

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 961211-WS
contributions-in-aid-of-) ORDER NO. PSC-96-1471-FOF-WS
construction gross-up funds) ISSUED: December 3, 1996
collected by Sunray Utilities-)
Nassau, Inc.)
_____)

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 ON DISPOSITION OF CIAC GROSS-UP FUNDS

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

Sunray Utilities - Nassau, Inc. (Sunray or utility) is a Class C water and wastewater utility which provides service to approximately 142 customers in Nassau County. According to its 1995 annual report, operating revenues were \$47,836 for the water system and \$54,814 for the wastewater system. The utility reported a net operating loss of \$42,231 for the water system and \$77,873 for the wastewater system.

As a result 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. By Order No. 16971, issued December 18, 1986, we 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.

Order Nos. 16971, issued December 18, 1986, and 23541, issued October 1, 1990, require that utilities annually file information which would be used to determine the actual state and federal

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income tax liability directly attributable to the CIAC. The information would also determine whether refunds of gross-up would be appropriate. These orders 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, should be refunded on a pro rata basis to those persons who contributed the taxes.

By Order No. 23541, this Commission required water and wastewater utilities that wished to continue collecting gross-up on CIAC to file a petition for approval. By Order No. PSC-92-0130-FOF-WS, issued March 31, 1992, we granted Sunray 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 provisions of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. Order No. PSC-92-0961A-FOF-WS, issued on September 14, 1992, set forth the generic calculation form.

By Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, we directed our staff to continue processing CIAC gross-up and refund cases pursuant to Order Nos. 16971 and 23541. We also determined that further study of the policy and possible alternatives should be pursued. However, The Small Business Job Protection Act of 1996 (The Act) signed into law on August 20, 1996, significantly changed the treatment of CIAC. 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, in Docket No. 960965-WS, by Order No. PSC-96-1180-FOF-WS, we revoked the authority of utilities to collect gross-up of CIAC and canceled the respective tariffs unless affected utilities requested a variance.

DISPOSITION OF CIAC GROSS-UP FUNDS FOR 1993 and 1994

As established in Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases shall be processed pursuant to Order Nos. 16971 and 23541. In compliance with Order No. 16971, Sunray filed its 1993 and 1994 annual CIAC reports regarding its collection of gross-up for each year. We calculated the gross-up required to pay the tax liability resulting from the collection of taxable CIAC by grossing-up the net taxable CIAC amount, in accordance with the method adopted in Order No. PSC-92-0961-FOF-WS.

Sunray's 1993 CIAC report indicated that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income. Therefore, all of the taxable CIAC received would be taxed. The report indicated a total of \$170,045 in taxable CIAC for that year, with \$4,265 being deducted for the first year's depreciation. In addition, Sunray received \$83,053 in gross-up collections. By applying the 37.63 percent combined marginal federal and state tax rates as provided in the 1993 CIAC Report to calculate the tax effect of \$100,021, we conclude that the utility required more in gross-up to pay the tax impact than was collected. Therefore, no refund of CIAC gross-up funds collected in 1993 is necessary.

Sunray's 1994 CIAC report indicated that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income. Therefore, all of the taxable CIAC received would be taxed. The report indicated a total of \$22,994 in taxable CIAC, with \$387 deducted for the first year's depreciation. In addition, the utility collected \$14,000 in gross-up. Using the 38.57 percent combined marginal federal and state tax rates as provided in the 1994 CIAC Report to calculate the tax effect of \$14,195, we conclude that the utility required more in gross-up to pay the tax impact than was collected. Therefore, no refund of CIAC gross-up funds collected in 1994 is necessary.

If a timely protest is not filed by a substantially affected person within the protest period set forth below, this docket shall be closed.

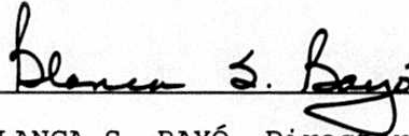
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sunray Utilities, Inc., is not required to refund any CIAC gross-up funds collected in 1993 and 1994. It is further

ORDERED that the provisions of this Order issued as proposed agency action 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 Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0863, by the date set forth in the Notice of Further Proceedings Below.

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By ORDER of the Florida Public Service Commission, this 3rd
day of December, 1996.

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

BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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 24, 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.