

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request by FLORIDA WATERWORKS ASSOCIATION for investigation of proposed repeal of Section 118(b), Internal Revenue Code (Contributions-in-aid-of-Construction)	)	DOCKET NO. 860184-PU
	)	ORDER NO. 21436
	)	ISSUED: 6-26-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman  
 THOMAS M. BEARD  
 BETTY EASLEY  
 GERALD L. GUNTER  
 JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION

ORDER REQUIRING REFUND OF CONTRIBUTED TAXES AND REQUIRING ADJUSTMENTS TO DEPRECIATION RESERVES

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are 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

By Order No. 16971, issued December 18, 1986, this Commission authorized corporate water and sewer utilities to elect to "gross-up" contributions-in-aid-of-construction (CIAC), in order to meet their potential tax liabilities resulting from the repeal of the exclusion of CIAC from gross income. In addition, pursuant to the provisions of Order No. 16971, these contributed taxes were to be collected subject to a pro rata refund, with interest, of all amounts collected in excess of the actual amount of tax expense attributable to the receipt of CIAC.

REFUNDS OF CONTRIBUTED TAXES

A number of utilities have collected contributed taxes and need to make refunds thereof. The problem is that there are at least two possible interpretations of the refund requirement language of Order No. 16971. The first interpretation is that these utilities should refund all contributed taxes in excess of taxes actually paid as a result of their collection of CIAC. The other interpretation is that these utilities should refund all contributed taxes in excess of the tax effect resulting from their collection of CIAC. The difference between these two interpretations is that, under the second interpretation, the tax effect would not necessarily be measured by the actual amount of taxes paid on CIAC.

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We believe that the correct interpretation of the refund requirement is that the utilities should refund all contributed taxes in excess of taxes actually paid as a result of their collection of CIAC. We do not believe that the tax effects attributable to the collection of CIAC should be treated differently from the tax effects of any other element of taxable income or loss deriving from utility operations. Our interpretation will have the effect of transferring the benefits of net operating loss carryforwards, less the first year's tax depreciation, to those who have contributed taxes on CIAC, rather than preserving them for the future benefit of the ratepayers. However, the ratepayers will receive a benefit from the future tax depreciation to be taken on the contributed property equal to the foregone net operating loss carryforward.

Based upon the discussion above, we find it appropriate to require the utilities listed below to refund the following amounts, on a pro rata basis, to those who have paid contributed taxes on CIAC:

Aloha Utilities, Inc.	\$ 79,600
Canal Utilities, Inc.	135,736
Clay Utility Company	136,514
Eagle Ridge Utilities, Inc.	20,294
El Agua Corporation	24,070
Martin Downs Utilities, Inc.	6,175
Meadowbrook Utility Systems, Inc.	30,140
Palm Coast Utilities Corporation	268,358
St. Johns Service Company	261,944

#### ADJUSTMENTS TO DEPRECIATION RESERVES

In addition to the utilities listed above, Duval Utility Company and Kingsley Service Company also collected taxes on CIAC in excess of the actual amount of tax expense attributable to their collection of CIAC. However, the excess amounts for these two utilities are far too small to warrant the expense of a refund. Nevertheless, we do not believe that the utilities' shareholders should benefit from these unneeded, zero-cost monies. Accordingly, we find that these utilities should make one-time adjustments to their depreciation reserves in the amounts of \$282 for Duval Utility Company and \$325 for Kingsley Service Company, plus interest earned on those amounts.

Upon consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the provisions of this Order are issued as proposed agency action and will become final unless an appropriate petition is received by the Director of the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida, 32399-0870, by the close of business on July 17, 1989. It is further

ORDERED that Aloha Utilities, Inc., Canal Utilities, Inc., Clay Utility Company, Eagle Ridge Utilities, Inc., El Agua Corporation, Martin Downs Utilities, Inc., Meadowbrook Utility Systems, Inc., Palm Coast Utilities Corporation and St. Johns Service Company shall refund to those entities from which it has collected contributed taxes, on a pro rata basis, the amounts listed in the body of this Order. It is further

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ORDERED that Duval Utility Company shall make a one-time adjustment to its depreciation reserve, in the amount of \$282, plus interest earned on that amount. It is further

ORDERED that Kingsley Service Company shall make a one-time adjustment to its depreciation reserve, in the amount of \$325, plus interest earned on that amount. It is further

ORDERED that, after July 17, 1989, this Commission shall issue either a notice of further proceedings or an order indicating that the provisions of this Order have become final and effective.

By ORDER of the Florida Public Service Commission  
 this 26th day of JUNE, 1989.

  
 STEVE TRIBBLE, Director  
 Division of Records and Reporting

( S E A L )

RJP

Commissioners Betty Easley and Gerald L. Gunter dissented from the Commission's decision regarding refunds of contributed taxes.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on July 17, 1989. In the absence of such a petition, this order shall become effective July 18, 1989 as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

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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 July 18, 1989, any party adversely 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 sewer 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.