

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to gross-up) DOCKET NO. 920739-WS
contributions-in-aid-of-) ORDER NO. PSC-92-0962-FOF-WS
construction (CIAC) for the) ISSUED: 09/09/92
related tax impact by LAKE)
GROVES UTILITIES, INC. in Lake)
County)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER ACKNOWLEDGING INTERIM AUTHORITY TO
GROSS-UP CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION

BY THE COMMISSION:

Lake Groves Utilities, Inc. (Lake Groves or utility) is a Class C water and wastewater utility providing service to the public in Lake County. Pursuant to Order No. 24283, issued March 25, 1991, Lakes Groves received Certificates Nos. 534-W and 465-S permitting it to provide water and wastewater services to the Greater Groves area. Because this is a new utility, there is no financial information on file for this utility for 1991. Based upon the filing, projected 1992 revenues are \$19,246 with a projected operating loss of \$86,859.

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. In Order No. 23541, issued October 1, 1990, we determined that any water and wastewater utilities already collecting the gross-up on CIAC and wishing to continue collecting the gross-up had to file a petition for approval with the Commission on or before October 29, 1990. Further, we ordered that water and wastewater utilities could not begin grossing-up CIAC without first obtaining the approval of this Commission.

On July 20, 1992, pursuant to Order No. 23541, Lake Groves filed its proposed tariff for authority to gross-up CIAC. The utility asserts that this request is necessary because of its

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status as a newly certificated utility. The utility was newly formed and had no revenues in 1990 or 1991, and projects only 78 residential customers by the end of 1992.

Construction of Phase I of the source of supply and water and wastewater treatment facilities began in 1991. This was done to provide service to the first 99 units in the Greater Groves development. The cost of these facilities and the land on which they are located was financed by a \$1,005,000 loan from a bank, a \$500,000 loan from Greater Construction Corporation (Greater), and CIAC of \$127,000. Construction of the Phase II expansion of the water and wastewater treatment plant and distribution and collection systems began in April of 1992.

Section 367.091(5), Florida Statutes, provides that within sixty (60) days of the filing of an application to change a rate or charge other than the monthly rates for service, the Commission may withhold consent to the operation of any or all portions of the new rate schedules, by a vote to that effect giving a reason or statement of good cause for withholding consent. If the Commission does not act within sixty (60) days, the rates become effective. The file-and-suspend statutes have been interpreted by the Florida Supreme Court to provide that rates which become effective upon inaction by the Commission are interim rates pending a final order by the Commission. Citizens of the State of Florida v. Wilson, 568 So.2d 904 (Fla. 1990). The case law also provides that substantially affected persons have the right to a hearing on the interim rates.

In its tariff filing for approval to collect the gross-up on CIAC, Lake Groves asserts that it needs to collect the gross-up because it anticipates that upon receipt of the CIAC, it will immediately be in the position of having a regulatory above-the-line taxable income. In addition, Lake Groves asserts that unless its gross-up authority is effective throughout this period, it will incur a substantial tax liability with no viable source for the funding of such liability.

Although the information filed makes it appear that Lake Groves will have a tax liability, additional information is needed before we can determine whether a tax liability exists and other sources of funds are not available at a reasonable cost, as required by Order No. 23541. In consideration of the above, we will not suspend, approve or deny the tariff. Therefore, we find it appropriate to allow the proposed tariff to become effective on an interim basis, pending our review of the additional information.

Pursuant to Orders Nos. 16971 and 23541, CIAC tax impact amounts are to be deposited as received in a fully funded interest bearing escrow account and Lake Groves is required to maintain adequate records to account for the receipt, deposit, and withdrawal of monies in the CIAC tax impact account. Because this CIAC gross-up will be collected on an interim basis and may not be permitted after further examination, no monies shall be withdrawn from the escrow account until a final determination is made in this matter. Pursuant to Rule 25-30.360(6), Florida Administrative Code, Lake Groves shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund.

In the event that CIAC gross-up is permitted after a final determination, all CIAC tax impact monies received during the tax year that are in excess of Lake Groves' actual tax liability resulting from the collection of CIAC, together with interest on such excess monies, shall be refunded on a pro rata basis to the contributors of those amounts. Further, all provisions of Orders Nos. 16971 and 23541 not addressed in this Order are incorporated herein by reference.

The tariff proposed by Lake Groves in its petition will become effective, but not final, on or after September 19, 1991. However, substantially affected persons shall have 21 days from the date of this Order to request a hearing.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the tariff filed by Lake Groves Utilities, Inc. for CIAC gross-up is neither approved, suspended nor denied. It is further

ACKNOWLEDGED that the tariff filed by Lake Groves Utilities, Inc. will become effective on or after September 19, 1992, but is interim in nature, pending a final order by the Commission. It is further

ORDERED that Lake Groves Utilities, Inc. shall deposit all of the collected gross-up on CIAC into a fully funded interest bearing escrow account and the funds collected are subject to refund in accordance with the provisions of Rule 25-30.360, Florida Administrative Code. It is further

ORDERED that Lake Groves Utilities, Inc. shall make no withdrawals from the escrow account until a final determination to approve or deny the tariff is made in this matter. It is further

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ORDERED that a substantially affected person may file a petition for a formal proceeding, with the Director, Division of Records and Reporting, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 9th day of September, 1992.

Steve Tribble, Director
Division of Records and Reporting

(S E A L)

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by: Kay Hym
Chief, Bureau of Records

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 Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the action proposed files a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), 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 September 30, 1992.

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In the absence of such a petition, this order shall become final on the day subsequent to the above date.

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 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 date this Order becomes final, 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.