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June 21, 1996

ORIGINAL  
FILE COPY

**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. 951056-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 Memorandum in Opposition to Citizens' Third 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.

Sincerely,

*Kathryn G. W. Cowdery*  
Kathryn G. W. Cowdery

- CK
- FA 4
- IPP \_\_\_\_\_ KGWC/met
- AF \_\_\_\_\_ Enclosures
- DMU \_\_\_\_\_ cc:w/encl.: Commissioner Diane K. Kiesling
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1
- LIN 3
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC \_\_\_\_\_
- WAS Willis
- OTH \_\_\_\_\_

RECEIVED & FILED  
*mar*  
EPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
06701 JUN 21 96  
EPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate ) Docket No. 951056-WS  
increase in Flagler County by )  
PALM COAST UTILITY CORPORATION ) Filed: June 21, 1996

PALM COAST UTILITY CORPORATION'S MEMORANDUM  
IN OPPOSITION TO CITIZENS' THIRD MOTION TO COMPEL

Palm Coast Utility Corporation (PCUC), pursuant to Rule 25-22.037(2)(b), F.A.C., hereby files its memorandum in opposition to Citizens Third Motion to Compel, and states:

1. On May 17, 1996, OPC filed Citizens' Third Set of Interrogatories to Palm Coast Utility Corporation. On May 28, 1996, PCUC filed PCUC's Objection to Citizens' 3rd Set of Interrogatories, No. 73. OPC filed its 4th sets of interrogatories and requests for production of documents on PCUC on May 28, 1996. PCUC's Objections to OPC's 4th sets of discovery were filed on June 7, 1996. OPC filed Citizens' Third Motion to Compel production of Interrogatory No. 73 and its 4th sets of interrogatories and requests for production to PCUC on June 14, 1996.

Interrogatory No. 73

2. OPC's Interrogatory No. 73 is as follows:

73. Provide the gallons of water sold to each of the above water customer groups identified in POD No. 72, by month, for the year 1995.

PCUC objected as follows:

73. Objection. Unduly burdensome to provide breakdown on monthly basis, given the immense amount of discovery responses required of PCUC. Pursuant to OPC's request for production No. 65, PCUC is providing 1995 actual gallons sold by customer class and meter size. It is irrelevant to rate making what the monthly breakdown would be.

DOCUMENT NUMBER-DATE

06701 JUN 21 8 487

FPSC-RECORDS/REPORTING

A copy of PCUC's Response to OPC Interrogatory No. 72, referenced in No. 73 is attached hereto as Attachment "A". The information which OPC specifically wants is the gallonage breakdown of the total monthly flow information shown in column 2 ("residential gravity") for the customer classes identified in the third, fourth, and fifth columns. PCUC has provided breakdown by customer class on an annual basis in its response to OPC's Request for Production No. 65 attached hereto as Attachment "B". Additional flow information on a monthly basis was provided in response to OPC's Interrogatory No 41, attached hereto as Attachment "C".

3. OPC does not allege in its motion to compel any need for monthly flow information by customer class in determining excessive I & I in the used and useful calculation. It has failed to demonstrate the required: "reasonably 'calculated' causal 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). There is no logical connection between monthly gallonage data by customer class and any portion of a used and useful calculation. This information is irrelevant to any used and useful determination.

4. Production of the information necessary to answer this information would be unduly burdensome. The Assistant Comptroller of PCUC estimates he would need two full work days to retrieve and compile this information. Because this information serves no function whatsoever it is not available for retrieval in the form requested. All four billing cycle books for PCUC's approximate

13,000 customers would have to be manually reviewed for each customer class for each month. PCUC submits that the burden placed on PCUC outweighs any possible relevance this information might have to OPC's case, and OPC's motion to compel should be denied. E.g., Krypton Broadcasting of Jacksonville, Inc. v MGM-Pathe Communications, 629 So.2d 852 (Fla. 1st DCA 1993).

**PCUC's Objections to Citizens' Fourth Set  
of Interrogatories and Fourth Set of Requests  
for Production of Documents to PCUC**

5. The Order Establishing Procedure in this case sets a limit of 100 interrogatories and 100 requests for production. OPC's motion to compel responds substantively to PCUC's argument that OPC exceeded the discovery limit of 100 interrogatories and 100 requests for production by asking the Prehearing Officer to: "order PCUC to play fairly and cooperate in the discovery process, not frustrate it." This response begs the question of OPC's responsibilities in the discovery process. The fact is that the utility has and is still expending a considerable amount of time answering discovery. It is OPC that is not "playing by the book." OPC's response to PCUC's objection offers no response as to its action in exceeding the limit, nor does it justify a need for additional discovery.

6. OPC did not refute PCUC's argument that the test for how many interrogatories have been propounded is based on how many "separate answers" are required, except to disagree with counting each year's worth of data as a separate answer. The test in deciding whether separate years constitute separate questions

should be one of reasonableness based on an assessment of each interrogatory or document request. PCUC did not in all cases consider separate years as separate questions. E.g., OPC's First Set of Interrogatories, Nos. 6, 7a and b, 9, 16a, 22; OPC's Second Request for Production of Documents, No. 42; OPC's Third Request for Production of Documents No. 64. A main reason that OPC's interrogatories exceeded the 100 item limit is that OPC simply asked multiple questions in individual interrogatories. See Attachment A to PCUC's Objections to Citizens' Fourth Set of Interrogatories and Fourth Set of Requests for Production of Documents to PCUC. Even if OPC and PCUC disagree as to the exact number of discovery items propounded by OPC, OPC did not refute the fact that OPC has propounded over 100 interrogatories and requests for production. OPC's Motion to Compel production of its fourth sets of interrogatories and requests for production should be denied.

7. OPC asks in the alternative in its Motion to Compel that the Commission: "authorize such Interrogatories and POD's and direct PCUC to respond to those requests for information on an expedited basis." It is OPC's burden to show the neccessity of increasing the number of discovery request from that allowed by the Procedural Order. However, OPC gives no showing of good cause as to why the Prehearing Officer should enlarge discovery. Rule 25-22.034, F.A.C., states that discovery in proceedings determining substantial interests may be obtained through the means and in the manner provided by Rule 1.280 through 1.400, Fla. R. Civ.

Procedure. Rule 1.340, Interrogatories to Parties, states:

(a) The interrogatories shall not exceed 30, including all subparts, unless the court permits a larger number on motion and notice for good cause.

OPC has not given any reason that it be allowed discovery beyond that permitted in the Order Establishing Procedure except that the fourth set of discovery represents the final set of discovery which it will propound in this case. This is not "good cause." "Good cause" should require a showing of need on a particular subject matter, for instance an issue raised in rebuttal requires discovery, or that questions have been raised by previous discovery response. OPC itself recognized the requirement of showing good cause pursuant to Rule 1.340(a), in its March 29, 1996, Motion to Permit Additional Interrogatories, wherein OPC stated it believed that a maximum of 100 interrogatories would allow it to accomplish its discovery (Attachment D hereto). Although OPC's motion was made moot by the Order Establishing Procedure issued on May 2, 1996, OPC should be required to adhere to the Rule 1.340(a) in requesting more than 100 interrogatories. OPC has likewise given no good reason for increasing the number of production of document requests above 100. Since OPC has not shown good cause for increasing the number of interrogatories its request to enlarge discovery should be denied.

Citizens' Request for Production of Documents  
Nos. 68, 69, 70, 72 and 74 (4th Set)

8. PCUC also objected to Document Request Nos. 60, 68, 69, 72, and 74 from OPC's 4th Set of discovery on individual bases. Document Request Nos. 68, 69, and 74 are requests for contracts/original offering statements between a nonregulated company and lot purchasers, and as ruled by the Commission in PCUC's last rate case, are not relevant, and discovery should not be allowed. See PCUC's Objections to Citizens' Fourth Set of Interrogatories and Fourth Set of Requests for Production of Documents to PCUC, pg. 4, and Attachment C.

9. Request for Production No. 68 states:

68. Please provide a copy of example lot purchase agreements between ITT Community Development Corporation (ICDC) and lot purchasers which in anyway holds the lot purchaser financially responsible to ICDC for the maintenance and/or other costs associated with water and or sewer collection, transmission, and/or distribution lines that are considered non-used and useful.

PCUC objected as follows:

68. Objection. Irrelevant and as such, not in the possession, custody, or control of PCUC; not reasonably calculated to lead to admissible evidence. PCUC is not a party to such agreements. PCUC does not collect any such costs from ICDC's lot purchasers.

OPC claims in its motion to compel that an example of this lot purchase agreement is relevant to the issue of used and useful and the need for a margin reserve, but does not explain the logical connection between the information sought and possible relevant to

issue in the case. There is no apparent causal connection between these lot purchase agreements and the developer to which PCUC is not a party. There is a revenue agreement between the developer and PCUC which has been furnished to OPC in PCUC's Response to Document Request No. 36.

10. Request for Production No. 69 states:

69. Please provide a copy of example lot purchase agreements between ICDC and lot purchasers which in anyway allows or requires lot purchaser to prepay water and wastewater CIAC, service availability charges, hook-up fees, and/or the like.

PCUC objected as follows:

69. Objection. Irrelevant and as such, not in the possession, custody, or control of PCUC; not reasonably calculated to lead to admissible evidence. PCUC is not a party to such agreements. PCUC does not collect CIAC or the charges referred to from ICDC's lot purchasers.

OPC's motion to compel claim that the example lot purchase agreement is relevant to the issue of used and useful and the amount of CIAC that is included as an offset to rate base. This is not a logical, causal connection between information sought and relevance. An example of this lot purchase agreement such as this between nonregulated third parties to which PCUC is not a party cannot be relevant to amount of CIAC that is included as an off-set to rate base. OPC's motion to compel production of this document should be denied.



11. Request for Production No. 70 states:

70. Please provide a copy of all workpapers and source documents used by the Company to calculate reuse revenue included in the MFRs.

PCUC objected as follows:

70. Objection. This information has already been produced to OPC through PCUC's response to OPC's Document Request No. 66 and PCUC's response which will be produced to OPC's Interrogatory No. 79.

OPC's motion simply states that "as long as the information requested is produced, the Citizens can withdraw this document request, pending satisfactory responses to POD 66 and Interrogatory 79. PCUC has responded to these discovery requests and OPC's motion to compel should be denied.

12. Request for Production No. 72 states:

72. For purposes of this request please refer to Attachment 36, and the Revenue Agreement between ITT Community Development Corporation and the Company. Please provide for each month 1994 and 1995, the Exhibit B calculation used to determine the amount of availability fee charged to ICDC.

PCUC objected as follows:

72. Objection. PCUC has produced this information on an annual basis for 1994 and 1995 in its Supplemental Request to OPC's Interrogatory No. 47. Breakdown by month gives no useful, additional information. The request is therefore irrelevant; not reasonably calculated to lead to the discovery of admissible evidence and is unduly burdensome and oppressive.

OPC gives no explanation as to how a monthly breakdown of this information is needed or reasonably calculated to lead to the

discovery of admissible evidence. A party arguing a motion to compel has the burden of making apparent the logical connection between the information sought and possible relevance to issues in the case by pointing out its reasoning process demonstrating how he calculates that sought information will "reasonably" lead to admissible evidence. Calderbank v. Cazares, 435 So.2d 377 (Fla. 5th DCA 1983). Since OPC has failed to meet this burden, its motion to compel production should be denied as to Request for Production No. 72.

13. Request for Production No. 74 states:

74. Please provide a copy of the March 26, 1974 offering statement referred on page 10 of 10 of the May 12, 1994 offering statement included in the additional MFRs.

PCUC objected as follows:

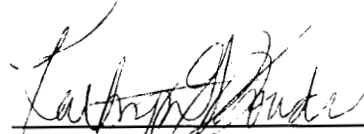
74. Objection. Irrelevant; not reasonably calculated to lead to the discovery of admissible evidence in this case.

OPC does not establish the relevance of the March 26, 1974 ICDC offering statement to this case. The fact that the Commission requires the most recent offering statement to be filed as part of the MFRs certainly does not ipso facto make the prior offering statement relevant. Differences between the two offering statements of ICDC have no bearing on CIAC in this case. OPC has failed to show how such a comparison could have any bearing on CIAC in this case, and OPC's motion to compel Request for Production No. 74 should be denied.

WHEREFORE, PCUC requests that OPC's Third Motion to Compel be denied.

DATED this 21st day of June, 1996.


Respectfully submitted,

  
\_\_\_\_\_  
Kathryn G.W. Cowdery  
Gatlin, Woods & Carlson  
1709-D Mahan Drive  
Tallahassee, Florida 32308  
(904) 877-7191

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 Mr. Richard D. Melson, Esquire, Hopping, Green, Sams & Smith, 123 South Calhoun Street, Tallahassee, Florida 32314, and by U.S. mail to Mr. Albert J. Hadeed, County Attorney, 1200 E. Moody Blvd. #11, Bunnell, Florida 32110, on this 21st day of June, 1996.

  
\_\_\_\_\_  
Kathryn G.W. Cowdery

**PALM COAST UTILITY CORPORATION  
DOCKET NO. 951056-WS  
ATTACHMENT Q**

477

<u>WATER CUSTOMERS</u>	<u>RESIDENTIAL GRAVITY</u>	<u>RESIDENTIAL PEP</u>	<u>GENERAL SERVICE</u>	<u>MULTI-FAMILY DWELLING</u>
JAN '95	10,663	N/A	340	13
FEB	10,762	"	348	13
MAR	10,819	"	360	13
APR	10,895	"	365	13
MAY	10,970	"	364	13
JUN	10,995	"	361	13
JUL	11,048	"	357	13
AUG	11,102	"	354	13
SEP	11,164	"	350	13
OCT	11,238	"	358	13
NOV	11,268	"	368	13
DEC	11,302	"	366	13
<u>WASTEWATER CUSTOMERS</u>				
JAN '95	8,398	1,195	285	12
FEB	8,405	1,239	294	12
MAR	8,469	1,218	305	12
APR	8,509	1,242	312	12
MAY	8,534	1,278	312	12
JUN	8,569	1,260	327	12
JUL	8,585	1,285	324	12
AUG	8,596	1,329	351	12
SEP	8,632	1,339	330	12
OCT	8,726	1,315	332	12
NOV	8,692	1,374	340	12
DEC	8,739	1,353	334	12

Attachment A

PALM COAST UTILITY CORPORATION  
 SCHEDULE OF ACTUAL REVENUES  
 YEAR ENDED DEC. 31, 1995

	CUMULATIVE BILLS	GALLONS	BPC	USAGE	TOTAL
<b>WATER</b>					
<b>GEN SERV</b>					
3/4"	3,033	19,012	10.44	3.56	
			31,665	67,683	99,347
1"	727	18,908	26.08	3.56	
			18,960	67,312	86,273
1 1/2"	91	4,913	83.45	3.56	
			7,594	17,490	25,084
2"	333	30,276	83.45	3.56	
			27,789	107,783	135,571
3"	71	6,631	166.89	3.56	
			11,849	23,606	35,456
4"	24	15,342	260.78	3.56	
			6,259	54,618	60,876
6"	12	62,497	193.83	1.00	
			2,326	62,497	64,823
<b>TOTAL</b>					<b>507,430</b>
<b>MULTI FAM</b>					
1 1/2"	60	23,876	52.16	3.56	
			3,130	84,999	88,128
2"	36	6,887	83.45	3.56	
			3,004	24,518	27,522
3"	48	4,967	166.89	3.56	
			8,011	17,683	25,693
4"	12	6,314	260.78	3.56	
			3,129	22,478	25,607
<b>TOTAL</b>					<b>166,951</b>
<b>RESIDTL</b>					
3/4"	132,226	573,096	10.44	3.56	
			1,380,439	2,040,222	3,420,661
<b>IRRIGATION</b>					
<b>GEN SERV</b>					
3/4"	497	4,039	5.27	3.56	
			2,619	14,379	16,998
1"	561	21,822	26.34	3.56	
			14,777	77,686	92,463
1 1/2"	98	4513	52.16	3.56	
			5,112	16,066	21,178
2"	265	21,799	83.45	3.56	
			22,114	77,604	99,719
<b>TOTAL</b>					<b>230,358</b>
<b>MULTI FAM</b>					
1"	12	182	26.08	3.56	
			313	648	961
2"	132	15,181	83.45	3.56	
			11,015	54,044	65,060
3"	12	4,217	166.89	3.56	
			2,003	15,013	17,015
<b>TOTAL</b>					<b>83,036</b>
<b>RESIDTL</b>					
3/4"	40,550	102,134	5.22	3.56	
			211,671	363,597	575,268
<b>TOTAL IRRIGATION</b>					<b>888,662</b>
<b>PPPS CHARGES</b>					<b>134,824</b>
<b>PUBLIC FIRE HYDRANTS</b>					<b>127,434</b>
<b>MISC WATER REVENUES</b>					<b>47,642</b>
<b>TOTAL WATER</b>					<b>5,293,604</b>

PALM COAST UTILITY CORPORATION  
 SCHEDULE OF ACTUAL REVENUES  
 YEAR ENDED DEC. 31, 1995

	CUMULATIVE		BPC	USAGE	TOTAL
	BILLS	GALLONS			
<b>WASTEWATER</b>					
<b>GEN SERV</b>					
3/4"	2,813	16,490	10.95	3.47	
			30,802	57,220	88,023
1"	650	16,819	27.36	3.47	
			17,784	58,362	76,146
1 1/2"	71	2,881	54.71	3.47	
			3,884	9,997	13,881
2"	241	22,548	87.53	3.47	
			21,095	78,242	99,336
3"	47	4,457	175.06	3.47	
			8,228	15,466	23,694
4"	24	15,342	273.54	3.47	
			6,565	53,237	59,802
<b>TOTAL</b>					<b>360,882</b>
<b>MULTI FAM</b>					
1 1/2"	60	23,876	54.71	3.47	
			3,283	82,850	86,132
2"	36	6,887	87.53	3.47	
			3,151	23,898	27,049
3"	48	4,967	175.06	3.47	
			8,403	17,235	25,638
4"			273.54	3.47	
<b>TOTAL</b>					<b>138,820</b>
<b>RESDDL</b>					
3/4"	118,281	455,814	10.95	2.89	
			1,295,177	1,317,302	2,612,479
<b>MISC. SEWER REVENUES</b>					<b>64,218</b>
<b>TOTAL WASTEWATER</b>					<b>3,176,399</b>

Palm Coast Utility Corporation  
Docket No. 951056-WS  
Attachment N

	Water*	Water*	Wastewtr*	Wastewtr*	Customers Billed	
	<u>Sold</u>	<u>Trtd</u>	<u>Sold</u>	<u>Trtd</u>	<u>Water</u>	<u>Wwtr</u>
Jan '93	59,532	76,548	0	61,601	9,472	8,572
Feb	58,877	75,839	0	57,946	9,450	8,567
Mar	64,088	72,391	0	68,913	9,672	8,716
Apr	62,669	84,161	0	57,930	9,702	8,763
May	84,503	113,056	0	55,459	9,761	8,808
Jun	104,366	122,053	0	51,900	9,896	8,909
Jul	96,694	120,091	0	53,490	9,789	8,848
Aug	106,535	137,025	0	62,975	9,939	8,981
Sep	87,170	103,146	0	56,522	9,954	9,013
Oct	80,339	96,014	0	55,468	10,029	9,045
Nov	55,614	87,193	0	55,893	10,068	9,041
Dec	72,989	92,638	0	56,068	10,178	9,138
Jan '94	70,580	83,367	0	66,607	10,279	9,198
Feb	60,097	77,264	0	67,213	10,278	9,193
Mar	65,796	98,129	0	62,226	10,348	9,279
Apr	80,518	108,172	0	56,626	10,430	9,333
May	96,866	120,355	0	54,536	10,533	9,431
Jun	88,497	97,549	0	59,147	10,547	9,432
Jul	74,124	113,676	0	63,011	10,572	9,468
Aug	76,323	85,662	0	89,421	10,739	9,599
Sep	70,317	118,754	0	67,860	10,757	9,631
Oct	88,756	115,982	0	79,350	10,845	9,686
Nov	71,891	108,731	0	105,070	10,902	9,731
Dec	76,710	120,903	0	84,303	11,106	9,868
Jan '95	88,398	107,455	0	62,789	11,068	9,890
Feb	68,772	112,256	0	55,758	11,175	9,950
Mar	73,007	97,084	0	74,776	11,244	10,004
Apr	88,977	111,294	0	62,469	11,325	10,075
May	89,467	116,961	0	57,424	11,399	10,136
Jun	96,024	113,787	0	60,464	11,421	10,168
Jul	82,921	117,255	0	62,313	11,416	10,204
Aug	91,564	122,434	0	63,618	11,467	10,286
Sep	82,136	104,279	0	80,998	11,525	10,311
Oct	64,810	99,724	0	84,464	11,607	10,383
Nov	71,549	97,070	0	67,543	11,647	10,416
Dec	76,500	91,700	0	64,624	11,689	10,436
Jan '96	78,234	93,647	0	64,486	11,715	10,490
Feb	87,064	94,207	0	56,271	11,871	10,596
Mar	59,225	65,164	0	72,966	11,887	10,625

\*(Gallons 000's)