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July 9, 1997

Blanco Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0862

Re: Mad Hatter Utility, Inc; Docket No. 960576-WS
Application for Amendment of Water and Wastewater
Certificates in Pasco County, Florida
Our File No. 28023.07

Dear Ms. Bayo:

Enclosed for filing please find the original and fifteen
copies of Mad Hatter's Response In Opposition To Motion To
Supplement The Record in the above-referenced docket.

If you have any questions in this regard, please let me know.

Sincerely,

ROSE, SUNDBSTROM & BENTLEY, LLP

John L. Wharton
John L. Wharton, Esq.
For The Firm

ACK _____
AFA _____
APP _____
CAF _____ JLW/lm
CMU _____ Encl.
CTR _____
EAG _____
LEG 1 _____
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SEC 1 _____
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06914 JUL-97
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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

RESPONSE IN OPPOSITION TO
MOTION TO SUPPLEMENT THE RECORD

Mad Hatter Utility, Inc., by and through its undersigned counsel, and pursuant to Rule 25-22.037(2)(b), Fla. Admin. Code, hereby files this Response In Opposition To Motion To Supplement The Record and in support thereof would state and allege as follows:

1. The record in this matter, which was the subject of a formal evidentiary hearing, is closed. There is nothing in Rule 25-22.056, Fla. Admin. Code, the Uniform Rules of Procedure, Rule 28-101.001, et seq., or the Florida Administrative Procedure Act to authorize or justify a supplementation of the record in the form and manner requested by Pasco County.

2. Rule 25-22.056 specifically discusses what post-hearing filings are appropriate before this Commission. Rule 25-22.056(1)-(a), Fla. Admin. Code, provides:

If a hearing under section 120.57, F.S., is conducted by a panel of two or more Commissioners or the full Commission, all parties may submit proposed findings of fact, conclusions of law, and legal briefs on the issues within a time designated by the presiding officer.

The Motion To Supplement The Record does not suggest the submission of either a finding of fact, a conclusion of law, or a

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legal brief on the issues. Rather, it is a blatant and self-serving attempt to place before the Commission the result of an after-the-fact negotiation which was clearly pursued and designed to promote the position taken on the issues by a party to this proceeding, Pasco County. The evidence is certainly not "newly discovered," but is rather "newly created."

3. Commissioner's Prehearing Order could not be more clear as to what post-hearing procedures should be followed. Additionally, the Prehearing Order provides that exhibits must be identified and entered into the record "at the appropriate time during the hearing." To the extent the document which Pasco County seeks to unilaterally insert into the record at this point is an exhibit, it is an untimely exhibit created after the fact in an apparent attempt to promote Pasco County's cause, to the detriment of Mad Hatter, before this Commission. Pasco County's filing the Motion To Supplement The Record on the same day that the parties filed their briefs is simply another example of Pasco County's apparent agenda that these documents not be discussed, examined, impeached or otherwise subject to the rigorous calisthenics normally required of such evidence by the tenets of due process.

Pasco County's attempt to place "evidence," which was unilaterally created after the close of the formal administrative proceeding and which is a) not and cannot be subject to discovery; b) is not and cannot be subject to investigation; c) is not and cannot be subject to cross-examination; and d) is not and cannot be subject to rebuttal, should not be allowed.

5. Pasco County should not be rewarded for engaging in a post-trial scheme to either better its position in the trial or to circumvent the Commission's jurisdiction. The baseless and tortured interpretation presented by Pasco County of the case of *City of Mount Dora v. JJ's Mobile Homes, Inc.*, 579 So.2d 219 (Fla. 5th DCA 1991) is apparently included in the Motion to stand for the proposition that Pasco County does not need the Commission because it (again based on this unilateral, post-hearing submission) is "first in time" and, therefore, "has the right" to serve these customers. Pasco County represents that it is accommodatingly "notifying the Commission of its intent to provide service" to the two properties in question. These properties are part of the precise territory on which the Commission has now completed not one but two full and formal administrative proceedings with the first one concluding that Mad Hatter was in the best position to provide any needed service, and the second one awaiting final decision. Pasco County should not be rewarded now for its flaunting of the Commission's authority by engaging in negotiations involving some of the precise properties on which the Commission will render its decision.

6. If Pasco County is allowed to supplement the record as it has requested, Mad Hatter will have no opportunity to a) engage in meaningful discovery regarding the information; b) cross-examine the information or the witness presenting the information; c) present impeachment evidence regarding the information; or d) present rebuttal evidence regarding the information. Such a denial

of due process is not in conformance with the Florida Administrative Procedure Act, the Administrative Code Rules of the Public Service Commission or the Public Service Commission's practices or precedents.

7. The information which Pasco County seeks to supplement to the record is apparently being introduced for the truth of the matters asserted therein. Accordingly, the information is hearsay and also contains information which is hearsay within hearsay. Not only is this hearsay totally uncorroborated in the record, but presents even a greater problem than simple hearsay "properly introduced" within the course of trial, in that it is even more difficult (in fact, impossible) to cross-examine and rebut the assertions contained therein. This difficulty is the precise reason that stand-alone hearsay is not credible evidence under the Florida Administrative Procedure Act or in the Florida judicial system.

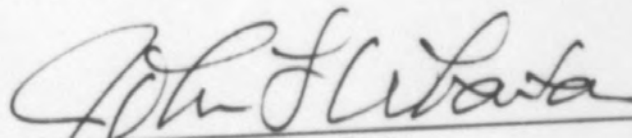
8. Not only do the documents which Pasco County seeks to supplement to the record constitute an improper supplementation as well as hearsay, but the Motion itself is ripe with representations of "facts" which Pasco County apparently thought were important to put before the Commission with regard to the supplementation. The attorney for Pasco County is not a witness in this proceeding and her factual representations in the Motion To Supplement The Record should not be considered by this Commission.

9. It is apparent that Pasco County's gracious offer that "the Commission may want to take this matter into consideration

when it decides Mad Hatter's application to extend" is, stripped to its essence, nothing more than a signal to the Commission that Pasco County intends to serve these properties whether Mad Hatter, or the Commission, likes it or not. The Commission should not be influenced by this shot across its bow. The Commission should decline to reopen the record in this proceeding (particularly based on a subsequent event which was wholly within Pasco County's control and making) and should make its determination based only on the relevant law and properly accepted evidence. Pasco County's unique theory regarding the case of the *City of Mount Dora v. JJ's Mobile Homes, Inc.* has no relevance to this proceeding, is not an issue in this proceeding, and will be vigorously contested by Mad Hatter in the proper forum at the proper time.

WHEREFORE, and in consideration of the above, Mad Hatter respectfully requests that Pasco County's Motion To Supplement The Record be denied.

DATED this 9th day of July, 1997.



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F. Marshall Deterding
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by the method indicated below on this 9th day of July, 1997.

Marion Hale, Esq.
Johnson, Blakely, Pope, et al.
Post Office Box 1368
Clearwater, FL 34617

VIA U.S. MAIL

Roseanne Capeless, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

VIA HAND-DELIVERY


John L. Wharton, Esq.

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