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June 3, 1996

HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-1850

RE: Docket No. ~~96050-WS~~
Application by PALM COAST UTILITY CORPORATION
for a rate increase in Flagler County, Florida

Dear Ms. Bayo:

Enclosed for filing are an original and fifteen copies of Palm Coast Utility Corporation's Response to Citizens' Second Motion to Compel and a Request for Oral Argument on Palm Coast Utility Corporation's Response to Citizens' Second Motion to Compel, in reference to the above docket.

Please acknowledge receipt of the foregoing by stamping the enclosed extra copy of this letter and returning same to my attention. Thank you for your assistance.

Very truly yours,

B. Kenneth Gatlin

B. Kenneth Gatlin

- ACK _____
- ADD 1 _____
- APP _____
- CHF _____
- CMC _____
- COB _____
- CRG BKG/met _____
- ENC Enclosures _____
- EDM Edmonds _____
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- FRM _____
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate increase in)
Flagler County by PALM COAST)
UTILITY CORPORATION)

Docket No. 951056-WS

Filed: June 3, 1996

PALM COAST UTILITY CORPORATION'S
RESPONSE TO CITIZENS' SECOND MOTION TO COMPEL

Palm Coast Utility Corporation (PCUC), pursuant to Rule 25-22.037, F.A.C., hereby files its Response to Citizens' Second Motion to Compel, and states:

1. The Office of Public Counsel (OPC) served Citizens' Second Set of Requests for Production of Documents to Palm Coast Utility Corporation and Citizens' Second Set of Interrogatories to PCUC by hand-delivery to PCUC on April 12, 1996. On May 2, 1996 the Procedural Order was issued in this case. The Order requires objections to discovery to be made within 10 days of service of a discovery request. On May 3, 1996, PCUC filed PCUC's Motion for Extension of Time and Notice of Intent to File Motion for Protective Order relating to OPC's second sets of discovery. PCUC requested until May 13, 1996 in which to file its objections to discovery, and filed notice of intent to file a motion for protective order by May 20, 1996. PCUC served its Response to Citizens' Second Set of Requests for Production of Documents to Palm Coast Utility Corporation and its Response to Citizens' Second Set of Interrogatories on May 13, 1996. PCUC's Second Motion for Protective Order was filed on May 17, 1996, regarding Production Request Nos. 37, 46-51, 53 and 56, due to the confidential nature of these requests. No order has yet been issued on PCUC's May 3rd Motion.

2. OPC's Second Motion to Compel should be denied because as to the discovery at issue, OPC has failed to demonstrate "a reasonably 'calculated' casual connection between the

information sought and the possible evidence relevant to the pending action.” Calderbank v. Cazares 435 So.2d 377, 379 (Fla. 5th DCA 1983). The Court in Calderbank quashed an order compelling discovery. The Court elaborated as follows:

If a logical connection is not readily apparent, the questioner should make it apparent by pointing out to the court his reasoning process based on facts and inferences demonstrating how he calculates that the sought information will “reasonably” lead to admissible evidence. The mere fact that an inquiry that appears to be irrelevant “might” lead to evidence that is relevant and admissible to the issues in the pending suit is not sufficient. Such a rule would place no limitation on the authority of any litigant to invade, by questions, the privacy of a witness.

3. The discovery requests addressed in Citizens’ Second Motion to Compel are responded to in order, as follows:

Interrogatory No. 45

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

PCUC’s 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.

4. PCUC should not be required to create a document which does not exist. Syken v. Elkins, 644 So.2d 539, 546 (Fla. 3d DCA 1994)(The Court quashed the lower court’s orders compelling discovery, stating, inter alia. “An expert may not be compelled to compile or produce nonexistent documents.”); See, LeJeune v. Aikin, 624 So.2d 788 (Fla. 3d DCA 1973)(“Clearly, a trial

court has no authority to order the discovery of nonexistent records.”); Balzebre v. Anderson, 294 So.2d 701 (Fla. 3d DCA 1974).

5. As stated in the MFRs, Schedule A-12 is a recap of schedules A-1 and A-4. Schedules A-1 and A-4 are supported, as stated in those schedules, by Schedules A-3DTAX, A-5 through A-7, A-9 through A-10, A-12, A-14, and A-16 through A-18. The set of schedules in Section A of the MFRs determines Rate Base. The CIAC information required to set rate base in this case is included in its entirety in these schedules. There is no commission requirements to provide a Schedule A-12 for years prior to the test year. PCUC requested pursuant to Rule 2-30.430, F.A.C., and was granted “a projected year end test year ending December 31, 1995, with an historical base year ended December 31, 1994. The projected test year will be composed of six months actual data and six months projected data.” The use of a rate case test year is designed to give limited parameters to what would otherwise be a wholly unweildy proceeding. To compile and format the CIAC information requested by OPC would take one full week of PCUC’s Assistant Comptroller’s time. This person is currently working on responses to 18 interrogatories and 13 document requests from Dunes Community Development District, Staff’s First and Second Sets of Interrogatories (66 interrogatories) and Staff’s First and Second Set of Requests for Production (16 requests), OPC’s third set of interrogatories (Nos. 66-79), and OPC’s third set of requests for production of documents (Nos. 57-67). In the midst of the rate case with ongoing discovery preparation, it would be an extremely heavy burden to create additional Schedule A-12’s for each year 1988-1994.

6. However, based upon OPC’s statements made in Citizens’ Second Motion to Compel that OPC is requesting “the historical balances of CIAC” and “Citizens’ would be willing to accept

the information in another format,” PCUC is producing the requested CIAC information in the format in which its records are kept, for the years 1989-1994.

Interrogatory No. 47

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

PCUC’s response:

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

Public Counsel fails to demonstrate why the answer was not adequate. PCUC believes that its response was accurate and complete, however, based upon OPC’s discussion of this interrogatory contained in its motion to compel, PCUC will file a Supplemental Response, which includes an objection to this clarified interrogatory, as follows:

47. See “Attachment Int-47.” Objection to providing information prior to the test year, as irrelevant; not reasonably calculated to lead to admissible evidence.

7. Public Counsel’s Motion to Compel seeks different information than sought by Interrogatory No. 47 and answered by PCUC. The PCUC Developer Agreements relative to guaranteed revenues are all on file with the Commission. Reference to the PCUC approved tariff will “itemize” the elements used to determine the amount of guaranteed revenues. Therefore, the original answer is a complete response to Public Counsel’s Interrogatory No. 47. Now, in its Motion to Compel Public Counsel indicates that it seeks “the amounts of guaranteed revenues charged to each entity.” PCUC will furnish the amount of guaranteed revenues in its response for the test years 1994 and 1995. Revenue from guaranteed revenue agreements for other years are not relevant. The

revenue from prior years to the test year have no relevancy in this rate case. As a matter of fact, since guaranteed revenues are for non-used and useful properties, such revenues have no relevancy for the determination of the required revenue for used and useful property. However, PCUC is raising no objection to furnishing the guaranteed revenues for the test year.

Interrogatory No. 51

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.

PCUC's response:

51. 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.

8. This interrogatory is actually two interrogatories. As to the first question concerning the .25 percent contractual service charge, PCUC has answered the question. There is no other response.

9. As to the second interrogatory portion, it is irrelevant what amount is charged by ITT to each other affiliate and subsidiary of ITT for administrative services. The test for determining whether a service provided to a utility by an affiliate is appropriate is whether the transactions exceed the going market rate or are otherwise inherently unfair. The Florida Supreme Court has made this clear, stating:

The mere fact that a utility is doing business with an affiliate does not mean that unfair or excess profits are being generated, without more. Charles F. Phillips, Jr., The Regulation of Public Utilities 244-55 (1988). We believe the standard must be whether the transactions exceed the going market rate or are otherwise inherently unfair. See id. If the answer is “no,” then the PSC may not reject the utility’s position. The PSC obviously applied a different standard, and we thus must reverse the PSC’s determination of this question.

GTE Florida Inc. v. Deason, 642 So.2d 545, 547-48 (Fla. 1994); on remand, GTE Florida Incorporated v. Clark, 668 So.2d 971 (Fla. 1996).

10. MFR Vol. III states in regard to affiliate charges that the total annual contract service charge by ITT to PCUC for the projected test year is only \$21,201. This charge covers the costs of ITT corporate administrative services and expertise from ITT executives, legal, financial and accounting personnel. PCUC would not be able to secure expert advice as needed on these diverse topics from any other sources for this price. This is the test for reasonableness of a charge, not how a charge of .25 percent of annual net operating revenues compares to other entities. Furthermore, in case this point is not clear, the MFRs explain that the charge is not an allocation. Affiliates, as stated in the MFRs, each pay individually between .25 and 1.0% of their annual net operating revenues for administrative services.

11. Because the charge is not an allocation and because the standard of the charges reasonableness is market rate, the information requested by OPC is not reasonably calculated to lead to admissible evidence and OPC’s Motion to Compel should be denied.

Interrogatory No. 52

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.

PCUC's response:

52. 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.

12. This interrogatory appears to be linked to Interrogatory No. 51. The information on number of employees employed by ITT, and each of ITT's affiliates and subsidiaries is not reasonably calculated to lead to admissible evidence in this case. OPC states in its second motion to compel that this information "is relevant to the issue of addressing the reasonableness of charges from ITT and ICDC to the utility," and would be used to check "the reasonableness of allocations and charges from ITT and ICDC to the utility." The number of employees of ITT, affiliates and subsidiaries, has no bearing on the reasonableness of any administrative charges to PCUC (again, there are no allocations. See MFR Vol. III, and paragraph 9 above). See GTE v. Deason, *supra*, paragraph 8 above. PCUC should not be compelled to produce this information since it is not reasonably calculated to lead to the discovery of admissible evidence.

Request for Production No. 36

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

PCUC's response:

36. 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.

OPC's Motion to Compel asks the commission to compel production of Exhibits A-C for PCUC's 1980 Developer Agreement with ICDC. PCUC did not have Exhibits A-C attached to its file copy of the agreement provided to OPC, and was not aware the Exhibits were missing. PCUC is in the process of locating these exhibits for purposes of production.

Request for Production No. 37

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.

PCUC's response:

37. 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. PCUC requested protection from discovery of this information in Palm Coast Utility Corporation's Second Motion for Protective Order, pp. 2-10 (Filed May 17, 1996). In its second motion for protective order, PCUC refutes OPC's statement that it should have "the undeniable right to review this affiliate's financial statements." As set forth in detail in PCUC's Second Motion for Protective Order, ICDC's financial statements are not reasonably expected to lead to admissible evidence (See arguments and citations therein, pp. 2-10).

14. OPC gives as reasons why it believes that ICDC's financial statements are relevant that OPC wants to determine if ICDC has reasonably charged PCUC, whether the charges are based on actual cost, whether PCUC has correctly accounted for its CIAC, and to identify the guaranteed revenues provided by ICDC. However, Public Counsel does not state how the information on

ICDC's books will aid in this determination. Public Counsel does not say how ICDC's books will be relevant in determining whether PCUC correctly accounted for its CIAC on PCUC's books. Again, OPC goes awry of the Florida Supreme Court's test for reasonableness of an affiliate's charges, set forth in GTE v. Deason, *supra*. The focus here must be on whether the amount charged as specified in MFR Vol. III exceeds the going market rate or is otherwise unfair. The test of reasonableness is not whether the charges are based on actual cost. For this reason, actual cost to ICDC is not an issue in this case. Review of ICDC's financial information is not reasonably calculated to lead to admissible evidence in this regard, as it has no bearing upon the issue.

15. Regarding the confidential nature of the financial information, OPC incorrectly states that the documents requested are produced in the ordinary course of business. PCUC alleged in its second motion for protective order that to the extent that such information has not been publicly disclosed as required by law, ICDC intends to and treats this financial information as private, and has not disclosed it. The request for confidentiality in PCUC's Second Motion for Protective Order, and arguments in support thereof set forth in paragraphs 7-10 therein, relate to the following undisclosed financial information: income statements, cash flow statements and accompanying notes for the years ended 1993 through 1995. In the event the Commission finds this information discoverable, review of such information at PCUC's offices would assure protection of the confidentiality of this information, and give OPC the opportunity to determine whether it would intend to use any such information as part of its case. (See also Palm Coast Utility Corporation's Second Motion for Protective Order, paragraphs 7-5)

Request for Production Nos. 48, 49, 51, 53, and 56 concerning the current sales negotiations of PCUC.

16. PCUC has requested protection from discovery of this information in its second motion for protective order, paragraphs 18 - 22, filed May 17, 1996. In these requests for production OPC asks for documents (all purchase agreements, amendments, option agreements, correspondence, and any 1993-1996 appraisals and due diligence studies, and estimates on gains or losses on sale) relating to negotiations of a potential sale of Palm Coast Utility Corporation.

Request for Production No. 48

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 or affiliates).

PCUC's response was:

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

Request for Production No. 49

49. Please provide all correspondence 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 or affiliates).

PCUC's response was:

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

Request for Production No. 51

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 or affiliates).

PCUC's response was:

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

Request for Production No. 53

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 any of Minnesota Power and Light Company's subsidiaries or affiliates).

PCUC's response was:

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

Request for Production No. 56

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 any of Minnesota Power and Light Company's subsidiaries or affiliates).

PCUC's response was:

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

17. OPC's Second Motion to Compel makes various allegations concerning ITT, the potential transfer, and possible ramifications of such a transfer. OPC's Motion to Compel in this regard attempts to raise a speculative issue that may or may not occur in the future. These speculative issues are not before the Commission in this rate case. This rate case is to determine rates based on the approved test year. Answers to OPC's speculative future issues would not be relevant to that determination. However, OPC does not in its second motion to compel address or refute the substantive points on irrelevance raised in PCUC's Second Motion for Protective Order, as again set forth in paragraph 20 below. Neither does OPC state whether it agrees or disagrees that such information, if discoverable, should be classified as confidential proprietary business information.

18. Document Request No. 49 asks for correspondence between ITT, its subsidiaries and affiliates and MP&L, its subsidiaries and affiliates regarding the potential sale of PCUC. Document Request No. 49 is identical to OPC's Document request No. 12, except much broader. No. 12 asks for correspondence "between the Company and any other utility, municipality, city or government agencies concerning the possible purchase of Palm Coast." Document request No. 49 asks for correspondence between ITT, its affiliates and subsidiaries and MP&L, its subsidiaries and affiliates, concerning the sale of PCUC. PCUC's objections to both requests are therefore similar.

19. OPC's second motion to compel attempts to give as a causal connection between the discovery request and its relevance to the case that correspondence requested must be examined "for the purpose of proposing adjustments to test year salary expenses to the extent PCUC personnel participated in sale negotiations." OPC thus does not even address any need for correspondence from ITT, its affiliates, and its subsidiaries, other than PCUC. OPC's second motion to compel discovery of document request No. 49, as it relates to non-utility affiliates and the parent corporation, must be denied as OPC has given no causal connection at all between the information sought and the possible evidence relevant to the issues in the rate case. Calderbank v. Cazares, 435 So.2d 377, 379 (Fla. 5th DCA 1983).

20. Adjustments to test year salary expenses should not be made to the extent Utility personnel participated in PCUC sales negotiations. The PSC regulates public utilities, but does not manage the day to day operations of them. See, e.g., In re: Application of Century Utilities, Inc., for an increase in water and sewer rates in Palm Beach County, Florida, Docket No. 861564-WS, Order No. 19161, p. 11 (In reviewing the utility's officer and employee bonus program the Commission stated: "However, our statutory mandate is not to manage this company, but to regulate it. If viewed as salary, the bonuses do not cause the salaries to be unreasonably high, thus we find no cause for their disallowance.") Part of operating and managing any business is fielding inquiries and corresponding regarding a sale of that business. These duties are legitimate utility business, part of running the utility, and adjustments are not properly made to delete time spent thereon. Furthermore, examination of correspondence concerning the potential sale of PCUC can not reasonably be expected to lead to any admissible evidence in this case regarding the issue of test year salary

expenses. Such correspondence can give no indication of the percentage an employee's time was devoted to sales negotiations.

21. OPC gives as additional support for Document Request No. 49 that such correspondence: "is presumptively relevant to PCUC's business, and particularly relevant to understanding the near future business of PCUC." OPC again misses the point regarding relevancy. The point is whether correspondence concerning the potential sale of PCUC is reasonably calculated to lead to admissible evidence in this rate case. The logical connection which OPC must show is the relevance of the documents to an issue in the rate case. OPC's framing of this discovery question if accepted would allow issues having no bearing upon ratemaking to be inappropriately included in this rate case.

22. PCUC additionally seeks protection from OPC's Request for Production no. 49, on the basis that providing copies would be unduly burdensome, and expensive. The request for correspondence covers documents not in PCUC's offices, which include file cabinets of information, as well as correspondence in offices of lawyers, consultants, and other agents which may not be identical to the documents in PCUC's offices. In order to protect PCUC against inadvertent disclosure of privileged information, all such files would need to be reviewed. Although PCUC objected to Document Request No. 49 on this basis, OPC does not address this point in its second motion to compel.

23. The First District Court of Appeals addressed the issues of overly broad, irrelevant and burdensome discovery requests in Krypton Broadcasting of Jacksonville, Inc. v. MGM-Pathe Communications Co., 629 So.2d 852 (Fla. 1st DCA 1993). The Court quashed the lower court order compelling answers to discovery, stating:

The trial court, in deciding whether a party should be required to respond to a given discovery request, should weigh the relevance of the information sought against the burdensomeness of the request. *Wood v. Tallahassee Memorial Regional Medical Center, Inc.*, 593 So.2d 1140 (Fla. 1st DCA 1992), *petition for review denied*, 599 So.2d 1281 (Fla. 1992).

24. Finally, certain correspondence in this broad request, even if not ruled irrelevant to the rate case or overly broad and burdensome, is or may be proprietary confidential business information pursuant to Section 367.156(3), Fla. Stat. Production of certain correspondence pertaining to ongoing purchase negotiations, agreements and/or transactions could put PCUC and its customers at a disadvantage in affecting favorable transfer terms.

25. PCUC has requested in its second motion for protective order that the Commission protect from discovery documents and correspondence relating to the possible future sale of PCUC as irrelevant to this proceeding. Issues relevant to a sale of PCUC are not before the Commission in this proceeding. These discovery requests do not relate to an issue in this rate case. If a transfer proceeds to conclusion, issues relevant to the sale will come before the Commission in a transfer docket. Discovery should not be had concerning issues not before the Commission. E.g., In re: Application for Amendment of Certificates Nos. 298-W and 248-S in Lake County by J.J.'s Mobile Homes, Inc., etc., combined Docket Nos. 921237-WS/940264-WS, Order No. PSC-94-1563-PCO-WS, issued December 15, 1995. J.J.'s Mobile Homes was a certificate amendment case before the Commission. As part of a Motion for Reconsideration, OPC claimed that if, pursuant to an existing contract to purchase the utility, the sale was consummated, discovery was necessary to answer questions before the sale could be approved. The Commission denied OPC's motion and stated:

In its motion, OPC raised questions about the impact of the purchase of the utility on CDD. Those issues, while relevant to the sale of the

utility to the CDD, are not ripe for determination at this point. The sale of the utility to the CDD is not before the Commission in this proceeding. If the sale is completed, it would likely come before the Commission as a transfer application pursuant to Section 367.071(4)(a), Florida Statutes.

Id. See also, Ft. Pierce Utilities Authority v. FPSC, 388 So.2d 1031 (Fla. 1980), where the Florida Supreme Court held that in a proceeding on an application for issuance of securities, the Florida Public Service Commission had no jurisdiction to consider and rule upon a merger of two nonparty corporations which would be made possible by using proceeds from the securities issue. The Court ruled that the Commission had jurisdiction to reserve for a subsequent ratemaking proceeding, issues of valuation and costs which could arise as a result of financing. Likewise, the possible future transfer of PCUC is not ripe for determination in this ratemaking docket, and the Commission has no jurisdiction to consider that issue in this rate case. The information concerning a potential transfer is not reasonably calculated to lead to admissible evidence, and discovery should be denied.

26. Further, the documents or certain documents in discovery requests Nos. 48, 49, 51, 53, and 56, in addition to being irrelevant to the rate case, are proprietary confidential business information pursuant to Section 367.156(3), Florida Statute. PCUC requests that pursuant to Rule 25-22.006(5), F.A.C., a temporary protective order be issued, and that the documents be afforded all protection from disclosure as set forth by rule and statute. PCUC has treated and is treating this information as private and has not disclosed it. Production of the option agreement and correspondence pertaining to ongoing purchase negotiations, agreements and/or transactions could put PCUC and its customers at a disadvantage in affecting favorable transfer terms. Indeed, the buyer could choose not to exercise the option.

27. The Commission has previously found documents relating to potential sales or purchases of utilities to be confidential proprietary business information. In re: Application for rate increase and increase in service availability charges by SSU, Inc., etc., Docket No. 950495-WS, Order No. PSC-95-1377-CFO-WS, issued Nov. 6, 1995.

WHEREFORE, PCUC respectfully requests that Citizens' Second Motion to Compel be denied, and that PCUC be granted a Protective Order ruling:

(1) that discovery on OPC's Interrogatories Nos. 45 (as originally requested), 47, 51 and 52, and request for production Nos. 37, 46-51, 53, and 56, not be had, or, in the alternative,

(2) in the event the Commission rules any of these documents discoverable, such other alternative or additional protective relief as the Commission may deem appropriate pursuant to Section 367.156(3), Fla. Stat., Rule 25-22.006(5)(c), F.A.C., and Rule 1.280(c), Fla. R. Civ. P., and as set forth herein, and in PCUC's Second Motion for Protective Order.

DATED this 3rd day of June, 1996.

Respectfully submitted,

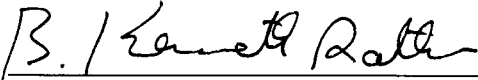


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Attorneys for
PALM COAST UTILITY CORPORATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to Mr. Scott Edmonds, Esquire, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0850, Mr. Stephen C. Reilly, Associate Public Counsel, Office of Public Counsel, 111 W. Madison Street, Room 812, Claude Pepper Building, Tallahassee, Florida 32399-1400, and to Richard D. Melson, Esquire, Hopping, Green, Sams & Smith, 123 South Calhoun Street, Tallahassee, Florida 32314, on this 3rd day of June, 1996.



B. Kenneth Gatlin