

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of gross-up
on CIAC collections by Fountain
Lakes Sewer Corporation in Lee
County.

DOCKET NO. 990744-SU
ORDER NO. PSC-99-1748-PAA-SU
ISSUED: September 7, 1999

The following Commissioners participated in the disposition of
this matter:

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

NOTICE OF PROPOSED AGENCY ACTION ORDER ACCEPTING SETTLEMENT OFFER
AND REQUIRING REFUNDS FOR THE YEARS 1990 THROUGH 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.

CASE BACKGROUND

Fountain Lakes Sewer Corporation (Fountain Lakes or utility)
is a Class B utility providing service to approximately 503
wastewater customers in Lee County. As of December 31, 1997, the
utility had annual operating revenues of \$266,281 and a net
operating income of \$48,758 for the wastewater system.

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, 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.

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

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PSC-RECORDS/REPORTING

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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 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 gross-up.

On December 31, 1990, pursuant to Order No. 23541, Fountain Lakes filed for authority to continue grossing-up CIAC. Although the information as filed did not meet the filing requirements of Order No. 23541, subsequent information that was filed did meet the filing requirements. On December 17, 1991, we issued Proposed Agency Action (PAA) Order No. 25500, granting Fountain Lakes the authority to continue to gross-up CIAC.

However, on August 1, 1996, 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 utility refunded all collections made after June 12, 1996, to the contributors and provided canceled checks as verification.

The purpose of this Order is to address the amount of CIAC gross-up funds that shall be refunded for the years 1990 through 1996.

SETTLEMENT OFFER

The utility has requested that it be allowed to offset 50 percent of the legal and accounting costs it incurred in 1996 against any overcollections for 1996. In support of this offer, it has provided documentation supporting legal and accounting fees of \$6,100 for the fiscal year ended 1996. Based on a review of these costs, it appears that these are legitimate expenses.

We have considered on several occasions, the question of whether an offset should be allowed pursuant to the orders governing CIAC gross-up. Where a utility has requested an offset, we have consistently approved the offset of 50 percent of the legal and accounting costs associated with the preparation and filing of the utility's gross-up reports against the overcollections. See PAA Orders Nos. PSC-97-1349-FOF-SU, PSC-97-0648-FOF-SU, PSC-98-0031-FOF-WS, and PSC-97-0816-FOF-WS. In general, the utility argues that the legal and accounting costs should be deducted from the amount of the contributors' refund, as the contributors are the cost-causers and as such, those costs should be recovered from them.

As in the other cases referenced above, we find that acceptance of the settlement proposal would avoid the substantial cost associated with a hearing, which may in fact exceed the amount of the legal and accounting costs to be recovered. We further note that the actual costs associated with making the refunds have not been included in these calculations and will be absorbed by the utility. Moreover, we find the utility's settlement proposal to be a reasonable compromise. Therefore, while not adopting the utility's position, we find it appropriate to accept the utility's settlement proposal.

Although 50 percent of the utility's legal and accounting fees equals \$3,050, only \$896 of this amount is necessary to offset the overcollection of \$896. When the legal and accounting fees of \$896 are offset against the overcollection of \$896 in 1996, no refund is required for 1996.

REFUND CALCULATIONS FOR YEARS 1990 THROUGH 1996

In compliance with Orders Nos. 16971 and 23541, Fountain Lakes filed its 1990 through 1996 annual CIAC reports and tax returns regarding its collection of gross-up for each year. The utility has agreed with our staff's calculation of the amounts overcollected. Further, the utility has only requested recovery of consulting fees for accounting and legal services for the year 1996.

Our refund calculations are based on the method adopted in Order No. PSC-92-0961-FOF-WS. The adjustments have been explained in the body of this Order. A summary of each year's refund calculation follows.

1990

The utility proposes a refund of \$6,688 for 1990 gross-up collections. We agree that a refund of \$6,688 in gross-up collections for 1990 is appropriate.

Based upon our review of the utility's 1990 filing, the utility incurred an above-the-line loss of \$10,420 prior to the inclusion of taxable CIAC in income. As a result, all of the CIAC collected would not be taxed. Order No. 23541 requires that above-the-line losses be offset against CIAC income. Therefore, the above-the-line loss of \$10,420 must be netted with the taxable CIAC collected. The CIAC report indicates that the utility collected \$46,060 of taxable CIAC, with \$921 being deducted for the first

year's depreciation. As a result, the amount of taxable CIAC is calculated to be \$34,719.

Using the 37.63 percent combined federal and state tax rate as provided in the CIAC report, we calculate a tax effect of \$13,065. 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 \$20,948. The utility collected \$27,636 in gross-up taxes. Based upon the foregoing, the utility collected \$6,688 more in gross-up than was required to pay the taxes, and this amount shall be refunded. This amount does not include the accrued interest as of December 31, 1990, which must also be refunded through the date of the refund.

1991

The utility proposes a refund of \$6,358 for 1991 gross-up collections. We agree that a refund of \$6,358 in gross-up collections for 1991 is appropriate.

Based upon our review of the utility's 1991 filing, the utility incurred an above-the-line loss of \$10,491 prior to the inclusion of taxable CIAC in income. As a result, all of the CIAC collected would not be taxed. Order No. 23541 requires that above-the-line losses be offset against CIAC income. Therefore, the above-the-line loss of \$10,491 must be netted with the taxable CIAC collected. The CIAC report indicates that the utility collected \$22,560 of taxable CIAC, with \$172 being deducted for the first year's depreciation. As a result, the amount of taxable CIAC is calculated to be \$11,897.

Using the 37.63 percent combined federal and state tax rate as provided in the CIAC report, we calculate a tax effect of \$4,477. 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 \$7,178. The utility collected \$13,536 in gross-up taxes. Based upon the foregoing, the utility collected \$6,358 more in gross-up than was required to pay the taxes. This amount does not include the accrued interest as of December 31, 1991, which must also be refunded through the date of the refund.

1992

The utility proposes a refund of \$4,945 for 1992 gross-up collections. We agree that a refund of \$4,945 in gross-up collections for 1992 is appropriate.

Based upon our review of the utility's 1992 filing, the utility incurred an above-the-line loss of \$7,745 prior to the inclusion of taxable CIAC in income. As a result, all of the CIAC collected would not be taxed. Order No. 23541 requires that above-the-line losses be offset against CIAC income. Therefore, the above-the-line loss of \$7,745 must be netted with the taxable CIAC collected. The CIAC report indicates that the utility collected \$14,100 of taxable CIAC, with \$529 being deducted for the first year's depreciation. As a result, the amount of taxable CIAC is calculated to be \$5,826.

Using the 37.63 percent combined federal and state tax rate as provided in the CIAC report, we calculate a tax effect of \$2,192. 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 \$3,515. The utility collected \$8,460 in gross-up taxes. Based upon the foregoing, the utility collected \$4,945 more in gross-up than was required to pay the taxes. This amount does not include the accrued interest as of December 31, 1992, which must also be refunded through the date of the refund.

1993

The utility proposes a refund of \$2,233 for 1993 gross-up collections. We agree that a refund of \$2,233 in gross-up collections for 1993 is appropriate.

Based upon our review of the utility's 1993 filing, the utility incurred an above-the-line loss of \$3,702 prior to the inclusion of taxable CIAC in income. As a result, all of the CIAC collected would not be taxed. Order No. 23541 requires that above-the-line losses be offset against CIAC income. Therefore, the above-the-line loss of \$3,702 must be netted with the taxable CIAC collected. The CIAC report indicates that the utility collected \$34,708 of taxable CIAC. As a result, the amount of taxable CIAC is calculated to be \$31,006.

Using the 37.63 percent combined federal and state tax rate as provided in the CIAC report, we calculate a tax effect of \$11,668. 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 \$18,707. The utility collected \$20,940 in gross-up taxes. Based upon the foregoing, the utility collected \$2,233 more in gross-up than was required to pay the taxes. This amount does not include the accrued interest as of December 31, 1993, which must also be refunded through the date of the refund.

1994

The utility proposes a refund of \$1,024 for 1994 gross-up collections. We agree that a refund of \$1,024 in gross-up collections for 1994 is appropriate.

Based upon our review of the utility's 1994 filing, the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income. Therefore, all taxable CIAC received would be taxed. The report indicates a total of \$62,720 in taxable CIAC was received, with \$1,869 being deducted for the first year's depreciation, resulting in net taxable CIAC of \$60,851.

Using the 37.63 percent combined marginal federal and state tax rates, we calculate a tax effect of \$22,898. 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 \$36,712. The utility collected \$37,736 in gross-up taxes; therefore, the utility collected \$1,024 more in gross-up than was required to pay the taxes. This amount does not include the accrued interest as of December 31, 1994, which must also be refunded through the date of the refund.

1995

The utility proposes a refund of \$1,203 for 1995. We agree with this proposed refund amount for 1995.

Based upon our review of the utility's 1995 filing, the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income; therefore, all taxable CIAC received would be taxed. The report also indicates that a total of \$78,400 in taxable CIAC was received, with \$2,054 being deducted for the first year's depreciation. As a result, net taxable CIAC was calculated to be \$76,346.

Using the 37.63 percent combined federal and state tax rate as provided in the CIAC report, we calculate a tax effect of \$28,729. When \$28,729 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 \$46,061. The utility collected \$47,264 in gross-up taxes; therefore, the utility collected \$1,203 more in gross-up than was required to pay the taxes. This amount does not include the accrued interest as of December 31, 1995, which must be refunded through the date of the refund.

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1996

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1996 is not appropriate.

Based upon our review of the utility's 1996 filing, the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income. Therefore, all taxable CIAC received would be taxed. The report indicates a total of \$70,000 in taxable CIAC was received, with \$2,940 being deducted for the first year's depreciation, resulting in net taxable CIAC of \$67,060.

Using the 37.63 percent combined marginal federal and state tax rates, we calculate a tax effect of \$25,235. 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 \$40,460. The utility collected \$41,356 in gross-up taxes. Therefore, the utility overcollected CIAC gross-up of \$896. However, upon offsetting \$896 of the recoverable legal and consulting fees of \$3,050 for 1996, with the \$896 overcollection of gross-up, no refund is required.

CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, this order shall become final upon the issuance of a consummating order. 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement offer of Fountain Lakes Sewer Corporation shall be accepted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, 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" attached hereto. It is further

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ORDERED that, pursuant to the settlement offer, no refunds are required for 1996. It is further

ORDERED that Fountain Lakes Sewer Corporation shall refund excess gross-up of contributions-in-aid-of-construction in the amount of \$6,688 for 1990, \$6,358 for 1991, \$4,945 for 1992, \$2,233 for 1993, \$1,024 for 1994, and \$1,203 for 1994. It is further

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

ORDERED that Fountain Lakes Sewer Corporation shall refund accrued interest 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 Fountain Lakes Sewer Corporation 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

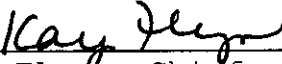
ORDERED that within 30 days of completion of the refund, Fountain Lakes Sewer Corporation shall provide a list of unclaimed refunds detailing the contributor and the amount, and an explanation of the efforts made to make the refunds. It is further

ORDERED that the docket shall be administratively closed upon expiration of the protest period, if no timely protest is filed, 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 7th
day of September, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



Kay Flynn, Chief
Bureau of Records

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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 that is available under Section 120.57, 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 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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 28, 1999.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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.