

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 961277-WS
contributions-in-aid-of-) ORDER NO. PSC-97-0185-FOF-WS
construction gross-up funds) ISSUED: February 18, 1997
collected by Palm Coast Utility)
Corporation.)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER FINDING NO REFUND REQUIRED FOR 1992 THROUGH 1994

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, the Commission 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, issued December 18, 1986, and 23541, issued October 1, 1990, 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 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.

DOCUMENT NUMBER-DATE
01754 FEB 18 97
FPSC-RECORDS/REPORTING

In Order No. 23541, the Commission required any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue, to file a petition for approval with the Commission on or before October 29, 1990. On November 30, 1992, Palm Coast Utility Corporation timely filed a petition requesting approval to continue to collect the gross-up on its CIAC. The information as filed met the filing requirements of Order No. 23541. By Order No. 25141, issued September 30, 1991, the Commission approved the utility's request to continue gross-up of CIAC using the net present value method.

Palm Coast Utility Corporation, Inc. (PCUC or utility) is a wholly-owned subsidiary of the ITT Corporation and a Class A utility providing water and wastewater service to the community of Palm Coast and part of Flagler County known as the Hammock. As of December 31, 1995, the Utility served 15,290 water and 10,436 wastewater customers. Gross operating revenues were reported as \$6,424,127 for the water system and \$3,217,123 for the wastewater system. Net operating income was reported as \$877,227 for water and \$527,170 for wastewater.

On September 9, 1992, this Commission issued Proposed Agency Action Order No. PSC-92-0961-FOF-WS, which clarified the provision of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On October 12, 1994, Order No. PSC-94-1265-FOF-WS revised the full gross-up formula.

On March 29, 1996, Docket No. 960397-WS was opened to review the Commission's policy concerning the collection and refund of CIAC gross-up. Workshops were held and comments and proposals were received from the industry and other interested parties. By Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, Commission staff was directed to continue processing CIAC gross-up and refund cases pursuant to Order Nos. 16971 and 23541; to make a recommendation to the Commission concerning whether the Commission's policy regarding the collection and refund of CIAC should be changed upon the staff's completion of its review of the proposals and comments offered by the workshop participants; and to consider ways to simplify the process and determine whether there were viable alternatives to the gross-up.

However, on August 1, 1996, the Small Business Job Protection Act of 1996 (the Act) passed Congress and was signed into law by the President 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, Order No. PSC-96-1180-FOF-WS was issued to revoke the authority of

utilities to collect gross-up of CIAC and to cancel the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. Docket No. 960397-WS was also closed on October 8, 1996. 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. This order, therefore, addresses the disposition of the gross-up of CIAC collected by PCUC for each of the years 1992 through 1994.

As stated previously, PCUC is a utility operating in Flagler County. Flagler County rescinded Commission jurisdiction effective August 5, 1996. However, 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 find that we retain jurisdiction of the matter regarding the determination of refunds.

Refund Calculations for Years 1992 Through 1994

In compliance with Order No. 16971, PCUC filed annual CIAC gross-up reports for 1992 through 1994. Our calculations, taken from these gross-up reports, are reflected on Schedule No. 1, which is attached hereto and by reference incorporated herein. Gross-up calculations are in accordance with the method adopted in Order No. PSC-92-0961-FOF-WS. A summary of each year's calculations follows.

1992

The utility's 1992 CIAC report indicates the utility was in an above-the-line taxable position prior to the inclusion of taxable CIAC in income. Therefore, all taxable CIAC received would be taxed.

The CIAC report indicates a total of \$2,383,771 of taxable CIAC was received. However, gross-up was collected on only \$972,005 of this amount because \$1,411,766 of the CIAC collected was prepaid. The utility collects the gross-up on prepaid CIAC when the customer actually connects to the system. The CIAC report also indicates that \$313,180 of gross-up collections were received on the \$972,005 of taxable CIAC. Our calculations show that the utility should have collected \$313,180 of gross-up for 1992. Therefore, we find that no refund is required.

1993

The utility's 1993 CIAC report indicates the utility was in an above-the-line taxable position prior to the inclusion of taxable CIAC in income. Therefore, all taxable CIAC received would be taxed.

The CIAC report indicates a total of \$2,257,507 of taxable CIAC was received. However, gross-up was collected on only \$1,120,282 of this amount because \$1,137,225 of the CIAC collected was prepaid. As stated previously, the utility collects the gross-up on prepaid CIAC when the customer actually connects to the system. The CIAC report also indicates that \$360,955 of gross-up collections were received on the \$1,120,282 of taxable CIAC. Our calculations show that the utility should have collected \$360,955 of gross-up for 1993. Therefore, we find that no refund is required.

1994

The utility's 1994 CIAC report indicates the utility was in an above-the-line taxable position prior to the inclusion of taxable CIAC in income. Therefore, all taxable CIAC received would be taxed.

The CIAC report indicates a total of \$2,393,825 of taxable CIAC was received. However, gross-up was collected on only \$1,394,103 of this amount because \$999,722 of the CIAC collected was prepaid, and the utility collects the gross-up on prepaid CIAC when the customer actually connects to the system. The CIAC report also indicates that \$467,582 of gross-up collections were received on the \$1,394,103 of taxable CIAC. Our calculations show that the utility should have collected \$467,582 of gross-up for 1994. Therefore, we find that no refund is required.

Closing of Docket

No further action is required in this docket. Therefore, upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the provisions of this order are 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

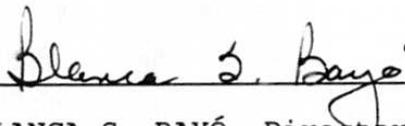
ORDER NO. PSC-97-0185-FOF-WS
DOCKET NO. 961277-WS
PAGE 5

received by the Director of the Division of Records and Reporting 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 Palm Coast Utility Corporation is not required to refund gross-up funds collected for each of the years 1992 through 1994. It is further

ORDERED that this 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 18th day of February, 1997.



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 120.569(1), 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 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 March 11, 1997.

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.