

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of CIAC) DOCKET NO. 960934-WU
gross-up funds collected in) ORDER NO. PSC-96-1393-FOF-WU
1994-1996 by Bocilla Utilities,) ISSUED: November 20, 1996
Inc. in Charlotte County.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER FINDING SHOW CAUSE NOT REQUIRED
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING REFUNDS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein pertaining to the approval of refunds of the gross-up of contributions-in-aid-of-construction is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On September 27, 1994, the Board of County Commissioners of Charlotte County adopted a resolution declaring all water and wastewater utilities within its boundaries to be subject to the jurisdiction of the Florida Public Service Commission. By Order No. PSC-95-0966-FOF-WU, issued August 8, 1995, the Commission granted Bocilla Utilities, Inc. (Bocilla or utility) a certificate pursuant to Section 367.171, Florida Statutes, to provide water service in Charlotte County. Also, by the same order, the Commission authorized Bocilla to continue collecting gross-up of contributions-in-aid-of-construction (CIAC) on an interim basis, subject to refund with interest. Bocilla is a Class C utility providing water service to approximately 158 customers in Charlotte County. For 1995, the utility reported gross operating revenues of \$97,673 and a net operating loss of \$14,270.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

On May 28, 1996, this Commission received a letter from Mr. R. Craig Noden, President of the utility, requesting that the gross-up of CIAC charge be removed from the utility's customer connection (tap-in) charge. On July 1, 1996, Mr. Noden explained that because Bocilla is operating at a loss and would not be taxed on any CIAC collected, it would no longer gross-up CIAC. Further, he explained that since the utility had paid no taxes on the CIAC collected during 1994 and 1995, the gross-up collected had to be refunded to the contributors. By correspondence dated July 5, 1996, we informed Mr. Noden that pursuant to Order No. PSC-95-0966-FOF-WU, Bocilla was required to: 1) place any gross-up taxes collected from September 27, 1994 forward into an interest bearing account; 2) provide a report by the 20th of each month stating the monthly and total revenue collected subject to refund; and 3) file, within 90 days of the issuance of the order, the information required by Order No. 23541, issued October 1, 1990, granting water and wastewater utilities authority to continue collecting gross-up of CIAC. The utility did not comply with this third requirement in a timely manner, and this matter is discussed further within this order.

On August 1, 1996, The Small Business Job Protection Act of 1996 (the Act) passed Congress and was signed into law by President Clinton on August 20, 1996. The Act provides for the non-taxability of CIAC collected by water and wastewater utilities, effective retroactively for amounts received after June 12, 1996. Pursuant to the Act, this Commission, by Order No. PSC-96-1180-FOF-WS, issued September 20, 1996, in Docket No. 960965-WS, revoked Bocilla's authority to collect gross-up of CIAC, and the utility's respective tariff was scheduled for cancellation within 30 days of the issuance of the order, unless the utility requested a variance.

We informed Mr. Noden that because the Act provides for the non-taxability of CIAC collected by water and wastewater utilities, the information required by Order No. 23541 was no longer needed. However, Mr. Noden was also informed that the other requirements of Order No. PSC-95-0966-FOF-WU still had to be met before the utility's requested tariff change could be processed. This order addresses Bocilla's failure to timely comply with certain provisions of Order No. PSC-95-0966-FOF-WU and the disposition of the gross-up of CIAC funds collected by Bocilla from 1994 through 1996.

SHOW CAUSE

As noted earlier, Order No. PSC-95-0966-FOF-WU required Bocilla to place any gross-up taxes collected from September 27, 1994 forward into an interest bearing account, provide a report by

the 20th of each month stating the monthly and total revenue collected subject to refund, and file the information required by Order No. 23541 within 90 days of the issuance of the order so that a final determination could be made regarding Bocilla's authority to continue collecting gross-up of CIAC. The utility timely complied with the first two requirements, but failed to comply with the last requirement. Upon our request, the utility, one year later on August 8, 1996, filed the required reports and provided copies of cancelled checks, verifying that refunds of CIAC had been made.

At our request, the utility, on September 23, 1996, provided an explanation of why it did not timely file the reports required by Order No. PSC-95-0966-FOF-WS. The utility explained that the filing requirement was overlooked when the order was first received because the utility has only one full-time employee, the plant operator. The utility further explained that its customer base of 170 has not been able to generate enough revenue to provide for office help.

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, Florida Statutes or any lawful rule or order of the Commission.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to comply with a monthly reporting requirement, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Failure to comply with the filing requirement of Order No. PSC-95-0966-FOF-WS is an apparent willful violation of a Commission order. However, a show cause proceeding shall not be initiated for the following reasons. First, when we notified the utility of this violation, the utility immediately responded and provided the information necessary to process the case. Second, Bocilla has

already made the appropriate refunds and we have verified the refund amounts. Therefore, we find that this utility's failure to comply with Order No. PSC-95-0966-FOF-WS does not rise to the level warranting that a show cause order be issued.

Accordingly, Bocilla shall not be ordered to show cause why it should not be fined for failing to comply with the filing requirement of Order No. PSC-95-0966-FOF-WS.

APPROVAL OF REFUND OF COLLECTED GROSS-UP

On August 8, 1996, the utility filed its refund report which consisted of copies of cancelled checks, a check register listing each contributor, and monthly statements of its escrow account. We reviewed the information provided by the utility and verified that the refunds are complete. Therefore, we are approving refunds of \$9,498.02 for 1994, \$13,801.25 for 1995, and \$1,398.73 for 1996, for a total amount of \$24,264, plus accrued interest of \$433.27 for gross-up of CIAC collected in excess of the tax liability.

As stated earlier, by Order No. PSC-96-1180-FOF-WS, Bocilla's authority to collect gross-up of CIAC was revoked. Accordingly, the gross-up charge has been removed from the utility's customer connection fee and the revised tariff sheet has been approved administratively, effective for connections made on or after the expiration of the protest period for Order No. PSC-96-1180-FOF-WS.

CLOSING OF DOCKET

The verification of the refunds has been made, and the revised tariff sheet has been approved administratively, effective for connections made on or after the expiration of the protest period for Order No. PSC-96-1180-FOF-WS. Accordingly, this docket shall be closed, if no person whose interests are substantially affected by the proposed action files a protest within the 21 day protest period.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Bocilla Utilities, Inc. shall not be ordered to show cause why it should not be fined for failing to comply with the monthly reporting requirement of Order No. PSC-95-0966-FOF-WS. It is further

ORDERED that refunds made by Bocilla Utilities, Inc. in the amount of \$9,498.02 for 1994, \$13,801.25 for 1995, and \$1,398.73 for 1996, for a total amount of \$24,264, plus accrued interest of \$433.27 for gross-up of contributions-in-aid-of-construction

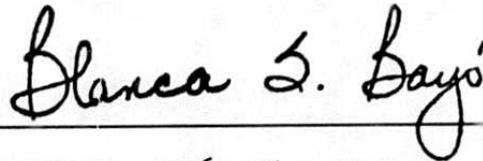
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collected in excess of the tax liability are approved. It is further

ORDERED that the provisions of this order pertaining to the approval of refunds of gross-up of contributions-in-aid-of-construction is issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of the Division of Records and Reporting at his office at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that the docket shall be closed upon expiration of the protest period if no timely protest is filed.

By ORDER of the Florida Public Service Commission, this 20th day of November, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DCW

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.

The action proposed herein, regarding the approval of refunds of gross-up of contributions-in-aid-of-construction, is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 11, 1996.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.