

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 930217-WS
Contributions-in-Aid-of-) ORDER NO. PSC-93-0870-FOF-WS
Construction (CIAC) Gross-Up) ISSUED: June 9, 1993
Funds Received by KINGSLEY)
SERVICE COMPANY in Clay County.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER FINDING REFUND NOT REQUIRED

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

The repeal of Section 118(b) of the Internal Revenue Code (IRC) resulted in making contributions-in-aid-of-construction (CIAC) gross income and depreciable for federal tax purposes. By Order No. 16971, issued December 18, 1986, this Commission authorized corporate utilities to collect a CIAC tax gross-up in order for those utilities to pay the tax liability resulting from their receipt of CIAC.

In Order No. 23541, issued October 1, 1990, we ordered all water and wastewater utilities which were collecting the CIAC tax gross-up and which wanted to continue do so to file a petition for approval of same on or before October 29, 1990. Kingsley Service Company (Kingsley or utility) filed a petition, and by proposed agency action (PAA) Order No. 25505, issued December 18, 1991, we authorized Kingsley to collect a partial gross-up of 25.17%, as Kingsley had requested. No protest to that PAA Order was filed, so the action taken therein became final.

DOCUMENT NUMBER-DATE

06214 JUN-93

PSC-RECORDS/REPORTING

By Orders Nos. 16971 and 23541, we required utilities which gross-up to file annually the information needed for (1) a determination of the utility's state and federal income tax liability directly attributable to receipt of CIAC for that year and (2) a determination of whether a refund of gross-up charges collected during that year is appropriate. These orders required that a utility refund on a pro rata basis the gross-up charges collected each year which exceeded the utility's actual above-the-line tax liability attributable to CIAC for the same year.

By PAA Order No. PSC-92-0961-FOF-WS, issued September 9, 1992, as amended by Order No. PSC-92-0961A-FOF-WS, issued September 14, 1992, we clarified the refund calculation provisions of Orders Nos. 16971 and 23541. No protest to that PAA Order was filed, so the action taken therein became final.

Kingsley is a class A utility providing water and wastewater service in Clay County. According to its 1991 annual report, Kingsley had \$1,770,334 in operating revenue and \$285,698 in net operating income for its water system and had \$2,612,022 in operating revenue and \$224,104 in net operating income for its wastewater system. On December 22, 1992, Kingsley transferred its water and wastewater facilities to Clay County. By Order No. PSC-93-0744-FOF-WS, issued May 17, 1993, we acknowledged said transfer and cancelled Kingsley's certificates of authorization.

Refund Calculations For Years 1987 Through 1991

In compliance with Order No. 16971, Kingsley filed annual CIAC gross-up reports for 1987 through 1992. In response to our staff's preliminary refund calculations, Kingsley submitted copies of IRS examination reports for 1987 through 1990. Using the amounts from the IRS examination reports, Kingsley suggested revised refund calculations under which no refunds were due.

Using Kingsley's annual gross-up reports and IRS examination reports, we have made a refund calculation for each of the years Kingsley collected CIAC the gross-up, 1987-1992, and we find that no refunds are due. Our calculations are reflected on Schedule No. 1, which is attached hereto and by reference incorporated herein. A summary of each year's calculation follows.

1987

Kingsley's 1987 CIAC report and IRS examination report indicate that a total of \$19,720 in CIAC gross-up charges were collected, and the first year's depreciation on the CIAC was \$980. We used the 43.30% combined federal and state tax rates to calculate the net income tax on CIAC. We then compared the gross-up required to pay the tax, \$22,547, to the gross-up charges collected, \$19,720. Since the utility did not collect gross-up in excess of its tax liability, no refund is necessary.

1988

Kingsley's 1988 CIAC report and IRS examination report indicate that a total of \$452,382 in CIAC gross-up charges were collected, and the first year's depreciation on CIAC was \$41,598. We used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. We then compared the gross-up required to pay the tax, \$644,772, to the gross-up charges collected, \$452,382. Since the utility did not collect gross-up in excess of its tax liability, no refund is necessary.

1989

The 1989 CIAC report and IRS examination report indicate that a total of \$344,706 of gross-up charges were collected, and the first year's depreciation on CIAC was \$27,418. We used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. We then compared the gross-up required to pay the tax, \$424,586, to the gross-up charges collected, \$344,706. Since the utility did not collect gross-up in excess of its tax liability, no refund is necessary.

1990

During 1990, the utility was granted authority to continue to gross-up; however, as noted above, the utility requested, and we approved, use of the full gross-up method at a reduced or partial percentage of 25.17%. In determining the combined 1990 refund calculation, we took the 1990 totals and divided them in half; we used the full gross-up expansion factor for the first half of the year and the partial gross-up factor for the other half. For both six-month periods, the amount of gross-up required to pay the tax liability exceeded the amount of gross-up collected.

The 1990 CIAC report and IRS examination report indicate that a total of \$340,943 of gross-up charges were collected, and the first year's depreciation was \$28,314. We used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. We then compared the gross-up required to pay the tax, \$443,987, to the gross-up charges collected, \$340,943. Since the utility did not collect gross-up in excess of its tax liability, no refund is necessary.

1991

The 1991 CIAC report indicates that a total of \$152,269 of gross-up charges were collected, and the first year's depreciation was \$23,218. We used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. We then compared the gross-up required to pay the tax, \$280,691, to the gross-up charges collected, \$152,269. Since the utility did not collect gross-up in excess of its tax liability, no refund is necessary.

1992

The 1992 CIAC report indicates that a total of \$146,517 of gross-up charges were collected, and the first year's depreciation was \$18,532. We used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. We then compared the gross-up required to pay the tax, \$224,034, to the gross-up charges collected, \$146,157. Since the utility did not collect gross-up in excess of its tax liability, no refund is necessary.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission 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 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 Kingsley Service Company is not required to refund any CIAC gross-up funds collected for the period 1987 through 1992. It is further

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ORDERED that the docket should be closed upon expiration of the protest period if no timely protest is filed.

By ORDER of the Florida Public Service Commission this 9th day of June, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 30, 1993.

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.

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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 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 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.

