

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 940158-SU
Contributions-in-Aid-of-) ORDER NO. PSC-94-0443-FOF-SU
Construction (CIAC) Gross-UP) ISSUED: April 13, 1994
Funds Collected by NORTH FORT)
MYERS UTILITY, INC. in Lee)
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 FINDING REFUND NOT REQUIRED

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 (IRC) resulted in making contributions-in-aid-of-construction (CIAC) gross income and depreciable for federal tax purposes. By Order No. 16971, issued December 18, 1986, this Commission authorized corporate utilities to collect a CIAC tax gross-up in order for those utilities to pay the tax liability resulting from their receipt of CIAC.

In Order No. 23541, the 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. North Fort Myers filed for authority to continue to gross-up on December 27, 1990. By Order No. PSC-92-0251-FOF-SU, issued April 27, 1992, North Fort Myers was granted authority to continue to gross-up using the full gross-up formula.

DOCUMENT NUMBER-DATE

03452 APR 13 1994

FPSC-RECORDS/REPORTING

By Orders Nos. 16971 and 23541, we required utilities which gross-up to file annually the information needed for (1) a determination of the utility's state and federal income tax liability directly attributable to receipt of CIAC for that year and (2) a determination of whether a refund of gross-up charges collected during that year is appropriate. These orders required that a utility refund on a pro rata basis the gross-up charges collected each year which exceeded the utility's actual above-the-line tax liability attributable to CIAC for the same year.

By Proposed Agency Action (PAA) Order No. PSC-92-0961-FOF-WS, issued September 9, 1992, as amended by Order No. PSC-92-0961A-FOF-WS, issued September 14, 1992, we clarified the refund calculation provisions of Orders Nos. 16971 and 23541. No protest to that PAA Order was filed, so the action taken therein became final.

North Fort Myers is a class B wastewater utility providing wastewater service to 2,556 customers in Lee County. According to its 1992 annual report, North Fort Myers had \$686,547 in operating revenue and a net operating loss of \$204,452 for the wastewater system.

Refund Calculations For Years 1990 Through 1991

In compliance with Order No. 16971, North Fort Myers filed annual CIAC gross-up reports for 1990 through 1991. Using North Fort Myers' annual gross-up reports, we have made a refund calculation for each of the years North Fort Myers collected CIAC and the gross-up, 1990-1991, and we find that no refunds are due. Our calculations are reflected on Schedule No. 1, which is attached hereto and by reference incorporated herein. A summary of each year's calculation follows.

1990

North Fort Myers' 1990 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. North Fort Myers' 1990 CIAC report indicates that a total of \$109,206 in CIAC gross-up charges was collected, and the first year's depreciation on the CIAC was \$10,608 associated with \$282,885 in taxable CIAC. We used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. Since the utility required more in gross-up to pay the tax impact than was collected, no refund is necessary.

1991

North Fort Myers' 1991 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. North Fort Myers' 1991 CIAC report indicates that a total of \$66,812 in CIAC gross-up charges was collected, with no first year depreciation deduction because no depreciable assets were added in 1991. Taxable CIAC of \$157,768 was collected. We used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. Since the utility required more in gross-up to pay the tax impact than was collected, no refund is necessary.

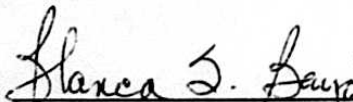
Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that North Fort Myers Utility, Inc., 18500 Tucker Lane, North Fort Myers, Florida 33917, is not required to refund any CIAC gross-up funds collected for the period 1990 through 1991. 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 of the 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 the docket should be closed upon expiration of the protest period if no timely protest is filed.

By ORDER of the Florida Public Service Commission this 13th day of April, 1994.



BLANCA S. BAYO, Director
Division of Records and Reporting

(S E A L)

MSN

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 May 4, 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.

NORTH FORT MYERS UTILITY, INC.
 SOURCE: (Line references are from CIAC Reports)

CALCULATED GROSS-UP REFUND

	1990	1991	1992	1993
1 Form 1120, Line 30 (Line 15)	\$ 437,441	\$ 275,322	\$ 0	\$ 0
2 Less CIAC (Line 7)	(282,885)	(157,768)	0	0
3 Less Gross-up collected (Line 19)	(109,206)	(66,812)	0	0
4 Add First Year's Depr on CIAC (Line 8)	10,608	0	0	0
5 Add/Less Other Effects (Lines 20 & 21)	0	0	0	0
6				
7 Adjusted Income Before CIAC and Gross-up	\$ 55,958	\$ 50,742	\$ 0	\$ 0
8				
9 Taxable CIAC (Line 7)	\$ 282,885	\$ 157,768	\$ 0	\$ 0
10				
11 Taxable CIAC Resulting in a Tax Liability	\$ 282,885	\$ 157,768	\$ 0	\$ 0
12 Less first years depr. (Line 8)	(10,608)	0	0	0
13				
14 Net Taxable CIAC	\$ 272,277	\$ 157,768	\$ 0	\$ 0
15 Combined marginal state and federal tax rate	37.63%	37.63%	37.63%	37.63%
16				
17 Net Income tax on CIAC	\$ 102,458	\$ 59,368	\$ 0	\$ 0
18 Less ITC Realized	0	0	0	0
19				
20 Net Income Tax	\$ 102,458	\$ 59,368	\$ 0	\$ 0
21 Expansion Factor for gross-up taxes	1.603334936	1.603334936	1.503334936	1.603334936
22				
23 Gross-up Required to pay tax effect	\$ 164,274	\$ 95,187	\$ 0	\$ 0
24 Less CIAC Gross-up collected (Line 19)	(109,206)	(66,812)	0	0
25				
25 REFUND (excluding interest)	\$ 0	\$ 0	\$ 0	\$ 0
27				
28				
29 TOTAL REFUND	\$ 0			
30				