

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

May 29, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (REYES) *REYES*
DIVISION OF WATER & WASTEWATER (ZHANG, MERCHANT) *ZHANG MERCHANT*

RE: DOCKET NO. 961471-WU - INITIATION OF SHOW CAUSE
PROCEEDINGS AGAINST MAD HATTER UTILITY, INC. FOR
VIOLATION OF ORDER NO. PSC-93-0295-FOF-WS

COUNTY: PASCO

AGENDA: JUNE 10, 1997 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\961471WU.RCM

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 1995 annual report, MHU serves 1,890 water customers and 1,804 wastewater customers.

MHU's last rate case was finalized by Order No. PSC-93-0295-FOF-WS, issued February 24, 1993, in Docket No. 910637-WS. In that Order, the Commission recognized the loss associated with MHU's abandonment of the Foxwood and Turtle Lakes wastewater plants, including land, and allowed recovery of the loss in rates over a period of eight years. The Order further required the utility to report to the Commission any future sale of this abandoned land and any proposed rate reduction resulting therefrom.

In November, 1996, staff received information which indicated that this land had been sold; however, MHU had not reported any sale of the land to the Commission pursuant to Order No. PSC-93-

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FPSC-RECORDS/REPORTING

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0295-FOF-WS. By Order No. PSC-97-0140-FOF-WS, issued February 11, 1997, the Commission ordered MHU to show cause in writing why it should not be fined \$5,000 for violation of Order No. PSC-93-0295-FOF-WS. On March 3, 1997, the utility filed its response to the show cause order. This recommendation addresses the disposition of the show cause proceeding.

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DISCUSSION OF ISSUES

ISSUE 1: In light of the utility's response to the show cause order, should this matter be scheduled for hearing?

RECOMMENDATION: Yes. Because the utility's response raises a disputed issue of material fact, this matter should be scheduled for hearing. (REYES)

STAFF ANALYSIS: As stated earlier, on March 3, 1997, the utility timely filed its written response to the show cause order. In its response, the utility essentially contends that MHU has not violated Order No. PSC-93-0295-FOF-WS, as no sale of the Foxwood treatment plant property ever occurred. Instead, the utility argues, the land was simply foreclosed on by Mr. Larry DeLucenay, President and shareholder of MHU.

By Order No. PSC-93-0295-FOF-WS, the Commission recognized the loss associated with the abandonment of the Foxwood and Turtle Lakes plants, including the land, and allowed MHU to recover this loss through its rates over a period of eight years. That loss is still being recovered in current wastewater rates. The Order also required MHU to report to the Commission any future sale of this abandoned land and any proposed rate reduction resulting therefrom. Order at p. 4. The pertinent language of Order No. PSC-93-0295-FOF-WS states, "The utility shall report to the Commission any future sales of abandoned land and shall also report any proposed rate reduction resulting therefrom." (emphasis added) Order at p. 4.

The utility explains in its response that disposal of the land was a condition precedent to obtaining a refinancing of the utility's then existing debt. However, because the land was encumbered by liens which exceeded the sales price of the land, foreclosure by Mr. DeLucenay was the only method by which clear title to the property could be obtained in order to dispose of the property. After the foreclosure, Mr. DeLucenay was then able to sell the property to a third party pursuant to a land sales contract assigned to Mr. DeLucenay by MHU. Therefore, the utility asserts, MHU did not violate the requirements of Order No. PSC-93-0295-FOF-WS in that the utility did not sell the property. In other words, the utility does not believe that the language in the order requiring the utility to report "any future sale of abandoned land" to the Commission included a foreclosure and subsequent sale of the land by Mr. DeLucenay. Therefore, the utility believes it had no duty under the Order to report the foreclosure and sale by Mr. DeLucenay. Finally, to the extent that the Commission determines either that the utility has violated the provisions of Order No. PSC-93-0295-FOF-WS, or that a limited rate proceeding is

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appropriate in order to adjust the utility's rates as a result of the foreclosure of the property by a related party, the utility in its response requests a hearing on this matter pursuant to Section 120.569 and 120.57(1), Florida Statutes, to allow it to present formal evidence supporting the allegations contained in its response.

Staff interprets the utility's request for a hearing in its response to the show cause order as a conditional or contingent request for a hearing. Staff believes that a contingent or conditional request for hearing is not appropriate in this instance.

Under the show cause procedure set out in Order No. PSC-97-0140-FOF-WS, if the utility files a timely written response that raises material questions of fact and requests a hearing pursuant to Section 120.569, Florida Statutes, further proceedings may be scheduled before a final determination on this matter is made. Staff believes that the utility's allegations in its response to the show cause order sufficiently state a disputed issue of material fact, i.e. whether a "sale" within the context of Order No. PSC-93-0295-FOF-WS did occur such that the utility was then under an obligation to report the transaction to the Commission. Therefore, because staff believes the utility's response raises a disputed issue of material fact, staff recommends that this matter be scheduled for a hearing.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, this docket should remain open pending disposition of the hearing.

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should remain open pending disposition of the hearing.

State of Florida

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



DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(904) 413-6199

Public Service Commission

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FPSC - Records/Reporting

Marshall Deterding, Esquire
Rose, Sundstrom & Bentley
2548 Blairstone Pines Drive
Tallahassee, FL 32301

Re: Docket No. 961471-WS - Initiation of show cause proceedings against Mad Hatter Utility, Inc. for violation of Order No. PSC-93-0295-FOF-WS.

Dear Mr. Deterding:

Enclosed a copy of the Staff Recommendation filed in this matter on May 29, 1997. The Commission is expected to consider the Recommendation at its June 10, 1997, Agenda Conference which will be held in Room 148, Betty Easley Conference Center, in Tallahassee beginning at 9:30 a.m. Due to the number of items to be covered at this conference, we cannot state the exact time at which this item will be heard. You are welcome to come to this Agenda Conference and observe and/or participate in the discussion of this item. If you have any questions, please feel free to call me at (904) 413-6199.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bobbie L. Reyes".

Bobbie L. Reyes
Staff Counsel

BLR/dp
Enclosure

cc: Division of Water and Wastewater (Zhang, Merchant)
Division of Records and Reporting