

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

MEMORANDUM

April 24, 1997

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

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

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

AGENDA: MAY 6, 1997 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

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

CASE BACKGROUND

Palm Coast Utility Corporation (PCUC or utility) is a utility operating in Flagler County. 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. By 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.

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 3, 1996, this Commission voted 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. Order No. PSC-96-1180-FOF-WS, issued September 20, 1996 in Docket No. 960965-WS, memorialized the Commission's vote.

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Pursuant to this order, on October 16, 1996, PCUC filed an Application for Variance to collect the gross-up taxes for prepaid CIAC that was collected from January 1, 1987 through June 12, 1996. By Order No. PSC-97-0188-FOF-WS, issued February 18, 1997, PCUC's Application for Variance was dismissed for lack of jurisdiction due to Flagler County's recision of Commission jurisdiction. On March 3, 1997, the utility filed a Motion for Reconsideration or, Alternatively, Clarification of that order and a Request for Oral Argument.

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**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant the utility's Request for Oral Argument?

**RECOMMENDATION:** No. Staff recommends that the Commission deny PCUC's Request for Oral Argument on its Motion for Reconsideration or, Alternatively, Clarification. (CYRUS-WILLIAMS)

**STAFF ANALYSIS:** On March 3, 1997, PCUC filed a Request for Oral Argument on its Motion for Reconsideration or Alternatively, Clarification. Rule 25-22.058, Florida Administrative Code, permits the Commission to grant oral argument, provided, among other things, that the request state "with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it." In its requests, PCUC states that the motion raises important legal arguments stemming from a series of Commission actions in at least four different dockets, and therefore, oral argument would assist the Commission in evaluating the inter-relationship of those dockets and the substantive issue regarding gross-up on prepaid CIAC, with counsel available to answer any questions the Commission may have.

Staff believes that PCUC's motion contains sufficient argument to render a fair and complete evaluation of the merits without oral argument. Further, since interested persons may participate in the disposition of this item at the Commission Agenda Conference, counsel for the utility will have the opportunity to address the Commission and answer any questions.

Therefore, staff recommends that the Commission deny PCUC's Request for Oral Argument on its Motion for Reconsideration or, Alternatively, Clarification.

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**ISSUE 2:** Should the Commission grant PCUC's Motion for Reconsideration or, Alternatively, Clarification?

**RECOMMENDATION:** Staff recommends that the utility's Motion for Reconsideration or, Alternatively, Clarification, be denied. However, staff recommends that the Commission, on its own motion, correct Order No. PSC-97-1180-FOF-WS to remove PCUC from the list of utilities whose gross-up authority was revoked by that order. (CYRUS-WILLIAMS)

**STAFF ANALYSIS:** As stated previously, on March 3, 1997, PCUC filed a Motion for Reconsideration or, Alternatively, Clarification of Order No. PSC-97-0188-FOF-WS. In its motion, PCUC states that the Commission, after the effective date of jurisdictional transfer from the Commission to Flagler County, opened a new docket to cancel the gross-up authority of PCUC, among other utilities, and a new docket to consider disposition of gross-up of CIAC collected by PCUC from 1992 through 1994. Yet, the utility argues, the Commission dismissed its timely-filed application for variance from the cancellation of gross-up authority.

According to the utility, Section 367.171(5), Florida Statutes, states that all cases pending before the Commission or on appeal from an order of the Commission as of the jurisdictional transfer date remain within the jurisdiction of the Commission until disposed of by the Commission. The utility states that if the Commission had the jurisdiction to dispose of gross-up collected by the utility during 1992 through 1994, and to cancel its authority to collect CIAC after the effective date of the jurisdictional transfer date, then the Commission continued to have jurisdiction to consider the utility's request for variance. Conversely, the utility argues that if the Commission did not have jurisdiction after the jurisdictional transfer date to consider its variance request, then it had no jurisdiction to cancel the utility's prospective gross-up authority. Further, the utility argues that it may not seek remedy from Flagler County, as stated by the Commission in Order No. PSC-97-0188-FOF-WS, because the Commission, and not the County, has cancelled its gross-up authority.

PCUC, therefore, requests that the Commission either exercise jurisdiction over the request for variance, or alternatively, clarify Order No. PSC-97-0188-FOF-WS to state that the Commission lacked jurisdiction to cancel the utility's gross-up authority.

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Rule 25-22.060(1)(a), Florida Administrative Code, permits a party who is adversely affected by an order of the Commission to file a motion for reconsideration of that order. The purpose of a motion for reconsideration is to point out some matter of law or fact which the Commission failed to consider or overlooked in its prior decision. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962); Pingtrees v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). A motion for reconsideration is not an appropriate vehicle for mere reargument or to introduce evidence or arguments which were not previously considered. In Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974), the Court found that the granting of a petition for reconsideration should be based upon specific factual matters set forth in the record and susceptible to review.

Initially, staff notes that the utility's request for reconsideration is merely a reargument of whether or not the Commission had the jurisdiction to entertain the utility's request for variance decided by Order No. PSC-97-0188-FOF-WS. That order stated that Flagler County rescinded Commission jurisdiction effective August 5, 1996, over one month before the Commission voted to allow utilities to request a variance of the order cancelling the authority of utilities to collect gross-up. PCUC has provided no matter of law or fact which the Commission failed to consider or overlooked in its prior decision. Therefore, staff recommends that the utility's request for reconsideration be denied.

However, staff agrees with PCUC that the Commission did not have the authority to cancel the utility's authority to continue grossing up CIAC. As stated previously, the Small Business Job Protection Act of 1996 was signed into law on August 20, 1996, and as a result, this Commission, on September 3, 1996, voted to revoke the authority of utilities to collect gross-up of CIAC. Order No. PSC-96-1180-FOF-WS, memorializing the Commission's vote, was issued on September 20, 1996. That order cancelled the authority to gross-up of those utilities listed on Attachment "A" of the order. PCUC was one of the utilities listed on Attachment "A." But, at the time of the Commission's vote on September 16, 1996, Flagler County had already rescinded Commission jurisdiction as of August 5, 1996, and the Commission maintained authority over utilities in Flagler County only with respect to pending matters or matters on appeal from a decision of the Commission. See Section 367.171(5),



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Florida Statutes. Therefore, PCUC should not have been included on the list.

Staff believes that the utility's alternative request for clarification of Order No. PSC-97-0188-FOF-WS is really an untimely request for reconsideration of an earlier order, Order No. PSC-96-1180-FOF-WS, and therefore, recommends that it be denied. See Rule 25-22.060(3), which states that a motion for reconsideration shall be filed within 15 days of issuance of a final order. However, in light of the Commission's error, staff recommends that the Commission, on its own motion, correct Order No. PSC-97-1180-FOF-WS to remove PCUC from the list of utilities whose gross-up authority was revoked by that order.

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**ISSUE 3:** Should this docket be closed.

**RECOMMENDATION:** Yes, if Issue 2 of this recommendation is approved, there is no further action required, and this docket should be closed. (CYRUS-WILLIAMS)

**STAFF ANALYSIS:** If Issue 2 of this recommendation is approved, there is no further action required, and this docket should be closed.