

GATLIN, SCHIEFELBEIN & COWDERY, P.A.

Attorneys at Law

The Mahan Station
1709-D Mahan Drive
Tallahassee, Florida 32308

ORIGINAL
THE COPY

B. KENNETH GATLIN
WAYNE L. SCHIEFELBEIN
KATHRYN G.W. COWDERY

TELEPHONE (904) 877-5609
TELECOPIER (904) 877-9031
E-MAIL: bkgatlin@nettally.com

May 6, 1997

HAND DELIVERY

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

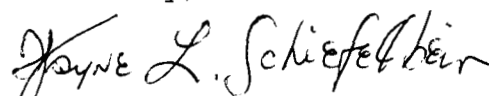
RE: Docket No. 951056-WS
Application by PALM COAST UTILITY CORPORATION
for a rate increase in Flagler County, Florida

Dear Ms. Bayo:

Enclosed for filing on behalf of Palm Coast Utility Corporation, are an original and one (1) copy of a Directions to Clerk, in reference to the above docket.

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

Sincerely,



Wayne L. Schiefelbein

- ACK _____
- AFA _____
- APP ~~WLS/pav~~
- CAF Enclosures
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

RECEIVED & FILED



CLERK OF RECORDS

DOCUMENT NUMBER-DATE

04453 MAY-66

FPSC-RECORDS/REPORTING

ORIGINAL
FILE COPY

IN THE FLORIDA PUBLIC
SERVICE COMMISSION

Palm Coast Utility Corporation,)
a Florida Corporation,)
)
Applicant/Appellant,)
)
v.)
)
State of Florida, Florida Public)
Service Commission,)
)
Appellee.)
_____)

FPSC Case No. 951056-WS

DIRECTIONS TO CLERK

Applicant/Appellant, Palm Coast Utility Corporation, directs the clerk to include the following items in the original record

1. All those items stated in Rule 9.200(a)(1), Fla. R. App. P., i.e., the original documents, exhibits and transcripts of proceedings; and

2. All those items set forth in Section 120.57(1)(f) 1-9, Florida Statutes (copy attached hereto).

3. If not already to be included in the record pursuant to paragraphs 1 and 2 above, please specifically include:

a) the test year request letter and test year approval letter (Documents 08641-95 and 09195-95);

b) the complete set of the 74-sheet water and wastewater system maps filed with Volume III of the MFRs (Document 13060-95) and incorporated therein by reference;

c) Order PSC-96-0493-FOF-WS suspending proposed rates and granting interim rate increase subject to refund (Document 04090-96);

DOCUMENT NUMBER-DATE

04453 MAY-66

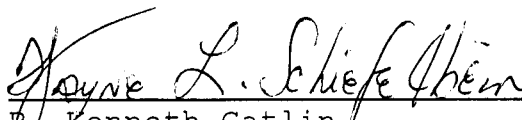
FPSC-RECORDS/REPORTING 1673

ORIGINAL
FILE COPY

- d) Order PSC-96-0577-PCO-WS establishing procedure (Document 04943-96);
- e) Prehearing Order PSC-96-0825-PHO-WS (Document 06864-96);
- f) Late-filed hearing exhibit 9 (Document 07728-96);
- g) Late-filed hearing exhibit 14 (Document 07729-96);
- h) PSC staff electronic spreadsheets, and notice of filing same (Document 00974-97);
- i) PSC staff electronic spreadsheets, and notice of filing same (Document 02766-97);
- j) Transcripts of Item 60 of October 9, 1996 and Item 31 of March 18, 1997 Agenda Conferences, and notice of filing same (Document 03439-97);
- k) PSC Staff electronic spreadsheets, and notice of filing same (Document 03863-97).

DATED this 6th day of May, 1997.

Respectfully submitted,



B. Kenneth Gatlin
 Fla. Bar No. 0027966
 Wayne L. Schiefelbein
 Fla. Bar No. 0265047
 Gatlin, Schiefelbein & Cowdery, P.A.
 1709-D Mahan Drive
 Tallahassee, Florida 32308
 (904) 877-5609

Attorneys for
PALM COAST UTILITY CORPORATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to Ms. Bobbie Reyes, Esq., Counsel for the Florida Public Service Commission, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0850, to Mr. Stephen C. Reilly, Counsel for the Office of Public Counsel, Associate Public Counsel, Office of Public Counsel, Claude Pepper Building, Room 812, 111 West Madison Street, Tallahassee, Florida 32399-1400, and to Mr. Richard Melson, Esq., Counsel for Dunes Community Development District, Hopping, Green, Sams & Smith, 123 South Calhoun Street, Tallahassee, Florida 32314, and by U.S. Mail to Mr. Albert J. Hadeed, Esq., Counsel for Flagler County, County Attorney, 1200 East Moody Boulevard, #11, Bunnell, Florida 32110-9764, on this 6th day of May, 1997.



Wayne L. Schiefelbein

- b. Does not enlarge, modify, or contravene the specific provisions of law implemented;
- c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;
- d. Is not arbitrary or capricious;
- e. Is not being applied to the substantially affected party without due notice;
- f. Is supported by competent and substantial evidence; and
- g. Does not impose excessive regulatory costs on the regulated person, county, or city.

3. The recommended and final orders in any proceeding shall be governed by the provisions of paragraphs (i) and (j), except that the administrative law judge's determination regarding the unadopted rule shall not be rejected by the agency unless the agency first determines from a review of the complete record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency's rejection of the determination regarding the unadopted rule does not comport with the provisions of this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney's fee for the initial proceeding and the proceeding for review.

(f) The record in a case governed by this subsection shall consist only of:

- 1. All notices, pleadings, motions, and intermediate rulings.
- 2. Evidence admitted.
- 3. Those matters officially recognized.
- 4. Proffers of proof and objections and rulings thereon.
- 5. Proposed findings and exceptions.
- 6. Any decision, opinion, order, or report by the presiding officer.
- 7. All staff memoranda or data submitted to the presiding officer during the hearing or prior to its disposition, after notice of the submission to all parties, except communications by advisory staff as permitted under s. 120.66(1), if such communications are public records.
- 8. All matters placed on the record after an ex parte communication.
- 9. The official transcript.

(g) The agency shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript available at no more than actual cost.

(h) Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized.

(i) The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. All proceedings conducted pursuant to this subsection shall be de novo. The agency shall allow

each party 15 days in which to submit written exceptions to the recommended order.

(j) The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules over which it has substantive jurisdiction. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

(k) If a recommended order is submitted to an agency, the agency shall provide a copy of its final order to the division within 15 days after the order is filed with the agency clerk.

(l) Notwithstanding any law to the contrary, when statutes or rules impose conflicting time requirements for the issuance of expedited hearings or recommended orders, the director of the division shall have the authority to set the proceedings for the orderly operation of this chapter.

(2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which subsection (1) does not apply:

(a) The agency shall:

1. Give reasonable notice to affected persons of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the action of the agency or to its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the parties are overruled, provide a written explanation within 7 days.

(b) The record shall only consist of:

1. The notice and summary of grounds.

2. Evidence received.

3. All written statements submitted.

4. Any decision overruling objections.

5. All matters placed on the record after an ex parte communication.

6. The official transcript.

(3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO CONTRACT BIDDING OR AWARD.—An agency which enters into a contract pursuant to the provisions of ss. 282.303–282.313, chapter 255, chapter 287, or chapters 334–349 shall adopt rules specifying procedures for the resolution of protests arising from the contract bidding process. Such rules shall at least provide that: