

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Barnett Bank )	DOCKET NO. 900883-WS
of Pasco County against MAD HATTER )	
UTILITY, INC. in Pasco County )	ORDER NO. 24200
regarding a prorata contribution )	
for construction of an off-site )	ISSUED: 3-5-91
lift station. )	
_____ )	

The following Commissioners participated in the disposition of this matter:

- THOMAS M. BEARD, Chairman
- BETTY EASLEY
- GERALD L. GUNTER
- J. TERRY DEASON
- MICHAEL MCK. WILSON

ORDER APPROVING JOINT STIPULATION OF DISMISSAL AND CLOSING DOCKET

BY THE COMMISSION:

On November 1, 1990, Barnett Bank of Pasco County (Barnett) filed a formal complaint against Mad Hatter Utility, Inc. (Mad Hatter or utility) regarding a demand by the utility for contributions for construction of an off-site lift station. On November 2, 1990, the utility was notified of the complaint and was directed to respond within twenty days. On November 26, 1991, the utility filed a motion for enlargement of time of ten days to respond to the complaint filed by Barnett. On November 30, 1990, Barnett filed its objection to the utility's motion for enlargement of time. The utility has filed no response to Barnett's objection.

Prior to any action by the Commission, the parties signed a Joint Stipulation in which Barnett agrees to withdraw its complaint and Mad Hatter agrees to withdraw any claims to fees for the construction cost of the off-site lift station. The Stipulation is attached as Exhibit 1 of this Order.

Barnett's complaint alleges that the utility sought unauthorized and unsubstantiated payments due on property held by Barnett as a result of foreclosure proceedings. The utility demanded payments of \$42,350 as a contribution for construction of an off-site lift station and for base facility charges. The

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complaint further alleges that Mad Hatter was arbitrary and capricious in its conduct towards Barnett as a customer. The basis for this allegation is Mad Hatter's refusal to acknowledge a \$117,500 payment of "utility fees" paid to the utility prior to foreclosure, and the utility's failure to produce or make available its tariff for Barnett's review for substantiation of Mad Hatter's claim to developer agreement fees and to base facility charges. Barnett's complaint asked the Commission to order Mad Hatter to cease and desist from seeking payment for the off-site lift station, and to require Mad Hatter to base its responses to customers on Commission approved rate schedules. Barnett's complaint also requests the Commission inquire into any other improprieties or abuse of regulatory authority that Mad Hatter may be committing to other customers or potential customers and to revoke Mad Hatter's certificate if a pattern of abuse is established as a result of the inquiry.

The Joint Stipulation of Dismissal provides as follows: Mad Hatter withdraws any claim to fees for payment of the construction of the off-site lift station; Mad Hatter withdraws any claim to base facility charges for the period of time Barnett had an ownership interest in the property; and Barnett withdraws its complaint before the Commission with prejudice.

We find that under the provisions of the Stipulation the utility is not relinquishing any claim to payments it is obligated to collect, and Barnett is not being required to make payments not authorized in Mad Hatter's tariff. Therefore, we approve the Joint Stipulation of Dismissal as a reasonable resolution of the complaint in this docket. However, since it has come to our attention that Mad Hatter may not be operating in compliance with its tariff and Commission rules, we find that an informal investigation of the utility should be conducted to determine whether Mad Hatter is operating in compliance with its tariff and Commission rules. If the informal investigation indicates improprieties, then a docket will be opened and a formal investigation will be conducted.

It is, therefore,

ORDERED that the Joint Stipulation of Dismissal entered into between Barnett Bank of Pasco County and Mad Hatter Utility, Inc. is hereby approved. It is further

ORDERED that this docket is hereby closed.

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By ORDER of the Florida Public Service Commission this 5th  
day of March, 1991.

\_\_\_\_\_  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

CB

by: Kay Hegan  
Chief, Bureau of Records

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

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EXHIBIT 1

PUBLIC SERVICE COMMISSION  
State of Florida  
Docket Number 9008830-WS

BARNETT BANK OF PASCO COUNTY,	)
a Florida banking corporation	)
2739 U.S. Highway 19	)
Holiday, Florida 33590	)
	)
Complainant,	)
	)
vs.	)
	)
MAD HATTER UTILITY, INC.,	)
a Florida corporation	)
Post Office Drawer 1387	)
Lutz, Florida 33549	)
	)
and	)
	)
LARRY G. DeLUCENAY, President	)
Mad Hatter Utility, Inc.	)
Post Office Drawer 1387	)
Lutz, Florida 33549	)
	)
Respondents.	)

JOINT STIPULATION OF DISMISSAL

Complainant, by its undersigned attorney, and Respondents, by their undersigned attorney, hereby jointly stipulate to a dismissal of the above captioned matter and as grounds for the same state as follows:

1. Respondent, MAD HATTER UTILITY, INC., joined by Respondent, LARRY G. DeLUCENAY, have voluntarily withdrawn any and all claim to the payment of a fee in the amount of \$42,350.00 which MAD HATTER UTILITY, INC. had characterized as a prorata contribution for the construction costs on offsite lift station as more fully described in the Complaint. Each of the Respondents have

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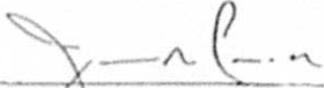
acknowledged that neither the Complainant nor any other successor-in-interest to Complainant insofar as ownership of the real property described in the Complaint is concerned, currently have or shall have in the future any obligation whatsoever for the payment of any monies to MAD HATTER UTILITY, INC. or to LARRY G. DeLUCENAY, individually, or any corporation controlled by LARRY G. DeLUCENAY for the cost of construction of an offsite lift station as more fully described in the Complaint.

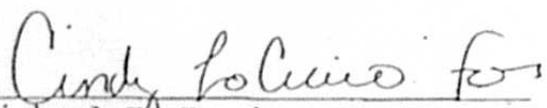
2. Respondent, MAD HATTER UTILITY, INC., and Respondent, LARRY G. DeLUCENAY, individually, agree that neither Complainant, BARNETT BANK OF PASCO COUNTY, nor its subsidiary, EQUITY DMT, INC., nor any other successor-in-interest to Complainant insofar as ownership of the real property described in the Complaint is concerned currently have or shall have in the future any responsibility or obligation for the payment of a base facility charge for water and sewer service to real property described in the Complaint to which EQUITY DMT, INC. took title on March 28, 1990, from that date through September 7, 1990 when the property was sold to MID-CONTINENT PLANTATION, INC., a Delaware corporation. Further, Respondents, MAD HATTER UTILITY, INC. and LARRY G. DeLUCENAY, acknowledge and agree that as to the real property in question, the obligations of MID-CONTINENT PLANTATION, INC. or its successor-in-interest for the payment of monthly base facility charges for water and sewer service shall be due and owing only from September 7, 1990 forward.

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3. In summary, Respondents, MAD HATTER UTILITY, INC. and LARRY G. DeLUCENAY, or any corporation controlled by LARRY G. DeLUCENAY, hereby waive any and all claim of any kind to a \$42,350.00 fee characterized as a contribution for the construction costs of an offsite lift station and for any base facility charges for water and sewer service between the dates of March 29, 1990 through September 7, 1990 insofar as it affects the real property described in the Complaint. Each respondent acknowledges that these items of costs no longer are assessable against the real property nor any entity which is in ownership currently to the real property or any successor-in-interest to the owner of the real property.

4. Based upon the foregoing, the Complainant agrees that the allegations and requests for relief demanded by the Complainant are hereby withdrawn and the Complainant and Respondents hereby jointly stipulate to a dismissal of the above captioned Complaint, with prejudice, this 9th day of <sup>January</sup> ~~December~~, 1990. This stipulation shall be binding upon the parties hereto, their successors and assigns.

  
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