

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by FLORIDA WATERWORKS) DOCKET NO. 860184-PU
 ASSOCIATION for investigation of proposed) ORDER NO. 24129
 repeal of section 118(b), Internal Revenue) ISSUED: 2-18-91
 Code (CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION))

The following Commissioners participated in the disposition of this matter:

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

ORDER REQUIRING CIAC GROSS-UP REPORTS

BY ORDER OF THE COMMISSION:

By Order No. 16971, issued December 18, 1986, on an emergency basis, this Commission authorized corporate water and/or wastewater utilities, subject to its jurisdiction, to amend their service availability policies to "gross-up" contributions-in-aid-of-construction (CIAC) in order to meet the tax impact resulting from the inclusion of CIAC as gross taxable income under the Tax Reform Act of 1986. By Order No. 16971, we also required utilities that elected the gross-up to file an annual report containing the following information:

1. Signed copies of their state and federal income tax returns;
2. Workpapers filed with, used in preparation of, or related to their state and federal income tax returns, which clearly reflect their tax treatment of CIAC; and
3. Workpapers filed with, used in preparation of, or related to their state and federal income tax returns, which clearly show any tax savings resulting from the Tax Reform Act of 1986, related to jurisdictional operations.

The purpose of requiring this information was so that we could make an annual determination of the actual state and federal income tax expense directly attributable to the CIAC, and whether a refund of the gross-up is appropriate for any given year for which it was in effect.

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It has recently come to our attention that some utilities have not filed their reports on an annual basis, and that some have not filed them at all. However, it has also been brought to our attention that Order No. 16971 did not set a precise date by which the reports should be filed. Accordingly, we believe that it is appropriate to place all jurisdictional utilities on notice that they must file their reports for 1987, 1988, and 1989, no later than April 1, 1991. We also find it appropriate to place the utilities on notice that, if they employ the gross-up for 1990 or any subsequent year, such reports must be filed annually by April 1, beginning with their 1990 report in 1992, unless an extension is granted by Commission Staff.

In addition to the above, we note that, by Order No. 23541, we refined our guidelines regarding refunds of the gross-up to exclude refunds occasioned by below-the-line net operating losses (NOLs) or investment tax credits (ITCs). We therefore suggested, to any utility that had such NOLs or ITCs and had filed its report, that it file an amended report reflecting only the above-the-line NOLs and ITCs, including a reconciliation to the amounts originally filed. Finally, we stated that, if any utility failed to distinguish above-the-line NOLs and ITCs from below-the-line NOLs and ITCs, we would treat all NOLs and ITCs as above-the-line for purposes of determining the amount of refund.

To date, few utilities have submitted CIAC reports reflecting only above-the-line NOLs and ITCs. Nevertheless, we believe that it is appropriate to give these utilities one last opportunity to submit this information. We also believe that, since almost all utilities will have filed their income tax returns no later than by December 1, 1990, a deadline of April 1, 1991, is sufficient time to file the amended reports. If any utility fails to submit an amended CIAC gross-up report by April 1, 1991, we will assume that all NOLs and ITCs are above-the-line for purposes of determining a refund of CIAC tax monies collected.

Upon consideration of the above, it is

ORDERED by the Florida Public Service Commission that all jurisdictional water and/or wastewater utilities that have employed the CIAC gross-up for any of the years 1987, 1988, and/or 1989, shall submit CIAC gross-up reports reflecting only above-the-line NOLs and ITCs, and a reconciliation to any amounts that may have already been filed, no later than by April 1, 1991. It is further

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ORDERED that any jurisdictional water and/or wastewater utility that employs the gross-up for 1990 or any subsequent year shall file an annual CIAC gross-up report, in conformance with this Order, no later than by April 1, unless an extension is granted by Commission Staff, beginning with their 1990 report on or before April 1, 1992.

By ORDER of the Florida Public Service Commission this
18th day of February, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

by: Kay Hizon
Chief, Bureau of Records

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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.