

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 921241-WS
contributions-in-aid-of) ORDER NO. PSC-93-0284-FOF-WS
construction (CIAC) gross-up) ISSUED: 02/23/93
funds received by Rolling Oaks)
Utilities, Inc. in Citrus County)
)
)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION

ORDER REQUIRING NO REFUND OF EXCESS GROSS-UP
OF CIAC FOR 1987 AND 1988 AND
DISPOSING OF EXCESS GROSS-UP FOR 1989 AND 1990

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

The repeal of Section 118(b) of the Internal Revenue Code (I.R.C.) resulted in making contributions-in-aid-of-construction (CIAC) gross income and 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, require that utilities annually file information which would be used to determine the actual state and federal income tax expense directly attributable to the CIAC, and whether a refund of the gross-up is appropriate for any given year for which gross-up was in effect. These orders also required that all gross-up amounts for a tax year which are in excess of a utility's actual tax liability for the same year resulting from its

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collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes.

In Order No. 23541, issued, October 1, 1990, we determined that any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue collecting the gross-up, had to file a petition for our approval on or before October 29, 1990. Rolling Oaks Utilities, Inc. (Rolling Oaks or utility) requested authority to continue to gross-up CIAC for the related tax impact, and we granted the utility the authority to do so in Order No. PSC-92-0005-FOF-WS, issued March 3, 1992.

By Order No. PSC-92-0961-FOF-WS, issued on September 9, 1992, we clarified the procedure to be used to calculate the amount of gross-up refunds. The calculations we used in this Order are consistent with Order No. PSC-92-0961-FOF-WS.

Rolling Oaks is a Class A utility which provides water and wastewater service to customers in Citrus County. According to its 1991 annual report, operating revenues of \$720,290 for the water system and \$883,068 for the wastewater system were reported. The utility reported net operating income of \$65,665 for the water system and a net operating loss of \$42,838 for the wastewater system.

In compliance with Order No. 16971, Rolling Oaks filed its 1987 through 1990 annual CIAC reports regarding its collection of gross-up for each year. We have reviewed these reports and determined that the gross-up required to pay the tax impact exceeded the gross-up collections for 1987 and 1988. Therefore, we find that no action is necessary for either 1987 or 1988. In addition, due to the minimal over-collection of gross-up monies for 1989 and 1990; we find it appropriate to order the utility to book the over-collections to CIAC.

ANNUAL GROSS-UP REFUND AMOUNTS

We have calculated the amount of refund per year which is appropriate. Our calculations are reflected on Schedule No. 1, attached hereto, and were taken from the information provided by the utility in its gross-up reports filed each year. A summary of each year's refund calculation follows.

The total gross-up collected in 1987 was \$172,280, and the gross-up required to pay the tax effect was calculated to be

\$283,694. The total gross-up collected in 1988 was \$159,140, and the gross-up required to pay the tax effect was calculated to be \$194,002. The gross-up required to pay the tax impact exceeded the gross-up collections for both 1987 and 1988. Therefore, we find that no refund is necessary for 1987 and 1988.

The utility's 1989 CIAC report indicates that a total of \$91,790 of taxable CIAC was collected. We have used the 37.63 percent combined federal and state tax rate as provided in the 1989 CIAC report to calculate the tax effect. The total gross-up collected in 1989 was \$56,210. Gross-up required to pay the tax effect was calculated to be \$55,381. Based upon the foregoing, we have calculated that over-collections of gross-up amount to \$829 for 1989, which does not include accrued interest. The utility's gross-up report indicates that the CIAC was collected from 77 different developers and would result in immaterial refunds to each. The utility proposes to book the over-collections to CIAC in lieu of incurring the administrative cost of refunding the minor amounts to 77 different developers. We believe this proposal is reasonable and hereby approve it.

We have calculated a refund of \$563 for 1990. The utility's 1990 CIAC report indicates that a total of \$51,095 of taxable CIAC was collected. We have used the 37.63 percent of combined federal and state tax rate as provided in the 1990 CIAC report to calculate the tax effect. The total gross-up collected in 1990 was \$31,390. Gross-up required to pay the tax effect was calculated to be \$30,827. Based upon the foregoing, we have calculated that the utility's over-collections of gross-up amount to \$563 for 1990, which does not include the accrued interest. The utility's gross-up report indicates that the CIAC was collected from 43 different developers. We do not find it appropriate to require the utility to incur administrative costs to provide such immaterial refunds to 43 different developers. Therefore, we find it appropriate to require the utility to book the over-collection to CIAC.

If no timely protest is received prior to the termination of the protest period, this docket shall be closed.

Based on the foregoing, it is,

ORDERED by the Florida Public Service Commission that Rolling Oaks Utilities, Inc. shall make no refund for 1987 and 1988. It is further

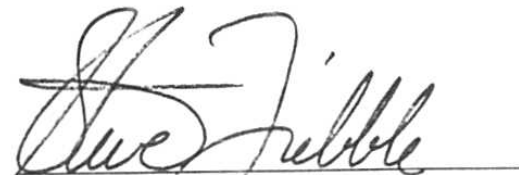
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ORDERED that Rolling Oaks Utilities, Inc. shall book the over-collection of \$829 for 1989, and \$563 for 1990, for a total of \$1,392, to CIAC instead of being required to refund the amount. It is further

ORDERED that the provisions of this Order are issued as proposed agency action and shall become final unless an appropriate petition is received by the Director of the Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that, in the event no timely protest is received, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of February, 1993.



STEVE TRIBBLE, 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 120.59(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 March 16, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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 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 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.

ROLLING OAKS UTILITIES, INC.
 SOURCE: (Line references are from CIAC Reports)

COMMISSION CALCULATED GROSS-UP REFUND

	1987	1988	1989	1990
1 Form 1120, Line 30 (incl CIAC & Gross-up)	\$ 791,562	\$ 458,321	\$ 553,159	\$ 98,617
2 Less CIAC	(491,490)	(416,360)	(91,790)	(51,095)
3 Less Gross-up collected	(172,280)	(159,140)	(56,210)	(31,390)
4 Add First Year's Depr on CIAC	21,281	9,646		0
5 Add/Less Other Effects	25,861	22,369	(393)	(348)
6				
7 Adjusted Income Before CIAC and Gross-up	\$ 174,934	\$ (85,164)	\$ 404,766	\$ 15,784
8				
9 Taxable CIAC (Line 7)	\$ 491,490	\$ 416,360	\$ 91,790	\$ 51,095
10				
11 Taxable CIAC Resulting in a Tax Liability	\$ 491,490	\$ 331,196	\$ 91,790	\$ 51,095
12 Less first years depr. (Line 8)	(21,281)	(9,646)	0	0
13				
14 Net Taxable CIAC	\$ 470,209	\$ 321,550	\$ 91,790	\$ 51,095
15 Effective state and federal tax rate	37.63%	37.63%	37.63%	37.63%
16				
17 Net Income tax on CIAC	\$ 176,940	\$ 120,999	\$ 34,541	\$ 19,227
18 Less ITC Realized	0	0	0	0
19				
20 Net Income Tax	\$ 176,940	\$ 120,999	\$ 34,541	\$ 19,227
21 Expansion Factor for gross-up taxes	1.603334936	1.603334936	1.603334936	1.603334936
22				
23 Gross-up Required to pay tax effect	\$ 283,694	\$ 194,002	\$ 55,381	\$ 30,827
24 Less CIAC Gross-up collected (Line 19)	(172,280)	(159,140)	(56,210)	(31,390)
25				
26 PROPOSED REFUND (excluding interest)	\$ 0	\$ 0	\$ (829)	\$ (563)
27				
28				
29 TOTAL REFUND	\$ (1,392)			
30				