

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 940865-WU
Authority to Gross Up) ORDER NO. PSC-95-0748-FOF-WU
Contributions In Aid Of) ISSUED: June 21, 1995
Construction (CIAC) in Escambia)
County by THE PEOPLES WATER)
SERVICE COMPANY)
_____)

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 DENYING PERMANENT AUTHORITY TO GROSS-UP CONTRIBUTIONS IN AID OF CONSTRUCTION AND ORDERING UTILITY TO SHOW CAUSE

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING REFUNDS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein concerning refunds of gross-up of contributions in aid of construction collected 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

By Order No. 16971, issued December 18, 1986, the Commission granted approval for water and wastewater utilities to amend their service availability policies to meet the tax impact of contributions in aid of construction (CIAC) resulting from the amendment of Section 118(b) of the Internal Revenue Code. Order No. 23541, issued October 1, 1990, ordered utilities currently grossing up CIAC to file a petition for continued authority to gross-up and also ordered that no utility may gross-up CIAC without

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first obtaining the approval of this Commission. These orders also prescribe the accounting and regulatory treatments for the gross-up and require refunds of certain gross-up amounts collected.

The Peoples Water Service Company (Peoples or utility) is a Class A utility providing water service to the public in Escambia County. According to its 1993 annual report, the entity that holds the certificate of authorization and is herein referred to as Peoples is the Warrington Plant operating division of The Peoples Water Service Company in Escambia County, which was formed in 1929 to operate as an investor-owned public water utility. The Peoples Water Service Company's corporate office is located in Towson, Maryland. Besides the Escambia County plant, The Peoples Water Service Company has two wholly owned subsidiaries, The Peoples Water Service Company of Louisiana, Inc., (a Louisiana corporation) and Water Treatment & Controls Company, Inc., (a Maryland corporation). As of December 31, 1993, the Escambia County division served 7,898 water customers, had gross operating revenues of \$2,250,150 and net operating income of \$438,352.

On December 3, 1991, the Board of County Commissioners of Escambia County adopted a resolution declaring all water and wastewater utilities within its boundaries to be subject to the jurisdiction of this Commission. By Order No. PSC-92-0866-FOF-WU, issued August 25, 1992, we granted Peoples the authority pursuant to Section 367.171, Florida Statutes, to provide water service in Escambia County. In that order we grandfathered in Peoples' existing rates and charges that Escambia County had established, with the exception of the gross-up charges on CIAC. We removed the CIAC gross-up charges from the utility's tariff and advised the utility to submit a separate filing for gross-up authority.

On August 19, 1994, Peoples filed for initial authority to gross-up CIAC. By Order No. PSC-94-1355-FOF-WU, issued November 7, 1994, we allowed the utility's proposed tariff to become effective by operation of law on an interim basis, subject to refund, after October 18, 1994.

The information Peoples filed with its request for initial authority met the filing requirements of Order No. 23541; however, several questions resulted from review of the filing. Our staff requested clarification of several items by letter dated September 7, 1994, and in subsequent conversations with the utility. Peoples responded with additional written information on September 12, 1994; October 7, 1994; and January 23, 1995. Further, on several occasions, our staff and the utility discussed the contents of the utility's responses and the utility's need for gross-up authority.

The utility requested an informal meeting with our staff in Tallahassee before staff filed its recommendation. A meeting was scheduled to be held on March 17, 1995, and was properly noticed. When the utility's representatives were unable to keep the date, our staff, the Office of Public Counsel and the utility participated in a properly noticed teleconference on March 22, 1995. Shortly before this time, the utility wrote its customers, urging them to get in contact with us in support of the utility's position. More than 500 customers responded in this manner.

In this Order we address the following issues:

1. Should we grant Peoples final authority to collect CIAC gross-up?
2. Should we order Peoples to show cause why it should not be fined for collecting CIAC gross-up in violation of a Commission order?
3. What, if any, CIAC gross-up collected should be refunded?

GROSS-UP AUTHORITY

In Order No. 23541, we concluded that the need for gross-up should be determined on a case-by-case basis, considering the facts and circumstances peculiar to each utility. In that same order, we recognized that the utility's management is in the best position to evaluate these facts and circumstances in determining whether it needs to gross-up CIAC, and, if it determines that gross-up is necessary, to provide to us the same analysis that it relied upon to make that determination in a petition requesting gross-up authority. Accordingly, we found it appropriate to require all utilities wishing to collect CIAC gross-up to file a petition for authority to collect the gross-up with the Commission.

Order No. 23541 also recognizes that there is no need determination policy that will cover the entire water and wastewater industry and that the requirements should, therefore, remain flexible. Nevertheless, Order No. 23541, at page 11, states that,

at a minimum, each utility should be able to demonstrate that a tax liability exists and that sources of funds are not available at a reasonable cost. (emphasis added)

Further, this order provides that a utility may demonstrate a need to collect gross-up by filing:

1. A Demonstration of Actual Tax Liability;
2. A Cash Flow Statement;
3. A Statement of Interest Coverage;
4. A Statement of Alternative Financing; and
5. A Justification for Gross-Up.

On August 19, 1994, Peoples filed with us the information which it believed demonstrated its need to gross up CIAC. On the basis of this information as several times later supplemented we find that Peoples has not met the minimum criteria of Order No. 23541. Peoples demonstrates that it will incur an above-the-line tax liability associated with the collection of CIAC. However, it fails to demonstrate that alternative sources of funds are not available at a reasonable cost. We find it appropriate, therefore, to deny Peoples' tariff application for authority to gross-up CIAC.

Demonstration of Actual Tax Liability

The financial statements filed by the utility show that it will incur an actual above-the-line tax liability as a result of its collection of CIAC. According to the utility's 1992 and 1993 income statements, the utility had taxable income before CIAC of \$767,248 and \$625,684 for 1992 and 1993, respectively. The statements show that taxable income including CIAC and gross-up was \$932,021 and \$772,730 for 1992 and 1993, respectively. Therefore, it appears that the utility has had, and will continue to have, an above-the-line tax liability associated with the collection of CIAC.

Cash Flow Statement

A cash flow statement shows whether liquid funds are available to pay taxes on CIAC. We believe that Peoples' Escambia County division has adequate cash flow to meet the tax effect of CIAC collections. First, we observe that funds would be available to pay the taxes associated with CIAC without the funding arrangements the utility has with the Maryland corporate headquarters. The cash flow statement the utility provided shows that during 1993 the Escambia County division transferred \$2,072,000 to the corporate headquarters, receiving back \$1,440,391 in that same period, with the result that the Escambia County division transferred \$631,609 net to the corporate headquarters for 1993. Second, according to the utility's 1993 annual report, the utility had net operating income of \$476,463 for 1992 and \$454,776 for 1993. Third, according to the balance sheet contained in its 1993 annual report, believed to be a consolidated balance sheet, the utility had "other investments" of \$2,053,078 as of December 31, 1993, which it

describes as stocks, mutual funds, bonds, notes and limited partnerships.

Peoples does not deny that the necessary funds are available. In a letter dated October 7, 1994, to our staff, the utility declares that, "the Parent Company is not willing to pay taxes on CIAC. The Parent Company is willing to forward CIAC tax collected from a developer to the appropriate tax agency."

Accordingly, we find that adequate cash flow funds are available for the payment of taxes on CIAC.

Statement of Interest Coverage

The times interest earned (TIE) ratio indicates the number of times a utility is able to cover its interest. The ratio is an indicator of the relative protection for the bondholders. It is also indicative of the utility's ability to go into the financial market to borrow money at a reasonable rate or to issue stock. Order No. 23541 established a TIE ratio of 2 times as a benchmark.

Here, the consolidated entity has no debt. Neither does the Escambia County division. Accordingly, it has no interest on which to calculate a TIE ratio.

Statement of Alternative Financing

Peoples stated that it had not looked into other sources for alternative financing and that it does not have a mechanism in place to borrow funds to pay taxes on CIAC. As just noted, the consolidated entity has no debt. In 1993, it had positive retained earnings. Its capital structure is 100% equity. The utility had a positive income position in 1992 and 1993. It appears that the utility would have positive cash flow, without the funding arrangement with the corporate headquarters previously noted. The utility has "other investments" of \$2,053,078 as of December 31, 1993. Based on these factors, it appears that the utility is a financially strong company. Furthermore, the utility has revealed its plans to incur approximately \$3 million in debt for utility improvements in the near future, which suggests the utility's confidence to reasonably borrow substantial funds. We find that Peoples is a financially strong company and that its ability to go into financial markets to obtain alternative financing under reasonable terms will not be impaired if it is not allowed gross-up authority.

Justification for Gross-up

The utility asserted that CIAC gross-up is necessary because in the fiscal years ended August 31, 1992 and 1993, Peoples received and remitted to the Internal Revenue Service (IRS) and the State of Florida in excess of \$61,000 and \$55,000 in income tax attributable to CIAC. Peoples represented that it would be a burden on the current ratepayers and the utility if these funds were not contributed by developers. Peoples stated that new residential construction activity in the franchise area is strong, and is expected to remain strong. Peoples anticipates serving 387 additional equivalent residential connections over the next three years. Thus, it likely will continue to have a CIAC tax liability.

Peoples asserted that grossing up CIAC promotes rate stability, and that the CIAC tax is not a source of income or "windfall" to the utility. Peoples further asserted that if the Commission will not authorize the gross-up of CIAC, it will be acting against the consumers' best interests and that to have the public pay for one part of a developer's expense for utility service and not another would be inconsistent.

By correspondence dated January 20, 1995, Peoples further maintained that the utility should be allowed to gross-up CIAC, because if a utility must pay CIAC tax, (1) its rates will need to be increased commensurately, causing current ratepayers to subsidize developers' speculative projects, and (2) its cash flow is reduced, restricting its ability to finance plant improvements. It also alleged that the Commission, were it to acknowledge that Peoples has a CIAC-tax liability but also the financial means to pay the tax, would be discriminating against it and the class of well managed utilities. The effect of this discrimination would be to hinder the capacity of healthy utilities to rescue the many marginal small utilities and to themselves comport with the expanding demands of environmental regulation.

CIAC Eligibility

In assessing Peoples' statement that it remitted taxes in excess of \$55,000 attributable to CIAC to the IRS and the State of Florida in 1993, we raise the question whether any of the CIAC on which this tax was paid would have been taxable prior to the 1986 Section 118(b) amendment, and, therefore, ineligible for gross-up authority under our current guidelines. Its 1993 annual report shows total CIAC collections for that year to be \$104,158. Of this amount, we note that the utility reports that it received \$76,058 from plant capacity, main extension and customer connection charges, \$27,600 in property, and \$500 in cash. It appears that

that portion excluding plant capacity charge of the \$76,058 and the \$500 in cash may have been taxable prior to the Section 118(b) amendment. Prior to the amendment of Section 118(b) of the Internal Revenue Code, meter fees, backflow prevention devices, and cash (under certain circumstances) were income for tax purposes. As we stated in Order No. 16971, at page 3, the gross-up formula specifies that CIAC gross-up is computed on the "Dollar Amount of charges paid to a utility as contributions in aid of construction which must be included in taxable income of the utility, and which had been excluded in taxable income pursuant to Section 118(b) of the Internal Revenue Code."

Based on the foregoing, it appears to us that a substantial amount of the CIAC collected in 1993 would have been taxable prior to the amendment of Section 118(b) of the Internal Revenue Code, and is, therefore, ineligible for gross-up authority. Coincident to this, part of the \$55,883 reported as the tax liability related to 1993 collections would have been incurred prior to the Section 118(b) amendment.

Tax Burden

The utility stated that with anticipated growth, it would be a burden on the current ratepayers and the utility if these funds were not contributed by developers. We considered high growth scenarios in reaching our conclusions in Order No. 23541, which we issued following a full evidentiary hearing on April 27 and 30, 1990. In Order No. 23541, at page 5, we stated that:

We agree that high growth could result in increased revenue requirements. However, such growth would probably cause the utility to file a rate case anyway, due to factors such as increased rate base and operating and maintenance expenses. Accordingly, we do not believe that this particular piece of the regulatory puzzle should be viewed in isolation. We believe that all of the facts and circumstances of the utility should go into determining who should bear the responsibility of paying the tax impact of the CIAC. Depending upon its particular facts and circumstances, it may be appropriate for the utility to collect the taxes from the contributor or invest in them itself.

Consumers' Interests

The utility argued that grossing up CIAC to include income taxes promotes rate stability; that the CIAC tax is not a source of income or "windfall" to the utility; that if the Commission will

not authorize the gross-up of CIAC, it will be acting against the consumers' best interests; and that to have the public pay for one part of a developer's expense for utility service and not another would be inconsistent.

We agree with the utility that gross-up should not be a source of income or a windfall to the utility. We also agree that under certain circumstances, gross-up promotes rate stability. However, we are unable to agree that if we do not authorize the gross-up of CIAC, we will be acting against the consumers' best interests.

We assume that "acting against the consumers' best interests" is meant to refer to increasing rates to the customers. However, we point out that the service rates of a water utility are based on its cost of service. The cost of service is based on used and useful assets which are devoted to providing service to the customer base served. Nonused and useful plant, nonused and useful CIAC and the nonused and useful investment in taxes are excluded from cost of service and rates. Therefore, the current ratepayers will not pay a return on the investment in taxes which is attached to the nonused and useful CIAC. As we stated in Order No. 23541, at page 16, "[W]e do not find it appropriate to allow utilities to earn a return on taxes related to nonused and useful CIAC." Therefore, through ratesetting procedures, the current ratepayers will not bear the burden or speculative risk of the developer.

Inconsistency and Tax-on-Tax

Neither do we agree that to have the public pay for one part of a developer's expense and not another would amount to an inconsistency. Although CIAC is a developer "expense," the tax on CIAC is not. The tax on CIAC is a tax on the utility and not the developer and, therefore, there is no inconsistency. We believe that, if possible, the use of gross-up should be avoided because it creates a new tax, an expense that did not previously exist. This is what is often referred to as the "tax-on-tax." A tax-on-tax is created when taxes are contributed. The contributed taxes are considered gross income which are, in turn, taxable. Because of this tax-on-tax effect, the gross-up can be as high as 60.3 percent, as compared to a maximum combined federal and state tax rate of 37.63 percent, assuming the company is in the 34 percent federal tax bracket. With full gross-up, this added tax liability of up to 22.7 percent will be eventually borne by the ratepayer, the company, the developer or any combination of the three, given the particular facts and circumstances. We so observed in Order No. 23541, at page 6. For this reason, we believe that requests for gross-up authority should be examined carefully and should not be an automatic right.

Mismanagement Reward

We cannot accept Peoples' allegation that only mismanaged utilities receive the benefit of CIAC gross-up and that that is discriminatory against well managed utilities. We have reviewed the list of the utilities presently authorized to collect CIAC gross-up and we conclude that a determination of mismanagement has not been a predicate to our granting authority to gross-up CIAC. As just noted, depending on the particular facts and circumstances, it may be appropriate for the utility to collect the taxes from the contributor or invest in them itself. It appears to us in this instance that Peoples has the ability to invest in the taxes itself.

Healthy Utility Hinderance

The utility stated that, "In an era when the Environmental Protection Agency, Florida Department of Environmental Protection, and the Commission are encouraging healthy utilities to absorb their financially unstable and poorly managed counterparts, it would be contradictory to hinder the financial condition of healthy utilities." We do not believe that in denying Peoples the authority to gross-up we would "hinder" its financial condition. We recognize that we have not audited Peoples' operating and financial records. Nonetheless, based on its 1993 annual report, we are able to observe that the utility's achieved Return on Equity (ROE) was 14.37% and, based on the leverage formula authorized in Order No. PSC-94-1051-FOF-WS, issued August 29, 1994, its required ROE is 9.98%. Further, we are able to observe that its 1993 achieved overall return was 12.08% and, based on the required ROE of 9.98%, the mid-point of its required overall return is 8.80%. Similarly, based on its 1994 annual report, we are able to observe that its achieved ROE was 14.44% and based on the latest leverage formula, its required ROE is 9.99%. Finally, we are able to observe that its 1994 achieved overall return was 11.25% and, based on the required ROE of 9.99%, the mid-point of its required overall return is 7.93%. Thus, there appears to be a "window" for the utility to invest in its own taxes without increasing its rates to its current customers. Also, we note that the utility's unaudited level of CIAC is 16%. Moreover, based on our staff's preliminary review of Peoples' annual reports, it appears that the utility may be overearning. Accordingly, we will undertake an audit of Peoples' books and records.

The utility represents that it will incur approximately \$3 million in debt for utility improvements related to environmental requirements in the near future. We have not been presented with information that would enable us to examine this program in detail,

but, as with growth impacts, we believe that this part of the regulatory puzzle should not be viewed in isolation.

Rates

A final point to be addressed is Peoples' letter to its customers soliciting their support for gross-up authority. In that letter, Peoples suggested that unless we grant it authority to gross-up, the current customers will be harmed through increased rates. In response to this, we reiterate that the requirement that all nonused and useful elements be excluded from cost of service, including nonused and useful taxes related to nonused and useful CIAC, will protect current customers from being harmed through increased rates.

Further, we must observe that increased rates do not always result when a utility is not authorized to collect the CIAC gross-up. We noted in Order No. 23541, at page 5, the testimony under cross-examination of utility witness Nixon that, depending upon a utility's particular circumstances, its investment in taxes on CIAC could result in either no increase or a very minimal increase in rates.

Summary

In conclusion, we find that the utility has not met the minimum criteria required by Order No. 23541. Although Peoples has demonstrated that an above-the-line tax liability exists, it has not demonstrated that alternative sources of funds are not available at a reasonable cost. Further, rather than Peoples' request being based on need, the utility acknowledges that its request is based on burden of risk, equitable considerations, and its unwillingness to pay the CIAC taxes. For these reasons and other reasons stated previously, we find it appropriate to deny Peoples' petition for gross-up authority. However, this denial does not preclude the utility from requesting gross-up authority at a later date. If facts and circumstances change or if the utility submits new information which tends to support its need for gross-up collection, we are prepared to revisit the issue.

SHOW CAUSE

As earlier noted, by Order No. PSC-92-0866-FOF-WU, we granted Peoples the authority pursuant to Section 367.171, Florida Statutes, to provide water service in Escambia County. In that order, we grandfathered in Peoples' existing rates and charges,

with the exception of the gross-up charges on CIAC. We removed the CIAC gross-up charges from the utility's tariff and advised the utility to submit a separate filing for gross-up authority before the gross-up on CIAC could be charged again.

As noted earlier, on August 19, 1994, Peoples filed for initial authority to gross-up CIAC. By Order No. PSC-94-1355-FOF-WU, we allowed the utility's proposed tariff to become effective by operation of law on an interim basis, subject to refund, after October 18, 1994. As a result, Order No. PSC-92-0866-FOF-WU, removing gross-up charges from the utility's tariff, was in effect from August 25, 1992, until October 18, 1994, when it was effectively supplanted by Order No. PSC-94-1355-FOF-WU. Peoples, therefore, was without our authorization to collect CIAC gross-up until October 18, 1994. However, according to the reports submitted with its August 19, 1994, application for gross-up authority, the utility collected \$55,883 in CIAC gross-up during its tax year, September 1, 1992, to August 31, 1993. We do not have information for the tax year, September 1, 1993, through August 31, 1994, so we are unable to determine if the utility continued to collect CIAC gross-up without authorization during that period, as well.

Section 367.161(1), Florida Statutes, authorizes us to assess a penalty of not more than \$5,000 per day for each offense, if a utility is found to have willfully violated any lawful order of the Commission. Utilities are charged with 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 conduct at issue here, would meet the standard for a "willful violation."

It is clear that Peoples collected unauthorized gross-up in the period, August 25, 1992, to October 18, 1994, and stands consequently in violation of Order No. PSC-92-0866-FOF-WU. We believe that this conduct was "willful" in the sense intended by Section 367.161, Florida Statutes. 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:

In our view, "willful" implies intent to do an act, and this is distinct from intent to violate a rule. In order

to measure the intent of GTEFL, it is appropriate to examine its actions regarding: (1) the safeguards established to insure compliance with Commission rules; (2) the steps taken, or not taken, to halt destruction of documents sought by the Commission; (3) the systematic destruction of documents in violation of our Rule; and (4) the failure to seek an interpretation of the Rule in question prior to destroying documents. It is uncontroverted that GTEFL adopted a policy of destroying records and willfully implemented it. GTEFL's behavior in this instance appears to rise to the level of a "willful violation" of the Commission's Rule. Accordingly, such conduct warrants the imposition of a penalty.

The pertinent language of Order No. PSC-92-0866-FOF-WU is unmistakable. Furthermore, our staff remarked in its recommendation leading to that order that it had informed the utility in writing that a separate filing must be submitted before the gross-up on CIAC could be charged again. We find that the utility's violation of Order No. PSC-92-0866-FOF-WU rises to a level warranting that a show cause order be issued. Accordingly, we order Peoples to show cause in writing within 20 days why it should not be fined for collecting gross-up on CIAC in the period, August 25, 1992, through October 18, 1994, in violation of Order No. PSC-92-0866-FOF-WU.

REFUNDS

Our discussion on the appropriate amounts of refunds, which follows, is developed on the basis of relevant time periods.

December 4, 1991, through August 25, 1992

The period December 4, 1991, through August 25, 1992, represents the time between Escambia County's resolution passing jurisdiction to this Commission and issuance of Peoples' grandfather certificate. Generally, when a utility is grandfathered in, we allow that utility to continue collecting the rates and charges then in effect until such time as we instruct the utility it may not. Therefore, during this period, Peoples' CIAC gross-up collections, authority for which had been established under Escambia County jurisdiction, were made in the absence of any Commission direction to the contrary. For this reason, Peoples shall be allowed to retain all CIAC gross-up collected during this period. In this period, we will not distinguish gross-up that may

have been collected on CIAC ineligible for gross-up because taxable before the Section 118(b), I.R.C., amendment in 1986.

August 26, 1992, through October 18, 1994

The period August 26, 1992, through October 18, 1994, represents the time between issuance of Peoples' grandfather certificate and the time the utility filed for initial gross-up authority. We have noted that in Order No. PSC-92-0866-FOF-WU, in which we granted Peoples its certificate, we grandfathered in Peoples' existing rates and charges as established by Escambia County, with the exception of the gross-up charges on CIAC. We removed the CIAC gross-up charges from the utility's tariff and advised the utility to submit a separate filing for gross-up authority. Therefore, during this period of time, Peoples did not have authority to gross-up. Consequently, Peoples shall refund to the contributors all CIAC gross-up collected during this period.

October 19, 1994, through date of Commission vote

The period October 19, 1994, through the date of the instant Commission vote, May 30, 1995, represents the time since the utility was given interim authority to collect CIAC gross-up, subject to refund, by Order No. PSC-94-1355-FOF-WU. The gross-up funds collected in this period were to be held in an interest-bearing account. However, since it is our decision to deny the utility's request for final gross-up authority, Peoples shall refund to the contributors all gross-up collected during this period. The interest earned on the money held in the CIAC escrow account must be refunded in accordance with Orders Nos. 16971 and 23541.

In summary, Peoples shall be allowed to retain all CIAC gross-up that it collected from contributors between December 4, 1991, and August 25, 1992. It shall be required, however, to refund, with interest, to the contributors pro rata all CIAC gross-up collected subsequent to that period of time.

The refunds shall be completed within six months of the effective date of this Order. Within thirty days from the date of completing the refunds, the utility shall submit copies of cancelled checks, evidence of credits applied to monthly bills, or other evidence verifying that the utility has made the refunds. Within thirty days from the date of completing the refunds, the utility shall also provide a list of unclaimed refunds detailing contributors' names and claim amounts, together with an explanation of the efforts expended to make the refunds.

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Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket shall remain open to monitor the refunds and to resolve the show cause matter.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the request of The Peoples Water Service Company for final authority to collect gross-up of contributions in aid of construction (CIAC) is denied. It is further

ORDERED that The Peoples Water Service Company shall show cause, in writing, within twenty days from the date of this order, why it should not be fined up to \$5,000 per day for each offense for collecting unauthorized gross-up of contributions in aid of construction (CIAC). It is further

ORDERED that the response of The Peoples Water Service Company must contain specific allegation of fact and law. It is further

ORDERED that the opportunity of The Peoples Water Service Company to file a written response shall constitute its opportunity to be heard prior to a final determination of noncompliance or assessment of penalty. It is further

ORDERED that the failure of The Peoples Water Service Company to file a timely written response to this show cause order shall constitute an admission of the facts alleged in the body of this order and a waiver of any right to a hearing. It is further

ORDERED that in the event The Peoples Water Service Company files a written response that raises material questions of fact and requests a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings may be scheduled before a final determination on these matters is made. It is further

ORDERED that if a fine is assessable and The Peoples Water Service Company does not remit payment after reasonable collection efforts, the Commission deems the fine to be uncollectible and authorizes referral to the Comptroller's Office for further disposition. It is further

ORDERED that The Peoples Water Service Company shall make refunds to contributors of gross-up of contributions in aid of construction funds collected as set forth in the body of this Order. It is further

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ORDERED that the refunds herein ordered shall be completed within six months of the effective date of this Order. It is further

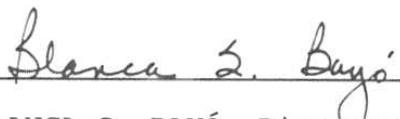
ORDERED that within thirty days of completing the refunds, The Peoples Water Service Company shall submit to the Commission copies of cancelled checks, evidence of credits applied to monthly bills or other evidence verifying that it has made the refunds as herein ordered. It is further

ORDERED that within thirty days of completing the refunds, The Peoples Water Service Company shall provide the Commission with a detailed list of unclaimed refunds, including contributors' names, the amounts claimable, and an explanation of the efforts made to make the refunds. It is further

ORDERED that the provisions of this Order concerning refunds of gross-up of contributions in aid of construction collected, 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, upon expiration of the protest period, if no substantially affected person has filed a protest, this docket shall remain open for purposes of verifying the completion of refunds and resolving the show cause matter.

By ORDER of the Florida Public Service Commission, this 21st day of June, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

Commissioner J. Terry Deason dissented from the denial of gross-up authority on the ground that, in his opinion, the utility demonstrated a cash flow deficiency at the Agenda Conference, and that it did not have adequate access to funds at reasonable cost to pay the CIAC tax.

Commissioner Diane K. Kiesling also dissented from the denial of gross-up authority.

(S E A L)

CJP

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 concerning refunds of gross-up of contributions in aid of construction collected 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 July 12, 1995. 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.

The Commission's decision on the tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the action proposed files a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), 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 July 12, 1995.

In the absence of such a petition, this order shall become final on the day subsequent to the above date.

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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 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 date this Order becomes final, 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. 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.