

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for continuation)
of gross-up of contributions-in-)
aid-of-construction (CIAC) in Lee)
County by NORTH FORT MYERS)
UTILITY, INC.)

DOCKET NO. 901013-SU

In re: Petition for distribution)
of contributions-in-aid-of)
construction (CIAC) gross-up)
monies by NORTH FORT MYERS)
UTILITY, INC. in Lee County)

DOCKET NO. 910261-SU

ORDER NO. PSC-92-0251-FOF-SU

ISSUED: 04/27/92

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
J. TERRY DEASON

ORDER APPROVING CONTINUED GROSS-UP OF
CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER DETERMINING REFUND DUE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature, except for the approval of continued authority to collect the gross-up on contributions-in-aid-of-construction, and will become final unless a person whose interests are substantially affected files a petition for formal proceedings pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

In Order No. 23541, issued October 1, 1990, we determined that any water and wastewater utility currently collecting the gross-up on contributions-in-aid-of-construction (CIAC) must file a petition for continued authority to gross-up. In Order No. 23689, issued October 29, 1990, we extended the time to file petitions to continue to gross-up to January 2, 1991. On December 27, 1990,

DOCUMENT NUMBER-DATE

04105 APR 27 1992

FPSC-RECORDS/REPORTING

North Fort Myers Utility, Inc. (utility) timely filed a petition requesting approval to continue to collect the gross-up on its CIAC and to refund a certain amount of gross-up collected in the fiscal years ended May 31, 1988, and May 31, 1989. Additionally, on March 1, 1991, the utility filed its request for disposition of CIAC tax gross-up funds collected in the fiscal year ended May 31, 1990. Upon review of the information filed, on September 18, 1991, we requested that the utility file additional clarifying or explanatory information. The utility filed the additional information on November 4, 1991.

Order No. 25532, issued December 24, 1991, approved continued gross-up of CIAC and approved a refund of gross-up collections of \$54,116 for the fiscal year ended May 31, 1989. No refund was required for the fiscal year ended May 13, 1988. Also, Order No. 25533, issued December 24, 1991, approved a refund of \$70,464 for the fiscal year ended May 31, 1990. On January 14, 1992, North Fort Myers Utility, Inc., filed a Petition on Proposed Agency Action (PAA) in Dockets Nos. 901013-SU and 910261-SU, objecting to our calculation of CIAC refunds. Accordingly, this matter was set for hearing and by Order No. 25698, issued February 7, 1992, Dockets Nos. 901013-SU and 910261-SU were consolidated for purposes of hearing.

In objecting to Dockets Nos. 901013-SU and 910261-SU, the utility submitted a petition which contained a recalculation of the CIAC refunds for 1989 and 1990. The used and useful percentages in the revised refund calculations were based on actual flow data instead of estimated amounts as used by the utility in its original filings. As a result, North Fort Myers Utility, Inc., calculated a refund of \$9,663 and \$21,415 for the fiscal years ended May 31, 1989, and May 31, 1990, respectively. We reviewed the revised refund calculations and agree with the utility's recalculation of used and useful and the refund amount. This agreement eliminated the need for a hearing in this matter, and Dockets Nos. 901013-SU and 910261-SU remain consolidated for purposes of this Order.

APPROVAL TO CONTINUE GROSS-UP

Order No. 25532, issued December 24, 1991, approved North Fort Myers Utility, Inc.'s request to continue gross-up of CIAC utilizing the full gross-up method. The utility's authority to continue CIAC gross-up was not the subject of its protest to Order No. 25532. Therefore, that portion of Order No. 25532 authorizing continued gross-up of CIAC and relating to the accounting and regulatory treatment and record keeping for the gross-up and refunds of certain CIAC gross-up amounts collected, is hereby reissued as final agency action.

REFUND APPROVED

No refund is due for the fiscal year ended May 31, 1988. According to North Fort Myers Utility, Inc.'s revised refund calculation, the utility should refund \$9,663 and \$21,415 for the fiscal years ended May 31, 1989, and May 31, 1990, respectively. We agree. These figures represent gross-up collected in excess of the resulting tax liability.

The refund shall include interest calculated from the end of the respective fiscal years through the date of the refund. In accordance with Orders Nos. 16971 and 23541, all amounts shall be refunded, with interest, on a pro rata basis to those persons who contributed the taxes. The refund shall be completed within six months from the effective date of this Order. The utility shall submit copies of cancelled checks, credits applied to monthly bills, or other evidence which verifies that the refunds have been made.

In consideration of the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the portion of Order No. 25532, issued December 24, 1991, which allows North Fort Myers Utility, Inc., to continue to gross-up contributions-in-aid-of-construction utilizing the full gross-up method is hereby reissued as final agency action. It is further

ORDERED that all provisions of Order No. 25532, issued December 24, 1991, regarding continuation of gross-up authority, the accounting and regulatory treatment, and record keeping for the gross-up and refunds of certain contributions-in-aid-of-construction gross-up amounts collected, are hereby reissued as final agency action. It is further

ORDERED that North Fort Myers Utility, Inc. shall refund \$9,663 and \$21,415 of contributions-in-aid-of-construction for the fiscal years ended May 31, 1989, and May 31, 1990, respectively. These amounts shall be refunded pro rata to contributors. It is further

ORDERED that such refunds for the fiscal years ended May 31, 1989, and May 31, 1990, shall include interest calculated from the end of the respective fiscal years through the date of the refund. It is further

ORDERED that North Fort Myers Utility, Inc., shall file copies of the cancelled refund checks, credits applied to monthly bills, or other evidence for verification that the refunds ordered herein were made as set forth in the body of this Order. It is further

ORDERED that the refund provisions of this Order regarding the fiscal years ended May 31, 1989, and May 31, 1990, 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 in the event no timely protest is received to the proposed agency action provisions of this Order, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 27th day of April, 1992.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

NRF

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.

As identified in the body of this order, our action regarding the refunds for the fiscal years ended May 31, 1989, and May 31, 1990, 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, 1992. In the absence of such a petition, this order shall become effective on the date 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 the relevant portion of 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 sewer 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by 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 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 after the issuance 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.