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May 15, 1996

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Docket No. 951056-WS

Dear Ms. Bayo:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 15 copies of the Motion to Compel.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Stephen C. Reilly
Associate Public Counsel

ACK	<u>✓</u>
AFA	<u>2</u>
APP	_____
CAF	_____
CMU	<u>SCR/bgm</u>
CTR	<u>Enclosures</u>
EAG	_____
LEG	<u>1</u>
LIN	<u>3</u>
OPC	_____
RCH	_____
SEC	<u>1</u>
WAS	<u>Willis</u>
OTH	_____

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

05456 MAY 15 96

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of PALM COAST) Docket No. 951056-WS
UTILITY CORPORATION for Increased) Filed: May 15, 1996
Rates in Flagler County, Florida /

CITIZENS' MOTION TO COMPEL

The Citizens of the State of Florida ("Citizens"), by and through their undersigned attorney, move this Commission to enter an order requiring Palm Coast Utility Corporation (PCUC, Utility or Company) to produce the documents requested in Citizens' First Set of Requests for Production of Documents, Document Requests Nos. 12, 18 and 25. In support of this motion the Citizens state the following:

1. Document Request No. 12 requests: Provide a copy of correspondence between the Company and any other utility or municipality, city or government agencies concerning the possible purchase of Palm Coast.

2. The Company objects to Citizens' Document Request No. 12 on the basis that the request seeks documents that are irrelevant, unduly burdensome, and confidential. PCUC also argues that if any of the correspondence is ultimately deemed to be discoverable that "...discovery should be made at PCUC's offices because of the great volume of documents involved and/or the confidential nature thereof."

3. The correspondence is certainly not irrelevant information

as alleged by PCUC. To the contrary, this information is extremely relevant and is reasonably calculated to lead to the discovery of admissible evidence to be used in this rate proceeding. The Citizens understand that PCUC's sister company, ICDC, has already sold approximately 13,000 acres and various commercial properties located in PCUC's service area and accounts receivable to a wholly owned subsidiary of the parent company, of the same entity that has an option to purchase PCUC. This entity's purchase of PCUC will be but the final chapter of ITT Corporation's (ITT) virtually complete divestment of its interests in the Palm Coast community. ITT's sale of PCUC appears to be a fait accompli, in a larger corporate decision to remove itself from further involvement with Palm Coast.

4. This Commission sets rates on a going forward basis. The Citizens have a right to discover: (1) When the Option Agreement to purchase PCUC may be exercised; (2) The terms and conditions of the Option Agreement; (3) The extent to which the Option Agreement requires PCUC to file the instant rate case; and (4) The possible affects the exercise of the option will have on PCUC's capital structure, levels and types of future expenses, and affects on rate base (positive or negative acquisition adjustment).

5. The Citizens do not know the details of Minnesota Power and Light's purchase of vast holdings in Palm Coast nor the details of the option to purchase PCUC, nor the degree to which those transactions might impact upon PCUC and its customers. While POD Request No. 12 is limited to discovery of only PCUC's correspondence associated with any potential sale, subsequent

requests for information in the Citizens' Second Set of Requests for Production of Documents pursues complete disclosure of all of the related purchase transactions. It is only after a review of all of the related transactions that anyone will be able to determine the "true" consideration paid for the Utility and sale's impact on PCUC and its customers on a going forward basis. At the time the Citizens propounded POD Request NO. 12, we had only been informed by the customers of rumors of ITT's impending divestment of its Palm Coast holdings. After ITT made a public announcement of its sale of 13,000 acres and other commercial holdings and accounts receivable to a wholly owned subsidiary of Minnesota Power and Light, the Citizens necessarily greatly expanded the scope of their discovery of these transactions, in the Citizens' Second Set of Request for Production of Documents.

6. To the extent PCUC personnel were sending and receiving letters concerning the sale of PCUC or other Palm Coast assets, it is appropriate to examine the extent Utility personnel participated in these transactions for the purpose of proposing adjustments to test year salary expenses for PCUC.

7. If PCUC personnel sent or received letters concerning the sale of PCUC or other Palm Coast assets, such conduct is presumptively relevant to PCUC's business, and particularly relevant to understanding the near future business of PCUC. To the extent this correspondence is irrelevant, as alleged by the Utility's counsel, PCUC is conceding that its employees have engaged in conduct unrelated to the Utility's business.

Consequently, further adjustments to test year salary expenses for PCUC may be appropriate.

8. While PCUC suggests that the request of this correspondence is unduly burdensome and confidential, it offers no details about the number or length of any such letters within the custody or control of PCUC, its officers, employees, consultants, agents, representatives, attorneys, or any other person or entity acting on behalf of PCUC. PCUC also offers no details about why it can not disclose the correspondence concerning the sale of Palm Coast assets already accomplished or concerning the Option Agreement already entered into and binding upon the parties to that agreement.

9. Document Request No. 18 requests: Provide a copy of all Federal income tax returns for ITT for each of the years 1993, 1994, and 1995, including a complete copy of any and all schedules, workpapers, and consolidating schedules.

10. The Company objects to the production of the consolidated tax returns of ITT because they are irrelevant and their production will not lead to the discovery of admissible evidence in this rate case. PCUC also alleges that the returns are proprietary confidential business information and that their production would be unduly burdensome and expensive.

11. The requested tax returns are highly relevant to this rate case and are calculated to lead to the discovery of information that will be admissible evidence in this proceeding. Although PCUC's federal income taxes are calculated on a stand

alone basis, PCUC files a consolidated tax return with ITT as noted in the Audited Financial Statements, Notes, Income Tax Matters.

12. ITT's consolidated tax returns include a wealth of important and relevant information that should be analyzed to determine the proper revenue requirement for PCUC. This information includes depreciation methodology, treatment of investment tax credits, details on expenses, revenues, assets and liabilities, gains on sale and other important matters properly before the Commission in a rate setting proceeding. Any suggestion that the tax returns and the information included in them are irrelevant to this case is utterly absurd and an insult to the Commission.

13. In a recent case, Docket No. 940495-WS, Southern States Utilities, Inc. (SSU) made similar arguments. However, in Order No. PSC-95-1504-PCO-WS the Commission denied SSU's motions to protect it from producing the consolidated income taxes returns of SSU's parent company Minnesota Power & Light Company. SSU sought reconsideration of Order No. PSC-95-1504-PCO-WS, which was also denied in Order No. PSC-96-0347-FOF-WS. In that order the Commission found: "The utility is hereby ordered to make available without condition the consolidated tax return of MP&L which OPC has requested for inspection and copying at SSU's offices in Apopka within five days of the Commission's vote." There are no distinguishing differences between the SSU case and the instant case. It has been a long standing policy of the Commission to allow intervenors to review and copy the consolidated tax returns

of the parent company of a utility seeking rate relief. The Company has provided no justification for not producing the tax returns requested.

14. Document Request No. 25 requests: Provide a copy of the Company's 1995 expenses broken down into the accounts and departments shown on the Company's B-5 Schedules of the MFRs. (Please provide this for both water and wastewater separately).

15. The Company objects to providing the requested information, but did not include this objection in its request for a protective order. The Company stated that the above noted B-5 Schedules are the Company's projected 1995 expenses broken down into accounts and departments. The Company objects to the extent any other information may be being requested on the basis of vagueness and the need for clarification.

16. The Citizens have received no calls from PCUC asking us to clarify our request or resolve any questions concerning the vagueness of POD Request No. 25. The information sought by the Citizens is not vague as alleged by PCUC. The information requested is exactly the same as what appears in the MFR B-5 Schedules by account and department, but for the actual expenses incurred in 1995. The MFR B-5 Schedules contain 6 month of historic 1995 data and 6 months of budgeted 1995 data. The Citizens have requested that since 1995 is now historic the Company should provide the information for actual 1995 expenses in the same format as reflected on the B-5 Schedules of the MFRs. This will provide the Commission with the best information available to help

**CERTIFICATE OF SERVICE
DOCKET NO. 951056-WS**

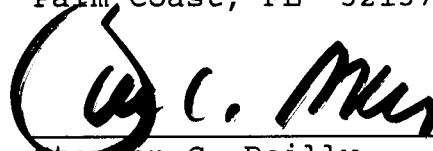
I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or *hand-delivery to the following parties on this 15th day of May, 1996.

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