



Public Service Commission

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REC'D BY
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G. H.

DATE: DECEMBER 22, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER AND WASTEWATER (JOHNSON, MCCASKILL)
DIVISION OF LEGAL SERVICES (JAEGER)

RE: DOCKET NO. 981070-WS - DISPOSITION OF CONTRIBUTIONS IN AID OF CONSTRUCTION (CIAC) COLLECTED IN 1993-1996 BY SANLANDO UTILITIES CORPORATION IN SEMINOLE COUNTY.
COUNTY: SEMINOLE

AGENDA: JANUARY 5, 1999 - REGULAR AGENDA -PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: THIS DOCKET SHOULD BE CONSIDERED BEFORE DOCKET NO. 980957-WS

FILE NAME AND LOCATION: S:\PSC\WAW\WP\981070.RCM

CASE 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 (I.R.C.), 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.

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PSC-RECORDS/REPORTING

Orders Nos. 16971, issued December 18, 1986, and 23541, issued 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, should 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. On April 27, 1992, this Commission issued Proposed Agency Action (PAA) Order No. PSC-92-0248-FOF-WS, which granted Sanlando Utilities Corporation the authority 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.

CIAC gross-up refunds for the years 1987 through 1991, were addressed in Docket No. 940344-WS, Order No. PSC-95-0746-FOF-SU, issued June 21, 1995. The purpose of this recommendation is to address the amount of CIAC gross-up funds that should be refunded for the years 1992 through 1996.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the refunds made by Sanlando Utility Corporation, for excess gross-up collections for the years 1992 through 1996 and require the utility to refund accrued interest for the refund years?

RECOMMENDATION: Yes, the Commission should approve refunds totalling \$1,329 for 1995 gross-up collected in excess of the tax liability resulting from the collection of CIAC. In addition, the utility should refund accrued interest through the date of the refund. The utility refunded \$1,010 of the \$1,329 to the contributors in 1998; therefore, only \$319 was not refunded. The remaining \$319 should be credited to CIAC and divided equally between water (\$159.50) and wastewater (\$159.50). In accordance with Orders Nos. 16971 and 23541, 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 should submit the same type of documentation as verification that the accrued interest has been refunded. The utility's documentation indicates that for 1992 through 1994 and 1996, the tax liability exceeded the amount of gross-up collected, which resulted in no refund. (JOHNSON)

STAFF ANALYSIS: In compliance with Orders Nos. 16971 and 23541, Sanlando Utilities Corporation filed its 1992 through 1996 annual CIAC reports and tax returns regarding its collection of gross-up for each year. Staff's calculations and the utility's calculations are in agreement on the refund amounts for the years listed. No refunds are necessary for 1992, 1993, 1994, and 1996, because the utility did not collect sufficient taxes to satisfy the tax liabilities for those years. 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 tax. 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 should be divided equally between water and wastewater for the amount of \$159.50 for each system. The \$319 represents about 24% 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; therefore, none were included in staff's refund calculation.

ANNUAL GROSS-UP REFUND AMOUNTS

Based upon the foregoing, staff has calculated the amount of refund which is appropriate, based on the information provided by the utility in its CIAC report and tax returns. A summary of the 1992 through 1996 refund calculations follows.

1992

The utility proposes that no refund is appropriate. Staff agrees 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. Staff has used the 37.63% combined marginal federal and state tax rates to calculate the tax effect of \$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 taxes; therefore, the tax liability exceeded the taxes collected and no refund is necessary.

1993

The utility proposes that no refund is appropriate. Staff agrees 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. Staff has used the 37.63% combined marginal federal and state tax rates to calculate the tax effect of \$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 taxes; therefore, the tax liability exceeded the taxes collected and no refund is necessary.

1994

The utility proposes that no refund is appropriate. Staff is in agreement 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. Staff has used the 37.63% combined federal and state tax rate as provided in the CIAC report to calculate the tax effect of \$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 collected \$27,073 of the gross-up monies; therefore, staff calculates that the utility under collected and no refund is required.

1995

The utility proposes a refund of \$1,329 for 1995 excess gross-up collections. Based upon our review of the utility's 1995 filing, the utility was in a taxable position with \$246,256 in above-the-line income prior to the inclusion of taxable CIAC in income. Therefore, all taxable CIAC received would be taxed. The 1995 CIAC report indicates that a total of \$151,433 in gross-up collections were received, with \$254,272 in taxable CIAC. First year's depreciation is \$5,482, associated with the taxable CIAC income of \$254,272, resulting in net taxable CIAC of \$248,790. Staff used the 37.63% combined marginal federal and state tax rates as provided in the 1995 CIAC Report to calculate the tax effect of \$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 taxes. Based upon the foregoing, the utility should 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 taxes should be credited to CIAC and divided equally between water and wastewater. The utility should 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 should submit copies of

canceled checks, credits applied to monthly bills or other evidence that verifies that the utility has refunded the interest.

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. Staff agrees 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. Staff has used the 37.63% combined marginal federal and state tax rates to calculate the tax effect of \$24,908. 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 \$39,936. The utility collected \$37,800 in gross-up taxes; therefore, the tax liability exceeded the taxes collected and no refund is necessary.

DOCKET NO. 981070 S
DATE: DECEMBER 22, 1998

ISSUE 2: Should the docket be closed?

RECOMMENDATION: Yes, if a timely protest is not filed by a substantially affected person, this docket may be closed administratively. (JAEGER)

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

