

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of) DOCKET NO. 940761-WS
special service availability) ORDER NO. PSC-96-0172-FOF-WS
contract with Lake Heron in) ISSUED: February 7, 1996
Pasco County by MAD HATTER)
UTILITY, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER ACKNOWLEDGING NOTICE OF WITHDRAWAL OF PROTEST, DECLARING
ORDER NO. PSC-94-1603-FOF-WS TO BE FINAL AND EFFECTIVE, AND
REQUIRING UTILITY TO FILE AMENDMENT APPLICATION WITHIN 90 DAYS

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 1994 annual report, MHU serves 1,838 water customers and 1,704 wastewater customers.

On July 19, 1994, MHU filed requests for approval of two special service availability contracts; one with "AFI, Inc. (VOPII)" (AFI), which was processed in Docket No. 940760-WS, and the other with Lake Heron, which was processed in the instant docket. 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, both in Docket No. 940760-WS and in the instant docket, certain proposed revised tariff sheets containing revised territory descriptions, which filings were unrelated to the utility's requests for approval of the aforementioned special service availability contracts. Specifically, the utility filed proposed revised water and wastewater tariff sheets nos. 3.0

DOCUMENT NUMBER-DATE

01356 FEB-7 96

FPSC-RECORDS/REPORTING

through 3.18, describing territory which, by Order No. PSC-94-1603-FOF-WS, the Commission found is not within the utility's certificated area. The utility based these revised territory descriptions on Order No. 20067, issued September 26, 1988, in Docket No. 870982-WS. By Order No. PSC-94-1603-FOF-WS, the Commission found, among other things, that "[w]e expressly stated in [Order No. 20067] that we were not granting the utility any additional territory or amending certificates at that time." Consequently, the Commission denied approval of the proposed revised tariff sheets.

Moreover, by Order No. PSC-94-1603-FOF-WS, the Commission found that MHU is currently serving outside of its certificated territory in violation of Section 367.045(2), Florida Statutes. However, the Commission did not believe it necessary for the utility to show cause as to why it should not be fined for this violation. Instead, the Commission ordered MHU to file an amendment application to include the uncertificated territory which it is currently serving by February 28, 1995.

On January 17, 1995, MHU filed, in the instant docket, an objection to Order No. PSC-94-1603-FOF-WS, to the extent that the Order rejects proposed revised water and wastewater tariff sheets nos. 3.0 through 3.18 and directs the utility to file an amendment application to serve the uncertificated territory which it is currently serving by February 28, 1995. On September 26, 1995, Pasco County (County) filed a Motion to Intervene. The County's motion was granted by Order No. PSC-95-1317-PCO-WS, issued October 27, 1995. On October 3, 1995, MHU filed a Proposed Offer of Settlement. The utility's Proposed Offer of Settlement was rejected by Order No. PSC-95-1521-FOF-WS, issued December 7, 1995.

This matter was set for formal hearing on December 15, 1995, in Tallahassee. However, because on December 14, 1995, MHU filed a Notice of Withdrawal of its protest of Order No. PSC-94-1603-FOF-WS and cancellation of all further proceedings in this docket, the hearing was not held as scheduled.

Notice of Protest Withdrawal

In its Notice of Withdrawal of its protest of Order No. PSC-94-1603-FOF-WS, MHU states that it has expended substantial monies in extending its services to areas outside its service territory in reliance upon Order No. 20067. The utility states that it believes it has provided the Commission with ample proof that it has complied with the requirements of that order, which would entitle it to an amendment of its certificated territory under the terms of that order and the then existing statutes and rules. The utility

further states that it is apparent that the Commission will not recognize such compliance nor even provide language in its orders to help the utility protect its investment and its certificated service territory from invasion by another utility, despite the fact that such invasion may seriously impair the utility's ability to recover its investment in facilities authorized by the Commission in Order No. 20067. For these reasons, the utility does not believe that the likelihood of its receiving an amendment to its certificated territory in this proceeding warrants the cost of proceeding further under this docket.

Moreover, the utility notes that by Order No. PSC-94-1603-FOF-WS, the Commission required it to file an amendment application in order to incorporate within its certificates all territory that it currently serves. Because of litigation demands placed upon the utility in the next two months, the utility requests that the Commission grant it 120 days, or a minimum of 90 days, in which to file the amendment application.

We note the utility's above-described concerns for informational purposes. With regard to the utility's belief that we will not recognize its compliance with Order No. 20067 nor even provide language in our orders to help the utility protect its investment and its certificated service territory from invasion by another utility, we assume the utility refers to its Proposed Offer of Settlement, which was filed in this docket and rejected by way of Order No. PSC-95-1521-FOF-WS, issued December 7, 1995. By that order, we fully explained why we declined to issue an order containing certain language drafted by the utility in exchange for a withdrawal of the utility's protest to Order No. PSC-94-1603-FOF-WS.

We also note that on December 8, 1995, the utility informed us of its failure to give written notice of the date, time, location and purpose of the December 15, 1995, hearing to each of its customers who are served within the territory at issue. By Order No. PSC-95-1383-PCO-WS, issued November 7, 1995, in this docket, pursuant to Rule 25-22.0405, Florida Administrative Code, the prehearing officer ordered the utility to give notice of the hearing to these customers no less than fourteen days prior to the first day of the hearing, or by December 1, 1995. On Friday, December 8, 1995, the Prehearing Officer instructed the utility to either send the notices via First-Class Mail that same day or hand-deliver them to the customers the following Monday and Tuesday, December 11-12, 1995, and to give notice by publication, as well, or face penalty for its failure to provide the notice as previously ordered. Instead, on Monday, December 11, 1995, the utility informed our staff of its intention to withdraw its protest and to

ORDER NO. PSC-96-0172-FOF-WS
DOCKET NO. 940761-WS
PAGE 4

file the new amendment application, as ordered by Order No. PSC-94-1603-FOF-WS.

Because MHU indicates its willingness to file an application for amendment of its certificates to include those portions of the territory at issue which it is currently serving, we find it appropriate to acknowledge the utility's Notice of Withdrawal. Order No. PSC-94-1603-FOF-WS shall be made final and effective as of January 16, 1996. We note that by Order No. PSC-94-1603-FOF-WS, the Commission required the utility to file an amendment application within sixty days. We believe that a ninety-day, May, 1996, deadline should allow the utility ample time in which to prepare and file the application, notwithstanding the utility's litigation demands during the next two months. Therefore, the utility shall file an amendment application to include those portions of the territory at issue which it is currently serving within ninety days of the issuance date of this Order, which is the minimum amount of filing time which the utility has requested.

This docket shall remain open until the utility files its amendment application, which shall be processed in a new docket. If the utility files the amendment application within the deadline imposed by this Order, this docket shall be closed administratively.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Mad Hatter Utility, Inc.'s, Notice of Withdrawal of its protest of Order No. PSC-94-1603-FOF-WS is hereby acknowledged. It is further

ORDERED that Order No. PSC-94-1603-FOF-WS is hereby declared to be final and effective as of January 16, 1996. It is further

ORDERED that Mad Hatter Utility, Inc., is hereby required to file an amendment application as described within the body of this Order within ninety days of the issuance date of this Order. It is further

ORDERED that this docket shall remain open until Mad Hatter Utility, Inc., files an amendment application as described within the body of this Order, which application shall be processed in a new docket. It is further

ORDERED that if Mad Hatter Utility, Inc., files an amendment application as described within the body of this Order within the deadline imposed herein, this docket shall be closed administratively.

ORDER NO. PSC-96-0172-FOF-WS
DOCKET NO. 940761-WS
PAGE 5

By ORDER of the Florida Public Service Commission, this 7th
day of February, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Jeyan
Chief, Bureau of Records

(S E A L)

RGC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.