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June 27, 1997

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Mad Hatter Utility, Inc.; Docket No. 960576-WS
Application for Amendment of Water and Wastewater Certificates
Our File No. 28023.07

Dear Ms. Bayo:

Attached are the original and 8 copies of the Post-Hearing Memorandum and the Post-Hearing Statement of Issues and Positions submitted on behalf of Mad Hatter Utility, Inc. in the above-referenced docket.

Should you have any questions in this regard, please let me know.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP

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For The Firm

FMD/lts
Enclosures
cc: Mr. Larry DeLucenay
Rosanne Capeless, Esquire
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BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION
DOCKET NO. 960576-WS

POST-HEARING MEMORANDUM FILED ON BEHALF OF MAD HATTER UTILITY, INC.

F. Marshall Deterding, Esquire
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POST-HEARING MEMORANDUM
FILED ON BEHALF OF MAD HATTER UTILITY, INC.

INTRODUCTION

On May 13 and 14, 1997, Commissioners J. Terry Deason, Susan F. Clark, and Diane K. Kiesling heard testimony and received exhibits in the application for amendment of certificates of Mad Hatter Utility, Inc. (hereinafter "Mad Hatter", "Applicant" or "Utility") in Docket No. 960576-WS. The Utility filed its application for extension of service territory on May 8, 1996. On June 13, 1996, Pasco County (hereinafter "County") filed an objection to the application and the matter was set for hearing.

To fully understand the circumstances which led to the filing of this application requires a review of several years history of this Utility and its territorial filings with the PSC. On June 1, 1987, Mad Hatter filed an application with the Florida Public Service Commission to amend its certificate to include substantial additional areas. Several parties protested including Pasco County. The matter proceeded through full hearing and on September 26,1988, Order No. 20067 was issued. In that order the Commission found that Mad Hatter was in the best position to provide service throughout the territory proposed. Because at that time under the statutory law then in effect, the Commission required full hearings on a protest of the notice for an extension; required the actual extension of facilities after a favorable decision; and then approved the certificate revision based upon the areas extended to; Mad Hatter constructed the additional facilities and filed the information which the Commission order stated was necessary in order to receive those areas within its certificate. Years later in 1994, Mad Hatter filed for approval of two special service availability contracts, the Commission at that time discovered that the Utility was serving outside of the territory described in its certificate and in its tariff.

The Commission thereby ordered Mad Hatter to file a certificate application to include all areas currently served. Mad Hatter protested that order claiming it had already fully litigated the issue of service to the areas currently served along with substantial additional areas in Docket No. 870982-WS and that Order No. 20067 had ruled on those issues. The Commission and its Staff claimed that the Utility had not fully complied with the request procedure outlined in the 1988 order and, as such, the territory had never been formally granted and must be applied for a second time. After discussions with the Commission Staff, the Utility withdrew its protest and Order No. PSC-94-1603-FOF-WS was reinstated with a requirement that the Utility file again for inclusion of those territories presently served but outside the area described in its certificate and in its tariff. As a result of that requirement, Mad Hatter filed this application for inclusion in its certificate all of those areas currently served, those areas immediately adjacent thereto where the Utility has existing lines and is able to serve, and those where Mad Hatter had existing developer agreements.

It is therefore Mad Hatter's position that it has previously litigated an extension of service territory many times larger than, but including the area proposed for service under this application and Pasco County had their opportunity to be heard in that prior case. In that proceeding, it was determined that Pasco County had no facilities in the vicinity and Mad Hatter was in the best position to provide service. This proceeding is giving Pasco County a second opportunity to litigate those issues as to a much smaller area. However, because of their total disregard for the Commission's findings in the last case, and their conscious and concerted effort to duplicate the facilities of Mad Hatter, they have now placed themselves in a position

to compete for service territory, and as they have most recently done simply to invade the service territory of Mad Hatter.

This case is, under the provisions of the statute, about ability to serve and what it is in the public interest. Mad Hatter has existing water treatment, water distribution, and sewer collection facilities that very plainly place Mad Hatter in the best position to provide services to all the areas applied for. Were it not for the County's blatant disregard for the Commission's previous findings, both in Order No. 20067 and as to the original certificated service territory of Mad Hatter, there would be no issue, the County would have no facilities anywhere near these areas.

The only real question concerning Mad Hatter's ability to serve (and that which constituted the great majority of the protestant's case) is the question of wastewater treatment capacity. Approximately 90% of Mad Hatter's sewage flows are currently treated by Pasco County through a bulk service arrangement. Pasco County only recently has taken the position that it will not provide additional capacity to Mad Hatter. Mad Hatter believes that based upon the plain wording and a simple reading of the original agreement which was entered into the record in this proceeding, the County has an obligation to provide additional bulk wastewater capacity to Mad Hatter, if such excess capacity exists, despite what the County officials testified to at hearing. It is apparent that even the County's witnesses believe this since they repeatedly referred to the unavailability of capacity to sell to Mad Hatter while at the same time claiming to have excess capacity themselves to serve the same areas (and through the same treatment facilities). These totally contrary positions lend support to Mad Hatter's repeated contention that the County has an obligation to provide additional capacity to it under the existing

agreement. They also reveal that the County's true purpose in attempting to restrict access to such services is merely to allow the County to service all of this area directly through duplication of existing facilities. The County is attempting to use the PSC certification process to this end even after demonstrating a total disregard for the Commission decisions in the past.

The evidence presented by Mad Hatter spoke to several possible options in addition to enforcing its contract rights for bulk service from Pasco County, including expansion of its Linda Lakes facilities; placing an existing but out of service sewage treatment plant either on an existing site owned by the Utility; or on another site acquired by the Utility, or receiving bulk service from some other entity. These are questions and choices which all utilities must address in adding new customers. The fact that they are ripe at the same time as this certificate expansion proceeding should not be overemphasized by the Commission in rendering its decision. However, until such time as Mad Hatter is given a legal right to serve in these areas, it cannot take the next step of planning for the appropriate method by which to obtain this wastewater capacity.

To the extent the Public Service Commission believes that Mad Hatter should report back to them concerning the alternatives available for treating additional sewage after the granting of this additional territory, that is an option that may have some merit. However, failing to grant this territory based solely upon the County's current refusal to provide additional bulk capacity is not reasonable. Mad Hatter does have some minor amounts of excess capacity and can either pursue enforcement of the bulk service arrangement with the County under Mad Hatter's interpretation or seek other alternatives, in order to be ready to provide service to the areas requesting same as need arises. A decision by the Commission to deny Mad Hatter all or

any significant portion of the territory requested herein because of the County's recently duplicative actions which they contend now provides them with some ability to serve, promotes the County's actions over the last ten years which have been plainly contrary to the public interest, the interest of Mad Hatter's customers, and all potential customers in the area. Rather than pursuing the public interest, Pasco County has been pursuing a course of duplicating facilities, invading territory, and overcharging bulk users. This should not be tolerated or condoned. While the Commission has no direct authority over the County, it can at least send a message to Pasco County through its actions in this case.

Mad Hatter stands ready, willing, and able to provide service to the entire territory requested herein and has only applied for those areas where it is immediately available and ready to provide such service. Despite the Commission's lack of direct jurisdiction over the County Utility Department, action by the Commission in granting this territory to Mad Hatter can provide a significant basis for a long-range settlement of the disputes between Mad Hatter and the County. That power no other agency or court has.

In accordance with the Commission standard policy, Mad Hatter hereby files its brief on each of the issues contained in Commission Prehearing Order No. PSC-97-0534-PHO-WS.

ISSUE 1: **Does MHU include in its amendment application all of the uncertificated territory in which it currently provides service as required by Order No. PSC-96-0172-FOF-WS, issued February 7, 1996, in Docket No. 940761-WS, and what are those specific areas?**

By its Order No. PSC-96-0172-FOF-WS issued on February 7, 1996, in Docket No. 940761-WS, Mad Hatter Utility was required to file an application for amendment of service territory in order to include within its territory those areas in which it currently is providing service. Mad Hatter filed its application in Docket No. 960576-WS in order to comply with the order's requirements and additionally to include those areas where it had service immediately adjacent, but was not currently providing such service. All parties agree that Mad Hatter did in fact include within its certificate application all areas outside its certificate in which it currently provides service.

The Utility provided the testimony of Mr. Larry DeLucenay, President of the Utility, concerning the areas in which Mad Hatter is currently providing service and which are outside its existing certificated service territory. The parties agreed that these include Parcels A-3, A-4, B-21, B-22, B-23, C-6, C-7 and C-8. The Utility also alleged that it is providing service within Parcels B-24, C-6A, and C-8. Each of these parcels on which there is disagreement has been separately discussed below.

Mr. DeLucenay testified that the Utility has been providing water and wastewater service to Parcel B-24 for several years. No party provided any evidence or testimony to the contrary. He also testified that the Utility had water and sewer mains running along the northern boundary of this property fully stubbed for the provision of service as and when needed (TR 226-227). Mr. DeLucenay further testified that the Utility had provided service to several customers on this property over the years (TR 228-230). Specifically, Exhibit No.

9 was provided concerning billings to customers at this location. Exhibit No. 9 showed that the Utility had provided service to this property on several occasions since 1994. While no service is currently provided, the service line, meter and box are still in place to provide service to this parcel and the most recent billing for service was in June of 1996 (Exhibit 9). A copy of that bill was attached to Exhibit 9. Mr. DeLucenay also testified that he believes the existing service will be reactivated in the very near future (TR 229-230). No other witness testified concerning the existing provision of service by Mad Hatter to Parcel B-24. Therefore, Mr. DeLucenay's testimony that the Utility has provided service for several years and currently has an inactive meter and sewer connection on this property is unrebutted.

The County also contested whether Mad Hatter Utility is providing service to C-6A, what has commonly been referred to as the Twin Lakes commercial parcel. Mr. DeLucenay provided testimony that Mad Hatter is currently providing water service to this property (TR 254). He noted that Mad Hatter owns the water and wastewater lines services and manholes that run through the center of this parcel in order to provide both water and wastewater service throughout the Twin Lakes residential parcel (Parcel C-6) located immediately behind it (TR 255, 257-258). Mr. DeLucenay testified that the Utility is currently providing irrigation water service to Parcel C-6A through a 2" meter (TR 254). The Utility provided Late Filed Exhibit No. 10 which demonstrates that the Utility has continuously provided service to Parcel C-6A since 1989. In addition, Mad Hatter's facilities running through the middle of Parcel C-6A are sized in order to allow service to the residential Parcel C-6 located immediately behind it and are stubbed and sized in order to also provide service to Parcel C-6A at build-out. No other

testimony or evidence was presented by any witness to rebut these statements concerning existing service to Parcel C-6A.

The County's prehearing statement indicated agreement that Mad Hatter is currently providing service to Parcel C-8, and the Utility and the Staff agreed. At hearing however, the County indicated a belief that Mad Hatter is providing service only to the commercial portion of this parcel along its Highway 54 frontage and was not currently providing service to the remainder of the parcel. Mr. DeLucenay testified that the Utility is currently providing service to the commercial portion of this property to three separate entities (TR 258-259). He also testified that as part of the agreement for service, a master sewage pump station has been constructed and sized for service to these existing customers and to receive the gravity sewer flow from the anticipated residential development on the south side of the property (TR 261, 284). Mr. DeLucenay also described in detail how the Utility has constructed facilities in order to enable it to provide both water and wastewater service to this property including looping of its existing Turtle Lakes and Carpenter's Run systems (TR 259). Mr. DeLucenay also indicated that the Utility has lines stubbed at the back end of the commercial area in order to provide water and wastewater service to the residential phase of this property. No testimony was provided by any witness contrary to that of Mr. DeLucenay.

Based upon the only evidence of record, it is wholly uncontested that Mad Hatter has applied for certification of all areas in which it is currently providing service which were not previously within its certificate. These include Parcels A-3, A-4, B-21, B-22, B-23, C-6, C-7, and C-8. The County alleged that there was some question concerning service to Parcels B-24,

C-6A and Parcel C-8. The evidence as outlined above clearly demonstrates that in fact, Mad Hatter is providing service to each of those parcels.

ISSUE 2: **Does MHU include in its amendment application territory in which it currently does not provide service, and what are those specific areas?**

All parties agreed that certain parcels proposed for service by Mad Hatter are not currently receiving service from Mad Hatter. Mr. DeLucenay testified that these parcels were included in the proposed certificate application because they are immediately adjacent to existing facilities constructed in order to provide service and with the capacity to service those parcels. All parties agree that the areas included within the application which are not currently receiving service are Parcels B-1A, B-20, B-25, B-26, B-27, C-9, and C-10. Pasco County, however, also asserted that the Utility was not providing service to Parcel B-24, C-6A, and Parcel C-8.

The existence of service to the three parcels for which the County alleges Mad Hatter is not providing service has previously been discussed under Issue 1. It should be noted that the evidence discussed therein shows that Mad Hatter Utility, Inc. is currently providing service to each of the three contested parcels and there is no evidence to the contrary presented by any witness. Therefore, the Commission should find that the only parcels included within the amendment that are not receiving service are those outlined above on which all parties agree.

ISSUE 3: **Pursuant to Section 367.045(2)(b), Florida Statutes, is there a need for service in the territory which MHU seeks to add to its certificate of authorization?**

Both Mad Hatter and the County took the position that there is a need for service in all of the areas requested that Mad Hatter has sought to include in its certificates under this docket. The Commission Staff has agreed that all of those parcels to which Mad Hatter is currently providing service do have a need for such service and took no position on the need for service to the remaining parcels. Mr. DeLucenay provided extensive testimony that there was anticipated need for service to each of the areas proposed for service by Mad Hatter in which the Utility is not currently providing service and that such need has been demonstrated either through discussions with the property owners or through actual correspondence or developer agreements (TR 214-267). Each of the parcels for which Mad Hatter is not currently providing service is discussed separately below.

Parcel B-1A is the subject of a request for service sent to Mad Hatter and included as part of Page 3 of Exhibit 6. Mr. DeLucenay testified that the need for water and wastewater service is immediate and subject only to economic considerations of the owner, specifically the DOT road construction along the front of the property (TR 220). The County does not object to Mad Hatter serving B-1A (TR 401).

Parcel B-20, otherwise referred to as the Willett-Liner parcel has been the subject of at least two requests for service included as Pages 8 and 9 of Exhibit 6. This need for service is further indicated by Exhibit 15, Page 7, wherein the County refused to provide service to the Willett property through Mad Hatter Utility while stating that the County will have the facilities to provide the service itself in 1998.

Parcel B-25, also known as Ash Property, has been the subject of a developer agreement with Mad Hatter for service since 1990 (TR 237). Mr. DeLucenay testified that the need to begin service was at least in part contingent upon DOT takings for the widening of immediately adjacent roadways (TR 237-238). Mr. DeLucenay also discussed in detail the facilities that Mad Hatter has in place immediately adjacent to this parcel sized and intended to provide service to that parcel at build-out.

Parcel B-26, also known as the Meadowview parcel, has been the subject of a request for service and in fact, Page 14 of Exhibit 6, is a copy of a request to Mad Hatter for service to this parcel. Mr. DeLucenay also stated that he had recently discussed with one of the partners the need for service, and that the need apparently is now immediate (TR 244).

Parcel B-27 is the Como Club/Mossview parcel. As noted by Mr. DeLucenay, it is a wetland sensitive area immediately adjacent to the Linda Lakes service area on the north and the Northfork Professional Center on the east, boun of which are currently provided with both water and sewer service by Mad Hatter. Mr. DeLucenay further testified that the Utility has had an executed developer agreement for service to this parcel in existence since 1990. Mr. DeLucenay also testified that he has recently been contacted by members of the Board of Directors related to his property. Mr. DeLucenay also noted that service to Parcel B-27 allows the Utility to obtain water service from two different water treatment plants in the Linda Lakes and Foxwood subdivisions and thereby loop those systems (TR 249-251).

The Utility has previously received inquiries for service to Parcel C-9, including the one contained in Exhibit 6 at Page 18. Mr. DeLucenay testified concerning the anticipated construction of a school structure on this existing church site and the need for service relayed

to him as a result of that change (TR 263-265). Mr. DeLucenay also testified concerning the extent of the facilities which Mad Hatter has constructed immediately adjacent to this parcel in order to provide water and wastewater service to it as and when needed (TR 265).

The Utility has an existing executed developer agreement to provide water and wastewater service to Parcel C-10. That developer agreement was originally executed in 1990. Mr. DeLucenay testified concerning the anticipated need for service in the near future and the status of the development of that parcel (TR 266-268).

Mad Hatter Utility, Inc. has demonstrated through the weight of competent substantial evidence that there is a need for service pursuant to Section 367.045(2)(b), Florida Statutes. The County has taken the position that such need exists. The only parcels at issue are those four outlined above for which Mr. DeLucenay testified concerning the needs and recent discussions with the property owners. In order to allow Mad Hatter to meet these needs, and to plan construction and looping of the facilities to provide that service, the Utility must have those properties included in its certificate immediately. Therefore, the only evidence of record clearly demonstrates that there is a need for service which would require inclusion of those properties within the certificate of the Utility under the provisions of Section 367.045(2)(b), Florida Statutes, so as to allow the Utility to plan and construct to provide that service.

ISSUE 4: **Does MHU have the technical ability and adequate capacity to serve the territory which it seeks to add to its certificates of authorization?**

Mad Hatter Utility has the technical ability and adequate capacity to serve the territory which it seeks to add to its certificate. The Utility has operated for many years in providing both water and wastewater service throughout its certificated territory and most of the additional areas requested under this application. The County took the position that the Utility does not have adequate capacity to serve these specific areas contested by them as outlined in Issue 1. The Commission Staff has taken the position that the Utility has adequate capacity to serve all of the areas which are currently served at or near build-out and takes no position with regard to the remaining areas.

Technical ability served can be broken down into four basic areas: water treatment capacity, water distribution capacity, sewer treatment capacity, and sewer collection capacity. Each of these is addressed separately below:

WATER TREATMENT CAPACITY

Mr. DeLucenay testified that the Utility has adequate capacity in place to serve the immediate needs of all of the parcels within the proposed area as well as the immediate needs of its existing service territory. He also testified that with the addition of these territories as requested, the Utility can loop existing areas of service and minimize the additions of water facilities necessary to service the entire service area. Mr. DeLucenay stated that the existing water treatment facilities were adequate to preserve all of the areas at build-out and that the Utility anticipates only the possible addition of wells or tanks once the requested territories are added and are looped (TR 268-269). As additionally noted by Mr. DeLucenay, it would be

imprudent on the Utility's part to construct water treatment plant in advance of the need for those additional treatment facilities (TR 247-248).

Both Mr. Orsi and his counsel, Mr. Hobby, testified concerning their allegations that Mad Hatter did not have adequate water treatment capacity and therefore proposed to require Sunfield Homes to fund through loans the construction of additional wells. No other testimony was provided other than the general conclusory statements of Mr. Orsi and Mr. Hobby that Mad Hatter does not have adequate water treatment capacity to meet the needs of the proposed service territory.

In response to Mr. Orsi and Mr. Hobby, Mr. DeLucenay testified extensively concerning the negotiations for service to the Sunfield Homes property otherwise known as the Oak Grove subdivision and located for many years within Mad Hatter's certificated service territory. Mr. DeLucenay testified that the Utility had provided initial water to the development during construction phases, had sent a draft agreement to the developer, but that the developer cut off negotiations soon thereafter. While Mr. DeLucenay admitted that the Utility had discussed the possibility of requiring the funding of additional well-sites in the future through loans, he also stated that that was not being required as a prerequisite to service, was only a matter of negotiation and is a standard approved provision of the Utility's agreement with developers (TR 545-550). In fact, the agreement attached to Mr. Hobby's testimony as Exhibit 20, shows no such requirement. Mr. DeLucenay further testified that the Commission had recently approved a similar agreement for Lake Heron wherein that developer was required to fund the construction of wells in the same manner as discussed with Sunfield Homes (TR 549-550). In addition, under cross-examination, Mr. Hobby admitted that with the 800 proposed

connections within the Oak Grove subdivision, the cost for water system capacity charges would be slightly more than $400,000, whereas, such charges for Mad Hatter would be zero (TR 481-489).

Mr. Hobby and Mr. Orsi also alleged that the proposed agreement between Mad Hatter and Sunfield Homes did not guarantee service. However, on cross-examination, Mr. Orsi admitted that he did not know whether the provisions claimed to support this allegation were common in agreements approved by the Public Service Commission, and had done no investigation to find out (TR 42-44).

No other testimony other than that provided by Mr. DeLucenay as to the specifics of Mad Hatter's ability to serve and the allegations from Mr. Orsi and Hobby concerned the ability of the Utility to provide water treatment capacity to serve the proposed territory. Mr. Hobby's and Mr. Orsi's statements were based solely upon their experience with Oak Grove and they admitted that they had done no investigation to determine whether or not the requirements were in line with previous Commission authorized action with regard to this Utility. In addition, the evidence clearly shows that the actual cost imposed upon the developer was substantially less under a proposal for service by Mad Hatter (even with no repayment of a loan for construction of water wells) than is required under County water service.

Based upon the great weight of evidence, it is clear that Mad Hatter has the current water treatment capacity to provide for the immediate service needs to the proposed area, and will require only minor additions to wells or tanks to serve the existing and proposed areas at build-out. Finally, Mad Hatter has the ability to construct whatever minor additional facilities may be required as and when needed.

WATER DISTRIBUTION SYSTEM

Only Mr. DeLucenay provided any testimony on this issue. Mr. DeLucenay stated in his direct testimony that the Utility had facilities in place adequate to provide service to their existing territory and to the territories proposed for service. As to each parcel proposed for extension by Mad Hatter, Mr. DeLucenay testified that the Utility either was already serving those properties or had in place distribution facilities immediately adjacent thereto to enable the Utility to provide such service. In all such cases, the stub-outs to existing mains immediately adjacent to each property also exist. The only exception to this is for distribution facilities to provide water to Parcels C-9 and C-10. In the case of those two parcels, Mad Hatter's existing water distribution facilities are approximately 1/4 mile away.

The only County witness who testified concerning distribution and collection systems available for the provision of service to the area (Mr. Bramlett) repeatedly stated he knew nothing of the location or sizing of Mad Hatter's existing facilities.

As to the alternative of County service, upon cross-examination of Mr. Bramlett it was clear that the existing location of County water distribution facilities of sufficient size or capacity to provide service to any of the western parcels proposed for service by Mad Hatter was at least 1 1/2 to 2 miles away. The only exception in the proposed extension areas west of the Collier Parkway was Parcel B-25. Mr. Bramlett also testified, and it is apparent from DB-3 of Exhibit 11, that the County water distribution facilities are at least 1/4 mile away from those areas proposed for service within the eastern portion of the proposed territory (east of Collier Parkway) with the exception of Parcel C-9 and C-10.

Based upon the only evidence of record, the Commission must find that Mad Hatter's existing water distribution system is adequately located and sized to allow the Utility the technical ability to provide water service to the existing and proposed areas without any further expansion. The evidence also clearly demonstrates that the County's water system is far from being in that position.

WASTEWATER COLLECTION FACILITIES

As with the water system, Mr. DeLucenay provided extensive testimony concerning the fact that Mad Hatter currently has in place facilities immediately adjacent to all areas proposed for service where service is not yet provided, including Parcels C-9 and C-10. Mr. DeLucenay also testified that those facilities were sized in order to enable Mad Hatter to provide service to their existing territory and to the proposed territories as and when needed. As stated previously, Mr. Bramlett repeatedly admitted to having virtually no knowledge of Mad Hatter's system and therefore, Mr. DeLucenay's statements were wholly unrebutted and uncontested in the record.

Mr. Bramlett testified on cross-examination that the County's only wastewater collection facilities within the western portion of Mad Hatter's proposed service territory were at a minimum of 1/4 mile from the other areas proposed for service in that area, with the exception of Parcel B-25. In the eastern section of Mad Hatter's territory, Mr. Bramlett admitted and his system map submitted as DB-3 of Exhibit No. 11 shows that there were no existing wastewater collection facilities within 1/2 mile of Parcel C-7 and Parcel C-8 where Mad Hatter is currently providing service.

Based upon this evidence, it is clear that Mad Hatter has all of the necessary wastewater collection facilities in place to provide service to the areas proposed for service in this application and that no contrary evidence was provided. Alternatively, the County's facilities, for the most part, are still significant distances away from those areas and any construction of additional facilities to those areas constitutes a duplication of Mad Hatter's existing collection facilities.

WASTEWATER TREATMENT CAPACITY

The only evidence submitted by the County to support their suggestion that Mad Hatter does not have the technical ability to provide service to its proposed territory was grounded upon its assertion that the Utility has little or no existing wastewater treatment capacity, and that its commitment with the County for bulk treatment of such wastewater was at or near the maximum authorized amount. However, upon cross-examination of Mr. Bramlett and Mr. Gallagher and reading the contract itself, it is apparent that the agreement between Mad Hatter and Pasco County does provide for increases in capacity above the 350,000 gallon cap if the County, in fact, has additional capacity (TR 352-354)(DB-2 of Exhibit 11). Both Mr. Bramlett and Mr. Gallagher, on the one hand suggested that no such additional available capacity exists, yet grounded their alleged ability to serve the same properties on the substantial additional capacity the County has or soon will have in the same facilities. The County's position is one that is untenable and non-sensical. If it is the County providing service, there exists more than adequate wastewater treatment capacity, but if it is Mad Hatter's customers needing that service, such capacity is not available. On cross-examination, Mr. Bramlett admitted that the County had recently entered into agreements with Paradise Lakes subdivision

committing 100,000 GPD of wastewater capacity even after several much smaller requests for capacity from the same treatment facilities were denied to customers of Mad Hatter (TR 356-358, TR 361-362, TR 382-384, TR 402)(Exhibits 12, 13 and 15). Mr. Gallagher also admitted that once the interconnect of the County's two wastewater systems is complete, the County will have excess capacity (TR 447-448). Mr. DeLucenay testified extensively concerning the availability of wastewater treatment capacity from Pasco County and the alternatives which Mad Hatter might pursue once it is determined what area it is authorized to serve and what capacity is needed. In addition to pursuing its contract rights with the County, Mr. DeLucenay and Mr. Ed Rogers, a professional engineer, testified that Mad Hatter has the ability to construct additional wastewater treatment facilities as and when needed (TR 71-77, TR 584-585) (Exhibit 30). In fact, Mad Hatter owns an existing steel-ring wastewater treatment plant, currently out of service, which could be located on an appropriate parcel of property (TR 76-77). In addition, as noted by Mr. Rogers and Mr. DeLucenay in their testimony, Mad Hatter could pursue other alternatives for bulk service or could attempt to enforce the contract provisions requiring additional capacity be provided by Pasco County to the extent it is available.

The County's interpretation of its agreement with Mad Hatter is so restrictive as to be non-sensical. A provision in the agreement that allows for more than the initial capacity only if the County has additional capacity is being interpreted by the County as nonexistent. Instead, the County would have the Commission believe that despite this provision, if the County has additional capacity to provide this service directly itself, it still does not have the capacity to provide that service in bulk to Mad Hatter. They cannot have it both ways.

Mr. DeLucenay was the only witnesses who testified upon the several options available to the Utility and stated that Mad Hatter would be imprudent to have in place existing capacity to serve the build-out needs of the proposed service territory before knowing what territories it will be serving and before the demand exists. Mad Hatter has several options with regard to additional wastewater treatment capacity, including a right to additional capacity from the County to the extent the County has excess capacity, the ability through eminent domain to acquire property and construct its own place in existing owned and active wastewater treatment plant on that site for the provision of such service, or to receive bulk service from other treatment facilities. Pasco County, while alleging substantial capacity available, ignores their ability and their obligation under the terms of the bulk service arrangement with Mad Hatter to provide it with additional capacity to the extent needed and to the extent excess capacity exists in the County system. Therefore, Mad Hatter does have several options for additional wastewater treatment capacity and as soon as the Commission's decision is rendered, Mad Hatter can prudently move forward with pursuit of the most appropriate option for service as demand arises.

CONCLUSION

Based upon all of the evidence of record, it is clearly unrebutted that Mad Hatter is in a better position to provide service to the proposed areas based on existing water treatment capacity, water distribution facilities, and sewage collection facilities. The only question that arises is the availability of additional wastewater treatment capacity. However, Mad Hatter has several options including the clear right to additional capacity through bulk service from Pasco County. To the extent the County has the capacity to serve the proposed area, it does have

additional capacity available that can be provided to Mad Hatter instead. Based upon these facts, it is clear that Mad Hatter does have the technical ability to provide service to the proposed territories and, in fact, is in a much better position to do so than is Pasco County.

ISSUE 5: **Does MHU have the financial ability to serve the territory which it seeks to add to its certificates of authorization?**

Mr. DeLucenay and Mr. Nixon provided testimony for Mad Hatter concerning Mad Hatter's financial ability to provide service. Both concluded that Mad Hatter does have the financial ability to provide service to the proposed service area. In fact, as noted in previous issues, the existing water transmission and distribution, sewer collection, and water treatment plants are in need of little or no expansion to service the proposed areas. Therefore, the only additional capital required of Mad Hatter is for sewage treatment capacity and then only if it cannot obtain additional bulk capacity through Pasco County.

Pasco County provided the testimony of Mr. Mike Moses on this subject. However, Mr. Moses' testimony deals almost exclusively with the net book value of the Utility assets as of August of 1991. Based primarily on this information, Mr. Moses concluded that according to the financial information he had reviewed, Mad Hatter does not have the capability of borrowing money (TR 531). In addition, Mr. Moses' report is flawed in that it is based upon a valuation of the Utility at August 11, 1991, which flaw renders it irrelevant to Mad Hatter's current financial ability (TR 533). Mr. Moses admitted on cross-examination that since the time his report was prepared, the Utility has done a substantial refinancing of their debt (TR 540). Finally, Mr. Moses admitted on cross-examination by Staff that his report is specifically limited on its face to use in the valuation of the Utility in the federal court case between the parties (TR 540-543).

Mr. Nixon testified that the valuation of Mad Hatter and the calculated potential sales price to a private buyer six years ago is irrelevant to this proceeding (TR 191-192). He also noted that the same lender for the major refinancing that took place in April of 1994 has

indicated a willingness to consider additional financing for plant expansion in a recent letter to Mr. DeLucenay. Mr. Nixon also expressed his opinion that Mad Hatter would have the capability of borrowing additional money for plant expansion as necessary (TR 193, TR 568) (LGD-6 of Exhibit 22).

Based upon the great weight of evidence of record, Mad Hatter has the financial ability to expand or construct additional facilities as necessary to provide service to the proposed area. To the extent that the Utility is either able to negotiate additional capacity from Pasco County or to enforce the provisions of the contract between the parties for additional capacity, no significant additional capital expenditures will even be required. The only testimony contrary to the opinions expressed by Mr. Nixon and Mr. DeLucenay concerning the Utility's financial ability was that of Mr. Moses which involved a valuation of the Utility six years ago and a statement that the Utility could not borrow money based on an analysis of that valuation and other less important factors. In fact, the Utility has obtained a substantial refinancing since the dates on which that analysis was based and has received a letter from that same lender indicating an interest in additional financing. Based upon all of this evidence, it is clear by the great weight of evidence and the only competent, substantial evidence directly related to the issue that Mad Hatter does have the financial ability to expand its facilities to provide whatever additional treatment facilities or distribution or collection facilities are necessary to provide service to the proposed expansion area.

<u>ISSUE 6</u>: Does MHU own the land upon which its treatment facilities that serve or will serve the proposed territory are located, or, if not, is the utility entitled to continued use of that land?

Mad Hatter demonstrated through the testimony of Mr. DeLucenay that it owns or has arrangements for continued use of land on which its existing water and wastewater treatment facilities are located and that to the extent any additional water or wastewater plant sites are necessary, those rights will have to be acquired. The Staff took the position that the Utility currently has the land or long-term rights to land upon which its existing facilities are located and took no position on what properties, if any, would be required to serve the proposed area. While the County took the position that it did not know whether the Utility owned the land beneath the Utility's treatment facilities, it also provided absolutely no evidence on this issue. In fact, the only indicated witness on the issue for Pasco County was Mr. Mike Moses who provided absolutely no evidence related to this matter.

Mr. DeLucenay provided testimony and evidence that Mad Hatter owns or has continuous rights to use its existing water and wastewater treatment sites (Exhibit 3, LGD-1, Exhibits 26 and 27). In addition, he noted that Mad Hatter continues to own a former wastewater treatment plant site at the Foxwood subdivision which might be able to be incorporated into further use for that purpose along with the reactivation of an existing but unused steel-ring plant owned by the Utility. He and Engineer Rogers also noted that the Utility could acquire additional land as needed for this purpose. Mr. DeLucenay also noted the existence of substantial amounts of existing effluent disposal capability through reuse systems which currently exist in at least two areas already served by Mad Hatter and the potential for additional disposal capacity at the Como Property (Parcel B-27).

Based upon the evidence of record, it is clear that Mad Hatter does own the land on which its current treatment facilities are located, that the Utility has existing or can acquire additional land, if needed, and that the Utility also has several alternatives for effluent disposal. There was no evidence whatsoever to the contrary provided.

ISSUE 7: **Does service exist from other sources within geographical proximity to the areas that MHU seeks to add to its certificates of authorization?**

Witnesses DeLucenay and Bramlett testified concerning the availability of water and wastewater services to the proposed service areas from Mad Hatter and the County respectively. Mr. DeLucenay testified that Mad Hatter currently has in place both water distribution and sewage collection facilities immediately adjacent to or within all of the territories proposed for service. The only exception being Parcels C-9 and C-10 which currently have only sewer lines immediately adjacent to them. There are however existing executed agreements for service by Mad Hatter and the developer for both of these parcels. In addition, Mr. DeLucenay testified concerning the Utility's ability to meet the immediate needs of these areas from existing water treatment facilities and its ability to expand or construct additional wastewater facilities to the extent Pasco County fails to provide additional bulk wastewater capacity.

Mr. Bramlett testified concerning the availability of service from Pasco County as to both water treatment and water distribution facilities. He testified that the County had no water distribution or treatment facilities available within 1 3/4 miles of the areas proposed for service by Mad Hatter within the western portion of its present and proposed service area (all western parcels begins with prefix A or B on LGD-5 of Exhibit 22), the only exception being Parcel B-25. Mr. Bramlett also admitted on cross-examination that no wastewater collection system other than one forcemain recently constructed to serve the Paradise Lakes subdivision exists to serve this western area. According to Mr. Bramlett's own map of his existing and proposed system submitted as DB-3 of Exhibit 11, that brand new sewage collection line is still approximately 1/4 to 3/4 of a mile away from any of the areas proposed for service by Mad Hatter within this western area. The County estimated in response to discovery that the facilities not yet

constructed, but necessary in order for the County to serve this area would be $800,000 for the water distribution facilities and $800,000 for the wastewater collection facilities. The County also estimated the additional facilities not yet in place, but necessary in order to serve the eastern portion of Mad Hatter's proposed service territory would be approximately $600,000 for wastewater and that all necessary water facilities are in place to serve these areas (TR 404) (Exhibit 15).

Based upon these facts, it is clear that service is not currently available from Pasco County to the great majority of the parcels proposed for inclusion in Mad Hatter's certificate. In addition, the County will incur total costs in excess of $2,000,000 in order to extend its distribution and collection facilities to these parcels, $1,400,000 of which has not yet been expended. With the exception of a minor water line extension needed to service Parcel C-9 and C-10, all of the parcels proposed for service have, according to the unchallenged testimony of Mr. DeLucenay, adequately sized water treatment and distribution and sewage collection systems currently in place and adequate water treatment facilities to meet the immediate and build-out needs of these areas with little or no expansion needed. Those facilities are owned and operated by Mad Hatter. In addition, Mad Hatter has the ability to construct additional wastewater treatment capacity to the extent needed.

Based upon all this evidence, it is clear that there is no alternative service available to the majority of these properties proposed for inclusion in Mad Hatter's certificate, and to the extent there is, that is the result of expenditure of substantial additional funds by Pasco County to duplicate existing facilities owned by Mad Hatter. As such, the Commission should find that no such service exists from sources other than Mad Hatter.

ISSUE 8: **Would the proposed amendment of MHU's territory result in the extension of a system which would be in competition with, or duplication of, any other system or portion of a system?**

Testimony was provided by Mr. DeLucenay directly on this subject. He concluded that the granting of the requested territory extension would not be in competition with or duplication of any other system. He noted that to the extent competition or duplication exists, it is the direct result of the County's actions in duplicating Mad Hatter's long existing systems. No other witness provided any testimony directly on point. The testimony and exhibits of Mr. Bramlett also demonstrate that any proposal for extension of service by the County to serve this area would be in direct duplication of significant components of Mad Hatter's system already in place.

In 1987, Mad Hatter filed an application for extension of its service territory in Docket No. 870982-WS. After protests by Pasco County among others, and full evidentiary hearings (at which both Mr. Bramlett and Mr. Gallagher testified on behalf of the County), the Florida Public Service Commission specifically found that Mad Hatter was in the best position to provide service to that extensive proposed territory (which included all of the parcels proposed for service herein and substantial surrounding areas). The Commission issued its final order authorizing Mad Hatter to go forward with extension of services. Among other findings of the Commission in support of their conclusions, the order states that:

> "The County has no facility in the area noticed that were in use at the time of the hearing. Mad Hatter's lines are already in the ground along State Road 54. . . " "Since the County has no service in the area noticed, there is no existing service provided by the County." (PSC Order No. 20067 issued on 9/26/88 at Page 6)

Mr. Bramlett testified at the hearing in the current case, verifying the fact that the County had no facilities anywhere near Mad Hatter's existing and proposed territory in 1987 and 1988. He also admitted that the County had immediately gone forward with construction of the County's duplicative facilities after the Commission found Mad Hatter in the best position to serve (TR 346, TR 371-373). The Commission's order issued eight years ago in Docket No. 870982-WS also found as follows:

> "Mr. DeLucenay had already testified that Mad Hatter's forcemains are already in the ground on State Road 54. Mr. Bramlett explained that if lines were already in the ground on one side of the road, and another line were laid on the other side, that would be duplication of facilities." (PSC Order 20067 at Page 3)

And additionally that:

> "The record shows that in order to provide sewer service in the area, the County would have to build a forcemain alongside Mad Hatter's existing forcemain on Highway 54. Thus, it seems that the County's position is that Mad Hatter's existing facilities can uneconomically duplicate the County's proposed facilities. We do not believe this position is reasonable." (PSC Order 20067 at Page 10)

Based upon these facts, previous Commission findings as to the same parties, and Mr. Bramlett's own testimony, the granting of this proposed service territory to Mad Hatter will not result in competition or duplication of any other system or portion of a system. In fact, the evidence clearly demonstrates that just the opposite is true. Despite the Commission's findings nine years ago, the County immediately pursued a course of action which constituted a duplication of the facilities of Mad Hatter. Since the County has demonstrated an intent to duplicate facilities, only by the Commission granting Mad Hatter's certificate for the territories requested can this waste cease. Such action by the Commission will allow Mad Hatter to utilize the facilities it has constructed for the purpose of serving these areas.

ISSUE 9: **If the proposed amendment of MHU's territory would result in the extension of a system which would be in competition with, or duplication of, any other system or portion of a system, is such other system or portion thereof inadequate to meet the reasonable needs of the public or are the persons operating it unable, refusing, or neglecting to provide reasonably adequate service?**

The majority of the evidence and points on this issue have been discussed under Issue 7 above. However, one additional area of evidence should be noted under this issue. Mad Hatter has never refused to provide service to anyone in need of such water or wastewater service. Quite to the contrary, the evidence in this record demonstrates that the County has repeatedly refused to provide bulk wastewater service to Mad Hatter and to its customers when requests for such service were made despite the fact that when direct service is to be provided, the County has been willing to provide such wastewater service in plain contravention of not only public policy, but the contract between the parties. As such, to the extent the Commission finds that there is service readily available from another entity despite the great weight of evidence; despite the non-existence of County distribution and collection facilities in the great majority of the proposed territory parcels; and despite the fact that the duplication which has occurred is solely the result of the County's conscious decision to duplicate Mad Hatter's facilities and invade its existing territory, the Commission must find that Pasco County has refused repeatedly to provide service where needed.

ISSUE 10: **Stricken.**

ISSUE 11: **Withdrawn.**

ISSUE 12: **What is the projected impact of the extension on the utility's monthly rates and service availability charges, if any?**

The only evidence provided on this issue is that provided with the original application sponsored by Mr. DeLucenay. In that application, the Utility specifically noted that the majority of facilities necessary to provide service to these areas are already in place. As additional development requires service, on-site facilities will be required to be contributed in accordance with the Utility's existing service availability policy and the Utility's tariff and Commission rules. As a result, the Utility noted that no impact on monthly service charges or service availability charges is currently anticipated to result directly from this extension of the Utility's service territory (Exhibit 3, LGD-2).

The evidence also demonstrated (as outlined in other issues herein) that service to these areas by the County would require the expenditure of substantial monies in order to construct water distribution and sewer collection facilities which would serve only to duplicate those facilities already in place and presently located at the boundary of each parcel for which service is proposed by Mad Hatter.

Therefore, based upon the only evidence of record, it is clear that no impact on the Utility's rates or charges is anticipated to result from the granting of this extension.

ISSUE 13: **Pursuant to Section 367.045(5)(a), Florida Statutes, is it in the public interest for the Commission to grant MHU's amendment application?**

For all the reasons outlined in the previous issues concerning the existence of all necessary transmission and distribution systems needed to provide service at build-out to each of the parcels requested (with one very minor exception), Mad Hatter is in, by far, the best position to provide the service to the territories requested herein. Mad Hatter applied for only those areas where it either had existing service or where it had existing developer agreements and/or facilities immediately adjacent thereto. There is no alternative service provider similarly situated. Pasco County would have to construct substantial additional facilities which duplicate those existing facilities owned by Mad Hatter in order to serve the requested areas.

In addition to the issues directly related to technical and financial ability and proximity of facilities to the proposed areas, Pasco County has raised several issues in an attempt to demonstrate that it is not in the public interest for the Commission to grant Mad Hatter's proposed extension. These and other general issues raised at hearing require some brief discussion and have been addressed separately below:

SALE OF DISPOSAL PLANT SITE

Through the testimony of Mr. Bramlett and through cross-examination of Mr. DeLucenay, the County attempted to suggest that Mad Hatter was somehow in violation of a Commission order concerning reporting of the sale of a parcel of property previously utilized as a wastewater plant site. That is a matter currently pending before the Public Service Commission in a separate docket and should not be tried here. However, the Commission allowed the County to present evidence in this regard under the broad issue of public interest. The testimony of Mr. DeLucenay in response to these issues and the responses of Mr. Bramlett

on his cross-examination clearly demonstrate that this is a matter currently pending before the Public Service Commission and outlines the reasons why the Utility continues to maintain its position that it did not violate the Commission order. In fact, the testimony provided by Mr. DeLucenay demonstrates that the Utility did not and could not have sold the property for any net gain under Florida Law. Mad Hatter believes that any further discussion of this pending matter which has yet to be resolved is inappropriate and cannot reasonably form any part of a basis for a conclusion as to the public interest until all the facts are in.

PASCO COUNTY RATE REDUCTIONS

At the beginning of 1996, Pasco County reduced its charges to its bulk service customers. As a result, several utilities receiving bulk service from Pasco County were subjected to show cause proceedings from the Commission. Pasco County Witness Bramlett testified that Mad Hatter had failed to pass these costs savings from bulk wastewater service on to its customers (TR 385-386). However, under cross-examination, he admitted that this matter is still the subject of pending proceedings before the Commission and that no conclusions had been reached. All of those affected utilities have now resolved with the Commission the issues related to this decrease in bulk service costs and, in fact, Mad Hatter has proposed a substantial rate reduction which has been accepted by the Commission in Docket No. 961418-WS. As such, this matter has been resolved to the satisfaction of the Commission and is of no further relevance to the public interest question in this proceeding.

It should be noted that Pasco County reduced its rates to bulk service customers due to a restructuring of rates and a rate study which revealed that the charges imposed upon bulk service customers were too high and those on residential customers were too low. Mr. Bramlett

admitted that the County had not yet, and had no intention of refunding the excesses charged to the bulk service customers over the years (TR 385-386).

IMPACT FEE CREDITS

Pasco County alleged through the testimony of Mr. Bramlett that Pasco County has been issuing credits to Mad Hatter for customers who paid advance impact fees, but "Mad Hatter has refused to pass along these credits to the customers." (TR 337) No further testimony was provided by any County witness in support of this allegation. A review of Exhibit 24, the bulk service agreement between the parties, shows no reference to any proposal for impact fee credits and the Commission specifically found in the Utility's last rate order at which the bulk service arrangement was recognized, that Mad Hatter should not be required to keep records of impact fees paid by customers through the $1.00 surcharge (PSC Order No. PSC-93-0295-FOF-WS issued on February 24, 1993, at Page 42). In addition, Mr. DeLucenay also explained why Mr. Bramlett's accounting proposal represents a technical impossibility for the Utility, especially given the information which has been supplied to Mad Hatter by Pasco County. In addition, such accounting was considered and rejected previously by this Commission and, as such, it is not authorized by that order or pursuant to the Utility's tariff (TR 565).

In reviewing the proposal by Mad Hatter for service to the additional territories, and the issue of public interest, the Commission by implication is also considering the alternative of service by Pasco County and the public interest that will or will not be served by effectively granting this territory to Pasco County through a denial of Mad Hatter's application. In so doing, several facts came to light in the record of this proceeding which do not relate direct to

any of the other specific issues herein but do relate to the public interest and must be considered. These are outlined separately below:

DUPLICATION OF FACILITIES

As noted in the detailed discussion within this brief, Pasco County participated as a protestant in Commission Docket No. 870982-WS. As a result of the hearings in that prior extension case, the Commission decided that Mad Hatter was in the best position to provide service to a substantial parcel of property which included and surrounded all of those smaller parcels proposed for service hereunder. Pasco County fully participated in that contested matter and opposed service by Mad Hatter. At that time, Pasco County had no facilities in the much larger area proposed for service by Mad Hatter. However, despite the Commission's finding that Mad Hatter was best situated and had existing facilities in place to provide that service, the County ignored the Commission's decision and immediately began extending facilities and duplicating the existing facilities of Mad Hatter and continues to do so to the present day. This action by the County is not in the public interest and, in fact, is plainly contrary to it.

DENIAL OF SERVICE

Despite the plain wording of the contract for bulk service between Mad Hatter and Pasco County allowing if not requiring the County to provide additional wastewater capacity to Mad Hatter if available, the County has recently repeatedly refused to provide additional wastewater capacity for customers to be served through Mad Hatter. The County has done this despite their willingness to provide that service directly, with no regard to the needs of the citizens for service and the County's need to duplicate existing utility lines to provide that service directly. The County has alleged that it does not have the adequate capacity as to Mad

Hatter's customers, but ample capacity as to its own direct customers in the same exact areas. In fact, Mr. Bramlett went so far as to admit at hearing that he would not provide service to a customer through Mad Hatter even if that individual was in need of such service because of a failed septic system (TR 383-384) Once again, these actions evidence an attitude and an agenda which is plainly contrary to the public interest, and should not be condoned much less supported.

INVASION OF TERRITORY

As is evident from testimony and exhibits submitted at hearing, Pasco County actually invaded the existing certificated service territory of Mad Hatter to provide service to the Oak Grove development. Mr. Bramlett of Pasco County alleges the County attempted to get Mad Hatter to provide service, but that "Mad Hatter refused". Under cross-examination, Mr. Bramlett could provide no proof of any notification to Mad Hatter to provide service. He, in fact, admitted that the County, with a change in County attorneys preceding that invasion of territory by a few months, issued a letter reversing the previous attorney's position that the County was somehow prohibited from invading a utility's service territory.

This marks the first time a private utility's water and wastewater service territory has actually been invaded by a local government to the undersigned's knowledge. Pasco County has expressed and demonstrated a total disregard for the Commission's certification process, while at the same time participating in it twice. Obviously, unless the County receives a favorable ruling, it intends to ignore the Public Service Commission's decision. While the Commission is not in a position to enforce its certificates against the County, it should at least discourage

blatant disregard for the Commission's decision of the public interest and allow the regulated Utility through use of its certificate to defend itself in the local and federal courts.

Mad Hatter has already asserted its rights as to the specific invasion of its territory, and has won in Federal Court on a denial of its due process rights concerning such invasion. This court decision currently awaiting the damages phase also included other counts against the County, including inverse condemnation. The Commission should, at the very least, recognize that the County's actions in general with regard to PSC certificated utilities and the Commission's decisions, and more specifically with regard to Mad Hatter, are inappropriate and at the very least demonstrate actions contrary to public interest.

In conclusion, the evidence presented throughout this proceeding as to each of the issues demonstrates that it is in the public interest to grant Mad Hatter's request for extension of territory to serve all of the parcels applied for. Pasco County's long-term attempts to compete for the provision of water and wastewater service with Mad Hatter, despite the public interest, and the Florida Public Service Commission's previous findings, should not be condoned, much less, rewarded through denying Mad Hatter the certificate extension requested. If the Commission does deny this extension application, it is effectively granting to the County, those areas for service and thereby rewarding their and other non-regulated entities continued duplication of facilities, and other actions against the public interest and contrary to law.

CONCLUSION

Mad Hatter has filed its application and complied with all of the noticing and filing requirements under the Commission's rules and applicable statutes. The Utility has demonstrated that it is in the public interest to grant amendments of its water and wastewater certificates for the territories requested. Granting of this application will allow Mad Hatter to plan for and serve those areas where it has existing water and wastewater facilities sized and located to enable the Utility to serve and fully utilize these facilities already invested in.

The great weight of evidence in this proceeding clearly demonstrates that Mad Hatter has the facilities and the technical and financial ability to provide such service and that the provision of such service by Mad Hatter is in the public interest. Such evidence also demonstrates that the County's facilities are not currently situated to allow it to provide service to the great majority of these parcels. To the extent the County is now or will in the near future have the distribution, collection and treatment facilities in place to serve the proposed areas, it is only as a result of direct duplication of the existing facilities of Mad Hatter. Any such facilities of the County have been and will have been constructed contrary to the public interest and in plain competition with and duplication of the existing facilities of Mad Hatter.

While the Commission does not have direct regulatory authority over the County, it should not condone, much less support the series of actions by Pasco County in plain contravention of the Commission's previous findings and the public interest. For the Commission to ignore or effectively condone the County's actions over the past ten years while reaching its decision in this certificate proceeding, sets a very dangerous precedent for all Commission regulated utilities, such that they cannot depend upon the actions of the

Commission to support their previous findings and will jeopardize all investments made by private utilities in reliance on those Commission findings.

Based upon the great weight of evidence presented in this proceeding, the public interest, sound policy, and the law, the Commission should grant the application for extension of service territory requested by Mad Hatter for each of the parcels outlined therein.

Respectfully submitted this
27th day of June, 1997, by:

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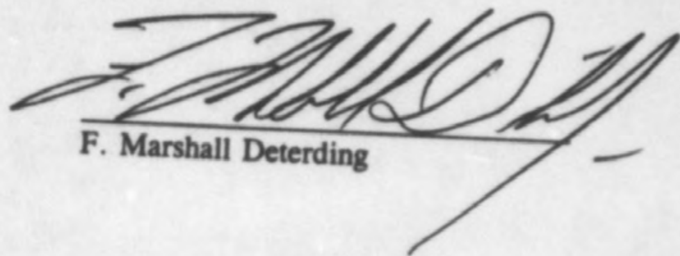

F. Marshall Deterding

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Post-Hearing Memorandum has been furnished by *Hand Delivery or U.S. Mail to the following parties this 27th day of June, 1997.

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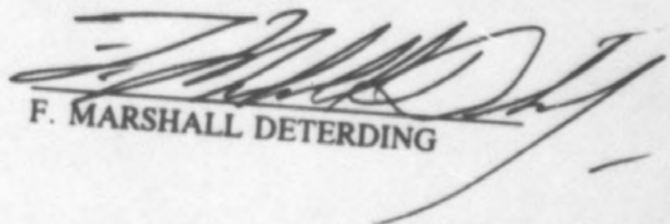

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