

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

October 31, 1996

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

FROM: DIVISION OF WATER & WASTEWATER (GILCHRIST)
DIVISION OF LEGAL SERVICES (JAEGER)

RE: DOCKET NO. 961196-WS - REQUEST FOR VARIANCE FROM ORDER
NO. PSC-96-1180-FOF-WS BY ROLLING OAKS UTILITIES, INC.
COUNTY: CITRUS

AGENDA: NOVEMBER 12, 1996 - REGULAR AGENDA - PROPOSED AGENCY
ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\961196.RCM

CASE BACKGROUND

Rolling Oaks Utilities, Inc. (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.

On August 1, 1996, The Small Business Job Protection Act of 1996 (The Act) passed Congress and was signed 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. Order No. PSC-96-1180-FOF-WS, required the utilities to refund the gross-up to those who paid it within 60 days of the date the proposed agency action portion of the order becomes final. Further, that Order required each utility to provide copies of canceled checks, or other evidence verifying

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that the refunds have been made, within 30 days from the date of the refund. On September 5, 1996, Rolling Oaks filed a request for a variance from that Order. Also, the utility indicated that it would prefer to implement the post June 12, 1996 refunds along with the annual filing of its CIAC report to the Commission regarding its collection of gross-up for 1996.

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DISCUSSION OF ISSUES

ISSUE 1: Should Rolling Oak's request for a variance from Order No. PSC-96-1180-FOF-WS, be granted?

RECOMMENDATION: Yes, Rolling Oak's request for a variance from Order No. PSC-96-1180-FOF-WS, should be granted. If the Commission approves staff's recommendation, Rolling Oak's tariffs for gross-up authority will not be canceled. However, the utility should be required to notify the Commission when the Internal Revenue Service (IRS) rules on its private letter ruling so that the tariffs can be cancelled. (GILCHRIST)

STAFF ANALYSIS: As previously mentioned, Order No. PSC-96-1180-FOF-WS, revoked 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. On September 5, 1996, Rolling Oaks requested a variance from the Commission action taken at the September 3rd Agenda Conference which resulted in the issuance of that Order. The utility states that a variance from the Order is necessary because it has pending before the IRS, a private letter ruling which was filed on its behalf by a developer, Morrison Homes (f/k/a George Wimpey of Florida, Inc). The question in this letter ruling is whether a bulk service arrangement entered into at the beginning of this year constitutes an effective contribution to the utility of the lines on the customer side of the bulk meter.

Further, the utility explains that the request for a private letter ruling was recently filed and until an answer is received from the IRS, it will not know whether or not gross-up is payable on that "contribution". The utility has indicated that the gross-up is currently maintained in an escrow account pending the outcome of the private letter ruling request. The utility goes on to say that it expects to receive additional connections and facilities behind those bulk meters in the coming months pursuant to those same developer agreements entered into prior to the June 12, 1996, effective date of the new tax law. Moreover, the utility has indicated that it is unclear at this time what effect those connections and facilities will have and, therefore, the utility needs to retain the authority to charge gross-up only as to those contributions received pursuant to the bulk service arrangement with Morrison Homes over the next several months. As far as individual connection fees and other charges, the utility has indicated that it does not believe that it needs to collect any further gross-up.

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Staff reviewed the developer agreements and the private letter ruling filed with the IRS, and based on the above, staff recommends that the utility's request for a variance from Order No. PSC-96-1180-FOF-WS, be granted. If the Commission approves staff's recommendation, Rolling Oak's tariffs for gross-up authority should not be cancelled. However, the utility should be required to notify the Commission within 20 days when the IRS rules on its private letter ruling so that the tariffs can be cancelled.

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ISSUE 2: Should Rolling Oak's request to refund the post June 12, 1996, CIAC gross-up collections be implemented along with the annual filing of its 1996 CIAC report to the Commission regarding its collection of gross-up?

RECOMMENDATION: No. The utility should be ordered to comply with the refunding requirements of Order No. PSC-96-1180-FOF-WS. If the Commission approves staff's recommendation, the utility should be required to provide copies of cancelled checks, or other evidence, verifying that the refunds have been made, within 30 days from the date of the refund. (GILCHRIST)

STAFF ANALYSIS: By Order No. PSC-96-1180-FOF-WS, the utilities are required to refund the gross-up to those who paid it within 60 days of the date the proposed agency action portion of the order becomes final. By letter dated September 5, 1996 the utility stated that it is agreeable to refunding gross-up monies collected after June 12, 1996, but that it would prefer to do this along with the general report to the Commission on gross-up collections for the entire year rather than piecemeal. Further, by letter dated September 30, 1996, the utility indicated that refunding all gross-up monies together rather than in two separate refunds, would avoid the additional cost and confusion of a separate refund.

Staff does not believe there will be any additional costs incurred to implement the post June 12th refunds nor do we believe there would be confusion over a separate refund. Staff knows that all of the CIAC gross-up monies collected after June 12th will have to be refunded, however, we do not know whether refunds will be required for gross-up monies collected before June 12th. Therefore, staff believes it is premature for the utility to assume that two refunds will be necessary. Staff will not make this determination until it reviews the utility's 1996 CIAC report and 1996 tax return. In accordance with Order No. 24129, issued February 18, 1991, Rolling Oak's 1996 CIAC report and 1996 tax return is not due to be filed with the Commission until April 1, 1997, and because this information is not needed to process the post June 12th refunds, the June 12th refunds should not be delayed.

Normally, utilities are allowed up to 6 months from the effective date of the order to complete the refunds of gross-up; therefore, staff does not believe it is fair nor is it necessary to make the contributors who are entitled to receive refunds in 1996, due to the non-taxability of CIAC, to wait until the latter part of 1997 before they actually receive their refunds. In staff's opinion, the savings, if any, that could possibly result if the post June 12th refunds are implemented with the pre June 12th

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refunds (if one is required) do not justify the delay in implementing the post June 12th refunds. Staff does not believe there would be any confusion over a separate refund because the post June 12th refunds can be easily determined; the utility is aware of who the post June 12th contributors are and it is aware of the amount each contributor is entitled to receive. Further, staff believes it would be better to make the refunds now while the contributors can easily be located. Moreover, immediate implementation of the post June 12th refund minimizes the need to credit CIAC in the future for unclaimed refunds.

Therefore, the refund of the post June 12th collections of CIAC gross-up should be implemented as required by Order No. PSC-96-1180-FOF-WS. Further, that Order requires each utility to provide copies of cancelled checks, or other evidence, verifying that the refunds have been made, within 30 days from the date of the refund.

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ISSUE 3: 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, and upon staff's verification that the refund has been completed. (JAEGER)

STAFF ANALYSIS: If a timely protest is not filed, upon expiration of the protest period, and upon staff's verification that the refunds are complete, processing of this docket is complete and the docket should be closed.