

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Mad Hatter Utility, Inc. in Pasco County for violation of Order No. PSC-93-0295-FOF-WS.

DOCKET NO. 961471-WS
ORDER NO. PSC-97-1233-AS-WS
ISSUED: 10/13/97

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER APPROVING SETTLEMENT
OF SHOW CAUSE PROCEEDING

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING SETTLEMENT OF LIMITED PROCEEDING

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein regarding acceptance of the settlement of the limited proceeding portion of this matter is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

Mad Hatter Utility, Inc., (MHU or utility) is a Class B utility located in Lutz, Florida. The utility is located in the Northern Tampa Bay Water-Use Caution Area, as designated by the Southwest Florida Water Management District. MHU owns and operates water and wastewater systems in three separate communities: Linda Lakes, Foxwood, and Turtle Lakes. According to MHU's 1996 annual

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ORDER NO. PSC-97-1233-AS-WS
DOCKET NO. 961471-WS
PAGE 2

report, MHU serves 1,977 water customers and 1,895 wastewater customers.

MHU's last rate case was finalized by Order No. PSC-93-0295-FOF-WS, issued February 24, 1993, in Docket No. 910637-WS. In that Order, this Commission recognized the loss associated with MHU's abandonment of the Foxwood and Turtle Lakes wastewater plants, including land, and allowed recovery of the loss in rates over a period of eight years. The Order further required the utility to report to this Commission any future sale of this abandoned land and any proposed rate reduction resulting therefrom.

In November, 1996, we received information which indicated that this land had been sold; however, MHU had not reported any sale of the land to this Commission pursuant to Order No. PSC-93-0295-FOF-WS. By Order No. PSC-97-0140-FOF-WS, issued February 11, 1997, we ordered MHU to show cause in writing why it should not be fined \$5,000 for failing to report the sale of the land and initiated a limited proceeding to address any possible wastewater rate reduction. On March 3, 1997, the utility filed its response to the show cause order alleging that no sale by the utility ever occurred and, therefore, the utility had no duty under the Order to report to the Commission the land transaction at issue here.

By Order No. PSC-97-0790-FOF-WS, issued on July 2, 1997, we consolidated Dockets Nos. 961471-WS and 970125-WS into a single proceeding for hearing. On August 5, 1997, MHU filed a Motion to Establish Procedure. On August 6, 1997, the utility submitted an offer of settlement. By Order No. PSC-97-0986-PCO-WS, issued August 20, 1997, these proceedings were suspended pending our review of the utility's settlement proposal.

Limited Proceeding

As stated earlier, by Order No. PSC-93-0295-FOF-WS, this Commission recognized the loss associated with the abandonment of the Foxwood and Turtle Lakes plants, including the land, and allowed MHU to recover this loss through its rates over a period of eight years. That loss is still being recovered in current wastewater rates.

MHU's offer of settlement for the limited proceeding contains a proposed revenue and rate reduction and schedules which support the calculation. In its offer of settlement, the utility recognizes our concern that the liens which render the utility unable to dispose of the land for any gain should never have been allowed to attach to the percolation pond land. However, the

utility pointed out that the loan transaction resulting in the transfer of this land to the utility, which was never fully documented, was negotiated and finalized almost exclusively by the then primary shareholders of the utility who are now long-gone. The utility further states that the present shareholders and management, Mr. and Mrs. DeLucenay, had been attempting to straighten out the problems that arose under prior majority shareholders. The utility was also aware of our view that this was a matter within management's control, and management, whether current or prior, should bear the responsibility for these problems rather than the utility's customers. The utility has prepared a calculation of the proforma net gain on the sale of the land as though the utility were able to sell it at the price that the shareholders were ultimately able to dispose of the property.

In addition, the utility also recognizes our concern that the utility had already received reimbursement for a portion of its basis in this land through the amortization of the loss on the land in the utility's last rate case order. The utility proposes to amortize both the gain that the utility would have recognized, the recovery of loss that the utility has achieved to date through rates, and the amount contained within the current rates for recovery of the loss. The combination of those three amortized over an eight-year period results in an annual revenue reduction of \$22,453. The detailed calculation of the revenue and rate reduction for the utility's Foxwood and Turtle Lakes wastewater systems is shown in the attached schedules. The utility proposes, in an attempt to settle this matter short of hearing, to make that rate reduction on a going forward basis.

The utility believes that its offer of settlement is in line with our concerns and is reflective of our perspective on this matter. However, the utility maintained its position that the gain on the sale of this land could not have accrued to the utility, nor can it be booked as such. Therefore, the utility contends that this Commission cannot, in anyway, require a change in the accounting treatment of the disposition of this land as it would reinstate the liens and eliminate any benefit to anyone. Further, the utility does not believe that the gain achieved on the land should be passed on to the customers. Finally, the utility alleges that the proposed changes will affect its earnings and will require the utility to consider seeking general rate relief in the near future.

We have reviewed the entire offer of settlement as filed by the utility. The utility's calculation of the net proforma gain on the sale of the land and the total annual revenue reduction is shown in Schedule No. 1 of the attachment. The sales price of the

land to VanDorsten Corp., Inc., is \$195,000. By Order No. PSC-93-0295-FOF-WS, this Commission determined that the total loss on abandonment of land was \$83,021, with an annual amortization of \$10,377 over eight years. Since the amortization of the loss began in March, 1993, the unamortized loss on this land through July 31, 1997 is \$30,271. The proforma gain is reduced by income tax expense of \$53,411 and other closing expenses of \$22,791 associated with the sale. Netting all of these items results in a proforma gain of \$88,527. The proforma gain is amortized over eight years, consistent with the loss amortization period, resulting in an annual amortization of \$11,066. Adding the \$10,377 for the loss on abandonment of the land results in an annual gain of \$21,433 to be recovered by the customers for eight years. The annual revenue impact, including gross-up for regulatory assessment fees, is \$22,453. The utility then calculated the percentage decrease in rates to be 2.83% by comparing the annual revenue reduction with the utility's annualized revenue based on the rates approved by Order No. PSC-97-0681-FOF-SU. These rates, effective July 14, 1997, incorporate a pass-through rate reduction resulting from the reduction in purchased wastewater costs from Pasco County. The utility calculated its proposed rates by applying the 2.83% rate reduction across the board to the existing rates. The details of these calculations are shown on Schedules Nos. 2 and 3.

We believe that the utility's settlement proposal reflects our concerns and position regarding the regulatory recognition of a gain on the sale of the percolation pond land. We believe that any gain realized through the sale of the percolation pond land should be passed on to the utility customers who have been paying the loss of abandonment, including the land, through the current rates. This is consistent with the utility's last rate case order.

Based upon our review, the utility's proposed revenue and rate reduction is appropriately calculated and supported. Based on the above, we find it appropriate to accept the utility's offer of settlement in the limited proceeding.

The utility shall file revised tariff sheets, along with a proposed customer notice reflecting the appropriate rates and the reason for the reduction. The rates shall be effective for service rendered as of the stamped approval date on the tariff sheets, provided the customers have received notice. The tariff sheets shall be approved administratively upon our staff's verification that the tariffs are consistent with our decision and that the customer notice is adequate. The utility shall provide proof of the date notice was given within 10 days after the date of the notice.

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If the effective date of the new rates falls within a regular billing cycle, the initial bills at the new rates may be prorated. The old charge shall be prorated based on the number of days in the billing cycle before the effective date of the new rates. The new charge shall be prorated based on the number of days in the billing cycle on or after the effective date of the new rates. In no event shall the rates be effective for service rendered prior to the stamped approval date.

Show Cause

As stated earlier, by Order No. PSC-97-0140-FOF-WS, we ordered MHU to show cause in writing why it should not be fined \$5,000 for failing to report the sale of the Foxwood and Turtle Lakes land to this Commission. On March 3, 1997, the utility filed its response to the show cause order alleging that no sale by the utility ever occurred because the land had been foreclosed on by Mr. Larry DeLucenay, President and shareholder of MHU, and, therefore, the utility had no duty under the Order to report to the Commission the latter sale of that land by Mr. DeLucenay.

On August 6, 1997, MHU filed an offer of settlement in the above-referenced dockets. In its offer, the utility maintains that it has not violated Order No. PSC-93-0295-FOF-WS. The utility states that it did not report the transaction because it did not constitute a sale and because the utility did not and could not achieve any gain under the transaction. The utility further states that it would be willing to pay a \$1,000 fine in settlement of this matter under the following circumstances: the order in this matter will reflect that this is in fact a settlement and that the utility admits no guilt and that the Commission makes no finding of guilt or innocence, but rather the parties agree to settle this and the limited proceeding in combination.

Order No. PSC-93-0295-FOF-WS required the utility to report to this Commission any future sale of the Foxwood and Turtle Lakes abandoned land and any proposed rate reduction resulting therefrom. We believe that in light of the utility's offer with regards to the limited proceeding portion of this matter, the utility's offer will accomplish the same end result which the Order's language was intended to achieve. Therefore, we find that the settlement amount is reasonable and find it appropriate to accept the utility's offer of settlement. The utility shall remit the \$1,000 in settlement within 10 days of the date of this Order. Upon receipt, the \$1,000 payment in settlement shall be forwarded to the Office of the

ORDER NO. PSC-97-1233-AS-WS
DOCKET NO. 961471-WS
PAGE 6

Comptroller for deposit in the State of Florida General Revenue Fund, pursuant to Section 367.161, Florida Statutes.

Closing of Docket

Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, and upon verification that the utility has remitted the \$1,000 fine and has reduced its rates pursuant to its settlement offer, and upon the utility's filing of and our staff's approval of the proposed customer notice and the revised tariff sheets, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Mad Hatter Utility Inc.'s offer of settlement in the limited proceeding is hereby accepted. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained in the schedules attached hereto are incorporated herein by reference. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that Mad Hatter Utility, Inc. shall file revised tariff sheets, along with a proposed customer notice reflecting the appropriate rates and the reason for the reduction. It is further

ORDERED that Mad Hatter Utility, Inc. shall provide proof that the customers have received notice within ten days of the date of the notice. It is further

ORDERED that the tariff sheets shall be approved upon our staff's verification that the tariffs are consistent with our decision and that the customer notice is adequate. It is further

ORDER NO. PSC-97-1233-AS-WS
DOCKET NO. 961471-WS
PAGE 7

ORDERED that Mad Hatter Utility, Inc.'s rates shall be effective for service rendered as of the stamped approval date on the tariff sheets, provided the customers have received notice. It is further

ORDERED that if the effective date of the new rates falls within a regular billing cycle, the bills may be prorated as set forth in the body of this Order. It is further

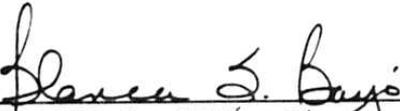
ORDERED that Mad Hatter Utility Inc.'s offer of settlement in the show cause proceeding is hereby accepted. It is further

ORDERED that Mad Hatter Utility, Inc. shall remit \$1,000 in settlement of the show cause proceeding within ten days of the date of this Order. It is further

ORDERED that upon receipt, the \$1,000 payment shall be forwarded to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund, pursuant to Section 367.161, Florida Statutes. It is further

ORDERED that in the event this Order becomes final, and upon verification that the utility has remitted the \$1,000 in settlement and has reduced its rates pursuant to its settlement offer, and upon the utility's filing of and our staff's approval of the proposed customer notice and the revised tariff sheets, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 13th day of October, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.

As identified in the body of this order, our action accepting settlement of the limited proceeding portion of this matter is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 3, 1997. If such a petition is filed, 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. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate

ORDER NO. PSC-97-1233-AS-WS
DOCKET NO. 961471-WS
PAGE 9

Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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 Records and Reporting 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 or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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.

Mad Hatter Utility, Inc.
 Proforma Gain on Sale of Foxwood Treatment Plant Land
 and Proposed Regulatory Treatment
 Foxwood and Turtle Lakes Wastewater System

I. <u>Proforma Gain to Mad Hatter</u>	
Sales price to VanDorsten Corp., Inc.	\$ 195,000
Mad Hatter cost basis, net of accumulated amortization through July 31, 1997	(30,271)
	<hr/> 164,729
Income taxes at 37.63%	(53,411)
Expenses per closing statements:	
Real estate taxes	(11,273)
Document stamps	(1,365)
Recording fees	(56)
Courier fees	(30)
Title insurance fees	(1,577)
Attorney's fees	(3,475)
Power of Attorney fees	(15)
Commission	(5,000)
	<hr/>
Net gain if Mad Hatter were seller	<u>\$ 88,527</u>
II. <u>Rate Impact - 8-Year Amortization Period</u>	
Decrease for loss amortization in existing rates	\$ 10,377
Amortization of proforma gain on sale of land	11,066
	<hr/>
Annual decrease in revenue	21,443
Divide by Regulatory Assessment Fee Expansion Factor	0.955
	<hr/>
Total annual revenue decrease	<u>\$ 22,453</u>
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Divide by annualized revenue (Schedule No. 2)	<u>\$ 792,677</u>
	<hr/>
Percentage decrease in rates	<u>2.83%</u>

Mad Hatter Utility, Inc.
 Schedule of Annualized Revenue
 Foxwood & Turtle Lakes Wastewater Systems
 For the Year Ended December 31, 1996

	Number of Bills/Gallons			Tariff Rate	Revenue
	Foxwood	Turtle Lakes	Total		
<u>Foxwood & Turtle Lakes Systems</u>					
<u>Residential</u>					
Base facility charge	12,447	8,788	21,235	\$ 11.34	\$ 240,805
Gallons sold			110,038	3.76	413,743
Total Residential revenue					654,548
<u>General Service</u>					
Base facility charge:					
5/8" x 3/4"	322	48	370	11.34	4,196
1"	120	36	156	28.34	4,421
1 1/2"	108	60	168	56.68	9,522
2"	84		84	90.68	7,617
4"	12		12	283.40	3,401
					29,157
Gallons sold	17,934	5,653	23,587	4.62	108,972
Total General Service revenue					138,129
Total annualized revenue					\$ 792,677

Note: Rates effective July 14, 1997, per Show Cause - Pass-through Gallonage Reduction

ORDER NO. PSC-97-1233-AS-WS
 DOCKET NO. 961471-WS
 PAGE 12

Schedule No. 3

Mad Hatter Utility, Inc.
 Schedule of Present and Approved Rates
 Foxwood & Turtle Lakes Wastewater System

	<u>Present Rates</u>	<u>Approved Rates</u>
<u>Residential (2.83% decrease)</u>		
Base facility charge - all meter sizes	\$ 11.34	\$ 11.02
Gallonage charge per 1,000 gallons (8,000 max.)	3.76	3.65
<u>General & Multi-Residential Service (2.83% decrease)</u>		
Base facility charges:		
5/8" x 3/4"	11.34	11.02
1"	28.34	27.54
1 1/2"	56.68	55.08
2"	90.68	88.11
3"	181.37	176.24
4"	283.40	275.38
6"	566.81	550.77
Gallonage charge per 1,000 gallons	4.62	4.49