**FLORIDA PUBLIC SERVICE COMMISSION**

**Fletcher Building**

**101 East Gaines Street**

**Tallahassee, Florida 32399-0850**

**M E M O R A N D U M**

**February 2, 1994**

**TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING**

**FROM : DIVISION OF WATER AND WASTEWATER (PRICE, MEADOR)**

**DIVISION OF LEGAL SERVICES (ERSTLING)**

**RE : UTILITY: UTILITIES, INC. OF FLORIDA,**

**MILES GRANT WATER & SEWER, CO.,**

**LAKE UTILITY SERVICES, INC.**

**DOCKET NO.: 931129-WS**

**COUNTY: ORANGE, SEMINOLE, MARTIN AND LAKE COUNTIES**

**CASE: DISPOSITION OF GROSS-UP FUNDS COLLECTED**

**AGENDA : 02/15/94 - CONTROVERSIAL - PROPOSED AGENCY ACTION - PARTIES MAY PARTICIPATE**

**CRITICAL DATES: NONE**

**RECOMMENDATION FILE NAME: I:\PSC\WAW\WP\931129.RCM**

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CASE 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, 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, issued December 18, 1986, 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, and 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 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 collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes.

In Order No. 23541, the Commission 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 approval with the Commission on or before October 29, 1990. By Order No. 24790, issued July 10, 1991, Utilities, Inc. of Florida (Utilities, Inc. or Utility) was authorized to cancel tariff gross-up authority. Likewise, Miles Grant Water and Sewer Company and Lake Utility Services, Inc., both of which are owned by Utilities Inc. of Florida, were authorized to cancel tariff gross-up by Orders Nos. 24769 and 24771, respectively, issued July 8, 1991. Utilities, Inc. of Florida will ultimately be responsible for refunding excess gross-up collections for all three of the above mentioned companies.

Utilities, Inc. of Florida is a Class A utility which provides only water service to customers in Orange county and both water and wastewater service to customers in Seminole county. According to their 1992 annual report, operating water revenue for Orange county was reported at $74,322 as well as a net operating loss of $3,580. For Seminole county, the 1992 annual report reflected water revenues of $505,260 and wastewater revenues of $347,967. The utility reported net operating income of $82,646 for the water system and $32,103 for the wastewater system.

Miles Grant Water and Sewer Co. is a Class B utility which provides water and wastewater service to customers in Martin county. According to the 1992 annual report, water revenues were reported at $212,796 and $274,246 were reported for wastewater revenues. The utility reported net operating income of $56,629 for the water system and $72,080 for the wastewater system.

Lake Utility Services, Inc. is a Class C utility which provides only water service to customers in Lake county. According to the 1992 annual report, water revenues of $90,074 and a net operating loss of $27,136 were reported.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Utilities, Inc. of Florida be required to refund excess gross-up collections of $960 for 1989, $7,080 for 1990 and $720 for 1991, for a total of $8,760 plus accrued interest through the date of refund?

**RECOMMENDATION:** Yes, the utility should refund $960 for 1989, $7,080 for 1990 and $720 for 1991, for a total of $8,760 plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability resulting from the collection of CIAC. No refund is required for 1987 and 1988. In accordance with Orders Nos. 16971 and 23541, all amounts should be refunded on a pro rata basis to those persons who contributed the taxes. The refund should be completed within 6 months. The utility should 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 refund. (PRICE)

**STAFF ANALYSIS:** In compliance with Order No. 16971, Utilities, Inc. of Florida filed its 1987, 1988, 1989, 1990, and 1991 annual CIAC reports regarding its collection of gross-up for each year. There was no response to staff's preliminary calculations from the utility and staff recommends the following refund amounts.

**ANNUAL GROSS-UP REFUND AMOUNTS**

Based upon the information provided by the utility in its annual gross-up reports, staff has calculated the appropriate refund amounts per year. Our calculations are shown on Schedule No. 1. A summary of each year's refund calculation follows.

**1987 & 1988**

No gross-up was collected; therefore, no refund is required.

**1989**

The utility did not propose a refund amount for 1989.

Staff calculates a refund of $960 for 1989. The 1989 CIAC report indicates that a total of $960 of gross-up collections were received, with the first year's depreciation reported as $32. The utility had an above-the-line loss for 1989 of $102,278 before taxable CIAC was included in income. After taxable CIAC of $2,560 was included in income, the utility had an above-the-line loss of $99,718. Therefore, no tax liability resulted from the collection of CIAC, all gross-up collected should be refunded. Based on the foregoing, staff recommends a refund of $960 for 1989. This amount does not include the accrued interest which must also be refunded from December 31, 1989 to the date of refund.

**1990**

The utility did not propose a refund amount for 1990.

Staff calculates a refund of $7,080 for 1990. The 1990 CIAC report indicates that a total $7,080 of gross-up collections were received. The utility had an above-the-line loss for 1990 of $161,460 and the utility reported that no taxable CIAC was received in 1990. Because no taxable CIAC was received during the year, all gross-up should be refunded. Based upon the foregoing, staff recommends a refund of $7,080 for 1990. This amount does not include the accrued interest which must also be refunded from December 31, 1990 to the date of refund.

**1991**

The utility did not propose a refund amount for 1991.

Staff calculated a refund of $720 for 1991. The 1991 CIAC report did not provide any data to arrive at Adjusted Income Before CIAC and Gross-up. The CIAC report indicated no taxable CIAC was received. Because there was no taxable CIAC, the utility was not required to pay any taxes, and the full amount of gross-up collected of $720 must be refunded. This amount does not include the accrued interest which must also be refunded from December 31, 1991.

**ISSUE 2:** Should Miles Grant Water Company be required to refund excess gross-up collections of $2,873 for 1989, and $223 for 1990, for a total of $3,096 plus accrued interest through the date of refund?

**RECOMMENDATION:** Yes, the utility should refund $2,873 for 1989, and $223 for 1990, for a total of $3,096 plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability resulting from the collection of CIAC. No refund is required for 1987, 1988 and 1991. In accordance with Orders Nos. 16971 and 23541, all amounts should be refunded on a pro rata basis to those persons who contributed the taxes. The refund should be completed within 6 months. The utility should 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 refund. (PRICE)

**STAFF ANALYSIS:** In compliance with Order No. 16971, Miles Grant Water Company filed its 1987, 1988, 1989, 1990, and 1991 annual CIAC reports regarding its collection of gross-up for each year. There was no response to staff's preliminary calculations from the utility and staff recommends the following refund amounts.

**ANNUAL GROSS-UP REFUND AMOUNTS**

Based upon the information provided by the utility in its annual gross-up reports, staff has calculated the appropriate refund amounts per year. Our calculations are shown on Schedule No. 2. A summary of each year's refund calculation follows.

**1987 & 1988**

No gross-up was collected; therefore, no refund is required.

**1989**

The utility did not propose a refund amount for 1989.

Staff calculates a refund of $2,873 for 1989. The 1989 CIAC report indicates that a total of $17,840 of gross-up collections were received, with the first year's depreciation reported as $593. The utility had an above-the-line loss for 1989 of $22,039 before taxable CIAC was included in income. After taxable CIAC of $47,440 was included in income, the utility had above-the-line income of $25,401. Therefore, $25,401 is the CIAC collected which resulted in a tax liability. When first year's depreciation of $593 is considered, the net taxable CIAC is calculated to be $24,808. Staff used the 37.63% combined federal and state tax rates that were in effect during 1989 to calculate the tax effect. Based on the foregoing, staff recommends a refund of $2,873 for 1989. This amount does not include the accrued interest which must also be refunded from December 31, 1989 to the date of refund.

**1990**

The utility did not propose a refund amount for 1990.

Staff calculates a refund of $223 for 1990. The 1990 CIAC report indicates that a total $223 of gross-up collections were received. The utility reported that no taxable CIAC was received in 1990. Because no taxable CIAC was received during the year, all gross-up should be refunded. Based upon the foregoing, staff recommends a refund of $223 for 1990. This amount does not include the accrued interest which must also be refunded from December 31, 1990 to the date of refund.

**1991**

No gross-up was collected; therefore, no refund is required.

**ISSUE 3:** Should Lake Utility Services, Inc. be required to refund excess gross-up collections of $120 for 1991 plus accrued interest through the date of refund?

**RECOMMENDATION:** Yes, the utility should refund $120 for 1991, plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability resulting from the collection of CIAC. No refund is required for 1987, 1988, 1989 and 1990. In accordance with Orders Nos. 16971 and 23541, all amounts should be refunded on a pro rata basis to those persons who contributed the taxes. The refund should be completed within 6 months. The utility should 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 refund. (PRICE)

**STAFF ANALYSIS:** In compliance with Order No. 16971, Lake Utility Services, Inc. filed its 1987, 1988, 1989, 1990, and 1991 annual CIAC reports regarding its collection of gross-up for each year. There was no response to staff's preliminary calculations from the utility and staff recommends the following refund amount.

**ANNUAL GROSS-UP REFUND AMOUNTS**

Based upon the information provided by the utility in its annual gross-up reports, staff has calculated the appropriate refund amount. Our calculations are shown on Schedule No. 3. A summary of each year's refund calculation follows.

**1987 - 1990**

No gross-up was collected; therefore, no refund is required.

**1991**

Staff calculates a refund of $120 for 1991. The 1991 CIAC report indicates that a total $120 of gross-up collections were received. The utility had an above-the-line loss for 1991 of $50,179 and the utility reported that no taxable CIAC was received in 1991. Because no taxable CIAC was received during the year, all gross-up should be refunded. Based upon the foregoing, staff calculates the refund to $120 for 1991. This amount does not include the accrued interest which must also be refunded from December 31, 1991 to the date of refund.

**ISSUE 4:** Should the docket be closed?

**RECOMMENDATION:** No, the docket should remain open pending the verification of the refund. Staff should be given administrative authority to close the docket upon verification of the refund. (PRICE)

**STAFF ANALYSIS:** Staff should be given administrative authority to close docket upon the verification of the refund.

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