

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for gross-up of	)	DOCKET NO. 900019-WS
contributions in aid of construction	)	ORDER NO. 22737
(CIAC) in Brevard County by MALABAR	)	ISSUED: 3-27-90
WOODS UTILITIES, INC. (WS-90-0007	)	
filed 1/3/90)	)	
	)	

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

ORDER APPROVING REQUEST FOR APPROVAL OF GROSS-UP OF CIAC

BY THE COMMISSION:

Malabar Utilities, Inc. (Malabar or Utility) is a utility which will provide water and sewer service to the public in Brevard County. The Utility has requested authority to gross-up its contributions-in-aid-of-construction (CIAC) to offset the tax consequences of such collections. The Utility's request is unique due to the fact that it is not actually in operation.

GROSS-UP OF CIAC

The Tax Reform Act of 1986 amended Section 118(b) of the Internal Revenue Code, making CIAC paid to a utility by a developer and other customers taxable income to the utility. In response to this change in the tax law, in Order No. 16971, issued December 18, 1986, we approved a methodology whereby utilities could offset the adverse economic impact to a utility due to its collection of CIAC. This methodology, referred to as gross-up of CIAC, permits utilities to collect the amount of tax liability created by the collection of CIAC. Subsequent to its implementation in 1986, we have also attempted to establish qualifying guidelines for a utility applying for gross-up of CIAC.

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In Proposed Agency Action Order No. 21266, issued May 26, 1989, we said that four (4) criteria must be satisfied before a utility could qualify for gross-up of CIAC. First, we said that a utility must demonstrate the existence of an actual tax liability resulting from the collection of CIAC. Second, a utility must demonstrate that its existing cash flow is inadequate to meet the tax liability created by such collection. Third, a utility must include a statement accompanying its request that alternatives were considered and gross-up of CIAC is the most effective alternative to lessen the tax impact of collecting CIAC. Finally, a utility must provide calculations of its interest coverage ratio both with and without utilizing the gross-up. Order No. 21266 was timely protested and is presently scheduled for an administrative hearing.

The Utility's application was filed during the pendency of the aforementioned hearing. The utility has attempted to meet our proposed gross-up criteria to the best of its ability, even though certain difficulties were created by the fact that the Utility is not operational. Upon consideration, we find that the Utility's request to gross-up its CIAC is reasonable and it is, therefore, approved.

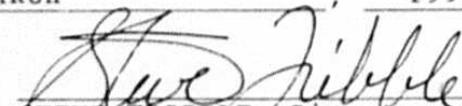
It is, therefore,

ORDERED by the Florida Public Service Commission that Malabar Utilities, Inc.'s request for approval to gross-up contributions-in-aid-of-construction is hereby approved. It is further

ORDERED that the Utility shall file revised tariff sheets reflecting our decision herein. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission  
this 27th day of MARCH, 1990.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

JRF

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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.

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 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 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.