

MEMORANDUM

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January 20, 1999

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (JALGER) *RRJ*
RE: DOCKET NO. 981070-WS - DISPOSITION OF CONTRIBUTIONS IN
AID OF CONSTRUCTION (CIAC) COLLECTED IN 1993-1996 BY
SANLANDO UTILITIES CORPORATION IN SEMINOLE COUNTY.

99-0151-FOF XNS

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER FINDING NO REFUNDS DUE FOR THE YEARS 1992 THROUGH 1994 AND 1996 AND APPROVING REFUNDS MADE FOR THE YEAR 1995, BUT REQUIRING ADDITION OF ACCRUED INTEREST, AND CLOSING DOCKET, to be issued in the above-referenced docket.

(Number of pages in order - 8)

RRJ/lw

Attachment

cc: Division of Water and Wastewater (Johnson, McCaskill)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of
contributions in aid of
construction (CIAC) collected in
1993-1996 by Sanlando Utilities
Corporation in Seminole County.

DOCKET NO. 981070-WS
ORDER NO. PSC-99-0151-FOF-WS
ISSUED: January 25, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION ORDER FINDING NO REFUNDS DUE FOR
THE YEARS 1992 THROUGH 1994 AND 1996 AND APPROVING REFUNDS MADE
FOR THE YEAR 1995, BUT REQUIRING ADDITION OF ACCRUED INTEREST,
AND CLOSING DOCKET

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

Sanlando Utilities Corporation (Sanlando or utility) is a Class A utility providing service to approximately 9,888 water and 8,905 wastewater customers in Seminole County. As of December 31, 1997, the utility had annual operating revenues of \$2,034,193 for the water system and \$2,898,138 for the wastewater system and net operating income of \$97,579 for the water system and \$269,057 for the wastewater system.

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

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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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 and 23541, issued December 18, 1986, and October 1, 1990, required 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, shall be refunded on a pro rata basis to those persons who contributed the taxes.

On September 12, 1991, pursuant to Order No. 23541, Sanlando filed for authority to continue grossing-up CIAC. Although the information as filed did not meet the filing requirements of Order No. 23541, subsequent information that was filed on November 18, 1991, did meet the filing requirements. By Proposed Agency Action (PAA) Order No. PSC-92-0248-FOF-WS, issued April 27, 1992, we allowed Sanlando Utilities Corporation to continue to gross-up CIAC.

However, on August 1, 1996, The Small Business Job Protection Act of 1996 (The Act), which became law on August 20, 1996, provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996.

By Order No. PSC-95-0746-FOF-SU, issued June 21, 1995, we disposed of CIAC gross-up funds for the years 1987 through 1991. The purpose of this Order is to address the amount of CIAC gross-up funds that should be refunded for the years 1992 through 1996.

REFUND REQUIREMENT

In compliance with Orders Nos. 16971 and 23541, Sanlando filed its 1992 through 1996 annual CIAC reports and tax returns regarding its collection of gross-up for each year. The utility agrees with our calculations of the refund amounts. No refunds are necessary for 1992, 1993, 1994, and 1996, because the utility did not collect sufficient gross-up funds to satisfy the tax liabilities for those years. However, the utility over-collected \$1,329 in CIAC gross-up in 1995.

By correspondence dated October 1, 1998, the utility provided staff with documentation on the disposition of the CIAC gross-up funds. According to the utility's documentation, \$978 was returned to the appropriate contributors by checks. There were seven customer accounts credited for a total of \$32. The remaining monies (\$319) could not be returned to the contributors, because the addresses could not be located. The utility has exhausted all means of locating the contributors and has requested that the remaining \$319 be credited as CIAC. The credit to CIAC shall be divided equally between water and wastewater for the amount of \$159.50 for each system. The \$319 represents about 24 percent of the total refunds. The utility submitted copies of canceled checks, credits applied to monthly bills or other evidence which verifies that the refunds have been made.

The utility did not request recovery of consultant fees for accounting and legal services and none were included in the refund calculation. A summary of the 1992 through 1996 refund calculations follows.

1992

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1992 is not appropriate.

Based upon our review of the utility's 1992 filing, the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income. Therefore, all taxable CIAC received would be taxed. The report indicates a total of \$41,659 in taxable CIAC was received, with \$907 being deducted for the first year's depreciation, resulting in net taxable CIAC of \$40,752. Using the 37.63 percent combined marginal federal and state tax rates, we calculate the tax effect to be \$15,335. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$24,587. The utility collected \$23,117 in gross-up; therefore, the tax liability exceeded the funds collected and no refund is necessary for 1992.

1993

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1993 is not appropriate.

Based upon our review of the utility's 1993 filing, the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income. Therefore, all taxable CIAC received would be taxed. The report indicates a total of \$8,783 in taxable CIAC was received, with \$191 being deducted for the first year's depreciation, resulting in net taxable CIAC of \$8,592. Using the 37.63 percent combined marginal federal and state tax rates, we calculate the tax effect to be \$3,233. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$5,184. The utility collected \$3,240 in gross-up; therefore, the tax liability exceeded the funds collected and no refund is necessary.

1994

The utility proposes that no refund is appropriate. We agree with the utility that no refund is necessary.

The 1994 CIAC report indicates the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income; therefore, all taxable CIAC received would be taxed. The report also indicates that a total of \$53,777 in taxable CIAC was received, with \$1,187 being deducted for the first year's depreciation. As a result, net taxable CIAC was calculated to be \$52,590. Using the 37.63 percent combined federal and state tax rate as provided in the CIAC report, we calculate the tax effect to be \$19,790. When \$19,790 is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$31,730. The utility only collected \$27,073 of gross-up; therefore, the tax liability exceeded the funds collected and no refund is required.

1995

The utility proposes a refund of \$1,329 for 1995 excess gross-up collections, and has already attempted to refund, without interest, that amount. With the addition of the applicable interest, we agree.

The utility's 1995 CIAC report indicates the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income; therefore, all taxable CIAC received would be taxed. The report also indicates that a total of \$154,272 in taxable CIAC was received, with \$5,482 being deducted for first

year's depreciation. As a result, net taxable CIAC was calculated to be \$248,790. Using the 37.63 percent combined marginal federal and state tax rates as provided in the 1995 CIAC Report, we calculate the tax effect to be \$93,620. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$150,104. The utility collected \$151,433 in gross-up. Based upon the foregoing, the utility shall refund \$1,329, for 1995. This amount does not include the accrued interest as of December 31, 1995, which must also be refunded through the date of the refund. The utility refunded \$1,010 in 1998. The remaining \$319 of the gross-up funds shall be credited to CIAC and divided equally between water and wastewater. The utility shall refund the interest within 30 days of the effective date of the order. Within 30 days from the date of refunding the interest, the utility shall submit copies of canceled checks, credits applied to monthly bills or other evidence that verifies that the utility has refunded the interest.

To date, our staff has reviewed the copies of canceled checks, and credits submitted by the utility as evidence to confirm that the utility has made the refunds. The utility also provided a list of unclaimed refunds detailing the contributors and the amounts, and an explanation of the efforts made to make the refunds.

1996

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1996 is not appropriate.

Based upon our review of the utility's 1996 filing, the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income. Therefore, all taxable CIAC received would be taxed. The report indicates a total of \$68,562 in taxable CIAC was received, with \$2,371 being deducted for the first year's depreciation, resulting in net taxable CIAC of \$66,191. Using the 37.63 percent combined marginal federal and state tax rates, we calculate the tax effect to be \$24,908. When this amount is multiplied by the expansion factor for gross-up, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$39,936. The utility collected \$37,800 in gross-up; therefore, the tax liability exceeded the taxes collected and no refund is necessary.

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CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, this docket may be closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sanlando Utilities Corporation shall refund \$1,329, plus accrued interest through the date of the refund, for gross-up collected in excess of the tax liability for the year 1995. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that no refunds are due for the years 1992, 1993, 1994 and 1996. It is further

ORDERED that the unclaimed refund amount of \$319 shall be credited to the CIAC accounts and divided equally between water (\$159.50) and wastewater (\$159.50). It is further

ORDERED that Sanlando Utilities Corporation shall refund the interest within 30 days of the effective date of the order. Within 30 days from the date of refunding the interest, Sanlando Utilities Corporation shall submit copies of canceled checks, credits applied to monthly bills or other evidence that verifies that the utility has refunded the interest. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

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By ORDER of the Florida Public Service Commission this 25th
day of January, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, 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 February 15, 1999.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

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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.