

Flagler County
Board of County Commissioners
Al Hadeed

County Attorney
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(904) 437-7483 FAX (904) 437-8292

August 26, 1996

ORIGINAL
FILE COPY

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

Re: Docket No. 960898-WS
Resolution 96-62 by Board of Flagler County
Commissioners rescinding Florida Public Service
Commission jurisdiction over private water and
wastewater utilities in Flagler County, Florida

Dear Ms. Bayo:

Enclosed for filing is an original and 15 copies of
Flagler County's Reply to PCUC's Motion to Intervene and
Flagler County's Reply to PCUC's Objections to County
Resolution. We appreciate your cooperation in filing the
attached.

Sincerely,

Albert Hadeed
Albert J. Hadeed
Attorney for
Flagler County

- ACK _____
- AFA _____
- APP _____
- CC _____
- _____ cc: Mr. Charles H. Hill, Division of Water and Wastewater
Division of Legal Services
- _____ Attachments
- _____ AJH\pdh
- _____ 09132
- _____ 09131
- SEC _____
- WAS _____
- OTH _____

objection
DOCUMENT NUMBER-DATE
MICHAEL R. DES PARTE
09132 AUG 27 88

JIM DARBY
District 3

Intervention
DOCUMENT NUMBER-DATE
SAM TRIVETT
09131 AUG 27 88
GEORGE HANNIS
District 5



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of PALM COAST) Docket No. 960898
UTILITY CORPORATION for Increased) Filed: August 27, 1996
Rates in Flagler County, Florida)

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FILED

FLAGLER COUNTY'S REPLY TO
PCUC'S MOTION TO INTERVENE

1. PCUC has requested to intervene in a docket established solely for acknowledging Flagler County's resolution to reinstate its regulatory jurisdiction over investor-owned water and wastewater utilities. While the County does not believe that intervention is appropriate, as demonstrated below, the County recognizes that PCUC has been able to circulate the substance of its objections to Commission staff regardless of whether it is permitted to intervene. The County has no interest in depriving the Commission or its staff of information. Therefore, to assure that the Commission and its staff are informed, the County has responded to PCUC's objections by a separate reply.

2. On the question of whether PCUC should be allowed to intervene, the County strongly objects to PCUC being granted the status of a party. This docket is purely an administrative mechanism utilized by the Commission to process a legislative enactment from a county, a sovereign, constitutional body. See Fla. Const. art. VIII, §1(a).

3. Nowhere is statutory jurisdiction conferred on the Commission to adjudicate the legality or validity of a county's legislative enactment. See Fla. Stat. §367.171. If

PCUC wishes an adjudication of Flagler County's legislative enactment, it should in proper form file for a declaratory judgment in circuit court. See, e.g., Orange City Water Co. v. Town of Orange City, 255 So. 2d 257, 258 (Fla. 1971) (declaratory action in circuit court adjudicating municipal ordinance in context of Chpt. 367). It simply is not for the Commission to exercise a judicial power to declare the act of another constitutional body valid or invalid. As the First District recently quoted with approval, "Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof...." Citrus County v. So. States Utils., 656 So.2d 1307, 1311 (Fla. 1st DCA 1995).

4. The statutory scheme under section 367.171 allows a county to decide in its legislative discretion whether it wishes the provisions for Commission regulatory jurisdiction under Chapter 367 to apply to investor-owned water and sewer utilities within the county. See Orange City Water Co. v. Town of Orange City, 188 So.2d 306, 308 (Fla. 1966) (decided before the enactment of the 1980 opt out feature but court explained the intent of the opt in feature as "merely [permitting] the counties through their boards of county commissioners to decide whether the provisions of the complete statute shall become operative as to the county they represent."). If a county opts out today, certain transition provisions are automatic in their application, for example,

existing certificates, rates and operating regulations are held in place. Fla. Stat. §367.171(4). No provision is made for the Commission to judge the validity of a county's legislative enactment. Indeed, the Commission itself has promulgated no rules that create an adjudicatory forum for county resolutions. Hence, without jurisdiction to adjudicate the matter, PCUC cannot intervene to ask the Commission to do so.

5. Even setting aside the jurisdictional hurdle, PCUC is not capable of appearing as a party in the context of this docket.

6. This docket is not an adversary proceeding under the rules of the Commission. There is no presiding officer, and there are no parties as such. See FPSC Rule 25-22.026 (parties listed and their rights defined). Flagler County, as a political subdivision of the State of Florida, is not an entity subject to regulation by the Commission, so there is no pending proceeding within the meaning of the Commission's rules.

7. This is not a Section 120.57 hearing to determine substantial interests of a party. See FPSC Rule 25-22.025 (substantial interests of party to be adjudicated); 25-22.029 (point of entry after proposed agency action); 25-22.036 (initiation of formal proceedings). As well, this is not a declaratory statement proceeding. See FPSC Rule 25-22.020.

8. This docket involves only the Commission's customary administrative mechanism for acknowledging a

county's resolution and for establishing any transitional provisions the Commission deems necessary. There is no "proceeding" in which to intervene. See FPSC Rule 25-22.039 (intervention in proceedings).

9. Accordingly, intervention is not appropriate and should be denied.

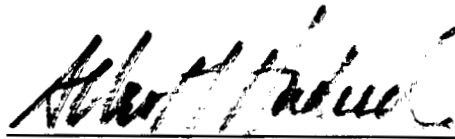
Respectfully submitted,



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Attorney for Flagler County

CERTIFICATE OF SERVICE

I certify that a correct copy of the foregoing has been furnished to B. Kenneth Gatlin, Esq., Gatlin, Woods & Carlson, The Mahan Station, 1709-D Mahan Drive, Tallahassee, FL 32308, by U.S. Mail this 26th day of August, 1996.



Albert J. Hadeed
Attorney for Flagler County