

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval
of contributions-in-aid-of-
construction (CIAC) tax gross-up
by Rampart Utilities, Inc. in
Charlotte County.

DOCKET NO. 951135-WS
ORDER NO. PSC-97-0560-FOF-WS
ISSUED: May 20, 1997

The following Commissioners participated in the disposition of
this matter:

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

ORDER ACKNOWLEDGING WITHDRAWAL OF APPLICATION
AND
NOTICE OF PROPOSED AGENCY ACTION ORDER
REQUIRING REFUNDS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service
Commission that the action discussed herein related to refunds 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

Rampart Utilities, Inc., (Rampart or utility) is a class B
utility providing water and wastewater services to approximately
1,290 water and wastewater customers in Charlotte County.
According to the utility's 1995 annual report, the water system had
a net operating loss of \$32,517 and the wastewater system had net
operating income of \$46,881.

By Order No. 16971, issued December 18, 1986, we granted
approval for water and wastewater utilities to amend their service
availability policies to meet the tax impact of contributions-in-

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FPSC-RECORDS/REPORTING

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aid-of-construction (CIAC) resulting from the amendment of Section 118(b) of the Internal Revenue Code. By Order No. 23541, issued October 1, 1990, we ordered utilities currently grossing-up CIAC to file a petition for continued authority to gross-up. We also ordered that no utility could gross-up CIAC without first obtaining our approval.

On September 27, 1994, the Charlotte County Board of County Commissioners adopted a resolution declaring that water and wastewater utilities in the County would be subject to Chapter 367, Florida Statutes. Rampart had been authorized by the County to collect gross-up for CIAC.

By Order No. PSC-95-0750-FOF-WS, in Docket No. 941342-WS, issued June 22, 1995, we granted Rampart a grandfather certificate to provide water and wastewater service in Charlotte County. In addition, we allowed the utility to collect CIAC gross-up on an interim basis in accordance with the provisions of Orders Nos. 16971 and 23541, with the proviso that no funds be withdrawn from the escrow account until our determination of the utility's authority to collect CIAC gross-up. Further, pursuant to Rule 25-30.360 (6), Florida Administrative Code, we required the utility to provide a report by the 20th of each month indicating the monthly and total revenues collected subject to refund.

On September 20, 1995, Rampart filed an application for permanent authority to gross-up CIAC in accordance with Order No. PSC-95-0750-FOF-WS. Then, on March 29, 1996, we opened Docket No. 960397-WS to review our CIAC gross-up policy. Our staff held workshops to receive comments and proposals from the industry and other interested parties. We also directed our staff to bring a recommendation to us concerning whether our CIAC gross-up policy should be changed. In addition, we directed our staff to consider ways to simplify the gross-up authorization process and to search for alternatives to gross-up. As a result, we placed processing of CIAC gross-up dockets in abeyance. By Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, in Docket No. 960397-WS, however, we directed our staff to continue processing CIAC gross-up and refund cases pursuant to Orders Nos. 16971 and 23541 while we revisited our policy concerning the collection and refund of CIAC gross-up.

On August 1, 1996, the U.S. Congress passed the Small Business Job Protection Act of 1996 (the Act), which President Clinton signed into law on August 20, 1996. The Act provides that CIAC collected by water and wastewater utilities after June 12, 1996, is not subject to taxation. On September 20, 1996, in Docket No. 960965-WS, we issued Order No. PSC-96-1180-FOF-WS revoking the authority of water and wastewater utilities to collect CIAC gross-up. We also directed that CIAC gross-up tariffs be canceled unless affected utilities requested a variance. Rampart did not request a variance and its gross-up tariffs were canceled. On October 8, 1996, we issued Order No. PSC-96-1253-FOF-WS, closing Docket No. 960397-WS and ending the review of our CIAC gross-up policy. On November 26, 1996, Rampart filed a request to withdraw its application for final authority to gross-up CIAC.

REQUEST TO WITHDRAW APPLICATION

By Order No. 23541, we required all utilities that wished to collect CIAC gross-up to file a petition with this Commission for authorization to do so. As noted, Rampart filed an application that it believed demonstrated its need for permanent CIAC gross-up authority on September 20, 1995. By letter dated November 26, 1996, Rampart requested leave to withdraw its application based on the provision of the Act establishing that CIAC received on or after June 12, 1996, will be considered a tax-free contribution to the capital of a regulated utility. The utility stated that it was concerned with potentially substantial property contributions, which it would probably receive in late 1996 or 1997. Since these property contributions would meet the criteria for a tax-free contribution to its capital, Rampart stated that it was no longer necessary to seek approval for CIAC gross-up authority.

As a result of Rampart's request to withdraw its application, the utility has become obligated to refund to all of the CIAC contributors all of the gross-up collected during the interim period, September 27, 1994, to June 12, 1996. The utility advises that it plans to do so with interest. We find it appropriate to acknowledge the utility's request to withdraw its application for permanent authority to gross-up CIAC. Rampart shall refund \$5,600 of CIAC gross-up collections, the amount collected in the interim period, plus accrued interest through the date of refund. In accordance with Orders Nos. 16971 and 23541, all refunds shall be

made on a pro rata basis to those persons who contributed the taxes. The refunds shall be completed within six months. The utility shall submit copies of canceled checks, credits applied to monthly bills or other evidence that verifies that the refunds have been made within 30 days from the date of refund. Within 30 days from the date of refund, the utility shall also provide a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refunds.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request of Rampart Utilities, Inc., to withdraw its application for permanent authority to gross-up contributions-in-aid-of-construction is hereby acknowledged. It is further

ORDERED that Rampart Utilities, Inc., shall refund to the contributors of contributions-in-aid-of-construction pro rata shares of the amount of gross-up collected in the period September 27, 1994, through June 12, 1996. It is further

ORDERED that Rampart Utilities, Inc., shall complete the refunds within six months of this Order. It is further

ORDERED that Rampart Utilities, Inc., shall submit copies to this Commission of canceled checks, credits applied to monthly bills or other evidence that verifies that the refunds have been made within 30 days from the date of refund, together with a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refunds. It is further

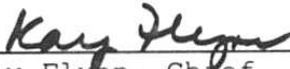
ORDERED that the provision of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

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ORDERED that in the event this Order becomes final, this Docket shall be closed administratively upon verification of the completion of the refunds.

By ORDER of the Florida Public Service Commission, this 20th day of May, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



Kay Flynn, Chief
Bureau of Records

(S E A L)

CJP

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 requiring refunds of CIAC gross-up 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 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 10, 1997. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. 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.

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 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

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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 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.