

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to gross-up ) DOCKET NO. 920032-WS  
contributions-in-aid-of- ) ORDER NO. PSC-92-0777-FOF-WS  
construction (CIAC) in Lake ) ISSUED: 08/10/92  
County by JJ'S MOBILE HOMES, )  
INC. )  
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The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING AUTHORITY TO GROSS-UP  
CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION

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

JJ's Mobile Homes, Inc. (JJ's or utility) is a Class C water and wastewater utility providing service to the public in Lake County. As of December 31, 1991, the utility served 137 water and 137 wastewater customers. The utility had gross operating revenues of \$24,311 for the water system and \$28,449 for the wastewater system. The utility reported a net operating loss of \$33,058 for the water system and a loss of \$30,035 for the wastewater system. JJ's has changed its corporate tax status several times over the last 17 years. Prior to September 30, 1975, JJ's was a C Corporation. From September 30, 1975, to October 1, 1980, JJ's was an S Corporation. JJ's again became an S Corporation on October 1, 1987. In March of 1991, all of the shareholders of JJ's filed a statement revoking this S Corporation election. JJ's is now a C Corporation, effective January 1, 1991. JJ's will be a C Corporation for 1991 and at least five consecutive tax periods, at

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which time another S election could be made (Internal Revenue Code § 1362(g)).

By Order No. 16971, issued December 18, 1986, the Commission granted approval for water and wastewater utilities to amend their service availability policies to meet the tax impact on Contributions-in-Aid-of-Construction (CIAC) resulting from the amendment of Section 118(b) of the Internal Revenue Code. Under the provisions of Order No. 17396, issued on April 14, 1987, S Corporations were specifically excluded from those utilities that were authorized to gross-up CIAC for the related tax impact. Order No. 23541, issued October 1, 1990, ordered utilities currently grossing-up CIAC to file a petition for continued authority to gross-up and also ordered that no utility may gross-up CIAC without first obtaining the approval of this Commission. Orders Nos. 16971 and 23541 also prescribed the accounting and regulatory treatments for the gross-up and required refunds of certain gross-up amounts collected.

On January 7, 1992, pursuant to Order No. 23541, JJ's filed for authority to gross-up CIAC for the related tax impact. On February 17, 1992, a George Wimpey of Florida, Inc. d/b/a/ Morrison Homes (the Developer) filed a Petition to Intervene. Order No. PSC-92-0039-FOF-WS, issued on March 10, 1992, suspended gross-up authority pending further analysis.

By letter dated March 30, 1992, the utility was instructed to update the financial information in the filing to the calendar year 1991, and supply the amount of any net operating loss (NOL) and investment tax credit (ITC) carryforwards in existence at the time of the corporate conversion from an S Corporation to a C Corporation. The utility's responses were received on June 2, 1992. At our Agenda Conference on July 21, 1992, the Developer withdrew its intervention in this Docket.

APPROVAL OF AUTHORITY TO GROSS-UP  
CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION

Order No. 23541 required that each utility demonstrate that an above-the-line tax liability exists and that alternate sources of funds are not available at a reasonable cost. In accordance with Order No. 23541, JJ's has provided this Commission with a Statement of Interest Coverage indicating a times interest earned (TIE) of no

more than 2x, and that it has no alternative source of financing available at a reasonable rate.

DEMONSTRATION OF ACTUAL TAX LIABILITY: The original filing included a demonstration of tax liability for 1990. In view of the fact that the utility's conversion from S Corporation status was effective January 1, 1991, we find it to be more appropriate for the filing to be based upon the 1991 calendar year. The utility submitted data on June 2, 1992.

Our review of the financial statements filed by the utility indicates that JJ's will incur an actual above-the-line tax liability as a result of its collection of CIAC. The revised filing included the amount of NOL carryforwards which were generated during the years JJ's was a C Corporation, which totaled \$137,807. This amount is completely used up by the 1991 above-the-line taxable income of \$170,528. Thus, there is a resulting tax liability for 1991 prior to donation of the assets associated with the Developer's development. The data filed by the utility indicates there are no ITC carryforwards from either the S or C Corporation years which could be used to reduce tax liability.

STATEMENT OF INTEREST COVERAGE: The TIE ratio indicates the number of times a utility is able to cover its interest. The ratio is an indicator of the relative protection for the bondholders. It is also indicative of the utility's ability to go into the financial market to borrow money or issue stock at a reasonable rate. Order No. 23541 established a TIE ratio of 2x as a benchmark. As of December 31, 1991, the utility had long-term debt of \$443,112. The total company TIE ratio was calculated to be a negative 17.37x, which is less than the benchmark established by Order No. 23541. This TIE ratio indicates that the company, as a whole, does not have adequate interest coverage.

STATEMENT OF ALTERNATIVE FINANCING: The utility stated that additional unsecured, third-party loans are not available at any cost to fund the additional tax burden related to CIAC. The total debt for the company, according to the 1991 annual report, is \$519,257, which consists of a note payable to the shareholders with an interest rate of 11%. The utility estimates rate base to be \$23,237 as of December 31, 1991. The utility has stated that the shareholders are not willing to extend transfers to include payment of taxes related to taxable CIAC collections. The utility states that it must expand both its water and wastewater plants to provide



capacity to serve the approximately 750 unit development. Borrowing funds to pay taxes would, in the utility's opinion, jeopardize its ability to obtain construction financing.

Based on the utility's inadequate interest coverage, negative retained earnings, and negative equity ratio, we find that the utility's ability to go into the financial market to borrow money may be impaired and the utility may not be able to obtain alternative financing at a reasonable rate.

JUSTIFICATION FOR THE GROSS-UP: The utility indicated that it will need to expand both its water and wastewater plants in the near future. Based on the total gross operating revenue generated in 1991 of \$52,760, it appears that the utility will not 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 construction of new facilities. Based on the foregoing, we find that the utility will incur an above-the-line tax liability associated with the collection of CIAC and that it will not be able to generate the funds to finance the taxes either through its existing rates or alternative financing.

GROSS-UP METHOD SELECTED: The utility has elected to use the full gross-up method. This method was selected due to its cost effectiveness and relative simplicity as opposed to the present value method. The utility stated it does not have the financial resources to fund the up-front investment required by the present value gross-up method.

PROPOSED TARIFFS: In accordance with Order No. 23541, the utility submitted proposed tariffs for the full gross-up as requested in its filing.

Upon consideration of the foregoing, we find that the utility's request to gross-up its CIAC is reasonable and it is, therefore, approved. Upon expiration of the protest period, if no protests have been received, the docket may be closed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the request of JJ's Mobile Homes, Inc. for authority to gross-up

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contributions-in-aid-of-construction is hereby approved. It is further

ORDERED that the 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, 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 this docket shall be closed upon expiration of the protest period if no timely protests are received.

By ORDER of the Florida Public Service Commission this 10th day of August, 1992.

  
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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

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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 August 31, 1992.

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.