

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of CIAC) DOCKET NO. 970113-WS
gross-up funds collected by Lake) ORDER NO. PSC-97-0255-FOF-WS
Groves Utilities, Inc. in Lake) ISSUED: March 7, 1997
County)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER FINDING NO REFUND REQUIRED FOR 1995

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, be refunded on a pro rata basis to those persons who contributed the taxes.

DOCUMENT NUMBER-DATE

02491 MAR-75

FPSC-RECORDS/REPORTING

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.

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 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, on August 1, 1996, the Small Business Job Protection Act of 1996 (the Act) passed Congress 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, therefore, addresses the disposition of the gross-up of CIAC collected by Lake Groves in 1995. The disposition of gross-up refunds collected by the utility in 1993 and 1994 were addressed in Docket No. 961415-WS and Order No. PSC-97-0038-FOF-WS, was issued accordingly.

Refund Calculations for 1995

In compliance with Orders Nos. 16971 and 23541, Lake Groves filed an annual CIAC gross-up report for 1995. Lake Groves' CIAC report revealed that the utility did not collect gross-up for CIAC in 1995. According to the utility's 1995 annual report and 1995 Tax Return, Lake Groves collected CIAC of \$10,651. Of this amount, \$7,303 is for meters, which is not subject to gross-up, and \$3,348 is for backflow prevention devices, which is subject to gross-up. We requested, and the utility provided, an explanation of why it did not collect gross-up for 1995. In its response, the utility indicated that it did not collect gross-up because it considered the backflow prevention devices to be meters, and thus, not subject to gross-up. Also, Lake Groves' CIAC report shows, and our analysis confirms, that the utility did not have a tax liability in 1995. In consideration of the foregoing, we find that no refunds are required.

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 Lake Grove Utilities, Inc. is not required to make a refund for excess gross-up collected in 1995. It is further

ORDER NO. PSC-97-0255-FOF-WS
DOCKET NO. 970113-WS
PAGE 4

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 7th day of March, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay J. [Signature]
Chief, Bureau of Records

(S E A L)

DCW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 March 28, 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.