

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 97-1481-WS

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

PASCO COUNTY'S COMMENTS TO MAD HATTER'S PETITION FOR VARIANCE FROM RULE 25-30.036(3)(d), F.A.C. OR, IN THE ALTERNATIVE, A MOTION FOR EXTENSION OF TIME

Pasco County, through its undersigned counsel, hereby responds to the petition for variance from Rule 25-30.036(3)(d), F.A.C. or, in the alternative, a motion for extension of time filed by Mad Hatter Utility, Inc. (Mad Hatter). The County requests that the Public Service Commission deny Mad Hatter's request for the following reasons:

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1. On October 1, 1997, the Commission entered an order requiring Mad Hatter to submit proof of ownership for the continued right to the use of the land upon which the Linda Lake Groves water treatment plant is located either by November 10, 1997, or 60 days from the September 9, 1997, agenda conference. (Order at p. 27). Mad Hatter filed a cross-motion for reconsideration dated October 27, 1997, in

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which it did not raise this issue. Instead, it waited until after the time for complying with the order had lapsed to file a petition for a variance or request an extension of time to comply with the requirements of Rule 25-30.036(3)(d) of the Florida Administrative Code. That rule requires Mad Hatter to provide evidence that it owns or controls the land upon which its treatment facilities are located.

2. Mad Hatter's petition is deficient in that it must state the reasons why the variance requested would serve the purposes of the underlying statute. Rule 28-104.002(2)(h). Furthermore, it does not state whether the variance requested is permanent or temporary as required by Rule 28-104.002(2)(i).

3. Furthermore, Mad Hatter has provided no reason why the Commission should grant the variance. The utility suggests that it would need to foreclose on the property beneath the water treatment plant. That option is not viable since it has no ownership interest nor recorded encumbrance such as a mortgage to the property which would give rise to a right to foreclose. However, Mad Hatter could condemn the property pursuant to Chapter 361 of the Florida Statutes or negotiate for the purchase or long-term

lease of the property. Mad Hatter apparently does not want to pay the owner of the property to acquire the interest as required by Rule 25-30.036(3)(d). It claims it does not want to do so for fear of incurring costs which it suggests would be borne by its customers.

4. Mad Hatter ignores the real problem which will occur once the owner asserts ownership rights to the property. When that event occurs, Mad Hatter, and perhaps the customers, will have to pay either to purchase the property or condemn it. In any event, Mad Hatter is only postponing the inevitable by requesting the variance. The County does not know whether the Commission would allow Mad Hatter to pass such costs along to the customers given Mad Hatter's failure to comply with the rule requirements in the past 20 years. During that time, the value of the property has undoubtedly increased. Had Mad Hatter complied with the rule when it originally applied for certificates of authorization, the value of the property presumably would have been substantially less. By its failure to comply with the rule, the costs, which may be borne by the customers, have increased. Mad Hatter should not allow that cost to

escalate more by ignoring the problem with the hope the owner will never object.

5. Mad Hatter should have raised this issue by filing a timely motion for reconsideration pursuant to Rule 25-22.061 in docket 960576-WS or raised this issue in its cross-motion for reconsideration pursuant to Rule 25-22.060. Instead, it has waited until the time for complying with the order has passed. Mad Hatter has provided no reason as to why the passage of time will cure its 20-year failure to comply with the requirements of Rule 25-30.036(3)(d). The customers whom Mad Hatter serves deserve a resolution to this problem as quickly as possible.

WHEREFORE, Pasco County requests that the Commission deny Mad Hatter's petition for variance from Rule 25-30.036(3)(d) F.A.C. or, in the alternative, for extension of time.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been served upon Blanca S. Bayo, Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399; Hans Ottinot, Florida Public Service Commission, 2540 Shumard Oak

Boulevard, Tallahassee, FL 32399, and F. Marshall Deterding,
Rose Sundstrum & Bentley, 2548 Blairstone Pines Drive,
Tallahassee, Florida 32301, by regular U.S. mail this 17th
day of December, 1997.

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

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