

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of ) DOCKET NO. 940344-SU  
contributions-in-aid-of- ) ORDER NO. PSC-95-0746-FOF-SU  
construction (CIAC) gross-up ) ISSUED: June 21, 1995  
funds received during years )  
ended 12/31/87 through 12/31/92 )  
by SANLANDO UTILITIES )  
CORPORATION in Seminole County. )  

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The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION ORDER REQUIRING  
UTILITY TO REFUND GROSS-UP FUNDS COLLECTED IN 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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

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 to meet the above-the-line tax liability resulting from the inclusion of CIAC as gross income.

Order No. 16971, issued December 18, 1986, and Order No. 23541, issued October 1, 1990, require that utilities annually file information to determine the actual above-the-line state and federal income tax liability directly attributable to the CIAC, and to determine whether a refund of the gross-up is appropriate for any given year for which gross-up was in effect. These orders also require that utilities refund on a pro rata basis to those persons who contributed the taxes, all gross-up collections for a tax year

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refunded on a pro rata basis to those persons who contributed the taxes. The utility shall complete the refund within six months of the effective date of this Order, shall and submit copies of canceled checks, credits applied to monthly bills, or other evidence which verifies that the refunds have been made, within 30 days from the date of the refund. Within thirty days from the date of the refund, the utility shall provide a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refunds.

For the years 1987, 1988, 1989, and 1991, the amount of gross-up required was more than the amount of gross-up collected. Therefore, no refund is required. We have granted below a deferral of the determination of CIAC gross-up refunds for 1992. Our calculation of the amount of refund for each year is set forth in Schedule No. 1 attached to this Order. A summary of each year's refund calculation is detailed below.

1987

We find that a refund of gross-up collection for 1987 is not appropriate. The utility's November 30, 1994 refund calculation indicates that the utility was in an above-the-line taxable position before the inclusion of taxable CIAC and gross-up. Therefore, all taxable CIAC received during the year would be taxed, net of CIAC that is ineligible for gross-up and the first year's depreciation. The utility received taxable CIAC of \$60,632 and deducted \$900 for CIAC ineligible for gross-up and \$1,815 for the first year's depreciation.

As stated above, we have not approved the utility's use of the 45.81 percent incremental federal and state tax rate. The utility's method, using the 45.81 percent incremental rate applied to the net \$57,917 results in the tax effect of \$48,961. The utility collected \$41,481 of gross-up monies; therefore, the utility calculated that it required \$7,480 more in gross-up to pay the tax impact than it collected and no refund is necessary. We find it appropriate to use the combined federal and state tax rate of 43.30 percent. This percentage, applied to the net \$57,917, results in a tax effect of \$44,229. Therefore the utility required \$2,748 more in gross-up to pay the tax impact than the utility collected and no refund is necessary.

1988

We find that a refund of gross-up collection for 1988 is not appropriate. The 1988 CIAC report and our calculation indicates that the utility was in an above-the-line taxable position before

the inclusion of taxable CIAC and gross-up. Therefore, all taxable CIAC received during the year would be taxed, net of the first year's depreciation. The utility received taxable CIAC of \$36,471 and deducted \$1,030 for the first year's depreciation.

Our calculation of the tax rate is based upon a combined approach, resulting in a tax rate of 37.63 percent. Although the utility has used the same rate of 37.63 percent, it arrived at that percentage based upon the incremental approach. As noted above, we find it appropriate to use the combined approach. Applying the 37.63 percent combined tax rate to the net \$35,441 results in the tax effect of \$21,382. The utility collected \$19,580 of gross-up monies. Because the utility required \$1,802 more in gross-up to pay the tax impact than it collected, no refund is necessary.

1989

We find that a refund of gross-up collection for 1989 is not appropriate. The 1989 CIAC report and our calculation indicates that the utility was in an above-the-line taxable position before the inclusion of taxable CIAC and gross-up. Therefore, all taxable CIAC received during the year would be taxed, net of the first year's depreciation. The utility received taxable CIAC of \$183,757 and deducted \$3,116 for the first year's depreciation.

Our calculation of the tax rate is based upon a combined approach, resulting in a tax rate of 37.63 percent. In its calculations, the utility used a rate of 42.34 percent, which was based upon the incremental approach. As noted above, we find it appropriate to use the combined approach. Applying the 37.63 percent combined tax rate to the net \$180,641 results in the tax effect of \$108,987. The utility collected \$108,675 of gross-up monies. Because the utility required \$312 more in gross-up to pay the tax impact than it collected, no refund is necessary.

1990

We find that a refund of \$25,518 for gross-up collections is appropriate. We calculated an above-the-line loss of \$79,824, which includes our adjustment for rate case expense and the recalculation of interest expense. In determining the utility's above-the-line taxable loss, we considered the amount of rate case expense that the utility reported on the tax return. For tax purposes, the utility expensed all rate case expense to reap the tax benefit in the tax year. All of the rate case expense reported on the utility's tax return was jurisdictional expense and should be recognized in determining the utility's above-the-line tax liability. The utility did not report any rate case expense on its

1988, 1989, 1991 and 1992 tax returns, which further indicates that they have received the tax benefit for deducting all of the rate case expense in 1990. In addition, instead of carrying-forward the above-the-line loss to offset 1991 CIAC contributions, the utility represents that it carried back the loss to the 1987 tax year.

Because the utility amortized rate case expense in its November 30, 1994 reports, the reports do not reflect the utility's actual above-the-line tax liability as reported on its tax return. For this reason, the utility's November 30, 1994 calculation is incorrect and in direct conflict with Order No. 16971. All rate case expense that the utility reported on the tax return should be considered in determining the utility's above-the-line tax liability and the consequent over or undercollection of gross-up. Order No. 16971 states that CIAC gross-up funds received during the tax year that are more than the actual amount of tax liability that is attributable to the receipt of CIAC, must be refunded.

Based on the above, we calculated an above-the-line loss of \$79,824 before the inclusion of taxable CIAC in income. Order No. 23541, issued October 1, 1990, requires that utilities net CIAC income against an above-the-line loss; therefore, none of the CIAC collected by Sanlando would create an above-the-line tax liability because the above-the-line taxable loss before CIAC exceeded the CIAC received in that year and eliminated the taxability of the CIAC. The utility received \$62,520 of CIAC in 1990 and gross-up funds of \$25,518. Therefore, the utility shall refund the entire \$25,518 of gross-up monies.

The refund shall be completed within six months of the effective date of this Order. Within thirty days from the date of the refund, the utility shall submit copies of canceled checks, credits applied to monthly bills or other evidence that verifies that the utility has made the refunds. Within thirty days from the date of the refund, the utility shall provide a list of unclaimed refunds detailing the amount of contribution and an explanation of the efforts made to complete the refunds.

#### 1991

We find that a refund of gross-up collection for 1991 is not appropriate. Our calculation, with our adjustment to remove amortization of rate case expense and our recalculation of above-the-line interest expense, indicates that the utility was in an above-the-line taxable position before the inclusion of taxable CIAC and gross-up. Therefore, all taxable CIAC received during the year would be taxed, net of the first year's depreciation and net of CIAC that is ineligible for gross-up. The utility received

taxable CIAC of \$134,311 and deducted \$3,125 for CIAC ineligible for gross-up and \$2,082 for the first year's depreciation, resulting in net taxable CIAC of \$129,104. The \$3,125 is excess earnings that the utility charged to the CIAC account and is therefore ineligible for gross-up.

As stated earlier, our calculation of the tax rate is based upon a combined approach, resulting in a tax rate of 37.63 percent. In its calculations, the utility used a rate of 42.36 percent, which was based upon the incremental approach. As noted above, we find it appropriate to use the combined approach. Applying the 37.63 percent combined tax rate to the net \$129,104 results in the tax effect of \$77,893. The utility collected \$72,489 of gross-up monies. Because the utility required \$5,404 more in gross-up to pay the tax impact than it collected, no refund is necessary.

1992

By letter dated April 17, 1995, Sanlando requested that determination of the appropriate disposition of CIAC gross-up funds collected during the year ended December 31, 1992 be deferred to a later date. The utility requested the 1992 deferral because the 1992 tax year is being audited by the Internal Revenue Service (IRS). Sanlando states that the IRS has proposed an adjustment that may have a material effect on the amount of overcollection or undercollection of CIAC gross-up for the 1992 tax year. We find that the request is appropriate and, therefore, Sanlando's request for deferral of 1992 shall be granted. A separate docket shall be opened for the disposition of the 1992 CIAC gross-up refunds at a later date.

Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket shall remain open pending verification of the refund. Our staff is authorized to close the docket administratively upon verification that the utility has made the refunds.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Sanlando Utilities Corporation shall refund \$25,518 in gross-up collections for 1990. The refund shall be made in accordance with the terms set forth in this Order. It is further

ORDERED that Sanlando Utilities Corporation shall not be required to make any refunds of gross-up collections for 1987, 1988, 1989, and 1991. It is further

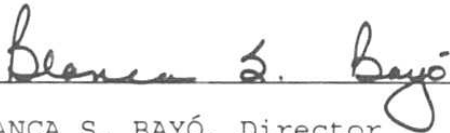
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ORDERED that a determination of any refunds of gross-up collections for 1992 shall be deferred and addressed in a separate docket. It is further

ORDERED that the provisions of this Order are issued as proposed agency action and shall become final unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0850, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that unless a timely protest from a substantially affected person is received, this docket shall be closed administratively upon verification that the refund specified herein has been made.

By ORDER of the Florida Public Service Commission, this 21st day of June, 1995.

  
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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 120.59(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.