

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of Florida Public) DOCKET NO. 960397-WS
Service Commission's policy) ORDER NO. PSC-96-1253-FOF-WS
concerning collection and refund) ISSUED: October 8, 1996
of contributions-in-aid-of-)
construction (CIAC) gross-up.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

The Passage of the Tax Reform Act of 1986 (Act), effective January 1, 1987, made Contributions-in-Aid-of-Construction (CIAC) taxable income. To address this change, we issued several orders. In Proposed Agency Action (PAA) Order No. 16971, issued on December 18, 1986, we granted the Florida Waterworks Association's (FWWA's) application for emergency approval of amended service availability policies with modifications. That Order, among other things, allowed utilities to collect from contributors an amount equal to the tax impact of CIAC, set forth a gross-up formula, required filing of annual CIAC tax impact reports, and required a refund of excess monies collected.

By PAA Order No. 21266, issued May 22, 1989, we proposed to establish guidelines to control the collection of the gross-up. Also, by PAA Order No. 21436, we proposed to require a number of utilities to refund amounts of the gross-up collected or make adjustments to their depreciation reserves. Both of these orders were protested.

Those protests were combined and a formal hearing was held on April 27 and 30, 1990. As a result of that formal hearing, we issued Order No. 23541 on October 1, 1990. This Order specifically required any gross-up amounts collected in excess of a utility's actual tax liability resulting from its collection of CIAC to be refunded on a pro rata basis to the contributors of those amounts. Also, that Order recognized that above-the-line Net Operating

DOCUMENT NUMBER-DATE

10736 OCT-88

FPSC-RECORDS/REPORTING

Losses (NOLs) and Investment Tax Credits (ITCs) would be used to calculate the actual tax liability.

However, in Docket No. 941083-WS, Disposition of Contributions-in-Aid-of-Construction (CIAC) Gross-up Fund for 1987-1990 for Canal Utilities, Inc. in Duval County, the utility raised the question of the appropriate method for calculating refunds. Specifically at issue was the treatment of depreciation of CIAC after the first year. Also at issue was the appropriate level of review necessary to grant authority or process a refund, offsetting of above-the-line NOLs and ITCs with CIAC income, the requirement of refunds of excess collections of CIAC gross-up, and the differing interpretations given to past decisions of the Commission. As a result of these issues, among others, we directed our staff to hold workshops to discuss the current practices employed by the Commission in dealing with the taxability of CIAC and to discuss viable alternatives. We also directed our staff to consider the need, if any, to change our current policy.

A workshop was held on August 30, 1995, with staff, industry representatives and other interested parties. Staff compiled a list of relevant questions for discussion at the workshop and solicited responses from the industry. A subsequent workshop was held on November 29, 1995, before the full Commission, in which the responses received in the first workshop were presented and discussed. At the Commission Workshop on November 29, 1995, the utilities proposed an alternate plan for the treatment of CIAC gross-up.

Based on the above, staff opened this docket (Docket No. 960397-WS) and prepared a recommendation for the April 30, 1996, agenda conference recommending that the Commission's policy concerning the collection and refund of CIAC gross-up be revisited to determine what change, if any, should be made to accomplish the intended purpose of CIAC gross-up as established in Orders Nos. 16971 and 23541. Pursuant to this recommendation, we issued Order No. PSC-96-0686-FOF-WS on May 24, 1996.

Order No. PSC-96-0686-FOF-WS directed our staff, upon completion of its review of the proposals and comments offered by the workshop participants, to make a recommendation concerning the changing of the current policy regarding the collection and refund of CIAC gross-up. That Order further provided that until we indicated our change in policy, the requirements of Orders No. 16971 and 23541 should be met in the collection of CIAC gross-up and the ordering of refunds. It also provided that any such change would be made prospectively; therefore, all pending CIAC gross-up cases, and any such cases filed prior to any change in policy, if

ORDER NO. PSC-96-1253-FOF-WS
DOCKET NO. 960397-WS
PAGE 3

there was any, would continue to be processed pursuant to Orders Nos. 16971 and 23541.

However, the Small Business Job Protection Act of 1996 (the Job Protection Act) was passed by Congress and signed by the President on August 20, 1996. The Job Protection Act provides for CIAC collected by water and wastewater utilities to become non-taxable on a retroactive basis effective for amounts received after June 12, 1996. On September 16, 1996, we voted to revoke the utilities' authority to collect gross-up and to cancel the respective tariffs unless, within 30 days of the issuance of the Order, affected utilities requested a variance.

CLOSING OF DOCKET

As stated above, this docket was opened to review the Commission's policy on CIAC to determine what changes, if any, should be made to accomplish the intended purpose of CIAC gross-up as established in Orders Nos. 16971 and 23541. However, with the passage of the Small Business Job Protection Act of 1996, CIAC received after June 12, 1996, was returned to its former non-taxable status. Because Order No. PSC-96-0686-FOF-WS provided that any change in policy would be made prospectively only, there is no longer a need to review our policy to determine any changes, as the gross-up of CIAC will no longer be needed by the utilities. Therefore, this docket shall be closed. Further, as established in Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases shall be processed pursuant to Orders Nos. 16971 and 23541.

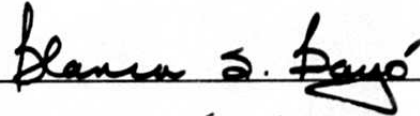
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Docket No. 960397-WS shall be closed. It is further

ORDERED that all pending Contributions-in-Aid-of-Construction gross-up refund cases shall continue to be processed pursuant to Orders Nos. 16971 and 23541.

ORDER NO. PSC-96-1253-FOF-WS
DOCKET NO. 960397-WS
PAGE 4

By ORDER of the Florida Public Service Commission, this 8th
day of October, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RRJ

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.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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 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.