

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 951056-WS
increase in Flagler County by) ORDER NO. PSC-96-0819-PCO-WS
Palm Coast Utility Corporation) ISSUED: June 24, 1996
_____)

ORDER ON MOTION FOR TEMPORARY PROTECTIVE ORDER AND
FOR PROTECTIVE ORDER AND REQUEST FOR ORAL ARGUMENT
AND
ORDER ON MOTION TO COMPEL

Background

On May 1, 1996, Palm Coast Utility Corporation (Palm Coast or PCUC) filed its Motion for Temporary Protective Order and for Protective Order, pursuant to Rules 25-22.006, Florida Administrative Code. The Office of Public Counsel (OPC or Citizens) timely filed its response to this motion on May 8, 1996. Further, on May 15, 1996, the OPC filed its Motion to Compel the production of the documents requested under Document Request Nos. 12, 18, and 25. Palm Coast timely responded to OPC's Motion to Compel by a response filed on May 22, 1996. Palm Coast also requested Oral Argument which was denied at the prehearing conference on June 20, 1996, as not necessary for the resolution of the issues.

Request For Temporary Protective Order

Palm Coast requests a temporary protective order in response to Document Request No. 4, which requests that Palm Coast "Provide a complete copy of the Company's internal accounting manuals and chart of accounts." Palm Coast states that it uses GAAP and the NARUC system of accounts for accounting purposes and objected to the production of those books as burdensome and unnecessary. Palm Coast also uses an internally generated accounting manual, known as "Finance Policies." It is this document for which Palm Coast seeks a temporary protective order on the grounds that it is confidential proprietary business information.

In response to the request for a temporary protective order, OPC does not object to Palm Coast producing this document pursuant to a temporary protective order or to Palm Coast's request that the documents in question be viewed at their office at a time mutually convenient to the parties.

Therefore, Palm Coast's Motion for Temporary Protective Order is hereby granted. Accordingly, the document identified as the

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

"Finance Policies" Manual shall be kept confidential and exempt from public disclosure under Section 119.07(1), Florida Statutes, for the duration of this Temporary Protective Order.

Palm Coast shall, in accordance with the provisions of Rule 25-22.006(6)(a), apply for confidential treatment of those portions of the materials and information which are, in its opinion, entitled to such treatment within fourteen days of notification that OPC has identified the documents or information it will use at the final hearing. This Temporary Protective Order shall remain in effect no longer than eighteen months. However, once OPC determines which information it intends to use and notifies Palm Coast, Palm Coast shall have fourteen days to apply for a permanent protective order and this temporary protective order will no longer be in effect fourteen days after such notice. Further, OPC shall return to Palm Coast, all materials and information that it does not intend to use in this proceeding. The expiration date of this Order shall be void upon the issuance of an order finding that the information and materials herein are not proprietary and confidential business information. This Order shall have no effect on the subsequent determination of any request for specified confidential classification of any of these materials and information.

Motion for Protective Order

Palm Coast has requested a protective order in response to OPC's Requests for Production Nos. 2, 12, 18, and 25. However, OPC has moved to compel production on only Document Requests Nos. 12, 18, and 25. Each of these remaining requests is discussed separately below.

Document Request No. 12

For Document Request No. 12, OPC requested as follows:

Provide a copy of correspondence between the Company and any other utility or municipality, city or government agencies concerning the possible purchase of Palm Coast.

Palm Coast responded as follows:

The company objects to this document request on the grounds that it is irrelevant. Correspondence regarding the potential purchase of Palm Coast Utility Corporation is not reasonably calculated to lead to admissible evidence in this rate case. Further, this request is overly broad and unduly burdensome, and contains

proprietary confidential business information. If any of this information is ultimately deemed discoverable, discovery should be made at PCUC's offices because of the great volume of documents involved and/or the confidential nature thereof.

OPC argues that the information sought is relevant and is reasonably calculated to lead to the discovery of admissible evidence. Specifically, OPC states that the possible effects the exercise of an option to buy will have on Palm Coast's capital structure, levels and types of future expenses, and effects on rate base (positive or negative acquisition adjustment), and, also the extent to which utility personnel participated in these transactions for the purpose of proposing adjustments to test year salary expenses for Palm Coast, is discoverable.

Upon reviewing this discovery request and Palm Coast's objection, it appears that the information sought by OPC is not reasonably calculated to lead to the discovery of admissible evidence. Future capital structure, future expenses, and the effects of any acquisition adjustment related to a possible future sale are not in any way relevant to this proceeding. Based on the above, Palm Coast's motion for a protective order is granted for Document Request No. 12, and OPC's Motion to Compel is hereby denied.

Document Request No. 18

For Document Request No. 18, OPC has requested as follows:

Provide a copy of all Federal income tax returns for ITT for each of the years 1993, 1994, and 1995, including a complete copy of any and all schedules, workpapers, and consolidating schedules.

Palm Coast objects to this request as irrelevant, unduly burdensome and expensive. Palm Coast also objects on the basis that the documents requested are proprietary confidential business information.

In moving to compel production, the OPC cites Orders Nos. PSC-95-1504-PCO-WS and PSC-96-0347-FOF-WS, issued in Docket No. 950495-WS, which required Southern States Utilities, Inc., (SSU) "to make available without condition the consolidated tax return of MP&L [Minnesota Power and Light Company - parent company of SSU] which OPC has requested for inspection and copying at SSU's offices in Apopka within five days of the Commission's vote." Palm Coast argues that SSU is distinguishable from this case in that SSU did

not object to production of the consolidated tax returns, but to the manner of production. Palm Coast further argues that because the burden and expense of allowing inspection of these documents (consisting of thousands of pages) in New York far outweighs the likelihood that such discovery would lead to admissible evidence, that it is not appropriate to allow discovery where the information is most likely readily available through less burdensome discovery routes. Palm Coast cites Krypton Broadcasting of Jacksonville, Inc. v. MGM - Pathe Communications Co., 629 So. 2d 852 (Fla. 1st DCA 1993), as requiring this balancing test.

In the event its request for a protective order denying zdiscovery is denied, Palm Coast requests that the documents be protected as confidential proprietary business information pursuant to Section 367.156, Florida Statutes, that such inspection occur at the ITT offices where the documents reside, and that no copying be allowed.

Citizens' Motion to Compel is granted to the extent that the utility shall make available for inspection and copying the requested documents at the ITT offices where the documents reside or at Palm Coast's office no later than June 28, 1996. However, pursuant to the provisions of Section 367.156, Florida Statutes, I find it appropriate to protect as confidential the information requested by Document Request No. 18.

Document Request No. 25

OPC's Motion to Compel production of Document Request No. 25 was clarified to request actual 1995 cost data for the B-5 schedules where the company supplied projected test year data in the MFRs. Palm Coast objects to this production request on the grounds that no such documents exist and that they cannot be compelled to create a document which does not exist.

Palm Coast's request for protection from responding to Document Request No. 25 is granted, and OPC's related Motion to Compel is denied. However, this ruling is limited solely to the form of the discovery request. The substance of the request is also the subject of Interrogatory No. 82 and a pending motion which will be ruled on in a separate order.

Based on the foregoing, it is

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that Palm Coast Utility Corporation's Motion for Temporary Protective Order and for Protective Order is granted in part and denied in part as set out in the body of this Order. It is further

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ORDERED that the request of Palm Coast Utility Corporation for Oral Argument on its Response to the Citizens' Motion to Compel is denied. It is further

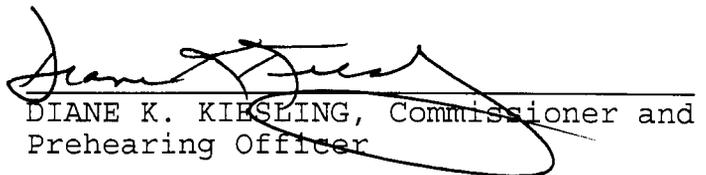
ORDERED that the Citizens' Motion to Compel Palm Cost Utility Corporation to produce documents is granted for Document Request No. 18, but denied for Document Requests Nos. 12 and 25. It is further

ORDERED that those documents produced in response to Document Request No. 18 shall be made available for inspection and copying at the offices where the documents reside or at Palm Coast's offices by no later than June 28, 1996. It is further

ORDERED that those documents produced in response to Request for Production No. 18 shall be protected as confidential as set forth in the body of this Order. It is further

ORDERED that the documents submitted in response to Request for Production No. 4 shall be protected by a temporary protective order as set forth in the body of this Order.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 24th day of June, 1996.


DIANE K. KIESLING, Commissioner and
Prehearing Officer

(S E A L)

RRJ

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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

MEMORANDUM

JUNE 24, 1996

RECEIVED

JUN 24 1996

3.05

FPSC-RECORDS/REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (JAEGER)
RE: DOCKET NO. 951056-WS - APPLICATION FOR RATE INCREASE IN
FLAGLER COUNTY BY PALM COAST UTILITY CORPORATION

6819-PCD

Attached is an ORDER ON MOTION FOR TEMPORARY PROTECTIVE ORDER
AND FOR PROTECTIVE ORDER AND REQUEST FOR ORAL ARGUMENT AND ORDER ON
MOTION TO COMPEL, to be issued in the above-referenced docket.
(Number of pages in Order - ⁶~~2~~)

*Please issue this Order today.
(6/24/96)*

RRJ/dp

Attachment

cc: Division of Water and Wastewater (Willis, Crouch, Merchant,
Moniz, Rendell, Starling, Washington, Webb)

I: PALMC.RRJ

MUST GO TODAY

4/27