

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of gross-up
funds collected by Lake Groves
Utilities, Inc. in Lake County.

DOCKET NO. 980695-WS
ORDER NO. PSC-98-1245-FOF-WS
ISSUED: September 21, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION ORDER
REQUIRING REFUNDS FOR THE YEAR 1996

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

Lake Groves Utilities, Inc. (Lake Groves or utility), is a Class C utility providing service to approximately 484 water and 483 wastewater customers in Lake County. According to its 1997 annual report, the utility reported gross operating revenues of \$187,063 and \$151,481 for water and wastewater, respectively, and net operating income of \$82,887 for water and net operating income of \$80,330 for wastewater.

As a result of the repeal of Section 118(b) of the Internal Revenue Code, effective January 1, 1987, contributions-in-aid-of-construction (CIAC) became gross income and were depreciable for federal tax purposes. Therefore, 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.

DOCUMENT NUMBER-DATE

10347 SEP 21 88

FPSC-RECORDS/REPORTING

Order No. 16971 and Order No. 23541, issued December 18, 1986 and October 1, 1990, respectively, 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 required 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. However, the Small Business Job Protection Act of 1996 (The Act), which became law on August 20, 1996, provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996.

The disposition of gross-up funds collected by the utility for 1995 was handled in Docket No. 970113-WS, Order No. PSC-97-0255-FOF-WS, issued March 7, 1997. This Order addresses the disposition of gross-up funds collected by the utility for 1996.

REFUND REQUIREMENT

In compliance with Orders Nos. 16971 and 23541, Lake Groves filed its 1996 annual CIAC report regarding its collection of gross-up. By letter dated June 4, 1998, the utility filed a response to our staff's preliminary refund calculation. The utility stated it disagreed with staff's above-the-line allocation of operation and maintenance (O&M) expenses.

Our staff's above-the-line allocation of O&M expenses is based upon the expenses reported in the utility's annual report. By correspondence dated June 25, 1998, the utility informed staff that the O&M expenses reported in its 1996 annual report were overstated by approximately \$44,000 and an amended 1996 annual report was submitted accordingly. By amending its annual report to reflect O&M expenses in the amount of \$44,000 below-the-line, the utility still did not earn outside of its authorized rate of return. Also, the utility did not file for a 1997 price index, and customers will not be harmed by this action.

Based upon the information contained in the amended 1996 annual report, 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. These calculations

show, and the utility agrees, that a refund of \$16,654 is appropriate for 1996.

Our calculations, taken from the information provided by the utility in its gross-up report, are reflected on Schedule No. 1. The utility's 1996 CIAC report indicates that the utility had an above-the-line-loss before the inclusion of taxable CIAC in income. Order No. 23541 requires that CIAC income be netted against the above-the-line-loss; therefore, not all of the CIAC collected would create a tax liability. The utility's CIAC report indicates a total of \$426,511 in taxable CIAC was received, with \$5,458 being deducted for the first year's depreciation, resulting in net taxable CIAC of \$421,053. When this amount is netted against the above-the-line-loss of \$38,644, the amount of taxable CIAC resulting in a tax liability is \$382,409.

Using the 37.63 percent combined marginal federal and state tax rate as provided in the 1996 CIAC Report, we calculated net income taxes of \$143,901 on the taxable CIAC. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$230,722. The utility collected \$247,376 of gross-up monies; therefore, the utility overcollected in the amount of \$16,654. This amount does not include accrued interest which must be refunded from December 31, 1996, 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 provide a list of unclaimed refunds detailing the contributor and amount, and an explanation of the efforts made to make the refund.

CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket shall remain open pending completion and verification of the refunds. Our staff shall have administrative authority to close the docket upon verification that the refunds have been made, and there are no unclaimed refunds.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Lake Groves Utilities, Inc., shall refund excess gross-up of contributions-in-aid-of-construction in the amount of \$16,654 for 1996. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, 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" attached hereto. It is further

ORDERED that the schedule attached to this Order is incorporated into and made a part of this Order. It is further

ORDERED that the refunds shall be carried out as set forth in the body of this Order. It is further

ORDERED that Lake Groves Utilities, Inc., shall refund accrued interest from December 31, 1996, through the date of refund, for gross-up of contributions-in-aid-of-construction collected in excess of the tax liability. It is further

ORDERED that, pursuant to Orders Nos. 16971 and 23541, all refund amounts shall be refunded on a pro rata basis to those persons who contributed the funds. It is further

ORDERED that the refunds required herein shall be completed within six months of the effective date of this Order, and that Lake Groves 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

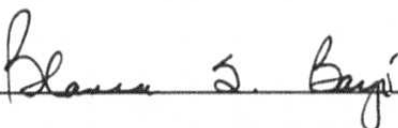
ORDERED that within 30 days of completion of the refund, Lake Groves Utilities, Inc., shall provide a list of unclaimed refunds detailing the contributor and the amount, and an explanation of the efforts made to make the refunds. It is further

ORDERED that the docket shall be administratively closed upon expiration of the protest period, if no timely protest is filed by

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a substantially affected person, and upon our staff's verification that the refunds have been made, and there are no unclaimed refunds.

By ORDER of the Florida Public Service Commission this 21st day of September, 1998.



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 120.569(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. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of

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Records and Reporting, 2540 Chambered Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 12, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

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

Lake Groves Utilities, Inc.
 SOURCE: (Line references are from CIAC Reports)

		1996
		-
1 Form 1120, Line 30 (Line 15)	\$	631,376
2 Less CIAC (Line 7)		(426,511)
3 Less Gross-up collected (Line 19)		(247,376)
4 Add First Year's Depr on CIAC (Line 8)		5,458
		0
5 Add/Less Other Effects (Lines 20 & 21)		(1,591)
6		-
7 Adjusted Income Before CIAC and Gross-up	\$	(38,644)
8		
9 Taxable CIAC (Line 7)	\$	426,511
10 Less first years depr. (Line 8)	\$	(5,458)
11		-
12 Adjusted Income After CIAC	\$	382,409
13 Less: NOL Carry Forward	\$	0
14		-
15 Net Taxable CIAC	\$	382,409
16 Combined Marginal state & federal tax rates		37.63%
17		-
18 Net Income tax on CIAC	\$	143,901
19 Less ITC Realized		0
20		-
21 Net Income Tax	\$	143,901
22 Expansion Factor for gross-up taxes		1.60333493666827
23		-
24 Gross-up Required to pay tax effect	\$	230,722
25 Less CIAC Gross-up collected (Line 19)		(247,376)
26		-
27 (OVER) OR UNDER COLLECTION	\$	(16,654)
28		=
29		
30 TOTAL YEARLY REFUND	\$	(16,654)
31		=
32		
33 PROPOSED REFUND (excluding interest)	\$	(16,654)
34		=