

MEMORANDUM

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April 13, 1998

APR 13 1998

12:00  
FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING  
FROM: DIVISION OF LEGAL SERVICES (JAEGER) *[Signature]*  
RE: DOCKET NO. 980182-WS - DISPOSITION OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION GROSS-UP FUNDS COLLECTED BY PALM COAST UTILITY CORPORATION IN FLAGLER COUNTY.

98-0507-EDF-WS

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER FINDING NO REFUNDS DUE FOR 1996 AND CLOSING DOCKET, to be issued in the above-referenced docket.

(Number of pages in order - 6)

RRJ/lw

Attachment

cc: Division of Water and Wastewater (C. Johnson)

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1 manual*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of  
contributions-in-aid-of-  
construction gross-up funds  
collected by Palm Coast Utility  
Corporation in Flagler County.

DOCKET NO. 980182-WS  
ORDER NO. PSC-98-0507-FOF-WS  
ISSUED: April 13, 1998

The following Commissioners participated in the disposition of  
this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION  
ORDER FINDING NO REFUNDS DUE FOR 1996 AND CLOSING DOCKET

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein 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

As a result of the repeal of Section 118(b) of the Internal Revenue Code, contributions-in-aid-of-construction (CIAC) became gross income and were depreciable for federal tax purposes. In Order No. 16971, issued December 18, 1986, we authorized corporate utilities to collect the gross-up on CIAC in order to meet the tax impact resulting from the inclusion of CIAC as gross income.

Orders Nos. 16971 and 23541, issued December 18, 1986, and October 1, 1990, respectively, require that utilities annually file information which would be used to determine the actual state and federal income tax liability directly attributable to the CIAC. The information would also determine whether refunds of gross-up

DOCKET NO. 980182-WS

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FLORIDA PUBLIC SERVICE COMMISSION

ORDER NO. PSC-98-0507-FOF-WS  
DOCKET NO. 980182-WS  
PAGE 2

would be appropriate. These orders require that all gross-up collections for a tax year, which are in excess of a utility's actual tax liability for the same year, should be refunded on a pro rata basis to those persons who contributed the taxes.

In Order No. 23541, we required any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue, to file a petition for our approval on or before October 29, 1990. By Order No. 25141, issued September 30, 1991, we approved the utility's request to continue gross-up of CIAC using the net present value method.

However, on August 1, 1996, the Small Business Job Protection Act of 1996 (The Act) passed Congress and was signed into law on August 20, 1996. The Act provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996. As a result, on September 20, 1996, in Docket No. 960965-WS, by Order No. PSC-96-1180-FOF-WS, we revoked the authority of utilities to collect gross-up of CIAC and canceled the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. However, as established in Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Order Nos. 16971 and 23541.

On October 16, 1996, PCUC filed an Application for Variance to collect the gross-up taxes for prepaid CIAC that was collected from January 1, 1987 through June 12, 1996. By Order No. PSC-97-0188-FOF-WS, issued February 18, 1997, we dismissed PCUC's Application for Variance for lack of jurisdiction due to Flagler County's recision of our jurisdiction effective August 5, 1996.

On March 3, 1997, the utility filed a Motion for Reconsideration or, Alternatively, Clarification of that order and a Request for Oral Argument. According to the utility, Section 367.171(5), Florida Statutes, states that all cases pending before us or on appeal from our order as of the jurisdictional transfer date remain within our jurisdiction until disposed of by us. The utility stated that if we had the jurisdiction to dispose of gross-up collected by the utility during 1992 through 1994, and to cancel its authority to collect CIAC after the effective date of the jurisdictional transfer date, then we continued to have

ORDER NO. PSC-98-0507-FOF-WS  
DOCKET NO. 980182-WS  
PAGE 3

jurisdiction to consider the utility's request for variance. Conversely, the utility argued that if we did not have jurisdiction after the jurisdictional transfer date to consider its variance request, then we had no jurisdiction to cancel the utility's prospective gross-up authority.

PCUC, therefore, requested that we either exercise jurisdiction over the request for variance, or alternatively, clarify Order No. PSC-97-0188-FOF-WS to state that we lacked jurisdiction to cancel the utility's gross-up authority. By Order No. PSC-97-0601-FOF-WU issued May 27, 1997, we denied both PCUC's request for oral argument and its motion for reconsideration, or, alternatively, clarification. However, on our own motion, we corrected Order No. PSC-97-1180-FOF-WS, to remove PCUC from the list of utilities whose gross-up authority was revoked by that order.

Although Flagler County rescinded our jurisdiction effective August 5, 1996, Order No. 25141, which approved the utility's request to continue the gross-up of CIAC, provides that all CIAC collections are to be made in accordance with Orders Nos. 16971 and 23541, and all matters discussed in those orders were expressly incorporated therein. Order No. 23541 states that "all gross-up amounts in excess of a utility's actual tax liability resulting from its collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes." Since the collection of gross-up of CIAC was made subject to refund by the Order, we retain jurisdiction of the matter regarding the determination of refunds. The purpose of this Order is to address the disposition of refunds for 1996.

PCUC is a Class A utility which is a wholly-owned subsidiary of the ITT Corporation. The utility provides water and wastewater service to the community of Palm Coast and part of Flagler County known as the Hammock. As of December 31, 1996, the utility served 16,205 water and 11,170 wastewater customers. Gross operating revenues were reported as \$7,328,311 for the water system and \$3,700,965 for the wastewater system. Net operating income was reported as \$1,354,129 for water and \$1,791,825 for wastewater.

REFUND REQUIREMENT

In compliance with Orders Nos. 16971 and 23541, PCUC filed its 1996 annual CIAC report regarding its collection of gross-up. On February 9, 1998, the utility submitted its preliminary refund calculation numbers to our staff. Review of the CIAC report and supporting documentation reveals that the utility did not collect sufficient gross-up tax to satisfy their tax liability obligation. A summary of the refund calculation is as follows.

1996

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1996 is not appropriate.

The 1996 CIAC report indicates the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income. Therefore, all taxable CIAC received would be taxed. The CIAC report indicates a total of \$946,082 of taxable CIAC was received. The tax liability is \$364,951 on the taxable CIAC of \$946,082. However, only \$244,747 in gross-up was collected on \$729,732 of this amount because \$216,350 of the CIAC collected was prepaid. The utility collects the gross-up on prepaid CIAC when the customer actually connects to the system.

PCUC uses the net present value gross-up method. Therefore, we have calculated the gross-up required to pay the tax liability resulting from the collection of taxable CIAC by grossing-up the net taxable CIAC amount, in accordance with the net present value method adopted in Order No. 23541. In accordance with the net present value formula we have used the utility's last authorized rate of return of 9.21 percent as approved in Order No. 22843, issued April 23, 1990, in Docket No. 890277-WS. As a result, the authorized gross-up percentage is 32.2 percent. Based on this calculation, the utility should have collected \$244,747 of gross-up for 1996. Therefore, no refund is required.

CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, processing of this docket is complete and the docket shall be closed.

ORDER NO. PSC-98-0507-FOF-WS  
DOCKET NO. 980182-WS  
PAGE 5

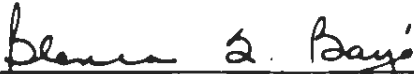
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Palm Coast Utility Corporation did not overcollect gross-up on contributions-in-aid-of-construction for the year 1996, and no refunds for overcollection are required for that year. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 13th day of April, 1998.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that

ORDER NO. PSC-98-0507-FOF-WS  
DOCKET NO. 980182-WS  
PAGE 6

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein 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 May 4, 1998.

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.