

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for amendment of
Certificates Nos. 340-W and 297-S to add
territory in Pasco County by Mad Hatter
Utility, Inc.

DOCKET NO. 021215-WS

In re: Application for amendment of Certificate
No. 340-W to add territory in Pasco County by
Mad Hatter Utility, Inc.

DOCKET NO. 041342-WU
ORDER NO. PSC-05-0942-PCO-WS
ISSUED: September 26, 2005

ORDER HOLDING DOCKETS IN ABEYANCE

By Order No. PSC-03-0192-PCO-WS, issued February 7, 2003, a procedural schedule was established setting forth the controlling dates for Docket No. 021215-WS. Since then, several orders were issued revising the schedule, in part in response to several motions for continuance filed by the utility.¹

On September 15, 2005, Mad Hatter filed a Fourth Motion for Continuance (Motion). In support of its Motion, Mad Hatter states that its request for an extension of its certificated service territory necessarily involves the provision of bulk wastewater service from Pasco County (the County). Since the utility's 1992 Bulk Wastewater Treatment Agreement (Agreement) with the County is at issue in this proceeding, Mad Hatter states that it sought clarification of the Federal Court's prior orders and directives such that Mad Hatter's position in this proceeding would be made clear. Mad Hatter states that the Federal Court issued an Order in Case No. 8:94-cv-1473-T-TBM on January 13, 2005, declining to interpret the Agreement beyond its previous injunction. According to Mad Hatter, it must now obtain clarification from a court of competent jurisdiction as to the interpretation of the County's obligation to provide bulk wastewater service under the Agreement. Mad Hatter states that it recently filed a Request for Declaratory Statement in Circuit Court in Case No. 51-2005-CA-2416ES to obtain a ruling concerning the appropriate interpretation of the Agreement. Mad Hatter contends that until such time as that ruling is achieved, the Commission does not have the information necessary to rule on its requested extension of service territory. Mad Hatter asserts that interpretation of the Agreement must be obtained prior to proceeding with this docket, as well as future certificate extension applications which will likely involve similar issues. In addition, Mad Hatter states that Docket No. 041342-WU involves extension of water service to approximately 3.5 ERCs and involves the same parties. According to Mad Hatter, while the issues may vary, proceeding to hearing on Docket No. 041342-WU alone would be inefficient and extremely costly for the small areas involved. Therefore, Mad Hatter contends that any continuance of the larger territory extension

¹ Order No. PSC-03-0233-PCO-WS, issued February 19, 2003; Order No. PSC-03-0841-PCO-WS, issued July 21, 2003; Order No. PSC-04-0299-PCO-WS, issued March 17, 2004; Order No. PSC-04-0698-PCO-WS, issued July 19, 2004; and Order No. PSC-05-0256-PCO-WS, issued March 7, 2005.

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case in Docket No. 021215-WS should also result in a continuance of the hearing and other controlling dates in Docket No. 041342-WU as well.


On September 23, 2005, the County filed a Response in opposition to Mad Hatter's Motion. The County states that the Commission has granted three continuances while Mad Hatter was seeking the Federal Court ruling on the Agreement. The County states that Mad Hatter now contends it needs a ruling by the state court addressing the same issue which the Federal Court has already rejected. The County contends that the Commission should not rely on the new action as a basis to further postpone the hearing. The County asserts that the customers in Mad Hatter's requested extension of service territory deserve a ruling on the pending applications. The County states that since the original application was filed, much of the land which Mad Hatter requested to add to its service territory has been developed and that the County provides services to those customers as they are not within Mad Hatter's certificated territory. The County contends that those customers have the right to know that they will not be disconnected from their utility provider and forced to accept service from Mad Hatter.

Based on the pleadings of the parties, I find that Mad Hatter's request is reasonable. The interpretation of the 1992 Bulk Wastewater Treatment Agreement is a matter to be resolved in state court and resolution of the disputed Agreement may prove dispositive as to some of the issues pending before this Commission. However, rather than setting new hearing dates, the dockets shall be held in abeyance until such time that the parties have exhausted the available remedies in state court.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the dockets shall be held in abeyance.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 26th day of September, 2005.


J. TERRY DEASON
Commissioner and Prehearing Officer

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.