

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of special service availability contract with AFI, Inc. (VOPII), in Pasco County by MAD HATTER UTILITY, INC. ) DOCKET NO. 940760-WS

In Re: Request for approval of special service availability contract with Lake Heron in Pasco County by MAD HATTER UTILITY, INC. ) DOCKET NO. 940761-WS  
ORDER NO. PSC-94-1603-POF-WS  
ISSUED: December 27, 1994

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
SUSAN F. CLARK  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER APPROVING SPECIAL SERVICE AVAILABILITY CONTRACTS AND CHANGES TO SERVICE AVAILABILITY POLICY, DENYING REQUEST FOR REVISED TERRITORY DESCRIPTIONS, AND REQUIRING APPLICATION FOR AMENDMENT TO TERRITORY

BY THE COMMISSION:

CASE BACKGROUND

Mad Hatter Utility, Inc., (MHU or utility) is a Class B utility located in Lutz, Florida. The utility is located in the Northern Tampa Bay Water-Use Caution Area, as designated by the Southwest Florida Water Management District. MHU owns and operates water and wastewater systems in three separate communities; Linda Lakes, Foxwood, and Turtle Lakes. According to MHU's 1993 annual report, MHU serves 1,709 water customers and 1,672 wastewater customers.

On July 19, 1994, MHU filed requests for approval of special service availability contracts; one with "AFI, Inc. (VOPII)" (AFI), and the other with Lake Heron, in Pasco County. On November 9, 1994, the utility filed an amendment to its service availability contract with AFI. The utility submitted these special service

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availability contracts pursuant to Section 367.101, Florida Statutes, and to Rule 25-30.550(2), Florida Administrative Code. Pursuant to Section 367.091(2), Florida Statutes, the utility also filed certain proposed revised tariff sheets requesting approval of the charges contained in the special service availability contracts.

In addition, MHU filed certain other revised tariff sheets which contain revised territory descriptions. The utility bases these revised territory descriptions on Order No. 20067, issued September 26, 1988, in Docket No. 870982-WS. This tariff filing is unrelated to the utility's requests for approval of the special service availability contracts at issue and its tariff filing concerning the charges contained within those contracts.

#### SPECIAL SERVICE AVAILABILITY CONTRACTS

We first address the utility's requests for our approval of two special service availability contracts, entitled "Utility Extension and Service Agreements," entered into between MHU and AFI, and MHU and Lake Heron. Pursuant to Section 367.101, Florida Statutes, we must set just and reasonable charges and conditions for service availability, as well as investigate agreements for charges and conditions for service availability. Pursuant to Rule 25-30.550(2), Florida Administrative Code, we must approve each special service availability contract before it becomes effective. Because these two agreements are nearly identical, we consider them collectively.

Pursuant to Rule 25-30.550(3), Florida Administrative Code, MHU has filed its applicable Department of Environmental Protection permit applications to serve the AFI and Lake Heron developments.

Pursuant to Section 367.091(2), Florida Statutes, a utility's rates, charges, and customer service policies must be contained in an approved tariff. Upon review, our Staff determined that there appeared to be certain charges contained in the Utility Extension and Service Agreements which were not reflected in MHU's approved tariff. These charges include an approximate \$13,399 cost to off-site improvements to AFI, and an approximate \$101,260 cost to off-site improvements to Lake Heron. However, upon further investigation, our Staff has determined that these off-site improvement costs were, in fact, construction loans issued by the developers, AFI and Lake Heron, to the service company. Because these amounts will be paid back to the developers by the service company, we do not rule upon, nor do we further investigate the propriety of, these costs.

Other charges contained in the Utility Extension and Service Agreements which were not reflected in MHU's approved tariff included a charge to AFI of 1.5% of the estimated total cost of engineering and inspection fees, and a charge to Lake Heron of 2% of the estimated total cost of engineering and inspection fees. On October 13, 1994, at our Staff's request, the utility submitted for our approval proposed revised tariff sheets to reflect these costs.

The revised tariff sheets reflect a developer cost of 2% of the estimated total cost of engineering and inspection fees. Because the proposed cost to AFI of 1.5% of the estimated total cost of these fees was inconsistent with the revised tariff sheets, the utility submitted an amendment to its Utility Extension and Service Agreement with AFI on November 9, 1994. The amendment states that AFI and MHU have negotiated resolution of this inconsistency and have agreed upon a developer charge of 2% of the estimated total cost of engineering and inspection fees. We find the agreement between the utility and AFI, as amended, as well as the agreement between the utility and Lake Heron, to be consistent with the utility's proposed revised tariff sheets which reflect these costs.

Further, we find it to be common practice for utilities to include a 2% charge of the estimated total cost of engineering and inspection fees to developers. Such charges commonly appear in developer agreements submitted by regulated utilities pursuant to Rule 25-30.540(7), Florida Administrative Code. We find these charges to be just and reasonable, in accordance with Section 367.101, Florida Statutes. We therefore approve these charges.

In approving these charges, we note that by Order No. PSC-93-0295-FOF-WS, issued February 24, 1993, in Docket No. 910637-WS, we prohibited MHU from collecting any other service availability charges except meter installation fees. This was due to the fact that MHU's contribution-in-aid-of-construction (CIAC) levels exceeded the 75% maximum prescribed by Rule 25-30.580, Florida Administrative Code. However, because the proposed charges of 2% of the total cost for engineering and inspection fees will have no effect upon the utility's CIAC levels, we do not depart from the terms of that order by approving them.

The utility also proposes certain modifications and additions to its existing service availability policy in order to provide certain definitions and explanations of abbreviations which are common to the industry. We find the proposed definitions submitted by the utility to be in accordance with Rule 25-30.515, Florida Administrative Code. We therefore approve MHU's special service availability contracts with AFI, as amended, and with Lake Heron.



We hereby approve the following tariff sheets to reflect the charges contained in the special service availability contracts at issue and the changes to the utility's service availability policy: Second Revised Sheet No. 24.0, and Original Sheets Nos. 25.0 - 34.0, for Wastewater; and Second Revised Sheet No. 27.0, and Original Sheets Nos. 28.0 - 37.0, for Water. The new charges shall become effective for new connections made on or after the stamped approval date of the revised tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code. In the event that a timely protest is filed, the tariffs shall remain in effect and the related revenues shall be held subject to refund pending resolution of the protest.

#### REVISED TERRITORY DESCRIPTIONS

The utility also filed certain other proposed revised tariff sheets containing revised territory descriptions. Specifically, the utility filed proposed revised water and wastewater tariff sheets nos. 3.0 through 3.18, describing territory which does not fall within its certificated area. This tariff filing is unrelated to our approval of MHU's special service availability contracts with AFI and Lake Heron and its relative tariff filing reflecting the charges contained therein and the changes to the service availability policy. The territories being developed by AFI and by Lake Heron are located within the utility's certificated area and have no bearing upon our analysis of the utility's proposed revised territory descriptions.

The utility based its revised territory descriptions on Order No. 20067, issued September 26, 1988, in Docket No. 870982-WS. We expressly stated in that Order that we were not granting the utility any additional territory or amending certificates at that time. Under Section 367.061(4), Florida Statutes (1987), and Rule 25-30.045, Florida Administrative Code, the utility had one year from the date of the last notice issued in which to construct and apply for an amendment to its certificated territory, or to receive from this Commission an extension of time in which to construct. In Order No. 20067, the Commission noted that the utility had prematurely filed its territory application and filing fee in September, 1987, before construction was completed. Rather than requiring the utility to resubmit its application and filing fee upon the completion of construction, to preclude a duplication of effort, the Commission ordered the utility to submit a letter referencing the September, 1987, application and requesting that that application be considered in a new docket. Further, the Commission granted MHU an extension of time until April 30, 1989, to construct the requisite facilities in order to serve the new territory it requested. The utility was also required to submit a

revised territory description. By Order No. 21218, issued May 10, 1989, in Docket No. 890463-WS, the Commission granted MHU another extension of time until April 30, 1990, to construct the facilities to serve the new area.

On December 1, 1994, the utility faxed our Staff a copy of a letter dated November 30, 1989, in which the utility referenced the September, 1987, application and filing fee, and requested that a docket be opened to finalize that application and fee. We have no record of having received this letter, nor do we have record of any follow-up filing by the utility to stimulate its request for a docket. No amendment docket was opened prior to April 30, 1990, the expiration date of the second period of extension of time which we granted the utility to complete construction, nor has the utility filed an amendment application since that time. Consequently, we have not granted the utility the territory which it describes on proposed revised water and wastewater tariff sheets nos. 3.0 through 3.18.

Section 367.061, Florida Statutes, and our corresponding rule, Rule 25-30.045, Florida Administrative Code, the authorities under which the utility filed its September, 1987, application, have been repealed. Pursuant to Section 367.045(2), Florida Statutes (1993), a utility may not extend lines to serve an area without our prior approval. Therefore, we reject proposed revised tariff sheets nos. 3.0 through 3.18, as these tariff sheets describe territory which has not, to date, been approved.

The utility has indicated that it has extended a large portion of its lines to serve the territory at issue, as allowed under the pre-existing law. Thus, the utility is currently serving outside of its certificated territory in violation of Section 367.045(2), Florida Statutes. However, we do not believe it necessary for the utility to show cause as to why it should not be fined for serving outside of its certificated territory. As we understand it, much of the construction was completed several years ago, during the time that Section 367.061, Florida Statutes, was in effect. However, to correct this problem, we hereby order the utility to file an amendment application to include the territory it is currently serving by February 28, 1995.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Mad Hatter Utility, Inc.'s, request for approval of its Special Service Availability Contract with AFI, Inc. (VOPII), as amended, is hereby approved as set forth in the body of this order. It is further

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ORDERED that Mad Hatter Utility, Inc.'s, request for approval of its Special Service Availability Contract with Lake Heron is hereby approved. It is further

ORDERED that Mad Hatter Utility, Inc.'s, changes to its Service Availability Policy are hereby approved, as set forth herein. It is further

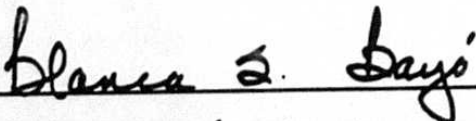
ORDERED that Mad Hatter Utility, Inc.'s, tariff sheets labeled Second Revised Sheet No. 24.0, and Original Sheets Nos. 25.0 - 34.0, for Wastewater; and Second Revised Sheet No. 27.0, and Original Sheets Nos. 28.0 - 37.0, for Water, are hereby approved. It is further

ORDERED that Mad Hatter Utility, Inc.'s, revised water and wastewater tariff sheets nos. 3.0 through 3.18 are hereby rejected for the reasons set forth in the body of this order. It is further

ORDERED that Mad Hatter Utility, Inc., shall file an application for amendment to serve the uncertificated territory which it is currently serving, by February 28, 1995. It is further

ORDERED that if there are no timely objections to the revised tariff sheets herein ruled upon, no further action will be required and these dockets shall be closed. In the event that a timely protest is filed, the tariffs herein approved shall remain in effect and the related revenues shall be held subject to refund pending resolution of the protest.

By ORDER of the Florida Public Service Commission, this 27th day of December, 1994.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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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.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the action proposed files a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 17, 1995.

In the absence of such a petition, this order shall become final on the day subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this Order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this Order becomes final on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the date this Order becomes final, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.