

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

MEMORANDUM

AUGUST 28, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO) *per* *bbm* *gww*

FROM: DIVISION OF WATER & WASTEWATER (BRADY, REDEMANN, MESSER) *bc* *bbm*
DIVISION OF LEGAL SERVICES (CAPELESS)

RE: DOCKET NO. 960576-WS - MAD HATTER UTILITY INC. -
APPLICATION FOR AMENDMENT OF CERTIFICATE NOS. 340-W AND
297-S.
COUNTY: PASCO

AGENDA: SEPTEMBER 9, 1997 - REGULAR AGENDA - POST HEARING
DECISION - PARTICIPATION IS LIMITED TO COMMISSICNERS AND
STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\960576WS.RCM

CASE BACKGROUND

Mad Hatter Utility, Inc. (MHU or utility), is a Class A utility located in south central Pasco County, Florida, which is 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 its 1996 annual report, MHU serves approximately 2,013 water and 1,940 wastewater customers with combined annual operating revenues of \$1,361,504 and a combined net loss of \$77,418.

On July 19, 1994, MHU filed requests for approval of two special service availability contracts; one with AFI, Inc. (VOPII), and the other with Lake Heron, which were processed in Dockets Nos. 940760-WS and 940761-WS, respectively. By Order No. PSC-94-1603-FOF-WS, issued December 27, 1994, in both dockets, the Commission approved both service availability contracts.

MHU also filed, in both dockets, proposed revised water and wastewater tariff sheets nos. 3.0 through 3.18, describing certain territory which the Commission found was not within the utility's

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certificated area. Consequently, by Order No. PSC-94-1603-FOF-WS, the Commission denied approval of the proposed revised tariff sheets. The Commission also found that MHU was serving outside of its certificated territory in violation of Section 367.045(2), Florida Statutes. However, the Commission did not believe it necessary to require the utility to show cause as to why it should not be fined for this violation. Instead, the Commission required MHU to file an amendment application within sixty days in order to request to serve the territory that it was already serving without a certificate.

MHU filed a timely protest to the order which it later withdrew prior to hearing. By Order No. PSC-96-0172-FOF-WS, issued February 7, 1996, in Docket No. 940761-WS, the Commission acknowledged the utility's notice of withdrawal of protest, declared Order No. PSC-94-1603-FOF-WS to be final and effective, and required the utility to file an amendment application within ninety days. The utility complied by filing, on May 8, 1996, the amendment application which is at issue in this docket.

In its amendment application, the utility seeks to include in its Certificates Nos. 340-W and 297-S, the uncertificated territory that it is currently serving as well as certain adjacent territory which it is not currently serving. On June 13, 1996, Pasco County (County) filed an objection to the application and a petition for administrative hearing on the matter, stating, among other things, that the County will soon provide service to certain of the parcels included in MHU's amendment application. Consequently, a prehearing conference was held on May 5, 1997, in Tallahassee, and a formal hearing was held on May 13-14, 1997, in Pasco County.

Customer testimony was received from four members of the public. Ms. Delores Johnson, a real estate broker, testified that she represents the seller of property located in a parcel referred to as Lake Talia. Ms. Johnson testified that she has a contract for the sale of the property and that the sale has not been able to close as a result of difficulties encountered in obtaining water and wastewater service due to a conflict between MHU and the County. According to Ms. Johnson, although the property is located in MHU's currently certificated area, MHU does not have any facilities nearby, while the County does. Ms. Johnson further stated that MHU has not refused to provide the service, and that she was not certain whether the buyer had applied to MHU for service.

Mr. Tim Hayes testified that he is a residential customer of MHU who also represented the seller of the Lake Talia property. Mr. Hayes testified, among other things, that MHU gave him an

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application to file for a request for service but that he had not submitted the application to the utility. Mr. Hayes also stated that it is extremely frustrating to be in the middle of a conflict between the County and MHU and to have to pay higher rates to a private utility to act as a middleman when the sewage is being treated by the County.

Ms. Juanita Dennis testified that she has begun receiving wastewater from MHU but has yet to receive a bill for service. She explained that she wishes to begin paying for service so that she will not have a huge bill to pay at some future time. Ms. Norma Koebernik testified that she is the president of the Carpenter's Run Homeowners Association and a customer of MHU. She testified that the water smells, tastes, and looks bad, that the water pressure is poor, and that MHU has not responded to numerous phone calls and letters regarding a billing concern.

The parties filed post-hearing statements and briefs on June 30, 1997. On that same date, Pasco County filed a "Motion to Supplement the Record." By Order No. PSC-97-1004-FOF-WS, issued August 22, 1997, the Commission declined to consider the information contained in that filing in making its decision on the merits of this case. This recommendation addresses the merits of MHU's amendment application.

RULINGS

At the hearing, it was ruled that the additional prefiled direct testimony of John Gallagher, filed on May 9, 1997, would not be inserted into the record.

Organization of the Recommendation

Before beginning the discussion of issues, staff would note that MHU's application for amendment contains seventeen discrete areas for amendment called parcels which are listed below in numerical order. The parcels denoted by the letter "A" are intended to be primarily served by MHU's Linda Lakes Groves system. The parcels denoted by the letter "B" are intended to be served primarily by MHU's Foxwood/Cypress Cove system. Parcels denoted by the letter "C" are intended to be served primarily by MHU's Turtle Lakes/Carpenter's Run system.

Each issue builds various components of information that are culminated in a parcel by parcel recommendation in Issue 13. For ease of following the recommendations in each issue, staff has prepared the following table, which can be used as a guide while

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reading the analyses.

TABLE 1
 OVERVIEW OF PARCEL RECOMMENDATIONS BY ISSUE

P A R C E L	ISSUE 1	ISSUE 2	ISSUE 3	ISSUE 4	ISSUE 7	ISSUE 8	ISSUE 13
	MSU IS SERVING	MSU NOT SERVING	NEED SERVICE W WW	CAPACITY W WW	OTHER SOURCE W WW	MSU DUPLICATE W WW	GRANT OR DENY W WW
A-3	YES		YES YES	YES YES	NO NO		YES YES
A-4	YES		YES YES	YES YES	NO NO		YES YES
B-1A		X	YES YES	YES YES	NO NO		YES YES
B-20		X	YES NO	YES YES	NO NO		YES YES
B-21	YES		YES YES	YES YES	NO NO		YES YES
B-22	YES		YES YES	YES YES	NO NO		YES YES
B-23	YES		YES YES	YES YES	NO NO		YES YES
B-24	YES		YES YES	YES YES	NO NO		YES YES
B-25		X	NO NO	? NO	YES YES	NO NO	NO NO
B-26		X	NO NO	? NO	NO NO		NO NO
B-27		X	NO YES	? NO	NO YES	N/A NO	NO NO
C-6	YES		YES YES	YES YES	NO NO		YES YES
C-6A	YES		YES YES	YES YES	NO NO		YES YES
C-7	YES		YES YES	YES YES	NO NO		YES YES
C-8	YES		YES YES	YES YES	NO NO		YES YES
C-9		X	NO NO	YES ?	YES YES	YES NO	NO NO
C-10		X	YES YES	YES ?	YES YES	YES NO	NO NO

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DISCUSSION OF ISSUES

ISSUE A: Should the Commission approve staff's specific recommendations on the County's proposed findings of fact and conclusions of law?

RECOMMENDATION: Yes. The Commission should approve staff's specific recommendations on the County's proposed findings of fact and conclusions of law as contained in Attachment A. (CAPELESS)

STAFF ANALYSIS: The recommendations on the proposed findings of fact and conclusions of law are contained in Attachment A.

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ISSUE 1: Does MHU include in its amendment application all of the uncertificated territory in which it currently provides service as required by Order No. PSC-96-0172-FOF-WS, issued February 7, 1996, in Docket No. 940761-WS, and what are those specific areas?

RECOMMENDATION: Yes. MHU has included in its amendment application all of the uncertificated territory in which it currently provides service, in accordance with Order No. PSC-96-0172-FOF-WS. These areas are: A-3 (Woodruff Mobile Home Park); A-4 (Holy Trinity Church); B-21 (Robco); B-22 (Larreau); B-23 (Rusch Plaza); B-24 (Kniff Property); C-6 (Twin Lakes Subdivision); C-6A (Twin Lakes Commercial); C-7 (Woodridge); C-8 (Reiber Medical Plaza/Highland Oaks). (REDEMANN)

POSITION OF PARTIES

MHU: Yes. Those are parcels A-3, A-4, B-21, B-22, B-23, B-24, C-6 and C-6A, C-7 and C-8.

COUNTY: The County believes MHU has included in its amendment application all of the uncertificated territory to which it currently provides service which includes parcels A-3, A-4, B-21, B-22, B-23, C-6, C-7, and a portion of C-8.

STAFF ANALYSIS: This issue was identified by staff to determine whether MHU has fully complied with Order No. PSC-96-0172-FOF-WS, issued February 7, 1996, in Docket No. 940761-WS, which required MHU to file an application for amendment to serve the uncertificated territory which it was currently serving without authorization. The intent of the issue is to identify the existing customer base of MHU as opposed to areas MHU is requesting to add to its territory for which it is not providing service.

Both MHU and the County agree that MHU has included in its amendment application all of the uncertificated territory for which it currently provides service. In addition, both parties agree that MHU is serving A-3, A-4, B-21, B-22, B-23, C-6, C-7 and a portion of C-8. MHU takes a further position that it is also providing service outside its certificated territory to B-24 and C-6A. The County disagrees.

Order No. PSC-97-0534-PHO-WS, dated May 9, 1997, in

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this docket, confirms that the parties' positions on this issue have not changed with the exception of parcel C-8. In its prehearing position, the County did not make any qualifications with respect to service not being provided to parcel C-8. In its post-hearing position, the County agreed MHU is providing service to a portion of the parcel. Staff notes the County's post-hearing position in this issue is now consistent with its prehearing position on Issue 2.

Although the County provided a statement of its issues and positions, the County did not brief this issue or support its position with citations to the record. Nor did the County specifically address its position on this issue in its testimony. Any comments the County provided under cross-examination will be noted in the analysis below. Since the County only disputes that MHU is serving parcels B-24, C-6A and the southern portion of parcel C-8, staff's analysis will be confined to these three parcels.

B-24 (Kniff Property)

The County gave no testimony why it believed MHU is not serving parcel B-24. MHU contends it has been providing water and wastewater service to B-24 for a number of years. (TR 228) MHU also contends it has existing water and wastewater force mains along the north side and down the east side of the property which are stubbed to serve. (TR 226-227) The utility acknowledges that service over the years has been intermittent and to different customers. (TR 228-229) And, while no customer is currently requiring service, MHU witness Delucenay stated he expected a dirt contractor to take a meter within the next 30 days for a minimal amount of water for construction. (TR 229-230) Meanwhile, by having the lines in place to provide service when needed, MHU states that it is serving the parcel. (BR 9)

At staff's request, MHU provided billing records (late filed EX 9) which substantiate that the utility provided water and wastewater service to H.C. Price in 1994 and, more recently, water service to Overstreet Paving Company in 1996. Rule 25-30.515(1), Florida Administrative Code, provides a definition of an "Active Connection" as a connection to the utility's system at the point of delivery of service, whether or not service is currently being provided. Staff concludes MHU has

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demonstrated that it has a point of connection to B-24 by providing records which show it periodically receives compensation for water and wastewater service. Therefore, pursuant to the above rule, staff recommends that MHU is providing service to B-24.

Parcel C-6A (Twin Lakes Commercial)

The only statement the County gave on its position that MHU is not serving C-6A was witness Bramlett's testimony that he does not consider irrigation water as the provision of utility service. (TR 412) MHU acknowledged the service it is currently supplying to C-6A is 2 inch meter service for irrigation on the frontage and along the center road of the parcel. (TR 254) However, the utility contends that such service has been provided continuously since it was initiated in 1988. (TR 255) The utility also states it has an 8 inch water main running through the center of C-6A to provide service to parcel C-6 (Twin Lakes Subdivision) located immediately north of C-6A. (TR 254, 257) With the assistance of the developer, the utility stated that it added 12 inch reclaim, or reuse, infrastructure to serve both parcels. (TR 257-258) For wastewater, the utility states it has gravity manholes and lines stubbed into C-6A with a master force main down the east property line stubbed to serve both C-6 and C-6A. (TR 255, 258)

At staff's request, MHU provided billing records (late filed EX 10) which substantiate that the utility has provided continuous potable water service to the parcel since 1989 for irrigation. Staff believes that the utility has demonstrated it is providing water service to Parcel C-6A.

Parcel C-8 (Reiber Medical Plaza/Highland Oaks)

With regard to parcel C-8, the County does not dispute that MHU is providing service to the northern portion of the parcel known as the Reiber Medical Plaza. It only disputes that service is being provided to the southern portion known as Highland Oaks. (TR 412)

MHU acknowledged it currently provides water and wastewater service to an eye clinic and to a few developer-owned commercial rental properties in the northern commercial phase of C-8 called the Reiber Medical Plaza. (TR 258-259, 262) Witness DeLucenay

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indicated that the developer had not yet finalized construction plans for the second phase of development intended to be a residential phase in the southern part of C-8. (TR 262) However, witness DeLucenay stated service to the residential phase had been anticipated in its service agreement with the developer for the Reiber Medical Plaza by sizing the master sewage pump station to also receive gravity sewer flow from the south side of C-8 when developed. (TR 259, 284)

Since there is no dispute that MHU is providing water and wastewater service to commercial customers in parcel C-8, staff concludes MHU has demonstrated that it is serving parcel C-8. Staff does not believe the lack of service to undeveloped property in this parcel is relevant to a recommendation in this issue. MHU has relied on service to the entire parcel in the planning of its mains and lines. (TR 261-262) Therefore, staff believes the entire parcel should be identified for future service by the utility.

Summary

Staff recommends that MHU has included in its amendment application all of the uncertificated territory in which it is providing service, in accordance with Order No. PSC-96-0172-FOF-WS, and that these areas are: A-3, A-4, B-21, B-22, B-23, B-24, C-6, C-6A, C-7, C-8.

ISSUE 2: Does MHU include in its amendment application territory in which it currently does not provide service, and what are those specific areas?

RECOMMENDATION: Yes. MHU includes in its amendment application territories in which it currently does not provide service. Those areas are: B-1A (T & G Properties); B-20 (Willet-Liner); B-25 (Ash Property); B-26 (Meadowview); B-27 (Como Club/Mossview); C-9 (Myrtle Lakes Baptist Church); C-10 (Ash Property-Myrtle Lake). (REDEMANN)

POSITION OF PARTIES

MHU: Yes. B-1A, B-20, B-25, B-26, B-27, C-9, C-10.

COUNTY: MHU includes in its amendment application territory in which it currently does not provide service. Those areas include 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-6A (Twin Lakes Commercial Parcel); C-9 (Myrtle Lakes Baptist Church); C-10 (Ash Property-Myrtle Lake). Mad Hatter does not provide service to the majority of parcel C-8.

STAFF ANALYSIS: The purpose of this issue is to specify the areas requested in MHU's amendment application which are not currently served by MHU. This issue is designed to complement Issue 1, in that it identifies those parcels which would be receiving new service from MHU, as opposed to those parcels which are already receiving service.

There was agreement among the parties with the majority of the areas, which included parcels B-1A, B-20, B-25, B-26, B-27, C-9 and C-10. Testimony during the hearing also confirmed that these parcels were not being served and have never been served by MHU. (TR 216, 223, 236, 240, 241, 247, 248, 263 and 266)

However, as pointed out in Issue 1, there was some disagreement as to whether parcels B-24, C-6A and C-8 should be included as areas receiving service from MHU. Although the County provided a statement of issues and positions, it did not brief this issue. MHU's brief discussed the various levels of service provided to the three parcels. (BR 10)

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The staff believes this issue is essentially a fall-out issue from decisions made in Issue 1. By identifying those parcels in Issue 1 that are receiving service from MHU, by definition, the remainder of the parcels in the application are not currently receiving service.

Rather than duplicate the discussion, staff refers to the explanation provided in Issue 1 concerning the existence of service to parcels B-24, C-6A and C-8. In addition, the County provided no evidence to refute the utility's assertion of service to these parcels. Therefore, staff recommends that MHU included the following parcels in its application which are not current customers of the utility. These include: B-1A (T & G Properties); B-20 (Willet-Liner); B-25 (Ash Property); B-26 (Meadowview); B-27 (Como Club/Mossview); C-9 (Myrtle Lakes Baptist Church) and C-10 (Ash Property-Myrtle Lake).

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ISSUE 3: Pursuant to Section 367.045(2)(b), Florida Statutes, is there a need for service in the territory which MHU seeks to add to its certificates of authorization?

RECOMMENDATION: The parties agree MHU should provide service to where it is currently serving which includes parcels: A-3 (Woodruff MHP); A-4 (Holy Trinity Church); B-21 (Robco); B-22 (Larreau); B-23 (Rusch Plaza); C-6 (Twin Lakes Subdivision) and C-7 (Woodridge). A need for service also exists in those areas staff recommended are receiving service from MHU, including: B-24 (Kniff Property); C-6A (Twin Lakes Commercial) and C-8 (Reiber Medical Plaza/Highland Oaks). Further, a need for service exists in parcels: B-1A (T & G Properties); B-20 (Willet-Liner); B-27 (Como Club/Mossview) and C-10 (Ash Property-Myrtle Lakes). A need for service does not exist for parcels: B-25 (Ash Property); B-26 (Meadowview) and C-9 (Myrtle Lake Baptist Church). (REDEMANN)

POSITION OF PARTIES

MHU: Yes. In all of the areas requested for inclusion in the utility certificate.

COUNTY: Yes.

STAFF ANALYSIS: As indicated in the issue statement, Section 367.045(2)(b), Florida Statutes, requires an examination of the need for service in the requested area of expansion. Both the County and MHU agreed there was a need for service in all areas which MHU seeks to add to its certificates of authorization.

One witness, Ms. Phillips, gave testimony at the hearing regarding the general need for water and wastewater services in the area of the road widenings which she characterized as that of a general emergency. (TR 324) Ms. Phillips stated she was not a customer but a real estate consultant with commercial clientele in the area. (TR 322-323) She testified that, due to FDOT acquiring land and widening the roads in the area, her clients were in need of sites to relocate their businesses. Absent water and wastewater services, they can not proceed with timely relocation. (TR 324)

Although the County provided a statement of its

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issues and positions, it did not brief this issue or provide specific testimony. MHU's brief acknowledged the utility's and County's agreement on need for service in all areas where MHU is currently providing service. The brief focused on the evidence of need for the areas where MHU is not currently providing service. (BR 11-13)

Both parties agree that a need exists for all parcels. For example, County witness Bramlett stated the County has extended lines in the area to serve not only the County's existing customers but also to serve one of the high growth areas of the County. (TR 335) MHU provided various requests for service to verify need. (TR 217, 218, 223, 237, 244, 249-251, 263-265 and 266) The distinguishing factor among the parcels appears to be the timeliness of this need. For those parcels that MHU is currently serving, the parties agreed through their positions in Issue 1, that MHU should continue as the service provider. These include parcels A-3, A-4, B-21, B-22, B-23, C-6 and C-7. Therefore, these areas will not be discussed any further in this issue. Based on staff's recommendation in Issue 1, a need for service also exists where MHU is providing service to B-24, C-6A and C-8. Therefore, these areas also will not be discussed any further in this issue. Staff will individually discuss each of the parcels still in question, which includes B-1A, B-20, B-25, B-26, B-27, C-9 and C-10.

Parcel B-1A (T & G Properties)

MHU witness DeLucenay testified the need for water and wastewater service is immediate and subject only to being economically served in consideration of the FDOT road construction. (TR 220) A request for service dated May 5, 1995, from Mr. Gerald M. Grandbois of T&G Properties was provided by MHU. (EX 6, page 3) Witness Bramlett testified that the County does not object to MHU serving parcel B-1A. (TR 401)

Parcel B-20 (Willet-Liner)

Letters dated April 16, 1995, and November 15, 1995, request service from Mad Hatter for the warehouse owned by Mr. Francis M. Liner and Mr. R. Mark Willet. (EX 6, TR 223) The County refused to provide wastewater service to the property through the current bulk agreement with MHU. (EX 15) Therefore, the owners have subsequently

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installed a septic tank. (TR 224, 401) However, in 1997, the Willet-Liner property requested the installation of a fire hydrant. (EX 6)

Parcel B-25 (Ash Property)

MHU has an executed developer agreement that has been in existence since 1990. (EX 6, TR 237) However, due to the construction along Highway 54, the property is subject to a FDOT taking. Therefore, there are no current plans for development of this parcel. (TR 237) County witness Bramlett testified that the construction by FDOT is scheduled to be complete in the year 2000. (TR 405)

Parcel B-26 (Meadowview)

MHU received a letter dated September 24, 1986, requesting water service from Mr. David Fuxan. (EX 6) The letter indicated that the development would consist of 79 units, with a need for water and wastewater service in July of 1987. (TR 243) Witness DeLucenay did not know of any particular reason why the project had been delayed. He indicated that he spoke with one of the original partners the week prior to the hearing, and the partner stated the need was immediate. (TR 244) The County indicated its intention to provide service to the parcel, but currently did not have plans under contract to serve. Witness Bramlett stated that the maps provided to staff showed only what was under contract, and not what was proposed 10 years in the future or whenever this development's needs for service would occur. (TR 410)

Parcel B-27 (Como Club/Mossview)

Witness DeLucenay stated that an executed developer agreement with MHU had been in existence for this parcel since 1990. (TR 247) Witness DeLucenay also stated he had been contacted by two of the board members of the existing development within the last 30 days, and that service might be required in about six months to a year, depending on permitting considerations. (TR 249) County witness Bramlett also discussed a meeting with the Board of Directors of the Como Club about four weeks prior to the hearing, to provide water and wastewater service to this parcel. (TR 410, 411) In addition, staff witness Burghardt confirmed that Como Club/Mossview was being monitored for required conversion from septic to

wastewater service, and a letter was sent to the Health Department advising it not to issue any more septic tank permits on that property. (TR 163)

Parcel C-9 (Myrtle Lake Baptist Church)

MHU was sent a letter dated November 14, 1986, from Mr. Charles E. Groover, requesting service. (EX 6, TR 263) The church was planning on building a school on this property. However, there has been no construction and witness DeLucenay indicated that it was unknown at this time if and when the actual construction would take place. (TR 263, 264) There was no testimony from the County concerning the need for service to this parcel.

Parcel C-10 (Ash Property-Myrtle Lakes)

MHU has had an executed developer agreement for this property since 1990, however it has never actually provided service to the property. (EX 6, TR 266) Witness Delucenay indicated the existing strip mall was to be demolished due to a DOT taking, and the parcel was to be rezoned for a supermarket chain. He stated there were signs on the property right now with respect to the proposed project. (TR 266, 267) County witness Bramlett stated that preliminary plans have been submitted to the County and the project's engineer have contacted the County for connection services. (TR 416, 417) Since the County has been contacted for connection services and there is activity on the site, staff estimates a need for service within 6 months to a year to be reasonable.

Analysis

In this case, the parties appear to share similar opinions on the need for service for some parcels, varying from immediate need, as in the case of parcel B-20 (Willet-Liner), B-27 (Como/Mossview) and possibly B-1A (T & G Properties); intermediate need (six months to a year) for parcel C-10 (Ash Property-Myrtle Lakes); to a completely unknown future need for parcels B-25 (Ash Property) and C-9 (Myrtle Lake Baptist Church). (EX 6, TR 249, 410, 411, 220, 416, 417, 237, 405, 263, 264) The parties provide contradictory statements as to immediacy of need for parcel B-26 (Meadowview), with the utility suggesting the need is immediate, and the County suggesting the need is at an unknown future time. (TR 244, 410)

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The parties seem to be in basic agreement with the concept of need for service and timeliness of this need for parcels B-1A, B-20, B-25, B-27, C-9 and C-10. Parcel B-26 generated some disagreement among the parties as to need for service. The utility stated it had a verbal affirmation from one of the original partners that need was immediate. (TR 244) However, the County indicated that it had no current construction plans to that property because there did not appear to be any firm development plans. (TR 410) The letter of inquiry for service used by MHU to verify need for service is over ten years old and there is no developer agreement at this time. (EX 6) Staff believes the record does not support a clear need for service in parcel B-26.

Staff recommends that MHU continue to provide service in the parcels it is currently providing service, which includes: A-3 (Woodruff MHP); A-4 (Holy Trinity Church); B-21 (Robco); B-22 (Larreau); B-23 (Rusch Plaza); C-6 (Twin Lakes Subdivision) and C-7 (Woodridge). Based on Issue 1, a need for service exists in those areas receiving service from MHU, including: B-24 (Kniff Property); C-6A (Twin Lakes Commercial) and C-8 (Reiber Medical Plaza/Highland Oaks). A need for service also exists in parcels: B-1A (T & G Properties); B-20 (Willet-Liner); B-27 (Como Club/Mossview) and C-10 (Ash Property-Myrtle Lakes). A need for service does not exist for parcels: B-25 (Ash Property); B-26 (Meadowview) and C-9 (Myrtle Lake Baptist Church).

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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?

RECOMMENDATION: MHU has the technical ability to provide water and wastewater service to the requested territory. MHU has water capacity to serve its existing customers, some of the B Parcels served from the Foxwood/Cypress Cove system and all of the C Parcels served from the Turtle Lakes Water System. MHU has the capacity to provide wastewater service to its existing customers and to some combination of Parcels B-1A, B-20, B-25, B-26, B-27, C-9 and C-10 that totals under 40,000 gpd. (MESSER, REDEMANN)

POSITION OF PARTIES

MHU: MHU has, in the past, and will continue in the future, to have the technical ability and adequate capacity to provide service to its entire existing service territory and the additional territory requested in the amendment as and when needed.

COUNTY: No. MHU does not have the capacity to provide service nor does it have the financial ability to obtain capacity. Furthermore, it does not have any DEP permit to provide wastewater treatment service.

STAFF ANALYSIS: A part of the filing requirement for an application to amend a certificate of authorization is the demonstration of technical ability and adequate capacity to serve pursuant to Rules 25-30.036(3)(b) and (j), Florida Administrative Code. This issue is intended to determine the utility's technical ability and plant capacity.

MHU's basic position is that it has already demonstrated the ability to serve the extended territory by providing both water and wastewater service throughout its certificated territory and most of the additional areas requested under this application for many years. The County's basic position is that MHU lacks the capacity to serve the extended territory and that granting MHU's request to serve will result in a portion of south central Pasco County having no utility service and no prospect of such service in the foreseeable future.

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The following analysis of MHU's technical ability and plant capacity is divided into two areas of discussion. The first discussion is on technical ability, which will then address water and wastewater. The second discussion will focus on capacity to serve, again, divided into water and wastewater.

Technical Ability

Water

The primary source of information regarding the technical ability of MHU to provide water service to the requested area was from the testimony of staff witnesses Martinez and Screnock. Neither the County nor MHU specifically briefed MHU's technical ability to operate and maintain water treatment facilities in compliance with FDEP standards.

Witness Martinez testified that MHU currently has six water treatment plant (WTP) facilities: 1. Linda Lakes WTP; 2. Cypress Cove-Phase I (Foxwood WTP); 3. Cypress Cove-Phase II WTP; 4. Turtle Lakes-Phase I (Twin Palms WTP); 4. Turtle Lakes-Phase II (Highway 54 WTP); 6. Carpenter's Run WTP. (TR 324) Both witnesses Martinez and Screnock testified that all six plants are currently in compliance with the utility's permits. (TR 314, 181)

Staff witness Screnock gave additional testimony that all of MHU's water treatment facilities currently have FDEP certified operators; have established cross-connection control programs; have satisfactory maintenance records; meet the standards for primary and secondary water quality contaminant levels; maintain the required chlorine residual equivalents and minimum required 20 psi pressure throughout the distribution system; and all except Turtle Lakes have an adequate auxiliary power source. (TR 181-182).

With respect to the Turtle Lakes auxiliary power source, witness Screnock testified that a warning notice had been issued October 9, 1995, and that FDEP and the utility had entered into a Settlement Agreement on March 27, 1997, for the utility to place an auxiliary power unit into operation per an agreed-upon schedule. (TR 183) As of the time of the hearing, the agreement was still valid and the utility was complying with the time

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frames established in the agreement. (TR 187)

Based on all the above, staff recommends that MHU has demonstrated the technical ability to provide water service.

Wastewater

Staff witness Burghardt provided testimony on MHU's technical ability to operate and maintain its Linda Lake Groves wastewater treatment plant (WWTP). Witness Burghardt also provided testimony on the County's technical ability to operate and maintain its WWTPs. In addition, County witness Squitieri testified about the reasons MHU no longer has an operating permit for its former Foxwood and Turtle Lakes WWTPs.

Witness Burghardt testified that MHU has a current operating permit for its Linda Lakes WWTP with a capacity limit of 20,000 GPD. The permit is valid until September 30, 1999. Witness Burghardt testified that MHU was not currently in compliance with the permit due to insufficient chlorine detention time and the lack of requisite overflow structures at the disposal pond. (TR 125) Witness Burghardt acknowledged the FDEP had only recently located this widespread design flaw in small package plants similar to Linda Lakes WWTP. The FDEP was in the process of issuing permit modifications for the plant operators to address the problem. MHU's permit modification was issued on April 15, 1997. (TR 125, 134)

Witness Burghardt further testified the Linda Lakes WWTP facilities are located in accordance with FDEP's rules at the time the facilities were constructed; FDEP has not been required to take any action to minimize adverse odors, noise, aerosol drift or lighting from the plant; the plant has a FDEP certified operator; and the overall maintenance, treatment and disposal facilities were satisfactory as of the last inspection. (TR 126) Witness Burghardt also testified that the facilities have not been subject to any FDEP enforcement action within the last two years. (TR 127)

Witness Burghardt testified the County has current operating and construction permits for four WWTPs in south central Pasco County which are: Land O'Lakes subregional WWTP, Wesley Chapel subregional WWTP, Trout Creek WWTP, and Wesley Center subregional WWTP under construction at the time of the hearing. (TR 129)

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Witness Burghardt testified that the County's Land O' Lakes WWTP was in compliance with its permit and the Wesley Chapel and Trout Creek WWTPs were in compliance with a consent agreement pursuant to OGC Case No. 95-0978 which was attached to his testimony. (TR 129, EX 4, pages 1-24)

Witness Burghardt further testified the County's WWTPs are located in accordance with FDEP's rules at the time the facilities were constructed; FDEP has not been required to take any action to minimize adverse odors, noise, aerosol drift or lighting from the plants; the plants have a FDEP certified operator; and the overall maintenance, treatment and disposal facilities were satisfactory. However, the County's Land O'Lakes WWTP was issued a compliance and self-improvement schedule which it is currently meeting. (TR 130-131) The County's Wesley Chapel and Trout Creek WTPs have been subject to DEP enforcement action which resulted in the County's construction of the Wesley Center WWTP. (TR 131-132).

Witness Burghardt gave further testimony regarding the County's consent agreement with the FDEP. (EX 4, pages 1-24) He explained the County had another WWTP affected by the enforcement action, Saddlebrook, but that plant has already been taken off line and so is no longer subject to action. (TR 148) Witness Burghardt explained the FDEP rates violations in a consent order by the potential for harm in order to assess fines. Of the five remaining violations cited for the County's current WWTPs, four of the six had the highest potential for harm. (TR 153-155)

As noted, above, County witness Squitieri gave testimony regarding MHU's former permits for its Foxwood and Turtle Lakes WWTPs. Witness Squitieri stated MHU had allowed its Turtle Lakes WWTP to expire in April of 1991 and did not file a timely request to extend that permit to the FDEP's predecessor organization, the Florida Department of Environmental Regulation (FDER). (TR 106-107) Without a legal permit, MHU continued to operate the plant until connection to Pasco County Utilities in August of 1991. (TR 107) Witness Squitieri also testified that the FDER had also issued a notice of intent to revoke MHU's permit to operate its Foxwood WWTP and MHU had consented to the revocation. (TR 107-108)

Staff would note the Commission has already considered the circumstances surrounding the shut down of

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MHU's Foxwood and Turtle Lakes WWTPs in Order No. PSC-93-0295-FOF-WS, in Docket No. 910637-WS, issued February 24, 1993, which was officially recognized for the purpose of the proceeding. (EX 10) In that order the Commission relied upon the findings of the 6th Judicial Circuit Court which concluded there was no evidence that MHU had done anything improper or that it had failed to do something required. Instead, the environmental problems relating to MHU's wastewater treatment plants were found to be the result of artificially high water levels caused by a stormwater drainage system that was not in MHU's control. Id. at 8.

Based on the above discussions, staff recommends that MHU has the technical ability to provide wastewater service.

Capacity

Water

The County used the testimony of witness Orsi to support the conclusion that MHU did not have sufficient water available to support his proposed development. (TR 404-495) This conclusion originated from the terms of a developer agreement, which would have required Orsi (as Sunfield Homes) to lend the utility \$100,000 to develop two wells on the property of its Oak Groves subdivision project. The County also referenced the DEP testimony that stated the County could serve an additional 1,500 water connections with its current facilities. (TR 313-314). Since MHU could provide less than 600 connections, the County contends it is better able to provide water to the extended territory. (TR 313-316, BR 15)

With respect to the Orsi agreement, witness DeLucenay testified that he believed such arrangements were appropriate for a development project the size of Mr. Orsi's, projected to be over 800 ERCs at buildout. (TR 548-549) Witness DeLucenay testified that the utility had sufficient water capacity and lines ready to supply the immediate needs of the Oak Groves development from its Turtle Lakes system to the west and from its Carpenter's Run system to the east allowing looping of the two existing water systems. However, the utility anticipated a new well would be necessary to supply water needs at buildout and believed the logical location was on the property. (TR 549, 553)

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The utility also stated that it had required several previous developers to provide similar loans and those agreements had been filed with the Commission and approved. (TR 549) Further, the County acknowledged that it recently required a developer to construct a 0.58 mile 10 inch water main extension along SR 54 from a developers project to the County's Collier Parkway water main. (TR 405-406) From the record, it appears that the County has similar requirements for developers of large projects served by the County. These requirements may or may not have any relationship to the serving utility's existing capacity to serve.

Staff witness Martinez specifically testified about the capacity of MHU's water treatment systems and the ability of MHU to construct additional water treatment plants in compliance with FDEP standards. Witness Martinez stated MHU's existing water systems can accommodate a total of 2,126 connections of which there are an additional 565 connections remaining. (TR 315-316) Staff would note that, for purposes of the following analysis, an FDEP connection is approximately equal to the Commission's equivalent residential connection (ERC). The 565 connections were distributed among MHU's connected water systems as follows: 95 remaining connections in Linda Lake Groves; 200 remaining connections in the Foxwood/Cypress Cove looped system; and 270 remaining connections in the Turtle Lakes looped system. Witness Martinez indicated that there were no additional connections in the currently isolated Carpenter's Run system. (TR 316)

When questioned about MHU's ability to increase its existing water capacity, witness Martinez acknowledged it would only require the addition of larger pumps or pressure tanks. (TR 318-319) Witness Rogers testified MHU has designs available for additional wells and tanks at Turtle Lakes and Carpenter's Run which can be taken "out of the drawer" and submitted for permitting on relatively short order. (EX 30, EJR-2, page 4)

However, the record does not reflect the extent to which these changes would extend plant capacity. Therefore, the staff cannot make any determinations on additional ERCs that may be served from the existing plant. Instead, the staff has relied on the following information.

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In Issue 2, staff recommended that the remaining areas where MHU is not providing water service are parcels B-1A, B-20, B-25, B-26, B-27, C-9 and C-10. The following table is a breakdown of MHU's estimate of the number of ERCs for each parcel where MHU is not currently serving, by water system. Parcels B-24, C-6A and C-8 are also included (even though they were defined in Issue 1 as being served by MHU) because they have existing connections, but the real demand is projected. (TR 316, EX 6, page 5)

Staff identified the potential of available ERCs in the currently isolated Linda Lake Groves system, for informational purposes. The utility stated its intent to connect that system to the Foxwood/Cypress Cove system via parcel B-27. (TR 250-251, EX 6, page 5) Please note however, that since the staff is recommending that MHU be denied parcel B-27 in Issue 13, the 95 available connections that would result from the looping, are not included in evaluating water capacity.

Staff would also note there are a number of qualifications to the numbers of ERCs shown on the chart. Witness DeLucenay stated the ERCs given staff in Exhibit 6, page 5, are only estimates and subject to final developer permitting and buildout. (TR 68) Also MHU did not estimate the number of ERCs for parcels B-25 and C-10 in Exhibit 6, page 5, since these projects were undergoing FDOT modification at the time. (EX 6, page 5, footnotes) For parcel B-25, staff used an earlier exhibit and witness DeLucenay's testimony at hearing that a likely development would be 196 multifamily units which is 156.8 ERCs. (TR 236-239, EX 6, page 1) For parcel C-10, staff also used the earlier exhibit and witnesses DeLucenay's and Bramlett's testimony at hearing that the proposed development would likely be one commercial customer. Staff then used the same 2.5 ERCs given for similar commercial developments in B-1A, B-20 and B-24. (TR 267, 416-417, EX 6, page 1)

TABLE 2

**STAFF'S RECOMMENDATION
AVAILABLE WATER CAPACITY**

	PARCEL	DEVELOPMENT	ERCs
LINDA LAKE GROVES WATER SYSTEM--AVAILABLE CONNECTIONS			95.0
FOXWOOD/CYPRESS COVE WATER SYSTEM--AVAILABLE CONNECTIONS			200.0
B-1A	T & G Properties	Commercial	2.5
B-20	Willet-Liner	Commercial	2.5
B-24	Kniff Property	Commercial	2.5
B-25	Ash Property	Multi-family	156.8
B-26	Meadowview	Residential	50.0
B-27	Lake Como/Mossvie	Mobile Homes	60.0
Remaining (deficit) connections with amendment			(74.3)
TURTLE LAKES WATER SYSTEM--AVAILABLE CONNECTIONS			270.0
C-6A	Twin Lakes Commercial	Commercial	12.5
C-8	Reiber Medical Plaza/Highland Oaks	Commercial/Resid	68.0
C-9	Myrtle Lakes Baptist Church	Commercial	5.0
C-10	Ash Property-Myrtle Lakes	Commercial	2.5
Remaining connections with amendment			184.5

The table shows that MHU has adequate existing water capacity to serve some of the B Parcels served from the Foxwood/Cypress Cove system, and all of the C Parcels served from the Turtle Lakes Water System. The specific parcels that staff is recommending be approved for MHU are discussed in Issue 13.

Wastewater

Staff witness Burghardt and County witness Squitieri both testified that, with a recent flow reconciliation, MHU's Linda Lakes WWTP's permitted capacity of 20,000 GPD is 100% committed. (TR 104, 125) Witness Burghardt confirms the remainder of MHU's wastewater is being

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treated by agreement with Pasco County Utilities and estimates the amount as approximately 340,000 GPD. (TR 126, 127) Witness Bramlett indicated the amount of wastewater the County was obligated to treat pursuant to its 1992 agreement with MHU is 350,000 GPD. The County has agreed to treat an additional 30,000 GPD of wastewater for a total of 380,000 GPD. (TR 90, 331, 333) Therefore, staff believes that there appears to be 40,000 GPD of unused, committed capacity under that County contract. (380,000 GPD committed capacity - 340,000 GPD currently being treated.)

Witness Bramlett estimated the need for service in MHU's territory extension to be 436,000 gallons of wastewater per day (GPD). (TR 333, EX 11, DB-2) MHU witness Rogers estimated total flows for the territory extension to be 361,250 GPD. The parcels used for both those calculations are: A-4, B-23, B-24, B-25, B-26, B-27, C-6A, C-8 and C-9. Staff would note that the list includes parcels that MHU is undisputedly currently serving and excludes parcels that MHU is undisputedly not currently serving.

In Issue 2, staff recommended the remaining areas where MHU is not providing wastewater service are parcels B-1A, B-20, B-25, B-26, B-27, C-9 and C-10. The following table is a breakdown of MHU's estimate in Exhibit 6, page 7, of the wastewater demand in GPD for each unserved parcel. Staff made the same adjustments noted in Table 2, above, in GPD rather than in ERCs. Also, shown in the chart is staff's recommendation in Issue 3 for wastewater need.

TABLE 3

STAFF'S RECOMMENDATION
UNSERVED WASTEWATER CAPACITY

PARCEL	GPD	WASTEWATER NEED
B-1A T&G Properties	750	Yes
B-20 Willet-Liner	435	Unknown future
B-24 Kniff Property	435	Yes
B-25 Ash Property	39,200	Unknown future
B-26 Meadowview	12,500	Unknown future
B-27 Como Club/Mossvie	15,000	Yes
C-6A Twin Lakes Commercial	5,060	Yes
C-8 Reiber Medical/Highland Oaks	13,135	Yes
C-9 Myrtle Lakes Baptist Church	1,250	Unknown future
C-10 Ash Property-Myrtle Lakes	435	Yes

Combining the numbers for the parcels with a need for wastewater service results in a total of 34,815 GPD, which is less than MHU's estimated available capacity in the County contract. Combining all the estimates for these parcels is 88,200 GPD, which is over the available capacity in the County contract. Clearly, then, only some combination of these parcels can be approved for MHU, based on the current contract with the County.

The following issues in this recommendation develop the service options for each of these parcels, with the culmination in Issue 13. Therefore, the staff recommends that MHU has the capacity to provide wastewater service to its existing customers and to some combination of Parcels B-1A, B-20, B-25, B-26, B-27, C-9 and C-10 that totals under 40,000 gpd.

Conclusion

Staff believes the record supports a finding that MHU has the technical ability to provide both water and wastewater service. Due to capacity limitations, the record supports a finding that the utility can provide

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water service to its existing customers, some of the B Parcels served from the Foxwood/Cypress Cove system and all of the C Parcels served from the Turtle Lakes Water System. Similarly, the utility can provide wastewater service to its existing customers and to some combination of Parcels B-1A, B-20, B-25, B-26, B-27, C-9 and C-10 that totals under 40,000 gpd.

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ISSUE 5: Does MHU have the financial ability to serve the territory which it seeks to add to its certificates of authorization?

RECOMMENDATION: MHU appears to have the financial ability to provide service to those portions of the requested area which it is already providing service and to those portions of the requested area where it is not currently providing service which have a need for service, through the use of existing facilities and within the capacity constraints of the County contract. (MESSER)

POSITIONS:

MHU: Yes. As demonstrated by recent refinancing, bank correspondence, and the statements of Mr. DeLucenay and Mr. Nixon.

COUNTY: No. MHU lacks the financial ability to finance the construction of any new facilities. Even if it could finance the construction, the impact would be devastating upon its capital structure.

STAFF ANALYSIS: This issue addresses the financial ability of MHU to provide service to the area requested in its amendment. This area includes parcels to which MHU has already been providing water and/or wastewater service, but are outside of the utility's PSC certificated area, in addition to parcels that will require service to be provided at varying times in the future. MHU's position is that it has the financial resources to provide service to the entire area identified in the application since little to no additional facilities would be required and the utility has completed restructuring and refinancing of debt. (BR 23-24) The County believes that MHU's finances are generally in an extremely poor state, and that since no specific plan was presented by MHU, there can be no finding about its ability to acquire financing in the future. (BR 16-20)

The County's position is based primarily on a combination of the testimony of witnesses Hobby, Orsi and Moses. The County also supported its position with the cross-examination testimony of Mr. Delucenay.

The County argued that the very nature of the

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utility's developer agreements demonstrate the weak financial condition of MHU. County witness Hobby attached a copy of a developer agreement that was the subject of negotiations between witness Hobby, his client (witness Orsi), and MHU. (EX 20) Witness Hobby stated that the agreement contained language that would have required his client to loan MHU \$93,000 at a low interest rate for MHU to build the infrastructure in the development. (TR 461, 470) Witness Hobby stated that this language indicates that the utility must have financial problems, since it required developers to pay for infrastructure, rather than the utility paying for it. (TR 491) Witness Hobby and witness Orsi also suggested that language in the developer agreement which he characterized as "not guaranteeing service to the client", also indicated that MHU was in a precarious financial condition. (TR 481-486, 491, 501)

The County also provided financial information which was used in the federal court proceeding concerning the value of MHU with respect to a sale to a private entity. (EX 21) Witness Moses testified that MHU's liabilities exceeded its assets as of January 1994, and therefore the utility had no value should it be sold to a private utility concern. (TR 530)

Finally, during cross-examination, the County asked Mr. Delucenay if it was true that he had represented in a federal proceeding that the utility was near bankruptcy in January of 1996. The County also identified that Mr. Delucenay had represented that if MHU were not allowed to serve the Oak Grove subdivision and the Denham Oaks school, the utility faced possible foreclosure by its lender, and MHU was still not serving either customer. Mr. Delucenay acknowledged that both of those statements were made in the federal proceeding. (TR 88, 89)

MHU's support for its financial ability was provided by Mr. Delucenay on rebuttal, and by witness Nixon on direct. In his rebuttal, witness Delucenay stated that MHU had recently refinanced all of its outstanding debt with CoBank. (TR 568) In addition, he included a letter from the Vice President at CoBank indicating a willingness to provide additional financing to MHU as needed. (TR 568, TR 608, EX 22) Witness Nixon added more information on that point, stating that the utility restructured and refinanced its existing debt with CoBank, and since that time had serviced that debt on a

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timely basis. He further stated the utility's cash flow has gradually improved, and that he believed MHU would have the capability of borrowing money for additional plant expansion, if necessary. (TR 193) Witness Nixon also pointed out substantial new investment would not be required by MHU if it could obtain additional wastewater capacity from Pasco County. (TR 193)

It appears that most of the record deals with the conceptual aspect of MHU's financial ability, since none of the parties sponsored specific current financial data. Although County witness Moses presented his financial report, the report was generated for a different proceeding, was not current, and used assumptions that were not relevant to this proceeding. (TR 536-541) In fact, the report itself stated that it "is valid only for the purpose or purposes specified herein" which was for use in a U.S. District Court proceeding. (TR 540, 541) Witness Moses also agreed that the information should not be considered by itself in any determination by the Commission, but that it be used to show a history. (TR 542)

The testimony of County witnesses Hobby and Orsi were intended to indicate the questionable financial status and willingness of MHU to provide service to witness Orsi's development. MHU's financial ability to serve was linked to statements relating to loans required by the developer to build infrastructure and the guarantee of service. A discussion between witness Hobby and the Commission revealed that the regulation of investor-owned utilities requires a different perspective on who should bear the costs of development, the developer or the existing utility customer through higher rates. The Commission has traditionally taken the position that existing customers should not be forced to pay for expenses incurred by private developers. (TR 474-475) Therefore, while the language at issue in the contracts could actually reflect a poor financial status of MHU, it also reflects the Commission's policy of requiring development to pay for itself, versus requiring the existing customers to pay for future customers. Language in those contracts concerning inability of the utility to provide service were included as *force majeure* provisions, also standard in utility agreements (to protect the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and which could not be

avoided by exercise of due care). (TR 482-484, 551)

The County attempted to discredit the statements concerning additional financing from CoBank by questioning the level of collateral that might need to be committed by MHU and the actual commitment made by CoBank. On cross, witness Nixon testified that he would not know with 100% certainty that MHU could obtain financing until there was an actual application by the utility that was approved by the bank. (TR 196) He also testified that the letter from John Cole does not represent a commitment to lend and that no application has been made. (TR 197, 198) However, witness Nixon added that he believed an application by MHU for financing would be premature at this point. (TR 198) This testimony was consistent with statements made by witness Delucenay concerning the timing of building new facilities and timing the need for financing. (TR 85-88) Witness Nixon testified that CoBank's security requirements include all of the existing fixed assets and a claim on the revenues of the Company, and that CoBank does not require a personal guarantee of the stockholders. Therefore, in his opinion, the security for MHU would be the additional facilities to be constructed and the future revenues from connections that those facilities were to serve. (TR 195-196)

Staff believes the record supports the conclusion that MHU is financially able to provide service to the areas in which it currently provides service and to those portions of the requested area where it is not currently providing service which have a need for service, through the use of existing facilities and within the capacity constraints of the County contract. Although it was in serious financial circumstances a few years ago, the restructure and refinancing of debt appear to have been successful in producing a positive cash flow for the utility, at least to the extent that its lender would entertain additional discussions of debt. (TR 193, EX 20) Staff further believes that the language in the developer agreements discussed by County witnesses Orsi and Hobby are not compelling evidence of MHU's financial inability to serve existing customers or those with an immediate need. These agreements contain language that reflect general Commission policies. (TR 474-475, 551-552) The County presented historic financial information to suggest financial instability. (EX 21) However, that information was intended for a specific purpose outside of this hearing, and again, the utility has successfully

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executed its debt restructure and refinancing since then.
(TR 541, 193).

With respect to MHU's financial ability to provide service to future customers which requires investment in plant by the utility, staff believes the record does not strongly support a conclusion in either direction. Although the need for additional financing may be premature, the utility has a letter from CoBank supporting a willingness to consider additional financing. (EX 20) Since the lender's security requirements include new construction and associated revenues, it does not appear out of the realm of possibility that MHU could receive that financing. However, the past financial history of the utility does cast some doubt on MHU's ability to attract capital and finance a substantial wastewater treatment facility. (TR 542) Regardless, without an actual set of circumstances to evaluate, it is impossible to make any affirmative statement. (TR 86-87) As stated earlier, no current specific financial information was presented by either party to either confirm or refute each parties arguments.

Therefore, the staff recommends that MHU appears to have the financial ability to provide service to those portions of the requested area where it is already providing service and those portions where it is not providing service which have a need. We note that the record does not strongly support or refute whether MHU has the financial ability to provide service in the areas not currently served by MHU which would require the financing and the building of new plant. However, staff does not recommend that MHU's amendment request be granted in full. And for those portions of territory which staff recommends should be granted, construction of plant will not be necessary in order for the utility to provide the service.

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ISSUE 6: Does MHU own the land upon which its treatment facilities are located that serve or will serve the proposed territory, or, if not, is the utility entitled to continued use of that land?

STAFF RECOMMENDATION: Yes. With the exception of the Linda Lake Groves water treatment plant, MHU owns the land or has long term leases for the land upon which its water and wastewater facilities are located, to serve the staff recommended territory. With respect to the Linda Lake Groves water treatment plant, the utility should be required to file, consistent with Rule 25-30.036(3)(d), Florida Administrative Code, a warranty deed, a copy of an agreement, such as a 99-year lease which provides for the continued use of the land, a written easement, or another cost-effective alternative, within 60 days of the Commission vote. If the utility does not comply within the 60 day timeframe, staff recommends that the utility be required to show cause, in writing, as to why the areas served from the Linda Lake Groves water treatment plant should not be deleted from its service area. (REDEMANN, CAPELESS)

POSITIONS OF THE PARTIES

MHU: Yes. MHU owns or has an arrangement for continued use of the Linda Lakes wastewater treatment plant site and owns the land on which its water treatment facilities are located. To the extent additional plant sites or wastewater treatment sites are necessary, those will have to be acquired by the utility and the utility will obtain either ownership or a right to continuous use unless the Foxwood sewage treatment plant site can be incorporated into that use.

COUNTY: No.

STAFF ANALYSIS: As required by Rule 25-30.036(3)(d), Florida Administrative Code, a utility must provide evidence that it owns the land upon which its treatment facilities that will serve the proposed territory are located or a copy of any agreement, such as a 99-year lease, which provides for the continued use of the land. The Commission may consider a written easement or other cost-effective alternative. MHU's capacity to serve the proposed territory is discussed in Issue 4.

The County's brief concentrates on the lack of a

wastewater treatment plant and disposal capacity for MHU. It states that MHU has failed to show proof it owns land associated with future wastewater treatment, and that therefore the Commission should deny the application. (BR 20, 21) In MHU's brief, MHU states it has demonstrated that it owns or has arrangements for continued use of land on which its existing water and wastewater treatment facilities are located. It also states that, to the extent any additional land is necessary, those rights will be acquired. (BR 25)

The County did not address this issue with respect to the provision of water service by MHU to the extended area. The County's focus on wastewater was on the utility's lack of capacity with its existing wastewater facilities to provide service to the entire requested territory. Since additional capacity for MHU would be required, the County focused on whether MHU had any specific plans regarding additional plant and therefore, land.

The County supported its position largely through cross-examination of utility witness DeLucenay. He reaffirmed an earlier deposition statement that MHU did not have permitted capacity to treat the sewage in the extended territory. (TR 66-67) While the utility believed it had several options to allow it to provide service, there were no current plans, either by lease, by contract or by ownership to provide additional wastewater treatment service to the extended territory. (TR 67, 72) The utility stated one exception to that statement was the possible use of the Foxwood wastewater plant site, which had been owned since 1981. (TR 72) However, MHU had no permit applications pending with DEP to either expand or build any treatment plants. (TR 76) County witness Moses testified that MHU owned land for a subregional wastewater treatment plant, but gave the property back in a deed in lieu of foreclosure. (TR 530)

The utility affirmed that it owned or had continuous rights to its existing water and wastewater treatment sites. Witness DeLucenay testified that MHU owned six water treatment plants. (TR 268) Proof of deeds or easements were provided for five water treatment plants (Composite EX 3 at EX LGD-2, pages 21-34 of 136. EX 24, pages 9-16 references the specific plant). Staff required additional documentation for the Cypress Cove II water plant, which was included in the above-mentioned

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five plants. Exhibit 26 provided proof of ownership by a warranty deed. The utility believed that these plants could provide water to the proposed extension with some minor capacity enhancements, and that no purchases of additional land for enlargement would be necessary. (TR 269)

The sixth water plant, Linda Lake Groves, required the additional proof of an easement, which was not provided in Late-filed Exhibit 27. Exhibit 27 shows a reference to plat Book 12, pages 84-86, and a map where the location of the Linda Lake Groves water treatment plant is identified as in the middle of a median strip. Staff believes that this is insufficient proof of an easement for the Linda Lakes plant. Therefore, staff recommends that the utility should be required to provide evidence the utility owns the land for the Linda Lake Groves water treatment plant as required by Rule 25-30.036(3)(d), Florida Administrative Code. The proof should be in the form of a warranty deed, a copy of an agreement, such as a 99-year lease, which provides for the continued use of the land, a written easement or another cost-effective alternative, and should be provided within 60 days of the Commission vote.

With respect to wastewater, witness DeLucenay testified that the utility owned the Linda Lakes wastewater plant, and the land at the former Foxwood treatment facility. (TR 72) Exhibit 24 pages 25-32 shows an easement for the Linda Lake Groves wastewater treatment plant. Ownership of the Foxwood treatment facility land was provided in Exhibit 24 page 16.

Both parties attempted to address the issue of MHU providing wastewater service beyond the capacity of its current plant and contract with the County. For example, the County emphasized the utility was basically at full wastewater capacity, no firm plans had been committed to by the utility, the utility could not dispose of any additional effluent if it did bring a new treatment plant on line, and the bulk agreement with the County to treat wastewater was in litigation. (TR 66, 67, 72, 76, 81-84) In response, the utility stated it could pursue a few options independent of the County, that some existing lots could be disposal sites if the Foxwood site was reinstated and its interpretation of the County contract allowed for additional flows. (TR 80, 81-84, 474-475, 573, 585)

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Normally, this is a reasonable consideration in evaluation of an amendment application, since the Rule itself focuses on ownership of land used to provide service to existing as well as future customers to be served in the requested new area. This usually also requires some evaluation of whether capacity is also available for some period of time before any additional plant may be necessary and what the utility's options may be to obtain that additional plant.

However, staff's recommendation concerning the proposed extension is such that water could be provided by MHU's existing water plants. Wastewater service to the areas recommended for approval could be continued through the current facilities of MHU and under the provisions of the existing bulk wastewater treatment contract with the County. These recommendations are discussed in Issue 4 concerning capacity and Issue 13 concerning public interest.

Therefore, the staff recommends that with the exception of the Linda Lake Groves water treatment plant, MHU owns the land or has long term leases for the land upon which its water and wastewater facilities are located, to serve the staff recommended territory. The utility should be required to provide evidence that the utility owns the land upon which the Linda Lake Groves water treatment plant is located, as required by Rule 25-30.036(3)(d), Florida Administrative Code. The proof should be in the form of a warranty deed, a copy of an agreement, such as a 99-year lease, which provides for the continued use of the land, a written easement or another cost-effective alternative, and should be provided within 60 days of the Commission vote. If the utility does not comply within the 60 day timeframe, staff recommends that the utility be required to show cause, in writing, as to why the areas served from the Linda Lake Groves water treatment plant should not be deleted from its service area.

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ISSUE 7: Does service exist from other sources within geographical proximity to the areas that MHU seeks to add to its certificates of authorization?

RECOMMENDATION: For areas where there is no dispute, no other source was evaluated or there is no evidence to show that service exists from other sources. These areas are A-3, A-4, B-1A, B-21, B-22, B-23, C-6 and C-7. No service exists from other sources for parcels B-20, B-24, B-26, C-6A and C-8. For the remaining areas, staff recommends that water service exists from another source for B-25, C-9 and C-10. Wastewater service exists from another source for B-25, B-27, C-9 and C-10. (MESSER, REDEMANN)

POSITION OF PARTIES

MHU: Pasco County has attempted to extend services into some of the areas adjacent to those currently certificated and/or served by MHU and proposed for service hereunder counter to the requirements of the provisions of Section 153, Florida Statutes.

COUNTY: Yes. Pasco County has service and is completing the construction of additional lines.

STAFF ANALYSIS: Pursuant to Section 367.045, (5) (a), Florida Statutes:

The Commission may not grant a certificate of authorization for a proposed system, or an amendment to a certificate of authorization for the extension of an existing system, which will be in competition with, or a duplication of, any other system or portion of system, unless it first determines that such other system or portion thereof 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.

Issues 7, 8, and 9 are intended to address different components of the above statutory requirement to avoid uneconomic duplication of service. Issue 7 is intended to discuss the extent to which Pasco County has existing or proposed lines within proximity to the areas MHU proposes to serve. Issue 8 is intended to determine the

extent to which MHU's proposed amendment would result in an extension of any lines in competition with or in duplication of any of these systems. And, if competition or duplication exists, Issue 9 is intended to determine whether Pasco County is unable, refusing or neglecting to serve the areas where duplication would occur.

MHU takes the basic position that, to the extent any alternative service exists, it is the result of the County attempting to duplicate MHU's existing facilities. The County takes the basic position that its activity in the area is not to compete with MHU but a necessary response to meet growth.

County witness Bramlett testified it has partially constructed lines along SR 54 and US 41 which can serve the areas requested by MHU. (TR 334, EX 11, DB-3) In addition, witness Bramlett testified that the county is planning to extend its lines along US 41 in conjunction with the widening of the road. He testified that this extension is not to compete with MHU but in response to a request by FDOT to enter into a construction agreement when MHU refused to do so. (TR 342-343, 397-398) In addition to extending its service lines in the area, witness Bramlett testified that the County is increasing its wastewater plant capacity by another 4,000,000 gallons per day. (TR 334) However, County witness Gallegher states it does not intend to accept any additional flows from MHU. (TR 449-450)

MHU witness DeLucenay testified that it already has in place all the necessary water distribution and wastewater collection facilities immediately adjacent to, or within, all the territories proposed for service except for parcels C-9 and C-10. (TR 61-64, EX 11, DB-3) In addition to having the lines already in place, witness DeLucenay testified that the utility has the necessary existing treatment facilities to meet immediate need. To the extent it cannot get additional wastewater capacity from the County, he stated the utility has the ability to expand or construct on its own. He also testified that, with minor exceptions, the County has no water or wastewater facilities or lines in close proximity to the areas requested by MHU. (TR 61-64, 560, 567-568) In addition, MHU cites County witness Bramlett's response in cross-examination that it will incur costs of several million dollars to duplicate MHU's existing facilities. (TR 404, EX 15, pages 8-9)

There is no disagreement by the two parties that the County is active in geographical proximity to the areas that MHU seeks to add to its certificates. Instead, the parties focus their disagreement on the reasons for that activity and what they would propose that the Commission do as a result. However, the only matter to be decided in this issue is whether service exists from other sources within geographical proximity to the areas that MHU seeks to add to its certificates of authorization. Any public interest concerns raised by parties in this issue will be considered in Issue 13.

While the County contends it is an overall source for service in the geographical area, it does not object to MHU serving those areas where the County believes MHU has existing service. (TR 399) From Issue 1, the undisputed areas of existing service are: A-3, A-4, B-21, B-22, B-23, C-6 and C-7. In addition, the County does not object to MHU serving parcel B-1A. (TR 401) Therefore, staff's analysis in this issue, and in Issue 8, will focus only on the areas where the County would propose to be an alternate source of service. These areas are: B-20, B-24, B-25, B-26, B-27, C-6A, C-8, C-9 and C-10.

The analysis in this issue, and in Issue 8, relies in part on a visual inspection of the maps attached as Exhibit DB-3 to County witness Bramlett's testimony (EX 11) and attached as Exhibit LGD-5 to MHU witness DeLucenay's rebuttal testimony (EX 22). For ease of analysis, staff has appended composite maps to this recommendation as Attachment B. As a base, staff used a reduced copy of Exhibit LGD-5 (EX 22) onto which it superimposed the County's lines from Exhibit DB-3 (EX 11). While staff used its best effort to accurately portray the data from the original maps, where there are differences, the attachments to this recommendation should not be relied upon in lieu of the original documents.

B-20 (Willet-Liner)

Parcel B-20 can be located on Attachment B as a small sliver of land on the east side of US 41 near the apex of US 41 and Dale Mabry. As noted in Issue 3, both parties agreed the need for water and wastewater service to B-20 was immediate. By letter dated June 27, 1996, to Mr. Willet, the County stated it will not have central

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sewer service available at the intersection of US 41 and Dale Mabry until 1998. (EX 15, page 7) As a consequence, the property owners have subsequently installed a septic tank mitigating the immediate need for wastewater service. (TR 224, 401) However, in 1997, the property owners requested water service for a fire hydrant. (EX 6)

Inspection of Attachment B reveals the County currently has no constructed water or wastewater systems in the immediate vicinity of B-20. Instead, it shows the proposed extension of a 12 inch water main along the west side of US 41 and an 8 inch wastewater force main along the east side of US 41. The terminus of the constructed portion of the wastewater force main is currently located approximately a half mile north of B-20 and the terminus of the constructed portion of the water main a little over 2 miles north (not shown on the map). As currently proposed, the County's water main will be on the opposite side of US 41 from B-20. However, a jack and bore will not be required if the crossings are provided during the road widening as described by witness Bramlett. (TR 402)

According to County witness Bramlett, the County's US 41 main extensions are in conjunction with the FDOT's widening of the highway scheduled to start in mid-1997 and intended to be completed within 12 months. (TR 334) Witness Bramlett verified the County intends to serve B-20 from the FDOT extensions. (TR 401-402) Based on the recommendation in Issue 3 that the need for service is immediate for B-20 and the County's written statement that it cannot meet that need until 1998 from these extensions, staff concludes that water and wastewater service from the County to B-20 currently does not exist.

Staff recommends that the record does not show that water or wastewater service to B-20 currently exists from the County.

B-24 (Kniff Property)

Staff recommended in Issue 1 that MHU is serving parcel B-24. However, since the County protests MHU serving (TR 403), staff is presenting information on the availability of service from other sources to this parcel. The County would propose to serve B-24 from the same extension of its water and wastewater mains in conjunction with the US 41 widening described in B-20,

above. (TR 403)

Attachment B shows that B-24 is located just a little south and west of B-20 inside the apex of US 41 and Dale Mabry. Therefore, the analysis of County's lines in B-20, above, applies to B-24 with the distinction that B-24 is on the same side of US 41 as the County's proposed water main but on the opposite side from the County's proposed wastewater force main. Jack and bore will not be required to connect B-24 to the County proposed wastewater force main if the crossing is provided during the road widening as described by witness Bramlett. (TR 402)

Since staff recommended in Issue 1 that MHU has an active connection to B-24, in order for service to exist from the County, it must have a connection in place which can be immediately activated. Instead, the County has stated it will not have central service available at the intersection of US 41 and Dale Mabry until 1998. (EX 15, page 7) Based on the recommendation in Issue 1 that MHU has an active connection to B-24 and the County's written statement it cannot meet that need until 1998, staff concludes that water and wastewater service from the County to B-24 currently does not exist.

Staff recommends the record does not show that water or wastewater service to B-24 currently exists from the County.

B-25 (Ash Property)

Attachment B shows parcel B-25 located on the north side of SR 54 where the road bends from a southeast direction to due east. The property's 40 acre size is misleading because the majority of its perimeters are wetland sensitive. (TR 240, EX 11, DB-2) County witness Bramlett described the location of B-25 as adjacent to SR 54 about halfway between US 41 to the east and Collier Parkway to the west. (TR 405)

With regard to water service, witness Bramlett testified that the County had recently required a developer to construct a westward extension of the County's existing north-south water main on Collier Parkway in order to serve the developer's property. (TR 406) The County would propose to further extend that 10 inch water main along the southern right-of-way of SR 54

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adjacent to B-25. (TR 406) Attachment B shows the terminus of the existing portion of this water main about 0.16 miles east of B-25 on the south side of SR 54. Staff notes that, in order to serve B-25 on the north side of SR 54 from this main, the County would need to jack and bore under SR 54.

With regard to wastewater service, inspection of Attachment B reveals that the County has an existing 8 inch wastewater force main in the southern right-of-way of SR 54. Witness Bramlett testified that the purpose of the force main is to send wastewater from Pasco Plaza on the north side of SR 54, near US 41, to the County's Willow Bend master pump station on the south side of SR 54 on Collier Parkway. (TR 407) Obviously, to make this connection, the force main has to cross at some point from the north side to the south side of SR 54. The determination to cross over west of B-25 was to avoid having to possibly relocate the force main as a result of FDOT's eventual widening of the north side of SR 54. (TR 405) Witness Bramlett anticipates that the widening would be completed around the year 2000. (TR 405)

Regardless of the reason, the cross over west of B-25 places the County's wastewater force main on the opposite side of SR 54 from B-25. As a result, the County would need to jack and bore back under SR 54 and construct a lift station to serve B-25 from this force main. For this parcel, the prior decision with respect to need (Issue 3) comes into play. In that issue, staff recommended the need for service to this parcel is at some unknown future time. While the County does not have any active connections to this property, it does have existing mains for both water and wastewater that are adjacent to the property. (TR 406).

Because the need for service to B-25 is unknown future need and because the County has existing facilities in the area, staff recommends that the record does show that water and wastewater service to B-25 exists from the County.

B-26 (Meadowview)

Attachment B shows the location of B-26 directly south of B-24 inside the apex of US 41 and Dale Mabry. Currently B-26 is pastureland with some environmentally sensitive property along its east side. (TR 243) An

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inspection of Attachment B reveals the County currently has no constructed, or proposed, water or wastewater systems in the immediate vicinity of B-26. Due to the extreme southerly location of B-26 on the Pasco/Hillsborough County line, witness Bramlett indicated that lines for any proposed extension to B-26 would probably be downsized. Since the lines on Exhibit DB-3 to his direct testimony were intended to represent only major transmission and collection mains, the County did not show any proposed extensions in the vicinity of B-26. (TR 409-410)

With respect to water service, witness Bramlett testified that the County could extend its proposed US 41 water main further down the west side of US 41. (TR 409) Staff would note that this is the same proposed water main extension in conjunction with FDOT's widening of US 41 that was discussed in B-20 and B-24, above. To serve B-26, the County would have to extend the line over 2.5 miles from the current northern terminus of this main (not shown on map).

Witness Bramlett explained under cross-examination that the County had two ways to provide wastewater service to B-26. The County could either continue its constructed wastewater force main serving Paradise Lakes (0.94 miles) down the west side of Dale Mabry or continue its proposed wastewater force main (1.18 miles) down the east side of US 41. (TR 409) Both ways would require a jack and bore under a highway and a lift station to serve B-26. Both ways would also require land easements to reach B-26 since the parcel is not contiguous with either highway. (TR 409)

Staff recommended in Issue 3 that the record does not support a clear need for service in parcel B-26. However, this issue is intended to determine if service exists. Not only does the County not have constructed lines in the area of B-26, it does not have any contracts for lines, either. (TR 409) Therefore, staff must conclude that water and wastewater service from the County to B-26 does not exist.

Staff recommends the record does not show that water or wastewater service to B-26 exists from the County.

B-27 (Lake Como/Mossview)

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Attachment B shows the location of parcel B-27 as a large tract of land situated on the extreme western side of MHU existing and proposed service territory. As with B-25, the property's 200 acre size is misleading because the majority of the western side is wetland sensitive. (TR 248, EX 11, DB-2) It is bordered on the east by Northfork Professional Plaza, which is in MHU's existing service territory, and on the north by MHU's Linda Lake Groves service area. (TR 247-248) Parcel B-27 is also bordered on the northeast corner by Paradise Lakes which recently connected to the County's central wastewater treatment system. (TR 354)

With regard to water service, witness Bramlett testified that the County intends to serve B-27 from an extension of its proposed water main down the west side of US 41. (TR 411) Inspection of Attachment B reveals a road extending west from US 41 along the north of Paradise Lakes called Leonard Road, north of the apex of US 41 and Dale Mabry. Since B-27 is on the opposite side of US 41 and Dale Mabry from the extension of the water main to B-20, B-24 and B-26, the County proposes to split a distribution line off the main. (TR 411) Attachment B reveals the juncture of Leonard Road and US 41 to be a little over 2 miles south of the terminus of the County's currently constructed portion of this water main. Since this line is not yet proposed and since the County provided a written statement that it cannot meet water need in the area until 1998 (EX 15, page 7), therefore, staff concludes that water service from the County to B-27 currently does not exist.

For wastewater service, witness Bramlett testified that the County proposes to either extend its recent connection with Paradise Lakes along Leonard Road between Paradise Lakes and parcel A-4 to the NE corner of B-27, or to continue down Dale Mabry to the eastern side of B-27. (TR 410) MHU witness Rogers estimates that the County's connection to Paradise Lakes is approximately three quarters of a mile north of B-27. (TR 625) Staff estimates the connection is close enough to serve relatively immediate need and concludes that wastewater service does exist from the County to serve B-27.

Staff recommends the record does not show that water service to B-27 currently exists from the County. Staff recommends the record does show that wastewater service to B-27 currently exists from the County.

C-6A (Twin Lakes Commercial)

Attachment B shows the location of parcel C-6A on the eastern side of the map on the north side of SR 54. The parcel is bisected into two rectangular tracts by Foggy Ridge Parkway. Staff recommended in Issue 1 that MHU is providing water service to C-6A. Since the County protests MHU serving (TR 411), staff is presenting information on the availability of service from other sources for this parcel.

An inspection of Attachment B reveals the County has an existing 20 inch water main on the same side of SR 54, along the south border of C-6A. (Staff would note that the County main may be 12 vs. 20 inches along a portion of SR 54). County witness Bramlett did not indicate in his testimony whether or not the County made specific provisions for a stub-out to serve C-6A at the time it constructed this water main. Since staff recommended in Issue 1 that MHU is providing water service to C-6A, need was not analyzed in Issue 3 since it is apparent. Therefore, even though the County has an operating water main running along side C-6A, in the absence of evidence that the line is stubbed to serve C-6A, staff concludes that water service from the County does not currently exist.

An inspection of Attachment B reveals the County has a proposed 12 inch wastewater force main on the south side SR 54 adjacent to C-6A, but on the opposite side of SR 54. According to witness Bramlett, the purpose of the County's proposed force main is to connect the County's Willow Bend master pump station on Collier Road to the County's existing 10 inch force main on SR 54 which terminates at Oak Grove subdivision. (TR 346) Once that segment of force main is complete, the County will have an interconnection between its Land O' Lakes regional collection system and its newly constructed Wesley (Center) collection system. (TR 344) It is evident that the proposed force main is not operational, and that in order for the County to serve C-6A from this proposed force main, it would need to jack and bore under SR 54 and construct a lift station.

Staff recommends that the record does not show that water or wastewater service to C-6A currently exists from the County.

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C-8 (Reiber Medical Plaza/Highland Oaks)

Attachment B shows the location of parcel C-8 to be slightly west of C-6A but on the south side of SR 54. The County did not dispute that MHU was currently serving the northern portion of C-8 known as the Reiber Medical Plaza. (TR 388) Since the County protests MHU serving the southern portion of C-8 known as Highland Oaks (TR 412), staff is presenting information on the availability of service from other sources for this parcel.

The County intends to provide water service to C-8 from its constructed 20 inch water line on the opposite side of SR 54 (again, staff would note that the county line may be 12 and not 20 inches along this part of SR 54). It is evident that a jack and bore will be required to service this parcel. Since there is no dispute that MHU already has an active water connection to C-8, in order for the County's service to exist, it must have a connection which can be activated immediately. As a consequence, staff cannot conclude that water service from the County to C-8 currently exists.

According to witness Bramlett, the County intends to provide C-8 with wastewater service from the same proposed 12 inch force main being constructed along SR 54 that was described in C-6A, above. Since the force main is intended to be constructed on the same side of SR 54 as C-8, there will be no need for a jack and bore. (TR 411-413) However, since there is no dispute that MHU already has an active connection to some of parcel C-8 (County position to Issue 1), in order for the County's service to exist, it must have a connection which can be activated immediately. Again, because evidence is not available to determine if the line is operational, staff cannot conclude that wastewater service to C-8 currently exists.

Staff recommends the record does not show that water or wastewater service to C-8 currently exists from the County.

C-9 (Myrtle Lakes Baptist Church)

Attachment B shows the location for C-9 in the middle of the map on the north side of SR 54 close to the intersection of Collier Parkway and SR 54. (TR 415) In Issue 3, staff recommended there was unknown future need

for service to C-9.

Witness Bramlett indicates the County intends to provide water service to C-9 from the County's constructed 16 inch water main on Collier Parkway. (TR 416) An inspection of Attachment B reveals that this main expands to a 20 inch water main extending east along the northern right-of-way of SR 54 along the southern face of C-9. (Again, staff notes that this may be a 12 inch line) Witness Bramlett did not indicate in his testimony whether or not the County had made specific provisions for a stub-out to serve C-9 at the time it constructed this water main. However, since the need for service is at some unknown future time, and the County has a constructed water main running along a face of C-9, staff concludes that water service from the County exists.

Witness Bramlett indicated the County intends to provide wastewater service to C-9 from the proposed 12 inch force main extension the Willow Bend master pump station to Oak Groves subdivision described in C-6A and C-8, above. (TR 415-416) Inspection of Attachment B reveals C-9 is on the opposite side of SR 54 from the proposed extension and service would require a jack and bore under SR 54 and the construction of a lift station. Staff would note that Attachment B also reveals an existing 12" wastewater force main extending north-south along Collier Parkway about 0.125 miles west of C-9. Service from this force main would also require a jack and bore and lift station. Again, since the need for service to this property is at an unknown future time, and an existing wastewater main is located nearby, staff concludes that wastewater service from the County exists.

Staff recommends the record does show that water and wastewater service to C-9 currently exists from the County.

C-10 (Ash Property--Myrtle Lakes)

Attachment B shows C-10 located immediately to the west of C-9 on the north side of SR 54 and contiguous with Collier Parkway on its west border. Witness Bramlett testified the developer of C-10 had submitted preliminary plans for the construction of a Winn Dixie at the site and the developer's engineer had contacted the County for service. (TR 416-417) In Issue 3, staff

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estimated need for service to C-10 to be within 6 months to a year.

As described in C-9, above, Witness Bramlett noted the County has constructed a 16 inch water main and a 12 inch wastewater force main along either side of Collier Parkway. (TR 416) The water main is on the same side of Collier Parkway as C-10. Witness Bramlett did not indicate in his testimony whether or not the County had made specific provisions for a water stub-out to serve C-10 at the time it constructed its main along Collier Parkway. Regardless, since the County has a constructed water main running along a face of C-10, staff concludes that water service from the County exists.

Inspection of Attachment B reveals the County's wastewater force main is on the opposite side of Collier Parkway from C-10. As such, service to C-10 would require a jack and bore under the parkway and possibly the construction of a lift station. Also, once the County makes a connection to C-10, staff would note that Attachment B reveals the same line extension and lift station could serve C-9, as well. However, the County did provide testimony that the County's engineers had talked with the developer about how services would be provided from the Collier Parkway force main and water main. (TR 417) Staff, therefore, concludes that wastewater service from the County to C-10 also exists.

Staff recommends the record does show that water and wastewater service to C-10 currently exist from the County.

Recommendation Summary

For areas where there is no dispute, no other source was evaluated as there is no evidence in the record to show that service exists from other sources. These areas are A-3, A-4, B-1A, B-21, B-22, B-23, C-6 and C-7. No service exists from other sources for parcels B-20, B-24, B-26, C-6A and C-8. For the remaining areas, staff recommends that water service exists from another source for B-25, C-9 and C-10. Wastewater service exists from another source for B-25, B-27, C-9 and C-10.

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ISSUE 8: Would the proposed amendment of MHU's territory result in the extension of a system which would be in competition with, or a duplication of, any other system or portion of a system?

RECOMMENDATION: MHU's proposed amendment would result in an extension of water service to Parcels C-9 and C-10 that would be in competition with or duplicate another system. MHU's proposed amendment would not result in an extension of wastewater service to Parcels B-25, B-27, C-9 and C-10 that would be in competition with or duplicate another system. (MESSER, REDEMANN, CAPELESS)

POSITION OF THE PARTIES

MHU: No. Pasco County's attempts to extend services into and adjacent to the areas currently served by MHU's systems since 1975, is a duplication of MHU's existing service, and is contrary to law and public policy. To the extent duplications [sic] exists under relevant law, it has or will result from actions by Pasco County.

COUNTY: Yes. The County is completing the infrastructure necessary to serve south central Pasco County including those areas for which MHU seeks a certificate.

STAFF ANALYSIS: The record is clear that duplication of lines and facilities already exists in some portions of the territory at issue. Section 367.045(5)(a), Florida Statutes, prohibits the Commission from granting an amendment for the extension of an existing system which will be in competition with, or a duplication of, another system absent a determination that such other system is inadequate to meet the reasonable needs of the public or that the person operating it is unable, refusing or neglecting to provide reasonably adequate service. Accordingly, the question raised by this issue is whether the granting of MHU's application will result in an extension of MHU's existing system which would cause further duplication of, or competition with, the County's system. If so, the next step, whether the County's system is inadequate, or whether the County is unable, refusing or neglecting to provide reasonably adequate service to the parcels at issue, is the subject of Issue 9.

It is important to note that the granting of the

proposed territory amendment, or any portion thereof, in which territory MHU proposes to serve from existing plant, mains, and lines, will not result in the extension of an existing system at all, and thus could not result in the extension of a system which would be in competition with, or a duplication of, another system. Similarly, where both parties are in an equal position to provide service in areas where service is not currently being provided, in which areas the facilities to serve are already in place, no extension of an existing system would be constructed at all. Thus again, no extension of an existing system would be constructed which could duplicate, or compete with, the County's system.

In Issue 7, staff recommended that water and wastewater service exists from the County for parcels B-25, C-9 and C-10 and that wastewater service also exists from the County for parcel B-27. Consistent with that recommendation, the following analysis will focus on the extent to which MHU would need to extend an existing system to provide service to these parcels, which extension would be in competition with or a duplication of a portion of the County's system.

For areas where there is no dispute that MHU is already serving, no other source of service was evaluated in Issue 7 and, hence, duplication will not be evaluated in this issue. These areas are parcels A-3, A-4, B-1A, B-21, B-22, B-3 C-6 and C-7.

B-25 (Ash Property)

Water

Witness Bramlett testified that the County has an existing force main within the SR 54 right-of-way at the southern edge of this property boundary. (TR 405-406) The County is currently having a developer construct a water main along that right-of-way, and can extend that line on further to the Ash property. (TR 406) Based on a review of Attachment B, this is a 10-inch water main, which is approximately 0.16 miles east of the Ash property on the south side of SR 54.

MHU, on the other hand, already has an 8-inch line stubbed onto private property under an easement area for this specific parcel. This line runs under Highway 54, under its existing force main. (TR 239)

MHU's force main for wastewater was installed in 1986. (TR 240) Although the record does not specifically show when the water line was installed, staff believes it reasonable to assume that it was near the time that the wastewater force main was installed, particularly since the water line is under the wastewater force main. As noted above, MHU's water line is already stubbed to serve this parcel, whereas the County's line is only currently being installed, and would need to be extended to serve the parcel since it is .16 miles away from it. Because MHU has existing facilities and lines in place to serve this parcel, it will not need to extend its existing system to provide the service. Therefore, staff recommends that no duplication or competition will result if MHU's request to amend its water certificate to include Parcel B-25 is granted.

Wastewater

The County has an 8-inch wastewater force main adjacent to B-25. This main was constructed in 1990 in the same south side SR 54 right-of-way as MHU's existing 16-inch force main. (EX 15, page 9)

As stated, MHU has a 16-inch force main, which was installed in 1986. (TR 240) Actual service to this parcel has not been initiated by either MHU or the County. (TR 237, 405) Attachment B shows that both parties will require a jack and bore under SR 54 in order to provide service to the parcel.

Since MHU installed its force main before the County installed one, and because no extension by the County has been made to this parcel, staff recommends that no duplication or competition will result if MHU's request to amend its wastewater certificate to include Parcel B-25 is granted.

B-27 (Lake Como/Mossview)

Wastewater

The County intends to serve B-27 from either an extension of its recent connection with Paradise Lakes (along Leonard Road between Paradise Lakes and parcel A-4), or to continue down Dale Mabry. (TR 410) MHU witness Rogers estimated that the County's connection to Paradise Lakes is approximately three quarters of a mile

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north of B-27, which he characterized as relatively close. (TR 625)

MHU has an existing 6-inch wastewater force main which is stubbed at the juncture of the Northfolk Plaza and Lake Como/Mossview. (TR 248) MHU witness Rogers testified that Northfolk Plaza abuts directly on B-27, which positions MHU closer to Lake Como/Mossview than the County. (TR 626)

Since MHU has an existing force main and is stubbed out to serve this parcel, staff recommends that no duplication or competition will result if MHU's request to amend its wastewater certificate to include Parcel B-27 is granted.

C-9 (Myrtle Lakes Baptist Church)

Water

The County intends to provide water service to C-9 from the County's constructed 16-inch water main on Collier Parkway. (TR 416) Attachment B shows that this main runs along the southern face of parcel C-9.

Witness DeLucenay testified that MHU is not currently serving Parcel C-9. (TR 262) Witness DeLucenay stated that the water main was stubbed by the earlier owners of the utility on the north side of SR 54. (TR 265) However, Attachment B shows that the utility proposes an extension of its water main on the north side of SR 54 in order to serve the parcel. It appears the current main is approximately 3/4 miles east of C-9.

Because the County has an existing main along the parcel, and because MHU would have to extend its main to reach the parcel, staff recommends that duplication or competition will result if MHU's request to amend its water certificate to include Parcel C-9 is granted.

Wastewater

County witness Bramlett indicated that the County intends to provide wastewater service to C-9 from a proposed 12-inch force main extension. (TR 415-416) However, Attachment B shows that the County also has an existing 12-inch force main which extends north-south

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along Collier Parkway, about 0.125 miles west of C-9. Service to the parcel would require a jack and bore under the Parkway, as well as the construction of a lift station.

MHU witness DeLucenay testified that wastewater service to both C-9 and C-10 was taken into consideration at the time MHU constructed its SR 54 force main on the southern side of SR 54, by allowing for a stub to serve the two adjoining parcels. (TR 265) Attachment B verifies that there is an existing 16-inch wastewater force main on the opposite side of SR 54 from Parcel C-9. Therefore, service to this parcel would require a jack and bore under the SR, and construction of a lift station.

If the Commission relies on witness Bramlett's testimony that the County intends to provide wastewater service to this parcel from a proposed force main, because MHU has an existing force main to serve, staff would recommend that no duplication or competition will result if MHU's request to amend its wastewater certificate to include Parcel C-9 is granted. We note that the record also shows the possibility of service by the County from another existing force main. If the County were to use this option, this would place it in an even position with MHU to serve the parcel, since either party would still have to jack and bore and construct a lift station in order to provide the service. In any event, because the duplicative facilities (force mains) are already in place, and because either party would need to jack and bore and construct a lift station, service to this parcel by MHU would not necessitate that MHU extend service which would duplicate or be in competition with the County's existing facilities. Therefore, under either of the two possible methods of providing the service which the record reflects are available to the County, staff recommends that no duplication or competition will result if MHU's request to amend its wastewater certificate to include Parcel C-9 is granted.

C-10 (Ash Property-Myrtle Lakes)

Water

County witness Bramlett testified that the County has constructed a 16-inch water main along Collier Parkway. (TR 416) Attachment B shows that the main is

on the same side of Collier Parkway as is parcel C-10.

MHU witness DeLucenay testified that it is not currently providing water service to Parcel C-10. (TR 266) Attachment B shows that the utility proposes an extension of its water main on the north side of SR 54 in order to serve the parcel. This Attachment also shows that the end point of the existing main is approximately 3/4 miles east of C-10.

It appears that the County has an existing main to serve this parcel, and that MHU would be required to extend its water main in order to provide the service. Therefore, staff recommends that duplication or competition will result if MHU's request to amend its water certificate to include Parcel C-10 is granted.

Wastewater

County witness Bramlett testified that the County had constructed a 12-inch wastewater force main along Collier Parkway. (TR 416) Attachment B shows that the main is on the opposite side of the Parkway from C-10. Therefore, service by the County to C-10 would require a jack and bore under the parkway and possibly the construction of a lift station.

MHU witness DeLucenay testified that wastewater service to C-10 was taken into consideration at the time MHU constructed its SR 54 force main on the southern side of SR 54, by allowing for a stub to serve that parcel, as well as C-9. (TR 265) This construction occurred in 1986. (TR 240) Attachment B verifies that there is an existing 16-inch wastewater force main on the opposite side of SR 54 from Parcel C-10. Therefore, service to this parcel by MHU would require a jack and bore under SR 54, and construction of a lift station.

Since MHU has an existing main, and both parties would require a jack and bore to provide service to these parcels, it appears that they are essentially in an equal position to serve. Consistent with the discussion for wastewater service to Parcel C-9, staff recommends that no duplication or competition will result if MHU's request to amend its wastewater certificate to include Parcel C-10 is granted.

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Conclusion

Based on the above discussion, staff recommends that MHU's proposed amendment would result in an extension of water service to Parcels C-9 and C-10 that would be in competition with or duplicate another system. MHU's proposed amendment would not result in an extension of wastewater service to Parcels B-25, B-27, C-9 and C-10 that would be in competition with or duplicate another system.

ISSUE 9: If the proposed amendment of MHU's territory would result in the extension of a 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?

RECOMMENDATION: MHU's proposed amendment would duplicate the existing County water lines to parcels C-9 (Myrtle Lakes Baptist Church) and C-10 (Ash Property-Myrtle Lakes). Pasco County is not unable, refusing or neglecting to provide reasonably adequate service to parcels C-9 and C-10. (MESSER)

POSITION OF PARTIES

MHU: In addition to the points raised in response to Issue 8 above, there are several areas within MHU's proposed extension territory for which neither the County or any entity other than MHU has any facilities in a position which renders them readily able to serve.

COUNTY: No. The County's system is adequate to meet the reasonable needs of the public. The County is not unable, refusing or neglecting to provide reasonably adequate service.

STAFF ANALYSIS: Pursuant to Section 367.045(5)(a), Florida Statutes, Issue 9 is intended to determine whether the County is unable, refusing or neglecting to serve those areas where duplication would occur.

While MHU's position focuses on the location of the utility's facilities, its brief focuses on the County's refusal to serve. It states the County has repeatedly refused to provide bulk wastewater service to MHU and to MHU's customers' requests for service. On the other hand, when direct service is to be provided, MHU contends the County has been willing to provide such service itself in contravention of public policy and contract between parties. MHU concludes that the Commission must find the County has repeatedly refused to provide service when needed. (BR 31)

The County contends in its brief that no evidence was presented at hearing that the County's system was not

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adequate to meet the reasonable needs of the public. (BR 25) Specifically, the County cites MHU witness DeLucenay's acknowledgement that he has no reason to doubt the County is willing and able to provide service. (TR 204-205)

In Issue 8, staff recommended that MHU's proposed territory extension is only in competition with or a duplication of the County's existing water service lines for areas C-9 (Myrtle Lakes Baptist Church) and C-10 (Ash Property-Myrtle Lakes). Therefore, staff's analysis in this issue is limited to a discussion of whether the County's water systems in the areas of parcels C-9 and C-10 are inadequate to meet the reasonable needs of the public or whether the County is unable, refusing, or neglecting to provide service to those two areas.

In Issue 7, staff concluded that the County has existing water systems in the immediate areas of parcels C-9 and C-10. With regard to willingness to serve, County witness Bramlett gave testimony indicating that the County was prepared to serve both these areas. (TR 415-416) In addition, for C-10, witness Bramlett indicated that a preliminary request for service had been submitted and County staff had informed the developer that water and wastewater service would be provided from the County's constructed mains on Collier Parkway. (TR 416-417) There is no opposing testimony concerning the County's ability and willingness to provide water service to parcels C-9 and C-10.

Therefore, staff recommends that the record does not indicate that the County is unable, refusing or neglecting to provide water service to parcels C-9 (Myrtle Lakes Baptist Church) and C-10 (Ash Property-Myrtle Lakes).

ISSUE 10: Stricken.

ISSUE 11: Withdrawn.

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

RECOMMENDATION: There is no impact on the utility's monthly rates and service availability charges from staff's recommended extension of territory. The utility should continue to apply its existing rates and charges to the territory extension until authorized to change by this Commission in a subsequent proceeding. (MESSER)

PARTIES POSITIONS

MHU: MHU does not believe there will be any impact on monthly rates or service availability charges other than the possible reduction in any upward pressure on rates resulting from full utilization of existing facilities and economies of scale.

COUNTY: MHU has provided no information regarding how it plans to serve the territory and thus the County cannot determine the impact on the utility's monthly rates and service availability charges, if any.

STAFF ANALYSIS: This issue resulted from the County's contention that MHU provided insufficient information in its application pursuant to Rule 25-30.036(3)(n), which requires a statement regarding the projected impact of the extension on the utility's monthly rates and service availability charges. Generally, if an extension requires additional plant capacity or main extensions to be built by the utility, the potential exists for a change in either monthly rates or service availability charges. Factors such as the type and level of financing, existing level of contributions-in-aid-of-construction, and magnitude of necessary construction would all be factors in determining the necessity for any changes in rates or charges.

MHU had filed a statement in its application that the majority of facilities necessary to provide service to these areas are already in place. As additional development requires service, on-site facilities will be required to be contributed in accordance with the

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utility's existing service availability policy and the utility's tariff and Commission rules. As a result, MHU's extension will have no impact on monthly service charges or service availability charges as a result of the extension. (EX 3, LGD-2, pages 7-8)

MHU briefed the issue by restating the above language in the application, and added that the County's construction would duplicate the existing facilities of MHU. (BR 32) The County briefed this issue affirming that since MHU has no plans to serve the extended territory, there was no way to determine the effect on rates. (BR 26)

This issue would take a different direction if the staff believed it appropriate to recommend the extension as filed. While water capacity is not an immediate issue, the utility discussed the long term plan for looping the two water plants to provide reliability and cost-effective connections. (TR 226, 275, 549) This additional investment might require some change in either rates or charges, since utilities are allowed to earn a reasonable return on their investment. (TR 474-475) However, since no firm plans were presented by the utility, it would be impossible to determine the exact nature of any potential change in rates or charges. (TR 86-87, 206-207) Since there is no change at this time, the utility's existing rates and charges should be applied to any areas amended to its territory as a result of the Commission's decision in this docket.

Since the staff recommendation does not include the parcels that would necessitate the looping as proposed by the utility, it appears that any change in water rates or charges is moot. Witness Delucenay and Rogers stated the parcels that are included either have service already provided, or existing utility lines nearby, such that a tie-in by either a developer or customer would require minimal additional investment by the utility. (TR 227, 268-269, 558, 560, 567, 632)

With respect to wastewater capacity, the utility presented several options which included reinstating a 500,000 gallon per day (0.5 MGD) treatment plant, contracting with other neighboring systems to treat bulk wastewater and renegotiating its existing contract with Pasco County. (TR 573, 585) The first two options might result in a need to change rates or charges since they

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involve some additional investment by the utility. (TR 474-475) However, again, since no specific plans were presented with respect to the 0.5 MGD plant or contracting with other systems, it is impossible to determine what that change might be. (TR 86-87, 206-207) Also, staff's recommendation will not require negotiating for additional treatment capacity with the County, so staff believes it is likely that no change will result in monthly rates or service availability charges, since MHU essentially operates as a "middleman" in providing this service. (TR 84-85)

Therefore, staff recommends that there is no impact on the utility's monthly rates and service availability charges from staff's recommended extension of territory. Staff also recommends that the utility should continue to apply its existing rates and charges to the territory extension until authorized to change by this Commission in a subsequent proceeding.

For informational purposes, the staff notes that MHU has two separate wastewater rates, depending on whether service is from MHU's Linda Lakes treatment plant or via bulk service from the County. The parcels that would receive wastewater service from Linda Lakes are A-3 and A-4, and have a residential rate for a 5/8" x 3/4" meter of \$11.84 base facility and \$2.84 gallonage charge. All other parcels will be billed a \$11.34 base facility and \$3.76 gallonage charge. Both sets of rates include a gallonage cap of 8,000 gallons.

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

RECOMMENDATION: MHU's application to provide water and wastewater service to parcels A-3, A-4, B-1A, B-20, B-21, B-22, B-23, B-24, C-6, C-6A, C-7 and C-8 should be granted. MHU's application to provide water and wastewater service to parcels B-25, B-26, B-27, C-9 and C-10 should be denied. The territory descriptions for the approved parcels should be approved as reflected in Attachment C. (MESSER, REDEMANN)

POSITION OF PARTIES

MHU: Yes. It is in the public interest to grant MHU's application for extension of service territory and it is not in the public interest to allow the County to continue its brazen disregard for the public interest, Florida Statutes, and the specific findings of regulatory bodies and courts and attempt to duplicate the facilities of MHU.

COUNTY: No. It is not in the public interest to have MHU serve the area.

STAFF ANALYSIS: This issue has two separate parts. The first part is to address some of general public interest concerns raised in this docket. The second part is to incorporate those general public interest concerns along with staff recommendations on all previous issues into a final finding as to whether or not it is in the public interest, pursuant to Section 367.045(5)(a), Florida Statutes, to grant MHU's request for amendment in whole or in part.

Public Interest Concerns

One of the outcomes of these various staff recommendations, is that the service territory of MHU becomes somewhat "jagged". Generally, the staff attempts to make a reasonable finding with respect to the size and location of territory granted to a utility, with the idea being that service areas are grouped together. This makes sense from the engineering perspective of the utility, as well as from a user's point of view. It is very confusing to customers to have one service provider on one side of the street and another provider on the

other side of the street.

Staff recognizes that unfortunately, some of the parcel recommendations will result in the less-desirable utility configuration. We attempted to mitigate this by evaluating current service, when future service would be needed, duplication, and who was in the "best" situation to serve. While MHU may have had the water capacity in many instances to serve various properties, the combined capacities for wastewater placed it at a precarious point with respect to either the limit of the existing contract with the County or the estimated available contract capacity by staff.

There was much testimony regarding the contract and potential available capacities from the County, once various construction plans were completed. There is obviously great dispute over the terms of the contract. However, the record leaves us with nothing more than acknowledging this dispute. Court proceedings are ongoing to determine the meaning of the language of the existing contract. (TR 84-85) Staff believes the availability or nonavailability of additional capacity from the County through new plants is basically meaningless, until the language of the contract terms are resolved.

Capacity considerations on wastewater connect back to the public interest consideration discussed earlier about having one consistent service provider. Upon declining wastewater service territory to MHU, it also seems reasonable to decline water service territory, for the very reasons stated above. Generally, it makes more sense to have one service provider for both services.

If territory decisions were made in a vacuum, there could be consistent application of this policy. However, in this case, the strategy of the County to place lines in close proximity to MHU's existing lines for many parcels, in addition to the debate over available wastewater treatment capacity for MHU, left the staff in a position of recommending parcels in a configuration that is less than "ideal".

Staff would note that the record does indicate a general frustration by the citizens of this area, due to ongoing legal disputes between the County and MHU that result in a standoff on who can or should serve a parcel.

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This was mentioned in the summary of customer testimony in the Case Background.

Witness Phillips stated that duplication was clearly occurring, and it was in no one's best interests. (TR 326) An example in the record that supports her concerns is that the County's plans to serve Parcel B-24 would require the County to cross over MHU's existing water and wastewater lines. The proposed cost of the water main to serve this parcel and also parcels C-6A, C-8, C-9 and B-25 is \$800,000 and the cost of the wastewater main is \$900,000. (TR 403-408)

Final Recommendation

The purpose of this portion of Issue 13 is to summarize staff's recommendations in all prior parcel-specific technical issues, along with any considerations of public interest, into staff's final recommendation on MHU's application with respect to each parcel. If the Commission make findings different than those recommended by staff in the previous issues, these decisions would flow through to this issue and require a change.

MHU's position is that it is not in the public interest for the County to be duplicating the existing lines and facilities of MHU, and that it is in the public interest for the requested territory amendment to be granted. (BR 33-38)

The County's position is that Mad Hatter does not have the capacity or the financial ability to serve the area, or that it, in fact, owns or leases the land beneath which any plant will be built. (BR 26-30)

The primary factors used by staff in evaluating each parcel for this issue were immediacy of need for service, technical availability of service to the parcel, the availability of water and wastewater capacity and the finding that extension of service would not result in competition or duplication. A negative finding by staff on any one of these factors is the basis for staff recommending that MHU's request to amend that parcel for that service not be granted.

Parcels A-3, A-4, B-21, B-22, B-23, C-6 and C-7

In Issue 1, staff recommended it was undisputed that MHU was already providing either water and/or wastewater service to these parcels so immediacy of need was apparent and the possibility of competition with or duplication of any other source of service moot. There was no controversy over the granting of these parcels to MHU. Therefore, staff recommends that MHU's request to amend these parcels to its water and wastewater certificates be granted.

Parcels B-24, C-6A and C-8

Issues 1 and 3 discussed that MHU was already providing water to B-24 and C-6A, and water and wastewater service to C-8, so the need for service was apparent. In Issue 4, staff recommended that MHU had adequate water and wastewater capacity to serve existing customers and also the expected demand for water and wastewater. These three parcels would add a demand of 83 ERCs of available water capacity and 18,630 GPD of available wastewater treatment capacity from the County. (EX 6, page 6) In Issues 7 and 8, staff recommended there was no other existing source for service other than MHU. Therefore, staff recommends that MHU's request to amend these parcels to its water and wastewater certificates be granted.

Parcel B-1A

In Issue 3, staff recommended there was need for service to this parcel. In Issue 4, staff recommended that MHU had adequate water capacity to serve the parcel from the Foxwood/Cypress Cove Water System, which was 2.5 ERCs, and in Issue 7 that there is no other existing source of service other than MHU. Staff notes that the County did not protest MHU serving the parcel.

Since the County did not protest MHU serving this parcel, it also meant access to wastewater capacity through the bulk agreement. This parcel adds 750 GPD towards the 40,000 GPD available for bulk treatment as shown in Issue 4. Combined with Parcels B-24, C-6A and C-8, these total 19,380 GPD. Therefore, staff recommends that MHU's request to amend this parcel to its water and wastewater certificates be granted.

Parcel B-20

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In Issue 3, staff recommended there was an immediate need for water-only service to this parcel. In Issue 4, staff recommended MHU had adequate water capacity to serve the parcel at buildout. In Issues 7 and 8, staff determined there was no other existing source of service for water. Staff, therefore, recommends that MHU's request to amend this parcel to its water certificate be granted. This parcel adds 2.5 ERCs to the available capacity of the Foxwood/Cypress Cove Water system.

With respect to wastewater, the immediacy of need for service has been eliminated for some unknown time by the installation of a septic tank. (TR 224, 401) In Issue 4, staff recommended that the projected wastewater usage for this parcel as 435 GPD. This places the combined wastewater demand at 19,815 GPD which would place MHU at about 360,000 GPD with the County contract. In Issue 7, staff recommended that an alternative source of water and wastewater does not exist at this time, although the County stated its intention to serve this area within 12 months. (TR 334) Staff believes the public interest considerations discussed in the beginning of this issue with respect to consistency of service should come into play. Therefore, the staff recommends MHU should also provide wastewater service to this parcel.

Parcel B-25

MHU is not currently providing any service to this parcel, and in Issue 3, staff recommended that there was no immediate need for service. Issue 4 identified future wastewater demand at 39,200 GPD, which when combined with the previous parcels, would place MHU in excess of the estimated 40,000 GPD available from the County contract. In Issue 7, staff recommended there was another source of water and wastewater service for B-25. Staff believes the public interest considerations of consistency of service should also apply to the County. Therefore, staff recommends that this parcel be denied for both water and wastewater service.

Parcel B-26

MHU is not currently providing any service to this parcel. While we recommended in Issue 7 that other service by the County was not available at this time, Issue 3 recommended there was no immediate need for

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service. Estimated future wastewater demand is 12,300 GPD, which would place MHU at 32,315 GPD towards the estimated available contract gallons.

Staff's primary considerations are the fact that there is no current service by MHU to this property, and that there is no immediate need for service. In addition, although the 32,315 GPD appear to be within the available gallons from the County, the staff is concerned about leaving room for potential growth within the existing territory, plus room for particularly high flow periods. Until the contract disputes are finalized, staff believes it is prudent to grant parcels with flows that range around the current provision level of 350,000 GPD.

The public interest consideration of consistency of service providers is a final determinate. Therefore, staff recommends that this parcel be denied for water and wastewater service.

Parcel B-27

In Issue 3, staff recommended there was an immediate need for wastewater-only service to this parcel. In Issue 4, staff identified that this property would generate 15,000 GPD of wastewater, placing a total demand of 34,815 GPD towards the County contract. In Issue 7, staff recommended the County had an existing source for wastewater service.

Similar to the discussion in B-26, staff believes that this amount of flow places MHU close to the ceiling of the contract provisions. The public interest consideration of consistency of service is also a determinate.

Staff believes it is appropriate to note, that the utility had desired to serve parcel B-27 to allow it to loop its water treatment plants of Linda Lakes and Foxwood/Cypress Cove. Witness DeLucenay testified that looping would allow it to have greater redundancy in water service, and also allow it to fully utilize the available water capacity of 95 ERCs from its Linda Lakes Water plant. (This was discussed in Issue 4 in determining available water capacity.)

The staff agrees that in general, the looping concept is an appropriate engineering design. However,

this is not our only consideration. The staff believes that the capacity restraints on wastewater combined with the consistent server concept, should cause the Commission to deny this parcel for water and wastewater service.

Parcel C-9

MHU is not providing any service to this parcel. In Issue 3, staff recommended there was not an immediate need for service in this parcel. In Issue 7, staff recommended the County was an existing source of water and wastewater service to C-9. In Issue 8, staff recommended that MHU water service to C-9 would be in competition with or a duplication of the County's existing system. Therefore, the provision of water service by MHU does not seem appropriate.

Using the public interest concept of consistency of service provider, the lack of service by MHU or need for service, the staff also believes that MHU should not provide wastewater service. Therefore, staff recommends that this parcel be denied for water and wastewater service.

Parcel C-10

MHU is not currently serving this parcel, but, in Issue 3, staff recommended there was an immediate need for water and wastewater service. In Issue 7, staff recommended the County had existing sources of service for water and wastewater. In Issue 8, staff recommended that MHU water service to C-10 would be in competition with or a duplication of the County's existing system. Therefore, consistent with the recommendation for parcel C-9, staff recommends that this parcel be denied for water and wastewater service.

Conclusion

Based on the above discussion, the staff recommends it is in the public interest to grant MHU's application for the following parcels for both water and wastewater service; A-3, A-4, B-1A, B-20, B-21, B-22, B-23, B-24, C-6, C-6A, C-7 and C-8. MHU's application for parcels B-25, B-26, B-27, C-9 and C-10 should be denied. The territory descriptions for the approved parcels should be

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approved as reflected in Attachment C.

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ISSUE 14: Should the docket be closed?

RECOMMENDATION: Yes. Upon expiration of the time for filing an appeal, and upon the timely receipt of proof of ownership of the land upon which the Linda Lake Groves water treatment plant is located, no further action will be necessary and this docket should be closed. If a party files a notice of appeal, this docket should be closed upon resolution thereof by the appellate court. (CAPELESS)

STAFF ANALYSIS: Upon expiration of the time for filing an appeal, and upon the timely receipt of proof of ownership of the land upon which the Linda Lake Groves water treatment plant is located, no further action will be necessary and this docket should be closed. If a party files a notice of appeal, this docket should be closed upon resolution thereof by the appellate court.

ATTACHMENT A

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).

RECOMMENDATION: Reject because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code.

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.

RECOMMENDATION: Reject because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code.

ISSUE 3

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

RECOMMENDATION: Reject because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code.

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).

RECOMMENDATION: Reject as argumentative or conclusory.

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).

RECOMMENDATION: Accept.

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).

RECOMMENDATION: Accept.

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).

RECOMMENDATION: Accept first sentence, but clarify that MHU has no other permits from the DEP other than for the Linda Lakes wastewater treatment plant. Accept second sentence.

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).

RECOMMENDATION: Accept.

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).

RECOMMENDATION: Accept.

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 considerably 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).

RECOMMENDATION: Accept first sentence. Reject second sentence as unsupported by the record because the record does not support the contention that the utilization of slow rate disposal is more expensive than rapid rate infiltration basin disposal.

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 acknowledged 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).

RECOMMENDATION: Reject as argumentative or conclusory.

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.

RECOMMENDATION: Reject as unsupported by the

record, and as argumentative or conclusory.

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).

RECOMMENDATION: Accept sentence one. Reject sentences two and three as unsupported by the record.

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).

RECOMMENDATION: Accept sentence one, but eliminate the word "both," as it appears to be a typographical error. Accept sentence two.

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

RECOMMENDATION: Reject as vague or misleading.

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).

RECOMMENDATION: Reject first sentence as argumentative or conclusory and because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code. Accept second sentence.

17. It is not cost effective for Mad Hatter to connect to Hillsborough County's system. (R. 432-433).

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Furthermore, Hillsborough County would not agree to provide service to Mad Hatter unless Pasco County agreed. (R. 432-433).

RECOMMENDATION: Reject first sentence as unsupported by the record. Accept second sentence, but delete the word "furthermore."

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).

RECOMMENDATION: Reject first sentence because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code. Accept second sentence, but delete the word "however," and clarify that Dr. Kratz is the owner of Windemere Utility Co.

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).

RECOMMENDATION: Reject as unsupported by the greater weight of the competent and substantial evidence.

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).

RECOMMENDATION: Accept sentence one. Reject sentence two as unsupported by the record.

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).

RECOMMENDATION: Reject sentence one as argumentative or conclusory and because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code. Accept sentences two and three, but clarify that these findings pertain to water connections.

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. 2-25; R. 87, L. 1-3).

RECOMMENDATION: Reject as argumentative or conclusory.

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).

RECOMMENDATION: Reject as unsupported by the record.

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

RECOMMENDATION: Reject as vague or misleading.

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).

RECOMMENDATION: Reject as vague or misleading.

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. 5-25; R. 583, L. 1-15).

RECOMMENDATION: Accept sentence one. Reject sentences two and three as argumentative or conclusory and as unsupported by the record.

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).

RECOMMENDATION: Reject as unsupported by the record.

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).

RECOMMENDATION: Reject as vague and misleading.

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).

RECOMMENDATION: Reject as unsupported by the record.

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).

RECOMMENDATION: Reject as unsupported by the

record.

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).

RECOMMENDATION: Reject as unsupported by the record and as argumentative or conclusory.

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).

RECOMMENDATION: Reject as unsupported by the record and as argumentative or conclusory.

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

RECOMMENDATION: Reject as unsupported by the record.

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).

RECOMMENDATION: Reject as argumentative or conclusory.

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).

RECOMMENDATION: Accept first and second sentences.
Reject third sentence as speculative.

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).

RECOMMENDATION: Accept.

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).

RECOMMENDATION: Reject as argumentative or conclusory.

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).

RECOMMENDATION: Reject as argumentative or conclusory.

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).

RECOMMENDATION: Accept sentence one, but clarify that the agreement is the bulk wastewater treatment agreement between MHU and the County. Accept sentences two and three.

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

RECOMMENDATION: Accept.

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. 334, L. 12-24).

RECOMMENDATION: Reject as conclusory and as unsupported by the record.

ISSUE 9

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

RECOMMENDATION: Reject as conclusory and as unsupported by the record.

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).

RECOMMENDATION: Accept, but change "and" to "or," in order to comport with the language of Section 367.045(5)(a), Florida Statutes, and add "to the extended territory," to the end of the sentence, for clarification.

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.)

RECOMMENDATION: Reject as unsupported by the record and as argumentative or conclusory.

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. 1-13; R. 16-18; R. 20-22; R. 32; R. 51, L. 10-24; R. 82, L. 14-22).

RECOMMENDATION: Reject as argumentative or conclusory and as unsupported by the record.

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).

RECOMMENDATION: Reject first sentence as irrelevant. Reject second sentence as unsupported by the record.

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).

RECOMMENDATION: Accept sentence one. Reject sentence two as argumentative or conclusory.

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

Ex. 18).

RECOMMENDATION: Accept.

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.

RECOMMENDATION: Reject as argumentative or conclusory, as unsupported by the record, and as irrelevant to the issues of this case.

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).

RECOMMENDATION: Reject as irrelevant to the issues of this case.

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).

RECOMMENDATION: Reject as irrelevant to the issues of this case.

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).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law, is argumentative, and because Rule 25-30.036(3)(a)-(1), Florida Administrative Code, contains no such legal requirement.

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).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

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).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

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).

RECOMMENDATION: Reject because the proposed conclusion contains a factual conclusion which is unsupported by the record.

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).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

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).

- RECOMMENDATION:** Reject because the proposed conclusion does not constitute a conclusion of law.
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).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

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).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

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

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

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).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

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

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

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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. Sec. 367.045(5)(a).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

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. Sec. 367.111(1).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

14. Pasco County is not regulated by the Commission. Fla. Stat. Sec. 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).

RECOMMENDATION: Accept.

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).

RECOMMENDATION: Accept.

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).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

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.

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

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.

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

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)

RECOMMENDATION: Accept.

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.

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

21. Failure to comply with the requirements set forth in Fla. Stat. Sec. 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).

RECOMMENDATION: Accept.

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

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deficiency which justifies denial. Id.

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

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

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.



A. Linda Lake Groves System

B. Foxwood/Cypress Cove System

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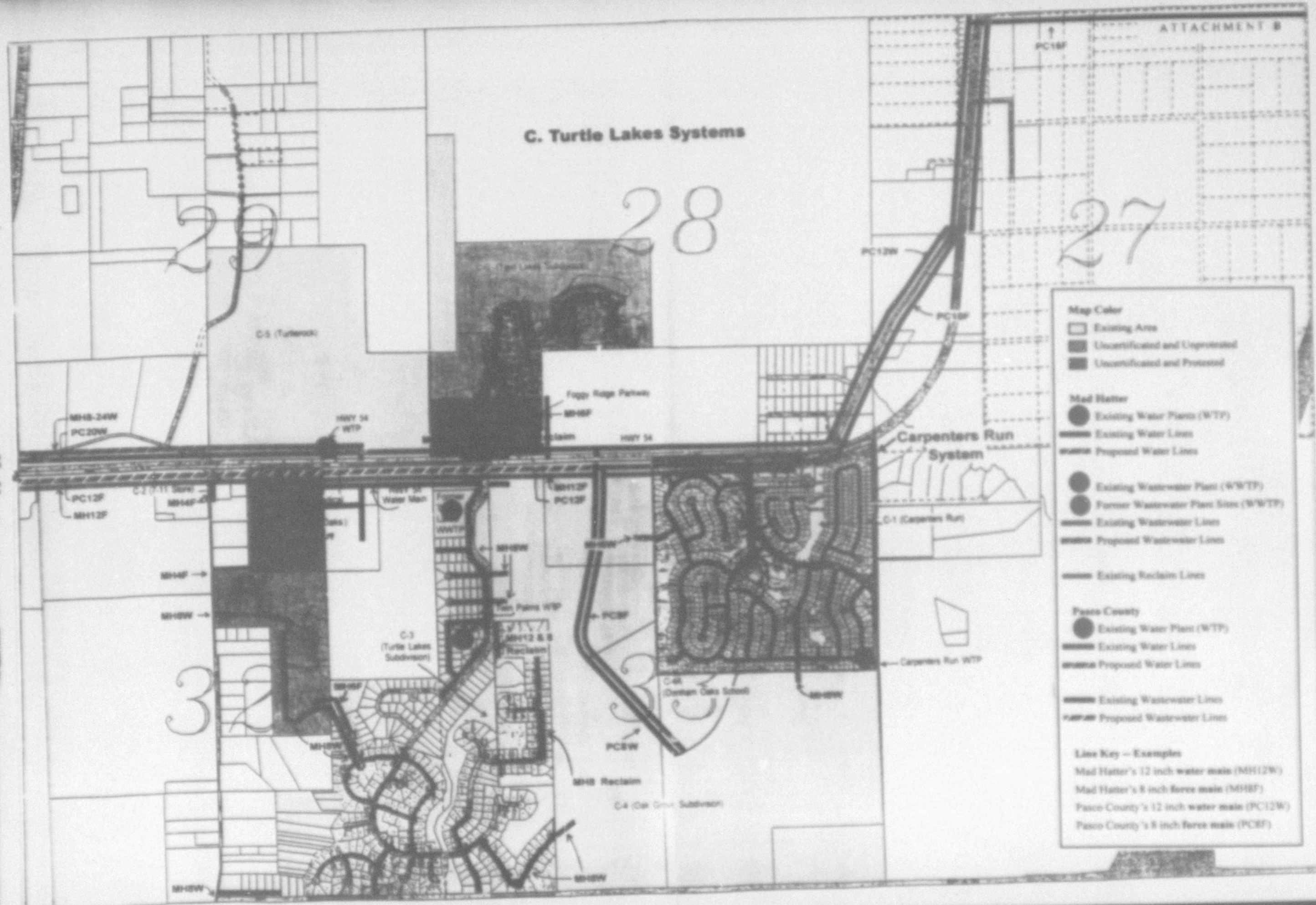
MAD HATTER UTILITY, INC.
 FLORIDA PUBLIC SERVICE COMMISSION
 CERTIFICATE NUMBER W-340 S-287

C. Turtle Lakes Systems

29

28

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ATTACHMENT C
MAD HATTER UTILITY, INC.
WATER AND WASTEWATER TERRITORY AMENDMENT
DOCKET NO. 960576-WS

LINDA LAKES GROVES SYSTEM

PARCEL A-3: WOODRUFF MOBILE HOME PARK

Township 26 South, Range 18 East
Section 26

The SE 1/4 of the SE 1/4 of the SW 1/4 except the west
345.00 feet, and the
South 200.00 feet of the NE 1/4 of the SE 1/4 of the SW
1/4 except the West 345.00 feet, in Section 26, Township
26 South, Range 18 East, Pasco County, Florida,
Less and except the South 30.00 feet thereof.

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LINDA LAKES GROVES SYSTEM

PARCEL A-4: HOLY TRINITY (LUTHERAN) CHURCH

Township 26 South, Range 18 East
Section 26

That part of the East 1/4 of the SW 1/4 of the SE 1/4;
and the

West 1/2 of the SW 1/4 of the SE 1/4 of the SE 1/4 in
Section 26, Township 26 South, Range 18 East, Pasco
County, Florida; said part being more particularly
described as follows, to wit:

Commence at the SW corner of the East 1/4 of the SW 1/4
of the SE 1/4 of Section 26, Township 26 South, Range 18
East, Pasco County, Florida; thence run

N.00°01'21"W., along the Westerly boundary of said East
1/4 of the SW 1/4 of the SE 1/4 of Section 26, for a
distance of 30.00 feet to a concrete monument being the
Point of Beginning of the herein described parcel;
continue thence

N.00°01'21"W., along said Westerly boundary for a
distance of approximately 555.00 feet to a point; thence

S.89°47'40"E., for a distance of 599.57 feet to a point
lying on the existing right of way line of Leonard Road,
as occupied; thence

S.37°57'32"W., along said existing right-of-way line as
occupied, for a distance of 209.70 feet to a point;
thence

S.39°11'56"W., continuing along said existing right-of-
way line of Leonard Road as occupied for a distance of
200.20 feet to a point; thence

S.32°02'54"W., continuing along said right of way line
for a distance of 100.32 feet to a point; thence

S.22°24'23"W., for a distance of 154.14 feet to a point;
thence

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S.66°08'18"W., for a distance of 14.96 feet to a point;
thence

N.89°39'52"W., for a distance of 217.94 feet to a
concrete monument lying on the Westerly boundary of the
East 1/4 of the SW 1/4 of the SE 1/4 of Section 26,
Township 26 South, Range 18 East, Pasco County, Florida,
said point being also the Point of Beginning.

Containing 5.00 acres more or less.

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FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-1A: T & G PROPERTIES

Township 26 South, Range 18 East
Section 36

A portion of the East 1/2 of the SE 1/4 of the SW 1/4 of said Section 36, lying East of U.S. Highway 41, being more particularly described as follows:

For a point of reference, commence at the Southeast corner of the SW 1/4 of said Section 36; run thence Northwardly along the East boundary of said SW 1/4, a distance of 373.81 feet for the Point of Beginning; continue thence

Northwardly along said East boundary of the SW 1/4, a distance of 460.37 feet; thence

Westwardly along a line parallel to the South boundary of said Section 36, a distance of 522.14 feet to a point of the Easterly right-of-way line of U.S. Highway 41; thence

S.22°58'00"E., along said Easterly right-of-way line of U.S. Highway 41, a distance of 520.00 feet; thence

N.67°02'00"E., a distance of 47.20 feet; thence

Eastwardly along a line parallel to the South boundary of said Section 36, a distance of 279.40 feet to the Point of Beginning.

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FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-20: WILLET-LINER

Township 26 South, Range 18 East
Section 36

Being that portion of the NE 1/4 of the SW 1/4 of the NW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida; lying East of U.S. Highway 41, being more fully described as follows:

Commence at the Northeast corner of the SW 1/4 of the NW 1/4 of said Section 36; thence

S.00°52'44"W., along the East line of the said SW 1/4 of the NW 1/4 of said Section 36, for a distance of 49.82 feet; thence continue

S.00°52'51"W., along the said East line, for a distance of 135.00 feet; thence

N.89°13'40"W., for a distance of 65.00 feet to the Point of Beginning; thence

S.00°52'51"W., for a distance of 100.00 feet; thence

N.89°13'40"W., for a distance of 136.08 feet; thence

S.00°52'51"W., for a distance of 6.47 feet; thence

N.89°13'40"W., for a distance of 102.00 feet to a point on the Easterly right-of-way line of U.S. Highway 41; thence

N.14°19'48"W., along the said Easterly right-of-way line, for a distance of 100.00 feet; thence

S.89°13'40"E., for a distance of 100.00 feet; thence

N.00°52'51"E., for a distance of 9.93 feet; thence

S.89°13'40"E., for a distance of 164.32 feet to the Point of Beginning.

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And

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Township 26 South, Range 18 East
Section 36

That portion of the NE 1/4 of the SW 1/4 of the NW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida, lying East of U.S. Highway 41, being more fully described as follows:

Commence at the NE corner of the SW 1/4 of the NW 1/4 of said Section 36; thence

S.00°52'44"W., along the East line of said SW 1/4 of the NW 1/4 of said Section 36, for a distance of 49.82 feet; thence continue

S.00°52'51"W., along the said East line, for a distance of 135.00 feet to the Point of Beginning; thence continue

S.00°52'51"W., for a distance of 100.00 feet; thence

N.89°13'40"W., for a distance of 65.00 feet; thence

N.00°52'51"E., for a distance of 100.00 feet; thence

S.89°13'40"E., for a distance of 65.00 feet to the Point of Beginning.

Less

Right-of-way for U.S. Highway 41, described as follows:

Township 26 South, Range 18 East
Section 36

That part of the SW 1/4 of the NW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida, being more fully described as follows:

Commence at a 4" concrete monument being the Northeast corner of the SW 1/4 of the NW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida; thence

S.00°27'26"W., along the East line of said SW 1/4 of the NW 1/4 of said Section 36, for a distance of 184.82 feet; thence

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N.89°38'23"W., parallel with the North line of said SW 1/4 of the NW 1/4 of Section 36, for a distance of 229.32 feet; thence

S.00°27'26"W., for a distance of 9.93 feet; thence

N.89°38'23"W., for a distance of 103.58 feet to the Point of Beginning and a point on the existing easterly right-of-way line of U.S. Highway 41, said point being the point of intersection with a non-tangent curve, concave easterly having a radius of 5,679.58 feet and a central angle of 01°00'38"; thence

Southerly along said easterly right-of-way and along the arc of said curve to the left for a distance of 100.18 feet, said arc subtended by a chord which bears S.15°07'16"E., for a distance of 100.17 feet to the point of intersection with a non-tangent line; thence

S.89°38'23"E., parallel with said North line of the SW 1/4 of the NW 1/4 of Section 36, for a distance of 59.52 feet to a point of intersection with a non-tangent curve, concave easterly having a radius of 6,822.50 feet and a central angle of 00°50'13"; thence

Northerly along the arc of said curve to the right for a distance of 99.67 feet to the point of intersection with a non-tangent line; thence

N.89°38'23"W., for a distance of 61.49 feet to the Point of Beginning.

Parcel contains 0.597 acres, more or less.

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FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-21: ROBCO

Township 26 South, Range 18 East
Section 36

A portion of land lying in the SE 1/4 of the SW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida, being more particularly described as follows:

Commence at the SE corner of the SE 1/4 of SW 1/4 of Section 36; thence

S.89°59'18"W., along the South boundary of said Section 36, for a distance of 50.0 feet; thence

N.00°27'41"W., along a line 50.0 feet West of and parallel to the East boundary of the SE 1/4 of the SW 1/4 of said Section 36, for a distance of 34.0 feet to a point on the Northerly right-of-way line of County Line Road said point also being the Point of Beginning; thence

S.89°59'18"W., along the said Northerly right-of-way line, for a distance of 139.38 feet to a point on the Easterly right-of-way line of U.S. Highway No. 41; thence

N.22°58'00"W., along said Easterly right-of-way line for a distance of 212.85 feet; thence

N.89°59'18"E., for a distance of 220.86 feet; thence

S.00°27'41"E., for a distance of 196.00 feet to the Point of Beginning.

Less a portion described as follows

Township 26 South, Range 18 East
Section 36

Commence at the SE corner of the SE 1/4 of SW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida; thence

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S.89°59'18"W., along the South boundary of said Section 36, a distance of 50.0 feet; thence

N.00°27'41"W., along a line 50.0 feet West of and parallel to the East boundary of the SE 1/4 of the SW 1/4 of said Section 36, for a distance of 34.0 feet to the Point of Beginning; thence continue

N.00°27'41"W., for a distance of 26.0 feet; thence

S.89°59'18"W., along a line 60.0 feet North of and parallel to the South boundary of said Section 36, for a distance of 150.19 feet to a point on the Easterly right-of-way line of U.S. Highway No. 41; thence

S.22°58'00"E., along the Easterly right-of-way of U.S. Highway No. 41; for a distance of 28.14 feet to a point 34.0 feet North of the South boundary of said Section 36; thence

N.89°59'18"E., along a line 34.0 feet North of and parallel to the South boundary of said Section 36, for a distance of 139.38 feet to the Point of Beginning.

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FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-22: LARREAU

Township 26 South, Range 18 East
Section 36

The SE 1/4 of the NE 1/4 of the SW 1/4, less the West 50 feet;

and

The SW 1/4 of the NW 1/4 of the SE 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida.

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FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-23: RUSCH PLAZA

Township 26 South, Range 18 East
Section 36

The West 515.69 feet of the North 1/2 of the South 1/2 of the North 1/2 of the SW 1/4 of the NW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida, lying East of Dale Mabry Highway extension.

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FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-24: KNIFF PROPERTY

Township 26 South, Range 18 East
Section 36

The West 3/4 of the South 1/2 of the NW 1/4 of the SW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida; and

The West 3/4 of the North 1/2 of the NW 1/4 of the SW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida, less a tract described as follows:

Beginning at a point 20 rods West of the Northeast corner of the NW 1/4 of the SW 1/4 of Section 36, Township 26 South, Range 18 East, run thence South for a distance of 40 rods; run thence

West for a distance of 320.00 feet; run thence

North for a distance of 40 rods; run thence

East, for a distance of 320.00 feet to the Point of Beginning; also

The South 1/2 of the SW 1/4 of the NW 1/4 lying West of Seaboard Air Line Railroad right-of-way, in Section 36, Township 26 South, Range 18 East, Pasco County, Florida, less a tract described as follows:

From a point on the South boundary of the SW 1/4 of the NW 1/4 of said Section 36 where said South boundary intersects the West right-of-way line of Tampa Northern Railroad (Seaboard Air Line Railroad), run West along the South boundary of said SW 1/4 of the NW 1/4 of Section 36, for a distance of 445.00 feet to a Point of Beginning; run thence

North for a distance of 330.0 feet; run thence

East to the West right-of-way line of said Seaboard Air Line Railroad; run thence

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Southeasterly along said West right-of-way line of said Seaboard Air Line Railroad to intersection with the South boundary of said SW 1/4 of the NW 1/4 of Section 36; run thence

West along the South boundary of said SW 1/4 of the NW 1/4 of Section 36, for a distance of 445.00 feet to the Point of Beginning; also less that part in right-of-way of Dale Mabry Extension.

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FOXWOOD/CYPRESS COVE SYSTEM

PARCELS B-25: ASH PROPERTY

Township 26 South, Range 19 East
Section 30

- (A) The South 400.00 feet of the NW 1/4 of the SW 1/4, less the West 15.00 feet for Public Road; and
- (B) That part of the SW 1/4 of the SW 1/4 lying North of State Road No. 54, less the West 15.0 feet for private road,
- less the East 1/2 of the SE 1/4 of the SW 1/4 of the SW 1/4, and

less that part of the West 1/2 of the SE 1/4 of the SW 1/4 of the SW 1/4, lying East of the boundary line by agreement as staked on February 27, 1962, and described in Official Record Book 130, Page 700, Public Records of Pasco County, Florida: all in Section 30, Township 26 South, Range 19 East, Pasco County, Florida;

Township 26 South, Range 18 East
Section 25

- (C) That part of the East 500.00 feet of the SE 1/4 of the SE 1/4 of Section 25 lying North of State Road No. 54, less that lying in exception described in final paragraph below:
- (D) The South 400.00 feet of the East 400.00 feet of the NE 1/4 of the SE 1/4 of Section 25, less the North 300.00 feet of the West 100.00 feet thereof, and less that part lying in exception described below:

Exception

Township 26 South, Range 18 East
Section 25

Begin at the East 1/4 corner for Section 25, Township 26

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South, Range 18 East, Pasco County, Florida; thence
S.88°00'15"W., on the East and West 1/4 line of Section
25, for a distance of 1,319.18 feet to the East 1/16
corner of Section 25; thence
S.01°54'43"E., on the East 1/4 - 1/4 line of Section 25,
for a distance of 900 feet; thence
N.88°00'15"E., for a distance of 820 feet; thence
S.01°54'43"E., for a distance of 300 feet for a Point of
Beginning; thence continue
S.01°54'43"E., for a distance of 500 feet; thence
N.88°00'15"E., for a distance of 100 feet; thence
N.01°54'43"W., for a distance of 500 feet; thence
S.88°00'15"W., for a distance of 100 feet to the Point of
Beginning.

Township 26 South, Range 19 East
Section 30

Commence at the NW corner of the South 400 feet of the NW
1/4 of the SW 1/4 of Section 30, Township 26 South, Range
19 East, Pasco County, Florida, run thence East for a
distance of 330 feet for a Point of Beginning; run thence
N.00°12'25"E., for a distance of 239 feet; run thence
S.89°24'05"E., for a distance of 95.3 feet; thence
N.00°12'25"E., for a distance of 36.0 feet; run thence
S.89°24'05"E., to a point which lies 402.0 feet West of
the East boundary of the NW 1/4 of the SW 1/4 of Section
30; run thence
S.00°27'05"W., to the North boundary of the South 400
feet of the NW 1/4 of the SW 1/4 of said Section 30; run
thence
N.89°24'05"W., along the North boundary of the South 400
feet of the NW 1/4 of the SW 1/4 of said Section 30 to

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the Point of Beginning.

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FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-26: MEADOWVIEW

Township 26 South, Range 18 East
Section 36

West 1/2 of the SW 1/4 of the SW 1/4 of Section 36,
Township 26 South, Range 18 East less the South 25 feet
for road right-of-way.

Containing 19.69 acres more or less.

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FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-27: COMO CLUB/MOSSVIEW

Township 26 South, Range 18 East
Section 35

SE 1/4 of NW 1/4;

South 1/2 of NE 1/4 of NW 1/4;

NW 1/4 of NE 1/4;

SW 1/4 of NE 1/4;

SE 1/4 of NE 1/4 and N 1/2 of NW 1/4 of SE 1/4;

NE 1/4 of NE 1/4 of SE 1/4 West of right-of-way of Dale
Mabry Highway; and

NE 1/4 of NE 1/4 West of the East Line of Lake Como, all
being in Section 35, Township 26 South, Range 18 East,
Pasco County, Florida, less road rights-of-way.

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TURTLE LAKES SYSTEM

PARCELS C-6: TWIN LAKES SUBDIVISION

Township 26 South, Range 19 East
Section 28

The NE 1/4 of the SW 1/4, and the
East 3/4 of the NW 1/4 of the SW 1/4, and the
North 17 acres of the SW 1/4 of the SW 1/4 of Section 28,
Township 26 South, Range 19 East, Pasco County, Florida.

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TURTLE LAKES SYSTEM

PARCELS C-6A: TWIN LAKES COMMERCIAL

Township 26 South, Range 19 East
Section 28

The SW 1/4 of the SW 1/4, less the North 17 acres,
Section 28, Township 26 South, Range 19 East, lying and
being in Pasco County, Florida.

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TURTLE LAKES SYSTEM

PARCEL C-7: WOODRIDGE

Township 26 South, Range 19 East
Section 32

The NW 1/4 of the SW 1/4 of the NE 1/4, less existing right-of way for Livingston Avenue; the

East 1/2 of the SW 1/4 of the NE 1/4; and the

NE 1/4 of the NW 1/4 of the SE 1/4; all lying in Section 32, Township 26 South, Range 19 East, Pasco County, Florida.

Subject to existing right-of-way of Livingston Avenue, as occupied.

Containing 39.97 acres, more or less.

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TURTLE LAKES SYSTEM

PARCEL C-8: REIBER MEDICAL PLAZA/HIGHLAND OAKS

Township 26 South, Range 19 East
Section 32

The NW 1/4 of the NE 1/4, less the West 437.50 feet thereof and less right-of-way for State Road 54, in Section 32, Township 26 South, Range 19 East, Pasco County, Florida.

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TURTLE LAKES SYSTEM

PARCEL C-9: MYRTLE LAKES BAPTIST CHURCH

Township 26 South, Range 19 East
Section 29

A parcel of land in the SW 1/4 of Section 29, Township 26 South, Range 19 East, Pasco County, Florida. Commence at the SW corner of said Section 29; thence along the West boundary of said SW 1/4 of Section 29,

N.00°51'33"E., for a distance of 50.48 feet to a point of intersection with the North right of way boundary of State Road No. 54, for a Point of Beginning; thence continue along said West boundary of the SW 1/4 of Section 29,

N.00°51'33"E., for a distance of 1,267.90 feet to the NW corner of the South 1/2 of said SW 1/4 of Section 29; thence along the North boundary of the South 1/2 of the SW 1/4 of Section 29,

S.89°17'45"E., for a distance of 450.82 feet; thence

S.00°51'33"W., for a distance of 1,266.50 feet to the North right-of-way boundary of State Road 54; thence along said North right-of-way boundary of State Road 54,

N.89°28'16"W., for a distance of 14.39 feet; thence

N.12°44'02"W., for a distance of 66.08 feet; thence

S.77°15'58"W., for a distance of 90.00 feet; thence

S.12°44'02"E., for a distance of 44.87 feet; and

N.89°28'16"W., for a distance of 343.97 feet to the Point of Beginning.

Subject to a 40 foot right-of-way by maintenance for Old State Road No. 54.

The above described parcel of land contains 13.00 acres more or less.

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TURTLE LAKES SYSTEM

PARCEL C-10: ASH PROPERTY-MYRTLE LAKES

Township 26 South, Range 19 East
Section 30

Commence at the SE section corner; thence along East boundary of Section 30, thence

N.00°25'36"E., for a distance of 50.0 feet to the North right-of-way line of State Road 54; thence along North right-of-way line

N.89°26'05"W., for a distance of 323.39 feet for a Point of Beginning; thence continue

N.89°26'05"W., for a distance of 218.10 feet to the easterly right-of-way line of proposed Collier Parkway; thence

N.44°02'36"W., for a distance of 35.60 feet; thence along the arc of a curve to the right, with a radius of 2,540.00, and a chord bearing of N.04°12'20"E., for a distance of 263.19 feet; thence

S.89°26'05"E., for a distance of 225.27 feet; thence

S.00°52'27"W., for a distance of 279.00 feet; thence along arc of curve to the left, a radius of 35.00 feet, and a chord bearing of S.07°33'00"E., for a distance of 9.08 feet to the Point of Beginning. Subject to slope easement.

And

Commence at the SE corner of Section 30; thence

N.00°14'55"W., for a distance of 50.00 feet to the North right-of-way line of State Road 54 for a Point of Beginning; thence

S.89°54'11"W., for a distance of 323.39 feet; thence along arc of curve Northeasterly 9.11 feet, with a radius of 35.0 feet, and a chord bearing of N.07°33'00"W., for

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a distance of 9.08 feet; thence
N.00°05'49"W., for a distance of 279.00 feet; thence
S.89°54'11"W., for a distance of 225.13 feet to a point
on a curve; thence 13.32 feet along arc of curve, with a
radius of 2,640.00 feet, and a chord bearing of
N.06°30'30"E., for a distance of 13.32 feet; thence
N.45°12'38"E., for a distance of 38.31 feet; thence
S.82°41'00"E., for a distance of 66.30 feet; thence
N.12°23'36"E., for a distance of 136.94 feet; thence
S.77°36'24"E., for a distance of 240.00 feet; thence
N.12°23'36"E., for a distance of 20.00 feet; thence
N.77°36'24"W., for a distance of 240.00 feet; thence
N.12°23'36"E., for a distance of 64.72 feet; thence
N.77°42'03"W., for a distance of 100.04 feet to a point
on new right-of-way line of Collier Parkway; thence for
a distance of 483.16 feet along arc of curve concave to
the East, with a radius of 2,640.00 feet, and a chord
bearing of N.17°19'41"E., for a distance of 482.49 feet;
N.45°52'15"E., for a distance of 107.02 feet; thence
S.44°05'28"E., for a distance of 160.00 feet; thence
S.79°50'41"E., for a distance of 171.14 feet; thence
S.00°14'55"W., along East line of Section 30, for a
distance of 945.62 feet to the Point of Beginning.
Subject to slope easement.

All being in Section 30, Township 26 South, Range 19
East, Pasco County, Florida.