

FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

August 5, 1993

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF WATER AND WASTEWATER (MEADOR) *Meador*
DIVISION OF LEGAL SERVICES (JABER) *Jaber*

RE : UTILITY: POINCIANA UTILITIES, INC.
DOCKET NO.: 930529-WS
COUNTIES: OSCEOLA AND POLK
CASE: PETITION FOR REVISION TO THE FULL GROSS-UP FORMULA
FOR DEPRECIABLE PLANT

AGENDA : AUGUST 17, 1993 - CONTROVERSIAL - PARTIES MAY PARTICIPATE

CRITICAL DATES: 60-DAY SUSPENSION DATE - JULY 31, 1993 (COMPANY
EXTENDED 60-DAY SUSPENSION DATE TO AUGUST 17, 1993)

FILENAME: I:\PSC\WAW\WP\930529.RCM

CASE 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. Order No. 23541, issued October 1, 1990, ordered utilities currently grossing-up CIAC to 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 December 18, 1990, Poinciana Utilities, Inc. (Poinciana or utility) filed a petition requesting approval to continue to collect the gross-up using the full gross-up method approved in Order No. 23541. Order No. 25174, issued on October 8, 1991, approved continued authority for Poinciana to gross-up.

Poinciana is a Class A water and wastewater utility providing service to the public in Osceola and Polk County. A review of the utility's 1992 Annual Report reflected 4,035 water customers and 3,866 wastewater customers as of December 31, 1992. Gross annual

DOCUMENT NUMBER-DATE

08448 AUG-5 93

1150-RECORDS/REPORTING

DOCKET NO. 930529-WS
August 5, 1993

operating revenue was \$761,165 for the water system and \$1,262,062 for the wastewater systems, and the utility had net operating income of \$98,518 for the water system and \$224,995 for the wastewater system.

DISCUSSION OF ISSUES

ISSUE 1: Should Poinciana Utilities, Inc. be granted authority to revise the full gross-up formula contained in its current tariff?

RECOMMENDATION: Yes, the Commission should approve the new tariffs. (MEADOR, JABER)

STAFF ANALYSIS: Section 367.091(5), Florida Statutes, provides that within sixty (60) days of the filing of an application to change a rate or charge other than the monthly rates for service, the Commission may withhold consent to the operations of any or all portions of the new rate schedule by a vote to that effect giving 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 inaction by the Commission are merely interim rates pending final order by the Commission. The case law also provides that substantially affected persons have the right to a hearing on the interim rates.

On June 1, 1993, Poinciana filed its petition requesting authority to revise the full gross-up formula for depreciable plant. The utility asserts that this request is necessary because they believe the formula contained in Order No. 23541 and their tariff may not be correct. Their assertion is that the formula which calculates the amount of gross-up to collect is intended to pass the tax savings on first year depreciation to the contributor of CIAC, and the existing gross-up factor generated by the formula contained in Order No. 23541 would not pass on the entire tax savings.

Staff reviewed the formula and determined that the formula in Order No. 23541 may contain an error. It appears the two factors which distinguish when companies use tax straight-line or accelerated rate were combined. The 1/tax life or TL would apply when a company uses straight-line for tax, which can be shorter than straight-line for book, and the accelerated rate or AR would apply when a company uses something other than straight-line for

DOCKET NO. 930529-WB
August 5, 1993

tax. The formula in Order No. 23541 uses both factors and should have made the distinction between the two. Upon this discovery, staff believes it is more appropriate to open a generic docket to address the necessary formula revision and resulting tariff revisions for all companies currently grossing-up. In an attempt to avoid further mistakes, staff asked the company to extend the 60-day suspension date to allow staff time to verify the correctness of the formula and address the appropriate method to address the question generically.

On July 8, 1993, the company filed a letter stating that Poinciana agrees to extend the 60-day suspension date from July 31, 1993 to August 17, 1993.

Staff agrees that the formula needs to be revised and recommends that the company's tariffs be approved as filed. With clarification and distinction between the two factors, generally the gross-up factor will be lower and the subsequent amount of gross-up refunds, if any, will be lower as well.

ISSUE 2: What should be the effective date of the tariffs?

RECOMMENDATION: The tariffs will be effective, but not final, on or after August 18, 1993. However, substantially affected persons shall have 21 days from the date of the order issued as a result of today's vote, to request a hearing. (MEADOR, JABER)

STAFF ANALYSIS: The 60-day suspension date, as extended, expires on August 17, 1993. Staff is recommending that the tariff be approved and will become effective on the date following the expiration of the suspension date. Persons substantially affected by the Commission's approval of this tariff have the right to a hearing prior to the Commission's giving final approval. Therefore, substantially affected persons should be given twenty-one days from the date of the Order to protest the Commission's approval of the tariff.

ISSUE 3: Should a generic docket be opened to address the correction to the full gross-up formula contained in Order No. 23541?

DOCKET NO. 930529-WB
August 5, 1993

RECOMMENDATION: Yes, a generic docket should be opened to address the correction of the full gross-up formula and approve tariff revisions for the companies which are currently utilizing the full gross-up formula. (MEADOR, JABER)

STAFF ANALYSIS: Staff reviewed the formula and determined that the formula in Order No. 23541 may contain an error. It appears the two factors which distinguish when companies use tax straight-line or accelerated rate was combined. The 1/tax life or TL would apply when a company uses straight-line for tax, which can be shorter than straight-line for book, and the accelerated rate or AR would apply when a company uses something other than straight-line for tax. The formula in Order No. 23541 uses both and should have made the distinction between the two factors.

Staff believes it is more appropriate to open a generic docket immediately to address the necessary formula revision and resulting tariff revisions for all companies currently grossing-up.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed. (MEADOR, JABER)

STAFF ANALYSIS: Persons substantially affected by the Commission's approval of this tariff have the right to a hearing prior to the Commission's giving final approval. Therefore, substantially affected persons should be given twenty-one days from the date of the Order to protest the Commission's approval of the tariff. Upon expiration of the protest period, if no protests have been received, the docket may be closed.