

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for ) DOCKET NO. 940865-WU  
Authority to Gross-Up ) ORDER NO. PSC-94-1355-FOF-WU  
Contributions-in-Aid-of- ) ISSUED: November 7, 1994  
Construction (CIAC) in Escambia )  
County, by THE PEOPLES WATER )  
SERVICE COMPANY. )  
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The following Commissioners participated in the disposition of this matter:

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

ORDER REFLECTING NO ACTION BY THE COMMISSION  
ALLOWING REQUEST FOR APPROVAL OF GROSS-UP OF  
CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION TO  
BECOME EFFECTIVE ON AN INTERIM BASIS, SUBJECT TO REFUND

BY THE COMMISSION:

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 on contributions-in-aid-of-construction (CIAC) resulting from the amendment of Section 118(b) of the Internal Revenue Code. In Order No. 23541, issued October 1, 1990, we determined that utilities currently grossing-up CIAC must file a petition for continued authority to gross-up and also ordered that no utility may gross-up CIAC without first obtaining the approval of this Commission. On August 19, 1994, pursuant to Order No. 23541, The Peoples Water Service Company (Peoples or Utility) filed a petition for authority to gross-up CIAC.

Peoples is a Class A water utility providing service to the public in Escambia County. As of December 31, 1993, the utility served 7,898 customers. For the fiscal year 1993, the utility's annual operating revenue was \$2,250,150 and its net operating income was \$438,352.

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TARIFF IMPLEMENTATION

In its petition, Peoples asserts that the requested gross-up authority is necessary because in the taxable years ended August 31, 1993 and August 31, 1992, the utility remitted to the Internal Revenue Service and the State of Florida, respectively, in excess of \$55,000 and \$61,000, in income tax attributable to CIAC. Further, Peoples states that residential construction in its franchise area is strong, and the trend is for continuing residential development. As a result, it will have future CIAC tax liability. Peoples anticipates serving 387 new Equivalent Residential Connections (ERCs) over the next three years. The utility maintains that it would be a burden on the current rate payers and the utility if these funds were not contributed by developers. The utility also maintains that grossing up CIAC to include federal and state income taxes and collecting the grossed-up CIAC assigns the total costs of a speculative development to the creator of the expense, the developer, who is the sole beneficiary of the speculation.

Moreover, Peoples maintains that if a utility is not permitted to gross up CIAC, the utility's current and future customers bear the carrying costs of the CIAC tax, without receiving a related benefit; a part of the developer's risk is shifted to the utility and its customers; and that the Commission, in denying authority to gross up CIAC, casts itself in the role of advocate of special interests, not of protector of consumers' interests.

Peoples also asserts that grossing up CIAC to include income taxes will promote rate stability and mollify pressures on future rates. The utility notes that, if growth continues, and it is forced to continue to make CIAC tax investments, the effect will be to further increase rate base and escalate revenue requirement increases. It further notes that the CIAC tax is not a source of income or "windfall" to the utility.

Although the information filed appears to indicate that the utility will have a CIAC tax liability, we need additional information before we can determine that a tax liability will occur and that other sources of funds, such as debt financing, will not be available at a reasonable cost, as required by Order No. 23541. The utility represents that for the taxable years ended August 31, 1993 and August 31, 1992, it received \$91,163 and \$101,543, respectively, in CIAC. Peoples states that it is presently without debt, but is seeking debt financing to fund plant improvements mandated by the U.S. Environmental Protection Agency. Further, it states that it does not at this time have a mechanism in place to borrow funds to pay taxes on CIAC.

Section 367.081 (6), Florida Statutes, provides that within 60 days of the filing of any rate request, the Commission may withhold consent to the operation of any or all portions of the new rate schedule by a vote to that effect stating a reason or statement of good cause for withholding consent. If the Commission does not act within 60 days, the rates become effective. The file-and-suspend statutes have been interpreted by the Florida Supreme Court in Citizens of the State of Florida v. Wilson, 568 So. 2d 904 (Fla. 1990), to provide that rates which become effective upon the Commission's determination not to withhold consent are merely interim rates pending final order by the Commission.

In this instance, we will neither suspend, approve, nor deny Peoples' tariffs; rather, we will take no action, thereby allowing the tariffs to become effective on an interim basis. If we were to suspend the tariffs, the utility would not be able to collect any gross-up since it has no gross-up tariff in effect presently. Thus, the utility would forever lose monies to which it might ultimately be found to be entitled at the end of the Commission's investigation. If we were to approve the tariffs, the Commission would be stating that the utility's gross-up tariff is correct as filed. We cannot make that statement because we have not yet considered the effect of the additional information requested from the utility. If we were to deny the tariff, the utility would be unable to collect any CIAC gross-up and would have to refile. Therefore, we find that the appropriate procedure to use in this instance is to take no action on Peoples' tariffs, thus allowing the tariffs to go into effect on an interim basis, subject to refund with interest. As a result, both the utility and the rate payer are protected.

Pursuant to Rule 25-30.360 (6), Florida Administrative Code, the utility shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund as of the end of the preceding month.

Orders Nos. 16971 and 23541 granted authority for utilities to gross-up CIAC, prescribed accounting and regulatory treatment for the gross-up, and required refunds of certain gross-up amounts collected. Pursuant to these Orders, CIAC tax impact amounts shall be deposited as received in a fully funded interest bearing escrow account and the utility shall maintain adequate records to account for the receipt, deposit, and withdrawal of monies in the CIAC tax impact account. Further, Order No. 16971 provides that monies in the CIAC tax impact account may be withdrawn periodically for the purpose of paying that portion of the estimated Federal and State income tax expense which can be shown to be directly attributable to the repeal of Section 118(b) of the Internal Revenue Code and

the inclusion of CIAC in taxable income. In the event that excess monies are determined to have been withdrawn from the escrow account, the utility shall repay said monies to the account together with any earnings on the account lost because of the excess withdrawals.

CIAC tax impact monies received during the tax year that are in excess of the utility's actual tax liability resulting from its collection of CIAC, together with interest on such excess monies, must be refunded on a pro rata basis to the contributors of those amounts. All other matters discussed in the bodies of Orders Nos. 16971 and 23541 are expressly incorporated herein by reference. However, although in Order No. 16971 we said the utility may draw upon the escrow account to pay estimated taxes, we find that, because we are allowing the gross-up only on an interim basis by virtue of this Order, and because we may disallow it upon examination of further evidence, no monies shall be withdrawn from the escrow account until a final determination is made.

Peoples' interim collections of the CIAC gross-up shall be made in accordance with the provisions of Orders Nos. 16971 and 23541, with the modification that no monies shall be withdrawn from the escrow account until a final determination of the utility's authority to collect CIAC gross-up is made. Peoples' tariffs allowing it to gross-up will become effective, on an interim basis, subject to refund, on October 19, 1994. However, substantially affected persons shall have 21 days from the date of this order to request a hearing.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that this Commission takes no action on the tariffs for CIAC gross-up collections filed by The Peoples Water Service Company, thereby allowing said tariffs to become effective on an interim basis. It is further

ORDERED that interim collections of the CIAC gross-up shall be subject to refund with interest as set forth in the body of this Order. It is further

ORDERED that the interim collections of the CIAC gross-up shall be made in accordance with the provisions of Orders Nos. 16971 and 23541, with the exception that no monies shall be withdrawn from the escrow account until a final determination in this docket is made. It is further

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ORDERED that The Peoples Water Service Company, shall provide, in accordance with Rule 25-30.360(6), Florida Administrative Code, a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund as of the end of the preceding month. It is further

ORDERED that substantially affected persons shall have 21 days from the date of this Order to request a hearing.

By ORDER of the Florida Public Service Commission, this 7th day of November, 1994.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kary Flynn  
Chief, Bureau of Records

( 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.

The Commission's decision on this 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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on November 28, 1994.

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

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.