

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 940219-WS
Contributions-in-Aid-of-) ORDER NO. PSC-94-0499-FOF-WS
Construction (CIAC) Gross-Up) ISSUED: April 27, 1994
Funds Collected by ROLLING OAKS)
UTILITY, INC., in Citrus County)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER FINDING REFUND NOT REQUIRED

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

The repeal of Section 118(b) of the Internal Revenue Code (IRC) resulted in making contributions-in-aid-of-construction (CIAC) gross income and depreciable for federal tax purposes. By Order No. 16971, issued December 18, 1986, this Commission authorized corporate utilities to collect a CIAC tax gross-up in order for those utilities to pay the tax liability resulting from their receipt of CIAC.

In Order No. 23541, 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) filed for authority to continue to gross-up on February 18, 1991. By Order No. PSC-92-0005-FOF-WS, issued March 3, 1992, Rolling Oaks was granted authority to continue to gross-up using the full gross-up formula.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

By Orders Nos. 16971 and 23541, we required utilities which gross-up to file annually the information needed for (1) a determination of the utility's state and federal income tax liability directly attributable to receipt of CIAC for that year and (2) a determination of whether a refund of gross-up charges collected during that year is appropriate. These Orders required that a utility refund on a pro rata basis the gross-up charges collected each year which exceeded the utility's actual above-the-line tax liability attributable to CIAC for the same year.

By Proposed Agency Action (PAA) Order No. PSC-92-0961-FOF-WS, issued September 9, 1992, as amended by Order No. PSC-92-0961A-FOF-WS, issued September 14, 1992, we clarified the refund calculation provisions of Orders Nos. 16971 and 23541. No protest to that PAA Order was filed, so the action taken therein became final.

Refund Calculations For Years 1991 Through 1992

In compliance with Order No. 16971, Rolling Oaks filed annual CIAC gross-up reports for 1991 through 1992. Using Rolling Oaks' annual gross-up reports, we have made a refund calculation for each of the years Rolling Oaks collected CIAC and the gross-up, 1991-1992, and we find that no refunds are due. Our calculations are reflected on Schedule No. 1, which is attached hereto and by reference incorporated herein. A summary of each year's calculation follows.

1991

Rolling Oaks' 1991 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Rolling Oaks' 1991 CIAC report indicates that a total of \$22,632 in CIAC gross-up charges was collected, and the first year's depreciation on the CIAC was \$738 associated with \$39,363 in taxable CIAC which was collected. We used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. Since the utility required more in gross-up to pay the tax impact than was collected, no refund is necessary.

1992

Rolling Oaks' 1992 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Rolling Oaks' 1992 CIAC report indicates that a total of \$48,946 in CIAC gross-up charges

was collected, and the first year's depreciation on the CIAC was \$1,524 associated with \$81,276 in taxable CIAC which was collected. We used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. We calculated that the utility collected \$828 more in gross-up than it required to pay the tax impact. The utility indicates that the gross-up was collected from 78 individuals. The utility anticipates the cost of making the refund would exceed the amount of the refund, and therefore, requests that it be authorized to book this excess to CIAC. We agree and order that, in lieu of a refund, the utility credit CIAC for the \$828 of excess gross-up collections.

According to the utility's 1992 annual report, the utility is 63.06% contributed for the water system and 31.16% contributed for the wastewater system. Since the utility collected CIAC for both water and wastewater, we order that the \$828 of excess gross-up collections be allocated \$331 for water and \$497 for wastewater, based on the ratio of water service availability charges to wastewater service availability charges in the utility's approved tariff.

Based on the foregoing, it is, therefore,

ORDERED that Rolling Oaks Utility, Inc., is not required to refund any CIAC gross-up funds collected for 1991 and 1992. It is further

ORDERED that Rolling Oaks Utility, Inc., credit CIAC for a total of \$828, \$331 for water and \$497 for wastewater, of excess gross-up collections for 1992, in lieu of a refund. It is further

ORDERED by the Florida Public Service Commission 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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that the docket should be closed upon expiration of the protest period if no timely protest is filed.

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By ORDER of the Florida Public Service Commission this 27th
day of April, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay J. Jeyan
Chief, Bureau of Records

(S E A L)
MSN

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 May 18, 1994.

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.

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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 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.