

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of gross-up) DOCKET NO. 961415-WS
funds collected by Lake Groves) ORDER NO. PSC-97-0038-FOF-WS
Utilities, Inc. in Lake County.) ISSUED: January 8, 1997
_____)

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 FINDING REFUND REQUIRED FOR 1993 AND 1994

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

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.

Order No. 16971 and Order No. 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, should 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 CIAC and wishing to continue, to file a petition for approval with the Commission on or before October 29, 1990.

DOCUMENT NUMBER-DATE

00183 JAN-85

FPSC-RECORDS/REPORTING

Lake Groves Utilities, Inc. (Lake Groves or utility) is a Class C utility providing services to 342 water and 341 wastewater customers in Lake County. According to its 1995 annual report, the utility reported operating revenues of \$92,747 for water and \$77,129 for wastewater and net operating income of \$77,032 and \$69,139 for water and wastewater, respectively. By Order No. PSC-93-0291-FOF-WS, issued February 23, 1993, Lake Groves was granted authority 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 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, in Docket No. 960965-WS, 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 addresses the disposition of gross-up funds collected by the utility in 1993 and 1994.

REFUND CALCULATIONS FOR YEARS 1993 AND 1994

In compliance with Order No. 16971, Lake Groves filed annual CIAC gross-up reports for 1993 and 1994. Our calculations, taken from these gross-up 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 that the utility had an above-the line loss of \$3,487 before the inclusion of taxable CIAC in income. Order No. 32541 requires that CIAC income be netted against the above-the-line loss.

The CIAC report indicates that a total of \$108,790 in taxable CIAC was received, with \$2,124 being deducted for the first year's depreciation. When this amount is netted against the above-the-line loss of \$3,487, the tax liability which results is \$103,179. The combined marginal federal and state tax rate of 37.63% was used to calculate the tax effect of \$38,826, as provided in the utility's 1993 CIAC report. When this amount is multiplied by the expansion factor for gross-up taxes, \$62,251 is required to pay the tax effect on the CIAC. The utility collected \$65,274 of gross-up monies; therefore, a refund of \$3,023 is required. This amount does not include accrued interest, which must also be refunded from December 31, 1993 through the date of refund.

1994

In its 1994 CIAC report, the utility classified \$20,770 of its expenses as above-the-line and \$84,306 as below-the-line operating expenses. However, when we reviewed the utility's annual report to determine whether it was overearning, operating expenses in the amount of \$102,944 were considered to be utility related and used and useful. Further, for annual report review purposes, these expenses were included and considered when determining the utility's net income. Therefore, the utility's operating expenses has been adjusted accordingly, to classify expenses in the amount of \$102,944 as above-the-line operating expenses. Our adjustment to the utility's operating expenses changed the utility's reported above-the-line taxable loss before the inclusion of CIAC in income from \$1,715 to \$28,265. Order No. 23541 requires that CIAC income be netted against the above-the-line loss.

The utility's CIAC report indicates a total of \$627,581 in taxable CIAC was received, with \$12,254 being deducted for the

first year's depreciation. When this amount is netted against the above-the-line loss of \$28,265, the resulting tax liability is \$587,062, instead of \$613,612 as calculated by the utility. As provided in the utility's 1994 CIAC report, the combined marginal federal and state tax rate of 37.63% was used to calculate a net tax effect of \$220,911. When this amount is multiplied by the expansion factor for gross-up taxes, \$354,194 is required to pay the tax effect on the CIAC. The utility collected \$375,790 of gross-up monies; therefore, a refund of \$21,596 is required. This amount does not include accrued interest, which must be refunded from December 31, 1994 through the date of the refund.

According to Orders Nos. 16971 and 23541, all amounts shall be refunded on a pro rata basis to those persons who contributed the taxes. The refunds should be completed within 6 months of the effective date of the order. Within 30 days from the date of the refund, the utility should submit copies of cancelled checks, credits applied to monthly bills or other evidence that verifies that the utility has made the refunds. Within 30 days from the date of the refund, the utility also should provide a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refunds.

CLOSING OF DOCKET

Upon the expiration of the protest period, this docket shall remain open pending the verification of refunds. This docket shall be closed administratively upon verification that the refunds have been completed.

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 Lake Groves Utilities, Inc. shall refund \$3,023, plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability for 1993. It is further

ORDERED that Lake Groves Utilities, Inc. shall refund \$375,790, plus accrued interest through the date of refund, for

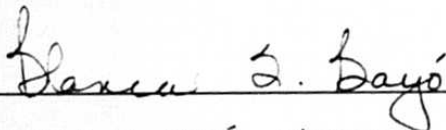
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gross-up collected in excess of the tax liability for 1994. It is further

ORDERED that all refund amounts shall be refunded on a pro rata basis to those persons who contributed the taxes. The refunds shall be completed within six months of the effective date of this order. Within thirty days from the date of the refund, Lake Groves Utilities, Inc. shall submit copies of cancelled checks, credits applied to monthly bills or other evidence that verifies that the utility has made the refunds. Within thirty days from the date of the refund, Lake Groves Utilities, Inc. shall also provide a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refunds. It is further

ORDERED that upon expiration of the protest period, this docket shall remain open pending the verification of refunds. This docket shall be closed administratively upon verification that the refunds have been completed.

By ORDER of the Florida Public Service Commission, this 8th day of January, 1997.



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 January 29, 1997.

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.

COMMISSION CALCULATED GROSS-UP REFUND

Lake Groves Utilities, Inc.

SOURCE: (Line references are from CIAC Reports)

	1993		1994
	-----		-----
1 Form 1120, Line 30 (Line 15)	\$ 168,465	\$	964,250
2 Less CIAC (Line 7)	(108,790)		(627,581)
3 Less Gross-up collected (Line 19)	(65,274)		(375,790)
4 Add First Year's Depr on CIAC (Line 8)	2,124		12,254
5 Add/Less Other Effects (Lines 20 & 21)	(12)		(1,398)
6	-----		-----
7 Adjusted Income Before CIAC and Gross-up	\$ (3,487)	\$	(28,265)
8			
9 Taxable CIAC (Line 7)	\$ 108,790	\$	627,581
10 Less first years depr. (Line 8)	\$ (2,124)	\$	(12,254)
11	-----		-----
12 Adjusted Income After CIAC	\$ 103,179	\$	587,062
13 Less: NOL Carry Forward	\$ 0	\$	0
14	-----		-----
15 Net Taxable CIAC	\$ 103,179	\$	587,062
16 Combined Marginal state & federal tax rates	37.63%		37.63%
17	-----		-----
18 Net Income tax on CIAC	\$ 38,826	\$	220,911
19 Less ITC Realized	0		0
20	-----		-----
21 Net Income Tax	\$ 38,826	\$	220,911
22 Expansion Factor for gross-up taxes	1.6033349		1.6033349
23	-----		-----
24 Gross-up Required to pay tax effect	\$ 62,251	\$	354,194
25 Less CIAC Gross-up collected (Line 19)	(65,274)		(375,790)
26	-----		-----
27 (OVER) OR UNDER COLLECTION	\$ (3,023)	\$	(21,596)
28	=====		=====
29			
30 TOTAL YEARLY REFUND	\$ (3,023)	\$	(21,596)
31	=====		=====
32			
33 PROPOSED REFUND (excluding interest)	(24,619)		
34	=====		