

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval of tariff for the gross-up of CIAC for water rates in Lee County and wastewater rates in Pasco County, by Ni Florida, LLC.

DOCKET NO. 20180100-WS
ORDER NO. PSC-2018-0269-TRF-WS
ISSUED: May 30, 2018

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
JULIE I. BROWN
DONALD J. POLMANN
GARY F. CLARK
ANDREW GILES FAY

ORDER APPROVING GROSS-UP CIAC TARIFFS

BY THE COMMISSION:

Background

Ni Florida, LLC (Ni Florida or utility) is a Class A utility providing service to approximately 745 water connections in Lee County and 2,757 wastewater connections in Pasco County. The utility reported in its 2017 annual report operating revenues in the amount of \$292,211 for water and \$2,282,516 for wastewater. The utility did not collect any contributions in aid of construction (CIAC) for 2017.

On April 17, 2018, the utility filed an application for approval of a tariff to allow for gross-up of CIAC. As discussed in below, the utility indicated that the change in tax law may cause it to risk the loss of its opportunity to earn a reasonable return on its used and useful property if it is not allowed to collect the tax impact on receipt of CIAC. This order addresses the utility's request for approval of gross-up tariffs related to 2018 changes in the federal tax code. Any potential refund related to the change in the federal tax rate currently embedded in the utility's rates is outside of this order and will be addressed in the generic Docket No. 20180013-PU.¹ This Commission has jurisdiction pursuant to Sections 367.081 and 367.091, Florida Statutes (F.S.).

Decision

Effective January 1, 2018, the Federal Tax Cuts and Jobs Act amended Section 118 of the Internal Revenue Code. Prior to the amendments, CIAC was exempt from taxable

¹ Docket No. 20180013-PU, In re: Petition to establish generic docket to investigate and adjust rates for 2018 tax savings, by Office of Public Counsel.

gross income for water and wastewater utilities. As a result of the amendments, both cash and property CIAC are now taxable gross income for water and wastewater utilities. In recognition of this change in the tax law, this Commission has opened Docket No. 20180013-PU, In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings by Office of Public Counsel, to address the potential rate impacts on regulated electric, gas, water, and wastewater utilities.

A similar law, the Tax Reform Act of 1986, became effective in 1987.² In Docket No. 19860184-PU, this Commission found that it was appropriate to allow water and wastewater utilities to recover the tax on CIAC from the contributor, including the tax associated with the additional tax that would also become taxable income. For those utilities that were approved to collect the gross-up on CIAC, the gross-up amounts collected were held subject to refund and were evaluated on a case-by-case basis as to whether any refunds were subsequently required.

On April 17, the utility filed a tariff to gross-up cash service availability charges and property contributions to recover the federal and state corporate income taxes associated with those contributions. According to the utility, Ni Florida could risk loss of its opportunity to earn a reasonable return on its property used and useful in the public service if it is not allowed to collect the tax impact on receipt of CIAC.³

At our May 8, 2018, Agenda Conference, Commission staff recommended an oral modification incorporating a correction made by the utility to its tariff filed on April 17. The revised tariff is provided in Attachment A.

The tariff recognizes that, for depreciable property, depreciation expense is tax deductible and the utility's tax liability will be reduced by depreciation claimed for tax purposes. The proposed tariff is mathematically the same, regarding the gross-up for taxes, as the tariff approved by this Commission following the hearing in Docket No. 19860184-PU.⁴ Because the proposed tariff accurately depicts the utility's expected tax expense associated with CIAC, we find that no further Commission action would be required once the gross-up formula has been approved. We note that in Order No. 23541 in Docket No. 19860184-PU, this Commission required a reconciliation of CIAC tax collected to taxes paid. We find that a reconciliation of tax collected on CIAC to taxes paid is not required for two reasons. First, the proposed formula more appropriately tracks the potential tax liability associated with the collection of CIAC. Second, expenses approved in base rates are not typically subject to reconciliation. For example, the utility's revenue requirement is grossed-up for expected taxes and expected tax expense is included in rates but there is no after-the-fact proceeding to reconcile taxes actually paid with tax expense allowed in case the utility experienced a loss and paid no taxes. Consequently, we find that no after-the-fact proceeding is warranted to compare

² The amendment was repealed in 1996.

³ According to the 2017 Annual Report, Ni Florida collected approximately \$1,453,329 in cash and property CIAC.

⁴ Order No. 23541, issued October 1, 1990, in Docket No. 860184-PU, In re: Request by Florida Waterworks Association for investigation of proposed repeal of Section 118(b), Internal Revenue Code [Contributions-in-aid-of-construction].

allowed tax expense for CIAC to actual tax expense and, therefore, no corporate undertaking is necessary.⁵

Conclusion

Based on the above, the tariffs attached in Attachment A are approved. The approved gross-up charges shall be effective for connections made on or after the stamped approval date on the tariff sheets. The utility shall provide notice to all persons in the service areas included in the application who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the application was filed. The utility shall provide proof of such noticing within 10 days of rendering its staff-approved notice.

Based on the foregoing, it is

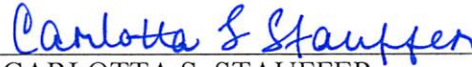
ORDERED by the Florida Public Service Commission that the tariffs filed by Ni Florida, LLC on April 17, 2018, as subsequently amended and attached in Attachment A, are approved. The utility shall provide notice to all persons in the service areas included in the application who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the application was filed. The approved gross-up charges shall be effective for connections made on or after the stamped approval date on the tariff sheets. The utility shall provide proof of such noticing within 10 days of rendering its staff-approved notice. It is further

ORDERED that if a protest is filed within 21 days of issuance of the Order, the tariff shall remain in effect with any charges held subject to refund pending resolution of the protest. It is further

ORDERED that if no timely protest is filed, a Consummating Order shall be issued, and upon staff verification of proof of noticing, the docket shall be closed administratively.

⁵ This finding is consistent with this Commission's vote at the April 20, 2018 Agenda Conference with respect to Docket No. 20180042-WS, In re: Application for approval of tariff for the gross-up of CIAC in Martin County, by Indiantown Company, Inc., and Docket No. 20180059-WS, In re: Application for approval of tariff for the gross-up of CIAC in Escambia County, by Peoples Water Service Company of Florida, Inc.

By ORDER of the Florida Public Service Commission this 30th day of May, 2018.



CARLOTTA S. STAUFFER

Commission Clerk

Florida Public Service Commission

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

(850) 413-6770

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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KMS

NOTICE OF FURTHER PROCEEDINGS

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.

This Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files 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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 20, 2018.

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.

NI FLORIDA, LLC.
WATER TARIFF

ORIGINAL SHEET NO. 19.1

Income Taxes Related to Cash and Property Contributions In Aid of Construction

The utility may gross-up cash service availability charges and property contributions in aid of construction in order to recover the federal and state corporate income taxes associated with these contributions. The formula to be used to gross-up cash service availability charges and contributed property are as follows:

TAX IMPACT= Full Gross Up:

Depreciable Plant:

For utilities using straight-line depreciation for tax purposes, the gross-up formula shall be: $(CP - (CP * (1/TL) * .5)) * (CTR / (1-CTR))$

For utilities using an accelerated rate of depreciation for tax purposes, the gross-up formula shall be: $(CP - ((CP * AR) * .5)) * (CTR / (1-CTR))$

Land (and Cash): $CL * (CTR / (1-CTR))$

Where:

CP = Contributed Plant
TL = Tax Life of Contributed Plant
AR = First Year Accelerated Depreciation Rate for Tax Purposes
CTR = Combined Federal and State Income Tax Rate
CL = Contributed Land (and Contributed Cash)

EFFECTIVE DATE -

TYPE OF FILING - Service Availability

WS-15-0140

RALPH H. WALKER
ISSUING OFFICER

PRESIDENT
TITLE

NI FLORIDA, LLC.
WASTEWATER TARIFF

ORIGINAL SHEET NO. 18.1

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