

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for variance) DOCKET NO. 961276-WS
from Order No. PSC-96-1190-FOF-) ORDER NO. PSC-97-0188-FOF-WS
WS in Flagler County by Palm) ISSUED: February 18, 1997
Coast Utility Corporation.)
_____)

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER DISMISSING APPLICATION FOR VARIANCE
FOR LACK OF JURISDICTION

BY THE COMMISSION:

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 16, 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.

Pursuant to this order, on October 16, 1996, Palm Coast Utility Corporation, Inc. (PCUC or utility) filed an Application for Variance. PCUC 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.

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

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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.

As stated previously, PCUC 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. 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, we 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.

Therefore, pursuant to Section 367.171(5), Florida Statutes, we retained jurisdiction over utilities operating in Flagler County 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, we recognized that PCUC had open only Dockets Nos. 951056-WS and 951593-WS. Flagler County rescinded Commission jurisdiction effective August 5, 1996,

ORDER NO. PSC-97-0188-FOF-WS
DOCKET NO. 961276-WS
PAGE 3

over one month before we voted to allow utilities to request a variance of Order No. PSC-96-1180-FOF-WS. Therefore, we find that this Commission no longer has jurisdiction to address new requests filed by PCUC. PCUC may seek remedy from Flagler County.

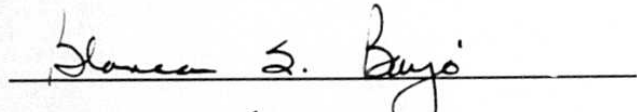
Accordingly, PCUC's Application is dismissed for lack of jurisdiction. No further action is required and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Palm Coast Utility Corporation's Application for Variance is dismissed for lack of jurisdiction. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 18th day of February, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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ORDER NO. PSC-97-0188-FOF-WS
DOCKET NO. 961276-WS
PAGE 4

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.