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a partnership including a professional association

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ORIGINAL  
FILE COPY

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June 19, 1996

**HAND DELIVERY**

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-1850

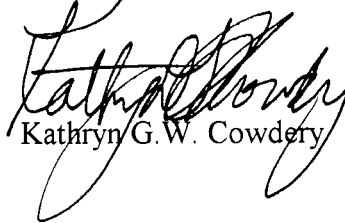
RE: Docket No. ~~951056-WS~~  
Application by PALM COAST UTILITY CORPORATION  
for a rate increase in Flagler County, Florida

Dear Ms. Bayo:

Enclosed for filing are an original and fifteen copies of PCUC's Response to Flagler County's Memorandum in Support of Citizens' Motion to Compel Production of Option Agreement and Request for Oral Argument on Palm Coast Utility Corporation's Response to Flagler County's Memorandum in Support of Citizens' Motion to Compel Production of Option Agreement, 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. Thank you for your assistance.

Sincerely,

  
Kathryn G. W. Cowdery

- ACK \_\_\_\_\_
- AFA 1
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR KGWC/met
- EAG Enclosures
- LEG Edmonds
- LIN 3
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

RECEIVED & FILED  
*Max*  
DIVISION OF RECORDS & REPORTING

DOCUMENT NUMBER-DATE  
06610 JUN 19 96  
FPSC-RECORDS/REPORTING

*Response*  
DOCUMENT NUMBER-DATE  
06609 JUN 19 96  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate increase in )  
Flagler County by PALM COAST )  
UTILITY CORPORATION )

Docket No. 951056-WS

Filed: June 19, 1996

ORIGINAL  
FILE COPY

**PCUC'S RESPONSE TO FLAGLER COUNTY'S MEMORANDUM  
IN SUPPORT OF CITIZENS' MOTION TO COMPEL PRODUCTION  
OF OPTION AGREEMENT**

Palm Coast Utility Corporation (PCUC), pursuant to Rule 25-22.038(2)(b), F.A.C., hereby files its response to Flagler County's Memorandum in Support of Citizens' Motion to Compel Production of Option Agreement, and states:

1. On April 12, 1996, the Office of Public Counsel (OPC) served Citizens' Second Set of Requests for Production of Documents, including Document Request No. 48, to which PCUC objected on May 13, 1996 in its Response to Citizens' Second Set of Requests for Production to Documents to PCUC, as follows:

48. Please provide any and all purchase agreements, amendments, and option agreements, entered into between ITT (including any of ITT's subsidiaries or affiliates) and Minnesota Power and Light Company (including any of Minnesota Power and Light Company's subsidiaries or affiliates) concerning the sale of Palm Coast Utility Corporation to Minnesota Power and Light Company (including any of Minnesota Power and Light Company's subsidiaries or affiliates).

PCUC's response:

48. Objection. Irrelevant; not reasonably calculated to lead to admissible evidence in this rate case. Confidential proprietary business information.

On May 17, 1996, PCUC filed its Second Motion for Protective Order regarding, inter alia, Request for Production No. 48, OPC filed a motion to compel production on, inter alia, Document Request No. 48 on May 24, 1996. PCUC's Response to Citizens' Second Motion to Compel on June 3, 1996.

DOCUMENT NUMBER-DATE

06609 JUN 19 96

FPSC-REGDORS/REPORTING

457

On June 14, 1996, Flagler County served by U.S. mail its Petition of Flagler County for Leave to Intervene, and Intervenor County's Memorandum in Support of Citizens' Motion to Compel Production of Option Agreements. Although Flagler County does not refer specifically to OPC's Request for Production No. 48, it is assumed that it is referring to that discovery request.

2. The County presents no legal argument to counter any of PCUC's arguments, Commission Orders and Court cases, as set forth in PCUC's Second Motion to Compel, that the Option Agreement should be protected from discovery because it is irrelevant to this rate case proceeding. See, In re: Application for Amendment of Certificate Nos. 298-W and 248-S in Lake County by J.J.'s Mobile Homes, Inc., etc., combined Docket Nos. 921237-WS/940264-WS, Order No. PSC-94-1563-PCO-WS, issued December 15, 1995; Ft. Pierce Utilities Authority v. FPSC, 388 So.2d 1031 (Fla. 1980). The County makes only general statements with no apparent basis in fact. An option to purchase agreement can have no bearing on rate base which is set using net original cost, a calculation wholly independent of and unrelated to any subsequent sale price. An option agreement can have no "effects on the test year." All "numbers" in this case have been supported by PCUC and reviewed by Commission auditors and staff wholly independent of and unrelated to the Option Agreement. The Option Agreement has not been exercised and by definition is not binding on the potential buyer.

3. Flagler County itself is interested in buying PCUC. Attachment "A" hereto is the County's Request for Proposal, published in *The Florida Specifier*, in May 1996, requesting: "proposals for the development of a comprehensive engineering and financial report on the water and wastewater systems of Palm Coast Utility Corporation (PCUC) which will be used to evaluate the possible purchase of the system by Flagler County." According to the attached Request for

Proposals, copies of proposals were required to be received by the County by May 30, 1996. Thus, it appears that Flagler County has an interest in the Option Agreement apart from its alleged relevance to this rate case.

4. As set forth in PCUC's Second Motion for Protective Order, the Option Agreement is confidential proprietary business information. In re: Application for rate increase and increase in service availability charges by SSU, Inc., etc., Docket No. 950495-WS, Order No. PSC-95-1377-CFO-WS, issued November 6, 1995.

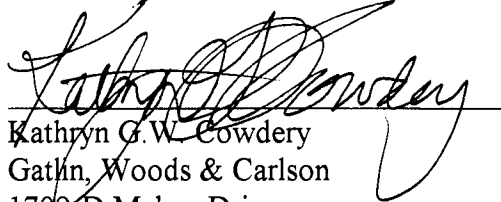
5. PCUC requests that if the Prehearing Officer is inclined to compel production, that she first conduct in camera inspection of the document in order to determine if the document has any relevance to this rate case.

WHEREFORE, PCUC requests that the Prehearing Officer,

1. Deny OPC's Motion to Compel, or in the alternative,
2. Conduct in camera inspection of the Option Agreement to determine whether discovery should be had, and
3. If discovery is ordered, allow discovery to OPC only pursuant to PCUC's Second Motion for Protective Order.

DATED this 19th day of June, 1996.

Respectfully submitted,

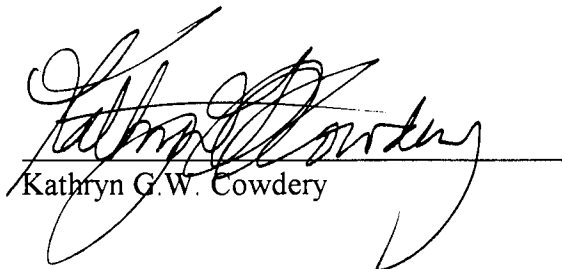


Kathryn G.W. Cowdery  
Gathin, Woods & Carlson  
1709-D Mahan Drive  
Tallahassee, Florida 32308  
(904) 877-7191

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 Mr. Scott Edmonds, Esquire, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0850, Mr. Stephen C. Reilly, Associate Public Counsel, Office of Public Counsel, 111 W. Madison Street, Room 812, Claude Pepper Building, Tallahassee, Florida 32399-1400, and Mr. Richard D. Melson, Esquire, Hopping, Green, Sams & Smith, 123 South Calhoun Street, Tallahassee, Florida 32314, and by U.S. mail to Mr. Albert J. Hadeed, County Attorney, 1200 E. Moody Blvd. #11, Bunnell, Florida 32110, on this 19th day of June, 1996.



Kathryn G.W. Cowdery

Please respond in confidence to:  
Dept. MRE, NTCC  
P.O. Box 2027, Winter Park, FL 32790

Tampa, FL  
(813) 282-4623 • F

## REQUEST FOR PROPOSAL

RFP #96-05-30-01

### Water and Wastewater Systems Evaluation (PCUC)

Flagler County, Florida hereby requests proposals for the development of a comprehensive engineering and financial report on the water and wastewater systems of Palm Coast Utility Corporation (PCUC) which will be used to evaluate the possible purchase of the systems by Flagler County. The engineering part of the study shall include evaluation of the systems; a detailed inventory of each system; determination of current and future needs; development and comparison of alternatives with regard to cost, environmental, and other factors; and recommendations for necessary improvements. The financial part of the study shall include system price estimation, pre-acquisition due diligence, financial assistance and a financial feasibility study. The study, which shall be in accordance with all applicable provisions of Florida Statutes, shall also outline the process required should the County desire to purchase the systems. The County may expand initial services to include those services related to utility acquisition and regulation. This request does not include legal services.

Proposals shall contain Standard Forms 254 and 255 and include experience with similar projects; qualifications of professional staff; current work load; projected time frame to complete the requested study; designation of the project manager; a list of work that the firm has performed for PCUC and ITTCDC; and an indication as to whether or not a potential conflict might exist due to work that the firm is presently, has recently, or reasonably expects in the future to conduct with a firm that could be impacted by the County's purchase or failure to purchase PCUC; a list of references that the County can contact; and a cover letter signed by an authorized representative of the firm. The above-noted information is required for the submitting firm and any associated firm and/or firms to which the primary or lead firm is subcontracting portions of this work. The County reserves the right to reject any portion or all of a proposal at its sole discretion and reserves the right to waive any irregularities or informalities.

Recommendation for the selection of a consultant will be made by staff to the Board of County Commissioners following interviews of the shortlisted firms.

Proposals and any representative samples of previous work that may be provided shall be sent in a sealed envelope/container and marked "Water & Wastewater Proposal" to:

Flagler County Administration Offices  
ATTN: Purchasing Coordinator Janet J. Anderson, CPPB  
1200 E. Moody Boulevard #1  
Bunnell, FL 32110

Seven (7) copies are required. Proposals must be received by 4:30 p.m., Thursday, May 30, 1996. Proposals will be opened at 9:00 a.m. the following day. Facsimile submittals are not acceptable and will not be considered.

### Sewer Fore

\$19,160 - \$28,810  
High school grad. o  
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yr. supervisory exp.  
Class B CDL.

Sanford C  
Civil Servi  
300 N. P  
P.O. Bo  
Sanford, F

EOE/ADA/Vet Pref/D

### Solid Waste Salary Range: \$4

Directs a staff of  
a \$17,000,000 budge  
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responsible experienc  
waste operations req

Martin C  
2401 S.E. Mo  
Stuart, FL

Apply by:

Martin County I