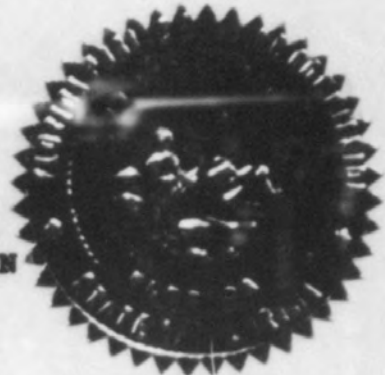


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of	:	DOCKET NO. 960576-WB
	:	
Application for amendment of	:	
Certificate Nos. 340-W and	:	
297-S in Pasco County by	:	
Mad Hatter Utility, Inc.	:	



FIRST DAY - MORNING SESSION

VOLUME 1

Pages 1 through 98

PROCEEDINGS:

HEARING

BEFORE:

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

DATE:

Tuesday, May 13, 1997

TIME:

Commenced at 10:00 a.m.

PLACE:

Land O'Lakes Community Center
5401 Land O'Lakes Blvd.
Land O'Lakes, Florida 34639-3414

REPORTED BY:

H. RUTHE POTAMI, CSR, RPR
Official Commission Reporter

DOCUMENT NUMBER - DATE

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FPSC-RECORDS/REPORTING

1 **APPEARANCES:**

2 **F. MARSHALL F. DETERDING**, Rose, Sundstrom &
3 Bentley, 2548 Blairstone Pines Drive Tallahassee,
4 Florida 32301, appearing on behalf of **Mad Hatter**
5 **Utility, Inc.**

6 **MARION HALE** and **CHARLES SAMARKOS**, Johnson,
7 Blakely, Pope, Bokor, Ruppel & Burns, P.A, 911
8 Chestnut Street, Clearwater, Florida, appearing on
9 behalf of **Pasco County**.

10 **ROSANNE CAPELESS**, Florida Public Service
11 Commission, Division of Legal Services, 2540 Shumard
12 Oak Boulevard, Tallahassee, Florida 32399-0870,
13 appearing on behalf of the **Commission Staff**.

14
15 **ALSO PRESENT:**

16
17 **PAT BRADY**, FPSC, Division of Water &
18 **Wastewater**.

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P R O C E E D I N G S

(Hearing convened at 10:00 a.m.)

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COMMISSIONER DEASON: Call the hearing to order. May I have the notice read, please?

MS. CAPELESS: Pursuant to notice, this time and place has been designated for hearing in Docket No. 960576-WS, application for amendment of certificates numbered 340-W and 297-S in Pasco County by Mad Hatter Utility, Inc.

COMMISSIONER DEASON: Thank you. Take appearances.

MR. DETERDING: F. Marshall Deterding of Rose, Sundstrom & Bentley law firm here on behalf of Mad Hatter Utility, Inc.

MS. HALE: Marion Hale on behalf of Pasco County from Johnson, Blakely, Pope, Bokor, Ruppel & Burns in Clearwater.

MR. SAMARKOS: Charles Samarkos, S-A-M-A-R-K-O-S, on behalf of Pasco County from Johnson, Blakely, Pope, Bokor, Ruppel & Burns in Clearwater.

MS. CAPELESS: Roseanne Capeless, appearing on behalf of the Commission Staff.

COMMISSIONER DEASON: Thank you. Preliminary matters?

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MS. CAPELESS: Commissioner, we have just a few housekeeping type matters. At the prehearing on May 5th the County was given leave, if it so chose, to prefile testimony by May 9th on a limited issue of Mad Hatter's potential interconnection with Hillsborough County; and the County indeed filed testimony of two witnesses on this issue on May the 9th.

So we'd like to go ahead and make a few additions to the prehearing order to the order of witnesses as they appear in the prehearing order on Pages 5 and 6. The County has filed supplemental direct testimony of John Gallagher consisting of two pages.

COMMISSIONER KIESLING: Where are they going to testify in the order of witnesses?

MS. CAPELESS: Well, I would assume that Mr. Gallagher's supplemental testimony will go directly after his original prefiled direct testimony. The other witness is a new witness, and so perhaps the County could designate the order of that witness.

MS. HALE: We believe that that witness is Keith Templeman. He's an employee of Hillsborough County and that he should be toward the end of our witnesses, probably tomorrow morning, perhaps between

1 Mr. Moses and Mr. O'Connor.

2 MR. DETERDING: Commissioner, if I may, the
3 testimony of these witnesses is in the nature of
4 surrebuttal. It is in response to some comments made
5 by Mr. DeLucenay in his rebuttal testimony about
6 discussions with Hillsborough County for service, and
7 we object to the entry of that testimony at all at
8 this late date.

9 We did not receive it until late last week,
10 and believe that is what it is intended to be, is
11 surrebuttal to the rebuttal testimony of
12 Mr. DeLucenay.

13 COMMISSIONER DEASON: I believe I'm going to
14 need a copy of it as well.

15 COMMISSIONER KIESLING: I don't have it
16 either.

17 MS. CAPELESS: We have some extra copies of
18 it. It was filed on May the 9th, which was just last
19 week, but filed, as I said, pursuant to the prehearing
20 officer giving leave for the County to so file the
21 testimony on that date.

22 COMMISSIONER DEASON: Very well.

23 MR. DETERDING: Commissioner, if I may, my
24 recollection is that the prehearing officer did not
25 say that they would be allowed to, said that they

1 could go forward with their attempt to, if they wished
2 to do that. I don't think there was ever a ruling. I
3 may be mistaken, Commissioner Kiesling, but my
4 recollection was there was never a ruling as to
5 whether or not it would be allowed.

6 **COMMISSIONER KIESLING:** Well, I thought that
7 I had ruled that it would be allowed.

8 **MR. DETERDING:** Okay. I apologize if that's
9 the case. I don't mean to go over it again. That was
10 just my understanding was there was only a suggestion
11 that if they wished to do so, they should get it filed
12 by last Thursday or Friday. Right.

13 **COMMISSIONER KIESLING:** And, also, I mean,
14 one thing I would point out was what I gave them leave
15 to do was to file something from Hillsborough County.
16 There was no mention of additional testimony from one
17 of their already listed witnesses.

18 **MR. DETERDING:** They have prefiled testimony
19 from Mr. Gallagher again as well from the County, from
20 Pasco County.

21 **COMMISSIONER DEASON:** Well, Mr. Deterding,
22 we're going to go forward at this point. At the time
23 that this testimony is introduced, if you feel
24 compelled to make an objection at that time, it will
25 be entertained.

1 **MR. DETERDING:** Okay. Thank you.

2 **COMMISSIONER DEASON:** Any other preliminary
3 matters?

4 **MS. CAPELESS:** I believe Mad Hatter is
5 prepared to offer the notice of hearing into the
6 record, and Staff also would like to identify a list
7 of orders that we would request be officially
8 recognized for the purpose of this proceeding, which
9 we've handed out.

10 **COMMISSIONER DEASON:** Yes. The list of
11 orders for official recognition will be identified as
12 Exhibit No. 1.

13 (Exhibit 1 marked for identification.)

14 **MS. CAPELESS:** Thank you.

15 **COMMISSIONER DEASON:** Mr. Deterding, do you
16 wish to supply -- what is it? A proof of publication
17 of the notice? Is that what you're --

18 **MR. DETERDING:** Commissioner, I wasn't -- or
19 I didn't realize we were expected to supply that as an
20 exhibit at this time. We did provide an affidavit to
21 the Commission Staff that the noticing had been
22 accomplished, the public -- the mailed notice had been
23 accomplished. I was not aware that it was anticipated
24 that we would provide that as an exhibit at this time.
25 Frankly, I've never done that before, but I would

1 gladly get you that as an exhibit.

2 **COMMISSIONER DEASON:** Just discuss that with
3 Ms. Capeless at the first break.

4 **MR. DETERDING:** Certainly. We'll be glad to
5 provide it. I just don't have it here now.

6 **MS. CAPELESS:** That's fine. Staff would
7 move that Exhibit 1 be entered into the record.

8 **COMMISSIONER DEASON:** Any objection?
9 Hearing no objection, Exhibit 1 is admitted.

10 **MS. CAPELESS:** Thank you.

11 (Exhibit 1 received in evidence.)

12 **COMMISSIONER DEASON:** Any other preliminary
13 matters?

14 **MS. CAPELESS:** We have nothing further.

15 **COMMISSIONER DEASON:** Very well. For
16 benefit of the members of the public who are joining
17 us today, let me first welcome you to the hearing and
18 bring your attention to the special report, which I'm
19 holding a copy of, which is printed on green paper.
20 It contains all the background information concerning
21 the amendment application that's currently pending
22 before the Commission.

23 I believe that we have set aside the first
24 part of the hearing to hear from members of the public
25 who wish to address the Commission concerning this

1 matter. I understand that there is at least one
2 individual who has signed up for that purpose, so
3 that's going to be the next order of business.

4 It's necessary, though, for witnesses to
5 have to be sworn in so that their testimony can become
6 part of the record in this proceeding. So I'm going
7 to ask all members of the public who wish to testify,
8 as well as any of the technical witnesses who are
9 present at this time, to please stand and raise your
10 right hand.

11 (Witness collectively sworn.)

12 COMMISSIONER DEASON: Thank you. Please be
13 seated. Ms. Capeless, do you have a list of the
14 individuals from the public? I have one name,
15 Mrs. Delores Johnson.

16 MS. CAPELESS: I was not given the list.

17 UNIDENTIFIED SPEAKER: (Inaudible comment.)

18 COMMISSIONER DEASON: Mrs. Johnson, if you
19 would come forward to the microphone to my right, and
20 if you will please begin by giving us your name and
21 your address for the record, and then you may proceed
22 with your statement.

23

24

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1 **DELORES JOHNSON**

2 appeared as a witness, being duly sworn, testified as follows:

3 **DIRECT STATEMENT**

4 My name is Delores Johnson, 1520
5 Land O'Lakes Boulevard, Unit 8, Lutz, 33549. I'm a
6 registered real estate broker, and I'm not -- was not
7 here to address these two items.

8 I had talked to Ms. Messer in reference to
9 an isolated piece of property, which I have a contract
10 on and have been trying to develop for the last year
11 and have not been able to do it, so -- because of a
12 conflict between the County and Mr. DeLucenay. But I
13 had spoken to Ms. Messer about this.

14 This is -- it's a piece of property that's
15 up right here. Right here. (Indicating)

16 **COMMISSIONER DEASON:** Mrs. Johnson, for
17 purposes of the record, if you can basically describe
18 where you're pointing to on the map.

19 **WITNESS JOHNSON:** This is just right on the
20 back of us.

21 **COMMISSIONER KIESLING:** And speak into the
22 mike, please.

23 **WITNESS JOHNSON:** Excuse me. This is right
24 in the back of the school. The school is right here.
25 The property is right here. This is Lake Thomas Road.

1 This is Drexell Road. This is Old School Road. The
2 County has facilities running right by our property,
3 but we're not able to develop this because DeLucenay,
4 so they -- that they have, or Mad Hatter has, a
5 certificate to serve that area.

6 That certificate came about by the fact that
7 at one time they had applied to put a plant in here,
8 and that was turned down, and then they turned the
9 property back to the owner of that property.

10 Nothing was ever done about the certificate
11 of service. However, it ties up this other piece of
12 property that's over 100 acres here that I have a
13 contract on, and all I wanted to do is for either
14 Mad Hatter or the County to be able to service us. We
15 do not want to be dragged out in this federal lawsuit.

16 And I was -- when I called the Public
17 Service Commission last week and then I ended up
18 getting to talk to Ms. Messer, she said that she did
19 not realize that that was a problem and that I could
20 bring it to the floor.

21 I don't have a copy of the service agreement
22 or anything. About all I know is that I have a very
23 expensive contract on that piece of property and wish
24 to develop it. And my suggestion -- which I don't
25 know that it matters very much -- is why we

1 couldn't -- why this couldn't be exchanged out for
2 some other area that Mr. DeLucenay wants.

3 I also have -- my attorney is with me, Tim
4 Hayes, and maybe he might be able to give us a little
5 more information on that.

6 COMMISSIONER DEASON: Mrs. Johnson, right
7 now we need to hear from you. Let me ask you a
8 question. Are you finished with your presentation?

9 WITNESS JOHNSON: Yes.

10 COMMISSIONER DEASON: Do you have a
11 preference as to whether this area is serviced by
12 Mad Hatter or by the County?

13 WITNESS JOHNSON: I don't care who it's
14 serviced by as long as we have it. However, the
15 County does have the sewer and the water that is --
16 which an easement was given along the front of our
17 property for this. It's there right now. We could
18 immediately begin development.

19 Mad Hatter does not have any facilities in
20 that area, and although there had been some meetings
21 in reference to paying for getting the service
22 released in there, and then the -- and the
23 negotiations broke down.

24 COMMISSIONER DEASON: Is it your
25 understanding this property is currently within the

1 certificated territory of Mad Hatter?

2 WITNESS JOHNSON: That's right.

3 COMMISSIONER DEASON: Did you approach them
4 about providing a service?

5 WITNESS JOHNSON: Yes.

6 COMMISSIONER DEASON: And that difficulty is
7 because of this docket that's currently pending before
8 the Commission? Is that what you were told? What
9 were you told?

10 WITNESS JOHNSON: I was told, especially by
11 the County, that they could not service us because of
12 the conflict between Mad Hatter and the County in
13 reference to service areas.

14 Also, there was a figure of -- I understand
15 of -- I wasn't at the meeting, but there was an
16 understanding -- my understanding that there was a
17 \$200,000 offer made to buy that certificate of service
18 so the County could service us, but then that was --
19 and, again, I wasn't at the meeting. I was just told
20 by my buyer, and that was backed out on.

21 COMMISSIONER DEASON: Okay.

22 WITNESS JOHNSON: It's really holding up a
23 piece of property that is so far away from Mad
24 Hatter's service area that it would not be possible to
25 get the right-of-way all the way up from 54 up to this

1 property to put in water and sewer.

2 COMMISSIONER DEASON: Okay. Thank you,
3 ma'am. Questions?

4 COMMISSIONER KIESLING: Yes, I have one.
5 Have you actually talked to Mr. DeLucenay or anyone
6 representing Mad Hatter about providing service to
7 that piece of property?

8 WITNESS JOHNSON: Yes, we have.

9 COMMISSIONER KIESLING: And what were you
10 told?

11 WITNESS JOHNSON: Mr. DeLucenay just sent us
12 an application to fill out. It was my understanding
13 from the buyer that he filled it out.

14 COMMISSIONER KIESLING: I'm asking -- what
15 you talked to him.

16 WITNESS JOHNSON: Yes, I have asked Larry.
17 I've also asked Larry to release it.

18 COMMISSIONER KIESLING: And has Mad Hatter
19 said no, they will not provide service there?

20 WITNESS JOHNSON: No, they have not, but we
21 are in -- what we are in right now is we are in a
22 fishbowl, or the chicken and the egg. One can't and
23 the other one won't. The County will not because of
24 the federal lawsuits. I don't think that
25 Mr. DeLucenay can provide us service.

1 **COMMISSIONER KIESLING:** What I'm trying to
2 find out is whether Mr. DeLucenay has told you that he
3 cannot provide you service.

4 **WITNESS JOHNSON:** He has not told us he
5 cannot provide us service, but under the
6 circumstances -- and I have been involved in this area
7 for the last 20 years. I was here when Mr. DeLucenay
8 moved in. And my -- from the area that he was
9 servicing south of 54 all the way up to where we're at
10 right now -- this piece of property is right behind
11 us -- it's a problem.

12 **COMMISSIONER KIESLING:** Thank you.

13 **COMMISSIONER DEASON:** Questions for the
14 witness?

15 **MR. DETERDING:** I have a couple.

16 **EXAMINATION**

17 **BY MR. DETERDING:**

18 **Q** This is the area, as I understand it, known
19 as Lake Talia; is that correct?

20 **A** That's right.

21 **Q** And have you made formal application to
22 Mad Hatter for service to that area?

23 **A** No, we have not. We have had a couple of
24 meetings. As a matter of fact -- I did not sit in on
25 the meeting our attorney. Tim Hayes sat in on the

1 last meeting with the buyer and with Mr. DeLucenay,
2 and I was not -- I would not want to testify what went
3 on in that meeting. Mr. Hayes is here.

4 We just don't want to be caught up in this
5 overall picture when we need to develop this property,
6 because it's going to cause a very large lawsuit, and
7 I hate lawsuits. Is there anything else?

8 COMMISSIONER DEASON: Further questions?

9 MS. HALE: Yes.

10 EXAMINATION

11 BY MS. HALE:

12 Q Mrs. Johnson, I'm Marion Hale. I represent
13 Pasco County. You asked service from Mad Hatter and
14 it has not been forthcoming; is that correct?

15 A May I ask the attorney a question?

16 COMMISSIONER DEASON: Ma'am, you need to --
17 if you can answer, answer, and if you don't know --

18 WITNESS JOHNSON: I'm not sure. I don't
19 want to say yes.

20 Q (By Ms. Hale) But no service has been
21 provided; is that correct?

22 A No; that's right. And this has been a year
23 and three months.

24 Q Since you first requested the service?

25 A Uh-huh.

1 Q You need to answer yes or no for the court
2 reporter.

3 A Yes. Excuse me. Yes.

4 Q Okay. And in that year and a half -- what
5 did you say? Year and three months?

6 A Uh-huh. Yes.

7 Q No service has been provided by either the
8 County or Mad Hatter?

9 A That's right.

10 Q And it's your understanding that the reason
11 is that Mad Hatter doesn't have any facilities nearby?

12 A That's right.

13 Q And is that water or sewer or both? Do you
14 know?

15 A Both; water and sewer. It's to be an
16 approximate 300-home subdivision.

17 Q And you represent somebody who has a
18 contract to buy that property?

19 A I represent the seller.

20 Q And that sale has not been able to close as
21 a result of this problem?

22 A That's right.

23 MS. HALE: Nothing further.

24 MR. DETERDING: I have a couple of follow-up
25 questions.

EXAMINATION

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BY MR. DETERDING:

Q Ms. Hale repeatedly referred to your application for service. Have you filed an application for service with Mad Hatter Utility?

A I, personally, would not have been the person who would file that, and my buyer, who is not here today, would be the one that would have to say that he filed it personally. I do -- I have seen an application that was sent to us to be filled out, but I did not personally fill that out myself.

Q So you don't know if it's been filed?

A I do not know.

Q Okay. Thank you.

COMMISSIONER DEASON: Staff, any questions?

MS. CAPELESS: No questions.

COMMISSIONER DEASON: Thank you, ma'am. Let me ask, are there any other members of the public who wish to address the Commission at this time?

Sir, if you want to testify, you need to be sworn in as a witness, so if you'll come forward to the microphone, I'll do that.

TIM HAYES

1
2 appeared as a witness and testified as follows:
3

4 **DIRECT STATEMENT**

5 **COMMISSIONER DEASON:** Please begin by giving
6 us your name and your address.

7 **WITNESS HAYES:** My name is Tim Hayes,
8 H-A-Y-E-S. My office address is 21859, State Road 54.
9 That's in Lutz, Land O'Lakes, Florida. I'm an
10 attorney. I'm also a customer of Mad Hatter Utilities
11 on my residence.

12 **COMMISSIONER DEASON:** Please proceed with
13 your statement.

14 **WITNESS HAYES:** Thank you. What
15 Mrs. Johnson previously testified to I was involved in
16 as an attorney. I was representing at the time the
17 Kinsman family. The Kinsman family is a large
18 property owner that owns property adjacent to the
19 parcel referred to, I think, earlier in the hearing as
20 Lake Talia.

21 The Kinsmans years ago sold a portion of
22 their property to Mr. DeLucenay. It was my
23 understanding, from the review of DEP records, Public
24 Service Commission records, SWFWMD records, that
25 Mr. DeLucenay originally purchased this property to
put in a subregional sewage treatment plant to expand

1 his service area, and I assume his franchise area, as
2 a private water and sewer utility provider.

3 What happened was Mr. DeLucenay was not
4 successful in getting the necessary permits to site
5 this plant in an area referred to as Lake Thomas,
6 which is a large lake that's near there. As a result
7 of it, Mr. DeLucenay returned the property to the
8 Kinsman family and did not pursue getting a sewage
9 treatment plant to service that area.

10 However, I'm led to believe that at the time
11 that he was the owner of this property is that the
12 same time frame where he initially filed with the
13 Public Service Commission paperwork trying to expand
14 his franchise area. The Kinsman family is under the
15 understanding that their property is now tied up in
16 that it can only be serviced by Mad Hatter Utilities
17 and cannot be serviced by the County.

18 The purpose of the meeting which
19 Mrs. Johnson referred to occurred in the law services
20 of Jerry Buhr, who was Mr. DeLucenay's attorney, and
21 the purpose of the meeting was to discuss what options
22 were available as far as moving forward with the
23 development of this property.

24 I was there on behalf of the Kinsman family.
25 Other people in attendance was the potential buyer of

1 the Lake Talia property. The Lake Talia property is
2 owned by a gentleman by the name Carl Anderson. There
3 was a contract pending for the sale of that property
4 which I think is what Mrs. Johnson testified to
5 earlier.

6 At that particular meeting we discussed with
7 Mr. DeLucenay and his attorney his ability to supply
8 service to that area. The options that were made
9 available to us was, one, he could connect to the
10 County sewer line and the County would treat the
11 sewage and we would pay Mad Hatter very similar to
12 what the customers of Mad Hatter do now.

13 The second option that was discussed was
14 whether or not the buyers would be willing to set
15 aside acreage on this property for purposes of a
16 sewage treatment plant in order to allow Mad Hatter
17 the ability to treat the sewage that would be produced
18 by these developments. There was discussions at this
19 meeting about the idea of paying a sum of money to Mad
20 Hatter Utilities to give up what rights it had to
21 serve that area so that the buyer/developer could move
22 forward with plans to discuss the County coming in and
23 providing the sewage. Nothing came of this meeting.

24 I have since been contacted by Mr. Anderson,
25 the owner of Lake Talia, who has asked that I come

1 here today on his behalf and explain to you that as a
2 seller of property it is extremely frustrating to be
3 caught in the middle of the situation involving both
4 the County and the private utility where on the one
5 hand you have a private utility where on the one
6 sewer plants to treat sewage and relies upon
7 interconnections with the County to supply that
8 sewage.

9 I will also tell you, as a customer of the
10 Utility -- and by way of history, as you may know, I
11 was one of the individual customers that filed the
12 protest of the rate -- last rate increase that the
13 Public Service Commission approved for Mad Hatter
14 Utilities.

15 As a customer, it is extremely frustrating
16 to me to have to pay a private utility to act as a
17 middleman when, in fact, the sewage is being treated
18 by the County. It is a very unique set of
19 circumstances.

20 And now I read in the paper that unbeknownst
21 to me as a customer, the County had reduced their
22 treatment rates which they were charging Mad Hatter
23 Utilities, but as a customer of Mad Hatter Utilities I
24 was continued to be charged as if I -- we were -- he
25 was paying the higher rates to the County. And I will

1 tell you, as a customer it is extremely frustrating to
2 be in the middle of this whole situation.

3 Ms. Clark, you were at the public hearings
4 that we had on the rate case. You recall that we had
5 to hold them in a gymnasium because there was so many
6 people that came forward to testify. Look out here
7 today. You don't see any customers out here. You
8 want to know why? Because they're frustrated with the
9 whole process. They took their time from work and
10 their families to come forward and testify at the rate
11 hearing and try to open this whole issue about the
12 Utility and the service provided to us, and they feel
13 that the sum and substance of it didn't make a darn
14 bit of difference.

15 And now we're sitting here because the
16 Utility wants to expand into areas and expand its
17 franchise area, and we sit here as customers and we
18 say, but they don't even have a sewer plant. And then
19 we look at our rates, as we understand how base rates
20 and everything else is structured, and we say, you
21 know, as a customer, we're still paying for plants
22 that were shut down by other state authorities, and
23 we're still paying for them in our rates, and because
24 we took the time to contest his rate case, we're still
25 paying for his attorneys; we're still paying the cost

1 that he incurred in that rate case. And then we're
2 paying a premium to the County, an additional \$1.00
3 per thousand gallons, as an ongoing impact fee because
4 the County took on the responsibility of treating that
5 sewage.

6 Every step of the way anytime the customers
7 got involved in this process it ended up costing the
8 customers. And today we sit here and we scratch our
9 heads and go, I'm not sure I understand this. There's
10 a private utility out there that no longer operates a
11 sewer plant, and everything goes through them as
12 middleman to the County, and the County is treating
13 our sewage, and we're paying higher rates because of
14 that.

15 And then we open up the papers and we
16 hear -- and we read -- and our kids can't go to a
17 school because there's a fight between the County and
18 the Utility as to who is going to supply the sewer and
19 the water for that school site. And we have to bring
20 our kids to double sessions for nearly a year because
21 the school that we're told is ready to open can't open
22 because the question is, who is going to supply the
23 water and sewer for the school.

24 So now we finally get the school open and
25 there's a federal lawsuit here. And we're sitting

1 here as customers, which are also taxpayers of Pasco
2 County, and going -- pardon my language -- but, "are
3 we going to get screwed again?"

4 The private utility sues the County in
5 federal court for damages. Who is going to pay the
6 damages? Well, who do you think is going to pay the
7 damages? The taxpayers of Pasco County are going to
8 pay the damages. So once again the customers are in
9 the middle of this thing, and on it goes and on it
10 goes and on it goes.

11 So today you have a public hearing and
12 you're nice enough to come down to Land O'Lakes. The
13 customers are saying, why come; it isn't going to make
14 any difference. He's going to be granted what he
15 wants. Life is going to go on in this community, and
16 we're going to continue to pay the price for it, and
17 that's the frustrating part.

18 You all have approved service agreements
19 between clients of mine and Mad Hatter Utilities.
20 Your Staff approved them, because they looked at them
21 and they said, well, these were agreed to by the
22 developer, were agreed to by the Utility, so it looks
23 good to us; we're going to approve it.

24 I pointed out to your Staff that there were
25 certain things in those utility agreements that in my

1 opinion were unconscionable, and I advised my client
2 accordingly; but my client opted to accept those
3 provisions because it was either file an appeal to the
4 Public Service Commission, have an entire development
5 come to a screeching halt for months while you fight
6 this issue with the Public Service Commission, or do
7 you accept the unconscionable provisions in the
8 utility service agreement, pass those costs on to
9 guess who -- your lot buyers and your customers -- and
10 go about your business.

11 What I'm alluding to is some of the first
12 service utility agreements that were approved by the
13 Public Service Commission following the rate hearing,
14 you had a provision in there where you said that the
15 Utility could no longer collect CIAC because they had,
16 according to your findings as I understood them,
17 over-collected for that.

18 So what the Utility did to their service
19 agreement is they said, well, Mr. Developer you're
20 going to loan the money to my client, we're going to
21 pay you back. But in the language in the service
22 agreement it said "at the utility's sole option".

23 Now, if you had the option to repay a
24 promissory note, do you honestly think you would repay
25 the promissory note? That was black and white right

1 in the agreement. Now, why did my client not contest
2 it? Because we had a subdivision to build. We didn't
3 have time to spend a year appealing such matters to
4 the Public Service Commission. And my client made the
5 decision to, well, we'll just increase the price of
6 the lot and we'll recover that cost because we know
7 we're not going to get repaid under the promissory
8 note, and that's how he got around the CIAC that you
9 told him he couldn't collect anymore, and on and on we
10 go.

11 Ms. Clark, you might remember that when I
12 came in front of you the first time, there was
13 documentation in front of you and Mad Hatter's
14 application for rate increase, and it said that those
15 plants that were shut down by state regulatory
16 agencies had no recoverable value. In other words, it
17 would cost more to put that land back in a salvageable
18 form than the land was worth.

19 And very late in the process hearing, I
20 brought forth a contract whereby the Utility, which
21 said that it had no salvageable value in its own
22 plants to offset part of its base rate, had a contract
23 to sell that land, the same land that they had told
24 you all was of little value; it would cost more to
25 bring it back into a usable form than the land would

1 be worth. And you all looked at the contract and --
2 okay, so what.

3 Well, today this land where this useless
4 piece of property was that would cost more to salvage
5 than it was worth is a whole series of town houses,
6 and I understand from looking at documentation, that
7 land was changed over into the name of certain
8 individuals of the Utility.

9 But this is the stuff we're facing all the
10 time, and the customers continue to pay the price
11 again and again and again. It is frustrating. It's
12 frustrating for developers. Mrs. Johnson was correct.
13 There is a sale pending. There is a contract pending.
14 The development can't go forward.

15 The buyer looks at the option of this. Do I
16 file a formal request to the utility and institute an
17 appeal to the Public Service Commission that will drag
18 on for months, or do I say, forget the contract, I'll
19 go find some land that I can develop. I don't have a
20 year or two to battle it out with the Utility and the
21 Public Service Commission and the courts. I don't
22 have the time to get involved potentially in a federal
23 lawsuit. I'm a developer. I want to put houses in
24 the market now. The market is there today. I can't
25 afford to go before the Public Service Commission and

1 fight these battles. There's plenty of other land out
2 here that I can deal with.

3 So what happens? The poor owner of the
4 property sits here and goes, nobody wants to touch my
5 property; nobody wants to jump into the middle of this
6 battle. So what happens in this area? Development
7 comes to a screeching halt. Development comes to a
8 screeching halt.

9 Now, you might ask yourself, if you're new
10 to this, well, how did this whole thing start in the
11 first place. Because development was coming to a
12 screeching halt in one of the hottest real estate
13 markets in the Tampa Bay area.

14 What happened is when Mad Hatter had its
15 franchise area, and when other state regulatory
16 agencies started raising concerns about the operation
17 of those sewer treatment plants and their capacity and
18 they threatened to shut down those plants, clients of
19 mine and developers in this area said, we're not going
20 to be able to get building permits. I got a
21 multimillion-dollar residential and commercial project
22 here. The County is telling me, because DEP is
23 telling them, we're not going to issue any more
24 building permits. Now, what do I do? Do I go fight
25 this battle for two years in court, or do I make a

1 practical decision?

2 So the developers go to the private utility
3 and they say, we've got a problem, guys. I've got
4 letters from you that say you have the capacity to
5 supply my subdivision, but your plant is being shut
6 down, and I'm being told by the County and DEP we're
7 not going to issue any more building permits. What
8 are we going to do?

9 So the Utility and the developers and the
10 County sit down. The County steps forward and says,
11 I'll tell you what we'll do, folks; we will supply
12 that capacity through an interconnect. Developers
13 say, wonderful, because that allows my
14 multimillion-dollar project to move forward. But
15 guess what? The bottom line is the customers pay for
16 the added cost. The customers pay for the added costs
17 once again. That's how this thing came about.

18 Now, the issue is, was it a short-term
19 solution or a long-term solution. Was it only
20 supposed to buy the private utility some time so it
21 could get its own plants on line, or are the customers
22 from here until God only knows when going to be paying
23 the private utility as the middleman and on and on we
24 go?

25 Then what happens? Now the utility says, we

1 want to expand our service area. We want to take on
2 more customers. Sounds great. How are you going to
3 treat the sewage? You have no plant. And to my
4 knowledge, you have no plans to put another plant on
5 line. Back to the County. County, you need to give
6 us more capacity. We are in federal court now
7 fighting the issue. Okay.

8 I don't understand how we can be considering
9 expanding the franchise area of a private utility that
10 doesn't even operate the sewer plants anymore. What's
11 going to happen, folks, is the developer is going to
12 pay through the nose. They're going to pass the cost
13 on to the person who buys the home, and the poor
14 little customer sitting in the house is going to pay
15 the freight as long as they live in that house,
16 because the cost is passed on down the line. And once
17 again, the consumer gets it in the end. And that's
18 where we're at.

19 COMMISSIONER DEASON: Questions?

20 MR. DETERDING: I have some.

21 EXAMINATION

22 BY MR. DETERDING:

23 Q Mr. Hayes, you were the protestant in the
24 Utility's last rate case, were you not?

25 A That's what I testified to, yes.

1 Q Isn't it true that the developer of the
2 Lake Talia property is the one who proposed the idea
3 of purchasing out of Mad Hatter service territory, not
4 Mad Hatter?

5 A That is 100% correct.

6 Q You say this is a unique situation. Are you
7 suggesting that bulk water or wastewater service is
8 unique?

9 A I think it's unique from the standpoint that
10 you had a utility that was operating two plants to
11 supply the needs of the customers within its area, and
12 for whatever reason, those two plants were shut down
13 by other state regulatory agencies, which put the
14 customers in a Catch 22 position, which is that if you
15 protest the shutting down of those plants and they're
16 shut down, there's no way to treat your sewage as a
17 customer. So you're forced with only one option,
18 which is to allow the County to come in and
19 interconnect so when you go home at night you can
20 flush your toilet and know that it's going to be
21 treated properly.

22 Q And you think that's a unique situation?

23 A Yes, sir, I do.

24 Q Okay. Have you ever heard of Forest Hills
25 Utility here in Pasco County?

1 A Yes, sir, I have.

2 Q Are you aware that they have recently shut
3 down their sewage treatment plant to get service from
4 bulk, from the County?

5 A Yes, sir, I am.

6 Q Are you aware of Aloha Gardens wastewater
7 treatment system?

8 A Yes, I am.

9 Q And are you aware that they also receive
10 bulk service from the County after shutting down their
11 plant a few years ago?

12 A Yes, sir, I am.

13 Q Are you familiar with Betmar Utilities in
14 Pasco County?

15 A Yes, sir, I am.

16 Q And are you aware that they, also, have shut
17 down their treatment facility and receive service from
18 Pasco County?

19 A Yes, sir, I am.

20 Q So it doesn't sound very unique even in
21 Pasco County, does it?

22 A Well, it is unique in Pasco County, because
23 I'm not sure you understand the history of Pasco
24 County. The history of Pasco County was this: If you
25 wanted to develop in Pasco County, our county at that

1 time did not have the water and sewer capacity or the
2 plants necessary to take on your needs. So, as a
3 developer, you would build what was referred to as a
4 pocket plant or a temporary plant. It was --
5 basically consisted of a metal tank and a percolation
6 pond. Those plants were built for purposes of the 100
7 to 200 to 500 homes in a particular subdivision, and
8 that's the uniqueness of the Mad Hatter history here.

9 The original plant for Mad Hatter Utilities
10 in my subdivision, Turtle Lakes, was a plant built by
11 Criterion and Pulte Homes, and it was built for the
12 sole purpose of supplying the needs of that one
13 subdivision. The Foxwood plant, which was the other
14 plant in the Mad Hatter Utilities area, was built by
15 the developer, Groveland, for purposes of just the
16 homes in the Foxwood plant.

17 Where this thing got all out of kilter, if
18 you will, is that those plants that were built as
19 temporary plants -- because the County did not have
20 any water and sewer capacity in that area, and if you
21 wanted to develop you had to have water and sewer --
22 those plants were built as temporary plants.

23 What happened is when the developer sold out
24 his lots, he would love for somebody to take over this
25 nuisance that he had on his hands. So that's where

1 Mad Hatter came from, and they interconnected, or had
2 these plants that were originally built as temporary
3 plants to meet the needs of a small community, and all
4 of a sudden they became the basis of a franchise -- or
5 of a private utility that was going to serve more than
6 just the hundred or 200 or 300 homes in those
7 subdivisions. That's the history of Pasco County.

8 All the other utilities that he referred to
9 here earlier, same situation; started off as little
10 pocket plants and outgrew their needs and could not
11 serve the customers that they were given to serve.
12 And so what was our alternative as customers? You
13 can't turn the valve off and say to over a thousand
14 customers, tomorrow you have no sewer, folks; tomorrow
15 you have no water. So what's the alternative?

16 The alternative is to interconnect into the
17 County and let the County take it over. The problem
18 is if it had been done the way we all would have
19 liked, then the County's water and sewer would have
20 grown as development had grown, but that's not the way
21 development happened in Pasco County, and that's why
22 we're left with the history that we're left with.

23 Q So do you think that Pasco County is unique
24 in that private utilities are created where there is
25 no service from local government? Do you think that's

1 uncommon in the state of Florida?

2 A I think that is common in certain portions
3 of the state of Florida, yes.

4 Q How much involvement have you had with the
5 creation of private utilities in the state of Florida?

6 A Very little.

7 Q So you don't know how and when those private
8 utilities are created?

9 A I don't know --

10 Q As a rule. So your suggestion that this is
11 unique because of the way of Pasco County development
12 is based upon no knowledge of the circumstances that
13 occur throughout the state?

14 A That is correct.

15 Q You state that these plants are temporary in
16 nature. Are you an engineer?

17 A I --

18 Q Are you an engineer, Mr. Hayes?

19 A Is that the question?

20 Q That is the question. Are you an engineer?

21 A No, sir, I'm not.

22 Q Do you have any experience with the design
23 and construction of wastewater treatment plants?

24 A From an engineering standpoint?

25 Q Correct.

1 A No.

2 Q On what basis do you state that these are
3 temporary? Do you have any documents that show that
4 these are temporary plants?

5 A Yes, sir. I represented one of the
6 developers, Groveland Development, a Mr. Loren Worley,
7 who is responsible for putting in that plant, had
8 indicated to me prior to his death that it was built
9 for the sole purposes of supplying the Foxwood
10 subdivision and it was temporary in nature.

11 Q And what documents do you have that show
12 that that was a temporary structure?

13 A I have none with me.

14 Q Do you know of any documents that state that
15 that was a temporary structure?

16 A No, sir, I do not.

17 Q You state that the customer -- I assume your
18 clients -- are frustrated with this process. If the
19 customer wants service from a utility, why wouldn't
20 they apply for service from the utility? I don't
21 understand that.

22 A What you're talking about is a -- if you're
23 familiar with real estate development -- what normally
24 happens is when one buys a large tract of land or
25 signs a contract for it, there's what's called a due

1 diligence period. The due diligence period could be
2 as long as three months, it could be as long as a
3 year.

4 The purpose of a due diligence period is to
5 allow the buyer the ability to look at the property,
6 analyze it, engineer it, answer questions that need to
7 be answered to make a decision as to whether or not
8 you're going to go forward with the purchase and,
9 i.e., the development of the property.

10 What happened in this particular case is
11 that the purchasers, under their due diligence period,
12 attempted to answer some of the questions that they
13 needed to answer for purposes of moving forward with
14 the closing on the property and development of it.
15 The purpose of that meeting was to address one of
16 those questions; is there water and sewer capacity
17 presently available to meet the needs of that
18 build-out of that development. That was the purpose
19 of the meeting.

20 Q And have you have made any formal
21 application for service to that parcel of property?

22 A Since the buyer has not closed on the
23 property they are not in any legal position to request
24 an application for service.

25 Q So nobody has requested the service?

1 A That is correct.

2 Q And nobody has been turned down for that
3 service?

4 A That is correct, too.

5 Q You stated you had represented the owner of
6 what was originally the -- I think it was called
7 Groveland Development; is that correct?

8 A That is correct.

9 Q And which was later known as Foxwood; is
10 that correct?

11 A No. Groveland was the name of the
12 developer. The subdivision in question is Foxwood.

13 Q Isn't it true your client sold that plant to
14 Mad Hatter Utilities?

15 A That's a real interesting question. I'm
16 glad you brought that up. There was a big question in
17 my mind, as Groveland's attorney at the time, or
18 subsequent to that sale, that any money ever changed
19 hands, although there seems to be quite a bit of
20 documentation that allegedly money did change hands;
21 and that was one of the things we tried to bring up in
22 the rate hearing.

23 There was a series of promissory notes
24 prepared by Mr. DeLucenay's attorney at the time which
25 were recorded, satisfactions were recorded; and there

1 was a question as to whether or not money ever changed
2 hands to satisfy those promissory notes. That's a
3 real good question.

4 Q So are you suggesting money never changed
5 hands?

6 A All I can tell you is in my search to find
7 out if money ever changed hands, I was unable to cover
8 every -- any evidence that money ever changed hands.

9 Q Do you have any proof that it did not?

10 A I have a series of promissory notes that
11 were prepared by Mr. DeLucenay's attorney. I have a
12 series of satisfaction of promissory notes, which is
13 my understanding were presigned and were periodically
14 filed by Mr. DeLucenay's attorney. Other than that, I
15 have no proof.

16 Q So you're suggesting that they may not have
17 paid for this system, but you have absolutely no proof
18 of that?

19 A That is correct.

20 Q And this all occurred back in the late '70s,
21 did it not?

22 A No.

23 Q About when did it occur?

24 A 1980 -- yeah, maybe -- right around 1980s,
25 early 1980s.

1 Q You talked about the school site and the
2 double sessions required there. Isn't it true that
3 that is a piece of property that's within -- is within
4 the service territory of Mad Hatter Utilities?

5 A I don't know that.

6 Q Do you know whether or not it's true that
7 Mad Hatter was providing service to that school during
8 the construction phase?

9 A I don't know that.

10 Q Are you familiar with the federal lawsuit
11 whereby Mad Hatter has objected to the County coming
12 in and providing service to that school?

13 A My familiarity with the lawsuit is only what
14 I've read in the papers.

15 Q Well, you've talked about the required
16 double session as though to suggest that that was
17 somehow the fault of Mad Hatter Utilities.

18 A All I know is that my child was forced with
19 the issue of -- we're in the district of the Denham
20 Oaks Elementary School. As a parent, I was faced with
21 the option of placing my child in that school under
22 double sessions, or transporting my child with my own
23 car, because bus service would not be allowed outside
24 of that district, and keep my child in the elementary
25 school which they had previously attended. We opted

1 not to face the double sessions.

2 Q But you don't know who is at fault for that
3 situation, do you?

4 A No, sir, I do not.

5 Q You talked about unconscionable provisions
6 in a utility service agreement. Did you file a
7 complaint with the Public Service Commission?

8 A No, sir, and I think I stated that I did
9 not.

10 Q Why not?

11 A Well, the practical application of it, as I
12 think I testified to, was if you're a real estate
13 developer and you've got a residential subdivision
14 that you're ready to move forward with and develop,
15 you cannot afford to sit there with bank loans and
16 other things and say, you know, I don't like this
17 agreement so I'm going to protest it, and it's going
18 to end up in administrative hearings several months
19 down the line in front of the Public Service
20 Commission. In the meantime, my project sits there
21 idly by while we fight over provisions in a service
22 utility agreement.

23 Q Well, if you've never asked the
24 Commission -- filed a complaint with the Commission to
25 find out what their position was as to that agreement,

1 how do you know it's going to end in up in an
2 administrative hearing?

3 A Well, I think what came about is a
4 subsequent review of a service agreement where I did
5 have a client that protested it -- I think as
6 Ms. Messner is well aware -- we brought out the issue
7 of the promissory notes and the Utility's right to, at
8 their option, pay those promissory notes back or not.
9 My understanding from my conversations with Public
10 Service Commission Staff was they were very surprised
11 to see that. They had not noticed it before.

12 Q Isn't it true that Mad Hatter Utilities
13 bought the lines within the -- your client's
14 subdivision?

15 A My understanding is that they did buy the
16 lines within the subdivision.

17 Q As to the loan, isn't it true that that was
18 for upgrading a lift station?

19 A Which loan are we talking about?

20 Q The loan that was demanded of your client
21 for -- that you say the Utility -- it's at the
22 Utility's option to pay back.

23 A Well, you know, that's an interesting
24 question, too, because there were several allegations
25 made by the Utility as to what the money was going to

1 do, including a backup pump for the water station.
2 And to this day we have never been provided with any
3 documentation to verify that any of those things were
4 ever done.

5 Q Did you demand that they provide you with
6 documentation that they spent the money on those
7 things?

8 A No, sir. We paid the money and moved on
9 about our business.

10 Q Isn't it true that that loan is still being
11 paid back to this day?

12 A Still being --

13 Q Correct. It is a long-term amortization
14 that's still being paid back?

15 A I can't speak to that. I don't know.

16 Q Are you aware -- you spoke about the
17 abandonment of land for the sewage treatment plant.
18 Are you aware there's an ongoing investigation as to
19 that matter?

20 A No, I am not.

21 Q Are you aware that there were substantial
22 liens on that property?

23 A No, I'm not.

24 Q And you don't know the magnitude of those
25 lines either, do you?

1 A No, sir, I do not.

2 Q Do you know whether or not the disposition
3 of that land was required as a condition of the
4 Utility's refinancing?

5 A That I don't know.

6 Q In your suggestions about the temporary
7 nature of these plants and their -- your belief that
8 they were intended as temporary until the County -- as
9 I understood it, until the County got there; is that
10 basically what you're saying?

11 A That's correct.

12 Q You mean that the private utility is
13 supposed to invest in facilities, and when the County
14 comes in and has available service, then the private
15 utility is suppose to turn the system over to the
16 County?

17 A No. What normally happens is that -- for
18 instance, in relation to the history of my
19 subdivision, which is Turtle Lakes, the property was
20 developed by a corporation by the name of Criterion.
21 The builder was Pulte Homes.

22 What they did is they put in what I refer to
23 as a pocket plant, which is a single tank and a
24 percolation pond. What they did is they took the cost
25 of that plant, pass it on, and each person that bought

1 a lot within the subdivision in essence was paying for
2 that little pocket plant.

3 The idea was that once they built out the
4 subdivision, then they would either dismantle that
5 plant, at which time the County would be there, or
6 municipality if we ever incorporated or what have you,
7 would take over that deal. That did not happen.

8 As a result, my understanding is Criterion
9 gave the plant over to the subsequent owners.

10 Q Do you know whether or not the subsequent
11 owners ever actually purchased that plant or whether
12 it was given to them? Do you have personal knowledge
13 of that.

14 A My understanding is it was purchased as part
15 of a deal which involved the same individual buying
16 the remaining phases of that particular subdivision.

17 Q Do you have any documents that demonstrate
18 that that plant was given to another individual?

19 A No, sir, I do not.

20 Q As to this allegation that the customers
21 paid for this system and then it was intended to be
22 given over, what documents do you have that show that
23 it was intended to be given to local government?

24 A The only document I have is what I paid for
25 my lot when I bought my lot in there.

1 Q And it says in that document, or some of
2 those documents, that those facilities are intended to
3 be given over to local government?

4 A Of course it does not.

5 Q Well, that is what you said, is it not?

6 A What I'm telling you as an attorney that is
7 involved in development is that -- and you know, and
8 common sense dictates to you, when a developer
9 develops a subdivision, the costs inherent in that
10 development are passed on, and that's how the lot
11 prices are established.

12 For instance, if I'm a developer and I put a
13 road in my subdivision, do you honestly believe that
14 the developer absorbs that cost? If I pay you as an
15 attorney to represent me at a rezoning for that
16 subdivision, do you honestly think that I, as a
17 developer, absorb that cost? Of course not. Common
18 sense tells you that that cost is part of the
19 development costs that go into sustaining what the lot
20 price that I'm going to sell to the consumer is going
21 to be. That's how I recover the cost of my
22 development.

23 A pocket plant in a subdivision is another
24 cost of development that I pass on in the price of the
25 lots that I sell to my customers. A developer is in

1 the business to make a profit, not to lose money.
2 Costs of that development are passed in the lot
3 prices.

4 Q Do you know whether or not the Commission
5 has investigated in its previous audits of Mad Hatter
6 Utilities whether it believes that those costs were
7 passed on to the lot purchasers?

8 A All I know is -- and pardon my language
9 again -- I tried like hell to get them to look at it.

10 Q And you don't know whether they did, do you?

11 A No, sir, I do not.

12 MR. DETERDING: That's all I have.

13 COMMISSIONER DEASON: Ms. Hale?

14 EXAMINATION

15 BY MS. HALE:

16 Q Mr. Hayes, my name is Marion Hale. I
17 represent Pasco County in this matter. You discussed
18 a meeting that you held in Jerry Buhr's office; is
19 that correct?

20 A Yes, ma'am.

21 Q Can you tell us approximately when that was?

22 A It would probably be, at this time, close to
23 a year ago.

24 Q And, as I understand it, Mr. Buhr represents
25 Mad Hatter; is that correct?

1 A That's correct. For purposes of tying a
2 time frame, my recollection was it was a few months
3 before you all went to trial.

4 Q So if I told you our trial began in
5 November, would that clarify --

6 A Well, actually I think at the time, you were
7 scheduled to have had your trial sooner. And didn't
8 it get postponed?

9 Q The original trial was supposed to be in
10 September, as I recall. So it was a few months prior
11 to that time?

12 A Yes. So it would be about a year ago.

13 Q Now, whom did you represent at this meeting
14 with -- in Mr. Buhr's office?

15 A I represented the property owner, Kinsman
16 family.

17 Q And the Kinsman family was seeking to sell
18 property to this Mr. Anderson?

19 A We had been approached about the -- no, not
20 to Mr. Anderson; to the people that were going to buy
21 Mr. Anderson's property, a gentleman by the name of
22 Dara Khoyia and a gentleman by the name of Ben Murphy.

23 Q And was Mr. DeLucenay present for this
24 meeting in Mr. Buhr's office?

25 A Yes, he was.

1 Q And was the purpose of this meeting in
2 Mr. Buhr's office to discuss utility service to this
3 proposed development?

4 A Yes, ma'am, it was.

5 Q Does this proposed development have a name?

6 A It's referred to as Lake Talia.

7 Q And this is the 300-home development that
8 your client just testified to; Mrs. Johnson?

9 A Yes.

10 Q And during this meeting, did Mr. -- was it
11 acknowledged that Lake Talia is within Mad Hatter's
12 PSC certificated territory?

13 A In no uncertain terms, we were told that by
14 Mr. DeLucenay and his attorney.

15 Q And did they then tell you because it was in
16 Mad Hatter's certificated territory, that Mad Hatter
17 would serve?

18 A In no uncertain terms we were told that,
19 yes. It was very clear.

20 Q And so why isn't Mad Hatter serving that
21 territory?

22 A All I can tell you is there is no plant
23 there to serve that area. There are no pipes from the
24 private utility that would be in that area to serve.

25 Q And so your client's only two things they

1 could do would be to file a compliant with the PSC,
2 which was too time consuming?

3 A That's correct.

4 Q Or pay Mad Hatter money?

5 A Or opt to purchase other property in another
6 area.

7 Q And did you leave that meeting with the
8 clear impression that Mad Hatter did not have the
9 capability of serving this project?

10 A Yes, and that belief was based on statements
11 that were made at that meeting requesting that if
12 Mr. Khoyia and his group purchased the property, an
13 option available in order to be able to supply service
14 to that area would be their willingness to put forth
15 land and cost to allow the Utility to put in a small
16 sewage treatment plant to serve the needs of that
17 community.

18 Q So Mr. DeLucenay acknowledged at this
19 meeting that Mad Hatter had no present ability to
20 serve Lake Talia?

21 A In fairness to Mr. DeLucenay, he also
22 indicated that another option available to him was to
23 interconnect to the county sewer line which we knew to
24 be in that area.

25 Myself and Mr. Khoyia questioned whether or

1 not under the existing agreement with the County,
2 which specified a sole point of connection, that the
3 private utility would have the legal basis to be able
4 to do that. But that was discussed.

5 Q And to this day, Mad Hatter is not serving
6 this property?

7 A To my knowledge, no, they are not.

8 Q And your concern about an expansion of
9 Mad Hatter's territory is that if Mad Hatter can't
10 serve its existing territory, it should not be given
11 additional territory?

12 A That's correct.

13 MS. HALE: Nothing further.

14 COMMISSIONER DEASON: Staff, questions?

15 MS. CAPELESS: No questions.

16 EXAMINATION

17 BY MR. DETERDING:

18 Q There has been no request for service to
19 Lake Talia.

20 COMMISSIONER DEASON: Mr. Deterding, if you
21 have a question -- you cannot testify.

22 MR. DETERDING: I apologize.

23 Q (By Mr. Deterding) Isn't it true that
24 there has been no request for service to Lake Talia?

25 A There has been no specific written legal

1 request to serve that area.

2 Q Weren't you given an application to file a
3 request for service?

4 A Yes, we were.

5 Q And you have not filed that with the
6 Utility?

7 A That is correct.

8 COMMISSIONER DEASON: Okay. Thank you,
9 Mr. Hayes. Are there any other members of the public
10 who have entered the hearing room who wish to testify
11 at this time? Let the record reflect that there are
12 no other members of the public who wish to testify.

13 Before we move into the next phase of the
14 hearing, we're going to take a 10-minute recess.

15 (Brief recess.)

16 - - - - -

17 COMMISSIONER DEASON: Call the hearing back
18 to order. Mr. Deterding, you may call your witness.

19 MR. DETERDING: As a preliminary,
20 Commissioners, with Ms. Capeless' help, I was able to
21 locate the noticing information that she had requested
22 and was, in fact, provided to me to bring here, and I
23 was just not aware of it; and I'll pass out copies of
24 that.

25 COMMISSIONER DEASON: Very well. It will be

1 identified as Exhibit 2.

2 (Exhibit 2 marked for identification.)

3 MR. DETERDING: I believe this was the item
4 that was -- this is 2, correct?

5 COMMISSIONER DEASON: Yes. Do you move its
6 admission?

7 MR. DETERDING: Yes, please.

8 COMMISSIONER DEASON: Without objection,
9 hearing none, then Exhibit 2 is admitted.

10 (Exhibit 2 received in evidence.)

11 MR. DETERDING: With that, we call Larry
12 DeLucenay.

13 - - - - -

14 LARRY DeLUCENAY

15 was called as a witness on behalf of Mad Hatter
16 Utility, Inc. and, having been duly sworn, testified
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. DETERDING:

20 Q Mr. DeLucenay, please state your name and
21 employment address.

22 A Larry G. DeLucenay, care of 1900
23 Land O'Lakes Boulevard, Suite 113, Lutz, L-U-T-Z, zip
24 34 -- 33549.

25 Q And by whom are you employed?

1 A Mad Hatter Utility, Inc.

2 Q And in what capacity?

3 A President since 19 -- March 1st, 1978.

4 Q Did you prepare direct testimony for this
5 proceeding?

6 A Yes, I did.

7 Q And that was prefiled?

8 A Yes, sir, it was.

9 Q If I asked you the questions contained
10 within that direct testimony here today, would your
11 answers be the same as those in the prefiled?

12 A Yes, sir, they would be.

13 Q Do you have any changes or corrections to
14 that testimony?

15 A Not to my knowledge, not at this time.

16 Q Did you also prepare and submit with that
17 testimony three exhibits marked LGD-1, 2, and 3?

18 A Yes, sir, I did.

19 Q And do you have any changes to make to those
20 exhibits?

21 A No, sir, not at this time.

22 MR. DETERDING: I ask that his testimony,
23 prefiled direct testimony of Larry G. DeLucenay, be
24 inserted in the record as though read.

25 COMMISSIONER DEASON: Without objection, it

1 shall be so inserted.

2 **MR. DETERDING:** And that his Exhibits LGD-1
3 through 3, I guess, be marked as Composite Exhibit 3.

4 **COMMISSIONER DEASON:** It will be so
5 identified.

6 (Exhibit 3 marked for identification.)
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 960576-WS

MAD HATTER UTILITY, INC.

APPLICATION FOR AMENDMENT OF CERTIFICATE

NOS. 340-W AND 297-S IN PASCO COUNTY

PREFILED DIRECT TESTIMONY OF LARRY G. DELUCENAY

1
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6
7 Q Please state your name and address.

8 A My name is Larry G. DeLucenay, and my address is 1900
9 Land O'Lakes Boulevard, Suite 113, Lutz, Florida 33549.

10 Q By whom are you employed and in what capacity?

11 A I am employed by Mad Hatter Utility, Inc. I am the
12 company's president and have been so since its inception.

13 Q What are your duties and responsibilities?

14 A I am responsible for all aspects of the day to day
15 operation of the Utility for its technical operation, to
16 management and handling regulatory matters before the
17 PSC, such as this certificate extension application in
18 coordination with our attorneys and consultants.

19 Q What is your experience in the water and wastewater
20 utility industry?

21 A I have extensive experience in this area and have
22 operated this Utility since its creation and consolida-
23 tion under its current name in 1978. I have attached
24 hereto, a resume of my background and experience as
25 Exhibit LGD-1.

1 Q Was the application of Mad Hatter Utility, Inc. for
2 amendment of water and wastewater certificates prepared
3 by you or under your direct supervision and control?

4 A Yes, in association with our attorneys, I prepared the
5 application which is attached hereto as Exhibit LGD-2.
6 In addition, the PSC Staff has requested additional
7 information in support of the application which copies of
8 the additional information provided is set forth in
9 Exhibit LGD-3. We will continue to provide any addi-
10 tional information as and when requested by the Staff to
11 the extent we are able to do so.

12 Q Have you prepared a map which shows the location of Mad
13 Hatter's existing service area, with the location of the
14 proposed service area?

15 A Yes. The set of franchise key maps attached to the
16 original application showed the location of the Utility's
17 existing and proposed service territories. This
18 application is undertaken primarily to clear up those
19 areas where the Utility has existing service, but does
20 not have the parcels included in its current certificate
21 or where the Utility has facilities stubbed and ready to
22 serve and where there have been previous requests for
23 such service. The Utility has intentionally not under-
24 taken in this application to include those areas where
25

1 they are either not the logical provider of service with
2 the existing facilities or where we do not have facili-
3 ties immediately adjacent to or within the parcel in
4 hopes that we could avoid a protest of this application
5 by Pasco County.

6 Q Would Mad Hatter Utility, Inc.'s extension of service
7 territory as proposed in the application be in competi-
8 tion with or duplication of any other water or wastewater
9 system or portion of any other water or wastewater
10 system?

11 A No. This extension application was put together, in
12 part, to comply with the Commission's requirements that
13 the Utility file and extension application to cover the
14 areas where it is currently serving which are not
15 included in a certificated service territory. The
16 Utility has done that. In addition, we have included
17 areas that are immediately adjacent to and in a position
18 to provide service when requested. We also have included
19 areas where we have outstanding developer agreements with
20 the property owners. While I will not get into great
21 detail about the circumstances which led to this filing,
22 a little background information is in order. Mad Hatter
23 Utility filed a request in 1987 for extension of service
24 territory in order to include a large area in and around
25

1 its Foxwood, Turtle Lakes and Linda Lakes service areas.
2 The Florida Public Service Commission, at that time, held
3 hearings immediately upon protest of the notice of Mad
4 Hatter's intent to extend. While the Utility had filed
5 the application, the Commission instead held the hearing
6 on the notice with Pasco County specifically objecting to
7 the extension of any service territory to this Utility.
8 Even though that extension notice included an area much
9 larger than that requested in this application, the
10 Public Service Commission found in its Order No. 20067
11 that Pasco County did not have facilities located within
12 the area to enable it to provide service and specifically
13 found that Mad Hatter was in the best position to provide
14 service to the entire area requested. The Commission
15 thereafter, in accordance with the then existing statute
16 and rules, required that Mad Hatter go forward with
17 construction of facilities into these new areas and
18 thereafter to file a simple request for inclusion in
19 their territory, at which time that additional territory
20 would be granted. I note all of this simply because it
21 is historically significant. The County was unable at
22 that time to provide service to any of the areas in and
23 around Mad Hatter's large proposed new territory.
24 However, despite the Public Service Commission's findings
25

1 in favor of service by Mad Hatter and the Commission's
2 specific finding that it was in the public interest for
3 Mad Hatter to provide service in these areas, the County
4 went forward with an aggressive campaign to extend lines
5 which duplicated those of Mad Hatter in and around its
6 existing service territory and the areas for which the
7 Commission had specifically found Mad Hatter was in the
8 best position to provide water and wastewater service.
9 Since the Commission's findings and up through the
10 current date, the County has gone as far as to actually
11 invade the existing service territory of Mad Hatter,
12 attempting to take those or any new customers in those
13 areas from the Utility.

14 The physical facilities of Mad Hatter render it best able
15 to provide service to the areas proposed in this applica-
16 tion despite the County's decision to ignore previous
17 Commission findings and move forward with not only
18 attempting to duplicate the facilities of Mad Hatter, but
19 also in its overt action in invading the certified
20 service territory of Mad Hatter. These facts make it
21 clear that to the extent there is any duplication of
22 facilities or service it is a direct result of the
23 actions undertaken by the County in blatant disregard of
24 the Commission's findings on the public interest and the

1 appropriate provider of service many years ago and
2 despite their participation in those previous proceedings
3 and outstanding case law, including the JJ's Mobile Homes
4 case. The contempt of the PSC shown by Pasco County has
5 continued and progressed to the point of attempting to
6 take customers in the existing certificated service
7 territory of Mad Hatter.

8 Q Is it in the public interest for the Public Service
9 Commission to grant this amendment?

10 A Yes, it is. Mad Hatter has continually provided service
11 in accordance with all applicable standards and to those
12 in need of service as was found in Order No. 20067 where
13 these areas, among others, were previously discussed.
14 The Utility has existing facilities either already
15 located within the areas applied for in this certificate,
16 or immediately adjacent thereto, and is in a position to
17 provide service to all requests therein. While it would
18 be imprudent for any utility to have capacity in place to
19 serve its territory at build-out unless there was an
20 immediate demand for all of that capacity, Mad Hatter
21 does have the capacity to enable it to provide service in
22 the near future and will expand that capacity either
23 through additional bulk purchases from the County or
24 through construction of its own additional wastewater
25

1 treatment facilities or possibly other options to provide
2 that service as and when needed. Mad Hatter is in a
3 position to provide the most efficient cost effective
4 service to the areas proposed in its application through
5 utilization of the existing water and wastewater service
6 facilities as has been part of the Utility's master plan
7 for many years. Any proposal for service by the County
8 would be duplicative and inefficient as well as require
9 additional time to extend. The requested extension of
10 service territory will also allow Mad Hatter Utility,
11 Inc. to interconnect its systems in the long-run as part
12 of the master plan approved and recognized as appropriate
13 for providing service in this area by the Commission some
14 8 to 10 years ago, after full formal hearing including
15 participation by the County.

16 Q Do you have any further testimony to provide at this
17 time?

18 A No. I have simply tried to provide a brief outline of
19 the situation and purpose for filing this application in
20 direct testimony and to sponsor our original application
21 and the supplements thereto. Since the County has
22 protested our proposal for extension, I will respond in
23 my rebuttal testimony to the specific nature of those
24 protests and the reasons therefore after and to the
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extent they are discussed in the County's direct testimony.

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1 MR. DETERDING: And we tender the witness
2 for cross.

3 COMMISSIONER DEASON: Ms. Hale?

4 CROSS EXAMINATION

5 BY MS. HALE:

6 Q Mr. DeLucenay, you've just heard some
7 testimony about the Lake Talia development, correct?

8 A Yes, ma'am.

9 Q It's correct, isn't it, that Mad Hatter has
10 no wastewater treatment plant out there at the Lake
11 Talia project; isn't that accurate?

12 A Mad Hatter does not currently have a
13 wastewater treatment plant on Lake Talia property,
14 correct.

15 Q And Mad Hatter does not own any property
16 nearby the Lake Talia property to build a wastewater
17 treatment plant, does it?

18 A Not as of this date.

19 Q Now, Mad Hatter does not have the capacity
20 to treat the sewage in the extended territory that
21 you're asking for this Commission to award you today,
22 does it?

23 A I don't agree with -- no, I don't agree with
24 the way the question is asked. Mad Hatter has a
25 number of options for service to the extended

1 territory for wastewater and water.

2 Q Mr. DeLucenay, do you remember my taking
3 your deposition on April 17th of this year in this
4 matter, and do you remember my asking you this
5 question and your giving me this answer? This is
6 Page 29, Line 22: "Mr. DeLucenay, yes or no; do you
7 have the capacity today to serve? Just yes or no."

8 Answer: "Wastewater, we do not have permitted
9 capacity today. Water, we have adequate capacity."
10 Do you remember my asking you that question
11 and you giving that answer, Mr. DeLucenay?

12 A Yes, I do.

13 Q Now, isn't it true that you do not know how
14 Mad Hatter will provide the treatment for the sewage
15 in the extended territory?

16 A Mad Hatter has four options available. The
17 final selection will, of course, be subject to final
18 determination of quantity, timing, economics,
19 permitting.

20 Q Mr. DeLucenay, do you remember that
21 deposition April 17th, 1997? Do you remember my
22 asking you this question and your giving me this
23 answer? Page 30: "Isn't it a true statement, yes or
24 no, that sitting here today you do not know how
25 Mad Hatter will provide the treatment of the sewage

1 for the extended territory? Just a yes or no."

2 Answer: "I can't answer that."

3 Do you remember giving that answer under
4 oath just last month?

5 A I think the depo would have to speak for
6 itself. I don't recall the question. I don't recall
7 the answer.

8 Q You don't know how many customers the
9 extended territory will have when it is built out, do
10 you?

11 A We gave the Commission a projected ERC
12 connection. Those types of numbers I don't think
13 anyone can give a hard number to. Those are all
14 subject to final developer permitting and build-out.
15 Those are not utility controlled numbers. We gave the
16 Commission an estimate.

17 Q Mr. DeLucenay, when I took your deposition
18 on April 17th, do you remember giving me this answer
19 in response to this question. Page 4: "Okay. Do you
20 know how many customers the extended territory will
21 have when it is built out?" Answer: "No, I don't."

22 Isn't that the answer you gave me on April
23 17th, Mr. DeLucenay?

24 A As I said, the depo would have to speak for
25 itself. But we did give a reasonable effort to

1 estimate the quantity of ERCs and supplied it to the
2 Commission as part of our application.

3 Q Well, if you don't know the number of
4 customers, Mr. DeLucenay, when the territory is built
5 out, you don't know what the water and sewer needs
6 are; isn't that correct?

7 A Those are all things that are not defined at
8 this point in time; that's correct.

9 Q So it's fair to say you can't tell us what
10 the needs of the extended territory are for water and
11 sewer service when it's built out?

12 A I think it's a true statement that the final
13 determination of exact quantity of sewage and/or water
14 is not determinable by anyone at this date.

15 Q And if you don't know how much sewage will
16 be generated in the extended territory, it's fair to
17 say that you don't know what the capacity for a
18 treatment plant is that you will have to build or
19 acquire somehow; isn't that correct?

20 A That would be correct as asked, but I think
21 that's misleading, because we don't -- and the Utility
22 is not representing that all these projects are going
23 to come on line June 1st of this year with 100% of all
24 their units. Those types of things are normally
25 utility planned items and matches the developer's need

1 for capacity based on his projected build-out.

2 Q And isn't it correct that it takes about a
3 year and a half of planning to provide wastewater
4 treatment service to a development?

5 A In some cases, yes. Sometimes it's shorter
6 sometimes it's longer.

7 Q Now, Mr. Bramlett in his prefiled testimony
8 said that conservatively Mad Hatter would need 436,000
9 gallons of sewage treatment capacity a day to serve
10 the extended territory. You don't know one way or the
11 other whether that's correct, do you?

12 A That's correct. I do not know that that's
13 an exact number. I have reviewed the -- one
14 attachment Mr. Bramlett supplied since then. It
15 appears that Mr. Bramlett, from what I was able to
16 review, used a max number; and I think Mr. Bramlett's
17 numbers are high.

18 Q Well, actually you don't know one way or the
19 other whether they're accurate, do you?

20 A Just based on experience of 30 years, I --
21 is what I draw my conclusion on.

22 Q Well, you don't have knowledge one way or
23 the other whether Mr. Bramlett is correct in his
24 figures, do you?

25 A No, because I don't see all the data that he

1 used.

2 Q Now, you don't own any -- you, being
3 Mad Hatter, does not own any real estate, either
4 outright owning or leasing, by which -- on which you
5 could provide the additional wastewater treatment
6 services to the extended territory; isn't that
7 correct?

8 A Only the Foxwood wastewater plant site. We
9 own no other properties, no.

10 Q You mean the Linda Lakes?

11 A No. We still own the original Foxwood
12 wastewater plant site and always will, because it
13 contains a master sewage pump station on that real
14 estate; but we own no other outside site.

15 Q So you own no site on which you could
16 construct a wastewater treatment plant to serve the
17 some 400,000 gallons a day that will be generated in
18 the extended territory, correct?

19 A No, that's not correct. The Foxwood site
20 used to house a 340,000 gallon-per-day treatment
21 plant, actually parallel plants. It could actually
22 be -- could house a treatment plant today if it was
23 determined that that was the site that was needed. We
24 own no other outside parcels of land to -- per your
25 question.

1 Q Do you remember my taking your deposition on
2 April 17th and my asking you this question and you
3 giving this answer. Page 9. Question: "Does that
4 mean you have no real property today, either under
5 lease, by contract or by ownership to provide
6 additional wastewater treatment service to the
7 extended territory?" Answer: "As of today, we do
8 not."

9 Do you remember giving me that answer?

10 A Not specifically, but that was an oversight.
11 If that was my exact answer, that was an oversight,
12 because I forgot the Foxwood wastewater plant site,
13 which we have owned since 1981.

14 Q Now, you do own the Linda Lakes wastewater
15 treatment plant, correct?

16 A That's correct.

17 Q And that's permitted for 20,000 gallons a
18 day?

19 A That's correct.

20 Q And Mr. Burghardt, in his prefiled testimony
21 he said that he thought the excess capacity at
22 Linda Lakes was about 4,000 gallons a day. You don't
23 disagree with that, do you?

24 A No. I think it's an approximate accurate
25 number.

1 Q And you can't treat the extended territory
2 with 4,000 gallons of wastewater treatment capacity a
3 day, can you?

4 A I would not anticipate treating the entire
5 extended area with 4,000 gallons, no.

6 Q Now, your own engineer, Edwin Rogers, he's
7 testified in his prefiled testimony that the Linda
8 Lakes has 3,000 gallons of excess capacity. You don't
9 disagree with that, do you?

10 A I can't testify as to exactly what the
11 number is. I've not reviewed the numbers myself.

12 Q And Mr. Burghardt says that you could --
13 Mad Hatter could treat with that 4,000 gallons -- if
14 that number is accurate -- 10 to 15 homes extra, and
15 that's it. You don't disagree with that, do you?

16 A I'd say that's approximately correct.

17 Q So if Mr. Burghardt is wrong and it's
18 actually 3,000 gallons, as Mr. Rogers your expert
19 says, then we're looking at less than 10 to 15 homes
20 that -- additional property that could be treated by
21 the Linda Lakes wastewater treatment plant?

22 A I'm not sure what numbers you're using,
23 because, obviously, different types of units have
24 different quantities of flow associated with them,
25 whether they're multi-family or mobile home or

1 whatever.

2 Q But if you're looking at single family
3 homes, you told me you don't disagree with
4 Mr. Burghardt's theory that you're looking at 10 to 15
5 homes additional for Linda Lakes if you've got 4,000
6 gallons capacity, right?

7 A I said approximately, that's correct.

8 Q So if Mr. Rogers is correct and
9 Mr. Burghardt has overestimated it, you're looking at
10 less than 10 to 15 additional homes for Linda Lakes;
11 isn't that correct?

12 A That's approximately correct.

13 Q You certainly wouldn't be able to treat the
14 Lake Como Mobile Home Park with 3,000 gallons a day,
15 would you, Mr. DeLucenay?

16 A That would not be anticipated to do its
17 build-out, no.

18 Q Do you know what the current flow out of
19 Lake Como is?

20 A Zero.

21 Q Well, it's on septic tanks, correct?

22 A The existing mobile homes are, yes.

23 Q And if they were required by the Florida
24 Department of Environmental Protection to connect to a
25 wastewater treatment plant, do you know what the

1 gallons per day out of Lake Como are?

2 A No, I'd have to say I don't.

3 Q But you would agree with me that they are
4 well over 3,000 gallons a day; isn't that correct?

5 A I couldn't say one way or the other.

6 Q And there are numerous mobile homes and a
7 restaurant and a motel at Lake Como; isn't that
8 correct?

9 A I was not aware of the mobile home park when
10 I was -- visited one of the residents there a couple
11 weeks ago. I was not aware of the motel. They
12 apparently do serve food at the rec center building.

13 Q And if Mr. Burghardt has estimated that
14 that's running at about 34,000 gallons a day excluding
15 the motel, you've got no reason to doubt that, do you?

16 A I have no knowledge one way or the other.

17 Q You couldn't treat 34,000 gallons a day at
18 the Linda Lakes Mobile Home -- at the Linda Lakes
19 treatment plant, could you?

20 A Not with the current permit, but obviously
21 the treatment plant is expandable.

22 Q Well, Mad Hatter doesn't have any permits
23 with the DEP other than Linda Lakes; isn't that
24 correct?

25 A That's correct.

1 Q And you've got no permit applications
2 pending with DEP for any -- to expand or build any
3 treatment plants; isn't that correct?

4 A As of this date, that is correct, but we do
5 have options available to us.

6 Q And Mad Hatter would need a DEP permit,
7 would it not, to operate a wastewater treatment plant?

8 A Yes, we would have to have an operating -- I
9 mean, we would have to have a permit for construction
10 and operation.

11 Q Now, you testified in your deposition that
12 you've got some steel drum for a half-million gallons
13 a day? It's in mothballs in Manatee County?

14 A Yes.

15 Q And you don't even know what size of
16 property you would have to put that on, do you, to be
17 able to treat that?

18 A I believe that was covered during the
19 deposition inasmuch as some people may think that the
20 wastewater treatment plant and the effluent disposal
21 must sit on the same piece of property. And I think I
22 responded to your question, I can't define what the
23 ultimate acreage of property may be, because you may
24 find a piece of property where you would incorporate
25 effluent disposal on site, or in the case of the

1 original Foxwood plant, effluent never existed on
2 site. The plant was housed there and effluent
3 disposal was some 2,000 feet away. So the two don't
4 have to be on the same sized piece of property. I can
5 just tell you that the treatment plant itself is 105
6 feet in diameter.

7 Q But it's fair to say, isn't it,
8 Mr. DeLucenay, since you don't even know how many
9 customers you're going to need to be serving and you
10 don't know how much sewage is going to be generated,
11 you certainly don't know the size of the piece of
12 property that will be needed for a treatment plant and
13 disposal of the sewage; isn't that correct?

14 A Well, those are engineering functions, and
15 as I previously stated, the treatment plant that I
16 have in mothballs is a million-gallon-a-day contact
17 process, 500,000 extended area.

18 Q Mr. DeLucenay, that's not my question. My
19 question is, you don't know what piece of property,
20 what size the piece of property is, and you haven't
21 even located a piece of property, have you, to put
22 this steel drum that you've got mothballed out in
23 Manatee County on to treat and dispose of the sewage;
24 correct?

25 A As I indicated, the Foxwood site is

1 available. It may not be the most efficient. The
2 ultimate size of property will be final determined by
3 an engineering study and function of incorporating all
4 of our existing reclaimed facilities into effluent
5 disposal, plus any percolation ponds that may be
6 required. Those engineering functions may make a
7 final determination, and you may end up with two
8 pieces of property. You may end up with two separate
9 percolation ponds and well -- weather storage areas,
10 and that could be entirely separate from where the
11 treatment physically sat.

12 So, no, a final determination is not
13 available today.

14 Q Well, if you don't even know the size of the
15 real estate, it's safe to assume you've not located a
16 piece of real property for it; isn't that correct?

17 A We have not located a separate, independent
18 piece; that's correct.

19 Q You haven't located any piece; isn't that
20 correct?

21 A I believe I've testified three times that
22 the Foxwood wastewater site is currently owned by Mad
23 Hatter and is adequate to house that container, but it
24 may not be the most feasible or cost-effective piece.

25 Q Mr. DeLucenay, do you remember my asking you

1 this question and your giving me this answer under
2 oath on April 17th? Page 25: "Mr. DeLucenay, my
3 question to you was, given the fact you don't even
4 know what size of real estate you would use, isn't it
5 safe to assume you have not located a piece of real
6 property to situate this?" Answer: "I think I've
7 testified to that before, that we have not located a
8 specific piece."

9 Do you remember giving that answer under
10 oath to me on April 17?

11 A Yes, I think that's still true today.

12 Q And you don't even know what size of
13 property to look for; isn't that correct?

14 A I believe I just testified to that. That's
15 an engineering function based on percolation and other
16 engineering considerations.

17 Q So it's a correct statement that Mad Hatter
18 does not currently have any location to dispose of
19 sewage from the extended territory, isn't it?

20 A I don't believe that question was asked
21 identical to your previous question. We do have
22 reclaimed infrastructure in place. We've testified
23 that to the Commission as long ago as 1988. Those
24 facilities are currently available. Final selection
25 of land for percolation pond and perhaps an alternate

1 plant site are engineering functions, as I've
2 previously testified to.

3 Q Well, you don't have a perc pond, and you
4 don't have a spray field, and you don't have any way
5 to dispose of the sewage; isn't that correct;
6 Mr. DeLucenay. Yes or no; isn't that correct?

7 A That's incorrect. I just testified that we
8 have in excess of 300 lots available for reclaimed
9 disposal of effluent today.

10 Q Do you remember my asking you this question
11 and your giving me this answer on April 17th? Page
12 61. Question: "So even though you've got the steel
13 drum to treat the sewage, you don't currently have any
14 location to dispose of the sewage?" Answer: "We
15 don't have a percolation pond or large tracts of land
16 to slow filtrate."

17 Do you remember giving me that answer?

18 A Yes, ma'am. I think that's just exactly
19 what I just testified to.

20 Q Now, you don't have the ability to serve the
21 property within your existing PSC certificate, do you?

22 A We have four options for treatment.

23 Q That's not my question to you,
24 Mr. DeLucenay. Isn't it true that you do not
25 currently have the capacity to treat within your

1 existing certificated territory?

2 A We feel the County bulk agreement provides
3 for that. We do not have a separate, independent
4 permit for an alternate treatment plant as of this
5 time, but we do have four other -- four options
6 available to us.

7 Q Well, isn't it true, Mr. DeLucenay, that you
8 don't have the ability to serve because you have
9 exceeded your 350,000 gallons with the County?

10 A I don't feel that that's accurate, because
11 the contract provides for expansion of that, as we
12 interpret it.

13 Q Well, that's your interpretation of the
14 contract; isn't that correct?

15 A That and our consultants. It may lead to a
16 legal conclusion, of course, which I'm not qualified
17 to render.

18 Q Well, the County has taken the position,
19 hasn't it, that you've got no more capacity left with
20 the County, right?

21 A They've indicated that.

22 Q And that's that 350,000 gallon-per-day cap
23 in your 1992 agreement with the County?

24 A Plus some 30 or 40,000 extra on top of that.

25 Q Well, you don't have the ability to provide

1 service to the Oak Grove subdivision and the Denham
2 Oaks School, and they're in your certificated
3 territory; isn't that correct?

4 A That's incorrect as asked, because we do
5 have the options of building capacity on-site,
6 off-site, and Pebble Creek and other capacities are
7 available. So that's incorrect as asked.

8 Q Well, isn't it true that you do not
9 immediately have the ability to serve the Denham Oaks
10 School and the Oak Grove subdivision even though
11 they're within your certificated territory?

12 A I disagree with the way the question is
13 asked.

14 Q Do you remember testifying under oath,
15 Mr. DeLucenay, in federal court on November 7th of
16 last year, and do you remember being asked this
17 question and giving this answer? Question: "Do you
18 have the capacity to service the project?" This is
19 referring to Denham Oaks and Oak Grove. Answer: "Not
20 immediately, but there were alternatives for that."

21 Do you remember giving that answer?

22 A I believe that would speak for itself.

23 Q So you're not able to add on new customers
24 today; isn't that correct?

25 A I believe there's a process recognized by

1 this Commission that customers are served, and that
2 includes a process that we're starting today; results
3 in execution of developer's agreement, which results
4 in proper permitting through regulatory agencies,
5 which ultimately allows service to be provided. And
6 in that sequence, yes, we can supply service to the
7 extended territory.

8 Q You can't even serve new customers in your
9 existing PSC certificated area because you're just a
10 middleman, isn't that true, dependent on the County
11 for treatment?

12 A Mad Hatter is referred to that, but we still
13 have other sources of treatment. We can always build
14 new capacity at any point in time on-site, off-site.
15 Those are always available to us.

16 Q You have referred to Mad Hatter under oath,
17 haven't you, as just a middleman?

18 A I believe that's the terminology that has
19 been used since the bulk agreement with the County.
20 That does not lock us into that position forever and
21 ever.

22 Q Well, it's not just been used, it's been
23 used by you, Mr. DeLucenay; isn't that correct?

24 A Probably correct. I don't recall doing so,
25 but --

1 Q And you're not able to add to new customers
2 today within your PSC certificated territory because
3 you have today no additional capacity to treat
4 customers; isn't that correct?

5 A I believe I've already testified to the fact
6 that we feel the existing bulk agreement with the
7 County provides for additional capacity that shall be
8 given to Mad Hatter. And any project that comes to us
9 at any point in time first, of course, follows our
10 procedure of a developer's agreement disclosing to the
11 utility what capacity they need, on what days, the
12 permits being executed between the developer and the
13 utility to the regulatory agencies that results in a
14 permit, and then ultimate service being planned
15 accordingly.

16 Q Mr. DeLucenay, do you remember testifying
17 under oath in federal court on November 7th, 1996 and
18 being asked this question by your own lawyer and
19 giving this answer. Page 58: "Are you able to add on
20 customers today?" Answer: "No."

21 Do you remember giving that answer under
22 oath, Mr. DeLucenay?

23 A No, and I don't remember what context the
24 questioning was being asked throughout.

25 Q Would it refresh your recollection if I gave

1 you the preceding questions to that?

2 A Preceding two or three.

3 Q Question; 58, Line 5: "Were you able to
4 negotiate, A, with that particular development company
5 and provide service?" Answer: "No, we were not."

6 Question: "Okay. What is Mad Hatter's situation
7 today as a private utility?" Answer: "We're sort of
8 a middleman right at present." Question: "What do
9 you mean by that?" Answer: "We do not -- we have not
10 the direct ability to control our growth like we had
11 previously to pursue the most cost-effective service
12 for our customers regarding wastewater, and we've been
13 just kind of isolated in the middle." Question: "Are
14 you able to add customers today?" Answer: "No."

15 Does that refresh your recollection,
16 Mr. DeLucenay?

17 A I think that record would speak for itself.

18 Q Now, you not only don't have the land to
19 build a wastewater treatment facility, and you don't
20 lease any land to do that, but you don't have the
21 financing to serve the extended territory, do you?

22 A Financing, as this Commission is well aware,
23 I believe, is a function of developers' agreements
24 being executed, proper planning being coordinated
25 between developers and utilities, and that includes,

1 of course, coming back to your lender and coordinating
2 financing that may be required through a lender.
3 Developer financing is a possibility. Those are
4 functions that are taken care of in a developer's
5 agreement negotiated between the utility and the
6 developer as needed.

7 Q Mr. DeLucenay, do you remember my asking you
8 questions under oath on April 17th, Page 32, and your
9 giving this answer? Question: "So you don't have the
10 financing today, do you?" Answer: "We do not."

11 Do you remember giving that answer?

12 A Yes, I think that's correct. Applications
13 for additional loans are always made with the support
14 of developers' agreements after the Commission gives
15 its approval to serve.

16 That's the way we've always done it in the
17 past. Subsequent to then, I think we've been supplied
18 with a letter from our primary lender out of Atlanta
19 that does say that they're interested in pursuing
20 additional lending that we may be needing in the
21 future.

22 Q You haven't even applied for financing, have
23 you --

24 A No. The actual final determination and loan
25 application is not tendered until that preliminary

1 negotiation with the bank takes place and a final
2 determination of cost, which is a function after this
3 Commission approves our service to the area.

4 Q And you don't know -- you can't apply for a
5 loan because you don't know how much money it's going
6 to cost, and you don't know how much money it's going
7 to cost because you don't know how much sewage is
8 going to be generated, and you don't have the land,
9 and don't even know how much the land is going to
10 cost; isn't that true, Mr. DeLucenay?

11 A Those are true statements, but they're taken
12 a little bit out of context as much as phasing, as
13 I've testified previously. Phasing is something that
14 is very definitely addressed by utilities. You cannot
15 come out and build capacity today if a project has an
16 eight or 10-year build-out. It's just not
17 cost-effective, and this Commission certainly doesn't
18 recognize those expenses.

19 I think with financing as well as treatment
20 plant capacity, I think it's only prudent on the
21 utility to coordinate those two functions together.
22 If you need to build a wastewater plant to meet the
23 three to four-year growth, then that's prudence of
24 expenditure.

25 With the area that we're applying for, if

1 some of those projects have seven, eight, nine-year
2 build-out, I don't think it's prudent to ask the bank
3 for that money at this time, and it's certainly not
4 prudent to construct that spare capacity and carry it
5 for that many years for those future customers. So
6 all those, again, are functions that the Utility
7 performs after we have this Commission's approval to
8 serve those customers.

9 Q Well, another reason you haven't applied for
10 financing, Mr. DeLucenay, is that as recently as
11 January of last year Mad Hatter's financial position
12 was precarious at best; isn't that true?

13 A I believe now we've gotten the federal case
14 out of the way, I think that where we go with our
15 lender is going to be a function of what the lender
16 considers being satisfactory to them.

17 Q Mr. DeLucenay, isn't it true that in January
18 of '96 Mad Hatter's financial position was precarious
19 at best?

20 A Yes, I think it's a true statement.

21 Q And you testified so under oath, didn't you,
22 once?

23 A I don't recall, but that -- I wouldn't
24 question that.

25 Q And, in fact, you testified at a preliminary

1 injunction hearing in January of 1996 that if
2 Mad Hatter was not allowed to serve the Oak Grove
3 subdivision and the Denham Oaks School, that
4 Mad Hatter faced possible foreclosure by its lender
5 and bankruptcy; isn't that true?

6 **A** I think at that time there were a number of
7 things that we were facing.

8 **Q** And the things you were facing were --

9 **COMMISSIONER CLARK:** Can I interrupt a
10 moment? Was that a yes with an explanation?

11 **WITNESS DELUCENAY:** Yes, Commissioner, yes.

12 **COMMISSIONER CLARK:** It would be helpful to
13 me, because sometimes I'm not clear what direction
14 you're going in, if you would say yes or no and then
15 follow up. That would be helpful.

16 **WITNESS DELUCENAY:** Yes, Commissioner.

17 Thank you.

18 **Q** **(By Ms. Hale)** So in January of '96, Mad
19 Hatter was facing foreclosure and possible bankruptcy
20 because it was not serving the Denham Oaks School and
21 the Oak Grove subdivision, and today it is still not
22 serving the Denham Oaks School or the Oak Grove
23 subdivision; isn't that correct?

24 **A** That's correct.

25 **Q** And didn't you also testify in the

1 injunction hearing that Mad Hatter was having trouble
2 getting financing because the County was providing
3 service to the Denham Oaks School?

4 A Yes. We have had indications from potential
5 lenders over time, and I believe certain letters and
6 documents were supplied during discovery that
7 indicated that.

8 Q Now, you've reached your 350,000-gallon
9 capacity with the County, correct?

10 A It's the County's position, and we do
11 recognize we're approximately 338,000 gallons of
12 actual flow per day, approximate --

13 Q And there's committed capacity beyond that,
14 correct?

15 A Pardon?

16 Q Mad Hatter has committed capacity with the
17 County? The County has committed to treat additional
18 gallons --

19 A 350 plus 30 or 40,000 on top of that. Plus
20 our position is the County owes us additional capacity
21 in excess of that.

22 COMMISSIONER CLARK: Can you hold up a
23 minute? What was your first question? How much
24 capacity the City -- go back to your original
25 question.

1 MS. HALE: My original question was that
2 Mad Hatter has exceeded its 350,000 gallon cap with
3 the County, which is -- the contract with the County
4 has a cap of 350 a day.

5 COMMISSIONER CLARK: Mr. DeLucenay, is that
6 what's in the contract?

7 WITNESS DELUCENAY: 350, Commissioner, is
8 itemized. The County has agreed --

9 COMMISSIONER CLARK: Hang on a minute. It's
10 itemized in the contract.

11 WITNESS DELUCENAY: Yes, ma'am. That is one
12 item that's itemized.

13 COMMISSIONER CLARK: Okay. And you believe
14 you can deliver more than that to the County and they
15 have an obligation to treat it; is that correct?

16 WITNESS DELUCENAY: Yes, Commissioner,
17 according to --

18 COMMISSIONER CLARK: What is that based on?

19 WITNESS DELUCENAY: That is based on legal
20 counsel's legal opinion of the contract.

21 COMMISSIONER CLARK: And the County disputes
22 that, to your knowledge?

23 WITNESS DELUCENAY: I'd have to let the --

24 COMMISSIONER CLARK: If you don't know, you
25 can say, I don't know.

1 **WITNESS DELUCENAY:** I don't know,
2 Commissioner. There's been miscellaneous coffee break
3 conversations back and forth.

4 **COMMISSIONER CLARK:** Thank you.

5 **Q** **(By Ms. Hale)** Well, isn't it true,
6 Mr. DeLucenay, that one of the claims you brought in
7 the federal lawsuit against the County was you claimed
8 that the County had breached the 1992 agreement by
9 refusing to accept additional sewage from Mad Hatter
10 and that the County won that claim in the federal
11 court litigation?

12 **A** I would have to let the suit speak for
13 itself. I can't quote the complaint exactly, and I
14 don't represent to this Commission I have a full legal
15 interpretation of all the stuff that was in it versus
16 all the responses.

17 **Q** You were present in the federal court trial
18 on November 19th, 1996, were you not, when the judge
19 heard the motions for directed verdict arguments, and
20 the judge said, quote, "The motion with regards to the
21 breach of the '92 contract is granted." Do you
22 remember that?

23 **A** No, I don't, but the record would have to
24 speak for itself.

25 **Q** Well, you would have to agree with me that

1 the County has told you it's not taking any additional
2 sewage from Mad Hatter?

3 A Yes, either directly or indirectly.

4 Q And it's notified you that Mad Hatter has
5 exceeded its 350,000-gallon-a-day capacity, hasn't it?

6 A That's correct, and if I would -- mention at
7 this time for the benefit of the Commissioners, I'm
8 not able to answer those last two questions in total
9 because of mediation and other things that are
10 pending.

11 If this Commission directs me to answer that
12 question in full, and with Mr. Deterding's permission,
13 then we can discuss additional capacities in its total
14 detail; but somebody would have to make that -- direct
15 me on that answer.

16 Q Well, Mr. DeLucenay, the County is not going
17 to and has told you it's not going to accept any
18 capacity in excess of 350,000 gallons a day; isn't
19 that true? Just a yes or no answer, Mr. DeLucenay.

20 A I'd have to yield to counsel as to whether
21 or not I can answer that in all honesty and fairness
22 to the Commission without violating mediation
23 privilege.

24 Q Well, what you're talking about,
25 Mr. DeLucenay, is that in mediation when you demanded

1 that the County buy your system, that there were
2 negotiations in mediation which did not prove fruitful
3 which involved lifting of the cap; isn't that correct?

4 A That's not my opinion, that we were in
5 mediation for reaching mutual ground. And apparently
6 the County, with the assistance of the mediator
7 outside of my presence, offered unlimited capacity to
8 Mad Hatter in exchange for dropping the federal
9 lawsuit.

10 Q Well -- and that did not come to pass; isn't
11 that correct?

12 A That, as of this time, has not come to pass.

13 Q In fact the mediation broke off
14 unsuccessful; isn't that correct?

15 A It did as of that date. I understand from
16 legal counsel that the mediator wants to revisit those
17 items again. That's as current as last Friday.

18 Q Now, the '92 agreement not only has a number
19 of gallons which Mad Hatter can send to the County for
20 treatment, but it also limits the area geographically
21 that Mad Hatter has to accept sewage from; isn't that
22 correct? Something called a service area that's
23 described on Exhibit 3 to the agreement.

24 A If I could have -- if I could just pick up
25 my note, I can refer to that quickly.

1 Q Mr. DeLucenay, just answer my question. The
2 contract with the County not only limits the number of
3 gallons Mad Hatter can send, it also limits by
4 geography the area from which Mad Hatter can send the
5 sewage to the County?

6 MR. DETERDING: Counsel, if you're going to
7 ask him to interpret the contract, you at least ought
8 to let him look at the contract.

9 MS. HALE: It's a simple yes or no question.

10 MR. DETERDING: Well, I think --

11 COMMISSIONER DEASON: If the witness wants
12 to review the contract, provide it to him.

13 WITNESS DELUCENAY: I believe I can do two
14 things for the benefit of the Commission. Number one,
15 the contract, in my layperson's interpretation, refers
16 to our certificated area, but it also expands on that
17 and lists these properties that we are here currently
18 today on as recognizing that they will, and were at
19 the time, also part of our flow which was anticipated
20 to go to the --

21 COMMISSIONER DEASON: Mr. DeLucenay, the
22 question was not for you to interpret all that. Is
23 there anything in the contract which limits it by a
24 geographic area as well as by the number of gallons of
25 flow?

1 **WITNESS DELUCENAY:** Yes, Commissioner, it
2 does, in those two phases that I have just described.

3 **COMMISSIONER DEASON:** Thank you.

4 **Q** **(By Ms. Hale)** And that's Exhibit 3 to the
5 contract which has what's called a service area map on
6 it, correct?

7 **A** I'd have to see the map you're referring to.

8 **Q** Mr. DeLucenay, Mr. Samarkos has now put up
9 there a copy of the service area map which was
10 attached as Exhibit 3 to the 1992 contract; isn't that
11 correct?

12 **A** No, I can't agree to that. I don't have the
13 original and I can't represent that this is any
14 likeness; and this document is dated April 7th, 1997.

15 **Q** Mr. DeLucenay, we took the original and we
16 had it placed on foam board, but if you would like to
17 look at the original, you're welcome to do so.

18 **MR. DETERDING:** Commissioners, this doesn't
19 look like the same map to me. It looks like it is an
20 attempt to recreate that map, but it doesn't look like
21 a copy or --

22 **COMMISSIONER DEASON:** I'll tell you what
23 we're going to do, Mr. Deterding. The Commission is
24 going to break for lunch, and you all are going to
25 stay here and figure out what maps are what and what

1 maps you can agree on --

2 MR. DETERDING: Commissioner --

3 COMMISSIONER DEASON: Listen, Mr. Deterding.

4 MR. DETERDING: I'm listening, Commissioner.

5 COMMISSIONER DEASON: All of this could have

6 been worked out beforehand as to what maps are what.

7 We're here taking time debating on representations of

8 what maps constitute what. I don't think that's a

9 wise use of the Commission's time.

10 MR. DETERDING: I agree with you,

11 Commissioner. We asked for -- we did not receive this

12 map with the direct testimony of the witness who is

13 sponsoring it, which is their witness. We discovered

14 that in our -- during discussions with Mr. Bramlett on

15 his deposition approximately 10 days ago.

16 We asked for the map that was supposedly

17 entered with the 1992 agreement, and we were provided

18 a copy of this. This is the first time I've heard of

19 or seen this map.

20 COMMISSIONER DEASON: I don't dispute any of

21 that, Mr. Deterding. All I'm saying is that I'm going

22 to instruct the parties to try to come to an agreement

23 on what maps are what and what maps can be utilized in

24 cross-examination and what maps can be presented to

25 the Commission for its consideration. We're going to

1 recess for lunch and we'll reconvene at 1:00.

2 (Thereupon, lunch recess was taken at
3 12:00.)

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5 (Transcript continues in sequence in Volume
6 2.)

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