**FLORIDA PUBLIC SERVICE COMMISSION**

 **Fletcher Building**

 **101 East Gaines Street**

 **Tallahassee, Florida 32399-0850**

 **M E M O R A N D U M**

 **JANUARY 21, 1993**

**TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING**

**FROM : DIVISION OF WATER AND WASTEWATER (MEADOR)**

 **DIVISION OF LEGAL SERVICES (KNOWLES)**

**RE :UTILITY: ROLLING OAKS UTILITIES, INC.**

**DOCKET NO.: 921241-WS**

**COUNTY: CITRUS**

**CASE: DISPOSITION OF GROSS-UP FUNDS COLLECTED**

**AGENDA : 2/2/93 - CONTROVERSIAL - PROPOSED AGENCY ACTION - PARTIES MAY PARTICIPATE**

**CRITICAL DATES: NONE**

**RECOMMENDATION FILE NAME: I:\PSC\WAW\WP\921241.RCM**

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 **CASE BACKGROUND**

 The repeal of Section 118(b) of the Internal Revenue Code (I.R.C.) resulted in making contributions-in-aid-of-construction (CIAC) gross income and depreciable for federal tax purposes. In Order No. 16971, issued December 18, 1986, the Commission authorized corporate 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 require that utilities annually file information which would be used to determine the actual state and federal income tax expense directly attributable to the CIAC, and whether a refund of the gross-up is appropriate for any given year for which gross-up was in effect. These orders also require that all gross-up amounts for a tax year which are in excess of a utility's actual tax liability for the same year resulting from its collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes.

 In Order No. 23541, issued October 1, 1990, the Commission determined that any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue collecting the gross-up, had to file a petition for approval with the Commission on or before October 29, 1990. Rolling Oaks Utilities, Inc. (Rolling Oaks or Utility) requested and was granted authority to continue to gross-up CIAC for the related tax impact, Order No. PSC-92-0005-FOF-WS, issued March 3, 1992.

 On September 9, 1992, this Commission issued PAA Order No. PSC-92-0961-FOF-WS, which clarified the Provisions of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On September 14, 1992, Order No. PSC-92-0961A-FOF-WS, was issued with included Attachment A which reflects the generic calculation form. No protests were filed, and the order became final.

 Rolling Oaks is a Class A utility which provides water and wastewater service to customers in Citrus County. According to its 1991 annual report, operating revenues of $720,290 for water and $883,068 for the wastewater system were reported. The utility reported net operating income of $65,665 for the water system and a net operating loss of $42,838 for the wastewater system.

 **DISCUSSION OF ISSUES**

**ISSUE 1:** Should Rolling Oaks Utilities, Inc. be required to refund excess gross-up collections of $829 for 1989 and $563 for 1990, for a total of $1,392 plus accrued interest through the date of refund?

**RECOMMENDATION:** No, the utility should not be required to refund excess gross-up collections for 1989 and 1990. Due to the minimal over-collection of gross-up monies, the over-collections should be booked to CIAC. (MEADOR)

**STAFF ANALYSIS:** In compliance with Order No. 16971, Rolling Oaks filed its 1987 through 1990 annual CIAC reports regarding its collection of gross-up for each year. The gross-up required to pay the tax impact exceeded the gross-up collections for 1987 and 1988, therefore, no action is necessary for either 1987 or 1988. In response to staff's preliminary calculations, the utility agreed with the calculations. However, due to the minimal over-collections of gross-up monies the utility proposed the over-collections be booked to CIAC.

 **ANNUAL GROSS-UP REFUND AMOUNTS**

 Staff has calculated the amount of refund per year which is appropriate. Our calculations are reflected on Schedule No. 1, attached to the recommendation and were taken from the information provided by the utility in its gross-up reports filed each year. A summary of each year's refund calculation follows.

 **1987**

 The total gross-up collected in 1987 was $172,280. Gross-up required to pay the tax effect was calculated to be $283,694. The gross-up required to pay the tax impact exceeded the gross-up collections. No refund is necessary or proposed.

 **1988**

 The total gross-up collected in 1988 was $159,140. Gross-up required to pay the tax effect was calculated to be $194,002. The gross-up required to pay the tax impact exceeded the gross-up collections. No refund is necessary or proposed.

 **1989**

 Staff and the utility agree that over-collections of gross-up amount to $829 in 1989. No refund is proposed.

 Staff calculated a refund of $829 for 1989. The 1989 CIAC report indicates that a total of $91,790 of taxable CIAC was collected. Staff has used the 37.63% combined federal and state tax rate as provided in the 1989 CIAC Report to calculate the tax effect. The total gross-up collected in 1989 was $56,210. Gross-up required to pay the tax effect was calculated to be $55,381. Based upon the foregoing, staff calculates a refund of $829 for 1989. This amount does not include the accrued interest. The utility's gross-up report indicates that the CIAC was collected from 77 different developers and would result in immaterial refunds to each. The utility proposes to book the over-collections to CIAC in lieu of incurring the administrative cost of refunding the minor amounts to 77 different developers. Staff agrees and does not believe the utility should be required to incur the administrative cost of refunding the over-collections to 77 developers. The over-collection should be booked to CIAC.

**1990**

 Staff and the utility agree that over-collections of gross-up amount to $563 in 1990. No refund is proposed.

 Staff calculated a refund of $563 for 1990. The 1990 CIAC report indicates that a total of $51,095 of taxable CIAC was collected. Staff has used the 37.63% combined federal and state tax rate as provided in the 1990 CIAC Report to calculate the tax effect. The total gross-up collected in 1990 was $31,390. Gross-up required to pay the tax effect was calculated to be $30,827. Based upon the foregoing, staff calculates a refund of $563 for 1990. This amount does not include the accrued interest. The utility's gross-up report indicates that the CIAC was collected from 43 different developers and would result in immaterial refunds to each. The utility proposes to book the over-collections to CIAC in lieu of incurring the administrative cost of refunding the minor amounts to 43 different developers. Staff agrees and does not believe the utility should be required to incur the administrative cost of refunding the over-collections to 43 developers. The over-collection should be booked to CIAC.

 The utility did not propose any refund of gross-up collections for 1987 and 1988 due to the tax liability exceeding gross-up collections. Staff agrees no further action is necessary for 1987 and 1988. Based upon the foregoing, staff recommends that the utility be required to book the over-collections of $829 for 1989 and $563 for 1990 for a total of $1,392 to CIAC.

**ISSUE 2:** Should the docket be closed?

**RECOMMENDATION:** Yes, the docket should be closed upon expiration of the protest period. (MEADOR, KNOWLES)

**STAFF ANALYSIS:** Staff believes this docket should be closed if a timely protest is not filed.

ROLLING OAKS UTILITIES, INC. STAFF CALCULATED GROSS‑UP REFUND

SOURCE: (Line references are from CIAC Reports)

 1987 1988 1989 1990

 ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑

 1 Form 1120, Line 30 (incl CIAC & Gross‑up) $ 791,562 $ 458,321 $ 553,159 $ 98,617

 2 Less CIAC (491,490) (416,360) (91,790) (51,095)

 3 Less Gross‑up collected (172,280) (159,140) (56,210) (31,390)

 4 Add First Year's Depr on CIAC 21,281 9,646 0

 5 Add/Less Other Effects 25,861 22,369 (393) (348)

 6 ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑

 7 Adjusted Income Before CIAC and Gross‑up $ 174,934 $ (85,164) $ 404,766 $ 15,784

 8

 9 Taxable CIAC (Line 7) $ 491,490 $ 416,360 $ 91,790 $ 51,095

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11 Taxable CIAC Resulting in a Tax Liability $ 491,490 $ 331,196 $ 91,790 $ 51,095

12 Less first years depr. (Line 8) (21,281) (9,646) 0 0

13 ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑

14 Net Taxable CIAC $ 470,209 $ 321,550 $ 91,790 $ 51,095

15 Effective state and federal tax rate 37.63% 37.63% 37.63% 37.63%

16 ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑

17 Net Income tax on CIAC $ 176,940 $ 120,999 $ 34,541 $ 19,227

18 Less ITC Realized 0 0 0 0

19 ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑

20 Net Income Tax $ 176,940 $ 120,999 $ 34,541 $ 19,227

21 Expansion Factor for gross‑up taxes 1.603334937 1.603334937 1.603334937 1.603334937

22 ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑

23 Gross‑up Required to pay tax effect $ 283,694 $ 194,002 $ 55,381 $ 30,827

24 Less CIAC Gross‑up collected (Line 19) (172,280) (159,140) (56,210) (31,390)

25 ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑

26 PROPOSED REFUND (excluding interest) $ 0 $ 0 $ (829) $ (563)

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29 TOTAL REFUND $ (1,392)

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