

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Revision of Formula Used) DOCKET NO. 930914-WS
to Gross-up Contributions-in-) ORDER NO. PSC-94-0156-FOF-WS
Aid-of-Construction (CIAC).) ISSUED: February 9, 1994
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION

ORDER REVISING FULL GROSS-UP FORMULA
AS CONTAINED IN ORDER NO. 23541

AND

REQUIRING UTILITIES CURRENTLY USING THE FULL GROSS-UP METHOD
TO SUBMIT REVISED TARIFF SHEETS REFLECTING THE REVISED FORMULA

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

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. Order No. 16971 contained a gross-up formula. 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. Order No. 23541 modified the

DOCUMENT NUMBER-DATE

01307 FEB-94

FPSD-REGULATORY REPORTING

gross-up formula contained in Order No. 16971 and also set forth the methods utilities should use in calculating the gross-up. Orders Nos. 16971 and 23541 also prescribed the accounting and regulatory treatments for the gross-up and required refunds of excess gross-up amounts collected.

By letter dated June 1, 1993, Poinciana Utilities, Inc. (Poinciana or utility) requested that the full gross-up formula for depreciable plant as contained on page 14 of Order No. 23541 be revised. With its request, the utility submitted tariff sheets for the Commission's approval. Docket No. 930529-WS was opened to process the utility's request. By Order No. PSC-93-1308-FOF-WS, issued September 8, 1993, we approved Poinciana's tariff, as filed, and ordered that a generic investigation be made to address a possible revision to the full gross-up formula. On September 15, 1993, this Docket was opened for that purpose.

Revision of Full Gross-Up Formula

In its request, Poinciana asserted that the formula which calculates the amount of required gross-up was intended to pass the tax savings on first year depreciation to the contributor of CIAC and the existing gross-up factor generated by the formula contained in Order No. 23541 would not pass on the entire tax savings. Poinciana asserted that, with the correction to the formula, the gross-up factor will generally be lower and the subsequent amount of gross-up refunds, if any, will also be lower.

The full gross-up formula for depreciable plant that was approved by the Commission in Order No. 23541 is reflected below:

$$(CP - (CP * (1/TL) * AR * .5)) * (1 / (1 - CTR))$$

Whereby,

CP= Contributed plant
TL= Tax life of contributed plant
AR= Accelerated rate from tax table
CTR= Combined federal and state income tax rate

Upon reviewing the utility's request, we have found that the two factors which distinguish when companies use tax straight-line depreciation lives or accelerated tax depreciation rates were combined. The $1/TL$, whereby TL represents the tax life of the contributed property, would apply when a company uses tax straight-line depreciation for income tax purposes. Tax straight-line depreciation lives can be different from book depreciation lives.

The accelerated rate, or AR, would apply when a company uses a tax depreciation method other than the straight-line method for income tax purposes. The formula in Order No. 23541 uses both factors and a distinction should have been made between the two. In consideration of the foregoing, we find that it is appropriate to revise the formula contained in Order No. 23541.

Upon further review of the formula, we have also discovered that the computation for the tax associated with the collection of CIAC was omitted. The full gross-up formula should allow a utility to collect the full tax impact associated with CIAC, including the tax-on-tax. The formula should also provide a ready source of cash for the maximum tax liability that would be associated with CIAC. Therefore, we find it appropriate to further revise the formula to include the calculation of the tax associated with CIAC.

The full gross-up formula for depreciable plant is hereby revised to the extent set forth below:

For utilities using straight-line depreciation, the gross-up formula shall be:

$$(CP + (((CP - (CP * (1/TL) * .5)) * CTR) * (1/(1-CTR))))$$

For utilities using an accelerated rate of depreciation, the gross-up formula shall be:

$$(CP + (((CP - (CP * AR *.5)) * CTR) * (1/(1-CTR))))$$

For land, the gross-up formula shall be:

$$CL + ((CL * CTR) * (1/(1-CTR)))$$

Whereby,

CP = Contributed plant
TL = Tax life of contributed plant
AR = Accelerated rate from tax table
CTR = Combined federal and state income tax rate
C = Contributed cash
CL = Contributed land

Order No. 23541 shall be reaffirmed in all other respects.

Revised Tariff Sheets

Schedule No. 1 reflects that there are 24 utilities that have been authorized to implement the full gross-up formula. All utilities currently utilizing the full gross-up formula as contained in Order No. 23541 shall submit revised tariff sheets which reflect the revised formula within sixty days of the effective date of this Order. Staff shall be given administrative authority to approve the revised tariff sheets.

Upon expiration of the protest period, if no protests have been timely received, this docket may be closed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the full gross-up formula as contained in Order No. 23541 is hereby revised to the extent set forth in the body of this Order. 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 in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that Order No. 23541 is reaffirmed in all other respects. It is further

ORDERED that the utilities currently using the full gross-up method as contained in Order No. 23541 shall submit revised tariff sheets which reflect the revised formula within sixty days of the effective date of this order. It is further

ORDERED that upon receipt of the revised tariff sheets, Staff shall have administrative authority to approve the tariff sheets if the tariff sheets are consistent with the decision herein. It is further

ORDER NO. PSC-94-0156-FOF-WS
DOCKET NO. 930914-WS
PAGE 5

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

By ORDER of the Florida Public Service Commission, this 9th day of February, 1994.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LAJ

by: Kay J. [Signature]
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 March 2, 1994.

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.

ORDER NO. PSC-94-0156-FOF-WS
DOCKET NO. 930914-WS
PAGE 6

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.

LIST OF COMPANIES WITH FULL GROSS-UP AUTHORITY

1. ALOHA UTILITIES, INC
2. CLAY UTILITY COMPANY
3. EAGLE RIDGE UTILITIES, INC.
4. EAST CENTRAL FLORIDA SERVICES, INC.
5. FOREST UTILITIES, INC.
6. FOUNTAIN LAKES SEWER CORP
7. GULF AIRE WASTEWATER TREATMENT PLANT
8. GULF UTILITY COMPANY
9. HUDSON BAY COMPANY
10. HYDRATECH UTILITIES, INC.
11. INDIANTOWN COMPANY, INC.
12. JJ'S MOBILE HOMES, INC.
13. LAKE GROVES UTILITIES, INC.
14. LAKE HILLS UTILITY COMPANY
15. MID CLAY SERVICE CORP
16. NORTH FORT MYERS UTILITIES, INC.
17. ORANGE-OSCEOLA UTILITIES, INC.
18. ORTEGA UTILITY COMPANY
19. POINCIANA UTILITIES, INC.
20. ROLLING OAKS UTILITIES, INC.
21. SANLANDO UTILITIES CORP
22. SUNBELT UTILITIES, INC.
23. SUNRAY UTILITIES, INC.
24. TRADEWINDS UTILITIES, INC.
25. PARKLAND UTILITIES, INC.*

* Pending authority