BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment of Certificates Nos. 340-W and 297-S in Pasco County by Mad Hatter Utility, Inc.	DOCKET NO. 960576-WS ORDER NO. PSC-97-1173-FOF-WS ISSUED: October 1, 1997

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
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APPEARANCES:

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On behalf of Mad Hatter Utility, Inc.

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On behalf of Pasco County.

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On behalf of the Commission Staff.

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FINAL ORDER AMENDING CERTIFICATES NOS. 340-W AND 297-S TO INCLUDE ADDITIONAL TERRITORY

BY THE COMMISSION:

BACKGROUND

Mad Hatter Utility, Inc. (MHU or utility), is a Class A utility located in south central Pasco County, Florida, which is 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 its 1996 annual report, MHU serves approximately 2,013 water and 1,940 wastewater customers with combined annual operating revenues of $1,361,504 and a combined net loss of $77,418.

On July 19, 1994, MHU filed requests for approval of two special service availability contracts; one with AFI, Inc. (VOPII), and the other with Lake Heron, which were processed in Dockets Nos. 940760-WS and 940761-WS, respectively. By Order No. PSC-94-1603-FOF-WS, issued December 27, 1994, in both dockets, we approved both service availability contracts.

MHU also filed, in both dockets, proposed revised water and wastewater tariff sheets nos. 3.0 through 3.18, describing certain territory which we found was not within the utility's certificated area. Consequently, by Order No. PSC-94-1603-FOF-WS, we denied approval of the proposed revised tariff sheets. We also found that MHU was serving outside of its certificated territory in violation of Section 367.045(2), Florida Statutes. However, we did not believe it necessary to require the utility to show cause as to why it should not be fined for this violation. Instead, we required MHU to file an amendment application within sixty days in order to request to serve the territory that it was already serving without a certificate.

MHU filed a timely protest to the order which it later withdrew prior to hearing. By Order No. PSC-96-0172-FOF-WS, issued February 7, 1996, in Docket No. 940761-WS, we acknowledged the utility's notice of withdrawal of protest, declared Order No. PSC-94-1603-FOF-WS to be final and effective, and required the utility to file an amendment application within ninety days. The utility complied by filing, on May 8, 1996, the amendment application at issue in this docket.

In its amendment application, the utility seeks to include in its Certificates Nos. 340-W and 297-S, the uncertificated territory

that it is currently serving as well as certain adjacent territory which it is not currently serving. On June 13, 1996, Pasco County (County) filed an objection to the application and a petition for administrative hearing on the matter, stating, among other things, that the County will soon provide service to certain of the parcels included in MHU's amendment application. Consequently, a prehearing conference was held on May 5, 1997, in Tallahassee, and a formal hearing was held on May 13-14, 1997, in Pasco County.

During the hearing, customer testimony was received from five members of the public. Ms. Delores Johnson, a real estate broker, testified that she represents the seller of property located in a parcel referred to as Lake Talia. Ms. Johnson testified that she has a contract for the sale of the property and that the sale has not been able to close as a result of difficulties encountered in obtaining water and wastewater service due to a conflict between MHU and the County. According to Ms. Johnson, although the property is located in MHU's currently certificated area, MHU does not have any facilities nearby, while the County does. Ms. Johnson further stated that MHU has not refused to provide the service, and that she was not certain whether the buyer had applied to MHU for service.

Mr. Tim Hayes testified that he is a residential customer of MHU who also represented the seller of the Lake Talia property. Mr. Hayes testified, among other things, that MHU gave him an application to file for a request for service but that he had not submitted the application to the utility. Mr. Hayes also stated that it is extremely frustrating to be in the middle of a conflict between the County and MHU and to have to pay higher rates to a private utility to act as a middleman when the sewage is being treated by the County.

Ms. Marilyn Phillips testified that she is a real estate broker and that it seems that every development she is involved in experiences permitting delays due to water and wastewater jurisdiction problems between MHU and the County. Ms. Juanita Dennis testified that she has begun receiving wastewater from MHU but has yet to receive a bill for service. She explained that she wishes to begin paying for service so that she will not have a huge bill to pay at some future time. Ms. Norma Koebernik testified that she is the president of the Carpenter's Run Homeowners Association and is a customer of MHU. She testified that the water smells, tastes, and looks bad, that the water pressure is poor, and that MHU has not responded to numerous phone calls and letters regarding a billing concern.

The parties filed post-hearing statements and briefs on June 30, 1997, in accordance with Rule 25-22.056(3)(a), Florida Administrative Code. On that same date, the County filed a "Motion to Supplement the Record." By Order No. PSC-97-1004-FOF-WS, issued August 22, 1997, we declined to consider the information contained in that filing in making our decision on the merits of this case.

Also on June 30, 1997, the County filed Proposed Findings of Fact and Conclusions of Law. We include our ruling on each of the County's proposed findings of fact and conclusions of law in Attachment A to this Order, which is incorporated herein by reference.

RULINGS

Additional Prefiled Direct Testimony

At the hearing, a ruling was made that the additional prefiled direct testimony of John Gallagher, filed on May 9, 1997, would not be inserted into the record.

Motion to Delay Agenda Conference and Rendering of Decision, for Staff to Reconsider Recommendation, and Request to Supplement Record

On September 5, 1997, MHU filed a Motion to Delay Agenda Conference, Motion to Delay Rendering of Decision, Motion for Staff to Reconsider Recommendation, and Request to Supplement Record. By this motion, MHU sought to have us consider certain comments which it alleges that a federal magistrate made at a status conference conducted on September 3, 1997, in a pending federal action, which comments the utility contends are relevant to our decision in this case. By its motion, the utility requested that we enter a final order consistent with our staff's recommendation on the merits of its application on those parcels which our staff recommended be approved for inclusion in its territory, and that we delay taking any action on those parcels which our staff recommended be denied until the federal court makes its decision. The utility also requested that we supplement the record with the transcript from the federal court status conference, a copy of which it attached to the motion.

The County filed its response in opposition to the motion on September 9, 1997, arguing that MHU intentionally misconstrued the comments the federal court made during the status conference.

At the September 9, 1997, agenda conference, prior to ruling on the merits of MHU's application, we denied the motion. We found

that the utility did not request that we conduct an evidentiary hearing in order to admit the information as evidence, and that the motion contained information upon which parties and staff had not had an opportunity to conduct discovery, to cross-examine, or to rebut. Moreover, we found that the documentation had not been authenticated, as required by the Florida rules of evidence, and that the information contained in, and the documentation attached to, the motion are not in the record upon which we base our decision on the merits of this case, as set forth herein.

FINDINGS OF FACT, LAW AND POLICY

Having heard the evidence presented at the hearing in this proceeding and having reviewed the recommendation of the Commission staff, as well as the post-hearing filings of the parties, we now enter our findings and conclusions.

UNCERTIFICATED TERRITORY CURRENTLY SERVED BY MHU

An issue raised in this docket was whether MHU included 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. The intent of the issue is also to identify the existing customer base of MHU as opposed to areas MHU is requesting to add to its territory for which it is not providing service.

Both MHU and the County agree that MHU has included in its amendment application all of the uncertificated territory for which it currently provides service. In addition, both parties agree that MHU is serving Parcels A-3, A-4, B-21, B-22, B-23, C-6, C-7 and a portion of C-8. MHU takes a further position that it is also providing service outside its certificated territory to Parcels B-24 and C-6A. The County disagrees.

We note that although the County provided a statement of its issues and positions, it did not brief this issue or support its position with citations to the record. Nor did a County witness testify on direct on this issue. Any comments provided by a County witness on cross-examination will be noted in the analysis below. Because the County only disputes that MHU is serving Parcels B-24, C-6A and the southern portion of Parcel C-8, we confine our analysis to those three parcels.

B-24 (Kniff Property)

MHU witness DeLucenay testified that MHU has been providing water and wastewater service to Parcel B-24 for a number of years.

No County witness testified as to why the County believes that MHU is not serving this parcel. Witness DeLucenay testified that MHU has existing water and wastewater force mains along the north side and down the east side of the property which are stubbed to serve. The utility acknowledges that service over the years has been intermittent and to different customers. And, witness DeLucenay testified that although no customer is currently requiring service, he expected a dirt contractor to take a meter within the next thirty days for a minimal amount of water for construction purposes. Regardless, MHU contends that by having the lines in place to provide service when needed, it is serving the parcel.

Late-filed exhibit 9 consists of billing records which substantiate that MHU provided water and wastewater service within this parcel to H. C. Price in 1994 and, more recently, water service to Overstreet Paving Company in 1996. Rule 25-30.515(1), Florida Administrative Code, defines an active connection as a connection to the utility's system at the point of delivery of service, whether or not service is currently being provided. We find that MHU has demonstrated that it has a point of connection to Parcel B-24, by providing records which show that it periodically receives compensation for water and wastewater service. Based on the foregoing, we find that MHU currently provides service to Parcel B-24.

Parcel C-6A (Twin Lakes Commercial)

With respect to whether MHU currently provides service to Parcel C-6A, County witness Bramlett testified that he does not consider the provision of irrigation water to be the provision of utility service. Witness DeLucenay acknowledged that the service which MHU is currently supplying to C-6A is 2-inch meter service for irrigation on the frontage and along the center road of the parcel, and that such service has been provided continuously since it was initiated in 1988. Witness DeLucenay also testified that MHU an 8-inch water main running through the center of Parcel C-6A to provide service to Parcel C-6 (Twin Lakes Subdivision), which is located immediately north of Parcel C-6A. Witness DeLucenay testified that with the assistance of the developer, the utility added 12-inch reclaim, or reuse, infrastructure to serve both parcels. For wastewater, witness DeLucenay testified that the utility has gravity manholes and lines stubbed into Parcel C-6A with a master force main down the east property line stubbed to serve both Parcels C-6 and C-6A.

Late-filed exhibit 10 consists of billing records which substantiate that the utility has provided continuous potable water service to Parcel C-6A since 1989, for irrigation. Based on the

foregoing, we find that MHU currently provides service to Parcel C-6A.

Parcel C-8 (Reiber Medical Plaza/Highland Oaks)

With regard to Parcel C-8, the County does not dispute that MHU is providing service to the northern portion of the parcel known as the Reiber Medical Plaza. It does dispute that service is being provided to the southern portion known as Highland Oaks.

MHU witness DeLucenay acknowledged that MHU currently provides water and wastewater service to an eye clinic and to a few developer-owned commercial rental properties in the northern commercial phase of Parcel C-8 called the Reiber Medical Plaza. Witness DeLucenay indicated that the developer had not yet finalized construction plans for the second phase of development intended to be a residential phase in the southern part of the parcel. However, witness DeLucenay testified that service to the residential phase was anticipated in its service agreement with the developer for the Reiber Medical Plaza by way of sizing the master sewage pump station to also receive gravity sewer flow from the south side of Parcel C-8 when developed.

MHU's lack of service to undeveloped property in this parcel does not dissuade us from finding that MHU has demonstrated that it is currently serving Parcel C-8. There is no dispute that MHU is providing water and wastewater service to commercial customers in Parcel C-8. MHU has relied on service to the entire parcel in the planning of its mains and lines. For these reasons, we hereby identify the entire parcel for future service by MHU.

Conclusion

We find that MHU has included in its amendment application all of the uncertificated territory in which it is currently providing service, in compliance with Order No. PSC-96-0172-FOF-WS, and that these areas are: A-3, A-4, B-21, B-22, B-23, B-24, C-6, C-6A, C-7, and C-8.

TERRITORY REQUESTED BUT NOT CURRENTLY SERVED BY MHU

A parallel issue was designed to identify the areas requested by MHU in its amendment application which are not currently served by MHU. The parties are in agreement that these areas include Parcels B-1A, B-20, B-25, B-26, B-27, C-9 and C-10. The testimony given at the hearing confirms that these parcels are not being served and have not been served by MHU. Nevertheless, as discussed

out above, there was disagreement among the parties as to whether MHU currently provides service to Parcels B-24, C-6A and C-8.

By having determined the parcels which are currently receiving service from MHU, as set forth above, we find that it necessarily follows that the remainder of the parcels included in the application are not currently receiving service. We refer to our finding made above concerning the existence of service to Parcels B-24, C-6A and C-8. Therefore, we hereby also find that MHU included the following parcels in its application, to which parcels MHU does not currently provide service: Parcels B-1A (T & G Properties); B-20 (Willet-Liner): B-25 (Ash Property); B-26 (Meadowview); B-27 (Como Club/Mossview); C-9 (Myrtle Lakes Baptist Church), and C-10 (Ash Property-Myrtle Lake).

NEED FOR SERVICE

Section 367.045(2)(b), Florida Statutes, requires an examination of the need for service in the requested area of expansion. Both the County and MHU agree there is a need for service in all areas which MHU seeks to add to its certificates of authorization.

Witness Phillips testified on the general need for water and wastewater service in the area of the road widenings, which she characterized as that of a general emergency. Ms. Phillips testified that she is not a customer, but a real estate broker with commercial clientele in the area. She testified that due to the Florida Department of Transportation (FDOT) acquiring land and widening the roads in the area, her clients were in need of sites to relocate their businesses. Absent water and wastewater services, they cannot proceed with timely relocation.

County witness Bramlett testified that the County has extended lines in the areas at issue in this docket to serve not only the County's existing customers but also to serve one of the high growth areas of the County. MHU provided various requests for service to verify need.

The distinguishing factor among the parcels appears to be the timeliness of this need for service. For those parcels that the parties agree that MHU is currently serving, which include Parcels A-3, A-4, B-21, B-22, B-23, C-6, and C-7, the parties agree that MHU should continue as the service provider. We agree. Moreover, we find that a need for service also exists in Parcels B-24, C-6A, and C-8, in which parcels we found above that MHU is currently providing service. We individually discuss below the need for

service in each of the remaining parcels, which include Parcels B-1A, B-20, B-25, B-26, B-27, C-9, and C-10.

Parcel B-1A (T & G Properties)

Witness DeLucenay testified that the need for water and wastewater service is immediate in this parcel, and subject only to being economically served in consideration of the FDOT road construction. Exhibit 6 shows that a request for service to this parcel was made on May 5, 1995, from Mr. Gerald M. Grandbois of T&G Properties. Witness Bramlett testified that the County does not object to MHU serving Parcel B-1A.

Parcel B-20 (Willet-Liner)

Exhibit 6 shows that requests for service to this parcel were made on April 16, 1995, and November 15, 1995, for the warehouse owned by Mr. Francis M. Liner and Mr. R. Mark Willet. Exhibit 15 shows that the County refused to provide wastewater service to the property through the current bulk agreement with MHU. The record reflects that the property owners subsequently installed a septic tank. In 1997, they requested the installation of a fire hydrant.

Parcel B-25 (Ash Property)

The record reflects that MHU has an executed developer agreement that has been in existence since 1990. However, due to the construction along Highway 54, the property is subject to a FDOT taking. Therefore, there are no current plans for development of this parcel. Witness Bramlett testified that the construction by FDOT is scheduled to be complete in the year 2000.

Parcel B-26 (Meadowview)

Exhibit 6 shows that MHU received a letter dated September 24, 1986, requesting water service from Mr. David Fuxan. The letter indicates that the development would consist of 79 units, with a need for water and wastewater service in July of 1987. Witness DeLucenay testified that did not know why the project had been delayed. He indicated that he spoke with one of the original partners the week prior to the hearing, and the partner stated that the need for service was immediate. Witness Bramlett testified that the County intends to provide service to the parcel, but that it currently does not have plans under contract to serve. He testified that the maps contained in composite Exhibit 11 show only what the County has under contract and what is permitted, not what the County proposes to serve ten years in the future or whenever this development's needs for service will occur.

Parcel B-27 (Como Club/Mossview)

Witness DeLucenay testified that an executed developer agreement with MHU had been in existence for this parcel since 1990. Witness DeLucenay also stated that he had been contacted by two of the board members of the existing development within the last thirty days, and that service might be required in about six months to a year, depending on permitting considerations. Witness Bramlett also testified about a meeting with the Board of Directors of the Como Club about four weeks prior to the hearing, concerning the provision of water and wastewater service to this parcel by the County. Staff witness Burghardt testified that Como Club/Mossview was being monitored for required conversion from septic to wastewater service, and that a letter was sent to the Health Department advising it not to issue any more septic tank permits on that property.

Parcel C-9 (Myrtle Lake Baptist Church)

Exhibit 6 shows that Mr. Charles E. Groover requested service to this parcel from MHU on November 14, 1986. The church was planning on building a school on this property. However, witness DeLucenay testified that there has been no construction that it was unknown at this time if and when the actual construction will take place. No County witness testified as to the need for service to this parcel.

Parcel C-10 (Ash Property-Myrtle Lakes)

The record reflects that MHU has had an executed developer agreement for this property since 1990, but that it has not actually provided service to the property. Witness Delucenay testified that the existing strip mall was to be demolished due to an FDOT taking, and that the parcel was to be rezoned for a supermarket chain. He testified that there are signs on the property right now with respect to the proposed project. Witness Bramlett testified that preliminary plans have been submitted to the County and that the project's engineer has contacted the County for connection services. Because the County has been contacted for connection services and there is activity on the site, we hereby find it reasonable to estimate that there will be a need for service to this parcel within six months to a year.

Conclusion

In this case, the parties appear to share similar opinions on the need for service for some parcels, varying from immediate need, as in the case of Parcels B-20 (Willet-Liner), B-27

(Como/Mossview), and possibly B-1A (T & G Properties); to intermediate need (six months to a year) for Parcel C-10 (Ash Property-Myrtle Lakes); to a completely unknown future need for Parcels B-25 (Ash Property) and C-9 (Myrtle Lake Baptist Church). The parties provide contradictory statements as to immediacy of need for Parcel B-26 (Meadowview), with the utility suggesting that the need is immediate, and the County suggesting that the need is at an unknown future time.

The parties seem to be in basic agreement with the concept of need for service and timeliness of this need for Parcels B-1A, B-20, B-25, B-27, C-9, and C-10. Parcel B-26 generated some disagreement among the parties as to need for service. Witness DeLucenay testified that MHU has a verbal affirmation from one of the original partners that need is immediate. However, witness Bramlett indicated that the County had no current construction plans to that property because there did not appear to be any firm development plans. Exhibit 6 shows that the letter of inquiry for service used by MHU to verify need for service is over ten years old, and there is no developer agreement at this time. Based on the foregoing, we find that the record does not support a clear need for service in Parcel B-26.

We find it appropriate for MHU to continue to provide service in the parcels where it is currently providing service, which include Parcels A-3 (Woodruff MHP), A-4 (Holy Trinity Church), B-21 (Robco), B-22 (Larreau), B-23 (Rusch Plaza), C-6 (Twin Lakes Subdivision), and C-7 (Woodridge). We also find that a need for service exists in the remaining parcels in which we found above that are also receiving service from MHU, including Parcels B-24 (Kniff Property), C-6A (Twin Lakes Commercial), and C-8 (Reiber Medical Plaza/Highland Oaks). Moreover, based on the foregoing, we find that a need for service also exists in Parcels B-1A (T & G Properties), B-20 (Willet-Liner), B-27 (Como Club/Mossview), and C-10 (Ash Property-Myrtle Lakes), but that a need for service does not exist in Parcels B-25 (Ash Property), B-26 (Meadowview), and C-9 (Myrtle Lake Baptist Church).

TECHNICAL ABILITY AND PLANT CAPACITY

A part of the filing requirement for an application to amend a certificate of authorization is the demonstration of technical ability and adequate capacity to serve, pursuant to Rules 25-30.036(3)(b) and (j), Florida Administrative Code.

MHU contends that it has, in the past, and will continue in the future, to have the technical ability and adequate capacity to provide service to its entire existing service territory and the

additional territory requested in the amendment as and when needed. According to MHU, it has already demonstrated its ability to serve the extended territory by providing both water and wastewater service throughout its certificated territory and most of the additional areas requested under this application for many years.

The County contends that MHU does not have the capacity to provide service, and that it does not have the financial ability to obtain capacity. Furthermore, according to the County, MHU does not have any Florida Department of Environmental Protection (FDEP) permit to provide wastewater treatment service. The County argues that the granting of MHU's request to serve will result in a portion of south central Pasco County having no utility service and no prospect of such service in the foreseeable future.

Technical Ability

Water

The evidence regarding the technical ability of MHU to provide water service to the requested territory consists primarily of the testimony of staff witnesses Martinez and Screnock. Neither the County nor MHU briefed MHU's technical ability to operate and maintain water treatment facilities in compliance with FDEP standards.

Witness Martinez testified that MHU currently has six water treatment plant (WTP) facilities, including:

1) Linda Lakes WTP;
2) Cypress Cove-Phase I (Foxwood WTP);
3) Cypress Cove-Phase II WTP;
4) Turtle Lakes-Phase I (Twin Palms WTP);
5) Turtle Lakes-Phase II (Highway 54 WTP); and
6) Carpenter's Run WTP.

Both witnesses Martinez and Screnock testified that all six plants are currently in compliance with the utility's permits. Witness Screnock additionally testified that all of MHU's water treatment facilities currently have FDEP certified operators, established cross-connection control programs, satisfactory maintenance records, meet the standards for primary and secondary water quality contaminant levels, maintain the required chlorine residual equivalents and minimum required 20 psi pressure throughout the distribution systems, and, with the exception of Turtle Lakes, have an adequate auxiliary power source.

With respect to the Turtle Lakes auxiliary power source, witness Screnock testified that a warning notice was issued October 9, 1995, and that FDEP and the utility had entered into a settlement agreement on March 27, 1997, for the utility to place an auxiliary power unit into operation per an agreed-upon schedule. As of the time of the hearing, the agreement was still valid and the utility was complying with the timeframes established by the agreement.

Based on the foregoing, we hereby find that MHU has the technical ability to provide water service to the requested territory.

Wastewater

Staff witness Burghardt testified on MHU's technical ability to operate and maintain its Linda Lake Groves wastewater treatment plant (WWTP). Witness Burghardt also testified on the County's technical ability to operate and maintain its WWTPs. In addition, County witness Squitieri testified about the reasons why MHU no longer has an operating permit for its former Foxwood and Turtle Lakes WWTPs.

Witness Burghardt testified that MHU has a current operating permit for its Linda Lakes WWTP with a capacity limit of 20,000 gallons per day (gpd), and that the permit is valid until September 30, 1999. Witness Burghardt also testified that MHU is not currently in compliance with the permit due to insufficient chlorine detention time and the lack of requisite overflow structures at the disposal pond. Witness Burghardt acknowledged that FDEP had only recently located this widespread design flaw in small package plants similar to Linda Lakes WWTP, and that FDEP is in the process of issuing permit modifications for the plant operators to address the problem. MHU's permit modification was issued on April 15, 1997.

Witness Burghardt further testified that the Linda Lakes WWTP facilities are located in accordance with FDEP's rules at the time the facilities were constructed; FDEP has not been required to take any action to minimize adverse odors, noise, aerosol drift or lighting from the plant; the plant has an FDEP certified operator; and that the overall maintenance, treatment and disposal facilities were satisfactory as of the last inspection. Witness Burghardt also testified that the facilities have not been subject to any FDEP enforcement action within the last two years.

Witness Burghardt further testified that the County has current operating and construction permits for four WWTPs in south

central Pasco County, which are the Land O'Lakes subregional WWTP, Wesley Chapel subregional WWTP, Trout Creek WWTP, and Wesley Center subregional WWTP, the latter being under construction at the time of the hearing.

Witness Burghardt testified that the County's Land O' Lakes WWTP was in compliance with its permit and the Wesley Chapel and Trout Creek WWTPs were in compliance with the consent agreement as shown in exhibit 4.

Witness Burghardt further testified that the County's WWTPs are located in accordance with FDEP's rules at the time the facilities were constructed; FDEP has not been required to take any action to minimize adverse odors, noise, aerosol drift or lighting from the plants; the plants have an FDEP certified operator; and that the overall maintenance, treatment and disposal facilities were satisfactory. However, the County's Land O'Lakes WWTP was issued a compliance and self-improvement schedule, which it is currently meeting. The County's Wesley Chapel and Trout Creek WWTPs have been subject to FDEP enforcement action, which resulted in the County's construction of the Wesley Center WWTP.

Witness Burghardt testified regarding the County's consent agreement with the FDEP. He explained that the County had another WWTP, Saddlebrook, which was also affected by the enforcement action, but that that plant has already been taken off line and is therefore no longer subject to action. Of the five remaining violations cited for the County's current WWTPs, four of the six had the highest potential for harm.

As noted above, witness Squitieri testified regarding MHU's former permits for its Foxwood and Turtle Lakes WWTPs. Witness Squitieri stated that MHU had allowed its Turtle Lakes WWTP to expire in April of 1991, and did not file a timely request to extend that permit to the FDEP's predecessor organization, the Florida Department of Environmental Regulation (FDER). Without a legal permit, MHU continued to operate the plant until connection to Pasco County Utilities in August of 1991. Witness Squitieri also testified that the FDER had issued a notice of intent to revoke MHU's permit to operate its Foxwood WWTP and that MHU had consented to the revocation.

This Commission has already considered the circumstances surrounding the shutdown of MHU's Foxwood and Turtle Lakes WWTPs by Order No. PSC-93-0295-FOF-WS, issued February 24, 1993, in Docket No. 910637-WS, which order we officially recognized for the purposes of this proceeding. By that order, the Commission relied upon the findings of the 6th Judicial Circuit Court, which

concluded that there was no evidence that MHU had done anything improper or that it had failed to do something required. Instead, the environmental problems relating to MHU's wastewater treatment plants were found to be the result of artificially high water levels caused by a stormwater drainage system that was not in MHU's control.

Based on the foregoing, we hereby find that MHU has the technical ability to provide wastewater service to the requested territory.

Capacity

Water

The County argues that the testimony of County witness Orsi supports the conclusion that MHU does not have sufficient water available to serve Mr. Orsi's proposed development. This conclusion originates from the terms of a developer agreement which would have required Sunfield Homes to lend the utility $100,000 to develop two wells on the property of its Oak Groves subdivision project. The County also referenced that staff witness Martinez testified that the County could serve an additional 1,500 water connections from its existing facilities. According to the County, because MHU is able to provide less than 600 connections, the County is better able to provide water to the extended territory.

With respect to the Orsi agreement, witness DeLucenay testified that he believed such arrangements were appropriate for a development project the size of Mr. Orsi's, projected to be over 800 equivalent residential connections (ERCs) at buildout. Witness DeLucenay testified that the utility has sufficient water capacity and lines ready to supply the immediate needs of the Oak Groves development from its Turtle Lakes system to the west and from its Carpenter's Run system to the east, allowing for the looping of the two existing water systems. However, witness DeLucenay testified that he anticipated that a new well would be necessary to supply water needs at buildout, and that he believed the logical location for the new well would be on the property.

Witness DeLucenay also testified that MHU had required several previous developers to provide similar loans and that those agreements had been filed with and approved by this Commission. Further, witness Bramlett acknowledged that the County recently required a developer to construct a 0.58 mile 10-inch water main extension along State Road 54 (SR 54) from a developer's project to the County's Collier Parkway water main. Thus, the record reflects that the County appears to have similar requirements for developers

of large projects served by the County. These requirements may or may not have any relationship to the serving utility's existing capacity to serve.

Staff witness Martinez testified about the capacity of MHU's water treatment systems and the ability of MHU to construct additional water treatment plants in compliance with FDEP standards. Witness Martinez stated that MHU's existing water systems can accommodate a total of 2,126 connections, of which there are an additional 565 connections remaining. For purposes of the following analysis, we note that an FDEP connection is approximately equal to an ERC. The 565 connections were distributed among MHU's connected water systems as follow: 95 remaining connections in Linda Lake Groves; 200 remaining connections in the Foxwood/Cypress Cove looped system; and 270 remaining connections in the Turtle Lakes looped system. Witness Martinez testified that there are no additional connections remaining in the currently isolated Carpenter's Run system.

When questioned about MHU's ability to increase its existing water capacity, witness Martinez acknowledged that it would only require the addition of larger pumps or pressure tanks. MHU Witness Rogers testified that MHU has designs available for additional wells and tanks at Turtle Lakes and Carpenter's Run which can be taken "out of the drawer" and submitted for permitting on relatively short order. However, we note that the record does not reflect the extent to which these changes would extend plant capacity. Therefore, we make no determinations herein on additional ERCs that may be served from the existing plants. Instead, we rely on the following information.

We have found herein that the remaining areas where MHU is not providing water service are Parcels B-1A, B-20, B-25, B-26, B-27, C-9, and C-10. The following table indicates MHU's estimate of the number of ERCs for each parcel where MHU is not currently serving, by water system. Parcels B-24, C-6A, and C-8 are also included because they have existing connections, although the real demand is projected.

We have identified the potential of available ERCs in the currently isolated Linda Lake Groves system for informational purposes. Witness DeLucenay testified that the utility intends to connect that system to the Foxwood/Cypress Cove system by way of Parcel B-27. However, because we deny MHU's request to serve Parcel B-27, as set forth herein below, the 95 available connections that would result from the looping are not included in evaluating water capacity.

We note that there are a number of qualifications to the numbers of ERCs shown on the following table. Witness DeLucenay testified that the ERCs used on page 5 of exhibit 6 are only estimates, and are subject to final developer permitting and buildout. Moreover, MHU did not estimate the number of ERCs for Parcels B-25 and C-10 in exhibit 6, since these projects were undergoing FDOT modification at the time. For Parcel B-25, we rely upon page 1 of exhibit 6 and witness DeLucenay's testimony that a likely development would be 196 multifamily units, which is 156.8 ERCs. For Parcel C-10, we also rely on that exhibit, as well as the testimony of witnesses DeLucenay and Bramlett that the proposed development would likely be one commercial customer. We then used the same 2.5 ERCs given for similar commercial developments in Parcels B-1A, B-20, and B-24.

Available Water Capacity

	PARCEL	DEVELOPMENT	ERCs
LINDA LAKE GROVES WATER SYSTEM--AVAILABLE CONNECTIONS			95.0
FOXWOOD/CYPRESS COVE WATER SYSTEM--AVAILABLE CONNECTIONS			200.0
B-1A	T & G Properties	Commercial	2.5
B-20	Willet-Liner	Commercial	2.5
B-24	Kniff Property	Commercial	2.5
B-25	Ash Property	Multi-family	156.8
B-26	Meadowview	Residential	50.0
B-27	Lake Como/Mossview	Mobile Homes	60.0
Remaining (deficit) connections with amendment			(74.3)
TURTLE LAKES WATER SYSTEM--AVAILABLE CONNECTIONS			270.0
C-6A	Twin Lakes Commercial	Commercial	12.5
C-8	Reiber Medical Plaza/Highland Oaks	Commercial/Resid	68.0
C-9	Myrtle Lakes Baptist Church	Commercial	5.0
C-10	Ash Property-Myrtle Lakes	Commercial	2.5
Remaining connections with amendment			184.5

This table reflects our finding that MHU has adequate existing water capacity to serve some of the B Parcels served from the Foxwood/Cypress Cove system, and all of the C Parcels served from the Turtle Lakes Water System. Our rulings on which of these

specific parcels shall be approved for service by MHU are set forth later in this Order.

Wastewater

Witnesses Burghardt and Squitieri both testified that, with a recent flow reconciliation, MHU's Linda Lakes WWTP's permitted capacity of 20,000 gpd is 100% committed. Witness Burghardt testified that the remainder of MHU's wastewater is being treated by agreement with Pasco County Utilities and estimates the amount as approximately 340,000 gpd. Witness Bramlett testified that the amount of wastewater that the County was obligated to treat pursuant to its 1992 bulk agreement with MHU (bulk agreement) is 350,000 gpd. The County has agreed to treat an additional 30,000 gpd of wastewater for a total of 380,000 gpd. Therefore, we hereby find that there is 40,000 gpd of unused, committed capacity under the bulk agreement; i.e., 380,000 gpd committed capacity less 340,000 gpd currently being treated.

Witness Bramlett estimated the need for service in MHU's territory extension to be 436,000 gpd. MHU witness Rogers estimated total flows for the territory extension to be 361,250 gpd. The parcels used for both those calculations are Parcels A-4, B-23, B-24, B-25, B-26, B-27, C-6A, C-8, and C-9. We note that the list includes parcels in which MHU is undisputedly currently serving and excludes parcels in which MHU is undisputedly not currently serving.

We have herein above found that the remaining areas where MHU is not providing wastewater service are Parcels B-1A, B-20, B-25, B-26, B-27, C-9, and C-10. The following table shows MHU's estimate, from page 7 of exhibit 6, of the wastewater demand in gpd for each unserved parcel. Also shown on the following table are our findings on wastewater need.

Unserved Wastewater Capacity

PARCEL	GPD	WASTEWATER NEED
B-1A T&G Properties	750	Yes
B-20 Willet-Liner	435	Unknown future
B-24 Kniff Property	435	Yes
B-25 Ash Property	39,200	Unknown future
B-26 Meadowview	12,500	Unknown future
B-27 Como Club/Mossview	15,000	Yes

C-6A Twin Lakes Commercial	5,060	Yes
C-8 Reiber Medical/Highland Oaks	13,135	Yes
C-9 Myrtle Lakes Baptist Church	1,250	Unknown future
C-10 Ash Property-Myrtle Lakes	435	Yes

We find that combining the numbers for the parcels with a need for wastewater service results in a total of 34,815 gpd, which is less than MHU's estimated available capacity in the bulk agreement. Combining all the estimates for these parcels amounts to 88,200 gpd, which exceeds the available capacity in the bulk agreement. Clearly, then, only some combination of these parcels can be served by MHU, based on the current bulk agreement with the County. We therefore find that MHU has the capacity to provide wastewater service to its existing customers and to some combination of Parcels B-1A, B-20, B-25, B-26, B-27, C-9, and C-10 that totals under 40,000 gpd.

Conclusion

We hereby find that MHU has the technical ability to provide both water and wastewater service. However, due to capacity limitations, the utility is able to provide water service to its existing customers, some of the B Parcels served from the Foxwood/Cypress Cove system, and all of the C Parcels served from the Turtle Lakes Water System. Similarly, we find that the utility is able to provide wastewater service to its existing customers and to some combination of Parcels B-1A, B-20, B-25, B-26, B-27, C-9, and C-10 that total under 40,000 gpd.

FINANCIAL ABILITY

Also at issue is whether MHU has the financial ability to provide service to the areas requested in its amendment application. These areas include parcels to which MHU has already been providing water and/or wastewater service, but are outside of the utility's certificated area, in addition to parcels that will require service to be provided at varying times in the future.

MHU's position is that it has the financial resources to provide service to the entire area identified in the application since little to no additional facilities will be required and the utility has completed restructuring and refinancing of debt. The County believes that MHU's finances are generally in an extremely poor state, and that since no specific plan was presented by MHU, there can be no finding about its ability to acquire financing in the future. The County takes the position that even if MHU could

finance the construction, the impact would be devastating upon its capital structure.

The County argues that the very nature of the utility's developer agreements demonstrate the weak financial condition of MHU. County witness Hobby testified concerning a developer agreement that was the subject of negotiations between witness Hobby, his client, witness Orsi, and MHU. The agreement is shown in exhibit 20. Witness Hobby testified that the agreement contained language that would have required his client to loan MHU $93,000 at a low interest rate for MHU to build the infrastructure in the development. According to witness Hobby, this language indicates that the utility must have financial problems, since it requires developers, rather than the utility, to pay for infrastructure. Witnesses Hobby and Orsi also testified that the agreement indicates that MHU is in a precarious financial condition.

The County also provided financial information, contained in exhibit 21, which was used in a federal court proceeding concerning the value of MHU with respect to a sale to a private entity. Witness Moses testified that MHU's liabilities exceeded its assets as of January 1994, and that therefore the utility would have no value should it be sold to a private utility concern.

Finally, during cross-examination, the County asked witness DeLucenay whether he had represented in a federal proceeding that the utility was near bankruptcy in January of 1996. The County also identified that Mr. DeLucenay had represented in that proceeding that if MHU were not allowed to serve the Oak Grove subdivision and the Denham Oaks school, the utility faced possible foreclosure by its lender, and that MHU was still not serving either customer. Witness DeLucenay acknowledged that both of those statements were made in the federal proceeding.

Witness DeLucenay testified on rebuttal and MHU witness Nixon testified on direct in support of MHU's financial ability to serve the areas requested. On rebuttal, witness DeLucenay stated that MHU had recently refinanced all of its outstanding debt with CoBank. In addition, exhibit 22 is a letter from the Vice President at CoBank indicating a willingness to provide additional financing to MHU as needed. Witness Nixon added that the utility restructured and refinanced its existing debt with CoBank, and that since that time, has serviced that debt on a timely basis. He further testified that the utility's cash flow has gradually improved, and that he believed MHU would have the capability of borrowing money for additional plant expansion, if necessary. Witness Nixon testified that substantial new investment would not

be required by MHU if it could obtain additional wastewater capacity from the County.

We find that the record contains conceptual information concerning MHU's financial ability, but does not contain specific current financial data for the utility. Although County witness Moses presented his financial report, the report was generated for a different proceeding, was not current, and used assumptions that were not relevant to this proceeding. In fact, the report itself states on its face that it "is valid only for the purpose or purposes specified herein," which was for use in a U.S. District Court proceeding. Witness Moses agreed that the information should not be considered by itself in any determination by the Commission, but that it could be used to show a history.

County witnesses Hobby and Orsi testified to the questionable financial status of MHU and its and unwillingness to provide service to witness Orsi's development. MHU's financial ability to serve was linked to statements relating to loans required by the developer to build infrastructure and the guarantee of service. Nevertheless, a discussion on record between witness Hobby and the Commission reveals that the regulation of investor-owned utilities requires a different perspective on who should bear the costs of development, as between the developer and the existing utility customer, through higher rates. This Commission has traditionally taken the position that existing customers should not be required to pay for expenses incurred by private developers. Therefore, we find that although the language at issue in the agreements may reflect a poor financial status of MHU, the agreements also reflect the Commission's policy of requiring development to pay for itself, rather than requiring the existing customers to pay for future customers. We also find that language in those agreements concerning inability of the utility to provide service were included as *force majeure* provisions, which are standard in utility agreements, to protect the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and which could not be avoided by exercise of due care.

The County attempted to discredit the statements concerning additional financing from CoBank by questioning the level of collateral that might need to be committed by MHU and the actual commitment made by CoBank. On cross-examination, witness Nixon testified that he would not know with 100% certainty whether MHU could obtain financing until MHU actually applies for financing and the bank rules upon it. He also testified that the letter from Mr. John Cole does not represent a commitment to lend and that no application has been made. However, witness Nixon added that he

believed an application by MHU for financing would be premature at this point. This testimony was consistent with statements made by witness DeLucenay concerning the timing of building new facilities and timing the need for financing. Witness Nixon testified that CoBank's security requirements include all of the existing fixed assets and a claim on the revenues of the company, and that CoBank does not require a personal guarantee of the stockholders. Therefore, in his opinion, the security for MHU would be the additional facilities to be constructed and the future revenues from connections that those facilities were to serve.

Based on the foregoing, we find that MHU is financially able to provide service to the areas in which it currently provides service and to those portions of the requested area where it is not currently providing service which have a need for service, through the use of existing facilities and within the capacity constraints of the bulk agreement with the County. Although it was in serious financial circumstances a few years ago, the restructure and refinancing of debt appear to have been successful in producing a positive cash flow for the utility, at least to the extent that its lender would entertain additional discussions of debt. We further find that the language in the developer agreements discussed by County witnesses Orsi and Hobby are not compelling evidence of MHU's financial inability to serve existing customers or those with an immediate need. These agreements contain language that reflect general Commission policies. The County presented historic financial information to suggest financial instability. However, that information was intended for a specific purpose outside of this hearing, and again, the utility has successfully executed its debt restructure and refinancing since then.

With respect to MHU's financial ability to provide service to future customers which requires investment in plant by the utility, we find that the record does not strongly support a conclusion in either direction. Although the need for additional financing may be premature, the utility has a letter from CoBank supporting a willingness to consider additional financing. Because the lender's security requirements include new construction and associated revenues, it does not appear out of the realm of possibility that MHU could receive that financing. However, the past financial history of the utility does cast some doubt on MHU's ability to attract capital and finance a substantial wastewater treatment facility. Regardless, without an actual set of circumstances to evaluate, it is not possible for us to make any affirmative finding in this regard. As stated earlier, no current specific financial information exists in the record upon which to make such a finding. As previously noted, the record does not strongly support or refute whether MHU has the financial ability to provide service in the

areas not currently served by MHU which would require the financing and the building of new plant. Nevertheless, we do not herein grant MHU's amendment request in full. And for those portions of territory which we do herein approve for MHU to serve, construction of plant will not be necessary in order for the utility to provide the service.

PROOF OF OWNERSHIP OR RIGHT TO CONTINUED USE OF LAND

As required by Rule 25-30.036(3)(d), Florida Administrative Code, MHU must provide evidence that it owns the land upon which its treatment facilities that will serve the proposed territory are located or a copy of any agreement, such as a 99-year lease, which provides for the continued use of the land. The Commission may consider a written easement or other cost-effective alternative.

MHU states that it has demonstrated that it owns or has arrangements for continued use of the land upon which its existing water and wastewater treatment facilities are located. It also states that, to the extent any additional land is necessary, those rights will be acquired. The County focuses on MHU's lack of a wastewater treatment plant and lack of disposal capacity, and argues that MHU has failed to show proof that it owns land associated with future wastewater treatment, and that therefore we should deny the application.

The County did not address this issue with respect to the provision of water service by MHU to the extended area. The County's focus was on the utility's lack of capacity with its existing wastewater facilities to provide service to the entire requested territory. Since additional capacity for MHU would be required, the County focused on whether MHU had any specific plans regarding additional plant and therefore, land.

The County supported its position largely through the testimony of witness DeLucenay, who testified on cross-examination that MHU does not have permitted capacity to treat the sewage in the extended territory. Although witness DeLucenay testified that MHU has several options to allow it to provide service, there were no current plans, either by lease, by contract, or by ownership to provide additional wastewater treatment service to the extended territory, with the one possible exception being that the utility may be able to use the Foxwood wastewater plant site, which it has owned since 1981. However, MHU has no permit applications pending with FDEP to either expand or build any treatment plants. County witness Moses testified that MHU owned land for a subregional wastewater treatment plant, but gave the property back in a deed in lieu of foreclosure.

Witness DeLucenay testified that MHU owns six water treatment plants. Proof of deeds or easements were provided for five water treatment plants. Composite exhibit 3 at pages 21-34 of LGD-2; Exhibit 24 at 9-16; Exhibit 26. Witness DeLucenay testified that that these plants could provide water to the proposed extension with some minor capacity enhancements, and that no purchases of additional land for enlargement would be necessary.

However, we find that MHU has not proven that it owns or has a continued right to the use of the land upon which the sixth water plant, Linda Lake Groves, is located. Late-filed exhibit 27 references a plat book and a map wherein the location of the Linda Lake Groves water treatment plant is identified as being in the middle of a median strip. We find that this is insufficient proof of ownership or of an easement or other right to the continued use of the land upon which the Linda Lakes plant is located. Therefore, MHU shall provide such proof, as required by Rule 25-30.036(3)(d), Florida Administrative Code, in the manner and within the timeframe as set forth herein below.

With respect to wastewater, witness DeLucenay testified that the utility owns the Linda Lakes wastewater plant, as well as the land at the former Foxwood treatment facility. Exhibit 24 at 25-32 contains an easement for the Linda Lake Groves wastewater treatment plant. Ownership of the Foxwood treatment facility land is contained in Exhibit 24 at 16.

Both parties addressed the issue of MHU providing wastewater service beyond the capacity of its current plant and bulk agreement with the County. For example, the County emphasized that MHU is basically at full wastewater capacity, that it has not committed to any firm plans, that it cannot dispose of any additional effluent without bringing a new treatment plant on line, and that the bulk agreement is the subject of litigation. MHU argues that it could pursue other options independent of the County, that some existing lots could be disposal sites if the Foxwood site is reinstated, and that its interpretation of the bulk agreement allows for additional flows.

Nevertheless, we find herein that water service can be provided from MHU's existing water plants to the areas proposed for extension of service. We also find herein that wastewater service to the areas which we approve for extension of service can be continued through MHU's current facilities or under the provisions of the bulk agreement with the County.

Based on the foregoing, we hereby find that, with the exception of the Linda Lake Groves water treatment plant, MHU owns

areas not currently served by MHU which would require the financing and the building of new plant. Nevertheless, we do not herein grant MHU's amendment request in full. And for those portions of territory which we do herein approve for MHU to serve, construction of plant will not be necessary in order for the utility to provide the service.

PROOF OF OWNERSHIP OR RIGHT TO CONTINUED USE OF LAND

As required by Rule 25-30.036(3)(d), Florida Administrative Code, MHU must provide evidence that it owns the land upon which its treatment facilities that will serve the proposed territory are located or a copy of any agreement, such as a 99-year lease, which provides for the continued use of the land. The Commission may consider a written easement or other cost-effective alternative.

MHU states that it has demonstrated that it owns or has arrangements for continued use of the land upon which its existing water and wastewater treatment facilities are located. It also states that, to the extent any additional land is necessary, those rights will be acquired. The County focuses on MHU's lack of a wastewater treatment plant and lack of disposal capacity, and argues that MHU has failed to show proof that it owns land associated with future wastewater treatment, and that therefore we should deny the application.

The County did not address this issue with respect to the provision of water service by MHU to the extended area. The County's focus was on the utility's lack of capacity with its existing wastewater facilities to provide service to the entire requested territory. Since additional capacity for MHU would be required, the County focused on whether MHU had any specific plans regarding additional plant and therefore, land.

The County supported its position largely through the testimony of witness DeLucenay, who testified on cross-examination that MHU does not have permitted capacity to treat the sewage in the extended territory. Although witness DeLucenay testified that MHU has several options to allow it to provide service, there were no current plans, either by lease, by contract, or by ownership to provide additional wastewater treatment service to the extended territory, with the one possible exception being that the utility may be able to use the Foxwood wastewater plant site, which it has owned since 1981. However, MHU has no permit applications pending with FDEP to either expand or build any treatment plants. County witness Moses testified that MHU owned land for a subregional wastewater treatment plant, but gave the property back in a deed in lieu of foreclosure.

Witness DeLucenay testified that MHU owns six water treatment plants. Proof of deeds or easements were provided for five water treatment plants. Composite exhibit 3 at pages 21-34 of LGD-2; Exhibit 24 at 9-16; Exhibit 26. Witness DeLucenay testified that that these plants could provide water to the proposed extension with some minor capacity enhancements, and that no purchases of additional land for enlargement would be necessary.

However, we find that MHU has not proven that it owns or has a continued right to the use of the land upon which the sixth water plant, Linda Lake Groves, is located. Late-filed exhibit 27 references a plat book and a map wherein the location of the Linda Lake Groves water treatment plant is identified as being in the middle of a median strip. We find that this is insufficient proof of ownership or of an easement or other right to the continued use of the land upon which the Linda Lakes plant is located. Therefore, MHU shall provide such proof, as required by Rule 25-30.036(3)(d), Florida Administrative Code, in the manner and within the timeframe as set forth herein below.

With respect to wastewater, witness DeLucenay testified that the utility owns the Linda Lakes wastewater plant, as well as the land at the former Foxwood treatment facility. Exhibit 24 at 25-32 contains an easement for the Linda Lake Groves wastewater treatment plant. Ownership of the Foxwood treatment facility land is contained in Exhibit 24 at 16.

Both parties addressed the issue of MHU providing wastewater service beyond the capacity of its current plant and bulk agreement with the County. For example, the County emphasized that MHU is basically at full wastewater capacity, that it has not committed to any firm plans, that it cannot dispose of any additional effluent without bringing a new treatment plant on line, and that the bulk agreement is the subject of litigation. MHU argues that it could pursue other options independent of the County, that some existing lots could be disposal sites if the Foxwood site is reinstated, and that its interpretation of the bulk agreement allows for additional flows.

Nevertheless, we find herein that water service can be provided from MHU's existing water plants to the areas proposed for extension of service. We also find herein that wastewater service to the areas which we approve for extension of service can be continued through MHU's current facilities or under the provisions of the bulk agreement with the County.

Based on the foregoing, we hereby find that, with the exception of the Linda Lake Groves water treatment plant, MHU owns

the land or has long term leases for the land upon which its water and wastewater facilities are located, to serve the territory which we herein approve for MHU to serve. The utility shall provide evidence that it owns the land upon which the Linda Lake Groves water treatment plant is located. The proof shall be in the form of a warranty deed, a copy of an agreement, such as a 99-year lease which provides for the continued use of the land, a written easement, or another cost-effective alternative, and shall be provided by November 10, 1997, or within sixty days from the September 9, 1997, agenda conference at which we voted upon this matter. If MHU does not comply within this timeframe, it shall be required to show cause, in writing, as to why the areas served from the Linda Lake Groves water treatment plant should not be deleted from its service area.

EXISTENCE OF SERVICE FROM OTHER SOURCES

Pursuant to Section 367.045,(5)(a), Florida Statutes,

> [t]he Commission may not grant a certificate of authorization for a proposed system, or an amendment to a certificate of authorization for the extension of an existing system, which will be in competition with, or a duplication of, any other system or portion of system, unless it first determines that such other system or portion thereof is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses, or neglects to provide reasonably adequate service.

According to MHU, the County has attempted to extend services into some of the areas adjacent to those currently within MHU's certificates of authorization and/or which are served by MHU and are proposed for service herein, counter to the requirements of the provisions of Section 153, Florida Statutes. According to MHU, to the extent any alternative service exists, it is the result of the County attempting to duplicate MHU's existing facilities. The County's position is that it has service and is completing the construction of additional lines, and that its activity in the area is not to compete with MHU but is a necessary response to meet growth.

Witness Bramlett testified that the County has partially constructed lines along SR 54 and US 41 which can serve the areas requested by MHU. In addition, witness Bramlett testified that the county is planning to extend its lines along US 41 in conjunction with the widening of the road. He testified that this extension is not to compete with MHU but is in response to a request by FDOT to

enter into a construction agreement when MHU refused to do so. In addition to extending its service lines in the area, witness Bramlett testified that the County is increasing its wastewater plant capacity by another 4,000,000 gpd. However, County witness Gallagher testified that the County does not intend to accept any additional flows from MHU.

Witness DeLucenay testified that MHU already has in place all the necessary water distribution and wastewater collection facilities immediately adjacent to, or within, all the territories proposed for service except for Parcels C-9 and C-10. In addition to having the lines already in place, witness DeLucenay testified that the utility has the necessary existing treatment facilities to meet immediate need. Witness DeLucenay testified that to the extent it cannot get additional wastewater capacity from the County, the utility has the ability to expand or construct on its own. He also testified that, with minor exceptions, the County has no water or wastewater facilities or lines in close proximity to the areas requested for service by MHU. In addition, MHU points out that witness Bramlett testified on cross-examination that the County will incur costs of several million dollars to duplicate MHU's existing facilities.

There is no disagreement by the two parties that the County is active in geographical proximity to the areas that MHU seeks to add to its certificates. Instead, the parties focus their disagreement on the reasons for that activity and what they would propose that we do as a result.

Although the County contends that it is an overall source for service in the geographical area, it does not object to MHU serving those areas where the County believes that MHU has existing service. As set forth previously, the areas where MHU undisputed provides service are Parcels A-3, A-4, B-21, B-22, B-23, C-6, and C-7. In addition, the County does not object to MHU serving Parcel B-1A. Therefore, we limit our focus to the areas where the County proposes to be an alternate source of service, which are Parcels B-20, B-24, B-25, B-26, B-27, C-6A, C-8, C-9, and C-10.

Parcel B-20 (Willet-Liner)

The record reflects that Parcel B-20 is located on the east side of US 41, near the apex of US 41 and Dale Mabry. As noted previously, both parties agree that the need for water and wastewater service to Parcel B-20 is immediate. Exhibit 15 at 7 shows that by letter dated June 27, 1996, to Mr. Willet, the County stated that it will not have central sewer service available at the intersection of US 41 and Dale Mabry until 1998. As a consequence,

the property owners subsequently installed a septic tank, mitigating the immediate need for wastewater service. However, in 1997, the property owners requested water service for a fire hydrant.

The record reveals that the County currently has no constructed water or wastewater systems in the immediate vicinity of Parcel B-20. Instead, the record shows that the County proposes to extend a 12-inch water main along the west side of US 41 and an 8-inch wastewater force main along the east side of US 41. The terminus of the constructed portion of the wastewater force main is currently located approximately one-half mile north of Parcel B-20 and the terminus of the constructed portion of the water main is approximately two miles north. As currently proposed, the County's water main will be on the opposite side of US 41 from Parcel B-20. However, a jack and bore will not be required if the crossings are provided during the road widening, as witness Bramlett testified.

According to witness Bramlett, the County's US 41 main extensions are in conjunction with the FDOT's widening of the highway scheduled to start in mid-1997 and intended to be completed within twelve months. Witness Bramlett testified that the County intends to serve Parcel B-20 from the FDOT extensions. Based on our finding that the need for service to this parcel is immediate, and on the County's statement that it cannot meet that need until 1998 from these extensions, we hereby find that water and wastewater service to Parcel B-20 does not exist from the County.

Parcel B-24 (Kniff Property)

We herein above found that MHU is serving Parcel B-24. However, since the County contends otherwise, we find it appropriate to consider the availability of service to this parcel from other sources. The County proposes to serve Parcel B-24 from the same extension of its water and wastewater mains in conjunction with the US 41 widening described in above for Parcel B-20.

The record reflects that Parcel B-24 is located slightly south and west of Parcel B-20, inside the apex of US 41 and Dale Mabry. Therefore, the analysis of the County's proposed lines in Parcel B-20, above, applies to Parcel B-24 with the distinction that Parcel B-24 is on the same side of US 41 as the County's proposed water main, but on the opposite side from the County's proposed wastewater force main. Witness Bramlett testified that jack and bore will not be required for the County to connect Parcel B-24 to its proposed wastewater force main if the crossing is provided during the road widening.

Since we have found herein that MHU has an active connection to Parcel B-24, in order for service to exist from the County, it must have a connection in place which can be immediately activated. Instead, the County indicates that it will not have central service available at the intersection of US 41 and Dale Mabry until 1998. Therefore, we find that water and wastewater service to Parcel B-24 does not exist from the County.

Parcel B-25 (Ash Property)

The record reflects that Parcel B-25 is located on the north side of SR 54 where the road bends from a southeast direction to due east. The majority of this 40-acre parcel is wetland sensitive. County witness Bramlett described the location of Parcel B-25 as adjacent to SR 54 about halfway between US 41 to the east and Collier Parkway to the west.

With regard to water service, witness Bramlett testified that the County had recently required a developer to construct a westward extension of the County's existing north-south water main on Collier Parkway in order to serve the developer's property. The County would propose to further extend that 10-inch water main along the southern right-of-way of SR 54 adjacent to Parcel B-25. The terminus of the existing portion of this water main is about 0.16 miles east of this parcel, on the south side of SR 54. We note that, in order to serve Parcel B-25 on the north side of SR 54 from this main, the County would need to jack and bore under SR 54.

With regard to wastewater service, the County has an existing 8-inch wastewater force main in the southern right-of-way of SR 54. Witness Bramlett testified that the purpose of the force main is to send wastewater from Pasco Plaza on the north side of SR 54, near US 41, to the County's Willow Bend master pump station on the south side of SR 54 on Collier Parkway. Obviously, to make this connection, the force main must cross at some point from the north side to the south side of SR 54. The determination to cross over west of Parcel B-25 was to avoid having to possibly relocate the force main as a result of FDOT's eventual widening of the north side of SR 54. Witness Bramlett anticipates that the widening will be completed around the year 2000.

Regardless of the reason, the cross over west of Parcel B-25 places the County's wastewater force main on the opposite side of SR 54 from this parcel. As a result, the County would need to jack and bore back under SR 54 and construct a lift station to serve Parcel B-25 from this force main.

We have found herein that the need for service to this parcel is at some unknown future time. Although the County does not have any active connections to this property, it does have existing mains for both water and wastewater that are adjacent to the property. Because the need for service to Parcel B-25 is unknown future need and because the County has existing facilities in the area, we hereby find that water and wastewater service does exist to Parcel B-25 from the County.

Parcel B-26 (Meadowview)

The record reflects that Parcel B-26 is located directly south of Parcel B-24, inside the apex of US 41 and Dale Mabry. Currently, Parcel B-26 is pasture land with some environmentally sensitive property along its east side. The record reflects that the County currently has no constructed or proposed water or wastewater systems in the immediate vicinity of this parcel. According to witness Bramlett, the lines on the map preliminarily marked exhibit DB-3, which is contained in composite exhibit 11, were intended to represent only major transmission and collection mains. The record does not show that the County has any proposed extensions in the vicinity of Parcel B-26. Witness Bramlett testified that due to the extreme southerly location of Parcel B-26 on the Pasco/Hillsborough County line, lines for any proposed extension to this parcel would probably be downsized.

With respect to water service, witness Bramlett testified that the County could extend its proposed US 41 water main further down the west side of US 41. We note that this is the same proposed water main extension in conjunction with FDOT's widening of US 41 that was discussed above for Parcels B-20 and B-24. To serve Parcel B-26, the County would have to extend the line over 2.5 miles from the current northern terminus of this main.

Witness Bramlett testified on cross-examination that the County has two ways to provide wastewater service to Parcel B-26. The County could either continue its constructed wastewater force main serving Paradise Lakes down the west side of Dale Mabry or continue its proposed wastewater force main down the east side of US 41. Both ways would require a jack and bore under a highway and a lift station. Both ways would also require land easements to reach the parcel since it is not contiguous to either highway.

We have found herein that the record does not support a clear need for service in Parcel B-26. We find that the County does not have constructed lines in the area of this parcel, nor does it have any contracts for lines. Therefore, we find that water and wastewater service to Parcel B-26 does not exist from the County.

Parcel B-27 (Lake Como/Mossview)

Parcel B-27 is a large tract of land situated on the extreme western side of MHU's existing and proposed service territory. As with Parcel B-25, the majority of the western side of this 200-acre property is wetland sensitive. It is bordered on the east by Northfork Professional Plaza, which is in MHU's existing service territory, and on the north by MHU's Linda Lake Groves service area. Parcel B-27 is also bordered on the northeast corner by Paradise Lakes, which recently connected to the County's central wastewater treatment system.

With regard to water service, witness Bramlett testified that the County intends to serve Parcel B-27 from an extension of its proposed water main down the west side of US 41. A road extends west from US 41 along the north of Paradise Lakes called Leonard Road, north of the apex of US 41 and Dale Mabry. Since Parcel B-27 is on the opposite side of US 41 and Dale Mabry from the extension of the water main to Parcels B-20, B-24, and B-26, the County proposes to split a distribution line off the main. The juncture of Leonard Road and US 41 is approximately two miles south of the terminus of the County's currently constructed portion of this water main. Since this line is not yet proposed and since exhibit 15 at 7 shows that the County cannot meet water need in the area until 1998), we find that water service to Parcel B-27 does not exist from the County.

For wastewater service, witness Bramlett testified that the County proposes to either extend its recent connection with Paradise Lakes along Leonard Road between Paradise Lakes and Parcel A-4 to the northeast corner of Parcel B-27, or to continue down Dale Mabry to the eastern side of the parcel. MHU witness Rogers estimates that the County's connection to Paradise Lakes is approximately three quarters of a mile north of Parcel B-27. We find that the connection appears to be close enough to serve relatively immediate need. We therefore find that wastewater service to Parcel B-27 does exist from the County.

Parcel C-6A (Twin Lakes Commercial)

Parcel C-6A is located on the north side of SR 54. The parcel is bisected into two rectangular tracts by Foggy Ridge Parkway. We above found that MHU is providing water service to this parcel. However, because the County objects to MHU serving the parcel, we find it appropriate to consider the availability of service to Parcel C-6A from other sources.

The record reveals that the County has an existing 20-inch water main on the same side of SR 54, along the south border of Parcel C-6A. The record does not show whether the County made specific provisions for a stub-out to serve Parcel C-6A at the time it constructed this water main. As MHU is providing water service to Parcel C-6A, need for service to this parcel is apparent. Therefore, although the County has an operating water main running alongside Parcel C-6A, in the absence of evidence that the line is stubbed to serve the parcel, we find that water service to the parcel does not exist from the County.

With respect to wastewater service, the record reflects that the County has a proposed 12-inch wastewater force main on the south side of SR 54 adjacent to Parcel C-6A, but on the opposite side of SR 54. According to witness Bramlett, the purpose of the County's proposed force main is to connect the County's Willow Bend master pump station on Collier Road to the County's existing 10-inch force main on SR 54, which terminates at the Oak Grove subdivision. Once that segment of force main is complete, the County will have an interconnection between its Land O' Lakes regional collection system and its newly constructed Wesley (Center) collection system. It is evident that the proposed force main is not operational, and that in order for the County to serve Parcel C-6A from this proposed force main, it would need to jack and bore under SR 54 and construct a lift station. Based on the foregoing, we find that wastewater service to Parcel C-6A does not exist from the County.

Parcel C-8 (Reiber Medical Plaza/Highland Oaks)

Parcel C-8 is slightly west of Parcel C-6A, but on the south side of SR 54. The County does not dispute that MHU is currently serving the northern portion of Parcel C-8 known as the Reiber Medical Plaza. Since the County protests MHU serving the southern portion of Parcel C-8 known as Highland Oaks), we find it appropriate to consider the availability of service to this parcel from other sources.

The County intends to provide water service to Parcel C-8 from its constructed 20-inch water line on the opposite side of SR 54. It is evident that a jack and bore will be required to service this parcel. Since there is no dispute that MHU already has an active water connection to Parcel C-8, in order for the County's service to exist, it must have a connection which can be activated immediately. Consequently, we find that water service to Parcel C-8 does not exist from the County.

According to witness Bramlett, the County intends to provide Parcel C-8 with wastewater service from the same proposed 12-inch force main being constructed along SR 54 as described in our above analysis on Parcel C-6A. Since the force main is intended to be constructed on the same side of SR 54 as Parcel C-8, there will be no need for a jack and bore. However, since there is no dispute that MHU already has an active connection to some of Parcel C-8, in order for the County's service to exist, it must have a connection which can be activated immediately. Because the record does not show whether the line is operational, we find that wastewater service to Parcel C-8 does not exist from the County.

Parcel C-9 (Myrtle Lakes Baptist Church)

Parcel C-9 in located on the north side of SR 54, close to the intersection of Collier Parkway and SR 54. We found above that the need for service to this parcel is at some unknown future time.

Witness Bramlett testified that the County intends to provide water service to Parcel C-9 from the County's constructed 16-inch water main on Collier Parkway. This main expands to a 20-inch water main extending east along the northern right-of-way of SR 54 along the southern face of Parcel C-9. The record does not show whether the County made specific provisions for a stub-out to serve Parcel C-9 at the time it constructed this water main. However, because the need for service is at some unknown future time, and the County has a constructed water main running along a face of Parcel C-9, we find that water service to this parcel exists from the County.

Witness Bramlett testified that the County intends to provide wastewater service to Parcel C-9 from the proposed 12-inch force main extension the Willow Bend master pump station to Oak Groves subdivision as described above in our analyses on Parcels C-6A and C-8. Parcel C-9 is on the opposite side of SR 54 from the proposed extension and service would require a jack and bore under SR 54 and the construction of a lift station. There is an existing 12-inch wastewater force main extending north-south along Collier Parkway about 0.125 miles west of Parcel C-9. Service from this force main would also require a jack and bore and lift station. Again, because the need for service to this property is at an unknown future time, and an existing wastewater main is located nearby, we find that wastewater service exists to Parcel C-9 from the County.

Parcel C-10 (Ash Property--Myrtle Lakes)

Parcel C-10 is located immediately to the west of Parcel C-9 on the north side of SR 54, contiguous to Collier Parkway on its west border. Witness Bramlett testified that the developer of

Parcel C-10 has submitted preliminary plans for the construction of a Winn Dixie store at the site and that the developer's engineer has contacted the County for service. We found above that there will be a need for service to Parcel C-10 within six months to one year.

As noted in our above analysis on Parcel C-9, witness Bramlett testified that the County has constructed a 16-inch water main and a 12-inch wastewater force main along either side of Collier Parkway. The water main is on the same side of Collier Parkway as Parcel C-10. The record does not show whether the County made specific provisions for a water stub-out to serve Parcel C-10 at the time it constructed its main along Collier Parkway. Nevertheless, because the County has a constructed water main running along a face of Parcel C-10, we find that water service exists to this parcel from the County.

The County's wastewater force main is on the opposite side of Collier Parkway from Parcel C-10. As such, service to Parcel C-10 would require a jack and bore under the parkway and possibly the construction of a lift station. Once the County makes a connection to Parcel C-10, the same line extension and lift station could serve Parcel C-9, as well. Witness Bramlett testified that the County's engineers have discussed with the developer the provision of service from the Collier Parkway force main and water main. Based on the foregoing, we find that wastewater service to Parcel C-10 exists from the County.

Conclusion

For areas where there is no dispute, Parcels A-3, A-4, B-1A, B-21, B-22, B-23, C-6, and C-7, we evaluated no other source of service, as there is no evidence in the record to show that service exists from other sources. We find that no service exists from other sources for Parcels B-20, B-24, B-26, C-6A, and C-8. We also find that water service exists from another source for Parcels B-25, C-9, and C-10, and that wastewater service exists from another source for Parcels B-25, B-27, C-9, and C-10.

DUPLICATION OF SERVICE

MHU takes the position that its proposed amendment of territory would not result in the extension of a system which would be in competition with, or a duplication of, any other system or portion of a system. According to MHU, the County's attempts to extend services into and adjacent to the areas currently served by MHU's systems since 1975, is a duplication of MHU's existing service, and is contrary to law and public policy. MHU argues that

to the extent duplication exists under relevant law, it has or will result from actions by the County.

The County argues that the proposed amendment of MHU's territory would result in the extension of a system which would be in competition with, or a duplication of, the County's system, as the County is completing the infrastructure necessary to serve south central Pasco County including those areas for which MHU seeks a certificate.

The record is clear that duplication of lines and facilities already exists in some portions of the territory at issue. Section 367.045(5)(a), Florida Statutes, prohibits us from granting an amendment for the extension of an existing system which will be in competition with, or a duplication of, another system absent a determination that such other system is inadequate to meet the reasonable needs of the public or that the person operating it is unable, refusing or neglecting to provide reasonably adequate service. Accordingly, the question raised by this issue is whether the granting of MHU's application will result in an extension of MHU's existing system which would cause further duplication of, or competition with, the County's system. If so, the next step is to determine whether the County's system is inadequate, or whether the County is unable, refusing or neglecting to provide reasonably adequate service to the parcels at issue.

It is important to note that the granting of the proposed territory amendment, or any portion thereof, in which territory MHU proposes to serve from existing plant, mains, and lines, will not result in the extension of an existing system at all, and thus could not result in the extension of a system which would be in competition with, or a duplication of, another system. Similarly, where both parties are in an equal position to provide service in areas where service is not currently being provided, in which areas the facilities to serve are already in place, no extension of an existing system would be constructed at all. Thus again, no extension of an existing system would be constructed which could duplicate, or compete with, the County's system.

We have above found that water and wastewater service exists from the County for Parcels B-25, C-9, and C-10 and that wastewater service also exists from the County for Parcel B-27. Consistent with these findings, the following analysis will focus on the extent to which MHU would need to extend an existing system to provide service to these parcels, which extension would be in competition with or a duplication of a portion of the County's system.

For areas where there is no dispute that MHU is already serving, Parcels A-3, A-4, B-1A, B-21, B-22, B-3, C-6, and C-7, we evaluated no other source of service. Neither shall we evaluate whether duplication of service exists for those parcels.

Parcel B-25 (Ash Property)

Water

Witness Bramlett testified that the County has an existing force main within the SR 54 right-of-way at the southern edge of this property boundary. The County is currently having a developer construct a water main along that right-of-way, and can extend that line on further to the Ash property. This is a 10-inch water main, which is approximately 0.16 miles east of the Ash property on the south side of SR 54.

MHU, on the other hand, already has an 8-inch line stubbed onto private property under an easement area for this specific parcel. This line runs under Highway 54, under its existing force main.

MHU's wastewater force main was installed in 1986. Although the record does not specifically show when the water line was installed, we find it reasonable to assume that it was near the time that the wastewater force main was installed, particularly since the water line is under the wastewater force main. As noted above, MHU's water line is already stubbed to serve this parcel, whereas the County's line is only currently being installed and would need to be extended to serve the parcel since it is .16 miles away from it. Because MHU has existing facilities and lines in place to serve this parcel, it will not need to extend its existing system to provide the service. Therefore, we find that no duplication or competition will result if we grant MHU's request to amend its water certificate to include Parcel B-25.

Wastewater

The County has an 8-inch wastewater force main adjacent to Parcel B-25. This main was constructed in 1990 in the same south side SR 54 right-of-way as MHU's existing 16-inch force main.

As stated, MHU has a 16-inch force main, which was installed in 1986. Actual service to this parcel has not been initiated by either MHU or the County. Both parties will require a jack and bore under SR 54 in order to provide service to the parcel.

Since MHU installed its force main before the County installed one, and because no extension by the County has been made to this parcel, we find that no duplication or competition will result if we grant MHU's request to amend its wastewater certificate to include Parcel B-25.

Parcel B-27 (Lake Como/Mossview)

Wastewater

The County intends to serve Parcel B-27 from either an extension of its recent connection with Paradise Lakes, along Leonard Road between Paradise Lakes and Parcel A-4, or to continue down Dale Mabry. MHU witness Rogers estimated that the County's connection to Paradise Lakes is approximately three quarters of a mile north of Parcel B-27, which he characterized as being relatively close.

MHU has an existing 6-inch wastewater force main which is stubbed at the juncture of the Northfolk Plaza and Lake Como/Mossview. MHU witness Rogers testified that Northfolk Plaza directly abuts Parcel B-27, which positions MHU closer to Lake Como/Mossview than the County.

Since MHU has an existing force main and is stubbed out to serve this parcel, we find that no duplication or competition will result if we grant MHU's request to amend its wastewater certificate to include Parcel B-27.

Parcel C-9 (Myrtle Lakes Baptist Church)

Water

The County intends to provide water service to Parcel C-9 from its constructed 16-inch water main on Collier Parkway. This main runs along the southern face of Parcel C-9.

Witness DeLucenay testified that MHU is not currently serving Parcel C-9, and that the water main was stubbed on the north side of SR 54 by the earlier owners of the utility. The utility proposes an extension of its water main on the north side of SR 54 in order to serve the parcel. It appears that the current main is approximately 3/4 of a mile east of Parcel C-9.

Because the County has an existing main along the parcel, and because MHU would have to extend its main to reach the parcel, we find that duplication or competition will result if we grant MHU's request to amend its water certificate to include Parcel C-9.

Wastewater

Witness Bramlett testified that the County intends to provide wastewater service to Parcel C-9 from a proposed 12-inch force main extension. The record shows that the County also has an existing 12-inch force main which extends north-south along Collier Parkway, about 0.125 miles west of Parcel C-9. Service to the parcel would require a jack and bore under the Parkway, as well as the construction of a lift station.

Witness DeLucenay testified that wastewater service to Parcels C-9 and C-10 was taken into consideration at the time MHU constructed its SR 54 force main on the southern side of SR 54, by allowing for a stub to serve these two adjoining parcels. The record shows that there is an existing 16-inch wastewater force main on the opposite side of SR 54 from Parcel C-9. Therefore, service to this parcel would require a jack and bore under the SR, and construction of a lift station.

If we rely on witness Bramlett's testimony that the County intends to provide wastewater service to this parcel from a proposed force main, because MHU has an existing force main to serve, we would find that no duplication or competition will result if we grant MHU's request to amend its wastewater certificate to include Parcel C-9. However, as noted above, the record also shows the possibility of service by the County from another existing force main. If the County were to use this option, this would place it in an even position with MHU to serve the parcel, since either party would still have to jack and bore and construct a lift station in order to provide the service. Nevertheless, because the duplicative facilities (i.e., force mains) are already in place, and because either party would need to jack and bore and construct a lift station, service to this parcel by MHU would not necessitate that MHU extend service which would duplicate or be in competition with the County's existing facilities. Therefore, under either of the two possible methods of providing the service which the record reflects are available to the County, we hereby find that no duplication or competition will result if we grant MHU's request to amend its wastewater certificate to include Parcel C-9.

Parcel C-10 (Ash Property-Myrtle Lakes)

Water

As noted above, witness Bramlett testified that the County has constructed a 16-inch water main along Collier Parkway. The main is on the same side of Collier Parkway as Parcel C-10. Witness DeLucenay testified that MHU is not currently providing water

service to Parcel C-10. The utility proposes an extension of its water main on the north side of SR 54 in order to serve the parcel. The end point of the existing main is approximately 3/4 of a mile east of C-10.

It appears that the County has an existing main to serve this parcel, and that MHU would be required to extend its water main in order to provide the service. Therefore, we find that duplication or competition will result if we grant MHU's request to amend its water certificate to include Parcel C-10.

Wastewater

Witness Bramlett testified that the County had constructed a 12-inch wastewater force main along Collier Parkway. The main is on the opposite side of the Parkway from Parcel C-10. Therefore, service by the County to C-10 would require a jack and bore under the parkway and possibly the construction of a lift station.

Witness DeLucenay testified that wastewater service to Parcel C-10 was taken into consideration at the time MHU constructed its SR 54 force main on the southern side of SR 54, by allowing for a stub to serve that parcel, as well as Parcel C-9. This construction occurred in 1986. There is an existing 16-inch wastewater force main on the opposite side of SR 54 from Parcel C-10. Therefore, service to this parcel by MHU would require a jack and bore under SR 54, and construction of a lift station.

Since MHU has an existing main, and both parties would require a jack and bore to provide service to these parcels, it appears that they are essentially in an equal position to serve. Consistent with our finding on wastewater service to Parcel C-9, we find that no duplication or competition will result if we grant MHU's request to amend its wastewater certificate to include Parcel C-10.

Conclusion

Based on the foregoing, we find that MHU's proposed amendment of territory would result in an extension of water service to Parcels C-9 and C-10 that would be in competition with or duplicate another system. MHU's proposed amendment would not result in an extension of wastewater service to Parcels B-25, B-27, C-9, or C-10 that would be in competition with or duplicate another system.

ADEQUACY OF OTHER SYSTEM

Pursuant to Section 367.045(5)(a), Florida Statutes, we must determine whether the County is unable, refusing or neglecting to serve those areas in which we have above found that duplication would occur if we were to grant MHU's request to include them in its certificates of authorization. MHU argues that there are several areas within the proposed territory for which neither the County nor any entity other than MHU has any facilities in a position which renders them readily able to serve. The County argues that its system is adequate to meet the reasonable needs of the public, and that it is not unable, refusing or neglecting to provide reasonably adequate service.

In its brief, MHU argues that the County has repeatedly refused to provide bulk wastewater service to MHU and to MHU's customers' requests for service. On the other hand, MHU contends that the County has been willing to provide direct service itself, in contravention of public policy and the bulk agreement. MHU concludes that we must find that the County has repeatedly refused to provide service when needed.

The County contends that no evidence was presented at hearing to show that the County's system is not adequate to meet the reasonable needs of the public. Specifically, the County cites to witness DeLucenay's testimony that he has no reason to doubt that the County is willing and able to provide service.

We have above found that MHU's proposed territory extension is only in competition with or a duplication of the County's existing water service lines for Parcels C-9 and C-10. Therefore, we shall limit our analysis to whether the County's water systems in the areas of these parcels are inadequate to meet the reasonable needs of the public, or whether the County is unable, refusing, or neglecting to provide service to these two areas.

With regard to willingness to serve, witness Bramlett testified that the County is prepared to serve Parcels C-9 and C-10. In addition, witness Bramlett testified that a preliminary request for service to Parcel C-10 has been submitted to the County and that County staff has informed the developer that water and wastewater service would be provided from the County's constructed mains on Collier Parkway. There is no record evidence indicating that the County is either unable or unwilling to provide water service to Parcels C-9 and C-10.

Based on the foregoing, we hereby find that the County is not unable, refusing or neglecting to provide water service to Parcels C-9 and C-10.

IMPACT UPON RATES AND CHARGES

MHU does not believe that the approval of its amendment application will have any impact on monthly rates or service availability charges other than the possible reduction in any upward pressure on rates resulting from full utilization of existing facilities and economies of scale. The County contends that because MHU has provided no information regarding how it plans to serve the territory, the County cannot determine the impact on the utility's monthly rates and service availability charges, if any.

Rule 25-30.036(3)(n), Florida Administrative Code, requires the utility to provide a statement regarding the projected impact of the proposed extension of territory on the utility's monthly rates and service availability charges. Generally, if an extension requires additional plant capacity or main extensions to be built by the utility, the potential exists for a change in either monthly rates or service availability charges. Factors such as the type and level of financing, existing level of contributions-in-aid-of-construction, and magnitude of necessary construction are all factors in determining the necessity for any changes in rates or charges.

In its application, MHU states that the majority of facilities necessary to provide service to the areas requested are already in place. MHU further states that 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. MHU states that as a result, approval of its application will have no impact on monthly service charges or service availability charges.

This issue would take a different direction if were to approve the utility's application as filed. While water capacity is not an immediate issue, witness DeLucenay discussed the long term plan for looping the two water plants to provide reliability and cost-effective connections. This additional investment could require some change in either rates or charges, as utilities are given an opportunity to earn a reasonable return on their investment. However, we do not herein approve for inclusion in MHU's certificates the parcels that would necessitate the looping as proposed by the utility. Moreover, because no firm plans for service to these parcels were presented by the utility, it is not

possible to determine the exact nature of any potential change that such service would have upon its rates or charges.

With respect to the parcels which we herein approve for inclusion in MHU's certificates, witnesses DeLucenay and Rogers testified that service is either already being provided, or that MHU has existing lines nearby such that a tie-in by either a developer or customer would require minimal additional investment by the utility. Because there is no additional investment contemplated at this time for service to those areas which will be amended to MHU's territory as a result of our decision herein, we find it appropriate to require MHU to apply its existing rates and charges to those areas.

With respect to wastewater capacity, the utility presented several options, including reinstating a 500,000 gallon per day (0.5 MGD) treatment plant, contracting with other neighboring systems to treat bulk wastewater, and renegotiating its existing bulk agreement with the County. The first two options could result in a need to change rates or charges, as they would involve some additional investment by the utility. However, again, since no specific plans were presented with respect to these options, it is not possible for us to determine what that change might be. Moreover, our decision herein will not require negotiating for additional treatment capacity with the County. Therefore, we find it likely that no change will result in monthly rates or service availability charges, since MHU essentially operates as a "middleman" in providing this service.

Based on the foregoing, we find that there is no impact on the utility's monthly rates and service availability charges from the extension of territory which we grant herein. MHU shall continue to apply its existing rates and charges to the territory extension until authorized to change by this Commission in a subsequent proceeding.

For informational purposes, we note that MHU has two separate wastewater rates, depending on whether service is provided from its Linda Lakes treatment plant or via bulk service from the County. The parcels that will receive wastewater service from Linda Lakes are Parcels A-3 and A-4, and will have a residential rate for a 5/8" x 3/4" meter of $11.84 base facility and a $2.84 gallonage charge. All other parcels will be billed a $11.34 base facility and a $3.76 gallonage charge. Both sets of rates include a gallonage cap of 8,000 gallons.

DECISION ON AMENDMENT APPLICATION

Public Interest Considerations

Generally, we attempt to make reasonable findings with respect to the size and location of territory granted to a utility, with the idea being that service areas are grouped together. This makes sense from the engineering perspective of the utility, as well as from a user's point of view. It can be confusing for customers to have one service provider on one side of the street and another provider on the other side of the street.

Unfortunately, some of our findings made herein result in the less-desirable utility configuration. One of the outcomes of our various findings is that MHU's service territory becomes somewhat jagged. We have attempted to mitigate this by evaluating current service, when future service will be needed, duplication, and who is in the best situation to serve. MHU may have the water capacity in many instances to serve various properties. However, given the capacity limitations contained in the bulk wastewater agreement with the County and the remaining capacity which we have found that MHU has under that bulk agreement, the combined capacities for wastewater place MHU in a precarious position.

The record contains considerable evidence with regard to the bulk agreement and the potential available capacities from the County once various construction plans are completed. There is obviously great dispute over the terms of the bulk agreement. However, the record does nothing more than acknowledge this dispute. Court proceedings are ongoing to determine the meaning of the language of the agreement. We find that the availability of additional capacity from the County through new plants is of no consequence until the meaning of the contract terms is resolved.

MHU's wastewater capacity limitations cause us to deny, as set forth below, MHU's request for inclusion in its wastewater certificate certain of the parcels at issue. As stated, it is preferable for customers to have one consistent service provider. Therefore, we find that it would also be reasonable to deny MHU's request for inclusion of the same parcels in its water certificate which we deny for inclusion in its wastewater certificate. Generally, it makes more sense to have one service provider for both services.

If territory decisions were made in a vacuum, there could be consistent application of this policy. However, in this case, the strategy of the County to place lines in close proximity to MHU's existing lines for many parcels, in addition to the debate over

available wastewater treatment capacity for MHU, left us in a position of approving parcels for inclusion in MHU's certificates in a configuration that is less than ideal.

We note that the record indicates a general frustration by the citizens of this area, due to ongoing legal disputes between the County and MHU concerning who can or should serve a parcel. Witness Phillips stated that duplication is clearly occurring, and that it is in no one's best interests. An example in the record that supports her concerns is that the County's plans to serve Parcel B-24 would require the County to cross over MHU's existing water and wastewater lines. The proposed cost of the water main to serve this parcel and also Parcels C-6A, C-8, C-9, and B-25 is $800,000 and the cost of the wastewater main is $900,000.

Decision

MHU contends that it is in the public interest for us to grant its application for extension of service territory and that it is not in the public interest to allow the County to continue its brazen disregard for the public interest, Florida Statutes, and the specific findings of regulatory bodies and courts and attempt to duplicate MHU's facilities. The County contends that it is not in the public interest for MHU to serve the area. The County's position is that MHU does not have the capacity or the financial ability to serve the area, and that it does not own or lease the land beneath which any plant will be built to serve.

We shall incorporate our findings made elsewhere in the body of this Order, along with any considerations of public interest, into our decision on MHU's application with respect to each parcel requested for inclusion in its certificates. The primary factors which we use to evaluate each parcel are immediacy of need for service, technical availability of service to the parcel, the availability of water and wastewater capacity, and whether extension of the service will result in competition or duplication. A negative finding on any one of these factors will form the basis for our decision to deny MHU's request to amend that parcel for that service.

Parcels A-3, A-4, B-21, B-22, B-23, C-6, and C-7

We have found herein that MHU is undisputedly providing water and/or wastewater service to these parcels. Therefore, immediacy of need is apparent and competition with or duplication of any other source of service is not a possibility. The County does not object to the granting of these parcels to MHU. For these reasons,

MHU's request to amend these parcels to its water and wastewater certificates is hereby granted.

Parcels B-24, C-6A, and C-8

We have found herein that MHU is already providing water service to Parcels B-24 and C-6A, and water and wastewater service to Parcel C-8. Therefore, the need for service is apparent. We have also found that MHU has adequate water and wastewater capacity to serve existing customers, as well as the expected demand for water and wastewater. These three parcels will add a demand of 83 ERCs of available water capacity and 18,630 gpd of available wastewater treatment capacity from the County. We have also found that there is no other existing source for service to these parcels other than MHU. For these reasons, MHU's request to amend these parcels to its water and wastewater certificates is hereby granted.

Parcel B-1A

We have found herein that there is a need for service to this parcel, and that MHU has adequate water capacity to serve the parcel from its Foxwood/Cypress Cove Water System. We have also found that the parcel will add a demand of 2.5 ERCs, and that there is no other existing source of service other than MHU. We note that the County does not object to MHU serving the parcel.

MHU has access to wastewater capacity to serve this parcel through the bulk agreement. This parcel adds 750 gpd towards the 40,000 gpd available for bulk treatment as shown herein above. Combined with Parcels B-24, C-6A, and C-8, the total demand is 19,380 gpd. Based on the foregoing, MHU's request to amend this parcel to its water and wastewater certificates is hereby granted.

Parcel B-20

We have found herein that there is an immediate need for water-only service to this parcel. We have also found that MHU has adequate water capacity to serve the parcel at buildout. We have determined that there are no other existing source of service for water. For these reasons, MHU's request to amend this parcel to its water certificate is hereby granted. In so doing, we note that this parcel adds 2.5 ERCs to the available capacity of the Foxwood/Cypress Cove Water system.

With respect to wastewater, we have found that the immediacy of need for service has been eliminated for some unknown time by the installation of a septic tank. We have found that the projected wastewater usage for this parcel is 435 gpd. This places

the combined wastewater demand at 19,815 gpd, which places MHU at about 360,000 gpd under the bulk agreement with the County. We have found that although the County voiced its intention to serve this parcel within twelve months, an alternative source of water and wastewater does not exist at this time. We find it appropriate to also factor in the public interest considerations discussed above with respect to consistency of service. Based on the foregoing, MHU's request to amend this parcel to its wastewater certificate is hereby granted.

Parcel B-25

We have herein found that MHU is not currently providing any service to this parcel, and that there is no immediate need for service to this parcel. We have identified future wastewater demand at 39,200 gpd, which when combined with the previous parcels, would place MHU in excess of the estimated 40,000 gpd available from the bulk agreement with the County. Moreover, we have found that there exists another source of water and wastewater service for Parcel B-25. For these reasons, MHU's request to amend this parcel to its water and wastewater certificates is hereby denied.

Parcel B-26

We have herein found that MHU is not currently providing any service to this parcel. Although we have found that other service by the County was not available at this time, we have also found that there is no immediate need for service. Estimated future wastewater demand is 12,300 gpd, which would place MHU at 32,315 gpd towards the estimated available gallons under the bulk agreement.

Our primary considerations are that there is no current service by MHU to this property, and that there is no immediate need for service. In addition, although the estimated future wastewater demand of 32,315 gpd appears to be within the available gallons under the bulk agreement with the County, we are concerned about leaving room for potential growth within the existing territory, plus room for particularly high flow periods. Until the contract disputes are finalized, we believe it prudent to grant parcels with flows that range around the current provision level of 350,000 gpd. The public interest consideration of consistency of service providers is a final determinate. Based on the foregoing, MHU's request to amend this parcel to its water and wastewater certificates is hereby denied.

Parcel B-27

We have herein found that there is an immediate need for wastewater-only service to this parcel. We have found that this property would generate 15,000 gpd of wastewater, placing a total demand of 34,815 gpd towards the bulk agreement with the County. Similar to the above discussion concerning Parcel B-26, we find that this amount of flow places MHU close to the ceiling contained in the bulk agreement. We have also found that the County has an existing source for wastewater service. The public interest consideration of consistency of service is also a determinate.

We note that the utility has requested to serve Parcel B-27 to allow it to loop its Linda Lakes and Foxwood/Cypress Cove water treatment plants. Witness DeLucenay testified that looping would allow it to have greater redundancy in water service, and to fully utilize the available water capacity of 95 ERCs from its Linda Lakes Water plant.

We agree that in general, the looping concept is an appropriate engineering design. However, this is not our only consideration. Due to the capacity restraints on wastewater and the consistent server concept, MHU's request to amend this parcel to its water and wastewater certificates is hereby denied.

Parcel C-9

We have found herein that MHU is not providing any service to this parcel. We have also found that there is not an immediate need for service in this parcel, and that the County is an existing source of water and wastewater service to this parcel. We have found that the provision of water service to Parcel C-9 by MHU would be in competition with or a duplication of the County's existing system. Based on the above, and, for wastewater, on the public interest concept of consistency of service provider, the lack of service by MHU, and the lack of need for service, we find it appropriate to deny MHU's request to amend its water and wastewater certificates to serve this parcel.

Parcel C-10

We have found herein that MHU is not currently serving this parcel, and that there is an immediate need for water and wastewater service. We have also found that the County has existing sources of service for water and wastewater, and that the provision of water service by MHU to this parcel would be in competition with or a duplication of the County's existing system. For the foregoing reasons, and consistent with our decision

concerning Parcel C-9, as set forth above, MHU's request to amend its water and wastewater certificates to serve this parcel is hereby denied.

Conclusion

Based on the foregoing, we hereby find that it is in the public interest to grant, and we do so grant, MHU's application for the following parcels for both water and wastewater service: A-3, A-4, B-1A, B-20, B-21, B-22, B-23, B-24, C-6, C-6A, C-7, and C-8. MHU's application for Parcels B-25, B-26, B-27, C-9, and C-10, is denied. The territory descriptions for the approved parcels are appended to this Order as Attachment B, which is incorporated herein by reference.

DOCKET CLOSURE

Upon expiration of the time for filing an appeal, and the timely receipt of proof of ownership of, or a continued right to the use of, the land upon which the Linda Lake Groves water treatment plant is located, as required herein, and after staff's approval of revised tariff sheets concerning the territory approved herein, no further action will be necessary and this docket shall be closed administratively. If a party files a notice of appeal, this docket shall be closed upon resolution thereof by the appellate court.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Mad Hatter Utility, Inc.'s, Motion to Delay Agenda Conference, Motion to Delay Rendering of Decision, Motion for Staff to Reconsider Recommendation, and Request to Supplement Record, is hereby denied. It is further

ORDERED that Water Certificate No. 340-W and Wastewater Certificate No. 297-S, held by Mad Hatter Utility, Inc., are hereby amended as set forth in the body of this Order, to include the additional territory described in Attachment B of this Order, which is incorporated herein by reference. It is further

ORDERED that Attachment A is also incorporated herein by reference. It is further

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

ORDERED that Mad Hatter Utility, Inc., shall submit proof of ownership of, or a continued right to the use of, the land upon which the Linda Lake Groves water treatment plant is located, as set forth in the body of this Order. It is further

ORDERED that Mad Hatter Utility, Inc., shall charge the customers in the territory herein approved the rates and charges approved in its tariff until authorized to change by this Commission. It is further

ORDERED that upon expiration of the time for filing an appeal, and the timely receipt of proof of ownership of, or a continued right to the use of, the land upon which the Linda Lake Groves water treatment plant is located, as required herein, and after staff's approval of revised tariff sheets concerning the territory approved herein, no further action will be necessary and this docket shall be closed administratively. If a party files a notice of appeal, this docket shall be closed upon resolution thereof by the appellate court.

By ORDER of the Florida Public Service Commission this 1st day of October, 1997.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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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.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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.

ATTACHMENT A

PROPOSED FINDINGS OF FACT

1. Mad Hatter Utility, Inc. (Mad Hatter), filed an amendment application to add territory (the extended territory) to its certificate of authorization. That territory includes territory in which Mad Hatter is currently serving without authorization (parcels A-3, A-4, B-21, B-22, B-23, C-6, C-7 and C-8).

   RULING: Reject because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code.

2. The application also included areas in which Mad Hatter seeks to provide service: parcels B-1A (T & G properties); B-20 (Willet); B-24 (Kniff property); B-25 (Ash property); B-26 (Meadowview); B-27 (Como Club/Mossview); C-3A (Twin Lakes commercial parcel); C-9 (Myrtle Lakes Baptist Church); C-10 (Ash property-Myrtle Lake) and the majority of parcel C-8.

   RULING: Reject because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code.

3. There is a need for service in the territory which Mad Hatter seeks to add to its certificate of authorization.

   RULING: Reject because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code.

4. Mad Hatter does not have the technical ability and adequate capacity to serve the territory which it seeks to add to its certificate of authorization. (R. 631, L. 5-14).

   RULING: Reject as argumentative or conclusory.

5. The territory to which Mad Hatter seeks to add to its certificates of authorization will generate somewhere between 436,000 gallons of wastewater a day to 532,500 GPD. (R. 333; L. 18-22; R. 618, L. 9-25; R. 619, L. 1-14).

   RULING: Reject as unsupported by the greater weight of the competent and substantial evidence.

6. Mad Hatter only operates one wastewater treatment plant, the Linda Lakes wastewater treatment plant, which is at 100% committed capacity. (R. 125; L. 21-25).

RULING: Accept.

7. Mad Hatter has no other permits from the Florida Department of Environmental Protection (DEP) (R. 75, L. 22-25). It has no permit applications pending with the DEP for any additional wastewater facilities. (R. 76, L. 1-5).

RULING: Accept first sentence, but clarify that MHU has no other wastewater operating permits from the DEP other than for the Linda Lakes wastewater treatment plant. Accept second sentence.

8. Mad Hatter allowed its permit for its Turtle Lakes wastewater treatment facility to expire in April of 1991. (R. 106, L. 22-23). Mad Hatter did not file a timely request with the Florida Department of Environmental Regulation (DER) for an extension for that permit. (R. 106, L. 24-25; R. 107, L. 1).

RULING: Reject as argumentative or conclusory.

9. The DER issued a notice of intent to revoke Mad Hatter's permit to operate the Foxwood wastewater treatment plant due to the numerous violations of state pollution regulations and the requirements of the permit. (R. 107, L. 11-19). Mad Hatter later consented to the revocation of its Foxwood wastewater treatment permit. (R. 108, L. 13-15).

RULING: Reject as unsupported by the greater weight of the competent and substantial evidence.

10. It is unlikely that the DEP would allow Mad Hatter to build a rapid rate infiltration basin disposal system in the Land O'Lakes area in light of the numerous plants which have been taken off line due to environmental problems caused by those disposal systems. (R. 128, L. 5-25). Thus, the DEP anticipates that any future wastewater treatment plants constructed in the area will require considerably more property than the use of rapid rate infiltration basins and will have to either utilize the more expensive slow rate disposal or the very expensive public access process. (R. 128, L. 5-25).

RULING: Reject first sentence as argumentative or conclusory. Reject second sentence as unsupported by the record because the record does not support the contention that the utilization of slow rate disposal is more expensive than rapid rate infiltration basin disposal.

11. Mad Hatter does not currently have the capacity to treat the sewage in the extended territory. (R. 67, L. 2-12, 20-25; R. 68, L. 1-7). Mad Hatter has acknowledged that it may take a year and a half of planning or more to provide wastewater treatment service to a development. (R. 70, L. 2-6).

RULING: Reject as argumentative or conclusory.

12. Mad Hatter not only does not have the ability to serve the extended territory, it is not able to provide service in the territory for which it currently has certificates of authorization. (R. 11-13; R. 16-18; R. 20-22; R. 32; R. 51, L. 10-24). Mad Hatter does not have the ability to serve either the Oak Grove subdivision nor the nearby Denham Oaks Elementary School, and it has also been unable to provide service to the Lake Talia area. Id.

RULING: Reject as unsupported by the record, and as argumentative or conclusory.

13. Mad Hatter relies upon Pasco County for the treatment of wastewater pursuant to a 1992 agreement between the parties. (R. 84, L. 1-15; R. 85, L. 3-17; Ex. 11). That agreement limits the amount of Mad Hatter's wastewater the County has to treat to 350,000 gallons per day (GPD). (R. 331, L. 19-24). Mad Hatter has exceeded its 350,000 gallon cap with the County. (R. 333, L. 8-15; R. 90, L. 8-21).

RULING: Accept sentence one. Reject sentences two and three as unsupported by the record.

14. The contract between the County and Mad Hatter limits the area to which the County must provide service to Mad Hatter to both Mad Hatter's PSC certificated area as of February of 1992. It further limits it to the service area described on the map attached as Exhibit 3 to the 1992 agreement. (R. 331; R. 332, L. 1-11).

RULING: Reject as conclusory.

15. Most of the extended territory is not described on the map attached to the 1992 agreement. (R. 332, L. 12-19).

RULING: Reject as vague or misleading.

16. Mad Hatter has no viable alternatives for the treatment of the sewage generated by the extended territory. It would cost

between $1.4 and $1.7 million for Mad Hatter to connect its system to the Pebble Creek treatment plant. (R. 515, L. 3-10).

RULING: Reject first sentence as argumentative or conclusory and because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code. Reject second sentence as conclusory.

17. It is not cost effective for Mad Hatter to connect to Hillsborough County's system. (R. 432-433). Furthermore, Hillsborough County would not agree to provide service to Mad Hatter unless Pasco County agreed. (R. 432-433).

RULING: Reject first sentence as unsupported by the record. Accept second sentence, but delete the word "furthermore."

18. Mad Hatter has suggested it might send the sewage to Windemere Utility Co. However, the owner, Dr. Bob C. Kratz, Sr., testified that Windemere would not accept any sewage from Mad Hatter for treatment. (R. 288, L. 18-21).

RULING: Reject first sentence because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code. Accept second sentence, but delete the word "however," and clarify that Dr. Kratz is the owner of Windemere Utility Co.

19. There is an immediate need for service in the extended territory. (R. 588, L. 2-16). Mad Hatter does not have the present ability to treat and dispose of that sewage to meet this immediate need. (R. 66, L. 19-25; R. 67, L. 1-12; R. 84, L. 16-25; R. 85, L. 1-17).

RULING: Reject as unsupported by the greater weight of the competent and substantial evidence.

20. The DEP believes that Pasco County is better able to treat sewage in the extended territory. (R. 167, L. 5-9). Mad Hatter's engineer, Edwin Rogers, admitted that Mad Hatter currently has no method of treating sewage generated by the extended territory. (R. 631, L. 11-14).

RULING: Reject sentence one as misleading. Reject sentence two as unsupported by the record.

21. Pasco County has a greater ability to provide water to the extended territory. With its current facilities, the County could serve an additional 1,500 connections. (R. 313, L. 22-

25; R. 314, L. 1-2). Mad Hatter could provide service to less than 600 new connections. (R. 315, L. 24-25; R. 316, L. 1-4).

RULING: Reject sentence one as argumentative or conclusory and because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code. Accept sentences two and three, but clarify that these findings pertain to water connections.

22. Mad Hatter does not have the financial ability to serve the territory which it seeks to add to its certificate of authorization. (R. 86, L. 7-15). Mad Hatter does not have the financial ability to build the facilities to serve the extended territory nor has it applied for any financing to expand its capacity. (R. 86, L. 2-25; R. 87, L. 1-3).

RULING: Reject as argumentative or conclusory.

23. Mad Hatter's accountant, Robert Nixon, acknowledged that he was not certain that Mad Hatter could obtain the financing to serve the extended territory. (R. 196, L. 14-19).

RULING: Reject as unsupported by the record.

24. Although Mad Hatter has contacted its banker, John Cole of Co-Bank, Co-Bank has not provided a commitment to Had Hatter to provide financing. (Exhibit 2).

RULING: Reject as vague or misleading.

25. One reason Mad Hatter has not applied for financing is because it does not know how much it would cost to build a wastewater treatment plant necessary to serve the extended territory. (R. 87, L. 4-18).

RULING: Reject as vague or misleading.

26. According to Mr. DeLucenay, Mad Hatter's financial position was precarious as of January of last year. (R. 88, L. 17-20). Mad Hatter has suffered severe financial difficulties in the past including forcing Barnett Bank to write off over $700,000.00 presumably because the utility could not repay the loan. (R. 530, L. 15-23). Mad Hatter gave a deed in lieu of foreclosure on a piece of property it owned, and Mr. and Mrs. DeLucenay foreclosed on Mad Hatter so that they could convey real property to a developer, the Van Dorsten Corporation, free and clear of liens on the property. (R. 530, L. 23-25; R. 531, L. 1; R. 582, L. 5-25; R. 583, L. 1-15).

RULING: Accept sentence one. Reject sentences two and three as argumentative or conclusory and as unsupported by the record.

27. Mad Hatter's president, Larry DeLucenay, testified at a preliminary injunction hearing in January of 1996, that without being able to serve the Oak Grove subdivision and the Denham Oaks Elementary School, Mad Hatter faces possible bankruptcy or foreclosure by its lender. (R. 88, L. 25; R. 89, L. 1-7, 18-24).

RULING: Reject as unsupported by the record.

28. Mr. DeLucenay testified at that hearing that Mad Hatter had trouble obtaining financing due to the fact that the County has provided service to the Denham Oaks Elementary School. (R. 89, L. 25, R. 90, L. 1-7).

RULING: Reject as vague and misleading and as unsupported by the record.

29. Mad Hatter faces a possible fine for failing to comply with the PSC order requiring disclosure of the sale of the Foxwood percolation ponds. (R. 531, L. 1-4).

RULING: Reject as unsupported by the record.

30. Mad Hatter has not determined the projected impact of the financing of a new wastewater treatment plant on its capital structure. (R. 206, L. 11-21).

RULING: Reject as unsupported by the record.

31. Mad Hatter is unable to provide information to the Commission on the impact on its rates if the Commission extends the territory for which it has certificates of authorization. (R. 206; L. 22-25; R. 207, L. 1-15).

RULING: Reject as unsupported by the record and as argumentative or conclusory.

32. Mad Hatter owns no real property either by lease or outright ownership on which to build a wastewater treatment plant to serve the extended territory other than a small parcel at its old Foxwood plant where it has no disposal capacity. (R. 76, L. 15-25, R. 77, L. 1-6, R. 78, L. 14-18, 25; R. 79, L. 1-11; R. 80, L. 10-19; R. 621, L. 15-18).

RULING: Reject as unsupported by the record and as argumentative or conclusory.

33. Mad Hatter has no location to dispose of the sewage in the extended territory. (R. 80, L. 10-19).

RULING: Reject as unsupported by the record.

34. Pasco County can and will provide service to the areas that Mad Hatter seeks to add to its certificates of authorization. (R. 334, L. 12-24).

RULING: Reject as argumentative or conclusory.

35. Pasco County has extended water and sewer service along State Road 54 and partially along U.S. 41 to those areas requested by Mad Hatter. (R. 334, L. 12-24). The County plans to run water and sewer lines along U.S. 41 in conjunction with the widening of that road. (R. 334, L. 12-24). Construction of those lines should be completed by June of 1998. (R. 334, L. 12-20).

RULING: Accept first and second sentences. Reject third sentence as speculative.

36. Pasco County has built the Wesley Center wastewater treatment plant and expanded the Land O'Lakes wastewater treatment plant so that the County has the capacity to treat an additional 4,000,000 GPD (R. 334, L. 12-23).

RULING: Accept.

37. The County did not build the lines along U.S. 41 in a race to serve with Mad Hatter. (R. 334, L. 25; R. 335, L. 1-13). Instead, the Florida Department of Transportation (DOT) approached Mad Hatter to enter into an agreement in which Mad Hatter would place lines along U.S. 41. (R. 342, L. 15-25; R. 343, L. 1-17; R. 397, L. 18-25; R. 398, L. 1-13). Only when Mad Hatter refused to do so did the DOT request the County enter into such an agreement. (R. 242, L. 3-6, 13-20; R. 397, L. 18-25; R. 398, L. 1-13).

RULING: Reject as argumentative or conclusory and as unsupported by the record.

38. Pasco County need not devote any of its additional capacity to Mad Hatter as the agreement between the County and Mad Hatter

is limited to the geographical areas described on Exhibit 3 to the 1992 agreement. (R. 331; R. 332, L. 1-11; Ex. 11).

RULING: Reject as argumentative or conclusory.

39. The agreement envisioned that Mad Hatter's sewage would be treated at the Land O'Lakes subregional wastewater treatment plant. (R. 425, L. 12-16). The committed capacity at that plant is 1.306 million GPD. (R. 425, L. 1-4). The permitted design capacity is 1 million GPD. (R. 514, L. 20-22).

RULING: Accept sentence one, but clarify that the agreement is the bulk wastewater treatment agreement between MHU and the County. Reject sentences two and three as unsupported by the greater weight of the competent and substantial evidence.

40. The County will not accept any additional wastewater flow from Mad Hatter. (R. 449, L. 13-25; R. 450, L. 1-3).

RULING: Reject as argumentative or conclusory and as unsupported by the record.

41. Mad Hatter's proposed amendment to its territory would result in the extension of the system which would be in competition with or a duplication of a portion of Pasco County's system. (R. 633, L. 3-18). Pasco County's system is adequate to meet the reasonable needs of the public. (R. 334, L. 12-24).

RULING: Reject as conclusory and as unsupported by the record.

42. Pasco County is able to provide reasonably adequate service to the extended territory. (R. 334, L. 12-24).

RULING: Reject as conclusory and as unsupported by the record.

43. There is no evidence that the County is unable, refusing and neglecting to provide reasonably adequate service. (R. 204, L. 22-25; R. 205, L. 1-8).

RULING: Reject as unsupported by the record.

44. Mad Hatter failed to provide any evidence to the Commission regarding the impact of the extension of the utility's monthly rates and service availability charges, if any. (R. 206, L. 11-25; R. 207, L. 1-15). Mr. DeLucenay admitted during the hearing that he did not know the effect of extending the

territory on Mad Hatter's capital structure or its rates. (R. 206, L. 11-25; R. 207, L. 1-15.)

RULING: Reject as unsupported by the record and as argumentative or conclusory.

45. It is not in the public interest to have Mad Hatter serve the extended territory. (R. 335-337; R. 576-577; R. 581-583). It is not in the public interest to extend the PSC certificate to a utility which cannot provide service to its current territory. (R. 82, L. 14-22). As noted above, Mad Hatter cannot provide service within its existing territory including the Lake Talia area, the Denham Oaks Elementary School and the Oak Grove subdivision. (R. 1-13; R. 16-18; R. 20-22; R. 32; R. 51, L. 10-24; R. 82, L. 14-22).

RULING: Reject as argumentative or conclusory and as unsupported by the record.

46. The Denham Oaks Elementary School was forced into double sessions so that school children in the fall of 1995 were going to school in the dark. (R. 335, L. 17-25; R. 336, L. 1-8). The County told Mad Hatter to provide service but it was unable to do so because Sunfield Homes, Inc. refused to enter into a contract with Mad Hatter. (R. 336, L. 2-8; R. 461, L. 16-21).

RULING: Reject first sentence as irrelevant. Reject second sentence as unsupported by the record.

47. Pasco County has agreed to provide credit to customers who pay impact fees. (R. 337, L. 2-10). Pasco County issues credits to those customers but Mad Hatter has refused to pass on those savings to the customers despite its agreement with the County to do so. (R. 337, L. 2-10; R. 581, L. 5-8).

RULING: Accept sentence one. Reject sentence two as argumentative or conclusory.

48. The rates charged by Pasco County are less than those charged by Mad Hatter. (R. 337, L. 11-14; Ex. 18).

RULING: Reject as vague and misleading.

49. Mad Hatter failed to notify the Commission of the sale of Foxwood and Turtle Lakes percolation ponds for $195,000.00 although the PSC had ordered Mad Hatter to notify it if the property was sold because the cost of abandonment had been

passed along to the customers. (R. 581, L. 18-25; R. 582, L. 1-11). Mad Hatter agreed to notify the PSC if the plants were sold. (R. 582, L. 7-14). In Re: Application for a Rate Increase in Pasco County by Mad Hatter Utility, Inc., Order PSC-93-0295-FOF-WS at p. 15.

RULING: Reject as argumentative or conclusory, as unsupported by the record, and as irrelevant to the issues of this case.

50. Mad Hatter then entered into a contract with the Van Dorsten Corporation to sell the land. (R. 582, L. 15-19). The contract was assigned by Mad Hatter to Mr. DeLucenay and his wife who then obtained a first mortgage on the property from Barnett Bank. (R. 582, L. 15-25; R. 583, L. 1). Mr. and Mrs. DeLucenay filed a mortgage foreclosure lawsuit against Mad Hatter and obtained a judgment. (R. 583, L. 2-7).

RULING: Reject as irrelevant to the issues of this case.

51. Mr. and Mrs. DeLucenay then sold the Foxwood and Turtle Lakes property to the Van Dorsten Corporation for $195,000.00. (R. 583, L. 8-11). Mad Hatter never notified the PSC of this transaction. (R. 583, L. 12-15).

RULING: Reject as irrelevant to the issues of this case.

PROPOSED CONCLUSIONS OF LAW

1. To obtain approval of an extension of its certificates of authorization, Mad Hatter must prove that there is no other utility in the area of the extended territory that is willing and capable of providing reasonably adequate service to the extended territory. Rule 25-30.036(3)(a)-(l).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law, is argumentative, and because Rule 25-30.036(3)(a)-(l), Florida Administrative Code, contains no such legal requirement.

2. Mad Hatter must prove to the Commission that it has the financial and technical ability to provide service in the extended territory. Rule 25-30.036(3)(b).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

3. Mad Hatter must prove it owns the land upon which the utility treatment facilities that will serve the proposed territory

are located or provide a copy of an agreement, such as a 99 year lease, which provides for the continued use of the land. Rule 25-30.036(3)(d).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

4. Since Mad Hatter has no current capacity to treat the wastewater from the extended territory, it must provide a written description of the proposed methods for effluent disposal. Rule 25-30.036(3)(g).

RULING: Reject because the proposed conclusion contains a factual conclusion which is unsupported by the record.

5. Mad Hatter must describe the capacity of its existing lines, the capacity of the treatment facilities and the designed capacity of the proposed extension. Rule 25-30.036(3)(j).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

6. Mad Hatter must provide to the Commission the numbers and dates of any permits issued for the proposed system by the Florida Department of Environmental Protection (DEP). Rule 25-30.036(3)(k).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

7. Mad Hatter must provide a proposed method of financing the construction and the projected impact on the utility's capital structure. Rule 25-30.036(3)(l).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

8. Mad Hatter must provide to the Commission a description of the types of customers anticipated to be served by the extension such as single family homes, mobile homes, duplexes, golf course clubhouse, commercial use, etc. Rule 25-30.036(3)(m).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

9. Mad Hatter must provide to the Commission a statement regarding the projected impact of the extension on the

utility's monthly rates [and] service availability charges. Rule 25-30.036(3)(n).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

10. Mad Hatter must provide an original and two copies of sample tariff sheets reflecting the additional service area. Rule 25-30.036(3)(o).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

11. Mad Hatter shall provide service to the areas described in its certificates of authorization within a reasonable time. Fla. Stat. Sec. 367.111(1).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

12. The Commission may not extend Mad Hatter's territory if the extension would result in Mad Hatter competing with or duplicating any system or portion thereof unless the Commission first determines that the other system is inadequate to meet the reasonable needs of the public or the person operating the system is unable, refuses or neglects to provide reasonably adequate service. Fla. Stat. Sec. 367.045(5)(a).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

13. If the utility has not provided service to any part of its certificated territory within five years after the date of authorization, the authorization may be reviewed, amended or revoked. Fla. Stat. Sec. 367.111(1).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

14. Pasco County is not regulated by the Commission. Fla. Stat. Sec. 367.022. In re: Petition by Adam Smith Enterprises, Inc. for a Declaratory Statement as to Jurisdictional Status, Docket No. 890159-WS, Order No. 19060 (March 30, 1988).

RULING: Accept.

15. The Commission has no authority to restrain a governmental agency from invading the service area of a private utility certificated by it. Southern Gulf Utilities, Inc. v. Mason, 166 So. 2d 138 (Fla. 1964).

RULING: Accept.

16. The right to provide utility services to the public carries a duty to promptly and efficiently provide those services. City of Mount Dora v. JJ's Mobile Homes, Inc., 579 So. 2d 219 (Fla. 5th DCA 1991).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

17. The right to provide utility services is conditioned upon the ability of the franchisee to promptly and efficiently meet its duty to provide those services. Id.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

18. When two utilities have the right to serve, the utility with the earliest acquired legal right has the exclusive right to provide the service if it has the present ability to do so. Id.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

19. Utilities which undertake to perform a service to the public have a duty and obligation to render reasonably adequate services to the public. City of Winter Park v. Southern States Utilities, Inc., 540 So. 2d 178 (Fla. 5th DCA 1989).

RULING: Accept.

20. A utility without the present ability to serve cannot prevent a utility with the present ability to serve from serving the public nor does it have any right to demand that it be permitted to serve the public in the future when it is capable of doing so. Id.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

21. Failure to comply with the requirements set forth in Fla. Stat. Sec. 367.041 and Rule 25-30.035 may result in the denial

for a certificate to provide utility service. In Re Conrock Utility Company, 90 Fla. Pub. Serv. Comm'n Rep. 537 (Docket No. 890459-WU, Order No. 22847, April 23, 1990).

RULING: Accept.

22. The failure to show that the utility owns land or has a written lease for the land on which the proposed facility will be located is a material deficiency in the application. Id. Furthermore, a utility's failure to show its financial ability to own and operate a utility is another material deficiency which justifies denial. Id.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

23. If a utility does not have the technical ability to provide the service, that is another material deficiency which justifies denial. Id.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

ATTACHMENT B

MAD HATTER UTILITY, INC.

WATER AND WASTEWATER TERRITORY AMENDMENT

DOCKET NO. 960576-WS

LINDA LAKES GROVES SYSTEM

PARCEL A-3: WOODRUFF MOBILE HOME PARK

Township 26 South, Range 18 East
Section 26

The SE 1/4 of the SE 1/4 of the SW 1/4 except the west 345.00 feet, and the

South 200.00 feet of the NE 1/4 of the SE 1/4 of the SW 1/4 except the West 345.00 feet, in Section 26, Township 26 South, Range 18 East, Pasco County, Florida,

Less and except the South 30.00 feet thereof.

LINDA LAKES GROVES SYSTEM

PARCEL A-4: HOLY TRINITY (LUTHERAN) CHURCH

Township 26 South, Range 18 East
Section 26

That part of the East 1/4 of the SW 1/4 of the SE 1/4; and the

West 1/2 of the SW 1/4 of the SE 1/4 of the SE 1/4 in Section 26, Township 26 South, Range 18 East, Pasco County, Florida; said part being more particularly described as follows, to wit:

Commence at the SW corner of the East 1/4 of the SW 1/4 of the SE 1/4 of Section 26, Township 26 South, Range 18 East, Pasco County, Florida; thence run

N.00°01'21"W., along the Westerly boundary of said East 1/4 of the SW 1/4 of the SE 1/4 of Section 26, for a distance of 30.00 feet to a concrete monument being the Point of Beginning of the herein described parcel; continue thence

N.00°01'21"W., along said Westerly boundary for a distance of approximately 555.00 feet to a point; thence

S.89°47'40"E., for a distance of 599.57 feet to a point lying on the existing right of way line of Leonard Road, as occupied; thence

S.37°57'32"W., along said existing right-of-way line as occupied, for a distance of 209.70 feet to a point; thence

S.39°11'56"W., continuing along said existing right-of-way line of Leonard Road as occupied for a distance of 200.20 feet to a point; thence

S.32°02'54"W., continuing along said right of way line for a distance of 100.32 feet to a point; thence

S.22°24'23"W., for a distance of 154.14 feet to a point; thence

S.66°08'18"W., for a distance of 14.96 feet to a point; thence

N.89°39'52"W., for a distance of 217.94 feet to a concrete monument lying on the Westerly boundary of the East 1/4 of the SW 1/4 of the SE 1/4 of Section 26, Township 26 South, Range 18 East, Pasco County, Florida, said point being also the Point of Beginning.

Containing 5.00 acres more or less.

FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-1A: T & G PROPERTIES

Township 26 South, Range 18 East
Section 36

A portion of the East 1/2 of the SE 1/4 of the SW 1/4 of said Section 36, lying East of U.S. Highway 41, being more particularly described as follows:

For a point of reference, commence at the Southeast corner of the SW 1/4 of said Section 36; run thence

Northwardly along the East boundary of said SW 1/4, a distance of 373.81 feet for the Point of Beginning: continue thence

Northwardly along said East boundary of the SW 1/4, a distance of 460.37 feet; thence

Westwardly along a line parallel to the South boundary of said Section 36, a distance of 522.14 feet to a point of the Easterly right-of-way line of U.S. Highway 41; thence

S.22°58'00"E., along said Easterly right-of-way line of U.S. Highway 41, a distance of 520.00 feet; thence

N.67°02'00"E., a distance of 47.20 feet; thence

Eastwardly along a line parallel to the South boundary of said Section 36, a distance of 279.40 feet to the Point of Beginning.

FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-20: WILLET-LINER

Township 26 South, Range 18 East
Section 36

Being that portion of the NE 1/4 of the SW 1/4 of the NW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida; lying East of U.S. Highway 41, being more fully described as follows:

Commence at the Northeast corner of the SW 1/4 of the NW 1/4 of said Section 36; thence

S.00°52'44"W., along the East line of the said SW 1/4 of the NW 1/4 of said Section 36, for a distance of 49.82 feet; thence continue

S.00°52'51"W., along the said East line, for a distance of 135.00 feet; thence

N.89°13'40"W., for a distance of 65.00 feet to the Point of Beginning; thence

S.00°52'51"W., for a distance of 100.00 feet; thence

N.89°13'40"W., for a distance of 136.08 feet; thence

S.00°52'51"W., for a distance of 6.47 feet; thence

N.89°13'40"W., for a distance of 102.00 feet to a point on the Easterly right-of-way line of U.S. Highway 41; thence

N.14°19'48"W., along the said Easterly right-of-way line, for a distance of 100.00 feet; thence

S.89°13'40"E., for a distance of 100.00 feet; thence

N.00°52'51"E., for a distance of 9.93 feet; thence

S.89°13'40"E., for a distance of 164.32 feet to the Point of Beginning.

And

Township 26 South, Range 18 East
Section 36

That portion of the NE 1/4 of the SW 1/4 of the NW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida, lying East of U.S. Highway 41, being more fully described as follows:

Commence at the NE corner of the SW 1/4 of the NW 1/4 of said Section 36; thence

S.00°52'44"W., along the East line of said SW 1/4 of the NW 1/4 of said Section 36, for a distance of 49.82 feet; thence continue

S.00°52'51"W., along the said East line, for a distance of 135.00 feet to the Point of Beginning; thence continue

S.00°52'51"W., for a distance of 100.00 feet; thence

N.89°13'40"W., for a distance of 65.00 feet; thence

N.00°52'51"E., for a distance of 100.00 feet; thence

S.89°13'40"E., for a distance of 65.00 feet to the Point of Beginning.

Less

Right-of-way for U.S. Highway 41, described as follows:

Township 26 South, Range 18 East
Section 36

That part of the SW 1/4 of the NW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida, being more fully described as follows:

Commence at a 4" concrete monument being the Northeast corner of the SW 1/4 of the NW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida; thence

S.00°27'26"W., along the East line of said SW 1/4 of the NW 1/4 of said Section 36, for a distance of 184.82 feet; thence

N.89°38'23"W., parallel with the North line of said SW 1/4 of the NW 1/4 of Section 36, for a distance of 229.32 feet; thence

S.00°27'26"W., for a distance of 9.93 feet; thence

N.89°38'23"W., for a distance of 103.58 feet to the Point of Beginning and a point on the existing easterly right-of-way line of U.S. Highway 41, said point being the point of intersection with a non-tangent curve, concave easterly having a radius of 5,679.58 feet and a central angle of 01°00'38"; thence

Southerly along said easterly right-of-way and along the arc of said curve to the left for a distance of 100.18 feet, said arc subtended by a chord which bears S.15°07'16"E., for a distance of 100.17 feet to the point of intersection with a non-tangent line; thence

S.89°38'23"E., parallel with said North line of the SW 1/4 of the NW 1/4 of Section 36, for a distance of 59.52 feet to a point of intersection with a non-tangent curve, concave easterly having a radius of 6,822.50 feet and a central angle of 00°50'13"; thence

Northerly along the arc of said curve to the right for a distance of 99.67 feet to the point of intersection with a non-tangent line; thence

N.89°38'23"W., for a distance of 61.49 feet to the Point of Beginning.

Parcel contains 0.597 acres, more or less.

FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-21: ROBCO

Township 26 South, Range 18 East
Section 36

A portion of land lying in the SE 1/4 of the SW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida, being more particularly described as follows:

Commence at the SE corner of the SE 1/4 of SW 1/4 of Section 36; thence

S.89°59'18"W., along the South boundary of said Section 36, for a distance of 50.0 feet; thence

N.00°27'41"W., along a line 50.0 feet West of and parallel to the East boundary of the SE 1/4 of the SW 1/4 of said Section 36, for a distance of 34.0 feet to a point on the Northerly right-of-way line of County Line Road said point also being the Point of Beginning; thence

S.89°59'18"W., along the said Northerly right-of-way line, for a distance of 139.38 feet to a point on the Easterly right-of-way line of U.S. Highway No. 41; thence

N.22°58'00"W., along said Easterly right-of-way line for a distance of 212.85 feet; thence

N.89°59'18"E., for a distance of 220.86 feet; thence

S.00°27'41"E., for a distance of 196.00 feet to the Point of Beginning.

Less a portion described as follows

Township 26 South, Range 18 East
Section 36

Commence at the SE corner of the SE 1/4 of SW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida; thence

S.89°59'18"W., along the South boundary of said Section 36, a distance of 50.0 feet; thence

N.00°27'41"W., along a line 50.0 feet West of and parallel to the East boundary of the SE 1/4 of the SW 1/4 of said Section 36, for a distance of 34.0 feet to the Point of Beginning; thence continue

N.00°27'41"W., for a distance of 26.0 feet; thence

S.89°59'18"W., along a line 60.0 feet North of and parallel to the South boundary of said Section 36, for a distance of 150.19 feet to a point on the Easterly right-of-way line of U.S. Highway No. 41; thence

S.22°58'00"E., along the Easterly right-of-way of U.S. Highway No. 41; for a distance of 28.14 feet to a point 34.0 feet North of the South boundary of said Section 36; thence

N.89°59'18"E., along a line 34.0 feet North of and parallel to the South boundary of said Section 36, for a distance of 139.38 feet to the Point of Beginning.

FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-22: LARREAU

Township 26 South, Range 18 East
Section 36

The SE 1/4 of the NE 1/4 of the SW 1/4, less the West 50 feet;

and

The SW 1/4 of the NW 1/4 of the SE 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida.

FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-23: RUSCH PLAZA

Township 26 South, Range 18 East
Section 36

The West 515.69 feet of the North 1/2 of the South 1/2 of the North 1/2 of the SW 1/4 of the NW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida, lying East of Dale Mabry Highway extension.

FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-24: KNIFF PROPERTY

Township 26 South, Range 18 East
Section 36

The West 3/4 of the South 1/2 of the NW 1/4 of the SW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida; and

The West 3/4 of the North 1/2 of the NW 1/4 of the SW 1/4 of Section 36, Township 26 South, Range 18 East, Pasco County, Florida, less a tract described as follows:

Beginning at a point 20 rods West of the Northeast corner of the NW 1/4 of the SW 1/4 of Section 36, Township 26 South, Range 18 East, run thence South for a distance of 40 rods; run thence

West for a distance of 320.00 feet; run thence

North for a distance of 40 rods; run thence

East, for a distance of 320.00 feet to the Point of Beginning; also

The South 1/2 of the SW 1/4 of the NW 1/4 lying West of Seaboard Air Line Railroad right-of-way, in Section 36, Township 26 South, Range 18 East, Pasco County, Florida, less a tract described as follows:

From a point on the South boundary of the SW 1/4 of the NW 1/4 of said Section 36 where said South boundary intersects the West right-of-way line of Tampa Northern Railroad (Seaboard Air Line Railroad), run West along the South boundary of said SW 1/4 of the NW 1/4 of Section 36, for a distance of 445.00 feet to a Point of Beginning; run thence

North for a distance of 330.0 feet; run thence

East to the West right-of-way line of said Seaboard Air Line Railroad; run thence

Southeasterly along said West right-of-way line of said Seaboard Air Line Railroad to intersection with the South boundary of said SW 1/4 of the NW 1/4 of Section 36; run thence

West along the South boundary of said SW 1/4 of the NW 1/4 of Section 36, for a distance of 445.00 feet to the Point of Beginning; also less that part in right-of-way of Dale Mabry Extension.

FOXWOOD/CYPRESS COVE SYSTEM

PARCELS B-25: ASH PROPERTY

Township 26 South, Range 19 East
Section 30

(A) The South 400.00 feet of the NW 1/4 of the SW 1/4, less the West 15.00 feet for Public Road; and

(B) That part of the SW 1/4 of the SW 1/4 lying North of State Road No. 54, less the West 15.0 feet for private road,

less the East 1/2 of the SE 1/4 of the SW 1/4 of the SW 1/4, and

less that part of the West 1/2 of the SE 1/4 of the SW 1/4 of the SW 1/4, lying East of the boundary line by agreement as staked on February 27, 1962, and described in Official Record Book 130, Page 700, Public Records of Pasco County, Florida: all in Section 30, Township 26 South, Range 19 East, Pasco County, Florida;

Township 26 South, Range 18 East
Section 25

(C) That part of the East 500.00 feet of the SE 1/4 of the SE 1/4 of Section 25 lying North of State Road No. 54, less that lying in exception described in final paragraph below:

(D) The South 400.00 feet of the East 400.00 feet of the NE 1/4 of the SE 1/4 of Section 25, less the North 300.00 feet of the West 100.00 feet thereof, and less that part lying in exception described below:

Exception

Township 26 South, Range 18 East
Section 25

Begin at the East 1/4 corner for Section 25, Township 26 South, Range 18 East, Pasco County, Florida; thence

S.88°00'15"W., on the East and West 1/4 line of Section 25, for a distance of 1,319.18 feet to the East 1/16 corner of Section 25; thence

S.01°54'43"E., on the East 1/4 - 1/4 line of Section 25, for a distance of 900 feet; thence

N.88°00'15"E., for a distance of 820 feet; thence

S.01°54'43"E., for a distance of 300 feet for a Point of Beginning; thence continue

S.01°54'43"E., for a distance of 500 feet; thence

N.88°00'15"E., for a distance of 100 feet; thence

N.01°54'43"W., for a distance of 500 feet; thence

S.88°00'15"W., for a distance of 100 feet to the Point of Beginning.

Township 26 South, Range 19 East
Section 30

Commence at the NW corner of the South 400 feet of the NW 1/4 of the SW 1/4 of Section 30, Township 26 South, Range 19 East, Pasco County, Florida, run thence East for a distance of 330 feet for a Point of Beginning; run thence

N.00°12'25"E., for a distance of 239 feet; run thence

S.89°24'05"E., for a distance of 95.3 feet; thence

N.00°12'25"E., for a distance of 36.0 feet; run thence

S.89°24'05"E., to a point which lies 402.0 feet West of the East boundary of the NW 1/4 of the SW 1/4 of Section 30; run thence

S.00°27'05"W., to the North boundary of the South 400 feet of the NW 1/4 of the SW 1/4 of said Section 30; run thence

N.89°24'05"W., along the North boundary of the South 400 feet of the NW 1/4 of the SW 1/4 of said Section 30 to the Point of Beginning.

FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-26: MEADOWVIEW

Township 26 South, Range 18 East
Section 36

West 1/2 of the SW 1/4 of the SW 1/4 of Section 36, Township 26 South, Range 18 East less the South 25 feet for road right-of-way.

Containing 19.69 acres more or less.

FOXWOOD/CYPRESS COVE SYSTEM

PARCEL B-27: COMO CLUB/MOSSVIEW

Township 26 South, Range 18 East
Section 35

SE 1/4 of NW 1/4;

South 1/2 of NE 1/4 of NW 1/4;

NW 1/4 of NE 1/4;

SW 1/4 of NE 1/4;

SE 1/4 of NE 1/4 and N 1/2 of NW 1/4 of SE 1/4;

NE 1/4 of NE 1/4 of SE 1/4 West of right-of-way of Dale Mabry Highway; and

NE 1/4 of NE 1/4 West of the East Line of Lake Como, all being in Section 35, Township 26 South, Range 18 East, Pasco County, Florida, less road rights-of-way.

TURTLE LAKES SYSTEM

PARCELS C-6: TWIN LAKES SUBDIVISION

Township 26 South, Range 19 East
Section 28

The NE 1/4 of the SW 1/4, and the

East 3/4 of the NW 1/4 of the SW 1/4, and the

North 17 acres of the SW 1/4 of the SW 1/4 of Section 28, Township 26 South, Range 19 East, Pasco County, Florida.

TURTLE LAKES SYSTEM

PARCELS C-6A: TWIN LAKES COMMERCIAL

Township 26 South, Range 19 East
Section 28

The SW 1/4 of the SW 1/4, less the North 17 acres, Section 28, Township 26 South, Range 19 East, lying and being in Pasco County, Florida.

TURTLE LAKES SYSTEM

PARCEL C-7: WOODRIDGE

Township 26 South, Range 19 East
Section 32

The NW 1/4 of the SW 1/4 of the NE 1/4, less existing right-of way for Livingston Avenue; the

East 1/2 of the SW 1/4 of the NE 1/4; and the

NE 1/4 of the NW 1/4 of the SE 1/4; all lying in Section 32, Township 26 South, Range 19 East, Pasco County, Florida.

Subject to existing right-of-way of Livingston Avenue, as occupied.

Containing 39.97 acres, more or less.

TURTLE LAKES SYSTEM

PARCEL C-8: REIBER MEDICAL PLAZA/HIGHLAND OAKS

Township 26 South, Range 19 East
Section 32

The NW 1/4 of the NE 1/4, less the West 437.50 feet thereof and less right-of-way for State Road 54, in Section 32, Township 26 South, Range 19 East, Pasco County, Florida.

TURTLE LAKES SYSTEM

PARCEL C-9: MYRTLE LAKES BAPTIST CHURCH

Township 26 South, Range 19 East
Section 29

A parcel of land in the SW 1/4 of Section 29, Township 26 South, Range 19 East, Pasco County, Florida. Commence at the SW corner of said Section 29; thence along the West boundary of said SW 1/4 of Section 29,

N.00°51'33"E., for a distance of 50.48 feet to a point of intersection with the North right of way boundary of State Road No. 54, for a Point of Beginning; thence continue along said West boundary of the SW 1/4 of Section 29,

N.00°51'33"E., for a distance of 1,267.90 feet to the NW corner of the South 1/2 of said SW 1/4 of Section 29; thence along the North boundary of the South 1/2 of the SW 1/4 of Section 29,

S.89°17'45"E., for a distance of 450.82 feet; thence

S.00°51'33"W., for a distance of 1,266.50 feet to the North right-of-way boundary of State Road 54; thence along said North right-of-way boundary of State Road 54,

N.89°28'16"W., for a distance of 14.39 feet; thence

N.12°44'02"W., for a distance of 66.08 feet; thence

S.77°15'58"W., for a distance of 90.00 feet; thence

S.12°44'02"E., for a distance of 44.87 feet; and

N.89°28'16"W., for a distance of 343.97 feet to the Point of Beginning.

Subject to a 40 foot right-of-way by maintenance for Old State Road No. 54.

The above described parcel of land contains 13.00 acres more or less.

TURTLE LAKES SYSTEM

PARCEL C-10: ASH PROPERTY-MYRTLE LAKES

Township 26 South, Range 19 East
Section 30

Commence at the SE section corner; thence along East boundary of Section 30, thence

N.00°25'36"E., for a distance of 50.0 feet to the North right-of-way line of State Road 54; thence along North right-of-way line

N.89°26'05"W., for a distance of 323.39 feet for a Point of Beginning; thence continue

N.89°26'05"W., for a distance of 218.10 feet to the easterly right-of-way line of proposed Collier Parkway; thence

N.44°02'36"W., for a distance of 35.60 feet; thence along the arc of a curve to the right, with a radius of 2,540.00, and a chord bearing of N.04°12'20"E., for a distance of 263.19 feet; thence

S.89°26'05"E., for a distance of 225.27 feet; thence

S.00°52'27"W., for a distance of 279.00 feet; thence along arc of curve to the left, a radius of 35.00 feet, and a chord bearing of S.07°33'00"E., for a distance of 9.08 feet to the Point of Beginning. Subject to slope easement.

And

Commence at the SE corner of Section 30; thence

N.00°14'55"W., for a distance of 50.00 feet to the North right-of-way line of State Road 54 for a Point of Beginning; thence

S.89°54'11"W., for a distance of 323.39 feet; thence along arc of curve Northeasterly 9.11 feet, with a radius of 35.0 feet, and a chord bearing of N.07°33'00"W., for a distance of 9.08 feet; thence

N.00°05'49"W., for a distance of 279.00 feet; thence

S.89°54'11"W., for a distance of 225.13 feet to a point on a curve; thence 13.32 feet along arc of curve, with a radius of 2,640.00 feet, and a chord bearing of N.06°30'30"E., for a distance of 13.32 feet; thence

N.45°12'38"E., for a distance of 38.31 feet; thence

S.82°41'00"E., for a distance of 66.30 feet; thence

N.12°23'36"E., for a distance of 136.94 feet; thence

S.77°36'24"E., for a distance of 240.00 feet; thence

N.12°23'36"E., for a distance of 20.00 feet; thence

N.77°36'24"W., for a distance of 240.00 feet; thence

N.12°23'36"E., for a distance of 64.72 feet; thence

N.77°42'03"W., for a distance of 100.04 feet to a point on new right-of-way line of Collier Parkway; thence for a distance of 483.16 feet along arc of curve concave to the East, with a radius of 2,640.00 feet, and a chord bearing of N.17°19'41"E., for a distance of 482.49 feet;

N.45°52'15"E., for a distance of 107.02 feet; thence

S.44°05'28"E., for a distance of 160.00 feet; thence

S.79°50'41"E., for a distance of 171.14 feet; thence

S.00°14'55"W., along East line of Section 30, for a distance of 945.62 feet to the Point of Beginning. Subject to slope easement.

All being in Section 30, Township 26 South, Range 19 East, Pasco County, Florida.