



Public Service Commission

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RECORDS AND REPORTING

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DATE: JULY 21, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (JAEGER)
DIVISION OF ECONOMIC REGULATION (IWENJIORA, ROMIG)

RE: DOCKET NO. 980954-WS - DISPOSITION OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION (CIAC) GROSS-UP FUNDS COLLECTED DURING THE YEARS 12/31/92 THROUGH 12/31/96 BY JJ'S MOBILE HOMES, INC. IN LAKE COUNTY.

AGENDA: 08/01/2000 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\980954R2.RCM

CASE BACKGROUND

JJ's Mobile Homes, Inc. (JJ's or utility), was a Class C utility located in Lake County, Florida. JJ's provided water and wastewater service to approximately 278 water and wastewater customers in the City of Mt. Dora, Florida (City). Its 1995 annual report reflected gross operating revenues of \$136,790 and \$138,025 for water and wastewater, respectively, and net operating losses of \$60,567 and \$45,929 for water and wastewater, respectively.

On July 9, 1996, the utility and City filed a joint application for transfer of the utility to a governmental authority, pursuant to Section 367.071(4)(a), Florida Statutes. The contract for the sale between JJ's and the City was made on June 21, 1996, with closing and transfer of all water and wastewater assets effective July 3, 1996. By Order No. PSC-96-1245-FOF-WS, issued October 7, 1996, in Docket No. 921237-WS, the Commission acknowledged the transfer of the water and wastewater

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FPSC-RECORDS/REPORTING

assets of JJ's to the City and canceled Certificates Nos. 298-W and 248-S.

Prior to this transfer, by Order No. PSC-92-0777-FOF-WS, issued August 10, 1992, in Docket No. 920032-WS, the Commission had authorized JJ's to gross-up using the full gross-up formula. The authorized CIAC gross-up was subject to refund and, pursuant to Orders Nos. 16971 and 23541, issued December 18, 1986 and October 1, 1990, respectively, in Docket No. 860184-PU, could only be used to pay the actual tax liability incurred by the utility associated with its reception of contributions-in-aid-of-construction (CIAC). CIAC gross-up was to be placed in a special account and withdrawn only to pay the actual income tax liability or to make refunds as required.

The disposition of gross-up collections was not addressed in Docket No. 921237-WS. However, the Commission determined that it had jurisdiction to address the disposition of CIAC gross-up collections even though the facilities had been sold to the City. See Charlotte County v. General Development Utilities, Inc., 653 So. 2d 1081 (Fla. 1st DCA 1995), determining that the Commission had jurisdiction over a rate dispute between a county and a water utility involving alleged overcharges to the county for water service occurring before transfer of the utility's water facility to the city. Therefore, this docket, Docket No. 980954-WS, was opened on July 28, 1998 to address the disposition of excess CIAC gross-up collections for the years 1992 through 1996.

By Proposed Agency Action (PAA) Order No. PSC-99-2369-PAA-WS, issued December 6, 1999, in this docket, which Order was consummated by Order No. PSC-99-2542-CO-WS, issued December 29, 1999, the Commission ordered JJ's to refund \$3,387 for 1992, \$1,559 for 1993, \$6,070 for 1994, and \$448 for 1995, for a total of \$11,464 plus accrued interest through the date of the refund, for gross-up collected in excess of the tax liability resulting from the collection of taxable CIAC. In addition, the Commission ordered the utility to refund \$6,353 for 1994 and \$6,918 for 1995 for a total of \$13,271 plus accrued interest through the date of the refund, for the unauthorized collection of gross-up on meter fees. Order No. PSC-99-2369-PAA-WS required that all refunds be completed within two months of the effective date of that Order. Pursuant to the Consummating Order, the effective date was December 29, 1999. Therefore, all refunds should have been completed on February 29, 2000.

However, as of May 16, 2000, JJ's had not made the refunds as required. Therefore, by Order No. PSC-00-1066-SC-WS, issued June

DOCKET NO. 980954-ws
DATE: JULY 21, 2000

5, 2000, the Commission ordered JJ's to show cause why it should not be fined in the amount of \$26,000 for its failure to timely make the refunds required by Order No. PSC-99-2369-PAA-WS.

On June 26, 2000, JJ's filed its timely Response to the Order to Show Cause. In that response, among other things, JJ's noted that the utility had been formally dissolved for almost two years and that the records were unavailable. Further, JJ's noted that its former President and director had developed a critical medical condition that necessitated emergency surgery and an extended hospitalization and convalescence period. In conclusion, JJ's noted that "most of the gross-up paid to the utility during the period in question was paid by a single developer, to wit: George Wimpey of Florida, Inc., which has now merged with and become Morrison Homes of Florida, Inc." In settlement of the total case, JJ's offered to pay Morrison Homes 88% of the total refund of \$24,735 required by Order No. PSC-99-2369-PAA-WS, issued December 6, 1999, for a total refund of \$21,767. In return, JJ's requests the Commission to accept the offer and not seek or impose any fines against the utility or any of its principals and close the docket upon such payment being made. By letter dated July 7, 2000, Morrison Homes, Inc., accepted JJ's settlement offer.

This recommendation addresses whether JJ's settlement offer should be approved.

DISCUSSION OF ISSUES

ISSUE 1: Should the settlement offer of JJ's Mobile Homes, Inc., be approved by the Commission?

RECOMMENDATION: Yes, the Commission should approve JJ's settlement offer. Pursuant to that offer, JJ's shall pay Morrison Homes, Inc., the sum of \$21,767, within two weeks of the issuance date of the Final Order approving the settlement offer, and upon verification of such payment, the Commission will not seek to impose any fines against JJ's or any of its principals. Staff should be given the authority to administratively close the docket upon verification that the payment has been made. (JAEGER, IWENJIORA)

STAFF ANALYSIS: As stated above, by Order No. PSC-99-2369-PAA-WS, the Commission determined that JJ's had over collected CIAC gross-up. In arriving at this final determination, the Commission ordered JJ's to refund \$3,387 for 1992, \$1,559 for 1993, \$6,070 for 1994, and \$448 for 1995, for a total of \$11,464 plus accrued interest through the date of the refund, for gross-up collected in excess of the tax liability resulting from the collection of taxable CIAC.

In addition, the Commission ordered the utility to refund \$6,353 for 1994 and \$6,918 for 1995 for a total of \$13,271 plus accrued interest through the date of the refund, for the unauthorized collection of gross-up on meter fees. Therefore, the Commission ordered JJ's to refund a total amount of \$24,735. Order No. PSC-99-2369-PAA-WS required that all refunds be completed within two months of the effective date of that Order. Pursuant to the Consummating Order, the effective date was December 29, 1999. Therefore, all refunds should have been completed by February 29, 2000.

However, when JJ's did not timely make the refunds, by Order No. PSC-00-1066-SC-WS, issued June 5, 2000, the Commission ordered JJ's to show cause why it should not be fined in the amount of \$26,000. On June 26, 2000, JJ's filed its timely Response to the Order to Show Cause.

In that response, among other things, JJ's noted that the utility had been formally dissolved for almost two years and that the records were unavailable. Further, JJ's noted that its former President and Director had developed a critical medical condition that necessitated emergency surgery and an extended hospitalization and convalescence period. In conclusion, JJ's noted that "most of

DOCKET NO. 980954-WS
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the gross-up paid to the utility during the period in question was paid by a single developer, to wit: George Wimpey of Florida, Inc., which has now merged with and become Morrison Homes of Florida, Inc." In settlement of the total case, JJ's offered to pay Morrison Homes 88% of the total refund of \$24,735 required by Order No. PSC-99-2369-PAA-WS, issued December 6, 1999, for a total refund of \$21,767. In return, JJ's requests the Commission to accept the offer and not seek or impose any fines against the utility or any of its principals and close the docket upon such payment being made. By letter dated July 7, 2000, Morrison Homes, Inc., accepted JJ's settlement offer.

Staff has contacted counsel for JJ's, and has been advised that JJ's has deposited with his firm the full amount of the settlement offer to be paid to Morrison Homes when the Commission approves the settlement offer (funds are in a trust account). Based on all the above, staff believes that the Commission should approve the settlement offer. As stated above, Morrison Homes has accepted the settlement offer, and counsel for JJ's states that the payment will be made immediately upon issuance of the Commission Order approving the settlement agreement.

Staff therefore recommends that the Commission approve the offer and not seek or impose any fines against the utility or any of its principals. Further, the payment should be made within two weeks of the issuance date of the Final Order approving the settlement offer, and staff should be given the authority to administratively close the docket upon verification that the payment has been made.