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State of Florida

Public Service Commission

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COMMISSION CLERK

DATE: April 6, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Hudson)
Division of Accounting and Finance (Cicchetti, Maurey)
Office of the General Counsel (Crawford)

ALM

RE: Docket No. 20180025-WS – Application for approval of tariff for the gross-up of CIAC in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida.

AGENDA: 04/20/18 – Regular Agenda – Proposed Agency Action (Issue 1) and Tariff Filing (Issue 2) – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 06/01/18 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: Place before Docket Nos. 20180042-WS and 20180059-WU

Case Background

Utilities, Inc. of Florida (UIF or utility) is a Class A utility providing water and wastewater services to 27 systems in the following counties: Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole. The utility reported in its 2016 annual report, water operating revenues in the amount of $2,498,891 and $1,440,710 for wastewater.

Pursuant to Order No. PSC-2018-0162-TRF-WS, issued March 26, 2018, in the instant docket, the Commission approved UIF's tariff for the gross-up of contributions in aid of construction (CIAC). The gross-up amounts to be collected were subject to refund pending resolution of Docket No. 20180013-PU, *In re: Petition to establish a generic docket to investigate and adjust* *rates for 2018 tax savings by Office of Public Counsel* and guaranteed by a corporate undertaking. UIF was ordered to file with its Annual Report a calculation detailing: (1) the amounts of cash and property contributions received during the reporting year; (2) the calculation of the utility's tax liability for the reporting year; and (3) the amount of taxes actually collected on CIAC for the reporting year. The reporting requirement was to begin with the 2018 Annual Report and continue each year thereafter.

On April 2, 2018, UIF filed a request for termination of its CIAC gross-up tariffs. Upon further reflection, UIF is concerned that requiring the gross-up of CIAC will eliminate its opportunity to obtain government grants, since it would require the amount of the grant to be increased to cover the income tax liability. In addition, UIF believes the CIAC gross-up may put the utility at a competitive disadvantage because developers may choose other alternatives in lieu of the utility's services to avoid paying the higher grossed-up CIAC. As an alternative, the utility stated that a developer could construct its own facilities and create a non-regulated homeowner's association to own and operate the facilities. Also, the utility indicated that an adjacent government-owned utility could create an incentive for the developer to find a way to circumvent UIF's exclusive service territory. As a condition of the requested termination of its CIAC gross-up tariffs, UIF asked for acknowledgement of its preferred treatment of the taxes it pays on CIAC.

This recommendation addresses the utility's request for termination of its CIAC gross-up tariffs and the acknowledgement of its preferred treatment of the taxes it pays on CIAC. The Commission has jurisdiction pursuant to Sections 367.081 and 367.091, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission acknowledge, in the positive, UIF's requested treatment of the taxes it pays on CIAC?

Recommendation: Yes. Netting debit deferred taxes against credit deferred taxes in the capital structure, as requested by UIF, is standard Commission practice. It is also standard Commission practice to include debit deferred taxes in rate base if the net of the credit and debit deferred taxes is a debit. (Cicchetti)

Staff Analysis: Netting debit deferred taxes against credit deferred taxes is standard Commission practice.[1] Debit deferred taxes arise when a utility pays taxes that have not yet been collected from customers. Credit deferred taxes arise when customers have paid taxes through rates but the taxes have not yet been paid by the Company to the IRS. Net credit deferred taxes are included as zero-cost capital in the capital structure and net debit deferred taxes are included in rate base. It is uncommon for a utility to have a net debit deferred tax balance.

If CIAC is not grossed-up for taxes, the utility will pay the tax itself and will remain whole by netting debit deferred taxes against credit deferred taxes or including the debit deferred taxes in rate base. Such treatment is beneficial because it will allow UIF to obtain government grants without having to charge the governmental entity an additional amount for taxes and will keep from putting UIF at a competitive disadvantage regarding growth by avoiding a gross-up charge for taxes associated with CIAC.

Therefore, staff recommends that the Commission acknowledge that UIF's requested treatment of the taxes it pays on CIAC appears reasonable and is consistent with the Commission's regulatory practices.

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[1] Order Nos. PSC-00-2054-PAA-WS, pp. 25-27, issued October 27, 2000, in Docket No. 990939-WS, *In re: Application for rate increase in Martin County by Indiantown Company, Inc.* and PSC-01-0326-FOF-SU, p. 38, issued February 6, 2001, in Docket No. 991643-SU, *In re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.*

Issue 2: Should the Commission approve UIF's request to terminate its CIAC gross-up tariffs?

Recommendation: Yes. If the Commission approves UIF's requested tax treatment of CIAC in Issue 1, it should also approve the utility's request to terminate its CIAC gross-up tariffs. The tariff should be terminated upon the vote of the Commission. UIF should provide notice to property owners who have requested service during the 12 months prior to the request to terminate the CIAC gross-tariffs. The utility should provide proof of noticing within 10 days of rendering its approved notice. The termination of the CIAC gross-up tariffs should relieve the utility of the reporting requirements that were outlined in Order No. PSC-2018-0162-TRF-WS. (Hudson)

Staff Analysis: As stated in the case background, UIF requested acknowledgement of its preferred method of treatment of taxes to be paid on CIAC, which is to offset deferred taxes against credit deferred taxes in the capital structure. If the net of the credit and debit deferred taxes is a debit, the amount is included in rate base. As discussed in Issue 1, staff recommends that the utility's requested treatment is standard Commission practice. As a result, staff believes it is appropriate to grant the utility's request to terminate its CIAC gross-tariffs.

The utility's CIAC gross-up tariffs became effective March 15, 2018. Pursuant to Order No. PSC-2018-0162-TRF-WS, the utility was required to file with its Annual Report a calculation detailing: (1) the amounts of cash and property contributions received during the reporting year; (2) the calculation of the utility's tax liability for the reporting year; and (3) the amount of taxes actually collected on CIAC for the reporting year. Since the implementation of the tariffs, the utility did not collect any CIAC. Further, the termination of the CIAC gross-up tariffs should relieve the utility of the reporting requirements.

Based on the above, the Commission should approve UIF's request to terminate its CIAC gross-up tariffs. The tariff should be terminated upon the vote of the Commission. UIF should provide notice to property owners who have requested service during the 12 months prior to the request to terminate the CIAC gross-tariffs. The utility should provide proof of noticing within 10 days of rendering its approved notice. The termination of the CIAC gross-up tariffs relieve the utility of the reporting requirements that were outlined in Order No. PSC-2018-0162-TRF-WS.

Issue 3: Should this docket be closed?

Recommendation: With respect to Issue 1, if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. With respect to Issue 2, the order should become final upon the issuance of the consummating order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the order. If a timely protest is filed, the tariff should remain in effect, pending resolution of the protest. If no protest is timely filed as to Issues 1 or 2, the docket should close upon the issuance of the consummating order. In the event of a protest, the docket should remain open to address the protest. (Crawford)

Staff Analysis: With respect to Issue 1, if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. With respect to Issue 2, the order should become final upon the issuance of the consummating order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the order. If a timely protest is filed, the tariff should remain in effect, pending resolution of the protest. If no protest is timely filed as to Issues 1 or 2, the docket should close upon the issuance of the consummating order. In the event of a protest, the docket should remain open to address the protest.