

FLORIDA PUBLIC SERVICE COMMISSION  
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**M E M O R A N D U M**

**JANUARY 23, 1997**

**TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)**

**FROM: DIVISION OF LEGAL SERVICES (CYRUS-WILLIAMS) *W***  
**DIVISION OF WATER & WASTEWATER (JOHNSON) *W***

**RE: DOCKET NO. 961276 - WU - REQUEST FOR VARIANCE FROM ORDER  
NO. PSC-96-1180-FOF-WS BY PALM COAST UTILITY CORPORATION  
COUNTY: FLAGLER COUNTY**

**AGENDA: FEBRUARY 4, 1997 - REGULAR AGENDA - INTERESTED PERSONS  
MAY PARTICIPATE**

**CRITICAL DATES: NONE**

**SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\961276.RCM**

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DOCUMENT NUMBER DATE

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FPSC-RECORDS/REPORTING

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**CASE BACKGROUND**

On August 1, 1996, the Small Business Job Protection Act of 1996 (the Act) passed Congress and was signed by the President on August 20, 1996. The Act provided for the non-taxability of contributions-in-aid-of-construction (CIAC) collected by water and wastewater utilities, effective retroactively for amounts received after June 12, 1996. As a result, on September 20, 1996, in Docket No. 960965-WS, Order No. PSC-96-1180-FOF-WS was issued to revoke the authority of utilities to collect gross-up of CIAC, and to cancel the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance.

Palm Coast Utility Corporation, Inc. (PCUC or utility) is a wholly-owned subsidiary of the ITT Corporation and a Class A utility providing water and wastewater service in Flagler County. As of December 31, 1995, the utility served 15,290 water and 10,436 wastewater customers. Gross operating revenues were reported as \$6,424,127 for the water system and \$3,217,123 for the wastewater system. Net operating income was reported as \$877,227 for water and \$527,170 for wastewater.

On August 5, 1996, Flagler County passed a resolution rescinding Public Service Commission jurisdiction over private water and wastewater utilities operating in Flagler County. On October 16, 1996, PCUC filed an Application for Variance from Order No. PSC-96-1180-FOF-WS. This recommendation addresses whether the Commission has jurisdiction over this matter.

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### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant PCUC's Application for Variance?

**RECOMMENDATION:** No. The Commission should dismiss PCUC's Application for Variance for lack of jurisdiction. (CYRUS WILLIAMS, JOHNSON)

**STAFF ANALYSIS:** On August 5, 1996, the Flagler County Board of County Commissioners (Flagler County or the County) met and adopted Resolution No. 96-62 rescinding Commission jurisdiction in Flagler County effective immediately. In Order No. PSC-96-1391-FOF-WS, issued November 20, 1996, this Commission acknowledged Flagler County's rescision of Commission jurisdiction, effective August 5, 1996. In that same Order, the Commission also established procedures for the cancellation of certificates for investor-owned utilities holding valid Commission certificates to provide water and wastewater service in Flagler County.

Section 367.171(5), Florida Statutes states:

When a utility becomes subject to regulation by a county, all cases in which the utility is a party then pending before the Commission, or in any court by appeal from any order of the Commission, shall remain within the jurisdiction of the Commission or court until disposed of in accordance with the law in effect on the day such case was filed by any party with the Commission or initiated by the Commission, whether or not the parties or the subject of any case relates to a utility in a county wherein this chapter no longer applies.

Thus, in Order No. PSC-96-1391-FOF-WS, pursuant to Section 367.171(5), Florida Statutes, the certificates of those utilities in Flagler County with no open dockets then pending before the Commission were ordered cancelled and returned to the Commission within 30 days of the order. The certificates of those utilities with then open dockets were to be cancelled and returned to the Commission within thirty days of the conclusion of the open dockets.

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The Commission, therefore, retained jurisdiction over these utilities only with respect to their open dockets, or other matters then pending before the Commission or on appeal from any order of the Commission. In Order No. PSC-96-1391-FOF-WS, the Commission recognized that PCUC had Dockets Nos. 951056-WS and 951593-WS open.

As discussed in the case background, on September 16, 1996, this Commission voted to cancel the authority of its regulated utilities to collect gross-up of CIAC and allowed utilities to request a variance. Order No. PSC-96-1180-FOF-WS was issued on September 20, 1996, memorializing the Commission's vote. Pursuant to this order, PCUC filed an Application for Variance on October 16, 1996. In its Application, PCUC states that it needs a variance from the order to collect the gross up taxes for prepaid CIAC that was collected from January 1, 1987 through June 12, 1996. According to the utility, its practice was to collect the gross-up at the time the contributor actually applied for utility service, and not when the prepaid CIAC was received. Consequently, it has reported prepaid CIAC as taxable income and paid the appropriate taxes, without collecting the gross-up on the income reported.

Flagler County rescinded Commission jurisdiction effective August 5, 1996, over one month before the Commission voted to allow utilities to request a variance of Order No. PSC-96-1180-FOF-WS. Therefore, pursuant to Section 367.171(5), Florida Statutes, the Commission no longer has jurisdiction over new requests filed by PCUC. Accordingly, staff recommends that the Commission has no jurisdiction over PCUC's request for variance. PCUC, however, may seek remedy from Flagler County.

Accordingly, staff recommends that PCUC's Application for Variance be dismissed for lack of jurisdiction.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, the docket should be closed. (CYRUS WILLIAMS)

**STAFF ANALYSIS:** If Issue 1 of this recommendation is approved, there is no further action required in this docket, and the docket should be closed.