

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Revision of ) DOCKET NO. 930529-WS  
CIAC Full Gross-Up Formula Used ) ORDER NO. PSC-93-1308-FOF-WS  
for Depreciable Plant in Osceola ) ISSUED: September 8, 1993  
and Polk Counties by POINCIANA )  
UTILITIES, INC. )  
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The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK  
JULIA L. JOHNSON  
LUIS J. LAUREDO

ORDER APPROVING UTILITY'S TARIFF, GRANTING UTILITY'S  
REQUEST TO REVISE FULL GROSS-UP FORMULA, AND  
OPENING A GENERIC DOCKET

BY THE COMMISSION:

Background

By Order No. 16971, issued December 18, 1986, the Commission granted approval for water and wastewater utilities to amend their service availability policies to meet the tax impact on contributions-in-aid-of-construction (CIAC) resulting from the amendment of Section 118(b) of the Internal Revenue Code. Order No. 23541, issued October 1, 1990, ordered utilities currently grossing-up CIAC to file a petition for continued authority to gross-up and also ordered that no utility may gross-up CIAC without first obtaining the approval of this Commission. On December 18, 1990, Poinciana Utilities, Inc. (Poinciana or utility) filed a petition requesting approval to continue to collect the gross-up using the full gross-up method approved in Order No. 23541. By Order No. 25174, issued October 8, 1991, we approved Poinciana's continued authority to gross-up.

Authority to Revise the Full Gross-up Formula

Section 367.091(5), Florida Statutes, provides that within sixty (60) days of the filing of an application to change a rate or charge other than the monthly rates for service, the Commission may withhold consent to the operations of any or all portions of the new rate schedule by a vote to that effect giving a reason or statement of good cause for withholding consent. If the Commission does not act within 60 days, the rates become effective. The file-

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and-suspend statutes have been interpreted by the Florida Supreme Court in Citizens of the State of Florida v. Wilson, 568 So.2d 904 (Fla. 1990), to provide that rates which become effective upon inaction by the Commission are merely interim rates pending final order by the Commission. The case law also provides that substantially affected persons have the right to a hearing on the interim rates.

On June 1, 1993, Poinciana filed tariffs and a petition requesting authority to revise the full gross-up formula for depreciable plant. The utility asserts that the formula contained in Order No. 23541 and in the utility's tariff may not be correct. Its assertion is that the formula which calculates the amount of gross-up to collect is intended to pass the tax savings on first year depreciation to the contributor of CIAC, and the existing gross-up factor generated by the formula contained in Order No. 23541 would not pass on the entire tax savings.

We reviewed the formula and have determined that the formula in Order No. 23541 may contain an error. It appears the two factors which distinguish when companies use tax straight-line or an accelerated depreciation rate were combined. The tax life component would apply when a company uses straight-line depreciation for tax, which can be shorter than straight-line for book, and the accelerated rate component would apply when a company uses something other than straight-line for tax. The formula in Order No. 23541 uses both factors and should have made the distinction between the two. As a result, we will open a generic docket to address the necessary formula revision and resulting tariff revisions for all utilities currently grossing-up. However, at this time, we find it appropriate to approve the utility's tariff as filed, which will allow the utility to collect the gross-up while the gross-up formula is under revision.

#### Effective Date

The tariff shall be effective on or after August 18, 1993. Persons substantially affected by the Commission's approval of this tariff have the right to request a hearing prior to the tariff becoming final. Therefore, substantially affected persons have twenty-one days from the date of this Order to protest the Commission's approval of the tariff. Upon expiration of the protest period, if no protests have been received, the tariff becomes final and this docket may be closed.

ORDER NO. PSC-93-1308-FOF-WS  
DOCKET NO. 930529-WS  
PAGE 3

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Poinciana Utilities, Inc.'s request for revision of the full gross-up formula is granted. It is further

ORDERED that Poinciana Utilities, Inc.'s, tariff is hereby approved as filed. It is further

ORDERED that the tariff will be effective, but not final, on or after August 18, 1993, and substantially affected persons shall have 21 days from the date of this order to request a hearing. It is further

ORDERED that a generic docket shall be opened to address the correction of the full gross-up formula. It is further

ORDERED that this docket shall be closed upon the expiration of the protest period.

By ORDER of the Florida Public Service Commission this 8th day of September, 1993.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

LAJ

by: Kay Hym  
Chief, Bureau of Records

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 Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the action proposed files a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), 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 September 29, 1993.

In the absence of such a petition, this order shall become final on the day subsequent to the above date.

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 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 date this Order becomes final, 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.