

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for distribution)	DOCKET NO. 910261-SU
of contributions-in-aid-of-)	ORDER NO. 25533
construction (CIAC) gross-up)	ISSUED: 12-24-91
monies by NORTH FORT MYERS)	
UTILITY, INC. in Lee County)	
_____)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING REFUND OF GROSS-UP ON CONTRIBUTIONS-
IN-AID-OF-CONSTRUCTION COLLECTED

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 25-22.0290, Florida Administrative Code.

In Order No. 23541, issued October 1, 1990, we determined that any water and wastewater utility currently collecting the gross-up on contributions-in-aid-of-construction (CIAC) must file a petition for continued authority to collect the gross-up and for approval of certain refunds to contributors. In Order No. 23689, issued October 29, 1990, we extended the time to file the petition to January 2, 1991. On March 1, 1991, North Fort Myers Utility, Inc. (North Fort Myers) timely filed a petition requesting disposition of CIAC tax gross-up monies collected for the fiscal year ended May 31, 1990.

Order No. 23541 required that all gross-up amounts in excess of a utility's actual tax liability resulting from its collection of CIAC should be refunded, with interest, on a pro rata basis to those who contributed the taxes. We further required the offset of above-the-line net operating losses (NOLs) and investment tax credits (ITCs) against the gross-up on CIAC collected. According to North Fort Myers' calculation, a total of \$13,262 is due to be refunded, pro rata to contributors. However, our calculation indicates that the appropriate amount of refund for the fiscal year ended May 31, 1990, is \$70,464, representing gross-up collected in excess of the tax liability. The reason for the difference in

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refund amounts is due to North Fort Myers' including a recent expense created by a substantial change in its operations and resulting tax losses as below-the-line losses. We find it appropriate to include North Fort Myers' losses for 1990 above-the-line. Upon consideration, we find that the appropriate amount to be refunded is \$70,464.

The refund is to be made in accordance with Orders Nos. 16971, issued December 18, 1986, and 23541. The refund must include interest calculated through the date of the refund and be completed within six months of the date of this Order. In addition, North Fort Myers must file with the Commission a report of the refund, including copies of the cancelled refund checks, so that we may verify the amount of the refund. This filing must occur within thirty days of the completion of the refund.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that North Fort Myers Utility, Inc. is hereby ordered to refund \$70,464 pro rata to contributors. It is further

ORDERED that such refund shall include interest calculated through the date of the refund and be completed within six months of the date of this Order. It is further

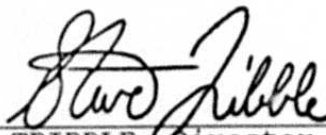
ORDERED that North Fort Myers Utility, Inc. shall file copies of the cancelled refund checks for verification within thirty days of the completion of the refund. It is further

ORDERED 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 101 East Gaines Street; Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that in the event no timely protest is received, this docket shall be closed. The refund will be monitored separately.

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By ORDER of the Florida Public Service Commission, this
24th day of December, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

NRF

Dissent: Commissioner Thomas M. Beard dissented regarding the requirement that a refund be made.

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

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petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 1-14-92.

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 adversely 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.