

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

SEPTEMBER 26, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO) *Bayo*

FROM: DIVISION OF WATER & WASTEWATER (WALKER, MESSER) *Walker*
DIVISION OF LEGAL SERVICES (CYRUS-WILLIAMS) *Cyrus Williams*

RE: DOCKET NO. 960898-WS - RESOLUTION 96-62 BY BOARD OF
FLAGLER COUNTY COMMISSIONERS RESCINDING FLORIDA PUBLIC
SERVICE COMMISSION JURISDICTION OVER PRIVATE WATER AND
WASTEWATER COMPANIES IN FLAGLER COUNTY

AGENDA: OCTOBER 8, 1996 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\WAW\WP\960898.RCM

CASE BACKGROUND

Pursuant to a 1980 amendment of Section 367.171(3), Florida Statutes, effective July 1, 1980, the Florida Public Service Commission (the Commission) gained jurisdiction over investor-owned water and wastewater utilities operating in Flagler County. The Commission has actively regulated the utilities in Flagler County since that time. On August 5, 1996, the Flagler County Board of County Commissioners (Flagler County or the County) met and adopted Resolution No. 96-62 rescinding Commission jurisdiction in Flagler County effective immediately. On August 15, 1996, Palm Coast Utility Corporation (PCUC or the utility), one of the investor-owned water and wastewater utilities operating in Flagler County, filed a Petition to Intervene, an Objection to Flagler County Resolution No. 96-62, and a Request for Oral Argument. On August 27, 1996, the County filed a Response and on September 4, 1996, PCUC filed a Reply.

DOCUMENT NUMBER-DATE

10343 SEP 26 96

FPSC-RECORDS/REPORTING

DOCKET 960898-WS
DATE: SEPTEMBER 26, 1996

ISSUE 1: Should PCUC's Petition to Intervene and Request for Oral Argument be granted?

RECOMMENDATION: No. PCUC's Petition to Intervene and Request for Oral Argument should not be granted because PCUC does not have standing to intervene where the County may, as a matter of statutory right, rescind its resolution granting the Commission jurisdiction. (CYRUS-WILLIAMS)

STAFF ANALYSIS: On August 15, 1996, PCUC petitioned to intervene in this case as a substantially affected party. In its August 15, 1996 objection, PCUC states that Flagler County's Resolution No. 96-62 is ineffective and does not rescind the jurisdiction of the Commission over water and wastewater utilities in Flagler County. PCUC argues that since the Commission was delegated authority by the Legislature, the only valid way the Commission's jurisdiction may be rescinded is by action of the Legislature. It is PCUC's belief that Section 367.171(1), Florida Statutes should be interpreted to mean that the Legislature delegated authority to the counties to re-take jurisdiction only when the county was made subject to the Commission's jurisdiction by "prior resolution." PCUC argues that since there was no resolution, there is no "prior resolution" for the County to rescind, and a statutory amendment by the Legislature is required to transfer jurisdiction back to Flagler County.

In its August 27, 1996 response, the County objected to PCUC being granted party status. It argues that this docket is purely an administrative mechanism for acknowledging a county's resolution, and as such, the Commission does not have the jurisdiction to adjudicate the legality or validity of a county's resolution. The County further argues that this docket is not an adversary proceeding under the rules of the Commission, that the County is not an entity subject to regulation by the Commission, that this is not a Section 120.57 hearing to determine the substantial interests of a party, and that this is not a declaratory statement proceeding. In the alternative, the County argues that there was a "prior resolution" to rescind. The County states that when the Florida Senate first passed the sunset bill on April 8, 1980, Flagler County was not placed within Commission jurisdiction. The County states that it was amended onto the bill placing it under Commission jurisdiction only at its request and only after the bill was referred to the House. The County argues that this should make it clear that it was the County's measure which led to its inclusion within Commission jurisdiction. It is the County's belief that when it acted in 1980 to opt in, this act constituted a resolution because there are no legal requirements as

DOCKET 960898-WS
DATE: SEPTEMBER 26, 1996

to the form of a resolution, either in Chapter 367 or anywhere else in Florida law.

On September 4, 1996, PCUC filed a reply to Flagler County's response. However, a reply to a response is not contemplated by Commission rules. Rule 25-22.037(2)(b), Florida Administrative Code, permits parties to file motions in opposition to a motion within seven days, but that rule does not allow parties to file a reply to a response. The pleading cycle must stop at a reasonable point, and the rule reflects that.

Section 367.171(1), Florida Statutes provides that a county, after ten continuous years under jurisdiction of the Commission, may by resolution or ordinance rescind any prior resolution or ordinance imposing Commission jurisdiction and thereby exclude itself from the provisions of Chapter 367, Florida Statutes. Staff believes that PCUC's argument that the only valid way the Commission's jurisdiction may be rescinded in this case is by action of the Legislature is without merit. Whether or not Flagler County actually came under Commission jurisdiction through prior resolution or statutory amendment is not dispositive of this issue. The County may, as a matter of statutory right, rescind Commission jurisdiction, and PCUC does not have standing to intervene where a county exercises this statutory right. See Board of County Com'rs of St. Johns County v. Beard, 601 So. 2d 590, 591 (Fla. 1st DCA 1992) ("[T]he County exercised its statutory right to rescind its resolution and thereby exclude its private utilities from PSC jurisdiction.").

Accordingly, Staff recommends that PCUC's Petition to Intervene and Request for Oral Argument be denied.

DOCKET 960898-WS
DATE: SEPTEMBER 26, 1996

ISSUE 2: Should the Commission acknowledge the resolution adopted by the County to rescind Commission jurisdiction?

RECOMMENDATION: Yes. The Commission should acknowledge the resolution that rescinds Commission jurisdiction in Flagler County. (WALKER, CYRUS-WILLIAMS)

STAFF ANALYSIS: Pursuant to a 1980 amendment of Section 367.171(3), Florida Statute, effective July 1, 1980, the Commission gained jurisdiction over investor-owned water and wastewater utilities operating in Flagler County. The Commission has actively regulated the utilities in Flagler County since that time. On August 5, 1996, the County adopted Resolution No. 96-62 rescinding Commission jurisdiction in Flagler County effective immediately.

Section 367.171(1), Florida Statute, provides that a county, after ten continuous years under jurisdiction of the Commission, may by resolution or ordinance rescind Commission jurisdiction and thereby exclude itself from the provisions of Chapter 367, Florida Statutes. Flagler County has met that requirement. Staff believes that Flagler County Resolution No. 96-62 is valid and effective, and therefore, recommends that the Commission acknowledge the resolution which rescinds Commission jurisdiction in Flagler County as of August 5, 1996.

DOCKET 960898-WS
DATE: SEPTEMBER 26, 1996

ISSUE 3: Should the Commission cancel the certificates of the regulated utilities in Flagler County?

RECOMMENDATION: Certificates previously issued to water and wastewater utilities in Flagler County that do not have cases pending before the Commission should be returned to the Commission within 30 days of the Commission's order for cancellation. Certificates held by utilities in Flagler County that have pending cases before the Commission should be returned for cancellation at the conclusion of their respective cases. (WALKER, CYRUS-WILLIAMS)

STAFF ANALYSIS: Section 367.171(5), Florida Statutes, states that:

When a utility becomes subject to regulation by a county, all cases in which the utility is a party then pending before the Commission, or in any court by appeal from any order of the Commission, shall remain within the jurisdiction of the Commission or court until disposed of in accordance with the law in effect on the day such case was filed by any party with the Commission or initiated by the Commission, whether or not the parties or the subject of any case relates to a utility in a county wherein this chapter no longer applies.

The following utilities had valid Commission certificates to provide water and wastewater service in Flagler County:

<u>Utility</u>	<u>Certificate Number(s)</u>	
Ocean City Utilities, Inc.	509W	391S
Palm Coast Utility Corporation	344W	302S
Plantation Bay Utility Company	455W	389S

The following utilities have cases pending before the Commission:

<u>Utility</u>	<u>Docket Number(s)</u>
Palm Coast Utility Corporation	951056-WS
Palm Coast Utility Corporation	951593-WS
Plantation Bay Utility Company	951296-WS

DOCKET 960898-WS

DATE: SEPTEMBER 26, 1996

Staff recommends that Certificates Nos. 509W and 391S, held by Ocean City Utilities, Inc., be cancelled and returned to the Commission within 30 days of the Commission's order.

Staff also recommends that Certificates Nos. 344W and 302S, held by PCUC, and Certificates Nos. 455W and 389S, held by Plantation Bay Utility Company, be cancelled and returned to the Commission within 30 days of the conclusion of the open dockets involving those utilities.

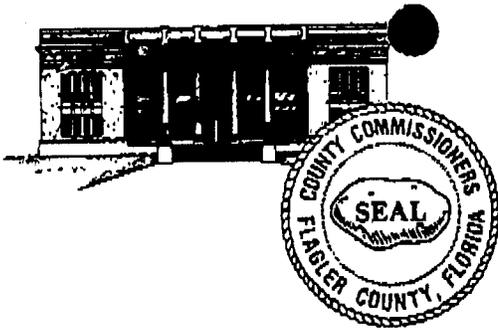
The cancellation of the certificates pursuant to the order should not affect the authority of the Commission to collect, or the obligation of the utilities to pay, regulatory assessment fees accrued prior to the August 5, 1996 transfer of jurisdiction to Flagler County.

DOCKET 960898-WS
DATE: SEPTEMBER 26, 1996

ISSUE 4: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open until all dockets currently pending before the Commission have been closed.
(WALKER, CYRUS-WILLIAMS)

STAFF ANALYSIS: Staff recommends that this docket remain open until all dockets currently pending before the Commission have been closed.



**Flagler County
Board of County Commissioners
Al Hadeed**

County Attorney
1200 E. Moody Blvd., # 11
Bunnell, Florida 32110
(904) 437-7483 FAX (904) 437-8292

By Facsimile

September 17, 1996

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

Re: 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, Florida

Dear Ms. Bayo:

This acknowledges receipt of the CASR in the above
captioned docket.

Please fax to me any further revisions to the CASR.

Thank you for your cooperation.

Sincerely,

Al Hadeed

P.S.

Please note that the CASR was faxed to me by your office on
September 12, 1996. However, the fax imprint by your
facsimile machine reflected a September 10th transmittal
date. We do not know the reason for the discrepancy.

AJH\pdh

960100





Flagler County
Board of County Commissioners

Al Hadeed

County Attorney

1200 E. Moody Blvd., #11

Bunnell, Florida 32110

(904) 437-7483 FAX (904) 437- 8292

FACSIMILE TRANSMISSION FORM

TO: *Blanca A. Bayo*

LOCATION: *Tallahassee*

FAX PHONE # *904-413-7118*

DATE: *9/17/96*

OF PAGES *2* (including cover sheet)

MESSAGE:

JACK NUGENT
District 1

MICHAEL R. DES PARTE
District 2

JIM DARBY
District 3

SAM TRIVETT
District 4

GEORGE HANNS
District 5

