BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a Rate Increase in Pasco County by MAD HATTER UTILITY, INC.	) DOCKET NO. 910637-WS) ORDER NO. PSC-93-0894-FOF-WS) ISSUED: June 14, 1993

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK

ORDER DENYING MOTIONS FOR RECONSIDERATION

BY THE COMMISSION:

Background

Mad Hatter Utility, Inc., (MHU or utility) is a class "B" utility located in Lutz, Florida. MHU owns and operates water and wastewater systems in three separate communities: Linda Lakes, Foxwood, and Turtle Lakes.

On October 18, 1991, MHU completed the minimum filing requirements for a general rate increase, and that date was established as the official date of filing for this proceeding. The approved test year for determining interim and final rates is the twelve-month period ended December 31, 1990. By Order No. 25589, issued January 9, 1992, we suspended MHU's proposed rates and approved interim rates. By Order No. 25711, issued February 12, 1992, in Docket No. 911206-SU, we allowed MHU to collect, subject to refund, emergency, temporary rates designed to allow MHU to collect sufficient revenues to pay Pasco County for bulk wastewater treatment.

By Proposed Agency Action (PAA) Order No. PSC-92-0123-FOF-WS, issued March 31, 1992, we proposed allowing MHU increased rates, requiring the refund of excess interim and emergency rates, reducing MHU's service availability charges, and finding MHU in violation of several Commission rules. On April 21, 1992, Mr. Timothy G. Hayes filed a timely protest to the PAA Order. The Office of Public Counsel (OPC) then intervened on behalf of MHU's customers. An administrative hearing in this matter was held on September 2 and 3, 1992, in Land O' Lakes, Florida, and on September 25, 1992, in Tallahassee, Florida. By Order No. PSC-93-0295-FOF-WS, issued February 24, 1993, we approved final rates and charges for MHU and required a refund of a portion of MHU's interim and emergency, temporary rates.

On March 10, 1993, OPC filed a motion for reconsideration. MHU responded to OPC's Motion on March 23, 1993. On March 11, 1993, MHU filed a motion for reconsideration to which OPC did not respond. This Order evinces our disposition of these two motions.

OPC'S MOTION FOR RECONSIDERATION

In its motion for reconsideration, OPC concedes that Order No. PSC-93-0295-FOF-WS correctly finds that MHU's plants were abandoned as a result of a lack of a stormwater structure. However, OPC asserts that the Commission ignored evidence that the lack of said structure was caused by "a developer which was indistinguishable from the utility itself." As a result, OPC argues, the Commission erroneously concluded that the abandonment was not the fault of MHU. OPC emphasizes that although the Commission questioned MHU's motives for not instituting legal action against the related developer party, the Commission did nothing to give effect to that finding. Specifically, OPC asserts:

> A proper consideration of the relationship between developer and utility shows that the reason for the abandonment is not reasonable; it was the result of nonfeasance on the part of MHU inspired by the reluctance of MHU to bring pressure to bear upon its related developer which failed to deal effectively with stormwater runoff.

OPC also argues that the Commission made an illogical conclusion in its statement that MHU "had to abandon" its plants as part of a DER consent order because MHU voluntarily entered into the consent order. In closing, OPC contends that the Commission's Order places too great a burden on the customers, who now have to pay for the loss, even though they were never in a position to prevent the loss, and pay for the cost of obtaining wastewater treatment from Pasco County.

In its response to OPC's motion, MHU repeatedly asserts that OPC's motion does not meet the requisite standard for granting reconsideration. For example, MHU states:

> Nowhere in any of [the motion's] paragraphs and allegations is [there] any contention whatsoever that the Commission has misapprehended, or failed to consider the facts or law related to this case. Instead, the Citizen's petition admits on its face

> that it is an argument against the conclusions reached based upon the evidence. For this reason alone, Citizen's Petition must be denied.

MHU disputes two factual characterizations in OPC's motion: (1) that the developer and the utility were "indistinguishable" and (2) that MHU engaged in "nonfeasance" with respect to the ponds' problems. MHU argues that the evidence in the record does not support either of those characterizations. Moreover, MHU contends that OPC fails to identify with specificity which facts the Commission overlooked. In MHU's view, the Commission overlooked nothing. MHU asserts that the Commission weighed and considered the evidence pertinent to MHU's relationship with the developer and to the alleged nonfeasance, and the Commission came to a conclusion different from the one OPC would have it come to.

We note that it is well established that the purpose of a motion for reconsideration is to bring to the attention of the Commission some point which it overlooked or failed to consider when it rendered its decision in the first instance, such as a mistake of law or fact. E.g., Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962).

We find that OPC's motion does not meet this standard. We made no mistake of fact or law in rendering the subject decision. Our Order states:

> In consideration of the above evidence, we believe that MHU is entitled to recover a loss on the abandoned plants. MHU designed its percolation ponds according to its permits, and it is relatively clear from the record that the problems with the ponds resulted from the lack of the stormwater structure. Although we question MHU's motives for not instituting legal action against the developer, it is uncontroverted in the record that the government agencies MHU contacted did little or nothing to help MHU before the problem with the ponds became serious. Furthermore, there is insufficient evidence in the record to establish that Mr. DeLucenay actually realized or should have realized the potential magnitude of the ponds' problems, in light of government inaction, at the time the developer was still in business. We think it is purely speculation on OPC's part that MHU had a cause of action against any of the governmental

> entities involved. Finally, once the full import of the ponds' malfunctioning was recognized, we think MHU had little choice but to assent to a permanent interconnect with Pasco County. As part of the Consent Order MHU entered into with DER, MHU had to abandon the Foxwood and Turtle Lakes plants.

Order No. PSC-93-0295-FOF-WS, pp. 13-14.

This quoted language clearly demonstrates that we did not fail to consider any of the contentions raised by OPC in its motion. Further, we think OPC failed to read the statement that MHU "had to abandon the . . . plants" in the proper context. The DER consent order was a virtually perfunctory act in light of MHU's inability to have the permits for its own facilities renewed. The consent order required MHU to abide by certain conditions regarding the facilities no longer used, including the condition that the facilities be abandoned.

In consideration of the above, we hereby deny OPC's motion for reconsideration.

MHU'S MOTION FOR RECONSIDERATION

In its motion for reconsideration, MHU asks that we reconsider the amount of purchased wastewater treatment expense allowed under Order No. PSC-93-0295-FOF-WS. Pertinent to this issue is stipulation no. 24, which we approved in the Order. That stipulation provides, "The allowance for purchased wastewater treatment should be calculated by multiplying the 1990 test year flows from the Foxwood and Turtle Lakes Treatment plants by the $4.12 per thousand gallons charge now assessed by Pasco County." MHU's dispute is specifically directed to the flow calculation used to arrive at the expense amount. As indicated in the stipulation, the dollar amount of the expense is simply a product of the flows (in thousands of gallons) and $4.12. We allowed some $292,000 for the subject expense.

Because the flow meter for the Turtle Lakes wastewater treatment plant was inoperative for 251 days of the test year, the monthly flows listed in the MFRs are admittedly inaccurate. In its motion, MHU acknowledges this: "[T]he determination of actual test year flows required in order to establish purchased sewage treatment costs must of necessity involve some estimate . . . ."

Although our Order does not depict the method we used to estimate flows, the following method may be extrapolated from the total expense allowed. First, the average daily flow of the maximum flow month for the Foxwood plant reported in Schedule No. F-4, 236,000 gallons, was annualized. We then calculated the ratio of this 55,385,000 annualized amount to the 86,140,000 actual annual flows reported for the test year:

- 236,000 gallons x 365 days = 86,140,000 gallons
- 55,385,000 gallons / 86,140,000 gallons = 64.3%

Next, we annualized the average daily flow of the maximum flow month for the Turtle Lakes plant as reported in the MFRs and applied the 64.3% ratio to that amount, thereby arriving at the annualized flow figure used in the Order:

- Turtle Lakes average daily flow max. month (May, 1990) = 66,000 gallons
- 66,000 gallons x 365 days = 24,090,000 gallons
- 24,090,000 gallons x 64.3% = 15,489,870 gallons

In its motion, MHU argues that it is apparent from the Order that the flow calculation assumes that the Turtle Lakes system had experienced the same relationship between average daily flow and peak flow as the Foxwood system had. According to MHU, not only is there no record support for such a proposition, "but the only evidence of record as to actual flows at the Turtle Lakes system specifically demonstrates that this relationship does not exist." (Emphasis in original.) MHU asserts that in order to arrive at an estimate and stay within the confines of the record, the Commission should have calculated a daily average by dividing the total actual flows reported for the test year, 7,342,000 gallons, by 114 days and then multiplying the quotient by 365 days to arrive at a full year's flows, 23,506,000 gallons. Using this figure, MHU calculates that the Commission-allowed purchased treatment cost is $33,000 too low.

We note that had we relied solely on the incomplete information provided by the utility in its MFRs, purchased treatment cost would be significantly lower than what we allowed in the Order. However, based on the record, we believed it reasonable to utilize some method for annualizing Turtle Lakes' flows. Since the Foxwood and Turtle Lakes treatment plants are within a mile or two of one another, we thought it reasonable to assume that the demographics of the two systems would be similar and that the

relationship between average daily flow and peak flow for the two systems would be similar. Notably, MHU cites no evidence in support of its claim that the record does not support the existence of the flow relationship similarity.

Further, MHU's proposed methodology is inherently flawed in that it presumes the total flows reported in the MFRs will produce a representative average daily flow when divided by the number of days for which the flow meter was operational. This assumption is not so firmly rooted in certainty that we are persuaded to change the methodology we used in our Order.

We recognize that the methodology we used in the Order is built on assumptions of its own. However, the issue at hand is whether this Commission made a mistake of fact or law in rendering its decision on purchased treatment cost. In consideration of the foregoing, we do not believe we made such an error, and we believe our decision was true to the stipulation involved.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that the motions for reconsideration filed by the Office of Public Counsel and Mad Hatter Utility, Inc., are hereby denied as set forth hereinabove. It is further

ORDERED that pursuant to Order No. PSC-93-0295-FOF-WS, this docket will be closed administratively upon our staff's verification of the required refund. It is further

By ORDER of the Florida Public Service Commission this 14th day of June, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MJF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director of the Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.