

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of gross-up) DOCKET NO. 961072-WS
funds collected by Rolling Oaks) ORDER NO. PSC-96-1353-FOF-WS
Utilities, Inc. in Citrus) ISSUED: November 18, 1996
County.)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING CREDIT TO CIAC IN LIEU OF REFUND

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action requested 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

As a result of the repeal of Section 118(b) of the Internal Revenue Code, contributions-in-aid-of-construction (CIAC) became gross income and were 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 and 23541, issued October 1, 1990, require that utilities annually file information which would be used to determine the actual state and federal income tax liability directly attributable to the CIAC. The information would also determine whether refunds of gross-up would be appropriate. These orders also require that all gross-up collections for a tax year, which are in excess of a utility's actual tax liability for the same year, be refunded on a pro rata basis to those persons who contributed the taxes. In Order No. 23541, the Commission required any water and wastewater utility already collecting the gross-up on

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CIAC, and wishing to continue, to file a petition for approval with the Commission on or before October 29, 1990.

Rolling Oaks (Rolling Oaks or utility) is a Class A water and wastewater utility providing service to approximately 5,661 water and 4,195 wastewater customers in Citrus County. According to its 1995 annual report, the utility reported gross operating revenues of \$750,793 for water and \$835,092 for wastewater, and net operating income of \$20,240 and \$164,918 for water and wastewater, respectively. On February 18, 1991, Rolling Oaks filed for authority to continue to gross-up, after being granted an extension to file by Order No. 24063, issued February 4, 1991. By Order No. PSC-92-0005-FOF-WS, issued March 3, 1992, Rolling Oaks was granted authority to continue to gross-up using the full gross-up formula.

On September 9, 1992, this Commission issued Proposed Agency Action 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 September 14, 1992, Order No. PSC-92-0961A-FOF-WS was issued, which included Attachment A, reflecting the generic calculation form. On October 12, 1994, Order No. PSC-94-1265-FOF-WS was issued, revising the full gross-up formula.

On March 29, 1996, Docket No. 960397-WS was opened to review the Commission's policy concerning the collection and refund of CIAC gross-up. Workshops were held and comments and proposals were received from the industry and other interested parties. By Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, Commission staff was directed to continue processing CIAC gross-up and refund cases pursuant to Order Nos. 16971 and 23541; however, the staff was also directed to make a recommendation to the Commission concerning whether the Commission's policy regarding the collection and refund of CIAC should be changed upon the staff's completion of its review of the proposals and comments offered by the workshop participants. In addition, the staff was directed to consider ways to simplify the process and determine whether there were viable alternatives to the gross-up.

However, the Small Business Job Protection Act of 1996 (the Act) passed Congress on August 1, 1996, and was signed into law by the President on August 20, 1996. The Act provided for the non-taxability of CIAC collected by water and wastewater utilities, effective retroactively for amounts received after June 12, 1996. As a result, on September 20, 1996, Order No. PSC-96-1180-FOF-WS was issued to revoke the authority of utilities to collect gross-up of CIAC and to cancel the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. Docket No. 960397-WS was also closed on October 8, 1996.

As established in Order No. PSC-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Order Nos. 16971 and 23541. This order, therefore, addresses the disposition of the gross-up of CIAC collected by Rolling Oaks in 1993 and 1994.

REFUND CALCULATIONS FOR YEARS 1993 AND 1994

In compliance with Orders Nos. 16971 and 23541, Rolling Oaks filed annual CIAC gross-up reports for 1993 and 1994. By letter dated June 18, 1996, we submitted preliminary refund calculation numbers to the utility. Our calculations, taken from the CIAC reports, are reflected on Schedule No. 1, which is attached hereto and by reference incorporated herein. Gross-up calculations are in accordance with the method adopted in Order No. PSC-92-0961-FOF-WS. A summary of each year's calculations follows.

1993

The utility's 1993 CIAC report indicates the utility was in an above-the-line taxable position prior to the inclusion of taxable CIAC and gross-up. Therefore, all taxable CIAC received would be taxed, net of the first year's depreciation.

The CIAC report further indicates a total of \$107,847 in taxable CIAC was received, with \$2,022 being deducted for the first year's depreciation. In addition, \$65,068 of gross-up collections were also received. The combined marginal federal and state tax rate of 37.63% was used to calculate the tax effect, as provided in the utility's 1993 CIAC report. Our calculations show that the utility collected \$1,220 more in gross-up than is required to pay the tax impact of collected CIAC, and a refund would normally be required.

The utility, however, indicates that the gross-up was collected from 96 developers, making the amount of refund less than \$13.00 per contributor. Since the anticipated cost of making the refund would more than likely exceed the amount of the refund, the utility shall credit CIAC for the \$1,220 of excess gross-up collections, in lieu of refund.

1994

The utility's 1994 CIAC report indicates the utility was in an above-the-line taxable position prior to the inclusion of taxable CIAC and gross-up. Therefore, as previously stated, all of the taxable CIAC received would be taxed, net of the first year's depreciation.

The report indicates a total of \$274,446 in taxable CIAC was received, with \$5,146 being deducted for the first year's depreciation. In addition, \$165,584 of gross-up collections were also received. The combined marginal federal and state tax rate of 37.63% was used to calculate the tax effect, as provided in the utility's 1994 CIAC report. Our calculations show that the utility collected \$3,105 more in gross-up than is required to pay the tax impact of collected CIAC, and a refund would normally be required.

The utility, however, indicates that the gross-up was collected from 255 developers, making the amount of refund less than \$13.00 per contributor. Since the anticipated cost of making the refund would more than likely exceed the amount of the refund, the utility shall credit CIAC for the \$3,105 of excess gross-up collections, in lieu of refund.

According to the utility's 1995 annual report, the utility is 75.82% contributed for the water system and 42.80% contributed for the wastewater system. Although the utility collected CIAC for both water and wastewater, the \$4,325 of excess gross-up collections (\$1,220 for 1993 and \$3,105 for 1994) shall be allocated to wastewater, since the water system is currently at the 75% maximum contribution level established by Rule 25-30.580 (1) (a), Florida Administrative Code.

CLOSING OF DOCKET

There is no further action required in this docket. Therefore, upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission 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 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the date set forth in the Notice of Further Proceedings below. It is further

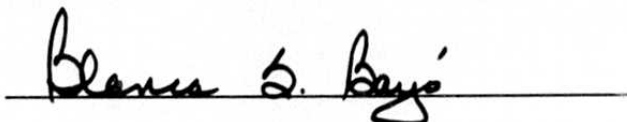
ORDERED that Rolling Oaks Utilities, Inc. shall credit contributions-in-aid-of-construction, in lieu of refund, in the amount of \$1,220 for excess gross-up collections in 1993. It is further

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ORDERED that Rolling Oaks Utilities, Inc. shall credit contributions-in-aid-of-construction, in lieu of refund, in the amount of \$3,105 for excess gross-up collections in 1994. It is further

ORDERED that this docket shall be closed upon expiration of the protest period if no timely protest is filed.

By ORDER of the Florida Public Service Commission, this 18th day of November, 1996.

A handwritten signature in black ink, reading "Blanca S. Bayó", is written over a horizontal line.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DCW

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 9, 1996.

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

COMMISSION CALCULATED GROSS-UP REFUND

Rolling Oaks, Utilities, Inc.

SOURCE: (Line references are from CIAC Reports)

	1993	1994
	-----	-----
1 Form 1120, Line 30 (Line 15)	\$ 277,811	\$ 575,570
2 Less CIAC (Line 7)	(107,847)	(274,446)
3 Less Gross-up collected (Line 19)	(65,068)	(165,584)
4 Add First Year's Depr on CIAC (Line 8)	2,022	5,146
5 Add/Less Other Effects (Lines 20 & 21)	(437)	(1,239)
6	-----	-----
7 Adjusted Income Before CIAC and Gross-up	\$ 106,481	\$ 139,447
8		
9 Taxable CIAC (Line 7)	\$ 107,847	\$ 274,446
10 Less first years depr. (Line 8)	\$ (2,022)	\$ (5,146)
11	-----	-----
12 Adjusted Income After CIAC	\$ 212,306	\$ 408,747
13 Less: NOL Carry Forward	\$ 0	\$ 0
14	-----	-----
15 Net Taxable CIAC	\$ 105,825	\$ 269,300
16 Combined Marginal state & federal tax rates	37.63%	37.63%
17	-----	-----
18 Net Income tax on CIAC	\$ 39,822	\$ 101,338
19 Less ITC Realized	0	0
20	-----	-----
21 Net Income Tax	\$ 39,822	\$ 101,338
22 Expansion Factor for gross-up taxes	1.6033349	1.6033349
23	-----	-----
24 Gross-up Required to pay tax effect	\$ 63,848	\$ 162,479
25 Less CIAC Gross-up collected (Line 19)	(65,068)	(165,584)
26	-----	-----
27 (OVER) OR UNDER COLLECTION	\$ (1,220)	\$ (3,105)
28	=====	=====
29		
30 TOTAL YEARLY REFUND	\$ (1,220)	\$ (3,105)
31	=====	=====
32		
33 PROPOSED REFUND (excluding interest)	(4,325)	
34	=====	