

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of
contributions-in-aid-of-
construction gross-up funds
collected by Sunray Utilities -
Nassau, Inc. in Nassau County.

DOCKET NO. 971524-WS
ORDER NO. PSC-98-0020-FOF-WS
ISSUED: January 5, 1998

The following Commissioners participated in the disposition of
this matter:

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

NOTICE OF PROPOSED AGENCY ACTION ORDER REQUIRING CREDIT TO THE
CONTRIBUTIONS-IN-AID-OF CONSTRUCTION ACCOUNT BUT DETERMINING THAT
NO REFUNDS ARE REQUIRED FOR THE YEAR 1996

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

Sunray Utilities - Nassau, Inc. (Sunray or utility) is a Class
C water and wastewater utility which provides service to
approximately 163 water customers and 155 wastewater customers in
Nassau County. According to their 1996 annual report, operating
revenue of \$62,272 for the water system and \$75,997 for the
wastewater system was reported. The utility reported a net
operating loss of \$52,873 for the water system and \$69,087 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
Order No. 16971, issued December 18, 1986, we authorized corporate

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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, respectively, 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 also required that all gross-up collections for a tax year, which are in excess of a utility's actual tax liability for the same year, be refunded on a pro rata basis to those persons who contributed the taxes.

In Order No. 23541, we 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. Sunray filed for authority to continue to gross-up on February 1, 1991. By Order No. PSC-92-0130-FOF-WS, issued March 31, 1992, Sunray was granted authority to continue to gross-up using the full gross-up formula.

On September 9, 1992, we issued Proposed Agency Action (PAA) 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 PAA Order No. PSC-92-0961A-FOF-WS. This order included Attachment A which reflected the generic calculation form. No protests were filed, and the Orders became final.

On March 29, 1996, we opened Docket No. 960397-WS to review our 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 PAA Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, we directed our staff to review the proposals and comments offered by the workshop participants and make a recommendation concerning whether our policy regarding the collection and refund of CIAC should be changed. In addition, we directed our staff to consider ways to simplify the process and determine whether there were viable alternatives to the gross-up. Pending this review, we directed our staff to continue processing CIAC gross-up and refund cases pursuant to Orders Nos. 16971 and 23541.

However, on August 1, 1996, Congress passed the Small Business Job Protection Act of 1996 (the Act), and the President signed the Act 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, we issued Order No. PSC-96-1180-FOF-WS revoking the authority of utilities to collect gross-up of CIAC and cancelling the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. Since there was no longer a need to review our policy on the gross-up of CIAC, we closed Docket No. 960397-WS by Order No. PSC-96-1253-FOF-WS, issued on October 8, 1996. However, as established in PAA Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Orders Nos. 16971 and 23541.

The purpose of this Order is to address the disposition of CIAC gross-up funds for 1996.

1996 CIAC GROSS-UP FUNDS

In compliance with Order No. 16971, Sunray filed its 1996 annual CIAC report regarding its collection of gross-up for the year. 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. The utility has indicated that it agrees with our calculations.

Our calculation, which is reflected on Schedule No. 1, is based on information provided by the utility in its gross-up report. A summary of the refund calculation follows.

The utility proposes that no refund is appropriate. However, we calculate an overcollection of \$28 for 1996.

The 1996 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 of the taxable CIAC received would be taxed. The report indicates a total of \$21,855 in taxable CIAC was received, with \$368 being deducted for the first year's depreciation, resulting in net taxable CIAC of \$21,487. Using the 37.63 percent combined marginal federal and

state tax rates, we calculate the tax effect to be \$8,086. 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 \$12,965. The utility collected \$12,993 in gross-up taxes. Based upon the foregoing, the utility collected \$28 more in gross-up than was required to pay the taxes. This amount does not include the accrued interest as of December 31, 1996.

However, the refund amount is still immaterial and the cost of processing the refund would cost more than the refund itself. The gross-up funds were collected from 54 individuals or entities during 1996. Based on the total refund amount, each contributor would receive about \$0.52 each. The net CIAC level is 20.42 percent. Therefore, the utility shall not be required to make a refund, but shall credit CIAC for the excess collections.

CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, processing of this docket is complete and the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the overcollection of \$28 in gross-up funds for the year 1996, plus accrued interest, shall be credited to the account for contributions-in-aid-of-construction. It is further

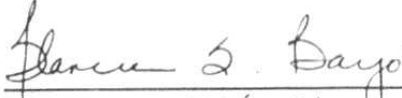
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, 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 Schedule 1 attached to this Order is incorporated and made a part of this Order. 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 5th day
of January, 1998.



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.

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 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-

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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 January 26, 1998.

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.

COMMISSION CALCULATED GROSS-UP REFUND

SUNRAY UTILITIES - NASSAU, INC.

SOURCE: (Line references are from CIAC	<u>1996</u>
1 Form 1120, Line 30 (Line 15)	\$ 78468
2 Less CIAC (Line 7)	-21855
3 Less Gross-up collected (Line 19)	-12993
4 Add First Year's Depr on CIAC (Line	368
5 Add/Less Other Effects (Lines 20 &	<u>1379</u>
6	
7 Adjusted Income Before CIAC and	\$ 45367
8 Taxable CIAC (Line 7)	21855
9 Less first years depr. (Line 8)	<u>-368</u>
10	
11 Taxable CIAC Resulting in a Tax	\$ 21487
12 Less: NOL Carrforward	0
13	-
14 Net Taxable CIAC	\$ 21487
15 Effective state and federal tax rate	37.63%
16	-
17 Net Income tax on CIAC	\$ 8086
18 Less ITC Realized	0
19	-
20 Net Income Tax	\$ 8086
21 Expansion Factor for gross-up taxes	1.60333493666827
22	-
23 Gross-up Required to pay tax effect	\$ 12965
24 Less CIAC Gross-up collected (Line	-12993
25	-
26 (OVER) OR UNDER COLLECTION	\$ -28
27	=
28	
29 TOTAL YEARLY REFUND	\$ 0
30	=
31	
32 PROPOSED REFUND (excluding	\$ 0
33	=