

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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IN RE: APPLICATION OF MAD HATTER  
UTILITY, INC. FOR AMENDMENT OF  
WATER AND WASTEWATER CERTIFICATES  
IN PASCO COUNTY, FLORIDA

DOCKET NO. 960576-WS

OBJECTION TO APPLICATION FOR AMENDMENT  
OF WATER AND WASTEWATER CERTIFICATES  
AND PETITION FOR  
ADMINISTRATIVE HEARING

Pursuant to Rules 25-22.025, 25-22.075, 25-30.030, 25-30.031 of the Florida Administrative Code and Fla. Stat. §§367.045, and 120.57(1), Pasco County objects to the application of Mad Hatter Utility, Inc. (Mad Hatter) for amendment of water and wastewater certificates in Pasco County, Florida (the application) and requests an administrative hearing.

1. The name and address of petitioner:

Pasco County, Florida  
Attn: John Gallagher, County Administrator  
7530 Little Road  
New Port Richey, Florida 34656

2. Notices and communications with respect to this docket should be addressed to:

Marion Hale, Esq.  
Johnson, Blakely, Pope, Bokor  
Ruppel & Burns, P.A.  
P.O. Box 1368  
Clearwater, Florida 34617

- ACK
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- OPC
- RCH
- SEC
- WAS  *Grady*
- OTH

Karla Stetter, Esq.  
Pasco County Attorney's Office  
7530 Little Road  
New Port Richey, Florida 34656

3. Pasco County is a duly organized political subdivision of the State of Florida which provides potable water service and wastewater treatment service to customers residing within the County's limits, including customers within the territory which Mad Hatter has requested permission to serve.

4. On February 11, 1992, Pasco County and Mad Hatter entered into a Bulk Wastewater Treatment Agreement (the 1992 agreement). The 1992 agreement requires the County to treat up to 350,000 gallons per day (GPD). Furthermore, if capacity is available at the County's wastewater treatment facilities, as determined by the County, the County may treat wastewater from Mad Hatter in excess of 350,000 GPD.

5. The 1992 agreement also provides:

The County shall not be obligated under the terms of this Agreement to treat additional wastewater from Mad Hatter from areas outside of its certificated area or areas which are not presently served by Mad Hatter unless the County issues written notification that it does not object to such additional service. Mad Hatter's service area is more specifically identified on Exhibit 3 attached hereto and incorporated herein by reference.

Section IV(C) of the 1992 agreement.

6. Thus, Pasco County only has to provide wastewater treatment for up to 350,000 GPD and only to those areas identified on Exhibit 3 to the 1992 agreement. That area described on Exhibit 3 to the 1992 agreement does not include the areas to which Mad Hatter now seeks to extend its PSC certificated territory.

7. Mad Hatter does not have the capacity to provide wastewater treatment services to the areas requested as Mad Hatter's annual average wastewater treated by Pasco County is 338,000 GPD. An additional 45,000 GPD of wastewater treatment will be delivered by Mad Hatter to Pasco County when the customers to whom Mad Hatter has agreed to provide service are connected to the County's system. Once those connections have been completed, Mad Hatter will far exceed the 350,000 GPD limit.

8. There is insufficient unused and uncommitted capacity at the County's wastewater treatment facilities to accept additional wastewater from Mad Hatter. Mad Hatter's wastewater is currently treated at the Land O' Lakes subregional wastewater treatment plant which has a permitted

treatment capacity of 1 million GPD. The outstanding committed capacity for the Land O' Lakes service area is currently 1.24 million GPD.

9. Mad Hatter's agreement with Pasco county does not require the County to construct additional facilities so that Mad Hatter can exceed the 350,000 GPD cap.

10. Mad Hatter has been serving outside its PSC certificated area in violation of Fla. Stat. §367.045(2). Mad Hatter not only has exceeded its 350,000 GPD cap, approximately 64,000 gallons a day of that wastewater come from customers whom Mad Hatter is illegally serving outside of its PSC certificated area.

11. Mad Hatter has never requested Pasco County increase the 350,000 GPD cap. Instead, Mad Hatter has filed a \$10 million civil rights lawsuit against Pasco County and Douglas Bramlett, director of Pasco County Utilities, Mad Hatter Utility, Inc. and Larry DeLucenay v. Pasco County, Florida and Douglas S. Bramlett, Case No. 94-1473-Civ-T-25E, in which it claims, among other things, that it signed the 1992 agreement with the County under duress (the litigation). If so, the 1992 agreement may be void and



Pasco County may have no obligation to treat any wastewater from Mad Hatter.

12. Pasco County objects to any extension of Mad Hatter's PSC certificated territory as Mad Hatter does not have the capacity to treat the wastewater as required by Rule 25-30.036(3)(j). Mad Hatter voluntarily relinquished its Florida Department of Environmental Regulation (DER) permit pursuant to a Consent Order due to Mad Hatter's unpermitted dumping of wastewater into the public waterways of Pasco County.

13. Mad Hatter may seek to obtain a Florida Department of Environmental Protection (DEP) permit to treat wastewater from these areas rather than requesting that Pasco County treat it. Pasco County believes that due to Mad Hatter's poor performance in the operation of percolation ponds which resulted in imminent environmental and health hazards to the community, it will not be permitted to operate rapid infiltration basins or any other system of wastewater disposal. Contrary to the assertion in Mad Hatter's application, it has not been in conformance with all applicable regulatory standards.

14. In its application, Mad Hatter contends that its extension of territory is in compliance with the County's Comprehensive Plan. That is directly contrary to Mad Hatter's allegations in the litigation. Furthermore, it has alleged in its application that it has the financial ability to provide service to the proposed territory. In the litigation, it has alleged that it is on the brink of financial ruin and has indicated that it may seek protection from its creditors pursuant to the Bankruptcy Code.

15. In addition to its objection to any extension of Mad Hatter's service area, Pasco County also objects to Mad Hatter being permitted to provide water and sewer service to the following described lands in Pasco County, Florida, as Pasco County Utilities is or will soon provide service to these areas:

- a. Nixon Mobile Home Park (Parcel A-2);
- b. Woodruff Mobile Home Park (Parcel A-3);
- c. Holy Trinity Lutheran Church (Parcel A-4);
- d. Como Club/Mossview (Parcel B-27);
- e. Myrtle Lake Baptist Church (Parcel C-9);
- f. Rusch Plaza (Parcel B-23);
- g. Kniff Property (Parcel B-24);

- h. Meadowview (Parcel B-26);
- i. Highland Oaks (Parcel C-8);
- j. Twin Lakes Subdivision (Parcel C-6A), and
- k. Ash Property (Parcel B-25).

Legal descriptions of these tracts are included in Exhibit A to the application.

16. Pasco County is the utility best suited to serve the areas described in paragraph 15 above.

17. Larry DeLucenay, president of Mad Hatter, and his wife, Janice, have obtained corporate assets from Mad Hatter without paying consideration to the corporation. Mr. and Mrs. DeLucenay personally sold percolation ponds owned by Mad Hatter to a developer in 1994 and in 1995 for \$195,000.00. Mr. and Mrs. DeLucenay claim to have loaned money back to the corporation although the amounts of those loans are unknown. Furthermore, the sale proceeds belonged to Mad Hatter, not to the DeLucenays. Finally, this Commission permitted Mad Hatter to pass along to the customers the cost of abandonment of those percolation ponds. Mad Hatter has not notified this Commission of the sale of percolation ponds so that the Commission could make an adjustment in the rates charged by Mad Hatter.

18. In addition, Mad Hatter has attempted to circumvent this Commission's order prohibiting it from charging Contributions in Aid of Construction (CIAC) by demanding that a developer, Sunfield Homes, Inc., sign an agreement in which Sunfield Homes would loan money to Mad Hatter to build the infrastructure but that Mad Hatter would not have to repay that amount. Mad Hatter refused to guarantee service to Sunfield Homes despite its insistence that Sunfield Homes pay for the infrastructure.

19. In the litigation, Pasco County has learned that large amounts of money have been transferred by Mr. and Mrs. DeLucenay from the corporation to themselves personally. Mr. DeLucenay has been unable to provide any credible explanation for the existence of large sums in his personal checking account nor the lack of money in the corporation's bank account where customer payments were to be deposited.

20. Pasco County's substantial interests are subject to determination in this proceeding as it has entered into an agreement with Mad Hatter which may be influenced by this Commission's decision. Furthermore, Pasco County has permits to operate its wastewater treatment facilities which, as noted above, have capacity limits which will be



exceeded if Mad Hatter is permitted to send more wastewater to the County system for treatment. Finally, Pasco County's substantial interests are subject to determination in this proceeding as its citizens are customers of Mad Hatter and some of those citizens have been subjected to Mad Hatter's violation of environmental laws when it operated the defective percolation ponds.

21. The following issues of material facts are in dispute in this proceeding:

a. Whether Mad Hatter may exceed its 350,000 GPD cap in the parties' 1992 agreement;

b. Whether Pasco County has capacity at the Land O' Lakes subregional treatment facility to accept additional wastewater from Mad Hatter;

c. Whether Mad Hatter has the financial and technical ability to treat wastewater independent of Pasco County;

d. Whether Mad Hatter or Pasco County is the utility best suited to serve the area.

22. Pasco County reserves the right to raise additional issues or dispute any issues of material fact which develop during the course of this proceeding.

23. Pasco County alleges as a concise statement of the ultimate facts that Mad Hatter does not have the present ability to provide for the treatment of additional wastewater and that expansion of its PSC certificated area is not in the public interest.

24. The following statutes and rules entitled Pasco County to relief: Chapters 367 and 120 of the Florida Statutes, Rule 25-22, 25-30 of the Florida Administrative Code. Pasco County reserves the right to rely on additional statutory and regulatory authorities.

25. Pasco County requests a hearing pursuant to Fla. Stat. §120.57 and Rule 25-22.036. Pasco County received notice of the application for an extension of service area by certified mail received on May 28, 1996.

WHEREFORE, Pasco County prays that the Public Service Commission will deny Mad Hatter's application for amendment of water and wastewater certificates in Pasco County, Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been served upon Director, Division of Records and Reporting, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0870 and

F. Marshall Deterding, Rose Sundstrum & Bentley, 2548  
Blairstone Pines Drive, Tallahassee, Florida 32301.

JOHNSON, BLAKELY, POPE,  
BOKOR, RUPPEL & BURNS, P.A.

By: 

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