

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

MARCH 6, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (CAPELESS) *PSC/CS*
DIVISION OF WATER & WASTEWATER (BRADY, REDEMANN) *pp* *AA*

RE: DOCKET NO. 960576-WS - MAD HATTER UTILITY, INC. -
APPLICATION FOR AMENDMENT OF CERTIFICATES NOS. 340-W AND
297-S *bb*
COUNTY: PASCO

AGENDA: MARCH 18, 1997 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\960576WS.RCM

DOCUMENT NUMBER-DATE

02425 MAR-65

FPSC-RECORDS/REPORTING

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CASE 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 1995 annual report, MHU serves approximately 1,890 water and 1,804 wastewater customers with combined annual operating revenues of \$1,298,700 and a combined net operating income of \$41,215.

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 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. Consequently, the matter is

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set for a formal hearing on May 13-14, 1997. No other objections were received.

However, during the pendency of this proceeding, staff has become aware that one parcel included in the amendment application which MHU is not currently serving is in need of immediate water and wastewater service. The parcel known as Lake Linda Circle Mobile Home Park (Lake Linda Circle) is being expanded from the existing 12 lots to a total of 26 lots. In order to receive the necessary permits from the Florida Department of Environmental Protection (DEP), Lake Linda Circle is required to connect to a community water distribution system and a central wastewater treatment facility and to abandon its private well and individual septic tanks. Lake Linda Circle's engineering firm designed the expansion to connect to MHU's facilities with the understanding that the County had no nearby facilities. As the project neared construction, it came to the engineers' attention that Lake Linda Circle was not within MHU's certificated territory and staff was contacted for assistance.

On March 4, 1997, the County filed a Notice of Withdrawal of Objection to the utility's application as to the area comprising the Lake Linda Circle parcel. Therefore, staff is bringing this recommendation to the Commission for a determination on the limited issue as to whether MHU's amendment application should be approved for Lake Linda Circle. Staff's recommendation on the remainder of the territory requested in MHU's application will be based upon all of the evidence of record taken at the upcoming formal hearing.

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DISCUSSION OF ISSUES

ISSUE 1: Should the withdrawal of the objection by Pasco County as to the area comprising the Lake Linda Circle Mobile Home Park be acknowledged?

RECOMMENDATION: Yes, the withdrawal of the objection by Pasco County as to the Lake Linda Circle Mobile Home Park should be acknowledged. (CAPELESS)

STAFF ANALYSIS: For reasons described more fully in the case background, on May 8, 1996, the utility applied for an amendment of Certificates Nos. 340-W and 297-S, to include, among other things, the area comprising the Lake Linda Circle Mobile Home Park (Lake Linda Circle). On June 13, 1996, the County filed an objection to the entire application and the matter was set for formal hearing.

By letter dated December 12, 1996, Mr. Edwin J. Rogers, P.E., of Townson-Rogers Engineering, Inc., requested that the Commission grant permission for MHU to serve Lake Linda Circle in advance of its final action to be taken in this docket. According to Mr. Rogers, the County has no facilities in the immediate vicinity of Lake Linda Circle, and MHU, which has available capacity, is roughly 1,000 feet away. By letter dated December 24, 1996, staff counsel informed Mr. Rogers that the Commission was scheduled to take final action on the matter after collecting and considering all the evidence presented at the May 13-14, 1997, formal hearing. Staff also advised that it was our understanding that MHU had proposed that the County withdraw the Lake Linda Circle parcel from its objection, and that if the County were to do so, we would make every effort to expeditiously process the utility's application to serve Lake Linda Circle.

On February 5, 1997, the County, the utility, and the developer, Lake Linda Circle Corporation, reached an agreement as to the Lake Linda Circle parcel. On February 20, 1997, staff counsel received a copy of the Agreement from the County. The Agreement declares that the parties agree that water and wastewater services should be provided by MHU to Lake Linda Circle provided that neither MHU nor the County uses the fact of such connections as an admission against interest, a waiver, or estoppel, or to otherwise gain advantage over the other of any kind in regard to the pending litigation, which pending litigation, by the terms of the Agreement, includes the remainder of the protested application in the instant docket. On March 4, 1997, the County filed a Notice of Withdrawal of Objection to the utility's application as to the area comprising the Lake Linda Circle parcel. Staff recommends that the County's Notice of Withdrawal should be acknowledged.

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ISSUE 2: Should the application of Mad Hatter Utility, Inc., for amendment of Certificates Nos. 340-W and 297-S be granted as it relates to the area comprising the Lake Linda Circle Mobile Home Park?

RECOMMENDATION: Yes, Mad Hatter Utility, Inc.'s, application for amendment of Certificates Nos. 340-W and 297-S should be granted for the territory comprising the Lake Linda Circle Mobile Home Park only, which territory is described in Attachment A. The utility should be required to apply its existing tariff rates and charges to the customers in the new service territory until authorized to change by the Commission in a subsequent proceeding. (BRADY, REDEMANN)

STAFF ANALYSIS: On May 8, 1996, MHU applied for an amendment of Certificates Nos. 340-W and 297-S. In its amendment application, the utility is seeking to include uncertificated territory which it is currently serving as well as adjacent territory which it is not currently serving. However, as discussed in Issue 1, this recommendation relates only to the request by MHU to serve the territory known as the Lake Linda Circle Mobile Home Park (Lake Linda Circle).

The application is in compliance with Section 367.045, Florida Statutes, and Rule 25-30.036, Florida Administrative Code. The application contains a check in the amount of \$2,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided a copy of a 99-year lease as evidence of ownership of the land upon which the facilities which are proposed to serve the Lake Linda parcel are located, as required by Rule 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and territory description have been provided as to the Lake Linda Circle parcel, as prescribed by Rule 25-30.036(3)(e), (f), and (i), Florida Administrative Code. A description of the Lake Linda Circle water and wastewater territory is appended to this recommendation as Attachment A. The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission.

Pursuant to Rule 25-30.030, Florida Administrative Code, notice of the filing was provided to all utilities and government agencies in the area of the proposed extension, in a newspaper of general circulation, and to each of the customers within the territory proposed for service. A timely objection was filed by Pasco County and the matter has been set for hearing. As more

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fully discussed in Issue 1, the objection by the County has been withdrawn for the area comprising Lake Linda Circle only. No other objections to the application were received.

It appears that MHU has the financial and technical ability to provide service to the customers of Lake Linda Circle. The utility is proposing to serve Lake Linda Circle with capacity available from facilities which it has used to serve the Linda Lakes Groves subdivision since 1981. Moreover, we note that the parties have agreed that MHU should provide water and wastewater services to Lake Linda Circle.

MHU's Linda Lakes water treatment plant has a permitted capacity of 40,000 gallons per day (gpd), of which the maximum recorded flows from existing customers is 24,000 gpd. The additional maximum demand anticipated by Lake Linda Circle is 10,400 gpd, leaving the water facility with a reserve capacity of 5,600 gpd. MHU's Linda Lakes wastewater treatment plant has a permitted capacity of 20,000 gpd. Current flows at the facility are 8,000 gpd. Staff estimates that Lake Linda Circle will return 4,160 gpd, leaving a reserve capacity of 7,840 gpd.

Staff has contacted DEP and verified that there are no outstanding notices of violation regarding this utility. On November 15, 1996, DEP issued Lake Linda Circle a permit to construct the wastewater collection and transmission connections to MHU's treatment plant. On December 4, 1996, DEP issued Lake Linda Circle a permit to construct the water distribution connection to MHU's potable water plant.

The Commission approved MHU's most recent rate increase by Order No. PSC-93-0295-FOF-WS, issued June 16, 1993, in Docket No. 910637-WS. The rates were last changed on April 11, 1995, by way of a price index adjustment. The utility's service availability policy was approved on December 9, 1994. The utility is not currently authorized to collect treatment capacity charges for either water or wastewater facilities. The utility is not requesting any modification to its existing rates at this time. Staff recommends that MHU should be required to apply its existing tariff rates and charges to the customers in the new service territory until authorized to change by the Commission in a subsequent proceeding.

Based on all the above, staff believes it is in the public interest to grant the application of Mad Hatter Utility, Inc., for amendment of Water Certificate No. 340-W and Wastewater Certificate No. 297-S, as it applies to the area comprising the Lake Linda Circle Mobile Home Park. The utility has returned its certificates

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for modification and has filed revised tariff sheets which contain the territory description in Attachment A.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: No, the docket should remain open to process Mad Hatter Utility, Inc.'s, application for amendment of its territory exclusive of the area comprising the Lake Linda Circle Mobile Home Park and to resolve the pending objection filed thereto by Pasco County. (CAPELESS)

STAFF ANALYSIS: The docket should remain open to process Mad Hatter Utility, Inc.'s, application for amendment of its territory exclusive of the area comprising the Lake Linda Circle Mobile Home Park and to resolve the pending objection filed thereto by Pasco County.

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ATTACHMENT A

MAD HATTER UTILITY, INC.

PASCO COUNTY

WATER AND WASTEWATER SERVICE AREA

SERVED BY THE LINDA LAKE GROVES WATER AND WASTEWATER SYSTEMS

LAKE LINDA CIRCLE MOBILE HOME PARK

Township 26 South, Range 18 East
Section 26

The West 345 feet of the SE 1/4 of the SE 1/4 of the SW 1/4, and

the West 345 feet of the South 200 feet of the NE 1/4 of the SE 1/4 of the SW 1/4.

Less and except the South 30 feet of the West 345 feet of the SE 1/4 of the SE 1/4 of the SW 1/4 of said property.