

RECEIVED  
FLORIDA PUBLIC  
SERVICE COMMISSION

ORIGINAL  
FIVE COPY

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

JUN 30 11 08

MAIL ROOM

DOCKET NO. 960576-WS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

PASCO COUNTY'S BRIEF

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- LIN \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC \_\_\_\_\_
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Marion Hale  
 FBN #441351  
 Charles A. Samarkos  
 FBN #0826146  
 Johnson, Blakely, Pope, Bokor,  
 Ruppel & Burns, P.A.  
 Post Office Box 1368  
 Clearwater, Florida 34617-1368  
 (813) 461-1818  
 Attorneys for Pasco County

DOCUMENT NUMBER-DATE  
 05526 JUN 30 5  
 FPSC-RECORDS/REPORTING

## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
Table of Contents.....	i
Table of Citations.....	iii
Definitions and Explanations.....	iv
Introduction.....	1
ISSUE 4 Does MHU have the technical ability and adequate capacity to serve the territory which it seeks to add to its certificates of authorization?.....	1
ISSUE 5 Does MHU have the financial ability to serve the territory which it seeks to add to its certificates of authorization?.....	16
ISSUE 6 Does MHU own the land upon which its treatment facilities that serve or will serve the proposed territory are located, or if not, is the utility entitled to continued use of that land?.....	20
ISSUE 7 Does service exist from other sources within geographical proximity to the area that MHU seeks to add to its certificates of authorization?.....	21
ISSUE 8 Does the proposed amendment of MHU's territory result in the extension of the system which would be in competition with, or a duplication of, any other system or portion of a system?.....	23
ISSUE 9 If the proposed amendment of MHU's territory would result in the extension of its system which would be in competition with, or a duplication of, any other system or portion of a system, is such other system or portion thereof inadequate to meet the reasonable needs of the public or are the persons operating	

it unable, refusing, or neglecting to  
provide reasonably adequate service?..... 25

ISSUE 12: What is the projected impact of the  
extension on the utility's monthly rates  
and service availability charges, if any?.... 26

ISSUE 13 Pursuant to Section 367.045(5)(a),  
Florida Statutes, is it in the public  
interest for the Commission to grant  
MHU's admendment application?..... 26

Conclusion..... 30

Certificate of Service..... 31

TABLE OF CITATIONS

Cases

City of Mount Dora v. J.J.'s Mobile Homes, Inc.,  
579 So.2d 219 (Fla. 5th DCA 1991)..... 14

City of Winter Park v. Southern States Utilities,  
Inc., 547 So.2d 178 (Fla. 5th DCA 1989).....14, 15

In Re: Application for a Rate Increase in Pasco  
County by Mad Hatter Utility, Inc., Order No.  
PSC-93-0295-FOF-WS..... 29

In Re Conrock Utility Company, 90 Fla. Pub.  
Serv. Comm'n Rep. 537 (Docket No. 890459-WU,  
Order No. 22847, April 28, 1990)..... 30

In Re: Objections by Pasco County, Central Pasco  
Utilities, Inc., and Paradise Lakes Utilities, Ltd.  
to the Application of Mad Hatter Utilities, Inc.,  
for Amendment of Certificate Nos. 304-W and 297-S,  
Order No. 20067..... 14

Florida Constitution and Statutes

Section 367.045(2), Florida Statutes..... 10

Section 367.045(5)(a), Florida Statutes.....23, 24, 25

Florida Public Service Commission Orders

Order No. PSC-93-0295-FOF-WS..... 29

Order No. PSC-97-0534-PHO-WS, Pre-hearing Order..... 1

Order No. 20067..... 14

Docket No. 890459-WU, Order No. 22847.....30

Other Sources

Rule 25-22.056, Florida Administrative Code..... 1

Rule 25-30.036(3)(a)-(1)..... 1

Rule 25-30.036(3)(b), Florida Administrative Code.....	5,16
Rule 25-30.036(3)(d), Florida Administrative Code. 5,20,21	
Rule 25-30.036(3)(j), Florida Administrative Code.....	5
Rule 25-30.036(3)(l), Florida Administrative Code.....	19
Rule 25-30.036(3)(n), Florida Administrative Code....	20,26

**DEFINITIONS**

DEP	Florida Department of Environmental Protection
DER	Florida Department of Environmental Regulation
DOT	Florida Department of Transportation
GPD	Gallons per day
Mad Hatter or MHU	Mad Hatter Utility, Inc.
PSC	Public Service Commission
RRIB	Rapid rate infiltration basin
WWTP	Wastewater treatment plant

Pursuant to Rule 25-22.056, Florida Administrative Code, and Order No. PSC-97-0534-PHO-WS (Pre-hearing order), Pasco County hereby submits the following brief.

#### INTRODUCTION

Pasco County requests that the Court deny Mad Hatter's petition to extend its territory to provide service to additional portions of south central Pasco County as Mad Hatter has no capacity to treat additional wastewater and no plans to obtain additional wastewater treatment and disposal. Furthermore, Pasco County has greater capacity to provide water to the area which Mad Hatter hopes to serve. Accordingly, Pasco County requests that the Commission deny Mad Hatter's request.

#### ISSUE 4

##### (TECHNICAL ABILITY AND ADEQUATE CAPACITY)

Mad Hatter Utility, Inc. (Mad Hatter) lacks the technical ability and the adequate capacity to serve the territory for which it seeks to extend its certificates of authorization (the extended territory). Thus, the Commission should deny Mad Hatter's petition pursuant to 25-30.036(3)(a)-(1). If the Commission grants Mad Hatter's request, it will result in a portion of south central Pasco County having no utility service and no prospect of such service in the foreseeable future.

The territory to which Mad Hatter seeks to add to its certificates of authorization will generate approximately 436,000 gallons of sewage per day (GPD) according to the County's estimate. (R. 333, L. 18-22). Mad Hatter's engineer, Edwin Rogers, acknowledged that he would expect the flow from the extended territory to range from 1,016 gallons per acre to 1,226 gallons per acre (R. 618, L. 9-21; R. 619, L. 11-14). He further testified that any number per acre up to 1,500 gallons per day was acceptable. (R. 618, L. 19-21). As there are 355.5 acres in the extended territory, (R. 618, L. 22-24) the area will generate up to 532,500 gallons a day. (R. 618, L. 25; R. 619, L. 1-10).

Mad Hatter only operates one wastewater treatment plant (WWTP), the Linda Lakes WWTP, which is at 100% committed capacity. (R. 125, L. 21-25). The reason why Mad Hatter has no other wastewater treatment plants is that it allowed its permit for the Turtle Lakes WWTP to expire in April of 1991 (R. 106, L. 22-23), and it did not file a timely request to the Florida Department of Environmental Regulation (DER) for an extension for that permit. (R. 106, L. 24-25; R. 107, L. 1).

Mad Hatter lost its only other operating permit for the Foxwood WWTP after the DER issued a notice of intent to revoke the permit due to numerous violations of state pollution regulations and the requirements of the permit. (R. 107, L. 11-19). Although Mad Hatter refused to acknowledge any wrongdoing, it consented to the revocation of its permit to operate the Foxwood plant. (R. 108, L. 13-15).

Thus, although Mad Hatter has requested that the Commission grant its request to extend its territory, Mad Hatter has no permit to operate a wastewater treatment facility other than the Linda Lakes permit. (R. 75, L. 22-25). Although it claims to be able to provide service to the extended territory, Mad Hatter has no permit applications pending with the Florida Department of Environmental Protection (DEP) for any additional wastewater treatment facilities. (R. 76, L. 1-5).

As Pasco County refuses to provide additional capacity to Mad Hatter, the utility will have to build a new wastewater treatment facility that will undoubtedly be expensive. As Peter Burghardt of the DEP testified:



To provide "reasonable assurance", it is unlikely that Mad Hatter will be able to construct future wastewater treatment plants in the Land O'Lakes area using disposal ponds (aka RRIBs) [rapid rate infiltration basin] due to the high ground water in the area. This is demonstrated by the fact that area wastewater treatment plants that rely on RRIBs are either going off line or have already gone off line -- some by prudent choice, and others through Department enforcement action. These facilities include: Turtle Lakes, Foxwood, Winter Quarters, and Paradise Lakes Utilities (which are currently off line through Department-initiated enforcement action for failed effluent disposal pond systems). Future pending off line systems include: Land O'Lakes Village Apartments, which is currently negotiating a consent order with the Department and Lake Padgett MV.... In light of the above, any new wastewater treatment plant in this area will most likely be required to utilize "Slow Rate" disposal or the very expensive "public access" (Rule 62.610 Part III) process for the disposal of the treated effluent for any future wastewater treatment plants constructed in this area. This will require considerably more property than the use of RRIBs have in the past.

(R. 128, L. 5-25).

Accordingly, Mad Hatter Utility has no capacity to provide service to the extended territory through existing wastewater treatment plants nor has it any DEP permit to construct a new WWTP. (R. 631, L. 11-14). It appears that the DEP will not permit Mad Hatter to construct rapid rate infiltration basin disposal systems in the Land O'Lakes area, according to Mr. Burghardt's testimony. (R. 128, L. 5-25). Thus, it would have to use the far more expensive

slow rate disposal or the very expensive public access disposal for any WWTP constructed in the area.

Larry DeLucenay, the president of Mad Hatter, acknowledged in his testimony that Mad Hatter does not have the capacity to treat the sewage in the extended territory today. (R. 67, L. 2-12, 20-25; R. 68, L. 1-7). He also acknowledged that it can take a year and a half of planning to provide wastewater treatment service to a development. (R. 70, L. 2-6).

The Commission should also deny Mad Hatter's request since it has failed to show it has the land upon which to treat and dispose of the sewage. Without such land, Mad Hatter lacks the technical ability and the adequate capacity to serve the extended territory. Rule 25-30.036(3)(d) requires Mad Hatter to prove to the Commission that it owns the land upon which it proposes to build a WWTP or that it has a long-term lease to the property. Mad Hatter has failed to meet the requirements of that rule and thus it cannot show it has the technical ability and adequate capacity required by Rules 25-30.036(3)(b) and 25-30.036(3)(j). Mad Hatter owns no real property either by lease or by outright ownership on which to build a

wastewater treatment plant to serve the extended territory other than the old Foxwood plant site which has no disposal capacity. (R. 71, L. 2-9; R. 76, L. 15-25; R. 77, L. 1-6; R. 78, L. 14-18, 25; R. 79, 1-11; R. 80, L. 10-19; R. 621, L. 15-18). Mad Hatter has suggested it may use reclaimed water to alleviate the fact it has no ability to dispose of the treated wastewater. However, the DEP has not issued it any reuse permits. (R. 141, L. 1-5).

Not only does Mad Hatter not have the ability to provide service to the extended territory, it cannot even provide service in the territory for which it currently has certificates of authorization. Mad Hatter does not have the present ability to serve a project within its PSC certificated territory called the Oak Grove subdivision nor the nearby school, the Denham Oaks Elementary School. (R. 82, L. 14-22).

Furthermore, both Delores Johnson and Tim Hayes testified that Mad Hatter has no service to the Lake Talia area which is also in its certificated territory. (R. 11, L. 4-15, 23-25; R. 12; R. 13, L. 1-2, 19-23; R. 16, L. 18-24; R. 17, L. 12-25; R. 18, L. 1-3, 10-12; R. 20, L. 6-10, 13-25; R. 21, L. 1-9, 18-25; R. 22-31; R. 32, L. 1-18; R.

51, L. 10-24). Both Ms. Johnson and Mr. Hayes explained that the owners of real property in the Lake Talia area are unable to sell or develop their property because Mad Hatter cannot provide service, the County refuses to serve within Mad Hatter's territory and Mad Hatter refuses to relinquish its right to serve despite its inability to do so. Id.

Since it entered into a long term agreement with the County in February of 1992, Mad Hatter has become almost totally dependent upon Pasco County for the treatment of wastewater. (R. 84, L. 1-15; R. 85, L. 3-17; Ex. 11). That agreement limits the amount of Mad Hatter Utility's wastewater the County must treat to 350,000 GPD (gallons per day). (R. 331, L. 19-24). Mad Hatter Utility has exceeded its 350,000 GPD gallon cap with the County. (R. 333, L. 8-15; R. 90, L. 8-21).

More importantly, the contract limits the area to which the County must provide service to Mad Hatter PSC certificated territory as of February of 1992 and 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; Ex. 11). Most of the extended territory is outside that geographical area and thus the County need not treat any

additional sewage from Mad Hatter. (R. 332, L. 12-19). The County refuses to rewrite the terms of the agreement to provide additional capacity to Mad Hatter given Mad Hatter's egregious tactics since the County bailed Mad Hatter out of its problems with the DEP. (R. 428, L. 5-25; R. 429, L. 1-8; R. 449, L. 13-25; R. 450, L. 1-3;

The Commission should not grant more territory to a utility which does not have the capacity to serve its existing certificated area. Mad Hatter does not have the capacity to serve new customers within its current territory and thus if the Commission extends its territory, the public will not have any utility service.

Two years ago, Mad Hatter refused to guarantee service to the developer of the Oak Grove subdivision, Sunfield Homes, Inc., because it had no capacity to add more customers. In a proposed agreement drafted by Mad Hatter's counsel, Mad Hatter refused to guarantee service. (R. 494, L. 19-25; R. 495, L. 1-8). The agreement provided in pertinent part:

Developer [Sunfield Homes, Inc.] shall be responsible for determination of availability of sewer capacity through Pasco County, and service company [Mad Hatter], makes no promises to provide

sewer utility service in the event that Pasco County refuses sewage treatment capacity.

(Ex. 20). Thus, Sunfield Homes, Inc.'s counsel, Clyde Hobby, advised his client not to enter into the contract with Mad Hatter because Sunfield Homes, Inc., would then be obligated exclusively to obtain service from Mad Hatter even if Mad Hatter was unable to provide service. (R. 461, L. 16-21; R. 489, L. 20-25; R. 490, L. 1-20).

Furthermore, Mad Hatter did not have the capacity to provide water to the Oak Grove subdivision. (R. 498, L. 23-25). Mr. Orsi testified that Mr. DeLucenay informed him that he could not supply water to his subdivision unless Mr. Orsi gave Mad Hatter two wells and a loan for a substantial amount of money. (R. 498, L. 21-25; R. 499, L. 1-5; R. 501, L. 1-23). Although Mad Hatter claims to have provided water to the nearby Denham Oaks Elementary School through construction, that water was nothing more than a two inch pipe laying on top of the ground from a water tank storage facility on Cypress Creek Road to the school. (R. 506, L. 11-21). Mr. Orsi, the developer of Oak Grove, testified that he would never accept water service from Mad Hatter

given Mr. DeLucenay's "character reputation and conduct."  
(R. 510, L. 8-25; R. 511, L. 1).

As noted above, the 1992 agreement between the County and Mad Hatter limits the area which Pasco County has to treat sewage to the service area defined on Exhibit 3 to the agreement. (R. 332, L. 8-11; Ex. 11). The majority of the extended territory is not described on the map attached to the 1992 agreement. (R. 332, L. 12-19). In addition, Mad Hatter is treating sewage from outside of its current PSC certificated territory in violation of Fla. Stat. §367.045(2). (R. 333, L. 23-25; R. 334, L. 1-2). Accordingly, some of the sewage Mad Hatter is sending to the County for treatment today comes from an area outside the territory that the PSC has allowed Mad Hatter to serve (the illegal territory). (R. 333, L. 23-25; R. 334, L. 1-2). Mad Hatter is collecting and sending to Pasco County for treatment approximately 64,000 gallons a day from the illegal territory. (R. 333, L. 23-25; R. 334, L. 1-2). Accordingly, if Mad Hatter were not serving in the illegal territory, it would not have exceeded the 350,000 GPD limit in the 1992 agreement.

In an effort to show that it has some capacity to serve the extended territory, Mad Hatter has suggested that it might connect its lines to the Pebble Creek treatment plant. (R. 585, L. 8-15). However, Thomas O'Connor, a professional engineer employed by King Engineering & Associates, Inc., testified that it would cost between \$1.4 and \$1.7 million for Mad Hatter to connect the two systems. (R. 515, L. 3-10). One of the reasons the connection is so expensive is that it would require a jack and bore under I-75. (R. 515, L. 3-10; R. 584, L. 19-21). Mr. DeLucenay was unable to disagree with Mr. O'Connor's assessment of the cost of hooking the two systems together. (R. 584, L. 8-18, 22-25; R. 585, L. 1-3). Thus, it would be cost prohibitive for Mad Hatter to connect to Pebble Creek.

Mad Hatter also suggested it might connect to Hillsborough County's wastewater treatment system. Keith Templeman, the administrative support manager for Hillsborough County Utilities, testified that Hillsborough County would only agree to treat sewage from Mad Hatter if Pasco County agreed to permit Hillsborough County to do so by entering into an interlocal agreement. (R. 432-433). Mr. Templeman further testified that since Hillsborough



County's closest point of service is approximately seven miles away, it appears highly unlikely it would be cost effective to send the sewage to Hillsborough County for treatment. (R. 432-433). Mr. Templeman testified that in his 27 years with Hillsborough County, the County has never extended a line seven miles to serve a project. (R. 435, L. 10-22). Mr. DeLucenay was unable to provide any estimate as to how much it would cost to connect Mad Hatter with Hillsborough County. (R. 585, L. 4-7; R. 587, L. 13-18). Thus, Mad Hatter will not be able to solve its lack of capacity by connecting to Hillsborough County's system.

Mad Hatter has also claimed it might send the sewage to Windemere Utility Co. (R. 585, L. 8-15). However, Dr. Bob C. Kratz, Sr., who owns Windemere Utility Co., testified that Windemere would not accept any sewage from Mad Hatter for treatment given the long history of contentious litigation between Windemere and another utility owned by the DeLucenays. (R. 288, L. 18-21). Accordingly, Windemere Utility Co. has declined the opportunity to solve Mad Hatter's capacity crisis.

During the hearing, Mr. DeLucenay acknowledged that each of his plans for providing service to the extended

territory requires Mad Hatter to come up with the money and wherewithal to treat the wastewater. (R. 588, L. 2-12). However, Mad Hatter acknowledges there is an immediate need for service in the extended territory. (R. 588, L. 13-16). While Mad Hatter knows that there is an immediate need for service and that it lacks the ability to serve, it continues to ask the Commission to extend its territory.

For example, one development within the extended territory, Lake Como (B-27), is currently served by septic tanks. However, the DEP is keeping close watch on Lake Como to decide whether to require the development to use sewer services. (R. 162, L. 18-23). Lake Como will generate at least 35,000 GPD of wastewater. (R. 162, L. 18-25; R. 163, L. 1-15), and it may generate a greater amount. (R. 165, L. 13-15). As it has no available treatment or disposal capacity, Mad Hatter could not serve Lake Como. (R. 626, L. 13-23; R. 165, L. 1-4). Thus, there is a need for wastewater treatment service in the extended territory and Mad Hatter does not have the ability to handle that sewage. (R. 66, L. 19-25; R. 67, L. 1-12; R. 84, L. 16-25; R. 85, L. 1-17).

Pasco County is the only utility with the ability to serve the extended territory. The DEP believes that Pasco

County is better able to treat sewage in the extended territory. (R. 167, L. 5-9). Even Mad Hatter's engineer, Edwin Rogers, candidly admitted that Mad Hatter currently has no method of treating sewage generated by the extended territory. (R. 631, L. 11-14). As this Commission noted in In Re Objections by Pasco County, Central Pasco Utilities, Inc. and Paradise Lakes Utilities, Ltd. to the Application of Mad Hatter Utilities, Inc. for Amendment of Certificate Nos. 304-W and 297-S, Order No. 20067, "The focus is on what utility can provide satisfactory service in a timely manner to the area in question." Order 20067, p. 11.

The right to provide utility service to the public carries a duty to promptly and efficiently provide those services. City of Mount Dora v. J J's Mobile Homes, Inc., 579 So. 2d 219 (Fla. 5th DCA 1991). As the Mount Dora court noted, the right to provide utility service is conditioned upon the ability of franchisee to promptly and efficiently meet its duty to provide those services. Id. 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).

Mad Hatter claims that although it has no ability to serve the extended territory now, it will have that capacity in the future, and thus it seeks to exclude the County from the extended territory although Pasco County utilities is the only utility with the ability to serve. That is precisely the argument which the Fifth District Court of Appeal rejected in Winter Park, supra. A utility without the present ability to serve cannot prevent a utility with that ability from serving the public. Id. Nor does the utility without that ability have the right to demand that it be permitted to serve the public in the future when it is capable of doing so. Id. Mad Hatter is requesting that its territory be extended now. It must be able to provide service now.

Pasco County is also better able to provide water to the extended territory. According to Milton Martinez, a civil engineer employed by the DEP, Pasco County could serve an additional 1,500 connections with water given its current facilities. (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). As Mr. Orsi's testimony proved, Mad Hatter does not have the ability to provide

water to its current territory. As with wastewater, since Mad Hatter cannot provide service in its present territory, the Commission should not extend its certificates of authority with the certain knowledge that the new customers would be left without utility service.

ISSUE 5

(FINANCIAL ABILITY)

The Commission should also refuse to grant Mad Hatter's request to extend its territory as the utility does not have the financial capability to provide service, nor has it proved that it could acquire financing in the future. Rule 25-30.036(3)(b) requires Mad Hatter to prove that it has the financial ability to serve the extended territory. It has not done so and the Commission should therefore deny its request.

Mad Hatter has acknowledged it does not have the financing to serve the extended territory. (R. 86, L. 7-15). Mad Hatter's accountant, Robert Nixon, acknowledged that he is not certain that Mad Hatter could obtain the financing to serve the extended territory. (R. 196, L. 14-19). Mad Hatter has not applied for any financing to expand its capacity to treat the sewage from the extended

territory. (R. 86, L. 22-25; R. 87, L. 1-3). Although Mad Hatter contacted John Cole of Co-Bank, Co-Bank did not provide a commitment to Mad Hatter to provide financing. (Ex. 22). Mad Hatter also failed to introduce any testimony under oath stating Co-Bank would loan money to Mad Hatter. Conspicuously absent from Mr. Cole's letter are terms such as the loan amount, interest rate, re-payment terms and collateral requirements. The lack of definite terms together with the lack of a loan commitment prove Mad Hatter does not have the financial ability to serve.

One reason Mad Hatter has not applied for financing is because it does not know how much it would cost to build the wastewater treatment facilities necessary to serve the extended territory. (R. 87, L. 4-18). Without a plan to provide service, Mad Hatter cannot determine the cost and thus cannot determine whether it qualifies for financing. As Peter Burghardt of the DEP testified, the DEP will, in all likelihood, require Mad Hatter to build the more expensive slow rate system or the very expensive public access disposal system. (R. 128, L. 5-25). With so many uncertainties and unknowns, Mad Hatter has no plan to

finance the acquisition of capacity to serve the extended territory.

As recently as January of last year, Mad Hatter's financial position was precarious at best. (R. 88, L. 17-20). In fact, 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 faced 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 nor the Denham Oaks Elementary School today (R. 89, L. 18-24). Therefore, if Mr. DeLuency's testimony under oath was truthful, Mad Hatter today faces the possibility of bankruptcy and/or foreclosure by its lender. In fact, according to Mr. DeLucenay, Mad Hatter has 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). Despite that acknowledgment, Mad Hatter has tried to convince this Commission that it could finance the construction necessary to serve the extended territory.

Michael Moses, a certified public accountant, testified that Mad Hatter does not have the capability of borrowing the money to construct additional plants. (R. 531, L. 6-11). He further added that Mad Hatter has suffered severe financial difficulties in the past. (R. 530, L. 12-25; R. 531, L. 1-5). For example, Barnett Bank agreed 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. DeLucenay and his wife, Janice, foreclosed on their own utility. (R. 530, L. 23-25; R. 531, L. 1). 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). All of the financial information is gloomy while Mad Hatter continues to insist that it could obtain financing.

Furthermore, Mad Hatter does not know the projected impact of the financing of a new wastewater treatment plant on its capital structure. (R. 206, L. 11-21). Mad Hatter must show the Commission the effect extension of its territory would have on its capital structure. Rule 25-30.036(3)(1). Mr. DeLucenay was also unable to testify as



to the impact on Mad Hatter's rates if the Commission extends the territory for which it has certificates of authorization. (R. 206, L. 22-25; R. 207, L. 1-15). Mad Hatter must show the Commission the impact of extending service on its rates. Rule 25-30.036(3)(n).

ISSUE 6

(LAND OWNERSHIP)

Mad Hatter must prove that it owns the land beneath which it will construct treatment facilities or that it has acquired such property through a long term lease. Rule 25-30.036(3)(d). Mad Hatter has failed to do so and thus the Commission should deny its request.

As noted above, Mad Hatter has no plan to treat sewage from the extended territory (R. 67, L. 20-25; R. 68, L. 1-7). Since it has no plan, it has no property. Mad Hatter does not own any real property by lease or outright ownership to provide additional wastewater treatment service to the extended territory with the exception of a small parcel located at Mad Hatter's old Foxwood plant which 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).

Mad Hatter's lack of land is a by-product both of its lack of a plan to serve the extended territory and its bleak finances. Mad Hatter owned land for a subregional WWTP but it gave the property back in a deed in lieu of foreclosure. (R. 530, L. 23-25). Mad Hatter cannot now acquire the necessary land because it does not know the amount of property it needs to construct a wastewater treatment plant and disposal area. It does not know how much land it will need because it does not know how much sewage the extended territory will generate. (R. 77, L. 18-25; R. 78, L. 1-13). It has no location to dispose of the sewage. (R. 80, L. 10-16). To extend its territory, Mad Hatter must provide evidence that it owns the land beneath the proposed treatment facilities or has a long term lease for the property. Rule 25-30.036(3)(d). Mad Hatter has failed to do so.

#### ISSUE 7

#### (ALTERNATIVE SERVICE)

During the past several years, Pasco County has expanded its utility service to include the south central portion of the county to meet the growth of that area. Thus, while Mad Hatter has become unable to add new

customers, (R. 84; R. 85, L. 1-17) Pasco County has become the only utility with capacity in the area.

The 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. 12-19; Ex. 11). The County plans to run water and sewer lines along U.S. 41 in conjunction with the widening of that road. (R. 334, L. 12-19; Ex. 11). Construction of those lines should be completed by June of 1998. (R. 334, L. 12-20). Pasco County has built the Wesley Center plant and expanded the Land O'Lakes WWTP so that the County has capacity to treat 4,000,000 GPD. (R. 334, L. 12-23). By next month, the County will have capacity of 4,000,000 GPD to serve south central Pasco County. (R. 334, L. 23-24).

Pasco County need not devote any of its additional capacity to Mad Hatter as the agreement is limited to the geographical areas described on Exhibit 3 to the 1992 agreement. (R. 331; R. 332, L. 1-11; Ex. 11). Furthermore, the parties' agreement envisioned that Mad Hatter's sewage would be treated at the Land O'Lakes subregional wastewater treatment plant. (R. 425, L. 12-16; Ex. 11). The committed capacity at that plant is 1.306 million GPD. (R. 425, L. 1-

4). The permitted design capacity is one million GPD. (R. 514, L. 20-22). The County will not accept any additional flow from Mad Hatter. (R. 449, L. 13-25; R. 450, L. 1-3).

The County did not build the lines along U.S. 41 to compete with Mad Hatter. (R. 334, L. 25; R. 335, L. 1-13). Instead, the Florida Department of Transportation (DOT) first approached Mad Hatter to enter into an agreement in which Mad Hatter would place the lines on 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. 424, L. 3-6, 13-20; R. 397, L. 18-25; R. 398, L. 1-13). The County has proceeded in a responsible manner to provide service to one of the high growth areas in the County. (R. 334, L. 25; R. 335, L. 1-13).

#### ISSUE 8

#### (SERVICE COMPETITION)

Pursuant to Fla. Stat. §367.045(5)(a), the Commission may not grant an amendment to a certificate of authorization for the extension of an existing system if it will be in competition with or a duplication of any other system or a portion thereof unless the PSC first determines that the

other system is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses or neglects to provide reasonably adequate service. Extension of Mad Hatter's certificates of authorization would create such a duplication in violation of §367.045(5)(a).

There is no evidence that the County's system is inadequate or that the County is not meeting the reasonable needs of the public. As noted above, the County has proceeded in a responsible manner to provide service to south central Pasco County. (R. 334, L. 25; R. 335, L. 1-13). The County is providing service along U.S. 41 in conjunction with the DOT's widening of that road. (R. 334, L. 12-24). Mad Hatter had the opportunity to participate with the DOT in providing service along U.S. 41, but it declined to do so. (R. 424, L. 3-6, 13-20; R. 397, L. 18-25; R. 398, L. 1-13)

Mad Hatter's engineer, Edwin Rogers, testified that Mad Hatter would be duplicating a portion of the County's wastewater treatment facilities if it built a plant to serve the extended territory. (R. 633, L. 3-18). Pasco County will have the capacity to treat 4,000,000 GPD of wastewater

by next month. (R. 334, L. 12-24). Accordingly, any extension of Mad Hatter's certificates of authorization would be a duplication of a portion of the County's system and put Mad Hatter Utility in competition with Pasco County Utilities. Fla. Stat. §367.045(5)(a) does not permit the Commission to extend Mad Hatter's territory since that would be a duplication of a portion of the County's utility service.

ISSUE 9

(ADEQUACY OF COMPETING SYSTEM)

Mad Hatter presented no evidence at the hearing that the County's system was not adequate to meet the reasonable needs of the public. Mr. DeLucenay acknowledged that he has no reason to doubt that the County is willing and able to provide service. (R. 204, L. 22-25; R. 205, L. 1-8). Furthermore, there was no evidence presented that the County was unable, refusing or neglecting to provide reasonably adequate service. The County is well able to serve the extended territory. (R. 334, L. 12-24).

ISSUE 12

(RATE IMPACT)

As Mad Hatter has no plans to serve the extended territory, the County cannot determine how an extension of Mad Hatter's certificates to include that area would impact its rates. Mr. DeLucenay candidly admitted that he did not know the effect of extending the territory on Mad Hatter's capital structure or its rates. (R. 206, L. 11-21). Mad Hatter must provide evidence of the impact to the Commission and it failed to do so. Rule 25-30.036(3)(n). Since it has failed to do so, the Commission should deny its request.

ISSUE 13

(PUBLIC INTEREST)

There are a variety of reasons why it is not in the public interest to have Mad Hatter serve the extended territory. First, it is not in the public interest to extend the PSC certificate of a utility which cannot provide service. As noted above, Mad Hatter cannot provide service within its existing PSC certificated territory, including the Lake Talia area, the Denham Oaks Elementary School and the Oak Grove subdivision. If the Commission extends Mad Hatter's territory, it will further exacerbate the problem.

Even when Mad Hatter is capable of providing service, it attempts to use its PSC certificate as financial leverage to bolster its financial position. (R. 291; R. 297). Mad Hatter insisted that one property owner, Juanita Dennis, pay for connecting the water from her property to U.S. 41 although it was not necessary to serve her property. (R. 297, L. 10-13). In fact, Mad Hatter wanted Ms. Dennis to pay some \$16,000.00 for the unnecessary work, and thus she drilled a well instead. (R. 297, L. 10-22).

Furthermore, Mad Hatter forced the Denham Oaks Elementary School into double sessions so that children were going to school in the dark in the fall of 1995. (R. 335, L. 17-25; R. 336, L. 1-8). To alleviate that situation, the County told Mad Hatter to provide service. (R. 336, L. 2-8). However, Mad Hatter did not do so and thus Sunfield Homes, Inc. asked the County for service which the County was forced to provide to permit the school to open. (R. 335, L. 14-25; R. 336, L. 1-8). Even Mr. DeLucenay admitted that Mad Hatter lacks the present ability to serve the school and the Oak Grove subdivision. (R. 82, L. 14-22).

In addition, another reason why it is not in the public interest to have Mad Hatter serve the extended territory is



that even without the cost of building a new wastewater treatment plant, Mad Hatter's rates are higher than the County's. (R. 337, L. 11-14; Ex. 18). It is in the public interest to have the utility with the lowest prices serve the territory. Furthermore, Mad Hatter's water and rates do not discourage excessive use as do the County's. Given the water shortage in west central Florida, it is in the public interest to permit the utility which encourages conservation to serve the extended territory.

In addition, the County agreed to provide credit to customers who paid up-front impact fees. Pasco County issues credits to the customers, but Mad Hatter refuses to pass that savings on to its customers. Accordingly, those customers who paid impact fees are also paying a surcharge of \$1.00 per 1,000 gallons of sewage in violation of Mad Hatter's agreement with Pasco County. (R. 337, L. 2-10; R. 581, L. 5-8). Mad Hatter falsely contended that it cannot determine to whom such a credits apply. (R. 576, L. 19-23; R. 577, L. 5-21). However, that information is supplied to Mad Hatter on the monthly bills the County sends to Mad Hatter. (R. 576, L. 19-23; R. 577, L. 5-21).

Another reason why it is not in the public interest to extend Mad Hatter's territory is that Mad Hatter has failed to notify the Commission of the sale of the Foxwood and Turtle Lakes percolation ponds for \$195,000.00 although it agreed to notify the PSC if the property was sold since the cost of abandonment had been passed along to the customers. (R. 581, L. 18-25; R. 582, L. 1-11). In Re: Application for a Rate Increase in Pasco County by Mad Hatter Utility, Inc., Order No. PSC-93-0295-FOF-WS at p. 15. The Commission allowed Mad Hatter to pass along to its customers the cost of abandonment of those plants -- some \$400,000.00 -- over eight years. (R. 582, L. 3-6). Mad Hatter agreed to notify the PSC if the plants were sold. (R. 582, L. 7-14). Order No. PSC-93-0295-FOF-WS at p. 15.

Mad Hatter then entered into a contract with the Van Dorsten Corporation to sell the land. (R. 582, L. 15-19). That contract was assigned by Mad Hatter to Mr. DeLucenay and his wife. (R. 582, L. 15-22). Mr. DeLucenay and his wife then obtained the first mortgage on the property from Barnett Bank (R. 582, L. 15-25; R. 583, L. 1), filed a mortgage foreclosure lawsuit against Mad Hatter and obtained a judgment against their own corporation. (R. 583, L. 2-7).

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). So Mad Hatter's customers were paying Mad Hatter for the cost of abandonment while Mr. and Mrs. DeLucenay sold the percolation ponds for more than \$195,000.00. (R. 338, L. 1-8).

Thus, for a variety of reasons, it is not in the public interest for Mad Hatter to serve the extended territory.

#### CONCLUSION

Mad Hatter has failed to prove it has the capacity to serve the extended territory, that it has the financial ability, or that it owns or leases the land beneath which the plants will be built. Each of those is a fatal defect. Failure to comply with the requirements of the applicable statute and rules justifies a denial for a certificate to provide service. In Re Conrock Utility Company, 90 Fla. Pub. Serv. Comm'n Rep. 537 (Docket No. 890459-WU, Order No. 22847, April 28, 1990).

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 this 26 day of June, 1997.

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

BY: 

MARION HALE  
FBN #441351  
CHARLES A. SAMARKOS  
FBN #0826146  
Post Office Box 1368  
Clearwater, FL 34617  
(813) 461-1818  
Attorneys for Pasco  
County  
FBN 441351  
Fax #813-441-8617

0131361.01