

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to Approve) DOCKET NO. 930267-WS
Refund of Gross-up on Certain) ORDER NO. PSC-93-1599-FOF-WS
Contributions-in-Aid-of-) ISSUED: November 2, 1993
Construction (CIAC) Collected in)
1991 by PALM COAST UTILITY)
CORPORATION in Flagler County.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING REFUNDS OF GROSS-UP OF
CONTRIBUTIONS-IN-AID-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.

Pursuant to Section 118(b) of the Internal Revenue Code contributions-in-aid-of-construction (CIAC) is considered gross income and depreciable for federal tax purposes. In Order No. 16971, issued December 18, 1986, we authorized corporate utilities to collect the gross-up on CIAC in order to meet the tax impact resulting from the inclusion of CIAC as gross income.

Orders Nos. 16971, issued December 18, 1986, and 23541, issued October 1, 1990, require that utilities annually file information which would be used to determine the actual state and federal

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income tax expense directly attributable to the CIAC, and whether a refund of the gross-up is appropriate for any given year for which gross-up was in effect. These orders also require that all gross-up amounts for a tax year which are in excess of a utility's actual tax liability for the same year resulting from its collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes.

In Order No. 23541, this Commission determined that any water and wastewater utility 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. By Order No. 25141, issued September 30, 1991, Palm Coast Utility Corporation (Palm Coast or the utility) was authorized to continue to gross-up CIAC for the related tax impact.

On September 9, 1992, this Commission issued Order No. PSC-92-0961-FOF-WS, which clarified the provision of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On March 11, 1993, Palm Coast filed its petition for approval of refund with interest of gross-up on certain CIAC collected in 1991. On September 14, 1992, Order No. PSC-92-0961A-FOF-WS, was issued to include the generic calculation form. In compliance with Order No. 16971, Palm Coast filed its 1991 annual CIAC report regarding its collection of gross-up. According to the schedule submitted by the utility, \$912,257 of the taxable CIAC collected in 1991 was subject to gross-up. The utility incurred above-the-line taxable income prior to the inclusion of the taxable CIAC. Therefore, all of the CIAC collected was taxable. However, we find that gross-up monies were over-collected because the utility used a higher gross-up percentage than allowable.

The utility collected \$427,918 of gross-up monies in 1991 on the \$912,257 taxable CIAC it received. In its calculation to determine the gross-up percentage to be used, the utility used a straight line depreciation rate instead of an accelerated rate as used in its tax return. The utility used a forty-five year tax life in its calculation instead of the appropriate twenty year tax life. Also, the utility used a 9.84 percent rate of return in its calculation of the gross-up amount which is not its last authorized rate of return. By Order No. 22843, issued April 23, 1990, this Commission authorized a 9.21 percent rate of return.

The utility initially calculated a refund amount of \$103,212. The utility revised the refund amount to \$142,402 to adjust for the

errors discussed above. After adjusting for the errors, we have calculated the appropriate amount of gross-up that should have been collected to be \$293,944. This results in an over-collection of \$133,974. Pursuant to Orders No. 16971 and 23541, the utility is required to refund the \$133,974 gross-up over-collection, plus accrued interest through the date of the refund, on a pro rata basis to the contributors of the taxes.

In consideration of the foregoing, we find it appropriate to require the utility to refund excess gross-up collections of \$133,974 for the year ended December 31, 1991, plus accrued interest through the date of refund. The refund shall be completed within six months of the date of this Order. The utility shall submit copies of cancelled checks, credits applied to monthly bills or other evidence which verifies that the refunds have been made, within 30 days from the date of refund.

In the event no timely protest is received, this docket shall be closed.

Based on the foregoing, it is, therefore,

ORDERED that Palm Coast Utility Corporation shall refund excess gross-up collections of \$133,974 for the year ended December 31, 1991, plus accrued interest through the date of refund. It is further

ORDERED that Palm Coast Utility Corporation shall refund the \$133,974 on a pro rata basis to those persons who contributed the taxes, and the refund shall be completed within six months of the effective date of this Order. It is further

ORDERED that Palm Coast Utility Corporation shall submit copies of cancelled checks, credits applied to monthly bills or other evidence which verifies that the refunds have been made, within 30 days from the date of refund. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth

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in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 2nd day of November, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

CB

by: Kay Flynn
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 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 November 23, 1993.

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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.