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May 24, 1996

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

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RE: Docket No. 951056-WS

Dear Ms. Bayo:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 15 copies of the Citizens' Second Motion to Compel.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Stephen C. Reilly  
Associate Public Counsel

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DIVISION OF RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of PALM COAST )  
UTILITY CORPORATION for Increased )  
Rates in Flagler County, Florida /

Docket No. 951056-WS  
Filed: May 24, 1996

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CITIZENS' SECOND MOTION TO COMPEL

The Citizens of the State of Florida ("Citizens"), by and through their undersigned attorney, move this Commission to enter an order requiring Palm Coast Utility Corporation (PCUC, Utility or Company) to provide information and produce the documents requested in Citizens' Second Set of Interrogatories and Second Set of Requests for Production of Documents. By this motion the Citizens request the Commission to Compel PCUC to provide the Citizens with the information sought in Interrogatories Nos. 45, 47, 51 and 52 and to produce the documents requested in Document Requests Nos. 36, 37, 48, 49, 51, 53 and 56. In support of this motion the Citizens state the following:

1. With the Request for the Production of Documents Nos. 46, 47 and 50 the Citizens sought to discover all of the details concerning PCUC's affiliate ICDC's sale of approximately 13,000 acres of property located in PCUC's service territory, certain commercial properties and accounts receivable. Only after analysis of the details of the sale of these nonutility assets, to an affiliate of the entity that has an option to buy PCUC, can an accurate picture be developed concerning the actual consideration

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that will be paid for PCUC under any exercise of the Option Agreement. While this background information will be critical to any subsequent transfer docket that would consider the proposed sale of PCUC, it is of less direct relevance to the issues presented in the instant rate case docket. Given the limitations of time and resources, and in the spirit of seeking only the information most likely to lead to the discovery of admissible evidence to be used in this proceeding, the Citizens have elected not to seek an order to compel PCUC to produce all of the documents relating to ITT's sale of nonutility assets to an affiliate of the entity that has an option to purchase PCUC. However, for the reasons stated later in the body of this motion, it is of critical importance to discover the details concerning the executed Option Agreement to sell PCUC.

2. Interrogatory No. 45 states:

45. Please provide information analogous to that provided on Schedule A-12 of the MFRs for each of the years 1988 through 1994.

Company Response:

Objection. Irrelevant; not reasonably calculated to lead to admissible evidence. All this requested information is outside the test year and has no bearing on rates or cost of service in this rate case. Unduly burdensome. The Company does not keep its CIAC balances in its accounting records as shown on Schedule A-12. To create a document analogous to A-12 for 1988-1994 would take an estimated one full week of work.

3. The information contained on Schedule A-12, is the breakdown on CIAC source. The information sought in Interrogatory No. 45 is relevant and is reasonably calculated to lead to admissible evidence in this proceeding. The utility has

considerable amounts of CIAC both used and non-used. The issue of the appropriate amount of CIAC that should be used to offset rate base is always a major issue in a utility rate proceeding. If the utility does not maintain its records as shown on Schedule A-12, one must question the legitimacy of the numbers contained on Schedule A-12. The historical balances of CIAC are requested for purposes of analyzing the utility's accounting for its CIAC and to help judge the reasonableness of the amounts claimed to be used and useful and non-used and useful in the instant case. If it would take the utility one week to prepare such information, it would take the Citizens three or four times that time, if it could even develop the calculations from data provided by the utility, to prepare such an analysis. Accordingly, it would be less burdensome for the utility to prepare the requested information than for the Citizens to attempt such a comparison. Further, the utility has made no attempt to communicate with the Citizens or to provide us with any detailed understanding of the problems they must overcome to provide the requested information. In the spirit of cooperation, the Citizens would be willing to accept the information in another format or in a manner that would be less burdensome to the utility. However, such a compromise requires communication, which has been virtually nonexistent as it relates to discovery requests.

4. Interrogatory No. 47 states:

47. For the guaranteed revenue received by the Company from 1975 forward, please itemize how the amount charged to each entity was developed.

Company Response:

The Company determines the guaranteed revenue for each entity in accordance with the terms in the specified tariffs.

5. In asking the utility to itemize how the amounts of guaranteed revenues were charged to each entity, the Citizens were attempting to discover the dollar amounts of guaranteed revenues charged and collected, by component, from each entity. PCUC apparently collects guaranteed revenues to reimburse itself for the carrying costs (depreciation, real estate taxes, operation and maintenance expenses and return on investment) of non-used and useful utility plant from ICDC and 10 other developers. While the Citizens believe we understand the components that make up the ICDC guaranteed revenue payment, we do not have any information concerning the guaranteed revenues being collected from 10 or more other developers. The Citizens need an itemization of the dollars and the basis for the guaranteed revenues by developers and by component (i.e., depreciation, real estate taxes, O&M, return on investment, administrative) not a statement that PCUC determines its guaranteed revenue payments pursuant to its tariffs. PCUC should be required to provide the information requested.

6. Interrogatory No. 51 states:

51. Please explain how the .25 percent contractual service charge rate for administrative services provided by ITT to the Company was determined. State the amount charged to each other affiliate and subsidiary of ITT.

Company Response:

For the Company see Volume III of Minimum Filing Requirements Docket No. 951056-WS Section titled "Costs Charged or Allocated by Parent or Affiliate" Item No. 1

of page 2 of 3, dated February 7, 1996, Summary of Information. Provided in Compliance with 25-30.436 (4) (h). As to other ITT Units, the Company objects to this interrogatory as not relevant to this proceeding, nor reasonably calculated to lead to any admissible evidence.

7. With respect to PCUC, the section cited in the MFRs does not explain how the .25 percent contractual service charge rate was determined. The MFRs merely state that the .25 percent is applied to revenue. The Company's answer is not responsive to the question asked. It did not explain how the .25 percent figure was determined. With respect to the other ITT Units, the information is relevant because it is necessary to determine if the amount charged to PCUC is reasonable. To analyze the amount charged to the utility it is necessary to know the total amount that is being charged to all affiliates to assess if the amount assigned to the utility is reasonable in light of the amounts charged to other entities. ITT would have an inherent incentive to charge more to the regulated operations than non-regulated operations. It is not possible to evaluate the reasonableness of the charge to the utility without knowing the amounts charged to the non-regulated operations. PCUC should be ordered to produce the information requested.

8. Interrogatory No. 52 states:

52. For each of the years 1994 and 1995, please provide the number of employees employed by ITT, each of ITT's affiliates, and each of ITT's subsidiaries.

Company Response:

For PCUC at: 12/94-76 Employees 12/95-69 Employees.  
As to other ITT Units, the Company objects to this interrogatory as irrelevant; and is not reasonably calculated to lead to admissible evidence in this rate

case. Not in possession, custody or control of PCUC.

9. The Company provided the information with respect to PCUC, but objected to providing the information for its other affiliates. The information requested is relevant to the issue of addressing the reasonableness of charges from ITT and ICDC to the utility. Both entities provide services to the utility. The information sought was to be used for the purpose of testing the reasonableness of the allocations and charges from ITT and ICDC to the utility. The information is in the control of the utility, because it is in the possession of its parent company which is in control of the utility. PCUC should be ordered to produce the information requested.

10. Production of Documents Request No. 36 states:

36. Provide a copy of all agreements between ICDC and the Company.

Company response:

See Attachment 36 (consisting of all Agreements other than developer agreements). Objection to providing copies of over 20 years of Developer Agreements, as they are voluminous and extremely burdensome to copy. The Developer Agreements are available for inspection at Company's office during normal business hours at a time convenient to the parties.

11. The Company provided two agreements. However, it did not provide with respect to the first agreement, Exhibits A, B, and C, which are part of the agreement. The Company should be ordered to produce the Exhibits A, B, and C, which should have been attached to the agreement requested.

12. Document Request No. 37 states:

37. Please provide a copy of the audited financial

statements (balance sheet, income statement, cash flow statement and accompanying notes) of ICDC for each of the years 1988 forward. If audited financial statements are not available, provide unaudited financial statements.

Company Response:

Objection. Irrelevant; not reasonably calculated to lead to admissible evidence in this rate case. Confidential proprietary business information. Not in possession, custody or control of PCUC.

13. ICDC charged the utility in excess of \$275,000 during the test year. In addition, ICDC acts as the conduit for collection of CIAC for the utility. The information sought is relevant for purposes of determining if the charges to the utility are reasonable and based upon actual costs. Likewise, to properly assess if the utility has accounted correctly for its CIAC the information obtained from ICDC's financial statements would be useful. In addition, ICDC provides the Company with guaranteed revenue for non-used and useful assets. This revenue should be an expense on the financial statements of ICDC. ICDC is an affiliate of the utility which provides services to the utility. The Citizens and the Commission should have the undeniable right to review this affiliate's financial statements. In the alternative, all costs charged to the utility from ICDC should be removed from test year expenses. The Citizens' would be willing to stipulate to this latter solution to the Company's objections. The information sought is in the control of the utility, because it is in the possession of its parent company which is in control of ICDC and the utility. The Citizens have no objection to keeping the material sought confidential. However, the Citizens do not believe



that they should only be allowed to review the material at the offices of PCUC. The information sought is not voluminous, nor is it burdensome to produce. The documents requested are produced in the ordinary course of business. PCUC should be ordered to produce the requested information at the Office of the Public Counsel.

14. Document Request No. 48 states:

48. Please provide any and all purchase agreements, amendments, and option agreements, entered into between ITT (including any of ITT's subsidiaries or affiliates) and Minnesota Power and Light Company (including any of Minnesota Power and Light Company's subsidiaries or affiliates) concerning the sale of Palm Coast Utility Corporation to Minnesota Power and Light Company (including any of Minnesota Power and Light Company's subsidiaries and affiliates).

Company response:

Objection. Irrelevant; is not reasonably calculated to lead to admissible evidence in this rate case. Confidential proprietary business information.

15. Document Request No. 49 states:

49. Please provide all correspondence between ITT (including any of ITT's subsidiaries and affiliates) and Minnesota Power and Light Company (including any of Minnesota Power and Light Company's subsidiaries and affiliates) concerning the sale of Palm Coast Utility Corporation to Minnesota Power and Light Company (including any of Minnesota Power and Light Company's subsidiaries and affiliates).

Company Response:

Objection. Irrelevant; is not reasonably calculated to lead to admissible evidence in this rate case. Confidential proprietary business information and unduly burdensome.

16. Document Request No. 51 states:

51. Provide a copy of any appraisals conducted in 1993, 1994, 1995 and 1996 of the Palm Coast Utility Corporation assets which may be sold under the option agreement to Minnesota Power and Light Company (including any of

Minnesota Power and Light Company's subsidiaries and affiliates).

Company Response:

Objection. Irrelevant; is not reasonably calculated to lead to admissible evidence in this rate case. Confidential proprietary business information.

17. Document Request No. 53 states:

53. Provide a copy of any due diligence studies in ITT's and/or the Company's possession, custody or control conducted in 1993, 1994, 1995 and 1996 of the Palm Coast Utility Corporation assets which may be sold under the option agreement to Minnesota Power and Light Company (including Minnesota Power and Light Company's subsidiaries and affiliates).

Company Response:

Objection. Irrelevant; is not reasonably calculated to lead to admissible evidence in this rate case. This request may contain privileged information. Confidential proprietary business information.

18. Document Request No. 56 states:

56. Provide a copy of calculations or other documents which estimate or attempt to estimate any gains or losses on sale, associated with the potential sale of Palm Coast Utility Corporation's assets to Minnesota Power and Light Company (including Minnesota Power and Light Company's subsidiaries and affiliates).

Company Response:

Objection. Irrelevant; not reasonably calculated to lead to admissible evidence in this rate case. Confidential proprietary business information; may contain privileged information.

19. With Document Requests Nos. 48, 49, 51, 53 and 56 the Citizens are attempting to discover all relevant documents which detail the Option Agreement PCUC has already entered into with an affiliate of Minnesota Power and Light. As stated in the Citizens' First Motion to Compel, the sale of PCUC is more than just a

possibility, it is virtually a fait accompli. The Citizens understand that PCUC's sister company, ICDC, has already sold approximately 13,000 acres and various commercial properties located in PCUC's service area and accounts receivable to a wholly owned subsidiary of the parent company, of the same entity that has an option to purchase PCUC. This entity's purchase of PCUC will be but the final chapter of ITT Corporation's (ITT) virtually complete divestment of its interests in the Palm Coast community.

20. The Citizens understand that but for the Option Agreement this rate case would not even be before this Commission. The Citizens understand that PCUC was required to file this rate case as a condition precedent to the sale of PCUC to a Southern States Utilities' surrogate. The Citizens further understand that the purchase price, under the Option Agreement, is to be a percentage of the rate base awarded by this Commission in this rate case. Certainly any imminent sale could result in the need for a possible acquisition adjustment, depending upon the particular facts of the transaction. The Commission should not decide this case completely ignorant of this major transaction that will affect all aspects of this utility.

21. This Commission sets rates on a going forward basis. The Citizens have a right to discover the details of this pivotal transaction that is probably scheduled to occur within the very near future. The Commission should know when and under what conditions the Option Agreement may be exercised, the extent to which the agreement has controlled PCUC's filings in this

proceeding, the possible affects the exercise of the option will have on PCUC's capital structure, levels and types of near future expenses, and affects on rate base (positive or negative acquisition adjustment).

22. To the extent PCUC's personnel sent and received letters concerning the sale of PCUC it is appropriate to examine the extent Utility personnel participated in these transactions for the purpose of proposing adjustments to test year salary expenses for PCUC. If PCUC personnel sent or received letters concerning the sale of PCUC such conduct is presumptively relevant to PCUC's business, and particularly relevant to understanding the near future business of PCUC. To the extent this correspondence is irrelevant, as alleged by the Utility's counsel, PCUC is conceding that its employees have engaged in conduct unrelated to the Utility's business. Consequently, further adjustments to test year salary expenses for PCUC may be appropriate.

23. PCUC has already conceded that costs associated with ITT's divesture should not be recovered in PCUC's revenue requirement to be determined by the Commission in this rate proceeding. In response to Citizens' Interrogatory No. 54 the utility identified \$34,768 in Account No. 636 which was included in the MFR's as nonrecoverable cost of service associate with potential utility diverture by ITT. The Citizens and ultimately this Commission must have all of the facts relating to this imminent transaction before it can correctly determine test year expenses.

24. The documents requested by the Citizens in Document Requests Nos. 48, 49, 51, 53 and 56 are relevant and reasonably calculated to lead to the discovery of admissible evidence to be used in this rate case. The Commission should order PCUC to supply the Citizens, on an expedited basis, the documents requested.

WHEREFORE, the Citizens respectfully request the Commission to Compel PCUC to furnish the Citizens the information sought in Interrogatories Nos. 45, 47, 51 and 52 and supply the documents requested in Production of Document Requests Nos. 36, 37, 48, 49, 51, 53 and 56 on an expedited basis.

Respectfully submitted,

  
Stephen C. Reilly  
Associate Public Counsel

Office of Public Counsel  
The Florida Legislature  
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Tallahassee, FL 32399-1400

(904) 488-9330

Attorney for the Citizens  
of the State of Florida

**CERTIFICATE OF SERVICE  
DOCKET NO. 951056-WS**

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or \*hand-delivery to the following parties on this 24th day of May, 1996.

\*B. Kenneth Gatlin  
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