

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into effect of 1986 federal tax reform on revenue requirements for regulated utilities)	DOCKET NO. 861145-PU
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In re: Investigation into the effect of 1986 federal tax reform for 1988)	DOCKET NO. 871206-PU
)	ORDER NO. 22156
)	ISSUED: 11-6-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTIONORDER REQUIRING REFUND OF
TAX SAVINGS FOR 1987 AND 1988

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

These dockets were established in order to investigate the effects of the Tax Reform Act of 1986, particularly with regard to tax savings. Under Rule 25-14.003, Florida Administrative Code, tax savings are defined as "[t]he difference between the tax expenses for a utility calculated under the previously effective corporate income tax rates and those calculated under newly effective, reduced corporate income tax rates."

TAX SAVINGS REPORTS

As required under Rule 25-14.003, Florida Administrative Code, Florida Cities Water Company (Florida Cities), Lee County division, filed tax savings reports for the years 1987 and 1988. Florida Cities filed separate reports for its water

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PSC-RECORDS/REPORTING

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system and each of its two wastewater systems, for a total of three reports for each year. We have reviewed Florida Cities' reports and made the following adjustments:

1. The 1987 reports were adjusted to reflect the return on equity approved by this Commission by Order No. 17417, issued April 16, 1987;
2. The 1988 reports were adjusted to reflect the return on equity approved by this Commission by Order No. 18661, issued January 7, 1988;
3. The 1988 reports were adjusted to reflect the investment tax credit costs required by the Internal Revenue Code. Corresponding interest synchronization adjustments were also made for 1987 and 1988;
4. The 1988 reports were recalculated to reflect a reduction in the corporate tax rate from 46 percent to 34 percent rather than from 39.95 percent to 34 percent.

AMOUNT OF REFUND

Generally, for the purposes of overearnings reviews, we would view the earnings and tax savings for Florida Cities' Lee County systems as a whole. However, since the rates for the South Ft. Myers wastewater division were established under the current tax rates, we believe that it would be more appropriate in this case to examine Florida Cities' tax savings on a system by system basis.

Based upon its tax savings reports and the adjustments discussed above, we find that, for 1987 tax savings, Florida Cities should refund \$250,422 plus interest for the Lee County water division. For the North Ft. Myers wastewater division, Florida Cities should make no refund since its 1987 earnings for this division fell below the midpoint. For 1988 tax savings, Florida Cities should refund \$507,287 plus interest for the water division and \$29,363 plus interest for the North Ft. Myers wastewater division.

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METHOD OF REFUND

Originally, we decided that the refund should be made in accordance with Rule 25-30.360, Florida Administrative Code. However, by letter dated September 25, 1989, Florida Cities informed us that its computer is programmed to store only the last twenty-four months of consumption history and that the earliest consumption information available is for November of 1987. Florida Cities states that, as of August 31, 1989, it had 15,492 water customers in Lee County and that it would be nearly impossible to manually compute the 1987 refund based upon 1987 consumption.

We agree that it would be extremely costly and time consuming to require the 1987 refund to be based upon 1987 consumption figures. Accordingly, we believe that the refund should be handled in the manner described below.

First, the "customer of record" date should be December 31, 1988. Those customers that came on-line after that date should not participate in a tax refund for 1987 and 1988.

Second, the utility should set up a reserve of \$50,000 to cover those off-line customers that later claim a refund. Refunds for these off-line customers should be computed in the same manner as for active customers. In other words, the percentage factor developed would be applied to the customer billings for the off-line customer for the twelve months preceding the date of disconnection, provided that the twelve months fall between January 1, 1987 and December 31, 1988.

The reserve should be set up as a special account, generated on a pro rata basis between water and wastewater. Any funds remaining in the reserve account after one year from the date of this Order should be credited to CIAC on the same pro rata basis, and the reserve account should be closed. The utility shall notify the Commission of this transaction and furnish a detailed analysis of the reserve transactions, including its crediting of unclaimed funds to CIAC. The utility shall not be liable to refund more than the reserve amount to inactive customers.

Third, the revenue base year should be the calendar year 1988. The combined 1987 and 1988 refund total for water and the 1988 refund total for wastewater should be compared to the total 1988 revenues to compute the refund factors to be applied

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to each customer's billings for 1988. A compounded interest factor should then be applied to the refund amount (the utility may wish to develop one factor which would include both the amount to be refunded plus the interest.) The water refund is to be system-wide. The wastewater refund is to be restricted to the North Wastewater Division.

Finally, the refund should be carried out in accordance with Rule 25-30.360, Florida Administrative Code, to the extent that such procedures are not inconsistent with the foregoing procedures.

Based upon the discussion above, it is

ORDERED by the Florida Public Service Commission that the provisions of this Order are issued as proposed agency action and will become final unless a protest is filed with the Director of the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date specified in the section entitled "Notice of Further Proceedings or Judicial Review." It is further

ORDERED that, for tax savings for 1987, Florida Cities Water Company shall refund \$250,422, plus interest, for the water division. It is further

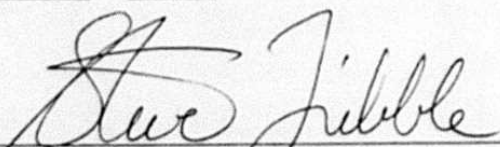
ORDERED that, for tax savings for 1988, Florida Cities Water Company shall refund \$507,287 plus interest for the water division and \$29,363 plus interest for the North Ft. Myers wastewater division. It is further

ORDERED that the refund shall be performed in accordance with the procedures outlined in the body of this Order. It is further

ORDERED that, if a protest to this Order is not timely filed, Docket No. 861145-PU shall be closed upon Staff's receipt of a refund report and its verification that the refund has been made.

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By ORDER of the Florida Public Service Commission
this 6th day of November, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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 November 27, 1989.

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, 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 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 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.