

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 930192-WS
Contributions-in-Aid-of-) ORDER NO. PSC-93-0656-FOF-WS
Construction (CIAC) Gross-up) ISSUED: 4/28/93
Funds Received by DUVAL UTILITY)
COMPANY in Clay County.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING REFUNDS OF EXCESS CIAC GROSS-UP
COLLECTIONS FOR THE YEARS 1987 AND 1988

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

The repeal of Section 118(b) of the Internal Revenue Code resulted in making contributions-in-aid-of-construction (CIAC) gross income and depreciable for federal tax purposes. In Order No. 16971, issued December 18, 1986, we 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.

Orders Nos. 16971 and 23541, issued December 18, 1986, and October 1, 1990, respectively, require that utilities annually file information to be used to determine the actual state and federal income tax liability directly attributable to CIAC, and whether a refund of the gross-up is appropriate for any given year for which gross-up was in effect. These orders also require that all gross-up amounts for a tax year which are in excess of a utility's actual tax liability for the same year resulting from its collection of

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CIAC should be refunded on a pro rata basis to those persons who contributed the taxes.

In Order No. 23541, we determined that any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue collecting the gross-up, had to file a petition for approval with the Commission on or before October 29, 1990. Duval Utility Company (Duval or utility) did not request authority to continue to gross-up CIAC for the related tax impact. By Order No. 24776, issued July 8, 1991, we canceled the utility's authority to gross-up.

By letter dated April 30, 1992, we requested that the utility review our preliminary refund calculation and, if, the utility disagreed with our calculations to provide alternative ones no later than May 30, 1992. No response was received from the utility.

Order No. PSC-92-0961-FOF-WS, issued September 9, 1992, clarified the procedure to be used to calculate the amount of gross-up refunds. In compliance with Order No. 16971, Duval filed its 1987 through 1991 annual CIAC reports regarding its collection of gross-up for each year. We have addressed our concerns and findings regarding the utility's refund and its calculations below.

Comparison of Annual Gross-up Collected with the
Tax Liability Resulting from Above-the-Line Operations

It appears that the utility calculates the above-the-line tax liability based upon the total taxable income at its federal and state tax rates. This above-the-line tax liability is then compared to the amount of gross-up collected for the year to determine the amount of gross-up refund, if any.

We believe there are several problems with this method of refund calculation. Orders Nos. 16971 and 23541 require that utilities annually file information to be used to determine the actual state and federal income tax expense directly attributable to the CIAC. The utility has in fact calculated the amount of above-the-line tax liability resulting from its overall operations. With the exception of taxable CIAC, federal and state income taxes due on above-the-line operations are recovered through service rates charged to the general body of ratepayers. Therefore, if a utility has an above-the-line loss, the amount of taxable CIAC

collected for the year should be netted against the above-the-line loss to determine the net amount of taxable CIAC and taxes which the gross-up was collected to pay. If a utility has above-the-line income, the total amount of CIAC collected which is taxable because of the Amendment to Section 118(b), of the Internal Revenue Code, should be used to calculate the tax liability.

Further, if the tax liability resulting from the collection of taxable CIAC is not looked at in isolation, the effect is that the developer or individual customer who pays gross-up is paying for the income taxes associated with the utility's overall operations, which is recoverable through service rates. We find it appropriate to use the total amount of taxable CIAC to calculate the actual tax liability attributable to the CIAC when a utility has an above-the-line taxable income and the amount of taxable CIAC is to be reduced by the amount of the above-the-line loss when an above-the-line loss exists.

Annual Gross-up Refund Amounts

Based upon the foregoing, we have calculated the amount of refund per year. Our calculations are reflected on Schedule No. 1, attached hereto. A summary of each year's refund calculation follows.

The utility's 1987 CIAC report indicates that a total of \$2,953 of gross-up collections was received. We used the 18.40 percent combined federal and state tax rate as provided in the 1987 CIAC report to calculate the tax effect. Based upon the foregoing, we calculate a refund of \$492 for 1987.

In its 1987 filing, the utility asserts that it is refunding \$282 to developers for the year ended December 31, 1987. We have received no documentation of this refund. If, indeed, the \$282 refund has been made for 1987, the utility shall refund an additional \$210 and submit evidence which verifies that the total refunds have been made.

The 1988 CIAC report indicates that a total of \$5,328 of gross-up collections was received. We used the 18.40 percent combined federal and state tax rate as provided in the 1988 CIAC report to calculate the tax effect. Based upon the foregoing, we calculate a refund of \$975 for 1988.

The refund amounts discussed above do not include the accrued interest which must also be refunded from December 31st of each year to the date of refund.

The utility indicates it did not collect gross-up during the years of 1989 through 1991, and, therefore, believes no refund is necessary. We agree with the utility and, therefore, find no refund is necessary for the years 1989 through 1991.

In consideration of the foregoing, we find that the utility shall refund \$492 for 1987; \$975 for 1988; and no refund is necessary for the years 1989 through 1991, for a total of \$1,467 plus accrued interest through the date of refund, for gross-up collected in excess of the actual tax liability resulting from the collection of CIAC. In accordance with Orders Nos. 16971 and 23541, all amounts shall be refunded on a pro rata basis to those persons who contributed to the taxes, and the refund shall be completed within 6 months of the effective date of this Order. The utility shall submit copies of canceled checks, credits applied to monthly bills, or other evidence which verifies that the refunds have been made, within 30 days from the date of the refund. If the utility has in fact made a refund of \$282 for 1987, it shall refund an additional \$210 for 1987 plus accrued interest from December 31st of that year to the date of refund. If the utility has previously refunded \$282 for 1987 as stated in its 1987 CIAC gross-up report, it shall submit copies of canceled checks, credits applied to monthly bills or other evidence which verifies the refunds have been made.

In the event no timely protest is received, this docket shall be closed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Duval Utility Company shall make refunds of \$492 for 1987; \$975 for 1988; and no refund for the years 1989 through 1991, for a total of \$1,467 plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability resulting from the collection of CIAC. It is further

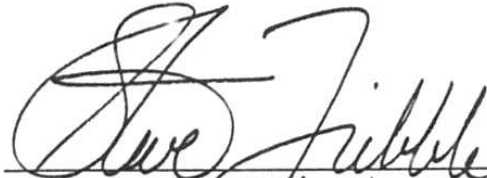
ORDERED that Duval Utility Company shall refund all of the amounts on a pro rata basis to those persons who contributed the taxes, and the refund shall be completed within 6 months of the effective date of this Order. It is further

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ORDERED that the provisions of this Order are issued as proposed agency action and shall become final unless an appropriate petition 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 close of business on the date set forth in the Notice of Further Judicial Proceedings or Judicial Review. It is further

ORDERED that in the event no timely protest is received, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 28th day of April, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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 petition must be received by the Director, Division of

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Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 19, 1993.

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.

Schedule No. 1

DUVAL UTILITY COMPANY
SOURCE: (Line references are from CIAC Reports)

COMMISSION CALCULATED GROSS-UP REFUND

	1987	1988	1989	1990	1991
1 Form 1120, Line 30 (Line 15)	\$ 16,528	\$ 24,973	\$ 0	\$ 0	\$ 0
2 Less CIAC (Line 7)	(11,050)	(22,200)	0	0	0
3 Less Gross-up collected (Line 19)	(2,953)	(5,328)	0	0	0
4 Add First Year's Depr on CIAC (Line 8)	138	278	0	0	0
5 Add/Less Other Effects (Lines 20 & 21)	(70)	(340)	0	0	0
6					
7 Adjusted Income Before CIAC and Gross-up	\$ 2,593	\$ (2,617)	\$ 0	\$ 0	\$ 0
8					
9 Taxable CIAC (Line 7)	\$ 11,050	\$ 22,200	\$ 0	\$ 0	\$ 0
10					
11 Taxable CIAC Resulting in a Tax Liability	\$ 11,050	\$ 19,583	\$ 0	\$ 0	\$ 0
12 Less first years depr. (Line 8)	(138)	(278)	0	0	0
13					
14 Net Taxable CIAC	\$ 10,912	\$ 19,305	\$ 0	\$ 0	\$ 0
15 Effective state and federal tax rate	18.40%	18.40%	0.00%	0.00%	0.00%
16					
17 Net Income tax on CIAC	\$ 2,008	\$ 3,552	\$ 0	\$ 0	\$ 0
18 Less ITC Realized	0	0	0	0	0
19					
20 Net Income Tax	\$ 2,008	\$ 3,552	\$ 0	\$ 0	\$ 0
21 Expansion Factor for gross-up taxes	1.225490196	1.225490196	1	1	1
22					
23 Gross-up Required to pay tax effect	\$ 2,461	\$ 4,353	\$ 0	\$ 0	\$ 0
24 Less CIAC Gross-up collected (Line 19)	(2,953)	(5,328)	0	0	0
25					
26 PROPOSED REFUND (excluding interest)	\$ (492)	\$ (975)	\$ 0	\$ 0	\$ 0
27					
28			No Gross-up	No Gross-up	No Gross-up
29 TOTAL REFUND	\$ (1,467)		Collected	Collected	Collected
30					