

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request of FLORIDA WATERWORKS)	DOCKET NO. 860184-PU
ASSOCIATION for investigation of)	ORDER NO. 23936
proposed repeal of Section 118(b),)	ISSUED: 12-24-90
Internal Revenue Code (Contributions-)	
in-aid-of-construction))	
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

ORDER GRANTING STAY

BY THE COMMISSION:

Pursuant to the Tax Reform Act of 1986, on January 1, 1987, contributions-in-aid-of-construction (CIAC) became includible in a utility's gross income for federal tax purposes. Accordingly, by Order No. 16971, issued December 18, 1986, this Commission authorized corporate utilities subject to its jurisdiction to elect to "gross-up" CIAC in order to meet the resulting tax impact.

By Order No. 21266, issued May 22, 1989, this Commission proposed to establish certain guidelines to control the collection of the gross-up. On June 12, 1989, Order No. 21266 was protested by the Florida Waterworks Association and fourteen water and/or wastewater utilities.

By Order No. 21436, issued June 26, 1989, we also proposed to require a number of utilities to refund certain amounts of the gross-up collected or to make adjustments to their depreciation reserves. On or about July 17, 1989, Order No. 21436 was protested by six water and/or wastewater utilities.

Based upon the protests of Orders Nos. 21266 and 21436, we held a formal hearing on April 27 and 30, 1990. By Order No. 23541, issued October 1, 1990, this Commission authorized the continuation of the gross-up, prescribed regulatory and accounting treatments for the gross-up, and required that certain refunds be made.

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On October 16, 1990, Aloha Utilities, Inc. (Aloha), one of the petitioners in this proceeding, filed a motion for reconsideration of Order No. 23541. Along with its motion for reconsideration, Aloha filed a motion for a stay of Order No. 23541, insofar as it directs Aloha to offset investment tax credits against CIAC income for determining the appropriate refund amount, pending our disposition of its motion for reconsideration.

In its motion, Aloha argues that, although there are no provisions in our rules for a stay pending a motion for reconsideration, if it is not granted a stay, it will suffer irreparable harm because there will be no way to recover the funds from those to whom it makes refunds. Aloha further argues that, if a stay is granted, no harm will be suffered since these funds are already held subject to refund.

Since Aloha may be irreparably harmed if it is not granted a stay but is successful on reconsideration, and since the monies in question are held subject to refund anyway, we find it appropriate to grant it a stay pending our disposition of its motion for reconsideration.

It is, therefore,

ORDERED by the Florida Public Service Commission that Aloha Utilities, Inc.'s motion for a stay pending our disposition of its motion for reconsideration is hereby granted.

By ORDER of the Florida Public Service Commission, this
24th day of DECEMBER, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

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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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.