

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for variance) DOCKET NO. 961196-WS
from Order No. PSC-96-1180-FOF-) ORDER NO. PSC-96-1469-FOF-WS
WS by Rolling Oaks Utilities,) ISSUED: December 3, 1996
Inc. in Citrus County.)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING, IN PART, REQUEST FOR VARIANCE
AND DENYING REQUEST FOR DELAY OF REFUNDS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Rolling Oaks Utilities, Inc. (Rolling Oaks or utility) is a Class A water and wastewater utility providing service to approximately 5,661 water and 4,195 wastewater customers in Citrus County. According to its 1995 annual report, the utility reported gross operating revenues of \$750,793 for water and \$835,092 for wastewater, and net operating income of \$20,240 and \$164,918 for water and wastewater, respectively.

On August 1, 1996, Congress passed the Small Business Job Protection Act of 1996 (the Act) and the President signed the Act on August 20, 1996. The Act provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996. As a result, on September 20, 1996, in Docket No. 960965-WS, Order No. PSC-96-1180-FOF-WS was issued to revoke the authority of utilities to collect gross-up of CIAC and to cancel the respective tariffs unless, within 30 days of the issuance of the order, affected

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FPSC-RECORDS/REPORTING

utilities requested a variance. Order No. PSC-96-1180-FOF-WS required the utilities to refund the gross-up to those who paid it within 60 days of the date the proposed agency action portion of the order became final. Further, that Order required each utility to provide copies of canceled checks, or other evidence, verifying that the refunds had been made, within 30 days from the date of the refund. On September 5, 1996, Rolling Oaks filed a request for a variance from that Order. Also, the utility indicated that it would prefer to implement the post-June 12, 1996 refunds along with the annual filing of its CIAC report to the Commission regarding its collection of gross-up for 1996.

VARIANCE FROM ORDER NO. PSC-96-1180-FOF-WS

As previously mentioned, Order No. PSC-96-1180-FOF-WS, revoked the authority of utilities to collect gross-up of CIAC and canceled the respective tariffs, unless, within 30 days of the issuance of the order, affected utilities requested a variance. On September 5, 1996, Rolling Oaks requested a variance from the Commission action taken at the September 3d Agenda Conference which resulted in the issuance of that Order. The utility states that a variance from that Order is necessary because it has pending before the Internal Revenue Service (IRS), a private letter ruling which was filed on its behalf by a developer, Morrison Homes (f/k/a George Wimpey of Florida, Inc). The question in this letter ruling is whether a bulk service arrangement entered into at the beginning of this year constitutes an effective contribution to the utility of the lines on the customer side of the bulk meter.

Further, the utility explains that the request for a private letter ruling was recently filed and until an answer is received from the IRS, it will not know whether or not gross-up is payable on that "contribution". The utility has indicated that the gross-up is currently maintained in an escrow account pending the outcome of the private letter ruling request. The utility goes on to state that it expects to receive additional connections and facilities behind those bulk meters in the coming months pursuant to those same developer agreements entered into prior to the June 12, 1996, effective date of the new tax law. Moreover, the utility has indicated that it is unclear at this time what effect those connections and facilities will have and, therefore, the utility needs to retain the authority to charge gross-up only as to those contributions received pursuant to the bulk service arrangement with Morrison Homes over the next several months. As far as individual connection fees and other charges, the utility has indicated that it does not believe that it needs to collect any further gross-up.

Based on the above, this part of the utility's request for a variance from Order No. PSC-96-1180-FOF-WS, shall be granted. Therefore, Rolling Oaks' tariffs for gross-up authority shall not be canceled at this time. However, the utility shall notify the Commission within 20 days when the IRS rules on its private letter ruling so that the tariffs can be canceled.

UTILITY'S REQUEST TO DELAY REFUND

The utility has also requested a variance from Order No. PSC-96-1180-FOF-WS with respect to the timing of the refunds of gross-up monies collected after June 12, 1996. By Order No. PSC-96-1180-FOF-WS, utilities are required to refund the gross-up to those who paid it within 60 days of the date the proposed agency action portion of the order became final. By letter dated September 5, 1996 the utility stated that it agrees to refund gross-up monies collected after June 12, 1996, but that it would prefer to make the refunds with the general report to the Commission on gross-up collections for the entire year rather than in piecemeal fashion. Further, by letter dated September 30, 1996, the utility indicated that refunding all gross-up monies together rather than in two separate refunds, would avoid the additional cost and confusion of a separate refund.

We do not believe there will be any additional costs incurred to implement the post June-12th refunds nor do we believe there would be confusion over a separate refund. All of the CIAC gross-up monies collected after June 12, 1996 will have to be refunded, but the CIAC gross-up monies collected on or before June 12, 1996 may or may not have to be refunded.

Further, the decision on the refund of the gross-up monies collected on or before June 12, 1996 will not be made until after the utility files its 1996 CIAC report and 1996 tax return. In accordance with Order No. 24129, issued February 18, 1991, Rolling Oaks' 1996 CIAC report and 1996 tax return is not due to be filed with the Commission until April 1, 1997.

Also, for those gross-up monies collected on or before June 12, 1996, where a refund is required, utilities are normally allowed up to 6 months from the effective date of the order to complete the refunds. We believe it is neither fair nor necessary to make the contributors who are entitled to receive refunds in 1996, due to the non-taxability of CIAC, to wait until the latter part of 1997 to receive their refunds. The savings, if any, in implementing the post-June 12th refunds with the pre-June 12th refunds (if these latter refunds are even required) do not justify the delay. There should not be any confusion over a separate

refund because the post-June 12th refunds can be easily determined. Further, if these refunds are made immediately, the contributors can easily be located and the need to credit CIAC in the future for unclaimed refunds will be minimized.

Therefore, the refund of the post-June 12th collections of CIAC gross-up shall be implemented as required by Order No. PSC-96-1180-FOF-WS, and the utility's request to delay this refund is denied. Further, the utility shall provide copies of canceled checks, or other evidence, verifying that the refunds have been made, within 30 days from the date of the refund as required by Order No. PSC-96-1180-FOF-WS.

If a timely protest is not filed, upon expiration of the protest period, and upon our staff's verification that the refunds are complete, processing of this docket is complete and the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request of Rolling Oaks Utilities, Inc., for a variance is granted in part and denied in part as set out in the body of this Order. It is further

ORDERED that the provisions of this Order 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" below. It is further

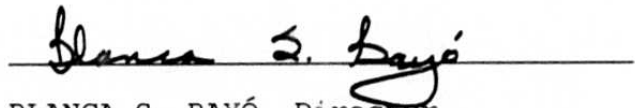
ORDERED that the tariffs of Rolling Oaks Utilities, Inc., for gross-up authority shall not be canceled at this time, but Rolling Oaks Utilities, Inc. shall notify the Commission within 20 days when the Internal Revenue Service rules on its private letter ruling so that the tariffs can be canceled. It is further

ORDERED that Rolling Oaks Utilities, Inc., shall make the refunds of the post-June 12th CIAC gross-up monies as required by Order No. PSC-96-1180-FOF-WS, and shall provide copies of canceled checks, or other evidence, verifying that the refunds have been made, within 30 days from the date of the refund. It is further

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ORDERED that if a timely protest is not filed by a substantially affected person, and upon our staff's verification that the refunds are complete, processing of this docket is complete and the docket shall be closed.

By ORDER of the Florida Public Service Commission, this 3rd day of December, 1996.

A handwritten signature in cursive script, reading "Blanca S. Bayó", is written over a horizontal line.

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.

The action proposed herein 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 24, 1996.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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 this order becomes final and effective on the date described above, any party substantially 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 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 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.