

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of
contributions-in-aid-of-
construction gross-up funds
collected by Palm Coast Utility
Corporation in Flagler County.

DOCKET NO. 970832-WS
ORDER NO. PSC-97-1266-FOF-WS
ISSUED: October 14, 1997

The following Commissioners participated in the disposition of
this matter:

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

NOTICE OF PROPOSED AGENCY ACTION ORDER DETERMINING THAT NO
REFUNDS ARE REQUIRED FOR THE YEAR 1995

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service
Commission that the action discussed herein 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

Palm Coast Utility Corporation (Palm Coast or utility), is a
Class A utility which is a wholly-owned subsidiary of the ITT
Corporation. The utility provides water and wastewater service to
the community of Palm Coast and part of Flagler County known as the
Hammock. As of December 31, 1996, the utility served 16,205 water
and 11,170 wastewater customers. Gross operating revenues were
reported as \$7,328,311 for the water system and \$3,700,965 for the
wastewater system. Net operating income was reported as \$1,354,129
for water and \$1,791,825 for wastewater.

As a result of the repeal of Section 118(b) of the Internal
Revenue Code, contributions in aid of construction (CIAC) became
gross income and were depreciable for federal tax purposes. In
Order No. 16971, issued December 18, 1986, we authorized corporate

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utilities to collect the gross-up on CIAC in order to meet the tax impact resulting from the inclusion of CIAC as gross income.

Orders Nos. 16971 and 23541, issued December 18, 1986 and October 1, 1990, respectively, require that utilities annually file information which would be used to determine the actual state and federal income tax liability directly attributable to the CIAC. The information would also determine whether refunds of gross-up would be appropriate. These orders also required that all gross-up collections for a tax year, which are in excess of a utility's actual tax liability for the same year, be refunded on a pro rata basis to those persons who contributed the taxes.

In Order No. 23541, we required any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue, to file a petition for approval with the Commission on or before October 29, 1990. On November 30, 1992, Palm Coast timely filed a petition requesting approval to continue to collect the gross-up on its CIAC. The information, as filed, met the filing requirements of Order No. 23541. By Order No. 25141, issued September 30, 1991, we approved the utility's request to continue gross-up of CIAC using the net present value method.

On September 9, 1992, we issued Proposed Agency Action (PAA) Order No. PSC-92-0961-FOF-WS, which clarified the provision of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On September 14, 1992, we issued PAA Order No. PSC-92-0961A-FOF-WS. This order included Attachment A which reflected the generic calculation form. No protests were filed, and the Order became final.

On March 29, 1996, we opened Docket No. 960397-WS to review our policy concerning the collection and refund of CIAC gross-up. Workshops were held and comments and proposals were received from the industry and other interested parties. By PAA Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, we directed our staff to review the proposals and comments offered by the workshop participants and make a recommendation concerning whether our policy regarding the collection and refund of CIAC should be changed. In addition, we directed our staff to consider ways to simplify the process and determine whether there were viable alternatives to the gross-up. Pending this review, we directed our staff to continue processing CIAC gross-up and refund cases pursuant to Orders Nos. 16971 and 23541.

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However, on August 1, 1996, Congress passed the Small Business Job Protection Act of 1996 (the Act), and the President signed the Act on August 20, 1996. The Act provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996. As a result, on September 20, 1996, in Docket No. 960965-WS, we issued Order No. PSC-96-1180-FOF-WS revoking the authority of utilities to collect gross-up of CIAC and cancelling the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. Since there was no longer a need to review our policy on the gross-up of CIAC, we closed Docket No. 960397-WS by Order No. PSC-96-1253-FOF-WS, issued on October 8, 1996. However, as established in PAA Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Orders Nos. 16971 and 23541.

As previously stated, by Order No. PSC-96-1180-FOF-WS, issued September 20, 1996, in Docket No. 960965, we revoked the authority of utilities to collect gross-up of CIAC. Pursuant to this order, on October 16, 1996, Palm Coast filed an Application for Variance to collect the gross-up taxes for prepaid CIAC that was collected from January 1, 1987 through June 12, 1996. By Order No. PSC-97-0188-FOF-WS, issued February 18, 1997, Palm Coast's Application for Variance was dismissed for lack of jurisdiction due to Flagler County's recision of Commission jurisdiction effective August 5, 1996.

On March 3, 1997, the utility filed a Motion for Reconsideration or, Alternatively, Clarification of that order and a Request for Oral Argument. According to the utility, Section 367.171(5), Florida Statutes, states that all cases pending before the Commission or on appeal from an order of the Commission as of the jurisdictional transfer date remain within the jurisdiction of the Commission until disposed of by the Commission. The utility stated that if we had the jurisdiction to dispose of gross-up collected by the utility during 1992 through 1994, and to cancel its authority to collect CIAC after the effective date of the jurisdictional transfer date, then we continued to have jurisdiction to consider the utility's request for variance. Conversely, the utility argued that if we did not have jurisdiction after the jurisdictional transfer date to consider its variance request, then we had no jurisdiction to cancel the utility's prospective gross-up authority.

Palm Coast, therefore, requested that we either exercise jurisdiction over the request for variance, or, alternatively, clarify Order No. PSC-97-0188-FOF-WS to state that the Commission

lacked jurisdiction to cancel the utility's gross-up authority. Order No. PSC-97-0601-FOF-WU, issued May 27, 1997, denied Palm Coast's request for oral argument, and denied its motion for reconsideration, or, alternatively, clarification. However, we, on our own motion, corrected Order No. PSC-97-1180-FOF-WS, to remove Palm Coast from the list of utilities whose gross-up authority was revoked by that order.

Although Flagler County rescinded Commission jurisdiction effective August 5, 1996, Order No. 25141, which approved the utility's request to continue the gross-up of CIAC, provides that all CIAC collections are to be made in accordance with Orders Nos. 16971 and 23541, and all matters discussed in those orders were expressly incorporated therein. Order No. 23541 states that "all gross-up amounts in excess of a utility's actual tax liability resulting from its collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes." Since the collection of gross-up of CIAC was made subject to refund by the order, we retain jurisdiction of the matter regarding the determination of refunds. The purpose of this Order is to address the disposition of CIAC gross-up funds for 1995.

1995 CIAC GROSS-UP FUNDS

In compliance with Orders Nos. 16971 and 23541, Palm Coast filed its 1995 annual CIAC report regarding its collection of gross-up. On June 18, 1997, our staff submitted their preliminary refund calculation numbers to the utility. The utility responded on June 23, 1997, that it agreed with staff's preliminary calculations.

Palm Coast uses the net present value gross-up method. Our staff calculated the gross-up required to pay the tax liability resulting from the collection of taxable CIAC by grossing-up the net taxable CIAC amount, in accordance with the net present value method adopted in Order No. 23541. The authorized rate of return is 9.21 percent as approved in Order No. 22843, Docket No. 890277-WS, issued April 23, 1990. Therefore, the authorized gross-up percentage is 32.2 percent.

The 1995 CIAC report indicates the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income. Therefore, all taxable CIAC received would be taxed. The CIAC report indicates a total of \$4,209,191 of taxable CIAC was received. However, gross-up was collected on only \$3,320,057 of this amount because \$889,134 of the CIAC collected

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was prepaid. The utility collects the gross-up on prepaid CIAC when the customer actually connects to the system. The CIAC report also indicates that \$1,113,514 of gross-up collections were received on the \$3,320,057 of taxable CIAC. Our calculations show that this is the correct amount of gross-up for 1995. Therefore, no refund is required.

Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, processing of this docket is complete and the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Palm Coast Utility Corporation in Flagler County is not required to refund any contributions-in-aid-of-construction gross-up funds for the year 1995. It is further

ORDERED that the provisions of this Order are issued as proposed agency action 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, 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" below. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th day of October, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 4, 1997.

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.

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 substantially 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.