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March 3, 1997

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

RE: Docket No. 961276-WS
Request for Variance from Order No. PSC 96-1190-FOF-WS in
Flagler County by Palm Coast Utility Corporation

Dear Ms. Bayo:

Enclosed for filing on behalf of Palm Coast Utility
Corporation in the above docket are an original and 15 copies of:

- 1) Motion for Reconsideration or, Alternatively, - 02276-97 3/3/97
Clarification;
- 2) Request for Oral Argument; and - 02277-97
- 3) Notice of Filing Transcripts of Agenda Conferences. - 02278-97

Please acknowledge receipt of the foregoing by stamping the
enclosed extra copy of this letter and returning same to my
attention. Thank you for your assistance.

Sincerely,

B. Kenneth Gatlin
B. Kenneth Gatlin

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BKG/pav
Enclosures

cc: w/encl. Donna Cyrus-Williams, Esq.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Request for Variance from Order)
No. PSC-96-1190-FOF-WS in Flagler County)
by Palm Coast Utility Corporation.)

Docket No. 961276-WS
Filed: March 3^d, 1997

MOTION FOR RECONSIDERATION OR, ALTERNATIVELY,
CLARIFICATION

Palm Coast Utility Corporation (PCUC), by and through undersigned counsel, and pursuant to Rule 25-22.060, Florida Administrative Code, requests reconsideration, or, alternatively, clarification of Order No. PSC-97-0188-FOF-WS (the Order), and in support states as follows:

1. The PSC has, in a series of separate dockets,
 - a) determined that Flagler County rescinded jurisdiction over PCUC effective August 5, 1996;
 - b) subsequent to said jurisdictional transfer date, opened a new docket to consider cancellation of grossup authority of PCUC (among other utilities), voted and issued an order exercising jurisdiction over PCUC cancelling such grossup authority, subject to an application for variance;
 - c) subsequent to said jurisdictional transfer date, opened a new docket to consider the disposition of grossup on CIAC collected by PCUC during 1992-1994, voted and issued an order exercising jurisdiction over PCUC disposing of such grossup.
 - d) subsequent to said jurisdictional transfer date, opened a new docket, voted and issued an order dismissing ("for lack of jurisdiction") PCUC's timely-filed application for variance from the cancellation of grossup authority for CIAC collected by PCUC during 1987 through mid 1996.

A chronology of pertinent PSC actions is appended hereto as Exhibit

A.

2. The PSC failed to adequately consider, or overlooked, the foregoing sequence of events in its decision dismissing PCUC's application for variance, as memorialized by the Order. The PSC's

DOCUMENT NUMBER-DATE

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foregoing actions adversely affect PCUC's substantial interests, are incongruent and, as a matter of law, erroneous.

3. Under Section 367.171(4), Florida Statutes, PCUC's rates, charges, operating regulations and procedures in effect as of the jurisdictional transfer date remain in effect until lawfully changed by the County. Under Section 367.171(5), however, all cases pending before the PSC or on appeal from a PSC Order (as of the jurisdictional transfer date) remain within PSC jurisdiction until disposed of in accordance with the law in effect on the date such case was filed by any party or initiated by the PSC.

4. If the PSC had jurisdiction after the effective date of the jurisdictional transfer to Flagler County to open new dockets to dispose of grossup on CIAC collected by PCUC during 1992-1994, and to cancel PCUC's authority to collect CIAC after the effective date of the jurisdictional transfer date, subject to an application for variance, then the PSC had and continues to have jurisdiction to consider a variance from the cancellation of authority to collect grossup on prepaid CIAC received from 1987 through mid-1996.

5. Conversely, if the PSC did not have jurisdiction after the effective date of the jurisdictional transfer to Flagler County to consider said variance, to allow for "prospective" collections of grossup, then it had no jurisdiction to cancel "prospective" grossup authority.

6. In its denial of application for variance, the Order asserts that PCUC "has remedy with Flagler County". That is a hollow assertion if the PSC maintains that it has revoked PCUC's grossup authority. The PSC failed to consider how PCUC may seek a

variance from the County regarding CIAC collected during 1987-1996 when the PSC has apparently already cancelled PCUC's grossup authority, or how PCUC may seek authority from Flagler County to recover grossup on prepaid CIAC collected between June 12, 1996 and the jurisdictional transfer date.

7. PCUC asserts that the PSC had and continues to have jurisdiction over its application for variance inasmuch as it pertains to CIAC collected under PSC authority during 1987-1996. PCUC therefore requests reconsideration of the Order, and a point of entry through the proposed agency action procedure to demonstrate, among other things, the extent of the substantial harm that will befall PCUC absent such variance, and the absence of adequate remedy before Flagler County.

8. a) PCUC submits that the provisions of the Order (96-1180) purporting to cancel PCUC's grossup authority are not, by the Order's own terms, final and effective given PCUC's timely filing of an Application for Variance. The Order dismissing PCUC's request for variance is, by virtue of the instant motion, not final and effective.

b) If the PSC declines to exercise jurisdiction over the variance, PCUC alternatively requests that the PSC clarify the Order dismissing its request for variance for lack of jurisdiction to confirm that the PSC also lacked jurisdiction to cancel PCUC's grossup authority.

c) Such clarification would in essence preserve the status quo as of the August 5, 1996 jurisdictional transfer date, thereby facilitating PCUC's pursuit of authority to collect grossup on prepaid CIAC collected during 1987-1996, during which period CIAC

was taxable and PCUC duly paid such taxes.

WHEREFORE, PCUC requests that the Commission

a) reconsider its dismissal of PCUC's Application for Variance for lack of jurisdiction, and provide PCUC through the proposed agency action procedure with an opportunity to further support its application; or, alternatively

b) clarify Order No. PSC-97-0188-POF-WS to reflect that the provisions of Order No. 96-1180 purporting to cancel PCUC's grossup authority are not final and effective, and that therefore any action to consider revocation of PCUC's grossup authority, and variances therefrom, should be pursued by and before Flagler County.

Respectfully submitted,



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CHRONOLOGY

- August 5, 1996 **Flagler County adopts Resolution 96-62 rescinding PSC jurisdiction.**
- August 9, 1996 **PSC opens Docket 960898-WS regarding Resolution 96-62.**
- August 20, 1996 **President signs Small Business Job Protection Act of 1996, providing for nontaxability of CIAC collected by water & wastewater utilities effective retroactively for amounts received after June 12, 1996.**
- August 21, 1996 **PSC opens Docket 960965-WS regarding Cancellation of Grossup Authority of Water & Wastewater Utilities.**
- August 22, 1996 **PSC Staff files recommendation in Docket 960965-WS regarding cancellation of grossup authority and 'variance' procedure to preserve such authority.**
- August 29, 1996 **PCUC submits letter to PSC asserting its authority to grossup should be preserved for prepaid CIAC collected from January 1, 1987 to June 12, 1996.**
- September 3, 1996 **PSC votes to approve Staff Recommendation in Docket 960965-WS revoking grossup authority unless a request for variance is filed within 30 days of forthcoming order, directing PCUC to submit its request as one for a variance.**
- September 20, 1996 **PSC issues Order 96-1180 in Docket 960965-WS revoking authority to grossup, subject to any applications for variances.**
- September 26, 1996 **PSC Staff files recommendation in Docket 960898-WS to acknowledge Flagler County Resolution 96-62 to rescind PSC jurisdiction over PCUC effective 8/5/96 date of resolution.**
- October 16, 1996 **PCUC timely files Application for Variance in Docket 960965-WS to preserve grossup authority for prepaid CIAC collected from January 1, 1987 to June 12, 1996.**
- October 24, 1996 **PSC opens Docket 961277-WS to dispose of CIAC grossup funds collected by PCUC in 1992-1994.**

October 24, 1996

PSC opens Docket 961276-WS to consider PCUC Request for Variance from Order 96-1180.

October 29, 1996

PSC votes to approve Staff Recommendation in Docket 960898-WS to acknowledge Flagler County Resolution 96-62 to rescind PSC jurisdiction over PCUC effective 8/5/96, identifying only two open dockets involving PCUC are Dockets 951056-WS (rate case) and 951593-WS (service availability charges).

November 20, 1996

PSC issues Order 96-1391 consistent with October 29, 1996 vote explained above.

January 23, 1997

PSC Staff files recommendation in Docket 961277-WS of no refund by PCUC of grossup for CIAC collected 1992-1994.

January 23, 1997

PSC Staff files recommendation in Docket 961276-WS to deny PCUC Request for Variance from Order 96-1180 for lack of jurisdiction, given August 5, 1996 effective date of County jurisdiction.

February 4, 1997

PSC votes to approve January 23, 1997 Staff Recommendations in Dockets 961277-WS and 961276-WS.

February 18, 1997

PSC issues Order 97-0185 in Docket 961277-WS finding no grossup refund required from PCUC from 1992-1994.

February 18, 1997

PSC issues Order 97-0122 in Docket 961276-WS dismissing PCUC Application for Variance, for lack of jurisdiction.