

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Disposition of contributions-in-) DOCKET NO. 940156-WS
aid-of-construction (CIAC)) ORDER NO. PSC-94-0444-FOF-WS
gross-up funds collected by) ISSUED: April 13, 1994
ALOHA UTILITIES, INC., in Pasco)
County.)
)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION ORDER REQUIRING UTILITY
TO REFUND GROSS-UP FUNDS COLLECTED IN 1991

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 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, 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 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 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, 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 approval with the Commission on or before October 29, 1990. Aloha Utilities, Inc. (Aloha or utility) filed for authority to continue to gross-up on December 28, 1990. By Order No. 25526, issued December 24, 1991, Aloha 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 which included Attachment A which reflects the generic calculation form. No protests were filed, and the Order became final.

Aloha is a Class A utility which provides service to 9,864 water and 9,331 wastewater customers in Pasco County. According to their 1992 annual report, operating revenues were \$1,484,390 for water and \$1,601,305 for wastewater. The utility reported net operating income of \$36,045 for the water system and \$93,739 for the wastewater system. In compliance with Order No. 16971, Aloha filed its 1990, 1991 and 1992 annual CIAC reports regarding its collection of gross-up for each year.

ANNUAL GROSS-REFUND AMOUNTS

Based upon information provided by the utility in its gross-up reports filed each year, we have 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. Based upon these calculations, the utility shall refund \$6,216 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 taxable CIAC. In accordance with Orders Nos. 16971 and 23541, all amounts shall be refunded on a pro rata basis to those persons who contributed the taxes. The utility shall complete the refund within 6 months 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 refund. For the years 1990 and 1992, the amount of gross-up required was more than the amount of gross-up collected, therefore, no refund is required. 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:

1990

We find that a refund of gross-up collections for 1990 is not appropriate. The 1990 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 taxable CIAC received would be taxed. The report indicates a total of \$359,492 gross-up collections were received, with the first year's depreciation of \$8,942 associated with \$608,545 in taxable CIAC. The utility's report included an effective federal and state tax rate of 39.50%. The tax impact was calculated by using the 37.63% combined marginal federal and state tax rates, which represent the maximum combined tax rates. Based upon the foregoing, we find that the utility paid more in taxes than was collected; therefore, no refund is necessary.

1991

We find that a refund of \$6,216 for gross-up collections for 1991 is appropriate. The 1991 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 taxable CIAC received would be taxed. The report indicates a total of \$669,921 gross-up collections were received, with the first year's depreciation of \$16,474 associated with \$1,116,535 in taxable CIAC. The utility's report included an effective federal and state tax rate of 39.50%. The tax impact was calculated by using the 37.63% combined marginal federal and state tax rates, which represent the maximum combined tax rate. Based upon the foregoing, we find that the refund amount of \$6,216 is appropriate for 1991. This amount does not include the accrued interest which must also be refunded from December 31, 1991, to the date of refund.

1992

We find that a refund of gross-up collections for 1992 is not appropriate. The 1992 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 taxable CIAC received would be taxed. The report indicates a total of \$177,703 gross-up collections were received, with the first year's depreciation of \$4,857 associated with \$331,525 in taxable CIAC. The tax impact was calculated by using the 37.63% combined marginal federal and state tax rates as provided in the 1992 CIAC Report. Based upon the foregoing, we find that the utility paid more in taxes than was collected; therefore, no refund is necessary.

This docket shall remain open pending verification of the refund. Our staff is authorized to close the docket upon verification that the refunds have been made.

It is, therefore,

ORDERED by the Florida Public Service Commission that Aloha Utilities, Inc. shall refund \$6,216 in gross-up collections for 1991. The refund shall be made in accordance with the terms set forth in this Order. It is further

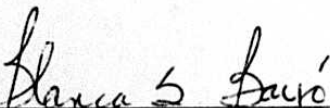
ORDERED that Aloha Utilities, Inc. shall not be required to make any refund in gross-up collections for 1990 or 1992. It is further

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, 101 E. Gaines Street, Tallahassee, Florida, 32399-0870, 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 to the proposed agency action order is filed, this docket shall be closed administratively upon verification that the refund specified herein has been made.

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By ORDER of the Florida Public Service Commission, this 13th
day of April, 1994.



BLANCA S. BAYO, 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.

As identified in the body of this order, our action 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 May 4, 1994. In the absence of such a petition, this order shall become effective on the date 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

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satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of 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.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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 after the issuance 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.

ALOHA UTILITIES, INC.

CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	1990	1991	1992	1993
1 Form 1120, Line 30 (Line 15)	\$ 1,020,053	\$ 1,964,380	\$ 733,089	\$ 0
2 Less CIAC (Line 7)	(608,545)	(1,116,535)	(331,525)	0
3 Less Gross-up collected (Line 19)	(359,492)	(669,921)	(177,703)	0
4 Add First Year's Depr on CIAC (Line 8)	8,942	16,474	4,857	0
5 Add/Less Other Effects (Lines 20 & 21)	(5,635)	(5,441)	0	0
6				
7 Adjusted Income Before CIAC and Gross-up	\$ 55,323	\$ 188,957	\$ 228,718	\$ 0
8				
9 Taxable CIAC (Line 7)	\$ 608,545	\$ 1,116,535	\$ 331,525	\$ 0
10				
11 Taxable CIAC Resulting in a Tax Liability	\$ 608,545	\$ 1,116,535	\$ 331,525	\$ 0
12 Less first years depr. (Line 8)	(8,942)	(16,474)	(4,857)	0
13				
14 Net Taxable CIAC	\$ 599,603	\$ 1,100,061	\$ 326,668	\$ 0
15 Combined marginal state and federal tax rate	37.63%	37.63%	37.63%	37.63%
16				
17 Net Income tax on CIAC	\$ 225,631	\$ 413,953	\$ 122,925	\$ 0
18 Less ITC Realized	0	0	0	0
19				
20 Net Income Tax	\$ 225,631	\$ 413,953	\$ 122,925	\$ 0
21 Expansion Factor for gross-up taxes	1.603334936	1.603334936	1.603334936	1.603334936
22				
23 Gross-up Required to pay tax effect	\$ 361,762	\$ 663,705	\$ 197,090	\$ 0
24 Less CIAC Gross-up collected (Line 19)	(359,492)	(669,921)	(177,703)	0
25				
26 REFUND (excluding interest)	\$ 0	\$ (6,216)	\$ 0	\$ 0
27				
28				
29 TOTAL REFUND	\$ (6,216)			
30				