

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a Rate ) DOCKET NO. 910637-WS  
Increase in Pasco County by ) ORDER NO. PSC-92-0610-FOF-WS  
MAD HATTER UTILITY, INC. ) ISSUED: 07/07/92  
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The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK  
BETSY EASLEY

ORDER DENYING MOTION TO DISMISS AND  
GRANTING MOTION TO STRIKE

BY THE COMMISSION:

BACKGROUND

Mad Hatter Utility, Inc., (MHU or utility) is a class "B" utility located in Lutz, Florida. MHU owns and operates water and wastewater systems in three separate communities: Linda Lakes, Foxwood and Turtle Lakes. According to MHU's 1990 annual report, MHU serves a total of about 1,234 water customers and 1,231 wastewater customers.

On October 18, 1991, MHU completed the minimum filing requirements for a general rate increase, and that date was established as the official date of filing for this proceeding. The approved test year for determining interim and final rates is the twelve-month period ended December 31, 1990. By Order No. 25589, issued on January 9, 1992, we suspended MHU's proposed rates and approved interim rates. In addition, by Order No. 25711, issued February 12, 1992, in a separate docket, Docket No. 911206-SU, we allowed MHU to collect emergency, temporary wastewater rates subject to refund. The emergency rates collected were to be deposited in an escrow account from which periodic withdrawals were allowed for MHU to pay Pasco County for bulk wastewater treatment. We reserved for this proceeding final judgment on the appropriate rates and the disposition of any remaining escrow funds.

By Proposed Agency Action (PAA) Order No. PSC-92-0123-FOF-WS, issued March 31, 1992, we allowed MHU increased rates, required the

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refund of excess interim and emergency rates, reduced MHU's service availability charges, and found MHU in violation of several Commission rules. On April 21, 1992, Mr. Timothy G. Hayes timely filed a Petition on Proposed Agency Action Order No. PSC-92-0123-FOF-WS And Request For Hearing (or protest).

On April 29, 1992, MHU filed a motion to dismiss Mr. Hayes' protest; Mr. Hayes filed a response to this motion on May 18th. On May 19th, MHU filed a motion to strike Mr. Hayes's response. This Order disposes of these two motions.

#### MOTION TO DISMISS

In his protest, Mr. Hayes states that he objects to Order No. PSC-92-0123-FOF-WS, that he requests a formal hearing, and that his substantial interests are affected by the PAA Order because it proposes to increase water and wastewater rates and he is a customer. Mr. Hayes specifically states that he disputes the amount of the rate increases and the process by which the Commission established a new rate structure. He also states that he disputes the content of the PAA Order because it makes no mention of the separate show cause proceeding which the Commission had approved.

In support of its motion to dismiss, MHU argues that Mr. Hayes' protest fails to state a cause of action upon which relief can be granted, fails to comply with the Commission's rules, and fails to state the manner in which Mr. Hayes' substantial interests are affected.

More specifically, MHU opines that Mr. Hayes' protest does not comply with Rule 25-22.036(7)(a)3., Florida Administrative Code, which requires that an initial pleading contain "[a] statement of all known disputed issues of material fact," or with Rule 25-22.036(7)(a)4., Florida Administrative Code, which requires the initial pleading contain "[a] concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle petitioner to relief." Mr. Hayes' statement that he disputes the rate increase, MHU argues, is nothing more than Mr. Hayes' ultimate position and "is not supported by a single allegation of material fact or statement of any law or policy which shows any basis for [Mr. Hayes'] dispute." MHU also argues that there is no significance to Mr. Hayes' claim that the PAA Order does not

accurately reflect the Commission's decision regarding a separate show cause proceeding.

MHU asserts that since Mr. Hayes' protest fails to raise any disputed issues of material fact and is so devoid of specificity, it is unclear how Mr. Hayes' interests are affected, how the Commission erred in its PAA Order, or what a formal hearing would accomplish. Although it acknowledges that the Commission has been somewhat averse to granting motions to dismiss PAA protests in the past, MHU suggests that since Mr. Hayes is an attorney, he should be held accountable for not following the Commission's pleading rules.

We think MHU is correct in pointing out that protests to PAA Orders are "petitions" within the meaning of Rule 25-22.036, Florida Administrative Code, and as such, PAA protests should meet the form and content requirements of that rule. However, as MHU acknowledges, the corollary to this rule is that this Commission encourages customer participation in its proceedings by not fervently enforcing every technical pleading requirement. This tradition notwithstanding, we think Mr. Hayes' protest is acceptable.

Rule 25-22.036(9)(b)1., Florida Administrative Code, provides that the Commission may deny a petition on proposed agency action if the petition "does not adequately state a substantial interest in the Commission determination . . . ." Mr. Hayes states that he is a customer, he objects to the Order, he disputes the rate increase which affects him, and he requests a hearing. Mr. Hayes' interest in the case is, therefore, adequately stated. Further, we disagree with the premise that Mr. Hayes' objection to the rates does not raise a disputed issue of fact. (For clarity, we note that Mr. Hayes errs in alleging that the PAA Order fails to mention a separate show cause proceeding, as such a proceeding is specifically mentioned on pages 4 and 26 of the PAA Order.)

#### MOTION TO STRIKE

MHU filed its motion to dismiss on April 29th. Rule 25-22.037(2)(b), Florida Administrative Code, allows another party to respond to a motion within seven days of the motion's being served. When the motion is served by mail, Rule 25-22.028(4), Florida Administrative Code, allows a party an additional five days. MHU's motion was served on Mr. Hayes by mail, so Mr. Hayes' response was

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due to be filed on May 11th. It was filed on May 18th. The next day, MHU filed a motion to strike Mr. Hayes's response as being untimely.

Since Mr. Hayes' response was filed more than a week late, we think it appropriate to grant MHU's motion to strike.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Mad Hatter Utility, Inc.'s Motion to Dismiss the Petition on Proposed Agency Action Order No. PSC-92-0123-FOF-WS And Request For Hearing filed by Mr. Timothy Hayes is hereby denied. It is further

ORDERED that Mad Hatter Utility, Inc.'s Motion to Strike Response Filed by Petitioner, Timothy G. Hayes is hereby granted.

By ORDER of the Florida Public Service Commission, this 7th day of July, 1992.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

by: Karp Flynn  
Chief, Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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