

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment  
of Certificates Nos. 340-W and  
297-S in Pasco County by Mad  
Hatter Utility, Inc.

DOCKET NO. 960576-WS  
ORDER NO. PSC-97-1004-FOF-WS  
ISSUED: August 22, 1997

The following Commissioners participated in the disposition of  
this matter:

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

ORDER DECLINING TO CONSIDER THE INFORMATION CONTAINED IN PASCO  
COUNTY'S "MOTION TO SUPPLEMENT THE RECORD"

BY THE COMMISSION:

BACKGROUND

Mad Hatter Utility, Inc. (MHU or utility), is a Class A utility located in south central Pasco County, Florida, which is 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 its 1996 annual report, MHU serves approximately 2,013 water and 1,940 wastewater customers with combined annual operating revenues of \$1,361,504 and a combined net loss of \$77,418.

On July 19, 1994, MHU filed requests for approval of two special service availability contracts; one with AFI, Inc. (VOPII), and the other with Lake Heron, which were processed in Dockets Nos. 940760-WS and 940761-WS, respectively. By Order No. PSC-94-1603-FOF-WS, issued December 27, 1994, in both dockets, the Commission approved both service availability contracts.

MHU also filed, in both dockets, proposed revised water and wastewater tariff sheets nos. 3.0 through 3.18, describing certain territory which the Commission found was not within the utility's certificated area. Consequently, by Order No. PSC-94-1603-FOF-WS, the Commission denied approval of the proposed revised tariff

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sheets. The Commission also found that MHU was serving outside of its certificated territory in violation of Section 367.045(2), Florida Statutes. However, the Commission did not believe it necessary to require the utility to show cause as to why it should not be fined for this violation. Instead, the Commission required MHU to file an amendment application within sixty days in order to request to serve the territory that it was already serving without a certificate.

MHU filed a timely protest to the order which it later withdrew prior to hearing. By Order No. PSC-96-0172-FOF-WS, issued February 7, 1996, in Docket No. 940761-WS, the Commission acknowledged the utility's notice of withdrawal of protest, declared Order No. PSC-94-1603-FOF-WS to be final and effective, and required the utility to file an amendment application within ninety days. The utility complied by filing, on May 8, 1996, the amendment application which is at issue in this docket.

In its amendment application, the utility seeks to include in its Certificates Nos. 340-W and 297-S, the uncertificated territory that it is currently serving as well as certain adjacent territory which it is not currently serving. On June 13, 1996, Pasco County (County) filed an objection to the application and a petition for administrative hearing on the matter, stating, among other things, that the County will soon provide service to certain of the parcels included in MHU's amendment application. Consequently, a prehearing conference was held on May 5, 1997, in Tallahassee, and a formal hearing was held on May 13-14, 1997, in Pasco County. The parties filed post-hearing statements and briefs on June 30, 1997.

#### MOTION TO SUPPLEMENT THE RECORD

On June 30, 1997, the County filed, among other things, what it titled a "Motion to Supplement the Record." The record in this docket was made at the hearing held on May 13-14, 1997, in Pasco County. By its filing, the County seeks to notify us of post-hearing negotiations between the County and potential customers concerning service within certain portions of the territory at issue in this docket. The County also seeks to notify us of its intent to provide the service to those portions, and suggests that we may wish to take this matter into consideration in making our post-hearing decision on MHU's amendment application.

On July 9, 1997, MHU filed a Response in Opposition to Motion to Supplement the Record, arguing that the motion should be denied

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because the record in this matter is closed and there is nothing in the Commission rules, the Uniform Rules of Procedure, or the Florida Administrative Procedure Act to authorize a supplementation of the record in the form and manner requested by the County. Moreover, the prehearing order issued in this case could not be more clear as to what post-hearing procedures should be followed. The County's filing represents an attempt to place before the Commission the result of an after-the-fact negotiation which would constitute newly created evidence. Contrary to its due process rights, MHU will have no opportunity to conduct discovery on, cross-examine, or rebut the assertions and materials contained therein. Moreover, the information is hearsay and is totally uncorroborated in the record. Finally, MHU asserts that the County's filing is nothing more than a signal to the Commission, based upon a tortured interpretation of City of Mount Dora v. JJs Mobile Homes, Inc., 579 So. 2d 219 (Fla. 5th DCA 1991), that the County intends to serve certain of the parcels at issue in this docket whether MHU or the Commission likes it or not.

We preliminarily note that although the County's filing is titled a "motion to supplement the record," it contains no prayer for relief of any kind. Nor does the body of the "motion" contain a request that we take any type of action. Rather, as noted above, it merely notifies us, in advance of our decision on the merits of this case, of its intent to serve within certain portions of the territory at issue. Accordingly, we find that because no action has been requested, none is necessary.

Moreover, we agree generally with MHU, and we therefore decline to consider the County's filing when we rule upon the merits of this case. The filing falls outside of the record of this case, and the County does not request that we conduct an evidentiary hearing in order to admit the information as evidence. The filing contains documents which have not been authenticated as required by the Florida Rules of Evidence, and, as MHU points out, information upon which parties and staff have not had an opportunity to conduct discovery, to cross-examine, or to rebut. Thus, even if we were to construe the County's filing as a true motion to supplement the record, as the title of the filing suggests, the motion would have been denied.

This docket shall remain open in order for us to rule upon MHU's amendment application at an upcoming agenda conference.

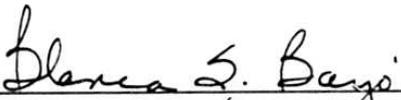
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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the information contained in Pasco County's "Motion to Supplement the Record" shall not be considered in an upcoming ruling upon the merits of Mad Hatter Utility, Inc.'s, amendment application. It is further

ORDERED that this docket shall remain open pending a ruling upon the merits of Mad Hatter Utility, Inc.'s, amendment application.

By ORDER of the Florida Public Service Commission, this 22nd day of August, 1997.

  
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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.