

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.)

MAD HATTER'S THIRD MOTION FOR CONTINUANCE

Mad Hatter Utility, Inc. ("Mad Hatter"), by and through its undersigned attorneys, hereby **files this** Third Motion for Continuance and would state and allege as follows:

1. Mad Hatter's request for an extension of its certificated service territory necessarily involves **the provision of bulk** wastewater services to Mad Hatter from the County. In the present action, the County is maintaining that Mad Hatter does not have wastewater capacity to serve the areas for which it has requested an **extension of service**. Mad Hatter has long contended that it is the obligation of the County to provide, through the current bulk agreement by which Mad Hatter sends its wastewater to Pasco County for treatment and disposal, all of the bulk wastewater service necessary to provide service to Mad Hatter's existing and any extension areas.

2. Mad Hatter had sought clarification of the Federal Court's previous orders and directives such that **Mad Hatter's** position in this proceeding would be made clear and such that the County's position in this proceeding (that it does not have to provide the capacity to Mad Hatter to serve portions of the Oak

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Grove development outside its PUD) would be established as erroneous. The Federal Court has issued its Order dated January 13, 2005 wherein the Court declined to interpret that agreement beyond its previous injunction which:

"...was intended only to ensure Plaintiff's sufficient wastewater treatment capacity (in whatever amount necessary) to meet the needs of the Oak Grove PUD and school outside the PUD the 1992 Agreement and any others reached between the parties is controlling. As the quote has previously noted, the County remains under continuing duty to act in good faith toward the Plaintiff in administering their agreements (as well as in compliance with the injunction). Otherwise, the motion raised is in no circumstances requiring or warranting modification or enforcement of the injunction at this time." (January 13, 2005 Federal Court Order at Page 12)

3. As a result of the Federal Court's recent action, the Utility must obtain clarification from a court of competent jurisdiction as to an interpretation of the County's obligation under the 1992 Bulk Wastewater Treatment Agreement in order to resolve issues relevant not only to the extension of service territory in this proceeding but also all other future extension of service territory by Mad Hatter for which County bulk service is required.

Docket No. 041342-WU

4. While this docket involves only water service with approximately 3.5 ERCs, as a result of the County's timely objection

to this Application that extension involves the same parties. While the issues may vary, moving forward to hearing on that case alone would be inefficient and extremely costly for the small areas involved and as such any continuance of the larger extension case in Docket No. 021215-WU should also result in a continuance of the hearing and other controlling dates in this docket as well.

Settlement Discussions

5. Both Mad Hatter and the County Protestant have had recent discussions concerning potential settlement of both of these cases. While those discussions continue, and will continue in the coming weeks and months, Mad Hatter believes that interpretation of the 1992 Agreement between Mad Hatter and the County must be obtained once and for all prior to proceeding with both these extension applications and future extension applications which will likely involve similar issues.

Conclusion

6. In order to resolve the issues that exist in Docket No. 021215-WS, and to allow for the efficient processing of both of the extension applications in Docket No. 021215-WU and 041342-WU, Mad Hatter believes that it must seek an interpretation of the 1992 Bulk Agreement as a prerequisite to the Commission considering final action in both of those dockets.

7. Mad Hatter will file, within the next two weeks, an action in the form of a Request for Declaratory Statement, or other similar request, in the appropriate courts with jurisdiction over Pasco County and Mad Hatter in order to obtain a ruling once and for all concerning an appropriate interpretation of the 1992 Agreement and Mad Hatter's right to additional bulk wastewater service thereunder. Until such time as that ruling is achieved the Commission does not have the information necessary to appropriately rule on the extension of service territory requested by Mad Hatter.

8. Mad Hatter will file within the next two weeks an appropriate pleading with the appropriate courts which will request an interpretation of the 1992 Agreement that when ruled upon will provide substantial clarification to the PSC and have substantial bearing on Docket No. 021215-WS and any future extensions of the service territory of Mad Hatter involving the provision of wastewater service.

9. Counsel for Mad Hatter has consulted with counsel for the County and Counsel for the Commission Staff regarding this Motion and represents that while the counsel for the County does not agree with Mad Hatter's interpretation of the Federal Court Order as it relates to the 1992 Agreement, or some of the other positions of Mad Hatter as asserted herein, counsel for the County does not oppose this continuance. Counsel for the Commission Staff also does not oppose this continuance.

WHEREFORE, Mad Hatter Utility, Inc. requests that the Florida Public Service Commission grant a continuance of the hearing and other matters currently scheduled in Docket Nos. 021215-WU and 041342-WU, based upon the facts as outlined above, for a period of at least six months to allow local courts to interpret the provisions of the 1992 Bulk Agreement and to promote judicial economy in these two and all future wastewater extension applications which are currently pending or which Mad Hatter may file.

Respectfully submitted this ^{28th}
day of February, 2005 by:

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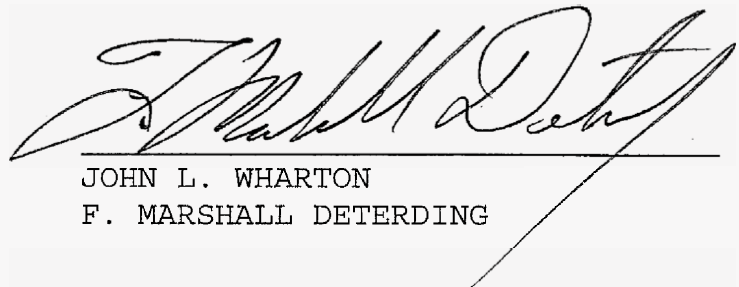
John L. Wharton
F. Marshall Deterding

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was provided via hand delivery (*) or facsimile (**) and U.S. Mail this 28th day of February, 2005, to:

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