

State of Florida



Public Service Commission

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COMMISSION
CLERK

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RECEIVED FPSC

DATE: AUGUST 23, 2001

TO: DIRECTOR, DIVISION OF COMMISSION CLERK AND ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (HARRIS) *son. PSL*
DIVISION OF REGULATORY OVERSIGHT (MESSER, REDEMANN, CLAPP) *PP-63M*

RE: DOCKET NO. 990988-WS - INVESTIGATION INTO THE RETENTION OF THE CERTIFICATED AREA OF MAD HATTER UTILITY, INC. LOCATED ON LAKE THOMAS AND SCHOOL ROAD IN PASCO COUNTY. COUNTY: PASCO *PR/AMA*

AGENDA: SEPTEMBER 4, 2001 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990988.RCM

CASE BACKGROUND

Mad Hatter Utility, Inc. (Mad Hatter 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. Mad Hatter owns and operates water and wastewater facilities in Pasco County, and either produces said services or contracts with the County to purchase bulk service.

On July 21, 1999, staff received a letter from Ms. Deloras Johnson, a realtor in Pasco County, asking the Commission to review Mad Hatter's "franchise." According to Ms. Johnson, Mad Hatter has made no actual or apparent efforts to provide utility service to a portion (approximately 150 acres) of Mad Hatter's certificated area. Furthermore, Ms. Johnson states that the owner of the

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unserved property has lost several opportunities to sell his property due to the unavailability of utility service.

In addition, Ms. Johnson states that Pasco County has facilities close to the property and is willing to serve the property provided the franchise rights are clarified. Lastly, Mrs. Johnson believes that developing the property will provide needed homes and enlarge the tax base of Pasco County. In response to Ms. Johnson's concerns, on August 26, 1999, staff filed a recommendation that a docket be opened for purposes of investigating the retention of the owner's property within Mad Hatter's certificated area.

At the September 7, 1999 agenda conference, the Commission deferred decision on staff's recommendation, instructing staff to clarify whether the property owner had actually applied for service from the utility, and if so, whether services had been denied. The Commission instructed staff to bring this matter back before the Commission after this additional information was obtained, at which time the Commission would determine whether or not to open an investigation.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission initiate a proceeding to investigate the retention of the certificated area of Mad Hatter Utility, Inc. located on Lake Thomas and School Road in Pasco County?

RECOMMENDATION: No. The Commission should decline to initiate a proceeding to investigate service to territory authorized in Mad Hatter Utility, Inc.'s Certificates Nos. 297-S and 340-W located on Lake Thomas and School Road in Pasco County. (HARRIS, CLAPP, REDEMANN)

STAFF ANALYSIS: As stated in the Case Background, this docket was opened with a recommendation that the Commission initiate an investigation as to whether Mad Hatter should retain a portion of

its certificated service area, or whether that area should be deleted from its certificates. After the September 7, 1999 agenda conference, staff continued to gather information to determine whether the utility was either refusing or unable to serve part of its certificated area, or whether there was a problem with the application for service. Staff contacted Ms. Johnson and the property owner's attorney several times during 1999 and 2000, and on September 3, 2000, held an informal meeting with representatives of the utility, the property owner, and staff present, in an attempt to resolve the dispute; no resolution was reached at that time.

Staff notes that the property owner had requested service from the utility by letters, dated September 28, 1999, December 22, 1999, and January 17, 2000, and attempted to provide the information required by the Rule. The property owner provided: 1. a legal description of the property; 2. a survey of the property; 3. what was termed a "development plan" from 1984; 4. information on the property zoning, density and type of use, name and address of the owner, nature of legal ownership, and an estimated date of need for service.

The utility promptly responded to the written requests from the owner with requests for specific additional information, which the utility claimed was needed to accurately evaluate the owner's request for service and provide a complete answer as required by Rule 25-30.530, Florida Administrative Code. The utility's attorney responded to the property owner's letters on October 22, 1999, January 6, 2000, and February 14, 2000, specifically noting a willingness to provide service when the additional information, including an updated development plan and preliminary plot plan, was submitted.

In January, 2001, staff sent a letter to the property owner's attorney, requesting that the property owner file an application for service which would fully comply with Rule 25-30.525, Florida Administrative Code, if the property owner was indeed interested in receiving services from Mad Hatter. The letter noted that staff did not believe the property owner had completely complied with Rule 25-30.525, Florida Administrative Code, in that the owner did not provide a current development plan or provide clarification of whether the preliminary plot plan was current or whether changes were intended to that plot plan.

On July 18 and 19, 2001, staff contacted the attorneys for both the property owner and the utility, and learned that the property owner had not provided any additional information and had not submitted a complete application for service which was in full compliance with Rule 25-30.525, Florida Administrative Code. Staff further learned that the property owner had not supplied the information specifically listed in staff's letter of January 17, 2001, including a development plan and clarification of the preliminary plot plan.

Staff informed the property owner's attorney by letter on July 26, 2001 of staff's intention to file a recommendation to close the docket on August 23, 2001, and asked the attorney to provide staff with any additional information the property owner would like staff to consider or include in the recommendation. Staff specifically suggested that any reasonable explanation for failure to comply with the January 17, 2001 letter would be considered. Since that time, the property owner's attorney has not contacted staff in any way. The utility's attorney has contacted staff during this time period, however, inquiring whether staff required any additional information or had any additional questions of the utility. As the property owner had been given approximately seven months to complete and submit this application, but has failed to do so, and has failed to respond to staff's requests for action, staff sees no reason to continue to hold open this docket.

If at some future time, the property owner does complete and submit an application for service which is in full compliance with Rule 25-30.525, Florida Administrative Code, and the utility does not comply with its responsibilities under Section 367.111, Florida Statutes, further proceedings may be warranted. These proceedings could include initiation of proceedings to delete the property in question from the utility's certificated territory.

Staff notes that Section 367.111(1), Florida Statutes, states that:

If utility service has not been provided to any part of the area which a utility is authorized to serve, whether or not there has been a demand for such service, within 5 years after the date of authorization for service to such part, such authorization may be reviewed and amended or revoked by the commission.

Staff believes this area has not been served within the past five years due to the fact there was no proper application for service. Staff notes that the utility has provided service to other areas of its territory as those areas were developed, and has repeatedly stated its willingness to provide service to the property owner at this time, upon receipt of a properly completed application for service. Staff does not believe that any statutory or policy goals would be served by initiating a full investigation or a revocation proceeding when the utility is indicating a willingness to provide service when such service is properly applied for according to procedures set out by the Commission. As the property owner has not properly followed those procedures, staff recommends that the Commission decline to initiate a proceeding to investigate service to the territory authorized in Mad Hatter Utility Inc.'s Certificates Nos. 297-S and 340-W located on Lake Thomas and School Road in Pasco County.

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ISSUE 2: Should the docket be closed?

RECOMMENDATION: Yes. Since no further action is necessary, this docket should be closed. (HARRIS)

STAFF ANALYSIS: Since no further action is necessary, this docket should be closed.