

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for 1996) DOCKET NO. 961151-WU
disposition of contributions in) ORDER NO. PSC-96-1351-FOF-WU
aid of construction, by East) ISSUED: November 18, 1996
Central Florida Services, Inc.)

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING REFUND AMOUNTS

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

As a result of the repeal of Section 118(b) of the Internal Revenue Code, contributions-in-aid-of-construction (CIAC) became gross income and were 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.

Order 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. The information would also determine whether refunds of gross-up would be appropriate. 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, should be refunded on a pro rata basis to those persons who contributed the taxes. In Order No. 23541,

DOCUMENT NUMBER-DATE

12204 NOV 18 86

FPSC-RECORDS/REPORTING

the Commission required any water and wastewater utility already collecting the gross-up on CIAC, and wishing to continue, to file a petition for approval with the Commission on or before October 29, 1990.

East Central Florida Services, Inc. (ECFS or Utility) is a Class C water utility providing service to the public in Brevard, Orange, and Osceola Counties. As of December 31, 1994, the Utility served 290 water customers. The utility had gross operating revenues of \$156,839 for the water system. The utility reported a net operating loss of \$119,701 for the system. On May 12, 1992, pursuant to Order No. 23541, ECFS filed for initial authority to gross-up CIAC. The information as filed met the filing requirements of Order No. 23541. Order No. PSC-92-0958-FOF-WU, issued September 9, 1992, granted ECFS authority 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, reflecting the generic calculation form. On October 12, 1994, Order No. PSC-94-1265-FOF-WS was issued, revising the full gross-up formula.

On March 29, 1996, Docket No. 960397-WS was opened to review the Commission's policy concerning the collection and refund of CIAC gross-up. Workshops were held and comments and proposals were received from the industry and other interested parties. By Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, Commission staff was directed to continue processing CIAC gross-up and refund cases pursuant to Order Nos. 16971 and 23541; however, the staff was also directed to make a recommendation to the Commission concerning whether the Commission's policy regarding the collection and refund of CIAC should be changed upon the staff's completion of its review of the proposals and comments offered by the workshop participants. In addition, the staff was directed to consider ways to simplify the process and determine whether there were viable alternatives to the gross-up.

However, the Small Business Job Protection Act of 1996 (the Act) passed Congress on August 1, 1996 and was signed into law by the President on August 20, 1996. The Act provided for the non-taxability of CIAC collected by water and wastewater utilities, effective retroactively for amounts received after June 12, 1996. As a result, on September 20, 1996, in Docket No. 960965-WS, Order No. PSC-96-1180-FOF-WS was issued to revoke the authority of utilities to collect gross-up of CIAC and to cancel the respective

tariffs, unless within 30 days of the issuance of the order, affected utilities requested a variance. Docket No. 960397-WS was also closed on October 8, 1996. As established in Order No. PSC-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Order Nos. 16971 and 23541. This order, therefore, addresses the disposition of the gross-up of CIAC collected by ECFS in 1993 and 1994.

REFUND CALCULATIONS FOR YEARS 1993 AND 1994

In compliance with Order No. 16971, ECFS filed annual CIAC gross-up reports for 1993 and 1994. Our calculations, taken from these gross-up reports, are reflected on Schedule No. 1, which is attached hereto and by reference incorporated herein. Gross-up calculations are in accordance with the method adopted in Order No. PSC-92-0961-FOF-WS. A summary of each year's calculations follows.

1993

The utility's 1993 CIAC report indicates that the utility incurred an above-the-line loss of \$110,451 prior to inclusion of taxable CIAC and gross-up. Order No. 23541 requires that CIAC income be netted against the above-the-line loss.

The CIAC report indicates that a total of \$1,100 in taxable CIAC was received, with \$28 being deducted for first year's depreciation. When this amount is netted against the above-the-line loss of \$110,451, the above-the-line loss exceeds the CIAC income; therefore, no tax liability exists and all gross-up must be refunded.

The CIAC report indicates that the utility collected \$664 of gross-up. Based upon the foregoing, a refund of \$664, plus accrued interest from December 31, 1993 to the date of the refund, is appropriate. The utility submitted a cancelled check dated October 17, 1994 as evidence that the \$664 refund, plus accrued interest of \$16.87 was made.

1994

The utility's 1994 CIAC report indicates that the utility incurred an above-the-line loss of \$90,826, prior to inclusion of the taxable CIAC and gross-up. As stated previously, Order No. 23541 requires that CIAC income be netted against the above-the-line loss.

The 1994 CIAC report indicates that a total of \$93,177 of CIAC was received, with \$582 being deducted for first year's depreciation. When this amount is netted against the above-the-line loss of \$90,826, the amount of taxable CIAC resulting is \$1,769. This remaining taxable CIAC income is offset with \$1,769 in net operating loss carryforwards. Therefore, no tax liability exists and all gross-up must be refunded.

The CIAC report indicates that the utility collected \$16,280 of gross-up. Based upon the foregoing, a refund of \$16,280 for 1994, plus accrued interest from December 31, 1994 to the date of refund, is appropriate. On May 24, 1996 the utility provided a copy of a cancelled check dated September 28, 1995 as evidence that \$16,280 in gross-up, plus accrued interest of \$208, was made.

CLOSING OF DOCKET

We have verified that the refunds have been made. No further action is required in this docket. Therefore, upon expiration of the protest period, if no person whose interests are substantially affected files a timely protest within the 21 day protest period, this docket shall be closed.

Based on the foregoing, it is

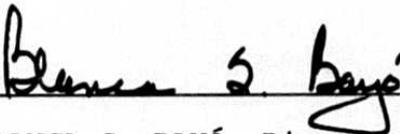
ORDERED by the Florida Public Service Commission that the provisions of this order are issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of the Division of Records and Reporting at his office at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that refunds made by East Central Florida Services, Inc. in the amount of \$664 for 1993, \$16,280 for 1994, plus accrued interest of \$16.87 for 1993, and \$208 for 1994 for gross-up of CIAC collected in excess of the tax liability, are approved. It is further

ORDERED that this docket shall be closed upon expiration of the protest period if no timely protest is filed.

ORDER NO. PSC-96-1351-FOF-WU
DOCKET NO. 961151-WU
PAGE 5

By ORDER of the Florida Public Service Commission, this 18th
day of November, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DCW

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 9, 1996.

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 substantially 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.

DOCKET NO. 961151-WU
OCTOBER 17, 1996

SCHEDULE NO. 1

COMMISSION APPROVED CALCULATED GROSS-UP REFUND

EAST CENTRAL FLORIDA SERVICES, INC.

SOURCE: (Line references are from CIAC Reports)

	<u>1993</u>	<u>1994</u>
1 Form 1120, Line 30 (Line 15)	\$ (108,698)	\$ 18,049
2 Less CIAC (Line 7)	(1,100)	(93,177)
3 Less Gross-up collected (Line 19)	(664)	(16,280)
4 Add First Year's Depr on CIAC (Line 8)	28	582
5 Add/Less Other Effects (Lines 20 & 21)	(17)	(2)
6		
7 Adjusted Income Before CIAC and Gross-up	\$ (110,451)	\$ (90,828)
8		
9 Taxable CIAC (Line 7)	\$ 1,100	\$ 93,177
10 Less first years depr. (Line 8)	\$ (28)	\$ (582)
11		
12 Adjusted Income After CIAC	\$ (109,379)	\$ 1,767
13 Less: NOL Carry Forward	\$ 0	\$ (1,769)
14		
15 Net Taxable CIAC	\$ 0	\$ 0
16 Combined Marginal state & federal tax rates	15.00%	15.00%
17		
18 Net Income tax on CIAC	\$ 0	\$ 0
19 Less ITC Realized	0	0
20		
21 Net Income Tax	\$ 0	\$ 0
22 Expansion Factor for gross-up taxes	1.176470588	1.176470588
23		
24 Gross-up Required to pay tax effect	\$ 0	\$ 0
25 Less CIAC Gross-up collected (Line 19)	(664)	(16,280)
26		
27 (OVER) OR UNDER COLLECTION	\$ (664)	\$ (16,280)
28	=====	=====
29		
30 TOTAL YEARLY REFUND	\$ (664)	\$ (16,280)
31	=====	=====
32		
33 PROPOSED REFUND (excluding interest)	(16,944)	
34	=====	