

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 940685-WU
Authority to Gross-up) ORDER NO. PSC-95-1129-FOF-WU
Contributions-in-Aid-of) ISSUED: September 7, 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 RESOLVING SHOW CAUSE PROCEEDING

BY THE COMMISSION:

The Peoples Water Service Company (Peoples or utility) is a Class A utility providing water service to the public in Escambia County. As of December 31, 1993, the utility served 7,898 water customers. For 1993, the utility reported 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 a certificate pursuant to Section 367.171, Florida Statutes, to provide water service in Escambia County. In that order, we approved Peoples' existing rates and charges as Escambia County had established them, with the exception of the gross-up charges on contributions in aid of construction (CIAC). In the same order, 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. Earlier, on April 20, 1992, Commission staff wrote a letter to the utility, confirming a telephone conversation April 16, 1992, in which, after quoting relevant language from Order No. 23541, issued October 1, 1990, it stated that "a separate petition will need to be filed with the Division of Records and Reporting requesting the approval of CIAC gross-up."

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FPSC-RECORDS/REPORTING

On August 19, 1994, Peoples filed an application 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 after October 18, 1994, on an interim basis, subject to refund. However, from the reports submitted with the application, we learned that the utility collected \$55,883 in CIAC gross-up from September 1, 1992, through August 31, 1993.

Accordingly, by Order No. PSC-95-0478-FOF-WU, issued June 21, 1995, we required Peoples to show cause within 20 days of the date of the order why it should not be fined up to \$5,000 per day for each offense for collecting unauthorized gross-up of CIAC. In that order, we stated that "[i]t 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." In addition, we ordered the utility to refund to contributors with interest all CIAC gross-up collected in the period beginning August 25, 1992, to the present time, including unauthorized collections in the period August 25, 1992, to October 18, 1994. We required the utility to make the refunds by December 21, 1995.

On July 11, 1995, Peoples timely filed its Response to Order to Show Cause. In its response, Peoples did not request a hearing pursuant to Section 120.57(1), Florida Statutes.

We believe Peoples' response to be of little merit in respect to its collection of CIAC gross-up during the period in question. Peoples' most persuasive argument is that, while it was aware that it was required to obtain the Commission's approval for continuing authority to collect CIAC gross-up, it was unaware of a time certain by which it was to file a request for such approval or that, until it obtained the Commission's approval, it was to cease collecting CIAC gross-up. First, the utility noted that staff's letter to the utility, dated April 20, 1992, raising questions concerning the utility's proposed tariff, did not set forth a certain time by which Peoples was to file a request for approval to gross up CIAC. Furthermore, the utility stressed that the letter stated that the company was to seek "continuing" authority to gross up. The utility's apparent position is that it was not unreasonable for it to have concluded that it could gross up CIAC as it had been authorized to do while under the jurisdiction of Escambia County until it secured Commission approval to continue to gross up CIAC.

However, casting staff's letter in the light most favorable to the utility (and without considering what might have been said in

the April 16, 1992, telephone conversation between staff and the utility concerning the subject matter of the letter), we find that the utility's position crumbles with a reading of Order No. PSC-92-0866-FOF-WU. In that order, we stated that:

Peoples collected gross-up charges on contributions-in-aid-of-construction (CIAC) prior to the Commission receiving jurisdiction. These charges have been removed from the utility's tariff. A separate filing must be submitted before the gross-up on CIAC may be charged again.

As we observed in Order No. PSC-95-0748-FOF-WU, "[t]he pertinent language of Order No. PSC-92-0866-FOF-WU is unmistakable." Thus, we find that it cannot be accepted that the utility acted in innocence, in persisting to collect CIAC gross-up following Order No. PSC-92-0866-FOF-WU.

Additionally, Peoples offered in mitigation its concern at the time of its application for certification with adapting to "an array of new regulations and reporting requirements, to which it was not familiar," and, moreover, with complying with new EPA regulations and making improvements to its plant. Conceding these concerns to have indeed required a great amount of the utility's energy, we find they are, if at all, only weakly mitigating. The utility further stated its operations history to be exemplary. While we fully appreciate the quality of service the utility provides, we find that has but little to do with the utility's obligation to comply with a clear order of the Commission.

Finally, Peoples asserted that its conduct resulted in no harm to ratepayers or consumers. However, no support was developed for this assertion. Moreover, the utility did not address the impact of its conduct on the contributors of CIAC. The utility's position appears to be that all contributors will be made whole upon receiving refunds with interest. That position is not tenable.

The utility conceded that its failure to comply with the Commission's order at the time of certification may have constituted a willful violation pursuant to Section 367.161(1), Florida Statutes. Upon consideration of the utility's response, we are persuaded that the utility's failure was indeed a willful violation of an order of the Commission. Furthermore, we find that very little in the utility's response to the show cause order is exculpatory. However, this is the first time that Peoples' conduct has been called into question. Peoples stated to us at Agenda Conference that it would carry out the refunds ordered in Order No. PSC-95-0748-FOF-WU promptly and well in advance of the imposed

deadlines. Accordingly, we find it appropriate to fine the utility in the amount of \$200.

Furthermore, we find it appropriate that the utility remit payment of the fine within 15 days of the effective date of this order. In Order No. PSC-95-0748-FOF-WU, we ordered that if a fine were to be assessed and the utility were to fail to remit payment after reasonable collection efforts, we would, in accordance with our standard practice, deem the fine to be uncollectible and authorize the matter to be referred to the Comptroller's Office for disposition. We hereby affirm that order, and note that by reasonable collection efforts we mean two certified letters requesting payment.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that a fine in the amount of \$200 as set forth in the body of this Order shall be imposed on The Peoples Water Service Company. It is further

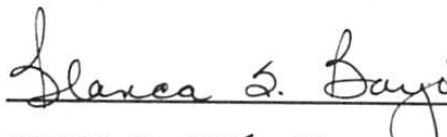
ORDERED that The Peoples Water Service Company shall remit payment in full of the fine herein imposed within 15 days of the effective date of this Order. It is further

ORDERED that if The Peoples Water Service Company fails to remit payment in full after reasonable collection efforts, the matter shall be referred to the Comptroller's Office for disposition. It is further

ORDERED that each of the findings made in the body of this Order is approved in every respect. It is further

ORDERED that this docket shall remain open in accordance with Order No. PSC-95-0748-FOF-WU.

By ORDER of the Florida Public Service Commission, this 7th day of September, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(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.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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.