

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to gross-up)	DOCKET NO. 910524-WS
contributions-in-aid-of-construction)	
(CIAC) for the related tax impact by)	ORDER NO. 24712
ORANGE-OSCEOLA UTILITIES, INC. in)	
Osceola County)	ISSUED: 6/25/91
<hr/>		

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 GERALD L. GUNTER
 MICHAEL MCK. WILSON

ORDER ON CIAC GROSS-UP

BY THE COMMISSION:

Orange-Osceola Utilities, Inc. (Orange-Osceola) is a Class A water and wastewater utility providing service to the public in Osceola County. The utility's 1989 annual report reflects 6,223 water and 5,169 wastewater customers as of December 31, 1989. The report also reflects gross annual operating revenues of \$774,359 and \$1,727,886 for the water and wastewater systems, respectively, and the utility had net operating income of \$76,116 for the water system and \$322,033 for the wastewater system.

By Order No. 16971, issued December 18, 1986, the Commission granted approval for water and sewer 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, required utilities wishing to collect the gross-up to obtain Commission approval to do so and required utilities currently collecting the gross-up on CIAC to file a petition for approval to continue collecting the gross-up. Orange-Osceola previously had authority from the Commission to gross-up CIAC for the related tax impact from January 1, 1987 through January 1, 1991. According to the utility, due to an initial oversight and other matters requiring management's full attention, the utility failed to timely file a petition for approval to continue collecting the gross-up by the deadline set by

DOCUMENT NUMBER-DATE

06354 JUN 25 1991

PSC-RECORDS/REPORTING

ORDER NO. 24712
DOCKET NO. 910524-WS
PAGE 2

the Commission. Therefore, Orange-Osceola no longer has authority to collect the gross-up. On April 23, 1991, pursuant to Rule 25-22.036, Florida Administrative Code, and Order No. 23541, Orange-Osceola filed its petition for approval to collect the gross-up on CIAC.

Section 367.091(5), Florida Statutes, provides that within sixty 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 operation 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 sixty days, the rates become effective. The file-and-suspend statutes have been interpreted by the Florida Supreme Court to provide that rates which become effective upon inaction by the Commission are merely interim rates pending a final order by the Commission. Citizens of the State of Florida v. Wilson, 568 So. 2d 904 (Fla. 1990). The case law also provides that substantially affected persons have the right to a hearing on the interim rates. See id.

In its petition for approval to collect the gross-up on CIAC, the utility asserts that it needs to collect the gross-up because all net operating losses will be exhausted and the utility will approximately break even from normal operations. The utility anticipates that a substantial portion of its CIAC will be taxed at federal statutory rates in 1991. Further, the utility asserts that unless its gross-up authority is effective throughout 1991, it will incur a substantial tax liability with no apparent source of payment.

We have considered the data submitted by Orange-Osceola and noted several deficiencies. The utility was notified of the deficiencies by letter dated April 30, 1991. Although based on the information filed, it appears that the utility will have a tax liability, we need additional information before we can make a final determination that a tax liability exists and that other sources of funds are unavailable at a reasonable cost, as required by Order No. 23541. In consideration of the above, we will not suspend the tariffs or give or withhold consent. Our intention is to allow the proposed tariffs to become effective on an interim basis, pending our review of the additional information.

ORDER NO. 24712
DOCKET NO. 910524-WS
PAGE 3

Pursuant to Orders Nos. 16971 and 23541, CIAC tax impact amounts are to be deposited as received in a fully funded interest bearing escrow account. Because this CIAC gross-up will be collected on an interim basis and may not be permitted after further examination, no monies shall be withdrawn from the escrow account until a final determination is made in this matter. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund.

In the event that CIAC gross-up is permitted after a final determination, all CIAC tax impact monies received during the tax year that are in excess of the utility's actual tax liability resulting from the collection of CIAC, together with interest on such excess monies, must be refunded on a pro rata basis to the contributors of those amounts. Further, all provisions of Orders Nos. 16971 and 23541 not addressed in this Order are incorporated herein by reference.

The tariffs proposed by Orange-Osceola in its petition will become effective, but not final, after June 22, 1991. However, substantially affected persons shall have 21 days from the date of this Order to request a hearing.

It is therefore

ORDERED by the Florida Public Service Commission that the tariffs filed by Orange-Osceola Utilities, Inc. for CIAC gross-up are neither approved, suspended nor denied. It is further

ORDERED that the tariffs filed by Orange-Osceola Utilities, Inc. are effective after June 22, 1991, but interim in nature, pending a final order by the Commission. It is further

ORDERED that Orange-Osceola Utilities, Inc. shall deposit all gross-up on CIAC collected into a fully funded interest bearing escrow account and the funds collected are subject to refund in accordance with the provisions of Rule 25-30.360, Florida Administrative Code. It is further

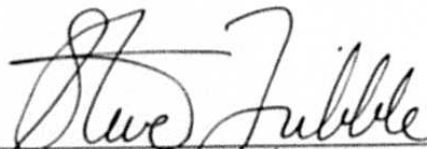
ORDERED that Orange-Osceola Utilities, Inc. shall make no withdrawals from the escrow account until a final determination to approve or deny the tariffs is made in this matter. It is further

ORDER NO. 24712
DOCKET NO. 910524-WS
PAGE 4

ORDERED that a substantially affected person may file a petition for a formal proceeding with the Director, Division of Records and Reporting, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 25th
day of JUNE, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MJL

ORDER NO. 24712
DOCKET NO. 910524-WS
PAGE 5

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 Commission's decision on this tariff is interim in nature, however, a person whose substantial interests are affected by the action proposed may file a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), 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 July 16, 1991.

Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the Florida Supreme Court, in the case of an electric, gas, or telephone utility, or the First District Court of Appeal, in the case of a water or sewer utility, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.