

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 960576-WS
amendment of Certificates Nos.) ORDER NO. PSC-97-0378-FOF-WS
340-W and 297-S in Pasco County) ISSUED: April 7, 1997
by Mad Hatter Utility, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER AMENDING CERTIFICATES NOS. 340-W AND 297-S
TO INCLUDE ADDITIONAL TERRITORY KNOWN AS
THE LAKE LINDA CIRCLE MOBILE HOME PARK

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 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, we 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 we found was not within the utility's certificated area. Consequently, by Order No. PSC-94-1603-FOF-WS, we denied approval of the proposed revised tariff sheets. We also found that MHU was serving outside of its certificated territory in violation of Section 367.045(2), Florida Statutes. However, we did not believe it necessary to require the utility to show cause as to why

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it should not be fined for this violation. Instead, we 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, we 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 set for a formal hearing on May 13-14, 1997. No other objections were received.

However, during the pendency of this proceeding, we have 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 our 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, we hereby address the limited issue as to whether MHU's amendment application should be approved for Lake Linda Circle. Our decision on the remainder of the territory requested in MHU's application will be based upon all of the evidence of record to be taken at the upcoming formal hearing.

Protest Withdrawal

For reasons described more fully above, 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 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 we grant permission for MHU to serve Lake Linda Circle in advance of our final action to be taken in this docket with respect to the remainder of the territory requested by the utility's amendment application. 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.

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, we 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. In consideration of the foregoing, we hereby acknowledge the County's Notice of Withdrawal.

Application

As discussed above, this Order relates only to the request by MHU to serve the territory known as the Lake Linda Circle Mobile Home Park (Lake Linda Circle), which territory comprises only a portion of the territory requested by the amendment application filed in this docket.

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 utility 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 Order 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 fully discussed above, 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. We estimate that Lake Linda Circle will return 4,160 gpd, leaving a reserve capacity of 7,840 gpd.

We have 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.

Based on the foregoing, we hereby find that it is in the public interest to grant MHU's application 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 for modification and has filed revised tariff sheets to include the territory described in Attachment A of this Order, which is incorporated herein by reference.

Rates and Charges

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. MHU shall 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.

This docket shall remain open to process MHU'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 the County.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Notice of Withdrawal of Objection filed by Pasco County regarding the Lake Linda Circle parcel is acknowledged. It is further

ORDERED that Certificates Nos. 340-W and 297-S, held by Mad Hatter Utility, Inc., 1900 Land O'Lakes Boulevard, Suite 113361, Lutz, Florida 33549, are hereby amended to include the territory described in Attachment A of this Order, which is incorporated herein by reference. It is further

ORDERED that Mad Hatter Utility, Inc., shall charge the customers in the territory added herein the rates and charges approved in its tariffs until authorized to change by this Commission. It is further

ORDERED that this docket shall remain open to process Mad Hatter Utility, Inc.'s, application for amendment of its territory exclusive of the area comprising the territory described in

ORDER NO. PSC-97-0378-FOF-WS
DOCKET NO. 960576-WS
PAGE 6

Attachment A of this Order, and to resolve the pending objection filed thereto by Pasco County.

By ORDER of the Florida Public Service Commission, this 7th day of April, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Dyer
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 120.569(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.

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.

ORDER NO. PSC-97-0378-FOF-WS
DOCKET NO. 960576-WS
PAGE 7

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.