

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the retention of the certificated area of Mad Hatter Utility, Inc. located on Lake Thomas and School Road in Pasco County.

DOCKET NO. 990988-WS
ORDER NO. PSC-01-1925-FOF-WS
ISSUED: September 24, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER DECLINING TO INITIATE INVESTIGATION INTO THE RETENTION OF THE CERTIFICATED AREA OF MAD HATTER UTILITY, INC. LOCATED ON LAKE THOMAS AND SCHOOL ROAD AND CLOSING DOCKET

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 (County), and either directly provides said services or contracts with the County to purchase bulk service.

On July 21, 1999, we received a letter from Ms. Deloras Johnson, a realtor in Pasco County, asking us 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 of Mad Hatter's certificated area, including approximately 150 acres located on Lake Thomas and School Road. Furthermore, Ms. Johnson states that the owner of the unserved property has lost several opportunities to sell his property due to the unavailability of utility service.

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In addition, Ms. Johnson states that the 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 County's tax base. In response to Ms. Johnson's concerns, on August 26, 1999, our staff filed a recommendation that a docket be opened for the purposes of investigating the retention of the owner's property within Mad Hatter's certificated area.

At the September 7, 1999 agenda conference, we deferred a decision on our staff's recommendation, instructing our staff to clarify whether the property owner had actually applied for service from the utility, and if so, whether services had been denied. We instructed our staff to bring this matter back before us after this additional information was obtained, at which time we would determine whether to initiate an investigation.

INITIATION OF INVESTIGATION

After the September 7, 1999 agenda conference, our 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. Our 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 and the property owner in an attempt to resolve the dispute. No resolution was reached at that time.

We note 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 part of the information required by Rule 25-30.525, Florida Administrative Code. 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; and 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, in order for the utility to 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, our 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 the 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, our 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. Our 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.

Our staff informed the property owner's attorney by letter on July 26, 2001 of their intention to file a recommendation to close the docket on August 23, 2001, and asked the attorney to provide any additional information the property owner would like them to consider or include in the recommendation. Our 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 the staff in any way. The utility's attorney did contact our staff during that time period, however, inquiring whether the 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 our staff's requests for action, we see no reason to continue to hold open this docket or to initiate an investigation into the retention of the utility's service territory at issue.

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.

We note 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.

We find that this area has not been served within the past five years due to the fact there was no proper application for service. We note that the utility has provided service to other areas of its territory as those areas were developed, and has repeatedly indicated a willingness to serve the property at issue, upon receipt of a properly completed application for service. We do 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 our rules and procedures. Because the property owner has not properly followed those rules and procedures, we decline to initiate a proceeding to investigate service to the territory authorized in Mad Hatter's Certificates Nos. 297-S and 340-W located on Lake Thomas and School Road. Staff is directed, however, to meet with the developer to help him understand what is needed to complete the development's application process with Mad Hatter.

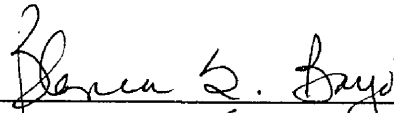
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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that an investigation into the retention of the certificated area of Mad Hatter Utility, Inc. located on Lake Thomas and School Road shall not be initiated at this time. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th day of September, 2001.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.