

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 940157-SU
contribution-in-aid-of-) ORDER NO. PSC-94-0448-FOF-SU
construction (CIAC) gross-up) ISSUED: April 13, 1994
funds collected by EAGLE RIDGE)
UTILITIES, INC. in Lee County.)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER FINDING REFUND NOT REQUIRED

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, 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 December 18, 1986, and October 1, 1990, respectively, 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

DOCUMENT NUMBER-DATE

03461 APR 13 5

FPSC-REGULATORY REPORTING

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. Eagle Ridge Utilities, Inc. (Eagle Ridge or utility) filed for authority to continue to gross-up on December 11, 1990. By Order No. 25436, issued December 4, 1991, this Commission granted Eagle Ridge authority to continue to gross-up using the full gross-up formula.

On September 9, 1992, we issued Proposed Agency Action Order No. PSC-92-0961-FOF-WS, which clarified the provisions of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On September 14, 1992, we issued Order No. PSC-92-0961A-FOF-WS. That Order included the generic calculation form.

In compliance with Order No. 16971, Eagle Ridge filed its 1990, 1991 and 1992 annual CIAC reports regarding its collection of gross-up for each year. By letter dated January 14, 1994, our Commission Staff submitted its preliminary refund calculation numbers to Eagle Ridge.

By letter dated February 2, 1994, Eagle Ridge responded that it agreed with Staff's preliminary calculations. In addition, Eagle Ridge stated that it anticipated that the cost to refund the excess gross-up collected, which was minimal, would probably exceed the amount to be refunded; so, Eagle Ridge requested that for 1990 and 1992, it be allowed to book the refund monies to CIAC rather than making individual refunds. Using the method adopted in Order No. PSC-92-0961-FOF-WS, 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. Our decisions regarding Eagle Ridge's refunds are addressed below.

ANNUAL GROSS-UP REFUND AMOUNTS

Our calculations, taken from the information provided by Eagle Ridge in its annual gross-up reports, are reflected in Schedule No. 1, attached hereto. A summary of each year's refund calculation follows.

1990

Eagle Ridge's 1990 CIAC report indicates that it had been 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 that a total of \$160,401 of gross-up collections has been received, with the first year's depreciation of \$2,292 associated with \$267,198 in taxable CIAC. We used the 37.63% combined marginal federal and state tax rates, which represent the maximum combined tax rates, to calculate the tax impact. Based on the above, we calculate a refund of \$574 for 1990.

Eagle Ridge originally stated that no refund would be appropriate in its 1990 gross-up report. However, after reviewing our calculations, Eagle Ridge has agreed that a refund of \$574 is appropriate.

Eagle Ridge collected gross-up funds from 21 separate individuals or entities during 1990. We agree that the administrative costs will exceed the individual refund amounts, and we find it appropriate to allow Eagle Ridge to credit its CIAC account for the excess collections.

1991

Eagle Ridge asserts that no refund for 1991 is appropriate. We agree that a refund of gross-up collections for 1991 is not appropriate. The 1991 CIAC report indicates that Eagle Ridge 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 also indicates that a total of \$53,950 gross-up collections has been received. No first year's depreciation was deducted because no depreciable assets were added in 1991. Taxable CIAC of \$89,960 was received. We used the 37.63% combined marginal federal and state tax rates as provided in the 1991 CIAC report to calculate the tax effect. Based on the above, we calculate that Eagle Ridge required more in gross-up to pay the tax impact than it has collected. Therefore, we find that no refund for 1991 is necessary.

1992

Initially, Eagle Ridge stated that a refund of \$328 for 1992 was appropriate. Now, however, Eagle Ridge has proposed crediting CIAC for this amount since the administrative costs of making the refund will exceed the refund amount.

We have calculated a refund of gross-up collections for 1992 of \$323, excluding interest. The 1992 CIAC report indicates that Eagle Ridge 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 that a total of \$31,713 of gross-up collections has been received, with the first year's depreciation of \$564 associated with \$52,592 in taxable CIAC. We used the 37.63% combined marginal federal and state tax rates as provided in the 1992 CIAC report to calculate the tax effect. Based on the above, we calculate that Eagle Ridge has collected \$323 more in gross-up than was required to pay the tax impact.

Eagle Ridge collected the gross-up funds from 8 separate individuals or entities during 1992. We agree that the administrative costs will exceed the individual refund amounts, and we find it appropriate to allow Eagle Ridge to credit CIAC for the excess collections.

According to its 1992 annual report, Eagle Ridge is 87.23% contributed, which is in excess of the 75% maximum amount of contribution level established by Rule 25-30.580(1)(a), Florida Administrative Code. After a credit to CIAC of \$897, Eagle Ridge will be 87.27% contributed. While Eagle Ridge appears to be over contributed, we do not find that the .04% increase is material.

Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that Eagle Ridge Utilities, Inc., in lieu of making refunds, shall credit its contributions-in-aid-of-construction account by \$897 to reflect the total excess gross-up collections for 1990 and 1992. It is further

ORDERED the provisions of this Order are issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of the Division of Records and Reporting at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that, in the event no timely protest is received, this docket shall be closed.

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

BLANCA S. BAYO, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

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.

The action proposed 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 day 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 satisfies the foregoing conditions and is renewed within the specified protest period.

If 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.

EAGLE RIDGE UTILITIES, INC.

CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	1990	1991	1992	1993
1 Form 1120, Line 30 (Line 15)	\$ 453,125	\$ 151,885	\$ 91,798	\$ 0
2 Less CIAC (Line 7)	(267,198)	(89,960)	(52,592)	0
3 Less Gross-up collected (Line 19)	(160,401)	(53,950)	(31,713)	0
4 Add First Year's Depr on CIAC (Line 8)	2,292	0	564	0
5 Add/Less Other Effects (Lines 20 & 21)	(3,017)	(1,932)	(582)	0
6				
7 Adjusted Income Before CIAC and Gross-up	\$ 24,801	\$ 6,043	\$ 7,475	\$ 0
8				
9 Taxable CIAC (Line 7)	\$ 267,198	\$ 89,960	\$ 52,592	\$ 0
10				
11 Taxable CIAC Resulting in a Tax Liability	\$ 267,198	\$ 89,960	\$ 52,592	\$ 0
12 Less first years depr. (Line 8)	(2,292)	0	(564)	0
13				
14 Net Taxable CIAC	\$ 264,906	\$ 89,960	\$ 52,028	\$ 0
15 Combined marginal state and federal tax rate	37.63%	37.63%	37.63%	37.63%
16				
17 Net Income tax on CIAC	\$ 99,684	\$ 33,852	\$ 19,578	\$ 0
18 Less ITC Realized	0	0	0	0
19				
20 Net Income Tax	\$ 99,684	\$ 33,852	\$ 19,578	\$ 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	\$ 159,827	\$ 54,276	\$ 31,390	\$ 0
24 Less CIAC Gross-up collected (Line 19)	(160,401)	(53,950)	(31,713)	0
25				
26 REFUND (excluding interest)	\$ (574)	\$ 0	\$ (323)	\$ 0
27				
28				
29 TOTAL REFUND	\$ (897)			
30				