

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. [REDACTED] 1781-WS

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

PASCO COUNTY'S RESPONSE TO MAD HATTER'S MOTION TO STRIKE THE COUNTY'S COMMENTS TO MAD HATTER'S PETITION FOR A VARIANCE

Pasco County, through its undersigned counsel, hereby responds to the motion to strike filed by Mad Hatter Utility, Inc. (Mad Hatter) to the County's comments to Mad Hatter's petition for a variance. The Commission should deny the motion to strike for the following reasons:

1. Mad Hatter cites no authority for its contention

that Pasco County is not an "interested person" as defined Fla. Stat. §120.542(6). There are no cases interpreting Fla. Stat. §120.542(6) which would exclude the County from the definition of an "interested person." Furthermore, some of the County's residents and taxpayers are Mad Hatter's customers who may be adversely affected by the Commission granting Mad Hatter a variance and thus the County is an "interested person" entitled to comment on Mad Hatter's

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petition. In addition, §120.52 defines a "person", among other things, as "any unit of government in or outside the state." Accordingly, Pasco County is a "person" as defined by §120.52(13).

2. Pasco County is mystified by Mad Hatter's reliance on Board of County Commissioners of Metropolitan Dade County v. Wood, 662 So.2d 417 (Fla. 3d DCA 1995). That decision concerned a zoning variance. The appellate court quashed a writ of prohibition and remanded the case to the Board of County Commissioners to determine whether a community council has standing to appeal a decision by the zoning appeals board. Accordingly, Wood is not applicable.

3. Pasco County is not a "mere intermeddler" as alleged by Mad Hatter. Instead, Pasco County seeks to assert the rights of Mad Hatter's customers who may be unaware that Mad Hatter seeks a variance from this Commission's requirements which may well lead to increased rates for those customers in the future should the owner of the property beneath the Linda Lakes water treatment plant assert ownership rights. Clearly, Mad Hatter cannot continue indefinitely to use that property without the owner's permission. Eventually, Mad Hatter will be forced

to purchase the property enter into or a long-term lease as required by Rule 30.036(3)(d). Mad Hatter will then ask this Commission to pass that cost along to its customers.

4. The Commission should now require Mad Hatter to obtain the property or long-term lease in the property prior to the further increases in the cost of real property in south central Pasco County. Furthermore, the Commission should require Mad Hatter to comply with the requirements of Rule 30.036(3)(d).

5. As Pasco County meets the definition of a person as defined by Chapter 120, represents the interests of Mad Hatter's customers and is thus an "interested person", the Commission should not strike the County's comments to Mad Hatter's request for a variance.

WHEREFORE, Pasco County prays the Court will deny Mad Hatter's motion to strike its comments to Mad Hatter's request for a variance.

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 20th
day of January, 1998.

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

By: 

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

Docket No. ~~28-104.003-118~~

MAD HATTER UTILITY, INC.'S MOTION TO STRIKE PASCO COUNTY'S COMMENTS

Mad Hatter Utility, Inc. ("Utility"), by and through its undersigned attorneys, files this Motion to Strike Pasco County's Comments to its Petition for Variance, and in support thereof states:

1. Pasco County has no standing to comment upon the Utility's Petition. Rule 28-104.003(1) provides that "[a]ny interested person or other agency may submit written comments on a petition for variance . . . "

2. Pasco County is merely continuing its harassment of the Utility as it has no legitimate interest in the outcome of the Commission's decision of the Utility's position.

3. Pasco County's assertion that over time the value of the property will increase which will only cost the Utility more to acquire ignores the rights which the Utility will gain over time,

such as adverse possession or prescriptive easement. The Utility has used the property in question unimpeded since 1974 and believes that in prior proceedings the Commission has approved of the Utility's right and interest in the property in question.

4. Pasco County is nothing more than a "mere intermeddler in the administrative process." Dade County v. Wood, 662 So.2d 417 (Fla. 3d DCA 1995).

- ACK
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WHEREFORE, Mad Hatter Utility, Inc. requests the Commission issue an Order striking the comments made by Pasco County in the above-styled docket.

Respectfully submitted this
14th day of January, 1998, by:

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MARTIN S. FRIEDMAN
For the Firm
FL Bar ID No. 0199060

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by *Hand Delivery or U.S. Mail this 14th day of January, 1998.

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