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FILE COPY

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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

ACK _____
 AFA _____
 APP _____
 CAF _____
 CMU _____
 CTR _____
 EAG _____
 LEG _____
 LIN _____

BKG/pav
Enclosures

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

only the only

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

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, 1997

**NOTICE OF FILING TRANSCRIPTS
OF AGENDA CONFERENCES**

Palm Coast Utility Corporation provides notice of its filing of transcripts of the following agenda conferences:

- 1) Docket No. 960965-WS Cancellation of authority to gross up contributions in aid of construction.

Item 30, September 3, 1996

- 2) 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.

Item 64, October 29, 1996

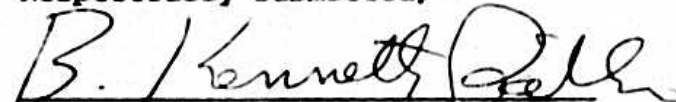
- 3) Docket No. 961277-WS Disposition of contributions-in-aid-of construction gross-up funds collected by Palm Coast Utility Corporation.

Item 23, February 4, 1997

- 4) Docket No. 961276-WU Request for variance from Order No. PSC-96-1190-FOF-WS by Palm Coast Utility Corporation.

Item 30, February 4, 1997

Respectfully submitted,



B. Kenneth Gatlin
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Attorneys for
PALM COAST UTILITY CORPORATION

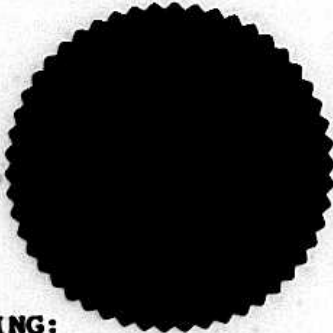
DOCUMENT NUMBER-DATE
02278 MAR-35
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Cancellation of authority to gross up contributions
in aid of construction.

DOCKET NO. 960965-WS

BEFORE:



CHAIRMAN SUSAN F. CLARK
COMMISSIONER J. TERRY DEASON
COMMISSIONER JULIA L. JOHNSON
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

30**

DATE:

September 3, 1996

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY:

JANE FAUROT, RPR
Notary Public in and for the
State of Florida at Large

JANE FAUROT, RPR
P.O. BOX 10751
TALLAHASSEE, FLORIDA 32302
(904) 379-8669

1 PARTICIPATING:

2 B. Kenneth Gatlin, Esquire, representing Palm
3 Coast Utility Corporation
4 Marty Deterding, representing Rolling Oaks
5 Utilities

6 * * * * *

7 STAFF RECOMMENDATIONS

8 Issue 1: Recommendation that the authority of the companies
9 named on Attachment A of staff's memorandum dated August 22,
10 1996, to collect gross-up should be revoked with the vote of
11 the Commission on this issue and the respective gross-up
12 tariffs should be cancelled.

13 Issue 2: Recommendation that, since the legislation became
14 effective for CIAC collected after June 12, 1996, the
15 companies with authority to collect gross-up should be
16 ordered to refund with interest, within 60 days of the
17 effective date of the order in this docket, all gross-up
18 collected after June 12, 1996. Each utility should provide
19 copies of canceled checks, or other evidence which verifies
20 that the refunds have been made, within 30 days from the
21 date of the refund.

22 Issue 3: Recommendation that, if no person whose interests
23 are substantially affected by the proposed action files a
24 protest within the 21-day protest period, this docket may be
25 closed upon verification of the refunds.

P R O C E E D I N G S

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CHAIRMAN CLARK: Item 30.

COMMISSION STAFF: Commissioners, Item 30 is staff's recommendation to cancel gross-up authority for the utilities currently with gross-up authority. CIAC has to be returned to former nontaxable status, therefore, we are recommending that gross-up authority be canceled for those utilities who now gross-up.

CHAIRMAN CLARK: I had a question. When is the law effective?

COMMISSION STAFF: It was effective back to June 12th.

MS. CAUSSEAU: It's effective for contributions received after June 12th of this year.

CHAIRMAN CLARK: Then they have to pay taxes on the ones prior to that, but they would have already collected that.

COMMISSION STAFF: With, I think, one exception.

CHAIRMAN CLARK: All right. Mr. Gatlin.

COMMISSIONER KIESLING: What is the exception?

MR. DETERDING: Palm Coast. Item Number 2.

CHAIRMAN CLARK: Mr. Gatlin.

MR. GATLIN: Commissioners, I represent Palm Coast Utility Corporation. My name is B. Kenneth Gatlin. First, we are very pleased that Congress took this

1 action. We appreciate the assistance that this
2 Commission gave to the industry and the customers to
3 get it repealed. It has been a problem for ten years,
4 and we are glad it's over. Palm Coast has a little bit
5 of a different peculiar problem to some of its CIAC
6 that it collects from. There are some customers that
7 have the option to pay CIAC over a time period starting
8 from the time they purchased their lot. And there are
9 some, indeed, that have done that between January 1st,
10 1987 and June 13th, 1996. And what has happened is
11 that some of the CIAC has been collected under the
12 short period of time, under those ten years, and Palm
13 Coast Utility Corporation has reported it as taxable
14 income and paid the appropriate taxes or made the
15 proper adjustments on the taxes.

16 COMMISSIONER KIESLING: Could I ask just that.
17 What you were collecting over time as you collected it
18 or did you gross-up the whole amount based on an
19 expectation of collecting it?

20 MR. GATLIN: No, we just reported it strictly as
21 taxable income and when the customer comes in to make
22 the final payment, or if the CIAC is a different amount
23 than under the contract, the customer comes in and
24 says, "I'm ready to connect, how much more do I owe you
25 on that lot," and the customer pays the balance of the

1 CIAC owed and the gross-up at that time. My point
 2 point simply is that during those ten years there has
 3 been CIAC collected and there has been no gross-up
 4 collected from the customers. The utility did not
 5 collect any gross-up. We simply want it to be provided
 6 that PCUC can continue to collect the gross-up on that
 7 CIAC collected and on which there has been no gross-up
 8 charge from January 1st, 1987 to June 13th, 1996.

9 CHAIRMAN CLARK: Mr. Deterding.

10 MR. DETERDING: Commissioners, I think my general
 11 concern and suggestion would address that raised by
 12 Mr. Gatlin specifically. I also have a client who may
 13 or may not have received CIAC prior to June 12, 1996.
 14 As you may recall, there was before you a request to
 15 implement a bulk rate by Rolling Oaks Utilities for new
 16 development within its area. There is pending now a
 17 private letter ruling request that was filed in the
 18 last two weeks to find out whether or not entering into
 19 that contract earlier this year constituted a
 20 contribution.

21 We have not received the gross-up, it is in
 22 escrow, and, therefore, I would say that that
 23 represents a second situation I'm aware of. What I
 24 would suggest as an alternative to what the staff has
 25 proposed, is to, first of all, require that all

1 utilities who currently have gross-up authority be
2 required to file within some period of time, 30 days,
3 20 days, whatever you perceive is appropriate,
4 something either requesting cancelation and proposing
5 to refund all monies collected since June 12th or
6 stating a reason why they should not.

7 COMMISSIONER DEASON: To show cause them, right?

8 COMMISSIONER KIESLING: Another show cause.

9 MR. DETERDING: Well, yes, you can call it a show
10 cause, I guess, yes. I think the great majority out
11 there, there are 27, I believe, currently grossing up,
12 are going to file and just say cancel my tariffs right
13 away and I will refund the money. But there may be
14 other situations other than the ones that you have been
15 made aware of today, mine with Rolling Oaks and Mr.
16 Gatlins with Palm Coast.

17 CHAIRMAN CLARK: Could we just enter an order that
18 does what staff says, but gives companies 30 days to
19 request a variance from the order?

20 COMMISSIONER KIESLING: My question was going to
21 be, did a copy of this recommendation go to every
22 company that was on Attachment A?

23 MR. JAEGER: We sent a recommendation out to every
24 company on Attachment A that we had a good address for,
25 and I think we had good addresses for all of them. But

1 some of them are represented by counsel, and we didn't
2 get all the counsels sent out, but we sent it to the
3 utility address.

4 MR. DETERDING: I am also concerned that we are
5 talking about --

6 COMMISSIONER KIESLING: When did we send it?

7 MR. JAEGER: I'm trying to remember. It was
8 Monday or Tuesday of last week.

9 COMMISSIONER KIESLING: Oh, so there hasn't been
10 sufficient time for those utilities to have responded
11 or not responded.

12 MR. JAEGER: They would have received it at the
13 end of last week or the middle of last week, and so
14 that's the time they would have had to respond.

15 CHAIRMAN CLARK: Mr. Deterding.

16 COMMISSIONER KIESLING: Well, I would support Mr.
17 Deterding's suggestion, then, that we resend notices to
18 all of the companies on Attachment A, and tell them
19 that based on the statutory change, that the authority
20 to gross-up is going to be revoked back to the CIAC
21 collected up until June 12th, and that after June 12th
22 it's going to have to be, I guess, refunded or
23 whatever, and allow them again 20 days to tell us why
24 they should receive a variance from that or not have
25 their authority revoked or whatever they want. I mean,

1 isn't that the same thing as what you just said,
2 Chairman Clark?

3 CHAIRMAN CLARK: I was just thinking we would
4 issue an order that says as of this date that is the
5 way it's going to be unless you come in in 30 days and
6 ask for a variance. It would not be a show cause.

7 COMMISSIONER KIESLING: I didn't say show cause, I
8 was just saying that some kind of notice be sent to
9 them.

10 CHAIRMAN CLARK: Well, I would assume the order
11 would go out to them.

12 MR. GATLIN: Madam Chairman, I have suggested some
13 language to the staff to put in this order that you
14 might issue as a result of this proceeding. And I
15 think that it would probably be satisfactory with them
16 except for one change or two, and if that were in this
17 order, I think it would negate the necessity for any
18 utility to file anything. And the language is that a
19 utility that has received prepaid CIAC between January
20 1st, 1987 and June 12th, 1996, reported such revenue as
21 taxable revenue and has been taxed pursuant to the tax
22 laws in effect at the time of collection of CIAC is
23 authorized to continue to collect tax gross-up for CIAC
24 made between January 1st, 1987 and January 12th, 1996
25 at the time of the customer's connection pursuant to

1 the utility's present policy. And I furnished that
2 language to the staff for their consideration.

3 MR. DETERDING: I believe that would address
4 Mr. Gatlin's concern, but I don't think it would
5 address the one that I have with Rolling Oaks and may
6 not address other utility companies.

7 MS. CAUSSEAU: I don't believe it would address
8 Mr. Deterding's concern because he is asking, I
9 believe, if I understood what he said correctly, that
10 it not be considered taxable income, so he would
11 certainly have not reported it as such or paid taxes on
12 it.

13 CHAIRMAN CLARK: Is there any other questions,
14 Commissioners? Is there a motion?

15 COMMISSIONER KIESLING: I move what you said and,
16 I guess, sort of modified by what I said, that this
17 order be used as the notice to all the utilities on
18 Attachment A that the authority is going to be revoked.

19 CHAIRMAN CLARK: Within 30 days of the issuance of
20 the order that their authority to gross-up CIAC is
21 revoked unless they come in and ask for a variance.

22 COMMISSIONER KIESLING: Right.

23 COMMISSIONER DEASON: What about Mr. Gatlin's
24 language, can we go ahead and solve his problem so he
25 doesn't have to request a variance?

1 **COMMISSIONER KIESLING:** I'm not convinced at this
2 point that that's the best way to deal with his
3 situation. And I guess I would rather have some kind
4 of record on which we grant the variance so that we
5 have it clear those circumstances under which it would
6 be available.

7 **CHAIRMAN CLARK:** There has been a motion. Is
8 there a second?

9 **MR. DETERDING:** May I make one minor additional
10 point. The staff has proposed that refunds be made
11 with interest. I just wanted to make sure that we
12 agreed that that's the same way that we made refunds
13 with interest on gross-up collections, and that is
14 based upon what is paid on the escrow account.

15 **MS. CAUSSEUX:** That would be our intent.

16 **CHAIRMAN CLARK:** With that modification, is there
17 a second to that motion?

18 **COMMISSIONER JOHNSON:** Second.

19 **CHAIRMAN CLARK:** All those in favor say aye.

20 (Unanimous affirmative vote.)

21 **CHAIRMAN CLARK:** Opposed, nay. The staff
22 recommendation as modified passes. That means,
23 Mr. Gatlin, you would have to file for a variance.

24 **MR. GATLIN:** I understand. Thank you.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings was transcribed from cassette tape, and the foregoing pages numbered 1 through 10 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 16th day of September, 1996.



JANE FAUROT, RPR
P.O. Box 10751
Tallahassee, Florida 32302
(904) 379-8669

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

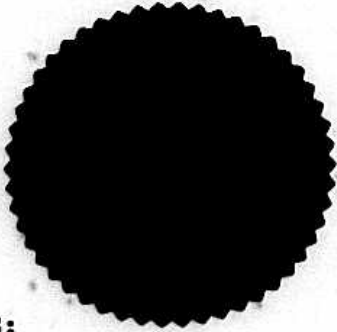
IN RE: Resolution 96-62 by Board of Flagler County
Commissioners rescinding Florida Public Service Commission
jurisdiction over private water and wastewater utilities in
Flagler County. (This item was deferred from the 10/8/96
Commission Conference due to Tropical Storm Josephine.)

DOCKET NO. 960898-WS

RECEIVED
NOV 12 1996

Office of
B. KENNETH GATLIN

BEFORE:



CHAIRMAN SUSAN F. CLARK
COMMISSIONER J. TERRY DEASON
COMMISSIONER JULIA L. JOHNSON
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

64**

DATE:

October 29, 1996

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY:

JANE FAUROT, RPR
Notary Public in and for the
State of Florida at Large

JANE FAUROT, RPR
P.O. BOX 10751
TALLAHASSEE, FLORIDA 32302
(904) 379-8669

JANE FAUROT - 904-379-8669

1 PARTICIPATING:

2 Ken Gatlin, Esquire, representing Palm Coast
Utility Corporation
3 Al Addid (phonetic), Esquire, representing Flagler
County
4

5 * * * * *

6
7 STAFF RECOMMENDATIONS

8 Issue 1: Recommendation that Palm Coast Utility
Corporation's (PCUC) Petition to Intervene and Request for
9 Oral Argument be denied because PCUC does not have standing
to intervene where the County may, as a matter of statutory
10 right, rescind its resolution granting the Commission
jurisdiction.

11 Issue 2: Recommendation that the Commission should
acknowledge the resolution that rescinds Commission
12 jurisdiction in Flagler County.

13 Issue 3: Recommendation that certificates previously issued
to water and wastewater utilities in Flagler County that do
not have cases pending before the Commission should be
14 returned to the Commission within 30 days of the
Commission's order for cancellation. Certificates held by
15 utilities in Flagler County that have pending cases before
the Commission should be returned for cancellation at the
16 conclusion of their respective cases.

17 Issue 4: Recommendation that this docket remain open until
all dockets currently pending before the Commission have
been closed.
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PROCEEDINGS

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CHAIRMAN CLARK: Item 64.

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COMMISSION STAFF: Commissioners, this item concerns Flagler County's resolution to rescind Commission jurisdiction in that county effective as of August 5th, 1996. We recommend acknowledging that resolution. We have a couple of technical corrections to make. First, in Issue Number 3, we named the three investor-owned utilities that currently operate in Flagler County. I recently learned that one of those companies, Plantation Bay Utility Company, also provides service in Volusia County. Since it serves customers in both counties with facilities that actually cross county lines, Plantation Bay will still be regulated by this Commission. Thus, in accordance with Part 7 of Section 367.171 of the Florida Statutes, Plantation Bay will still be regulated by this Commission since it serves two counties with one unified system.

Next, the language which appears on Pages 3 and 4 indicating that Flagler County is excluding itself from the provisions of Chapter 367 of the Florida Statute is incorrect, and will not appear in the order. Flagler County will regulate the affected utilities under appropriate provisions of Chapter 367.

1 One of the investor-owned utilities in Flagler
2 County, Palm Coast Utilities Corporation believes that
3 Flagler County is not empowered to rescind Commission
4 regulation due to special circumstances. If you
5 desire, Ms. Cyrus-Williams will address that concern.
6 And we have representatives from both Palm Coast and
7 Flagler County who are present and would like to
8 address the Commission.

9 COMMISSIONER KIESLING: I have a question on the
10 first issue. Haven't we pretty much consistently in
11 every one of these cases when it has come up said that
12 the utilities that are in that county don't have a
13 standing to intervene in opposition to a statutory
14 right?

15 MS. CYRUS-WILLIAMS: I'm not that aware of any
16 previous orders where we said that utilities didn't
17 have standing, but we have consistently said that it
18 was a matter of statutory right that the counties could
19 rescind Commission jurisdiction.

20 MS. JABER: That's correct, Commissioner. The
21 issue has never come up that I'm aware of, but
22 consistently, to answer your question, I agree with
23 Ms. Cyrus-Williams that you have not allowed
24 participation.

25 COMMISSIONER KIESLING: That came up in Hernando

1 County.

2 MS. JABER: Not on that issue. If I'm not
3 mistaken, there was an issue about regulatory
4 assessment fees, and whether or not the regulatory
5 assessment fees should go to the county or the
6 Commission. And I believe that you allowed parties to
7 participate on that item. I wasn't here, I'm just
8 guessing.

9 CHAIRMAN CLARK: Commissioner Kiesling, I can't
10 remember when this has come up. This the first I have
11 ever seen anyone oppose a resolution in effect. I
12 don't remember this coming up before. What Ms.
13 Cyrus-Williams has stated is my recollection.

14 COMMISSIONER KIESLING: I could have sworn that in
15 Hernando County that Southern States initially filed
16 something to try to oppose the retaking of that
17 jurisdiction.

18 CHAIRMAN CLARK: Yes, but I think that was based
19 on the fact of cross-county service, not whether or not
20 they could take it back.

21 COMMISSIONER KIESLING: Okay. I stand corrected
22 obviously. I don't have enough institutional memory to
23 go back much further than Southern States and Hernando
24 County.

25 COMMISSION STAFF: Right. And the only instance I

1 can think of was when Mr. Twomey -- I wasn't even
2 thinking of Southern States the utility, but Mr. Twomey
3 came and addressed the Commission on the regulatory
4 assessment fee issue.

5 CHAIRMAN CLARK: Mr. Gatlin.

6 COMMISSIONER GARCIA: Don't we have to vote to
7 allow him to speak?

8 CHAIRMAN CLARK: I'm sorry. Commissioners.

9 COMMISSIONER DEASON: Well, it has a double
10 asterisk.

11 COMMISSIONER KIESLING: But Issue 1 is to deny
12 standing for them to have oral argument and on their
13 petition, so I guess I didn't understand Issue 1 right
14 either. Do we have to vote to let them oral argument
15 and do we have to decide they have got standing before
16 we can grant them oral argument?

17 CHAIRMAN CLARK: Do we want to hear oral argument
18 on the standing issue? That's how I'm interpreting it.

19 COMMISSIONER KIESLING: You're interpreting Number
20 1 is do we want to hear oral argument? I don't
21 especially.

22 COMMISSION STAFF: Commissioners, what we are
23 recommending is that they shouldn't have oral argument
24 because they don't have standing in this case.

25 CHAIRMAN CLARK: Okay.

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COMMISSIONER JOHNSON: Move it.

COMMISSIONER KIESLING: That one I can second.

COMMISSIONER GARCIA: Sorry about that, Mr. Gatlin.

COMMISSIONER DEASON: Well, let me ask this question. They may not have standing to intervene, but if the Commission were inclined, could we allow them to address the Commission on this matter?

CHAIRMAN CLARK: On their standing or on the whole matter of taking back jurisdiction?

COMMISSIONER DEASON: On the whole matter. I mean, what if they are right? What is their recourse? The only thing they can do is take us to court. They can't -- when they go to court they will say the Commission won't even allow us to talk to them. I mean, that doesn't look very good, either. I'm just interested to see what they have to say. You know, that is the sum and substance of it.

COMMISSIONER GARCIA: I understand.

COMMISSIONER DEASON: But that is just my preference.

COMMISSIONER GARCIA: Well, why doesn't staff answer Commissioner Deason's question, because I don't know.

COMMISSION STAFF: That is just our

1 recommendation. It's within your discretion if you
2 want to allow them to speak. We can address that. You
3 know, we can address their argument.

4 COMMISSIONER DEASON: Well, my preference would be
5 to at least give them an opportunity to address the
6 Commission. That's just my reference.

7 COMMISSIONER KIESLING: Is there a second?

8 COMMISSIONER KIESLING: Wait. There was already a
9 motion and a second.

10 CHAIRMAN CLARK: I'm sorry.

11 COMMISSION DEASON: Okay. That's fine.

12 CHAIRMAN CLARK: All those in favor say aye.

13 COMMISSIONER JOHNSON: Aye.

14 COMMISSIONER KIESLING: Aye.

15 CHAIRMAN CLARK: Opposed, nay.

16 COMMISSIONER GARCIA: Nay.

17 COMMISSIONER DEASON: Nay.

18 CHAIRMAN CLARK: Nay. Is there another motion?

19 COMMISSIONER GARCIA: Well, I guess there has to
20 be a motion to hear them, which is to move Issue 1?

21 COMMISSIONER KIESLING: No, that isn't it.

22 COMMISSIONER GARCIA: Oh, I'm sorry. So it would
23 be to --

24 COMMISSIONER KIESLING: You have to make up your
25 own issue.

1 COMMISSIONER DEASON: Well, Issue 1 concerns
2 intervention and request for oral argument. I wouldn't
3 go that far. I wouldn't want to grant them
4 intervention at this point. I don't want to grant them
5 oral argument. It's a double asterisk item, they are
6 here, I'm just interested to see what they have to say
7 as an interested party. And when I say party, I don't
8 put any legal significance on that term other than they
9 are here. Mr. Gatlin, if you want to address the
10 Commission, I would move to allow you to do that
11 briefly.

12 CHAIRMAN CLARK: Is there a second?

13 COMMISSIONER GARCIA: Second.

14 CHAIRMAN CLARK: I understand that it is your
15 motion to allow the people that at least filed the
16 petition to be heard with no judgment as to whether or
17 not they have standing.

18 COMMISSIONER DEASON: That is the motion.

19 CHAIRMAN CLARK: Mr. Gatlin. Oh. There is a
20 motion and a second. All in favor say aye.

21 COMMISSIONER DEASON: Aye.

22 COMMISSIONER GARCIA: Aye.

23 CHAIRMAN CLARK: Aye. Opposed, nay.

24 COMMISSIONER KIESLING: Nay.

25 CHAIRMAN CLARK: Mr. Gatlin.

1 MR. GATLIN: Madam Chairman, Palm Coast Utility
2 Corporation has been under this Commission's
3 jurisdiction since 1980. The Commission entered an
4 order in 1980, 9598, which said that Palm Coast Utility
5 Corporation came under this Commission's jurisdiction
6 pursuant to an amendment of Chapter 367. There are 39
7 counties that are under this Commission's jurisdiction.
8 All 38 you will look at came under the Commission's
9 jurisdiction by a county resolution. One of them is an
10 exception, and that is Flagler County. Flagler County
11 did not pass a resolution, they wrote a letter to their
12 local delegation and asked that 367 be amended so that
13 Flagler County would be under the Commission's
14 jurisdiction. Then for the next 16 years the
15 Commission has had the jurisdiction.

16 Now what has to be decided, I guess, or what you
17 have to decide is, is the Commission relieved of its
18 duty and obligation to regulate water and wastewater
19 utilities in Flagler County by this county commission
20 resolution. If you're comfortable that the county has
21 that authority, then, you're right, you ought not to
22 exercise jurisdiction.

23 But that flies in the face of a couple of things.
24 One is a State Supreme Court decision which said
25 specifically and there has been no change in the law

1 and it's not pointed out in the staff memorandum. The
2 Orange City case says that a county cannot pass
3 jurisdiction back to itself unless it has statutory
4 authority to do so. And at that time the court ruled
5 that the commission of the county could not pass a
6 resolution, it would have to be done by statute.

7 The statute was amended very quickly, and it
8 provided for a way for the county to take jurisdiction
9 by resolution. Then it provided that the county could
10 take resolution, take jurisdiction back by passing a
11 resolution to repeal the former resolution. Well,
12 there is no resolution in this case, and it is a unique
13 situation. It is one out of 39 that is different.

14 Now, Palm Coast Utility has \$121 million worth of
15 plant in Flagler County. It has 10 or 11,000 water
16 customers and 10 or 11,000 wastewater customers. I
17 don't think there is any way you can construe that Palm
18 Coast doesn't have any interest or standing in this
19 situation. It has reason to believe because of the
20 statute and because of the way the court has
21 interpreted that statute that it is still regulated by
22 this Commission.

23 The St. Johns County case, which the staff cites
24 as a reason for not -- for its reason is a case wherein
25 you had the exact same situation before you. You had a

1 resolution from St. Johns County that attempted to take
2 jurisdiction back. The utility came into this
3 Commission and said, "We don't think so." And granted,
4 it was on a different basis, but the Commission decided
5 that that action by the county was not valid and did
6 not relieve this Commission of its jurisdiction.

7 So I think we have a Supreme Court case, we have a
8 statute, we have the recognition by this Commission
9 that it did not get jurisdiction of this county by
10 resolution, and there is no statutory authority at all
11 to give the county the right to revoke this
12 Commission's jurisdiction. And that's my position.

13 CHAIRMAN CLARK: The gentleman next to you.

14 MR. GATLIN: That is Mr. Perry, he is with the
15 utility. I will introduce Mr. Adid, county attorney.

16 CHAIRMAN CLARK: Go ahead and introduce yourself.

17 MR. ADID: Good afternoon, Madam Chair and
18 Commissioners. My name is Al Adid, I'm the county
19 attorney from Flagler County, and with me is Mr. Arthur
20 Sirkin (phonetic), who is our special counsel on
21 utility matters.

22 The argument of Palm Coast Utilities is to elevate
23 form over substance. The legislative intent of Chapter
24 367 with regard to regulatory jurisdiction is to give
25 counties the option of deciding whether they wish to be

1 regulated, that is their investor-owned utilities to be
2 regulated by the Public Service Commission or whether
3 they wish to regulate those investor-owned utilities.
4 The counties are given the statutory right to make that
5 decision subject to that if they decide to opt in, and
6 this has been since sometime in the mid-'80, that they
7 have to keep jurisdiction within the Public Service
8 Commission for at least ten years before they can
9 retake jurisdiction. Obviously for regulatory
10 efficiency. So that is the only substantive limit.

11 Now, as to their argument -- so that is the
12 statutory construct. The legislative intent,
13 regardless of what one may think of the wisdom of the
14 legislature, and we many times take issue with their
15 wisdom, but they have said that the decision about who
16 is going to regulate investor-owned utilities is
17 reposed in the elected officials of a county
18 commission.

19 Now, as to the merits of the argument. The
20 utility cites to you the Orange County case. That's a
21 1966 Florida Supreme Court decision. At that time
22 there was no provision for a county to opt out of
23 Public Service Commission jurisdiction once it had
24 opted in. That opt out feature, as some of you may
25 recall, was not included in any legislation until the

1 1980 sunset review of the Public Service Commission.
2 So, Orange County, the Orange County decision -- excuse
3 me, actually the Orange City Commission, Orange City is
4 in Volusia County. The Orange City decision is not
5 applicable here because there is legislative authority
6 for the county to opt out.

7 The second point that they raised is Flagler
8 County never passed a resolution, and that is not
9 correct. That is absolutely not correct, and the
10 records reflects that. In fact, they have submitted to
11 you the minutes and the transcript. What is a
12 resolution? A resolution is nothing more than a
13 motion. It's an expression of the collegial will.

14 CHAIRMAN CLARK: Let me ask you, what are you
15 talking about? Did Flagler County have an original
16 resolution to come under our jurisdiction or was it by
17 amendment, by inclusion or not inclusion, I suppose, in
18 the list of counties in 367.171? Did you originally
19 have a resolution passing jurisdiction to the
20 Commission?

21 MR. ADID: Yes, in the form of a motion. What the
22 county commission did was to convey their decision to
23 voluntarily come under the Public Service jurisdiction
24 to its legislative delegation during the waning days of
25 the 1980 legislative session when the sunset review

1 legislation was being finalized.

2 On the floor of the House of Representatives the
3 bill that had already passed the Senate, and for which
4 none of the legislative committee reports addressed the
5 status of Flagler County, Flagler County was amended
6 onto the bill to be a part of the Public Service
7 Commission family of counties. But for -- and the
8 Senate concurred in the House amendment. This was
9 during the closing days of the session. But for
10 Flagler County's resolution to choose to become a
11 county where its investor-owned utilities would be
12 regulated by the Public Service Commission, this
13 Commission would not have been exercising jurisdiction
14 over investor-owned utilities for the last 16 years.

15 It is important to point out that they make no
16 argument about the resolution passed this year
17 reflecting the vote of the county commission to retake
18 its jurisdiction over investor-owned utilities wholly
19 within the county. Their argument is that something
20 back in 1980 was flawed. It may not have been as
21 pretty as they wanted it. I mean, at the time that the
22 county commission made that resolution, and sent that
23 letter to its delegation, there were probably more cows
24 and cattle in Flagler County than people. Today that
25 is different. Today we have as many people now as we

1 have cattle.

2 COMMISSIONER GARCIA: That's a good thing, right?

3 MR. ADID: That is a very good thing. But the
4 bottom line is that the county expressed its will, as
5 other counties have, to be regulated by the Commission.
6 And has similarly, pursuant to the legislation,
7 expressed its will that it would like to retake its
8 jurisdiction over investor-owned utilities within the
9 county. And we would hope you would honor that
10 determination. Thank you.

11 CHAIRMAN CLARK: Thank you, Mr. Adid. Anything
12 further the Commission wants to ask on this item?

13 COMMISSIONER GARCIA: I will move staff.

14 COMMISSIONER JOHNSON: Second.

15 CHAIRMAN CLARK: On Issues 2 through 4?

16 COMMISSIONER GARCIA: Correct.

17 COMMISSIONER KIESLING: I'm sorry, I just need a
18 clarification, since on Issue 1 all we did was hear
19 from the parties, what --

20 COMMISSIONER GARCIA: No, 2 through 4.

21 CHAIRMAN CLARK: No, I think Commissioner Kiesling
22 is suggesting that you may need to --

23 COMMISSIONER KIESLING: You need to make a motion
24 on 1.

25 COMMISSIONER GARCIA: Oh, I'm sorry.

1 CHAIRMAN CLARK: And that we should modify Issue 1
2 to deny their request to intervene and move staff on
3 Issues 2 through 4. Is there a motion?

4 COMMISSIONER GARCIA: Yes, that is the motion.

5 COMMISSIONER KIESLING: And I second it.

6 CHAIRMAN CLARK: All those in favor say aye.

7 (Unanimous affirmative vote.)

8 CHAIRMAN CLARK: Opposed nay.

9 COMMISSIONER KIESLING: I do have one question.
10 Is there any question in the mind of the county as to
11 Plantation Bay being an intracounty intraconnected
12 utility that should stay under our jurisdiction?

13 MR. ADID: We brought that to the staff's
14 attention. We do concur with the staff recommendation
15 relative to that issue.

16 COMMISSIONER KIESLING: Thank you.

17 COMMISSIONER GARCIA: Good luck.

18 MR. ADID: And thank you.

19 COMMISSIONER KIESLING: And I know that with the
20 good grace of Mr. Sirkin and his broad expertise as
21 well as everything you learned last week in the water
22 rate school that the county will be able to handle
23 those duties without a problem.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings was transcribed from cassette tape, and the foregoing pages are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 12th day of November, 1996.

Jane Faurot

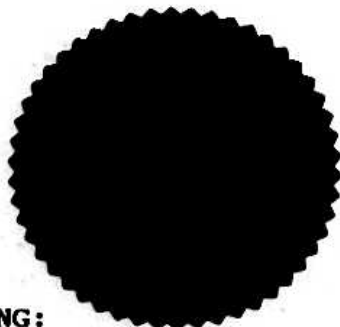
JANE FAUROT, RPR
P.O. Box 10751
Tallahassee, Florida 32302
(904) 379-8669

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Disposition of contributions in aid of construction
gross-up funds collected by Palm Coast Utility Corporation.

DOCKET NO. 961277-WS

BEFORE:



CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

23**PAA

DATE:

February 4, 1997

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

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STAFF RECOMMENDATIONS

Issue 1: Recommendation that PCUC not be required to refund excess gross-up collections plus accrued interest for the years 1992 through 1994. The utility required more gross-up than was collected in each year; therefore, no refund is necessary.
Issue 2: Recommendation that this docket be closed.

PROCEEDINGS

CHAIRMAN JOHNSON: Item 23.

COMMISSIONER CLARK: Move staff.

COMMISSIONER KIESLING: Second.

CHAIRMAN JOHNSON: Show it approved without objection.

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DATED THIS 11th day of February, 1997.



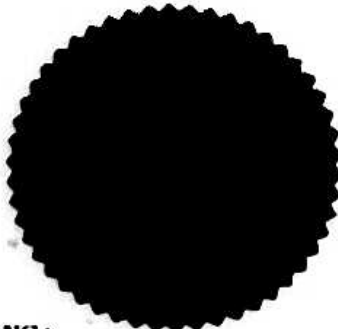
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Tallahassee, Florida 32302
(904) 379-8669

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Request for variance from Order No.
PSC-96-1190-FOF-WS by Palm Coast Utility Corporation.

DOCKET NO. 961276 WU

BEFORE:



CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

30**

DATE:

February 4, 1997

PLACE:

4075 Esplanade Way, Room 148
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STAFF RECOMMENDATIONS

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Issue 1: Recommendation that the Commission dismiss PCUC's application for variance for lack of jurisdiction.
Issue 2: Recommendation that this docket be closed.

1 PROCEEDINGS

2 CHAIRMAN JOHNSON: Item 30.

3 COMMISSION STAFF: Commissioners, Item Number 30
4 is staff's recommendation that the Commission dismiss
5 Palm Coast Utility's application for variance for a
6 lack of jurisdiction.

7 COMMISSIONER KIESLING: I move staff.

8 CHAIRMAN JOHNSON: Is there a second? On Item 30,
9 is there a second?

10 COMMISSIONER CLARK: I think so. I second.

11 COMMISSIONER DEASON: Let me ask a question. We
12 are denying the application for variance or dismissing
13 it because of a lack of jurisdiction?

14 COMMISSION STAFF: Yes, that's right.

15 COMMISSIONER DEASON: But do we have jurisdiction
16 over the monies that have been collected prior to this
17 point?

18 COMMISSION STAFF: Yes. That's the issue that was
19 addressed in Item Number 23, where we said -- well,
20 actually no refund was owed, but we said that it was a
21 pending matter, and if there was a refund owed then we
22 could tell the utility to go ahead and refund any
23 excess gross-up.

24 COMMISSIONER DEASON: So I guess I'm having a
25 problem, a little difficulty. If we have jurisdiction

1 in one instance, why don't we have jurisdiction in this
2 instance?

3 COMMISSION STAFF: Well, the difference between
4 the two dockets is one is prospective. In Item Number
5 23, those monies were already collected subject to
6 refund. So that was a pending matter, and we
7 maintained jurisdiction over the refund. In this item,
8 Item Number 30, the utility wants a variance to
9 continue collecting gross-up, and we don't see that we
10 have jurisdiction prospectively over this utility.

11 COMMISSIONER DEASON: But if they were to continue
12 collecting any funds we would still maintain our refund
13 jurisdiction over that, but you're saying that there is
14 not going to be any more funds collected.

15 COMMISSION STAFF: Well, we are saying that if
16 they want a variance from the order, then the proper
17 authority to seek that would be from the county at the
18 time that Order Number 961180 revoking their authority
19 to collect the gross-up was issued, and told the
20 utility that they could seek a variance, that was
21 issued on September 20. Flagler County took back
22 jurisdiction as of August 5th, so we are saying that
23 the authority to seek a variance from the order was
24 never applicable to Palm Coast.

25 COMMISSIONER CLARK: They can still go to Flagler

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County.

COMMISSION STAFF: Yes.

CHAIRMAN JOHNSON: Any other questions? There is a motion and a second. All those in favor signify by saying aye.

(Unanimous affirmative vote.)

CHAIRMAN JOHNSON: Opposed? Show it approved without objection.

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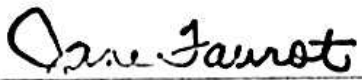
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DATED THIS 14th day of February, 1997.



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