

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for continuation)	DOCKET NO.:	901023-SU
of gross-up of contributions-in-)	ORDER NO.	25500
aid-of-construction in Lee County)	ISSUED:	12/17/91
by FOUNTAIN LAKES SEWER CORPORATION)		

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTIONORDER APPROVING CONTINUED GROSS-UP OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION AND APPROVING REFUND

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. 23541, issued October 1, 1990, we determined that any water and wastewater utility currently grossing-up contributions-in-aid-of-construction (CIAC) must file a petition for continued authority to gross-up. On December 31, 1990, Fountain Lakes Sewer Corporation (Fountain Lakes or utility) filed a petition requesting approval to continue collecting the gross-up on its CIAC. The information as filed did not meet the filing requirements of Order No. 23541. Proposed tariffs which contained the formula approved in Order No. 23541, were not submitted. The utility was contacted regarding the tariffs, and subsequently submitted the appropriate tariff sheets.

APPROVAL TO CONTINUE GROSS-UP

In accordance with Order No. 23541, Fountain Lakes has provided the Commission with a schedule which reflects that the utility will incur an actual above-the-line tax liability; a cash flow statement indicating that funds are not available to pay the

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taxes associated with CIAC; a statement of interest coverage indicating a times interest earned (TIE) ratio of less than 2x; and a statement that it does not have an alternative source of financing available at a reasonable rate. Further, as justification for the gross-up, Fountain Lakes states that based on the total operating revenues generated in 1990, it will not be able to generate enough revenues to cover its operating expenses, the taxes associated with CIAC, and service debt associated with its expansion program.

The utility also states that it is not in a strong enough financial position to obtain alternative financing for the construction as well as taxes on CIAC. Fountain Lakes 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 or decreased growth in the service area. Finally, the utility submitted proposed tariffs for the gross-up. Based on the information filed, we find that Fountain Lakes will continue to have an actual above-the-line tax liability associated with the collection of CIAC and has demonstrated a continued need to gross-up. The utility's request to continue collecting CIAC gross-up is, therefore, approved. The tariffs submitted by the utility shall be effective upon the expiration of the protest period set forth in the Notice of Further Proceedings attached to this Order, if no timely protests are filed.

All gross-up CIAC collections are to be made in accordance with the accounting and regulatory treatments and record keeping method 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 on a pro rata basis to those persons who contributed the taxes. According to the utility's calculation, a total of \$15,532 for the year 1989 is due to be refunded pro rata to contributors. This total represents the amount of gross-up collected and interest earned on the escrow account which exceeds the amount of taxes paid on the CIAC collections. Upon consideration, we approve the utility's request to refund that amount. The refund must include interest calculated through the

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date of the refund. In addition, the utility must file with the Commission a report of the refund, including copies of cancelled refund checks, so that we may verify the amount of the refund. This refund and filing must occur within 6 months from the date of this Order unless a timely protest is received.

Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that approval is granted for Fountain Lakes Sewer Corporation to continue collecting the gross-up on CIAC. It is further

ORDERED that all gross-up collections are to be made in accordance with the provisions of Orders Nos. 16971 and 23541, which are incorporated herein by reference. It is further

ORDERED that the tariff filed by Fountain Lakes Sewer Corporation for CIAC gross-up shall be effective upon the expiration date of the protest period set forth in the Notice of Further Proceedings attached to this Order, if no timely protests are filed. It is further

ORDERED that Fountain Lakes Sewer Corporation's request to refund \$15,532 pro rata to contributors is approved. It is further

ORDERED that such refund shall include interest calculated through the date of the refund and shall be complete within 6 months from the effective date of this Order. It is further

ORDERED that Fountain Lakes Sewer Corporation shall file copies of the cancelled refund checks for verification as set forth in the body of this Order. It is further

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 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 this docket shall be closed upon expiration of the protest period, if no protest is received.

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By ORDER of the Florida Public Service Commission, this
17th day of DECEMBER, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

by: Kay Flynn
Chief, Bureau of Records

LAJ

Dissent: Chairman Thomas M. Beard dissented to the refund portion.

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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 1/7/92.

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.