

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by PONCE DE LEON)	DOCKET NO. 891145-WS
UTILITY COMPANY OF ST. JOHNS COUNTY,)	
INC. for gross-up of contributions)	ORDER NO. 22340
in aid of construction in St. Johns)	
County)	ISSUED: 12-26-89
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING COLLECTION OF GROSS-UP OF
CIAC AND REQUIRING REFUND OF GROSS-UP
COLLECTED PRIOR TO APPROVAL

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are 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.

Ponce de Leon Utility Company of St. Johns County, Inc. (Ponce de Leon) is a Class C utility which provides service to approximately 60 water and 18 wastewater customers. We acquired jurisdiction over this utility in 1985 when the Board of County Commissioners for St. Johns County adopted a resolution transferring jurisdiction over privately owned water and wastewater utilities to this Commission.

By Order No. 16971, issued December 18, 1986, this Commission authorized certain corporate water and wastewater utilities to elect to collect contributed taxes (the gross-up) on contributions-in-aid-of-construction (CIAC).

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On August 25, 1987, by Order No. 18048, we approved the transfer of majority organizational control of Ponce de Leon to Charles A. Brown, Jr. Apparently due to a misunderstanding of our orders regarding the gross-up of CIAC, Ponce de Leon has, since the transfer, grossed-up CIAC without our approval.

By letter dated May 2, 1989, Ponce de Leon requested approval, effective September 14, 1987, to gross-up CIAC.

By letter dated July 7, 1989, the Staff of this Commission confirmed that Ponce de Leon did not have authority to collect the gross-up and informed the utility that any amounts collected thus far have been collected illegally. Staff requested that the utility file a schedule showing the total amounts collected for the gross-up, a copy of all tax returns filed since the utility began collecting the gross-up and copies of all escrow account statements. On July 25, 1989, Ponce de Leon provided this information and indicated that it had stopped collecting the gross-up.

According to the utility's filing, it collected \$53,844 in gross-up between October of 1987 and May of 1989. The information also shows that Ponce de Leon has deposited the proper sums into an interest bearing escrow account as required by Order No. 16971. Finally, according to its 1987 federal and state income tax returns, Ponce de Leon's tax liability for the period between October 1, 1987, and September 30, 1988, was \$39,626.

As a small utility in a fast-growing area, it appears that the need exists for Ponce de Leon to pass the tax liability of its collection of CIAC along to the contributor. Accordingly, we hereby approve Ponce de Leon's request for authority to gross-up CIAC, effective upon staff's approval of revised tariff sheets, for collections of CIAC on or after the stamped approval date on the revised tariff sheets.

Further, since it appears that Ponce de Leon's failure to obtain approval to gross-up was based upon its misunderstanding and because it voluntarily came forward with its error, we do not believe that it is appropriate to initiate show cause proceedings against this utility. However, we do believe that it is appropriate to require it to refund all amounts collected prior to our approval in excess of its actual tax liability. Accordingly, Ponce de Leon shall refund \$14,218, plus

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interest. The refund shall be made within thirty days of the date of this Order, on a pro rata basis to each of the contributors from whom the amounts were collected.

It is, therefore,

ORDERED by the Florida Public Service Commission that the provisions of this Order are issued as proposed agency action and will become final unless a person whose interests are substantially affected files a protest with the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date specified in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that Ponce de Leon Utility Company of St. Johns County, Inc. is hereby authorized to gross-up CIAC, as set forth in the body of this Order. It is further

ORDERED that, prior to its implementation of the gross-up of CIAC, Ponce de Leon Utility Company of St. Johns County, Inc. shall submit revised tariff pages in accordance with our decision on this matter. It is further

ORDERED that the gross-up will be effective for CIAC collections on or after the stamped approval date on the revised tariff pages. It is further

ORDERED that the revised tariff pages will be approved upon Staff's verification that they accurately reflect this Commission's decision and upon the expiration of the protest period. It is further

ORDERED THAT Ponce de Leon Utility Company of St. Johns County, Inc. shall refund \$14,218, the amount of gross-up collected in excess of the actual tax liability resulting from its collection of CIAC prior to our approval herein, plus interest, as set forth in the body of this Order. It is further

ORDERED that, if a protest to this Order is not timely filed, Docket No. 891145-WS shall be closed upon Staff's approval of the revised tariff pages and its verification that the refund has been completed.

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By ORDER of the Florida Public Service Commission
this 26th day of December, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

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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.

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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 16, 1990.

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, and as reflected in a subsequent order.

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 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 sewer 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.