

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Mad Hatter Utility, Inc. for violation of Order No. PSC-97-0790-FOF-WSPSC-93-0295-FOF-WS.

DOCKET NO. 961471-WS

In re: Initiation of limited proceeding for possible wastewater rate reduction for Foxwood/Turtle Lakes System for Mad Hatter Utility, Inc. in Pasco County

DOCKET NO. 970125-WS
ORDER NO. PSC-97-0790-FOF-WS
ISSUED: July 2, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER SETTING LIMITED PROCEEDING AND
SHOW CAUSE DOCKET FOR HEARING

BY THE COMMISSION:

BACKGROUND

Mad Hatter Utility, Inc., (MHU or utility) is a Class B utility located in Lutz, Florida. The utility is located in the Northern Tampa Bay Water-Use Caution Area, as designated by the Southwest Florida Water Management District. MHU owns and operates water and wastewater systems in three separate communities: Linda Lakes, Foxwood, and Turtle Lakes. According to MHU's 1995 annual report, MHU serves 1,890 water customers and 1,804 wastewater customers.

MHU's last rate case was finalized by Order No. PSC-93-0295-FOF-WS, issued February 24, 1993, in Docket No. 910637-WS. In that Order, we recognized the loss associated with MHU's abandonment of the Foxwood and Turtle Lakes wastewater plants, including land, and allowed recovery of the loss in rates over a period of eight years. The Order further required the utility to report to this Commission

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any future sale of this abandoned land and any proposed rate reduction resulting therefrom.

In November, 1996, we received information which indicated that this land had been sold; however, MHU had not reported any sale of the land to the Commission pursuant to Order No. PSC-93-0295-FOF-WS. By Order No. PSC-97-0140-FOF-WS, issued February 11, 1997, we ordered MHU to show cause in writing why it should not be fined \$5,000 for violation of Order No. PSC-93-0295-FOF-WS. On March 3, 1997, the utility filed its response to the show cause order.

UTILITY'S RESPONSE TO SHOW CAUSE ORDER

In its response to the show cause order, the utility essentially contends that MHU has not violated Order No. PSC-93-0295-FOF-WS, as no sale of the Foxwood treatment plant property ever occurred. Instead, the utility argues, the land was simply foreclosed on by Mr. Larry DeLucenay, President and shareholder of MHU.

By Order No. PSC-93-0295-FOF-WS, we recognized the loss associated with the abandonment of the Foxwood and Turtle Lakes plants, including the land, and allowed MHU to recover this loss through its rates over a period of eight years. That loss is still being recovered in current wastewater rates. The Order also required MHU to report to this Commission any future sale of this abandoned land and any proposed rate reduction resulting therefrom. Order at p. 4. The pertinent language of Order No. PSC-93-0295-FOF-WS states, "The utility shall report to the Commission any future sales of abandoned land and shall also report any proposed rate reduction resulting therefrom."

The utility explains in its response that disposal of the land was a condition precedent to obtaining a refinancing of the utility's then existing debt. However, because the land was encumbered by liens which exceeded the sales price of the land, foreclosure by Mr. DeLucenay was the only method by which clear title to the property could be obtained in order to dispose of the property. After the foreclosure, Mr. DeLucenay was then able to sell the property to a third party pursuant to a land sales contract assigned to Mr. DeLucenay by MHU. Therefore, the utility asserts, MHU did not violate the requirements of Order No. PSC-93-0295-FOF-WS in that the utility did not sell the property. In other words, the utility does not believe that the language in the order requiring the utility to report "any future sale of abandoned land" to the Commission included a foreclosure and subsequent sale of the land by Mr. DeLucenay. Therefore, the utility believes it

had no duty under the Order to report the foreclosure and sale by Mr. DeLucenay. Finally, to the extent that we determine either that the utility has violated the provisions of Order No. PSC-93-0295-FOF-WS, or that a limited rate proceeding is appropriate in order to adjust the utility's rates as a result of the foreclosure of the property by a related party, the utility in its response requests a hearing on this matter pursuant to Section 120.569 and 120.57(1), Florida Statutes, to allow it to present formal evidence supporting the allegations contained in its response.

We interpret the utility's request for a hearing in its response to the show cause order as a conditional or contingent request for a hearing. We find that a contingent or conditional request for a hearing is not appropriate in this instance.

Under the show cause procedure set out in Order No. PSC-97-0140-FOF-WS, if the utility files a timely written response that raises material questions of fact and requests a hearing pursuant to Section 120.569, Florida Statutes, further proceedings may be scheduled before a final determination on this matter is made. We believe that the utility's allegations in its response to the show cause order sufficiently state a disputed issue of material fact, i.e. whether a "sale" within the context of Order No. PSC-93-0295-FOF-WS did occur such that the utility was then under an obligation to report the transaction to this Commission. Therefore, because we believe the utility's response raises a disputed issue of material fact, we find it appropriate to schedule this matter for a hearing.

Furthermore, because the issues involved in Docket No. 970125-WS arise from the same disputed issues of material facts, we find it appropriate to schedule that docket for hearing concurrently with this matter.

These dockets shall remain open pending disposition of the hearing.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that this matter shall be scheduled for hearing. It is further

ORDERED that Docket No. 970125-WS shall be scheduled for hearing concurrently with this matter. It is further

ORDERED that these dockets shall remain open pending disposition of the hearing.

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By ORDER of the Florida Public Service Commission, this 2nd
day of July, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.