

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 960576-WS

**PASCO COUNTY'S PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

Pasco County, through its undersigned counsel, hereby submits the following proposed findings of fact and conclusions of law pursuant to Rule 25-22.056, Florida Administrative Code, and Order No. PSC-97-0534-PHO-WF.

**PROPOSED FINDINGS OF FACT**

**ISSUE 1**

1. Mad Hatter Utility, Inc. (Mad Hatter), filed an amendment application to add territory (the extended territory) to its certificate of authorization. That territory includes territory in which Mad Hatter is currently serving without authorization (parcels A-3, A-4, B-21, B-22, B-23, C-6, C-7 and C-8).

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- LIN \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC \_\_\_\_\_
- W/S \_\_\_\_\_
- OT- \_\_\_\_\_

ISSUE 2

2. The application also included areas in which Mad Hatter seeks to provide service: parcels B-1A (T & G properties); B-20 (Willet); B-24 (Kniff property); B-25 (Ash property); B-26 (Meadowview); B-27 (Como Club/Mossview); C-3A (Twin Lakes commercial parcel); C-9 (Myrtle Lakes Baptist Church); C-10, (Ash property-Myrtle Lake) and the majority of parcel C-8.

ISSUE 3

3. There is a need for service in the territory which Mad Hatter seeks to add to its certificate of authorization.

ISSUE 4

4. Mad Hatter does not have the technical ability and adequate capacity to serve the territory which it seeks to add to its certificate of authorization. (R. 631, L. 5-14).

5. The territory to which Mad Hatter seeks to add to its certificates of authorization will generate somewhere between 436,000 gallons of wastewater a day to 532,500 GPD. (R. 333; L. 18-22; R. 618, L. 9-25; R. 619, L. 1-14).

6. Mad Hatter only operates one wastewater treatment plant, the Linda Lakes wastewater treatment plant, which is at 100% committed capacity. (R. 125; L. 21-25).

7. Mad Hatter has no other permits from the Florida Department of Environmental Protection (DEP) (R. 75, L. 22-25). It has no permit applications pending with the DEP for any additional wastewater facilities. (R. 76, L. 1-5).

8. Mad Hatter allowed its permit for its Turtle Lakes wastewater treatment facility to expire in April of 1991. (R. 106, L. 22-23). Mad Hatter did not file a timely request with the Florida Department of Environmental Regulation (DER) for an extension for that permit. (R. 106, L. 24-25; R. 107, L. 1).

9. The DER issued a notice of intent to revoke Mad Hatter's permit to operate the Foxwood wastewater treatment plant due to the numerous violations of state pollution regulations and the requirements of the permit. (R. 107, L. 11-19). Mad Hatter later consented to the revocation of its Foxwood wastewater treatment permit. (R. 108, L. 13-15).

10. It is unlikely that the DEP would allow Mad Hatter to build a rapid rate infiltration basin disposal system in the Land O'Lakes area in light of the numerous plants which have been taken off line due to environmental problems caused by those disposal systems. (R. 128, L. 5-25). Thus, the DEP anticipates that any future wastewater

treatment plants constructed in the area will require considerable more property than the use of rapid rate infiltration basins and will have to either utilize the more expensive slow rate disposal or the very expensive public access process. (R. 128, L. 5-25).

11. Mad Hatter does not currently have the capacity to treat the sewage in the extended territory. (R. 67, L. 2-12, 20-25; R. 68, L. 1-7). Mad Hatter has acknowledge that it may take a year and a half of planning or more to provide wastewater treatment service to a development. (R. 70, L. 2-6).

12. Mad Hatter not only does not have the ability to serve the extended territory, it is not able to provide service in the territory for which it currently has certificates of authorization. (R. 11-13; R. 16-18; R. 20-22; R. 32; R. 51, L. 10-24). Mad Hatter does not have the ability to serve either the Oak Grove subdivision nor the nearby Denham Oaks Elementary School, and it has also been unable to provide service to the Lake Talia area. Id.

13. Mad Hatter relies upon Pasco County for the treatment of wastewater pursuant to a 1992 agreement between the parties. (R. 84, L. 1-15; R. 85, L. 3-17; Ex. 11).

That agreement limits the amount of Mad Hatter's wastewater the County has to treat to 350,000 gallons per day (GPD). (R. 331, L. 19-24). Mad Hatter has exceeded its 350,000 gallon cap with the County. (R. 333, L. 8-15; R. 90, L. 8-21).

14. The contract between the County and Mad Hatter limits the area to which the County must provide service to Mad Hatter to both Mad Hatter's PSC certificated area as of February of 1992. It further limits it to the service area described on the map attached as Exhibit 3 to the 1992 agreement. (R. 331; R. 332, L. 1-11).

15. Most of the extended territory is not described on the map attached to the 1992 agreement. (R. 332, L. 12-19).

16. Mad Hatter has no viable alternatives for the treatment of the sewage generated by the extended territory. It would cost between \$1.4 and \$1.7 million for Mad Hatter to connect its system to the Pebble Creek treatment plant. (R. 515, L. 3-10).

17. It is not cost effective for Mad Hatter to connect to Hillsborough County's system. (R. 432-433). Furthermore, Hillsborough County would not agree to provide service to Mad Hatter unless Pasco County agreed. (R. 432-433).

18. Mad Hatter has suggested it might send the sewage to Windemere Utility Co. However, the owner, Dr. Bob C. Kratz, Sr., testified that Windemere would not accept any sewage from Mad Hatter for treatment. (R. 288, L. 18-21).

19. There is an immediate need for service in the extended territory. (R. 588, L. 2-16). Mad Hatter does not have the present ability to treat and dispose of that sewage to meet this immediate need. (R. 66, L. 19-25; R. 67, L. 1-12; R. 84, L. 16-25; R. 85, L. 1-17).

20. The DEP believes that Pasco County is better able to treat sewage in the extended territory. (R. 167, L. 5-9). Mad Hatter's engineer, Edwin Rogers, admitted that Mad Hatter currently has no method of treating sewage generated by the extended territory. (R. 631, L. 11-14).

21. Pasco County has a greater ability to provide water to the extended territory. With its current facilities, the County could serve an additional 1,500 connections. (R. 313, L. 22-25; R. 314, L. 1-2). Mad Hatter could provide service to less than 600 new connections. (R. 315, L. 24-25; R. 316, L. 1-4).

ISSUE 5

22. Mad Hatter does not have the financial ability to serve the territory which it seeks to add to its certificate of authorization. (R. 86, L. 7-15). Mad Hatter does not have the financial ability to build the facilities to serve the extended territory nor has it applied for any financing to expand its capacity. (R. 86, L. 22-25; R. 87, L. 1-3).

23. Mad Hatter's accountant, Robert Nixon, acknowledged that he was not certain that Mad Hatter could obtain the financing to serve the extended territory. (R. 196, L. 14-19).

24. Although Mad Hatter has contacted its banker, John Cole of Co-Bank, Co-Bank has not provided a commitment to Mad Hatter to provide financing. (Exhibit 2).

25. One reason Mad Hatter has not applied for financing is because it does not know how much it would cost to build a wastewater treatment plant necessary to serve the extended territory. (R. 87, L. 4-18).

26. According to Mr. DeLucenay, Mad Hatter's financial position was precarious as of January of last year. (R. 88, L. 17-20). Mad Hatter has suffered severe financial difficulties in the past including forcing Barnett Bank to

write off over \$700,000.00 presumably because the utility could not repay the loan. (R. 530, L. 15-23). Mad Hatter gave a deed in lieu of foreclosure on a piece of property it owned, and Mr. and Mrs. DeLucenay foreclosed on Mad Hatter so that they could convey real property to a developer, the Van Dorsten Corporation, free and clear of liens on the property. (R. 530, L. 23-25; R. 531, L. 1; R. 582, L. 15-25; R. 583, L. 1-15).

27. Mad Hatter's president, Larry DeLucenay, testified at a preliminary injunction hearing in January of 1996, that without being able to serve the Oak Grove subdivision and the Denham Oaks Elementary School, Mad Hatter faces possible bankruptcy or foreclosure by its lender. (R. 88, L. 25; R. 89, L. 1-7, 18-24). Mad Hatter is not serving either the Oak Grove subdivision or the Denham Oaks Elementary School today. (R. 89, L. 18-24).

28. Mr. DeLucenay testified at that hearing that Mad Hatter had trouble obtaining financing due to the fact that the County has provided service to the Denham Oaks Elementary School. (R. 89, L. 25, R. 90, L. 1-7).



29. Mad Hatter faces a possible fine for failing to comply with the PSC order requiring disclosure of the sale of the Foxwood percolation ponds. (R. 531, L. 1-4).

30. Mad Hatter has not determined the projected impact of the financing of a new wastewater treatment plant on its capital structure. (R. 206, L. 11-21).

31. Mad Hatter is unable to provide information to the Commission on the impact on its rates if the Commission extends the territory for which it has certificates of authorization. (R. 206; L. 22-25; R. 207, L. 1-15).

#### ISSUE 6

32. Mad Hatter owns no real property either by lease or outright ownership on which to build a wastewater treatment plant to serve the extended territory other than a small parcel at its old Foxwood plant where it has no disposal capacity. (R. 76, L. 15-25, R. 77, L. 1-6, R. 78, L. 14-18, 25; R. 79, L. 1-11; R. 80, L. 10-19; R. 621, L. 15-18).

33. Mad Hatter has no location to dispose of the sewage in the extended territory. (R. 80, L. 10-19).

## ISSUE 7

34. Pasco County can and will provide service to the areas that Mad Hatter seeks to add to its certificates of authorization. (R. 334, L. 12-24).

35. Pasco County has extended water and sewer service along State Road 54 and partially along U.S. 41 to those areas requested by Mad Hatter. (R. 334, L. 12-24). The County plans to run water and sewer lines along U.S. 41 in conjunction with the widening of that road. (R. 334, L. 12-24). Construction of those lines should be completed by June of 1998. (R. 334, L. 12-20).

36. Pasco County has built the Wesley Center wastewater treatment plant and expanded the Land O'Lakes wastewater treatment plant so that the County has the capacity to treat an additional 4,000,000 GPD (R. 334, L. 12-23).

37. The County did not build the lines along U.S. 41 in a race to serve with Mad Hatter. (R. 334, L. 25; R. 335, L. 1-13). Instead, the Florida Department of Transportation (DOT) approached Mad Hatter to enter into an agreement in which Mad Hatter would place lines along U.S. 41. (R. 342, L. 15-25; R. 343, L. 1-17; R. 397, L. 18-25; R. 398, L. 1-13). Only when Mad Hatter refused to do so did the DOT

request the County enter into such an agreement. (R. 242, L. 3-6, 13-20; R. 397, L. 18-25; R. 398, L. 1-13).

38. Pasco County need not devote any of its additional capacity to Mad Hatter as the agreement between the County and Mad Hatter is limited to the geographical areas described on Exhibit 3 to the 1992 agreement. (R. 331; R. 332, L. 1-11; Ex. 11).

39. The agreement envisioned that Mad Hatter's sewage would be treated at the Land O'Lakes subregional wastewater treatment plant. (R. 425, L. 12-16). The committed capacity at that plant is 1.306 million GPD. (R. 425, L. 1-4). The permitted design capacity is 1 million GPD. (R. 514, L. 20-22).

40. The County will not accept any additional wastewater flow from Mad Hatter. (R. 449, L. 13-25; R. 450, L. 1-3).

#### ISSUE 8

41. Mad Hatter's proposed amendment to its territory would result in the extension of the system which would be in competition with or a duplication of a portion of Pasco County's system. (R. 633, L. 3-18). Pasco County's system

is adequate to meet the reasonable needs of the public. (R. R. 334, L. 12-24).

#### ISSUE 9

42. Pasco County is able to provide reasonably adequate service to the extended territory. (R. 334, L. 12-24).

43. There is no evidence that the County is unable, refusing and neglecting to provide reasonably adequate service. (R. 204, L. 22-25; R. 205, L. 1-8).

#### ISSUE 12

44. Mad Hatter failed to provide any evidence to the Commission regarding the impact of the extension of the utility's monthly rates and service availability charges, if any. (R. 206, L. 11-25; R. 207, L. 1-15). Mr. DeLucenay admitted during the hearing that he did not know the effect of extending the territory on Mad Hatter's capital structure or its rates. (R. 206, L. 11-25; R. 207, L. 1-15).

#### ISSUE 13

45. It is not in the public interest to have Mad Hatter serve the extended territory. (R. 335-337; R. 576-577; R. 581-583). It is not in the public interest to extend the PSC certificate to a utility which cannot provide service to its current territory. (R. 82, L. 14-22). As noted above,

Mad Hatter cannot provide service within its existing territory including the Lake Talia area, the Denham Oaks Elementary School and the Oak Grove subdivision. (R. 11-13; R. 16-18; R. 20-22; R. 32; R. 51, L. 10-24; R. 82, L. 14-22).

46. The Denham Oaks Elementary School was forced into double sessions so that school children in the fall of 1995 were going to school in the dark. (R. 335, L. 17-25; R. 336, L. 1-8). The County told Mad Hatter to provide service but it was unable to do so because Sunfield Homes, Inc. refused to enter into a contract with Mad Hatter. (R. 336, L. 2-8; R. 461, L. 16-21).

47. Pasco County has agreed to provide credit to customers who pay impact fees. (R. 337, L. 2-10). Pasco County issues credits to those customers but Mad Hatter has refused to pass on those savings to the customers despite its agreement with the County to do so. (R. 337, L. 2-10; R. 581, L. 5-8).

48. The rates charged by Pasco County are less than those charged by Mad Hatter. (R. 337, L. 11-14; Ex. 18).

49. Mad Hatter failed to notify the Commission of the sale of Foxwood and Turtle Lakes percolation ponds for

\$195,000.00 although the PSC had ordered Mad Hatter to notify it if the property was sold because the cost of abandonment had been passed along to the customers. (R. 581, L. 18-25; R. 582, L. 1-11). Mad Hatter agreed to notify the PSC if the plants were sold. (R. 582, L. 7-14).

In Re: Application for a Rate Increase in Pasco County by Mad Hatter Utility, Inc., Order PSC-93-0295-FOF-WS at p. 15.

50. Mad Hatter then entered into a contract with the Van Dorsten Corporation to sell the land. (R. 582, L. 15-19). The contract was assigned by Mad Hatter to Mr. DeLucenay and his wife who then obtained a first mortgage on the property from Barnett Bank. (R. 582, L. 15-25; R. 583, L. 1). Mr. and Mrs. DeLucenay filed a mortgage foreclosure lawsuit against Mad Hatter and obtained a judgment. (R. 583, L. 2-7).

51. Mr. and Mrs. DeLucenay then sold the Foxwood and Turtle Lakes property to the Van Dorsten Corporation for \$195,000.00. (R. 583, L. 8-11). Mad Hatter never notified the PSC of this transaction. (R. 583, L. 12-15).

PROPOSED CONCLUSIONS OF LAW

1. To obtain approval of an extension of its certificates of authorization, Mad Hatter must prove that

there is no other utility in the area of the extended territory that is willing and capable of providing reasonably adequate service to the extended territory. Rule 25-30.036(3)(a)-(1).

2. Mad Hatter must prove to the Commission that it has the financial and technical ability to provide service in the extended territory. Rule 25-30.036(3)(b).

3. Mad Hatter must prove it owns the land upon which the utility treatment facilities that will serve the proposed territory are located or provide a copy of an agreement, such as a 99 year lease, which provides for the continued use of the land. Rule 25-30.036(3)(d).

4. Since Mad Hatter has no current capacity to treat the wastewater from the extended territory, it must provide a written description of the proposed methods for effluent disposal. Rule 25-30.036(3)(g).

5. Mad Hatter must describe the capacity of its existing lines, the capacity of the treatment facilities and the designed capacity of the proposed extension. Rule 25-30.036(3)(j).

6. Mad Hatter must provide to the Commission the numbers and dates of any permits issued for the proposed

system by the Florida Department of Environmental Protection (DEP). Rule 25-30.036(3)(k).

7. Mad Hatter must provide a proposed method of financing the construction and the projected impact on the utility's capital structure. Rule 25-30.036(3)(l).

8. Mad Hatter must provide to the Commission a description of the types of customers anticipated to be served by the extension such as single family homes, mobile homes, duplexes, golf course clubhouse, commercial use, etc. Rule 25-30.036(3)(m).

9. Mad Hatter must provide to the Commission a statement regarding the projected impact of the extension on the utility's monthly rates of service availability charges. Rule 25-30.036(3)(n).

10. Mad Hatter must provide an original and two copies of sample tariff sheets reflecting the additional service area. Rule 25-30.036(3)(o).

11. Mad Hatter shall provide service to the areas described in its certificates of authorization within a reasonable time. Fla. Stat. §367.111(1).

12. The Commission may not extend Mad Hatter's territory if the extension would result in Mad Hatter



competing with or duplicating any system or portion thereof unless the Commission first determines that the other system is inadequate to meet the reasonable needs of the public or the person operating the system is unable, refuses or neglects to provide reasonably adequate service. Fla. Stat. §367.045(5)(a).

13. If the utility has not provided service to any part of its certificated territory within five years after the date of authorization, the authorization may be reviewed, amended or revoked. Fla. Stat. §367.111(1).

14. Pasco County is not regulated by the Commission. Fla. Stat. §367.022. In re: Petition by Adam Smith Enterprises, Inc. for a Declaratory Statement as to Jurisdictional Status, Docket No. 890159-WS, Order No. 19060 (March 30, 1988).

15. The Commission has no authority to restrain a governmental agency from invading the service area of a private utility certificated by it. Southern Gulf Utilities, Inc. v. Mason, 166 So.2d 138 (Fla. 1964).

16. The right to provide utility services to the public carries a duty to promptly and efficiently provide those

services. City of Mount Dora v. JJ's Mobile Homes, Inc.,  
579 So.2d 219 (Fla. 5th DCA 1991).

17. The right to provide utility services is conditioned upon the ability of the franchisee to promptly and efficiently meet its duty to provide those services. Id.

18. When two utilities have the right to serve, the utility with the earliest acquired legal right has the exclusive right to provide the service if it has the present ability to do so. Id.

19. Utilities which undertake to perform a service to the public have a duty and obligation to render reasonably adequate services to the public. City of Winter Park v. Southern States Utilities, Inc., 540 So.2d 178 (Fla. 5th DCA 1989).

20. A utility without the present ability to serve cannot prevent a utility with the present ability to serve from serving the public nor does it have any right to demand that it be permitted to serve the public in the future when it is capable of doing so. Id.

21. Failure to comply with the requirements set forth in Fla. Stat. §367.041 and Rule 25-30.035 may result in the

denial for a certificate to provide utility service. In Re Conrock Utility Company, 90 Fla. Pub. Serv. Comm'n Rep. 537 (Docket No. 890459-WU, Order No. 22847, April 23, 1990).

22. The failure to show that the utility owns land or has a written lease for the land on which the proposed facility will be located is a material deficiency in the application. Id. Furthermore, a utility's failure to show its financial ability to own and operate a utility is another material deficiency which justifies denial. Id.

23. If a utility does not have the technical ability to provide the service, that is another material deficiency which justifies denial. Id.

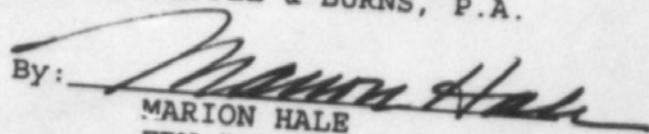
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been served upon Roseanne Capeless, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399, and F. Marshall Deterding, Rose Sundstrum & Bentley,

2548 Blairstone Pines Drive, Tallahassee, Florida 32301, by  
regular U.S. mail and facsimile this 26 day of June, 1997.

JOHNSON, BLAKELY, POPE,  
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