

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: APPLICATION OF MAD HATTER
UTILITY, INC. FOR AMENDMENT OF
WATER AND WASTEWATER CERTIFICATES
IN PASCO COUNTY, FLORIDA

DOCKET NO. 960576-WS

**PASCO COUNTY'S RESPONSE TO MAD HATTER'S
CROSS-MOTION FOR RECONSIDERATION**

Pasco County, through its undersigned counsel, hereby responds to Mad Hatter's cross-motion for reconsideration of the Commission Order No. PSC-97-1173-FOF-FS (Order) issued on October 1, 1997, as follows:

ADDITIONAL WASTEWATER CAPACITY

1. Mad Hatter objects to the Commission's interpretation of the parties' 1992 bulk wastewater agreement because the Commission correctly concluded that the agreement limits Mad Hatter to 350,000 gallons per day (GPD). (R. 331, 1. 19-24). The Commission has refused to re-write the contract as Mad Hatter has requested. It is undisputed that Mad Hatter has exceeded its 350,000 GPD cap with the County. (R. 333, 1. 8-15; R. 90, 1. 8-21). Thus, the County need not accept any additional wastewater from Mad Hatter. Furthermore, the County need only treat sewage

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from the areas described on the map attached to the contract. (R. 331-332). Most of the territory which Mad Hatter seeks to add to its certificates of authorization (the extended territory) lies outside the area described on the map.

2. In contending that the Commission should require the County to accept additional wastewater from Mad Hatter, the utility quotes a portion of the parties' agreement. Mad Hatter's interpretation of the contract is contrary to the express language of the agreement which only requires the County to accept wastewater in excess of 350,000 gallons per day unless the County has additional capacity "as determined by the County." (Composite Exhibit 11 at p. 5). Pursuant to the agreement, Mad Hatter's wastewater is treated at the County's Land O'Lakes wastewater treatment plant which has exceeded its permitted capacity. (R. 514).

3. In its cross-motion for reconsideration, Mad Hatter accuses Pasco County of providing service to areas within the extended territory for which Mad Hatter claims it has agreements to provide service. Those agreements, if they exist, are not in the record for this docket. Furthermore, the County's request to supplement the record to notify the

Commission that the County had entered into an agreement for a portion of the extended territory was denied.

4. Despite Mad Hatter's contention to the contrary, the Commission correctly interpreted the parties' bulk wastewater treatment agreement.

OTHER SOURCES OF WASTEWATER CAPACITY

1. Mad Hatter accuses the Commission of failing to consider the alternatives Mad Hatter allegedly has to the County's treatment of its wastewater. Mad Hatter is requesting that the Commission extend its territory to areas which all parties agree need service but for which Mad Hatter has no present ability to serve nor any prospect of such service in the foreseeable future.

2. The extended territory will generate between 532,500 and 436,000 GPD of wastewater. (R. 333, l. 18-22; R. 618, l. 25; R. 619, l. 1-10). Mad Hatter only has a permit from the Florida Department of Environmental Protection to operate the Linda Lakes wastewater treatment plant which is at 100% committed capacity. (R. 125, l. 21-25). Larry DeLucenay, the president of Mad Hatter, acknowledged in his testimony that Mad Hatter does not have the capacity to treat the sewage in the extended territory

today. (R. 67, 1. 2-12, 20-25; R. 68, 1. 1-7). He also acknowledged it can take a year and a half of planning to provide wastewater treatment services to a development. (R. 70, 1. 2-6).

Furthermore, Mad Hatter has failed to show that it owns the land upon which it seeks to treat and dispose of the sewage as required by Rule 25-30.036(3)(d), Florida Administrative Code. Several witnesses testified extensively during the public hearing that Mad Hatter cannot currently provide service to all of the area within its current certificated territory. (R. 11-13, R. 16-17; R. 20-32). Clearly, it has no ability to provide service outside its current territory.

2. Mad Hatter contends in its cross-motion for reconsideration that it provided evidence at the public hearing that it could obtain capacity from alternative sources in the future. For example, Mad Hatter contended it might connect its lines to the Pebble Creek treatment plant. (R. 585, 1. 8-15). However, that alternative is not economically viable as it would cost between \$1.4 million and \$1.7 million for Mad Hatter to connect its system to the Pebble Creek treatment plant. (R. 515, 1. 3-10). Mad

Hatter also suggested that it might connect to Hillsborough County's wastewater treatment system. Hillsborough County would not do so unless Pasco County agreed to entering into an interlocal agreement. (R. 432-433). Furthermore, it would take seven miles of pipe to connect Mad Hatter to the nearest Hillsborough County treatment plant which would be cost prohibitive. (R. 432-433). Finally, Mad Hatter claimed it might send its sewage to Windemere Utility Co. (R. 585, l. 8-15). Windemere has refused to accept any additional sewage from Mad Hatter. (R. 288, l. 18-21).

3. Mad Hatter ignores the requirements of the Florida Administrative Code which requires that it have the financial and technical ability to provide service to the extended territory. Rule 25-30.036(3)(b). It further ignores the provision that requires that it own the land beneath the proposed treatment facilities that will serve the extended territory or provide an agreement, such as a 99-year lease, for the continued use of the land. Rule 25-30.036(3)(d). Mad Hatter also failed to provide a written description of the proposed methods for effluent disposal. Rule 25-30.036(3)(g). In addition, it failed to provide a proposed method of financing the construction and failed to

project the economic impact on the utility's capital structure. Rule 25-30.036(3)(1). Finally, the Commission may not extend Mad Hatter's territory if the extension will result in Mad Hatter competing with or duplicating any system or portion thereof unless the Commission first determines that the other system is inadequate to meet the reasonable needs of the public or the person operating the system is unable, refuses or neglects to provide reasonably adequate service. Fla. Stat. §367.045(5)(a). The Commission has not found that Pasco County is unable, refuses or neglects to provide service. In fact, the Commission found that the County is providing adequate service to meet the reasonable needs of the public.

WATER TREATMENT CAPACITY

1. Mad Hatter suggests in its cross-motion for reconsideration that the Commission divide the water and wastewater service between Pasco County and Mad Hatter which is clearly contrary to the public interest. Separate water and wastewater service would result in the customers receiving two bills each month. It would also require each utility to read the customers' water meters, an expense which would undoubtedly be absorbed by the customers. In

the alternative, the County could depend upon Mad Hatter's meter readings but again the cost of re-running the information would be passed on to the customers. Thus, splitting the water and sewer service between the County and Mad Hatter would result in higher rates.

2. Mad Hatter contends it has sufficient capacity to provide additional water to the extended territory. However, the Commission noted in its Order that staff witness, Milton Martinez, had only found that Mad Hatter could serve an additional 565 connections. Mad Hatter has not provided any evidence that the Commission was in error.

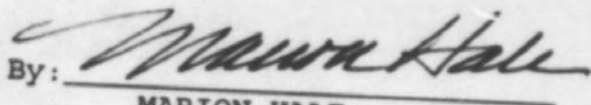
3. Mad Hatter further contends that the Commission in the past has granted to the utility additional service territory based upon the facility's ability to expand its existing facilities. Mad Hatter ignores the fact it has failed to provide any concrete plan or any substantive evidence that it has the ability to expand its existing facilities.

WHEREFORE, Pasco County requests that the Commission deny Mad Hatter's cross-motion for reconsideration.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been served upon Blanca S. Bayo, Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399; Roseanne Gervasi, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399, and F. Marshall Deterding, Rose Sundstrum & Bentley, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301, by regular U.S. mail this 31st day of October, 1997.

JOHNSON, BLAKELY, POPE,
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