

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: PETITION OF MAD HATTER )  
UTILITY, INC., FOR VARIANCE FROM )  
RULE 25-30.036(3)(d), F.A.C., OR )  
IN THE ALTERNATIVE, A MOTION FOR )  
EXTENSION OF TIME. )

Docket No. 971481-MS

**PETITION FOR VARIANCE FROM RULE 25-30.036(3)(d), F.A.C.  
OR IN THE ALTERNATIVE, A MOTION FOR EXTENSION OF TIME**

COMES NOW, Mad Hatter Utility, Inc., by and through undersigned counsel, pursuant to Section 120.542, Florida Statutes and Section 28-104, Florida Administrative Code, and files this Petition for Variance From the Requirements of Rule 25-30.036-(3)(d), Florida Administrative Code, or in the Alternative, a Motion for Extension of Time to file the information required pursuant to that rule and pursuant to Commission Order No. PSC-97-1173-FOF-WS, and in support thereof would state and allege as follows:

1. The name, address, telephone number and facsimile number of the Petitioner and Petitioner's attorney and representative are as follows:

Mad Hatter Utility, Inc.  
1900 Land O'Lakes Boulevard  
Suite 113  
Lutz, Florida 33549  
(813) 949-2167 Phone  
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2. The provisions of Section 25-30.036(3)(d), Florida Administrative Code, which implements Section 367.045, Florida

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FPSC-RECORDS/REPORTING

Statutes, requires that the Utility provide evidence that it owns the land upon which its treatment facilities are located that will serve a proposed territory, or a copy of an agreement such as a 99 Year Lease which provides for the continuing use of that land. The Commission also may consider a written easement or other cost effective alternative.

3. In Docket No. 960576-WS, and in subsequent documents, the Utility has provided the Commission with Late Filed Exhibit No. 27 which references a plat book and map showing the location of the Linda Lakes Grove water treatment plant in the center of a road right-of-way median.

4. To the extent the Commission has determined through Order No. PSC-97-1173-POF-WS that the information contained within Late Filed Exhibit 27 was insufficient to comply with the requirements of Rule 25-3-.036(3)(d), F.A.C., Mad Hatter will be required to either obtain a variance from the rule requirements as interpreted, or to condemn the parcel of property on which this small water plant is located.

5. Because of problems which have arisen since the initial platting and proposed dedication of the facilities within the Linda Lakes Grove area and the subsequent passage of time, it is unclear at this time, who, if anyone, claims an ownership interest in this small parcel on which the Linda Lakes Groves facilities are located. Determining that fact would take extensive, time consuming, and expensive title research and likely would result in a requirement of foreclosure in order to obtain any ownership

rights for Mad Hatter which would comply with Rule 25-30.036(3)(d), F.A.C., as interpreted by the Commission's order.

The cost of research and foreclosure proceedings to Mad Hatter would be expensive, especially in light of the very small size of the parcel on which the facilities are located and its small, relative worth. Such action by the Utility would also be extremely time consuming.

6. No person has made any claim on the property on which Linda Lakes Groves water treatment facilities are located in the approximately 25 years of operation of those facilities by the Utility and its predecessor. As such, there is nothing to be gained by expending substantial amounts of monies in researching the title and foreclosing an interest in that property at this time.

7. The Florida Public Service Commission has considered the Utility's right in this property and approved of the current ownership situation in the original certificate in 1974, the original transfer proceeding to Mad Hatter involving this property, and one extension case. In addition, this information was presented to the Commission in a rate case in which the issue of the ownership of this property arose. In each case, while the orders do not contain any specific discussion of the ownership interest in this property, the Commission Staff and the Commissioners seemed satisfied in the status of Mad Hatter's interest in this property based upon their failure to require anything further in any of those prior proceedings.

8. To the extent any claim is ever made against Mad Hatter as to its right to operate its water treatment facilities on this property, Mad Hatter would agree to immediately file a condemnation action to secure fee simple title or other appropriate interest in this property. However, to do so at this time would be costly and very time consuming.


9. Based upon the above facts and circumstances, Mad Hatter believes the purpose of the underlying statute has been achieved with regard to this small parcel of property as that statute contains no specific requirement for a written ownership interest in land on which the facilities are located. A variance from the requirements of the rule will serve the purposes of the underlying statute because to the extent that a claim is ever made which would in anyway conflict with Mad Hatter's long-term ability to provide service through utilization of this property, Mad Hatter would agree to immediately begin foreclosure proceedings in order to obtain fee simple or other appropriate interest in that property. Until such a claim is made, however, it would be not only a substantial economic hardship, but also require the substantial expenditure of time and effort on the part of the Utility in order to obtain such ownership interest with no apparent immediate necessity or benefit to the Utility or its customers.

10. In addition, strict application of the rule as suggested by the provisions of Order No. PSC-97-1173-POF-WS would create a substantial hardship on the Utility and substantial costs in acquiring an interest in this property through likely foreclosure

proceedings which would require that the Utility incur costs for legal and other representation substantially in excess of the value or cost of the property itself.

WHEREFORE, Mad Hatter Utility, Inc. requests that the Public Service Commission grant a variance from the requirements of Rule 25-30.036(3)(d), F.A.C., as to the Linda Lakes Groves water treatment plant until such time as any claim is made against Mad Hatter as to its right to utilize the property. In the alternative, if the Commission decides not to grant a variance from the rule requirements, the Utility will need at least a six to ten month extension of time in which to obtain title to this property through research and foreclosure proceedings and requests that the Commission grant such an extension.

Respectfully submitted this <sup>12<sup>th</sup></sup>  
day of November, 1997, by:


  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by \*hand delivery or U.S. Mail on this 12<sup>th</sup> day of November, 1997.

Marion Hale, Esq.  
Johnson, Blakely, Pope, et al.  
Post Office Box 1368  
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\*Rosanne Gervasi, Esq.  
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