

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of ) DOCKET NO. 950317-WS  
contributions-in-aid-of- ) ORDER NO. PSC-96-0986-FOF-WS  
construction (CIAC) gross-up ) ISSUED: August 5, 1996  
funds received by Orange-Osceola )  
Utilities, Inc. in Osceola )  
County. )  
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The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER APPROVING REFUNDED AMOUNTS

BY THE COMMISSION:

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, 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 require 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 the collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes. 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 to include Attachment A which reflects the generic calculation form.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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, must file a petition for approval with us on or before October 29, 1990. By Order No. 25779, issued February 24, 1992, Orange-Osceola Utilities, Inc. (OOU or utility) was authorized to continue to gross-up CIAC for the related tax impact.

Orange-Osceola Utilities, Inc. is a Class A utility which provides water and wastewater service to customers in Osceola County. According to its 1994 annual report, operating revenue of \$1,166,244 for the water system and \$2,563,684 for the wastewater system were reported. The utility reported net operating income of \$279,913 for the water system and \$593,738 for the wastewater system.

As of March 14, 1995, OOU had refunded \$3,787,841 in total. Orange-Osceola Utilities, Inc. requested permission to refund the full amount of tax collected on CIAC, including interest earned on the gross-up for 1987, 1988, and 1989. We approved a \$317,526 refund for 1987, pursuant to Order No. 21059, issued April 17, 1989. We also approved a \$1,421,996 refund for the years 1988 and 1989, pursuant to Order No. 25779, issued February 24, 1992. However, the utility refunded \$1,848,170 for the years 1990 through 1994 without our approval. At the September 26, 1995 agenda conference, the utility provided canceled checks as evidence that all refunds were made. According to OOU, its obligation to refund CIAC gross-up had been fulfilled.

On October 27, 1994, Southern States Utilities, Inc. (SSU) filed its application requesting that we approve the transfer and purchase of Orange-Osceola Utilities's water and wastewater facilities. By Order No. PSC-95-1325-FOF-WS, issued October 31, 1995, in Docket No. 941151-WS, we acknowledged the transfer of the system. Pursuant to the asset purchase agreement between SSU and OOU filed in that same docket, the obligations for CIAC gross-up refunds would remain with OOU.

In compliance with Order No. 16971, OOU filed its 1990 through 1994 annual CIAC reports regarding its collection of gross-up for each year. Due to the impending sale of the utility, OOU refunded the gross-up with accrued interest through the date of refund.

On September 26, 1995, the utility filed its refund report which consisted of copies of cancelled checks, a check register listing each contributor and refund worksheets. Our review of the cancelled checks, and refund worksheets indicates that the refunds

are complete. This order addresses the disposition of CIAC gross-up for the years 1990 through 1994.

ANNUAL GROSS-UP REFUND AMOUNTS

Based upon the foregoing, 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. Our calculations of the amount of refund for each year is set forth in Schedule No. 1. A summary of each year's refund calculation follows.

**1990**

The 1990 CIAC report indicates the utility had an above-the-line loss prior to the inclusion of taxable CIAC and gross-up. The above-the-line loss exceeded the amount of taxable CIAC collected. Therefore, no tax liability exists and all gross-up tax collected was appropriately refunded. The report indicates a total of \$799,532 in gross-up collections were received, with the first year's depreciation expense to be \$108,973 associated with \$1,355,075 in CIAC income. Based upon the foregoing, we calculated a refund of \$799,532 for 1990. We also calculated accrued interest from December 31, 1990 to the date of the refund to be \$23,423.

**1991**

The 1991 CIAC report indicates the utility had an above-the-line loss prior to the inclusion of taxable CIAC and gross-up. The above-the-line loss exceeded the amount of taxable CIAC collected. Therefore, no tax liability exists and all gross-up tax collected was appropriately refunded. The report indicates a total of \$187,425 in gross-up collections were received, with the first year's depreciation expense to be \$135,522 associated with \$298,800 in CIAC income. Based upon the foregoing, we calculated a refund of \$187,425 for 1991. We also calculated interest from December 31, 1991 to the date of the refund to be \$8,596.

**1992**

The 1992 CIAC report indicates the utility had an above-the-line loss prior to the inclusion of taxable CIAC and gross-up. The above-the-line loss exceeded the amount of taxable CIAC collected. Therefore, no tax liability exists and all gross-up tax collected was appropriately refunded. The report indicates a total of \$397,378 in gross-up collections were received, with the first year's depreciation expense to be \$163,040 associated with \$668,224

in CIAC income. Based upon the foregoing, we calculated a refund of \$397,378 for 1992. We also calculated accrued interest from December 31, 1992 to the date of the refund to be \$6,128.

**1993**

The 1993 CIAC report indicates the utility had an above-the-line loss prior to the inclusion of taxable CIAC and gross-up. The above-the-line loss exceeded the amount of taxable CIAC collected. Therefore, no tax liability exists and all gross-up tax collected was appropriately refunded. The report indicates a total of \$238,268 in gross-up collections were received, with the first year's depreciation expense to be \$164,213 associated with \$400,483 in CIAC income. Based upon the foregoing, we calculated a refund of \$238,268 for 1993. We also calculated accrued interest from December 31, 1993 to the date of the refund to be \$3,239.

**1994**

The 1994 CIAC report indicates the utility had an above-the-line loss prior to the inclusion of taxable CIAC and gross-up. The above-the-line loss exceeded the amount of taxable CIAC collected. Therefore, no tax liability exists and all gross-up tax collected was appropriately refunded. The report indicates a total of \$379,114 in gross-up collections were received, with the first year's depreciation expense to be \$176,081 associated with \$379,114 in CIAC income. Based upon the foregoing, we calculated a refund of \$225,566 for 1994. We also calculated accrued interest from December 31, 1994 to the date of the refund to be \$3,034.

The utility refunded \$1,848,170 for the years 1990 through 1994 without our approval. Our review indicates that the utility's refund calculation is consistent with Order No. PSC-92-0961-FOF-WS, issued September 9, 1992, and our decisions in other gross-up refund cases. We are in agreement with the utility's refund amount and have completed the verification of the refunds.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the refund of \$1,848,170 in CIAC collected for the years 1990 through 1994 by Orange-Osceola Utilities, Inc. is approved. It is further

ORDERED that all matters contained in the schedules attached hereto are by reference incorporated herein. It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 5th  
day of August, 1996.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay J. [Signature]  
Chief, Bureau of Records

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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.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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.

COMMISSION APPROVED CALCULATED GROSS-UP REFUND  
SCHEDULE NO. 1

	1990	1991	1992	1993	1994
1 Form 1120, Line 30 (Line 15)	\$ 307,100	\$ (1,369,935)	\$ (250,488)	\$ (553,791)	\$ (400,479)
2 Less CIAC (Line 7)	(1,355,075)	(298,800)	(668,224)	(400,483)	(379,114)
3 Less Gross-up collected (Line 19)	(799,532)	(187,425)	(397,378)	(238,268)	(225,566)
4 Add First Year's Depr on CIAC (Line 8)	108,973	135,522	163,040	164,213	176,081
5 Add/Less Other Effects (Lines 20 & 21)	(23,423)	(8,596)	(6,128)	(3,239)	(3,034)
6					
7 Adjusted Income Before CIAC and Gross-up	\$ (1,761,957)	\$ (1,729,234)	\$ (1,159,178)	\$ (1,031,568)	\$ (832,112)
8					
9 Taxable CIAC (Line 7)	\$ 1,355,075	\$ 298,800	\$ 668,224	\$ 400,483	\$ 379,114
10 Less first years depr. (Line 8)	\$ (108,973)	\$ (135,522)	\$ (163,040)	\$ (164,213)	\$ (176,081)
11					
12 Adjusted Income After CIAC	\$ (515,855)	\$ (1,565,956)	\$ (653,994)	\$ (795,298)	\$ (629,079)
13 Less: NOL Carry Forward	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
14					
15 Net Taxable CIAC	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
16 Combined Marginal state & federal tax rates	37.63%	37.63%	37.63%	37.63%	37.63%
17					
18 Net Income tax on CIAC	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
19 Less ITC Realized	0	0	0	0	0
20					
21 Net Income Tax	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
22 Expansion Factor for gross-up taxes	1.603334937	1.603334937	1.603334937	1.603334937	1.603334937
23					
24 Gross-up Required to pay tax effect	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
25 Less CIAC Gross-up collected (Line 19)	(799,532)	(187,425)	(397,378)	(238,268)	(225,566)
26					
27 (OVER) OR UNDER COLLECTION	\$ (799,532)	\$ (187,425)	\$ (397,378)	\$ (238,268)	\$ (225,566)
28	=====	=====	=====	=====	=====
29					
30 TOTAL YEARLY REFUND	\$ (799,532)	\$ (187,425)	\$ (397,378)	\$ (238,268)	\$ (225,566)
31	=====	=====	=====	=====	=====
32					
33 APPROVED REFUND (excluding interest)	(1,848,169)				
34	=====				