

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for continuation of)	DOCKET NO. 900976-WS
gross-up of contributions-in-aid-of-)	
construction (CIAC) in Clay County by)	ORDER NO. 25205
CLAY UTILITY COMPANY)	
_____)	ISSUED: 10/11/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING CONTINUED GROSS-UP OF
CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION AND APPROVING REFUND

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 formal proceedings pursuant to Rule 25-22.029, Florida Administrative Code.

CASE BACKGROUND

In Order No. 23541, issued October 1, 1990, we determined that any water and wastewater utility currently collecting the gross-up on contributions-in-aid-of-construction (CIAC) must file a petition for continued authority to gross-up and for approval of certain refunds to contributors. In Order No. 23689, issued October 29, 1990, we extended the time to file petitions to continue to gross-up to January 2, 1991. On December 11, 1990, Clay Utility Company (utility) timely filed a petition requesting approval to continue to collect the gross-up on its CIAC and to refund a certain amount of gross-up collected in 1987 through 1989.

APPROVAL TO CONTINUE GROSS-UP

In accordance with Order No. 23541, the utility has provided the Commission with a cash flow statement, a statement of interest coverage indicating a times interest earned (TIE) ratio of less than 2x, and a statement that it does not have an alternative

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source of financing available at a reasonable rate. Further, as justification for the gross-up, the utility states that it has been in an expansion program since 1983, that expansion is expected to continue through the 1990's, and that due to the expansion additional borrowing will be required for construction. The utility also indicated that it selected the full gross-up method because it is the least costly alternative and it has not resulted in competitive disadvantage or decreased growth. Finally, the utility submitted proposed tariffs for the gross-up. Based on the information filed, we find that the utility has demonstrated a continued need to collect the gross-up. Its request to continue collecting the gross-up is, therefore, approved. The proposed tariffs submitted by the utility shall be effective upon expiration of the protest period, if no timely protests are filed.

All gross-up CIAC collections are to be made in accordance with the accounting and regulatory treatments and record keeping prescribed in Orders Nos. 16971, issued December 18, 1986, and 23541, and all matters discussed in the body of those Orders are expressly incorporated herein by reference.

REFUND APPROVED

Order No. 23541 required that all gross-up amounts in excess of a utility's actual tax liability resulting from its collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes. According to the utility's calculation, a total of \$79,612 for the years 1987 through 1989 is due to be refunded pro rata to contributors. We find that this amount represents the amount of gross-up collected and interest earned on the escrow account which exceeds the amount of taxes paid on the CIAC collections. Upon consideration, we approve the utility's request to refund that amount. The refund must include interest calculated through the date of the refund. In addition, the utility must file with the Commission a report of the refund, including copies of cancelled refund checks, so that we may verify the amount of the refund. This refund and filing must occur within 6 months from the date of this order unless a timely protest is received.

In consideration of the foregoing it is

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ORDERED by the Florida Public Service Commission that approval is granted for Clay Utility Company to continue collecting the gross-up on CIAC. It is further

ORDERED that the tariffs filed by Clay Utility Company shall be effective upon expiration of the protest period, if no timely protest are filed. It is further

ORDERED that Clay Utility Company's request to refund \$79,612 to contributors on a pro rata basis is approved. It is further

ORDERED that such refund shall include interest calculated through the date of the refund. It is further

ORDERED that Clay Utility Company shall file copies of the cancelled refund checks for verification as set forth in the body of this order. It is further

ORDERED that all 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 his office 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 11th day of OCTOBER, 1991.



STEVE TRIBBLE, 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.

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 11/01/91.

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 sewer 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.