

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of MARTIN DOWNS)	DOCKET NO. 881412-WS
UTILITIES, INC. for tariff amendment)	
to eliminate the gross-up previously)	ORDER NO. 20564
approved on contributed property in)	
Martin County)	ISSUED: 1-9-89

The following Commissioners participated in the disposition of this matter:

KATIE NICHOLS, Chairman
 THOMAS M. BEARD
 GERALD L. GUNTER
 JOHN T. HERNDON
 MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTIONORDER DENYING REQUEST TO ELIMINATE
"GROSS-UP" ON CONTRIBUTED PROPERTY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the actions discussed herein are 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

Martin Downs Utilities, Inc. (Martin Downs or utility) is a utility subject to this Commission's jurisdiction, which provides water and wastewater service to approximately 2,000 customers in Martin County (County). Its original service area was a planned unit development for 5,500 single- and multi-family residences, a golf club, and other commercial customers.

By Order No. 15400, issued November 27, 1985, we approved Martin Downs' current service availability charges. Martin Downs' approved plant capacity charges are \$700 for water and \$925 for sewer, per equivalent residential connection. These charges cover the costs of both the treatment facilities and the trunk lines. Martin Downs' policy has been to construct the water and sewer trunk lines and to require developers to donate the water distribution and wastewater collection systems.

By Order No. 16971, issued December 18, 1986, we authorized corporate water and sewer utilities to amend their tariffs in order to "gross-up" contributions-in-aid-of-construction (CIAC). The purpose of the gross-up was to allow these utilities to collect, in addition to CIAC, amounts equal to their potential tax liabilities resulting from the repeal of the exclusion of CIAC from gross income under the Tax Reform Act of 1986. Martin Downs was among the approximately forty-five utilities which filed for and were granted authority to gross-up CIAC.

On December 22, 1987, Martin Downs applied to amend its certificated area to include additional territory. By Order No. 18989, issued March 16, 1988, we amended the utility's certificated area.

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Sometime in 1987, Martin Downs and the County entered into a contract for the County to purchase the utility's assets no later than 1994. In the interim, the County and the utility are attempting to promote Martin Downs as a regional water and sewer utility. However, according to Martin Downs, developers and other potential customers are discouraged from connecting to its system when confronted with the utility's plant capacity charges, the requirement that they donate the water distribution and wastewater collection systems and the gross-up on these amounts. Martin Downs and the County fear that developers will install package plants to avoid these charges.

ELIMINATION OF GROSS-UP ON PROPERTY CONTRIBUTIONS

On July 29, 1988, Martin Downs filed an application for authority to continue to gross-up plant capacity charges but to eliminate the gross-up on contributed property. Martin Downs does not foresee a cash flow problem associated with eliminating the gross-up on donated property. The utility informs us that it will have no income tax obligation for the tax year ended September 30, 1988, because of net operating loss carry-forwards. It states further that, in future tax years, it will satisfy its federal income tax liability out of cash contributions and the gross-up on these contributions. The utility believes that there could be a substantial tax liability for 1989, even with its net operating loss carry-forwards, as a result of large collections of CIAC. The utility states that it would be burdensome to meet its 1989 tax bill if the gross-up were eliminated for all CIAC.

We do not believe that it is appropriate to eliminate the gross-up solely for property contributions. Pursuant to Order No. 16971, utilities were authorized to elect whether or not to gross-up CIAC. We believe that a utility should either gross-up all CIAC or not gross-up at all. If the utility and the County are concerned about developers being discouraged from connecting to the systems, we believe that there are ways to encourage connection to the system which would be more appropriate than eliminating the gross-up on property contributions. We, therefore, deny Martin Downs' request.

SERVICE AVAILABILITY

Martin Downs' current service availability policy and charges were designed only for connections within the original service area, where the utility installed all of the trunk lines. The existing plant capacity charges are designed to recover the costs of the trunk lines as well as the treatment plants. Martin Downs would like to require developers outside of the original development to donate trunk lines. Since the plant capacity charges include a charge for trunk lines, even disregarding the gross-up, the current service availability policy will require these developers to pay for trunk lines twice. We, therefore, believe that a new service availability policy must be developed in order to prevent discrimination between customers within the development and those outside the development. Accordingly, Martin Downs shall file an application to amend its service availability policies and charges no later than April 3, 1989.

It is, therefore,

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ORDERED by the Florida Public Service Commission that Martin Downs Utilities, Inc.'s request to discontinue the gross-up on contributed property is hereby denied. It is further

ORDERED that Martin Downs Utilities, Inc. shall file a service availability case on or before April 3, 1989. It is further

ORDERED that the provisions of this Order are issued as proposed agency action and will become final unless an appropriate petition, in the form prescribed by Rule 25-22.036, Florida Administrative Code, is received by the Director of the Division of Records and Reporting at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 30, 1989. It is further

ORDERED that, after January 30, 1989, this Commission shall issue either a notice of further proceedings or an order stating that the provisions of this Order have become final and effective. It is further

ORDERED that, in the event that this Order becomes final and effective, Docket No. 881412-WS shall be closed.

By ORDER of the Florida Public Service Commission this 9th day of JANUARY, 1989.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

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

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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 January 30, 1989. In the absence of such a petition, this order shall become effective January 31, 1989, as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

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 January 31, 1989, 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 sewer 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.