

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of contributions-in-aid-of-construction (CIAC) gross-up funds collected during the years 12/31/92 through 12/31/96 by JJ's Mobile Homes, Inc. in Lake County.

DOCKET NO. 980954-WS
ORDER NO. PSC-00-1484-AS-WS
ISSUED: August 17, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER

ORDER APPROVING SETTLEMENT OFFER

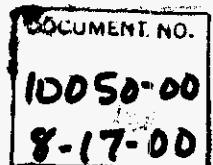
BY THE COMMISSION:

BACKGROUND

JJ's Mobile Homes, Inc. (JJ's or utility), was a Class C utility located in Lake County, Florida. JJ's provided water and wastewater service to approximately 278 water and wastewater customers in the City of Mt. Dora, Florida (City). Its 1995 annual report reflected gross operating revenues of \$136,790 and \$138,025 for water and wastewater, respectively, and net operating losses of \$60,567 and \$45,929 for water and wastewater, respectively.

On July 9, 1996, the utility and the City filed a joint application for transfer of the utility to a governmental authority, pursuant to Section 367.071(4)(a), Florida Statutes. The contract for the sale between JJ's and the City was made on June 21, 1996, with closing and transfer of all water and wastewater assets effective July 3, 1996. By Order No. PSC-96-1245-FOF-WS, issued October 7, 1996, in Docket No. 921237-WS, we acknowledged the transfer of the water and wastewater assets of JJ's to the City and canceled Certificates Nos. 298-W and 248-S.

Prior to this transfer, by Order No. PSC-92-0777-FOF-WS, issued August 10, 1992, in Docket No. 920032-WS, we authorized JJ's



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to gross-up using the full gross-up formula. The authorized CIAC gross-up was subject to refund and, pursuant to Orders Nos. 16971 and 23541, issued December 18, 1986 and October 1, 1990, respectively, in Docket No. 860184-PU, could only be used to pay the actual tax liability incurred by the utility associated with its receipt of contributions-in-aid-of-construction (CIAC). The CIAC gross-up was to be placed in a special account and withdrawn only to pay the actual income tax liability or to make refunds as required.

The disposition of gross-up collections was not addressed in Docket No. 921237-WS. However, we determined that we had jurisdiction to address the disposition of CIAC gross-up collections even though the facilities had been sold to the City. (See Charlotte County v. General Development Utilities, Inc., 653 So. 2d 1081 (Fla. 1st DCA 1995), determining that the Commission had jurisdiction over a rate dispute between a county and a water utility involving alleged overcharges to the county for water service occurring before transfer of the utility's water facility to the City.) Therefore, this docket was opened on July 28, 1998, to address the disposition of excess CIAC gross-up collections for the years 1992 through 1996.

By Proposed Agency Action (PAA) Order No. PSC-99-2369-PAA-WS, issued December 6, 1999, which Order was consummated by Order No. PSC-99-2542-CO-WS, issued December 29, 1999, we ordered JJ's to refund \$11,464 plus accrued interest through the date of the refund, for gross-up collected in excess of the tax liability resulting from the collection of taxable CIAC. In addition, we ordered the utility to refund an additional \$13,271 plus accrued interest through the date of the refund, for the unauthorized collection of gross-up on meter fees.

Order No. PSC-99-2369-PAA-WS required that all refunds be completed within two months of the effective date of that Order. Pursuant to the Consummating Order, the effective date was December 29, 1999. Therefore, all refunds should have been completed on February 29, 2000.

However, as of May 16, 2000, JJ's had not made the refunds as required. Therefore, by Order No. PSC-00-1066-SC-WS, issued June 5, 2000, we ordered JJ's to show cause why it should not be fined in the amount of \$26,000 for its failure to timely make the refunds required by Order No. PSC-99-2369-PAA-WS.

On June 26, 2000, JJ's filed its timely Response to the Order to Show Cause. In that response, JJ's also proposed a settlement of the total case.

SETTLEMENT OFFER

As stated above, by Order No. PSC-99-2369-PAA-WS, we determined that JJ's had over collected CIAC gross-up. In arriving at this final determination, we ordered JJ's to refund \$3,387 for 1992, \$1,559 for 1993, \$6,070 for 1994, and \$448 for 1995, for a total of \$11,464 plus accrued interest through the date of the refund, for gross-up collected in excess of the tax liability resulting from the collection of taxable CIAC.

In addition, we ordered the utility to refund \$6,353 for 1994 and \$6,918 for 1995 for a total of \$13,271 plus accrued interest through the date of the refund, for the unauthorized collection of gross-up on meter fees. Therefore, we ordered JJ's to refund a total amount of \$24,735. Order No. PSC-99-2369-PAA-WS required that all refunds be completed within two months of the effective date of that Order.

Because JJ's did not timely make the refunds, by Order No. PSC-00-1066-SC-WS, issued June 5, 2000, we ordered JJ's to show cause why it should not be fined in the amount of \$26,000. On June 26, 2000, JJ's filed its timely Response to the Order to Show Cause.

In that response, among other things, JJ's noted that the utility had been formally dissolved for almost two years and that the records were unavailable. Further, JJ's noted that its former President and Director had developed a critical medical condition that necessitated emergency surgery and an extended hospitalization and convalescence period. In conclusion, JJ's noted that "most of the gross-up paid to the utility during the period in question was paid by a single developer, to wit: George Wimpey of Florida, Inc., which has now merged with and become Morrison Homes of Florida, Inc."

By Order No. PSC-99-2369-PAA-WS, we ordered JJ's to refund \$24,735 plus any accrued interest. However, in settlement of the total case, JJ's offered to pay Morrison Homes of Florida, Inc. (Morrison Homes), only 88 percent of the total principal amount of \$24,735 required by Order No. PSC-99-2369-PAA-WS, for a total refund of \$21,767. In return, JJ's requests that we accept the

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offer and not seek or impose any fines against the utility or any of its principals and close the docket upon such payment being made. By letter dated July 7, 2000, Morrison Homes accepted JJ's settlement offer.

Based on all the above, we find it appropriate to approve the Settlement Offer and not seek or impose any fines against the utility or any of its principals. The payment to Morrison Homes shall be made within two weeks of the issuance date of this Final Order approving the Settlement Offer, and the docket shall be administratively closed upon our staff's verification that the payment has been made.


Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Settlement Offer of JJ's Mobile Homes, Inc., as set forth in the body of this Order, and as accepted by Morrison Homes of Florida, Inc., is hereby approved. It is further

ORDERED that JJ's Mobile Homes, Inc., shall pay Morrison Homes of Florida, Inc. the agreed amount of \$21,767 within two weeks of the issuance date of this Order. It is further

ORDERED that upon our staff's verification that JJ's Mobile Homes, Inc., has timely paid Morrison Homes of Florida, Inc., the agreed amount of \$21,767, all issues in this docket are resolved, and this docket shall be administratively closed.

By ORDER of the Florida Public Service Commission this 17th day of August, 2000.



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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/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 after the issuance 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.