

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 021215-WS

PASCO COUNTY'S OBJECTION TO APPLICATION FOR AMENDMENT
OF WATER AND WASTEWATER CERTIFICATES AND
PETITION FOR ADMINISTRATIVE HEARING

Pursuant to Rule 25-30.031 of the Florida Administrative Code and Fla. Stat. §§120.54(5)(b)(4), 120.569, 120.57(1), and 367.045, Pasco County objects to the application of Mad Hatter Utility, Inc. (Mad Hatter) for amendment of water and wastewater certificates in Pasco County, Florida (the application) and requests an administrative hearing.

OBJECTION TO APPLICATION FOR AMENDMENT
OF WATER AND WASTEWATER CERTIFICATES

1. Initially, Pasco County objects to the application as the County has an existing water and wastewater system in the proposed territory. Mad Hatter seeks to add territory to its certificates which would duplicate the County's service and thus the application does not comply with Fla. Adm. Code R. 25-30.036. As the application seeks to duplicate existing water and wastewater service, it should be denied. The Florida Public Service Commission (Commission) should not permit Mad Hatter to take territory

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from the County in light of the County's present ability to serve those prospective customers.

2. In addition, Pasco County notes that Mad Hatter's Legal Notice of Application for Amendments of Certificates dated December 6, 2002 and served by U.S. mail on the County does not comply with the requirements of Fla. Stat. §367.045(2) and Fla. Admin. Code R. 25-30.030. The County has not received any maps or a legal description of the territory to which Mad Hatter seeks to extend its certificates. The County has been left to guess as to the exact territory as Mad Hatter has merely requested that the Commission extend its certificates to a portion of Section 33 and that portion of Section 33 not previously included in its service territory. That description is legally insufficient. The Commission should require Mad Hatter to specify the legal description of the property which it seeks to add to its certificates and/or to otherwise comply with the requirements of Fla. Stat. §367.045(2) and Fla. Admin. Code R. 25-30.030.

3(a). The name and address of petitioner:

Pasco County, Florida
Attn: John Gallagher, County Administrator
7530 Little Road
New Port Richey, Florida 34656

3(b). Notices and communications with respect to this docket should be addressed to:

Marion Hale, Esq.
Johnson, Blakely, Pope, Bokor
Ruppel & Burns, P.A.
P.O. Box 1368
Clearwater, Florida 34617

Copy to:
Robert Sumner, Esq.
Pasco County Attorney's Office
7530 Little Road
New Port Richey, Florida 34656

4. Pasco County is a duly organized political subdivision of the State of Florida which provides potable water service and wastewater treatment service to customers residing within the County's limits, including the territory which Mad Hatter has requested permission to serve.

5. On February 11, 1992, Pasco County and Mad Hatter entered into a Bulk Wastewater Treatment Agreement (the 1992 agreement). The 1992 agreement requires the County to treat up to 350,000 gallons per day (GPD). Furthermore, if capacity is available at the County's wastewater treatment facilities, as determined by the County, the County may treat wastewater from Mad Hatter in excess of 350,000 GPD.

6. The 1992 agreement also provides:

The County shall not be obligated under the terms of this Agreement to treat additional wastewater from Mad Hatter from areas outside of its certificated area or areas which are not presently served by Mad Hatter unless the County issues written notification that it does not object to

such additional service. Mad Hatter's service area is more specifically identified on Exhibit 3 attached hereto and incorporated herein by reference.

Section IV(C) of the 1992 agreement.

7. Thus, Pasco County only has to provide wastewater treatment for up to 350,000 GPD and only to those areas identified on Exhibit 3 to the 1992 agreement. That area described on Exhibit 3 to the 1992 agreement does not include the areas to which Mad Hatter now seeks to extend its PSC certificated territory. Thus, the County has no obligation to treat wastewater from the parcels which Mad Hatter seeks to serve. Mad Hatter has no wastewater treatment facilities as they were shut down after repeated violations of environmental regulations as determined by the then Florida Department of Environmental Regulation (DER). In its application, Mad Hatter contends that it will send the wastewater to the County for treatment. The County will not treat it. Mad Hatter will be forced to find another source for treatment.

8. Mad Hatter does not have the capacity to provide wastewater treatment services to the areas requested as Mad Hatter's annual average wastewater treated by Pasco County is 348,000 GPD. An additional 150,000 GPD of wastewater treatment will be delivered by Mad Hatter to Pasco County when the customers to whom Mad Hatter has agreed to provide

service are connected to the County's system. Once those connections have been completed, Mad Hatter will far exceed the 350,000 GPD limit.

9. There is insufficient unused and uncommitted capacity at the County's wastewater treatment facility to accept additional wastewater from Mad Hatter. Mad Hatter's wastewater is currently treated at the Wesley Center subregional wastewater treatment plant which has a permitted treatment capacity of 3 million GPD. The outstanding committed capacity for the Wesley Center service area is currently 3,963,000 million GPD. In any event, the County elects not to treat Mad Hatter's wastewater as it is not legally obligated to do so.

10 Pasco County objects to any extension of Mad Hatter's PSC certificated territory as Mad Hatter does not have the capacity to treat the wastewater as required by Fla. Admin. Code R. 25-30.036(3)(j). Mad Hatter voluntarily relinquished its wastewater treatment permit pursuant to a Consent Order due to Mad Hatter's unpermitted dumping of wastewater into the public waterways of Pasco County.

11. In its application, Mad Hatter attempts to leave the Commission with the impression that the parcels it seeks to serve are subject to the injunction entered by the Federal Court in the litigation Mad Hatter initiated against the County. That is not accurate. The injunction prohibits

the County from providing service within the Oak Grove PUD. The territory which Mad Hatter seeks to add to its certificates is not within the Oak Grove PUD. The County has not been enjoined from providing service and could not be as the parcels are not within Mad Hatter's certificated territory.

12. Mad Hatter erroneously contends that the land it seeks to add "transverses" a portion of Section 33 and "is the only portion of the Oak Grove development not currently within the certificated service territory of MHU." (Mad Hatter's application at pp. 2-3). The parcels do not transverse Section 33 and are not within the Oak Grove development. They are completely independent of the development and were not included in the PUD by the developer.

13. Mad Hatter alleges that it is cost effective to permit it to provide service. It fails to note that it has not bothered to construct gravity lines and a lift station from the parcels to its force main. Mad Hatter misrepresents the developers' proposals by claiming that they can connect to Mad Hatter's collection lines without a lift station. The plans submitted by both developers show their engineers have designed lift stations to pump the wastewater to a force main. Thus, what Mad Hatter argues is

cost prohibitive is actually included in the developers' plans.

14. Furthermore, the County's force main is closer to the proposed lift station and thus it is more cost effective for the developers to connect to the County's wastewater system.

15. It is also more cost effective for the County to provide water service. The County has water mains along the southern right of way of State Road 54 immediately adjacent to the parcels which Mad Hatter seeks to add to its territory. Mad Hatter's proposal calls for the utility to run its water lines beneath Oak Grove Boulevard which would require a jack and bore, a far higher cost which will be borne by the developers. Mad Hatter has a water main along the north side of State Road 54, but it would be cost prohibitive to jack and bore beneath that divided 4-lane highway to provide water to the site.

16. Thus, the County's connection points for both water and sewer are closer than Mad Hatter's and it is in the public interest to have the County provide service as it can do so at a far lower cost. Furthermore, the application seeks to duplicate existing service.

17. Mad Hatter argues that the existing water and wastewater systems will have to be reconfigured if the Commission does not extend its territory. The only

reconfiguration will be in the plans submitted by the developers who should not have designed their developments to connect to Mad Hatter as they are not within Mad Hatter's certificated territory. Mad Hatter cannot legally serve outside its territory. The reconfiguration is necessitated only by Mad Hatter's attempt to illegally provide service. See Fla. Stat. §367.045(2).

18. Mad Hatter also erroneously claims that it currently provides service to all the areas surrounding the parcels. It does not. It does not serve the area along the north right-of-way of State Road 54.

19. As outlined above, Pasco County is the utility best suited to serve the areas described above.

PETITION FOR ADMINISTRATIVE HEARING

Pursuant to Fla. Stat. §120.569, §120.57 and §367.045(4), Pasco County requests a hearing on its objection. The County incorporates herein paragraphs 1 through 19.

20. Pasco County's substantial interests are subject to determination in this proceeding as it has entered into an agreement with Mad Hatter which may be influenced by this Commission's decision. Pasco County is the better utility to provide service. Pasco County's substantial interests are subject to determination in this proceeding as 1) its citizens are customers of Mad Hatter and some of those

citizens have been subjected to Mad Hatter's violation of environmental laws when it operated the defective percolation ponds, 2) its citizens are the prospective customers who will be forced to accept service from Mad Hatter and forced to pay the cost of Mad Hatter providing that service if the application is granted, 3) the Commission's decision will affect the amount of wastewater Mad Hatter sends to the County for treatment, and 4) the decision will determine whether the County, which is best able to serve, will lose customers to a private utility which cannot provide the service as cost effectively.

21. The following issues of material facts are in dispute in this proceeding:

- a. Whether Mad Hatter may exceed its 350,000 GPD cap in the parties' 1992 agreement;
- b. Whether the County has to treat wastewater from Mad Hatter which comes from areas outside the geographic scope of the parties' agreement;
- c. Whether Mad Hatter has the ability to treat wastewater independent of Pasco County, and
- d. Whether Mad Hatter or Pasco County is the utility best suited to serve the area in light of the fact that the County has existing

service and that its service is more cost effective.

22. Pasco County reserves the right to raise additional issues or dispute any issues of material fact which develop during the course of this proceeding.

23. Pasco County alleges as a concise statement of the ultimate facts that Mad Hatter does not have the present ability to provide for the treatment of additional wastewater and that expansion of its PSC certificated area is not in the public interest.

24. The following statutes and rules entitled Pasco County to relief: Chapters 367 and 120 of the Florida Statutes, Rule 25-22, 25-30 of the Florida Administrative Code. Pasco County reserves the right to rely on additional statutory and regulatory authorities.

WHEREFORE, Pasco County requests a hearing pursuant to Fla. Stat. §§120.54(5)(b)(4), 120.569, 120.57(1), and §§367.045 and denial of Mad Hatter's application. The only document that was served on the County was the Legal Notice of Application for Amendment of Certificates, and as noted above, Mad Hatter does not comply with the requirements of Fla. Stat. §367.045(2) and Fla. Admin. Code R. 25-30.030.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and seven copies hereof have been served by Federal Express upon Director,

Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0850 and one copy upon F. Marshall Deterding, Rose Sundstrum & Bentley, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301 this 3rd day of January, 2003.

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

By: 

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