

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution 96-62 by Board of Flagler)
County Commissioners rescinding Florida)
Public Service Commission jurisdiction over)
private water and wastewater utilities in)
Flagler County, Florida)

Docket No. 960898-WS

Filed: August 15, 1996

OBJECTION TO FLAGLER COUNTY
RESOLUTION 96-62

Palm Coast Utility Corporation (PCUC), files this its Objection to Flagler County Resolution 96-62, and states:

1. The purpose of this objection is to request an order of the Commission (FPSC) stating that Flagler County Resolution 96-62 is ineffective and does not rescind the jurisdiction of the FPSC over water and wastewater utilities in Flagler County.

2. The FPSC was delegated authority to regulate water and wastewater utilities in Flagler County by the Legislature of the State of Florida, not by a county resolution. Flagler County does not have the delegated authority to rescind by resolution the jurisdiction of the FPSC over water and wastewater utilities in Flagler County. The only valid way the FPSC jurisdiction over water and wastewater utilities in Flagler County may be rescinded is by action of the Legislature of the State of Florida by amendment to Section 367.171(3), Florida Statutes, 1995.

3. Section 367.171(3), F.S., lists the counties in which the FPSC does not have jurisdiction. Flagler County is not listed.

4. Flagler County was stricken from this list when the legislature adopted Chapter 80-99, Laws of Florida, which among other things amended Section 367.171(3) F.S. Section 367.171(1), F.S., provides that a board of county commissioners of a county may remove that county from the

FPSC's jurisdiction as follows:

“A county, after 10 continuous years under the jurisdiction of the commission, may by resolution or ordinance rescind any prior resolution or ordinance imposing commission jurisdiction and thereby exclude itself from the provisions of this chapter,” (Emphasis supplied)

There is no prior resolution for Flagler County to rescind. There has been no delegation of authority to Flagler County to rescind jurisdiction of the FPSC by resolution.

3. Flagler County did not pass a resolution placing Flagler County under FPSC jurisdiction. Flagler County came under this Commission's jurisdiction pursuant to statute on July 1, 1980.

4. By Order No. 9598 (copy of which is attached hereto as Appendix A), Docket No. 800583-WS, entered by the Commission on October 17, 1980, this Commission recognized that:

“pursuant to a 1980 amendment of Section 367.171(3), FS, the Commission effective July 1, 1980 gained jurisdiction over those “utilities” operating in Flagler County” . . .

5. The Supreme Court of Florida in the case of Orange City Water Company vs. Town of Orange City, 188 So.2d 306 (1966), held as follows:

“We hold that the resolution of the board of county commissioners repealing its resolution adopting Ch. 367, Fla.Stat., F.S.A. was of no legal effect and did not oust the jurisdiction of the Florida Public Utilities Commission to regulate privately-owned water and sewer systems in Volusia County. (Emphasis supplied)

6. The legislature then amended Section 367.171(1) so as to allow a county the authority to “rescind” its prior resolution and transfer jurisdiction back to the county. The legislature delegated authority to the counties to re-take jurisdiction only when the county was made subject to the FPSC's jurisdiction by resolution. No authority was delegated to the counties to take back jurisdiction when

the FPSC had acquired jurisdiction by statute.

7. Since jurisdiction was transferred from Flagler County to the FPSC by legislative act (Chapter 80-99) and not by resolution or ordinance, there is no “prior” Flagler County resolution or ordinance imposing FPSC jurisdiction. Flagler County does not have authority to rescind FPSC jurisdiction. A statutory amendment by the Florida Legislature is required to transfer jurisdiction back to Flagler County.

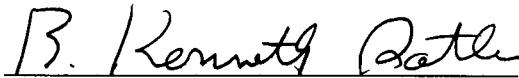
8. In Section 1 of Flagler County Resolution 96-62, there is reference made to a May 5, 1980 Resolution of the Board to subject PSC jurisdiction over water and wastewater utilities in Flagler County. In fact, the only action taken by Flagler County on May 5, 1980 was to request its legislative delegation to support legislation which would place the water and wastewater utilities in Flagler County under the FPSC’s jurisdiction (a copy of the Minutes of the Board meeting of May 5, 1980 is attached hereto as Appendix B). This was accomplished by the enactment of Chapter 80-99 which deleted Flagler County from the list of counties to which Chapter 367 would not apply. There is no authority in Section 367.171 for Flagler County to repeal or rescind an act of the legislature which placed Flagler County under the FPSC’s jurisdiction. There is only that authority when the county comes under the FPSC’s jurisdiction pursuant to its resolution. There is no authority in the case, such as here, where the county came under the jurisdiction pursuant to legislative act.

9. The legislatively delegated authority and duty to regulate water and wastewater utilities in Flagler County remains with the FPSC.

WHEREFORE, PCUC requests that the Commission enter its order ruling Flagler County Resolution 96-62 has no legal effect and does not oust the jurisdiction of this Commission over water and wastewater utilities in Flagler County.

DATED this 15th day of August, 1996.

Respectfully submitted,

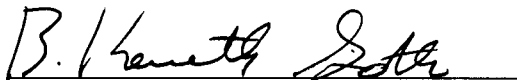


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Attorneys for Palm Coast Utility Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Mr. Albert Hadeed, County Attorney, 1200 East Moody Boulevard, #11, Bunnell, Florida 32110-9764, on this 15th day of August, 1996.



B. Kenneth Gatlin

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

OCT 20 1980

In re: Palm Coast Utility Company,) DOCKET NO. 800583-WS
 request for approval of test year.) ORDER NO. 9598
) ISSUED: 10-17-80

OFFICE OF
B. KENNETH GATLIN

The following Commissioners participated in the disposition of this matter:

ROBERT T. MANN, Chairman
 WILLIAM T. MAYO
 JOSEPH P. CRESSE
 GERALD L. GUNTER
 JOHN R. MARKS, III

O R D E R

BY THE COMMISSION:

Palm Coast Utility Company (Palm Coast) is a "utility" as defined by Section 367.021(3), Florida Statutes, and which operates in Flagler County, Florida. Pursuant to a 1980 amendment of Section 367.171(3), Florida Statutes, the Commission, effective July 1, 1980, gained jurisdiction over those "utilities" operating in Flagler County.

Pursuant to Section 367.171(2), Florida Statutes (1980), Palm Coast is required to register with the Commission within 30 days of the date that Flagler County becomes subject to Commission jurisdiction. Subsection 367.171(2), Florida Statutes (1980), provides that Palm Coast "shall be entitled to receive a certificate for the area served by such utility on the day this chapter becomes applicable to it if, within 90 days, the utility will make application by filing with this Commission" certain specified information. While Palm Coast has not yet filed its certificate application pursuant to this section, it has announced its intention to timely do so.

The instant docket was initiated upon Palm Coast's filing of a petition for rate relief pursuant to Section 367.081, Florida Statutes, which provides the Commission's general authority for fixing and changing water and sewer rates. Concurrently, Palm Coast has requested that the rate application be consolidated with the certificate application, when filed, in order to eliminate the submission of documents that are common to each application. For the reasons stated below, we believe that a separate rate application is unnecessary under the circumstances and will dismiss the same upon Palm Coast's filing of its certificate application pursuant to Section 367.171, Florida Statutes.

A primary concern of Palm Coast's in desiring to file both certificate and rate applications in this case is its desire to be granted increased rates in conjunction with its certification. While we can appreciate Palm Coast's concern, the filing of a rate application was unnecessary.

Section 367.171(2)(c), Florida Statutes (1980), states that:

(c) Before the commission issues a certificate under paragraph (b), it shall establish the amount of money prudently invested in property of the utility which property is used and useful in the public service, shall establish other elements of the rate base, and shall set and approve rates pursuant to s. 367.081.

Pursuant to Section 367.081(2), Florida Statutes, the Commission is to "fix rates which are just, reasonable, compensatory, and not unfairly discriminatory". In setting such rates, the Commission

is required to consider the value and quality of service, as well as specified cost of service factors stated in the statute. We have interpreted this statute as requiring us to raise the rates in a recent Commission-initiated investigation. (See Docket 790029-W Investigation of rates charged by Holiday Lakes Water System, Inc., for water service in Pasco County, Florida. Order No. 9536 entered on September 15, 1980.) Of course, if it is necessary that existing rates be lowered in order to make them just, reasonable, compensatory, and not unfairly discriminatory, we will do so. The bottom line is that this Commission, pursuant to statute and the case law, will grant gross revenues and rates designed to give the utility an opportunity to earn a fair return on its investment in property used and useful in the public service. An exception is that in the absence of some showing that the service to the public will suffer, the Commission may, at the utility's request, allow the charging of rates that will not produce a fair return. Utilities Operating Co. v. King, 143 So.2d 854 (Fla. 1962).

In summary, utilities seeking certification pursuant to Section 367.171(2), Florida Statutes (1980), will have their rates set pursuant to Section 367.081, Florida Statutes, and will be required to submit the Minimum Filing Requirements prescribed by that section and Rule 25-10.176, Florida Administrative Code. Additionally, concurrent applications for rate increases, pursuant to Section 367.081, Florida Statutes, are unnecessary.


Accordingly, it is therefore,

ORDERED by the Florida Public Service Commission that, upon Palm Coast Utility Company's filing of its certification application, the rate application in this docket will be dismissed and the filing fee returned.

By Order of the Florida Public Service Commission, this 17th day of October 1980.

(S E A L)

MBT



Steve Tribble
COMMISSION CLERK

Unofficial Transcript

May 5, 1980 - Meeting of the Board of County Commissioners
Franchised Sewer & Water Utilities - (Agenda Item)

Noah McKinnon, Board Attorney

The last thing that I have to talk with you about is the sunset law which will cause the expiration of PSC authority to regulate public utilities will occur on July 1st and there are many bills that are before the legislature and amendments to the bill which will re-enact the PSC regulation of water and sewer facilities within counties. Some of these bills may offer advantages to small counties in that it may enable them to use PSC staff, accountants and experts in making rate studies. What I would suggest to you is that perhaps we should write a letter to our delegation asking them to support legislation that would allow our citizens to benefit from utilization of PSC rate experts and accountants thereby saving us many thousands of dollars and that the enacting legislation accomplish this purpose.

Commissioner (Unknown): I'm in favor of it,

Commissioner Durrance:

I am too. You know we tried to get them to do that before and they didn't. You know they didn't want to mess with it but now we can ask them.

Noah McKinnon, Board Attorney:

Why don't you make a motion that I write such a letter and I'll take care of it.

Commissioner Durrance: You need that as a motion?

Noah McKinnon, Board Attorney: Yes.

Commissioner Durrance: I make a motion.

Commissioner Steflik, (Chairman):

Yes, it sounds all right to me if we can get [Senator] Dunn and [Representative] Upchurch to call it up.

Commissioner (Unknown): I so move.

Commissioner Johnston: Second.

Commissioner Steflik (Chairman): All in favor say "Aye."

Commissioners: "Aye."

May 5, 1997

THE BOARD TO DECLARE THE CROSSING AS PUBLIC AND MADE A MOTION FOR THE COUNTY TO PAY THE MAINTENANCE COSTS. THERE BEING NO SECOND TO THIS MOTION, IT DIED. NO ACTION TAKEN ON THIS MATTER AT THIS TIME.

BUILDING DEPARTMENT

MR. HUBERT PELLICER, BUILDING INSPECTOR, ADVISED THE BOARD THAT HE WOULD LIKE SOME TYPE OF DISCLAIMER STATEMENT THAT HE COULD STAMP ACROSS BUILDING PERMITS ISSUED ON LOTS THAT HAVE BEEN FILLED. BOARD ATTORNEY MCKINNON ADVISED THE BOARD THAT HE HAS COPIES OF A SUPREME COURT RULING WHICH STATES THAT NOT ONLY IS THE COUNTY RESPONSIBLE BUT THE BUILDING INSPECTOR AS WELL FOR INSPECTIONS. HE STATED THAT HE WOULD LIKE TO STEER THE RESPONSIBILITY FOR THE FAILURE OF THE LOT FROM THE COUNTY TO THE DEVELOPER. MR. MCKINNON READ A SAMPLE STATEMENT TO THE BOARD, AFTER SOME DISCUSSION, COMMISSIONER JOHNSTON MADE A MOTION TO ALLOW THE BUILDING INSPECTOR TO PLACE A STATEMENT OF POLICY ON BUILDING PERMITS FOR ANY FILLED LOT IN THE COUNTY WHICH WOULD READ "THE DEVELOPER HAS CERTIFIED, BY A REGISTERED FLORIDA PROFESSIONAL ENGINEER, THAT THIS BUILDING SITE LOCATED ON A FILLED LOT IS SUITABLE FOR THIS PROPOSED STRUCTURE. THE BUILDING DEPARTMENT OF FLAGLER COUNTY HAS MADE ONLY A LIMITED VISUAL INSPECTION OF THE SURFACE OF THE SITE AND HAS NOT INSPECTED THE SUBSOIL CONDITIONS FOR BUILDING SUITABILITY." COMMISSIONER DURRANCE SECONDED THE MOTION. NO MAY VOTES CAST. MOTION CARRIED.

COUNTY ENGINEER

BOARD ATTORNEY MCKINNON READ THE PROPOSED ADVERTISEMENT FOR A COUNTY ENGINEER TO THE BOARD. THE BOARD DISCUSSED WHERE THE ADVERTISEMENT SHOULD BE PRINTED AND DECIDED ON THE JOURNAL OF THE FLORIDA ENGINEERING SOCIETY AND THAT THE RESPONSES SHOULD BE RETURNED BY JULY 7th.

FLOOD PLAN

MR. HUBERT PELLICER ADVISED THE BOARD THAT HE HAD BEEN IN CONTACT WITH MR. DAN CASTLE OF THE NORTHEAST FLORIDA REGIONAL PLANNING COUNCIL CONCERNING THE FLOOD PLAN MAPS WHICH SHOULD HAVE BEEN COMPLETED FOR FLAGLER COUNTY. HE STATED THAT THE COUNTY DOES NOT HAVE AN ESTABLISHED ELEVATION. HE STATED THAT MR. CASTLE HAD ADVISED HIM THAT THE FUNDS HAD PREVIOUSLY BEEN SET ASIDE FOR THIS SURVEY, BUT HAVE BEEN USED UP AND THERE MAY NOT BE ANY FUNDS DURING 1981 OR EVEN 1982 FOR THIS. HE SUGGESTED THAT THE COUNTY CONTACT THEIR CONGRESSMEN. THE BOARD ASKED THE COUNTY ATTORNEY TO WRITE A LETTER TO THE VARIOUS CONGRESSMEN AND ASK THEM WHAT HAD HAPPENED TO THE MONEY THAT HAD BEEN ALLOCATED TO DO THE FLOOD PLAN SURVEY OF FLAGLER COUNTY.

WICKLINE BUILDING

BOARD ATTORNEY MCKINNON SAID THAT HE HAD DRAFTED A LETTER TO THE SCHOOL BOARD CONCERNING THE WICKLINE BUILDING. HE READ THE LETTER TO THE BOARD WHICH REQUESTED THAT THE SCHOOL BOARD CONVEY THIS BUILDING TO EITHER FLAGLER COUNTY OR FLAGLER BEACH SO THAT THE BUILDING COULD STILL BE USED BY THE COUNTY AND THE CITY. THE BOARD APPROVED THE DRAFT AND ASKED THAT COPIES BE SENT TO ALL SCHOOL BOARD MEMBERS, THE SCHOOL SUPERINTENDENT, AND MEMBERS OF THE FLAGLER BEACH CITY COMMISSION.

FRANCHISED SEWER AND WATER UTILITIES

BOARD ATTORNEY MCKINNON ADVISED THE BOARD THAT HE FEELS THAT A LETTER SHOULD BE WRITTEN TO THE LEGISLATIVE DELEGATION ASKING THEM TO SUPPORT LEGISLATION TO BRING FRANCHISED SEWER AND WATER UTILITIES IN THE COUNTY UNDER THE JURISDICTION OF THE FLORIDA PUBLIC SERVICE COMMISSION. COMMISSIONER DURRANCE MADE A MOTION TO ASK THE COUNTY ATTORNEY TO WRITE SUCH A LETTER. COMMISSIONER JOHNSTON SECONDED THE MOTION. NO MAY VOTES CAST. MOTION CARRIED.

ARCHITECT FOR COURTHOUSE ADDITION

AFTER SOME DISCUSSION, THE BOARD CHOSE THE FOLLOWING ARCHITECTS TO INTERVIEW FOR A PROPOSAL FOR COURTHOUSE