

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

October 17, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (GILCHRIST) *BW*
DIVISION OF LEGAL SERVICES (CYRUS-WILLIAMS) *fy G bl*
aw

RE: DOCKET NO. 961072-WS - DISPOSITION OF GROSS-UP FUNDS
COLLECTED BY ROLLING OAKS UTILITIES, INC.
COUNTY: CITRUS

AGENDA: OCTOBER 29, 1996 - REGULAR AGENDA - PROPOSED AGENCY
ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\961072.RCM

CASE BACKGROUND

As a result of the repeal of Section 118(b) of the Internal Revenue Code (I.R.C.), contributions-in-aid-of-construction (CIAC) became gross income and are depreciable for federal tax purposes. In Order No. 16971, issued December 18, 1986, the Commission 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, issued October 1, 1990, require that utilities annually file information which would be used to determine the actual state and federal income tax liability directly attributable to the CIAC. The information would also determine whether refunds of gross-up would be appropriate. These orders also required that all gross-up collections for a tax year, which are in excess of a utility's actual tax liability for the same year, should be refunded on a pro rata basis to those persons who contributed the taxes.

In Order No. 23541, the Commission required any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue to file a petition for approval with the Commission on or before October 29, 1990.

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FPSC-RECORDS/REPORTING

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Rolling Oaks (Rolling Oaks or utility) is a Class A water and wastewater utility providing service to approximately 5,661 water and 4,195 wastewater customers in Citrus County. According to its 1995 annual report, the utility reported gross operating revenues of \$750,793 for water and \$835,092 for wastewater and net operating income of \$20,240 and \$164,918 for water and wastewater, respectively. Rolling Oaks filed for authority to continue to gross-up on February 18, 1991. By Order No. PSC-92-0005-FOF-WS, issued March 3, 1992, Rolling Oaks was granted authority to continue to gross-up using the full gross-up formula.

On September 9, 1992, this Commission issued Proposed Agency Action Order No. PSC-92-0961-FOF-WS, which clarified the provision of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On September 14, 1992, Order No. PSC-92-0961A-FOF-WS was issued. This order included Attachment A which reflects the generic calculation form. No protests were filed, and the Order became final.

On March 29, 1996, Docket No. 960397-WS was opened to review the Commission's policy concerning the collection and refund of CIAC gross-up. Workshops were held and comments and proposals were received from the industry and other interested parties. By Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, staff was directed to continue processing CIAC gross-up and refund cases pursuant to Order Nos. 16971 and 23541; however, staff was also directed to make a recommendation to the Commission concerning whether the Commission's policy regarding the collection and refund of CIAC should be changed upon staff's completion of its review of the proposals and comments offered by the workshop participants. In addition, staff was directed to consider ways to simplify the process and determine whether there were viable alternatives to the gross-up.

However, the Small Business Job Protection Act of 1996 (The Act) passed Congress was signed into law by President Clinton on August 20, 1996. The Act provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996. As a result, on September 20, 1996, in Docket No. 960965-WS, Order No. PSC-96-1180-FOF-WS was issued to revoke the authority of utilities to collect gross-up of CIAC and to cancel the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. Since there was no longer a need to review the Commission's policy on the gross-up of CIAC, the Commission on September 16, 1996, voted to close Docket No. 960397-WS. However, as established in Order No. PSC-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Order Nos.

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16971 and 23541. The purpose of this recommendation is to address the disposition of gross-up funds collected by the utility in 1993 and 1994.

DISCUSSION OF ISSUES

ISSUE 1: Should Rolling Oaks Utilities, Inc. be required to refund excess gross-up collections for 1993 and 1994?

RECOMMENDATION: No. The amount to be refunded is minimal, therefore, in lieu of making refunds, staff recommends that the utility be ordered to credit wastewater CIAC in the amount of \$1,220 for 1993 and \$3,105 for 1994, a total of \$4,325, the excess gross-up collections for 1993 and 1994. (GILCHRIST)

STAFF ANALYSIS: In compliance with Orders Nos. 16971 and 23541, Rolling Oaks filed its 1993 and 1994 annual CIAC reports regarding its collection of gross-up for each year. By letter dated June 18, 1996, staff submitted preliminary refund calculation numbers to the utility.

Staff has calculated the gross-up required to pay the tax liability resulting from the collection of taxable CIAC by grossing-up the net taxable CIAC amount, in accordance with the method adopted in Order No. PSC-92-0961-FOF-WS.

ANNUAL GROSS-UP REFUND AMOUNTS

Based upon the foregoing, staff has calculated the amount of refund per year which is appropriate. Our calculations, taken from the information provided by the utility in its gross-up reports filed each year, are reflected on Schedule No. 1. A summary of each year's refund calculation follows.

1993

The utility proposes that a refund of \$1,220 is appropriate, however, the utility proposes a credit to CIAC because of the relatively insignificant amount of the refund.

Staff agrees that a refund of \$1,220 for 1993 is appropriate. The 1993 CIAC report indicates the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The report indicates a total of \$107,847 in taxable CIAC was received, with \$2,022 being deducted for the first year's depreciation. In addition, \$65,068 of gross-up collections were also received. Staff has used the 37.63% combined marginal federal and state tax rates as provided in the 1993 CIAC Report to calculate the tax effect. Staff calculates that the

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utility collected \$1,220 more in gross-up than is required to pay the tax impact; however, staff recommends that no refund be required. The utility indicates that the gross-up was collected from 96 developers (less than \$13.00 per developer). In addition, they anticipate the cost of making the refund would exceed the amount of the refund, and therefore, requests that it be authorized to book this excess to CIAC. Staff agrees and recommends that in lieu of a refund, the utility be ordered to credit CIAC for the \$1,220 of excess gross-up collections.

1994

The utility proposes that a refund of \$3,105 is appropriate, however, the utility proposes a credit to CIAC because of the relatively insignificant amount of the refund.

Staff agrees that a refund of \$3,105 for 1994 is appropriate. The 1993 CIAC report indicates the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The report indicates a total of \$274,446 in taxable CIAC was received, with \$5,146 being deducted for the first year's depreciation. In addition, \$165,584 of gross-up collections were also received. Staff has used the 37.63% combined marginal federal and state tax rates as provided in the 1994 CIAC Report to calculate the tax effect. Staff calculates that the utility collected \$3,105 more in gross-up than is required to pay the tax impact; however, staff recommends that no refund be required. The utility indicates that the gross-up was collected from 255 developers (less than \$13.00 per developer). In addition, they anticipate the cost of making the refund would exceed the amount of the refund, and therefore, requests that it be authorized to book this excess to CIAC. Staff agrees and recommends that in lieu of a refund, the utility be ordered to credit CIAC for the \$3,105 of excess gross-up collections.

According to the utility's 1995 annual report, the utility is 75.82% contributed for the water system and 42.80% contributed for the wastewater system. Although the utility collected CIAC for both water and wastewater, staff recommends that the \$4,325 of excess gross-up collections be allocated to wastewater, since the water system is currently at the 75% maximum contribution level established by Rule 25-30.580 (1) (a), Florida Administrative Code.

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ISSUE 2: Should the docket be closed?

RECOMMENDATION: Yes, upon expiration of the protest period, if a timely protest is not received from a substantially affected person. (CYRUS-WILLIAMS, GILCHRIST)

STAFF ANALYSIS: If a timely protest is not filed, upon expiration of the protest period, processing of this docket is complete and the docket should be closed.

STAFF CALCULATED GROSS-UP REFUND

Rolling Oaks, Utilities, Inc.

SOURCE: (Line references are from CIAC Reports)

	1993		1994
	-----		-----
1 Form 1120, Line 30 (Line 15)	\$ 277,811	\$	575,570
2 Less CIAC (Line 7)	(107,847)		(274,446)
3 Less Gross-up collected (Line 19)	(65,068)		(165,584)
4 Add First Year's Depr on CIAC (Line 8)	2,022		5,146
5 Add/Less Other Effects (Lines 20 & 21)	(437)		(1,239)
6	-----		-----
7 Adjusted Income Before CIAC and Gross-up	\$ 106,481	\$	139,447
8			
9 Taxable CIAC (Line 7)	\$ 107,847	\$	274,446
10 Less first years depr. (Line 8)	\$ (2,022)	\$	(5,146)
11	-----		-----
12 Adjusted Income After CIAC	\$ 212,306	\$	408,747
13 Less: NOL Carry Forward	\$ 0	\$	0
14	-----		-----
15 Net Taxable CIAC	\$ 105,825	\$	269,300
16 Combined Marginal state & federal tax rates	37.63%		37.63%
17	-----		-----
18 Net Income tax on CIAC	\$ 39,822	\$	101,338
19 Less ITC Realized	0		0
20	-----		-----
21 Net Income Tax	\$ 39,822	\$	101,338
22 Expansion Factor for gross-up taxes	1.6033349		1.6033349
23	-----		-----
24 Gross-up Required to pay tax effect	\$ 63,848	\$	162,479
25 Less CIAC Gross-up collected (Line 19)	(65,068)		(165,584)
26	-----		-----
27 (OVER) OR UNDER COLLECTION	\$ (1,220)	\$	(3,105)
28	=====		=====
29			
30 TOTAL YEARLY REFUND	\$ (1,220)	\$	(3,105)
31	=====		=====
32			
33 PROPOSED REFUND (excluding interest)	(4,325)		
34	=====		