

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of gross-up ) DOCKET NO. 970121-SU  
funds collected by Eagle Ridge ) ORDER NO. PSC-97-0329-FOF-SU  
Utilities, Inc. in Lee County. ) ISSUED: March 25, 1997  
\_\_\_\_\_)

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 REQUIRING REFUNDS

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

The repeal in 1986 of Section 118(b) of the Internal Revenue Code resulted in making contributions-in-aid-of-construction (CIAC) gross income, and depreciable for federal tax purposes. By Order No. 16971, issued December 18, 1986, this Commission authorized corporate utilities to collect a CIAC tax gross-up in order for those utilities to pay the tax liability resulting from their receipt of CIAC.

In Order No. 23541, we determined that any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue collecting the gross-up, had to file a petition for approval with the Commission on or before October 29, 1990. On December 11, 1990, pursuant to Order No. 23541, Eagle Ridge Utilities, Inc. (Eagle Ridge or utility) filed for authority to continue to gross-up CIAC. By Order No. 25436, issued December 4, 1991, Eagle Ridge was granted authority to continue to gross-up using the full gross-up formula.

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FPSC-RECORDS/REPORTING

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By Orders Nos. 16971 and 23541, we required utilities which gross-up to file annually the information needed for: (1) a determination of the utility's state and federal income tax liability directly attributable to receipt of CIAC for that year; and (2) a determination of whether a refund of gross-up charges collected during that year is appropriate. These orders required that a utility refund on a pro rata basis the gross-up charges collected each year which exceeded the utility's actual above-the-line tax liability attributable to CIAC for the same year.

By Proposed Agency Action (PAA) Order No. PSC-92-0961-FOF-WS, issued September 9, 1992, as amended by Order No. PSC-92-0961A-FOF-WS, issued September 14, 1992, we clarified the refund calculation provisions of Orders Nos. 16971 and 23541. No protests were filed, and the Order became final.

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, we directed our staff to continue processing CIAC gross-up and refund cases pursuant to Orders Nos. 16971 and 23541; however, we also directed our staff to make a recommendation to the Commission concerning whether the Commission's policy regarding the collection and refund of CIAC should be changed upon our staff's completion of its review of the proposals and comments offered by the workshop participants.

However, on August 1, 1996, Congress passed The Small Business Job Protection Act of 1996 (The Act), and the President signed The Act 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, we issued Order No. PSC-96-1180-FOF-WS revoking the authority of utilities to collect gross-up of CIAC and cancelling the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. Based on the above, there was no longer a need to review our policy to determine any changes and on September 16, 1996, we voted to close Docket No. 960397-WS. However, as established in Order No. PSC-0686-FOF-WS, all pending CIAC gross-up refund cases are still being processed pursuant to Orders Nos. 16971 and 23541.

Eagle Ridge is a Class B wastewater utility providing service to 606 customers in Lee County. According to its 1995 annual report, the utility reported operating revenues of \$338,486 and a net operating loss of \$53,052. The disposition of gross-up funds

collected by the utility in 1993 and 1994 was processed in Docket No. 961077-SU and an order requiring refunds for those years was issued. The purpose of this Order is to address the disposition of gross-up funds collected by the utility in 1995.

REFUND CALCULATION FOR 1995

In compliance with Orders Nos. 16971 and 23541, Eagle Ridge filed its 1995 annual CIAC report regarding its collection of gross-up. The utility proposed and we agree that a refund of \$1,131 plus accrued interest through the date of the refund is appropriate for 1995. For the year 1995, Eagle Ridge is not requesting that the accounting and legal costs associated with preparing the CIAC gross-up report be deducted from the refund amount.

Pursuant to the method adopted in Order No. PSC-92-0961-FOF-WS, the gross-up required to pay the tax liability resulting from the collection of taxable CIAC was calculated by grossing-up the net taxable CIAC amount. Our calculation, taken from the information provided by the utility in its gross-up report, is reflected on Schedule No. 1.

The utility's 1995 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The report indicates a total of \$178,213 in taxable CIAC was received, with \$8,305 being deducted for the first year's depreciation, for a total of \$169,908. Using the reported 37.63% combined marginal federal and state tax rate, and applying it to the net \$169,908 of taxable CIAC, income taxes are calculated to be \$63,936. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$102,511. However, the utility collected \$103,640 of gross-up monies; therefore, a refund of \$1,131 is required. The refund shall be distributed to the ten contributors and each contributor is entitled to a refund of \$113.10. This amount does not include accrued interest which must also be refunded from December 31, 1995 through the date of the refund.

The refunds shall be completed within 6 months of the effective date of the order. Within 30 days from the date of the refund, the utility shall submit copies of canceled 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 shall also provide a list of unclaimed refunds

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detailing the contributor and the amount, and an explanation of the efforts made to make the refunds.

CLOSING OF DOCKET

Upon expiration of the protest period, the docket shall remain open pending completion and verification of the refunds. Our staff shall be given administrative authority to close the docket upon verification that the refunds have been made.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Eagle Ridge Utilities, Inc., shall refund \$1,131 for 1995, plus accrued interest through the date of refund, for gross-up collected in excess of the above-the-line tax liability resulting from the collection of taxable contributions in aid of construction. All amounts shall be refunded on a pro rata basis to those persons who contributed the taxes. It is further

ORDERED 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 from a substantially affected person by the Director of the Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" below. It is further

ORDERED that all matters contained in the schedule attached hereto are by reference incorporated herein. It is further

ORDERED that the refunds required herein must be completed within six months of the effective date of this Order and that Eagle Ridge Utilities, Inc., shall submit copies of canceled checks, credits applied to monthly bills, or other evidence verifying that the refunds have been made within 30 days of completion of the refund. It is further

ORDERED that within 30 days of completion of the refund, Eagle Ridge Utilities, Inc., shall provide a list of unclaimed refunds detailing the contributor and the amount, and an explanation of the efforts made to make the refunds. It is further

ORDERED that this docket shall be closed administratively upon expiration of the protest period, if no timely protest is filed, and upon our staff's verification that the refunds have been made.

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By ORDER of the Florida Public Service Commission, this 25th  
day of March, 1997.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

  
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Kay Flynn  
Chief, Bureau of Records

( S E A L )

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 April 15, 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.

SCHEDULE NO. 1

COMMISSION CALCULATED GROSS-UP REFUND

Eagle Ridge Utilities, Inc.  
SOURCE: (Line references are from CIAC Reports)

	1995
1 Form 1120, Line 30 (Line 15)	\$ 285,493
2 Less CIAC (Line 7)	(178,213)
3 Less Gross-up collected (Line 19)	(103,640)
4 Add First Year's Depr on CIAC (Line 8)	8,305
5 Add/Less Other Effects (Lines 20 & 21)	(537)
6	-----
7 Adjusted Income Before CIAC and Gross-up	\$ 11,408
8	
9 Taxable CIAC (Line 7)	\$ 178,213
10 Less first years depr. (Line 8)	\$ (8,305)
11	-----
12 Adjusted Income After CIAC	\$ 181,316
13 Less: NOL Carry Forward	\$ 0
14	-----
15 Net Taxable CIAC	\$ 169,908
16 Combined Marginal state & federal tax rates	37.63%
17	-----
18 Net Income tax on CIAC	\$ 63,936
19 Less ITC Realized	0
20	-----
21 Net Income Tax	\$ 63,936
22 Expansion Factor for gross-up taxes	1.6033349
23	-----
24 Gross-up Required to pay tax effect	\$ 102,509
25 Less CIAC Gross-up collected (Line 19)	(103,640)
26	-----
27 (OVER) OR UNDER COLLECTION	\$ (1,131)
28	=====
29	
30 TOTAL YEARLY REFUND	\$ (1,131)
31	=====
32	
33 PROPOSED REFUND (excluding interest)	\$ (1,131)
34	=====