

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 931129-WS
contributions in aid of) ORDER NO. PSC-94-0258-FOF-WS
construction (CIAC) gross-up) ISSUED: March 8, 1994
funds received by UTILITIES,)
INC. OF FLORIDA (Orange and)
Seminole Counties), MILES GRANT)
WATER & SEWER CO. (UTILITIES,)
INC. OF FLORIDA) (Martin)
County), and LAKE UTILITY)
SERVICES, INC. (Lake County).)
_____)

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 REQUIRING REFUNDS OF EXCESS CIAC GROSS-UP
COLLECTIONS FOR THE YEARS 1989 THROUGH 1991

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

The repeal of Section 118(b) of the Internal Revenue Code (I.R.C.) resulted in making contributions-in-aid-of-construction (CIAC) gross income and depreciable for federal tax purposes. In Order No. 16971, issued December 18, 1986, the Commission 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

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which would be used to determine the actual state and federal income tax liability 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, we 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. 24790, issued July 10, 1991, Utilities, Inc. of Florida (Utilities, Inc. or Utility) was authorized to cancel tariff gross-up authority. Likewise, Miles Grant Water and Sewer Company and Lake Utility Services, Inc., both of which are owned by Utilities Inc. of Florida, were authorized to cancel tariff gross-up by Orders Nos. 24769 and 24771, respectively, issued July 8, 1991. Utilities, Inc. of Florida is ultimately responsible for refunding excess gross-up collections for all three of the above mentioned companies.

Utilities, Inc. of Florida is a Class A utility which provides water service to customers in Orange county and both water and wastewater service to customers in Seminole county. Its 1992 annual report for Orange County indicated water revenues at \$74,322 and a net operating loss of \$3,580. For Seminole county, the 1992 annual report reflected water revenues of \$505,260 and wastewater revenues of \$347,967. The utility reported net operating income of \$82,646 for the water system and \$32,103 for the wastewater system.

Miles Grant Water and Sewer Co. is a Class B utility which provides water and wastewater service to customers in Martin county. Its 1992 annual report reflected water revenues at \$212,796 and wastewater revenues at \$274,246. The utility reported a net operating income of \$56,629 for the water system and \$72,080 for the wastewater system.

Lake Utility Services, Inc. is a Class C utility which provides only water service to customers in Lake county. Its 1992 annual report reflected water revenues of \$90,074 and a net operating loss of \$27,136.

Order No. PSC-92-0961-FOF-WS, issued September 9, 1992, clarified the provisions of Orders No. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On September 14, 1992,

Order No. PSC-92-0961A-FOF-WS was issued. That Order included the generic calculation form.

ANNUAL GROSS-UP REFUND AMOUNTS

Utilities, Inc.

In compliance with Order No. 16971, Utilities, Inc. of Florida filed its 1987, 1988, 1989, 1990 and 1991 annual CIAC reports regarding its collection of gross-up for each year. Based upon the information provided by the utility in these annual gross-up reports we have calculated the appropriate refund amounts for each year. Our calculations are shown on Schedule No. 1.

The utility's 1987 and 1988 CIAC reports indicate that no gross-up collections were received; therefore, no refund is required for 1987 and 1988.

The utility did not propose a refund amount for 1989. However, the utility's 1989 CIAC report indicates that a total of \$960 of gross-up collections was received, with the first year's depreciation reported as \$32. The utility had an above-the-line loss for 1989 of \$102,278 before taxable CIAC was included in income. After taxable CIAC of \$2,560 was included in income, the utility had an above-the-line loss of \$99,718. Therefore since no tax liability resulted from the collection of CIAC, the total gross-up collected of \$960 shall be refunded. This amount does not include the accrued interest which must also be refunded from December 31, 1989 to the date of refund.

The utility did not propose a refund amount for 1990. However, the utility's 1990 CIAC report indicates that a total of \$7,080 of gross-up collections was received. The utility had an above-the-line loss for 1990 of \$161,460 and the utility reported that no taxable CIAC was received in 1990. Therefore, since no tax liability resulted from the collection of CIAC, the total gross-up collected of \$7,000 shall be refunded. This amount does not include the accrued interest which must also be refunded from December 31, 1990 to the date of refund.

The utility did not propose a refund amount for 1991. The utility's 1991 CIAC report did not provide any data to arrive at Adjusted Income Before CIAC and Gross-up. However, the CIAC report indicated no taxable CIAC was received; therefore, since no tax liability resulted from the collection of CIAC, the total amount of gross-up collected of \$720 shall be refunded. This amount does not include the accrued interest which must also be refunded from December 31, 1991 to the date of the refund.

Miles Grant Water Company

In compliance with Order No. 16971, Miles Grant Water Company filed its 1987, 1988, 1989, 1990, and 1991 annual CIAC reports regarding its collection of gross-up for each year. Based upon the information provided by the utility in its annual gross-up reports, we have calculated the appropriate refund amounts per year. Our calculations are shown on Schedule No. 2.

The utility's 1987 and 1988 CIAC reports indicate that no gross-up collections was received; therefore, no refund is required for 1987 and 1988.

The utility did not propose a refund amount for 1989. The 1989 CIAC report indicates that a total of \$17,840 of gross-up collections was received, with the first year's depreciation reported as \$593. The utility had an above-the-line loss for 1989 of \$22,039 before taxable CIAC was included in income. After taxable CIAC of \$47,440 was included in income, the utility had above-the-line income of \$25,401. Therefore, \$25,401 is the CIAC collected which resulted in a tax liability. When first year's depreciation of \$593 is considered, the net taxable CIAC is calculated to be \$24,808. We used the 37.63% combined federal and state tax rates that were in effect during 1989 to calculate the tax effect. Our calculations resulted in a refund amount of \$2,873. Based on the foregoing, the utility shall refund \$2,873 for 1989. This amount does not include the accrued interest which must also be refunded from December 31, 1989 to the date of refund.

The utility did not propose a refund amount for 1990. The 1990 CIAC report indicates that a total \$223 of gross-up collections was received. The utility reported that no taxable CIAC was received in 1990. Because no taxable CIAC was received during the year, the total gross-up collected of \$223 shall be refunded. This amount does not include the accrued interest which must also be refunded from December 31, 1990 to the date of refund.

The utility's 1991 CIAC report indicates that no gross-up collections were received; therefore, no refund is required for 1991.

Lake Utility Services, Inc.

In compliance with Order No. 16971, Lake Utility Services, Inc. filed its 1987, 1988, 1989, 1990, and 1991 annual CIAC reports regarding its collection of gross-up for each year. Based upon the information provided by the utility in its annual gross-up reports,

we have calculated the appropriate refund amounts. Our calculations are shown on Schedule No. 3.

The utility's 1987, 1988, 1989 and 1990 CIAC reports indicate that no gross-up collections were received; therefore, no refund is required for these years.

The 1991 CIAC report indicates that a total \$120 of gross-up collections was received. The utility had an above-the-line loss for 1991 of \$50,179 and the utility reported that no taxable CIAC was received in 1991. Because no taxable CIAC was received during the year, the total gross-up collected of \$120 shall be refunded. This amount does not include the accrued interest which must also be refunded from December 31, 1991 to the date of refund.

In consideration of the foregoing, we find it appropriate that the three utilities shall refund the amounts as shown herein respectively for each utility. However, Utilities, Inc. of Florida is ultimately responsible for the total refund of \$11,896 plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability resulting from the collection of CIAC. In accordance with Orders Nos. 16971 and 23541, all amounts should be refunded on a pro rata basis to those persons who contributed the taxes. The refund shall be completed within six months of the effective date of this Order. The utilities shall submit copies of canceled checks, credits applied to monthly bills or other evidence which verifies that the refunds have been made for each of the aforementioned utilities, within 30 days from the date of refund.

In the event no timely protest is received, this docket shall be closed administratively upon our staff's verification of the refund.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Utilities, Inc. of Florida shall make refunds of \$960 for 1989; \$7,000 for 1990; and \$720 for 1991, for a total of \$8,680 plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability resulting from the collection of CIAC. It is further

ORDERED that Miles Grant Water and Sewer Company shall make refunds of \$2,873 for 1989 and \$223 for 1990, for a total of \$3,096 plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability resulting from the collection of CIAC. It is further

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ORDERED that Lake Utility Services, Inc. shall make a refund of \$120 for 1991 plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability resulting from the collection of CIAC. It is further

ORDERED that Utilities, Inc. of Florida shall ultimately be responsible for the full refund of \$11,896 plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability resulting from the collection of CIAC by each of the named utilities. It is further

ORDERED that Utilities, Inc. of Florida, Miles Grant Water and Sewer, Co. and Lake Utility Services, Inc. shall refund all of the amounts 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 Utilities, Inc. of Florida, Miles Grant Water and Sewer, Co. and Lake Utility Services, Inc. shall submit copies of canceled 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 are issued as proposed agency action and shall become final unless an appropriate petition is received by the Director of the Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the Notice of Further Judicial Proceedings or Judicial Review. It is further.

ORDERED that in the event no timely protest is received, this docket shall be closed administratively upon our staff's verification that the refunds have been made.

By ORDER of the Florida Public Service Commission, this 8th day of March, 1994.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

SLE

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 March 29, 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.

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.

UTILITY, INC.

COMMISSION APPROVED CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	1987	1988	1989	1990	1991
1 Form 1120, Line 30 (Line 15)	\$ 0	\$ 0	\$ (98,790)	\$ (154,380)	\$ 0
2 Less CIAC (Line 7)	0	0	(2,560)	0	0
3 Less Gross-up collected (Line 19)	0	0	(960)	(7,080)	(720)
4 Add First Year's Depr on CIAC (Line 8)	0	0	32	0	0
5 Add/Less Other Effects (Lines 20 & 21)	0	0	0	0	0
6					
7 Adjusted Income Before CIAC and Gross-up	\$ 0	\$ 0	\$ (102,278)	\$ (161,460)	\$ (720)
8					
9 Taxable CIAC (Line 7)	\$ 0	\$ 0	\$ 2,560	\$ 0	\$ 0
10					
11 Taxable CIAC Resulting in a Tax Liability	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
12 Less first years depr. (Line 8)	0	0	0	0	0
13					
14 Net Taxable CIAC	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
15 Combined marginal state and federal tax rate	43.30%	37.63%	37.63%	37.63%	37.63%
16					
17 Net Income tax on CIAC	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
18 Less ITC Realized	0	0	0	0	0
19					
20 Net Income Tax	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
21 Expansion Factor for gross-up taxes	1.763668430	1.603334936	1.603334936	1.603334936	1.603334936
22					
23 Gross-up Required to pay tax effect	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
24 Less CIAC Gross-up collected (Line 19)	0	0	(960)	(7,080)	(720)
25					
26 PROPOSED REFUND (excluding interest)	\$ 0	\$ 0	\$ (960)	\$ (7,080)	\$ (720)
27					
28	No gross-up	No gross-up			
29 TOTAL REFUND	\$ (8,760)				
30					

MILES GRANT WATER COMPANY

COMMISSION APPROVED CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	1987	1988	1989	1990	1991
1 Form 1120, Line 30 (Line 15)	\$ 0	\$ 0	\$ 42,648	\$ 1,147	\$ 0
2 Less CIAC (Line 7)	0	0	(47,440)	0	0
3 Less Gross-up collected (Line 19)	0	0	(17,840)	(223)	0
4 Add First Year's Depr on CIAC (Line 8)	0	0	593	0	0
5 Add/Less Other Effects (Lines 20 & 21)	0	0	0	0	0
6					
7 Adjusted Income Before CIAC and Gross-up	\$ 0	\$ 0	\$ (22,039)	\$ 924	\$ 0
8					
9 Taxable CIAC (Line 7)	\$ 0	\$ 0	\$ 47,440	\$ 0	\$ 0
10					
11 Taxable CIAC Resulting in a Tax Liability	\$ 0	\$ 0	\$ 25,401	\$ 0	\$ 0
12 Less first years depr. (Line 8)	0	0	(593)	0	0
13					
14 Net Taxable CIAC	\$ 0	\$ 0	\$ 24,808	\$ 0	\$ 0
15 Combined marginal state and federal tax rate	43.30%	37.63%	37.63%	37.63%	37.63%
16					
17 Net Income tax on CIAC	\$ 0	\$ 0	\$ 9,335	\$ 0	\$ 0
18 Less ITC Realized	0	0	0	0	0
19					
20 Net Income Tax	\$ 0	\$ 0	\$ 9,335	\$ 0	\$ 0
21 Expansion Factor for gross-up taxes	1.763668430	1.603334936	1.603334936	1.603334936	1.603334936
22					
23 Gross-up Required to pay tax effect	\$ 0	\$ 0	\$ 14,967	\$ 0	\$ 0
24 Less CIAC Gross-up collected (Line 19)	0	0	(17,840)	(223)	0
25					
26 PROPOSED REFUND (excluding interest)	\$ 0	\$ 0	\$ (2,873)	\$ (223)	\$ 0
27					
28	No gross-up	No gross-up			No gross-up
29 TOTAL REFUND	\$ (3,096)				
30					

LAKE UTILITY SERVICES, INC.
 SOURCE: (Line references are from CIAC Reports)

COMMISSION APPROVED CALCULATED GROSS-UP REFUND

	1987	1988	1989	1990	1991
1 Form 1120, Line 30 (Line 15)	\$ 0	\$ 0	\$ 0	\$ 0	\$ (50,059)
2 Less CIAC (Line 7)	0	0	0	0	0
3 Less Gross-up collected (Line 19)	0	0	0	0	(120)
4 Add First Year's Depr on CIAC (Line 8)	0	0	0	0	0
5 Add/Less Other Effects (Lines 20 & 21)	0	0	0	0	0
6					
7 Adjusted Income Before CIAC and Gross-up	\$ 0	\$ 0	\$ 0	\$ 0	\$ (50,179)
8					
9 Taxable CIAC (Line 7)	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
10					
11 Taxable CIAC Resulting in a Tax Liability	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
12 Less first years depr. (Line 8)	0	0	0	0	0
13					
14 Net Taxable CIAC	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
15 Combined marginal state and federal tax rate	43.30%	37.63%	37.63%	37.63%	37.63%
16					
17 Net Income tax on CIAC	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
18 Less ITC Realized	0	0	0	0	0
19					
20 Net Income Tax	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
21 Expansion Factor for gross-up taxes	1.763668430	1.603334936	1.603334936	1.603334936	1.603334936
22					
23 Gross-up Required to pay tax effect	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
24 Less CIAC Gross-up collected (Line 19)	0	0	0	0	(120)
25					
26 PROPOSED REFUND (excluding interest)	\$ 0	\$ 0	\$ 0	\$ 0	\$ (120)
27					
28	No gross-up	No gross-up	No gross-up	No gross-up	
29 TOTAL REFUND	\$ (120)				
30					