10 A No, I don't.

11 Q Do you know what the -- plant capacity
12 charges the developer has to pay to connect to
13 Mad Hatter's sewer system?

14 A I'm -- I don't know, but I know that
15 Mad Hatter is getting sewer service from Pasco County,
16 so I have to assume that -- that somehow it must meet
17 the County's basic requirements as well.

18 Q Okay. Assume for the minute that the
19 County's sewer charge is all that you have to pay in
20 order to hook up to Mad Hatter's sewer system, whether
21 you do it through Mad Hatter or through the County,
22 and that Mad Hatter has no water service availability
23 charge. So wouldn't you agree that the sewer charges
24 to your developer client are approximately equivalent
25 since you have to donate the on-site system regardless

1 of who you get service from? Would you agree with
2 that?

3 A There's not any difference either way, is
4 there?

5 Q That's what I'm suggesting you -- that based
6 on those assumptions, you would agree with that?

7 A It seems to me that it's a wash, yes.

8 Q Okay. And on the water side, you are
9 required to pay Pasco County \$532 per connection, and
10 you're required to loan Mad Hatter \$93,000 under your
11 allegations about the way the agreement is phrased in
12 a later version. Does it make sense to be upset with
13 Mad Hatter for asking for a loan for \$93,000 but be
14 happy with paying Pasco County \$400,000?

15 A Yes, it does.

16 Q Why?

17 A Because if you're in the development
18 business, reliability is the first, foremost thing in
19 your mind.

20 Q What can you tell me about the reliability
21 of Mad Hatter's water system? Do you have any
22 experience with their having any problems with
23 reliability?

24 A No, I don't have any personal experience. I
25 read a lot of things in the newspapers, and -- but I

1 can -- but I can tell you that this agreement tells me
2 that they didn't -- that Mad Hatter did not have the
3 financial ability to guarantee service, and that makes
4 me uncomfortable and that it would make any developer
5 uncomfortable.

6 Q Did Oak Grove also pay to Pasco County, in
7 addition to the normal capacity charges, some moneys
8 for construction of off-site facilities?

9 A I don't know. I really don't know.

10 Q So you don't know if they paid for an
11 off-site force main as well?

12 A No. And so all of you understand, the
13 last -- the last contact I had with this was
14 approximately March the 1st, 1995, and then was in
15 Tallahassee for the next two months, and when I came
16 back, this was all done; okay?

17 Q I understand.

18 COMMISSIONER CLARK: I'm sorry. I don't
19 understand what you mean by "this was all done". This
20 is Susan Clark.

21 WITNESS HOBBY: You know, I reviewed the
22 contract the last time somewhere in the latter part of
23 February or around the 1st of March of '95 and had
24 discussions with my client and gave him my opinion on
25 what the contract said, and so my client made the

1 decision that it was going to try to pursue service
2 with Pasco County. And then the next time I had any
3 personal involvement in it -- and my recollection is
4 that that deal had already been made.

5 COMMISSIONER CLARK: And they're getting
6 service from Pasco County for the elementary school?

7 WITNESS HOBBY: Yes.

8 COMMISSIONER CLARK: And who do they get --
9 they have not gone forward with the Oak Grove
10 development, have they? There's nothing there yet?

11 WITNESS HOBBY: It's in some stage -- and I
12 haven't been out there recently, because I've just
13 come back to Tallahassee. But in some stage of
14 development; it is under development.

15 COMMISSIONER CLARK: Okay. Thank you.

16 WITNESS HOBBY: There were some additional
17 permitting problems with the County and with SWFWMD
18 that delayed the actual completion of the development,
19 the initial phase of the development and the sale of
20 lots.

21 Q (By Mr. Deterding) Okay. On paragraph
22 19 -- I don't want to belabor this, but I think that
23 there was -- your primary source of concern, or one of
24 your primary sources of concern on the ability of the
25 Utility to guarantee service was in this paragraph?

1 A Yeah; and I don't -- now, understand this,
2 too; that I had other problems with this contract
3 other than the -- other than the inability to provide
4 service.

5 Q I understand. Is it the first sentence of
6 this paragraph, or is it the whole thing?

7 A The whole paragraph.

8 Q Okay. Let's take it sentence by sentence,
9 then. The first sentence -- let me try and
10 characterize it rather than read it. It says that the
11 reservation of treatment plant capacity by service
12 company does not guarantee connection to service
13 company's water distribution or sewage collection, nor
14 guarantee the ability of service company to receive
15 and dispose of sewage in the event service company is
16 prohibited, limited or restricted from making such
17 connections or from reserving capacity for or
18 receiving and disposing of such flow by local, state
19 or federal government agencies having jurisdiction
20 over such matters, until such time of such pro -- said
21 prohibition, limitation or restriction is revoked,
22 altered or amended.

23 Now, doesn't that sound to you like a force
24 majeure clause, Mr. Hobby?

25 A No. There's another force majeure paragraph

1 there.

2 Q I agree there is, Mr. Hobby, but doesn't
3 that sound like a force majeure clause to you if the
4 Utility is prevented from providing that service?

5 A Prevented and prohibited or restricted for
6 any reason. And I construe that to be -- any reason
7 to be -- even to include the inability or the
8 unwillingness or -- of the service company to do what
9 is necessary to obtain the permits and to provide
10 whatever financing is necessary to obtain the permits.

11 Q Do you know whether or not -- did you
12 investigate whether or not this was the type of an
13 agreement that the Public Service Commission had
14 approved for this utility before?

15 A I had understood that this -- I did not
16 investigate, no, I didn't. Excuse me.

17 COMMISSIONER CLARK: Mr. Hobby, let's go
18 back on to the other question you were asked, that you
19 don't see this as a force majeure provision.

20 WITNESS HOBBY: It's much more than a force
21 majeure. It doesn't say -- a force majeure provision
22 provides for things beyond the control of the party.
23 This includes things within control of the --

24 COMMISSIONER CLARK: Okay. Tell me what
25 things are included within the control of the utility.

1 WITNESS HOBBY: Well, let's suppose -- let's
2 suppose DEP said, hey, you've got -- you know, you've
3 got to do certain things to -- in order for us to
4 issue your permits. And Mad Hatter just said, no, we
5 either don't have the money to do it or we're not
6 going to do it. So DEP says, okay, you're not going
7 to get the permits to serve Oak Grove. That's
8 included in my opinion in that sentence.

9 COMMISSIONER CLARK: Okay.

10 Q (By Mr. Deterding) Okay. So you don't
11 know whether the Public Service Commission had
12 approved a document with similar or identical
13 provisions on other developments for this utility
14 company?

15 A No, I did not investigate that. I do know
16 that the agreement provides that it is subject to
17 approval by the PSC.

18 Q Finally, on paragraph 41 let me again try
19 and paraphrase it, and you tell me if I've got this
20 wrong how I'm paraphrasing it. But basically it says
21 facilities shall not be connected until formal written
22 application has been made to service company by the
23 prospective consumer in accordance with the then
24 effective tariff of service --

25 A Wait a minute. I don't know where you are.

1 Q I'm sorry. I apologize. I'm on the wrong
2 paragraph. I apologize.

3 It says "Service company will have the right
4 to refuse to provide service to any lot or building
5 until the developer complies with all the terms and
6 conditions of this agreement. Service company shall
7 not be required to install water meters and boxes
8 until all the following conditions have been performed
9 by the developer." And you've referenced specifically
10 the condition M.

11 A Right.

12 Q "Developer has paid to service company all
13 contributions in aid of construction or loans for
14 construction, if applicable, as provided herein,
15 including any authorized increases thereof which may
16 have been approved by the PSC." And I assume that
17 it's the loans for construction?

18 A Right. Because it's my recollection and --
19 I -- well, the contract provides -- the PSC had not at
20 that -- not at this time anyway, in 1995, '94, '95,
21 approved any contributions in aid of construction for
22 this utility.

23 Q Okay.

24 A And that was the reason the loan was a way
25 to get around unapproved contributions in aid of

1 construction.

2 COMMISSIONER CLARK: Mr. Hobby, let me be
3 clear on one thing. The contract itself did provide
4 for repayment of the loan, but the condition precedent
5 was that 80% of the facilities be in?

6 WITNESS HOBBY: 80% of the connections be
7 made, which meant 80% of the lot and the houses on --
8 on those 80% be built.

9 COMMISSIONER CLARK: Okay. So it's your
10 view that the condition precedent would never come
11 about, and therefore there wouldn't be the requirement
12 to pay, not that the contract didn't have a
13 requirement --

14 WITNESS HOBBY: This is a good --

15 COMMISSIONER CLARK: -- to pay?

16 WITNESS HOBBY: -- possibility, that that
17 would never come about.

18 Q (By Mr. Deterding) Okay. The next thing
19 you state in your testimony is that the proposed
20 contract required my client to pay fees of an
21 undetermined amount in the future should they ever be
22 approved by the PSC.

23 A Right.

24 Q Where is that?

25 A It's a paragraph in here about

1 contributions, in aid of construction. It's
2 contributions in aid of construction and tax impact
3 charges, gross-up charges. It says if they are ever
4 in the future at any time approved by the PSC, then my
5 client will have to -- have to pay them; and even
6 theoretically after. If he had fully developed the
7 property and was out there, he might still have to pay
8 them, or someone would.

9 Q I'm not sure I understand what you mean by
10 that. Someone would have to pay them after the
11 developer had finished developing the property and had
12 left?

13 A Yeah. Let's look on Page 10, paragraph 11.

14 Q Yeah.

15 A The last line of the first paragraph there
16 says "In the event that CIAC fees may be approved by
17 the PSC subsequent to the date of this agreement,
18 developer agrees to pay such fees."

19 Q Yes.

20 A And then -- and I'm not sure -- paragraph 13
21 talks about those tax impact charges, gross-up fees,
22 and I thought of -- somewhere else, too. But it says
23 "Such charges will be collected in accordance with the
24 tariff, approved by the PSC and due upon execution."
25 It says -- what it says, if they approve them for this

1 development, you know, if the developer is going to
2 pay it.

3 Now, if you have some history of what these
4 charges might be, that's one thing, but when you're
5 operating in the dark saying we may be 10 -- right now
6 we don't have them, but 10 years down the road you may
7 have to start paying them, and that would include for
8 lots that you've already sold, you know, that gets a
9 little scary.

10 Q Can you name me a case where the Commission
11 has ever authorized a utility to go back and charge a
12 developer for properties he's already sold, CIAC and
13 gross-up?

14 A Well, I can't tell you that, but that's what
15 this contract provides.

16 Q Well, it provides something that is
17 authorized by the PSC. Did you do any investigation
18 to determine whether or not they had, if you had that
19 fear?

20 A They have not been authorized by the PSC at
21 all for this company, or at least they had not at that
22 time.

23 Q Has anyone ever been authorized to do that,
24 to your knowledge, regulated by the PSC?

25 A No.

1 Q Isn't it true that the statement that a
2 developer may be required to pay a change in service
3 availability charge is simply a statement of the law
4 based upon the court precedent related to the amount
5 and timing of connection fees?

6 A I don't know that.

7 MR. DETERDING: I don't have anything
8 further.

9 COMMISSIONER DEASON: Staff?

10 MS. CAPELESS: No questions.

11 COMMISSIONER DEASON: Redirect?

12 MS. HALE: Briefly.

13 REDIRECT EXAMINATION

14 BY MS. HALE:

15 Q Mr. Hobby --

16 A Yes.

17 Q -- I'd like you to look at Page 10 of the
18 agreement.

19 A Okay.

20 Q And I'd like you to look at the second
21 paragraph from the top of the page, and I'd like you
22 to read the second sentence in that paragraph. Would
23 you read it aloud, please?

24 A Does it begin "Developer shall be
25 responsible for determination"?

1 Q Yes.

2 A "Developer shall be responsible for
3 determination of availability of sewage capacity
4 through Pasco County, and service company makes no
5 promises to provide sewer utility service in the event
6 that Pasco County refuses sewage treatment capacity."

7 Q Is that one of the provisions of this
8 agreement which led you to believe that Mad Hatter did
9 not have the capacity to provide service to the Oak
10 Grove subdivision?

11 COMMISSIONER KIESLING: Ms. Hale, that was
12 leading. I mean, you are on redirect.

13 Q (By Ms. Hale) How did you interpret that
14 paragraph, Mr. Hobby?

15 A I interpreted that paragraph that Mad Hatter
16 did not have any sewer capacity at all, and that any
17 sewer service that it might provide, the development
18 was totally dependent on Pasco County's ability and
19 desire to provide that service to -- wholesale to
20 Mad Hatter.

21 Q Now I'd like you to look at Page 17. Would
22 you look at the second paragraph, please, on that
23 page, and could you read that aloud, please?

24 A Is that -- begins "In the event that initial
25 funds"?

1 Q Yes.

2 A "In the event that the initial funds loaned
3 for construction are insufficient due to unforeseen
4 circumstances, developer agrees to loan additional
5 amounts necessary to complete construction by taking
6 an additional promissory note in the same form as that
7 originally executed and attached as Exhibit I."

8 Q Did that paragraph cause you any concern?

9 A It surely did.

10 Q Why?

11 A It just told me again of the -- of
12 Mad Hatter's financial instability.

13 MS. HALE: Nothing further.

14 COMMISSIONER DEASON: Exhibits?

15 WITNESS HOBBY: Am I through?

16 COMMISSIONER DEASON: Just a moment. Hold
17 on for just a moment. Exhibits?

18 MS. HALE: We would offer Exhibit CH-4.

19 COMMISSIONER DEASON: That was identified as
20 Exhibit 20. Without objection, Exhibit 20 is
21 admitted.

22 (Exhibit 20 received in evidence.)

23 COMMISSIONER DEASON: Mr. Hobby, we
24 appreciate you making yourself available by telephone,
25 and you are now excused.

1 **WITNESS HOBBY:** I want to tell the members
2 of the Commission and everybody else present that I
3 appreciate your accommodation today, too, because
4 physically I just could not have made it over there.

5 **COMMISSIONER DEASON:** You're quite welcome.
6 We were glad we could accommodate it.

7 (Witness Hobby excused.)

8 **COMMISSIONER DEASON:** We'll take a 10-minute
9 recess to reconfigure the audio system.

10 (Brief recess.)

11 - - - - -
12 **COMMISSIONER DEASON:** Call the hearing back
13 to order. Ms. Hale?

14 **MS. HALE:** Call Michael Orsi.

15 - - - - -

16 **MICHAEL ORSI**
17 was called as a witness on behalf of Pasco County and,
18 having been duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 **BY MS. HALE:**

21 **Q** Would you please state your name for the
22 record?

23 **A** Michael Orsi.

24 **Q** And are you the same Michael Orsi who caused
25 to be prefiled direct testimony in this docket

1 consisting of three pages?

2 A I have one page.

3 Q Your testimony was three pages long?

4 A Oh, yes.

5 Q And do you have any changes or corrections
6 to that direct testimony?

7 A No.

8 Q If I were to ask you the same questions
9 today as were posed to you in that prefiled direct
10 testimony, would your answers be the same?

11 A Yes.

12 MS. HALE: We would request that Mr. Orsi's
13 prefiled testimony be inserted into the record.

14 COMMISSIONER DEASON: Without objection, it
15 shall be so inserted.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 960576-WS

MAD HATTER UTILITY, INC.

APPLICATION FOR AMENDMENT OF

WATER AND WASTEWATER CERTIFICATE

NOS. 340-W AND 297-S IN PASCO COUNTY, FLORIDA

PRE-FILED DIRECT TESTIMONY OF MICHAEL ORSI

Q. What is your name and occupation?

A. Michael Orsi and I am a land developer. My family business is Sunfield Homes, Inc.

Q. Is Sunfield Homes developing any property in Pasco County?

A. Yes. It is developing a number of parcels including the Oak Grove subdivision.

Q. Did Sunfield Homes attempt to negotiate a contract with Mad Hatter Utility to provide water and sewer service to the Oak Grove subdivision and the Denham Oaks School?

A. Yes.

Q. Was Sunfield Homes able to reach an agreement with Mad Hatter?

A. No.

Q. Why not?

A. There were several reasons. First, Mad Hatter did not have sufficient potable water for our project. Mad Hatter asked Sunfield Homes to lend Mad Hatter \$100,000.00

1 to develop two wells on our own property for Mad Hatter to
2 provide the water for our project. So Sunfield Homes
3 determined that Mad Hatter did not have sufficient water
4 available to serve the Oak Grove subdivision. As for sewer
5 service, Mad Hatter refused to guarantee service to Oak
6 Grove. Pasco County encouraged Sunfield Homes to negotiate
7 with Mad Hatter but we were unable to reach an agreement
8 with Mad Hatter because it refused to guarantee service.

9 Q. Whose idea was it for Sunfield Homes to enter into
10 a contract with the County for sewer service?

11 A. It was my idea. Mad Hatter tried to stop the
12 County from providing service to the development,
13 particularly the school. The school had a deadline to open
14 by August 23, 1996, and we tried to meet that deadline so
15 that the school children would not have to go on double
16 session. Mad Hatter filed two administrative complaints to
17 stop us from obtaining service and thus force the school
18 children into double sessions.

19 Q. If the County had not been permitted to provide
20 service to the Oak Grove subdivision, would Sunfield Homes
21 have accepted service from Mad Hatter?

22 A. No. I sought legal advice at the time and
23 determined that Sunfield Homes could provide its own water.
24 I am prepared to form a non-profit organization to do that
25 rather than to pay Mad Hatter \$100,000.00 to drill drinking

1 wells on Sunfield Homes' property. As for sewer service, I⁴⁹⁶
2 would consider septic tanks rather than accepting service
3 from Mad Hatter.

1 MS. HALE: Tender him for cross-examination.

2 COMMISSIONER CLARK: Mr. Deterding?

3 CROSS EXAMINATION

4 BY MR. DETERDING:

5 Q Mr. Orsi, you were sent a draft agreement
6 for service by Mad Hatter Utilities?

7 A Yes.

8 Q When was that?

9 A A year and a half, two years ago.

10 Q You expressed concern with some of the
11 provisions in that agreement. Did you provide them
12 with a draft -- with a response to that draft, a
13 written response?

14 A I personally did not, but my attorney and
15 engineer did.

16 Q They provided a response outlining the
17 concerns that you had in here?

18 A I don't know that they provided them
19 verbally or in writing.

20 Q So you don't know that any -- that these
21 concerns were ever outlined to Mad Hatter?

22 A Well, I had meetings with Mr. DeLucenay in
23 my engineer's office, and we did discuss some of the
24 matters, and the agreements were provided to our
25 attorney. I don't recall if our attorneys wrote to

1 them or had discussions with their attorney or not.

2 Q You say that Mad Hatter didn't have
3 sufficient water capacity for the project. On what do
4 you base that?

5 A One of the meetings that Mr. DeLucenay and I
6 and Mr. DeBosier attended at C&D Engineering, this is
7 where Mr. DeLucenay asked for us to provide to him two
8 drilled wells on site, lend him money, and -- for the
9 water system, and stated that he had very little water
10 capacity.

11 Q Isn't it true that you are surrounded on the
12 west side by Foxwood, Turtle Lakes system that has
13 existing water service?

14 A I know that Turtle Lakes is at my western
15 boundary and it's being serviced by Mad Hatter.

16 Q Okay. Isn't it true that the wells in that
17 area have excess capacity?

18 A I have no knowledge of that.

19 Q And you don't know whether there's excess
20 capacity in the Carpenter's Run system either?

21 A All's I was informed by Mr. DeLucenay that
22 he had limited capacity on the water.

23 Q Well, did he ever tell you he could not meet
24 the demands of your development as that need arose?

25 A He said he could not meet the demands unless

1 otherwise I provided two wells and a loan.

2 Q And where is that in the agreement that says
3 you must provide two wells and a loan?

4 A That's what he requested from us at the
5 meeting.

6 Q Well, the draft agreement, I take it, came
7 after your first meeting with Mr. DeLucenay, did it
8 not?

9 A Would you repeat the question?

10 Q The draft agreement came after your first
11 meeting with Mr. DeLucenay, did it not?

12 A Yes, but we had more than one meeting.

13 Q How many meetings did you have?

14 A At least two, maybe three.

15 Q And are you saying one occurred after they
16 sent you the draft agreement?

17 A I can't place the meetings at this
18 particular moment and which event -- one came before
19 the other.

20 Q But there's no provision in this agreement
21 for -- as attached to Mr. Hobby's testimony for their
22 providing you with two wells and a loan, is there?

23 A Could you repeat that question, please?

24 Q Yes. There's no provision in the agreement
25 attached to Mr. Hobby's testimony for Mad Hatter

1 requiring two wells and a loan, is there?

2 A Are you talking about the original draft
3 agreement Mr. DeLucenay provided to us, or the second?

4 Q I'm talking about the one that Mr. Hobby
5 attached to his testimony that has been marked as
6 Exhibit 20.

7 A Well, I don't know which is Exhibit 20.
8 Like I said, there were -- there are two going around;
9 the first draft and the revised draft that my attorney
10 has.

11 Q Okay. Now, you say that Mad Hatter refused
12 to guarantee service as being a concern of yours?

13 A Most definitely.

14 Q Is that the -- I'm trying to short-circuit
15 this. Is that based upon the same things that your
16 attorney told us during his testimony, or is it based
17 upon advice of your attorney?

18 A Would you please repeat that question?

19 Q Yes. Is your --

20 A Because it's more than one question.

21 Q I apologize. I am compounding. Is your
22 concern about the Utility's refusal to guarantee based
23 upon the advice of your attorney that they were
24 refusing to guarantee service?

25 A It was a combination.

1 Q I don't want to have to go through every
2 provision of that agreement with you, so if it was
3 something that in your independent analysis that you
4 determined that they were refusing to guarantee, I
5 want to know what it is in that agreement that led you
6 to the conclusion that they were refusing to guarantee
7 service.

8 A Well, one comes to a conclusion of not
9 willing to guarantee. One is the content of the
10 agreements. Two is the discussions with Mr. DeLucenay
11 and his requests and his statements in saying that he
12 had insufficient potable water and -- or to bring
13 himself up to speed, we'd literally have to almost to
14 put in the wells ourselves and put them in operation.
15 That demonstrates the ability not to serve.

16 And, number two, from the historical sense
17 where he had a sewer plant that was where his settling
18 ponds were overflowing over Foggy Ridge Road and
19 running into our lands where the roads broke up and
20 they had been resurfaced, then it demonstrated there
21 that he had an inability to serve. So when you put
22 all the pieces together, you come to a given
23 conclusion.

24 Q Are you familiar with the enforcement
25 actions brought by HRS and DEP concerning -- and the

1 Game and Fish Commission against Mad Hatter Utilities
2 and Larry DeLucenay concerning those overflows?

3 A Yes. I believe I heard there was a warrant
4 for his arrest as well.

5 Q Isn't it true that in each and every case
6 the courts found and the hearing officers found that
7 Mr. DeLucenay was not at fault, but instead that Pasco
8 County was at fault for permitting storm water
9 structures inappropriately?

10 A Storm water structures in --

11 Q Yes. And isn't that the case?

12 A What has storm water structures got to do
13 with sanitary effluent --

14 Q Well, I guess the answer is, then, Mr. Orsi,
15 that you're not familiar with those cases, are you?

16 A No, I'm not, but I'm familiar with the
17 visual inspections of seeing the effluent going into
18 my land.

19 Q You saw that there was a overflow of waters
20 onto your land? Do you know the source of that water?

21 A From the filtration ponds.

22 Q And did you get involved in those cases to
23 find out whether in fact that was the determination by
24 the courts and the hearing officers?

25 A I believe that -- no, I did not go to that

1 extent. No, I did not. But in my own observations,
2 came to my own conclusions and have knowledge in the
3 business.

4 Q Do you have a letter whereby you ever
5 informed Mad Hatter of your concerns with the
6 contract? Do you have any writings whereby you ever
7 informed Mad Hatter Utilities of your concerns with
8 the draft contract?

9 A I have not written any letters.

10 Q Did you file a complaint with the Florida
11 Public Service Commission concerning the terms of that
12 contract?

13 A No, I did not.

14 Q What's the density of the Oak Grove
15 subdivision?

16 A Could you be more specific?

17 Q Sure. What size are the lots?

18 A We have preliminary approval for
19 approximately 889 lots, basically primarily of 62
20 frontage by 105 in depth; a lesser -- a very lesser
21 amount of maybe 100 lots that are 67-foot frontage by
22 the same depth, and I'd guesstimate about 50 lots of
23 50-odd-foot frontage and 50 acres of zoned commercial,
24 and the balance is jurisdictional wetlands.

25 Q As to the average or even the largest of

1 those lots, what is that as percentage of an acre?

2 Could you tell me that?

3 A Well, when you say average, the roads are
4 curvilinear. There are cul-de-sac lots. Serpentine
5 roads provide the irregular lots, so they're not drawn
6 with a ruler where you can --

7 Q Okay.

8 A -- gross average, but I can gross-up from
9 the rectangular lot.

10 Q Quarter of an acre? Half an acre?

11 A If it's, let's say, 110 by 62, it would make
12 it about 7,000 square feet, and some would be even up
13 to seven and a half, 8,000, depending on location and
14 shape.

15 Q So that's significantly less than a quarter
16 of an acre, is it not?

17 A Yes.

18 Q Do you have something you can show me
19 whereby you could permit those things for septic tank?
20 You have suggested in your testimony and -- first of
21 all, that you're an experienced developer, and then
22 you have suggested that you would consider septic
23 tanks as an alternative to central sewer service?

24 A No. Come now. A question that was posed to
25 me was saying "had no utility company available and

1 not have put in my own sewer plant, what would an
2 alternative solution be as far as servicing is
3 concerned."

4 Therefore, you go back to the drawing board.
5 You look up the regulations, and I believe -- I'm not
6 familiar with the regulations in Pasco County as to
7 the minimum size you need for a septic tank lot.
8 Again, it's also not in relationship to the size of
9 the lot -- is also the type of soils that determine
10 the size of the lot. So it's land area, soils
11 conditions and regulations that the County imposes.
12 So it's the three put together that come to an area
13 for septic.

14 Q Did you investigate the soil conditions, the
15 County regulations to see if you could put septic
16 tanks on lots of less than a quarter of an acre in
17 this area?

18 A No, I did not, but that wasn't the intent of
19 the question.

20 Q Well, I think if -- let me read you the
21 question: "If the County had not been permitted to
22 provide service to Oak Grove subdivision, would
23 Sunfield Homes have accepted service from Mad Hatter?"
24 And your response in part is: "As for sewer, I would
25 consider septic tanks rather than accepting service

1 from Mad Hatter."

2 So my question to you is, did you do any
3 investigation to determine whether or not it was
4 possible to permit septic tanks on the development of
5 that --

6 A No, I did not.

7 Q Isn't it true that the Denham Oaks School
8 received service from Mad Hatter for approximately a
9 year?

10 A When you say service, can you --

11 Q Did they not receive water service and
12 billed for water service for approximately a year?

13 A Well, I can -- yes, water was provided. But
14 when you say service, as in a service ladder that's
15 normally provided to a particularly building, or as a
16 temporary measure?

17 My observations on site was that a two-inch
18 water main was laid along the southerly limit of
19 Carpenter's Run over my lands, and it lay on top of
20 the ground from the water tank storage facility on
21 Cypress Creek Road to the school site.

22 Q Who installed the line on the school
23 property, the water line through which Mad Hatter
24 provided service?

25 A I don't know. Two possibilities.

1 Q Probably more. Isn't it true that
2 Mad Hatter signed off on permit applications that you
3 had before the Department of Environmental Protection
4 to permit you to construct your on-site water and
5 sewer utility facilities?

6 A I've learned, yes. It was done through my
7 engineer.

8 MR. DETERDING: That's all I have. Thank
9 you.

10 COMMISSIONER DEASON: Staff?

11 CROSS EXAMINATION

12 BY MS. CAPELESS:

13 Q Mr. Orsi, you testified that you didn't file
14 a complaint with the Public Service Commission once
15 you determined that you were unable to reach an
16 agreement with Mad Hatter for service; is that right?

17 A Yes.

18 Q Why didn't you do that?

19 A Well, when you get into situations and you
20 try to find out what your options are, I sought to --
21 advice and legal advice; and when a utility company
22 regulated by the Public Service Commission which has a
23 public trust is not willing, able to service you
24 according to the Public Service Commission rules that
25 I've been advised, that you have the ability and the

1 opportunity to go to the next runner-up.

2 MS. CAPELESS: Okay. Thank you. No further
3 questions.

4 COMMISSIONER CLARK: Mr. Orsi, would it be
5 fair to say that you were relying on the advice of
6 your attorney as opposed to calling the Public Service
7 Commission yourself?

8 WITNESS ORSI: I was relying on more than
9 one attorney.

10 COMMISSIONER CLARK: Well, was it Mr. Hobby?

11 WITNESS ORSI: Mr. Hobby was one of them.

12 COMMISSIONER CLARK: And who else?

13 WITNESS ORSI: Questions were -- one of the
14 attorneys at Rose, Bentley in Tallahassee.

15 COMMISSIONER CLARK: You had called them?

16 WITNESS ORSI: Yes.

17 COMMISSIONER CLARK: Who did you talk to
18 there?

19 WITNESS ORSI: Mr. Jenkins.

20 COMMISSIONER CLARK: Okay. Thanks.

21 MR. DETERDING: I'll advise Mr. Jenkins of
22 the law when we return.

23 WITNESS ORSI: I'd like to clarify that,
24 because I think he's coming to a misconception. The
25 advice that I sought from Mr. Jenkins -- since he was

1 my attorney in another case, I posed questions to him
2 not relating specifically to this site, but in
3 general. I said, I'm in a particular predicament in a
4 certain area, what are my options. It did not refer
5 to saying I was in this particular predicament on Oak
6 Grove.

7 COMMISSIONER CLARK: Did you know at that
8 time that the law firm also represented Mr. DeLucenay?

9 WITNESS ORSI: I'm aware that that law firm
10 represents a number of public utility companies, and
11 it's also represented me in other cases.

12 COMMISSIONER CLARK: So you were aware of
13 it?

14 WITNESS ORSI: That he represents a number
15 of utility companies.

16 COMMISSIONER CLARK: Were you aware that
17 they represented Mad Hatter?

18 WITNESS ORSI: I don't know if I did at the
19 time, but I'm saying that no questions were posed to
20 him that particularly related to this particular
21 subdivision. I was becoming knowledgeable about the
22 Public Service Commission and its rules and laws. Not
23 directed to a specific situation.

24 COMMISSIONER CLARK: Okay. Mr. Orsi, let me
25 just tell you, you can always call the Staff direct if

1 you choose to.

2 WITNESS ORSI: Thank you.

3 MR. DETERDING: Could I follow up on that
4 just a little bit, just a couple of questions,
5 Commissioner?

6 FURTHER CROSS EXAMINATION

7 BY MR. DETERDING:

8 Q Did Mr. Jenkins suggest to you that you
9 should, without informing that utility of your
10 concerns with their proposal for service, just go to
11 the next available service provider?

12 A No, he did not give me that advice. Like,
13 for example, in this particular situation when
14 Mr. DeLucenay -- I'm saying today having gone through
15 all this experience with Mr. DeLucenay and his
16 character reputation and conduct, under no
17 circumstances would I accept a water service from his
18 utility; and I have learned through this -- exercises
19 where I'm prepared to put in my own water distribution
20 system as a nonprofit HEOA, which is within the
21 guidelines of the Public Service Commission rather
22 than accept water service from him. But I did not
23 know at the time when he asked me to make the loans
24 and put in the wells. Had I know known that that was
25 available to me, I would have sought to get my own

1 wells and water system.

2 COMMISSIONER DEASON: Thank you, sir. You
3 may be excused.

4 (Witness Orsi excused.)

5 - - - - -

6 COMMISSIONER DEASON: Ms. Hale, you may call
7 your next witness.

8 MS. HALE: Our next witness is Tom O'Connor.

9 COMMISSIONER DEASON: I'm sorry. I didn't
10 give you the opportunity for redirect.

11 MS. HALE: That's all right.

12 COMMISSIONER DEASON: Okay.

13 MR. SAMARKOS: He needs to be sworn.

14 COMMISSIONER DEASON: Are there any other
15 witness who have not been sworn who are in the hearing
16 room?

17 MS. HALE: Mr. Rogers.

18 COMMISSIONER DEASON: What about Michael
19 Moses?

20 MR. SAMARKOS: He's on his way. I just
21 talked to him in his car. He was probably about 15
22 minutes away.

23 COMMISSIONER DEASON: I believe there's a
24 member of the public that is going to testify. She's
25 going to stay with us until the end of all of the

1 scheduled witnesses. So if you will stand and raise
2 your right hand as well, please.

3 (Witnesses collectively sworn.)

4 - - - - -

5 **THOMAS O'CONNOR**

6 was called as a witness on behalf of Pasco County and,
7 having been duly sworn, testified as follows:

8 **DIRECT EXAMINATION**

9 **BY MR. SAMARKOS:**

10 Q Would you please state your name for the
11 record?

12 A My full name is Thomas Matthew O'Connor.

13 Q Are you the same Tom O'Connor who has
14 prefiled or caused to be prefiled direct testimony in
15 this docket consisting of two pages?

16 A I am.

17 Q Do you have any changes or corrections to
18 make to your direct testimony?

19 A No, I do not.

20 Q If I were to ask you the same questions as
21 posed in your testimony, would you give the same
22 answers today?

23 A I would.

24 **MR. SAMARKOS:** We would propose to have
25 Mr. O'Connor's testimony inserted into the record as

1 | though read.

2 | COMMISSIONER DEASON: Without objection, it
3 | shall be so inserted.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 960576-WS

MAD HATTER UTILITY, INC.

APPLICATION FOR AMENDMENT OF

WATER AND WASTEWATER CERTIFICATE

NOS. 340-W AND 297-S IN PASCO COUNTY, FLORIDA

PRE-FILED DIRECT TESTIMONY OF THOMAS O'CONNOR

Q. What is your name and address?

A. My name is Thomas O'Connor and my address is 8406
Massachusetts Avenue, Suite A-2, New Port Richey, Florida
34653.

Q. What is your occupation and by whom are you
employed?

A. I am a professional engineer and I am employed by
King Engineering & Associates, Inc.

Q. Are you familiar with Pasco County's Land O'Lakes
wastewater treatment plant?

A. Yes. I designed the plant and I have written
capacity analysis studies through the years.

Q. What is the capacity for Land O'Lakes wastewater
treatment plant?

A. The permitted capacity is one million GPD.

Q. What is the committed capacity for Land O'Lakes?

A. 1.305 million GPD.

Q. Does Land O'Lakes have any capacity to accept

1 additional flows from Mad Hatter Utilities?

2 A. No.

3 Q. Mad Hatter Utilities has represented in the past
4 that it may want to use the capacity of Pebble Creek
5 Utilities to treat Mad Hatter's sewage. Have you estimated
6 the cost of connecting Mad Hatter's system to Pebble Creek?

7 A. Yes. I estimate it would cost between \$1.4 and
8 \$1.7 million to connect the two systems as they are
9 approximately five miles apart and Mad Hatter would have to
10 run lines under I-75 to connect to the Pebble Creek system.

1 MR. SAMARKOS: We would tender the witness
2 for cross.

3 COMMISSIONER DEASON: Mr. Deterding?

4 CROSS EXAMINATION

5 BY MR. DETERDING:

6 Q Mr. O'Connor, you're familiar with the Pasco
7 County system in this area, water and wastewater
8 system?

9 A Yes.

10 Q Isn't it true that they are currently
11 constructing a force main that will enable them to
12 interconnect their Wesley -- Center, is it -- Wesley
13 Center treatment facility with the collection system
14 formerly served by the Land O'Lakes plant?

15 A I'm not involved with that project, so I'm
16 not -- as far as the details, I'm unaware.

17 Q So your comments concerning the capacity of
18 the Land O'Lakes plants are all based upon it
19 operating alone as opposed to its interconnection with
20 the rest of the County system?

21 A It's based on the current conditions of the
22 system; that's correct.

23 Q And you're not familiar with the fact that
24 Mr. Bramlett has testified that there is to be an
25 interconnection and diversion in the near future?

1 A I'm not involved with the design of that. I
2 believe that there is discussions about the
3 interconnect of the systems. However, I do not have
4 any of the details associated with that.

5 Q Did your firm design that interconnect?

6 A No, we did not. And you're talking -- I
7 just want to make sure that I understand. You're
8 talking about the interconnect between the Wesley
9 Center that you referred to earlier?

10 Q I'm talking about the piece --

11 A Maps --

12 Q -- of line along Highway 54 between Collier
13 Parkway and the -- and the connection into the Oak
14 Grove or Denham Oaks School that the County has coming
15 off 54. Do you see that on that map?

16 A I'm sorry.

17 Q In the far right-hand corner, the most --
18 the only water --

19 A The interconnect going to the Wesley Center;
20 is that what you're asking?

21 Q It goes from -- correct. It goes from--

22 A No, we were not involved with the design of
23 that.

24 Q So you don't know whether or not there will
25 be substantial additional capacity once that

1 interconnect is complete?

2 A No, I'm not aware of that.

3 Q If there is such capacity, couldn't it just
4 as well be used to serve Mad Hatter as it is to
5 serve -- provide service by the County directly?

6 MR. SAMARKOS: I'm going to object. This is
7 beyond of the scope of his direct testimony.

8 MR. DETERDING: Well, he's talked about what
9 the available capacity is. He has talked about there
10 being a capacity of one million gallons a day and a
11 commitment of 1.305, and I'm just trying to find out
12 if he's familiar with some of the other circumstances
13 that might impact on that.

14 COMMISSIONER DEASON: Objection is
15 overruled. You may answer the question.

16 WITNESS O'CONNOR: Could you restate that
17 again? I'm sorry.

18 Q (By Mr. Deterding) So you don't know what
19 the actual available capacity is once that
20 interconnect is made?

21 A For which facility?

22 Q For this area in the south --

23 A Well, there's different subregional areas
24 within the county. The Wesley Center is a specific
25 subregional area. We are not involved with the design

1 of that facility and we're not involved with the
2 interconnect that you're talking about. We are
3 involved with the design of the Land O'Lakes
4 subregional area, and that capacity of that facility
5 is designed for a one-million. It's been committed to
6 1.305, which you referenced.

7 Q And if there is a diversion of flow from
8 Land O'Lakes to the Wesley Center, isn't it true that
9 there would -- there could conceivably be more
10 capacity in this area that was formerly Land O'Lakes
11 area only?

12 A That possibility exists.

13 Q And if that capacity exists, isn't it true
14 that that could just as easily be provided to
15 Mad Hatter as it could by the County to provide retail
16 service --

17 A I wouldn't be able to answer that. I don't
18 know the contractual obligations of either party,
19 so --

20 Q Do you know any reason from an engineering
21 standpoint it could not be utilized to provide both
22 service to Mad Hatter just as easily to as retail to
23 the customers of Pasco County?

24 A I'm sorry. I --

25 Q Do you know any engineering reason why it

1 could not be used for bulk service to Mad Hatter just
2 as easily as it could be for retail service by Pasco
3 County?

4 A It'd all depend on the actual size of the
5 system and the ability to actually divert flows to --
6 or redivert additional flows to the Land O'Lakes
7 subregional facility. So, yes, it could impact,
8 depending upon if those additional flows were being
9 directed in a certain method from, say, Mad Hatter to
10 the Land O'Lakes subregional. Dependent upon that,
11 the possibility exists.

12 Q Well, but you apparently don't know where
13 it's going to be diverted, do you? You seem to have
14 no knowledge as to the proposed --

15 A That's correct. But you were asking me
16 earlier whether or not there was an engineering aspect
17 or a consideration that would prohibit that from
18 occurring. Yes, there is. It depends on where that
19 connection takes place of redirecting flows to the
20 County systems.

21 If you're pushing additional flows to the
22 county systems, then the possibility exists that you
23 may have existing infrastructure that's unable to
24 accommodate that additional flows that Mad Hatter
25 would want diverted to that Land O'Lakes subregional

1 plant. I don't know if that -- do you understand what
2 I said there?

3 Q Somewhat. Let me try and restate the
4 question, or offer it a little differently. If the
5 County has the capacity, once that interconnect is
6 complete and that diversion occurs, to serve this
7 area, why couldn't they provide it in the form of bulk
8 service? Do you know of any engineering reason why
9 they couldn't provide it in bulk service as opposed to
10 retail --

11 A You're talking about going to a different
12 facility now? You're saying going to the Wesley
13 Center facility? It --

14 Q It doesn't matter which facility. If the
15 capacity is freed up like the --

16 A Well, like I said --

17 COMMISSIONER DEASON: Hold it.

18 Mr. Deterding, Mr. O'Connor, there needs to be a
19 question. The question needs to stop. You need to
20 wait for just a moment before you begin your answer.
21 The court reporter cannot take down two people talking
22 at one time. Okay. Please be mindful of that.

23 WITNESS O'CONNOR: I'm sorry.

24 Q (By Mr. Deterding) If the capacity exists
25 for the County to provide service in this area, do you

1 know of any engineering reason why they couldn't
2 provide it either as bulk just as easily as they could
3 provide it as retail service?

4 A And as I stated earlier, on a engineering
5 perspective, yes, there is reasons why it could not;
6 depending upon the existing infrastructure and the
7 diversion of -- dependent on how much flow that is and
8 the existing size of that infrastructure, they may not
9 have the ability to accommodate the diversion of those
10 flows into that existing infrastructure because of the
11 size of the lines.

12 Q Well, we're talking about diversion of flows
13 through the County's force main from one plant to the
14 other. I'm talking about once that is done and
15 there's capacity available, why couldn't that capacity
16 be utilized by Mad Hatter?

17 A Because if I understand your question, the
18 capacity is at the wastewater treatment plant, okay;
19 and that's different than the capacity of the line
20 itself. If there was an interconnect that was
21 proposed between, say, the Land O'Lakes subregional
22 area to the Wesley Center facility, that interconnect
23 may be only accommodating the needs of Pasco County in
24 that the possibility exists that if there was
25 additional capacity that was needed for Mad Hatter to

1 move it from point A to B, that that system may not
2 be -- the infrastructure may not be large enough to be
3 able to divert those flows.

4 The treatment plant could possibly be sized
5 sufficient to be able to accommodate those flows, but
6 the infrastructure may not be sized sufficiently to
7 accommodate those flows.

8 Q Are you familiar with any problems within
9 the Mad Hatter system that would result in such a --
10 an engineering problem existing in this --

11 A I have not investigated the Mad Hatter
12 Utility system, but the possibility does exist, and it
13 would have to be evaluated.

14 Q It also exists, then -- based on your not
15 having evaluated the system then, it may also be true
16 with Mad -- with regard to the County's retail
17 systems?

18 A That possibility exists it would have to be
19 evaluated in terms of the ability to accommodate those
20 flows. Your question earlier was whether or not
21 there's -- is there any engineering concerns related
22 to that. And that's what I'm saying; yes, there is
23 engineering concerns that would have to be assessed in
24 order to assure that the ability to accommodate those
25 additional flows was available.

1 Q Did you perform a detailed engineering study
2 to determine the cost of your estimate as stated on
3 Page 2 of your testimony about the estimated cost of
4 transporting sewage to -- from Mad Hatter to Pebble
5 Creek?

6 A That was asked in a deposition at which we
7 had indicated that it was -- we had developed -- it
8 wasn't a detailed report, it was a development of
9 potential cost of extending from the Mad Hatter
10 service area there to the Pebble Creek utility.

11 Q Would you hold that out or certify that as
12 an estimate of the cost of providing those services?

13 A As I stated in my deposition is that those
14 are potential costs for that. Yes, I would hold that
15 out at the time of which we were providing preliminary
16 potential costs of that system based on the
17 information we had at that time. The estimates
18 themselves do get more refined as the development of
19 the report continues.

20 Q And what report is that you're --

21 A I'm sorry. The development of a design.
22 And we had stated that before with the 30, 60, 90%
23 development of design, you have the ability to
24 continue to refine your estimates.

25 Q And what percentage of design did you have

1 in order to make the assessments?

2 A These are essentially a potential cost at
3 the very beginning. They're initial costs of what
4 could be anticipated for a line to be constructed
5 within this corridor.

6 Q So those estimates could be off
7 significantly?

8 A I wouldn't say they would be off
9 significantly. We had given a range for those
10 estimates, and those estimates allow for that
11 consideration the 1.4 to 1.7 that is the percentage
12 cost of that line of what we see at this time.

13 Q Did you try to determine the cost from any
14 other potential providers of service?

15 A I'm sorry. Say that again.

16 Q This is only as to an interconnect between
17 Pebble Creek and Mad Hatter, is it not?

18 A That is correct.

19 Q Did you contact either Mad Hatter or Pebble
20 Creek to determine the nature of any required
21 interconnect or location or sizing or anything like
22 that?

23 A No. We had identified the potential costs
24 based on an assumed size of a 12-inch, and as I stated
25 in the deposition, the possibility of an 8 to 10

1 inches is also a consideration. However, the cost of
2 the pipeline are minimum in terms of material costs
3 compared to the actual installed costs; and so those
4 are the reason you have a potential cost of 1.7 to 1
5 point -- or 1.4 to 1.7.

6 Q But you assumed a route and you assumed a
7 connection point without any consultation with either
8 of the parties that would be involved in such --

9 A That's correct.

10 MR. DETERDING: That's all I have.

11 COMMISSIONER DEASON: Staff?

12 MS. CAPELESS: No questions.

13 COMMISSIONER DEASON: Redirect?

14 MR. SAMARKOS: No redirect.

15 COMMISSIONER DEASON: Thank you,

16 Mr. O'Connor.

17 (Witness O'Connor excused.)

18 - - - - -

19 COMMISSIONER DEASON: You may call your next

20 witness.

21 MR. SAMARKOS: Michael Moses.

22

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25

MICHAEL MOSES

was called as a witness on behalf of Pasco County and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SAMARKOS:

Q Good afternoon, Mr. Moses. Would you please state your full name for the record?

A Michael Moses.

Q Are you the same Michael Moses who prefiled or caused to be prefiled direct testimony in this docket consisting of three pages?

A Yes, I am.

Q Do you have any changes or corrections to make to your direct testimony?

A No, I do not.

Q If I were to ask you the same questions as posed in your testimony, would your answers be the same today?

A Yes, they would.

MR. SAMARKOS: We would propose to have Mr. Moses' testimony inserted into the record as though read.

COMMISSIONER DEASON: Without objection, it shall be so inserted.

Q (By Mr. Samarkos) Mr. Moses, with regard

1 to exhibits, did you cause to be prefiled Exhibit 5-MM
2 along with your testimony?

3 A Yes, I did.

4 Q Do you have any corrections or modifications
5 to that exhibit?

6 A No, I do not.

7 MR. SAMARKOS: And we would propose to have
8 this exhibit identified as the next available exhibit
9 number.

10 COMMISSIONER DEASON: Exhibit 21.

11 (Exhibit 21 marked for identification.)
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 960576-WS

MAD HATTER UTILITY, INC.

APPLICATION FOR AMENDMENT OF

WATER AND WASTEWATER CERTIFICATE

NOS. 340-W AND 297-S IN PASCO COUNTY, FLORIDA

PRE-FILED DIRECT TESTIMONY OF MICHAEL MOSES

Q. What is your name and address?

A. My name is Michael Moses and my address is 1509
Swann Avenue, Tampa, Florida.

Q. What is your occupation and by whom are you
employed?

A. I am a Certified Public Accountant (CPA) and I am a
shareholder in Ferrel and Moses, P.A.

Q. Are you an expert in valuation of utilities?

A. Yes.

Q. Were you retained by Pasco County to conduct a
valuation of Mad Hatter Utilities as of August 31, 1991?

A. Yes.

Q. What, in your opinion, is the value of Mad Hatter
Utilities as of August 11, 1991?

A. In my opinion, Mad Hatter Utilities had no value to
a private buyer which would have to assume the debt of Mad
Hatter Utilities as of August 11, 1991. Attached as Exhibit
5 is my preliminary report which further explains my

1 opinions and conclusions.

2 Q. How can Mad Hatter Utilities have no value as of
3 August 11, 1991?

4 A. The value of the assets of the utility as of August
5 11, 1991 were approximately \$890,000.00. The outstanding
6 debt at that same time was \$1,710,000.00. The fair market
7 value of the assets of the utility was less than the debt
8 and therefore Mad Hatter Utilities had no value to a private
9 buyer. I have seen no further financial information that
10 demonstrates the fair market value of the assets today
11 exceeds the debt.

12 Q. Are there other factors which affect the value of
13 Mad Hatter Utilities?

14 A. Yes.

15 Q. What factors?

16 A. There are issues in the interpretation of the
17 contract with Pasco County that could materially affect Mad
18 Hatter Utilities ability to expand. Mad Hatter Utilities
19 let one permit lapse for a wastewater treatment plant and
20 another permit was revoked. Mad Hatter Utilities has
21 suffered severe financial difficulties in the past. Barnett
22 Bank agreed to write off over \$700,000.00 presumably because
23 the utility could not pay the loan. I was told Mad Hatter
24 Utilities gave a deed in lieu of foreclosure on a piece of
25 property it owned and that Larry and Janice DeLucenay

1 foreclosed on Mad Hatter Utilities. I was also told that
2 Mad Hatter Utilities also faces a possible fine for failing
3 to comply with a PSC order requiring disclosure of the sale
4 of the Foxwood perc ponds. These are just some of the facts
5 that affect the value of Mad Hatter Utilities.

6 Q. Does Mad Hatter Utilities appear to have the
7 ability to expand capacity by constructing additional
8 plants?

9 A. No, according to the latest financial information I
10 reviewed Mad Hatter Utilities does not have the capability
11 borrowing money.

1 MR. SAMARKOS: We would tender the witness
2 for cross.

3 COMMISSIONER DEASON: Mr. Deterding?

4 CROSS EXAMINATION

5 BY MR. DETERDING:

6 Q Mr. Moses, you state that you are an expert
7 in evaluation of utilities, do you not?

8 A That is correct.

9 Q How many evaluations of utilities have you
10 done?

11 A I've been involved in evaluations -- let me
12 think for a second. Approximately four or five
13 utilities.

14 Q And how many have you been the primary
15 person responsible on?

16 A In two utilities it was -- I was working for
17 the utility in a negotiation of the sale of that
18 utility, so I would have been the primary accountant
19 in that; but it would also have been the officers of
20 company. Now, evaluation reports were not prepared in
21 those cases. And in one other utility I was the
22 primary and an evaluation report was prepared, and the
23 others I assisted.

24 Q I take it by the date on your report that
25 this report was not prepared for purposes of this

1 proceeding?

2 A That is correct.

3 Q What was it prepared for?

4 A It was prepared in connection with
5 litigation, I believe between Pasco County and
6 Mad Hatter Utility.

7 Q And you valued this utility as of
8 August 11th, 1991?

9 A That is correct.

10 Q And as I understand your testimony, your
11 opinion is conditioned upon the assumption that sale
12 would occur between Mad Hatter and a private buyer
13 under which the buyer would have to assume the debt of
14 Mad Hatter; is that correct?

15 A That is correct.

16 Q And how many times in your evaluations of
17 utilities have you made those same assumptions?

18 A At the least, one other.

19 Q And what was that in?

20 A That was in a negotiated sale for Pebble
21 Creek Utilities.

22 Q Do you know if the shareholders of
23 Mad Hatter would have -- or would even consider the
24 sale of the utility to a private buyer?

25 A No, I do not know that.

1 Q Are all sales of utilities to private buyers
2 at rate base?

3 A Not necessarily.

4 Q How about in the ones that you've had
5 involvement in the sales? What has been your
6 experience with regard to the relationship between the
7 two?

8 A It's varied somewhat; rate base along with
9 any potential for future growth, that there was
10 nonused and used and useful plant and connection fees
11 that were being collected. That was typically
12 considered. That was typically at bases or starting
13 point.

14 Q Did you consider those types of factors in
15 this valuation?

16 A Yes, I did.

17 Q Would the valuation be different if you were
18 assuming a sale to Pasco County?

19 A That would change the parameters under which
20 I valued this, yes.

21 Q Do you know whether or not Mad Hatter would
22 consider a sale to anyone other than a local
23 governmental entity?

24 A I do not know that.

25 Q In your testimony, and I believe also in

1 your report, you refer to some concerns about
2 Mad Hatter's ability to expand based upon the
3 interpretation of the contract between Mad Hatter and
4 the County?

5 A My understanding is that it's in question.

6 Q Have you analyzed that contract?

7 A I have read the contract. I don't have an
8 opinion on the status of that contract.

9 Q So you don't know whether or not it would
10 affect Mad Hatter's ability to expand based on your
11 own analysis, do you?

12 A I only know that there is a question as to
13 whether or not they would be able to expand based on
14 that contract.

15 Q And who raised that question?

16 A Who raised the question?

17 Q Yes. Is this your opinion, or the opinion
18 that someone else expressed to you?

19 A I'd say it's both my opinion and the
20 opinions of the attorneys I've talked to.

21 Q Well, have you talked to Mad Hatter's
22 attorneys about that?

23 A No, I have not.

24 Q In fact, the attorneys you've talked to are
25 Pasco County's attorneys, correct?

1 A That is correct.

2 Q Now, you state that Mad Hatter Utilities let
3 one permit lapse for a wastewater treatment plant and
4 another permit was revoked. What is your personal
5 knowledge of those circumstances?

6 A Only that I've reviewed some paperwork that
7 led me to those conclusions.

8 Q And what was that paperwork?

9 A Offhand I don't recall.

10 Q You didn't read the consent agreement
11 between DEP and the Utility, did you?

12 A I believe I have read the consent agreement,
13 yes.

14 Q And does that ever state that a permit was
15 revoked?

16 A I don't recall.

17 Q You talk about a deed in lieu of foreclosure
18 on a piece of property that the Utility owned. Do you
19 know anything about the circumstances surrounding that
20 foreclosure and the reason for it?

21 A Very little. I've read a -- I believe it
22 was an affidavit prepared by Bob Nixon in that
23 regards, and I've had discussions with the attorneys
24 of Pasco County on that issue.

25 Q Isn't it true that that was done as a

1 condition of the refinancing of the Utility?

2 A I do not know that.

3 Q Isn't it true that the liens on that
4 property in the hands of Mad Hatter Utilities exceeded
5 its fair market value?

6 A I do not know that.

7 Q You state further on that same issue that
8 Mad Hatter also faces a possible fine for failing to
9 comply with the PSC order requiring disclosure of the
10 sale of the Foxwood perc ponds. Do you have any
11 personal knowledge of those facts or circumstances?

12 A No. My only knowledge is discussions I've
13 had with the Pasco County attorneys on that issue.

14 Q And I take it that your final opinion here
15 is based upon this report. "Does Mad Hatter Utilities
16 appear to have the ability to expand capacity by
17 constructing additional plants?" No -- and your
18 answer is: "No. According to the latest financial
19 information I reviewed, Mad Hatter Utilities does not
20 have the capability of -- it didn't say "owe," but
21 borrowing money.

22 A Right. That's based on the analysis I did
23 on the evaluation of 1991 plus a review of the annual
24 reports filed through December of '95. I've not seen
25 December of '96 annual report.

1 Q Isn't it true that since the items occurred
2 that make up the great majority of factors that you've
3 outlined in here, that Mad Hatter has, in fact, done a
4 substantial refinancing?

5 A I believe in '94 they did a substantial
6 refinancing, which included the write-off of a
7 substantial amount of debt by the bank.

8 Q By a different bank, correct?

9 A That's correct.

10 Q And in your experience, aren't -- most loans
11 to utilities require a guarantee from a related party
12 or shareholder?

13 A I'd say yes.

14 Q And isn't it true that in this case there
15 was no guarantee required?

16 A I do not know.

17 Q Do you know whether or not Pasco County has
18 negotiated with Mad Hatter for the potential purchase
19 of this system?

20 A I know they were negotiating. I do not know
21 the status of that right now.

22 Q So you were -- you prepared this valuation
23 and were compensated by a potential buyer of the
24 Utility?

25 A I believe that would be correct.

1 Q And your opinion, as drawn in this report of
2 yours, is that the Utility is worth nothing?

3 A That the assets were worth less than the
4 debt, so the stock of the Utility would essentially be
5 worth nothing.

6 Q Well, have you seen the letter from CoBank
7 stating in -- an interest in loaning additional money
8 to Mad Hatter?

9 A I saw a letter that was attached to, I
10 believe it was a deposition from Robert Nixon. Is
11 that the letter you're referring to?

12 Q Yes.

13 A Yes, I have seen that.

14 Q And doesn't that indicate at least an intent
15 by its current lender to provide it additional
16 financing if it needs it?

17 A I think that indicates that the bank would
18 be willing to listen to anybody. I don't think that's
19 very conclusive.

20 Q I wasn't asking you if it was conclusive. I
21 guess I was asking you if it was an indication of an
22 interest by that bank in providing additional
23 financing to Mad Hatter.

24 A It's an indication that they're interested
25 in listening to them.

1 Q Okay. And, in fact, at a -- since the time
2 that you had stated this utility was -- you calculated
3 your report saying that this utility was worthless and
4 could not get financing, they've, in fact, done a
5 substantial refinancing, have they not?

6 A That is correct.

7 MR. DETERDING: I have nothing further.

8 COMMISSIONER DEASON: Staff.

9 MS. CAPELESS: Thank you.

10 CROSS EXAMINATION

11 BY MS. CAPELESS:

12 Q Mr. Moses, would you please direct your
13 attention to Exhibit A of your report marked
14 Exhibit 21? The pages aren't numbered at the
15 appendix, but it's appendix A. Pardon me.

16 A Okay.

17 Q And if you will look down at paragraph 4 to
18 that appendix, the report states that the various
19 estimates of value presented apply to this valuation
20 only and may not be used out of the context presented
21 herein, and we have no obligation to update our
22 report -- excuse me -- I skipped. The evaluation is
23 valid only for the purpose or purposes specified
24 herein, correct?

25 A That's correct.

1 Q And then if you look back up at Page 1 of
2 the report under the introduction, second sentence
3 from the top, and you state "The purpose of the
4 valuation is for the use -- is for use in the matter
5 of Mad Hatter Utility, Inc. versus Pasco County, U.S.
6 District Court for the Middle District of Florida.
7 This preliminary report is being produced pursuant to
8 the court order requiring a preliminary report, right?

9 A That's correct.

10 Q And then at the bottom of Page 3 under
11 Financial Analysis of the Company, Balance Sheet
12 Analysis, it states that Exhibit 1, the Utility's
13 balance sheets for 1989 through 1994 -- which start at
14 Page 5 of the exhibit, correct?

15 A That is correct.

16 Q That those historical financial statements
17 are included solely to assist in the development of
18 the value conclusion presented in the report and
19 should not be used for any other purpose, right?

20 A That is correct.

21 Q So is it your testimony that the Commission
22 should consider information in this docket from a
23 report that states that the information in it should
24 not be used for any other purpose than to assist the
25 development of the value conclusion presented in the

1 report?

2 A I don't think they should consider it by
3 itself, no. I think this was submitted basically to
4 show a history, to show a trend between this and an
5 analysis of the annual reports filed by the Utility to
6 look at the financial condition of this utility.

7 MS. CAPELESS: Okay. Thank you. No further
8 questions.

9 COMMISSIONER DEASON: Redirect?

10 MR. SAMARKOS: I have no redirect.

11 COMMISSIONER DEASON: Exhibits.

12 MR. SAMARKOS: We would offer Exhibit 21.

13 COMMISSIONER DEASON: Without objection,

14 Exhibit 21 is admitted.

15 (Exhibit 21 received in evidence.)

16 COMMISSIONER DEASON: Thank you, Mr. Moses.

17 (Witness Moses excused.)

18 - - - - -

19 COMMISSIONER DEASON: That concludes the
20 direct case of Pasco County?

21 MR. SAMARKOS: Yes.

22 COMMISSIONER DEASON: We'll take a 10-minute
23 recess before we move into rebuttal.

24 (Brief recess.)

25 - - - - -

1 COMMISSIONER DEASON: Call the hearing back
2 to order. Mr. Deterding?

3 MR. DETERDING: We call Larry DeLucenay.
4
5 - - - - -

6 LARRY DELUCENAY

7 was called as a rebuttal witness on behalf of Mad
8 Hatter Utility, Inc. and, having been duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. DETERDING:

12 Q Mr. DeLucenay, please state your name and
13 employment address.

14 A Yes. Larry G. DeLucenay, care of 1900
15 Land O'Lakes Boulevard, Suite 113, Lutz, 33549.

16 Q And you have previously provided direct
17 testimony in this proceeding?

18 A Yes, sir, I did.

19 Q And did you prepare rebuttal testimony and
20 prefile that as well?

21 A Yes, sir, I did.

22 Q If I asked you the questions within that
23 rebuttal testimony now, would your answers be the
24 same?

25 A Yes, they would.

Q You have no changes or corrections to make?

1 A No, sir.

2 Q You also attached to that testimony LGD-3,
3 4, 5 and 6, correct?

4 A Yes, sir.

5 Q Do you have any changes or corrections to
6 make to those exhibits?

7 A No, sir, not to my knowledge at this time.

8 MR. DETERDING: I request that
9 Mr. Delucenay's testimony be inserted in the record as
10 though read.

11 COMMISSIONER DEASON: Without objection, it
12 shall be so inserted.

13 MR. DETERDING: And that his prefiled
14 exhibits, LGD-3 through 6 be marked for
15 identification.

16 COMMISSIONER DEASON: Exhibit 22.
17 (Exhibit 22 marked for identification.)
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 960576-WS

MAD HATTER UTILITY, INC.

APPLICATION FOR AMENDMENT OF CERTIFICATE

NOS. 340-W AND 297-S IN PASCO COUNTY

PREFILED REBUTTAL TESTIMONY OF LARRY G. DELUCENAY

Q Please state your name and employment address.

A My name is Larry G. DeLucenay, and my address is 1900 Land O'Lakes Boulevard, Suite 113, Lutz, Florida 33549.

Q Have you previously provided testimony in this proceeding?

A Yes. I provided prefiled direct testimony previously.

Q What is the purpose of this rebuttal testimony?

A To respond to the direct testimony of the witnesses for Pasco County.

Q Have you read the testimony of Mr. Michael Orsi?

A Yes, I have.

Q Are you familiar with the facts surrounding Mr. Orsi's statement?

A Yes. I am the main contact person for the Utility with regard to any negotiation of service contracts and was in 1994 as well. Sunfield Homes contacted Mad Hatter Utility and requested that we provide them with a standard service contract for the Oak Groves subdivision. We sent a draft contract which is attached to Mr. Hobby's

1 testimony. As you can see from the copy provided by Mr.
2 Hobby, this was a standard form contract very similar if
3 not identical to those provided to all developers seeking
4 service within the Utility's territory and the same as
5 that approved by the PSC for service to the Lake Heron
6 development.

7 Q What was the next step in the negotiation of this
8 agreement for service with Mr. Orsi?

9 A There were a few informal discussions on issues including
10 the proposed siting of a well and loan arrangement
11 related thereto, but after a brief time the developer
12 simply discontinued such discussions. Rather than
13 discussing with us any concerns that the developer had
14 about the provision of water and wastewater service, the
15 next thing we heard was that the County had entered into
16 an agreement to provide service with the developer
17 without any notice to Mad Hatter or an opportunity to
18 discuss this with County officials.

19 Q Did Mr. Orsi or his counsel ever contact you concerning
20 further negotiations or concerns which they had with the
21 draft agreement or the requirements for service from Mad
22 Hatter?

23 A No. They did not.

24 Q Did they file a complaint with the Public Service
25

1 Commission as to their concerns with the proposed
2 agreement for service?

3 A No. They did not. As I understand the Commission's
4 rules, should a developer have any concerns with the
5 Utility's requirements for service, they have the right
6 to file a complaint proceeding under Rule 25-30.560,
7 Florida Administrative Code. No such complaint was
8 filed.

9 Q Were you surprised by the County and developer actions in
10 agreeing to a service by the County to this development
11 and school?

12 A Yes. We had just prior to the discussions with the
13 developer received the attached letter from the Pasco
14 County attorney, Mr. Thomas Bustin, which have included
15 as Exhibit LGD-3. In that letter, the County attorney
16 states that Pasco County recognizes Mad Hatter's certifi-
17 cate and will not compete with the corporation in that
18 area. Apparently, then a few months later, they entered
19 into an agreement with Mr. Orsi not only directly
20 contrary to the assertions in that letter, but also
21 without ever discussing the matter with Mad Hatter or its
22 representatives or allowing Mad Hatter Utility to present
23 our case to the Board of County Commissioners.

24 Q Mr. Orsi states that you did not have sufficient potable
25

1 water for his project, is that correct?

2 A No. As is always the case with a prudently run utility,
3 we may not have the capacity to meet his needs at build-
4 out. Having such excess capacity idle would be imprudent
5 on any utility's part. A utility does not build capacity
6 before the demand exists or is expected to exist in the
7 future. If the utility can anticipate demand, then they
8 try to build to meet the immediate needs for development
9 within their service territory. Mad Hatter had the
10 ability to provide immediate water and wastewater service
11 to the developer's property and, in fact, to this date,
12 the developer has placed very little demand on the
13 County's water and wastewater system and is just in the
14 initial phases of development approximately three years
15 after the first draft of the developer agreement was
16 forwarded to them. As such, it would have been foolish
17 for Mad Hatter to have had in place capacity to serve the
18 developer's needs three years ago.

19 Q What about Mr. Orsi's statement that the Utility asked
20 Sunfield Homes to lend Mad Hatter \$100,000 to develop two
21 new wells on his property?

22 A We had informally discussed the possibility of funding
23 one well at the time we provided them with the draft form
24 agreement. This is an arrangement that we have undertak-
25

1 en with other developers before and we believe it is
2 appropriate for a developer of the size of Mr. Orsi's
3 project. Mr. Orsi is proposing to develop an area of
4 over 800 equivalent residential connections and we
5 envision that at some point in the future we would need
6 additional water capacity to provide service to his
7 development. We have wells in the Turtle Lakes subdivi-
8 sion and Carpenter's Run subdivision on both the east and
9 west sides of Mr. Orsi's property and lines ready to
10 provide immediate service and to allow looping of those
11 two existing water systems. However, that well would not
12 be needed in order to provide initial service and we
13 indicated that to the developer. Once the new well was
14 needed, the logical place for location of those facili-
15 ties was on his property. We therefore initially
16 proposed that he would loan the money to construct those
17 facilities and the Utility would repay him over a 20 year
18 period.

19 Q Is such an arrangement unusual?

20 A No. In fact, several previous developers have been
21 required to provide similar loans and those agreements
22 have been filed with the Public Service Commission and
23 approved. Therefore, this is in accordance with our
24 standard service availability policy. Mr. Orsi's

1 property is as large a development as we have had begin
2 construction in our area in quite some time and if any
3 developer was to be required to provide funding for and
4 location for wells in order to avoid placing those
5 burdens on the other customers of the system, the Oak
6 Grove subdivision was the appropriate funder of such
7 costs. As I stated previously, similar arrangements have
8 been recently approved by the Commission for other
9 developments within our territory, specifically and most
10 recently, the Lake Heron agreement. In addition, the
11 costs of that loan to Mr. Orsi would not be anywhere near
12 as expensive as the County's water connection fees for
13 800 units even if the \$100,000 were CIAC instead of a
14 loan.

15 Q Mr. Orsi states that Mad Hatter refused to guarantee
16 service to Oak Grove, is this true?

17 A No. Because we were approaching the level of wastewater
18 capacity committed by Pasco County for bulk service our
19 draft agreement did require that Sunfield Homes go to the
20 County to ensure that the County was willing to provide
21 the additional bulk service necessary to serve their
22 development at build-out. This is only logical given the
23 fact that we did not believe Pasco County would provide
24 additional wastewater capacity to Mad Hatter without a
25

1 specific request from a developer within our area. This
2 is the standard required practice for any new service
3 within our territory under our agreement with Pasco
4 County. The developer must first go to the County, pay
5 the applicable fees for commitment of capacity directly
6 to the County, and then receive service through Mad
7 Hatter.

8 Q Did you ever state to Mr. Orsi or his attorney or any
9 other representatives of Sunfield Homes that Mad Hatter
10 refuses to guarantee service?

11 A No. I believe Mr. Orsi and Mr. Hobby are referring to
12 the language contained in Paragraph 19 of the agreement
13 on Page 12 which says that the Utility will not guarantee
14 its ability to provide service in the event the company
15 is prohibited or limited from doing so by local, state or
16 federal government agencies having jurisdiction. I
17 believe this is an appropriate clause. There is always
18 the possibility that some agency will restrict us from
19 providing that capacity and we are simply making sure
20 that the Utility is not held liable for that by the
21 developer. This is effectively a *force majeure* clause as
22 I understand is standard in all contracts, especially
23 those for regulated industries, and I believe it is
24 appropriate to protect the Utility and its other custom-

1 | ers.

2 | Q Did Mr. Hobby or Mr. Orsi question you about this
3 | provision?

4 | A No. No further discussions were had between us after I
5 | forwarded the draft form agreement to them other than the
6 | well construction and only a few on that subject.

7 | Q Does Paragraph 19 on guarantees of service exist in other
8 | contracts which the Utility has executed with developers?

9 | A Yes. It does. This is our standard form contract which
10 | we sent to Sunfield Homes and it has been approved
11 | previously by the Florida Public Service Commission, most
12 | recently and most specifically in the Lake Heron develop-
13 | er agreement which contains identical language.

14 | Q Has Mad Hatter taken any legal action as a result of
15 | Sunfield Homes' decision to receive service from Pasco
16 | County?

17 | A Yes. As part of our federal suit against Pasco County,
18 | we alleged that they violated Mad Hatter's due process
19 | rights by entering into an agreement with Sunfield Homes
20 | for the provision of water and wastewater service without
21 | informing us and giving us an opportunity to participate
22 | in that decision. A federal jury found that, in fact,
23 | the County's action did violate Mad Hatter's due process
24 | rights for this action. The issue of damages is being

1 sent back to a federal jury in the coming months.

2 Q Mr. Orsi makes some comments about Sunfield Homes'
3 ability to provide its own water through a non-profit
4 organization and to provide sewer service through septic
5 tanks. Do you believe these are viable alternatives?

6 A No. Mad Hatter is in an excellent position to provide
7 water and wastewater service to the Oak Grove subdivision
8 and to the Denham Oaks School. While they certainly
9 could seek approval to provide their own water service,
10 we would object to that in that we surround this develop-
11 ment with our Turtle Lakes and Carpenter Run systems, and
12 we are well situated to provide that service. We have
13 existing systems on both the east and west side of his
14 proposed development with lines in place to provide that
15 service and stubbed out immediately adjacent to his
16 property. We had ample capacity to provide service both
17 to the school and to the first phase of his development
18 before needing to get into the construction of any new
19 well for the long term and we would certainly oppose his
20 attempts to create such a water system simply because it
21 would be inefficient and be detrimental not only to our
22 other customers, but to the customers in his development
23 in the long run.

24 As to his suggestions that he would consider septic
25

1 tanks, I do not believe any environmental regulatory
2 authority would permit septic tanks, especially with the
3 availability of central sewer from Mad Hatter immediately
4 adjacent on both sides of his property. In addition, I
5 believe the lot sizing that he has planned would never
6 qualify for septic tanks, and I believe Mr. Orsi knows
7 that.

8 Q Do you have anything else to add with regard to the
9 testimony of Mr. Orsi?

10 A Yes. Mr. Orsi makes the statement that our actions in
11 bringing administrative proceeding "forced the school-
12 children into double sessions". If anything caused the
13 children into double sessions, it was Mr. Orsi's blatant
14 disregard for our right to provide service within our
15 territory, failure to negotiate with us concerning the
16 provision of service or to seek appropriate remedies of
17 the PSC if they believe that our requirements for service
18 were unreasonable, and the actions of Pasco County which
19 a Federal Court has recently determined to be illegal.
20 Mr. Orsi's statement is a lot like a bank robber claiming
21 that the bank guard is at fault for any injuries that
22 occur during the robbery because of their attempts to
23 stop the robber.

24 Q What about any other comments that Mr. Hobby made as
25

1 counsel to Mr. Orsi in his testimony?

2 A Mr. Hobby states that we required Sunfield Homes to loan
3 Mad Hatter \$93,000 for wells. While it is true that we
4 certainly discussed that as an addition to the agreement,
5 you can see from the draft agreement attached to his
6 testimony that no such provision is specifically included
7 within the draft agreement. That is because we were
8 still in the negotiation stages at the time Sunfield
9 Homes cut off such negotiations. The next thing we knew,
10 it had entered into an agreement with the County without
11 the County giving us a right to participate despite the
12 fact that the County and Sunfield were both very much
13 aware of the fact that this development was within our
14 certificated service territory and which our existing
15 systems surrounded.

16 Q Do you have anything further to add concerning Mr.
17 Hobby's comments about the Utility's refusal to guaran-
18 tee.

19 A No. Mr. Hobby has added nothing new to that testimony
20 provided by Mr. Orsi and my comments in response to Mr.
21 Orsi were also fully applicable to Mr. Hobby's testimony.

22 Q Do you have any response to Dr. Kratz's testimony?

23 A Very little. Only that Mad Hatter had looked to Winde-
24 mere as a possible source for some wastewater treatment

1 capacity, however, it has been clear to us for some time,
2 that despite excess capacity, Dr. Kratz was not inter-
3 ested in providing that additional capacity for use by
4 Mad Hatter. The reasons are inexplicable to me. It
5 probably has to do with the fact that Scarecrow Utility
6 Company, a separate utility owned by myself and my wife,
7 sued Mr. Kratz for breach of fiduciary duties related to
8 Windemere Utility Company. That suit is still pending in
9 the Hillsborough Circuit Court.

10 Q Have you reviewed the testimony of Mr. Doug Bramlett?

11 A Yes, I have.

12 Q Do you have any comments with regard to Mr. Bramlett's
13 testimony?

14 A Yes. I have several. First of all, Mr. Bramlett notes
15 that the 1992 Bulk Wastewater Treatment Agreement between
16 Mad Hatter and Pasco County does not "obligate" the
17 County to treat wastewater in excess of 350,000 gallons
18 per day in committed capacity unless the County in its
19 discretion has additional capacity to do so. I believe
20 this is an unreasonable reading and interpretation of the
21 contract. If you will refer to the contract at Paragraph
22 2D on Page 5, it specifically includes a section called
23 "Excess Capacity" and states:

24 "The County agrees to treat wastewater in
25

1 excess of 350,000 gallons per day pursu-
2 ant to this agreement provided sufficient
3 unused and uncommitted capacity is avail-
4 able at the County's wastewater treatment
5 facilities as determined by the County,
6 and all appropriate permits have been
7 obtained by Mad Hatter from state regula-
8 tory agencies. Mad Hatter agrees to pay
9 the per thousand gallon rate for such
10 services as set forth above."

11 Mr. Bramlett's testimony implies that the County does not
12 have any obligation to provide additional capacity to Mad
13 Hatter. We and our attorneys have always read this
14 agreement as recognizing that the County must provide it
15 if it has that capacity. As Mr. Bramlett notes, the
16 County has substantial excess capacity at its Wesley
17 Chapel Wastewater Treatment Plant, which is available to
18 our area now. Mr. Bramlett goes on to suggest that the
19 agreement limits the County's responsibility to treat
20 only sewage from the Mad Hatter's then existing service
21 area. However, given the expansion of capacity provi-
22 sion outlined above, I believe that agreement envisioned
23 possible the expansion of Mad Hatter's service territory
24 and the resulting need for more capacity. Therefore, we
25 believe that to the extent that the Utility has an
expanded territory and needs additional capacity, the
agreement provides that the County shall provide it if
they have that additional capacity. Even with the

1 identified service area at the time of the contract
2 execution which was attached as an exhibit thereto, I
3 believe this paragraph envisions a change in the Util-
4 ity's territory and therefore its capacity needs.

5 Q Mr. Bramlett refers to the fact that Mad Hatter's sewage
6 is currently sent to the Land O'Lakes Wastewater Treat-
7 ment Plant and that that plant is currently exceeding its
8 permitted capacity. As a result, he states that the
9 County has no additional capacity to give to Mad Hatter.
10 Do you have a response to that point?

11 A Yes. It seems strange to me that on the one hand Mr.
12 Bramlett says the County has no additional capacity, but
13 on the other hand, says that they have ample capacity to
14 provide the service directly themselves. Our water and
15 wastewater facilities are already interconnected and
16 place us in the best possible position to provide the
17 water and wastewater services to the areas proposed in
18 our application to the extent we are not already provid-
19 ing service there and yet the County is in effect
20 proposing to extend its lines into these areas and
21 effectively duplicate the facilities already existing
22 from Mad Hatter. To justify this, they suggest an
23 interpretation of the agreement for bulk service that
24 contrary to the language found in the agreement itself.

1 They suggest the County cannot provide capacity to Mad
2 Hatter while it has ample capacity itself to perform the
3 same function through separate and redundant lines. This
4 does not make any sense and is clearly contrary to the
5 public interest. Mr. Bramlett talks about extending
6 lines along State Road 54, however, there is a large gap
7 in the County's lines along Highway 54 where Mad Hatter
8 has existing facilities ample in size to serve those
9 areas not already served and proposed for service by Mad
10 Hatter. The County is preparing to run parallel lines
11 to those currently in existence and which have been in
12 existence for many years and owned by Mad Hatter. Along
13 U.S. 41, the County's water lines do not even cross south
14 of Highway 54 where the majority of Mad Hatter's
15 proposed extension areas exist. The only facilities
16 anywhere near this intersection is a very small well at
17 the northeast corner of these two main roads. It is
18 therefore at least one-half mile from the County's
19 existing water facilities to the closest area which Mad
20 Hatter is proposing to serve which Mad Hatter is not
21 already serving. Mad Hatter has existing facilities in
22 this area and once again any construction by the County
23 along these roads would be redundant to that currently
24 existing from Mad Hatter.

1 The County's wastewater system is also not as well
2 situated to serve those areas as is Mad Hatter. The
3 County's existing sewer lines only exist a very short
4 distance south of Highway 54 along this U.S. 41 corridor.
5 Once again, the proposed extension of these facilities by
6 the County to serve areas proposed for service by Mad
7 Hatter will be redundant to the existing facilities
8 already in this area owned and run by Mad Hatter for
9 several years.

10 Q Have you read Mr. Bramlett's response to your comment
11 concerning the County's aggressive campaign to extend
12 lines which duplicate those of Mad Hatter?

13 A Yes, I have.

14 Q Do you have any further comment in that regard?

15 A Only that Mr. Bramlett's answer totally evades the
16 question. My comment was that the County was extending
17 facilities into areas where Mad Hatter was currently
18 providing service and where the PSC had previously found
19 that Mad Hatter was in the best position to provide
20 service. At the time the Public Service Commission first
21 considered a major extension for Mad Hatter, approxi-
22 mately 8 years ago, the County came before the Commission
23 and proposed that the Commission not grant the additional
24 territory to Mad Hatter because the County wished to get
25

1 into the utility business in this area. At that time, the
2 County had no facilities anywhere near the service
3 territory. Based upon those facts, the Commission ruled
4 that Mad Hatter was in the best position to provide
5 service and as the Commission statute and rules required
6 at that time, told the Utility to go forward with the
7 extension of facilities to enable it to provide that
8 service. Despite this decision by the Commission in a
9 case in which Pasco County actively participated, the
10 County continued with its extension and duplication of
11 facilities adjacent to and parallel to those of Mad
12 Hatter. As can be seen from the comments of Mr. Bramlett
13 and the maps which he has provided, they are continuing
14 in their efforts to duplicate the facilities of Mad
15 Hatter to this day. The fact that Mr. Bramlett refers to
16 these actions by the County as "responsible" does not
17 change the fact that they are in duplication of Mad
18 Hatter's and plainly contrary to the findings of this
19 Commission about who was best able to provide service
20 approximately 8 years ago.

21 Q Concerning the Oak Grove subdivision, do you have any
22 response to the testimony provided by Mr. Bramlett?

23 A Yes. I have previously provided testimony in response to
24 Mr. Orsi's testimony and those responses are equally
25

1 applicable to Mr. Bramlett's testimony on this issue.
2 However, one additional comment made by Mr. Bramlett
3 requires separate response. He states that "to alleviate
4 that situation, the County told Mad Hatter to provide
5 service. However, Mad Hatter did not do so and thus,
6 Sunfield Homes asked the County for service which the
7 County has provided." Originally, in early 1994, the
8 County had informally told us that they agreed that this
9 area constituted our service territory and that we should
10 provide service. We received a letter to that effect
11 from the County Attorney in May of 1994. That is the
12 item that I have attached as Exhibit LGD-3. In approxi-
13 mately August of 1994, we signed the concurrency permits
14 for the developer to allow them to begin construction of
15 facilities, committing to provide the necessary water and
16 wastewater capacity as required by the County Development
17 Review Agency. Immediately thereafter, we began provid-
18 ing water service to the school site and continued doing
19 so for approximately one year. Then in June or July of
20 1995, we were informed by the school construction
21 superintendent that they were discontinuing the receipt
22 of water and wastewater service from Mad Hatter and that
23 they were to receive service from Pasco County on a
24 permanent basis. It is then that we began legal action to
25

1 stop service by the County to the school and to the Oak
2 Grove subdivision. Mr. Bramlett's suggestion that Mad
3 Hatter "did not" provide service is therefore ridiculous.
4 We were in fact providing that service at the time the
5 County entered into an agreement with the developer to
6 take over the provision of water and wastewater service.
7 If the County had maintained its position that Mad Hatter
8 was allowed to provide service as shown in the attached
9 letter and not interfered with such service, Mad Hatter
10 would be providing service to that territory now.
11 However, instead the County chose, without even consult-
12 ing Mad Hatter Utility, to invade that territory. The
13 Federal District Court has already found that the County
14 acted inappropriately and deprived Mad Hatter of its due
15 process rights by invading that territory without even
16 giving Mad Hatter the opportunity to address the County
17 Commission on this issue. It is still yet to be seen
18 whether the Federal Court will require the County to
19 remove its facilities from service to this area or
20 whether the Court will instead award Mad Hatter damages
21 for this invasion.

22 Q Mr. Bramlett talks about the reduction in bulk wastewater
23 rates that Pasco County recently enacted. Do you have
24 any comments with regard to this issue?
25

1 A Yes. First of all, I believe it is inappropriate for
2 this to be retried here. It is currently the subject of
3 a separate Commission docket which we are working to
4 resolve. Secondly, Mr. Bramlett states that Mad Hatter
5 has refused to pass the price reduction on to its
6 customers. In my opinion, this is simply another attempt
7 by Pasco County to divert blame from itself. For many
8 years, Mad Hatter Utility has operated at a loss. The
9 fact that we have a reduction in one cost does not
10 automatically mean we should reduce rates. We are
11 currently discussing that issue with the Commission and
12 its Staff to try and reach a resolution. In addition, it
13 should be noted that the County "discovered" that is was
14 charging too much to its bulk customers after its bulk
15 service customers had been telling it for many years that
16 the rates were unreasonable and too high. You would
17 think this would be obvious since those bulk rates were
18 higher than the retail rates. In fact, a suit by a
19 private utility is what led to the reduction in rates
20 charged to bulk service customers, not any benevolence by
21 Pasco County. I would note that Pasco County has never
22 offered to refund the monies to its bulk service custom-
23 ers for the many years it overcharged us as is indicated
24 by that rate study.
25

1 Q Mr. Bramlett speaks about credits to customers for impact
2 fees.

3 A Yes. Pasco County has stated that it is issuing credits
4 by not charging the \$1.00 impact fee surcharge on a
5 portion of the sewage treated by the County. However,
6 despite our repeated attempts, including written requests
7 for information concerning how the County came up with
8 the amount on which they do not impose this surcharge, we
9 have yet to receive an explanation from the County. We
10 cannot know to whom any such impact fee credits apply in
11 what amounts or even consider how they should be account-
12 ed for if we are not provided the information by the
13 County. In addition, the Public Service Commission
14 specifically recognized in our last rate order that any
15 such "credit" would be impossible to administer and, as
16 such, did not establish separate rate schedules. We
17 believe that the County should not charge the up-front
18 impact fee in order to make it easier both on the County
19 and on the Mad Hatter to properly bill in a non-discrimi-
20 natory manner. By doing this, we can then bill all
21 customers the same charges for wastewater service, since
22 that is all that the Utility can charge under its tariff.
23 Q Mr. Bramlett also raises the subject of the sale of the
24 Foxwood and Turtle Lakes percolation pond land. Do you
25

1 have any comments to provide in this regard?

2 A Yes. Once again, Mr. Bramlett is attempting to suggest
3 that the Utility has done something wrong without knowing
4 or at least not stating the facts. We are currently
5 involved in a totally separate docket on this matter and
6 it should not be tried a second time within this proceed-
7 ing. It should be noted, however, that the Utility did
8 not and could not achieve any gain on the disposition of
9 the former wastewater treatment plant lands and that has
10 been fully explained to the Public Service Commission
11 Staff and, in addition, no violation of the PSC order
12 occurred because no sale occurred. Mr. Bramlett is well
13 aware of these facts and was present through the three
14 federal trials at which these same allegations were
15 thoroughly discussed and refuted.

16 Q Do you have any comments concerning Mr. Gallagher's
17 testimony?

18 A No. My comments to Mr. Bramlett's testimony also relate
19 to those from Mr. Gallagher.

20 Q Do you have any further testimony to provide?

21 A Not at this time. However, I have attached three maps
22 showing the location of Mad Hatter's current certificated
23 service territory, color-coded in blue; with the areas
24 shown in pink where Mad Hatter is currently providing

25

1 service but which areas are not within its currently
2 certificated area; and then finally in green, showing
3 those areas applied for in this application which are not
4 being served at this time, but which Mad Hatter is in the
5 best position to provide service. These are attached as
6 Exhibit LGD-4. I have also enclosed copies of maps
7 (Exhibit LGD-5) prepared for the PSC Staff to show the
8 location of Mad Hatter's treatment facilities and major
9 transmission distribution and collection facilities to
10 demonstrate that Mad Hatter Utility has facilities
11 currently in place immediately adjacent to the areas not
12 already served and which place Mad Hatter Utility is in
13 a unique position to provide service to all of the
14 extension areas. I believe it should be plain to the
15 Commission and its Staff from a review of these maps that
16 Mad Hatter is in the best position to provide service to
17 all areas proposed in its application. It should also be
18 clear that the County's action in objecting to even those
19 areas where Mad Hatter is already serving and those where
20 Mad Hatter has lines immediately adjacent and where the
21 County has no facilities for some distance, is indicative
22 of an attitude by the County which has been shown to the
23 Federal Courts and on which the Federal Courts ruled in
24 Mad Hatter's favor, effectively finding that the County

1 had been, and continued to act inappropriately, and
2 effectively condemned the property of Mad Hatter in
3 addition to other illegal and inappropriate actions. No
4 only should the Commission recognize these facts as
5 recognized by the Federal Court, but they should not
6 allow Pasco County to retry the same case in a different
7 forum.

8 Q Have you investigated the possible availability of
9 financing for any required improvements including the
10 possible construction of wastewater treatment plant or
11 construction of other water facilities as needed?

12 A Yes, I have. We have recently financed all of our
13 outstanding debt with CoBank. We have thus far had a
14 very good relationship with CoBank and they have ex-
15 pressed an interest in meeting any financing needed that
16 the Utility may have in the future. I have specifically
17 obtained a letter from Mr. John Cole, Vice President at
18 CoBank, indicating a willingness to provide additional
19 financing to Mad Hatter as needed. This is attached to
20 my testimony as Exhibit LGD-6.

21 Q Do you have any further testimony in this regard.

22 A No, I do not.

23

24 mad\2testimon

25

1 MS. HALE: We'll have an objection as to
2 L -- the number 4 from -- the letter from CoBank.

3 COMMISSIONER DEASON: I'm sorry. Well, when
4 it's moved, then we'll entertain the objection.

5 MR. DETERDING: Tender the witness for
6 cross.

7 COMMISSIONER DEASON: Ms. Hale?
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1 CROSS EXAMINATION

2 BY MS. HALE:

3 Q Mr. DeLucenay, you do not deny that you told
4 Mr. Orsi that you want to drill a well on his property
5 in order to provide water service to the Oak Grove
6 subdivision; isn't that true?

7 A Yes. That is one of the topics of several
8 that were discussed with Mr. Orsi as a consideration
9 and anticipated need for the ultimate build-out of his
10 project.

11 Q And you requested that he give you \$100,000
12 in order to do that; isn't that correct?

13 A Yes. We talked preliminarily about that as
14 being one of the most cost-effective methods of
15 causing that capacity ultimately to come on line and
16 most cost-effective for the customers.

17 Q Now, you testified in your prefiled rebuttal
18 testimony that Mad Hatter did not refuse to guarantee
19 service to Sunfield Homes, correct?

20 A Correct.

21 Q But you knew when you were negotiating with
22 Mr. Orsi that Mad Hatter did not have the wastewater
23 treatment capacity for Oak Grove; isn't that true?

24 A I disagree with the way the question is
25 asked. I've testified previously that my opinion is

1 that the bulk agreement provides for additional
2 capacity, and that capacity was available. There
3 were, also, as I've testified to the Commission,
4 alternate sources of capacity that were never even
5 discussed because Mr. Orsi never came back to us with
6 any concerns.

7 Q Well, you knew you had exhausted your
8 capacity with the County, right?

9 A Not in my opinion, per Page 5 of the
10 agreement. I think it's subparagraph D.

11 Q Well, Mr. Orsi, if you weren't planning to
12 have Pasco -- I'm sorry. Mr. DeLucenay, if you
13 weren't planning to have Pasco County be the sole
14 provider of the wastewater services, why did you put
15 in the contract the following language? "Developer --
16 meaning Mr. Orsi -- shall be responsible for
17 determination of availability of capacity through
18 Pasco County, and service company makes no promise to
19 provide utility service in the event that Pasco County
20 refuses sewage treatment capacity.

21 A I believe that statement was in our two
22 previously approved, PSC-approved developer
23 agreements, and that is the standard wording in our
24 preliminary draft as it is in that one.

25 Q Now, you envisioned that Oak Grove would

1 generate 250,000 gallons a day; isn't that correct?

2 A I don't recall that number.

3 Q Well, that's the number in the contract, is
4 it not?

5 A I don't recall.

6 MS. HALE: Mr. Deterding, could you hand a
7 copy of the contract to the witness, please, if you
8 have one handy?

9 MR. DETERDING: Are you talking about the
10 contract attached to Mr. Hobby's testimony?

11 MS. HALE: Correct.

12 MR. DETERDING: (Handing document to
13 witness.)

14 Q (By Ms. Hale) Mr. DeLucenay, I direct your
15 attention to Page 11, paragraph 18 -- I'm sorry. That
16 is the wastewater -- I'm sorry -- water treatments.
17 You were anticipating 250,000 gallons, correct?

18 A No, ma'am. And I would point out for the
19 benefit of the record, that this is a handwritten note
20 on this particular copy of Mr. Orsi's, and this is not
21 my writing. It was not on the agreement or the
22 document when I conveyed this to Mr. Orsi. I don't
23 know where these numbers came from.

24 Q What number did you envision Oak Grove would
25 generate in terms of wastewater?

1 A I don't know that that had been discussed in
2 any lengthy detail. I do not remember any general
3 capacities at this time, and those types of things are
4 provided by the developer's engineer to us and
5 coordinated through DEP.

6 Q Well, if the County wasn't going to take any
7 more, and you've heard Mr. Kratz testify that he
8 wasn't going to take -- Windemere wouldn't take it,
9 and you've heard the Hillsborough County
10 representative testify that it was too expensive or
11 not cost-effective to send it to Hillsborough County,
12 you really didn't have any location to treat the
13 sewage from Oak Grove, did you?

14 A That's incorrect. At that time Pasco County
15 had not displayed the level of denial that they have
16 here during this proceeding. They had not denied us
17 capacity for that project, or any other as of that
18 time, to the best of my knowledge.

19 Q The Oak Grove subdivision is not attached on
20 that map that was attached to the 1992 agreement, is
21 it? You didn't color it in, did you?

22 A I'm sorry. I've declined to admit that I
23 colored any of that in. That's not my product. The
24 project reports exists on there, as it's outlined on
25 the map, but it is not colored, if that's what you

1 mean.

2 Q Well, where is your Exhibit 3, if that's not
3 Exhibit 3 to the contract, Mr. DeLucenay?

4 A I actually once before saw a different
5 Exhibit 3 that was presented by the County a couple
6 years ago, which was a County generated document. The
7 two documents that I have I've had an opportunity
8 review in my office, and they have no attachments to
9 them after they were executed by the County and sent
10 to our office for the file copy.

11 Q Well, you don't deny we went over this
12 earlier, Mr. DeLucenay, that your lawyer didn't even
13 object when that came into evidence in the federal
14 court trial, correct?

15 A We have discussed that before, yes.

16 Q Now, you testified in your rebuttal that
17 there is a large gap in the County's lines along State
18 Road 54 and that's one of the reasons why you believe
19 Mad Hatter is better able to serve the -- what I'll
20 call the extended territory, correct?

21 A It's one of the reasons, yes.

22 Q Sitting here in the last two days, you've
23 been aware, haven't you, that the County's lines along
24 State Road 54 will be done by July of this year?

25 A That's what I've heard in testimony.

1 Q Now, you've also heard Mr. Bramlett testify
2 in his prefiled testimony that the County's rates are
3 lower than Mad Hatter's rates. You're not able to
4 dispute that, are you?

5 A I'd have to let those rates speak for
6 themselves. I don't recall that portion of Bramlett's
7 testimony exactly.

8 Q Now, in your rebuttal you accused the County
9 of charging too much to its bulk customers after its
10 bulk service customers had been telling it for many
11 years that the rates were unreasonable and too high.
12 Do you remember saying that in your rebuttal
13 testimony?

14 A Vaguely.

15 Q And then you said a lawsuit by a private
16 utility led to a reduction in the rates, correct?

17 A That's my understanding, yes.

18 Q Well, that's a lawsuit filed by Jasmine
19 Utilities, wasn't it?

20 A I don't have that information in front of
21 me.

22 Q And Jasmine Utilities filed a lawsuit, but
23 that only concerned water; it didn't concern sewer
24 rates, did it?

25 A I don't recall what it is that you're

1 referring to at the time I looked at the information I
2 had available to me.

3 Q So when you said a lawsuit by a private
4 utility led to the reduction of rates, you don't even
5 know who filed that lawsuit?

6 A I'm sorry. As I'm sitting here, I don't
7 have anything in front of me that gives me the
8 information I had at that time.

9 Q Were you aware that the bulk rate study did
10 not find that the rates were too high, but only that
11 one cost should be absorbed by the one set of
12 customers rather than another set of customers?

13 A I understand that now after testimony, but
14 in my opinion, that's still saying the same thing.

15 Q Now, you acknowledge that the County and
16 Mad Hatter are in litigation with the developer Lake
17 Heron regarding the \$1.00 credit which Mad Hatter is
18 not passing on to its customers, right?

19 A There is a case such as that, yes.

20 Q And you've said in your rebuttal testimony
21 that you can't figure out to whom such credits apply;
22 is that correct?

23 A That is correct.

24 COMMISSIONER KIESLING: It would be helpful
25 if you could tell me pages, because he has 30-some

1 pages and I'm trying to follow along.

2 MS. HALE: The last is Page 21, Lines 9
3 through 13 of the rebuttal.

4 COMMISSIONER KIESLING: Thank you.

5 Q (By Ms. Hale) Mr. DeLucenay, I'm going to
6 hand you -- Mr. DeLucenay, I've just handed you a copy
7 of a bill from Pasco County to Mad Hatter Utilities;
8 isn't that correct?

9 A That's correct.

10 Q And on the far left-hand side it shows a
11 number of gallons at \$3.23 per gallon and another
12 number of gallons at \$2.23 per gallon, correct?

13 A That's correct.

14 Q Two pages later it has Sewer Impact Fee
15 Surcharge, and it has numerous pages listed of the
16 lots, addresses, personal ID numbers and subdivisions
17 for the lots which have paid the sewer impact fee
18 surcharge, correct?

19 A It does not specifically say that. It just
20 says "Sewer Impact Surcharge," period. It doesn't
21 give any explanation.

22 Q Well, you get these bills from Pasco County
23 on a monthly basis with this attached; isn't that
24 correct?

25 A I have received the last two invoices from

1 the County, most immediately with this partial
2 information on, and I would have to, in all fairness
3 to the Commission and Staff, say that I reviewed this
4 yesterday afternoon in my office, and the January bill
5 that I received from the County does not have all the
6 sheets that I was handed here today. And Pasco County
7 has refused, with written requests for support of
8 their difference in billing -- refused to give us any
9 communication or correspondence regarding that; and,
10 furthermore, being mailed this particular bill, it was
11 not accompanied by any explanation, phone call,
12 description, and there was no identification as to why
13 the \$2.00 -- two different dollar amounts are on here,
14 and there's certainly no correlation as to which of
15 these lots got how much of the pennies that are
16 credited.

17 Q So you immediately wrote a letter to Pasco
18 County saying, I don't understand the bill; correct?

19 A This has only happened in the last couple of
20 weeks.

21 Q Well, you told us the January bill had this
22 information attached, and you were confused as of
23 January, correct?

24 A No, ma'am, that's not what I said.

25 Q Well, the January -- what's the date on that

1 bill?

2 A 2/19/97.

3 Q So it's the February bill had that
4 information, correct?

5 A No, ma'am. What this bill is is for the
6 month of January. There is now a date of
7 February 19th, 1997, but before I could testify to the
8 fact that that's the date that I received the bill,
9 our office has a policy in dealing with Pasco County
10 to always attach the enclosed envelopes that we have
11 got the mailing date on it as well as stamping it into
12 our office. But the date on this in the upper
13 left-hand corner is 2/19/97.

14 Q All right. I'm back to my question,
15 Mr. DeLucenay. So as soon as you got this -- whether
16 it was on the 19th or the 20th or the 21st of
17 February -- and you were confused, so you immediately
18 wrote a letter to Pasco County saying, what is this
19 information. Is that what you did?

20 A I have not done that personally myself, no.

21 Q And when the March bill came, it contained
22 the same information; isn't that correct?

23 A I'm not aware that we've gotten a March bill
24 yet. I know that we've gotten a January bill and then
25 a February bill.

1 **COMMISSIONER KIESLING:** Do you suppose you
2 could get your cocounsel to hand out documents so that
3 you could continue?

4 **MS. HALE:** Yes. It would be a good use of
5 his efforts.

6 **COMMISSIONER KIESLING:** I thought so. Thank
7 you.

8 **Q** **(By Ms. Hale)** Mr. DeLucenay, I've just
9 handed you a bill which has got a March date on it.
10 That also reflects the same information, does it not?

11 **MR. DETERDING:** Excuse me. Are you going to
12 provide me copies of these things you're handing to
13 him?

14 **MS. HALE:** Yes, I'll get you one. If you
15 want to take a second --

16 **MR. DETERDING:** Well, I would like to, yes.

17 **COMMISSIONER KIESLING:** Did you provide
18 copies to Staff, also?

19 **MS. HALE:** I just told Ms. Capeless I'll
20 have to get her a copy. I had a shortage of copies.
21 I'll get her a copy, also.

22 **Q** **(By Ms. Hale)** I've just handed you the
23 March invoice, have I not, Mr. DeLucenay?

24 **A** That's correct.

25 **Q** And it also contains the same information,

1 does it not?

2 A The information contained appears to be the
3 same. Same type, same lacking of information as I
4 discussed earlier.

5 Q And you have not passed along these credits
6 to the customers, have you?

7 A That is correct. That's currently being
8 reviewed.

9 Q We've had some testimony about Mad Hatter
10 failing to notify the PSC of the sale of the Foxwood
11 and Turtle Lakes wastewater treatment plants. You've
12 testified in your rebuttal -- this is Page 22, Lines 7
13 through 12 -- that Mad Hatter did not fail to notify
14 the PSC because there was no sale. Isn't that
15 correct?

16 A That's correct, and that's subject to a
17 separate docket before this Commission.

18 Q And you would agree with me that those
19 plants, Foxwood and Turtle Lakes, were owned by
20 Mad Hatter, were they not?

21 A Foxwood and Turtle Lakes was owned by
22 Mad Hatter.

23 Q And Mad Hatter abandoned those plants when
24 it entered into the consent order with the DEP,
25 correct?

1 A That's correct. There again, it's all been
2 presented to this Commission in prior dockets.

3 Q And the PSC allowed Mad Hatter to pass along
4 the cost of the abandonment -- that's some \$400,000 to
5 its customers over eight years; isn't that correct?

6 A Only a portion of its abandonment.

7 Q And Mad Hatter agreed to notify the Public
8 Service Commission if the plants were sold; isn't that
9 correct?

10 A If they were sold by Mad Hatter; that's
11 correct.

12 Q If they were sold; isn't that correct,
13 Mr. DeLucenay?

14 A No, ma'am. If they were sold by Mad Hatter.

15 Q Mad Hatter entered into a contract with the
16 Van Dorsten Corporation to sell those lots, didn't it,
17 sell that property?

18 A Yes, it did; and that's been supplied to
19 Staff under a separate docket.

20 Q And that was assigned by Mad Hatter to your
21 and your wife, correct?

22 A I believe ultimately it was, yes.

23 Q And then you and your wife obtained a first
24 mortgage on the property from Barnett Bank, correct?

25 A That's correct; we bought the first

1 mortgage.

2 Q And then you filed a mortgage foreclosure
3 lawsuit against your own company, Mad Hatter, correct?

4 A That's correct.

5 Q And then you and your wife obtained a
6 judgment against Mad Hatter, correct?

7 A That's correct.

8 Q Then you and your wife sold the Foxwood and
9 Turtle Lakes property to Van Dorsten for \$195,000,
10 correct?

11 A Correct.

12 Q And Mad Hatter did not notify the Public
13 Service Commission of this transaction, did it?

14 A Mad Hatter did not notify the Commission of
15 the foreclosure, and there was no sale.

16 Q In your rebuttal you testified that
17 Mad Hatter is in the, quote -- this is Page 23, Lines
18 6 through 14 -- "in the unique position to provide
19 service to all of the extension areas," correct?

20 A Correct.

21 Q Isn't it true Mad Hatter has no water lines
22 to the Ash property?

23 A We have a water line stubbed for, I believe
24 it's B -- let me look in my exhibit. (Pause) As
25 previously testified to in great detail, B-25 has an

1 8-inch water main stubbed to the Ash property at the
2 southwest corner and so depicted in the exhibits. It
3 also has the force main that's stubbed on the south
4 side of 54 with a stub for it; and if you're talking
5 about the Ash parcel at C-10, the force main's
6 existing stub for that property, but does not
7 currently have a water line adjacent to it.

8 Q You've heard Mr. O'Connor's testimony about
9 Pebble Creek. You would agree that Pebble Creek
10 Utility is about five miles away from Mad Hatter's
11 points of connection?

12 A I believe Pebble Creek estimated it four
13 miles.

14 Q Well, you've heard Mr. O'Connor testify that
15 it would cost between 1,400,000 and 1,700,000 to
16 connect the two systems. You don't have any estimate
17 as to what it would cost to do that, do you?

18 A At this time I do not, no.

19 Q And you will agree it would require a jack
20 and bore under Interstate I-75 to do that?

21 A Yes, a standard jack and bore.

22 Q Well, you can't disagree with Mr. O'Connor's
23 assessment of the cost of hooking the two systems
24 together; isn't that true?

25 A I can't dispute -- no, I cannot dispute

1 Mr. O'Connor's cost, because I have no idea what
2 comprises his numbers or his points of connection as
3 he testifies to.

4 Q You've got no estimate of how much it would
5 cost Mad Hatter to connect to Hillsborough County
6 either, do you?

7 A That's correct; not at this date.

8 Q You say in your rebuttal testimony -- I'm
9 sorry. You say in your prefiled testimony you have
10 all these different options to treat the sewage;
11 Pebble Creek -- and you've testified about this not
12 only in the prefiled but other forums, too. You've
13 got Pebble Creek and Windemere; package plant, build a
14 wastewater treatment plant." Correct?

15 A Correct.

16 Q But you don't have any land to build the
17 wastewater treatment plant; isn't that correct?

18 A I believe that's been testified to by myself
19 at least three times previous in this hearing; that's
20 correct, other than as I detailed owning the Foxwood
21 wastewater treatment plant site currently.

22 Q And you've heard Dr. Kratz from Windemere
23 Utilities saying he won't take any sewage from Mad
24 Hatter, haven't you?

25 A I heard his statement, yes.

1 Q And you've heard the guy, Keith Templeman
2 from Hillsborough County saying it's not
3 cost-effective to connect; in fact they have never
4 connected a system seven miles away. Isn't that
5 correct?

6 MR. DETERDING: I think that's a
7 mischaracterization of Mr. Templeman's testimony.

8 COMMISSIONER DEASON: How is it
9 mischaracterized?

10 MR. DETERDING: He never said that they had
11 not connected a system seven miles away. He said they
12 had looked at systems up to 14 miles away and
13 determined that those were not cost-effective, but he
14 never said they had not connected a system seven miles
15 away.

16 That's my recollection, Commissioner, and I
17 apologize if that's incorrect, but I don't think so.

18 COMMISSIONER DEASON: Ms. Hale?

19 MS. HALE: It was my recollection he said
20 they had never connected as far away as four -- as
21 seven.

22 COMMISSIONER DEASON: Well, the record will
23 speak for itself. Ask him that, if that were his
24 testimony --

25 Q (By Ms. Hale) Assuming for a moment, that

1 Mr. Templeman testified that it would not be
2 cost-effective to connect a system seven miles away,
3 then it is not cost-effective for Mad Hatter to
4 connect to Hillsborough County; isn't that correct?

5 A I disagree with that. Mad Hatter's final
6 determination would be Mad Hatter's determination, not
7 Mr. O'Connor or Mr. Templeman.

8 Q But you don't know the cost of the
9 connecting, do you?

10 A Those are final engineering determinations
11 that reflect on that, as previously testified by other
12 witnesses.

13 Q Yes or no, Mr. DeLucenay. You don't know
14 what the cost of connecting to Hillsborough County is,
15 do you?

16 A That is correct; we do not know what the
17 exact cost is. Its final determination is determined
18 by the flow, pipe size.

19 Q Every single one of your plants,
20 Mr. DeLucenay, involves Mad Hatter at some time in the
21 future coming up with the money and the wherewithal to
22 connect or build another wastewater treatment plant.
23 But you've testified that there is an immediate need
24 for service, haven't you? Yes or no.

25 A I didn't understand the first part of that

1 question.

2 Q Every single one of these plans you've told
3 us about, connecting to Windemere and connecting to
4 Hillsborough County and building your own plant
5 connecting here and there all take money, wherewithal
6 and time, don't they, Mr. DeLucenay?

7 A Yes, that's correct; and that's just exactly
8 what Mad Hatter has experienced over the last 20 years
9 that we have been providing service satisfactory in
10 this area. Growth has always required the expenditure
11 of money, planning, coordination, permitting and
12 construction.

13 Q But you've also testified that there is an
14 immediate need for service in the extended territory;
15 yes or no?

16 A In my opinion, there is.

17 MS. HALE: Thank you. Nothing further.

18 COMMISSIONER DEASON: Staff?

19 MS. CAPELESS: Can we take a minute or two
20 break here to eliminate questions?

21 COMMISSIONER DEASON: We'll take five
22 minutes.

23 (Brief recess.)

24 - - - - -
25 COMMISSIONER DEASON: Call the hearing back

1 to order. Ms. Capeless?

2 MS. CAPELESS: Staff has just distributed
3 three more exhibits that we'd like to have marked.
4 The first one is a composite exhibit of correspondence
5 and responses to discovery consisting of 19 pages.

6 COMMISSIONER DEASON: That will be
7 identified as Exhibit 23.

8 COMMISSIONER KIESLING: Which one is it?

9 MS. CAPELESS: The one that has the word --

10 COMMISSIONER KIESLING: Which word is
11 underlined?

12 MS. CAPELESS: "Rebuttal testimony" is
13 underlined.

14 COMMISSIONER KIESLING: Thank you.
15 (Exhibit 23 marked for identification.)

16 MS. CAPELESS: The second one is the
17 composite with the word "deficiencies" underlined.
18 That's a composite of correspondence in responses to
19 deficiencies.

20 COMMISSIONER DEASON: 24.
21 (Exhibit 24 marked for identification.)

22 MS. CAPELESS: And then we have a late-filed
23 Deposition Exhibit No. 4.

24 COMMISSIONER DEASON: 25.
25 (Late-Filed Exhibit 25 identified.)

CROSS EXAMINATION

1

2 BY MS. CAPELESS:

3

Q Mr. DeLucenay, could you please take a few
4 moments to look through the materials that were just
5 handed out and marked as exhibits, and let us know if
6 they appear to be true and correct copies of what they
7 purport to be?

8

A Yes, Ms. Capeless, they appear to be
9 accurate.

10

Q Thank you. Now, Ms. Hale asked you a few
11 minutes ago whether you knew what the cost would be to
12 interconnect with Hillsborough County.

13

A Yes, ma'am.

14

Q And you said that you didn't know; is that
15 right?

16

A Well, I believe what we were on at that
17 particular time was the estimate of the force main
18 interconnecting and the exact distance of that force
19 main, the size of it and confirmation with
20 Hillsborough County the exact location of that
21 connection to make a cost estimate. And that's what I
22 did not know.

23

We do have by way of Mr. Hines' review, some
24 projected capacity numbers.

25

Q You're referring to what was marked

1 Exhibit 25?

2 A Yes, ma'am. I'm sorry Exhibit 25. So
3 inasmuch as we have a preliminary investigation of
4 that, we have those numbers; and putting the whole
5 package together and then trying to decide the
6 short-term, long-term utilization of Hillsborough
7 County is what would bring all that to a total number.

8 Q So you do agree, then, that there would be a
9 cost for reservation of capacity, correct?

10 A Yes. According to our preliminary
11 investigation, there would be.

12 Q And that would include a capacity fee and a
13 guaranteed revenue fee for --

14 A Yes, according to this. I did not
15 personally do this, so I can't speak firsthand on
16 that, but that's what Mr. Hines represents, some of
17 his contacts with the County in that document. So I'd
18 have to have that document speak for itself.

19 Q Thank you. Now, we also note that you've
20 provided us in response to discovery a quitclaim deed
21 as evidence of ownership for Cypress Cove 2. That's
22 on Pages 9 and 10 of what was marked Exhibit --

23 A 23?

24 Q 24.

25 A 24; I'm sorry. Which page again, please?

1 Q Pages 9 and 10.

2 A Yes.

3 Q Could you, as a late-filed exhibit, provide
4 us with either title insurance or an attorney's
5 opinion of title for the land upon which Cypress Cove
6 2 wastewater treatment plant is located?

7 A Sure.

8 MS. CAPELESS: May we go ahead, then,
9 please, and identify that late-filed exhibit as
10 Exhibit 26, titled Title Insurance for Cypress
11 Cove II?

12 COMMISSIONER DEASON: It will be identified
13 as Late-filed 26.

14 (Late-Filed Exhibit 26 identified.)

15 Q (By Ms. Capeless) We could also accept a
16 long-term lease for the land alternatively,
17 Mr. DeLucenay, if you would prefer, either of those
18 items as that Late-filed Exhibit 26.

19 Has Mad Hatter provided a deed or a
20 long-term lease to the land upon which the Linda Lake
21 Groves water treatment facility is located?

22 A It exists on an easement. It does not -- it
23 does not sit on a deeded piece of real estate. Never
24 has. It's part of a defunct platting of that original
25 subdivision. The developer is no longer alive or in

1 business.

2 The roadway -- the divided boulevard going
3 into the subdivision houses an easement in the center
4 where the original water plant was constructed in 1975
5 prior to us acquiring that system, and that was
6 never -- the roadway or the easements were never
7 accepted by the County and they were abandoned by the
8 original developer. So we're sitting in that
9 easement, have since 1975, in limbo.

10 Q Could you provide us with a copy of the
11 platting which shows the easement? Is it a perpetual
12 easement?

13 A I'd have to look at that in detail, but I'd
14 be glad to supply a plat. If I may grab my yellow
15 pad, please.

16 Q Okay. Thank you. Sure.

17 MS. CAPELESS: And may we please have that
18 identified as another late-filed exhibit titled
19 Easement for Linda Lake Groves?

20 COMMISSIONER DEASON: That would be
21 Exhibit 27.

22 MS. CAPELESS: Thank you.

23 (Late-Filed Exhibit 27 identified.)

24 Q (By Ms. Capeless) Mr. DeLucenay, on May
25 13th, which was yesterday, after the beginning of the

1 hearing Staff was hand delivered the legal description
2 for parcel A-3 and also for parcel C-10, and those are
3 included on Pages 48 and 49 of composite Exhibit 24;
4 is that right?

5 A Yes, ma'am.

6 COMMISSIONER KIESLING: What pages again?

7 MS. CAPELESS: 48 and 49.

8 MR. DETERDING: I've got two 48s and a 49.

9 MS. CAPELESS: Well, as long as you have
10 both of them. I didn't mean to include it twice.

11 MR. DETERDING: Well, they're different.

12 COMMISSIONER KIESLING: There are two
13 different pages both numbered 48.

14 MR. DETERDING: One of them is on the back
15 of the other.

16 MS. CAPELESS: I see. We probably
17 misnumbered. It's the second 48 that I'm referring
18 to.

19 WITNESS DELUCENAY: Yes, ma'am. I knew what
20 you meant.

21 Q (By Ms. Capeless) For parcel A-3, that's
22 the one on the second Page 48, that's in correct
23 quarter section format, but it appears that it doesn't
24 describe the parcel. It seems to us that it appears
25 to describe a portion of A-2 rather than A-3.

1 If you agree, could you provide us with a
2 late-filed exhibit of the legal description for A-3?

3 A I will try to investigate the accuracy of
4 that. I do know that A-3 and A-2 are common property
5 line. I do know that A-2 and A-3, to the best of my
6 knowledge, are very similar, if not exact, in
7 dimension and size.

8 Q Okay. Could you also, when you investigate
9 that, let us know whether -- if you decide that A-3,
10 the legal description is correct, let us know that.
11 But either way, would you also include for us an
12 engineering drawing with reference to township,
13 section and range, including all the distances and
14 angles labeled on the drawing so that we can follow
15 it?

16 A Yes, ma'am. This -- if I might explain for
17 a second -- where I derived this, this came from the
18 property owner in Mobile, Alabama, so I can recontact
19 him and see if he's got something more exact, or I can
20 attempt to research public file or record and see if
21 there's something additional there that's perhaps more
22 detailed.

23 Q Okay. Thank you.

24 MS. CAPELESS: And we've identified that as
25 Late-filed 28?

1 COMMISSIONER DEASON: Yes.

2 (Late-Filed Exhibit 28 identified.)

3 MS. CAPELESS: Thank you.

4 Q (By Ms. Capeless) Also for parcel C-10 for
5 the legal description there on the next page, Page 49,
6 we note that that's in meets and bounds format, but it
7 also appears to include several abbreviations that we
8 can't decipher. And we would request that you provide
9 us a late-filed exhibit of another version, a less
10 abbreviated version, if you will, of parcel C-10, and
11 if you would also include an engineering drawing for
12 that parcel, as well, with reference to township,
13 section, range and distances and angles labeled.
14 Could you do that?

15 A Yes, ma'am, I'll investigate that as well.

16 Q Thank you.

17 MS. CAPELESS: May we have that labeled
18 Late-filed Exhibit 29?

19 COMMISSIONER DEASON: Yes.

20 MS. CAPELESS: Thank you. And we'll call
21 that Legal for C-10.

22 (Late-Filed Exhibit 29 identified.)

23 Q (By Ms. Capeless) Mr. DeLucenay, in
24 response to Staff discovery requests, has the Utility
25 submitted detailed system maps for the following

1 parcels? And let me just state what those parcels
2 are. Do you know if a detailed system map has been
3 submitted for parcel A-3?

4 A A-3, we do not own any of the system lines
5 on site. They come into the Linda Lake Grove
6 subdivision to the water main for a meter. We don't
7 serve on site. It's a small tenant type, mobile home
8 community.

9 Q Did you provide a map concerning that mobile
10 home community, a detailed system map?

11 A We shared with the Commission, I believe,
12 the map on the Linda Lake Grove system, but of course
13 we do not have a map of the lines that we don't own
14 internal of that. That's Mr. Woodruff's lines. And
15 knowing the project, Mr. Woodruff probably doesn't
16 know where the lines are. It was built quite a few
17 years ago. It's not a formal mobile home community
18 setting.

19 Q Okay. How about for parcel A-4. Have you
20 provided a detailed system map for that parcel?

21 A There again, that's a single church. It's
22 only a three-quarter-inch water service. It's on an
23 existing water meter at the property line. There's
24 only a single three-quarter-inch water line that runs
25 from Linda Lake Grove subdivision to the church. We

1 don't own that line and we don't know where it runs on
2 site.

3 Q How about for B-21, the Robco property?

4 A That's the very same situation. They run a
5 three-quarter-inch water main out back of their
6 building from here to the wall there and tied in to a
7 meter. Actually, that was accomplished in 1976, and
8 that meter exists on our water plant site. So there
9 again, there's no system involved.

10 Q So you don't have a system map?

11 A No, ma'am, there's no -- there's really not
12 a system there. There's only a little
13 three-quarter-inch PVC line that we don't own or
14 maintain.

15 Q How about for parcel B-22, the Larreau
16 property?

17 A That's the very same situation. That
18 particular consumer, due to a dry well, laid poly tube
19 across the top of her back yard and came over to our
20 water plant site, and that's where the meter is
21 monitored. Again, there's no system that we own or
22 maintain.

23 Q How about for B-23, the Rusch Plaza?

24 A Rusch Plaza is the very same situation.

25 Q Is it the same situation for B-24, Kniff

1 property?

2 A We did supply drawings on where the water
3 mains and force mains exist on the north side of that,
4 yes, ma'am.

5 Q Okay. How about --

6 A As far as the actual service, it's merely a
7 standard meter connection at the northeast corner. So
8 there again, there's not a, quote, "system" involved.

9 Q How about for C-6, Twin Lakes?

10 A C-6, I believe we submitted the plans on
11 that in its entirety, because that included water
12 sewer and reclaimed. And I refer to C-6 as being the
13 main residential subdivision, not the commercial out
14 front. But I believe, also, the C-6 information that
15 was supplied included the water main, reclaimed line
16 and force main, as I depicted up here on the big
17 system map yesterday. And we -- since we own those
18 lines, they're all part of that main submittal that we
19 gave to you.

20 Q Did that also include the C-6A, the
21 commercial --

22 A Yes, ma'am. That's what I was saying. Yes.

23 Q Okay. And how about parcel C-7, Woodridge?
24 Did you supply --

25 A Woodridge, yes; we did supply you with a

1 detailed site drawing on that as well.

2 Q And C-8 Reiber?

3 A Yes.

4 Q You've supplied the map to --

5 A Yes, ma'am.

6 Q Thank you.

7 MS. CAPELESS: No further questions.

8 COMMISSIONER DEASON: Redirect?

9 MR. DETERDING: Yes.

10 **REDIRECT EXAMINATION**

11 **BY MR. DETERDING:**

12 Q I wanted to get a little clarification from
13 you on this map purporting to be Exhibit 3 to the
14 contract with the County. Does this map exclude any
15 parcels that are in Mad Hatter's service territory?

16 A The map itself does not exclude any areas --
17 the coloration is not on two of the larger areas that
18 are certificated.

19 Q Okay. And --

20 A If that makes my response more accurate.

21 Q It does. And where are those?

22 A The large parcel here, which is part of our
23 original certificated area, is titled Turtle Rock.
24 The area in Section 33, which we've discussed as being
25 Denham Oaks School and Oak Grove subdivision, is the

1 other area.

2 Q How long have those been part of
3 Mad Hatter's service territory?

4 A They were originally certificated by this
5 Commission in 1977 under a docket originated by Metro
6 Utilities. They were later transferred to Groveland
7 Developments and ultimately to Mad Hatter Utilities in
8 approximately 1988.

9 Q Is a part of the Village on the Pond
10 territory, as depicted in your LGD-4, also missing
11 from this?

12 A The area, the one area that is missing in
13 there is this parcel. (Indicating)

14 Q How about on the east side of that section;
15 is there something reflected on your LGD-4 that's not
16 shown on there?

17 A On the east side there -- on this particular
18 drawing there is a color omitted where there is
19 swampland and a few other things. And I can point to
20 it just for reference. (Indicating)

21 Q And -- okay. Is it conceivable you forgot
22 about those being in your certificate when -- in
23 preparing this map?

24 A Well, as I've said, I did not prepare this
25 particular map, so I don't know why the coloration

1 would or would not be on it.

2 Q Isn't the County's charge for water service
3 availability \$532 higher than Mad Hatter's?

4 A Yes, sir, it is.

5 Q And the sewer service availability charge is
6 the same for that, that is bulk service by the County?
7 Well, let me restate. That's a little confusing.

8 You don't collect a service availability
9 charge for --

10 A That is correct. Mad Hatter is not
11 authorized at this time to collect service
12 availability for wastewater or water.

13 Q So any customer who comes to you for sewer
14 service, to be receiving sewer service through those
15 systems that are bulk served by the County, pay their
16 charge directly to the County at this point?

17 MS. HALE: Objection. Leading question.

18 Q (By Mr. Deterding) Okay. Who do they pay
19 those charges to?

20 A It's my understanding that the direct
21 wastewater connection fee is collected by the County
22 at the County's option or discretion.

23 Q You were asked some questions about this
24 credit from Pasco County. Have you sent letters to
25 the County inquiring about the nature of this credit?

1 A Yes, we have; and on several occasions we've
2 even had additional phone conversations. And prior to
3 this material change, we've never gotten any courtesy
4 return phone call, written explanation, meeting or
5 anything regarding it; any -- there's just no detail.
6 There's no explanation to what it is.

7 Q And your attorney sent a letter to the
8 County in '94?

9 MS. HALE: Leading question.

10 WITNESS DELUCENAY: Yes, they did to the
11 best of my knowledge.

12 Q (By Mr. Deterding) Have you heard --

13 COMMISSIONER DEASON: Excuse me.

14 MR. DETERDING: I apologize.

15 COMMISSIONER DEASON: The question has been
16 asked. It's been answered. But this makes the second
17 objection concerning leading questions.

18 Mr. Deterding, be a little bit more diligent in the
19 phrasing of your questions.

20 MR. DETERDING: I will.

21 Q (By Mr. Deterding) Since those initial
22 inquiries, have you heard anything back from the
23 County concerning this?

24 A No. We've had absolutely no response from
25 the County at all.

1 Q When did you start receiving the types of
2 bills that Ms. Hale provided to you with -- in that
3 format?

4 A If I'm allowed to estimate, within the last
5 approximately 45 days, plus or minus.

6 Q Had you been asking for additional detail
7 previously?

8 A Yes. That's what part of our inquiry to the
9 County was. However, there is -- it was an inquiry of
10 explanation previous -- this Commission's previous
11 order provides for the fact that we're not required to
12 do Pasco County's accounting or administration on this
13 particular topic.

14 Q Were there any liens on the land that was
15 the former treatment plant property owned by
16 Mad Hatter?

17 A The effluent of Foxwood ponds, yes, there
18 was.

19 Q How were those in relationship -- how large
20 were those in relationship to the ultimate sales
21 price?

22 A All in excess. Total of -- in excess.

23 Q Was the sale of that land in any way
24 suggested to you by your lender?

25 A Yes. We had to liquidate a number of

1 different things to bring our ratios on different
2 topics back into compliance for their guidelines.

3 Q Did they specifically tell you to sell that
4 land?

5 A They said that we had to liquidate any of
6 the spare properties that we had to do the cash and
7 pay down the debt service that we had at the time,
8 yes.

9 MR. DETERDING: That's all I have.

10 COMMISSIONER DEASON: Exhibits?

11 MR. DETERDING: Move Exhibit 22.

12 COMMISSIONER DEASON: Without objection

13 Exhibit 22 is admitted.

14 (Exhibit 22 received in evidence.)

15 MS. CAPELESS: And Staff moves 23, 24 and

16 25.

17 COMMISSIONER DEASON: Without objection --

18 MS. HALE: The Staff exhibit, as with the
19 answers to interrogatories in it -- and I've lost
20 track of the numbering, I'm afraid.

21 COMMISSIONER DEASON: 23, 24 and 25 are --

22 MS. HALE: One of them has answers to
23 interrogatories in it.

24 MS. CAPELESS: 23.

25 MS. HALE: Is it 23? In those answers to

1 interrogatories, Mad Hatter has divulged some
2 conversations of settlement discussions, if you look
3 at Page 1, and that would not be admissible. And so
4 we're objecting to that provision -- those provisions
5 regarding Exhibit 23 being admitted into evidence.

6 MS. CAPELESS: Are you objecting to the
7 answer that Mad Hatter provided to Interrogatory
8 No. 38? Is that it?

9 MS. HALE: The first paragraph in response
10 to No. 38, reference to settlement negotiations.

11 MR. DETERDING: You want to strike the
12 second sentence of that paragraph 1?

13 MS. HALE: Yes, we would like to.

14 MR. DETERDING: That's fine with me.

15 COMMISSIONER DEASON: Well, it's Staff's
16 exhibit. It needs to be all right with Staff.

17 MR. DETERDING: I understand.

18 MS. CAPELESS: That's fine with Staff as
19 well.

20 COMMISSIONER CLARK: Let me ask you a
21 question, Ms. Hale. I recall when Mr. DeLucenay was
22 on direct examination the first time you asked
23 questions about the settlement.

24 MS. HALE: He brought up the settlement. He
25 brought it up as, "the County has offered us this and

1 this and this;" and I said to him "Didn't that occur
2 during a mediation; wasn't that unfruitful and didn't
3 the mediation stop?"

4 COMMISSIONER CLARK: So this was a
5 settlement that was a mediation?

6 MS. HALE: Correct; proposed settlement. I
7 also have an objection to Mr. Cole's letter and
8 that -- I'm also losing track of exhibit numbers.

9 MR. DETERDING: That was under Exhibit 22.

10 COMMISSIONER DEASON: Yes. And that has
11 been moved and admitted, but I did indicate that we
12 would take up your objection, so I'll reconsider that.
13 State your objection for exhibit -- first of all, let
14 me clarify. The language in question on Page 1 of
15 Exhibit 23, the second sentence of the first paragraph
16 is being stricken. It is not part of the admitted
17 exhibit.

18 And with that, Exhibits 23, 24 and 25 are
19 admitted, and we will go back and address Exhibit 22.

20 (Exhibits 23, 24 and 25 received in
21 evidence.)

22 COMMISSIONER DEASON: Ms. Hale?

23 MS. HALE: Exhibit 22 is hearsay, and under
24 Florida Administrative Code Rule 25-22.048(3), hearsay
25 is only admissible if it is used to supplement or

1 explain other evidence. This is not and, in fact, the
2 rule provides it shall not be sufficient in itself to
3 support a finding.

4 And that would be the case here. He's
5 trying to use this letter to support the finding that
6 Mad Hatter has the financial ability to serve the
7 extended territory, and the only evidence of that
8 would be Mr. Cole's letter, and Mr. Cole's letter is
9 hearsay.

10 COMMISSIONER DEASON: Mr. Deterding.

11 MR. DETERDING: I disagree wholeheartedly.
12 Mr. DeLucenay and Mr. Nixon have both provided
13 testimony about the ability of Mad Hatter to finance
14 and -- to obtain capital and to finance through loans
15 any needed expansion in the service territory. So it
16 is not standing out there by itself. In fact, it is
17 supplied as something that the bank provided to
18 Mr. DeLucenay to support his contention that he's able
19 to obtain that bank financing.

20 COMMISSIONER DEASON: Objection overruled.

21 Exhibit 22 will be admitted in its entirety.

22 (Exhibit 22 received in evidence.)

23 COMMISSIONER DEASON: Ms. Hale, you may call
24 your rebuttal witness. I'm sorry.

25 MR. DETERDING: The only witness left is

1 Mr. Rogers for Mad Hatter.

2 COMMISSIONER DEASON: I'm sorry.

3 - - - - -

4 EDWIN J. ROGERS

5 was called as a rebuttal witness on behalf of Mad
6 Hatter Utility and, having been duly sworn, testified
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. DETMENDING:

10 Q Mr. Rogers, please state your name and
11 employment address?

12 A My name is Edwin J. Rogers. And my
13 employment address --

14 COMMISSIONER KIESLING: Would you get closer
15 to the mike?

16 WITNESS ROGERS: My name is Edwin J. Rogers.
17 My employment address is 5514 7th Street, Zephyrhills,
18 Florida 33540.

19 Q And by whom are you employed?

20 A Tawson-Rogers Engineering.

21 Q And in what capacity?

22 A I am a principal and a partner and engineer.

23 Q Have you been retained by Mad Hatter Utility
24 to provide expert opinion in this proceeding?

25 A Yes, I have.

1 Q And did you prepare what has been labeled as
2 prefiled rebuttal testimony of Edwin J. Rogers, P.E.?

3 A Yes, I have.

4 Q Consisting of three pages, correct?

5 A That's correct.

6 Q If I asked you the questions contained
7 within that testimony today, would your answers be the
8 same?

9 A Yes, they would.

10 Q Did you also prepare two exhibits, EJR-1 and
11 EJR-2?

12 A That is correct.

13 Q And do you have any changes or corrections
14 to make to those exhibits?

15 A One minor correction. On the memorandum, I
16 guess it's EJR-1, I believe I referred to a
17 County-owned proposed pipeline as being 10 inches
18 when, in fact, it is proposed 12 inches, force main.

19 COMMISSIONER KIESLING: I'm sorry, I don't
20 know where you are referring to. You said EJR-1.
21 EJR-1 is your resume.

22 WITNESS ROGERS: Okay, I'm sorry. It must
23 be EJR-2, the memorandum. That would be the second
24 page -- the pages I believe are not numbered -- second
25 page, last paragraph. The County has a -- let's see.

1 Where is that? "The County proposes is 10-inch force
2 main along this alignment." It should be 12 inch.

3 Q (By Mr. Deterding) And the last paragraph
4 of the second page of the -- EJR-2. Okay. Any other
5 changes or corrections?

6 A No other.

7 MR. DETERDING: I request that Mr. Rogers'
8 rebuttal testimony be inserted in the record as though
9 read.

10 COMMISSIONER DEASON: Without objection, it
11 shall be so inserted.

12 MR. DETERDING: And EJR-1 and 2 be marked
13 for identification.

14 COMMISSIONER DEASON: It will be identified
15 at Composite Exhibit 30.

16 (Exhibit 30 marked for identification.)
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 960576-WS

MAD HATTER UTILITY, INC.

APPLICATION FOR AMENDMENT OF CERTIFICATE

NOS. 340-W AND 297-S IN PASCO COUNTY

PREFILED REBUTTAL TESTIMONY OF EDWIN J. ROGERS, P.E.

Q Please state your name and employment address.

A My name is Edwin J. Rogers. I am a principal in the engineering firm of Towson-Rogers Engineering, Inc., and my address is 5514 7th Street, Zephyrhills, Florida 33540.

Q Have you prepared a resume of your training experience in the engineering field related to water and wastewater utilities?

A Yes, I have. That is attached hereto as Exhibit EJ-1.

Q What is the purpose of your testimony here today?

A To provide some response to the direct testimony provided by Pasco County witnesses and to generally provide my professional opinion concerning the ability of Mad Hatter Utility, Inc. to provide water and wastewater service to the area proposed in this PSC application for extension of service territory. I have attached hereto a memorandum which I have prepared analyzing the facts and circumstances surrounding Mad Hatter's existing water and wastewater service to its current territory, those areas

1 where it is currently serving outside its territory and
2 its ability to serve all of those areas plus the addi-
3 tional proposed extension areas where no service is
4 currently provided. I have also addressed what will be
5 necessary for the Utility to do in order to meet these
6 needs for service. This analysis is contained in detail
7 in the attached Memorandum dated April 29, 1997, from me
8 to you as the Utility's counsel (Exhibit EJ-2) and the
9 statements therein are effectively my testimony on the
10 subject.

11 Q Have you drawn a conclusion as to Mad Hatter's ability to
12 serve in comparison to that of Pasco County?

13 A Yes. I believe that Mad Hatter is in the best position
14 to provide this water and wastewater service. This is
15 based upon an analysis of both the existing Mad Hatter
16 system and the existing County system and the fact that
17 Mad Hatter has facilities immediately adjacent to each
18 and every one of the proposed service territories where
19 they are not already providing service. To the extent
20 Mad Hatter Utility is already providing service, obvious-
21 ly Mad Hatter is in the best position to serve. Since it
22 has existing facilities, any proposal to provide service
23 through any other utility would involve duplication of
24 those existing facilities.
25

1 Q Do you have any other comments to provide in this regard?
2 A No. I do not.
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1 MR. DETERDING: And we tender the witness
2 for cross.

3 COMMISSIONER DEASON: Ms. Hale.

4 MS. HALE: Thank you.

5 CROSS EXAMINATION

6 BY MS. HALE:

7 Q Mr. Rogers, when you drafted your rebuttal
8 testimony, you reviewed two maps, the Pasco County
9 map, which was Exhibit 3 to the '92 agreement, and the
10 second map showing Mad Hatter's water and wastewater
11 lines; isn't that correct?

12 A I believe so. However, I believe that that
13 first map to which you are referring is actually not
14 the exhibit to the 1992 agreement, but rather a more
15 recent map.

16 Q Mr. Rogers, I took your deposition on
17 May 7, 1997; is that correct?

18 A That is correct.

19 Q And you were under oath that day?

20 A Yes, I was.

21 Q Did I ask you these questions, and did you
22 give me these answers, beginning on Page 3, Line 13.
23 "What did you review when you did your rebuttal
24 testimony?"

25 "ANSWER: I reviewed some maps of the Mad

1 Hatter Utility infrastructure and Pasco County
2 infrastructure and by that, I mean, water and
3 wastewater.

4 "QUESTION: And the Pasco County map that
5 you looked at regarding infrastructure, was that
6 Exhibit 3 to Mr. Bramlett's testimony?

7 "ANSWER: That was my belief, yes."

8 Do you remember me asking you that question?

9 A Indeed and, yes, that was my belief at the
10 time.

11 MR. DETERDING: If I may, there is a
12 difference between Exhibit 3 to the 1992 agreement and
13 Exhibit 3 to Mr. Bramlett's testimony. Exhibit 3 to
14 Mr. Bramlett's testimony is the document back here.
15 This is Exhibit 3 to the 1992 agreement.

16 MS. HALE: If I might continue on in this.

17 Q (By Ms. Hale) And then I asked you, "Tell
18 me what the second map was. I just have the first map
19 here."

20 "The first map is Exhibit 3 to the '92
21 agreement.

22 "What was the second map?

23 And you went on to say the second map is a
24 color coded map showing the water and sewer lines
25 owned by Mad Hatter."

1 Isn't that correct? Wasn't that your
2 answer?

3 A That indeed was my answer, but both of those
4 exhibits were Exhibits 3. You can understand my
5 confusion at that time. The map that I reviewed
6 resembled this map back here.

7 Q All right. On Page 4, I asked you the
8 following question; you gave me the following answer.
9 "A color coded map which was Exhibit 3 to the 1992
10 agreement between the County and Mad Hatter.

11 "ANSWER: That's correct."

12 A That was, to the best of my knowledge and
13 belief at the time. I understand that I was mistaken.

14 Q Now, when you did your rebuttal testimony,
15 you did not review any of the prefiled testimony from
16 the various DEP witnesses, did you?

17 A I reviewed prefiled testimony from Joseph
18 Squitieri of the FDEP.

19 Q You did not review Mr. Martinez or
20 Mr. Burghardt; is that correct?

21 A That's correct.

22 Q And you didn't review those because
23 Mr. DeLucenay didn't give you copies of those; is that
24 correct?

25 A I did not receive copies of those.

1 Q Now, you've got no independent knowledge to
2 reach your conclusions in your report, other than
3 looking at the two maps that you looked at, right?

4 A At the time of the report, that was correct.
5 Since then, I've had an opportunity to drive about the
6 area and take a look around. But outside of that, the
7 only documentation I've reviewed are the ones we've
8 just discussed.

9 Q Now, Mr. Bramlett testified in his prefiled
10 testimony that he would expect the flow from the
11 extended territory to be 1,226 gallons an acre. You
12 came up with 1,016 gallons an acre; isn't that
13 correct?

14 A That's correct.

15 Q But both numbers are acceptable, aren't
16 they?

17 A They're within generally accepted ranges for
18 engineering planning.

19 Q And isn't it true that any number up to
20 1,500 gallons a day is acceptable; isn't that correct?

21 A According to some sources, yes.

22 Q Now, there are 355.5 acres in the extended
23 territory?

24 A According to my calculations, yes.

25 Q And didn't we go over in your deposition

1 that that would mean at 1,500 gallons a day, that the
2 extended territory will generate 532,500 gallons a
3 day?

4 A That's correct. That must be qualified,
5 though. We heard testimony from a gentleman earlier
6 who talked about wetlands and so forth on his
7 property. Those would certainly have an impact on the
8 amount of density to which you could develop. But as
9 an outside high end range, I would say 1,500 for
10 fairly dense would be a number to use for planning.

11 Q So both your number and Mr. Bramlett's
12 numbers are valid, correct?

13 A I believe they are within acceptable ranges,
14 yes.

15 Q Now, you were under the belief that there
16 are 3,000 gallons of unused, uncommitted capacity at
17 the Linda Lakes plant?

18 A Did you say 3,000, I'm sorry?

19 Q Yes.

20 A Yes, I am under that belief.

21 Q So, obviously, the Linda Lakes plant is not
22 going to take a half million gallons a day to treat,
23 is it?

24 A That's correct.

25 Q So it's your believe, isn't it, that the

1 remainder, the 500,000 gallons a day, would be sent to
2 Pasco County for treatment?

3 A I believe that that is an option.

4 Q But don't you also understand that Mad
5 Hatter's committed capacity with the County is above
6 the 350,000 gallon limit in the contract?

7 A Yes, indeed. I am under the understanding,
8 though, that that contract has a provision for
9 additional service at the County's discretion.

10 Q Now, you are aware that the County's Land
11 O'Lakes plant has no additional capacity left, aren't
12 you?

13 A Yes. Testimony earlier today said that the
14 plant had a permitted capacity of 1 million gallons
15 per day and that's its committed capacity was
16 somewhere in the neighborhood of 1.305, which would
17 tend to lead me to believe that there is more
18 capacity -- or more flow committed to that plant than
19 it has capacity to treat.

20 Q And you don't know if there's any unused
21 capacity at the Wesley Chapel plant, do you?

22 A I don't know that at this time, no.

23 Q Now, assume for a minute that the County is
24 not willing to take any additional flow from Mad
25 Hatter.

1 A Okay.

2 Q If that's the case, wouldn't Mad Hatter have
3 to build its own sewage treatment plant to treat the
4 sewage?

5 A That would certainly be an option.

6 Q But you don't know of any specific parcels
7 of property that Mad Hatter owns to treat sewage, do
8 you?

9 A I don't know of specific parcels of
10 property. However, as a utility franchise, I believe
11 they have eminent domain capabilities. They can
12 condemn the land as they need it.

13 Q And pay for that?

14 A They would have to be able to pay for it.

15 Q Well, you're not telling the PSC that Mad
16 Hatter owns any land or leases any land on which to
17 build a wastewater treatment plant, are you?

18 A I'm not aware of any.

19 Q And you also can't tell us what the cost of
20 acquiring new land would be, can you?

21 A Land values vary and I haven't been called
22 upon to investigate that matter.

23 Q And you can't tell us how Mad Hatter would
24 pay for it because you don't even know what the cost
25 would be, correct?

1 A I've not been called upon to look into the
2 financial status of Mad Hatter, so I can't answer
3 that.

4 Q You don't know whether Mad Hatter's finances
5 could afford the purchase of additional land to build
6 a wastewater treatment plant, do you?

7 MR. DETERDING: I'm going to object. This
8 witness was not presented on the issue of their
9 financial ability, and he has not testified on this.
10 This is outside of scope of his direct testimony.

11 MS. HALE: His direct testimony is that Mad
12 Hatter is better capable of serving this area than
13 Pasco County is. The only way he has testified Mad
14 Hatter could do this, if the County won't accept the
15 sewage, is to build a wastewater treatment plant.

16 If that's the case, then I think we have a
17 right to examine the fact that he can't tell us
18 anything about how Mad Hatter would do that. It
19 undermines the basis for his opinion that Mad Hatter
20 is better able to serve.

21 MR. DETERDING: He has not attempted to
22 provide any information concerning their financial
23 ability to serve in his direct testimony.

24 COMMISSIONER DEASON: You can explore with
25 him from an engineering standpoint the need to build

1 additional facilities, but he is not being offered as
2 a financial expert to determine and give an opinion on
3 whether the Company has the means to obtain the
4 financing for such construction. So to the extent
5 you're exploring that, I'm going to sustain the
6 objection.

7 Q (By Ms. Hale) Now, in your rebuttal
8 testimony, Mr. Rogers, you say that Mad Hatter has
9 facilities immediately adjacent to each and every one
10 of the proposed service areas; isn't that correct?

11 A That was in my testimony, that is correct.

12 Q But you were not aware, were you, that Mad
13 Hatter had no sewer service to lot B-24, were you?

14 A Lot B-24 would be which lot? Refresh my
15 memory.

16 Q B-24.

17 A There is a system to the east of U.S.
18 Highway 41 that I believe is commonly termed "the
19 Foxwood system" by Mad Hatter Utility. And it is my
20 understanding that there is a force main, which is
21 stubbed across U.S. 41 to that parcel, that could be
22 utilized.

23 Q It would have to be extended, wouldn't it?

24 A I believe it's right there at the property,
25 that's my belief.

1 Q Now, you said in your report that Mad Hatter
2 could serve Lake Como, which is the Mossview property,
3 but you don't know where that sewage would be treated,
4 do you?

5 A It would be, to the best of my knowledge,
6 either through provision from the County in their bulk
7 service agreement that that additional flow could be
8 bulked to the County at the County's discretion, or
9 Mad Hatter Utility could condemn properties as
10 necessary in order to build their own wastewater
11 treatment system.

12 Q Well, that's not going to Linda Lakes plant,
13 is it? That flow from Lake Como couldn't go to Linda
14 Lakes, could it?

15 A It's my opinion that the size of the Lake
16 Como parcel makes it primed to generate more flow than
17 the Linda Lakes wastewater plant can handle at this
18 time.

19 Q Because Linda Lakes has got 3,000 gallons of
20 capacity left?

21 A That's correct.

22 Q And Lake Como is going to generate more than
23 100,000 gallons of sewage a per day, is it not?

24 A There's a possibility it could at build-out.
25 However, properties such as that are typically built

1 out in phases, and were Mad Hatter to serve that, they
2 could do a step-wise phased expansion of a wastewater
3 facility in order to meet those needs as they arose.

4 Q Now, when you put this report together, you
5 were not aware that the County has come down U.S. 41
6 to Lake Como and was putting Paradise Lakes on line.
7 In fact, put Paradise Lakes on line last week, were
8 you?

9 A I wasn't aware of that at the time I gave
10 testimony, prefiled testimony. No, I was not.

11 Q Mr. Rogers, you've testified you looked at
12 this map when you made your report; is that correct?

13 A I did.

14 Q And that map does show that there were lines
15 going down, proposed and actual, down to the Lake
16 Paradise, doesn't it? Paradise Lakes?

17 A I believe the green dashed line indicates a
18 proposed County force main, yes. However, when I
19 reviewed the map, I was not aware of the schedule that
20 that was to be installed. It's now my understanding
21 that it has been installed.

22 Q Now, Paradise Lakes is about three quarters
23 of a mile from Lake Como; is that correct?

24 A It appears to be about three quarters of a
25 mile.

1 Q So if the County had hooked up Paradise
2 Lakes on line last week, the County is very close to
3 providing sewer service to Lake Como; isn't that
4 correct?

5 A Three quarters of a mile is relatively
6 close. However, I'm aware that, in fact, North Fork
7 Professional Center is actually in the certificated
8 area for Mad Hatter. And I'm aware of the fact that
9 they are served by Mad Hatter. And their property
10 immediately abuts and is adjacent to Lake Como. And I
11 believe that positions Mad Hatter even closer still to
12 Lake Como than the County.

13 Q Well, Mr. Rogers even if Mad Hatter could
14 collect the sewage from Lake Como, it's got no way to
15 treat it; isn't that correct?

16 A Again, through --

17 Q Yes or no, Mr. Rogers? Yes or no? No way
18 to treat it.

19 A Today?

20 Q Today.

21 A Right now?

22 Q Right now.

23 A Right now, no.

24 Q Now, Paragraph 3, Page 2 of your report, you
25 say "The County does not have lines that extend east

1 of Collier Parkway as does Mad Hatter."

2 A I'm sorry, could you direct me to that
3 location again?

4 Q Paragraph 3, Page 2 of your report.

5 A Yes, I stated that.

6 Q Okay. When you wrote this report, you were
7 obviously not aware that the county lines east of
8 Collier Parkway would be completed in July of this
9 year, were you?

10 A I was aware that lines were proposed as they
11 were noted on the map. However, I was not aware of
12 the projected completion date for those lines.

13 Q And you made no efforts to determine the
14 completion dates?

15 A Since then, I've had an opportunity to drive
16 in that area, and I have noticed that there is indeed
17 pipe stacked in the right-of-way there. It looks like
18 it is ready to be installed. The product is there.
19 It looks like it has not been installed as yet.

20 Q Now, you put in your report on Page 3 -- and
21 this is the first full paragraph -- I'm quoting you
22 now "Expansions are made carefully and prudently as
23 the Utility would be imprudent to construct
24 significant expansions in advance of a demonstrated
25 demand," correct?

1 A That's correct.

2 Q So if there's a demand, then the Utility
3 would be prudent to construct significant expansions;
4 isn't that correct?

5 A Absolutely.

6 Q But you don't know of any major expansions
7 Mad Hatter has done in the past 10 years, do you?

8 A To the water or the wastewater utility?

9 Q Either.

10 A I have no personal knowledge of any
11 expansions, no.

12 Q Now, when you did this report, you were not
13 aware of the fact that the County was putting a
14 12-inch water main down U.S. 41, correct?

15 A To the extent that it is noted on the map, I
16 knew that there was one proposed.

17 Q When I took your deposition, Mr. Rogers, on
18 May 7th, do you remember my asking you these questions
19 and you giving these answers. Page 22, Line 10.
20 "Were you aware that the County is putting a 12-inch
21 water main down 41?

22 "ANSWER: What are the limits of that?

23 "QUESTION: Are you aware of any 12-inch
24 water line being placed by the County along 41?

25 "ANSWER: I don't recall at this time."

1 A I still don't know of any that are -- when
2 you say "is putting," I'm not aware of any that are
3 being put at this time. I just don't know. They show
4 up on the map as proposed.

5 Q Now, in your report you say that Mad Hatter
6 could feasibly serve the commercial tract C-6A in the
7 Twin Lakes subdivision; isn't that correct? That's
8 Paragraph 3 of the last page of your report.

9 A That's correct.

10 Q But you don't know what's going to be built
11 on tract C-6A, do you?

12 A No, I do not.

13 Q And you don't know what the water usage for
14 that tract will be, do you?

15 A I do not know.

16 Q Now the last page of your report refers to
17 the national trend toward privatization; isn't that
18 correct?

19 A That's correct.

20 Q You're not aware of any public utility
21 plants that went private in Pasco County, are you?

22 A I'm not aware of any.

23 Q And you are not aware of any in Hillsborough
24 County or Pinellas County, are you?

25 A No, I'm not.

1 Q In fact, you're not aware of any trend in
2 the entire State of Florida toward privatization of
3 water and sewer service, are you?

4 A No, I'm not aware of any.

5 Q In fact, Mr. Rogers, don't you just think
6 that a lot of politicians give lip service to the
7 notion, privatization; and you were not even referring
8 to water or sewer service when you made that comment,
9 true?

10 A I believe that's a direct quote from my
11 deposition, yes.

12 Q Now, you already testified that Mad Hatter
13 has no existing treatment capacity beyond what you
14 think is 3,000 GPD, correct?

15 A That's correct.

16 Q Now, we've already established that the
17 extended territory is going to have sewage amounting
18 to approximately a half million gallons a day, give or
19 take?

20 A Give or take.

21 Q But you concluded Mad Hatter was in the best
22 position to treat this area, correct?

23 A Yes, I did.

24 Q Now, there's no way Mad Hatter could treat a
25 half million gallons of sewage a day now, is there?

1 A How did you reach that conclusion? Through
2 the acquisition of lands and construction of
3 wastewater treatment plants, Mad Hatter absolutely
4 could serve the areas that are indicated.

5 Q Today there is no way Mad Hatter can treat a
6 half million gallons a day?

7 A I'm not sure there's a need to today. As
8 these parcels begin to develop and there's a
9 demonstrated demand through developer agreements
10 and --

11 Q Mr. Rogers, just yes or no. Mad Hatter, can
12 it treat a half million gallons of wastewater a day
13 now?

14 A No.

15 Q Now, you've got no doubt, do you, when the
16 County goes on line with a 3 million gallon wastewater
17 treatment plant, that the County will have significant
18 capacity to treat the sewage, right?

19 A It should, yes.

20 Q And there would be a 3 million -- any 3
21 million gallon plant would be sufficient to treat this
22 area, would it not?

23 A Yes, it would.

24 Q So if the County has lines that run through
25 this area to collect the sewage, then the County is in

1 a good position to serve this area; isn't that
2 correct?

3 A They would be indeed.

4 Q So you really can't say that Mad Hatter is
5 in a better position to serve this area than the
6 County, can you?

7 A I can because Mad Hatter's lines are in the
8 ground already. They are immediately abutting the
9 properties that are requested. They can collect the
10 sewage right now without construction of additional
11 lines, and if the service could be bulked to the
12 County for treatment, absolutely, Mad Hatter could
13 serve the areas requested.

14 Q Mr. Rogers, do you remember my taking your
15 deposition on May 7, 1997, and giving me this answer
16 in response to this question. Page 29, Line 9. "So
17 sitting here today you really can't say that Mad
18 Hatter is in a better position to serve this area than
19 the County, can you?" Your answer was, "no."

20 A That was after --

21 Q Mr. Rogers, did you give that answer in
22 response to that question?

23 A I gave that answer, yes.

24 Q Thank you.

25 MR. DETERDING: And the witness should be

1 allowed to expound on his answer once he answers yes
2 or no instead of cut off.

3 Q (By Ms. Hale) If Mad Hatter were to build
4 a wastewater treatment plant, as you have suggested in
5 your testimony, that would be a duplication, would it
6 not, of the County's service in this area and the
7 County's wastewater treatment facilities?

8 A I believe, as I stated in my deposition, the
9 County's proposed plant is further west -- further
10 east, I'm sorry, of this location. Presumably they
11 could take in flows generated further east of that
12 plant. And in that regard, it would not necessarily
13 be a duplication.

14 Q It could be a duplication, couldn't it,
15 Mr. Rogers?

16 A Were there more than one plant serving the
17 same area providing more capacity than was needed,
18 that would be a duplication.

19 MS. HALE: No further questions.

20 COMMISSIONER DEASON: Staff.

21 MS. CAPELESS: No questions.

22 COMMISSIONER DEASON: Exhibits -- I'm sorry,

23 redirect.

24 MR. DETERDING: Yes, just a couple of

25 questions.

REDIRECT EXAMINATION

1
2 **BY MR. DETERDING:**

3 **Q** Mr. Rogers, would it be prudent for a
4 utility who expected a build-out of its service
5 territory of 500,000 additional gallons to have that
6 sitting there waiting for that build-out?

7 **A** No, it would not.

8 **MR. DETERDING:** That's all I have.

9 **COMMISSIONER DEASON:** Exhibits.

10 **MR. DETERDING:** Move Exhibit 30.

11 **COMMISSIONER DEASON:** Without objection,
12 Exhibit 30 is admitted.

13 I believe that concludes all of the
14 witnesses with prefiled testimony. Very well. I
15 think there is a lady who's been waiting patiently to
16 address the Commission. If she'll come forward. I
17 think she's already been sworn.

18 Ma'am, if you'll please take a seat there
19 where the other witnesses have been testifying, and
20 give us your name, and your address, and then proceed
21 with your statement.

22

23

24

25

NORMA KOEBERNIK

1
2 appeared as a witness and testified as follows:

DIRECT STATEMENT

3
4 A My name is Norma Koebernik,
5 K-O-E-B-E-R-N-I-K, 1725 Spinning Wheel Drive, Lutz,
6 Florida. It's Carpenters Run subdivision.

7 I do want to thank you all for sticking
8 around a few more minutes, and I'll try to make it a
9 brief statement.

10 I do want to call your attention to one
11 fact. I am president of the homeowner association of
12 Carpenters Run. I have been coming to various
13 meetings and testifying for the past five years. This
14 is not new. It's kind of discouraging because whether
15 it's a gas pipeline or a DOT road or Public Service
16 Commission or rates or whatever, we frequently are not
17 advised. And in this instance, had I not seen a
18 three-line article in the newspaper when I was reading
19 it last night, I would not know of the meeting today.
20 And I've taken the time off to come.

21 Homeowner Associations notoriously rely upon
22 others to do their work for them. We have a board of
23 directors. They serve without any compensation of any
24 type, money, services, or whatever. In turn we are
25 large enough that we also have a property manager that

1 we rely upon. And I know you don't need to hear a lot
2 of it, so I'm going to keep it basically on an
3 homeowners association level.

4 In the five and a half years that I've lived
5 at Carpenters Run, as a personal customer of Mad
6 Hatter, the water smells bad, tastes bad, if you put
7 it in a glass, it looks bad, etcetera. The second
8 part of the problem is water pressure. And the third
9 problem is that I believe the lines are insufficient
10 for the development that we have in our own community,
11 which is 536 single family residences.

12 The other portion is that at the time that I
13 moved in, we were told we wouldn't have reclaimed
14 water. We were told that the gray line would be
15 something forthcoming, and as this has gone on and on
16 through the years now, we go back and we blame, this
17 is a developer that didn't put the line in, therefore,
18 we'll never have recycled, reclaimed water for use.

19 We are charged on the basis of water that
20 comes in through our meter and assume that that same
21 gallon reading will go out through the meters for
22 sewage. The reason that I want to bring this fact up
23 is the fact that if you use the water to water the
24 lawn, wash the car, or whatever, you are still paying
25 as though it went out the sewer.

1 We had a recent development, strictly
2 association. We have a clubhouse; tennis court; pool;
3 a restroom, one for men and women each, which would be
4 our equivalent probably to just an average household.
5 We budget \$234 a month for a water bill, water/sewer.
6 Our bills were running 209, 223, 211, 217, and
7 suddenly, bong, we went up to 635.

8 Having a property manager handling these
9 things for us, we asked Sterling Management,
10 Incorporated, get in touch with Mad Hatter, let's see
11 if we misread the meter. You know, what's the
12 problem? May be it's gone haywire and out and
13 whatever; see what we can do.

14 When the bills exceeded 1,000 two months
15 later, and it still was not anything resolved, we
16 decided there definitely is a leak. The leak turned
17 out to have been five leaks that were in and around
18 the swimming pool area, which we had repaired.

19 This started in late October of '96, and as
20 of this time, after numerous phone calls by Sterling
21 Management to Mad Hatter office and at least three
22 letters -- I was able to get a copy of one that I
23 happen to have in my own file. The latest date I have
24 is March 24, 1997, we have not had the courtesy of a
25 returned phone call or response to the various

1 correspondence. We are asking for a consideration or
2 possibly an adjustment. The bill that was at 1,000,
3 over 700 of that was for sewer fees, when we obviously
4 know nothing went in the sewer.

5 It's a small association as far as numbers
6 go, 536. Our fees are very minimal. Roughly \$250 a
7 year which is for everything, you know, your lights,
8 and your roads, your landscaping, and your upkeep and
9 so forth. We don't have the money to look at bills
10 that are in excess of \$2,000 to \$3,000 over and above
11 what we are anticipating.

12 Now the reason I think it's important for
13 you to know, because our question is, and residents
14 that come to our meetings ask, if they can't take care
15 of us, how is it they can take care of the subdivision
16 going in next door to us? And that's mine exactly.

17 If we don't have water pressure now, are we
18 going to have it later? If they don't respond to
19 phone calls or correspondence -- as an individual
20 business person you wouldn't stay in business long.
21 Being a utility, you don't go shop down the street and
22 see if somebody's got a better product, we're stuck
23 with it. But we are paying more because it's going
24 through Mad Hatter than if we were dealing directly
25 with Pasco, and I'd like for you to take those things

1 into consideration. Thank you.

2 COMMISSIONER DEASON: Questions? Mr. Hale?
3 Mr. Deterding? Staff?

4 MS. CAPELESS: No questions.

5 COMMISSIONER DEASON: I have a question.
6 Did you contact the Commission concerning your request
7 for a rebate or refund of the sewer charges?

8 WITNESS KOEBERNIK: Not to my knowledge.
9 The property manager that we have, which is Sterling,
10 and the individual's name happens to be Mr. Emerson,
11 is on a two-week vacation. I do not know if he, in
12 fact, after this point of time -- I know every month
13 at our board meeting we're after him; what have you
14 heard, what have you done.

15 And it's, you know, I've called, I've
16 talked, I've left messages, I've written letters. But
17 at this point in time, I cannot respond to that. But
18 I do not know of him contacting them directly.

19 COMMISSIONER DEASON: Well, let me advise
20 you that that is a possibility. We have Staff
21 personnel here sitting at the table to my left, and
22 you may inquire of them, and they may can give you
23 some assistance in that regard.

24 WITNESS KOEBERNIK: Thank you.

25 COMMISSIONER DEASON: Thank you, ma'am. Any

1 final matters?

2 MS. CAPELESS: Before we adjourn,
3 Commissioner, I think it would probably be a good idea
4 to establish a deadline for the filing of the
5 late-filed exhibits. We would suggest perhaps a
6 two-weeks deadline. A two-weeks deadline, if
7 possible, that would make the late-filed exhibits be
8 due to be filed by May the 28th.

9 COMMISSIONER DEASON: Mr. Deterding.

10 MR. DETERDING: I don't have a problem with
11 that, Commissioner. Some of these might take a little
12 work, especially the latter ones. The first two, we
13 could probably provide them as early as the end of the
14 week, perhaps. We'll do what we can to get whatever
15 we can in early, but two weeks for all.

16 COMMISSIONER DEASON: Very well. Any other
17 matters?

18 MS. CAPELESS: Nothing further from Staff.

19 COMMISSIONER DEASON: Any of the parties
20 have any final matters before we adjourn? Thank you.
21 This hearing is it adjourned.

22 (Thereupon, the hearing concluded at
23 5:16 p.m.)

24 - - - - -
25

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

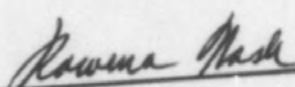
CERTIFICATE OF REPORTERS

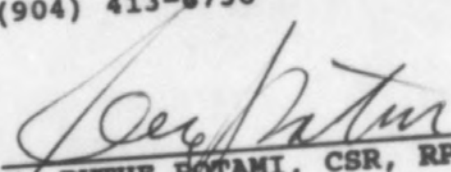
3 We, ROWENA NASH and RUTHE POTAMI, CSR, RPR,
4 Official Commission Reporters,

5 DO HEREBY CERTIFY that the Hearing in Docket
6 No. 960567-WS was heard by the Florida Public Service
7 Commission at the time and place herein stated; it is
8 further

9 CERTIFIED that we stenographically reported
10 the said proceedings; that the same has been
11 transcribed under our direct supervision; and that
12 this transcript, consisting of 640 pages, Volumes 1
13 through 4, constitutes a true transcription of our
14 notes of said proceedings and the insertion of the
15 prescribed prefiled testimony of the witnesses.

16 DATED this 23rd day of May, 1997.

17 
18 ROWENA NASH
19 Official Commission Reporter
20 (904) 413-6736

21 
22 H. RUTHE POTAMI, CSR, RPR
23 Official Commission Reporter
24 (904) 413-6732
25