

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution 96-62 by) DOCKET NO. 960898-WS
Board of Flagler County) ORDER NO. PSC-96-1391-FOF-WS
Commissioners rescinding Florida) ISSUED: November 20, 1996
Public Service Commission)
jurisdiction over private water)
and wastewater utilities in)
Flagler County.)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING INTERVENTION,
ACKNOWLEDGING RESCISSION OF COMMISSION JURISDICTION, AND
ESTABLISHING PROCEDURE FOR CANCELLATION OF CERTIFICATES
IN FLAGLER COUNTY

BY THE COMMISSION:

BACKGROUND

Pursuant to a 1980 amendment of Section 367.171(3), Florida Statutes, effective July 1, 1980, the Florida Public Service Commission (the Commission) gained jurisdiction over investor-owned water and wastewater utilities operating in Flagler County. The Commission has actively regulated the utilities in Flagler County since that time. 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. On August 15, 1996, Palm Coast Utility Corporation (PCUC or the utility), one of the investor-owned water and wastewater utilities operating in Flagler County, filed a Petition to Intervene, an Objection to Flagler County Resolution No. 96-62, and a Request for Oral Argument. On August 27, 1996, the County filed a Response and on September 4, 1996, PCUC filed a Reply.

INTERVENTION

On August 15, 1996, PCUC petitioned to intervene in this case as a substantially affected party. In its August 15, 1996

DOCUMENT NUMBER-DATE

12374 NOV 20 96

FPSC-RECORDS/REPORTING

ORDER NO. PSC-96-1391-FOF-WS
DOCKET NO. 960898-WS
PAGE 2

objection, PCUC states that Flagler County's Resolution No. 96-62 is ineffective and does not rescind the jurisdiction of the Commission over water and wastewater utilities in Flagler County. PCUC argues that since the Commission was delegated authority over Flagler County by the Legislature, and not by County resolution, the only valid way the Commission's jurisdiction may be rescinded is by action of the Legislature. It is PCUC's belief that Section 367.171(1), Florida Statutes should be interpreted to mean that the Legislature delegated authority to the counties to re-take jurisdiction only when the county was made subject to the Commission's jurisdiction by "prior resolution." PCUC argues that since there was no resolution by Flagler County, there is no "prior resolution" for the County to rescind, and a statutory amendment by the Legislature is required to transfer jurisdiction back to Flagler County.

In its August 27, 1996 response, the County objected to PCUC being granted party status. It argues that this docket is purely an administrative mechanism for acknowledging a county's resolution, and as such, the Commission does not have the jurisdiction to adjudicate the legality or validity of a county's resolution. The County further argues that this docket is not an adversary proceeding under the rules of the Commission, that the County is not an entity subject to regulation by the Commission, that this is not a Section 120.57 hearing to determine the substantial interests of a party, and that this is not a declaratory statement proceeding.

The County also argues that there was a "prior resolution" to rescind. The County states that when the Florida Senate first passed the sunset bill on April 8, 1980, Flagler County was not placed within Commission jurisdiction. The County states that it was amended onto the bill placing it under Commission jurisdiction only after it acted to "opt in," and only after the bill was referred to the House of Representatives, which amended the Senate version. The House version of the bill was then referred to the Senate, where it was passed in the same form as enacted by the House.

The County argues that its resolution was a May 5, 1980 vote of the Board of County Commissioners in which it resolved to write a letter to its legislative delegation asking them to support legislation that would place Flagler County under Commission jurisdiction. This, the County argues, makes it clear that it was the County's action which led to its inclusion within Commission jurisdiction. It is the County's belief, therefore, that when it acted in 1980 to "opt in," this act constituted a resolution, as

there are no legal requirements as to the form of a resolution, either in Chapter 367 or anywhere else in Florida law.

On September 4, 1996, PCUC filed a reply to Flagler County's response. However, a reply to a response is not contemplated by Commission rules. Rule 25-22.037(2)(b), Florida Administrative Code, permits parties to file motions in opposition to a motion within seven days, but that rule does not allow parties to file a reply to a response. The pleading cycle must stop at a reasonable point, and the rule reflects that.

Section 367.171(1), Florida Statutes provides that a county, after ten continuous years under jurisdiction of the Commission, may by resolution or ordinance rescind any prior resolution or ordinance imposing Commission jurisdiction, and thereby exclude itself from Commission jurisdiction. PCUC's argument that the only valid way the Commission's jurisdiction may be rescinded in this case is by action of the Legislature is without merit. The manner by which Flagler County came under Commission jurisdiction is not dispositive in this case.

The intent of the Legislature in enacting Section 367.171(1) is to allow counties the flexibility of opting in and out of Commission jurisdiction. This intent is reflected by the 1980 Senate Staff Analysis and Economic Impact Statement which states:

Since ch. 367 was designed to assist a county which lacks the ability to regulate the utilities, a county should not be prohibited from performing the regulatory function when it later attains regulatory capability.

This Commission's longstanding policy that a county may, as a matter of statutory right, rescind Commission jurisdiction recognizes this legislative intent. See also Board of County Com'rs of St. Johns County v. Beard, 601 So. 2d 590, 591 (Fla. 1st DCA 1992) ("[T]he County exercised its statutory right to rescind its resolution and thereby exclude its private utilities from PSC jurisdiction.").

Therefore, PCUC does not have standing to intervene where Flagler County exercises its statutory right and rescinds Commission jurisdiction. Accordingly, PCUC's Petition to Intervene and Request for Oral Argument are hereby denied.

ACKNOWLEDGEMENT OF RESOLUTION

As stated previously, Section 367.171(1), Florida Statutes, provides that a county, after ten continuous years under jurisdiction of the Commission, may by resolution or ordinance rescind any prior resolution or ordinance imposing Commission jurisdiction, and thereby exclude itself from Commission jurisdiction. Flagler County has met that requirement. We, therefore, acknowledge Flagler County's Resolution No. 96-62 rescinding Commission jurisdiction in Flagler County as of August 5, 1996 as valid and effective.

DISPOSITION OF CERTIFICATES

Section 367.171(5), Florida Statutes, states that:

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.

The following utilities had valid Commission certificates to provide water and wastewater service in Flagler County:

<u>Utility</u>	<u>Certificate Number(s)</u>	
Ocean City Utilities, Inc.	509W	391S
Palm Coast Utility Corporation	344W	302S
Plantation Bay Utility Company	455W	389S

The following utilities have cases pending before the Commission:

<u>Utility</u>	<u>Docket Number(s)</u>
Palm Coast Utility Corporation	951056-WS
Palm Coast Utility Corporation	951593-WS
Plantation Bay Utility Company	951296-WS

Certificates Nos. 509W and 391S, held by Ocean City Utilities, Inc., shall be cancelled and returned to the Commission within 30 days of this Order. However, Certificates Nos. 344W and 302S, held by PCUC, shall be cancelled and returned to the Commission within 30 days of the conclusion of the open dockets involving that utility, pursuant to Section 367.171(5), Florida Statutes.

The cancellation of these certificates pursuant to this Order shall not affect the authority of the Commission to collect, or the obligation of the utilities to pay, regulatory assessment fees accrued prior to the August 5, 1996 transfer of jurisdiction to Flagler County.

Section 367.171(7), Florida Statutes, states, among other things:

Notwithstanding anything in this section to the contrary, the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional . . .

On October 4, 1996, we received a letter from Plantation Bay Utility Corporation (PBUC or the utility) stating that the utility's service area lies partially in Flagler County and partially in Volusia County. The utility explained that it serves a total area of 3,673 acres, 1,099 of which is in Volusia County, and the remaining 2,574 in Flagler County. The utility further explained that while it currently serves only 500 units, there are 1,099 potential units to be served in Volusia County and 5,022 units in Flagler County. At the October 29, 1996 Agenda Conference, Flagler County stated that it had no objection to PBUC being deemed a system "whose service transverses county boundaries." Therefore, PBUC shall remain under the exclusive jurisdiction of the Commission, pursuant to Section 367.171(7), Florida Statutes.

ORDER NO. PSC-96-1391-FOF-WS
DOCKET NO. 960898-WS
PAGE 6

This docket shall remain open until all dockets currently pending before the Commission, involving water and wastewater utilities operating in Flagler County, have been closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Palm Coast Utility Corporation's Petition to Intervene in this docket is hereby denied. It is further

ORDERED that Flagler County's Resolution No. 96-62 rescinding Commission jurisdiction in Flagler County as of August 5, 1996 is hereby acknowledged. It is further

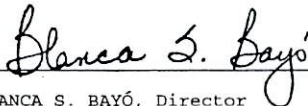
ORDERED that Certificates Nos. 509W and 391S, held by Ocean City Utilities, Inc., shall be cancelled and returned to the Commission within 30 days of this Order. It is further

ORDERED that Certificates Nos. 344W and 302S, held by Palm Coast Utility Corporation, shall be cancelled and returned to the Commission within 30 days of the conclusion of the open dockets involving that utility. It is further

ORDERED that Plantation Bay Utility Company shall remain under the exclusive jurisdiction of the Commission as a system whose service transverses county boundaries. It is further

ORDERED that upon the expiration of the protest period, this docket shall remain open until all dockets currently pending before the Commission have been closed.

By ORDER of the Florida Public Service Commission, this 20th day of November, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DCW

ORDER NO. PSC-96-1391-FOF-WS
DOCKET NO. 960898-WS
PAGE 7

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 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.