

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for continuation of )	DOCKET NO. 900975-WS
gross-up of contributions-in-aid-of-) )	
construction (CIAC) in Lee County by) )	ORDER NO. 25436
EAGLE RIDGE UTILITIES, INC. )	
_____ )	ISSUED: 12/4/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 SUSAN F. CLARK  
 J. TERRY DEASON  
 BETTY EASLEY  
 MICHAEL McK. WILSON

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING CONTINUED GROSS-UP OF  
CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION AND  
APPROVING REFUND WITH MODIFICATIONS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

In Order No. 23451, issued October 1, 1990, we determined that any water and wastewater utility currently collecting gross-up on contributions-in-aid-of-construction (CIAC) must file a petition for continued authority to gross-up and for approval of certain refunds to contributors. In Order No. 23689, issued October 29, 1990, we extended the time to file petitions to continue to gross-up to January 2, 1991. On December 11, 1990, Eagle Ridge Utilities, Inc. (Eagle Ridge or the utility) timely filed a petition requesting approval to continue to collect the gross-up of its CIAC and to refund certain amounts of gross-up collected.

APPROVAL TO CONTINUE GROSS-UP

In accordance with Order No. 23541, the utility has provided the Commission with a cash flow statement, a statement of interest coverage indicating a times interest earned (TIE) ratio of less

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than 2x, and a statement that it does not have an alternative source of funds available at a reasonable rate. Further, as justification for the gross-up, the utility states that it has expended significant amounts for construction during 1987 and 1989, and that it will begin a major construction program in 1991 and 1992. Based on the total gross operating revenue of \$196,772 in 1989, the utility does not believe that it will be able to generate enough revenues through its current rates and customer base to cover its operating expenses, the taxes associated with CIAC, and service debt associated with the pending construction. Thus, the utility will continue to incur an above-the-line tax liability associated with the collection of CIAC but it will not be able to generate the funds to finance the taxes either through its existing rates or alternative financing. The utility also indicated that it selected the full gross-up method because it is the least costly alternative and it has not resulted in competitive disadvantage to decreased growth. Finally, the utility submitted proposed tariffs for the gross-up. Based on the information filed, we find that the utility has demonstrated a continued need to collect the gross-up. Its request to continue collecting the gross-up is, therefore, approved. The proposed tariffs submitted by the utility shall be effective upon the expiration of the protest period, if no protests are filed.

All gross-up CIAC collections are to be made in accordance with the accounting and regulatory treatments and record keeping prescribed in Orders Nos. 16971, issued December 18, 1986, and 23541, and all matters discussed in the body of those Orders are expressly incorporated herein by reference.

REFUND APPROVED

Order No. 23541 required that all gross-up amounts in excess of a utility's actual tax liability resulting from its collection of CIAC should be refunded, with interest, on a pro rata basis to those persons who contributed the taxes. Order No. 16971 required that the CIAC tax impact amounts be deposited as received into a fully funded interest bearing escrow account. The Order further required that CIAC tax impact monies received during the tax year which were in excess of the actual amount of tax expense attributable to the receipt of CIAC, together with the interest earned on such excess monies held in the CIAC Tax Impact Account, must be refunded.

According to the utility's calculation, a total of \$19,128 for the years 1987 through 1989 is due to be refunded pro rata to contributors. This amount represents only the base amount of

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gross-up collected, interest earned on this escrow account for the year the gross-up was collected, and interest accrued from December 31, 1989, to the date of the refund. This amount does not include interest accrued on the 1987 refund amount since December 31, 1987, or interest accrued on the 1988 refund amount since December 31, 1988. Therefore, we find that in addition to the \$19,128 base amount of refund, the following amounts must also be refunded: 1) interest earned on the 1987 refund amount of \$15,343, accrued from December 31, 1987 through the date of the refund; 2) interest earned on the 1988 refund amount of \$1,742, accrued from December 31, 1988 through the date of the refund; 3) and interest earned on the 1989 refund amount of \$2,043, accrued from December 31, 1989 through the date of the refund. Accordingly, the utility's request to refund gross-up on CIAC is hereby approved with the modification that all accrued interest as discussed above, must also be refunded in accordance with Orders Nos. 23541 and 16971.

Further, the utility must file with the Commission a report of the refund so that we may verify the amount of the refund. This refund and filing must occur within six months from the date of this Order unless a timely protest is received.

In consideration of the foregoing it is

ORDERED by the Florida Public Service Commission that approval is granted for Eagle Ridge Utilities, Inc. to continue collecting the gross-up on CIAC. It is further

ORDERED that the tariffs filed by Eagle Ridge Utilities, Inc. shall be effective upon expiration of the protest period, as set forth below in the Notice of Further Proceedings, if no timely protests are filed. It is further

ORDERED that Eagle Ridge Utilities, Inc.'s request to refund \$19,128 to contributors on a pro rata basis is approved with the modification that such refund shall include all accrued interest calculated through the date of the refund as set forth in the body of this Order. It is further

ORDERED that Eagle Ridge Utilities, Inc. shall file with the Commission a report of the refund in order to verify the amount of the refund. It is further

ORDERED that the refund and report of the refund shall be completed within six months from the date of this Order. It is further

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ORDERED that all provisions of this Order are issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of the Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that in the event no timely protest is received, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 4th day of DECEMBER, 1991.

  
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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,

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Florida 32399-0870, by the close of business on  
12/26/91.

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.

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 wastewater 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.