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June 14, 1996

ORIGINAL  
FILE COPY

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

Dear Ms. Bayo:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 15 copies of the Third Motion to Compel.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Stephen C. Reilly  
Associate Public Counsel

ACK   
AFS 3 SCR/bgm  
Enclosures  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CPAU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Application of PALM COAST ) Docket No. 951056-WS  
UTILITY CORPORATION for Increased ) Filed: June 14, 1996  
Rates in Flagler County, Florida /

CITIZENS' THIRD MOTION TO COMPEL

The Citizens of the State of Florida ("Citizens"), by and through their undersigned attorney, move this Commission to enter an order requiring Palm Coast Utility Corporation (PCUC, Utility or Company) to respond to Interrogatory No. 73 propounded in Citizens' Third Set of Interrogatories and respond to the Citizens' Fourth Set of Interrogatories and Fourth Requests for Production of Documents. In support of this motion the Citizens state the following:

1. Interrogatory No. 73 requests:

73. Provide the gallons of water sold to each of the above water customer groups identified in POD No. 72, by month, for the year 1995.

2. The Company objects to the Citizens' Interrogatory No. 73 because it states that it will provide the above information on an annual basis when it responds to Citizens Production of Document Request No. 65 on or before Monday, June 17, 1996. The Company claims it is irrelevant to ratemaking to provide the information by month.

3. While adjustments can be made to operation and maintenance expenses based upon any annual excessive inflow and infiltration (I&I) data, that is not the case for making used and

useful adjustments. The used and useful calculation for wastewater plant is based upon the flows of the maximum month. The Citizens need to know the level of any excess I&I in the maximum month to enable any adjustments to be made to the used and useful calculation. To accurately and fairly evaluate the issue of any possible excessive I&I in the used and useful calculation, it will be important to discover the amount of I&I, by month, to help determine any trends or changes that may have occurred.

4. PCUC objects to OPC's Fourth Set of Discovery because it alleges that OPC exceeded the 100 limit established in the Order Establishing Procedure. PCUC's objection is nothing but yet another delay tactic designed to hinder the Citizens' efforts to develop a record in this proceeding. PCUC's objection is unfounded and should be disregarded. PCUC spent significant effort in attempting to count OPC's Interrogatories and PODs. This effort would have been better spent on properly responding to the legitimate discovery of the Citizens. Instead, PCUC has wasted the time of this Office and the Commission with its superfluous objection. PCUC's objection to the number of PODs and Interrogatories propounded by the OPC is groundless. PCUC's count of the Citizens' discovery is erroneous. PCUC included in its count two interrogatories or PODs if the Citizens requested information for two years. Under PCUC's theory if OPC requests 12 months worth of information, which is commonly needed in a rate proceeding, PCUC could count the request as 12

Interrogatories or PODs. Simply put, the Commission should reject PCUC's objection concerning the number of Interrogatories and PODs propounded by OPC and order PCUC to play fairly and cooperate in the discovery process, not frustrate it.

5. OPC's fourth set of discovery represents the final set of discovery that will be propounded by the Citizens in this proceeding. In the alternative, if the Commission determines that OPC has in anyway exceeded the number of Interrogatories or Requests for Production of Documents authorized by Commission Order No. PSC-96-0577-PCO-WS, the Citizens hereby request the Commission to authorize such Interrogatories and PODs and direct PCUC to respond to those requests for information on an expedited basis.

6. In addition to the Company's above objection to the Citizens' entire fourth set of discovery, it also expressed specific objections to Citizens' Requests for Production of Documents Nos. 68, 69, 70, 72, 74 and 76.

7. Request for Production No. 68 provides:

68. Please provide a copy of example lot purchase agreements between ITT Community Development Corporation (ICDC) and lot purchasers which in anyway holds the lot purchaser financially responsible to ICDC for the maintenance and/or other costs associated with water and or sewer collection, transmission, and/or distribution lines that are considered non-used and useful.

8. PCUC objections on the grounds that the information requested is irrelevant and not in its possession, custody or control. The information is relevant to the issue of used and useful and the need for a margin reserve. If the utility has a

means of recovering the cost of non-used and useful plant, then there is no reason for the Commission to allow a margin reserve. Furthermore, if some of the plant, which is in place to serve the customers that are paying a maintenance fee for non-used and useful plant, has become used and useful then the fee should be discontinued, or the revenue (fee) should be included in current income. The information is in the possession custody and control of PCUC because it is in the possession custody and control of PCUC's parent company ITT Industries which has control over both ICDC and PCUC.

9. Request for Production No. 69 provides:

69. Please provide a copy of example lot purchase agreements between ICDC and lot purchasers which in anyway allows or requires the lot purchaser to prepay water and wastewater CIAC, service availability charges, hook-up fees, and/or the like.

10. PCUC objects on the grounds that the information requested is irrelevant and not in its possession, custody or control. The information is relevant to the issue of used and useful and the amount of CIAC that is included as an offset to rate base. The information is in the possession, custody and control of PCUC because it is in the possession, custody and control of PCUC's parent company ITT Industries which has control over both ICDC and PCUC.

11. Request for Production No. 70 provides:

70. Please provide a copy of all workpapers and source documents used by the Company to calculate reuse revenue included in the MFRs.

12. PCUC objects because it will produce this information

in response to OPC's documents request 66<sup>1</sup> and Interrogatory 79. This is not an objection. As long as the information requested is produced, the Citizens can withdraw this document request, pending satisfactory responses to POD 66 and Interrogatory 79.

13. Request for Production No. 72 provides:

72. For purposes of this request please refer to Attachment 36, and the Revenue Agreement between ITT Community Development Corporation and the Company. Please provide for each month of 1994 and 1995, the Exhibit B calculation used to determine the amount of availability fee charged to ICDC.

14. PCUC suggests that it responded to the requested information in its supplemental response to OPC's Interrogatory No. 47. The Company's suggestion is not satisfactory. The document requested is produced on a monthly basis and would take a mere 10 minutes to copy. The Citizens' request stands as is, and has not been responded to as requested by PCUC's supplemental response.

15. Request for Production No. 74 provides:

74. Please provide a copy of the March 26, 1974 offering statement referenced on page 10 of 10 of May 12, 1994 offering statement included in the additional MFRs.

16. PCUC objects because it alleges that the requested information is irrelevant. The requested information is not irrelevant as evidenced by the fact that the Commission requires the most recent offering statement as part of the utility's MFRs. The Citizens have merely requested the prior offering statement

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<sup>1</sup> PCUC suggests in its objection that OPC has received POD 66. OPC has not received the response to this POD.

to see what changes if any have occurred between the two offering statements and to determine if the offers made to customers are consistent with the utility's MFR documentation--in particular CIAC.

17. Request for Production No. 76 provides:

76. Please provide a copy of the budget and associated workpapers used to prepare the budgeted six month period of the test year.

18. The Citizens withdraw this request. The Citizens' believed there to be more to the utility's budget than that provided in response to OPC's Document Request No. 13. However, if no other documentation exists, the Citizens withdraw this request.

WHEREFORE, the Citizens respectfully request the Commission to compel PCUC to respond to Citizens' Interrogatory No. 73 propounded in the Citizens' Third Set of Interrogatories and to provide information and documents responsive to Citizens' Fourth Set of Interrogatories and Fourth Set of Requests for Production of Documents on an expedited basis.

Respectfully submitted,



Stephen C. Reilly  
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Office of Public Counsel  
The Florida Legislature  
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(904) 488-9330

Attorney for the Citizens  
of the State of Florida

CERTIFICATE OF SERVICE  
DOCKET NO. 951056-WS

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or \*hand-delivery to the following parties on this 14th day of June, 1996.


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Stephen C. Reilly  
Associate Public Counsel