

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for continuation) DOCKET NO. 901019-WS  
of gross-up of contributions-in-) aid-of-construction in Duval ) ORDER NO. PSC-92-0117-FOF-WS  
County by SAN PABLO UTILITIES ) CORPORATION ) ISSUED: 3/30/92  
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The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

ORDER GRANTING LEAVE TO WITHDRAW REQUEST TO  
CONTINUE GROSS-UP OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION

AND

NOTICE OF PROPOSED AGENCY ACTION  
ORDER REQUIRING REFUND

BY THE COMMISSION:

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

WITHDRAWAL OF PETITION

On December 28, 1990, San Pablo Utilities Corporation (San Pablo or the utility) filed a request for authority to continue grossing-up contributions-in-aid-of-construction (CIAC). Prior to our ruling on this petition, San Pablo submitted an application for the transfer of its facilities to Jacksonville Suburban Utilities Corporation (Jacksonville Suburban) which is pending in Docket No. 911095-WS. On December 10, 1991, San Pablo filed a Notice of Withdrawal stating that both San Pablo and the acquiring utility, Jacksonville Suburban, wished to have the request for continued

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gross-up authority withdrawn. We acknowledge this request and find it appropriate that the request be withdrawn.

REFUND REQUIRED

As a result of a foreclosure action, El Agua Corporation (El Agua), previous owner of the utility, was purchased by Sun Bank/North Florida N.A. (Sun Bank). On February 2, 1990, Sun Bank conveyed all of the assets of El Agua to San Pablo (a wholly owned subsidiary of Sun Bank). By Order No. 23542, issued October 1, 1990, this Commission approved the transfer of Certificates Nos. 220-W and 165-S from El Agua to San Pablo. As a result of this transfer, CIAC gross-up in the amount of \$46,132 was transferred from El Agua to San Pablo. The transfer Order did not address the disposition of the CIAC gross-up monies.

By Order No. 23541, issued October 1, 1990, this Commission required that any gross-up amounts collected in excess of a utility's tax liability resulting from its collection of CIAC shall be refunded on a pro rata basis to the contributors of those amounts. Based on El Agua's 1987 and 1988 CIAC Reports and Income Tax Returns, we find that El Agua did not have any tax liability for the years 1987 and 1988. Therefore, we find it appropriate to require refund of \$30,862 for those years. In addition, we find it appropriate to require refund of \$15,270 of CIAC gross-up monies collected in 1989, unless it can be shown that El Agua's tax liability in that year exceeded the amount of gross-up collected.

By Orders Nos. 16971, issued December 18, 1986, and 23541, all refunds must include accrued interest through the date of refund. Thus, we find that an additional refund of \$7,982 is required for interest earned on CIAC gross-up collected for the years 1987, 1988, and 1989. This amount of refund includes \$4,875 of interest which was transferred from El Agua to San Pablo by Order No. 23542, issued October 1, 1990, and \$3,107 of additional interest accrued since that time.

We also find that San Pablo has collected a total of \$1,260 of CIAC gross-up monies for the years 1990 and 1991, which are required to be refunded, unless it can be shown that there was a tax liability in excess of that amount for those years.

It is the position of San Pablo Utilities Corporation that it has no obligation to refund CIAC gross-up collected by El Agua. We disagree. Section 367.071(1), Florida Statutes, requires that when a utility sells, transfers or assigns its certificate of authorization, the buyer, transferee or assignee will fulfill the

commitments, obligations, and representations of the utility. Accordingly, based on this statute, we find that as transferee of El Agua's certificate of authorization, San Pablo is required to refund the CIAC gross-up monies collected by El Agua, in the amounts previously detailed.

Upon consideration, we find it appropriate to require the refund of \$46,132, collected by El Agua for the years 1987, 1988, and 1989, with interest of \$7,982. In the event that San Pablo has no tax liability for either 1990 or 1991, we find the appropriate amount of refund attributable to those tax years to be \$1,260. San Pablo shall also correct or adjust the appropriate accounts to reflect the distribution of the required refunds. In accordance with Orders Nos. 16971 and 23541, all refunds shall include accrued interest through the date of the refund. The refund shall be completed within six months from the date of the order, and the utility shall submit copies of cancelled checks, credits applied to monthly bills, or other evidence which verifies that the refunds have been made.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request of San Pablo Utilities Corporation to withdraw its request for continued authority to gross-up contributions-in-aid-of-construction is acknowledged. It is further

ORDERED that San Pablo Utilities Corporation shall refund \$46,132 of CIAC gross-up monies and interest of \$7,982 to contributors on a pro rata basis for the years ended 1987, 1988, and 1989. It is further

ORDERED that San Pablo Utilities Corporation shall refund \$1,260 to contributors on a pro rata basis for the years ended 1990 and 1991. It is further

ORDERED that such refunds shall include interest through the date of the refund. It is further

ORDERED that San Pablo Utilities Corporation shall file copies of the cancelled refund checks for verification as set forth in the body of this Order. It is further

ORDERED that San Pablo Utilities Corporation shall correct or adjust the appropriate accounts to reflect the distribution of the required refunds. It is further

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ORDERED that all provisions of this Order are issued as proposed agency action, except that portion granting leave to withdraw request to continue gross-up of contributions-in-aid-of-construction, 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 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that, in the event no timely protest is received, this docket shall remain open for six months for verification of the completion of the refund.

By ORDER of the Florida Public Service Commission, this 30th day of March, 1992.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

CB

by: Kay Flynn  
Chief, Bureau of Records

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.

As identified in the body of this order, our action is preliminary in nature, except that portion granting leave to withdraw request to continue gross-up of contributions-in-aid-of-construction, 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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 20, 1992. In the absence of such a petition, this order shall become effective on the date 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 the relevant portion of this order becomes final and effective on the date described above, any party adversely 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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 after the issuance 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.