

MEMORANDUM

APRIL 21, 1997

11:45

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (CYRUS-WILLIAMS, BRUBAKER) *AWG*
RE: DOCKET NO. 970275-WS - DISPOSITION OF GROSS-UP FUNDS
COLLECTED BY HYDRATECH UTILITIES, INC. IN MARTIN COUNTY *JTB*

PSC-97-0454-FOF

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER FINDING REFUND REQUIRED FOR 1995, with an attachment, to be issued in the above-referenced docket. (Number of pages in Order - 7)

DCW/dp

Attachment

cc: Division of Water and Wastewater (Gilchrist)

I: 970275OR.DCW

see 4

for file - 2/0
marked - 1/0

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of gross-up) DOCKET NO. 970275-WS
funds collected by Hydratech) ORDER NO. PSC-97-0454-FOF-WS
Utilities, Inc. in Martin County) ISSUED: April 21, 1997

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER FINDING REFUND REQUIRED FOR 1995

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

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, 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.

Order No. 16971 and Order No. 23541, issued October 1, 1990, 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 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, be refunded on a pro rata basis to those persons who contributed the taxes.

DOCUMENT NUMBER DATE

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FPSC-RECORDS/REPORTING

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In Order No. 23541, the Commission 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.

Hydratech Utilities, Inc. (Hydratech or utility) is a Class A water and wastewater utility providing service to approximately 5,169 water and 4,389 wastewater customers in Martin County. According to its 1995 annual report, the utility reported gross operating revenues of \$1,210,078 and \$963,550 for water and wastewater, respectively, and net operating income of \$119,558 for water and a net operating loss of \$14,873 for wastewater. Hydratech filed for authority to gross-up on May 22, 1991. By Order No. 25515, issued December 20, 1991, Hydratech was granted authority to gross-up CIAC using the full gross-up formula.

On September 9, 1992, this Commission issued Proposed Agency Action Order No. PSC-92-0961-FOF-WS, which clarified the provision of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On September 14, 1992, Order No. PSC-92-0961A-FOF-WS was issued, which included Attachment A, reflecting the generic calculation form. On October 12, 1994, Order No. PSC-94-1265-FOF-WS was issued, revising the full gross-up formula.

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

However, on August 1, 1996, the Small Business Job Protection Act of 1996 (the Act) passed Congress and was signed into law by the President 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, Order No. PSC-96-1180-FOF-WS was issued to revoke the authority of utilities to collect gross-up of CIAC and to cancel the respective

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tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. Docket No. 960397-WS was also closed on October 8, 1996.

As established in Order No. PSC-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Order Nos. 16971 and 23541. This order, therefore, addresses the disposition of the gross-up of CIAC collected by the utility in 1995. The disposition of gross-up funds collected by the utility from 1991 through 1994 was addressed in Docket No. 970121-SU, and Order No. PSC-96-1352-FOF-WS was issued accordingly.

Refund Calculations for 1995

In compliance with Orders Nos. 16971 and 23541, Hydratech filed an annual CIAC gross-up report for 1995. Our calculations, taken from these reports, are reflected on Schedule No. 1, which is attached hereto and by reference incorporated herein. Gross-up calculations are in accordance with the method adopted in Order No. PSC-92-0961-FOF-WS.

The utility's 1995 CIAC report indicates that the utility had an above-the-line loss before the inclusion of taxable CIAC and gross-up. Order No. 23541 requires that CIAC income be netted against the above-the-line loss; therefore, not all of the CIAC collected would create a tax liability. The utility's CIAC report indicates a total of \$645,578 in taxable CIAC was received, with \$10,814 being deducted for the first year's depreciation, resulting in net taxable CIAC of \$634,764. When this amount is netted against the above-the-line-loss of \$127,973, the amount of taxable CIAC resulting in a tax liability is \$506,791. Applying the 37.63% combined marginal federal and state tax rate provided in the 1995 CIAC report to the net \$506,791 results in the income tax effect of \$190,705. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$305,757. The utility collected \$377,659 of gross-up monies; therefore, we find that a refund of \$71,902 is required. This amount does not include accrued interest as of December 31, 1995 which must also be refunded through the date of the refund. The refund will be distributed to 179 water and 225 wastewater customers.

In accordance with Orders Nos. 16971 and 23541, all amounts shall be refunded on a pro rata basis to those persons who contributed the taxes. The refunds shall be completed within 6 months of the effective date of this order. Within 30 days from the date of the refund, the utility shall submit copies of cancelled checks, credits applied to monthly bills or other

means, and an explanation of the efforts made to make the refunds.

Closing of Docket

Upon the expiration of the protest period, this docket shall remain open pending the verification of refunds. This docket shall be closed administratively upon verification that the refunds have been completed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission 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 25-22.003, Florida Administrative Code, is received by the Director of the Division of Records and Reporting at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that Hydratech Utilities, Inc. shall refund \$71,203. plus accrued interest through the date of refund, for amount collected in excess of the tax liability for 1988. It is further

ORDERED that all refunds shall be made by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that, upon expiration of the protest period, this docket shall remain open pending the verification of refunds. This docket shall be closed administratively upon verification that the refunds have been completed.

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By ORDER of the Florida Public Service Commission, this 21st
day of April, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Deane
Chief, Bureau of Records

(S E A L)

DCW

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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.

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 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 May 12, 1997.

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.

SCHEDULE NO. 1

COMMISSION CALCULATED GROSS-UP REFUND

Hydratech Utilities, Inc.

SOURCE: (Line references are from CIAC Reports)

	1995
1 Form 1120, Line 30 (Line 15)	\$ 887,110
2 Less CIAC (Line 7)	(645,578)
3 Less Gross-Up Collected (Line 10)	(377,659)
4 Add First Year's Depr on CIAC (Line 8)	10,814
5 Add/Less Other Effects (Lines 20 & 21)	(2,660)
6	-----
7 Adjusted Income Before CIAC and Gross-Up	\$ (127,973)
8	
9 Taxable CIAC (Line 7)	\$ 645,578
10 Less first years depr. (Line 8)	\$ (10,814)
11	-----
12 Adjusted Income After CIAC	\$ 506,791
13 Less: NOL Carry Forward	0
14	-----
15 Net Taxable CIAC	\$ 506,791
16 Combined Marginal state & federal tax rates	37.63%
17	-----
18 Net Income tax on CIAC	\$ 190,705
19 Less ITC Realized	0
20	-----
21 Net Income Tax	\$ 190,705
22 Expansion Factor for gross-up taxes	1.603334937
23	-----
24 Gross-up Required to pay tax effect	\$ 305,757
25 Less CIAC Gross-up collected (Line 19)	(377,659)
26	-----
27 (OVER) OR UNDER COLLECTION	\$ (71,902)
28	-----
29	
30 TOTAL YEARLY REFUND	\$ (71,902)
31	-----
32	
33 PROPOSED REFUND (excluding interest)	\$ (71,902)
34	-----