

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of PALM COAST)	DOCKET NO. 871395-WS
UTILITY CORPORATION for verification of)	
utility investment in water and sewer)	ORDER NO. 21075
assets in Flagler County)	ISSUED: 4-20-89

ORDER GRANTING MOTION FOR EXTENSION OF TIME,
DISMISSING OBJECTION AND DENYING MOTION TO STRIKE

By Order No. 18785, issued February 2, 1988, this Commission initiated an investigation into the level of investment in utility assets by Palm Coast Utility Corporation (PCUC). By Order No. 18713, issued January 21, 1988, this Commission acknowledged the intervention of the Office of Public Counsel in this proceeding. Pursuant to the provisions of Order No. 18785, the staff of this Commission (Staff) was directed to present a report to the Commission within twelve months of the date of that Order.

OPC's Motion For Extension of Case Schedule

On February 3, 1989, OPC filed a Motion to Extend CASR Dates to Permit Investigation of Specified Subjects. On February 8, 1989, OPC filed a Corrected Motion to Extend CASR Dates to Permit Investigation of Specified Subjects. In its motion, OPC outlines the history of this case, including its requests for information from PCUC and ITT Community Development Corporation (ICDC), an affiliate of PCUC. Then OPC describes certain difficulties in obtaining the requested information from both PCUC and ICDC and suggests that these difficulties are the result of obstructionist tactics on the parts of PCUC and ICDC. OPC next states that it learned from Staff that a ninety-day extension of time for this case had been tentatively approved. Next, OPC expresses how it was surprised when, at a January 10, 1989 meeting between Staff, OPC, PCUC and ICDC, Staff took the position that it had uncovered no problems in this investigation.

OPC's motion goes on to list nine issues that it believes require further investigation. These issues are: whether utility plant was expensed for tax purposes; the appropriateness of PCUC's disposition of investment tax credits; whether deferred taxes are understated; the propriety of certain inter-company transactions between PCUC and ICDC; whether water and sewer connection charges collected by ICDC should be considered cost-free capital; whether ICDC and/or PCUC should be made to bear increased costs of connecting to the utility systems; whether PCUC has adequately documented plant-in-service; the correct value of utility land, and; an extraordinary property loss suffered by PCUC. Based upon the above, OPC requests that we extend this case by four months.

PCUC's Objection to OPC's Motion For Extension

On February 20, 1989, PCUC filed an Objection to Public Counsel's Motion to Extend CASR Dates to Permit Investigation of Specified Subjects. In its objection, PCUC outlines PCUC's history, both before and since the Commission received jurisdiction over the utility, including four rate cases in which OPC fully participated. Next, PCUC delineates the history and progress of this particular proceeding. PCUC cites a number of pieces of correspondence between OPC, PCUC and ICDC and argues that, at no time prior to December 28, 1988, did OPC

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complain about PCUC's or ICDC's responses to informational requests. PCUC then suggests that OPC's motion is generally misleading and points out several portions of the motion that it believes contain untrue statements. Finally, PCUC addresses each of the nine areas of concern to OPC and explains why it believes that these concerns have already been adequately addressed. Accordingly, PCUC argues that we should deny OPC's motion for extension.

OPC's Response to PCUC's Objection

On February 27, 1989, OPC filed Citizen's Response to Palm Coast Utility Corporation's Objection to Public Counsel's Motion to Extend CASR Dates. In its response, OPC argues that PCUC has simply made the same argument that it has made on numerous occasions, namely that these matters have all been adequately examined and disposed of in previous cases before the Commission. OPC defends not having raised any serious concerns regarding PCUC's and ICDC's responses to informational requests by stating that it only learned of deficiencies after forwarding the full complement of the responses to its consultants. OPC goes on to reiterate what it believes to be obstructionist tactics on the parts of PCUC and ICDC. OPC further responds to PCUC's charge that OPC's motion is full of untrue statements by stating why it believes these statements to be true. OPC then provides further remarks in response to PCUC's comments regarding the areas of OPC's concern. Finally, OPC requests that the Commission inform PCUC that it must bear at least the burden of production regarding these areas of concern and outlines a time schedule which it believes will allow it to fully examine these areas of concern.

PCUC's Motion to Strike OPC's Response

On March 27, 1989, PCUC filed a Motion to Strike Citizens' Response to Palm Coast Utility Corporation's Objection to Public Counsel's Motion to Extend CASR Dates. In its motion to strike, PCUC alleges that OPC's response to PCUC's objection is inappropriate because it is not allowed under Chapter 25-22, Florida Administrative Code. In addition, PCUC argues that OPC's response, again, contains misleading information. Therefore, PCUC requests that this Commission strike OPC's response to its objection.

OPC's Response to PCUC's Motion to Strike

On April 3, 1989, OPC filed Citizens' Response to Palm Coast Utility Corporation's Motion to Strike. In its response, OPC argues that Rule 25-22.037(2)(b), Florida Administrative Code, does, indeed, contemplate its response to PCUC's objection. Further, OPC argues that PCUC's motion to strike was not even filed within the time limit allowed under Chapter 25-22, Florida Administrative Code. OPC, therefore, requests that we deny PCUC's motion.

Disposition of Motions, Objections and Responses

Based upon the discussion above, the Prehearing Officer believes that it may be appropriate to leave this docket open in order to allow OPC to bring forth any new information regarding the issues described in its motion for extension. Many of these issues have been in contention since we first

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assumed jurisdiction over PCUC. OPC argues that it intends to lay as many of these issues to rest in this docket as possible. By this Order, the Prehearing Officer, therefore, grants OPC's motion for extension. OPC shall have until June 5, 1989, to submit any new information regarding the issues described in its motion. Notwithstanding the granting of OPC's motion, Staff believes that its investigation of PCUC is complete. Staff is, therefore, directed to bring its recommendation regarding this investigation to the April 18, 1989 Agenda Conference.

Since OPC's motion for extension has been granted, the Prehearing Officer finds it appropriate to dismiss PCUC's objection to that motion. Although the Prehearing Officer, like PCUC, has concerns regarding the on-going nature of many of the issues addressed in this docket, these concerns are somewhat mitigated by OPC's assurances that it intends to resolve as many of these issues as possible.

With regard to PCUC's motion to strike, the Prehearing Officer does not agree that Chapter 25-22, Florida Administrative Code does not allow a response to an objection. PCUC's objection to OPC's motion for extension is nothing more than a response to that motion, which is covered under Rule 25-22.037(2)(b), Florida Administrative Code. The Prehearing Officer believes that it would be needlessly formalistic to construe the above to disallow a response to a response. PCUC's motion to strike is, therefore, denied.

Based upon the foregoing discussion, it is

ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer, that the Office of Public Counsel's motion for extension of time is hereby granted, as set forth in the body of this Order. It is further

ORDERED that the Office of Public Counsel shall have until June 5, 1989, to submit any new information regarding this investigation. It is further

ORDERED that Palm Coast Utility Corporation's objection to the Office of Public Counsel's motion for extension is hereby dismissed, as set forth in the body of this Order. It is further

ORDERED that Palm Coast Utility Corporation's motion to strike the Office of Public Counsel's response to its objection is hereby denied, as set forth in the body of this Order.

By ORDER of Commissioner Thomas M. Beard, as Prehearing Officer, this 20th day of APRIL, 1989.


 THOMAS M. BEARD, Commissioner
 and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 or sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.