

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for amendment of )  
Certificates Nos. 340-W and 397-S to ) Docket No. 021215-WS  
add territory in Pasco County by )  
MAD HATTER UTILITY, INC. )  
\_\_\_\_\_)

RESPONSE TO PASCO COUNTY'S RESPONSE  
TO PASCO COUNTY'S MOTION TO COMPEL

Mad Hatter Utility, Inc. ("Mad Hatter"), by and through its undersigned attorneys, hereby files its Response to Pasco County's Motion to Compel and would state and allege as follows:

1. Parties in an administrative proceeding may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.40, Fla.R.Civ.P., the same rules which are used in Florida circuit courts. See Rule 28-106.206, F.A.C. If the County's Motion had been filed in Circuit Court, it would be sanctionable.<sup>1</sup>

2. While it is unclear what the County's Motion is, it certainly is not a "Motion to Compel Discovery". It is rather, apparently, a request that the Commission issue an order enforcing a particular desire of counsel for the County which is not required by any facet of the civil rules.

3. The civil rules provide that a party submitting a request for production may move for an order under Rule 1.380 concerning any objection, failure to respond to the request, or any part of it, or failure to permit inspection as requested. **None of these situations**

<sup>1</sup>Mad Hatter is not seeking sanctions for the County's filing of its Motion to Compel.

**apply.** Mad Hatter has followed the procedures in Rule 1.350 and has stated that the documents are available for inspection and copying unless otherwise objected to.<sup>2</sup> The letters attached to Pasco County's Motion to Compel reveal on their face that Pasco County has not moved for an order concerning any objection, **failure to respond to the request**, or **failure to permit inspection**. Rather, Pasco County is apparently complaining that Mad Hatter has not afforded it the courtesy of putting the documents out on a table, counting their pages, and relaying the information to Pasco County. Apparently, the real desire of the County through its Motion is that the Commission become the "courtesy police" with regard to discovery requests.<sup>3</sup> The Florida Rules of Civil Procedure were drafted by individuals who are ostensibly wiser than the undersigned and have been effectively and successfully applied in an untold number of thousands of judicial and quasi judicial proceedings. Mad Hatter has done nothing to violate the Florida Rules of Civil Procedure. The two letters attached by the County to its Motion request that Mad Hatter do something it is not required to do by the Florida Rules of Civil Procedure.

4. Rule 28-106.204(3), F.A.C., requires that motions shall include a statement that the movant has conferred with all other

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<sup>2</sup>Pasco County apparently has no problem with any outstanding objections, since they are not the subject of its Motion to Compel.

<sup>3</sup>This does not mean that Mad Hatter in any way is acknowledging that it has not afforded all due courtesy to counsel for Pasco County. Rather than get into a tit for tat in this Motion, which would be an even greater waste of time than the Motion itself, the undersigned would merely state that the Prehearing Officer should consider that two letters, read in a vacuum, do not tell a story in and of themselves.

parties of record and shall state as to each party whether the party has any objection to the Motion. Pasco County has failed to confer regarding its Motion to Compel Discovery as required by the rule. Pasco County's letters, the most recent of which was written on October 13, 2003, which request that Mad Hatter do something **not** required by the civil or administrative code rules, can hardly be claimed to be a substitute for this conference, which **is** required by the applicable administrative code rules.

5. Pasco County's statement in paragraph 6 of its Motion that it has attempted to resolve "this discovery dispute" are false because **there is no discovery dispute**. The documents are exactly where they should be and are available, exactly as they should be, pursuant to the Florida Rules of Civil Procedure.

6. Despite the fact that Pasco County has wasted everyone's time by filing this Motion and that Mad Hatter is under no requirement to do so, Mad Hatter would like to take this opportunity to represent the following:

The documents in their entirety, other than some engineering-sized maps, are less than a banker's box.

7. The undersigned takes the requirements of the Florida Rules of Civil Procedure very seriously and would take a motion alleging a breach of those rules very seriously. However, Pasco County's Motion makes no such allegation and in fact on its very face reveals that it is seeking an order from this Commission compelling Mad Hatter to do something Mad Hatter has never, in any way shape or form, refused to do. The relief requested in the

County's Motion is exactly what Mad Hatter has been willing to do and is willing to do: "to produce all requested responsive records". The letters which Pasco County has attached to its Motion do not support the Motion and in fact impeach the propriety of the Motion.

8. It is hoped that Pasco County will withdraw its Motion so that Staff Counsel's time will not be wasted and so that the Prehearing Officer will never have to bring his or her attention to these matters. The documents are available. They are as described above and can be copied and sent to counsel for the County at cost or they can be inspected at the location where they are kept in the ordinary course of business upon some reasonable notice and at that point any selected documents can be copied and forwarded to the County at cost. The choice is, and always has been, up to the County. It is a certainty that given the Commission's usual time frames for issuance of an Order that Pasco County can obtain these documents before any such Order on the County's "motion" can be issued.

WHEREFORE, and in consideration of the above, Mad Hatter respectfully requests that the Prehearing Officer deny Pasco County's Motion to Compel Discovery.

Respectfully submitted this 23rd  
day of February, 2004 by:

ROSE, SUNDSTROM & BENTLEY  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301  
(850) 877-6555


By:   
John L. Wharton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was provided via U.S. Mail and facsimile this 23rd day of February, 2004, to:

Jennifer Rodan, Esq.  
Florida Public Service Commission  
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Tallahassee, FL 32399

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JOHN L. WHARTON

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