

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of  
contributions-in-aid-of-  
construction (CIAC) funds  
received by Martin Downs  
Utilities, Inc. in Martin County  
during 1990, 1991, 1992, and  
1993.

DOCKET NO. 931065-WS  
ORDER NO. PSC-99-2175-FOF-WS  
ISSUED: November 8, 1999

The following Commissioners participated in the disposition of  
this matter:

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

ORDER CLOSING DOCKET

BY THE COMMISSION:

Martin Downs Utilities, Inc. (Martin Downs or utility) was  
incorporated in the State of Florida in April 1981. Until January  
26, 1990, Martin Downs was a wholly-owned subsidiary of Southern  
Realty Group, Inc. (SRG). On January 25, 1990, Martin Downs was  
recapitalized and then sold by SRG, to an entity controlled by  
certain SRG shareholders.

On October 26, 1990, Martin Downs filed for authority to  
continue to collect gross-up on contributions-in-aid-of-  
construction (CIAC). By Order No. 25360, issued November 19, 1991,  
we authorized Martin Downs to continue to gross-up using the full  
gross-up formula.

Martin Downs was a Class A utility which provided services to  
approximately 3,486 water and 2,981 wastewater customers in Martin  
County. According to the 1992 annual report, operating revenues  
were reported as \$1,112,379 for water and \$1,040,717 for  
wastewater. The utility reported net operating income of \$291,382  
for the water system and \$261,177 for the wastewater system.

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On August 12, 1993, Martin County purchased the water and wastewater facilities from Martin Downs. By Order No. PSC-93-1484-FOF-WS, issued October 12, 1993, in Docket No. 930818-WS, we acknowledged the transfer of the water and wastewater facilities and canceled Certificates Nos. 343-W and 301-S. The records of the Department of State show that Martin Downs was administratively dissolved as of August 25, 1995.

By letter dated November 15, 1994, Martin Downs' former shareholders inquired about whether the Commission had continuing jurisdiction over the CIAC gross-up refund since the utility was being liquidated. Martin Downs cited two orders in which we acknowledged a sale and specifically addressed refunds associated with the utility. However, in the case at hand, the docket concerning the refund of CIAC gross-up funds was not opened until after the issuance of the Order acknowledging transfer and canceling certificate.

By letter dated November 29, 1994, our staff counsel advised Martin Downs that, in his opinion, the Commission still had jurisdiction over the CIAC gross-up funds. We retain jurisdiction over any matter which arose while the utility was under our jurisdiction. The gross-up funds were collected subject to refund prior to the cancellation of Martin Downs' certificates. Even though our order did not explicitly address the disposition of the gross-up funds, pursuant to Orders Nos. 16971 and 23541, and under our general authority, we found that the disposition of those funds would remain within our purview.

The disposition of CIAC gross-up collections was not addressed in Docket No. 930818-WS. However, by Order No. PSC-97-1147-FOF-WS issued in this docket, we asserted that we had jurisdiction to address the disposition of gross-up collections even though the facilities had been sold to the County. In that Order, citing Charlotte County v. General Development Utilities, Inc., 653 So. 2d 1081 (Fla. 1st DCA 1995), we determined that we had continuing jurisdiction because the CIAC gross-up funds were collected prior to the sale to the County.

Therefore, our staff opened Docket No. 931065-WS on November 4, 1993, to address the disposition of excess gross-up funds collected for the period of October 1, 1989 through August 12, 1993. Also, by letter dated November 23, 1993, our staff advised the attorney that had been representing Martin Downs that staff would address the collection of gross-up funds from October 1, 1989

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through August 12, 1993. That letter referenced Orders Nos. 16971 and 23541 (orders governing CIAC gross-up).

On September 30, 1997, we issued Proposed Agency Action (PAA) Order No. PSC-97-1147-FOF-WS. That PAA Order became final and required the utility to refund CIAC gross-up funds in the amount of \$32,361 for the fifteen-month period ending December 31, 1990, and \$22,064 for fiscal year 1991, plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability for those periods.

However, the utility never made any refunds and all funds were dispersed to the shareholders several years ago. At the August 4, 1998 Agenda Conference, we addressed the question of whether we should take any additional action to enforce this PAA Order. By Order No. PSC-98-1116-FOF-WS issued August 21, 1998, we directed our staff, pursuant to Sections 120.69, 367.011 and 607.1406(9)-(15), Florida Statutes, to file a petition in Circuit Court seeking to have the refund provisions of Order No. PSC-97-1147-FOF-WS enforced against either the shareholders or the directors of Martin Downs.

Pursuant to Order No. PSC-98-1116-FOF-WS, our staff filed a Petition to Enforce Final Order (Petition) in the Circuit Court on August 20, 1998. The Petition was assigned Case No. 98-652-CA. Because no response was filed to this Petition, staff filed its Motion For Default on August 2, 1999, and a Default was entered on August 4, 1999.

We had originally thought that we would be able to locate either the shareholders or the directors of Martin Downs. However, after searching the Internet and making inquiries with the Department of State, our staff was unable to locate any shareholders or directors. Because our staff has been unable to locate any of the shareholders, we can discern no further action that we can take in this matter.

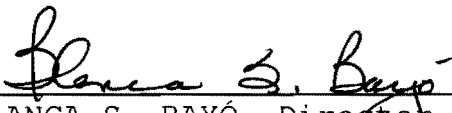
Further, the debt is not to this Commission, but to the customers or developers who paid the CIAC gross-up. Therefore, we cannot forward the debt to the Office of the Comptroller for collection. In consideration of all the above, this docket shall be closed.

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that this docket be closed.

By ORDER of the Florida Public Service Commission this 8th day of November, 1999.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( 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.

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.