

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Revision of formula used ) DOCKET NO. 940661-WS  
to gross-up contributions-in- ) ORDER NO. PSC-94-1265-FOF-WS  
aid-of-construction (CIAC). ) ISSUED: October 12, 1994  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
SUSAN F. CLARK  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION  
SECOND ORDER REVISING FULL GROSS-UP FORMULA 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 liability on contributions-in-aid-of-construction (CIAC) resulting from the amendment of Section 118(b) of the Internal Revenue Code. Order No. 16971 contained the 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 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 certain gross-up amounts collected.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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 our 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, Docket No. 930914-WS was opened to address the necessary formula revision and resulting tariff revisions for all utilities currently using the full gross-up formula. By Proposed Agency Action (PAA) Orders Nos. PSC-94-0156-FOF-WS, issued February 9, 1994, and PSC-94-0156A-FOF-WS, issued April 11, 1994, we revised the full gross-up formula contained in Order No. 23541. However, this docket was opened to address further revisions to the full gross-up formula and to further clarify certain language included in the tariff sheets.

#### Revision of Full Gross-Up Formula

The full gross-up formula should calculate the estimated tax liability that results from receipt of contributions. Currently, the full gross-up formula calculates the contribution and the estimated tax liability. Consequently, the full gross-up formula is incorrect as it overstates the estimated tax liability. Furthermore, the current formula is inconsistent with tariff treatment and could lead to substantial overcollection of the estimated tax liability.

Moreover, the full gross-up formula for utilities using accelerated depreciation rates for tax purposes, is inconsistent with the tables reflected in Internal Revenue Service (IRS) publications. The existing formula assumes a half-year convention applied to annual depreciation rates whereas IRS publications reflect depreciation rates in the tables which include the effect of the half-year convention or other convention used by the company. The existing formula, when applied to rates in IRS publications, dilutes the depreciation expense. Deletion of the .5 in the existing formula corrects this inconsistency.

We find that the correct full gross-up formula for depreciable plant for utilities using straight-line depreciation, which reflects the tax gross-up, exclusive of the contribution, for tax purposes is:

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

We find that the correct formula for utilities using an accelerated rate of depreciation, which reflects the tax gross-up, exclusive of the contribution for tax purposes is:

$$((CP - (CP * AR)) * CTR) * (1/(1-CTR))$$

We find that the correct full gross-up formula for land (or cash), which reflects the tax gross-up, exclusive of the contribution is:

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

Where:

CP = Contributed plant  
TL = Tax life for contributed plant  
AR = Accelerated tax depreciation rate  
CTR = Combined federal and state income tax rate  
CL = Contributed land (and cash)

For provisions other than those referenced in this Order, Orders Nos. 23541, PSC-94-0156-FOF-WS, and PSC-94-0156A-FOF-WS, are reaffirmed in every aspect.

#### Revised Tariff Sheets

Schedule No. 1 reflects that there are currently 22 utilities that have been authorized to implement the full gross-up formula. Consistent with the formulas in this Order, we have made the corresponding changes to the language found in the current tariff sheets. Those tariff sheets are attached to this Order. The changes that were made to the formulas have been highlighted in the shaded area. All utilities currently using the full gross-up formula contained in Orders Nos. PSC-94-0156-FOF-WS and PSC-94-0156A-FOF-WS shall submit revised tariff sheets which reflect the correct formula within sixty days of the effective date of this Order. Staff shall have administrative authority to approve the revised tariff sheets. Upon expiration of the protest period, if no timely protests are received, this docket shall be closed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the full gross-up formulas as contained in Orders Nos. PSC-94-0156-FOF-WS and PSC-94-0156A-FOF-WS, are hereby revised to the extent set forth in the body of this Order. It is further

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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, for provisions other than those referenced in this Order, Orders Nos. 23541, PSC-94-0156-FOF-WS, and PSC-94-0156A-FOF-WS, are reaffirmed in every aspect. It is further

ORDERED that the utilities currently using the full gross-up method as contained in Orders Nos. 23541, PSC-94-0156-FOF-WS, and PSC-94-0156A-FOF-WS 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

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

By ORDER of the Florida Public Service Commission, this 12th day of October, 1994.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

( S E A L )

LAJ

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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on November 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.

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 substantially 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.

SCHEDULE NO. 1

LIST OF COMPANIES WITH FULL GROSS-UP AUTHORITY

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

COMPANY NAME \_\_\_\_\_  
WATER TARIFF \_\_\_\_\_

TAX GROSS-UP OF CIAC

Prior to the Federal Tax Reform Act of 1986, Section 118(b) of the Internal Revenue Code provided for the exclusion of certain types of Contributions In Aid Of Construction (CIAC) from the taxable income of a corporate utility. Such amounts were, therefore, tax exempt.

However, pursuant to the Federal Tax Reform Act of 1986, Section 118(b) was amended to reclassify CIAC (both cash and property) as a taxable source of revenue, effective January 1, 1987. The net result of this action is that a utility which is a corporation must now pay income taxes on the CIAC it collects.

Since the amount of this additional tax liability is directly attributable to the contributors (developers, builders, etc.) of the CIAC, those utilities that are authorized by the Florida Public Service Commission to collect the tax effect of CIAC are required to collect the amount from those contributors.

By Orders Nos. 16971, 23541, PSC-92-0961-FOF-WS, PSC-92-0961A-FOF-WS, and \_\_\_\_\_, the Commission established specific guidelines for a utility to administer in the calculation, collection, and reporting of CIAC tax liabilities as well as in the refunding of excess tax collections:

1) The tax gross-up to be collected shall be determined by using the marginal rate of federal and state corporate income tax related to the value of all property and cash contributions included in the taxable income of the utility, including the tax applicable to the tax gross-up, or "tax on tax" effect. The first year's tax depreciation on all property contributions shall be used to reduce the tax gross-up collected.

The tax gross-up amount to be collected shall be determined using the following formula:

Full Gross-Up:

Depreciable Plant:

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

$$\frac{CP - (CP * (1/TL) * .5) * CTR}{1 - CTR}$$

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

$$\frac{CP - (CP * AR) * CTR}{1 - CTR}$$

EFFECTIVE DATE: \_\_\_\_\_

\_\_\_\_\_  
ISSUING OFFICER

TYPE OF FILING: CIAC GROSS-UP

\_\_\_\_\_  
TITLE



COMPANY NAME \_\_\_\_\_  
WATER TARIFF

For land (and cash), the gross-up formula shall be:

$$\frac{CL * CTR}{1 - CTR}$$

Where:

CP = Contributed plant  
TL = Tax life for contributed plant  
AR = Accelerated tax depreciation rate  
CTR = Combined federal and state income tax rate  
CL = Contributed land (and cash)

2) The CIAC tax gross-up amounts, as determined by using the appropriate formula, shall be deposited as received into a fully funded interest bearing escrow account, hereinafter referred to as the "CIAC Tax Account." Monies in the CIAC Tax Account may be withdrawn periodically for the purpose of paying that portion of the estimated Federal and State income tax liability which is directly attributable to the CIAC conveyed to the utility. Annually, following the preparation and filing of the utility's annual Federal and State income tax returns, a determination shall be made by the Commission as to the actual Federal and State income tax liability that is directly attributable to the receipt of CIAC. CIAC tax gross-up monies received during the tax year that are in excess of the actual amount of CIAC tax liability, including interest earned on such excess monies, shall be refunded on a pro rata basis to the contributors of the CIAC. The utility shall maintain adequate records to account for the receipt, deposit, and withdrawal of monies in the CIAC Tax Account. A detailed statement of the CIAC Tax Account and the annual determination of actual tax liability attributable to the receipt of CIAC, shall be submitted no later than 120 days after the date of filing of the tax return for the applicable year. The utility shall submit all information in accordance with the requirements established by the Commission.

3) The amount of CIAC tax monies collected by a utility shall not be treated as CIAC for ratemaking purposes.

All developer agreements in which CIAC tax monies are required shall indicate the amount of such monies separately from any other CIAC amounts required, as well as the Tax Gross-Up formula utilizing the appropriate values. The agreement shall reflect that the authority for the collection of CIAC gross-up derives from this tariff.

EFFECTIVE DATE: \_\_\_\_\_

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ISSUING OFFICER

TYPE OF FILING: CIAC GROSS-UP

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TITLE



COMPANY NAME \_\_\_\_\_  
WASTEWATER TARIFF \_\_\_\_\_

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$$\frac{((CP - (CP * (1/TL) * .5)) * CTR) * (1/(1-CTR))}{1}$$

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COMPANY NAME \_\_\_\_\_  
WASTEWATER TARIFF

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Where:

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